

Federal Law No. 17 of 2009
Concerning the Protection of New Plant Species

We Khalifah Bin Zayed Al Nahyan

UAE President,

- Having Reviewed the Constitution;
- Federal Law No. 1 of 1972 on the Competencies of Ministries and Powers of Ministers, and the amending Laws thereof;
- The Penal Code Promulgated by Federal Law No. 3 of 1987, and the amending Laws thereof;
- The Code of Penal Procedures Promulgated by Federal Law No. 35 of 1992, and the amending Laws thereof;
- Federal Law No. 37 of 1992 on Trademarks, and the amending Laws thereof;
- Federal Law No. 24 of 1999 for the Protection and Development of the Environment, and the amending Laws thereof;
- Federal Law No. 7 of 2002 on Copyright and Related Rights, and the amending Laws thereof; and
- The Proposal of the Minister of Environment and Water, and the Approval of the Cabinet of Ministers and the Federal National Council, and the Supreme Council of the Federation,

Enact the following law:

Article (1)

Definitions

In the course of applying the provisions of this Law, the following words and expressions shall have the meanings assigned to each of them unless the context otherwise requires:

State	: The United Arab Emirates.
Ministry	: The Ministry of Environment and Water.
Minister	: The Minister of Environment and Water.
Species	: A group of plants belonging to a Species, that is distinct from other in terms of its external characteristics, physiological, biochemical, genetic or any other characteristic which has an agricultural significance (or whose characteristics manifest upon propagation or reproduction). It excludes wild Species which did not undergo any development.
Plant Breeder	: A natural person or legal entity that breeds, or discovers and develops a new plant Species, or its legal successor.
Certificate	: The document granting rights to Plant Breeders.
Register	: The Register of the new plant Species and the rights of Plant Breeders.
Registrar	: The Registrar of plant Species and who registers the rights of Plant Breeders.
Protected Species	: A species which is granted protection in accordance with the provisions of this Law.
Breed Species	: A Species which is similar to a different species in its primary characteristics, but is different in the characteristics resulting from the breeding.
Applicant	: The person who applies for the right of a Plant Breeder.
Certificate Holder	: Any person who is granted a certificate.
Right Holder	: The Plant Breeder to whom the Registrar grants the right of a Plant Breeder in respect of a defined Species.
Propagation and Reproduction Material	: Any material from the plant's parts, cells, tissues, organs, or genetic material from plants that can be used for the propagation of plants or those intended for breeding by seedling, cultivation, grafting, or budding.

Material : Material used for propagation or reproduction of any kind, and harvest materials including plants or their components.

Article (2)

Objectives of the Law and its Scope

- 1 - This law aims to regulate the rights and obligations resulting from developing new plant Species.
- 2 - The provisions of this Law apply to the items specified in the list of plant Species identified by a decision of the Minister, including breeds, cuttings, tissues, cells and genetic materials.

Article (3)

Register of New Plant Species Protection

A Register is to be created in the Ministry under the name "Register of New Plant Species Protection", to protect new plant Species and the rights of Plant Breeders in accordance with the provisions of this Law and its Executive Regulations.

Article (4)

The Registrar and his Competencies

The Minister shall identify a Registrar for supervising the Register, and undertaking the competencies stipulated in this Law, particularly the following:

- 1 - Receiving the applications related to the rights of Plant Breeders, identifying plants and recording them in the Register after checking the documents attached to the applications and verifying that they meet the requirements set by the Executive Regulations of this Law.
- 2 - Supervising the process of checking the Species, to verify that it satisfies the requirements of modernity, distinctiveness, uniformity, and constancy, identifying the development method, and assessing the health and environmental risks.
- 3 - Keeping the Register and all the data related to new plant Varieties, their names and the names of Certificate Holders.

4 - Coordinating with the international bodies and regional and local communities related to the Registrar's work.

5 - Any other tasks assigned by the Minister in connection with the objectives of this Law.

Article (5)

Conditions for Protection the Conditions of Granting the Plant Breeder's Right

The right of the Plant Breeder is to be granted if the plant meets the following conditions:

1 - It must be new.

2 - It must be distinctive.

3 - It must be uniform.

4 - It must be fixed (ie. not be in a State of change).

5 - It must not be harmful to health or the environment.

6 - It must not be contrary to Islamic law or the applicable law in the State.

Article (6)

The New Species

A plant Species is considered new if the Propagation and Reproduction Material harvested was not previously offered for sale, sold or assigned to others in any way by a Plant Breeder or after the consent thereof, with a view to its commercial exploitation prior to making the application (by more than one year within the State, for more than four years outside the State, and for more than six years for vines and trees).

Article (7)

Species Distinctiveness

A plant Species is to be considered distinct, if it is clearly distinguishable from any other Species that is known publicly at the date of filing the application, whether inside or outside the State. The filing of an application for gaining the right of a Plant Breeder or for registering a different Species in the official Register of plant Species in any country is regarded as

making that Species known publicly as of the date of filing the application, provided that such Applicant will be granted the right of a Plant Breeder for that Species, or on recording it in the official Register as the case may be.

Article (8)

Species Uniformity

A plant Species is considered uniform if its basic characteristics are uniform, taking into account what might be expected as a result of the variation in characteristics due to sexual or vegetative reproduction.

Article (9)

Constant Species

The plant Species is considered constant if the basic genetic characteristics do not change after successive reproductions or breeding, or at the end of each cycle, especially for propagation or breeding.

Article (10)

The Person entitled to the Right to Register Species

The Person entitled to the right to Register a Species shall be:

- 1 - The Plant Breeder or the person to whom the rights resulting from the Species shall devolve.
- 2 - All persons involved in the development if the plant was a result of a joint effort, provided that it is registered on the basis of an equally divided partnership, unless they otherwise agree.
- 3 - If there are two independent Applicants, the earlier of two persons who made the application of registration.
- 4 - The employer, if the plant is bred by a person employed by him, according to a contract made between them for this purpose, unless the contract provides otherwise.

Article (11)

Application of the Species Owner

The application for gaining the rights of a Plant Breeder may be made by the owner of the Species, and the conditions of equal treatment shall apply.

The moral right to the Species may not be waived by the Plant Breeder or its successors.

Article (12)

The Right of Priority

1 - The Plant Breeder enjoys the right of priority (starting from the date of making the application) in respect of updates to the same Species which he is breeding.

2 - In the event that Plant Breeders that applied for a right of priority in another State for a period of 12 months for the purpose of seeking protection, the relevant period is calculated from the day following the date of making the first application in such other country.

The Registrar may in exceptional circumstances disregard that priority.

3 - When the Species is bred or discovered and developed by several persons independently of each other, the right to apply for gaining the Plant Breeder right is given to the person who first made a protection application or was the first to make an application to the Registrar.

Article (13)

The Documents and Materials Necessary for the Priority

1 - If the registration application includes a claim to the right of priority as provided in Article (12) of this Law, the Applicant shall within a period not exceeding ninety days of the date of filing the application, provide the following:

A - An identical copy of the documents related to his application certified by the Registrar, to whom it filed, in accordance with the Regulations of this Law identifying the documents and requirements related thereto.

B - The samples or evidence that the application represents the first application in respect of the Species seeking the right of priority. The relevant date for determining the date of filing the application is the same date on which the application was filed in the other State.

2 - If it is established that the Applicant does not have the right to priority as provided in Article (12) of this Law, the application shall be registered on the date of filing it with the Registrar.

3 - The Applicant may request a grace period of not more than two years after the expiration of the period of priority in order to provide the Registrar with the necessary information and documents required by Law for the purposes of examination stated in Article (24) of this Law. If the first application made in the other country is not accepted, the Applicant is to be given an appropriate time limit from the date of refusal or withdrawal of the application, to provide the information, documents and materials necessary for conducting the examination.

Article (14)

Transfer of Applications and Rights

The applications and rights of the Plant Breeders may be transferred to others, according to the rules set by the executive regulations of this Law.

Article (15)

Scope of the Plant Breeder's Right

Subject to the provisions of Articles (16) and (17) of this Law, it is a pre-requisite to obtain authorization from the Right Holder when planning to do any of the following acts:

- 1 - Production, propagation, or reproduction.
- 2 - Preparation for the purposes of propagation or reproduction.
- 3 - Offering for sale.
- 4 - Sale or other acts of marketing.
- 5 - Exportation.
- 6 - Importation.
- 7 - Storage for any of the purposes referred to in the items set forth in this Article, of the propagation or reproduction Material of the relevant Species or the Material harvested including plants, which was obtained through the unauthorized use.

Article (16)

Exceptions to the Protection

1 - The executive regulations of this Law shall identify the Species that shall be granted the right to protection under the provisions of this Law.

2 - The right to protection does not authorize the Right Holder to prevent any person from the use of Protected Species for one of the following purposes:

A - Scientific experiments.

B - The work carried out in order to develop new Species, except those specified in Article (15) of this Law.

3 - Farmers may not be prevented from using any Protected Species, a Breed Species or a Species that cannot be easily distinguish from the original plant in their land in order to increase the harvest by planting these items for non-commercial purposes.

Article (17)

Limitations to the Plant Breeder Rights

The Plant Breeder's rights do not include the Material related to the Protected Species or the materials of the Species protected, the materials of any Species covered in Article (15) of this Law, or materials bred therefrom, which the Plant Breeder sold or marketed in any other form or with his consent within the State, except if such acts involve any of the following:

1 - Additional propagation of the Species concerned.

2 - Exporting the Species materials that allow reproduction thereof to a country having no legislation for protecting the Species to which it belongs, except if the purpose of export is consumption.

Article (18)

Propagation or Reproduction Material Maintenance

The Right Holder shall be committed to provide the Registrar with the Propagation and Reproduction Material that can reproduce plants compatible with the defined characteristics of the Species at the time of granting the right, during the period in which the right is exercisable. It shall also provide the Registrar with all information and assistance required,

including the facilities for inspecting what the Right Holder does for the maintenance of plant.

Article (19)

Term of Protection

The term of protection of the Protected Species is twenty years for agricultural products, and twenty-five years for vines and trees.

The term of protection is calculated of the date of the decision to grant the right of Plant Breeder.

Article (20)

Procedures for Naming the Species

1 - The Applicant shall determine the proposed name of the Species, and the executive regulations of this Law shall determine the registration procedures of naming, publishing them and the periods related thereto.

2 - The naming may consist of a word or a group of words at a maximum of three words, or alternatively words and numbers, or alternatively words and letters, or alternatively letters and numbers, or numbers alone (if it is an established practice in labeling the Species provided that the numbers allow identification of the Species in all cases). In the case the naming contains words and numbers, the numbers must have a meaning related to the words.

Words that indicate the State or one of its landmarks may be used.

3 - It is not allowed to Register the name of the Species if the proposed naming is:

A - Contrary to the provisions of the law.

B - Contrary to public order and morality.

C - Causes misleading and confusion as concerning the Species' characteristics, its value, meaning, origin or its Plant Breeder.

D - a different name of an already existing Species registered in another country.

Article (21)

Naming the Species

1 - Every person that offers for sale, markets, or disposes of Propagation and Reproduction Material of a Protected Species in the State shall use the name of that Species, even after the end of the Plant Breeder's right.

2 - The Registrar may, when offering the Species for sale, marketing, or disposal for any purpose, allow the name to be associated with a trademark, trade name, or another mark distinctive from the name of the registered Species. In the case of any connection between the name and that brand, the name must be noticeably distinctive.

3 - No prejudice may be held to any resulting right of any party related to a name to be used for one of the Species, and in this case the Registrar should ask the Plant Breeder to propose another name for the Species.

Article (22)

Cancellation of the Naming of a Registered Species

1 - The Registrar shall cancel the naming of any registered Species in one of the following cases:

A) If the naming shows violation of the provisions of Article 20/3 of this Law.

B) If it is proven that third parties have the right of naming and the Right Holder approves the cancellation.

C) If the person is prevented from using the name of the Species by a final court judgment.

2 - The Registrar must, in case of cancelling the naming of the Species, summon the Right Holder to propose a new naming within a specified period.

Article (23)

Examination of the Application

The Species shall be examined to verify the fulfillment of the requirements of protection under the supervision of the Registrar based on the results of one of the following two methods:

1 - Growth and germination tests and any other tests or examinations of interest conducted by a technical body inside or outside the State, if such tests or examinations have taken place in environmental conditions compatible with the environmental conditions of the State.

2 - Tests and examinations conducted by the Registrar himself or through any party at the expense of the Plant Breeder.

Article (24)

Granting and Denying the Breeder Right

1 - If the examination reveals that the Species met the conditions of protection, the Registrar shall issue a decision to grant the right of the Plant Breeder and publish it in the Official Gazette.

2 - If the investigation shows that the proposed naming cannot be registered, the Registrar shall notify the Applicant to propose another naming during a specified period; otherwise the application shall be rejected.

Article (25)

Temporary Protection

The Plant Breeder is granted temporary protection during the period between the date of publication of the application in the Official Gazette, and the date of the decision to grant him the Plant Breeder's right, and shall be entitled during this period to use the Species and take action to prove any transgression thereon.

Article (26)

Termination of Protection

The right to protection is considered terminated in the following cases:

1 - If the Right Holder gives up his right to notify the Registrar in writing before the end of the term of protection. The termination date is the date of notification.

2 - The expiry of the legal period of the Right Holder.

Article (27)

Protection Invalidity

The granted right of the Plant Breeder is considered invalid in the following two cases (and a decision shall be accordingly issued by the Registrar and published in the Official Gazette):

- 1 - If it is established that the Species was contrary to the conditions of protection on the date of granting the right of the Plant Breeder.
- 2 - If the right of the Plant Breeder was granted to someone other than the real Plant Breeder contrary to the provisions of this Law.

Article (28)

Protection Cancellation

The right of the Plant Breeder shall be cancelled by a decision of the Registrar published in the Official Gazette in the following cases:

- 1 - If he does not meet the requirements of uniformity and stability set in this law.
- 2 - If the Plant Breeder does not provide the Registrar with the information, documents or materials necessary for verifying the maintenance of the Species.
- 3 - Cancelling the naming of the Species after granting the right, and not offering another appropriate naming.
- 4 - If he does not pay the annual fees within ninety days of the notice.

Article (29)

Objection

Any person has the right to object to granting the Plant Breeder the rights under this law in the following cases:

- 1 - If the Plant Breeder's right was granted to someone other than the Plant Breeder, unless the right was transferred to him.
- 2 - If the Species was not new or distinct at the date of filing or the priority date.
- 3 - If the Species was not uniform or constant.

Article (30)

License from the Breeder

The Plant Breeder may grant a license to others to use the Protected Species with or without remuneration under a written contract registered at the Registrar.

Article (31)

License from the Registrar

1 - The Registrar may grant a license to third parties to use the Protected Species without the consent of the Plant Breeder, if the public interest so requires, and without prejudice to the right of the Plant Breeder to receive fair compensation.

2 - The Registrar may, of his own initiative or at the request of the Plant Breeder, cancel the license set forth in item (1) of this Article if the licensee breaches the terms of the license granted to him or the grounds for granting the license came to an end.

Article (32)

License from the Minister

The Minister may, in the cases of emergency and upon the recommendation of the Ministry of Defense or the Ministry of Interior, grant an exceptional license to use a Protected Species, without prejudice to the right of the Plant Breeder to obtain fair compensation.

Article (33)

Penalties

1 - Any person who violates the provisions of Articles 15 and 17 of this Law, or manages in an illegal fashion to obtain the right of the Plant Breeder shall be punished by imprisonment for not less than two months and a fine of not less than ten thousand dirhams, and/or no more than two hundred fifty thousand dirhams.

The punishment shall be doubled in case of recidivism.

Any person who violates any other provisions of this Law shall be punished by a fine of not less than ten thousand dirhams and not more than two hundred fifty thousand dirhams.

2 - The court may decide to confiscate the plant Material the subject of the case and order destroying them at the expense of the offender, or transfer them to public bodies that may handle or use them. It also has the right, if the offense is committed by or on behalf of a legal person, a business, or a professional establishment, to decide to close them down for a period not exceeding six months, and to publish the summary of the conviction judgment in one or daily newspapers or at the expense of the offender.

Article (34)

The penalties provided in this Law do not prejudice any severer penalty stipulated in any other law.

Article (35)

The Death of the Breeder without an Heir or Legatee

The Ministry shall exercise the right of the Plant Breeder on the Protected Species if he dies without an heir or legatee.

Article (36)

Judicial Appeal Period

A judicial appeal is allowed to be filed in respect of any administrative decisions issued pursuant to this Law during a period of sixty days from the date of publication in the Official Gazette or from the notice by the concerned person, according to the circumstances.

Article (37)

Judicial Officers

The Minister of Justice shall issue a decision, in agreement with the Minister, to select staff that will have the status of judicial officers in the application of the provisions of this Law.

Article (38)

Fees

The Right Holder shall pay the prescribed annual fees during the first thirty days of each year of the term of protection.

Article (39)

The Cabinet of Ministers shall issue a resolution specifying the prescribed fees in accordance with the provisions of this law.

Article (40)

The Minister shall issue the executive regulations of this Law, and the decisions necessary for its implementation.

Article (41)

Any provision contrary to or inconsistent with the provisions of this Law shall be repealed.

Article (42)

This Law shall be published in the Official Gazette, and shall come into force as of the day following the date of its publication.

Khalifah bin Zayed Al Nahyan

UAE President

Issued by us at the Presidency Palace in Abu Dhabi on:

December 31, 2009 AD.

Corresponding to Muharram 14, 1431 H.