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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 567.

28 Maart 1980.

No. 567.

28 March 1980.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 5 van 1980: Wysigingswet op Planttelersregte, 1980.

No. 5 of 1980: Plant Breeders' Rights Amendment Act, 1980.

PLANT BREEDERS' RIGHTS AMENDMENT, ACT, 1980

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GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the provisions of the Plant Breeders' Rights Act, 1976, relating to the definitions; the application of the Act; entries in the register of plant breeders' rights; the persons who may apply for plant breeders' rights; applications for plant breeders' rights; priority of applications; the description and samples of new varieties; the designation of new varieties; the rejection of applications; the termination of provisional protection; objections to the granting of plant breeders' rights; the consideration and examination of applications; the period of plant breeders' rights; the rights of holders of plant breeders' rights; the maintenance of reproductive material; the granting of licences by the holders of plant breeders' rights; applications for compulsory licences; the rights of joint holders of plant breeders' rights; the taking over of plant breeders' rights by the State; the alteration of the denomination of a variety; the termination of a plant breeder's right; the marking of labels or containers; and secrecy; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 18 March 1980.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 1 of the Plant Breeders' Rights Act, 1976 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution for the definition of "agent" of the following definition:
- "agent" means **[the]** a person, resident in the Republic, who has been duly authorized by an applicant, breeder or holder to act on his behalf in connection with any matter regarding this Act, **[and]** who is for such purpose recognized by the registrar in **[accordance]** the prescribed manner if he complies with the prescribed requirements and in respect of whom the registrar has not been notified in the prescribed manner that such authorization has been terminated;";
- (b) by the substitution for the definition of "applicant" of the following definition:
- "applicant" means a person referred to in section 6 who applies in terms of section 7 for a plant breeder's right;";
- (c) by the substitution for the definition of "convention country" of the following definition:
- "convention country" means a country, including any colony, protectorate or territory subject to the authority or under the suzerainty of any other

Amendment of
section 1 of
Act 15 of 1976.

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5 country and any territory over which a mandate or trusteeship is exercised, which [the State President by proclamation in the *Gazette* declares to be a convention country with a view to the fulfilment of a convention concerning plant breeders' rights which has been signed and ratified by the Republic and such country] has signed and ratified, accepted or approved or has acceded to the International Convention for the Protection of New Varieties of Plants; and

10 (d) by the substitution for the definition of "propagating material" of the following definition:

15 "propagating material" means any [plant or any bulb, tuber, rhizome, shoot, bud or other] reproductive and vegetative [part of a plant which reproduces asexually, and includes the seed of a plant] propagating material, as such, of a variety;"

2. Section 2 of the principal Act is hereby amended—

20 (a) by the substitution for subsections (1) and (2) of the following subsections, respectively: Amendment of section 2 of Act 15 of 1976.

"(1) [A plant breeder's right, the content and mode of exercise of which are as determined in] (a) This Act [may be granted in respect of any] shall, subject to the provisions of paragraph (b), apply in relation to every new variety of any prescribed kind of plant [which the Minister by notice in the *Gazette* declares to be a kind for the purposes of this Act].

25 (b) The application of this Act may in the case of a particular kind of plant be limited to those varieties which reproduce or multiply in a prescribed manner or are used for a prescribed purpose.

(2) A variety of a plant referred to in subsection (1) shall be deemed to be a new variety if [—

35 (a) it is not available in the Republic to the public in the trade or otherwise at the time of the application for the relevant plant breeder's right or has at such time not been available elsewhere for more than 4 years;

40 (b) it is not generally known at the time of the application for the relevant plant breeder's right;

45 (c) it is by reason of any important characteristic clearly distinguishable from any other variety of the same kind of plant the existence of which is a matter of common knowledge at the time of the application for the relevant plant breeder's right, whatever the origin, artificial or natural, of the initial variation from which it resulted may be;

50 (d) it is sufficiently homogeneous having regard to the particular features of the sexual reproduction or vegetative propagation thereof; and

55 (e) it is stable with regard to the essential characteristics thereof 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 cycle] it complies with the prescribed requirements."; and

60 (b) by the deletion of subsections (3) and (4).

3. Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 4 of Act 15 of 1976.

65 "(1) The registrar shall keep a register in which the prescribed particulars in respect of plant breeders' rights

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- granted in terms of this Act [in which] shall be entered [—
- (a) the kind of plant to which each new variety belongs;
 - (b) the denomination of each new variety and any approved change thereof;
 - 5 (c) the principal morphological, physiological and other characteristics of each new variety, and, where varieties are produced by a cross between certain hereditary components, the principal morphological and physiological characteristics of such components;
 - 10 (d) the full name and address of the original breeder of each new variety;
 - (e) the name and address of the holder of the plant breeder's right in each new variety and the name and address of each person to whom such right has been transferred;
 - 15 (f) the name and address of the person who has been appointed as the agent of any person referred to in paragraph (e);
 - 20 (g) the date of inception of the plant breeder's right in each new variety;
 - (h) the date on which a plant breeder's right ceases to exist and the reason therefor;
 - (i) the name and address of each person to whom a licence has been issued in terms of section 25 for the use of the plant breeder's right;
 - 25 (j) the name and address of each person to whom a compulsory licence has been issued in terms of section 27 for the use of the plant breeder's right; and
 - 30 (k) such other particulars as the registrar may, subject to the provisions of this Act, deem necessary]."

4. The following section is hereby substituted for section 6 of the principal Act:

Substitution of section 6 of Act 15 of 1976.

- 35 "Persons who may apply for plant breeder's right."
6. An application for the grant of a plant breeder's right may be made by—
- (a) the breeder of a new variety of a kind of a plant referred to in section 2 (1); or
 - 40 (b) if the breeder is an employee (irrespective of whether or not he is paid a salary) whose duties are such that they involve plant breeders' activities relating to the kind of plant in question, and the new variety in question was bred in the performance of such duties, the employer of such breeder; or
 - 45 (c) the successor in title of the breeder or employer referred to in paragraphs (a) and (b), respectively."

5. The following section is hereby substituted for section 7 of the principal Act:

Substitution of section 7 of Act 15 of 1976.

- 50 "Application for plant breeder's right."
7. (1) An application for the grant of a plant breeder's right shall be made in the prescribed manner, be accompanied by the prescribed application fee and documents, and contain an address in the Republic to which any notice or communication may be sent.
- 55 (2) An application under subsection (1) by a person who is not resident in the Republic or, in the case of a juristic person, which does not have a registered office in the Republic, shall be submitted only through an agent who is resident in the Republic.
- 60 (3) The registrar may require—
- (a) that plants of the variety in question, or of the variety from which it originated, be shown to him; and
 - 65 (b) that such additional information or specimens as he may deem necessary to determine whether or not the variety concerned constitutes a new variety, be furnished to him."

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6. Section 8 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: Amendment of section 8 of Act 15 of 1976.

5 (1) The effective date of an application in terms of section 7 shall be the date on which **the application** it is received by the registrar, and if more than one application in respect of the same variety is received, priority shall be given **to the application first received** by the registrar in accordance with the regulations.

10 (2) If an application **referred to** in terms of section [6 (2)] 7 is preceded by an application by or on behalf of the same applicant for protection of the same new variety in a convention country or an agreement country and the last-mentioned application has been deposited in accordance with the laws in force in that country, the registrar shall, notwithstanding the provisions of subsection (1) of this section, give priority to the first-mentioned application if—

- 15 (a) it is submitted to the registrar in the prescribed form within the prescribed period of the date on which such preceding application was duly deposited in a convention country or an agreement country;
- 20 (b) it is accompanied by a claim in respect of the priority thereof; and
- (c) it is accompanied by the prescribed application fee.”.

25 7. Section 9 of the principal Act is hereby repealed.

Repeal of section 9 of Act 15 of 1976.

8. The following section is hereby substituted for section 10 of the principal Act:

Substitution of section 10 of Act 15 of 1976.

30 10. (1) The denomination of a new variety shall comply with the prescribed requirements and be proposed by the person who applies for the grant of a plant breeder's right in respect thereof, and such denomination shall be subject to the approval of the registrar.

35 (2) No denomination, other than the approved denomination of a variety, may at any time, whether before or after the expiry of the term of the plant breeder's right granted in respect thereof, be used in connection with such variety.

40 (3) The provisions of subsection (2) shall not be construed so as to prohibit the proprietor or other registered user of a mark to use such mark in conjunction with the denomination in respect of which a plant breeder's right has been granted.”.

45 9. Section 11 (1) of the principal Act is hereby amended—

Amendment of section 11 of Act 15 of 1976.

(a) by the substitution for subparagraph (iii) of paragraph (b) of the following subparagraph:

“(iii) does not belong to a prescribed kind of plant [which the Minister has declared to be a kind in terms of section 2];” and

50 (b) by the substitution for paragraph (i) of the following paragraph:

55 “(i) that, where such application has been preceded by an application by or on behalf of the same applicant for protection of the same variety in a convention country or an agreement country, the description submitted to him differs from the description submitted in such preceding application or that the description in such preceding application does not describe a new variety referred to in section 2.”.

60 10. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

Amendment of section 16 of Act 15 of 1976.

“(2) A protective direction—

- (a) may be withdrawn at an earlier date by the registrar if, in his opinion, circumstances justify the withdrawal; and

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(b) shall be withdrawn at an earlier date by the registrar if he is satisfied that the holder thereof—

- (i) has failed to fulfil the terms of an undertaking referred to in paragraph (b) of section 14 (2); or **[that he]**
- (ii) has given an undertaking, whether enforceable by law or not, to another person in terms whereof such holder is deprived of the right to institute an action referred to in section **[48]** 47, or an action for damages in respect of an infringement of a plant breeder's right."

11. The following section is hereby substituted for section 17 of the principal Act: Substitution of section 17 of Act 15 of 1976.

15 "Objection to grant of plant breeder's right. 17. (1) Any person may within the prescribed period, in the prescribed manner and on payment of the prescribed fee, lodge an objection with the registrar to the grant of a plant breeder's right in pursuance of an application in terms of section 7.

20 (2) The applicant may within the prescribed period and in the prescribed manner lodge with the registrar a counter-statement against such objection."

12. Section 19 of the principal Act is hereby amended— Amendment of section 19 of Act 15 of 1976.

(a) by the substitution for subsection (4) of the following subsection:

25 "(4) (a) Notwithstanding the provisions of subsection (2) the registrar may **[if he can obtain acceptable]** accept results of tests and trials with the variety in question **[from]** which were undertaken by the appropriate authority in a convention country or an agreement country **[in his discretion decide not to undertake any tests or trials with a variety in respect of which an application is being considered under subsection (1)].**

30 (b) The costs involved in obtaining the results under paragraph (a) shall be paid to the registrar by the person whose application is being considered at the time and place determined by the registrar;"

35 (b) by the substitution for subsection (5) of the following subsection:

40 "(5) The results of tests and trials undertaken by the registrar with a variety in terms of subsection (2) may upon payment of the prescribed fee be furnished to the appropriate authority in a convention country or an agreement country if an application for the protection of the same new variety has been made in that country in accordance with the laws in force in that country."

45 (c) by the substitution for subsection (6) of the following subsection:

50 "(6) (a) The registrar may submit propagating material of a variety in respect of which application for a plant breeder's right has been made to him, to the appropriate authority in a convention country or an agreement country in order to have the necessary tests and trials undertaken therewith, **[and the registrar shall accept the results of any such tests or trials which such authority may furnish to him]** and may for that purpose conclude an agreement with that authority.

55 (b) The costs connected with the tests and trials shall be paid by the registrar to the authority with whom he concluded the agreement, and the person whose application is being considered shall at the time and place determined by the registrar reimburse the registrar in respect of such payment."

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13. The following section is hereby substituted for section 21 of the principal Act:

Substitution of section 21 of Act 15 of 1976.

5 "Period of plant breeder's right.

21. [(1)] A plant breeder's right shall [subject to earlier termination under this Act] be granted for the period prescribed in respect of the kind of plant in question, which period shall [—

(a) in the case of a fruit tree or any root-stock thereof, any ornamental tree, any vine or any root-stock thereof or any forest tree, be not less than 18 years and not more than 25 years; and

(b) in the case of any other kind of plant, be not less than 15 years and not more than 20 years.

(2) The period referred to in subsection (1) shall be calculated from the date on which a certificate of registration is issued under paragraph (a) of section 20 (2)."

14. Section 23 of the principal Act is hereby amended—

Amendment of section 23 of Act 15 of 1976.

(a) by the substitution for subsection (1) of the following subsection:

"(1) The effect of the protection given under this Act by the grant of a plant breeder's right shall be that prior authority shall during the currency of the right be obtained by way of licence under section 25 or 27 by any person [—

(a) intending to undertake the production, sale, import into or export from the Republic of propagating material of the relevant new variety [and

(b) to use the new variety in question in developing a hybrid or a different variety of that kind of plant].";

(b) by the insertion after subsection (1) of the following subsection:

"(1A) The State President may by proclamation in the Gazette, and as from a date mentioned therein, extend the protection given by a plant breeder's right also to the sale of any product, normally not used as propagating material, of the variety in respect of which that plant breeder's right was granted.";

(c) by the addition to paragraph (b) of subsection (3) of the following proviso:

"Provided that the provisions of this paragraph shall not permit the sale of a product if such sale is in terms of subsection (1A) subject to a plant breeder's right.";

(d) by the addition of the following subsection:

"(5) A proclamation in terms of subsection (1A) shall, in any case where the holder of the plant breeder's right in question is a citizen of, or is domiciled in, a convention country or an agreement country or, in the case of a juristic person, has a registered office in a convention country or an agreement country, be issued only if such holder can in terms of the laws of such country obtain corresponding protection in that country.".

15. Section 24 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

Amendment of section 24 of Act 15 of 1976.

(a) to furnish the registrar on request with propagating material of the variety in respect of which the right was granted and which is capable of reproducing the said variety in such a manner that the [morphological, physiological and other] characteristics thereof correspond with those described at the time of the grant of the relevant right;"

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16. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 25 of Act 15 of 1976.

5 “(1) The holder of a plant breeder's right may at the request in writing of another person grant to such person a licence in terms of which such person may be authorized to undertake any activity referred to in section **[23 (1)] 23.**”

17. Section 26 of the principal Act is hereby amended— Amendment of section 26 of Act 15 of 1976.

(a) by the substitution for subsection (1) of the following subsection:

10 “(1) Any person who is of the opinion that the holder of a plant breeder's right unreasonably refuses to grant him a licence under section 25, or that such a holder is imposing unreasonable conditions for the issue of such a licence, may in the prescribed manner and upon payment of the prescribed fee apply to the registrar for the issue to him of a compulsory licence in respect of the relevant plant breeder's right **[on the ground that the reasonable requirements of the public with regard to the new variety in question are not being satisfied or will not be satisfied].**”;

(b) by the deletion of subsections (2) and (3); and

(c) by the substitution for subsection (4) of the following subsection:

25 “(4) The holder of such plant breeder's right may within **[60 days from the date of the receipt of the documents and other proof referred to in subsection (3), or within such further time as the registrar may allow]** the prescribed period and in the prescribed manner lodge a counter-statement with the registrar in which are set out the particulars of any ground upon which he contests the application in question.”

18. Section 28 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: Amendment of section 28 of Act 15 of 1976.

35 “(b) to undertake in connection therewith for his own benefit any activity referred to in section **[23 (1)] 23**, if he discloses any such activity to the other joint holders; and”

19. Section 31 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: Amendment of section 31 of Act 15 of 1976.

45 “(a) The Minister may after consultation with the Minister of Finance by notice in the *Gazette* **[declare that]** take over on behalf of the State the plant breeder's right in any new variety of a kind of plant **[shall]** from a date determined by him and published in the same or later notice in the *Gazette* **[be taken over by the State].**”

20. Section 32 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: Amendment of section 32 of Act 15 of 1976.

50 “(5) Any person may within **[3 months from the date of the publication of particulars under subsection (4) and]** the prescribed period, on payment of the prescribed fee, in the prescribed manner lodge **[with the registrar a written]** an objection to the grant of **[the]** such alteration or supplementation **[in question, and the registrar may require the objection to be substantiated by such proof as he may deem necessary].**”

21. Section 33 of the principal Act is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively: Amendment of section 33 of Act 15 of 1976.

60 “(4) Any holder referred to in subsection (3) may, within **[60 days from the date of the advice under that**

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- subsection or within such further time as the registrar may allow, upon payment of the prescribed fee lodge with the registrar] the prescribed period, in the prescribed manner and on payment of the prescribed fee lodge an
- 5 objection against the intended termination of **the** a plant breeder's right **in question**.
- (5) The provisions of sections **17 (3) and** 18 (1), (2), (3), (4), (5) and (6) shall *mutatis mutandis* apply with reference to such an objection."
- 10 **22.** Section 35 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):
- Amendment of section 35 of Act 15 of 1976.
- "(2) If a mark is used in conjunction with the name of the relevant variety, such mark and name shall be clearly**
- 15 **distinguishable."**
- 23.** Section 40 of the principal Act is hereby amended by the substitution for the words following upon paragraph (c) of the following words:
- Amendment of section 40 of Act 15 of 1976.
- 20 "disclose any information acquired by him in the carrying out of his duties or the performance of his functions under this Act in relation to any new variety for which an application for the grant of a plant breeder's right has been made, or in relation to the business affairs of an applicant or the holder of such right."
- 25 **24.** Section 41 of the principal Act is hereby repealed.
- Repeal of section 41 of Act 15 of 1976.
- 25.** (1) This Act shall be called the Plant Breeders' Rights Amendment Act, 1980, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.
- Short title and commencement.
- (2) Different dates may in terms of subsection (1) be fixed in
- 30 respect of different provisions of this Act.