REGISTERED No. M - 302 / L.-7646

The Gazette of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, THURSDAY, DECEMBER 8, 2016

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 7th December, 2016

No. F. 9(31)/2016-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on 2nd December, 2016 and is hereby published for general information:—

ACT NO. L OF 2016

An Act to encourage the development of new plant varieties and to protect the rights of breeders of such varieties

WHEREAS the establishment of a viable seed industry is essential to the food security in Pakistan to ensure the availability of high quality seeds and planting material to the farmers;

AND WHEREAS it is expedient to make provisions for the development of new plant varieties and protection of the rights of breeders of such varieties providing exceptions to scientific researchers and farmers for matters connected therewith or incidental thereto;

Price: Rs. 20.50

[4220 (2016)/Ex. Gaz.]

AND WHEREAS it is imperative to give effect to the provisions of sub-paragraph (b) of paragraph 3 of Article 27 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which the Government of Pakistan has ratified, relating to protection of new plant varieties;

AND WHEREAS the Provincial Assemblies of Balochistan, Khyber Pakhtunkhwa, Punjab, and Sindh have passed resolutions under Article 144 of the Constitution of the Islamic Republic of Pakistan to the effect that *Majlis-e-Shoora* (Parliament) may regulate and make law on Plant Breeders' Rights and matters connected therewith;

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**—(1)This Act may be called the Plant Breeders' Rights Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once except the provisions of section 10, which shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

CHAPTER-I

PRELIMINARY

2. **Definitions.-** In this Act, unless there is anything repugnant to the subject or context,—

(i) "applicant" means any natural or legal person who has submitted an application for the grant of Plant Breeders' Rights under this Act;

(ii) "breeder" means a natural or legal person, an institution, a farmer or an organization which has bred, discovered or developed a new plant variety;

(iii) "Committee" means the Plant Variety Protection Advisory Committee established under section 10;

(iv) "certificate" means the certificate of protection of plant breeders' right issued with regard to an essentially derived variety under sub-section (3) of section 20 or (with regards to a new plant variety) under section 21;

(v) "commercial" means a business activity related to the production, processing or merchandising seeds or propagating material including sale, distribution or resale for the purpose of making profit;

(vi) "Convener" means the Convener of the Plant Variety Protection Advisory Committee appointed under section 10;

(vii) "Director General" means the Director General of the Federal Seed Certification and Registration Department;

(viii) "Distinctness, Uniformity and Stability (DUS) examination" means plant variety examination for distinctness, uniformity and stability carried out by the Federal Seed Certification and Registration Department;

(ix) "Department" means the Federal Seed Certification and Registration Department;

(x) "essentially derived variety" means a variety derived from a protected variety where the protected variety is not itself an essentially derived variety, while it retains the expression of essential characteristics that result from the genotype or combination of genotypes of the initial variety and —

(a) it is clearly distinguishable from such initial variety, and

(b) it conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety;

(xi) "export" with its grammatical variations and cognate expressions means to take out of Pakistan;

(xii) "farmer" means any legal or natural person who cultivates crops either through cultivating land himself or through a person employed for the purpose;

(xiii) "genetically modified plant variety" means plant varieties which have been bred by genetic engineering involving molecular techniques that modify, recombine and transfer genes or segments of genetic material and includes recombinant deoxyribonucleic acid (DNA) techniques that transfer genes or segments of genetic material between genotypes (species that have no probability of exchanging genes in nature) and shall also apply to plant varieties derived from a living modified organism;

(xiv) "hybrid" means (1) the first generation offspring of a cross between two individuals (plants) differing in one or more genes; (2) the progeny of a cross between species of the same genus or of different genera;

(xv) "import" with its grammatical variations and cognate expressions means to bring into Pakistan;

(xvi) "invention" means any new and useful product or process, in any field of technology and includes any new and useful improvement of either of them;

(xvii) "Local communities" means the human population in a distinct ecological area who depend directly on its biodiversity and ecosystem goods and services for all or part of their livelihood and who have developed or acquired traditional knowledge as a result of this dependence;

(xviii) "Ministry" means Ministry of National Food Security and Research;

(xix) "National Bio-safety Committee" means the committee established by the Federal Government under clause (d) of section 15;

(xx) "plant" means a living organism classified in Kingdom Plantae;

(xxi) "Plant Breeders' Rights Journal" means the journal published by the Registry;

(xxii) "plant variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a new plant varieties are fully met, may be,—

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and

(c) considered as a unit with regard to its suitability of the plant grouping for being propagated unchanged;

(xxiii) "prescribed" means prescribed by the rules made under this Act;

(xxiv) "protected variety" means a plant variety for which a certificate of protection of Plant Breeders' Rights has been issued under this Act;

(xxv) "public sector research institution" means a research institution under the control of the Federal Government or a Provincial Government receiving financial support from the Government;

(xxvi) "register" means the register of protected plant varieties as provided under section 9;

(xxvii) "Registrar" means the Registrar appointed under section 5;

(xxviii) "Registry" means the Plant Breeders' Rights Registry established under section 3;

(xxix) "rules" mean rules made under this Act; and

(xxx) "terminator technology" means genetic modification that includes gene or gene sequences which restrict germination of the seed produced by the plant variety during the next subsequent year of planting.

CHAPTER-II

ADMINISTRATION

3. **The Plant Breeders' Rights Registry.**—(1) Notwithstanding the provisions contained in the Intellectual Property Organization of Pakistan Act, 2012(XXII of 2012), for the purposes of this Act, the Federal Government shall establish a Registry "The Plant Breeders' Rights Registry" under the Ministry of National Food Security and Research.

(2) The headquarter of the Registry shall be at Islamabad and for the purpose of facilitating the applicants, the Ministry of National Food Security and Research may, with the prior approval of the Federal Government, set up offices of the Registry at such places, as it may deem necessary, as and when required.

(3) The Ministry of National Food Security and Research may, with the prior approval of the Federal Government, create posts and appoint such officers, employees, experts and consultants, as it may consider necessary for the performance of the functions of the Registry, having such qualifications and experience as may be prescribed.

4. **Functions of the Registry.**—The Registry shall perform the following functions, namely:—

(a) to facilitate protection of new plant varieties subject to such terms and conditions and in the manner as may be prescribed;

(b) to issue certificates under this Act;

(c) to ensure the maintenance of the register of protected plant varieties;

(d) to promote the development of new varieties of plants, by such measures as it thinks fit, and to protect the rights of the farmers and breeders as provided under this Act;

(e) to manage characterization and documentation of varieties protected under this Act;

(f) to collect statistics with regard to plant varieties, including the contribution of any person at any time in the evolution or development of any plant variety, in Pakistan or in any other country, for compilation and publication; and

(g) to take all actions necessary for its smooth functioning.

5. **Officers and employees of the Registry.**—(1) The Federal Government shall appoint a Registrar who shall execute the activities of the Registry with the assistance of such officers and staff as may be appointed under sub-section (3) of section 3 and shall be under the administrative control of the Ministry of National Food Security and Research.

(2) The Registry shall function under the direct supervision of the Registrar who shall coordinate its activities with the Federal Seed Certification and Registration Department. The Registrar may, with the prior approval of the Ministry of National Food Security and Research delegate any of its powers and functions to any other officer of the Registry.

(3) The Registrar with the consent of the Director General may advise the Federal Government to transfer as many officers and officials as it may deem fit from Federal Seed Certification and Registration Department for the proper functioning of the Registry.

6. **Functions of the Registrar.**—(1) The Registrar shall,—

(a) execute and implement policy directives, rules, regulations and resolutions issued by the Federal Government or Ministry, as the case may be;

(b) carry out the administration, management and functional activities of the Registry;

(c) suggest measures for the encouragement and development of new varieties of plants and to protect the rights of farmers and breeders;

(d) impose any terms and conditions for research and experimental use or export of any registered plant variety developed from local genetic resources;

(e) request the advice of the Plant Variety Protection Advisory Committee in case of any dispute;

(f) develop characterization and documentation of varieties protected under this Act; and

(g) to facilitate cataloguing of all varieties of plants.

(2) In the discharge of his functions, the Registrar shall coordinate with the Director General, from time to time.

7. **Registrar to have certain powers of the civil court.**—Subject to any rules made in this behalf, the Registrar in any proceedings before him under this Act shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents; and

(e) awarding costs.

8. **Registry to carry a seal.**—There shall be a seal of the Registry and all orders and decisions of the Registrar shall be issued under the seal.

9. **Register of protected plant varieties.**—Subject to this Act, a Register of protected plant varieties shall be kept at the Registry under the supervision of the Registrar. Names of all the plant varieties protected under this Act along with the names and addresses of respective breeders, the right of such breeders in respect of the protected variety, the particulars of the denomination of each protected variety, its seeds or other propagating material along with specification and salient features thereof and such other matters as may be prescribed shall be entered in this Register.

10. **Establishment of the Plant Variety Protection Advisory Committee.**—(1) The Federal Government shall establish a Plant Variety Protection Advisory Committee consisting of a Convener and such other members from the public and private sectors, as it may deem fit.

(2) The Committee shall advise the Ministry or the Registrar, as the case may be, on such scientific and technical issues which may be referred to it.

(3) An officer, not below the level of a Director of the Registry, shall be *ex-officio* Secretary of the Committee.

(4) The Committee shall meet as and when required to perform its functions.

(5) The Committee may co-opt any other person who is an expert in a specific field of technology when a question related to that field of technology is under consideration.

(6) The Committee may, with the prior approval of the Ministry, make rules for regulating its business.

CHAPTER-III

APPLICATION FOR PROTECTION

11. **Application for grant of plant breeders' rights.**—Any person specified in section 13 may make an application for grant of plant breeders' rights to the Registrar for protection of a new plant variety of the genera or species prescribed by the Federal Government.

12. **Criteria for protection of plant breeders' rights.**—(1) A new plant variety shall be protected under this Act, if it conforms to the criteria of novelty, distinctness, uniformity, stability and designated by an acceptable denomination.

(2) For the purposes of this Act a new plant variety shall be deemed to be.—

(a) novel, provided that—

(i) it has not been sold or marketed by or with the agreement of the applicant, for more than one year in Pakistan before filing of the application for a certificate under this Act;

(ii) it has not been sold or marketed by or with the agreement of the applicant, for more than six years in the case of trees or vines and for more than four years in the case of all other plants in a foreign country before filing of the application for a certificate under this Act;

(b) distinct, if it clearly differs by one or more identifiable morphological, physiological or other characteristics from any other variety whose existence is a matter of common knowledge on the date of this application. In particular, the filing of an application for granting of a certificate for another variety or for entering of another variety in the Register, in any country, shall be deemed to render the other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a certificate or to the entering of the said other variety in the register of varieties, as the case may be;

(c) uniform, if subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its essential characteristics;

(d) stable, if its relevant characteristics remain unchanged after repeated propagation or in the case of a particular cycle of propagation, at the end of each such cycle; and

(e) acceptable denomination, if the denomination given to such variety is capable of identifying such variety and must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of its breeder and must also not be contrary to law, public order or ethics.

13. **Right to apply for a certificate.**—(1) An application for protection under section 15 may be made by,—

(a) the owner of a variety or his successor in title subject to the conditions and requirement of this Act. For the purposes of this clause the owner shall be the breeder or discoverer of the variety or the successor in

title or either of them. The owner may be a natural or legal person, but where the applicant is a legal person, the breeder of the variety shall be named in the application; and

(b) any person authorized in the prescribed manner by a person specified under clause (a), to make the application on his behalf.

(2) In proceedings before the Registrar for the grant of a certificate, the applicant shall be deemed to be entitled to such a grant. In the case where two or more breeders independently develop the same variety and apply for protection, the entitlement for rights shall rest with the person who first applied for protection.

(3) When two or more persons have jointly bred or discovered the variety for which protection is sought, they shall be considered joint breeders. One joint breeder may file an application for Plant Breeders' Rights naming all of the joint breeders. A Certificate of Plant Breeders' Rights shall be issued in the name of all of the joint breeders.

(4) The legal representative of a deceased breeder and of those under legal incapacity may apply for a certificate on behalf of such person under the same conditions and requirements as apply to other owners of varieties.

(5) In case of public sector breeders, the institute that develops the plant variety shall be entitled to apply for a certificate and the plant variety-developing institute directly involved in the research will be entitled to rights.

(6) The breeders working in the public sector will be eligible to register a variety under their own name at least five years after retirement or leaving government service.

(7) In case of private sector employed breeders, the employer company or breeder that develops the plant variety shall be entitled to apply for a certificate:

Provided that the breeders' right for new plant variety during the course of his employment in the area of activity of the employer shall, in the absence of contractual obligation to the contrary, belong to the breeder, unless the employer proves that the new variety could not have been made without the use of employer's facilities, equipment necessary for the development of new plant variety.

(8) The plant breeders from private sector will have to give a certificate or affidavit to the effect that the variety has, or has not, been developed at any stage utilizing the breeding material obtained from public sector research institution.

14. **Plant variety denomination.**—Every applicant in his application shall assign an appropriate and distinct denomination in accordance with the prescribed rules to a variety with respect to which the applicant is seeking rights under this Act.

(2) Where the denomination assigned to the variety does not satisfy the requirements specified in the rules, the Registrar may require the applicant to propose another denomination within such time as may be prescribed.

(3) Notwithstanding anything contained in the Trade Marks Ordinance 2001 (XIX of 2001), a denomination assigned to a variety shall not be protected as a mark.

15. **Requirements for an application for protection of rights.**—Every application for protection shall,-

(a) be with respect to a new plant variety;

(b) state an appropriate denomination assigned to such variety by the applicant;

(c) be accompanied by an affidavit sworn by the applicant declaring that such variety does not contain any gene or gene sequence involving terminator technology;

(d) in case of genetically modified plant variety, provide a certificate from the National Bio-safety Committee constituted by the Federal Government to this effect that the genetically modified plant variety shall have no adverse effect on the environment, human, animal or plant life and health;

(e) be in such form as may be prescribed;

(f) contain a complete identification data of the parental lines from which the variety has been derived along with the geographical location in or outside Pakistan from where the genetic material has been taken setting forth its novelty, parentage or pedigree, breeding history and a drawing or photograph to understand and evaluate the novelty of the variety;

(g) be accompanied by written consent of the authority representing public sector, private sector or the local community in case where the plant variety is developed from traditional varieties;

(h) be supported by documents relating to the compliance of any law

(i) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctness, uniformity and stability as required for protection and descriptions, DNA profile and drawings or photographs which disclose clearly the distinctive characteristics of the variety from other varieties of the same crop;

(j) be accompanied by such fee as may be prescribed;

(k) be filed in the Registry; and

(l) be accompanied by proof of the right to make the application, where such application is made by virtue of a succession or an assignment of the right for protection.

16. **Testing.**—(1) Every applicant shall, alongwith the application made under section 13, make available to the Registrar such quantities of seeds or propagating material, of a variety in respect of which protection is sought by way of such an application, as required for the purpose of conducting "Distinctness, Uniformity and Stability (DUS)" tests to evaluate whether such variety along with parental material conform to the prescribed standards as may be specified by regulations.

(2) The Registrar may make reference for the conduct of distinctness, uniformity and stability (DUS) trials or any other specific test required to the Federal Seed Certification and Registration Department as may be prescribed:

Provided that the Registrar or Federal Seed Certification and Registration Department to whom such seed has been sent for conducting the tests shall keep such seed in such manner and in such condition that its viability and quality shall remain unaltered as may be prescribed. Its access to unauthorized person shall not be allowed. Similarly, data of parental lines and other documents shall be protected from disclosure to unauthorized persons. Any violation by any person shall be penalized as prescribed in rules.

(3) The applicant shall deposit such Fee charges as may be prescribed for conducting the tests referred to in sub-sections (1) and (2).

(4) The tests under sub-sections (1) and (2) shall be conducted in such manner and by such method as may be prescribed.

17. **Amending the application.**—(1) On receipt of an application, the Registrar may, within three months after making any such inquiry, as he thinks fit with respect to the particulars contained in such application, accept the application or make the acceptance subject to such conditions or limitations as he may deem fit.

(2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules made thereunder, he may,—

(a) require the applicant to amend the application to his satisfaction; or

(b) reject the application:

Provided that no application shall be rejected unless a notice has been given to the applicant stating the grounds for rejection and the applicant has been given an opportunity of presenting his case in person or through his authorized agent, as the case may be.

18. **Advertisement of application.**—Where an application for protection of a variety has been accepted, the Registrar shall as soon as is practicable after such acceptance, cause such application to be advertised in the prescribed manner together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for protection of which such application is made including its photographs or drawings, calling for objections from any person interested in the matter.

19. **Opposition to protection.**—(1) At any time, within four months from the date of advertisement of an application under section 18, any person may give notice in writing and with documentary evidence to the Registrar of opposition to the grant of rights, on payment of the prescribed fee and on any of the following grounds, namely:—

(a) that the person opposing the application is entitled to the rights for the new variety as against the applicant;

(b) that the variety is not protectable within the meaning of this Act;

(c) that the grant of a certificate may not be in the public interest or against *public order;* or

(d) that the variety may have adverse effects on the environment, human, animal or plant health.

(2) Where a notice is given under sub-section (1), the Registrar shall give a notice of the opposition to the applicant, alongwith a copy of such notice of opposition, within two months from the receipt of the notice of opposition and the applicant shall send within two months of the receipt of this notice of opposition to the Registrar a counter statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(3) If the applicant sends such a counter statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give to the applicant and the opponent an opportunity of being heard.

(5) The Registrar shall, after hearing the applicant and the opponent, and after due consideration of the evidence decide whether and subject to what conditions or limitations, if any, the right is to be granted.

(6) Where a person giving notice of opposition or an applicant sending a counter statement after receipt of a copy of such notice neither resides nor carries on business in Pakistan, the Registrar may require him to give security for the costs of proceedings before him and in default of such security being given may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter statement on such terms as he may think fit.

(8) The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons thereof, by order, uphold or reject the opposition.

(9) When a new plant variety is protected by the Registrar, he shall issue a certificate in terms of section 24.

20. **Protection of essentially derived variety.**—(1) An application for the protection of an essentially derived variety of the genera or species prescribed by the Federal Government may be made to the Registrar by or on behalf of any person referred to in section 13 and in the manner specified in section 15 as if for the word "variety" the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fee as may be prescribed.

(2) On receipt of an application under sub-section (1), the Registrar shall have any such essentially derived variety examined in order to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(3) When the Registrar is satisfied on the report of the test referred to in sub-section (2) as to the fact that the essentially derived variety has been derived from the initial variety, he may enter such variety in the Register and issue a certificate to this effect.

(4) Where the Registrar is not satisfied on the report of the test referred in sub-section (2) that the essentially derived variety has been derived from the initial variety he shall reject the application.

(5) The rights of the breeder of a new plant variety contained in this Act shall also apply to the breeder of an essentially derived variety:

Provided that the authorization by the breeder of the initial variety to the breeder of essentially derived variety may be subject to such terms and conditions as both the parties may mutually agreed upon.

(6) An essentially derived variety shall not be protected under this section unless it satisfies the requirements of section 18 as if for the word "variety", the words "essentially derived variety" have been substituted therein.

CHAPTER-IV

THE CERTIFICATE OF PLANT BREEDERS' RIGHTS

21. **Issuance of the Certificate.**—The certificate shall be issued, on payment of such fee as may be prescribed, in the name of the Government of Pakistan and shall be signed by the Registrar. The certificate shall be recorded in the Register and the record shall be made publicly available during ordinary business hours. Notice of issuance of the certificate shall be published in the Plant Breeders' Rights Journal. There shall be annexed to the certificate a definitive description of the protected plant variety.

22. **Rights of the plant breeders.**—(1) Subject to the provisions of this Act the owner of a protected variety shall have the following exclusive rights in respect of that variety, namely:—

(a) offering for sale or selling or marketing of the reproductive or vegetative propagating material of the protected variety in Pakistan;

(b) importing the reproductive or vegetative propagating material of the protected variety into Pakistan or exporting it from Pakistan;

(c) conditioning or multiplying the reproductive or vegetative propagating material of the protected variety;

(d) carrying out any of the acts identified in clauses (a), (b), and (c) in relation to an essentially derived variety provided the protected variety is not itself an essentially derived variety;

(e) instigating or promoting any of the acts identified in clauses (a), (b), (c) and (d);

(f) authorizing any person to produce, sell, market or otherwise deal with a protected variety; and

(g) stocking for any of the purposes mentioned in clauses (a) to (d).

(2) Subject to any other provision of this Act no other person shall perform any of the acts mentioned in sub-section (1) without the prior authorization of the owner.

23. **Provisional protection.**—For the period between the filing of the application and the grant of a certificate, the owner of the certificate shall be entitled to equitable remuneration from any person who, during the said period, which once the certificate was issued, would fall within owner's rights to exclude others under section 22.

24. **Term of the certificate.**—Subject to section 29, the term of the certificate shall be twenty five years in the case of trees and vines and twenty years in the case of all other plants from the date of filing of the application.

25. **Exceptions.**—Nothing contained in this Act shall prevent,—

(a) any act done privately on a non-commercial basis;

(b) any act done for scientific research or plant breeding as an initial source of variety for the purpose of creating other varieties provided that the authorization of the breeder of a protected variety shall be required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety;

(c) any act done for the purpose of breeding other plant varieties and any act referred to in section 20 in respect of such other plant varieties, except where such other plant varieties have been essentially derived from the protected plant variety;

(d) a farmer to be entitled to save, use, sow, re-sow, exchange, share or sell his farm produce provided that the farmer shall not be entitled to sell seed of a variety protected under this Act on a commercial basis without complying with the requirements of Seed Act, 1976 (XXIX of 1976), and regulations made therein; and

(e) any exchange of propagating materials among farmers as may be specified in the regulations.

CHAPTER-V

SURRENDER, REVOCATION, RECTIFICATION OR CORRECTION OF REGISTER

26. **Surrender of certificate.**—The holder of a certificate under this Act may, at any time by giving notice in the prescribed manner to the Registrar, surrender his certificate in such manner as may be prescribed.

27. **Revocation of certificate by the Registrar.**—At any time within twelve months after the grant of a certificate, any person interested who did not oppose the grant of the certificate may make an application to the Registrar for an order revoking the certificate on any one or more of the grounds upon which the grant of the certificate could have been opposed:

Provided that when an action for infringement or proceedings for the revocation, of a certificate is pending in any court, an application to the Registrar under this section shall not be made except with the leave of the court.

28. **Revocation of certificate by the High Court.**—Subject to the provisions of this Act, a certificate may, on the petition of any person interested or of the Federal Government or on a counterclaim in a suit for infringement of the certificate, be revoked in part or in whole by the High Court on any one or more of the grounds upon which grant of certificate may be refused:

Provided that a notice of any petition for revocation of a certificate under this section shall be served on all persons appearing from the register to be the owner of that certificate or to have interest therein.

29. **Payment of annual fee and forfeiture of certificate in default thereof.**—(1) The Federal Government may prescribe a fee to be paid annually by every owner of a certificate under this Act subject to such conditions and procedures as may be prescribed.

(2) If the owner of the certificate fails to pay the fee as under sub-section (1), the Registrar may forfeit the certificate in the manner as may be prescribed.

30. **Rectification or correction of register.**—(1) Any person having sufficient interest may, on payment of such fee as may be prescribed, apply for the rectification of an error or omission in the Register:

Provided that an application for rectification may not be made in respect of a matter affecting the validity of the certificate.

(2) An application for rectification may be made to the Registrar except that,—

(a) if proceedings concerning the certificate in question are pending in the High Court, the application shall be made to the High Court; and

(b) in case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the High Court.

(3) The Registrar on his own motion may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any rectification of an error or omission in the Register.

(4) Except where the Registrar or the High Court directs otherwise, the effect of rectification of the register shall be that the error or omission in question shall be deemed never to have been made.

31. **Alteration of denomination of a protected variety.**—(1) The breeder of a variety protected under this Act may apply in the prescribed manner to the Registrar to delete any part or to add or alter the denomination of such variety in any manner not substantially affecting the identity thereof, and the Registrar may refuse or may grant leave to amend on such terms and subject to such limitations as he may think fit and subject to the rules to avoid any conflict with the rights of other breeders of the varieties protected under this Act.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient to do so, and where he does so, if within sixty days from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

CHAPTER-VI

BENEFIT SHARING

32. **Benefit sharing.**—(1) On receipt of copy of the certificate of protection, the Registrar shall publish such contents of the certificate and invite claims of benefit sharing to the variety protected under such certificate in the manner as may be prescribed.

(2) On invitation of the claims under sub-section (1), any person or group of persons or firm or governmental or non-governmental organization shall submit its claim of benefit sharing to such variety in the prescribed form within such period, and accompanied with such fees, as may be prescribed:

Provided that such claim shall only be submitted by any,—

(a) person or group of persons, if such person or every person constituting such group is a citizen of Pakistan; or

(b) firm or governmental or non-governmental organization, if such firm or organization is formed or established in or outside Pakistan.

(3) On receiving a claim under sub-section (2), the Registrar shall send a copy of such claim to the breeder of the variety protected under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

(4) The Registrar shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

(5) While disposing of the claim under sub-section (4), the Registrar shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:—

(a) the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed; and

(b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

(6) The amount of benefit sharing to a variety determined under this Act shall be deposited by the breeder of such variety in the manner prescribed. The amount of benefit sharing shall be determined under this Act on a reference made to the Registrar in the prescribed manner.

CHAPTER-VII

COMPULSORY LICENSE

33. **Power of Registrar to make order for compulsory license in certain circumstances.**—(1) Subject to sub-section (2), where,—

(a) the public interest, in particular the [illegible]

(b) the Registrar has determined that the manner of exploitation, by the owner of the certificate or his licensee, is anti-competitive;

(c) reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price;

(d) the owner of the certificate refuses to grant a license to a third party on reasonable commercial terms and conditions; or the right under the certificate has not been exploited in a manner which contributes to the promotion, transfer and dissemination of technology; and

(e) the Registrar may after the expiry of three years from the date of grant of a certificate and after seeking advice of the Committee, even without the consent of the owner of the certificate decide that a Government agency, or a third person who makes an application to the Registrar in the prescribed manner in this behalf, may exploit the rights under the certificate.

(2) The Registrar shall, before taking any decision under sub-section (1), give the owner of the certificate and the interested person an opportunity of being heard.

(3) The exploitation of rights under the certificate shall be limited to the purpose for which it was authorized, subject to payment to the said owner of an adequate remuneration thereof, taking into account the economic value of the authorization, and subject to such terms and conditions as may be prescribed.

34. **Duration of compulsory license.**—The Registrar shall determine the duration of the compulsory licenses granted under this Act and such duration may vary from case to case keeping in view the gestation periods of the plant variety and other relevant facts but in any case the term of compulsory license shall not exceed five years from the date of grant.

35. **Revocation of compulsory license.**—If the Registrar, on his own motion or on an application made in the prescribed manner to the Registrar by a person aggrieved of the grant of a compulsory license under this Act, is satisfied that the licensee has violated any of the terms or conditions of the license or it is not appropriate to continue such license further in the public interest, after giving such licensee an opportunity to file opposition and of being heard, make an order to revoke such license.

36. **Modification of compulsory license.**—The Registrar may, if he considers it in the public interest, on his own motion or on application made by the holder of a compulsory license under this Act, after providing an opportunity of being heard to the owner of the certificate under this Act, order modification of the entries in the Register on such terms and conditions as he may thinks fit.

37. **Application of Seed Act, 1976.**—Nothing provided or granted by, or under, this Act shall be construed as conferring authority for,—

(a) any seed to be sold, imported, exported or advertised; or

(b) any name, mark or label to be applied in connection with any seed, contrary to the Seed Act, 1976 (XXIX of 1976) or regulations made thereunder.

CHAPTER-VIII

INFRINGEMENT, OFFENCES AND PENALTIES

38. **Suit for infringement etc.**—(1) Subject to the provisions of this Act, any action in violation of the provisions of sub-section (1) of section 22 shall be deemed to be an infringement including using a variety protected under this Act without legal authorization, to produce an essentially derived variety or F1 hybrid for commercial utilization.

(2) No suit,—

(a) for the infringement of a variety protected under this Act; or

(b) relating to any right in a variety protected under this Act; shall be instituted in any court inferior to the Court of District Judge having jurisdiction to try the suit.

(3) For the purpose of clauses (a) and (b) of sub-section (2), "Court of District Judge having jurisdiction" shall mean the Court of District Judge within the local limit of whose jurisdiction the cause of action arises.

39. **Relief in suits for infringement.**—(1) The relief which a court may grant in any suit for infringement referred to in section 38 may include an injunction and at the option of the plaintiff, either damages or a share of the profits.

(2) An order under sub-section (1) may include an order for,

(a) discovery of documents;

(b) preserving of infringing variety, documents or other evidence which are related to the subject matter of the suit; or

(c) attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may finally be awarded to the plaintiff.

(3) A court of competent jurisdiction, having ruled in favour of the owner of the certificate, shall decree an appropriate remedy. In every case, the court may award damages to the owner of the right at least equal in amount to the losses suffered by the owner or any other relief which the court may deem appropriate.

40. **Time limitation on an infringement suit, notice of infringement.**— (1) No suit for infringement of a certificate shall be brought after three years following any alleged occurrence of infringement.

(2) Damages will not be assessed against a defendant for infringement committed before actual or constructive notice is given to the defendant that the concerned variety is a protected plant variety. Constructive notice may be given by marking the container of the protected variety, or by any other appropriately visible indication that the variety is protected.

41. **Offences and Penalties.**—Penalties for contravention of this Act or rules framed thereunder, shall be prescribed.

CHAPTER-IX

MISCELLANEOUS

42. **Transitional provision.**— The plant varieties already registered and released or commercialized which do not conform to the criteria of novelty may apply for a certificate within two years of the commencement of this Act. If the certificate is granted, the term of certificate will be reduced by the number of years between the time the variety was released, registered or commercialized and the time the application for a certificate was submitted.

43. **Protection of action taken in good faith.**— No suit, prosecution or other legal proceedings shall lie against the Federal Government, the Ministry, the Department, the Registrar or any other person acting on behalf of or under instructions from, the Federal Government, the Ministry, the Department, the Committee or the Registrar directly or under the provisions of this Act, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

44. **Non-resident certificate owners.**— Each owner of a certificate not residing in Pakistan shall designate in writing the name and address of a natural or legal person on whom judicial and other notices may be served.

45. **Incentives for the promotion of research and development.**— (1) The Federal Government and each of the Provincial Governments shall constitute a Research Incentive Board which shall recommend to the respective Governments, incentives for the promotion of research and development, including incentives for research scientists and their teams involved in developing new plant varieties:

Provided that in case of an applicant under sub-section (4) of section 13, the scientist, breeder or a group of scientists or breeders and their team involved in the development of a new plant variety shall be entitled to a minimum of forty percent of the royalty or the profits gained by the institute through any commercial deal:

Provided further that the Federal Government or the Provincial Governments, as the case may be, by notification in the official Gazette make rules for carrying out the purposes of this section.

(2) The rules related to determination and implementation of royalty on the protected plant varieties shall be prescribed.

46. **Appeal.**— Any person aggrieved by the decision of the Registrar or the Court of District Judge may, within sixty days of the decision, prefer an appeal to High Court having jurisdiction.

47. **Determination and collection of fee.**— The Federal Government may, by notification in the official Gazette, prescribe a schedule of fee and charges for services rendered to the applicants and the public under this Act and any fee or amount collected shall be deposited in the manner as may be prescribed.

48. **Power to make rules.**— The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

49. **Removal of difficulty.**— If any difficultly arises in giving effect to the provisions of this Act, the Federal Government may, by notification in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty.

AMJED PERVEZ,
Secretary.

PRINTED BY THE MANAGER, PRINTING CORPORATION OF PAKISTAN PRESS, ISLAMABAD.
PUBLISHED BY THE DEPUTY CONTROLLER, STATIONERY AND FORMS, UNIVERSITY ROAD, KARACHI.