

POLAND

SEED INDUSTRY LAW*

of October 10, 1987

With the aim of satisfying the needs of the national economy in the field of biological means of production and of making available to all growers quality seeds of valuable varieties of cultivated plants, the following Law has been enacted:

CHAPTER I

GENERAL PROVISIONS

Article 1

This Law regulates the legal situation in respect of:

- (1) the breeding and assessment of varieties of cultivated plants;
- (2) the rights and obligations of breeders of varieties of cultivated plants and the rights of creators of original varieties and of maintainers of varieties;
- (3) the production, utilization, marketing, testing and control of seed material.

Article 2

1. For the purposes of this Law:

- (1) "Variety of cultivated plant" (hereinafter referred to as "variety") shall mean a population of plants suitable for cultivation and characterized by its homogeneity and stability;
- (2) "Hybrid" shall mean a variety produced by the repeated crossing of its primary components, in accordance with its formula;
- (3) "Formula of a hybrid" shall mean an expression in the form of words or of symbols designating the primary components of the hybrid and describing the manner of association and the sequence of crossing for the production of the hybrid;

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(4) "Primary component of a hybrid" shall mean a variety, a strain, a line or a clone of a cultivated plant used in the first stage of production of the hybrid;

(5) "Homogeneous variety" shall mean a variety which, taking into account the particular features of its way of multiplication, satisfies the requirements concerning the variation of characteristics among individual plants;

(6) "Stable variety" shall mean a variety of which the essential characteristics remain unchanged after successive multiplication or at the end of each cycle of multiplication;

(7) "Known variety" shall mean a variety:

(a) which is currently cultivated,

(b) which, in Poland, has been entered or is the subject of an application for entry into the Register of Varieties of Cultivated Plants or into the Roll of Exclusive Rights in Varieties,

(c) which has been the subject, abroad, of an entry or of an application for entry into an official list of varieties,

(d) which appears in a collection of varieties commonly known in Poland or abroad or

(e) which is described in a readily available publication;

(8) "Distinct variety" shall mean a variety which is fundamentally distinguishable from all other known varieties by at least one characteristic important for the distinction of the variety;

(9) "New variety" shall mean a variety of which the seed material, at the date of the application for an exclusive right on the variety, has not been offered for sale or marketed with the consent of the breeder or of his successor in title:

(a) for more than one year in Poland,

(b) for more than six years abroad in the case of vines, trees and their rootstocks, or for more than four years in the case of other cultivated plants.

(10) "Economic value of a variety" shall mean the advantage which a variety brings or may bring to the national economy, taking into account revenue, costs and risks under different and variable conditions of cultivation, as well as requirements concerning the production, processing, marketing and utilization of the products derived from the variety;

(11) "Plant breeding" shall mean the branch of the seed industry dealing with varieties as a biological means of production; it consists of:

(a) creative breeding, of which the objective is to produce new varieties and

(b) maintenance breeding, of which the objective is to maintain the identity, homogeneity and stability of the varieties created;

(12) "Breeder of a variety" (hereinafter referred to as the "breeder") shall mean the natural or legal person who is the owner of plant breeding material and of documents concerning the breeding of the variety and who carries out the said breeding;

(13) "Creator of an original variety" (hereinafter referred to as the "creator") shall mean the natural person who, by his creative activity, has created an original variety and has assessed its economic value: in the case of a hybrid, it is the person:

(a) who has worked out its formula or

(b) who, by his creative activity, has created one or more of its primary components;

(14) "Maintainer" shall mean the natural person who carries out independently or manages work on the maintenance breeding of a variety: in the case of a hybrid, it is the person who carries out this work in relation to a primary component of the hybrid;

(15) "Seed material" shall mean plants or parts of plants intended for sowing, planting, grafting or budding;

(16) "Nursery material" shall mean seed material of trees, shrubs and perennials;

(17) "Certified seed material" shall mean seed material whose varietal identity is documented, which is produced in accordance with the statutory provisions on production and which satisfies the quality standards and requirements;

(18) "Conditionally certified seed material" shall mean certified seed material of a variety submitted for listing, but not yet entered into the Register;

(19) "Tested seed material" shall mean seed material which satisfies the quality standards and requirements;

(20) "Trade in seed material" shall mean the purchase and brokerage of seed material for the purposes of resale or sale of purchased seed material.

2. Varieties shall be classified according to the following categories:

(1) Domestic varieties:

(a) original variety: a variety created and maintained in Poland, or partly abroad, and characterized by distinctness, homogeneity and stability;

(b) selected variety: a variety created in Poland or abroad, maintained in Poland and characterized by its homogeneity and stability as well as by the identity of its botanical characteristics with those of the initial variety;

(c) local variety: a variety created in Poland without the intervention of a creator, as a result of the long-term action of local natural and agricultural factors, and characterized by its distinctness, homogeneity and stability;

(2) Foreign varieties:

(a) original variety: a variety created and maintained abroad and characterized by its distinctness, homogeneity and stability;

(b) selected variety: a variety created and maintained abroad and characterized by its homogeneity and stability as well as by the identity of its botanical characteristics with those of the initial variety;

(c) local variety: a variety created abroad without the intervention of a creator, as a result of the long-term action of local natural and agricultural factors, and characterized by its distinctness, homogeneity and stability.

3. The provisions of this Law concerning:

(1) the creator,

(2) the natural person who assisted in the creation of a variety,

(3) the maintainer of a variety,

(4) the natural person who assists in the maintenance breeding of a variety,

shall apply *mutatis mutandis* to two or more natural persons.

4. Unless otherwise provided in this Law, the Code of Administrative Procedure shall govern the procedure applicable to matters dealt with by this Law.

CHAPTER II

ENTRY OF VARIETIES INTO THE REGISTER

Article 3

1. A Register of Varieties is hereby established (hereinafter referred to as the “Register”).

2. The Register shall be the official list of varieties of which the seed material is approved for marketing.

3. The following shall be entered into the Register:

(1) the original, selected and local varieties of plants whose cultivation is important for the national economy;

(2) the primary components of a hybrid already entered into the Register, provided that they have not already been entered as varieties or primary components of another hybrid.

4. Domestic varieties intended exclusively for cultivation abroad may also be entered into the Register.

Article 4

The conditions for entering a variety into the Register shall be as follows:

1. The variety must have an economic value appropriate to the needs of the national economy.
2. The maintenance breeding of an original or selected variety must ensure a supply of seed material to satisfy economic needs.
3. The breeder of the variety must keep a sufficient quantity of seed material for testing and for the multiplication of the variety.
4. The variety must be given a denomination.

Article 5

1. The denomination of the variety must have characteristics which distinguish it from the denomination of all other varieties belonging to the same or a related cultivated plant entered into the Register or protected in Poland or in any other State party to an international agreement to which the Polish People's Republic is party.
2. The denomination of the variety must not be liable to mislead as to the characteristics of the variety, its economic value, its breeder or its place of origin. It may not consist solely of figures. It may not affect the rights of third parties deriving from trademarks or other rights of utilization of designations of seed material.
3. The denomination of a variety shall be protected as from the day of its entry into the Register and for as long as seed material of the variety is marketed in Poland.

Article 6

Anyone who tests, offers for sale or advertises seed material of a variety entered into the Register, or gives information concerning such variety shall be required to use the denomination entered into the Register.

Article 7

1. An original variety shall be entered into the Register at the request of the breeder.

2. The breeder qualified to make an application for entry of an original variety into the Register shall be:

(a) the creator who carries out the breeding of the variety and is the owner of the plant breeding material and documentation concerning the breeding of the variety,

(b) the creator's employer, if the variety has been created by the creator in the course of his duties as set out in his employment contract, or

(c) the client, if the variety has been created by the creator as a result of contract, unless the parties have decided otherwise.

3. A selected variety shall be entered into the Register at the request of its breeder and a local variety at the request of the person who intends to market seed material of the variety.

4. Where more than one application for entry into the Register is submitted for the same original or local varieties, the variety which is the subject of the earliest application shall be entered into the Register.

Article 8

The Register shall be kept by the Research Center for Varieties of Cultivated Plants (*Centralny Ośrodek Badania Odmian Roslin Uprawnych*), hereinafter referred to as the "Center."

Article 9

1. The Center shall carry out the testing and assessment of the varieties, both before and after their entry into the Register.

2. The Center shall not carry out the testing and assessment of a variety if the application shows that the entry requirements have not been met.

3. Depending upon the results of the testing and assessment, the Center shall enter or refuse to enter the variety into the Register.

4. After the entry of a variety into the Register, the Center shall issue to the applicant a certificate of entry which shall state whether the variety is classified as original, selected or local.

Article 10

1. The breeder of a variety who submits an application for entry into the Register shall be required:

(1) to give a denomination to the variety and

- (2) to supply, free of charge and at his own expense, the seed material necessary for the testing.
2. The provisions of paragraph 1(2) shall also apply after the entry of the variety into the Register.
3. If a domestic variety entered into the Register is to be tested abroad as a result of an international agreement, the breeder shall furnish, at the request and expense of the Center, seed material of the variety necessary for the testing.

Article 11

1. The entry of a variety into the Register and the maintenance of such entry shall be subject to a registration fee.
2. The registration fee for foreign varieties must be paid either in foreign currency or in Polish currency acquired from a documented source.
3. The Minister for Agriculture, Forestry and Food Economy may reduce or waive the registration fee if economically justified or required by the international agreements to which the Polish People's Republic is party.

Article 12

1. The Center shall remove a variety from the Register:
 - (1) if the characteristics of the variety determined at the time of its entry have been changed;
 - (2) if the variety has lost its homogeneity or stability;
 - (3) if the economic value of the variety is no longer appropriate to the needs of the national economy or
 - (4) if the breeder:
 - (a) ceases to carry out maintenance breeding of the variety or
 - (b) applies for removal of the variety from the Register.
2. The Center may remove a variety from the Register if the breeder:
 - (1) does not supply the seed material or the information necessary for the testing and assessment of the variety;
 - (2) is more than six months late in paying the registration fee;
 - (3) does not allow inspection of the maintenance breeding of the variety or

(4) ceases to produce seed material of the variety.

Article 13

1. The decisions to enter a variety into the Register, to refuse its entry, to remove a variety from the Register and to classify a variety as original, selected or local shall be taken after considering the opinion of a committee.
2. The committees, consisting of specialists, of representatives of institutions interested in the utilization of the varieties and of representatives of socio-professional organizations of growers, shall be set up and discontinued by the Minister for Agriculture, Forestry and Food Economy, who shall also appoint the members and terminate their appointment.
3. As for the decisions referred to in paragraph 1, an appeal may be lodged to the Minister for Agriculture, Forestry and Food Economy.

Article 14

1. Where entry is applied for by a non-entitled person or where the entry of an original variety into the Register results from such application, the breeder entitled to make the application for entry of the variety into the Register may demand refusal of the entry or removal of the variety from the Register.
2. Independently of the claim referred to in paragraph 1, the breeder entitled to apply for entry of the original variety into the Register may claim entry of the variety into the Register; in such case, the filing date of the application by the non-entitled person shall be considered the filing date of the application by the entitled breeder.

Article 15

Anyone who unduly obtains entry of an original variety into the Register must, in accordance with the general principles of law, surrender to the breeder of the variety the profit obtained and redress the damage caused to the breeder.

Article 16

1. The Minister for Agriculture, Forestry and Food Economy shall lay down by decree:
 - (1) the cultivated plants of which the varieties are subject to entry into the Register;
 - (2) the detailed conditions concerning applications for entry, entry of varieties into the Register and their removal and also concerning the denomination, the testing and the assessment of the varieties;

(3) the detailed provisions on the competence and rules of procedure of the committees referred to in Article 13(1).

2. The Minister for Agriculture, Forestry and Food Economy, in agreement with the Minister for Finance, shall lay down by decree the schedule of registration fees, the method of payment and the currency in which they are to be paid.

CHAPTER III

EXCLUSIVE RIGHT ON A VARIETY

Article 17

1. The breeder of a new original variety shall be granted the exclusive right to its commercial exploitation (hereinafter referred to as the “exclusive right”).

2. The exclusive right shall take effect on the day of entry of the variety into the Roll of Exclusive Rights (hereinafter referred to as the “Roll”) and shall last for 20 years.

3. At the request of the breeder, the varieties and the new primary components of a hybrid already entered into the Roll shall be entered into the Roll. The provisions of Article 7(2) shall apply *mutatis mutandis*.

4. The Roll shall be kept by the Center.

5. On the entry of a variety into the Roll, the Center shall issue to the breeder a certificate attesting the grant of the exclusive right.

Article 18

1. The exclusive right shall concern:

- (1) the carrying-out of maintenance breeding of the variety;
- (2) the production of certified seed material of the variety for the purpose of sale;
- (3) the offering for sale and sale of certified seed material of the variety;
- (4) the use of the variety for the repeated production of seed material of another variety.

2. The exclusive right on a variety of an ornamental plant shall also concern the production and sale of whole plants or parts of plants normally sold for purposes other than the production of seed material, if they are used for the production and marketing of seed material.

3. The use of an original variety as a source of variation of the plant's characteristics with a view to creating other original varieties for commercial purposes shall not infringe the exclusive right.

Article 19

A breeder having an exclusive right on a variety shall also enjoy the other rights in respect of that variety which result from international agreements to which the Polish People's Republic is party.

Article 20

1. Before a variety is entered into the Roll, the Center shall carry out a testing; the testing of the variety may also be continued after the entry into the Roll.

2. The testing of an original variety which is the subject of an application for entry into the Roll and the maintenance of the entry shall be subject to payment of a fee (hereinafter referred to as the "protection fee").

3. For foreign varieties, the protection fee must be paid either in foreign currency or in Polish currency acquired from a documented source.

Article 21

1. A variety shall be entered into the Roll:

(1) if it is new, distinct, homogeneous and stable;

(2) if it has been given a denomination in accordance with the provisions of Article 5(1) and (2);

(3) if the breeder has completed the application procedure for entry into the Roll and has paid the protection fee.

2. The breeder of a variety which is the subject of an application for entry or which is entered into the Roll must supply, free of charge and at his own expense, the seed material and information necessary for the examination.

3. The variety denomination entered into the Roll shall enjoy protection.

4. The provisions of Article 6 shall apply *mutatis mutandis*.

Article 22

1. Priority for the grant of the exclusive right shall derive from the filing date of the application for entry of the variety into the Roll.
2. A breeder who has filed an application for protection of the exclusive right on a variety abroad may avail himself, in Poland, of the priority referred to in paragraph 1 during a period of 12 months as from the date of the first application filed abroad.
3. The provisions of paragraph 2 shall apply only to applications made in States party to the relevant international agreements to which the Polish People's Republic is also party.

Article 23

1. The Center may, by decision, enter or refuse to enter a variety into the Roll, remove an entry from the Roll or declare that an entry is annulled.
2. The Center may declare the entry of a variety into the Roll to be annulled if the variety was not distinct or was not new at the date of its entry.
3. The provisions of Article 12.1(1), (2) and (4)(b), 12.2(1), (2) and (4) shall apply *mutatis mutandis* to the removal of a variety from the Roll.
4. As for the decisions referred to in paragraphs 1 and 2, an appeal may be lodged to the Minister for Agriculture, Forestry and Food Economy.

Article 24

1. Anyone who unduly obtains profit from the entry of a variety into the Roll must, in accordance with the general principles of law, surrender to the breeder the profit obtained and redress the damage caused to the breeder; in particular, on the demand of the breeder, he must publish an explanatory statement in the press.
2. The provisions of Article 14 shall apply *mutatis mutandis*.
3. When hearing a case for the infringement of the exclusive right, a Court or the State Commission of Economic Arbitration may, at the request of the breeder, order that the breeding material and documents concerning the breeding of the variety and the production of seed material of the variety be turned over to the breeder.

Article 25

1. The exclusive right shall be assignable and transmissible by succession.
2. A contract of assignment of the exclusive right shall take effect with respect to third parties as from the date on which the change of entitled breeder is recorded in the Roll.

Article 26

1. If an original variety has been created jointly by two or more breeders, the exclusive right shall vest in them jointly.
2. After entry of a variety into the Roll, each of the joint owners may, without the consent of the others, exercise the exclusive right and institute infringement actions. However, assignment of a joint ownership share, grant of licenses and any other form of alienation of the joint right shall require the consent of all joint owners. The joint owners shall be free to regulate their mutual rights and obligations in any other way.
3. The provisions of the Civil Code concerning joint property of fractional parts shall apply *mutatis mutandis* to the cases not mentioned in paragraph 2.

Article 27

1. A breeder who is the owner of an exclusive right may grant by contract to another person an authorization (license) to use such right (license contract). The license shall constitute a charge on the exclusive rights.
2. The license contract must be in writing.
3. Unless otherwise provided in the license contract, the licensee shall have the right to non-exclusive enjoyment of all the rights of the licensor as set out in Article 18(1) and (2) and in Article 19 (full license).
4. The licensee of a full license may only grant a sublicense with the written consent of the breeder.
5. Unless otherwise provided in the license contract, the grant of a license shall exclude neither the grant of a further license for the enjoyment of the exclusive right nor the simultaneous enjoyment of the right by the breeder (non-exclusive license).
6. A license contract may impose limits on the rights of the licensee, in particular as to duration, territory and volume of production or of sale of seed material.
7. Where the grant of a license authorizes the carrying out of maintenance breeding of the variety, the contract shall take effect with respect to third parties as from the date of its entry into the Roll.
8. An exclusive licensee may, in the same way as the licensor, take action against infringement of the exclusive right, unless otherwise provided in the license contract.

Article 28

1. If the exercise abroad of a right on a domestic variety results in a profit in foreign currency, the breeder who is the owner of the exclusive right on the variety in Poland shall be entitled to a share of such currency.
2. The amount of the share referred to in paragraph 1 shall be laid down in specific regulations. The amount of the share shall not be less than 30 percent of the amount resulting from the exercise abroad of the right on the variety, after deduction of the commission in foreign currency paid to the representative of the breeder, of the creator's bonus payment for exercise abroad of the right on the variety and of other expenses related to exercise of the right abroad.
3. The provisions of paragraphs 1 and 2 shall apply *mutatis mutandis* to original domestic varieties entered into the Register but not entered into the Roll.

Article 29

1. If the breeder who is the owner of the exclusive right or his licensee:
 - (1) does not produce or does not market seed material of the variety in the quantity and within the time limits corresponding to the needs of the national economy,
 - (2) does not offer a license allowing third parties to satisfy the needs referred to in subparagraph (1) or
 - (3) makes the grant of a license subject to unfair conditions,the Minister for Agriculture, Forestry and Food Economy may, by decision, grant third parties a compulsory license for the exercise of the exclusive right, except as regards maintenance breeding of the variety.
2. The compulsory license shall be non-exclusive and shall not restrict the right of the breeder to grant licenses under Article 27(1) and (4).
3. The provisions of Article 27(6) shall apply *mutatis mutandis* to the compulsory license.
4. The beneficiary of a compulsory license shall be required to pay a license fee to the breeder.
5. The decision referred to in paragraph 1 shall set out, in particular: the obligations of the beneficiary of the compulsory license, the extent and the duration of the license, the amount of the license fee and the method of payment.
6. The decision referred to in paragraph 1 may be appealed to the Supreme Administrative Tribunal.

Article 30

1. The Minister for Agriculture, Forestry and Food Economy shall establish by decree the list of cultivated plants of which the varieties may be entered into the Roll, together with detailed provisions concerning applications for entry, entry of varieties into the Roll and their removal from the Roll, and examination.
2. The Minister for Agriculture, Forestry and Food Economy, in agreement with the Minister for Finance, shall establish by decree the schedule of protection fees, the method of payment and the currency in which they are to be paid.
3. The Minister for Agriculture, Forestry and Food Economy may extend by decree the rights of breeders relating to protection of the exclusive right, where necessary for the application of international agreements to which the Polish People's Republic is party.

CHAPTER IV

RIGHTS OF CREATORS AND MAINTAINERS OF VARIETIES

Article 31

1. The creator of an original domestic variety entered into the Register shall be entitled to a creator's certificate and a creator's bonus.
2. The creator's certificate shall be issued by the Center.
3. Priority for the recognition of a person as the creator of an original domestic variety shall be determined according to the filing date of the application for entry of the variety into the Register.
4. A natural person who has assisted in the creation of an original domestic variety entered into the Register shall be entitled, subject to paragraph 5, to an auxiliary creator's bonus.
5. The following shall not be entitled to an auxiliary creator's bonus:
 - (1) natural persons employed under an order contract;
 - (2) heads and members of the administrative staff of organizational units in which the variety was created, unless they directly assisted in the creation of the variety.
6. Natural persons who are the employees or owners of a foreign economic entity which has collaborated in the creation of an original domestic variety shall not be entitled to the bonuses referred to in paragraphs 1 and 4.
7. The creators' bonuses and auxiliary creators' bonuses shall be transmissible by succession, shall not entail suspension of the right to retirement or other pensions and shall be exempted from taxation.

Article 32

1. The creator's bonus and the auxiliary creator's bonus shall be awarded on the basis of the estimated economic value of the variety and degree of difficulty of its creation.
2. The creator's bonus shall be payable for the period from the date of entry of the variety into the Register to the end of the last year in which certified seed material of the variety are marketed, whereby the maximum period of payment may not exceed 20 years.
3. The creator's bonus shall consist of an advance, paid during the 12 months following the date of entry of the variety into the Register, and an annual payment for each subsequent year. The first annual period shall be computed from the date of entry of the variety into the Register.
4. The auxiliary creator's bonus shall be payable during a period of 6 years computed from the entry of the variety into the Register. If the certified seed material of the variety is withdrawn from trade before the expiration of this period of 6 years computed from the entry of the variety into the Register, the auxiliary creator's bonus shall be paid for the period during which certified seed material was in trade. The provisions of paragraph 3 shall apply *mutatis mutandis*.
5. The amount of the creator's bonus shall be determined by reference to:
 - (1) the value, expressed in Polish currency, of certified seed material of the variety marketed in Poland and abroad;
 - (2) the value, expressed in the currencies in which payments for the exercise of the right have been made, of foreign currency revenue from the exercise abroad of the right on the variety; the creator's bonus shall correspond to 10 percent of such income.
6. The amount of the auxiliary creator's bonus shall be determined by reference to the value, expressed in Polish currency, of certified seed material of the variety marketed in Poland and abroad.

Article 33

1. A person carrying out maintenance breeding of an original or selected domestic variety entered into the Register shall be entitled to a maintainer's annual bonus during the whole period for which he carries out maintenance breeding of the variety.
2. A natural person who assists in the maintenance breeding of a variety entered into the Register shall be entitled to an annual auxiliary maintainer's bonus.
3. The amount of the maintainer's bonus and of the auxiliary maintainer's bonus shall be determined on the basis of the estimated economic value of the variety and the degree of difficulty of its maintenance breeding.
4. The provisions of Articles 31(5) and 32(5)(1) shall apply *mutatis mutandis*.

5. The maintainer's bonuses and the auxiliary maintainer's bonuses shall be transmissible by succession and shall not entail suspension of the right to retirement or other pensions.

Article 34

1. The creator's bonuses and the auxiliary creator's bonuses shall be established and paid by the Center.

2. The maintainer's bonuses and the auxiliary maintainer's bonuses shall be established and paid by the breeder.

Article 35

Bonuses paid under Articles 31 to 34 shall not be refundable, except where the profit resulted from a punishable act.

Article 36

1. Anyone who unduly obtains a creator's certificate or a bonus under Articles 31 to 34 must, in accordance with the general principles of law, surrender to the entitled person the profit obtained and redress the damage caused to him.

2. Persons entitled to bonuses under Articles 31 to 34 may institute proceedings to claim their bonuses before the Voivodship court having jurisdiction for the seat of the party owing the bonus. Such persons shall not be liable to pay court fees.

Article 37

The Minister for Agriculture, Forestry and Food Economy, in agreement with the Minister for Finance, shall establish by decree the detailed provisions concerning the establishment and the payment of the bonuses referred to in Articles 31 to 34.

CHAPTER V

PRODUCTION AND UTILIZATION OF SEED MATERIAL

Article 38

1. Demarcated regions, each of which must cover the territory of at least one village, may be established for the purposes of creating the necessary conditions for the production of certified seed potatoes.

2. At least 40 percent of the area of a demarcated region planted with potatoes must be devoted to the production of certified seed potatoes.

Article 39

1. The People's Council of the Voivodship shall, by resolution:

(1) create and abolish demarcated regions;

(2) appoint legal persons exclusively responsible for the organization of the production of potatoes and the purchase of certified seed potatoes in such regions;

(3) define the duties of possessors of farming land within a demarcated region, which are necessary for the production of certified seed potatoes.

2. Resolutions taken in accordance with paragraph 1 shall be published in the Official Journal of the Voivodship.

3. In the demarcated regions, the legal persons referred to in paragraph 1(2) shall be required:

(1) to inspect the potato fields;

(2) to advise and train potato growers;

(3) to sell to possessors of farming land certified seed potatoes in the quantities required for planting.

4. Possessors of farming land in a demarcated region shall be required:

(1) to use exclusively seed potatoes meeting the phytosanitary requirements in respect of certified seed potatoes;

(2) to allow inspection of their potato fields by the legal persons referred to in paragraph 1(2);

(3) to purchase certified seed potatoes for the entire potato field, unless they have their own seed potatoes which satisfy the phytosanitary requirements in respect of certified seed potatoes.

Article 40

1. The production:

(1) of nursery material of fruit trees and of berry-bearing plants (except strawberry) and

(2) of mycelium of cultivated mushrooms

shall be allowed only with the authorization of the local service of the State administration responsible for agricultural matters at the level of the Voivodship.

2. Authorization under paragraph 1 above shall not be required for the production:
 - (1) of nursery material or of mycelium of cultivated mushrooms if such production is carried out by a breeder in relation to his own varieties;
 - (2) for the producers' own needs.
3. Only certified nursery material of fruit trees and berry-bearing plants (except strawberry) may be sold or offered for sale.

Article 41

1. The People's Council of the Voivodship may, by resolution, prohibit the growing of certain cultivated plants or of their varieties and the use of seed material, of which the phytosanitary state is unsatisfactory, on land situated close to breeding nurseries or fields where seed material is produced, in order to protect them from the harmful effects of the neighborhood of such cultivated plants or of such varieties or of crops affected by disease. Such resolutions shall be published in the Official Journal of the Voivodship.
2. Prohibition shall be pronounced and published in due time so that it can be taken into account before sowing or planting on the farming land concerned.
3. Prohibition may only be enforced if the possessors of the farming land concerned are able to buy a sufficient quantity of seed material of other cultivated plants or other varieties that satisfy the relevant phytosanitary requirements.
4. If non-conforming seed material is used despite prohibition, the local service of the State administration responsible for agricultural matters at the level of the commune may order the possessor of the farming land concerned to destroy the crop within a specified period.

Article 42

1. The Minister for Agriculture, Forestry and Food Economy, in agreement with the Minister for Finance, may establish, in cases justified by economic needs, a system of compensation of prices for possessors of farming land who buy seed material for the purpose of sowing or planting.
2. The provisions of paragraph 1 shall not apply to certified seed material bought for the purpose of its multiplication.
3. The compensation referred to in paragraph 1 shall only be awarded if the seed material intended for sowing or planting is sold by a natural person or by an organizational unit authorized to trade in seed material.
4. The natural person and the organizational units referred to in paragraph 3 shall be entitled to reimbursement of the compensation awarded.

5. The Minister for Agriculture, Forestry and Food Economy, in agreement with the Minister for Finance, shall establish by decree the amount of compensation under paragraph 1.

Article 43

1. When the non-use of certified seeds of cereals (rye, triticale, wheat, barley and oats) or of certified seed potatoes is likely to result in a considerable drop in yield or a deterioration of the quality of the plant products, the People's Council of the Voivodship may, by resolution, institute an obligation on possessors of farming land to make exclusive use of certified seed material in the Voivodship or on specified lands within the Voivodship. Such resolutions shall be published in the Official Journal of the Voivodship.

2. In instituting the obligation referred to in paragraph 1 above, the People's Council of the Voivodship shall define the principles and the conditions of application of the obligation to use certified seed material; in particular, it shall determine:

(1) the cultivated plants affected by the obligation;

(2) the year during which the use of certified seed material of a particular cultivated plant is obligatory in certain villages or certain communes;

(3) the legal persons responsible for selling certified seed material;

(4) the cases in which the possessors of farming land shall be or may be exempted from the obligation to use certified seed material.

3. The People's Council of the Voivodship may only institute a new obligation to use certified seed material for the same cultivated plant and the same region after a period of 5 years.

4. The provisions of Article 42(1), (3) and (4) shall apply *mutatis mutandis*.

CHAPTER VI

TRADE IN SEED MATERIAL AND THE NATIONAL SEED RESERVE

Article 44

The following shall be authorized to trade in seed material:

(1) the breeders, in respect of the seed material of the varieties bred by them;

(2) the units of the collectivized economy whose statutory activities include trade in seed material;

(3) the natural persons and the organizational units holding a license to trade in seed material issued by the local service of the State administration responsible for agricultural matters at the level of the Voivodship.

Article 45

1. The following may be marketed:

- (1) certified seed material of varieties entered into the Register;
- (2) certified seed material of varieties removed from the Register, during a period of three years computed from the year of the removal of the variety;
- (3) tested seed material of cultivated plants of which the varieties are not subject to entry into the Register;
- (4) certified seed material intended for multiplication for export:
 - (a) of foreign varieties not entered into the Register and
 - (b) of domestic varieties entered into the Register but intended exclusively for cultivation abroad.

2. The Minister for Agriculture, Forestry and Food Economy may, in cases justified by economic needs, authorize trade in:

- (1) certified seed material of varieties not entered into the Register;
- (2) certified seed material of varieties referred to in paragraph 1(4) where such seed material is intended for use in Poland;
- (3) conditionally certified seed material;
- (4) tested seed material of cultivated plants of which the varieties are subject to entry into the Register.

Article 46

1. The local service of the State administration with general competence at the level of the Voivodship may, by decree, prohibit in a specified region of the Voivodship trade in seed material of a variety whose economic value in that region is inappropriate. Such decrees shall be published in the Official Journal of the Voivodship.

2. Decrees under paragraph 1 shall be issued at the request of the Center or any other interested party, after consultation with the socio-professional organizations of growers. The request must be based on the results of assessment of the varieties and on any other result, information or opinion on the economic value of the variety in which trade is to be prohibited.

3. An application that has been refused can be submitted again after the expiration of a period of one year. The new application must contain all the supplementary results, information or opinions on the economic value of the variety.
4. The prohibition of trade shall enter into force on the day of its publication or, with respect to a variety of which the seed material has already been marketed in the region referred to in paragraph 1, on the expiration of a period of one year computed from that date.
5. The price compensation referred to in Article 42 shall not be awarded in cases of prohibition of trade in seed material of a variety of an inappropriate economic value (paragraph 1).

Article 47

1. There shall be established a National Seed Reserve.
2. The Minister for Agriculture, Forestry and Food Economy shall administer the National Seed Reserve.
3. The National Seed Reserve shall consist of stocks of seed material intended for use for sowing or planting following a bad harvest or a disaster, or for export.
4. Seed material belonging to the National Seed Reserve shall be stored, at the expense of the State, by the natural and legal persons who produce or market them.

Article 48

The seed material belonging to the National Seed Reserve must be stored under conditions which ensure the maintenance of its quality.

Article 49

The Minister for Agriculture, Forestry and Food Economy may determine, by decree, the detailed methods of storing and of trade in seed material.

CHAPTER VII

BREEDING DUTY

Article 50

1. There shall be instituted a breeding duty.

2. The breeding duty shall consist of a fraction of the income resulting from the trade in seed material and from the sale of certified seed material by the producers to natural persons or organizational units not engaged in trade in seed material.

3. The breeding duty shall not be payable for sales of conditionally certified seed material and seed material of primary components of hybrids.

4. The income from breeding duty shall be used to finance plant breeding and research and other activities contributing to the development of the economic effects of breeding.

Article 51

1. The breeding duty shall be payable:

(1) by natural persons and organizational units engaged in trade in seed material, for the seed material sold:

(a) to producers for the purposes of sowing, planting, grafting or budding,

(b) for the purpose of retail trade or

(c) for the purpose of export;

(2) by the producers of seed material if the purchaser is a natural person or an organizational unit not engaged in trade in seed material.

2. The provisions of paragraph 1(1) shall not apply to natural persons or to organizational units exclusively engaged in retail trade in seed materials purchased from natural persons or organizational units engaged in trade in seed material.

Article 52

The amount of the breeding duty shall be determined by reference to the purchase price of the marketed seed material.

Article 53

The Minister for Agriculture, Forestry and Food Economy may, in cases that are particularly justified from an economic point of view, reduce the breeding duty for certified seed material of foreign varieties or for tested seed material, or exempt such seed material from the duty.

Article 54

1. Income from the breeding duty shall be paid:

(1) in the case of certified seed material of foreign varieties and of local domestic varieties, and of tested seed material, to the Seed Industry Fund;

(2) in the case of certified seed material of domestic varieties entered into the Register, to the breeder of the variety.

2. The breeding duty payable for seed material sold during one quarter shall be paid during the month following that quarter.

Article 55

The Minister for Agriculture, Forestry and Food Economy, in agreement with the Minister for Finance, shall establish by decree the method of calculation and the schedule of the breeding duty.

CHAPTER VIII

SEED INDUSTRY FUND

Article 56

1. There shall be established a Seed Industry Fund.

2. The Seed Industry Fund shall be financed by:

(1) the breeding duty payable on sales of certified seed material of foreign varieties and of local domestic varieties as well as of tested seed material;

(2) appropriations from the State budget;

(3) revenue from organizations, institutions, enterprises and other natural or legal persons;

(4) registration and protection fees;

(5) payments in foreign currency resulting from the exercise abroad of rights on domestic varieties, corresponding to the relevant creator's bonuses.

Article 57

The purpose of the Seed Industry Fund shall be to finance:

(1) the creation of new varieties;

- (2) the management of collections of plants with the aim of using genetic resources for the purpose of creating new varieties;
- (3) research into breeding methods and research into other aspects of plant breeding;
- (4) the activities necessary for the development of plant breeding and for the assessment of varieties;
- (5) publications and training of breeders in Poland and abroad;
- (6) the breeding of varieties of new cultivated plants;
- (7) maintenance breeding;
- (8) investments related to the activities listed in subparagraphs (1) to (7) above;
- (9) the creators' bonuses and the auxiliary creators' bonuses;
- (10) the duties for breeders of foreign varieties payable for the use of such varieties in Poland;
- (11) compensation of the selling price of seed material;
- (12) the amounts of compensation between the purchase price and selling price of imported seed material intended for multiplication in Poland;
- (13) the production costs of conditionally certified nursery material where the variety is refused to enter into the Register;
- (14) the costs of establishing and managing the National Seed Reserve;
- (15) other activities which the Minister for Agriculture, Forestry and Food Economy considers to be important for the development of the seed industry.

Article 58

1. The Minister for Agriculture, Forestry and Food Economy shall dispose of financial means of the Seed Industry Fund.
2. The financial means of the Seed Industry Fund not used in one calendar year shall be transferred to the following year.
3. Questions concerning the Seed Industry Fund not dealt with in this Chapter shall be governed by the provisions of the Finance Law concerning the management of special funds.

CHAPTER IX

EXAMINATION AND CONTROL OF SEED MATERIAL. THE SEED INSPECTION

Article 59

1. The purpose of the testing of seed material shall be to ensure that cultivation intended for the production of seed material satisfies the requirements concerning the production of certified seed material and that the seed material satisfies the quality standards or requirements.
2. The testing of seed material shall include verification:
 - (1) of crops intended for the production of seed material (hereinafter referred to as “field testing”);
 - (2) of the quality of seeds (hereinafter referred to as “laboratory testing”);
 - (3) of the phytosanitary state of seed potatoes and of other seed material (hereinafter referred to as “verification testing”);
 - (4) of the identity and the varietal purity of seed material (hereinafter referred to as “comparative testing”);
 - (5) of the external characteristics of seed material (hereinafter referred to as “testing of the external characteristics”).
3. The testing of the seed material shall be carried out at the request of an interested party.

Article 60

1. A certificate (hereinafter referred to as “certificate”) attesting to the recognition or the refusal of recognition as certified seed material or conditionally certified seed material or as tested seed material shall be issued on the basis of the test results.
2. The following seed material may be recognized as certified:
 - (1) that of varieties entered into the Register;
 - (2) that of varieties removed from the Register, during the two years following the year of the removal of the variety;
 - (3) that of varieties admitted to trade by an authorization under Article 45(2)(1) above;
 - (4) that produced exclusively for export.
3. Recognition as conditionally certified seed material may apply only to varieties for which an application has been made for entry into the Register.

4. After entry of a variety into the Register, conditionally certified seed material of the variety may be recognized, at the request of an interested party, as certified seed material.
5. If an application for entry of a variety into the Register has been refused, the conditionally certified seed material of this variety may be recognized, at the request of an interested party, as certified seed material at the lowest level of certification used in the trade. Such seed material shall be admitted to trade.
6. If the refusal of entry of the variety into the Register results from a finding by the Center that the economic value of the variety is lower than that of all the other varieties entered into the Register, the conditionally certified seed material of this variety may not be recognized as certified seed material.
7. If the refusal of entry into the Register relates to a variety of fruit tree or a berry-bearing shrub, the conditionally certified nursery material of such variety may not be recognized as certified material.
8. The seed material may be recognized as tested seed material if it satisfies the quality standards or requirements.

Article 61

1. The seed material for which an application has been made for recognition as certified or conditionally certified seed material shall be subject to:
 - (1) a field testing and
 - (2) a laboratory testing or a testing of external characteristics.
2. The seed material referred to in paragraph 1 may also be subject to a comparative testing or a verification testing.
3. The seed material for which an application has been made for recognition as tested seed material shall be subject only to a laboratory testing or a testing of external characteristics.

Article 62

1. The purpose of the control of seed material is to verify that the rules concerning production, stocking and trade in seed material are respected.
2. The control of seed material shall be carried out ex officio.

Article 63

1. The testing and control of seed material shall be carried out by the Seeds Inspectorate.

2. The other duties of the Seeds Inspectorate shall be:
 - (1) to recognize seed material as certified, as conditionally certified or as tested seed material;
 - (2) to control compliance with the provisions of this Law and with the implementing regulations for the production, trade and testing of seed material.
3. The Seeds Inspectorate shall be subordinate to the Ministry of Agriculture, Forestry and Food Economy.
4. The Seeds Inspectorate shall consist of the following organs: the Central Inspectorate of the Seeds Inspection (hereinafter referred to as the “Central Inspectorate”) and the Regional Inspectorate of the Seeds Inspection (hereinafter referred to as the “Regional Inspectorate”).

Article 64

1. The duties of the Central Inspectorate shall be in particular:
 - (1) to define in detail the organization of the Regional Inspectorates and to supervise and coordinate their activities;
 - (2) to establish and apply the methods of testing for seed material;
 - (3) to draw up the lists of varieties of which the seed material may be recognized as certified or conditionally certified seed material;
 - (4) to define the categories of certification of seed material;
 - (5) to define the seed material subject to comparative testing and to verification testing;
 - (6) to draft the forms of certificates;
 - (7) to determine which documents concerning the testing of seeds issued abroad are valid in Poland;
 - (8) to examine the applications for retesting of seed material where the testing certificates were issued by the Regional Inspectorates.
2. The duties of the Regional Inspectorates shall be, in particular:
 - (1) to examine seed material, to recognize it as certified, conditionally certified or tested and to issue the certificates;
 - (2) to authorize natural persons and organizational units to carry out laboratory testing of seed material intended to be recognized as tested and intended for marketing in the country, and also to revoke such authorizations;
 - (3) to authorize natural persons:

- (a) to undertake field testing or testing of external characteristics of seed material intended for export, and to issue the certificates;
 - (b) to take samples of seed material for testing;
- (4) to examine applications for retesting of:
- (a) a laboratory testing carried out by a natural person or an organizational unit authorized to trade in seed material;
 - (b) a field testing or a testing of external characteristics of seed material intended for export, where such testing has been carried out by a natural person referred to in subparagraph 3(a);
 - (c) a testing of external characteristics carried out by an organizational unit or a natural person engaged in trade in seed material;
- (5) to control the seed material;
- (6) to control the testing of the seed material carried out by the organizational units and the natural persons referred to in Article 66.

Article 65

1. Samples of seed material shall be taken for testing, at the request of an interested party, by natural persons authorized by the Regional Inspectorates.
2. The natural persons carrying out the field testing and the testing of external characteristics of seed material intended for export, and taking samples of seed material for the purposes of testing shall be entitled, for the tasks entrusted to them:
 - (1) to unpaid leave from the institution which employs them for up to ten days a year;
 - (2) to remuneration, the amount of which shall be determined by the Central Inspectorate.
3. The remuneration referred to in paragraph 2(2) shall not be payable to natural persons taking samples in the organizational units which employ them.

Article 66

1. The laboratory testing of seed material submitted for recognition as tested and intended for trade in Poland can also be carried out, with authorization by the Regional Inspectorate, by natural persons or organizational units engaged in trade in seed material. Those who carry out this testing shall also issue the certificates.

2. The testing of external characteristics of seed material intended for trade in Poland and the issue of certificates shall be the duty of the organizational units and of the natural persons marketing such seed material.

Article 67

The testing of seed material carried out by the organs of the Seeds Inspectorate shall be subject to payment of a fee (hereinafter referred to as the “testing fee”).

Article 68

1. An interested party who disagrees with the statements appearing on a certificate issued by the natural person who carried out the field testing or the testing of external characteristics of seed material intended for export, or on a certificate referred to in Article 66, may appeal to the Regional Inspectorate or, in the case of a certificate issued by a Regional Inspectorate, to the Central Inspectorate and may ask for retesting and the issue of a new certificate.

2. The application referred to in paragraph 1 shall be made within a period of three days, in the case of a certificate of field testing or of testing of external characteristics, and within a period of seven days in the case of a laboratory testing or a verification testing. This period is computed from the date of receipt of the certificate.

3. A testing fee must be paid at the time of filing the application referred to in paragraph 1; this fee shall be reimbursed if the appeal is upheld.

Article 69

1. The employees of the Seeds Inspectorate who control seed material shall be entitled:

(1) to have access to the fields where seed material is produced and to the storage places for seed material;

(2) to control the documents and to request information concerning the production, stocking and marketing of seed material;

(3) to secure the necessary documents and the seed material subject to control;

(4) to take, free of charge, samples of seed material.

2. The organs of the Seeds Inspectorate shall be authorized:

(1) to prohibit the marketing of and to order the withdrawal from the market of seed material not satisfying the quality standards or requirements;

(2) to order the denaturing of seed material referred to in subparagraph (1) in order to render it unfit for sowing or planting.

3. The prohibitions and orders referred to in paragraph 2 shall be immediately applicable.

Article 70

1. The Minister for Agriculture, Forestry and Food Economy shall determine the requirements concerning:

- (1) the production of certified seed material;
- (2) the quality of seed material placed on the market.

2. The requirements referred to in paragraph 1(2) shall cease to be applicable in the event of adoption of a Polish standard or an interprofessional standard.

Article 71

The Minister for Agriculture, Forestry and Food Economy shall determine by decree:

- (1) the detailed principles and procedure:
 - (a) for the control of seed material and
 - (b) the fixing of salaries of natural persons referred to in Article 64.2(3);
- (2) in agreement with the Minister Chief of the Office of the Council of Ministers, the seat and the territorial competence of the Regional Inspectorate;
- (3) in agreement with the Minister for Finance, the schedule of testing fees.

CHAPTER X

PENAL PROVISIONS

Article 72

Anyone who wrongfully appropriates another's creatorship of an original domestic variety shall be liable to imprisonment for a period not exceeding one year, to restraint of liberty or to a fine.

Article 73

1. Anyone who:

- (1) uses the denomination of a variety entered into the Roll or into the Register (Article 5.3 and Article 21.3) to designate seed material of another variety or of an unknown variety;
 - (2) produces nursery material of fruit trees or of berry-bearing plants or mycelium of cultivated mushrooms, without the authorization referred to in Article 40.1;
 - (3) engages in trade in seed material without the authorization referred to in Article 44.3;
 - (4) markets seed material other than that referred to in Article 45;
 - (5) sells or offers for sale non-certified nursery material of fruit trees or of berry-bearing plants (except for strawberry) (Article 40.3), or
 - (6) disturbs or hinders the activities of the organs of the Seeds Inspectorate
- shall be liable to arrest, to restraint of liberty or to a fine.

2. Anyone who, despite the obligation imposed on him, does not utilize:

- (1) the denomination of a variety in accordance with the provisions of Article 6 or Article 21.4,
- (2) exclusively seed potatoes satisfying the phytosanitary requirements concerning certified seed potatoes in accordance with the provisions of Article 39.4(1), or
- (3) certified seeds of cereals or certified seed potatoes in accordance with the provisions of Article 43.1

shall be liable to a fine.

3. In the cases referred to in paragraphs 1 and 2, the penalties shall be imposed in accordance with the procedure applying to misdemeanours.

CHAPTER XI

TRANSITIONAL AND FINAL PROVISIONS

Article 74

1. Rights of creators and maintainers of varieties, existing on the date of entry into force of this Law, shall not be affected. Such rights shall remain subject to the provisions applicable before that date, unless otherwise provided in this Law.
2. The creators of the original varieties entered into the Register to whom a full creator's bonus has been paid before the date of entry into force of this Law shall be entitled, after that

date, to a creator's bonus as defined in this Law for a duration which may not exceed 20 years computed from the entry of the variety into the Register.

3. The creators' bonuses due for the year 1988 will be paid in 1990 at the latest. In such case, the amount of the partial payments of the creators' bonuses shall be increased in proportion to the increase, in the course of the year, of the average monthly remuneration in the socialized sector of agriculture.

4. The maintainers' bonuses due for the year 1987 shall be paid in 1988 from the State budget in accordance with the provisions applicable before the entry into force of this Law.

Article 75

Documentation on the breeding and the right to an original domestic variety entered into the Register before the entry into force of this Law shall be passed on free of charge to the breeder carrying out maintenance breeding of the variety concerned.

Article 76

1. The seed material:

- (1) of foreign varieties eligible to enter into the Register and
- (2) of domestic varieties of fruit trees or berry-bearing plants

recommended for cultivation by the Ministry of Agriculture, Forestry and Food Economy in 1987 may be recognized as certified seed material and admitted to trade during a period of three years from the date of entry into force of this Law.

2. The Minister for Agriculture, Forestry and Food Economy shall publish in the Official Journal of the Ministry of Agriculture, Forestry and Food Economy the list of varieties referred to in paragraph 1.

Article 77

Actions commenced and not terminated before the date of entry into force of this Law shall proceed in accordance with the provisions of this Law.

Article 78

1. The provisions of Article 1(1) and (2), of Article 2.1(1), (5) to (9), (11), (12), (17) and (18), of Article 2.2 and 3, of Article 3.1, 2 and 4, of Articles 4 to 16, of Article 17.1, 2 and 5, of Articles 18 to 37, of Articles 41, 44 and 45, of Article 57(1), (2), (6) and (10), of Article 59.2(4), of Article 60.2 to 7, of Article 64.1(3), of Article 72, of Article 73.1(1) and 2(1), of Articles 74

and 75, of Article 76.1(1) and of Article 80 concerning varieties shall apply *mutatis mutandis* to primary components of hybrids.

2. The cases governed by Articles 17 to 19 and 24 to 29 and Article 39.1(1) and (2), and Article 43.2(3) shall not be subject to the provisions concerning counteraction against monopolistic practices in the national economy.

Article 79

The following laws are hereby repealed:

(1) the Law of May 29, 1957, concerning nursery material of fruit trees and shrubs (Official Journal No. 31, text No. 138);

(2) the Law of February 16, 1961, concerning plant breeding and the seed industry (Official Journal No. 10, text No. 54).

Article 80

This Law shall enter into force on January 1, 1988; the recognition of seed material of varieties of tobacco and of ornamental plants as certified seed material shall enter into force on January 1, 1990.