

DRAFT LAW
ON THE PROTECTION OF NEW PLANT VARIETIES

CHAPTER I
GENERAL PROVISIONS

Article 1

This Law and its respective executive regulations shall constitute the basic provisions for the protection of new plant varieties.

Article 2

The Minister of Agriculture and Fisheries shall be responsible for the implementation of this Law.

The Minister : Minister of Agriculture and Fisheries

The Ministry: Ministry of Agriculture and Fisheries

Variety:

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

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

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.

Propagating material for the production of plants:

reproductive material such as seed and fruit;

vegetable propagating material such as plants or parts of plants, cuttings, tubers, bulbs, rhizomes.

Breeder:

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

the person who is the employer of the aforementioned person or who has commissioned the latter's work, except where otherwise agreed by contract;

the successor in title of the first or second aforementioned person, as the case may be.

breeder's right : the right of the breeder provided for in this law.

Competent Office: the government authority as determined in the executive regulations.

CHAPTER II

CONDITIONS OF THE BREEDER'S RIGHTS

Article 3

The grant of the breeder's right shall not be subject to any conditions other than those laid down in Article 5 of this Law, provided that the variety is designated by a denomination in accordance with the provisions of Article 14 below, that the applicant complies with the formalities provided for by this Law and its implementing regulation and that he pays the imposed fees.

Article 4

This Law shall be applied to the Plant genera and species referred to in the executive regulations.

Article 5

A breeder's right shall be granted if following the prior examination referred to in Article 43 below, the variety is recognized to be new, distinct, uniform and stable.

Article 6

The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purposes of exploitation of the variety for more than one year in the Sultanate of Oman or for more than four years or, in the case of trees and vines, for more than six years abroad.

Article 7

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the

Article 12

Any breeder who has duly filed an application for the protection of a variety with a State that affords to Omani nationals protection at least equivalent to that provided by this Law (the "first application") shall, for the purpose of filing an application for the grant of a plant breeder's right for the same variety with the **Competent Office** (the "subsequent application"), enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included.

Article 13

In order to benefit from the right of priority referred to in Article 12 above, the breeder shall, in the subsequent application, claim the priority of the first application. The breeders shall also furnish within a period of three months as from the filing date of the subsequent application a copy of the documents that constitute the first application, certified to be a true copy by the authority with which that application was filed. The **Competent Office** may require the breeder to furnish within a period laid down by the **Competent Office**

existing variety of the same botanical species or of a similar species;

(Two) be contrary to public policy, morality or international conventions in which the Sultanate is taking part;

(Three) consist solely of figures except where this is an established practice for designating varieties of the species concerned.

If the same variety has already been filed or registered in another State, the denomination that has been used must be adopted unless it is not suitable for reasons of a linguistic nature, of public policy or of morality, or unless the denomination does not satisfy the requirements of the first paragraph above. Where such is the case, the breeder shall be required to propose another denomination in accordance with Article 37 below.

Article 15

Any person who offers for sale or markets propagating material of a protected variety on the territory of the Sultanate of Oman shall be required to use the denomination of that variety, even after the end of the term of protection, subject to third-party rights.

Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of a variety denomination is forbidden to a person who, under the provisions of the first paragraph above, is obliged to use the denomination, the **Competent Office** shall require the breeder to propose another denomination for the variety.

When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

CHAPTER III

SCOPE OF PROTECTION

Article 16

The breeder's right shall cover:

(One) The protected variety,

(Two) Any variety that is not clearly distinguishable in accordance with Article 7 above from the protected variety,

(Three) Any variety that is essentially derived from the protected variety, where the protected variety is not itself an essentially-derived variety and

(Four) Any variety whose production requires the repeated use of the protected variety.

Subject to the provisions of Articles 17 and 18 below, the following acts in respect of the propagating material of the protected variety and of the varieties referred to in the first paragraph above shall require the authorization of the breeder:

production or reproduction
(multiplication);

conditioning for the purpose of
propagation;

offering for sale;

- (Two) harvested material, including entire plants and parts of plants, and
- (Three) any product made directly from the harvested material.

Article 19

The term of protection shall be determined by the administration for each species. It may not be less than 20 years for agricultural crops and not less than 25 years for trees and vines.

CHAPTER IV

TRANSFER AND LOSS OF RIGHTS

Article 20

The rights deriving from an application for a certificate or from a certificate may be transferred in whole or in part.

They may be the subject, in whole or in part, of the grant of an exclusive or non-exclusive exploitation license.

The rights afforded by an application for a certificate or a certificate may be invoked with respect to a licensee who fails to comply with the limits set out in the license in accordance with the proceeding paragraph.

Subject to the case referred to in Article 52 below, transfer of the rights referred to in the first paragraph shall not affect rights acquired by third parties prior to the date of the transfer.

The acts comprising a transfer or a license as referred to in the first two paragraphs shall be set out in writing, on pain of nullity.

Article 21

Any public or private law person may, on expiry of three years after the issue of a certificate or of four years after the filing date of an application, obtain a compulsory license under that certificate, subject to the conditions set out in Articles 22, 23 and 24 below, if at the time of the request, and save for legitimate reasons, the holder of the certificate or his successor in title:

- (One) has not begun to exploit the subject matter of the certificate on the territory of the Sultanate of Oman nor has made effective and serious preparation to exploit it or

(Two) has not marketed the product which is the
subject matter of the certificate in a quantity

As from the day of publication of the administrative act which decides the *ex officio* exploitation of a plant variety certificate, any person who has the necessary technical and professional qualifications may request the grant of a license known as n "*ex officio* license".

Such license may only be no-exclusive. It shall be applied for and granted subject to the conditions laid down by regulation.

An *ex officio* license shall be granted under specific conditions, particularly as to its duration and its scope.

The royalties under an *ex officio* license shall be agreed by the parties or, failing agreement between them, their amount shall be laid down by the **Competent Office**.

An *ex officio* license shall take effect as of the date of notification to the parties of the act granting the license.

Article 27

If the holder of an *ex officio* license fails to comply with the required conditions, forfeiture may be declared in accordance with the conditions laid down by regulation.

Article 28

The State may at any time obtain *ex officio* for the needs of defense a license to exploit a plant variety that is the subject matter of any application for certificate or of a plant variety certificate, whether exploitation is to be carried out by the State itself or on its behalf according to national interest requirements.

The *ex officio* license shall be granted by means of an administrative order under the conditions laid down by regulation.

The administrative order shall lay down the conditions under the license. The royalties under the *ex officio* license shall be agreed by the parties or, failing agreement between them, their amount shall be laid down by the **Competent Office**.

The license shall take effect as of the date of the application for an *ex officio* license.

Article 29

The rights deriving from an *ex officio* license may be neither assigned nor transferred.

Article 30

The rights of the owner of a plant variety certificate shall be cancelled:

- (1). If it is established that the protected variety no longer fulfills the conditions set out in Article 8 and 9,
- (2). if he is unable to furnish to the **Competent Office** the information, documents or plant material deemed necessary for verifying the maintenance of his variety,
- (3). if he fails to propose, in the event of cancellation of the denomination of the variety after grant of the title, another denomination,
- (4). if he does not pay the fees for services rendered, where appropriate, for maintaining his right.

Cancellation shall be ordered in accordance with the conditions established by regulation.

If cancellation is ordered on the grounds of item 4 above, the holder of the certificate may, within six months following the expiry of the prescribed period, lodge an appeal for reinstatement of his rights if he can give legitimate reasons for his failure to pay the fees for services rendered. However, such appeal shall not prejudice any rights acquired by third parties.

A breeder whose rights are liable to be cancelled under items 2 or 3 above shall be summoned to remedy the situation by means of a notice served on him by the **Competent Office** . If such summons has remained without effect on expiry of a period of two months as from receipt of the notice, the breeder's rights shall be cancelled.

Article 31

The cancellation of a breeder's right shall be notified to the holder of the certificate. It shall be entered in the Register of Plant Variety Certificates and shall be published.

Article 32

The holder of a certificate may at any time surrender in whole or in part the rights deriving from the certificate.

Surrender shall be effected by a written statement addressed to the **Competent Office** . It shall take effect on the day of its publication.

However, surrender may be withdrawn prior to publication.

Where real property rights, under a pledge or license, have been entered in the Register of Plant Variety Certificates, surrender shall only be admissible if accompanied by the consent of the holders of such rights.

CHAPTER V

JOINT OWNERSHIP OF CERTIFICATES

Article 33

Joint ownership of an application for a certificate or of a certificate shall be governed by the following provisions:

(One)

Each joint owner may exploit the new plant
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the purchase of the joint ownership share, without prejudice to any damages that may be due. Costs shall be borne by the renouncing party.

(Four) An exclusive license may only be granted with the agreement of all the joint owners or with the authorization of the **Competent Court**.

(Five) Each joint owner may, at any time, assign his share. The joint owners shall have the right of pre-emption during a period of three months as from notification of the intended assignment. Failing agreement on the price, such price shall be set by the **competent court**. The parties shall have a period of one month as from notification of the court's decision to forego the sale or the purchase of the joint ownership share, without prejudice to any damages which may be due; the costs shall be borne by the renouncing party.

Article 34

The joint owner of an application for a certificate or of a certificate may notify the other joint owners that he relinquishes his share in their favour. Once the relinquishment has been entered in the Register of Plant Variety Certificates or, in the case of an unpublished application for certificate, as from its notification to the **Competent Office**, such joint owner shall be relieved of all obligations towards the other joint owners. The latter shall divide the relinquished share between them in proportion to their rights in the joint property, except where otherwise agreed.

CHAPTER VI

FILING OF APPLICATIONS FOR PLANT VARIETY CERTIFICATES

Article 35

Applications for plant variety certificates shall be filed with the **Competent Office** in the form and subject to the conditions laid down by regulation.

Personal and legal entities not having a place of residence or social quarter in the Sultanate of Oman shall be required to appoint a representative having a place of residence in the Sultanate of Oman.

Except as otherwise stipulated, the power of attorney of the representative appointed in accordance with the preceding paragraph shall extend to all acts that relate to exercise of the breeder's right and to receipt of all notifications referred to in this Law, with the exception of withdrawal of

Prosecution shall be suspended at the written request of any person who furnishes proof that he or she has instituted before the **Competent Court** proceedings to claim ownership of the application for the plant variety certificate. However, the tests ordered by the administration may be carried out.

Prosecution shall be resumed once the court decision on the proceedings referred to in the first paragraph above becomes final. It may also be resumed at any time with the written consent of the person who has instituted the proceedings claiming ownership. Such consent shall be irrevocable. During that period, the holder of the application may not withdraw the application without the written consent of the person who has instituted the proceedings to claim ownership. Further, such person shall be required to participate in the prosecution of the application in the same way as the holder of the application.

Article 45

When the various measures of the prosecution have been completed, a summary report of the results of the prosecution shall be notified to the holder of the application. The applicant shall have two months to submit his observations. He may, during that period, inspect the complete examination

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regulation. It shall be drawn up in the name of the holder of the application for a plant variety certificate. If the holder of the application is not the breeder, the name of the latter shall be included in the plant variety certificate.

The plant variety certificate shall take effect as of the date of issue.

The certificate shall be entered in the Register of Applications for Plant Variety Certificates.

The issue of a plant variety certificates shall be published within a period of three months as from the date of notification of issue made to the holder of the plant variety certificate.

Article 48

As from the date of publication referred to in Article 56 above, any person may inspect the plant variety certificate as entered in the Register of Applications for Plant Variety Certificates.

CHAPTER IX

MISCELLANEOUS

Article 49

The Competent Office shall keep a Register of Applications for Plant Variety Certificates and a Register of Plant variety Certificates.

Applications for plant variety certificates shall be entered in chronological order in the respective Register.

Additional particulars or information relating to each application for a certificate, of which the list shall be laid down by regulation, shall also be entered in that Register.

Plant variety certificates shall be entered in the respective Register of Applications for Plant Variety Certificates in their order of issue.

The list of additional particulars or acts to be entered in that Register shall be laid down by regulation.

Article 50

The executive regulations shall determine the method for publishing the notices and decisions and their contents issued according to this Law.

Acts concerning grant of a certificate, transfer of ownership, grant of a right of exploitation or a pledge, in relation to a plant variety certificate, cancellation of a certificate, surrender in whole or in part of the rights under a certificate may only be invoked against other persons if they have been duly published as per the above paragraph.

Article 51

The Minister of Agriculture and Fisheries shall lay down the fees for services rendered by the State in application of this Law and its implementing texts.

A3ticle 51

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Without prejudice to a severe penalty stipulated by other law, any one who deliberately violates the plant variety owner rights as determined in article (16) of this law or falsely claimed the right of the certificate owner or applicant for plant variety certificate shall be liable to a fine not less than RO. 1000/- (Rials Omani One Thousand only) and not exceeding RO. 2000/- (Rials Omani Two Thousand only).

Further the court may issue an order to destroy the disputed product or reproduction material or both. The fine shall be doubled if the violation is repeated.