

THE SEEDS AND PLANT VARIETIES ACT, 2000

Date of commencement to be proclaimed.

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An Act to provide for the control, sale, importation and exportation of seeds and matters incidental thereto.

PART I PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Seeds and Plant Varieties Act, 2000 and subject to subsection (2) shall come into operation on such date as the Minister may appoint by notice in the Gazette.
- (2) The Minister may appoint different dates for the coming into operation of different Parts or different provisions of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires —
 - “advertisement” means any statement, picture, design or device —
 - (a) published in any newspaper or other public print;
 - (b) contained in any handbill, circular or any other matter which is distributed to the members of the public; or
 - (c) brought to the notice of the public through radio or television or any other manner;
 - “Board” means the Appeals Board referred to in section 31;
 - “business” means the business of —
 - (a) cleaning, grading, prepacking and distribution of seed carried out in a registered establishment in terms of this Act;
 - (b) the retail sale of seed;
 - “certification scheme” means a scheme established under Part IV of this Act;
 - “certified seed” means seed produced and controlled under the provisions of a scheme referred to in Part IV;
 - “cleaning” means the treatment or processing of seed in order to improve the quality thereof;
 - “Committee” means a committee referred to in section 18;
 - “container” means any container in which seed is placed or packed;
 - “denomination” means the generic name of a variety;
 - “establishment” means any premises where business is carried out and which has been registered in terms of this Act;
 - “International Certificate” means an International Seed Testing Certificate issued under the auspices of the International Seed Testing Association;
 - “kind” means all related genera, species and sub-species of a plant which are known by the same common name;
 - “Minister” means the Minister responsible for Agriculture;
 - “Official Seed Testing Station” means the seed testing station where seed is tested in respect of any physical or biological property;
 - “owner or occupier” means, in relation to an establishment, the person who is the owner or lessee of the establishment or who has otherwise the right of management thereof;
 - “pack” means to pack for sale;
 - “prescribed seed” means any seed to which this Act applies by virtue of a regulation made under section 33;
 - “Registrar” means the Registrar of Seeds appointed under section 4;
 - “regulation” means a regulation made under this Act;
 - “seed” means that part of a plant which is or is intended to be used for propagation and includes seed, seedling, corn, cutting, bulb, bulbil, layer, marcott, root, runner, scion, set, split, stem, stock, stump, sucker, or tuber so used or intended to be so used;
 - “unit for certification” means any area of land registered under section 23 of this Act;
 - “variety list” means the list kept in terms of section 21;
 - “variety” means an assemblage of cultivated individuals which are distinguished by any character (morphological, physiological, cytological, chemical or others) significant for the purpose of agriculture, horticulture or forestry, and which when reproduced (sexually or asexually) retain their distinguishing characters.

Application of Act.

3. The provisions of this Act shall apply to any seed which the Minister, by virtue of a notice in the Gazette, declares to be a prescribed seed for the purposes of this Act.

Appointment of a Registrar of Seeds.

4. There shall be appointed to the public service a Registrar of Seeds who shall be responsible for the administration of this Act.

PART II**REGISTRATION OF SEED CLEANERS, SELLERS, IMPORTERS AND EXPORTERS***Register of establishments.*

5. The Registrar shall keep, or cause to be kept, a Register of establishments registered in terms of this Act in which shall be entered —

- (a) the names, postal address and physical location of the owner or occupier of such establishment;
- (b) the name under which such establishment is registered;
- (c) the kind of business conducted at such establishment;
- (d) such other particulars as may be prescribed.

Application for registration.

6. (1) A person who —
- (a) is the owner or occupier of an establishment under this Act shall within six (6) months of the coming into operation of this Act, apply in writing to the Registrar for the registration of the establishment;
 - (b) intends to start an establishment under this Act shall apply in writing to the Registrar for registration of such an establishment.
- (2) All applications made under subsection (1) shall be made in the prescribed form and be accompanied by the prescribed fee.
- (3) If the Registrar, after considering an application under subsections (1) and (2), is satisfied that the establishment may be registered in respect of the business, he shall register the establishment and —
- (a) enter the particulars in the register kept for that purpose; and
 - (b) issue a certificate of registration to the applicant.
- (4) If the Registrar refuses an application for registration, he shall inform the applicant, in writing, of his decision and of the grounds on which the refusal is based.

Terms of registration.

7. The registration of an establishment shall be valid for a period of twelve months from the date of issue of a certificate and shall be renewable.

Renewal of registration.

8. (1) A person to whom a certificate of registration has been issued under section 6(3) may apply for a renewal of the registration before the date of expiry thereof.
- (2) An application for the renewal of a certificate of registration shall be submitted to the Registrar in the prescribed form and shall be accompanied by the prescribed fee.
- (3) The Registrar may grant an application for the renewal if he is satisfied that —
- (a) the establishment conforms to the requirements prescribed in section 9;
 - (b) the records regarding the seed handled at the establishment are being kept in the prescribed manner.
- (4) If the Registrar grants an application for renewal he shall —
- (a) notify the applicant accordingly in writing and issue a fresh certificate;
 - (b) enter the appropriate particulars in the register.
- (5) If the Registrar refuses the application for renewal, he shall inform the applicant in writing of his decision and the reason therefor.

Requirements relating to the registration of establishments.

9. The Minister may, by regulation, set down requirements relating to the registration of establishments including

- (a) the type of building in which the business is carried out;
- (b) the necessary facilities for the carrying out of the business;
- (c) the records to be kept at the establishment.

Termination of registration.

10. (1) The Registrar may, at any time, terminate the registration of an establishment if he is satisfied that any requirements under section 9 have not been complied with.

(2) In case of termination of a registration, the Registrar shall inform, in writing, the person to whom the registration was granted of his decision and the reasons therefor.

Display and return of certificates.

11. (1) The owner or occupier of an establishment shall display the certificate of registration, at all times, in a prominent position.

(2) Where the registration of an establishment is terminated under section 10 or has not been renewed under section 8, the owner or occupier of the establishment shall return the certificate of registration to the Registrar.

Exemption from registration.

12. (1) Premises where only prepacked seed which has been —
 (a) prepacked at an establishment which is registered under this Act; or
 (b) imported in compliance with section 27,

is sold in the original unopened container, is exempt from registration.

(2) Premises, the owner or occupier of which participates in an official scheme under Part IV of this Act, and all the seeds grown or stored at the premises and which are sold exclusively to the multiplication organization referred to in the scheme, are exempt from registration.

Prohibition of selling or conducting business.

13. A person who sells or conducts any business from an establishment which is not registered or is not exempt from registration under this Act, is guilty of an offence.

Requirements relating to the sale of seed.

14. (1) A prescribed seed shall not be sold for the purpose of cultivation unless it —

- (a) is of a variety which is entered in the variety list;
- (b) complies with the requirements prescribed in section 26 and has been tested for germination within a period of six months before it is intended to be sold;
- (c) is either prepacked or is packed in containers which comply with the prescribed requirements, sealed and marked or labelled in the prescribed manner with the prescribed information.

PART III**PROVISIONS FOR THE RECOGNITION OF CERTAIN VARIETIES OF PLANTS***Provision for the recognition of a variety.*

15. (1) The Minister may, by notice in the Gazette, prescribe a variety list in respect of such plants as he may determine.

(2) Only varieties of plants that are listed in the variety list may be sold.

Application for the recognition of a variety.

16. (1) An application for the recognition of a variety for inclusion in the variety list may be made by any person.

- (2) The application under subsection (1) shall —
 - (a) be made to the Registrar in the forms and manner prescribed;
 - (b) be accompanied by the prescribed registration fee.

Requirements for the recognition of a variety.

17. (1) A variety may be recognized if —
- (a) it is, by reason of any important characteristic, clearly distinguishable from any other variety of the same kind of plant of which the existence is a matter of common knowledge;
 - (b) it is sufficiently homogeneous having regard to the particular features of sexual reproduction or vegetative propagation;
 - (c) it is stable with regard to its essential characteristics and remains true to the description thereof after repeated reproduction or propagation, or where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each such cycle;
 - (d) it is identified by a denomination which complies with the provisions of subsection (3); and
 - (e) it has sufficient merit in at least one agronomic character.
- (2) A characteristic referred to in subsection (1)(a) may be of a morphological, physiological or any other nature and shall be such that it is clearly recognizable and can be described according to internationally accepted standards.
- (3) The denomination of a variety for which an application for recognition is being considered shall be proposed by the applicant and shall —
- (a) be suitable to identify a variety;
 - (b) not be such as to be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the variety;
 - (c) be different from any other denomination which designates existing varieties of the same or closely related kinds of plants;
 - (d) comply with such further requirements as the Registrar may determine.

Consideration and examination of applications.

18. (1) The Minister shall appoint a committee, whose chairman shall be the Registrar, to consider and examine applications for the recognition of varieties of plants.
- (2) The committee shall consider every application for the recognition of a variety, and all documents and any other proof submitted to them, in order to ascertain whether the application complies with the requirements of this Act.
- (3) The committee shall in order to determine whether such a variety may be recognised —
- (a) undertake such tests as it may deem necessary; or
 - (b) designate other persons or institutions to carry out such tests; or
 - (c) use the results of tests undertaken with that variety and obtained by the committee in terms of an agreement referred to in section 19.
- (4) A person whose application is being considered shall, for the purpose of any tests, furnish the Committee with such —
- (a) quantity of seed as the committee may require;
 - (b) information in connection with the variety as it may require.
- (5) After consultation with the Committee, the Minister shall, by notice in the Gazette, prescribe the length of the period during which varieties of crops shall be tested.

Examination of varieties by others than the Minister.

19. The Minister may authorise the Committee examining and considering an application for the recognition of a variety to use results of tests conducted outside the country if he is satisfied that such tests have been conducted in such a manner and under such circumstances that the results form a reliable basis on which to determine whether a variety may be recognized.

Recognition of a variety.

20. (1) If the Committee, after considering an application under section 18 is of the opinion that —
- (a) the application conforms with the requirements of this Act; and
 - (b) the variety complies with the requirements of section 17,
- it shall authorise the Registrar to enter the variety in the variety list.
- (2) The Registrar shall in respect of each variety which is recognized —
- (a) inform the applicant in writing of such a decision;
 - (b) enter the necessary particulars in the variety list.

Variety list.

21. (1) The Registrar shall keep a list in which shall be entered —
- (a) the denomination used in Swaziland for a variety on the date on which the kind of plant to which such a variety belongs, becomes a plant to which this Act applies;
 - (b) the denomination of a variety recognized under section 20.
- (2) The variety list shall be published in the Gazette, at least once a year and not later than the 1st July each year.

PART IV
CERTIFICATION SCHEMES

Establishment of certification schemes.

22. (1) The Minister may, by notice in the Gazette, establish a scheme for the certification of seeds with the object of maintaining the quality of the seeds and of ensuring the usefulness for agricultural or industrial purposes of the products derived therefrom.
- (2) Different schemes may be established for seeds of different kinds of plants and the requirements, for different kinds and varieties of plants, may differ.
- (3) The Minister may recognize certification schemes in other countries to be of equal or higher standard than the certification schemes established under this Act and may, in such cases, recognize seed produced under such schemes as imported certified seed.
- (4) The Minister may, at any time by notice in the Gazette, amend or revoke a scheme.

Provision of a scheme.

23. The Minister may, in a notice referred to under section 22 —
- (a) designate the Seed Quality Control Services to be the authority which shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon such an authority under a scheme;
 - (b) provide that any person intending to participate in a scheme and any unit for certification shall be registered with the authority referred to in paragraph (a);
 - (c) provide for the manner in which a person or a unit for certification shall be registered and the forms to be used for an application for registration;
 - (d) prescribe the requirements for registration to be complied with by a person or unit for certification, the conditions under which such a person or unit shall be registered and the period of validity of such registration;
 - (e) provide that, as from the date on which a person or a unit for certification is registered in terms of a scheme, the provisions of such a scheme shall be binding on such a person or unit;
 - (f) provide for the manner in which and the control subject to which seed intended for certification under a scheme shall be produced and treated;
 - (g) determine the manner in which and the times at which any inspection of units for certification or of seeds with reference to which the provisions of a scheme are applicable, shall be carried out, and the forms to be used in connection with such an inspection;
 - (h) determine the requirements and standards of quality which seed shall comply with for certification in terms of a scheme;
 - (i) determine the manner in which seed shall be certified, the form of a certificate in connection therewith and the circumstances under which such a certificate shall lapse;
 - (j) determine the manner in which certified seed shall be packed, marked, labelled, sealed, stored or distributed, and the specifications of the labels and seals to be used therefor;
 - (k) determine the information which shall appear on the containers in which certified seed is packed, or on the labels affixed thereto;
 - (l) determine the records to be kept and the information to be furnished by any person registered under a scheme;
 - (m) determine the fees or charges payable to the authority designated under paragraph (a), by any person registered under a scheme;
 - (n) confer on the authority the powers of inspection referred to in section 24;
 - (o) provide that the provision of section 31 shall, *mutatis mutandis*, apply with reference to any person who feels aggrieved by any decision or action taken in connection with a scheme by the authority;
 - (p) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to further or better achieve the objects of a scheme.

Power to enter premises, carry out inspections, take samples for analysis and seize substances or articles.

24. (1) An officer authorised under section 23 may at any reasonable time —
- (a) enter upon and inspect any place, premises, vehicle or receptacle in which there is or is suspected to be produced, processed, treated, graded, prepacked, marked, labelled, removed, transported or sold any seed in respect of which this Act or any scheme established under this Act applies;
 - (b) inspect such seed and examine all books and documents which the person has reasonable grounds to suspect relate to such seed and demand an explanation of any record or entry therein;
 - (c) inspect any operation or process carried out in or on such a place in connection with the production, processing, treatment, grading, prepacking, marking, labelling, removing, transporting or selling of any seed to which this Act or any scheme established under this Act applies and demand from the person in charge of such an operation or process any information or explanation regarding such an operation process;
 - (d) take samples of any seed used or suspected to be intended for use in the production, processing, grading, treatment, prepacking, marking, labelling, removing, transporting or selling;
 - (e) seize any books, documents and seed which may be used as evidence in connection with any offence under this Act and remove them from the premises, place, vehicle or receptacle or leave them on such place, premises, vehicle or receptacle after labelling or marking such seed, books or documents in such a manner as may be necessary.
- (2) If an authorised officer has carried out an inspection in terms of subsection (1), he shall enter the particulars of the inspection and any decision or instruction on the prescribed form, submit a copy thereof to the person in charge of the place, premises, vehicle or receptacle in question.
- (3) Any samples taken under subsection (1)(d) shall —
- (a) consist of such quantity and subject to such conditions as the Registrar may determine;
 - (b) be taken in the presence of the owner or person in charge of such seed, or if such persons is not available, in the presence of a witness, and the prescribed form shall be completed in respect thereof;
 - (c) be tested, examined or analysed by an official seed testing station referred to in section 25, within reasonable time, and the results of such tests, examination or analyses shall be entered in the prescribed form.

PART V

ESTABLISHMENT OF AN OFFICIAL SEED TESTING STATION

Establishment of an official seed testing station.

25. (1) A Minister shall, by notice in the Gazette, designate Seed Quality Control Services as the Official Seed Testing Station for the purposes of this Act.
- (2) The Minister shall, by notice in the Gazette relating to the establishment of an Official Seed Testing Station —
- (a) designate an officer who shall perform the functions under this section;
 - (b) determine for which kinds of seed the results of tests shall be binding under this Act;
 - (c) determine the information to be supplied by the officer designated under paragraph (a) as a result of a test and prescribe the form to be used for reporting such results;
 - (d) prescribe the test conditions under which such tests shall be carried out;
 - (e) prescribe the tolerances applicable to the test results;
 - (f) determine the fees payable.

PART VI

REQUIREMENTS RELATING TO SEED, PACKING MATERIAL, SEALS AND LABELS

Requirements relating to seed, packing material, seals and labels.

26. (1) A prescribed seed shall not be offered for sale unless —
- (a) it is certified under a scheme referred to in section 22;
 - (b) it is recognized as imported certified seed under section 22(3);
 - (c) where it is not produced under any certification scheme, the Minister is satisfied that the standards applicable to the production and processing of such seed are of the same quality or better than those applied under section 23 (j) and (k); or
 - (d) it complies with the requirements referred to in subsection (2).
- (2) The Minister may make regulations providing for —
- (a) the quality requirements that shall be applicable to different classes of prescribed seed;
 - (b) the manner in which seed shall be packed, sealed and labelled;
 - (c) the information that shall appear on seals and label.

PART VII
IMPORTATION AND EXPORTATION OF SEED

Importation of seed.

27. (1) A person shall not import into Swaziland any seed to which this Act applies unless the seed
- (a) is of a variety entered in the variety list;
 - (b) complies with the requirements prescribed in section 26;
 - (c) is packed in a container which is sealed, marked or labelled in the prescribed manner with the prescribed information;
 - (d) is imported through a prescribed port of entry;
 - (e) is imported on an import permit issued by the Principal Secretary in accordance with the provisions of the Plant Control Act, 1981.
- (2) Notwithstanding the provisions of Part IV and Part V of the Plant Control Act 1981, the Registrar may, in writing and on such conditions as he may determine, allow the importation of certain kinds of seed which do not comply with any of the requirements referred to in subsection (1) or prohibit the importation of seed which otherwise complies with the requirements of subsection (1) where he is satisfied that sufficient quantities of such seed have already been imported, or where the importation of such seed, in his opinion, is not necessary.
- (3) A person importing a consignment of seed shall furnish the Registrar with the particulars the Registrar may require and such a consignment shall not be moved from the premises of the importer or offered for sale unless the Registrar has authorized in writing the importer to do so.
- (4) The seed imported under subsections (1) and (2) may, at the discretion of the Registrar, be examined and sampled in accordance with section 24(3) before a decision under subsection (3) is taken.
- (5) Consignments of seed which comply with the provisions of section 26(1) shall, unless the Registrar otherwise determines, be exempt from the provisions of subsections (3) and (4).
- (6) Consignments of seed accompanied by an International Certificate shall be exempt from the provisions of subsection (4).
- (7) If any consignment of seed to which this Act applies has been imported contrary to the provisions of this section, the Registrar may —
- (a) order that the consignment shall within such period as the Registrar may determine —
 - (i) be destroyed without compensation; or
 - (ii) be removed from the Kingdom of Swaziland at the importer's expense;
 - (b) permit the disposal thereof, within the Kingdom of Swaziland, in such a manner as he may determine.

Exportation of seed.

28. (1) A person shall not export from Swaziland any seed intended for sowing unless he is in possession of written authority from the Registrar.
- (2) Any person desiring to obtain such an authority shall apply to the Registrar in the prescribed form and shall pay the prescribed fee and the Registrar may grant or refuse the application.
- (3) After receiving such an application, the Registrar may undertake such inspection of the seed as he may consider necessary and take such samples in accordance with section 24(3) as he may consider necessary and have such samples tested at an official seed testing station.

PART VIII
OTHER SECTIONS

Preservation, inspections and proof of documents.

29. (1) All documents lodged with the Registrar under this Act shall be preserved for the prescribed time.
- (2) All documents referred to in subsection (1) which, in the opinion of the Registrar, may lie for inspection by the public, shall be open for inspection during office hours at the office of the Registrar and copies thereof shall, on request, be furnished to any person after payment of the prescribed fee.
- (3) Where an application for the recognition of a variety or for registration of an establishment has been withdrawn or refused, the Registrar shall return all documents submitted in connection with the application to the applicant or where necessary destroy them after the prescribed period.

Secrecy.

30. A person shall not, except —
- (a) for the purpose of carrying out his duties under this Act;
 - (b) for the purpose of legal proceedings under this Act or any other law; or
 - (c) with the written permission of the Registrar,
- disclose any information acquired by him in the carrying out of his duties which relates to seed matters.

Appeal against decision or action of the Registrar or committee.

31. (1) There shall be an Appeals Board appointed by the Minister which shall consist of three members one of whom shall be a specialist in the field concerned and the remaining members shall have a general knowledge of agriculture, and none of the members shall be party in the matter concerned.

(2) A person who is aggrieved by any decision or action taken by the Registrar or committee under this Act may, within the period and in the manner prescribed, appeal to the Board against such decision or action.

- (3) The Board may after investigation of the appeal —
- (a) confirm, set aside or vary any decision or action of the Registrar or committee;
 - (b) order the Registrar or the committee to carry out the decision of the Board.
- (4) The decision of the Board shall be in writing, and copies thereof shall be furnished to the appellant, the Registrar and any other interested party.
- (5) A decision of the Board shall be final.

Offences and penalties.

32. Any person who —
- (a) deliberately obstructs the Registrar or an officer authorized in the performance of his functions under this Act;
 - (b) conducts business in contravention of section 8(3) or section 13;
 - (c) sells any seed in contravention of section 14;
 - (d) imports or exports any seed in contravention of sections 27 and 28;
 - (e) furnishes any particulars in connection with seed on any container in which it is sold which do not correspond with the true properties thereof;
 - (f) tampers with any sample taken or any material seized under this Act;
 - (g) fails to display a Certificate of Registration; or
 - (h) fails to comply with any provision of a scheme while he is under an obligation to do so,
- is guilty of an offence and liable on conviction to a fine not exceeding ten thousand Emalangeni (E10,000.00) or imprisonment for three years or both.

Regulations.

33. The Minister may make Regulations from time to time for the implementation of this Act.
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