

**SAINT VINCENT AND THE GRENADINES
PLANT BREEDERS' PROTECTION ACT, 2019
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SAINT VINCENT AND THE GRENADINES

ACT NO. 28 OF 2019

I ASSENT

[L.S.]

SUSAN DOUGAN
Governor-General
31st December, 2019.

AN ACT to provide for the granting of protection to breeders of new plant varieties and for related purposes.

[BY PROCLAMATION]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Plant Breeders' Protection Act, 2019.

Short title and commencement

(2) This Act comes into force on a day fixed by the Governor-General by Proclamation published in the *Gazette*.

2. In this Act –

Interpretation

“agent” in relation to a plant variety, means a person who is resident or has an office in Saint Vincent and the Grenadines and who is appointed by the breeder of that plant variety to act on his behalf in respect of the making of an application for, or any proceedings relating to, a plant breeder's right for that plant variety;

“applicant”, in relation to an application, means the person currently shown in the application as the person making the application;

“application” means an application under section 13 for a plant breeder’s right;

“approved person” means a person appointed or designated by the Minister under section 18 (6);

“breeder” in relation to a plant variety, means –

- (a) a person who bred or discovered and developed the plant variety;
- (b) a person who is the employer of the person mentioned in paragraph (a) or who has commissioned the latter’s work; or
- (c) a person who is the successor in title to the persons referred to in paragraphs (a) and (b);

“Commerce and Intellectual Property Office” means the office established by the Commerce and Intellectual Property Office Act, Cap. 310;

“Convention” means the International Convention for the Protection of New Varieties of Plants, done at Geneva on 2 December 1961, as revised on 10 November 1972, 23 October 1978 and on 19 March 1991;

“Court” means the High Court;

“denomination” means the distinguishing name or identification for a plant variety covered under sections 40 and 42;

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

“harvested material” means any harvested material to which the rights of a grantee under section 29 are extended by virtue of section 30;

“Minister” means the Minister assigned responsibility for legal affairs;

“plant” includes all fungi and algae but does not include bacteria, bacterioids, mycoplasmas, viruses, viroids and bacteriophages;

“plant breeder’s right” means the right granted under section 21;

“plant 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 plant breeder’s right are fully met, can be –

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

“propagating material” in relation to a plant of a particular plant variety, means a part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same relevant characteristics can be produced;

“protected variety” means a plant variety which has been granted a plant breeder’s right;

“register” means the Register of Plant Varieties kept under section 11;

“Registrar” means the registrar of Plant Breeders’ Rights referred to in section 5;

“regulation” means regulations made under this Act;

“term”, in relation to a plant breeder’s right, means the term of the plant breeder’s right under section 24;

“UPOV” means the International Union for the Protection of New Varieties of Plants founded by the Convention;

“UPOV member” means a State, or an intergovernmental organisation, that is a party to the Convention.

3. This Act binds the Crown.

Act binds Crown

4. This Act applies to all plant genera and species including all fungi and algae.

Application of Act

PART II
ADMINISTRATION

- Registrar of Plant Breeders' Rights
5. (1) The Registrar of the Commerce and Intellectual Property Office is the Registrar of Plant Breeders' Rights for the purposes of this Act.
- (2) The Registrar –
- (a) has the powers and functions that are given to him under this Act or any other Act; and
- (b) is responsible for the administration of this Act.
- Powers of Registrar
6. The Registrar may, for the purposes of this Act –
- (a) summon witnesses;
- (b) receive written or oral evidence on oath or affirmation;
- (c) require the production of documents or articles;
- (d) award costs against a party to proceedings brought before the Registrar; and
- (e) notify, as he considers fit, any person of any matter, that, in his opinion, should be brought to the person's notice.
- Exercise of power by Registrar
7. The Registrar may not exercise a power under this Act in any way that adversely affects a person applying for the exercise of that power without first giving that person a reasonable opportunity to be heard.
- Registrar to act as soon as possible
8. If –
- (a) the Registrar is required under this Act to do any act or thing; and
- (b) no time or period is provided within which the act or thing is to be done,
- the Registrar is to do the act or thing as soon as practicable.
- Deputy Registrar
9. (1) Subject to any direction by the Registrar, a Deputy Registrar has all the powers and functions of the Registrar, except the powers of delegation under section 10.

(2) A power or function of the Registrar, when exercised by a Deputy Registrar, is taken to have been exercised by the Registrar.

(3) The exercise of a power or function of the Registrar by a Deputy Registrar does not prevent the exercise of the power or function by the Registrar.

(4) If the exercise of a power or function by the Registrar is dependent on the opinion, belief or state of mind of the Registrar in relation to a matter, that power or function may be exercised by a Deputy Registrar on his or her opinion, belief or state of mind in relation to that matter.

(5) If the operation of a provision of this Act or another Act is dependent on the opinion, belief or state of mind of the Registrar in relation to a matter, that provision may operate on the opinion, belief or state of mind of a Deputy Registrar in relation to that matter.

10. (1) The Registrar may by instrument in writing delegate all or any of his other powers or functions to –

Delegation of
Registrar's powers
and functions

- (a) a prescribed person, or persons included in a prescribed class, holding or performing the duties of an office in the Commerce and Intellectual Property Office; or
- (b) a prescribed public officer or public officer included in a prescribed class, employed in the Commerce and Intellectual Property Office.

(2) A delegate shall, if so required by the instrument of delegation, exercise or perform a delegated power or function under the direction or supervision of –

- (a) the Registrar; or
- (b) a person specified in the instrument being a person referred to in subsection (1) (a) or (b).

11. (1) The Registrar shall keep a register to be known as the Register of Plant Varieties.

Register

(2) There shall be entered in the register –

- (a) a grant of a plant breeder's right;
- (b) particulars of a grantee as the Registrar may determine;

- (c) the approved denomination for a plant variety;
 - (d) a licence granted by a grantee or a compulsory licence granted under section 38, with an indication of the conditions of the licence;
 - (e) any other matters and information relating to a protected variety or a plant breeder's right whose entry in the register appears to the Registrar to be useful; and
 - (f) any other matter required by this Act or the regulations to be entered in the register.
- (3) The register may be kept in whole or in part by using a computer.
- (4) Any record of a particular or other matter made by using a computer for the purpose of keeping the register is taken to be an entry in the register.
- (5) A person may on payment of the prescribed fee, if any, inspect the register and make copies of or extracts from the information in it.

Evidence of
official records

12. (1) The register is *prima facie* evidence of any particular or other matter entered in it.
- (2) A copy of, or extract from, the register that is certified by the Registrar to be a true record or extract is admissible in any proceedings as if it were the original.
- (3) If the register or a part of the register is kept by using a computer, a document certified by the Registrar as reproducing in writing a computer record of all or any of the particulars comprised in the register or in any part of the register is admissible in any proceedings as evidence of those particulars.
- (4) A certificate signed by the Registrar and stating that –
- (a) anything required or permitted to be done by this Act was done or not done on, or had been done or not been done by, a specified date;
 - (b) anything prohibited by this Act was done or not done on, or had been done or not been done by, a specified date; or

- (c) a document was available for public inspection at the Commerce and Intellectual Property Office on a specified date or during a specified period,

shall be prima facie evidence of the matter so stated.

PART III

APPLICATION FOR PLANT BREEDER'S RIGHT

13. (1) A breeder of a plant variety may apply to the Registrar for a plant breeder's right. Right to apply for plant breeder's right

(2) A breeder may apply under subsection (1) whether or not –

- (a) the breeder is a citizen of Saint Vincent and the Grenadines;
- (b) the breeder is resident in Saint Vincent and the Grenadines; and
- (c) the plant variety was bred in Saint Vincent and the Grenadines.

(3) Subject to subsection (4), if two or more persons bred a plant variety jointly, those persons or some of them may apply jointly for a plant breeder's right.

(4) If two or more persons bred a plant variety jointly, one of those persons is not entitled to apply for a plant breeder's right otherwise than jointly with, or with the consent in writing of, each other of those persons.

14. (1) The right of a breeder of a plant variety to apply for a plant breeder's right is personal property and is capable of assignment or of transmission in the same way as any other personal property. Right to apply for plant breeder's right personal property

(2) An assignment of a right to apply for a plant breeder's right shall be in writing signed by or on behalf of the assignor.

15. (1) An application for a plant breeder's right shall –

- (a) be in writing;
- (b) be in the prescribed form; and
- (c) be made in the manner set out in the prescribed form.

Form of application

(2) The application shall contain –

- (a) a description of the plant variety;
- (b) the proposed denomination for the plant variety which qualifies for approval and registration under section 40;
- (c) the address for service in relation to the application, being an address within Saint Vincent and the Grenadines;
- (d) if a right of priority is claimed under section 17, full particulars of the relevant right of priority; and
- (e) any other particulars as are required by the prescribed form or as are prescribed.

(3) An applicant shall at the time of filing an application under this section pay to the Registrar the application fee and any other fees as may be prescribed.

Dealing with application

16. (1) An application that complies with sections 13 and 15 at the time it is received by the Registrar shall, for the purposes of this Act, be deemed to be made at that time.

(2) An application that does not comply with sections 13 and 15 at the time it is received by the Registrar shall nevertheless be deemed to be made at that time if it is rectified within the time and manner as the Registrar may specify.

(3) The Registrar shall, if satisfied that an application complies with sections 13 and 15—

- (a) publish the application and the proposed denomination for the plant variety in the prescribed manner; and
- (b) notify the applicant of the publication.

Priority of foreign applications

17. (1) A breeder who has made an application in one or more UPOV members other than Saint Vincent and the Grenadines (referred to in this section as the first application) shall enjoy a right of priority for the purpose of filing an application if—

- (a) within a period of twelve months after the date of filing of the first application, the breeder files an application in Saint Vincent and the Grenadines (referred to in this section as the local application); and

- (b) the local application is accompanied with a claim to have the date the first application was made treated as the priority date for the purposes of the local application.
- (2) A breeder shall, within three months of making a claim under subsection (1) (b), submit to the Registrar –
- (a) a copy of the documents that constituted the first application, certified to be a true copy of the documents by the authority in the UPOV member to which the first application was made; and
 - (b) any other evidence to demonstrate that the plant variety which is the subject matter of both the first and local applications is the same.
- (3) A breeder shall –
- (a) within two years after the expiration of the period referred to in subsection (1) (a); or
 - (b) where the first application (or the earliest of those applications) is rejected or withdrawn, within two years after the rejection or withdrawal,

furnish any necessary information, document or material required for the purpose of an examination under section 18 to the Registrar or an approved person.

- (4) For the purposes of this section –
- (a) the period of twelve months referred to in subsection (1) (a) shall be computed from the date of filing of the first application; and
 - (b) the date of filing shall not be included in the computation of the twelve month period.

18. (1) An applicant shall, within the prescribed period after making an application, give to the Registrar or an approved person the necessary information, documents or material prescribed by the regulations.

Examination

(2) The Registrar or the approved person shall examine the plant variety concerned (referred to in this section as the candidate variety) –

- (a) to verify whether the candidate variety belongs to the stated botanical taxon;
- (b) to establish whether the candidate variety is distinct, uniform and stable; and
- (c) where the candidate variety is found to meet the requirements in paragraphs (a) and (b), to establish an official description of the variety.

(3) On examining the candidate variety under subsection (2), the Registrar or the approved person may, by written notice, request the applicant to furnish any further information, document or propagating material of the candidate variety.

(4) Where the Registrar or the approved person has made a request for further information, document or propagating material under subsection (3), the applicant shall –

- (a) furnish the information, document or propagating material within the period stated in the written notice; or
- (b) where the information, document or propagating material is not available, notify the Registrar or the approved person of this fact within that period.

(5) In examining a candidate variety under this section, the Registrar or the approved person may –

- (a) grow the variety or carry out other necessary tests;
- (b) cause the growing of the variety or the carrying out of other necessary tests; or
- (c) take into account the results of growing tests or other trials which have already been carried out by the appropriate authority in a UPOV member other than Saint Vincent and the Grenadines.

(6) For the purposes of this section, the Minister may by instrument in writing, on the basis of a person's qualifications and experience, appoint or designate that person to be an approved person in relation to one or more species of plants.

Withdrawal or
lapse of
application

19. (1) An applicant may withdraw an application at any time before a plant breeder's right is made in respect of it.

(2) The withdrawal of an application does not affect the liability of an applicant for any fees that may have become payable up to the date of that withdrawal.

(3) Where any information, document or material required to be given to the Registrar or an approved person under this Act is not supplied within the period stated in the written notice issued by the Registrar or approved person requiring the information, document or material, the application concerned shall lapse on the expiration of that period.

(4) An application to withdraw an application shall be filed in the prescribed form together with any prescribed documents or fee in accordance with the regulations.

20. Where a plant breeder's right has been granted under section 21, the grantee has the right to take proceedings in respect of unauthorised acts, which require the grantee's authorisation under sections 29, 30 and 31, as if the plant breeder's right had been granted on the date the application for that plant breeder's right was published under section 50.

Provisional
protection

PART IV

GRANT AND REVOCATION OF PLANT BREEDER'S RIGHT

Grant of plant breeder's right

21. (1) The Registrar shall –

- (a) except where an application has been withdrawn or has lapsed under section 19, grant a plant breeder's right in respect of every application that is eligible for the grant of a plant breeder's right; and
- (b) refuse to grant a plant breeder's right in respect of every application that is not eligible for the grant of a plant breeder's right.

Grant of plant
breeder's right

(2) An application shall only be treated as being eligible for the grant of a plant breeder's right if –

- (a) the applicant has complied with sections 13, 15 and 18; and
- (b) the Registrar –

- (i) has approved, for the plant variety in respect of which the application was made, the denomination proposed by the applicant under section 40;
- (ii) is satisfied that the applicant is the breeder of the plant variety; and
- (iii) is satisfied that the plant variety is new, distinct, stable and uniform within the meaning of section 22.

Conditions for
grant of plant
breeder's right

22. (1) For the purpose of this Act, a plant variety is new if, at the date of filing of the application, harvested or propagating material of the plant variety has not been sold or otherwise disposed of to another person, by or with the consent of the breeder for the purposes of exploitation of the plant variety –

- (a) in Saint Vincent and the Grenadines, earlier than one year before the date the application is made;
- (b) outside of Saint Vincent and the Grenadines –
 - (i) in the case of trees or vines, earlier than six years before the date the application is made; and
 - (ii) in any other case, earlier than four years before the date the application is made.

(2) For the purposes of this Act, a plant variety is distinct if the plant variety is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the date the application is made.

(3) For the purposes of this Act, a plant 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 cycle.

(4) For the purposes of this Act, a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

(5) For the purposes of subsection (1), where, in order to increase the stock of a plant variety or for any testing of a plant variety, the breeder of the plant variety makes an arrangement under which –

- (a) propagating material of that plant variety is to be sold to or used by some other person; and

- (b) any unused portion of that propagating material, and all the material of any type produced from that propagating material, is –
 - (i) to be sold to the breeder by that other person; or
 - (ii) otherwise to become the property of the breeder,

no account shall be taken of any sale or disposal under that arrangement.

(6) For the purposes of subsection (1), a plant variety does not cease to be new by virtue only of the sale or disposal at any time of –

- (a) material that is not propagating material or harvested material; or
- (b) propagating material sold or disposed of as a by-product or a surplus product of the creation of that plant variety if –
 - (i) the material is sold or disposed of without variety identification for purposes of consumption; and
 - (ii) having been produced during the breeding, increase of stock, test or trial of that plant variety, the material is not or no longer required for any of those activities.

(7) For the purposes of subsection (2), the making of an application in a country for –

- (a) a plant breeder's right; or
- (b) the entering of a plant variety in an official register of plant varieties,

shall be deemed to render that plant variety a matter of common knowledge from the date of application if the application leads to the grant of a plant breeder's right in that plant variety or to the entering of that plant variety in the official register of plant varieties.

(8) Notwithstanding subsection (1) and subject to subsection (9), a plant variety shall be considered new even where the sale or disposal of the plant variety took place in Saint Vincent and the Grenadines –

- (a) in the case of trees or vines, within six years before the date an application was filed; or

(b) in any other case, within four years before the date an application was filed.

(9) Subsection (8) only applies to applications filed within one year after the commencement of this Act.

Varieties bred by two or more persons independently

23. Where –

- (a) before a plant breeder's right is granted in a plant variety, two or more applications in respect of that plant variety have been made;
- (b) the Registrar is satisfied that the applicants concerned are persons who bred that plant variety independently; and
- (c) the Registrar is satisfied that, but for this section, each of those applicants would be entitled to a plant breeder's right in that plant variety,

the Registrar shall grant a plant breeder's right to the applicant whose application was made first

Term of plant breeder's right

24. (1) A plant breeder's right in a plant variety begins on the day that the plant breeder's right is granted.

(2) Subject to sections 26, 27 and 28, a plant breeder's right in a plant variety shall last –

- (a) in the case of trees and vines, for a period of twenty five years; and
- (b) for any other variety, for a period of twenty years.

(3) The Registrar shall endorse on every plant breeder's right the date of the grant.

Annual fee

25. A grantee shall during the term of a plant breeder's right –

- (a) pay an annual fee of a prescribed amount; and
- (b) furnish any information the Registrar may require in the prescribed manner and within the prescribed period.

Revocation and invalidity of plant breeder's right

Invalidity of plant breeder's right

26. (1) A person may, on the grounds referred to in subsection (2), apply to the Court for a declaration of invalidity of a plant breeder's right.

(2) The Court may declare a plant breeder's right invalid if the Court is satisfied that –

- (a) at the time of the grant of the plant breeder's right, the plant variety concerned was not new or distinct with the meaning of section 22;
- (b) where a plant breeder's right was granted mainly on the basis of information and documents furnished by the breeder, the plant variety was not, at the time the plant breeder's right was granted, stable or uniform within the meaning of section 22; or
- (c) the plant breeder's right has been granted to a person who is not entitled to it, unless it has since been transferred to the person who is entitled.

27. (1) For the revocation of a plant breeder's right, a person may apply –

Revocation of
plant breeder's
right

- (a) to the Registrar, on a ground referred to in subsection (2); or
- (b) to the Court, on a ground referred to in subsection (3).

(2) The Registrar may revoke a plant breeder's right at any time during the term of the plant breeder's right if –

- (a) the grantee, after having been requested by the Registrar to provide any information, document or material as the Registrar thinks fit for verifying the maintenance of the plant variety, fails to do so within the period specified by the Registrar;
- (b) in any particular year, the annual fee required under section 25 to be paid, has not been paid within the prescribed period; or
- (c) the grantee, after having been requested by the Registrar to propose another suitable denomination under section 43, fails to do so within the prescribed period.

(3) The Court shall revoke a plant breeder's right at any time during the term of the plant breeder's right if it is established that the plant variety is no longer stable or uniform with the meaning of section 22.

Renunciation of
plant breeder's
right

28. A grantee may, in the prescribed form and on payment of the prescribed fee, renounce his plant breeder's rights.

PART V

SCOPE OF PLANT BREEDER'S RIGHT

Scope of plant
breeder's right

29. (1) Subject to sections 34 and 35, a person shall obtain the authorisation of a grantee in respect of a protected variety to do the following acts in respect of propagating material of the protected variety –

- (a) produce or reproduce (multiply) the material;
- (b) condition the material for the purpose of propagation;
- (c) offer the material for sale;
- (d) sell the material;
- (e) import the material;
- (f) export the material;
- (g) stock the material for any purpose specified in paragraph (a), (b), (c), (d), (e) or (f).

(2) A grantee may authorise the acts referred to in subsection (1) subject to conditions and limitations.

(3) Subject to subsection (4), a licence issued by a grantee in respect of a protected variety is binding on a successor in title to the grantee's interest to the same extent as it was binding on the grantee; and a reference in this Act to doing anything with, or without, the consent of the grantee shall be construed accordingly.

(4) Subsection (3) does not apply –

- (a) to a person who, in good faith and without notice, actual or constructive of the licence, has given valuable consideration for interest in the plant breeder's right; or

(b) where the licence provides otherwise.

(5) For the purposes of this section, a person is deemed to have notice of a licence if the prescribed particulars of the grant of the licence are entered in the register.

30. Subject to sections 34 and 35, the acts under section 29 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety requires the authorisation of the grantee unless the grantee has had a reasonable opportunity to exercise his rights in relation to the propagating material.

Extension of plant breeder's right to harvested material

31. (1) Where a plant breeder's right is granted to a person, sections 29 and 30 also apply to –

Extension of plant breeder's right to essentially derived and certain other plant varieties

- (a) a plant variety which is essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (b) a plant variety which is not distinct in accordance with section 22 from the protected variety; and
- (c) a plant variety whose production requires the repeated use of the protected variety.

(2) A plant variety shall be taken to be essentially derived from another variety (referred to as the initial variety) if –

- (a) it is predominantly derived from the initial variety or from a plant variety that is itself predominantly derived from the initial variety;
- (b) it retains the expression of the essential characteristics that result from the genotype or a combination of genotypes of the initial variety;
- (c) it is clearly distinguishable from the initial variety; and
- (d) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the initial variety.

(3) For the avoidance of doubt, ways in which an essentially derived variety may be obtained include –

- (a) the selection of a natural or induced mutant or of a somaclonal variant;
- (b) the selection of a variant individual from plants of the initial variety;

- (c) backcrossing; or
- (d) transformation by genetic engineering.

Assignment of plant breeder's right 32. (1) A plant breeder's right is personal property and is capable of assignment or of transmission in the same way as other personal property.

(2) An assignment of a plant breeder's right does not have effect unless it is in writing signed by, or on behalf of, the assignor and assignee.

(3) An assignment or transmission shall be registered in the register on application in the prescribed form by the –

- (a) person registered as the grantee of the plant breeder's right; or
- (b) person to whom the right has been transferred or transmitted.

(4) No assignment or transmission to a successor shall have effect against a third party unless it has been registered.

(5) An application to register the assignment or transmission of a plant breeder's right shall be filed in a prescribed form together with any prescribed document or fee in accordance with the regulations.

PART VI

ENFORCEMENT OF PLANT BREEDER'S RIGHT

Infringement of plant breeder's right 33. Subject to sections 34 and 35, a plant breeder's right is infringed by a person who not being authorised by the grantee by means of a licence or transfer or otherwise, does in Saint Vincent and the Grenadines, or authorises the doing in Saint Vincent and the Grenadines of an act covered by –

- (a) section 29 in respect of propagating material;
- (b) section 30 in respect of harvested material; or
- (c) section 31 in respect of essentially derived and certain other varieties.

Exceptions to infringement 34. (1) The following acts do not infringe a plant breeder's right –

- (a) an act done privately and for non-commercial purposes;

- (b) an act done for experimental purposes;
- (c) an act done for the purpose of breeding other plant varieties; and
- (d) except where section 31 applies, an act referred to in sections 29 and 30 in relation to the other plant varieties under paragraph (c).

(2) In relation to the species of plants included in a list of agricultural plants, a farmer does not infringe a plant breeder's right if, within the prescribed reasonable limits and means for safeguarding the legitimate interests of a grantee, he uses for propagating purposes, on his own holding, the product of a harvest which he has obtained by planting, on his own holding, the protected variety or a variety covered by section 31 (1) (a) or (b).

(3) For the purposes of subsection (2), the regulations shall prescribe –

- (a) the list of agricultural plants which list shall not include fruits, ornamentals or vegetables; and
- (b) the reasonable limits and means for safeguarding the legitimate interests of a grantee.

35. (1) Subject to subsection (2), a plant breeder's right does not extend to any act referred to in section 29 in relation to –

Exhaustion of
plant breeder's
right

- (a) any material of the protected variety; or
- (b) any material of a variety referred to in section 31; or
- (c) any material derived from the material referred to in paragraphs (a) and (b),

that has been sold or otherwise marketed in Saint Vincent and the Grenadines by the grantee or with the grantee's consent.

(2) Subsection (1) does not apply if the acts involved –

- (a) further propagation of the plant variety; or
- (b) an export of material of the plant variety,

which enables the propagation of the variety into a country that does not provide plant breeder's rights in relation to the plant genus or species to which the plant variety belongs except where the exported material is for final consumption purposes.

- (3) For the purposes of this section, "material" means –
- (a) propagating material of any kind;
 - (b) harvested material, including entire plants and parts of plants; and
 - (c) any product made directly from the harvested material.

Civil remedies
for infringement
of plant breeder's
right

36. (1) A person who infringes a plant breeder's right is liable to the grantee and to all persons claiming under the grantee for all damages that are, by reason of the infringement, sustained by the grantee or any of those persons and, unless otherwise provided, the grantee shall be made a party to an action for the recovery of those damages.

(2) In an action for an infringement of a plant breeder's right, the Court may make any interim or final order sought by any of the parties and considered just by the Court, including provisions of relief by way of injunction and recovery of damages and generally respecting proceedings in the action.

(3) Without limiting subsection (1), the Court may make an order –

- (a) for restraint of such use, production or sale of the subject-matter of those rights as may constitute the infringement and for punishment in the event of disobedience of the order for that restraint;
- (b) for compensation of an aggrieved person;
- (c) for and in respect of account; and
- (d) with respect to the custody or disposition of any offending material, products, wares or articles.

(4) Where in an action for an infringement of a plant breeder's right –

- (a) an infringement of the plant breeder's right is established; and
- (b) the Court is satisfied that it is proper to do so having regard to –
 - (i) the flagrancy of the infringement;
 - (ii) any benefit shown to have accrued to the defendant by reason of the infringement;

(iii) all other relevant matters,

the Court may, in assessing damages for the infringement, award any additional damages as the Court considers appropriate in the circumstances.

(5) Where, in action for an infringement of a plant breeder's right, it is proved or admitted that an infringement was committed but proved by the defendant that, at the time of the infringement, the defendant was not aware and had no reasonable grounds for supposing that it was an infringement, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of that infringement, but shall be entitled instead to an account of profits in respect of that infringement.

(6) Nothing in subsection (5) shall affect any entitlement of a grantee to any relief in respect of the infringement of that grantee's rights under this Act other than damages.

37. Where a grantee authorises a person (by way of a licence) to do any of the acts referred to in section 29 that person has the same rights of the grantee to take proceedings in respect of an infringement of the rights of that grantee in respect of the protected variety which affects a right granted under the licence and committed after the licence was granted.

Rights under a
licence granted by
grantee

PART VII

COMPULSORY LICENCE

38. (1) A person may apply to the Court for the grant of a compulsory licence to exploit a protected variety in Saint Vincent and the Grenadines.

Compulsory
licence

(2) Subject to terms the Court thinks fit, the Court may make an order for the grant of a compulsory licence if the Court is satisfied that the grant of the compulsory licence is in the public interest.

(3) Without limiting subsection (2), the Court may set out in the order –

- (a) the extent to which the protected variety may be exploited;
- (b) the right of the licensee to obtain propagating material from the grantee to the extent possible; and

(c) the equitable remuneration which the licensee shall pay to the grantee.

(4) The Court shall not grant a compulsory licence to a person who is unable to demonstrate to the Court that he will be able to exploit the protected variety in a manner acceptable to the Court.

(5) No compulsory licence shall be granted by the Court unless the person applying for the compulsory licence has first taken all reasonable steps to obtain authorisation from the grantee on reasonable commercial terms and has failed to obtain authorisation within a reasonable period of time.

(6) A compulsory licence granted under this section –

- (a) does not prevent the grantee from exploiting the protected variety himself or from granting a licence in this respect;
- (b) may be transferred to another person, but only together with the business activity in connection with which the protected variety is exploited or is intended to be exploited; and
- (c) shall be terminated by the Court where the Court is satisfied that the ground on which the licence was granted has ceased to exist.

PART VIII

NOTICE OF PROTECTION

Notice of
protection

39. (1) Where an applicant sells any propagating material of the plant variety in respect of which his application relates, he shall take all reasonable steps, by means of suitable labelling or other identification of that material to inform the purchaser of the existence of his application, unless and until his application is withdrawn or lapses or the Registrar declines to grant a plant breeder's right in respect of that application.

(2) A person who –

- (a) has acquired any rights in respect of a plant variety under section 22, or who is a licensee of the rights; and
- (b) sells any propagating material of that plant variety,

shall take all reasonable steps, by means of suitable labelling or other identification of that material, to inform the purchaser of those rights.

(3) In determining, for the purposes of section 36, whether or not a person had reasonable grounds for supposing that an action was an infringement of a plant breeder's right, the Court may take into account the extent, if any, to which a person referred to in subsection (1) or (2) has complied with that subsection in respect of any propagating material in relation to which that infringement occurred.

PART IX DENOMINATION

40. (1) A plant variety in respect of which an application is made shall have a denomination which shall be its generic designation.

Approval and
registration of
denomination

(2) Subject to section 41, no rights in the generic designation registered as the denomination of a plant variety shall restrict the free use of the denomination in connection with the plant variety even after the term of the plant breeder's right has expired.

(3) Subject to subsections (4) and (5), the denomination shall be approved by the Registrar and registered at the time the plant breeder's right is granted.

(4) The Registrar shall approve and register a proposed denomination for a plant variety if, in the opinion of the Registrar, it complies with the prescribed requirements.

(5) The Registrar shall not approve or register a denomination for the plant variety which –

- (a) consists solely of figures, except where this is an established practice for designating plant varieties;
- (b) is likely to mislead or cause confusion concerning the characteristics, value or identity of the plant variety, or the identity of the breeder;
- (c) is contrary to any written law or public order, or is likely to be offensive to the public;
- (d) is likely to cause confusion with a trade mark, a name, a business or any other rights for which any person other than the applicant enjoys protection under any law;
- (e) is identical to or can be confused with a generic designation in which a third party enjoys a prior right,

either of which would prohibit the use of the designation as a denomination for a plant variety; or

- (f) is likely to cause confusion with a trade mark for any material of another plant variety or for food similar to any material of the first-mentioned plant variety for which the applicant enjoys protection under any law.

(6) Where a denomination for a plant variety has previously been submitted in UPOV member other than Saint Vincent and the Grenadines for the purpose of registration in that UPOV member, the denomination submitted for the purpose of an application in Saint Vincent and the Grenadines in respect of that plant variety must be the same as the denomination submitted in the UPOV member.

(7) The Registrar shall approve the denomination submitted under subsection (6) on the grant of the plant breeder's right, unless the Registrar considers the denomination to be unsuitable for use within Saint Vincent and the Grenadines.

(8) Where the Register refuses to approve a denomination under subsection (4), (5) or (7), the Registrar shall require, and the applicant shall propose, another denomination within the prescribed period.

Prior rights

41. (1) Notwithstanding anything in this Act, prior rights of third parties in a generic designation shall not be affected.

(2) The Registrar shall require an applicant to submit, within the prescribed period, another denomination if, by reason of a prior right, a person who is obliged to use the denomination under section 42 is prevented from using it.

Use of
denomination

42. (1) Except where prior rights prevent the use of a registered denomination, a person who offers for sale or markets propagating material of a protected variety shall use the registered denomination for that protected variety, even after the plant breeder's right has expired.

(2) A person shall not offer for sale or market, under the registered denomination of a protected variety, propagating material of some other plant variety of the same plant species or closely related species, even after the plant breeder's right has expired.

(3) A registered denomination for a protected variety or a denomination which is confusingly similar to the registered denomination shall not be used for any plant variety of the same plant species as the protected variety or for a plant species which is closely related thereto or for any material of such a plant variety, so long as –

- (a) the registration of the registered denomination of the protected variety is in force; or
- (b) the registered denomination of the protected variety is still in use in respect of the commercial exploitation of the protected variety, even if the plant breeder's right has expired.

(4) A person who sells or markets the propagating material or harvested material of a protected variety may, for that purpose, associate a trade mark, trade name or other similar indication which he owns with the registered denomination of that protected variety.

(5) Where a person associates a trade mark, trade name or other similar indication with the registered denomination under subsection (4), the denomination must nevertheless be easily recognisable and distinct from the trade mark, trade name or other similar indication.

43. (1) An application for a declaration of invalidity of a registered denomination may be made to the Court on the ground that it is registered in breach of sections 40, 41 or 42..

Invalidation of
registration of
denomination

(2) The Registrar shall require the grantee to submit another suitable denomination for registration within the prescribed period where –

- (a) the registration of a denomination has been declared invalid by the Court under subsection (1); or
- (b) the use of the registered denomination by the grantee has been prohibited or restricted by an order of Court pursuant to any proceedings taken under a law,

PART X

OFFENCES

44. (1) A person shall not intentionally –

- (a) make, or cause to be made, a false entry in the register;
- (b) make, or cause to be made, anything false purporting to be a copy of an entry in the register; or
- (c) produce or tender, or cause to be produced or tendered in evidence anything referred to in paragraph (b),

Falsification of
register

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one thousand dollars.

F a l s e l y
r e p r e s e n t i n g
p l a n t v a r i e t y a s
p r o t e c t e d
v a r i e t y

45. (1) A person shall not intentionally or recklessly –
- (a) falsely represent that a plant variety is a protected variety; or
 - (b) make a false representation as to the propagating material of a protected variety,

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

D i s o b e y i n g
s u m m o n s

46. (1) A person –
- (a) who has been summoned to appear as a witness before the Registrar; and
 - (b) to whom a reasonable sum has been tendered in payment for expenses,

shall not, without reasonable excuse, fail to appear in answer to the summons.

- (2) A person –
- (a) who has been required by the Registrar to produce a document or any other thing; and
 - (b) to whom a reasonable sum has been tendered in payment for expenses,

shall not, without reasonable excuse, fail to produce the document or thing.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of two hundred and fifty dollars.

R e f u s i n g t o g i v e
e v i d e n c e

47. (1) A person appearing before the Registrar as a witness shall not without reasonable excuse –
- (a) refuse to be sworn or make affirmation;
 - (b) refuse to answer questions that he is lawfully required to answer; or

(c) fail to produce any document or thing that he lawfully required to produce.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two hundred and fifty dollars.

48. A person who willfully or negligently acts in contravention of section 40 or 42 commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

Misuse of
denomination

49. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, he as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly:

Offences by
corporations

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

PART XI

GENERAL

50. The Registrar shall publish the following information in the prescribed manner at regular intervals –

Publication

- (a) applications for plant breeder's rights;
- (b) proposed and approved denominations;
- (c) withdrawals of applications for plant breeder's rights;
- (d) rejections of applications for plant breeder's rights;
- (e) any grant of a plant breeder's right;
- (f) any change in the breeder or agent in respect of a plant variety;
- (g) lapses of plant breeder's rights;
- (h) any invalidation, renunciation or revocation of a plant breeder's right;

- (i) licence in relation to plant breeder's rights, where applicable;
- (j) any other matter which the Registrar thinks fit.
- Objections to application 51. (1) Within the prescribed period after the publication of a denomination, a person may, by notice in writing to the Registrar, object to the approval of that denomination.
- (2) Within the prescribed period after the publication of an application for a plant breeder's right, a person may, by notice in writing to the Registrar, object to a grant of a plant breeder's right in respect of that plant variety on the ground that the plant variety is not new with the meaning of section 22.
- (3) If a person who neither resides nor carries on business in Saint Vincent and the Grenadines makes an objection under this section, the Registrar may require that person to give security for the costs of the proceedings and may, if security is not given, dismiss the proceedings.
- (4) The Minister may make regulations to provide for proceedings for objections and for other matters related to objections.
- Right of appeal 52. (1) Except as provided in subsection (2) or by the regulations, there shall be no appeal to the Court from a decision of the Registrar for any matter under this Act.
- (2) The following shall be subject to appeal to the Court –
- (a) a decision of the Registrar to refuse to grant a plant breeder's right;
- (b) a decision of the Registrar to grant a plant breeder's right; or
- (c) a decision of the Registrar approving or disapproving a proposed denomination.
- Fees 53. (1) There shall be paid in respect of applications, grants of plant breeder's rights, registrations and other matters under this Act the fees as may be prescribed.
- (2) The Minister may make regulations as to the remission of fees under prescribed circumstances.
- Regulations 54. (1) The Minister may make regulations –
- (a) for prescribing anything authorised or required by this Act to be prescribed; and

- (b) generally for regulating practice and procedure under this Act.
- (2) Without limiting subsection (1), regulations made under this section may make provision –
- (a) as to the manner of making applications and filing other documents and in respect of anything that is to accompany or to be furnished together with any application;
 - (b) as to the procedure to be followed in connection with any application or request to the Registrar or in connection with any proceedings or other matter before the Registrar, and the rectification of irregularities of procedure;
 - (c) providing for the growing, testing and treatment of plant varieties to which applications relate;
 - (d) requiring and regulating the translation of documents and the filing and authentication of any translation;
 - (e) as to the service of documents;
 - (f) prescribing time limits for anything required to be done under this Act;
 - (g) providing for the extension of any time limit prescribed or specified by the Registrar, whether or not it has already expired;
 - (h) providing for the forfeiture of any priority given in respect of an application;
 - (i) authorising the preparation, publication, sale and exchange of copies of diagrams, photographs and documents filed with the Commerce and Intellectual Property Office, and indexes and abridgements to them;
 - (j) prescribing the mode of publishing any matters required by this Act to be published;
 - (k) prescribing the requirements to be met in selecting the denomination of plant varieties, and providing for the approval or rejection by the Registrar of any denomination or the amendment to any denomination;

- (l) providing for the amendment of an entry in the register to correct a clerical error or an obvious mistake; and
- (m) prescribing fees and charges for the purpose of this Act.

Passed in the House of Assembly this 19th day of December, 2019.

NICOLE HERBERT
Clerk of the House of Assembly.

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