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THE PLANT VARIETY PROTECTION LAW

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THE PLANT VARIETY PROTECTION LAW

I GENERAL PROVISIONS

Article 1

This Law shall govern the procedure for protection of plant varieties (hereinafter referred to as: varieties) as well as rights and obligations of the breeder's right holder.

Article 2

When used in this law, the following terms shall have the meaning specified below:

“variety” shall mean a plant grouping within a single botanical taxon of the lowest known rank, which is defined by the expression of the characteristics resulting from a given genotype or combination of genotypes and is distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged;

“Initial variety” shall mean the variety from which new variety is derived;

“Essentially derived variety” shall mean the variety obtained by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

4) **“Protected variety”** shall mean variety protected in accordance with the provisions of this Law;

5) **“Person”** shall mean any natural or legal person;

6) **“Domestic person”** shall mean a person who has domicile and/or corporate domicile in Republic of Montenegro (hereinafter referred to as: Montenegro);

7) **“Foreign person”** shall mean a person who has domicile and/or corporate domicile outside the territory of Montenegro;

8) **“Breeder”** shall mean the person who bred, discovered or developed a new variety;

9) **“Breeder's right”** shall mean the right of the breeder granted by registering into the Protected varieties register, in accordance with the provisions of this Law;

- 10) **“Right holder”** shall mean a person who has been granted a breeder’s right in accordance with the provisions of this Law, or his successor in rights;
- 11) **“Priority day”** shall mean a filing date of the first application for the protection of a variety to a responsible body;
- 12) **“Representative”** shall mean a person recorded in the Registry of the competent body, as well as the person whose profession is to represent;
- 13) **“Competent authority”** shall mean authority competent for agriculture;
- 14) **“Authority at the State Union level”** is the authority receiving the applications, keeping the registries of registered and protected varieties and cooperating with **UPOV**;
- 15) **“Registry of applications for variety protection”** is the registry in which all appropriately sent applications for variety protection are entered;
- 16) **“Registry of protected varieties”** is the registry that the protected varieties are entered into;
- 17) **“UPOV”** shall mean International Union for Protection of New Varieties of Plants;
- 18) **“Competent court”** is the district court resolving cases in the area of copyright law, as well as the disputes relating to protection or use of invented samples, models and trade marks or the right to company use.

Article 3

Foreign persons shall, with respect to plant variety protection in Montenegro, enjoy the same rights as domestic persons.

Article 4

Article 6

(1) The term of protection for the protected variety shall be 20 years, and 25 years for the perennial varieties, as of the date of the grant of the breeder's right.

(2) The date of granting the breeder's right shall be considered the date of submitting the application to the competent body.

Article 7

The variety shall be considered to be new if, at the filing date of the application or on the day of priority, propagating or harvested material of that variety has not been

The competent authority shall prescribe the manner of evaluation of variety distinctiveness.

Article 9

- (1) The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.
- (2) The competent authority shall prescribe the manner of evaluation of variety uniformity.

Article 10

- (1) The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
- (2) The competent authority shall prescribe the manner of evaluation of variety stability.

- (6) When a variety is placed in circulation or advertised, it shall be permitted to associate a trademark, trade name or other similar indication with a registered denomination. If such an indication is so associated, the denomination must nevertheless be easily distinguishable.

Article 12

The applicant shall propose the variety denomination in the Application.

The applicant may temporarily postpone the proposal of a denomination. In that case, the applicant shall propose the denomination for the variety within 30 days from the filing date of application. If the applicant does not submit the proposal in due time, the application shall be rejected.

Any interested person may, within 30 days as of the date of entry in the Registry of Applications, file an objection to the proposed denomination.

The competent authority shall notify the applicant about the objection referred to in paragraph 3 of this Article and invite him to submit a reply to the objection within 30 days from the day of the receipt of notification.

The applicant may propose a new denomination in the reply to the objection.

If the denomination proposed does not comply with the provisions of this Law, the competent authority shall order the applicant to submit a proposal for a new denomination within 30 days from the day of the receipt of notification.

If the applicant within the time prescribed does not submit a proposal for a new denomination, the application shall be rejected.

The competent authority shall grant the denomination in the decision on variety protection.

If, by reason of a prior right of the third person, the use of the denomination of a variety is forbidden to a person who is obliged to use it, the competent authority shall require the breeder to propose another denomination for the variety.

Article 13

The competent authority shall reject the proposal for the variety denomination if it determines that the proposed denomination is:

- 1) unsuitable for the variety identification;
- 2) composed exclusively of marks and indications which may serve for determination of variety, species, quality, quantity, desired aim, value of geographical origin or the production time;
- 3) composed in such a way that it might be misleading or cause confusion with regard to its properties, value or geographical origin of the variety;
- 4) identical or very similar to the denomination which has already marked the variety of the same or closely related species.

- 5) designates to the conditions which are common for other variety of the same species.
- 6) designates that the variety has been developed from some famous or closely-related species to famous one.

The competent authority shall determine which species are to be deemed closely related.

Article 14

The competent authority shall cancel the variety denomination upon the request of the right holder or on the basis of the court decision prohibiting use of denomination.

The competent authority shall notify the right holder that the denomination has been cancelled on the basis of the court decision and invite him to propose a new denomination within 30 days from the date of receipt of notification.

IV PROCEDURE OF PROTECTION

1. Application

Article 15

- (1) The procedure for protection of a variety shall be initiated on the basis of filing a application by the breeder or its representative to the State Union authority.
- (2) The form and content of the application referred to in paragraph 1 of this Article shall be prescribed by the competent authority.

Article 16

- (1) With application referred to in Article 15, paragraph 1 of this Law, the documentation on developing of the variety and the samples of the propagating material of the variety for the purpose of evaluation and preservation and/or the certificate that mother trees of perennial plants of that variety are grown, stating the locality and the data on mother trees, shall be filed.
- (2) The sample of the propagating material of the variety which is not entered in register of varieties, may be imported for the purpose of evaluation and preservation for conducting the procedure of variety protection, on the base of approval by the competent authority.

Article 17

Upon receipt of the application, the State Union authority shall immediately direct the application to the competent body which determines whether the application is

complete i.e. whether it meets the conditions prescribed by the provisions of this Law.

If it determines that the application is not complete, the competent authority shall, stating the reasons, invite the applicant to eliminate the determined defects within 15 days from the date of receipt of notification.

If the applicant does not eliminate the defect within the prescribed period, the application shall be rejected.

Article 18

If the competent authority determines that the application is complete, it shall immediately inform the State Union authority, which enters the application into the Registry of Applications for the Variety Protection (hereinafter referred to as: the Registry of Applications).

The content of the Registry of Applications shall be prescribed by the competent authority.

2. Right of Priority

Article 19

- (1) Any breeder or its representative who has filed an application (the "first application") for the protection of a variety with the authority of other UPOV member country shall, for the purpose of filing a application for the grant of a breeder's right for the same variety with the State Union authority, enjoys a right of priority for a period of 12 months. The date of filing the first request shall not be included in this period. This period shall be computed from the date of filing the first request. If the right of priority is exercised, the breeder must, in request which is filed to the competent authority claim the priority of the first application.
- (2) If two or more breeders have, independently, bred, discovered or developed a new variety, the right of priority shall be enjoyed by the breeder who was the first to file an application for variety protection to the State Union authority.
- (3) In order to be granted the right of priority, the applicant has to submit a proof of the day of priority to the State Union authority within 90 days from the filing date of the application.
- (4) If the State Union authority accepts the proof of the day of priority, the application shall be considered as submitted on the day of priority.

3. Examination of the Variety

Article 20

The variety shall be examined in the experimental field and laboratory in order to determine whether it fulfills the requirements for the protection.

The applicant is obliged to submit the quantity of the variety propagating material to the competent authority necessary for the purposes of evaluation.

The competent authority shall reject the application, if the applicant does not submit the adequate quantity of the propagating material.

Article 21

The variety shall be examined in the experimental field or laboratory by the person, who meets the requirements for such research in terms of personnel, equipment and facilities (hereinafter referred to as: trial contractor).

The competent authority shall prescribe the requirements that need to be met by the trial contractor.

The competent authority shall determine and conduct the inspection procedure on the fulfillment of requirements referred to in paragraph 1 of this Article.

The list of the trial contractors shall be published in the official gazette of Republic of Montenegro.

Article 22

- (1) The competent authority shall conclude the contract with the trial contractor for evaluation of varieties.
- (2) The competent authority shall process the trial results obtained in the experimental field or laboratory.
- (3) The competent authority shall determine the methods of the processing of the results referred to in paragraph 2 of this Article.

4. Decision on plant variety protection and Granting the Right

Article 23

The competent authority shall, on the basis of the examination results, pass the decision on plant variety protection or refusal of application for the variety protection.

The competent authority shall immediately direct the decision to the State Body authority, after which the protected variety shall be entered into the Registry of protected varieties.

The content of the Registry of Protected Varieties shall be prescribed by the State

Article 27

The objection to the entry in the Registry of the Protected Varieties may be filed by the person who conceives that the variety is not new, distinct, uniform or stable.

The competent authority may order additional testing of the variety in order to assess the statements from the objection.

At the request of the competent authority, the objector shall submit additional information and documents on which his objection is based or the propagating material needed for evaluation within the period of 30 days.

If the objector does not act in accordance with the request referred to in paragraph 3 of this Article, the objection shall be rejected.

The decision on the objection referred to in paragraph 1 of this Article shall be deemed final under the administrative procedure and shall be immediately submitted to the State Union authority.

V RIGHTS AND OBLIGATIONS OF THE RIGHT HOLDER

1.

- 1) production or reproduction (multiplication) of the protected variety;
- 2) conditioning for the purpose of propagation the protected variety;
- 3) offering for sale of the protected variety;
- 4) selling or placing into circulation of the protected variety in any other manner;
- 5) exporting and importing of the protected variety;
- 6) stocking for any of the purposes referred to in items 1) to 5) above;
- 7) using the denomination of the protected variety.

For the acts referred to in paragraph 2 of this Article, in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, the authorization of the right holder shall be required, except in the case where the right holder has had reasonable opportunity to exercise

The breeder's right shall not extend to the material of the protected variety, which has been placed in circulation by the right holder or with his approval in the territory of Montenegro, except in the case of further propagation of the variety or export of material of the variety into a country which has no protection for varieties of a plant, genus or species to which this variety belongs, if the material is not exported for final consumption purposes.

Article 36

The right holder may transfer his rights with respect to the protected variety, wholly or partially to another person (hereinafter referred to as: license).

The licence shall be transferred by the license contract, which shall be in written form and shall contain: the scope of the rights, the term of the licence and remuneration for use of the right, if agreed upon.

The right holder shall submit the license contract to the State Union authority for entry into the Registry of the Protected Varieties.

Article 37

- (1) If the right holder refuses to transfer his right of economic exploitation of the protected variety, or sets unjustified conditions for such transfer, the competent authority may, after evaluating each individual case, grant the compulsory license, at the request of an inte

The scope and the length of the compulsory license shall be limited to the purposes for which it was given.

The compulsory license shall not be exclusive.

The compulsory license shall be transferred only together with the company and/or part of the company in which it is used.

The compulsory license shall be approved primarily for the purposes of supply of the domestic market.

The compulsory license may be canceled if the circumstances which have led to its grant cease to exist and if it is unlikely that they will reoccur. Upon the

The competent authority may nullify the decision on the variety protection throughout the duration of the protection, *ex officio* or at the proposal of the interested person if:

- 1) it assesses that the variety was not new or distinct;
- 2) it determines that the decision to grant the breeder's right has been essentially based upon information and documents furnished by the breeder, and that uniformity and stability were not complied with at the time of the right was granted.
- 3) the breeder's right has been granted to a person who was not entitled to it, except in the case where, in the meantime, it has been transferred to the person who is so entitled.

After the decision referred to in paragraph 1 of this Article becomes final and enforceable, the competent authority shall immediately inform the State Union authority for the purpose of deleting the variety from the Registry of the Protected Varieties.

Article 44

The competent authority shall cancel the decision on variety protection and immediately inform the State Union authority which enters the data thereupon into the Registry of the Protected Varieties if:

- it is established that the variety is no longer uniform or stable;
- the right holder does not provide the competent authority with the information, documents or materials which are deemed necessary for verifying the maintenance of the variety;
- the right holder does not propose another denomination within the prescribed period of time, if the denomination of the variety has been cancelled after the right was granted.

VIII COSTS

Article 45

The costs of variety trials in the field and laboratory, and annual cost for variety protection shall be borne by the applicant, and/or the right holder.

The amount of costs referred to in paragraph 1 of this Article shall be prescribed by the governments of Republic of Montenegro.

IX CIVIL LAW PROTECTION OF BREEDER I.E. RIGHT HOLDER

Article 46

The person that violates breeder's i.e. right holder's right shall be responsible for damage according to the general pr

Notwithstanding Article 7, paragraph 1 of this law, the varieties entered into the Registry of agricultural plant varieties starting from 1 January 2000 in line with the provisions valid until this law has entered into force, the breeder or representative may within one year after this law has entered into force, submit the application for variety protection.

Article 53

This Law shall come into force on 01.07.2006.

EXPLANATION

Having in mind that UPOV requires one body that will be responsible for enforcement of two laws in the entire SCG territory, this law envisages the existence of «competent authority for keeping the central registry of registered and protected varieties» at the State Union level. This body is responsible for all communication with the UPOV Office and keeping of the central registry on basis of data received from the competent republican bodies. Please note that all deadlines relating to plant variety protection will be counted from the date of filing the application to the competent authority.

The legal basis for the abovementioned model is Article 17 of the Constitutional Charter which envisages that the Republics may transfer certain activities from their competence to the State Union and the competence of the Ministry of Agriculture Republic of Montenegro for performing the plant variety protection.