

REPUBLIC OF PANAMA

**LAW NO.23 OF JULY 15, 1997, ON INDUSTRIAL PROPERTY  
TITLE V  
PROVISIONS ON THE PROTECTION OF NEW PLANT VARIETIES**

CHAPTER I

PURPOSE AND SCOPE

Article 231

*Purpose*

The purpose of this Title is to recognize and accord to the breeder of a new plant variety a right, to be known as a “breeder’s right,” under the conditions hereinafter defined.

Article 232

*Definitions*

The following terms and definitions shall be adopted for the purposes of this Title:

*National Seed Committee:* The national Committee created by Decree No. 3 of April 5, 1978, which consists of representatives of State entities and the private sector. Its purpose is to control the quality of the seed and propagating material used in the country, to certify and register seed and to supervise compliance with the applicable legal provisions. It has a Technical Secretariat which includes the Seed Reproduction Unit, the Official Seed Laboratory and the Certification and Registration Unit.

*Council for the Protection of New Plant Varieties:* The consultative body comprising the various circles and bodies interested in the protection of new plant varieties and presided over by the Minister for Agricultural Development.

*International Convention for the Protection of New Varieties of Plants (CIPOV), of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978:* The International Convention to which States may adhere, the objective of which is the protection of plant varieties by an intellectual property right. It constitutes the legal basis for the International Union for the Protection of New Varieties of Plants (UPOV).

*Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries (DIGERPI):* The State entity where the industrial property registers of the Republic of Panama are kept. For the purposes of this Title, it has the task of keeping the Register of Protected Varieties and granting breeders’ rights.

*Reference specimen:* The smallest sample used by the breeder to maintain his variety, from which the representative sample is taken for the purposes of the registration of the variety.

*Institute of Agricultural Research of Panama (IDIAP):* The State entity which has its own legal personality and assets and enjoys administrative, economic and technical autonomy, and whose task is to regulate the research activities and to formulate and apply the scientific and technological policies of the public sector in the field of agriculture and livestock. For the purposes of this Title, it is the entity entrusted with the technical analyses required to determine whether a variety satisfies the conditions set forth in this Title for its registration and for the grant of breeders' rights in respect of it.

*Reproductive or vegetative propagating material:* Seed, fruit, plants or parts thereof that are used for the reproduction of plants. It includes the whole plant.

*Breeder:* The natural or legal person who has created or discovered a new plant variety, either through natural means or by genetic manipulation.

*Recognized Priority:* The precedence for the grant of breeders' rights, based on the filing abroad of an application relating, either wholly or in part, to the same subject matter as a later application filed in the Republic of Panama.

*Register:* The Register of Protected Varieties kept at the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries.

*Claim:* A petition for the protection of an essential characteristic of a new plant variety, made in a precise and specific way in the application for registration and granted, where relevant, in the corresponding title.

*Title:* When used with a lower-case initial letter, a document that in one way or another attests, constitutes or confers rights.

*International Union for the Protection of New Varieties of Plants (UPOV):* The intergovernmental organization with its headquarters in Geneva (Switzerland), based on the International Convention for the Protection of New Varieties of Plants and whose members are the signatory countries of the Convention.

*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 a unit with respect to its suitability for being propagated unchanged.

*Protected Variety:* A variety entered in the Register of Protected Varieties of the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries which is the subject of breeders' rights.

Article 233

*Scope*

This Title shall apply to the plant genera and species specified in the Regulations.

Article 234

*National Treatment and Reciprocity*

The following shall be the beneficiaries of the rights conferred by this Title:

1. Nationals of the Republic of Panama and all persons having their place of residence or registered office in Panama.
2. Nationals of the member States of the International Union for the Protection of New Varieties of Plants (UPOV), and all persons having their place of residence or registered office on their territory.
3. Nationals of any State which, without being a member of the International Union for the Protection of New Varieties of Plants, grants effective protection to the nationals of the Republic of Panama. The Executive shall determine, for the purposes of this paragraph, whether the protection granted by another State is effective and may be reciprocated.

CHAPTER II

SUBSTANTIVE LAW

Article 235

*Nature of the Breeder's Right*

The breeder's right shall be treated for all purposes as an industrial property right, to which the legal provisions in force with respect to that property shall subsidiarily apply, except where otherwise provided in this Title.

Article 236

*Entitlement*

Entitlement to breeders' rights shall vest in the breeder or his successor in title.

Where two or more persons have created or discovered a variety jointly, entitlement to protection shall vest in them jointly. Subject to any agreement to the contrary between them, the shares of joint breeders shall be equal.

Where the breeder is an employee, the entitlement to breeders' rights shall be determined by the employment relationship in the context of which the variety was bred or discovered and in accordance with the law applicable to that relationship.

#### Article 237

##### *Features of the Right*

Breeders' rights may be assigned or transferred by contract or succession. The assignee or successor may use the rights, derive benefits therefrom and dispose of them during their period of validity in the same way and under the same conditions as his predecessor. The holder of the rights may grant licenses of exploitation for the use of the protected variety to third parties. The Executive shall regulate this matter further.

#### Article 238

##### *Scope of Breeders' Rights*

The authority of the breeder to whom breeders' rights have been granted shall be required for the following acts in respect of reproductive or vegetative propagating material of the protected variety:

1. Production.
2. Offering for sale, sale or other marketing.
3. Repeated use of the new variety for the commercial production of another variety.
4. Use of ornamental plants or parts thereof that are normally marketed for purposes other than propagation, when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

The breeder may make the authority granted in accordance with the preceding paragraphs subject to such conditions and limitations as he may specify.

#### Article 239

Breeders' rights shall extend to all botanical species and genera, and shall apply in general to the whole plant, including any type of flowers, fruit and seed and any other part thereof which may be used as reproductive or vegetative propagating material.

The use, by a farmer on his own holding, of the harvest produced from material acquired beforehand in an adequate manner shall not be deemed an infringement of breeders' rights. However, the said material may under no circumstances be marketed, sold or disposed of lawfully as seed or propagating material.

#### Article 240

The breeder's authority shall not be required either for the use of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. His authority shall however be required where repeated use of the variety becomes necessary for the commercial production of another variety.

#### Article 241

##### *Seed Marketing Authorization*

With respect to the requirements for the sale of seed, the National Seed Committee shall take the provisions of this Title into account.

#### Article 242

##### *Judicial Assignment of Breeders' Rights*

Where an application for breeders' rights has been filed by a person not entitled to protection, the holder of the better right or the entitled person may bring an action for the assignment to him of the application or of the breeders' rights if already granted.

The action for assignment shall be barred after five years from the date of publication of the grant of breeders' rights. An action brought against a defendant who has acted in bad faith shall not be subject to any limitation.

Where the action succeeds, any right granted to third parties on the basis of the breeders' rights in the intervening period shall lapse.

However, the holder of any exploitation right acquired in good faith who has taken genuine and effective measures with a view to exercising his right before the date of the notification of the action or, failing such notification, of the decision, may perform or continue to perform the act of exploitation resulting from the measures taken, subject to payment of equitable remuneration to the entitled person.

## Section I

### Conditions for the Grant of Breeders' Rights

#### Article 243

##### *Conditions for Protection*

Breeders' rights shall be granted where the variety possesses the following characteristics: it is new, distinct, uniform and stable, and has been given a denomination in accordance with the provisions of Articles 265 *et seq.*

The grant of breeders' rights may only be made subject to the aforementioned conditions, and the rights shall be granted provided that the applicant has complied with the formalities established by this Title and paid the required fees.

#### Article 244

##### *Novelty*

The variety shall be deemed new if, on the filing date of the application or where relevant on the priority date, reproductive or vegetative propagating material or harvested material of the variety has not been offered for sale or marketed, by or with the consent of the breeder or his successor in title:

1. On the territory of the Republic of Panama for longer than one year.
2. On the territory of any other State for longer than four years or, in the case of trees and vines, for longer than six years.

The Executive shall specify in the Regulations the cases in which a sale or another form of disposal to others will not affect the novelty of the variety.

#### Article 245

##### *Distinctness*

The variety shall be deemed distinct if it is clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

The filing, in any country, of an application for breeders' rights or for entry in a catalogue of varieties admitted to trade shall be deemed to render the variety in respect of which the application is filed a matter of common knowledge from the date of the application,

provided that the latter leads to the grant of breeders' rights or entry in the catalogue, as the case may be.

Common knowledge of the existence of another variety may be established by reference to various factors, such as exploitation of the variety already in progress, entry of the variety in the register of varieties kept by a recognized professional association or inclusion of the variety in a reference collection.

#### Article 246

##### *Uniformity*

The variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its sexual reproduction or vegetative propagation, it is sufficiently uniform in its relevant characteristics.

#### Article 247

##### *Stability*

The variety shall be deemed stable if its relevant characteristics remain unchanged after repeated reproductions or multiplications or, in the case of a particular cycle of reproductions or multiplications, at the end of each such cycle.

## **Section II**

### **Creation, Duration, Limitation**

#### Article 248

##### *Creation of the Right*

Breeders' rights shall be created by registration with the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries, under the terms and conditions set forth in this Title.

#### Article 249

##### *Duration of the Right*

The rights shall be granted to the breeder for a period of 20 years, counted from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees,

including their rootstocks in each case, the period of protection shall be 25 years. Breeders' rights shall remain in force only as long as the fees arising from registration and maintenance of the rights in accordance with the provisions of this Title are paid.

On the expiry of the periods of protection the varieties shall be regarded as having become public property.

#### Article 250

##### *Restrictions on the Exercise of the Protected Rights*

The free exercise of the exclusive rights accorded to the breeder may not be restricted otherwise than for reasons of public interest. In such cases, the grant of compulsory licenses for the exploitation of registered varieties may be authorized. When granting a compulsory license, the competent authority shall fix the equitable remuneration to be paid to the breeder by the holder of the compulsory license.

The Executive shall regulate this matter further.

#### Article 251

##### *Measures Regulating Commerce*

Breeders' rights shall be independent of any measure taken by the Republic of Panama to regulate within its territory the production, certification and marketing of material of varieties or the import or export of such material. The right shall be deemed assimilated to the rights resulting from industrial property, and the competition law provisions applicable to such property shall be applicable also to it.

### CHAPTER III

#### REGISTRATION AND APPLICATION

##### **Section I**

##### **Registration**

#### Article 252

##### *Register of New Plant Varieties*

The Register of New Plant Varieties shall be kept at the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries (DIGERPI).

The Directorate General of the Industrial Property Registry shall maintain for that purpose a Register of New Plant Varieties in which applications filed and rights granted shall be recorded. The Directorate General of the Industrial Property Registry shall distinguish between the Register of Applications and the Register of Rights, both of which shall be open to public inspection.

Any person having a legitimate interest may:

1. Inspect the documents relating to applications.
2. Inspect the documents relating to breeders' rights already granted.
3. Visit the growing tests and examine the other necessary tests relating to the technical examination.

In the case of varieties the production of which requires repeated use of other varieties (components), the applicant may, when making his application, request that the documents and tests relating to the components be withheld from public inspection.

The Directorate General of the Industrial Property Registry shall preserve the originals or copies of the documents in the files for five years after the withdrawal or rejection of the application or the lapse of breeders' rights, as the case may be.

#### Article 253

##### *Gazette*

The Directorate General of the Industrial Property Registry shall at regular intervals publish registrations of new plant varieties, and applications therefor, in the Official Gazette of the Industrial Property Registry under the following headings:

1. Applications for the grant of breeders' rights.
2. Applications for variety denominations.
3. Registrations of new denominations for protected varieties.
4. Withdrawals of applications for the grant of breeders' rights.
5. Rejections of applications for the grant of breeders' rights.
6. Grants of breeders' rights.
7. Changes in the persons (applicants, holders and procedural representatives).
8. Lapses of breeders' rights.

9. Licenses.
10. Official announcements.

#### Article 254

##### *Fees*

The administrative acts of The Directorate General of the Industrial Property Registry shall give rise to the payment of fees for services rendered. For the purposes of this Title, the fees and the amounts specified in Law No. 35 of May 10, 1996, on Industrial Property for the registration of patents and industrial designs shall be applicable.

#### Article 255

##### *Registration with the National Seed Committee*

Registrations made with the National Seed Committee of Panama shall be valid for the purposes set forth in the corresponding legislation, but shall not confer any breeders' rights, nor may they be claimed on the territory of any other member State of the International Union for the Protection of New Varieties of Plants. Producers who wish to hold breeders' rights in their new varieties shall comply with the registration provisions set forth in this Title.

## **Section II**

### **Applications**

#### Article 256

##### *Form and Content of the Application*

Any person wishing to have a variety protected shall file an application with the Directorate General of the Industrial Property Registry and pay the corresponding fee.

The application, to be valid, shall contain at least the following elements:

1. The name and address of the breeder, if he is not the applicant.
2. The name and address of the applicant and, where relevant, his procedural representative.

3. The identification of the botanical taxon (Latin and common names).
4. The denomination proposed for the variety, or a provisional designation.
5. Where the priority of an earlier application is claimed, the member State of the International Union for the Protection of New Varieties of Plants with which the said application was filed and the filing date;
6. A technical description of the variety.
7. Proof of payment of the application fee.

The Executive shall regulate this matter further.

#### Article 257

##### *Priority*

The applicant may avail himself of a right of priority based upon an earlier application that has been duly filed for the same variety, by himself or by his predecessor in title, with the authority of a member State of the International Union for the Protection of New Varieties of Plants.

Where an application filed with the Directorate General of the Industrial Property Registry is preceded by several such applications, priority may be based only on the earliest application.

The right of priority shall be expressly claimed in the application filed with the Directorate General of the Industrial Property Registry. It may only be claimed within a period of 12 months from the filing date of the earliest application. The day of filing shall not be included in the said period.

In order to avail himself of the right of priority, the applicant shall submit to the Directorate General of the Industrial Property Registry, within three months from the filing date, in accordance with the provisions of this Title, 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 Directorate General of the Industrial Property Registry may request that a translation of the first application, or of certain documents that constitute the first application, be produced within three months from the date of receipt of the request.

The effect of priority shall be that, with respect to the conditions of protection attaching to the variety, the application is deemed filed on the filing date of the first application.

## Article 258

*Examination of the Application as to Form; Filing Date*

The application must satisfy the requirements of form and substance.

Where the application is clearly unacceptable by reason of the botanical taxon to which the variety belongs, the documents constituting the application shall be returned to the applicant and the application fee shall be refunded.

Where the application is incomplete or incorrect, the Directorate General of the Industrial Property Registry shall request the applicant to correct it within 30 days from the date of receipt of the request. Any application that is not corrected within the prescribed period shall be deemed not to have been filed.

Any application that is complete and correct shall be given a filing date and shall be recorded in the Register. The date on which the information requested under this Title is received by the Directorate General of the Industrial Property Registry shall be taken to be the filing date.

## Article 259

*Examination of the Application as to Substance*

The Directorate General of the Industrial Property Registry shall examine the application as to substance in order to verify, on the basis of the information given in the application, that the variety satisfies the requirements and that the applicant is entitled in accordance with the provisions of this Title.

Where the examination reveals an obstacle to the grant of the breeders' rights, the application shall be rejected.

The examination as to substance shall be ordered by the Directorate General of the Industrial Property Registry and undertaken by the entities qualified to do so, namely the Institute of Agricultural Research of Panama or any other designated entity.

## Article 260

*Technical Examination of the Variety*

The variety shall undergo a technical examination the purpose of which shall be:

1. To verify that the variety belongs to the stated botanical taxon.
2. To establish that the variety is distinct, uniform and stable.

3. Where the variety is found to meet the aforesaid requirements, to establish an official description of the variety.

In principle, the examination shall be carried out by the Institute of Agricultural Research of Panama or under its supervision. The examination may be carried out by private entities in so far as they have been officially accredited for that purpose. The accreditation of such entities shall comply with the applicable provisions in force in the Republic of Panama.

The Institute of Agricultural Research of Panama shall determine the practical details of the examination. The cost of the technical examination shall be paid by the applicant directly to the institution that carries it out. The said cost shall be determined by the material used and the effectiveness of the service. The cost of the examination shall be reasonable. The Executive shall regulate this matter further.

The official description referred to under 3 above may be subsequently extended or amended on the basis of developments in agrobotanical knowledge without the subject matter of protection being affected thereby.

#### Article 261

##### *Information, Documents and Material Required for the Examination*

The applicant shall submit all the information, documents or material requested for the purposes of the technical examination. Failure to submit the requested elements shall cause the application to be rejected, unless the applicant submits a reason of *force majeure* for his omission.

#### Article 262

##### *Publicizing the Application*

Applications shall be published in the Official Gazette of the Industrial Property Registry and the announcements shall include, as a minimum, the elements mentioned in Article 256 under 1, 2, 3, 4 and 5.

#### Article 263

##### *Objections to the Grant of Breeders' Rights*

As from the publication of the application any person may file objections to the grant of breeders' rights.

The objections may only be based on the allegation that the variety is not new, distinct, uniform or stable, or that the applicant is not entitled to protection.

The Executive shall regulate this matter further, due account being taken, however, of the provisions of Law No. 35 of 1996 on objections to the grant of a patent.

#### Article 264

##### *Grant of Breeders' Rights; Rejection of the Application*

The Directorate General of the Industrial Property Registry shall grant breeders' rights where it is satisfied, as a result of the examination undertaken by the Institute of Agricultural Research of Panama, that the variety fulfills the requirements set forth in Article 243 under 1, 2, 3 and 4 and that the applicant has fulfilled the other requirements set forth in this Title,.

Where it is not so satisfied, the Directorate General of the Industrial Property Registry shall reject the application.

The grant of breeders' rights, or the rejection of the application, shall be recorded in the Register of New Plant Varieties and published in the Gazette.

The breeders' rights shall also be recorded in the said Register. The description of the variety may be included in the Register by reference to the technical files of the Directorate General of the Industrial Property Registry and the examinations provided by the Institute of Agricultural Research of Panama.

### CHAPTER III

#### DENOMINATION

#### Article 265

##### *Denomination*

The denomination of a protected variety shall be its generic designation.

The denomination may consist of any word, combination of words, combination of words and figures or combination of letters and figures, with or without an existing meaning, provided that such signs allow the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must differ from every denomination which designates in any member State of the International Union for the Protection of New Varieties of Plants, an existing variety of the same botanical species or of a closely related species.

For as long as the variety is exploited, it shall be prohibited to use, in the territory of the Republic of Panama, a designation that is identical or confusingly similar to the denomination of that variety in relation to another variety of the same or a closely related species. This

prohibition shall remain in force after the variety has ceased to be exploited where the denomination has acquired particular significance in relation to the variety.

Any person who offers for sale, sells or otherwise markets propagating material of a protected variety shall be obliged to use the denomination of that variety.

The obligation to use a denomination shall not end with the breeders' rights that gave rise to it.

When a variety is offered for sale or otherwise marketed, the use of a trademark, trade name or other similar indication in association with the registered variety denomination shall be permitted, subject to the denomination remaining easily recognizable.

## Article 266

### *Grounds for Refusal*

Without prejudice to the provisions of the Convention for the Protection of New Varieties of Plants and the rules established by the International Union for the Protection of New Varieties of Plants, registration as the denomination of a variety shall be denied to a designation that:

1. Does not conform to the provisions of the preceding Article.
2. Is not appropriate for the identification of the variety, in particular owing to lack of distinctiveness or linguistic unsuitability.
3. Is contrary to public policy or morality.
4. Consists exclusively of signs or indications that may serve, in the plant varieties and seeds sector, to designate kind, quality, quantity, intended purpose, value, geographical origin or time of production.
5. Is liable to mislead or to cause confusion as to the characteristics, value or geographical origin of the variety, or the links between the variety and certain persons, in particular the breeder or the applicant.
6. Is identical or confusingly similar to a denomination that designates, on the territory of Panama, an existing variety of the same or a closely related species, unless the existing variety is no longer exploited and its denomination has not acquired any particular significance.

The registration of such designations shall be refused on the basis of opposition filed by the holder of the rights in the element concerned, due regard being had to the applicable provisions of Law No. 35 of 1996. The details shall be specified in the Regulations.

## Article 267

*Registration Procedure*

The denomination proposed for the variety for which protection is sought shall be submitted together with the application.

Subject to payment of a special fee and the supply of a provisional designation for the variety in the application, the applicant may have the procedure for the registration of the denomination deferred. In such a case, the applicant shall submit the proposed denomination within 30 days from the date of receipt of the request. If the applicant fails to submit a proposal within the prescribed period, the application shall be rejected.

The proposed denomination shall be published in the Gazette, unless the competent authority has found or knows of a ground for refusal under the provisions of this Title.

Any interested person may file an objection to the registration of the denomination based on any one of the grounds for refusal set forth in this Title.

The objections and observations shall be communicated to the applicant, who may reply.

The applicant may, on the basis of the objections and observations, submit a new proposal.

For the examination of the suitability of the denomination, the Directorate General of the Industrial Property Registry shall submit the proposal for consideration to the Institute of Agricultural Research of Panama, which shall be the competent authority for determining whether or not a denomination may be registered. The Directorate General of the Industrial Property Registry shall abide by the findings of the report of the Institute of Agricultural Research of Panama.

The denomination shall be registered at the same time as breeders' rights are granted.

The Executive shall specify the details in the Regulations.

## Article 268

*Cancellation of a Denomination and Registration of a New Denomination*

The Directorate General of the Industrial Property Registry shall cancel a registered denomination:

1. When it is established that the denomination has been registered despite the existence of a ground for refusal.
2. When the holder so requests and demonstrates a legitimate interest.

3. When a third person produces a judicial decision prohibiting the use of the denomination in connection with the variety.

The holder shall be informed of the intended cancellation and requested to propose a new denomination. The proposed new denomination shall be subject to the examination and publication procedure set forth in this Title. The new denomination shall be registered and published once approved; the former denomination shall be cancelled at the same time.

## **Section IV**

### **Maintenance of the Variety**

#### Article 269

##### *Maintenance of the Variety*

The holder shall be under the obligation to maintain the protected variety or, where relevant, its hereditary components for the whole duration of the breeders' rights.

At the request of the Directorate General of the Industrial Property Registry, the holder shall provide it or an authority designated by it, within the prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety.

## **Section V**

### **Payment for and Lapse of Breeders' Rights**

#### Article 270

##### *Annual Fee*

The breeder shall pay, every five years throughout the period of protection, a fee which shall be determined according to the provisions of Law 35 of 1996. The first payment shall be made on the filing of the application, and the subsequent ones every five years, counted from the filing date of the application. The payment may be made at any time before the end of the five-year period concerned. If the payment is not made at the end of a period of six months after the date on which the payment of a particular fee became due, the holder will be deemed to have abandoned his breeders' rights and the latter shall automatically lapse.

## Article 271

*Lapse and Cancellation of Breeders' Rights*

The breeders' rights and its registration shall lapse, with the corresponding rights becoming public property, where

1. The period of protection set forth in this Title comes to an end.
2. The holder surrenders his right in a written declaration addressed to the Directorate General of the Industrial Property Registry.
3. The annual fees are not paid.
4. The holder is not in a position to provide the competent authority with reproductive or vegetative propagating material capable of producing the variety with its characteristics as defined when the protection was granted.
5. The holder, after being requested to do so and within a prescribed period, does not provide the documents and the information deemed necessary for checking the variety, or does not allow inspection of the measures which have been taken for the maintenance of the variety.

## Article 272

*Nullity of Breeders' Rights*

Breeders' rights shall be declared null and void when it is established that:

1. The variety was not new or distinct on the filing date of the application or, where relevant, on the priority date.
2. Where the grant of breeders' rights has been essentially based on information and documents submitted by the applicant, the variety was not uniform or stable on the said date.
3. Breeders' rights have been granted to a person who is not entitled to them and the entitled person has not brought an action for judicial assignment under Article 242, or has renounced the right to bring such an action.

Subject to any provision to the contrary in this Title, breeders' rights that have been declared null and void shall be deemed never to have been granted.

Any person having a legitimate interest may file a request for annulment.

CHAPTER IV  
REMEDIES AND SANCTIONS

Article 273

*Civil Remedies*

Any person who, without being entitled to do so, performs acts that require authorization by the holder, or who uses a designation or fails to use a variety denomination in contravention of the provisions of this Title, may be sued by the breeder or by the holder of an exclusive license and shall be liable to the provisions on civil procedure applicable to the rights deriving from industrial property as set forth in Law No. 35 of May 10, 1996.

Subject to the provisions of this Title, the provisions applicable to the exercise of the rights conferred in relation to inventions and utility models, as set forth in the provisions on industrial property of the Republic of Panama, shall apply *mutatis mutandis* to the exercise of the prerogatives conferred by breeders' rights.

Article 274

*Criminal Penalties*

Any act that involves improper use of breeders' rights and any infringement committed with full knowledge of the facts shall constitute a punishable offense for the purposes of this Title. The provisions, procedures and sanctions specified in the Law on Industrial Property of the Republic of Panama with respect to inventions shall be applicable.

Article 275

*Offenses in Relation to Variety Denominations*

Any person who, in full knowledge of the facts, uses a designation or fails to use a variety denomination in contravention of the provisions of this Title shall be liable to a fine of 1,000 to 10,000 balboas. In the case of a second or subsequent offense, the fine shall be doubled.

CHAPTER V  
OFFICIAL BODIES

Article 276

*Council for the Protection of New Plant Varieties*

A Council for the Protection of New Plant Varieties is created which shall be presided over by the Minister for Agricultural Development and shall comprise representatives of the various circles concerned with the protection of new plant varieties, including necessarily, but not exclusively, the Institute of Agricultural Research of Panama, the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries, the Faculty of Agricultural Sciences of the University of Panama and the members and Executive Secretary of the National Seed Committee.

The details of the appointment of the members of the Council and of its operation shall be specified in the Regulations.

The task of the Council shall be to advise the Minister for Agricultural Development and make proposals to him, as a consultative body for the implementation of this Title, in accordance with the other provisions applying to new plant varieties and seeds in the Republic of Panama.

CHAPTER VI

MISCELLANEOUS PROVISIONS

Article 277

*Regulations*

The Executive shall issue Regulations for the implementation of this Title.

Article 278

*Cooperation in Examination*

The Institute of Agricultural Research of Panama shall be entitled to conclude administrative agreements for cooperation in the examination of varieties and the verification of the maintenance of varieties with the competent authorities of the member States of the International Union for the Protection of New Varieties of Plants.

Article 279

*Coordination*

The Institute of Agricultural Research of Panama shall coordinate its action with the Directorate General of the Industrial Property Registry of the Ministry of Commerce and

Industries in the examination of the application with regard to botanical taxons, technical aspects, the maintenance of the variety, the suitability of the denomination, publications in the Official Gazette of the Industrial Property Registry and any other action that is necessary for the effective protection and registration of new plant varieties as industrial property rights in the Republic of Panama.

#### Article 280

##### *Transitional Provision Relating to Registrations*

Any breeder who has a variety registered with the National Seed Committee of the Republic of Panama may have his registration validated with the Directorate General of the Industrial Property Registry for the grant of breeders' rights. The applicant shall satisfy the requirements of form and substance for the application, but shall be exempted from the provisions regarding technical examination and the maintenance of the variety. He shall be subject to the legal provisions relating to the variety denomination.

#### Article 281

##### *Derogations*

This Title shall not be affected by any provision that would be incompatible with it, and shall enter into force on its promulgation.