

**IMPLEMENTING DECREE NO. 2183/91 TO THE LAW
ON SEED AND PHYTOGENETIC CREATIONS***

**CHAPTER I
GENERAL**

Article 1

For the understanding of the concepts used in Law No. 20.247 and in these Regulations,

- (a) “Seed” or “planting material” means any plant organ, not only seed in the strict botanical sense, but also fruit, bulbs, tubers, buds, cuttings, cut flowers and any other structures, including nursery plants, whenever intended or used for sowing, for planting or for propagation.
- (b) “Plant genetic creation” means any variety or cultivar, whatever its genetic nature, obtained by discovery or by incorporation and/or application of scientific knowledge.
- (c) “Variety” means a group of plants within a single botanical taxon of the lowest known rank which can be defined by the characteristics that are the expression of a given genotype or combination of genotypes and can be distinguished from other groups of plants of the same botanical taxon by at least one of the said characteristics. A particular variety may be represented by several plants, a single plant or by one or several parts of a plant, provided that such part or parts can be used for the production of entire plants of the variety.
- (d) “Breeder” means the person who breeds or discovers a variety or cultivar.

**CHAPTER II
NATIONAL SEED COMMISSION (CONASE)**

Article 2

The NATIONAL SEED COMMISSION (CONASE) shall exercise the function of adviser under Article 7 of the Law No. 20.247 under the jurisdiction of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES which will exercise full powers as the implementing authority under the said Law.

Article 3

In the cases for which provision is made in indents d) and e) of Article 7 of Law No. 20.247, the NATIONAL SEED COMMISSION (CONASE) shall give its opinion within a period of FIFTEEN (15) days. It can request a single extension of time of fifteen days when the completion of the task requires it. At the expiration of the said period, the implementing authority shall act on the matter without further formalities.

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Article 4

The Technical Secretariat of the NATIONAL SEED COMMISSION (CONASE) shall perform its functions within the ambit of the implementing authority under Law No. 20.247 jointly with the committees provided for in Article 8 of the said Law.

CHAPTER III IMPLEMENTING AUTHORITY

Article 5

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, as the implementing authority under Law No. 20.247, shall perform the tasks described in Article 6 of this Decree by means of the NATIONAL SEED SERVICE (SENASE), or any organization which replaces it in the future.

Article 6

The following shall be the functions of the NATIONAL SEED SERVICE (SENASE):

- (a) to keep the National Register for Seed Trading and Certification and to publish periodically the lists of establishments that constitute its sections;
- (b) to keep the National Register of Cultivars, to effect the registration *ex officio* of plant genetic creations that are a matter of common knowledge and to publish specific catalogues periodically;
- (c) to keep the National Register of Cultivar Ownership and to issue cultivar property titles;
- (d) to effect botanical, agricultural and industrial inspections of varieties that have been or are to be registered, and also of material subject to certification in plant research establishments;
- (e) to lay down provisions for the registration, operation and supervision of establishments that produce “certified” seed, and also of any other category of establishments that it sees fit to regulate;
- (f) to lay down with the advice of the NATIONAL SEED COMMISSION (CONASE) provisions for the registration and supervision of the growing and production of the various categories of seeds;
- (g) to carry out inspections of establishments producing certified and/or identified seed;
- (h) to carry out the inspection of planted material submitted for certification, and to authorize the sale of the production achieved;
- (i) to arrange for the printing of official labels for the identification of certified seed;
- (j) to sell the official labels to certified establishments;
- (k) to carry out the inspection of seed on sites of production, processing, trading or transport;
- (l) to determine the characteristics and procedures for the packing and labelling of planting material;
- (ll) to supervise the publicizing of the agronomic characteristics of varieties;
- (m) to supervise the import and export of seed under Law No. 20.247;

- (n) to direct the Official Board of Comparative Testing of Registered Cultivars, and to publish findings periodically;
- (β) to direct the Central Seed Testing Station and its associated laboratories; to lay down the provisions for the authorization and operation of seed-analysis laboratories;
- (o) to supervise the seed trade, exercising the police powers established by Article 45 of Law No. 20.247;
- (p) to publish periodically the results of the inspections and samplings provided for in Article 44 of Law No. 20.247;
- (q) to ensure compliance with Article 39 of Law No. 20.247;
- (r) to provide for control over the production and transport of seed prior to its identification;
- (s) to determine the fate of seed confiscated under Articles 35 to 38 of Law No. 20.247;
- (t) to provide the NATIONAL SEED COMMISSION (CONASE) with all information that may be requested of it for the satisfactory operation of the latter body;
- (u) to lay down provisions for the operation of quality certification schemes organized by species or groups of species;
- (v) to lay down provisions whereby the National Register for Seed Trading and Certification registers for publicity purposes, and at the request of interested parties, standard license contracts and/or ordinary licenses granted by breeders or associations of breeders and third parties;

The NATIONAL SEED SERVICE (SENASA) may, in order to carry out the aforesaid functions better, seek the advice of the NATIONAL SEED COMMISSION (CONASE) on matters within its competence.

Article 7

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES may delegate the functions provided for in subparagraphs (g), (h), (j), (k), (l), (o), (p), (q), (r) and (s) or Article 6 of this Decree by means of special arrangements with official agencies at national, provincial or municipal level, which shall remain under the supervision and direct responsibility of the implementing authority, subject to a prior ruling by CONASE. It may likewise entrust collaborative functions to private bodies with respect to the assignments provided for in subparagraphs (g), (h), (j), (k) and (n) of the said Article 6, by means of special arrangements under the supervision and direct responsibility of the implementing authority, subject to a prior ruling by the NATIONAL SEED COMMISSION (CONASE).

CHAPTER IV SEED

Article 8

For the purposes of the interpretation of Article 9 of Law No. 20.247, it shall be presumed that:

- (a) seed “exposed to the public” means all that which is available for delivery for whatever reason and in respect of which advertising, the display of samples, trading, offering for sale, display for sale, transactions, exchanges or any other forms of marketing take place, whether on properties or in premises, warehouses, depots, fields, etc., either in bulk or in containers of any kind.

- (b) Seed “delivered to users for whatever reason” means all that seed which is:
- (i) in vehicles destined for users;
 - (ii) in the possession of users.

Seed that has not been identified or is in the process of being identified and does not fall into the above categories shall be regarded as not exposed to the public.

Supervision of the production and transport of seed prior to identification shall be organized by the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES jointly with the organization which is competent in the particular case.

The Law 19.982 on the Identification of Merchandise as amended shall apply subsidiarily for the purposes of identification.

Article 9

“Label” means any label, tag or printed slip of any kind pasted, stamped or tied on to the seed package or container. The implementing authority shall lay down rules concerning the use, characteristics and constituent materials of labels, packages and containers and any other elements suitable for identifying, containing or protecting planting material.

Article 10

The class of “identified” seed shall include the following categories:

- (a) “common”: where the name of the variety is not given;
- (b) “listed”: where the name of the variety is given. The implementing authority shall specify the cases in which the cultivar may or should be mentioned, for which purpose it may seek the advice of the NATIONAL SEED COMMISSION (CONASE).

Article 11

The class of “certified” seed contains the following categories:

- (a) “original” (basic or initial): the progeny of genetic, prebasic or elite seed, produced in such a way as it retains its purity and identity;
- (b) “certified first-propagation” (registered): the first-generation offspring of “original” seed;
- (c) “certified subsequent-propagation”: seed produced from “original” or “first-propagation” planting material or from any earlier propagation stage; the implementing authority shall specify the stages of propagation;
- (d) “hybrid”: planting material obtained as a result of the production cycle of first-generation hybrid cultivars.

Article 12

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, on the advice of the NATIONAL SEED COMMISSION (CONASE), shall determine the species in respect of which it shall be mandatory or optional to produce and sell seed corresponding to the “certified” class.

Planting material corresponding to species where certification is optional may be marketed as “identified” except in the case of hybrid cultivars.

Article 13

The import and export of seed shall take place through the agency of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, which may grant or refuse import or export licenses in the light of an assessment of their compliance with requirements pertaining to registration, quality, health and certification of origin that have to be met by any seed according to its species, cultivar and destination, the latter term being understood to mean direct distribution, propagation or testing.

The import of seed of species declared “agricultural pests” is prohibited.

Article 14

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall lay down, on the proposition of the NATIONAL SEED SERVICE (SENASE), the maximum and minimum periods determining liability for the quality of planting material.

The sale or display to the public of seed whose liability period has expired shall be prohibited.

The liability of the identifier or retailer shall end if, when the merchandise has been delivered, it is found that the containers have been tampered with or that the merchandise has been improperly stored by others.

The fact of pasting, stamping or attaching a label on to a package or container shall have the character of a sworn declaration on the part of the person who does so.

CHAPTER V NATIONAL REGISTER OF CULTIVARS

Article 15

The National Register of Cultivars shall be organized in sections by species, botanical varieties or lower taxa where appropriate, according to the rules laid down by the NATIONAL SEED SERVICE.

Article 16

Those new or undisclosed cultivars that meet the requirements of Article 18 of this Decree shall be entered in the National Register of Cultivars, as shall, ex officio, those that are a matter of common knowledge on the date of entry into force of Law No. 20.247.

For those purposes:

- (a) “new or undisclosed variety” means any variety that has been identified for the first time, is covered by a property title issued by the implementing authority or has not yet been recorded, with a similar description, at the time of its submission to the National Register of Cultivars;

- (b) “variety that is a matter of common knowledge” means any variety that has appeared in scientific publications or in official or private catalogues in the country, or has been declared to be in the public domain in countries with which reciprocity agreements exist, and the characteristics of which, as required by Article 17 of Law No. 20.247, are known.

Article 17

Varieties already registered under Decree No. 50/89 shall remain on record in the official registers kept by the implementing authority.

Article 18

The application form for entry in the National Register of Cultivars shall have the character of a sworn statement and shall be filed with the implementing authority subject to compliance with the following requirements:

- (a) name, address and registration number of the applicant in the National Register for Seed Trading and Certification;
- (b) name, address and professional registration number of the agronomist sponsoring the registration;
- (c) common and scientific names of the species;
- (d) name of the variety;
- (e) establishment and locality in which the variety has been produced, with an indication where appropriate of the country of origin;
- (f) morphological, physiological, health, phenological and physico-chemical features, and the most striking industrial or technological properties that allow it to be distinguished. Photographs, drawings or any other commonly-accepted technical means of illustrating morphological aspects shall be enclosed.

Article 19

For the purposes of compliance with the provisions of subparagraph (d) of the foregoing Article, it shall be considered that:

- (a) varieties to be registered must be designated by a denomination intended to be its generic designation in accordance with the provisions of Article 17 of Law No. 20.247; that denomination shall combine the following characteristics:
 - (i) it shall permit identification of the variety;
 - (ii) it may not be composed solely of numerals, except where that is a common practice in the designation of varieties;
 - (iii) it may not mislead or confuse as to the characteristics, value or identity of the variety or as to the identity of its breeder;
 - (iv) it must be different from any denomination that designates a pre-existing variety of the same botanical species or a similar species in any other country;

The NATIONAL SEED SERVICE (SENASA) may refuse the registration of a variety whose denomination does not combine the aforesaid characteristics, and shall demand the proposal of another denomination within 30 days of the notification of refusal;

- (b) The implementing authority may in addition require the breeder to change the denomination of a variety when:
- (i) it affects prior rights granted by another country;
 - (ii) registration is sought for a denomination different from the one registered for the same cultivar in a State or States with which the Argentine Republic has signed agreements on the subject.

Article 20

Any person who places on sale or in any way markets or handles in any capacity planting material of a variety protected by a property title shall be obliged to make use of the denomination of that variety, even after the property title has expired, provided that previously-acquired rights are not affected thereby. The denomination of the variety may likewise be accompanied by a trademark or trade name or similar sign, in so far as it does not mislead as to the denomination of the variety or the name of the breeder.

Article 21

If a cultivar is registered in the National Register of Cultivar Ownership, the approved denomination thereof shall be registered at the same time as the property title concerned is granted.

Article 22

The implementing authority may request the submission of additional information on agronomic properties: genetic origin, proof of health status, agro-ecological qualities and proof of industrial value.

Article 23

The NATIONAL SEED SERVICE (SENASA) shall regulate the registration of varieties in the National Register of Cultivars, which shall be given priority according to the hour and date of submission, and which may be registered either provisionally or finally, while registration may also be refused, and the exercise of the rights deriving from grant suspended, or rights already registered may be cancelled, where anomalies or defects that warrant such a step are detected. The measure shall be subject to appeal by referral to the Federal Courts of Administrative Litigation.

Article 24

The National Seed Service (SENASA) shall satisfy itself of the authority or scientific value of catalogues or publications invoked in cases of synonymy, and shall set the date from which the simultaneous use of different names for the same variety is to be prohibited.

Article 25

Where varieties belonging to a species whose registration has been organized and implemented have not themselves been registered or where their registration has been cancelled in the National Register of Cultivars, their distribution on whatever grounds shall be prohibited.

CHAPTER VI
CONDITIONS FOR THE GRANT OF TITLES OF OWNERSHIP

Article 26

For a variety to be the subject of a property title it shall meet the following conditions:

- (a) Novelty: It shall not have been offered for sale or sold by the breeder or with his consent:
- (i) in the national territory, before the date of filing the application for inscription in the National Register of Cultivar Ownership;
 - (ii) in the territory of another State with which the Argentine Republic has a bilateral or multilateral agreement on the subject for a period greater than FOUR (4) years or, in the case of trees or vines, for a period greater than SIX (6) years before the application for inscription in the National Register of Cultivar Ownership;
- (b) Distinctness: It must be clearly distinguishable by means of one or more characteristics, from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.
- (c) Uniformity: Subject to predictable variations due to the specific features of its propagation, it must retain its most significant hereditary characteristics in a sufficiently uniform manner;
- (d) Stability: its most significant hereditary characteristics must remain true to the description thereof after repeated propagation, or, in the case of a particular cycle of propagation, at the end of each such cycle.

Article 27

The grant of a property title in a variety, in so far as it meets the conditions specified in this Title and the denomination of the variety conforms to the provisions of Articles 19, 20 and 21 of this Decree, may not be made subject to any additional condition other than payment of the appropriate fee.

CHAPTER VII
RECORDING IN THE NATIONAL REGISTER OF CULTIVAR OWNERSHIP

Article 28

The National Register of Cultivar Ownership shall be organized in sections by species, botanical varieties or lower taxa where appropriate, as directed by the implementing authority.

Article 29

The application for registration in the National Register of Cultivar Ownership shall have the character of a sworn statement, and shall be filed with the implementing authority, subject to compliance with the following requirements:

- (a) name, address of the breeder or discoverer or his national representative if appropriate;
- (b) name, address and professional registration number of the agronomist sponsoring the registration;
- (c) common and scientific names of the species;
- (d) name proposed for the variety;
- (e) establishment and locality in which the variety was bred;
- (f) description: this must cover the morphological, physiological, health, phenological and physico-chemical features, and also the industrial or technological properties that allow it to be identified; drawings, photographs or any other commonly-accepted technical means of illustrating morphological aspects shall be enclosed;
- (g) justification of novelty: reasons for which it is considered that the variety possesses new and undisclosed character, with evidence of differentiation in relation to existing varieties;
- (h) verification of stability: date on which the cultivar was propagated for the first time as such, for verification of stability;
- (i) origin: national or foreign, with an indication in the latter case of the country of origin;
- (j) reproductive or vegetative propagation mechanism;
- (k) other additional conditions for species that so require, as established by the NATIONAL SEED SERVICE (SENASA).

The implementing authority may, when it considers this necessary, require field trials and/or laboratory tests for the verification of the characteristics attributed to the new cultivar.

Article 30

The filing of the application for the registration of a variety in any State with which the Argentine Republic has a bilateral or multilateral agreement on the subject shall give the applicant priority for TWELVE (12) months for its registration in the National Register of Cultivar Ownership: that period shall be calculated as from the day following that of first filing in any such State. On its expiration, the applicant shall have a period of TWO (2) years in which to submit the documentation and material required by Article 29 of this Decree.

Article 31

Any decision to grant a right of ownership of a variety shall require an examination for compliance with the conditions provided for in Chapter VI of this Decree. In the course of the examination, the NATIONAL SEED SERVICE (SENASA) may grow the variety or carry out other necessary tests or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material, which should be available to the implementing authority for the validation of the title of ownership.

Article 32

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, on the advice of the NATIONAL SEED COMMISSION (CONASE), shall enact provisions governing the procedure for the recording of cultivars in the Register. The provisions to be enacted shall be without prejudice to the right of third parties to make such oppositions as they consider appropriate.

Article 33

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, when it has all the facts of the case in its possession, shall decide on the grant of the property title and shall make the appropriate communication to the applicant and shall issue the title.

Article 34

If the decision of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES is to refuse registration, this shall be brought to the notice of the applicant in order that he may produce specific proof concerning the aspects objected to within a maximum period of HUNDRED AND EIGHTY (180) days.

If the applicant does not contest the refusal of his application, he shall be regarded as having renounced it.

If he does contest the refusal, the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall have THIRTY (30) days within which to pronounce on the subject, for which purpose it may seek the advice of the NATIONAL SEED COMMISSION (CONASE).

Article 35

The breeder's right shall be declared null and void when it is established that, at the time of the grant of the title of ownership:

- (a) The conditions laid down in indents (a) and (b) of Article 26 were not effectively complied with.
- (b) Where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in indents (c) and (d) of Article 26 were not complied with.

The right of the breeder shall not be declared null and void for reasons other than those referred to in this article.

Article 36

The right of the breeder in a variety shall lapse in accordance with the provisions of Article 30 of Law 20.247 for the following reasons:

- (a) The breeder surrenders his rights, in which case the variety falls into the public domain.
- (b) When it is shown that it has been obtained by fraud upon a third party, in which case the right shall be transferred to its legitimate owner if he can be identified. In the contrary case, it shall fall into the public domain.
- (c) Upon termination of the legal period of ownership, after which it passes into the public domain.

- (d) When the breeder is not in a position to provide the implementing authority with the materials considered necessary to control the maintenance of the variety, as required by Article 31 of this Decree.
- (e) For failure to pay the annual fee to the National Register of Cultivar Ownership for a period of SIX (6) months from the making of a demand for payment, after which the variety passes into the public domain.

The breeder may not be deprived of his right for reasons other than those mentioned in this Article.

Article 37

Property titles for cultivars shall be granted for a maximum of TWENTY (20) consecutive years for all species.

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES may specify other, shorter periods, depending on the nature of the species.

Article 38

When the property title has been granted, the relevant decision of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall be published in the Official Gazette at the expense of the party concerned.

Surrenders of titles, cancellations and transfers shall also be published at his expense.

Article 39

Any transfer of the property title shall take place in the form of a request that states the names and addresses of the transferor and transferee, and shall be accompanied by the legal document evidencing the said transfer. The record of transfer shall be entered in the National Register of Cultivar Ownership and on the property title. The transferee shall remain subject to the same obligations as the transferor.

Article 40

Where the breeding of a new variety has been achieved by two or more persons, ownership thereof shall be governed by the rules of the Civil Code on joint ownership.

In the case of persons who have collaborated in the breeding of the variety in the course of employment relations, the provisions of Article 82 of the Law on Employment Contracts, No. 20.744, and amendments thereto, shall apply.

CHAPTER VIII THE RIGHTS OF THE BREEDER. SCOPE AND RESTRICTIONS

Article 41

For the purposes of Article 27 and related Articles of Law No. 20.247, and also the present Regulations, the property rights granted to a breeder in respect of a variety shall have the effect of making his prior authorization necessary for the acts specified below in relation to the planting material of the protected variety:

- (a) Production or reproduction;
- (b) Conditioning for the purposes of propagation;
- (c) Offering for sale;
- (d) Sale or any other form of marketing;
- (e) Export;
- (f) Import;
- (g) Advertising, display of samples;
- (h) Exchange, transfer and any other form of commercial transaction;
- (i) Stocking for any of the purposes mentioned in subparagraphs (a) to (h);
- (j) Any other delivery, in whatever connection.

Article 42

The breeder may make his authorization of the acts specified in the foregoing Article subject to conditions defined by himself, including for instance quality control, inspection of plots, volume of production, royalty percentages, periods, authorization to sublicense and other such restrictions.

Where a breeder makes a firm public offer of licensing, it shall be presumed that whoever carries out any of the acts specified in the foregoing Article has secured authorization therefor.

Article 43

The ownership of a variety shall not prevent its use as a source of variation or as a provider of desirable characteristics in plant improvement work.

To that end, it shall not be necessary either to know the breeder or to secure his authorization. However, the repeated and/or systematic use of a variety as a necessary means of producing commercial seed shall require the authorization of the said owner.

Article 44

The authorization of the breeder of a variety shall not be required, in accordance with the provisions of Article 27 of Law No. 20.247, when a farmer saves and uses as planting material on his own holding or estate, the product of the harvest which he has obtained by planting on the said holding or estate a protected variety.

Article 45

Final decisions handed down by the administrative bodies created by Law No. 20.247 and by this Decree shall be subject to appeal before the Federal Courts of Administrative Litigation together with consequential decisions involving ownership of varieties which in the field of private law can result from the breach of other legal rules.

Article 46

The “restricted public use” declaration shall be published in the Official Gazette and in one specialized publication, which latter shall request submissions from interested third parties, together with the minimum technical and economic guarantees and any other requirements that have to be met by such applicants.

Article 47

Any exploitation under “restricted public use” provisions shall be registered by the implementing authority.

Interested third parties shall be registered by the same authority, with an indication of name and address, and of the locality and area of the exploitation to be undertaken and information on compliance with the technical and economic guarantees imposed.

Article 48

The implementing authority shall undertake the verification of the existence of original seed of the “restricted public use” variety in the exploitation thereof by licensed third parties. Any surplus planting material shall be returned to the owner of the variety on expiry of the period for which “restricted public use” has been declared.

Article 49

The names of varieties that become public property shall have the same character, even where they have also been registered as trademarks.

Article 50

The fees and fines provided for in Chapters VI and VII of Law No. 20.247 as amended shall be paid to the implementing authority.

CHAPTER IX TRANSITIONAL PROVISIONS

Article 51

This Decree shall enter into force on the day following its publication in the Official Gazette.

Article 52

Decree No. 50 of 17 January 1989, shall be repealed on the coming into force of this Decree.

Article 53

This Decree is to be communicated, published, conveyed to the National Directorate of Official Registration and placed on record.