

PARAGUAY

LAW ON SEEDS AND CULTIVAR PROTECTION

CHAPTER I

GENERAL PROVISIONS

Purpose of the Law

Article 1

The purpose of this Law is to promote an efficient plant breeding activity ... and to protect the right of breeders of new cultivars in accordance with regional agreements which have been signed or are to be signed and with all international norms concerning seed.

Article 2

- (a) Farmer or user: natural or legal person who buys or produces seed for sowing or planting;
- (b) [...]
- (c) Cultivar of foreign origin: a variety which has been entered in a register of any kind in its country of origin;
- (d) Phytogenetic creation: a cultivar or variety, whatever its genetic nature, obtained by discovery or by the incorporation or transfer and/or the application of scientific knowledge to the inheritable improvement of plants;
- (e) Cultivar or variety: a group of cultivated plants which are clearly distinguishable from others of their species by any characteristic (morphological, physiological, cytological, chemical or otherwise), which when they are reproduced (sexually or asexually), maintains their distinctive characteristics;
- [...]
- (h) Plant breeder: a natural person, specialized in genetic improvement, working to discover, create, develop and maintain varieties of cultivated plants;
- [...]

(j) Breeder: a natural or legal person who registers a variety in the National Register of Protected Cultivars for which he is granted the title of breeder.

[...]

(ß) Seed or plant material: all plant parts or structures including nursery plants [*o mudas*] intended or used for sowing, planting or propagation;

[...]

Subjects of the Present Law

Article 3

Any natural or legal person may carry out work to breed cultivars or lines, to produce, process, conduct laboratory analysis of, distribute or commercialize seed without any limitation other than to adjust his or its activities to the legal provisions and regulations that are in force.

[...]

CHAPTER III

NATIONAL REGISTER OF COMMERCIAL CULTIVARS

Article 11

[...]

Article 12

Cultivars which meet the following requirements can be entered in [the National Register of Commercial Cultivars]:

(a) Distinctness: the cultivar must be clearly distinguishable by one or more phenotypic or genotypic characteristics from any other variety whose existence is a matter of common knowledge at the date of the application;

(b) Homogeneity: the cultivar must be sufficiently uniform in its relevant characteristics subject to the variation that may be expected from the particular feature of its propagation.

(c) Stability: the relevant characteristics of the cultivar must remain unchanged through successive generations or in the case of a particular cycle of propagation at the end of each such cycle.

The Seed Directorate can verify by means of trials that the aforementioned requirements are fulfilled.

[...]

CHAPTER IV

NATIONAL REGISTER OF PROTECTED CULTIVARS

Article 22

The National Register of Protected Cultivars is set up within the Seeds Directorate for the purpose of safeguarding breeders' rights.

Article 23

Except as provided in Article 37, the breeder's right requires that the production and marketing of seed of the protected variety be subject to the prior authorization of the breeder. The authorization given by the breeder shall be communicated by him to the Seeds Directorate.

Article 24

Varieties and lines of the following species are protected by this Law: Cotton (*Gossypium* spp.), Rice (*Oryza sativa* L.), Rapeseed (*Brassica napus*), Sunflower (*Helianthus annuus* L.), Maize (*Zea Mays* L.), Soyabean (*Glycine max* (L.) Merrill), Sorghum (*Sorghum* spp.), Wheat (*Triticum* spp.). Species not specified in this Article may be entered in the Register by decision of the Ministry of Agriculture and Livestock on a proposal from the Seeds Directorate, subject to a report from the Technical Committee for the Certification of Cultivars, where the needs of national agriculture so dictate.

Article 25

Those cultivars that meet all the requirements laid down in Article 12 and in addition fulfil the requirement of novelty may be entered in the National Register of Protected Cultivars.

A variety shall not be considered new for the purposes of this Law where, prior to the filing of the application for registration it has been sold or disposed of to others by the breeder or with his consent on the national territory, or has been sold or disposed of to others by the breeder or with his consent on the territory of another State, for more than six years prior to the filing of the application for registration in the case of vines, forest trees, fruit trees and ornamental trees, or more than four years in the case of other species.

Material disposed of to others for the testing of the variety shall not diminish the breeder's right to protection.

Article 26

For the purposes of registration at the National Register of Protected Cultivars the cultivar shall be identified by a single denomination that serves to distinguish it from any other. The denomination may not consist solely of figures or mislead or confuse as to the characteristics of the cultivar or the identity of the breeder. Other conditions governing the denomination shall be laid down by regulation.

The approved denomination of the variety shall be registered at the National Register of Protected Cultivars at the same time as the relevant breeder's certificate is granted.

Article 27

Any person who places on sale, markets or for whatever purpose supplies seed of a protected variety shall be obliged to use the denomination of the said variety, even after the breeder's certificate has lapsed.

Article 28

The denomination of a protected variety may not be made into a trademark. This provision shall not prevent the breeder of a variety from adding a trademark to the denomination thereof for marketing purposes.

The names of varieties that become public property shall remain names of varieties, even where they are registered as trademarks.

Article 29

The application for registration in the National Register of Protected Cultivars shall have the character of a sworn statement, and shall be sponsored by an agricultural or forestry engineer who

holds a national or nationally recognized title and is registered in the National Register of Agricultural and Forestry Engineers. It shall give the particulars required under Articles 12 and 25 and shall mention the parent material of the new cultivar. Other requirements to be met by the application shall be laid down by regulation.

Article 30

The Technical Committees referred to in Article 16 shall examine cultivars submitted for registration to verify or note, as the case may be, compliance with the requirements of Articles 12 and 25.

If the examination finding is favorable, the Ministry of Agriculture and Livestock shall, on a proposal from the Seeds Directorate, grant the breeder's certificate, the term of which shall be from 15 to 20 years according to the species or group of species, as laid down by regulation. The certificate shall specify the dates of grant and lapse.

The Seeds Directorate may, if considered appropriate, grow the variety or carry out other necessary tests, or alternatively take into account the results of growing trials or other tests already carried out for the purpose of confirming compliance with Articles 12 and 25. The breeder may likewise be asked for any information, document or material that may be necessary, and which must be available to the application body for as long as the breeder's certificate remains valid.

Article 31

The breeder shall deliver a sample of seed of the cultivar to be protected to the Seeds Directorate. The breeder shall be responsible for the maintenance of live samples, and the Seeds Directorate shall request the delivery of the material whenever it sees fit. The Directorate may likewise request the breeder to deliver samples for preservation in a national germplasm bank.

Article 32

The breeder's certificate for a variety or line may be granted jointly to more than one natural person and/or legal entity. It shall be marketable, transferable and inheritable, and the transferee may use it, derive benefit from it and dispose of it during the period remaining to its owner and in the same manner and on the same conditions as the said owner.

Article 33

The filing of the application for registration of a variety in any country with which the Republic of Paraguay has a bilateral or multilateral agreement on the subject shall give the

applicant priority for a period of 12 months during which time he may have it registered in the National Register of Protected Cultivars.

This period shall be calculated from the filing date of the first application. The actual day of filing shall not be included in the period.

The requirements to be met for the exercise of these rights shall be laid down by regulation.

Article 34

The protection of a cultivar shall not prevent other persons from using it for experimental purposes or for the creation of a new cultivar, which may be registered in the name of its creator without the consent of the breeder of the original cultivar used to produce it, provided that the original cultivar is not used permanently for the production of the new one.

Article 35

The rights of the breeder shall not be violated by a farmer who sows and stores seed of the protected cultivar for his own use, or uses or sells the product of the said cultivar as a raw material or food.

Article 36

The Ministry of Agriculture and Livestock, on a proposal by the Seeds Directorate and after the opinion of the National Seeds Council has been obtained, shall declare the protected cultivar to be “for restricted public use” where it is decided that such a resolution is necessary to ensure an adequate supply of seed and that the breeder is not supplying the needs of the public satisfactorily. The proposal shall specify the term of the declaration of restricted public use. Where necessary the extension of the term shall be provided for in a new resolution, issued according to the procedure specified in this Article.

Article 37

Throughout the period during which the declaration of restricted public use is in effect, the Seeds Directorate may grant authorization to produce seed of the corresponding cultivar to natural persons or legal entities registered in the National Register of Seed Producers referred to in Article 44. In that case the breeder of the cultivar in question shall collect compensation from the seed producer, and the Seeds Directorate may act as intermediary for that purpose.

Article 38

The breeder's right shall be cancelled under the following circumstances:

- (a) termination of the legal period of protection;
- (b) renunciation of rights on the part of the breeder;
- (c) third-party fraud, in which case the right shall be transferred to the lawful breeder, if he can be identified;
- (d) failure by the breeder to provide, at the request of the Seeds Directorate, a seed sample of the protected cultivar with characteristics identical to the original seed;
- (e) failure to pay fees to the National Registry of Protected Cultivars;
- (f) any other ground for cancellation that is considered appropriate on a proposal from the Seeds Directorate and subject to the opinion of the Technical Committee for Cultivar Inspection.

Article 39

The breeder's right shall be declared null and void if it is proved that, the time of the grant of the said right:

- (a) the conditions laid down in Articles 12(a) and 25 of this Law were not properly complied with;
- (b) the conditions laid down in Article 12(b) and (c) were not properly complied with where the grant of breeder's right was based solely on information and documents supplied by the person concerned.

Breeders' rights may not be invalidated on any grounds different from those specified in this Article.

Article 40

Cultivars of foreign origin with breeders' certificates in force in their countries of origin may be registered in the National Register of Protected Cultivars. To that end the foreign breeders shall be given the same rights as nationals with respect to the recognition and protection of breeders' rights, subject to compliance with the requirements and standards provided for in this Chapter.

Article 41

The application for the registration of cultivars from other countries shall be filed by the legal representative, permanently resident in the country, of the person concerned and shall be sponsored by an agricultural or forestry engineer who holds a national or nationally-recognized title and is registered in the National Register of Agricultural and Forestry Engineers.

Article 42

Cultivars which, on the date of adoption of this Law, have been grown commercially for a maximum period of three or more years are declared public property, and may not be granted protection by the National Registry of Protected Cultivars, being therefore freely available for use. The growing period for the aforementioned declaration may be determined using as a reference such statistical information from official or other sources as will assist in proving the duration of commercial use of the cultivar concerned.

The cancelling or invalidation of breeders' rights on any of the grounds provided for in Articles 38 and 39 shall likewise cause the protected variety to become public property with the aforementioned consequences.

[...]

CHAPTER X

INFRINGEMENTS AND SANCTIONS

Article 88

The following shall be liable to sanctions:

- (a) any person who produces seed for marketing that does not conform to the production systems provided for in this Law;
- (b) persons, whether natural persons or legal entities, who produce seed for marketing without being registered in the National Register of Seed Producers;
- (c) persons, whether natural persons or legal entities, who sell seed or offer seed for sale without being registered in the National Register of Seed Traders;
- (d) persons, whether natural persons or legal entities, who conduct analyses or issue analysis certificates for commercial purposes without being registered in the

National Register of Seed Laboratories, or those who alter or falsify analysis certificates or the information contained therein;

(e) any person who displays for sale, or for whatever purpose delivers to third parties, seed that is not labelled in accordance with the provisions of Article 58;

(f) any person who displays for sale, or for whatever purpose delivers to third parties, seed that either partly or entirely fails to correspond to the information given on the packaging, tag or label;

(g) any person who prevents or in any way obstructs supervisory tasks connected with the implementation of this Law;

(h) any person who changes the nature of seed obtained under certification and/or inspection or other systems, whether of national origin or imported;

(i) any person who supplies information on or publicizes, in advertisements or circulars or by any other means of dissemination, seed that does not meet legal requirements or is liable to mislead or confuse as to the cultivar to which the seed belongs or its origin, nature and quality, or who fails to supply or falsifies information that he is obliged to supply under this Law;

(j) any person who produces and/or markets seed of cultivars not registered in the National Register of Commercial Cultivars that belong to the species covered by this Law, and those that are in the process of being entered in the Register in accordance with the provisions of the last paragraph of Article 13;

(k) any person who produces for marketing or markets seed of protected cultivars without the consent of the breeder;

(l) any person who imports and/or markets seed that does not conform to the provisions of this Law;

(ll) any person who fails to comply with any other provision of this Law.

Article 89

The Ministry of Agriculture and Livestock shall impose the following sanctions on those who contravene the provisions of this Law:

(a) a warning in the case of a simple error or oversight;

(b) a fine;

(c) confiscation;

(d) partial or total, temporary or permanent closure of premises.

The sanctions listed above may be imposed separately or together, due account being taken of the provisions of Article 92.

Article 90

Without prejudice to the sanctions mentioned in the foregoing Article, the subsidiary sanction of removal of the entry in the Register of Seed Producers or Traders, or of other registrations granted by the Seeds Directorate, for a limited period or indefinitely shall be ordered.

In the event of a second or subsequent offense, the offender shall be punished with up to three times the fine imposed earlier and/or final cancellation of his registration in the relevant Register shall be ordered.

Article 91

The farmer who acquires seed that does not correspond to the information given on the packaging, tag or label shall be entitled to demand repayment by the seller of the sum paid for the seed and for the cost of sowing or plantation and management of the crop up to the time at which the first signs were observed of the falsity of the information given on the packaging or label, without prejudice to any other legal action that may be available to the affected acquirer as indemnification for damages.

Where the cause of the action is not attributable to the seller, the latter may make a claim against the producer or importer on the same grounds and with the same effects as are specified in the first paragraph of this Article.

Article 92

Fines shall be equivalent to the amount of 50 to 10,000 times the minimum daily wage at the current rate, the graduation of which shall be calculated according to the seriousness of the offense, the prejudice caused to a third party and the record of the person responsible.

Article 93

The confiscation of infringing products shall be carried out by the Seeds Directorate according to the procedure laid down by regulation. The Ministry of Agriculture and Livestock

may authorize the owner of the confiscated product to sell it for consumption or to order its destruction in a manner and under conditions specified by regulation.

Article 94

Infringements shall be statute-barred six years after they have been committed.

Article 95

The person affected by a resolution of the Ministry of Agriculture and Livestock imposing a sanction may file a request for reconsideration with the same Ministry within a mandatory period of ten working days counted from the day following the date on which the resolution objected to was notified to him. The Ministry of Agriculture and Livestock shall decide the question within a period of ten working days. Where the Ministry calls for evidence or inquiries for the purpose of decision, the said period shall be counted from the time at which it has been provided or taken.

If no resolution is issued in the period specified, it shall be understood that the request for reconsideration has been tacitly dismissed.

Article 96

The person affected by a ruling dismissing his request for reconsideration may file a legal-administrative appeal within a mandatory period of ten working days.

The said period shall be counted from the day following the notification of the ruling or from the expiry of the period allowed for the handing down of such a ruling.

Article 97

Proceedings instituted before the Ministry of Agriculture and Livestock shall be summary, and the time limits specified shall be mandatory.

CHAPTER XI

SPECIAL PROVISIONS

Article 98

Decree No. 24.251 of December 7, 1972, is repealed.

Article 99

The foregoing is to be communicated to the Executive.