

## Submission of applications for plant breeders' rights

Any person or institution may apply for a plant breeder's right. All information with regard to the submission of an application, the closing dates for submission, including the propagating material to be supplied, is available from the Registrar of Plant Breeders' Rights.

At the beginning of the growing season of each crop, trials are planned according to the applications received for the particular crop. Samples are planted and the new varieties are compared with the standard similar varieties. If a variety does not pass the DUS test because of adverse weather conditions or incorrect information on the technical questionnaire, supplementary tests may be carried out, or alternatively the test period may be extended to the next growing season.

As soon as all the necessary tests have been completed and the variety is found to be distinct, uniform and stable, a plant breeder's right is granted and a certificate issued.

The commercialisation of certain kinds of plants are regulated by the Plant Improvement Act, 1976 (Act No. 53 of 1976) by means of a Variety List. It implies that propagating material of the varieties of these crops may only be sold if the variety denomination is contained in the Variety List. The requirements for variety listing are the same as for plant breeders' rights, except for the requirement to be new. Therefore, applicants are advised to simultaneously apply for variety listing for these crops, because the examination can be done at the same time. In this case only the examination fee for a plant breeder's right is paid, resulting in a saving.

## Glossary of terms

**Variety:** A plant grouping with the same characteristics (colour, flower, height, growth) resulting from a given genotype or combination of genotypes, and such grouping can be distinguished from any other plant grouping by expression of at least one of the characteristics mentioned.

**Propagating material:** Any material of a plant that can be used for the propagation of a plant

**Harvested material:** Any material that can be harvested from a plant, such as flowers, fruit and seed.

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### Contact details:

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Directorate Genetic Resources  
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#### Regional offices:

Roodeplaat: Agricultural, Vegetable Crops and  
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# Understanding the Plant Breeders' Rights Act (PBR)



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REPUBLIC OF SOUTH AFRICA

## The necessity for plant breeders' rights

A plant breeder's right means the acquisition of a legal right in terms of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976). This right provides for protection of the variety against exploitation without the consent (permission) of the holder of the right, allowing him to obtain royalties as remuneration. A plant breeder's right therefore provides the holder with a means of gaining financial remuneration for his efforts, encouraging breeders to continue with the breeding of new and better varieties, a process that is very time-consuming and expensive.

A plant breeder's right is valid for a period of 20 or 25 years, depending on the kind of plant. During the first 5 to 8 years (sole right period) the owner has the sole right to produce and market propagating material of the variety. During the next 15 to 17 years the holder is compelled to issue licences to other persons who also wish to use and market such material. If the holder of the right refuses to issue licences, these individuals may apply to the Registrar of Plant Breeders' Rights for a licence.

When the holder issues a licence to another person, he may continue to claim royalties for any propagating material produced and sold. Only after the expiry of the full period of a plant breeder's right, does the variety become public property and anyone may then propagate and sell it.

The holder of a plant breeder's right must protect his/her own interests and ensure that the variety is not used illegally or grown by any unauthorised person.

The breeder of a new variety must maintain the variety and guarantee that propagating material, which still conforms to the original description, is always available. If he fails to do this, the Registrar may cancel his right.

## Advantages of plant breeders' rights for South Africa

The implementation of plant breeders' rights in South Africa has been a major stimulus for the plant breeding

industry. Not only does it provide for financial remuneration, but it also gives local plant breeders and producers access to high-quality new varieties from overseas. If such material cannot be protected by plant breeders' rights, foreign owners of varieties are not keen to supply propagating material to individuals in other countries.

It is of the utmost importance for the economy to obtain new and improved plant varieties as there is a constant demand for better quality, higher yields, better processing properties and increased disease, pest and drought resistance. If plant breeders' rights were not available locally, very few new varieties from foreign countries would be available in South Africa. This would impact negatively, among others, on the export market, as we would not be able to produce the new, sought after varieties.

## International cooperation on plant breeders' rights

The International Union for the Protection of New Varieties of Plants (UPOV) was established in 1961. In 1977, South Africa was accepted as the tenth member of UPOV. By 2007 there were already 64 member countries. The number of member countries is growing each year.

The main aims of UPOV are to standardise laws on plant breeders' rights, to determine procedures for the testing of new varieties and to promote cooperation among member countries, thereby encouraging the breeding of new plant varieties.

The acquisition of a plant breeder's right in one country does not mean that this protection is also valid in all other countries. The right is only valid in the country where it was granted. However, a plant breeder's right can be obtained in more than one country for the same variety.

## Plants for which plant breeders' rights may be granted

A list of prescribed plants for which plant breeders' rights can be applied for is available on request from the Registrar

of Plant Breeders' Rights. This list is contained in Table 1 of the Regulations of the Plant Breeders' Rights Act. At present, plant breeders' rights apply to approximately 300 kinds of plants. An application for the plant breeder's right shall be submitted to the Registrar.

## Requirements for the granting of plant breeders' rights

A plant breeder's right may be granted to a variety if it is:

### *New (novelty requirement):*

- Propagating or harvested material of a variety has not been sold or otherwise been available in South Africa for more than 1 year, and
- Propagating or harvested material has not been sold or otherwise been available in any other country for more than 6 years in the case of trees and vines, or in the case of any other plant, for more than 4 years, before the date of filing of the application for a plant breeder's right.

### *Distinct; Uniform; Stable (DUS):*

- It must be clearly distinguishable from any other variety
- It must be uniform, i.e. all the plants of a variety must look similar and must be sufficiently uniform in their relevant characteristics
- It must be stable, i.e. the relevant characteristics of the variety must remain unchanged after repeated propagation
- Has an acceptable variety denomination.

## Provisional protection

An applicant for a plant breeder's right may apply to the Registrar of Plant Breeders' Rights for provisional protection of a variety. The applicant has to give a written undertaking not to sell (except for purposes of multiplication or testing) any propagating material of the variety in question until all tests have been completed and a plant breeder's right has been granted. This means that for the period that it takes to complete the tests, until the plant breeder's right is granted, the variety is protected.