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## THE PRESIDENCY

No. 512 29 March 2019

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

**Act No. 11 of 2018: Plant Improvement Act, 2018**

## OFISI KAMONGAMELI

No. 512 29 March 2019

Esi sisaziso sokuba uMongameli uwamkele lo mthetho ulandelayo nonikezelwa kuluntu jikelele kolu xwebhu:—

**Ino 11 ka 2018: uMthetho Wokuphuculwa Kwezityalo ka-2018**

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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

(English text signed by the President)  
(Assented to 27 March 2019)

# ACT

To provide for—

- the registration of certain types of business relating to plants and propagating material intended for cultivation and sale and the registration of premises on or from which that business is conducted;
- quality standards for plants and propagating material intended for cultivation and sale and conditions of sale of plants and propagating material;
- a system for national listing of plant varieties;
- the evaluation of plant varieties in order to ensure value if there is doubt in respect of the value for cultivation and use of plant varieties intended for cultivation and sale;
- import and export control of plants and propagating material; and
- a system for different types of schemes for plants and propagating material; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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(English text signed by the President)  
(Assented to 27 March 2019)

# UMTHETHO

## Injongo—

- kukuba kubhaliswe iintlobo ezithile zamashishini ezityalo nezinto zokwandisa izityalo ngenjongo yolimo nokuthengisa nokubhaliswa kwendawo yeshishini eliqhutyelwa kuyo ishishini elo;
  - kukuba kubekho umgangatho wokufikelelwa zizityalo nezinto zokwandisa izityalo ngenjongo yolimo nokuthengisa nemiqathango yokuthengiswa kwezityalo nezinto zokwandisa izityalo;
  - kukuba kubekho inkqubo yokubekwa kuluhlu lwelizwe lonke lweendidi zezityalo;
  - kukuba kuphononongwe umgangatho weendidi zezityalo ukuze kuqinisekwe ngexabiso xa kukho amathandabuzo ngexabiso lolimo nokusetyenziswa kweendidi zezityalo ezizezolimo nokuthengiswa;
  - kukuba kulawulwe ukuodolwa kwezityalo nezinto zokwandisa izityalo xa ziodolwa kwamanye amazwe naxa zithunyelwa kwamanye amazwe; nokuze
  - kubekho inkqubo yeentlobo ezahlukeneyo zamacebo ezityalo nezinto zokwandisa izityalo
- nokulungiselela imicimbi ehlobene noku.

**K**UQULUNQWA UMTHETHO yiPalamente yeRiphabliki yoMzantsi-Afrika ngale ndlela ilandelayo:—

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## Definitions

1. In this Act, unless the context indicates otherwise—
- “**agent**” means a person, domiciled and resident in the Republic, who has been duly authorised by the breeder of a variety to act on his or her behalf for filing an application for national listing; 20
- “**applicant for national listing**” means the breeder of a variety who makes an application for national listing in terms of section 28;
- “**authorised person**” means a person, other than an employee, authorised in terms of section 3(5)(a);
- “**breeder**”, in relation to a variety contemplated in section 28, means— 25
- (a) the person who bred, or discovered and developed, the variety;
- (b) the employer of the person contemplated in paragraph (a), if that person is an employee whose duties are such that the variety was bred, or discovered and developed, in the performance of those duties; or
- (c) the successor in title of the person contemplated in paragraph (a) or the successor of the employer contemplated in paragraph (b); 30
- “**business**” means the business contemplated in section 9;
- “**cleaning**” in relation to seed means the removal of other material and other seed from propagating material, either manually or mechanically, in order to improve the general quality thereof; 35
- “**conditioning**”, in relation to propagating material of a plant variety, means—
- (a) cleaning, drying, coating, sorting, grading or packaging of the material;
- (b) testing for germination and vigour; or
- (c) any other similar treatment, 40
- undertaken for the purposes of preparing the material for cultivation and sale;
- “**denomination**” in relation to a variety entered in the national varietal list or the regional varietal list, means the denomination contemplated in section 33 that has to be used at all times in connection with the plants and propagating material of the variety in question;
- “**Department**” means the Department responsible for agriculture; 45
- “**designated authority**” means the authority contemplated in section 45(6)(a);
- “**employee**” has the meaning ascribed to it in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but does not include an employee contemplated in the definition of breeder;
- “**kind of plant**” means a group of plants of the same taxon; 50
- “**label**” means the piece of paper, plastic or fabric attached to a plant or container containing the prescribed information regarding the identity and source of the plant or propagating material in the container; and “**labelling**” and “**labelled**” have a corresponding meaning;
- “**laboratory**” means a facility where plants and propagating material are tested, examined or analysed in respect of the physical or biological property thereof or the occurrence of insects or pathogens thereon or therein or the elimination of pathogens for reward or for marking and labelling for purposes of selling; 55



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## ISIHLOMELO

## Ukuchazwa kwamagama

1. Kulo Mthetho, ngaphandle kokuba okanye okubhaliweyo kuwo kubonisa ngenye indlela—

- “**umthunywa**” ngumntu, ozinze nohlala kwiRiphabliki, ogunyazwe ngokufanelekileyo ngumlimi wodidi ukuba enze isicelo egameni lakhe sokuba kuluhlu lwelizwe lonke; 20
- “**umenzi-sicelo sokuba kuluhlu lwelizwe lonke**” ngumlimi wodidi owenz’ isicelo sokuba kuluhlu lwelizwe lonke ngokwesiqendu 28;
- “**umntu ogunyaziweyo**” ngumntu, ongenguye umqeshwa, ogunyazwe ngokwesiqendu 3(5)(a) 25
- “**umvelisi**”, mayela nodidi oluxelwe kwisiqendu 28—
- (a) ngumntu oye wavelisa udidi, okanye walufumanisa belungaziwa waza waluphuhlisa;
- (b) ngumqeshi womntu oxelwe kwisiqendu (a), ukuba loo mntu ungumqeshwa omisebenzi yakhe ekuthe ekuyenzeni kwakhe kwaveliswa olo didi, okanye lwafunyaniswa belungaziwa lwaza lwaphuhlisa; okanye 30
- (c) lilandela lomntu oxelwe kwisiqendu (a) okanye ilandela lomqeshi oxelwe kwisiqendu (b);
- “**ishishini**” lishishini elixelwe kwisiqendu 9; 35
- “**ukucoca**”, mayela nembewu, kukususa ezinye izinto nezinye iimbewu kwizinto zokwandisa izityalo, nokuba zisuswa ngezandla okanye ngomatshini, ukuze kuvele ukuba semgangathweni kwayo;
- “**ukulungisa imeko**”, mayela nezinto zokwandisa izityalo zodidi lwesityalo—
- (a) kukucocwa, kukomiswa, kukwambathiswa, kukuhlelwa okanye ukupakishwa kwento; 40
- (b) kukuvavanywa ukuba ingamila kusini na nokuba namandla kwayo; okanye
- (c) ukwenza nayiphi na enye into efana naleyo, ngenjongo yokuyilungiselela ukulinywa nokuthengiswa;
- “**icandelo**”, mayela nodidi olungeniswe kuluhlu lwelizwe lonke okanye kuluhlu lweendidi lwengingqi, licandelo elixelwe kwisiqendu 33 emalisetenyizwe ngamaxesha onke ngokumayela nezityalo nezinto zokwandisa izityalo zodidi olo; 45
- “**iSebe**” liSebe eliphathiswe ulimo;
- “**igunya elimiselweyo**” ligunya elixelwe kwisiqendu 45(6)(a);
- “**umqeshwa**” linentsingiselo elinikwe yona kwisiqendu 1 se*Public Finance Management Act* ka-1994 (iSihlokomiso 103 sika-1994), kodwa aliquki umqeshwa oxelwe ekuchazweni kwegama elithi umvelisi; 50
- “**uhlobo lwesityalo**” liqela lezityalo zohlobo olunye;
- “**ilebhile**” liphethshana, iplastiki okanye ilaphu eliqhotyoshelwe kwesityalo okanye kwesityalo ekubhalwe kulo ingcombolo efunekayo ngesityalo eso nemvelaphi yaso okanye izinto zokwandisa izityalo ezikwisitya; lize elithi “**ukubeka ilebhile**” okanye “**ebekwe ilebhile**” libe nentsingiselo ekwanye; 55

- “**mark**” means the written or printed identification of the plant on a marker or of the contents of a container on a label affixed to such container; and “**marked**” and “**marking**” have a corresponding meaning;
- “**Minister**” means the Minister responsible for agriculture;
- “**national listing**” means the inclusion of a variety denomination in the national varietal list; 5
- “**national varietal list**” means the list kept in terms of section 24;
- “**nursery**” means a business where plants or propagating material is propagated and grown for sale;
- “**pack**” means to pack propagating material or cause it to be packed into containers which are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; 10
- “**plant**” includes any part of a plant;
- “**premises**” means premises contemplated in section 10;
- “**pre-pack**” means to pack propagating material into containers of limited size mostly for sale at retail outlets, which complies with the prescribed requirements, in the mass or quantity prescribed in respect thereof, the containers being in compliance with the prescribed requirements, sealed and branded, marked or labelled in the prescribed manner with the prescribed information; 15
- “**prescribed**” means prescribed by regulation; 20
- “**propagating material**” means any reproductive or vegetative material of a plant from which, whether alone or in combination with other parts or products of that plant, another plant with the same characteristics can be produced;
- “**regional varietal list**” means the regional varietal list maintained by the designated institution of the Southern African Development Community; 25
- “**Registrar**” means the person contemplated in section 3(1);
- “**regulation**” means a regulation made in terms of section 58;
- “**scheme**” means a certification or other scheme established in terms of section 45;
- “**sell**” includes—
- (a) agree to sell or to offer, keep, expose, send, convey or deliver for sale; and 30
- (b) to exchange or to otherwise dispose of to any person in any manner;
- “**this Act**” includes the regulations;
- “**trademark**” means a registered trademark in terms of the Trade Marks Act, 1993 (Act No. 194 of 1993);
- “**variety**” means any plant grouping within a single botanical taxon of the lowest known rank, which grouping can be— 35
- (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 40
- (c) considered as a unit with regard to its suitability for being propagated unchanged. 45

## CHAPTER 1

### APPLICATION OF ACT

#### Application of Act 45

2. (1) This Act applies to such kinds of plants for agricultural, industrial and forestry production as the Minister may declare by notice in the *Gazette* for the purposes of this Act.

(2) Any person who desires to have a kind of plant declared in terms of subsection (1) must submit an application with the Registrar in the prescribed manner. 50

- “**ilabhoratri**” yindawo ezivavanywa kuyo izityalo nezinto zokwandisa izityalo, zicubungulwe ubunjani bazo okanye ukuba zinazo kusini na izinambuzane ukuze zisuswe ngomvuzo okanye zibekwe uphawu nelebhile ngenjongo yokuthengiswa;
- “**uphawu**” lufaniso olubhaliweyo okanye oluprintiweyo lwesityalo kwiphethshana okanye kokungaphakathi kwisitya kwilebhile enanyathiselwe kweso sitya; lize elithi “**ephawuliweyo**” nelithi “**ukuphawula**” libe nentsingiselo ekwanye; 5
- “**uMphathiswa**” nguMphathiswa ophathiswe ulimo;
- “**ukufakwa kuluhlu lwelizwe lonke**” kukufakwa kwecandelo lodidi kuluhlu lwelizwe lonke lweendidi;
- “**uluhlu lweendidi lwezwe lonke**” luluhlu olugcinwe ngokwesiqendu 24; 10
- “**indawo yemveliso-zityalo**” lishishini ekuveliswa kulo izityalo zize zithengiswe;
- “**ukupakisha**” kukupakisha izinto zokwandisa izityalo okanye wenze ukuba zipakishwe kwizitya ezitywiniweyo zaza zabhalwa, zaphawulwa okanye zabekwa ilebhile ngendlela efunekayo nangengcombolo efunekayo;
- “**isityalo**” siquka nayiphi na inxalenye yesityalo; 15
- “**indawo yeshishini**” yindawo exelwe kwisiqendu 10;
- “**ukupakisha kusengaphambili**” kukupakisha izinto zokwandisa izityalo kwizitya ezibukhulu bulinganisweyo ubukhulu becala izezokuthengiswa ezivenkileni, zibe zihambisana neemfuneko, zibubunzima obufunekayo, izitya zibe zihambisana neemfuneko ezixeliweyo, zatywinwa, zabhalwa, zaphawulwa okanye zabekwa ilebhile ngendlela efunekayo, zinengcombolo efunekayo; 20
- “**efunekayo**” ithetha efunwa ngummiselo;
- “**izinto zokwandisa izityalo**” zizo naziphi na izinto ezivelisayo okanye ezibumfuno zesityalo ekunokuthi kuso kuveliswe esinye isityalo esineempawu ezifanayo, nokuba ikwenza oko iyodwa okanye idityanise nezinnye iinxalenye okanye ezinye iimveliso zeso sityalo; 25
- “**uluhlu lweendidi lwengingqi**” luluhlu lweendidi lwengingqi olugcinwe ngumbutho omiselweyo weSouthern African Development Community;
- “**uMgcini-zifayile**” ngumntu oxelwe kwisiqendu 3(1);
- “**ummiselo**” ngummiselo owenziwe ngokwesiqendu 58; 30
- “**iqumrhu**” liqumrhu elikhupha iziqinisekiso okanye elinye iqumrhu elisekwe ngokwesiqendu 45;
- “**ukuthengisa**” kuquka—
- (a) ukuvuma ukuthengisa, ukugcina, ukubhenca, ukuthumela, ukuhambisa into ethengiswayo; 35
- (b) nokwananisa okanye ukuyinika omnye umntu nangayiphi na indlela;
- “**lo Mthetho**” uquka imimiselo;
- “**uphawu lorhwebo**” luphawu lorhwebo olubhalisiweyo ngokwe*Trade Marks Act 1993* (Umthetho 194 ka-1993);
- “**udidi**” lilo naliphi na iqela lezityalo elikudidi olunye kolona didi luphantsi lwaziwayo, qela elo— 40
- (a) elinokuchazwa ngokuxelwa kweempawu ezibangelwa ludidi oluthile okanye indibaniselwano yeendidi;
- (b) elinokwahlulwa kwelinye iqela lezityalo ngophawu olunye ubuncinane kwezinye iimpawu; 45
- (c) elinokujongwa njengembumba ngokuqhubeka kwalo ngokuhanjiswa lungaguqakanga.

## ISAHLUKO 1

### UKUSETYENZISWA KWALO MTHETHO

#### Ukusetyenziswa kwalo Mthetho 50

2. (1) Lo Mthetho usebenza kwezo zityalo zolimo, zorhwebo nokuveliswa kwamahlathi anokuthi uMphathiswa azibhengeze ngesihlokomiso kuShicilelo-Mithetho ngenjongo yokusebenza kwalo Mthetho.

(2) Nawuphi na umntu onqwenela ukuba uhlobo oluthile lwesityalo lubhengezwe ngokwesiqendwana (1) makangenise isicelo kuMgcini-zifayile ngendlela efunekayo. 55

**CHAPTER 2****REGISTRAR AND ADMINISTRATION****Designation of Registrar and delegation**

3. (1) Subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and following the recruitment processes prescribed by and in terms of that Act, the Minister must appoint and designate a person as the Registrar of Plant Improvement. 5

(2) The Registrar is the authority to whom the registration of a type of business and premises, national listing, import and export control, schemes and enforcement of quality control is entrusted and must perform the functions entrusted to the Registrar under this Act. 10

(3) The Registrar must appoint such number of technical and administrative persons as are necessary to support him or her in the performance of his or her functions in terms of this Act, following the recruitment procedures of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(4) The Office of the Registrar serves as the National Authority and contact point with the National Authorities of other countries and regional authorities for matters relating to national listing, certification and quality control of plants and propagating material. 15

(5) (a) The Registrar may delegate to any competent employee or, subject to the approval of the Minister, delegate to a person other than an employee, the performance of any function entrusted to the Registrar under this Act. 20

(b) Any decision made or order given by such employee or person must be regarded as having been made by the Registrar.

(c) The Registrar may withdraw or amend any decision or order contemplated in paragraph (b), subject to any rights that may have vested as a consequence of such decision or order. 25

**Exercise of discretionary powers by Registrar**

4. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)—

(a) any discretionary power conferred on the Registrar in terms of this Act, other than the power conferred in terms of section 43(3)(a)(i), must not be exercised by him or her to the prejudice of any applicant or any other person who appears to the Registrar to be an interested party, without giving such applicant or such other person an opportunity to be heard within such period as may be prescribed or, if no period has been prescribed, within such reasonable period as the Registrar may determine; and 30

(b) an applicant or other person referred to in paragraph (a) may not waive the right to be heard. 35

(2) Whenever a period is specified under this Act within which any act or anything must be done, the Registrar may, except where otherwise expressly provided, extend the time. 40

**Register of businesses and premises**

5. (1) The Registrar must keep a register in which the prescribed information and particulars in respect of every business and premises registered in terms of section 12 must be entered.

(2) The register must be open for inspection at the Office of the Registrar. 45

(3) The Registrar must furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register within seven days.

**Register of varieties**

6. (1) The Registrar must keep a register in which the prescribed particulars in respect of all applications for national listing in terms of this Act must be entered. 50

(2) The register must be open for inspection at the Office of the Registrar.

## ISAHLUKO 2

## UMGCINI-ZIFAYILE NOLAWULO

## Ukumiselwa koMgcini-zifayile nokuphathisa

3. (1) Ngokulawulwa yi*Public Finance Management Act* (iSihlokomiso 103 sika-1994), nangokulandela iindlela zokugaya abasebenzi ezifunwa nguloo Mthetho, uMphathiswa makamisele umntu abe nguMgcini-zifayile Wokuphuculwa Kwezityalo. 5

(2) UMgcini-zifayile uligunya eliphathiswe ukubhaliswa kohlobo lweshishini nendawo elikuyo, uluhlu lwelizwe lonke, ukulawulwa kweziodolwa kwamanye amazwe nezithunyelwa kwamanye amazwe, amacebo nokunyanzeliswa kokuba semgangathweni kwezinto, kwaye makenze imisebenzi ephathiswe uMgcini-zifayile ngokwalo Mthetho. 10

(3) UMgcini-zifayile makaqeshe inani labasebenzi eliyimfuneko ukumncedisa ekwenzeni imisebenzi yakhe engokwalo Mthetho, akuba elandele inkqubo yokugaya abasebenzi ye*Public Service Act* (iSihlokomiso 103 sika-1994).

(4) I-Ofisi yoMgcini-zifayile isebenza njengeGunya leZwelonke nanjengendawo yokuhagams shelana namaGunya eZwelonke amanye amazwe namagunya eengingqi ngemicimbi emayela noluhlu lwelizwe lonke, ukukhutshelwa iziqinisekiso nokugcinwa kwezityalo nezinto zokwandisa izityalo zisemgangathweni. 15

(5) (a) UMgcini-zifayile unokuthi ukwenziwa komsebenzi ongowakhe ngokwalo Mthetho akuphathise nawuphi na umqeshwa onobuchule okanye, ngemvume yoMphathiswa, akuphathise umntu ongenguye umqeshwa. 20

(b) Nasiphi na isigqibo okanye umyalelo owenziwe nguloo mqeshwa mawuthathwe njengowenziwe nguMgcini-zifayile.

(c) UMgcini-zifayile unokuthi asitshintshe okanye asirhoxise isigqibo okanye umyalelo oxelwe kwisiqendu (b), kuxhomekeke kumalungelo athe afunyanwa ngumntu ngenxa yeso sigqibo okanye umyalelo. 25

## Igunya loMgcini-zifayile lokusebenzisa okwakhe ukuqonda

4. (1) Ngokulawulwa yi*Promotion of Administrative Justice Act*, 2000 (uMthetho 3 ka-2000)—

(a) igunya lokusebenzisa okwakhe ukuqonda elinikwe uMgcini-zifayile ngokwalo Mthetho, ngaphandle kwegunya alinikwe ngokwesiqendu 43(3)(a)(i), makangalisebenzisi ngendlela emonayo umenzi-sicelo okanye omnye umntu obonakala kuMgcini-zifayile engumntu ochaphazelekayo, engaqalanga wamnika lo menzi-sicelo okanye loo mntu ongomnye ithuba lokumphulaphula kwithuba lexesha elinokuthi liqingqwe, okanye ukuba akuqingqwanga thuba lexesha, kwithuba lexesha elinokubonelela eligqitywe nguMgcini-zifayile; kanaanjalo 30

(b) umenzi-sicelo okanye umntu ongomnye ekuthethwe ngaye kwisiqendu (a) akavumelekanga ukuba angalisebenzisi ilungelo lakhe lokuphulaphulwa. 35

(2) Nanini na xa ngokwalo Mthetho kuxelwe ixesha emalingapheli ingenziwanga into ethile, uMgcini-zifayile unokulolula elo xesha, ngaphandle kwaxa kutshiwo ngokucacileyo ukuba makangaloluli. 40

## Irejista yamashishini neendawo akuzo

5. (1) UMgcini-zifayile makagcine irejista ekubhalwa kuyo ingcombolo neenkukacha ezifunekayo ngeshishini ngalinye elibhaliswe zingekapheli iintsuku ezisixhenxe ngokwesiqendu 12 nendawo elikuyo. 45

(2) Irejista mayibe soloko ilungele ukuhlolwa kwiOfisi yoMgcini-zifayile.

(3) UMgcini-zifayile makamnike ikopi yeenkukacha ezikwirejista nawuphi na umntu ozicelayo, akuba ehlawule umrhumo ofunekayo, emnika zingekapheli iintsuku ezisixhenxe. 50

## Ukubhaliswa kweendidi

6. (1) UMgcini-zifayile makagcine irejista ekubhalwa kuyo iinkukacha ezifunekayo zazo zonke izicelo zokuba kuluhlu lwelizwe lonke ngokwalo Mthetho.

(2) Irejista mayibe soloko ilungele ukuhlolwa kwiOfisi yoMgcini-zifayile.

(3) The Registrar must furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register within seven days.

#### **Register to be evidence**

7. (1) The registers referred to in sections 5 and 6 are *prima facie* evidence of all matters directed or authorised by this Act to be noted therein. 5

(2) A copy of an entry in the register or an extract from the register, certified by the Registrar, may be admitted in evidence in any court without further proof or production of the register.

#### **Inspection of documents submitted in connection with applications for national listing** 10

8. (1) Any person may inspect any document submitted in connection with an application for national listing at a reasonable time and upon payment of a prescribed fee.

(2) The Registrar must furnish the person contemplated in subsection (1), upon payment of a prescribed fee, with a copy of the document contemplated in that subsection within seven days. 15

(3) Notwithstanding subsections (1) and (2) but subject to subsection (4), a person may not—

(a) inspect that part of the document in question that contains information in respect of the name of each variety used in the breeding program and in respect of the manner in which the variety was bred; 20

(b) be furnished with a copy of the part of the document referred to in paragraph (a); or

(c) inspect, or be furnished with a copy of, any other prescribed confidential information. 25

(4) Subsection (3) does not apply to—

(a) the applicant;

(b) the applicant's authorised agent; or

(c) any other person who has to inspect that part of the document or information contemplated in subsection (3) in the course of the performance of a function entrusted to him or her in terms of this Act. 30

### **CHAPTER 3**

#### **REGISTRATION OF BUSINESS AND PREMISES**

##### **Types of business that may be conducted**

9. (1) Any person who desires to conduct one or more of the following types of business relating to plants or propagating material for cultivation or sale, must be registered in terms of this Act and must comply with the prescribed requirements, unless exempted in terms of section 19: 35

(a) The cleaning and conditioning of seed;

(b) the pre-packing of seed; 40

(c) the selling of seed;

(d) the running of a nursery or any other type of multiplication facility;

(e) the running of a laboratory;

(f) the importation of plants or propagating material; or

(g) the export of plants or propagating material. 45

(2) A person may not conduct a type of business referred to in subsection (1) on or from any premises unless—

(a) the premises is registered under this Act; and



(3) UMgcini-zifayile makamnike ikopi yeenkcukacha ezikwirejista nawuphi na umntu ozicelayo, akuba ehlawule umrhumo ofunekayo, zingaphelanga iintsuku ezisixhenxe.

#### **Irejista iza kuba bubungqina**

7. (1) Irejista ekuthethwe ngazo kwisiqendu 5 nsesi-6 zibubungqina 5 kungembiwanga nzulu bazo zonke izinto ekuyalelwe ngulo Mthetho okanye ekugunyaze lo Mthetho ukuba zibhalwe apho.

(2) Ikopi yokubhalwe kwirejista okanye okucatshulwe kwirejista, kwaza kwasethifaywa nguMgcini-zifayile, kunokwamkelwa njengobungqina kuyo nayiphi na inkundla kungabikho mfuneko yobunye ubungqina okanye kungabikho mfuneko 10 yokuza nerejista.

#### **Ukuhlolwa kwamaxwebhu angeniswe kunye nezicelo zokuba kuluhlu lwelizwe lonke**

8. (1) Nawuphi na umntu unokuhlola naluphi na uxwebu olungeniswe kunye nesicelo sokuba kuluhlu lwelizwe lonke ekwenza oko ngexesha elinokubonelela kwaye ehlawule 15 nomrhumo ofunekayo.

(2) UMgcini-zifayile makamnike umntu oxelwe kwisiqendwana (1), ikopi yoxwebhu oluxelwe kweso siqendwana, akuba ehlawule umrhumo ofunekayo, emnika zingaphelanga iintsuku ezisixhenxe.

(3) Kungakhathaliseki ukuba sithini isiqendwana (1) nsesi-(2) kodwa ke 20 ngokulawulwa sisiqendwana (4), umntu akavumelekanga ukuba—

(a) ahlole inxalenye yoxwebhu equlethe ingcombolo engegama lodidi ngalunye olusetyenziswe kwinkqubo yokuvelisa nengendlela olwaveliswa ngayo olo didi;

(b) anikwe ikopi yenxalenye yoxwebhu ekuthethwe ngayo kwisiqendu (a); 25 okanye

(c) ahlole ingcombolo eyenye eyimfihlo okanye anikwe ikopi yayo.

(4) Isiqendwana (3) asisebenzi—

(a) kumenzi-sicelo;

(b) kumthunywa ogunyaziweyo kamenzi-sicelo; okanye 30

(c) nawuphi na omnye umntu ekufuneka ehlole loo nxalenye yoxwebhu okanye ingcombolo exelwe kwisiqendwana (3) ekwenzeni umsebenzi awunikwe ngulo Mthetho.

### **ISAHLUKO 3**

#### **UKUBHALISWA KWESHISHINI NENDAWO ELIKUYO 35**

#### **Iintlobo zamashishini ezinokuqhutywa**

9. (1) Nawuphi na umntu onqwenela ukuqhuba elinye lamashishini alandelayo okanye angaphezu kwelinye kumashishini alandelayo ezityalo okanye ezinto zokwandisa izityalo okanye yukuthengisa, makabhaliswe ngokwalo Mthetho kwaye makahlangabezane neemfuneko ezixeliweyo, ngaphandle kokuba ukhululekile 40 ngokwesiqendu 19:

(a) ukucocwa nokulungiswa kwembewu;

(b) ukupakishwa kusengaphambili kwembewu;

(c) ukuthengiswa kwembewu;

(d) ukuqhutywa kweshishini lokuthengisa izityalo okanye olunye uhlobo 45 lwendawo yokwandisa;

(e) ukuqhutywa kwelaboratri;

(f) ukuodolwa kwezityalo kwamanye amazwe okanye izinto zokwandisa izityalo; okanye

(g) ukuthunyelwa kwezityalo kwamanye amazwe okanye izinto zokwandisa 50 izityalo.

(2) Umntu akavumelekanga ukuba aqhube uhlobo lweshishini ekuthethwe ngalo kwisiqendwana (1) kuyo nayiphi na indawo ngaphandle kokuba—

(a) loo ndawo ibhalisiwe ngokwalo Mthetho; kwaye

- (b) the type of business is specified on the certificate of registration issued in respect of such premises.
- (3) Subject to subsection (2), a person may—
- (a) conduct different types of business referred to in subsection (1) on or from the same premises; and 5
- (b) conduct a type of business referred to in subsection (1) on or from more than one premises,
- as long as the prescribed facilities are available and prescribed practises are employed on the premises in question.
- (4) A person may not conduct a type of business referred to in subsection (1) on or from any premises of which the registration— 10
- (a) has lapsed due to failure to renew the registration in terms of section 17 within the prescribed period; or
- (b) has been terminated by the Registrar in terms of section 20.
- (5) For the purposes of this section, subsection (1)(a) to (c) does not include the cleaning and conditioning, pre-packing and selling of tubers. 15

#### **Premises on or from which business may be conducted**

- 10.** (1) Premises on or from which a type of business referred to in section 9(1) may be conducted, must—
- (a) be registered in terms of this Act and must comply with the prescribed requirements; and 20
- (b) have a valid registration certificate reflecting the correct physical address and any type of business which may be conducted on the premises.
- (2) The person in direct control of the premises must comply with the prescribed requirements when business contemplated in section 9(1) is conducted. 25

#### **Application for registration of business and premises**

- 11.** (1) Any person who desires to register—
- (a) a type of business referred to in section 9(1); and
- (b) the premises on or from which that type of business will be conducted, must apply to the Registrar in the prescribed manner for registration. 30
- (2) A person who desires to register additional premises on or from which he or she wishes to conduct a type of business after registration in terms of section 12 of that type of business and premises on or from which that type of business will be conducted must apply to the Registrar in the prescribed manner for registration of the additional premises. 35
- (3) A person who desires to register an additional type of business in respect of premises after registration in terms of section 12 of a type of business and that premises on or from which the last mentioned type of business will be conducted must apply to the Registrar in the prescribed manner for registration of the additional type of business.
- (4) The name of the business or premises must not be similar to or be liable to cause confusion with the name of another business or premises. 40
- (5) (a) The Registrar must consider an application referred to in subsection (1) and may undertake any investigation or inspection in connection with the application in order to determine compliance with the prescribed requirements.
- (b) Any person applying for registration in terms of subsection (1) must make available to the Registrar for inspection, in the manner and at the time and place determined by the Registrar, the premises and such particulars as may be prescribed. 45
- (6) The Registrar must notify the applicant of any outstanding documentation or information within 21 days of receiving an application in terms of this section.
- (7) The applicant must furnish the Registrar with the documentation or information required by the Registrar within three months of the notification contemplated in subsection (6), failure of which may result in the application being returned to the applicant. 50

#### **Registration of business and premises**

- 12.** (1) The Registrar must register a business and issue a certificate of registration in respect thereof if— 55



- (b) uhlobo lweshishini luxeliwe kwisiqinisekiso sokubhaliswa esikhutshelwe loo ndawo.
- (3) Ngokulawulwa sisiqendwana (2), umntu uvumelekile ukuba—
- (a) aqhube iintlobo ngeentlobo zeshishini ekuthethwe ngazo kwisiqendwana (1) kwindawo enye; nokuba 5
- (b) aqhube uhlobo lweshishini ekuthethwe ngalo kwisiqendwana (1) kwiindawo eziliqela,
- into efunekayo kukuba nje zibe ezo ndawo zixeliweyo ziyafumaneka kananjalo kusetyenziswa iindlela ezimiseliweyo kuloo ndawo.
- (4) Umntu akavumelekanga ukuba aqhube uhlobo lweshishini ekuthethwe ngalo kwisiqendwana (1) kwindawo ekubhaliswa kwayo— 10
- (a) kuphelelweyo ngenxa yokungakuvuseleli ukubhaliswa ngokwesiqendu 17 ngexesha elibekiweyo; okanye
- (b) kuqhawuliweyo nguMgcini-zifayile ngokwesiqendu 20.
- (5) Ngenjongo yokusebenza kwesi siqendu, isiqendwana (1)(a) ukuya ku-(c) asiquki ukucocwa nokulungiswa, ukupakishwa kusengaphambili nokuthengiswa kwemidumba. 15

#### Indawo anokuqhutywa kuzo amashishini

10. (1) Indawo elinokuthi liqhutyelwe kuyo ishishini ekuthethwe ngalo kwisiqendu 9(1)—
- (a) mayibhaliswe ngokwalo Mthetho kwaye mayihlangabezane neemfuneko ezixeliweyo; kwaye 20
- (b) mayibe nesiqinisekiso sokubhaliswa esisebenzayo esibonisa idilesi yendawo echanileyo kunye nohlobo lweshishini olunokuqhutywa kuloo ndawo.
- (2) Umntu ophetheyo kuloo ndawo makahlangabezane neemfuneko ezixeliweyo xa liqhutywa ishishini elixelwe kwisiqendu 9(1). 25

#### Ukwenz' isicelo sokubhaliswa kweshishini nendawo elikuyo

11. (1) Nawuphi na umntu onqwenela ukubhalisa—
- (a) uhlobo lweshishini ekuthethwe ngalo kwisiqendu 9(1); kwaye
- (b) nendawo oluza kuqhutywa kuyo olo hlobo lweshishini, makenz' isicelo kuMgcini-zifayile ngendlela efunekayo ukuze zibhaliswe. 30
- (2) Umntu onqwenela ukubhalisa ezinye iindawo anqwenela ukuqhubela kuzo uhlobo lweshishini emva kokuba ebhalisile ngokwesiqendu 12 olo hlobo lweshishini nendawo eliza kuqhutyelwa kuyo makenz' isicelo kuMgcini-zifayile ngendlela efunekayo sokuba kubhaliswe ezinye iindawo.
- (3) Umntu onqwenela ukubhalisa olunye uhlobo lweshishini emva kokuba ebhalisile ngokwesiqendu 12 makenz' isicelo kuMgcini-zifayile ngendlela efunekayo sokubhaliswa kwamanye amashishini. 35
- (4) Igama leshishini okanye lendawo malingafani negama lelinye ishishini okanye indawo, okanye makungabi nakwenzeka ukuba libhidaniswe negama lelinye ishishini okanye indawo. 40
- (5) (a) UMgcini-zifayile makasiqwalasele isicelo ekuthethwe ngaso kwisiqendwana (1) kwaye angaphanda okanye ahlole ngokumayela nesicelo ukuze aqonde ukuba kuyahlangatyezwana na neemfuneko.
- (b) Nawuphi na umntu owenz' isicelo sokubhaliswa ngokwesiqendwana (1) makathi ngendlela efunekayo, nangexesha eligqitywe nakwindawo egqitywe nguMgcini-zifayile, ayenze indawo ibe nokuhlolwa nguMgcini-zifayile kunye nezinye iinkcukacha ezinokufunwa nguMgcini-zifayile. 45
- (6) (a) UMgcini-zifayile makamazise umenzi-sicelo ngamaxwebhu angekaphileli okanye ngengcombolo engekaphileli zingekapheli iintsuku ezingama-21 esifumene isicelo ngokwesi siqendu. 50
- (7) Umenzi-sicelo makamnike uMgcini-zifayile amaxwebhu okanye ingcombolo efunwa nguMgcini-zifayile zingekapheli iinyanga ezintathu azisiwe ngokwesiqendwana (6), kunokuthi ke xa engakwenzi oko isicelo sakhe sibuyiselwe kuye umenzi-sicelo. 55

#### Ukubhaliswa kweshishini nendawo elikuyo

12. (1) UMgcini-zifayile makalibhalise ishishini aze alikhuphele isiqinisekiso sokubhaliswa ukuba—

- (a) it is a type of business contemplated in section 9(1);
  - (b) the practices employed in the business in question are in compliance with the prescribed requirements; and
  - (c) the prescribed facilities for the type of business in question are available on or at the relevant premises. 5
- (2) The Registrar must register premises and issue a certificate of registration in respect thereof within 21 days if—
- (a) the premises complies with the prescribed requirements;
  - (b) the prescribed facilities for the business in question are available at the premises; 10
  - (c) the person in direct control of the premises has sufficient knowledge of the practices to be employed in the operation of the business and of the relevant provisions of this Act;
  - (d) in the case of a laboratory and multiplication facility, the responsible official of the technical operations at such premises is in possession of the prescribed qualifications, has sufficient knowledge of the practices to be employed in those operations and has sufficient knowledge of the relevant provisions of this Act; and 15
  - (e) the premises comply with such other requirements as may be prescribed.
- (3) The certificates of registration of a business and premises are not transferable. 20

#### **Refusal of registration of business and premises**

**13.** (1) The Registrar must refuse to register a business if one or more of the requirements set out in section 12(1) are not complied with.

(2) The registrar must refuse to register premises if one or more of the requirements set out in section 12(2) are not complied with. 25

(3) If the Registrar refuses an application for registration in terms of subsection (1) or (2), the Registrar must, within 21 days of the date of the refusal, notify the applicant of the refusal and furnish written reasons to the applicant for such refusal.

#### **Period of registration**

**14.** (1) The registration of a type of business is valid from the date of issue of the certificate of registration in terms of section 12(1) until the date of termination by the person in whose name the type of business was registered or termination of registration by the Registrar in terms of section 20, whichever date is earlier. 30

(2) The registration of premises is valid for a period of three years from the date of issue of the certificate of registration in terms of section 12(2) or until termination by the person in whose name premises was registered or termination by the Registrar in terms of section 20, whichever date is earlier. 35

#### **Notification of change of circumstances**

**15.** (1) The person in whose name a type of business and premises has been registered in terms of section 12 must notify the Registrar in writing if there is any change with regard to any information which was submitted in respect of the application for the issue of the certificates of registration referred to in that section within 30 days of the date of change. 40

(2) The Registrar must—

- (a) consider the notice referred to in subsection (1); 45
- (b) inspect the premises if necessary;
- (c) update the information in the register contemplated in section 5, and
- (d) issue a new certificate if the change so requires.

#### **Application for renewal of registration of premises**

**16.** (1) The person to whom a certificate of registration has been issued in terms of section 12(2) must apply for the renewal of the registration before or on the date of expiry of the certificate in the prescribed manner. 50

- (a) liluhlobo lweshishini oluxelwe kwisiqendu 9(1);
- (b) iindlela ekuqhutywa ngazo kwelo shishini ziyahambelana neemfuneko ezixeliweyo; kwaye
- (c) izinto ezifunekayo zolo hlobo lweshishini ziyafumaneka kwindawo efanelekileyo. 5
- (2) UMgcini-zifayile makayibhalise indawo aze ayikhuphele isiqinisekiso sokubhaliswa zingekapheli iintsuku ezingama-21 ukuba—
- (a) loo ndawo iyahambelana nemfuneko ezixeliweyo;
- (b) izinto ezifunekayo zelo shishini ziyafumaneka kuloo ndawo;
- (c) umntu ophetheyo kuloo ndawo unolwazi olwaneleyo lweendlela eziza kusetyenziswa ekuqhutyweni kweshishini kananjalo enolwazi olwaneleyo lokutshiwo ngulo Mthetho; 10
- (d) xa kuyilabhoratri nendawo yokwandisa, igosa lemisebenzi eyenziwayo apho kuloo ndawo linayo imfundo efunekayo, linolwazi olwaneleyo lweendlela eziza kusetyenziswa kuloo misebenzi, kwaye linolwazi olwaneleyo lokutshiwo ngulo Mthetho; kwaye 15
- (e) indawo leyo iyahlangabezana nezinye iimfuneko ezinokuthi zixelwe.
- (3) Iziqinisekiso zokubhaliswa kweshishini nendawo azinakudluliselwa komnye umntu.

#### **Ukwala ukubhalisa ishishini nendawo elikuyo** 20

- 13.** (1) UMgcini-zifayile makale ukulibhalisa ishishini ukuba enye yeemfuneko okanye ezinye zeemfuneko ezixelwe kwisiqendu 12(1) akuhlangatyezwana nazo.
- (2) UMgcini-zifayile makale ukuyibhalisa indawo ukuba enye yeemfuneko okanye ezinye zeemfuneko ezixelwe kwisiqendu 12(2) akuhlangatyezwana nazo.
- (3) Ukuba uMgcini-zifayile uyasikhaba isicelo sokubhaliswa ngokwesiqendwana (1) okanye (2), makathi zingaphelanga iintsuku ezingama-21 ukususela kumhla asikhabe ngaso azise umenzi-sicelo ngokusikhaba kwakhe aze amnike izizathu ezibhaliweyo zokusikhaba. 25

#### **Ubude bexesha lokubhaliswa**

- 14.** (1) Ukubhaliswa kohlobo lweshishini kusebenza ukususela kumhla wokukhutshwa kwesiqinisekiso ngokwesiqendu 12(1) kude kube ngumhla wokuqhawulwa ngumntu olwalubhaliswe egameni lakhe uhlobo lweshishini okanye kude kube kukuqhawulwa kokubhaliswa nguMgcini-zifayile ngokwesiqendu 20, kuxhomekeke ekubeni ngowuphi umhla ofika kuqala. 30
- (2) Ukubhaliswa kwendawo kusebenza ithuba leminyaka emithathu ukususela kumhla wokukhutshwa kwesiqinisekiso sokubhaliswa ngokwesiqendu 12(2) okanye kude kuqhawulwe ngumntu eyayibhaliswe egameni lakhe indawo okanye kude kuqhawulwe nguMgcini-zifayile ngokwesiqendu 20, kuxhomekeke ekubeni ngowuphi umhla ofika kuqala. 35

#### **Ukwazisa ngokuguquka kweemeko** 40

- 15.** (1) Umntu elibhaliswe egameni lakhe ishishini nendawo ngokwesiqendu 12 makazise uMgcini-zifayile ngencwadi ukuba kukho inguqu mayela nengcombolo eyayingenisiwe iyeyesicelo sokukhutshelwa iziqinisekiso zokubhaliswa ekuthethwe ngazo kweso siqendu, akwenze oko zingaphelanga iintsuku ezingama-30 yenzekile inguqu. 45
- (2) UMgcini-zifayile—
- (a) makasiqwalasele isaziso ekuthethwe ngaso kwisiqendwana (1);
- (b) makayihlole indawo ukuba kuyimfuneko;
- (c) makenze utshintsho oluhambisana nemeko yangoku kwirejista exelwe kwisiqendu 5; aze 50
- (d) akhuphe isiqinisekiso esitsha ukuba inguqu ifunisa oko.

#### **Ukwenz' isicelo sokuvuselelwa kokubhaliswa kwendawo yeshishini**

- 16.** (1) Umntu okhutshelwe isiqinisekiso ngokwesiqendu 12(2) makenz' isicelo sokuvuselelwa kokubhaliswa ngomhla okanye ngaphambi komhla wokuphelelwa kwaso, ekwenza oko ngendlela efunekayo. 55

(2) If the application for renewal has been lodged before or on the date of expiry in terms of subsection (1), the certificate remains valid until the application for renewal is decided.

#### Approval for renewal of registration of premises

- 17.** (1) The Registrar must renew the registration of a premises if— 5
- (a) the provisions of section 12(2) are complied with; and
  - (b) the prescribed records regarding the plants or propagating material handled at the premises are being kept for the period and in the manner prescribed, and such information in connection therewith as the Registrar may require has been furnished to the Registrar. 10
- (2) The Registrar may renew the registration of premises subject to such conditions as he or she may determine in each case.
- (3) If the Registrar renews the registration of premises, he or she must within 21 days of the decision notify the person who applied for such renewal by issuing a certificate of registration in respect of the premises and enter the relevant details in the register contemplated in section 5. 15
- (4) The renewal of the registration of premises is, subject to earlier termination under this Act, valid for a period of three years from the date of issue of the certificate of registration in terms of this section.
- (5) Section 16 applies with the changes required by the context in respect of the renewal of registration of a certificate issued in terms of this section. 20

#### Refusal for renewal of registration of premises

- 18.** (1) The Registrar must refuse to renew the registration of premises if any of the provisions of section 12(2) are not complied with.
- (2) If the Registrar refuses an application for the renewal of the registration of premises, he or she must, within 21 days of the date of that decision, inform the person who applied for the renewal in writing of his or her decision and the reasons for such decision. 25

#### Exemption from registration

- 19.** (1) The Minister may, by notice in the *Gazette* and on such conditions as he or she may specify in the notice, exempt any type of business from the provisions of section 9 and any premises from the provisions of section 10. 30
- (2) Any person seeking exemption from section 9 or section 10, or both, must submit an application with the Registrar in the prescribed manner.

#### Termination of registration 35

- 20.** (1) The registration of a type of business contemplated in section 9(1) may be terminated—
- (a) by the Registrar upon the written request by the person in whose name the certificate of registration was issued; or
  - (b) by the Registrar if— 40
    - (i) a condition of or a requirement for the registration of a type of business in terms of section 12(1) is no longer complied with;
    - (ii) the person in whose name the certificate of registration was issued, was found guilty of an offence under this Act; or
    - (iii) ordered by a court. 45
- (2) The registration of premises may be terminated—
- (a) by the Registrar upon the written request by the person in whose name the certificate of registration was issued; or
  - (b) by the Registrar if—
    - (i) a condition of or a requirement for the registration of the premises in terms of section 12(2) is no longer complied with; 50

(2) Ukuba isicelo sokuvuselela sifakwe ngaphambi komhla okanye ngawo umhla wokuphelelwa ngokwesiqendwana (1), isiqinisekiso eso siqhubeka sisebenza kude kube kwenziwe isigqibo ngesicelo sokuvuselela.

#### **Ukukwamkela ukuvuselelwa kokubhaliswa kwendawo yeshishini**

**17.** (1) UMgcini-zifayile makakuvuselele ukubhaliswa kwendawo yeshishini 5  
ukuba—

- (a) okutshiwo sisiqendu 12(2) kuyenziwa; kwaye
- (b) namaxwebhu afunekayo angezityalo nolutho lokuhambisa agcinwe kwindawo leyo agcinwe ubude bexesha obufunekayo nangendlela efunekayo, nengcombolo enokuthi ifunwe nguMgcini-zifayile uyinikiwe uMgcini-zifayile. 10

(2) UMgcini-zifayile angakuvuselela ukubhaliswa kwendawo yeshishini ngemiqathango enokuthi igqitywe nguye kwimeko nganye.

(3) Ukuba uMgcini-zifayile uyakuvuselela ukubhaliswa kwendawo yeshishini, makathi zingaphelanga iintsuku ezingama-21 esenzile isigqibo azise umntu ocele oko kuvuselela ngokuthi amkhuphele isiqinisekiso sokuvuselelwa sendawo yeshishini aze abhale iinkcukacha ezifanelekileyo kwirejista exelwe kwisiqendu 5. 15

(4) Ukuvuselelwa kokubhaliswa kwendawo yeshishini kusebenza ithuba eliyiminyaka emithathu ukususela kumhla wokukhutshwa kwesiqinisekiso sokubhaliswa ngokwesi siqendu, kodwa ke kuxhomekeke ekuqhawulweni kwako kwakuqala ngokwalo Mthetho. 20

(5) Isiqendu 16 siyasebenza ekuvuselelweni kwesiqinisekiso sokubhaliswa esikhutshwe ngokwesi siqendu, kubekho nje utshintsho olunokuthi lufuneka.

#### **Ukwala ukuvuselela ukubhaliswa kwendawo yeshishini**

**18.** (1) UMgcini-zifayile makale ukuvuselela ukubhaliswa kwendawo yeshishini 25  
ukuba okutshiwo sisiqendu 12(2) akwenziwa.

(2) Ukuba uMgcini-zifayile uyasikhaba isicelo sokuvuselela ukubhaliswa kwendawo yeshishini, makathi zingaphelanga iintsuku ezingama-21 esenzile eso sigqibo amazise umntu owenze isicelo sokuvuselela emazisa ngokumbhalela isigqibo sakhe, nezizathu zeso sigqibo. 30

#### **Ukukhululeka kwimfuneko yokubhalisa**

**19.** (1) UMphathiswa usenokulukhulula naluphi na uhlobo lweshishini kwiimfuneko ezitshiwo sisiqendu 9 kwaye akhulule indawo yeshishini kwiimfuneko zesiqendu 10, ekwenza oko ngesihlokomiso kuShicilelo-Mithetho nangemiqathango anokuthi ayixele apho kwisihlokomiso. 35

(2) Nawuphi na umntu ofuna ukukhululeka kokutshiwo sisiqendu 9 okanye 10, okanye ofuneka ukukhululeka kokutshiwo zizo zozibini, makangenise isicelo kuMgcini-zifayile ngendlela efunekayo.

#### **Ukuqhawulwa kokubhaliswa**

**20.** (1) Ukubhaliswa kohlobo lweshishini okuxelwe kwisiqendu 9(1) 40  
kungaqhawuwa—

- (a) nguMgcini-zifayile esakufumana isicelo esibhaliweyo somntu esasikhutshwe egameni lakhe isiqinisekiso sokubhaliswa; okanye
- (b) nguMgcini-zifayile ukuba—
  - (i) umqathango okanye imfuneko ethile yokubhaliswa kohlobo lweshishini ngokwesiqendu 12(1) akusahlangatyezwana nayo; 45
  - (ii) umntu esasikhutshwe egameni lakhe isiqinisekiso sokubhaliswa, ufunyenwe enetyala lokona ngokwalo Mthetho; okanye
  - (iii) kuyalewe yinkundla.

(2) Ukubhaliswa kwendawo yeshishini kungapheliswa— 50

- (a) nguMgcini-zifayile esakufumana isicelo esibhaliweyo somntu esasikhutshwe egameni lakhe isiqinisekiso sokubhaliswa; okanye
- (b) nguMgcini-zifayile ukuba—
  - (i) umqathango okanye imfuneko ethile yokubhaliswa kweshishini ngokwesiqendu 12(2) akusahlangatyezwana nayo; 55

- (ii) the person to whom the certificate of registration in respect thereof was issued, has been found guilty of an offence under this Act;
- (iii) the person to whom the certificate of registration in respect thereof was issued ceases to be the owner or occupier of the premises;
- (iv) the premises in question is no longer used for the conduct of the type of business for which it was registered; 5
- (v) the person in direct control of a laboratory or multiplication facility ceases to be employed at the premises without being replaced by a person complying with the requirements;
- (vi) the person to whom the certificate of registration in respect thereof was issued, failed to renew the registration in terms of section 17; or 10
- (vii) ordered by a court.

(3) If the Registrar terminates the registration of a type of business in terms of subsection (1) or premises in terms of subsection (2), the Registrar must, within 21 days of the date of the decision, inform the person to whom the certificate of registration in respect of the type of business or premises was issued and must furnish that person with written reasons for the decision to terminate registration. 15

#### **Display and return of certificate of registration**

**21.** (1) The certificate of registration issued in respect of a type of business and premises must be displayed at all times in a prominent position at the premises and be available for inspection by the Registrar. 20

(2) When the registration of a business and premises has been terminated in terms of section 20, the relevant certificates of registration must be collected by the Registrar within a prescribed period.

### **CHAPTER 4**

25

#### **CONDITIONS FOR SALE OF PLANTS AND PROPAGATING MATERIAL**

##### **Requirements relating to sale of plants and propagating material**

- 22.** (1) Plants and propagating material sold for purposes of cultivation must—
- (a) be of varieties of the kinds of plants contemplated in section 24;
  - (b) be sold under the approved denomination or synonym entered in respect thereof in the national varietal list or regional varietal list, and a qualifying term or reference may be used in conjunction thereof; 30
  - (c) comply with the requirements prescribed in respect of the plant and propagating material in question; and
  - (d) in the case of— 35
    - (i) propagating material, be pre-packed or packed in containers which comply with the prescribed requirements and which are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; or
    - (ii) a plant or batch of plants, be labelled in the prescribed manner with the label containing the prescribed information. 40

(2) Notwithstanding subsection (1), seed mixtures may be sold subject to prescribed requirements.

(3) (a) A person may in writing apply to the Registrar, with the furnishing of reasons, for exemption from compliance with one or more of the requirements set out in subsection (1). 45

(b) In order to enable the Registrar to make a decision on an application in terms of paragraph (a) the Registrar may call for further information from the applicant.

- (c) The Registrar may after considering an application—
- (i) refuse to grant exemption; or 50
  - (ii) in writing grant exemption from compliance with one or more of the requirements set out in subsection (1), subject to such conditions as the Registrar may deem fit.



- (ii) umntu esasikhutshwe egameni lakhe isiqinisekiso sokubhaliswa ufunyaniswe enetyala lokona ngokwalo Mthetho;
  - (iii) umntu esasikhutshwe egameni lakhe isiqinisekiso sokubhaliswa uyayeka ukuba ngumnini wendawo yeshishini okanye uyayeka ukuba lapho kuyo; 5
  - (iv) loo ndawo yeshishini ayisasetyenziselwa ukuqhuba uhlobo lweshishini eyayibhaliselwe lona;
  - (v) umntu ophethe ilabhoratri okanye umatshini wokwandisa uyayeka ukuqeshwa kuloo ndawo yeshishini ize indawo yakhe ingathathwa ngomnye umntu ohlangabezana neemfuneko; 10
  - (vi) umntu owayekhutshelwe isiqinisekiso sokubhaliswa akakuvuselelanga ukubhaliswa ngokwesiqendu 17; okanye
  - (vii) kuyalelwe yinkundla.
- (3) Ukuba uMgcini-zifayile uyakuqhawula ukubhaliswa kohlobo lweshishini ngokwesiqendwana (1) okanye ukubhaliswa kwendawo yeshishini ngokwesiqendwana (2), makathi zingaphelanga iintsuku ezingama-21 esenzile eso sigqibo amazise umntu esasikhutshelwe yena isiqinisekiso sokubhaliswa kohlobo lweshishini okanye sokubhaliswa kwendawo yeshishini, kwaye makamnike loo mntu izizathu ezibhaliweyo zokukuqhawula ukubhaliswa. 15
- Ukuxhonywa kwesiqinisekiso sokubhaliswa nokubuyiswa kwaso** 20
- 21.** (1) Isiqinisekiso sokubhaliswa esikhutshelwe uhlobo lweshishini nendawo yeshishini masisoloko sixhonyiwe kwindawo ebonakalayo kwindawo yeshishini kwaye silungele ukuhlolwa nguMgcini-zifayile.
- (2) Xa ukubhaliswa kweshishini nendawo yeshishini kupheliwe ngokwesiqendu 20, iziqinisekiso zokubhaliswa mazilandwe nguMgcini-zifayile lingaphelanga ixesha elithile elibekiweyo. 25

#### ISAPHLUKO 4

### IMIQATHANGO YOKUTHENGISWA KWEZITYALO NEZINTO ZOKWANDISA IZITYALO

- Imfuneko ezimayela nokuthengiswa kwezityalo nezinto zokwandisa izityalo** 30
- 22.** (1) Izityalo nezinto zokwandisa izityalo ezithengiswa ngenjongo yolimo—
- (a) mazibe ziindidi zeentlobo zezityalo ezixelwe kwisiqu 24;
  - (b) mazithengiswe phantsi kwecandelo elivunyiweyo elingeniswe kuluhlu lwelizwe lonke lweendidi okanye kuluhlu lweendidi lwengingqi, kwaye kunokusetyenziswa imbekiselo echazayo kunye nalo; 35
  - (c) mazihlangabezane neemfuneko ezixeliweyo zeso sityalo nezinto zokwandisa izityalo ukuze kuthi
  - (d) xa—
    - (i) kuzizinto zokwandisa izityalo, zipakishwe kusengaphambili okanye zipakishwe kwizitya ezihambisana neemfuneko ezixeliweyo zaza zatywina zaza zabhalwa, zaphawulwa okanye zanamathiselwa ilebhile ngendlela efunekayo kunye nengcombolo efunekayo; okanye 40
    - (ii) kususityalo okanye isipha sezityalo, zinamathiselwe ilebhile ngendlela efunekayo, ilebhile leyo ibe nengcombolo efunekayo.
- (2) Kungakhathaliseki ukuba sithini isiqendwana (1), imixube yembewu inokuthengiswa ngokulawulwa ziimfuneko ezixeliweyo. 45
- (3) (a) Umntu unokwenz' isicelo esibhaliweyo kuMgcini-zifayile, enika izizathu, sokuba akhululwe ekuhlangabezaneni neny imfuneko okanye neemfuneko eziliqela kwiimfuneko ezixelwe kwisiquendwana (1).
- (b) Ukuze uMgcini-zifayile akwazi ukwenza isigqibo ngesicelo esingokwesiqendu (a) usengacela ingcombolo ebhekele phaya kumenzi-sicelo. 50
- (c) UMgcini-zifayile unokuthi emva kokuba esiqwalasele isicelo—
- (i) ale ukumkhulula umntu; okanye
  - (ii) ngokumbhalela amkhulule ekuhlangabezaneni nemfuneko ethile okanye neemfuneko eziliqela ezixelwe kwisiquendwana (1), kuxhomekeke kwimiqathango anokukubona kufanelekile ukuyibeka uMgcini-zifayile. 55

(d) If any condition referred to in paragraph (c)(ii) is not being complied with, the Registrar may in writing withdraw the exemption in question.

(4) Plants and propagating material contemplated in subsection (1) must be sold from a business and premises registered in terms of this Act, unless exempted from registration in terms of section 19.

5

### Exemptions regarding certain plants and propagating material

23. (1) This Act does not apply to—

- (a) propagating material intended for purposes other than the cultivation thereof;
  - (b) the cleaning and conditioning of propagating material for private and non-commercial purposes by the producer thereof for own use; 10
  - (c) the sale of propagating material by the producer thereof to the person in whose name the certificate of registration in respect to a premises was issued: Provided that—
    - (i) in the case of propagating material certified under a scheme, the containers of the material must be sealed and labelled or marked in accordance with the provisions of the scheme; and 15
    - (ii) in the case of propagating material not certified under a scheme, the name and address of the producer, the kind of plant and the denomination of the variety concerned must be clearly and legibly marked on the container thereof or on a label attached thereto or on an accompanying invoice; or 20
  - (d) non-commercial varieties of the kinds of plants regulated by this Act.
- (2) For the purposes of subsection (1)(d), “non-commercial variety”—
- (a) means an unprotected variety of any kind of plant regulated by this Act that is available for cultivation and sale on such non-commercial scale as may be prescribed; and 25
  - (b) in the case of any kind of plant of which seeds are regulated by this Act, means any open-pollinated variety of that kind of plant.

## CHAPTER 5

### NATIONAL VARIETAL LIST

**National varietal list** 30

24. (1) The Registrar must keep and publish a list of such specific varieties or all varieties of such kinds of plants as may be prescribed.

(2) In cases where specific varieties are listed, the national varietal list must, in respect of a variety, contain the denomination—

- (a) of a variety approved in terms of section 37; 35
- (b) by which a variety is generally known on the date when the kind of plant to which the variety belongs, has been declared as a kind of plant in terms of section 2, if an application has been submitted in terms of section 28 and the variety complies with the requirements contemplated in section 27.

(3) If a variety is known by a synonym approved by the breeder of the variety or a trademark, the Registrar may enter these details in the varietal list in addition to the approved denomination. 40

(4) The Registrar may enter in the varietal list any other particulars regarding a variety referred to in subsection (1) that the Registrar deems necessary.

(5) The varietal list kept in terms of section 15 of the Plant Improvement Act, 1976 (Act No. 53 of 1976), must be incorporated in and must form part of the list kept under this section, and any document, information or other proof furnished to the registrar in terms of that Act must be regarded as having been furnished to the Registrar under the corresponding provision of this Act. 45



(d) Ukuba nawuphi na umqathango ekuthethwe ngawo kwisiqendu (c)ii akuhlangatyezwana nawo, uMgcini-zifayile unokuthi ngokubhala akurhoxise ukukhululwa ekuhlangabezani neemfuneko.

(4) Izityalo nezinto zokwandisa izityalo ezixelwe kwisiqendwana (1) mazithengiselwe kwishishini nendawo yeshishini ebhaliswe ngokwalo Mthetho, ngaphandle kokuba zikhululwe ekubhalisweni ngokwesiqendu 19. 5

#### Ukukhululeka mayela nezityalo ezithile nezinto zokwandisa izityalo

23. (1) Lo Mthetho awusebenzi—

- (a) kwizinto zokwandisa izityalo ezinjongo yazo ingelulo ulimo;
- (b) ekucocweni nasekulungisweni kwezinto zokwandisa izityalo zenjongo yomntu siqu engeyiyo eyorhwebo; 10
- (c) ekuthengisweni kwezinto zokwandisa izityalo ngumvelisi wazo zithengiselwa umntu esasikhutshwe egameni lakhe isiqinisekiso sokubhaliswa, kodwa ke—
  - (i) xa kuzizinto zokwandisa izityalo eziqinisekiswa phantsi kwequmrhu, izitya zezinto zokwandisa izityalo mazitywinwe zize zinamathiselwe ilebhile okanye ziphawulwe ngokwendlela efunwa liqumrhu; kuze kuthi
  - (ii) xa kuzizinto zokwandisa izityalo ezingaqinisekiswa phantsi kwequmrhu, igama nedilesi yomvelisi, uhlobo lwesityalo necandelo lohlobo zibhalwe ngokucacileyo nangokufundekayo kwisitya salo okanye kwilebhile enamathiselweyo okanye kwi-invoyisi ehambisana nalo; 20
- (d) kwiindidi ezingezizo ezorhwebo zeentlobo zezityalo ezilawulwa ngulo Mthetho. 25

(2) Kwisiqendwana (1)(d), elithi “udidi olungelulo olorhwebo”—

- (a) ludidi olungakhuselwanga lwalo naluphi na uhlobo lwesityalo olulawulwa ngulo Mthetho olufumanekela ulimo nokuthengiswa ngokwesilinganiso esingesimo esorhwebo esinokuthi sixelwe; kuze kuthi
- (b) xa kululo naluphi na uhlobo lwesityalo esimbewu yalo ilawulwa ngulo Mthetho, lithethe naluphi na udidi lolo hlobo lwesityalo oluvulekileyo olunemvumvuzelo. 30

### ISAHLUKO 5

#### ULUHLU LWELIZWE LONKE LWEENDIDI

##### Uluhlu lwelizwe lonke lweendidi

24. (1) UMgcini-zifayile makagcine aze apapashe uluhlu lweendidi ezithile okanye zonke iindidi zezityalo ezinokuthi zifuneke. 35

(2) Xa kudweliswe iindidi ezithile, uluhlu lwelizwe lonke lweendidi makuthi, ngodidi ngalunye, kube necandelo—

- (a) lodidi oluvunywe ngokwesiqendu 37;
- (b) olwaziwa ngalo udidi ngomhla xa uhlobo lwesityalo esiphantsi kwalo, luvakaliswe njengohlobo lwesityalo ngokwesiqendu 2, ukuba isicelo singenisiwe ngokwesiqendu 28 kwaye udidi luyahambisana neemfuneko ezixelwe kwisiqendu 27. 40

(3) Ukuba udidi lwaziwa ngecandelo oluvunywe ngumvelisi wodidi okanye uphawu lorhwebo, uMgcini-zifayile unokuzibhala ezi nkukacha kuluhlu lweendidi ukongezelela kwicandelo elivunyiweyo. 45

(4) UMgcini-zifayile unokubhala kuluhlu lweendidi naziphi na ezinye iinkukacha ngodidi ekuthethwe ngalo kwisiqendwana (1) uMgcini-zifayile alubona lufanelekile.

(5) Uluhlu lweendidi olugcinwe ngokwesiqendu 15 se*Plant Improvement Act, 1976* (uMthetho 53 ka-1976), malukwe kwaye lwenziwe inxalenye yoluhlu olugcinwe ngokwesiqendu, kwaye naluphi na uxwebhu, ingcombolo okanye obunye ubungqina obunikwe uMgcini-zifayile ngokwalo Mthetho makuthathwe njengokunikwe uMgcini-zifayile ngokwesiqendu esithetha ngaloo nto salo Mthetho. 50

**Maintenance of propagating material**

**25.** (1) The applicant for listing must ensure that he or she is able for the period that the denomination of the variety is included in the national varietal list, and when requested by the Registrar, to-

- (a) furnish the Registrar with propagating material of the listed variety that is capable of reproducing the variety in question in such a manner that the characteristics of the variety correspond with those described at the time of listing; and 5
- (b) provide the Registrar with the information and access to the relevant facilities to satisfy the Registrar that the applicant is maintaining propagating material that conform with the requirements contemplated in paragraph (a). 10

(2) The Registrar may conduct such inspection, during business hours, in connection with any matter contemplated in subsection (1), as may be necessary in order to confirm compliance with the provisions of that subsection.

**Removal of variety denomination from national varietal list**

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**26.** (1) The Registrar may remove the denomination of a variety from the national varietal list if—

- (a) it is established that the requirement specified in section 27(1)(a) has not been complied with at the time of approval of the variety;
- (b) a requirement specified in section 27(1)(b) or (c) is no longer complied with; 20
- (c) it is in the public interest to remove it;
- (d) the results of an evaluation referred to in section 38 indicate that the use of the variety is not in the public interest;
- (e) the applicant has failed to provide the registrar with information or propagating material considered necessary for verifying the maintenance of the variety within three months of the date on which the registrar requested the information or material in terms of section 25(1); 25
- (f) the applicant has failed to propose within 30 days from the date of notification in terms of section 34(2) another suitable denomination if the denomination of the variety is cancelled after approval of the variety; or 30
- (g) a third party has, in the prescribed format, lodged an application for the removal of a denomination of a variety to the registrar, in the event that—
  - (i) such third party has reason to believe that any of the circumstances contemplated in paragraphs (a) to (d) are present; and
  - (ii) the Registrar, after investigation, is of the view that such circumstances are present. 35

(2) The Registrar must—

- (a) notify the applicant of the variety concerned in writing that removal of the denomination of the variety from the national varietal list is being considered and provide the reasons for such consideration, unless the identity and address is unknown to the Registrar; 40
- (b) request the applicant of the variety concerned to submit reasons in writing within the prescribed period as to why the denomination of the variety should not be removed;
- (c) consider any reasons received pursuant to the notice contemplated in paragraph (a); 45
- (d) make a decision whether or not to remove the denomination of the variety; and
- (e) in the event that he or she decides to remove the denomination of the variety in accordance with subsection (1)—
  - (i) inform the applicant of the variety concerned in writing of the removal and the reasons for the decision; and 50
  - (ii) remove the variety within 60 days in the event that the applicant of the variety concerned does not lodge an appeal to the removal.

(3) The Registrar must remove the denomination of a variety from the national varietal list if ordered by a court or the Minister in terms of section 50. 55

**Ukugcinwa kwezinto zokwandisa izityalo zikwimeko entle**

**25.** (1) Umenzi-sicelo sokuba kuluhlu makaqinisekise ukuba, ngalo lonke ixesha icandelo lodidi liqukiwe kuluhlu lwelizwe lonke lweendidi, naxa ecelwa nguMgcini-zifayile, uyakwazi—

- (a) ukunika uMgcini-zifayile izinto zokwandisa izityalo zodidi olukuluhlu olukwaziyo ukuvelisa udidi ngendlela yokuba iimpawu zodidi zivumelane nezo zichazwe ngexesha lokubekwa kuluhlu; 5
- (b) nokunika uMgcini-zifayile ingcombolo nokufikelela kwiindawo ezifanelekileyo ukuze kwaneliseke uMgcini-zifayile kwinto yokuba umenzi-sicelo ulugcine lukwimeko entle ulutho lokuhambisa oluhambisana neemfuneko ezixelwe kwisiqendu (a). 10

(2) UMgcini-zifayile angahlola ngexesha lomsebenzi ehlola nayiphi na into exelwe kwisiqendwana (1), xa kunokuthi kube yimfuneko ukuze kuqinisekwe ukuba kuyenziwa okufunwa seso siqendwana.

**Ukususwa kwecandelo lodidi kuluhlu lwelizwe lonke lweendidi** 15

**26.** (1) UMgcini-zifayile unokulisusa icandelo lodidi kuluhlu lwelizwe lonke lweendidi ukuba—

- (a) kuthi kufumaniseke ukuba imfuneko exelwe kwisiqendu 27(1)(a) akuhlangatyezwana nayo ngexesha lokwamkelwa kodidi; 20
- (b) imfuneko exelwe kwisiqendu 27(1)(b) okanye (c) akusahlangatyezwana nayo;
- (c) kuya kuba luncedo kuluntu ukuyisusa;
- (d) iziphumo zophononongo ekuthethwe ngazo kwisiqendu 38 zibonisa ukuba ukusetyenziswa kolo didi akuluncedi nganto uluntu;
- (e) umenzi-sicelo woyisakele ukunika uMgcini-zifayile ingcombolo okanye izinto zokwandisa izityalo ezijongwa ziyimfuneko ukuqinisekisa ukugcinwa kodidi lukwimeko entle zingaphelanga iinyanga ezintathu ukususela kumhla awathi ngawo uMgcini-zifayile wayicela ingcombolo okanye izinto zokwandisa izityalo ngokwesiqendu 25(1); 25
- (f) umenzi-sicelo woyisakele ukucebisa ukuba lelipheli elinye icandelo elifanelekileyo ukuba icandelo lodidi lurhoxisiwe emva kokwamkelwa kodidi, ecebisa zingaphelanga iintsuku ezingama-30 ukususela kumhla wokwaziswa ngokwesiqendu 34(2); okanye 30
- (g) umntu ongomnye uthe, ngendlela efunekayo, wafaka isicelo sokususwa kwecandelo lodidi kuMgcini-zifayile, xa— 35
  - (i) loo mntu ongomnye enesizathu sokukholelwa ukuba nayiphi na imeko kwiimeko ezixelwe kwisiqendu (a) ukuya ku-(d) zikho; kwaye
  - (ii) uMgcini-zifayile, emva kophando, unoluvo lokuba ezo meko zikho.

(2) UMgcini-zifayile—

- (a) makamazise umenzi-sicelo ngodidi olo emazisa ngokumbhalela ukuthi ukususwa kwecandelo lodidi kuluhlu lweendidi lwelizwe lonke kuyaqwalaselwa, aze anike izizathu zolo qwalaselo, ngaphandle kokuba umntu lowo kunye nedilesi ziyaziwa nguMgcini-zifayile; 40
- (b) makacele umenzi-sicelo wodidi olo ukuba makaze nezizathu ezibhaliweyo lingekapheli ixesha elibekiweyo exela ukuba kungani na icandelo lodidi lingenakususwa; 45
- (c) makaqwalasele izizathu ezifunyenweyo ezilandela ukwaziswa okuxelwe kwisiqendu (a);
- (d) makenze isigqibo mayela sokuba lisuswe okanye lingasuswa kusini na icandelo lodidi; kuze kuthi 50
- (e) xa egqiba kwelokuba alisuse icandelo lodidi ngokwesiqendwana (1)—
  - (i) amazise umenzi-sicelo ngodidi olo emazisa ngokumbhalela ngokususwa emnika nezizathu zeso sigqibo; aze
  - (ii) alususe udidi zingaphelanga iintsuku ezingama-60 xa umenzi-sicelo engafakanga sibheni ngokususwa kwalo. 55

(3) UMgcini-zifayile makalisuse icandelo lodidi kuluhlu lwelizwe lonke lweendidi ukuba uyalelwa yinkundla okanye nguMphathiswa ngokwesiqendu 50.

## CHAPTER 6

## APPLICATION FOR NATIONAL LISTING

**Varieties eligible for national listing**

27. A variety must be listed if it is—
- (a) clearly distinguishable from any other variety of the same kind of plant which has been included in the national varietal list; 5
  - (b) sufficiently uniform with regard to the characteristics thereof, subject to the variation that may be expected from the particular features of the propagation of that variety;
  - (c) stable in that the characteristics of the variety remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle; and 10
  - (d) identified by a denomination which complies with the provisions of section 33.

**Application for national listing** 15

28. (1) An application for national listing must be made by an applicant in the prescribed manner and must be accompanied by the following duly completed documents and fees—
- (a) An application form obtainable from the office of the Registrar;
  - (b) a technical questionnaire in respect of the kind of plant of the variety in question obtainable from the office of the Registrar; 20
  - (c) written proof of the appointment of an agent by the applicant, if applicable;
  - (d) written proof of the transfer of the variety to the applicant, if applicable; and
  - (e) such application fee and such examination fee as may be prescribed.
- (2) If the applicant is not domiciled and resident in the Republic, the application must be submitted through an agent. 25
- (3) (a) In case of an old variety where the breeder cannot be traced, the applicant must furnish the Registrar with a prescribed declaration.
- (b) Neither the Registrar nor the State is liable for any claim as a result of a declaration submitted in terms of paragraph (a). 30
- (4) The Registrar must notify the applicant of any outstanding documentation or information within 21 days of the date of receiving the application.
- (5) The applicant must furnish the Registrar with any documentation or information required by the Registrar within three months of the date of notification contemplated in subsection (4), failure of which may result in the application being returned to the applicant. 35
- (6) (a) The effective filing date is the date on which the requirements of subsection (1) have been met and any outstanding documentation or information required by the Registrar in terms of subsection (5) has been received.
- (b) Copies of documents referred to in subsection (1)(a) to (d) may be submitted in order to secure a filing date, but the original documents must be submitted to the Registrar within three months of the filing date, failure of which may result in the application to lapse. 40
- (7) In case of a variety that may not be used without prior approval in terms of other legislation, the application must be accompanied by the relevant permit or proof of general release for the variety, as the case may be. 45

**Rejection of application for national listing**

29. (1) The Registrar must reject an application made in terms of section 28, if—
- (a) the applicant is not entitled to make an application under this Act;
  - (b) the application contains a misrepresentation; or 50
  - (c) the applicant refuses, fails to or is not able to propose such an acceptable denomination as may be prescribed.

**ISAPHLUKO 6****ISICELO SOKUBA KULUHLU LWELIZWE LONKE****Iindidi ezikufaneleyo ukuba kuluhlu lwelizwe lonke**

- 27.** Udidi malufakwe kuluhlu ukuba—
- (a) lwahluke ngokucacileyo kolunye udidi lohlobo olufanayo lwesityalo oluthe lwafakwa kuluhlu lweendidi lwelizwe lonke; 5
  - (b) lufana ngokwaneleyo ngeempawu zalo, kuxhomekeke kumahlukwana onokuthi ulindeleke kwezo mpawu zolo didi;
  - (c) luzinzile kuba iimpawu zodidi aziguqkanga emva kokwandiswa okuphindaphindiweyo okanye, xa kungumjikelo othile wolwandiso, 10 ekupheleni kwaloo mjikelo; naxa
  - (d) lufaniswa ngecandelo oluvumelana noko kutshiwo sisiqendu 33.

**Ukwenz' isicelo sokuba kuluhlu lwelizwe lonke**

- 28.** (1) Isicelo sokuba kuluhlu lwelizwe lonke masenziwe ngumenzi-sicelo ngendlela efunekayo kwaye masiphelekwe ngala maxwebhu alandelayo ezaliswe 15 ngokufanelekileyo—
- (a) ifomu yesicelo efumaneka kwiofisi yoMgcini-zifayile;
  - (b) iphepha lemibuzo ngohlobo lwesityalo sodidi elifumaneka kwiofisi yoMgcini-zifayile;
  - (c) ubungqina obubhaliweyo bokumiselwa komthunywa ngumenzi-sicelo, ukuba 20 kuyasebenza oko kule meko;
  - (d) ubungqina obubhaliweyo bokudluliselwa kodidi kumenzi-sicelo, ukuba kuyasebenza oko kule meko; kwakunye
  - (e) nomrhumo ohambisana nesicelo nomrhumo weemviwo onokuthi ufunwe.
- (2) Ukuba umenzi-sicelo akazinzanga kwaye akahlali kwiRiphabliki, isicelo 25 masingeniswe ngomthunywa.
- (3) (a) Xa kuludidi oludala apho ungenakufumaneka umkhondo womvelisi, umenzi-sicelo makanike uMgcini-zifayile amazwi avakalisa oko alungiselelwe loo njongo.
- (b) UMgcini-zifayile noRhulumente abanakubekeka tyala xa kuthi kufunw' 30 imbuyekezo ngenxa yamazwi avakalisa ukungafumaneki komkhondo atshiwo ngokwesiqendu (a).
- (4) UMgcini-zifayile makamazise umenzi-sicelo ngamaxwebhu angekaphileli okanye ngengcombolo engekaphileli zingaphelanga iintsuku ezingama-21 esifumene 35 isicelo.
- (5) Umenzi-sicelo makanike uMgcini-zifayile amaxwebhu okanye ingcombolo efunwa nguMgcini-zifayile zingaphelanga iinyanga ezintathu emazisile ngokwesiqendwana (4), okunokuthi xa engakwenzanga oko kubangele ukuba isicelo sibuyiselwe kumenzi-sicelo.
- (6) (a) Umhla osebenzayo wokufakwa efayileni kwesicelo ngumhla ekuthe 40 kwahlangatyezwana ngawo neemfuneko zesiqendwana (1) aza afumaneka kanaanalo amaxwebhu abengekaphileli okanye ingcombolo ebingekaphileli efunwa nguMgcini-zifayile ngokwesiqendwana (5).
- (b) Iikopi zamaxwebhu ekuthethwe ngawo kwisiqendwana (1)(a) ukuya ku-(d) 45 zinokungeniswa ukuze kufumaneke umhla wokufakwa kwesicelo efayileni, kodwa amaxwebhu ayiorijinali makangeniswe kuMgcini-zifayile zingaphelanga iinyanga ezintathu ukususela kumhla wokufakwa kwesicelo efayileni, okunokuthi ukungenzi njalo kubangele ukuba isicelo siphelile.
- (7) Xa kuludidi olungenakusetyenziswa kungafunyanwanga imvume kuqala ngokokutsho komnye umthetho wepalamente, isicelo masiphelekwe yimvume leyo 50 okanye siphelile kubungqina bokukhululwa okugabalala kodidi.

**Ukukhatywa kwesicelo sokuba kuluhlu lwelizwe lonke**

- 29.** (1) UMgcini-zifayile makasikhabe isicelo esenziwe ngokwesiqendu 28, ukuba—
- (a) umenzi-sicelo akanalungelo lokwenz' isicelo ngokwalo Mthetho;
  - (b) isicelo sinenkohliso; okanye 55
  - (c) umenzi-sicelo uyala, okanye uyoyisakala, okanye akakwazi ukuthi gqi nelinye icebo lecandelo elamkelekileyo.

(2) In the event that the Registrar rejects an application in terms of subsection (1), all fees relating to such application are forfeited.

(3) If the Registrar rejects an application in terms of subsection (1), the Registrar must notify the applicant in writing within 21 days of the date of that decision and state the reasons for rejection. 5

#### **Acceptance and registration of application for national listing**

**30.** (1) If the Registrar accepts the application, the Registrar must register the application and must notify the applicant in writing of the acceptance within 21 days of the date of the registration of the application.

(2) The Registrar must enter the particulars of every application for national listing in the relevant register. 10

#### **Amendment of application for national listing**

**31.** An applicant whose application has been registered in terms of section 30 may, at any time before or after the approval of the variety, apply in the prescribed manner to the Registrar for an amendment of that application, subject to the approval of the Registrar and upon payment of the prescribed fee, if the amendment does not affect the description of the variety which is the subject of the application. 15

#### **Objection to application for national listing**

**32.** (1) Any person may lodge an objection with the Registrar in respect of an application for national listing following the publication of the information regarding the application in terms of section 40 within 60 days from the date of publication. 20

(2) The Registrar must within 14 days of the date of the receipt of an objection inform the applicant concerned in writing of the objection and provide the applicant with a copy of the objection.

(3) The applicant may lodge a counter-statement against the objection with the Registrar within 60 days of the date of receiving the information. 25

### **CHAPTER 7**

#### **VARIETY DENOMINATIONS**

##### **Denomination of variety**

**33.** (1) An applicant for national listing must, subject to the approval of the Registrar, propose a denomination that complies with the prescribed requirements. 30

(2) No denomination other than the denomination and synonym approved by the Registrar in terms of subsection (1) may be used in connection with the variety in question.

(3) Subsection (2) does not prohibit the proprietor or other registered user of a trademark to use such trademark in conjunction with the denomination which has been entered in the national varietal list, if such trademark is clearly distinguishable from the variety denomination. 35

(4) A variety must be submitted to the Registrar under the same denomination as the denomination by which it is known in any other country, unless the Registrar considers that denomination unacceptable in accordance with recognised international and regional rules, in which case the applicant must submit an alternative denomination. 40

(5) If a variety is known by more than one denomination, the applicant must indicate the preferable denomination to be listed as the main denomination and the Registrar may include the other denomination as a synonym. 45

##### **Amendment of denomination**

**34.** (1) The Registrar must amend the denomination approved in respect of a variety in terms of section 33, if—

(a) ordered by a court on application by a person who in law has a preferential claim to the use of the denomination in question; 50



(2) Xa uMgcini-zifayile ethe wasikhaba isicelo ngokwesiqendwana (1), yonke imirhumo yeso sicelo kuyaphulukwana nayo.

(3) Ukuba uMgcini-zifayile uyasikhaba isicelo ngokwesiqendwana (1), makazise umenzi-sicelo ngokumbhalela zingaphelanga iintsuku ezingama-21 esenzile eso sigqibo aze axele izizathu zokusikhaba.

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#### **Ukwamkelwa nokubhaliswa kwesicelo sokuba kuluhlu lwelizwe lonke**

**30.** (1) Ukuba uMgcini-zifayile uyasamkela isicelo, makasibhalise isicelo aze azise umenzi-sicelo ngokumbhalela emazisa ngokwamkelwa kwaso zingaphelanga iintsuku ezingama-21 sibhalisiwe isicelo.

(2) UMgcini-zifayile makazifake kwirejista efanelekileyo iinkcukacha zesicelo ngasinye sokuba kuluhlu lwelizwe lonke.

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#### **Ukwenziwa kotshintsho kwisicelo sokuba kuluhlu lwelizwe lonke**

**31.** Umenzi-sicelo osicelo sakhe sibhalisiweyo ngokwesiqendu 30 unokuthi, nanini na ngaphambi okanye ngemva kokwamkelwa kodidi, enze isicelo ngendlela efunekayo esibhekisa kuMgcini-zifayile sokuba kwenziwe utshintsho kweso sicelo, kodwa ke kuxhomekeke ekubeni uMgcini-zifayile uyavuma na kwaye uhlawulwe nomrhumo ofunekayo, ukuba utshintsho olo alukuchaphazeli ukuchazwa kodidi oluyeyona nto engumxholo weso sicelo.

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#### **Ukuchaswa kwesicelo sokuba kuluhlu lwelizwe lonke**

**32.** (1) Nawuphi na umntu unokufak' isichaso kuMgcini-zifayile ngesicelo sokuba kuluhlu lwelizwe lonke emva kokuba kupapashwe ingcombolo engeso sicelo ngokwesiqendu 40, ekwenza oko zingaphelanga iintsuku ezingama-60 ipapashiwe.

(2) UMgcini-zifayile makathi zingaphelanga iintsuku ezili-14 esifumene isichaso amazise umenzi-sicelo ngaso ngokumbhalela aze amnike ikopi yesichaso eso.

(3) Umenzi-sicelo uvumelekile ukuba asiphikise isichaso kuMgcini-zifayile zingaphelanga iintsuku ezingama-60 eyifumene loo ngcombolo.

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### **ISAHLUKO 7**

#### **AMACANDELO EENDIDI**

##### **Icandelo lodidi**

**33.** (1) Umntu owenz' isicelo sokuba kuluhlu lwelizwe lonke makathi gqi necandelo elihlangabezana neemfuneko ezixeliweyo, kodwa kuxhomekeke kwimvume yoMgcini-zifayile.

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(2) Akukho candelo elinokusetyenziselwa udidi ngaphandle kwecandelo nesithethanto-nye ezamkelwe nguMgcini-zifayile ngokwesiqendwana (1).

(3) Isiqendwana (2) asimaleli umnini okanye omnye umsebenzisi obhalisiweyo wophawu lorhwebo ukuba alusebenzise olo phawu lorhwebo kunye necandelo elingeniswe kuluhlu lweendidi lwelizwe lonke, ukuba olo phawu lorhwebo lwahluke ngokucacileyo kwicandelo lodidi.

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(4) Udidi malungeniswe kuMgcini-zifayile ngaphantsi kwecandelo elikwalinye necandelo elaziwa ngalo kwelinye ilizwe, ngaphandle kokuba uMgcini-zifayile ulibona elo candelo lingamkelekanga ngokwemigaqo evunyiweyo yamazwe ngamazwe neyeengingqi, ekuya kuthi xa kunjalo umenzi-sicelo aquke nelinye icandelo elo njengesithethanto-nye.

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(5) Ukuba udidi lwaziwa ngamacandelo aliqela, umenzi-sicelo makabonise icandelo alikethayo emalidweliswe njengecandelo eliyintloko aze uMgcini-zifayile awabhale amanye amacandelo njengathethanto-nye.

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##### **Ukwenziwa kotshintsho kwicandelo**

**34.** (1) UMgcini-zifayile makenze utshintsho kwicandelo elivunyiweyo lodidi ngokwesiqendu 33, ukuba—

(a) uyalelwa yinkundla kusakwenziwa isicelo ngumntu onebango elivakalayo kunomnye ngokwasemthethweni lokusebenzisa elo candelo;

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- (b) the information submitted to the Registrar in the application for the approval of, or in connection with, the denomination in question was incorrect and such denomination would not have been approved had the Registrar known at the time of the application that such information was incorrect; or
- (c) information comes to light which, if discovered earlier, would have resulted in the refusal of such denomination. 5
- (2) (a) If an amendment becomes necessary on any ground referred to in subsection (1), the Registrar must notify the relevant applicant accordingly in writing within 21 days and must give the reasons in the notice why the amendment is necessary.
- (b) The applicant must submit proposals in writing to the registrar for an alternative denomination within 30 days from the date of receipt of the notice referred to in paragraph (a). 10
- (3) An applicant may request the Registrar in the prescribed manner at any time before the approval of the variety for national listing to amend the approved denomination. 15
- (4) The Registrar must consider the request referred to in subsection (3) and must notify the applicant of his or her decision and provide the reasons for the decision if rejected, in writing within 21 days of the date on which the request was received.
- (5) Any person may lodge an objection in the prescribed manner and within the prescribed period against an intended amendment of a variety denomination. 20

## CHAPTER 8

### EXAMINATION FOR DISTINCTNESS, UNIFORMITY AND STABILITY

#### Tests and trials

35. (1) The Registrar must, in order to enable him or her to determine whether a variety in respect of which an application has been accepted, is distinct, uniform and stable in accordance with section 27—
- (a) undertake or cause to be undertaken such tests and trials as may be necessary; or
- (b) use the results of tests and trials obtained from the appropriate authority in another country. 30
- (2) (a) The applicant must furnish the Registrar within the prescribed period with such material as may be prescribed.
- (b) The Registrar may grant an extension to the applicant from compliance with paragraph (a) for a period not exceeding the initial prescribed period.
- (c) An application for extension contemplated in paragraph (b) must be submitted to the Registrar in writing and must— 35
- (i) set out reasons for the request of an extension; and
- (ii) in the event of imported plant material, include prescribed proof that the plant material has been imported into the Republic.
- (d) An application in terms of section 28 lapses if the material contemplated in paragraph (a) is not furnished to the Registrar within the prescribed period or the extended period, as the case may be. 40
- (3) If an objection has been lodged against an application for national listing in terms of section 32, the Registrar may terminate all actions performed in accordance with subsection (1)(a) or (b) in the event that such objection is upheld. 45

#### Refusal for national listing

36. (1) The Registrar must refuse the approval of a variety for national listing if—
- (a) after examining the results of any tests or trials conducted in terms of section 35(1) in respect of the variety in question, the requirements specified in section 27 have not been met; 50
- (b) it is in the public interest to do so; or
- (c) the Registrar, after an evaluation in terms of section 38, decides that the variety is undesirable for use.
- (2) If the results from the tests or trials conducted in terms of section 35(1) indicate that two or more varieties in respect of which different applications have been registered 55



- (b) ingcombolo engeniswe kuMgcini-zifayile kwisicelo sokuvunywa kwecandelwa ibingachananga kwaye elo candelo ngelingavunywanga ukuba uMgcini-zifayile ebesazi ngexesha lokwenziwa kwesicelo ukuba loo ngcombolo ayichananga;
- (c) kuvela ingcombolo ebiya kuthi, ukuba ibibhaqwe kwakuqala, ibangele ukuba laliwe icandelo. 5
- (2) (a) Ukuba ukwenziwa kotshintsho kuthi kube yimfuneko ngaso nasiphi na isizathu ekuthethwe ngaso kwisiqendwana (1), uMgcini-zifayile makazise umenzi-sicelo ngako oko ngokumbhalela zingaphelanga iintsuku ezingama-21 kwaye axele izizathu zokuba kungani ukwenziwa kotshintsho kuyimfuneko. 10
- (b) Umenzi-sicelo makabhale incwadi eyibhekisa kuMgcini-zifayile ecebisa ngacandelo limbi zingaphelanga iintsuku ezingama-30 ekufumene ukwaziswa okungokwesiqendu (a).
- (3) Umenzi-sicelo unokucela uMgcini-zifayile ngendlela efunekayo nangaliphi na ixesha ngaphambi kokuba luvunywe udidi lokuba kuluhlu lwelizwe lonke, ecela ukuba kwenziwe utshintsho kwicandelo elivunyiweyo. 15
- (4) UMgcini-zifayile makasiqwalasele isicelo ekuthethwe ngaso kwisiqendwana (3) aze azise umenzi-sicelo ngesigqibo sakhe aze anike izizathu zesigqibo ukuba sikhathiwe, ekwenza oko ngokumbhalela zingaphelanga iintsuku ezingama-21 ukususela kumhla esafunyanwa ngawo isicelo. 20
- (5) Nawuphi na umntu angavakalisa ukuchasa ngendlela efunekayo, lingaphelanga ixesha elimiselweyo, echasa utshintsho olucetywa ukwenziwa kwicandelo lodidi.

## ISAHLUKO 8

### UKUPHONONONGWA UKUBA LWAHLUKILE, LUYAFANA, LUZINZILE KUSINI NA 25

#### Iimvavanyo

- 35.** (1) Ukuze akwazi ukuqonda ukuba udidi ekwamkelwe isicelo salo lwahlukile, luyafana kwaye luzinzile ngokwesiqendu 27, uMgcini-zifayile—
- (a) makenze iimvavanyo okanye afune omnye ukuba azenze njengoko kunokuthi kube yimfuneko; okanye 30
- (b) asebenzise iziphumo zeemvavanyo ezifumaneka kwigunya elifanelekileyo kwelinye ilizwe.
- (2) (a) Umenzi-sicelo makanike uMgcini-zifayile izinto ezinokuthi zifuneke, ekwenza oko lingekapheli ixesha elimiselweyo.
- (b) UMgcini-zifayile unokumolulela ixesha umenzi-sicelo ekwenzeni oko kufunwa sisiqendu (a), kodwa kungabi lixesha elide ukugqitha ixesha lakuqala ebelimiselwe. 35
- (c) Isicelo sokolulelwa ixesha esixelwe kwisiqendu (b) masingeniswe kuMgcini-zifayile sibhaliwe kwaye—
- (i) masixele izizathu sokucela ukolulelwa ixesha; size
- (ii) xa kuyimpahla eodolwe kwelinye ilizwe, sihambisane nobungqina obufunekayo bokuba impahla leyo iodwe ukuba ingene kwiRiphabliki. 40
- (d) Isicelo esingokwesiqendu 28 siyaphelelwa ukuba izinto ezixelwe kwisiqendu (a) azinikwa uMgcini-zifayile ngexesha elimiselweyo okanye eloluliweyo.
- (3) Ukuba kufakwe isichaso esichasa isicelo sokuba kuluhlu lwelizwe lonke ngokwesiqendu 32, uMgcini-zifayile unokuziyekisa zonke izenzo ezenziwa ngokwesiqendwana (1)(a) okanye (b) xa kunokwenzeka ukuba eso sichaso kuvunyelwane naso. 45

#### Ukwalelwa ukuba kuluhlu lwelizwe lonke

- 36.** (1) UMgcini-zifayile makale ukuluvuma udidi lokuba kuluhlu lwelizwe lonke ukuba— 50
- (a) emva kokuhlola iziphumo zeemvavanyo eziqhutywe ngokwesiqendu 35(1) zolo didi, iimfuneko ezixelwe kwisiqendu 27 akuhlangatyezwananga nazo;
- (b) akuyi kulunceda nganto uluntu ukwenza njalo; okanye
- (c) emva kokuhlola-hlola ngokwesiqendu 38, uMgcini-zifayile ugqiba kwelokuba olo didi alunqweneleki ukuba lusetyenziswe. 55
- (2) Ukuba iziphumo zeemvavanyo eziqhutywe ngokwesiqendu 35(1) zibonisa ukuba iindidi ezimbini okanye ezingaphezu koko ekuthe kwabhaliswa izicelo ngazo

in terms of section 30 cannot be distinguished, the registrar must approve the variety of the applicant whose application—

(a) was submitted first in time; or

(b) of which the filing date complies with section 28(1), whichever is earlier.

(3) (a) The Registrar must inform any applicant contemplated in subsection (1) or (2) in writing of the Registrar's decision and of the reasons for the refusal. 5

(b) The Registrar must in respect of each variety which is refused, enter the applicable particulars in the register contemplated in section 6.

#### Approval for national listing

37. (1) The Registrar must approve national listing in respect of a variety applied for if, subject to section 36(2) and after tests and trials contemplated in section 35(1) and evaluation contemplated in section 38, that variety conforms to the requirements specified in section 27. 10

(2) The Registrar must notify the applicant in writing within 90 days of the approval of each variety. 15

(3) The Registrar must, in respect of each variety which is approved, enter the applicable particulars referred to in section 24 in the national varietal list and the particulars referred to in section 6 in the register.

### CHAPTER 9

#### VALUE FOR CULTIVATION AND USE 20

##### Evaluation of variety for value, cultivation and use

38. (1) The Registrar may, in cases where the value for cultivation and use of a variety is doubtful, evaluate that variety in the prescribed manner in order to determine its value.

(2) For the purposes of subsection (1), the Registrar may evaluate—

(a) any variety in respect of which an application for national listing has been accepted in terms of section 30; or 25

(b) any variety which has been listed in the national varietal list.

(3) The prescribed quantity of plants or prescribed mass of propagating material of the variety in question required for the purposes of the evaluation must be supplied to the Registrar by the applicant at the prescribed time and prescribed place. 30

(4) The Registrar may, in order to enable him or her to evaluate a variety—

(a) examine the variety in the manner which he or she deems appropriate;

(b) cause the variety to be examined; or

(c) obtain results of an evaluation conducted on that variety.

(5) The Registrar may, as a result of the evaluation of a variety— 35

(a) approve or refuse the variety for national listing; or

(b) retain or remove the variety from the national varietal list.

(6) If the Registrar decides to refuse or remove a variety from the national varietal list, he or she must notify the applicant in writing within 21 days of the date of the decision and the reasons for the decision. 40

(7) If plants or propagating material cannot be supplied in terms of subsection (3), the Registrar must—

(a) in the case of a variety referred to in subsection (2)(a), refuse the application for national listing of the variety; or

(b) in the case of a variety referred to in subsection (2)(b), remove the variety from the national varietal list. 45

ngokwesiqendu 30 akukwazeki ukuzahlula kwezinye, uMgcini-zifayile makalwamkele udidi lomenzi-sicelo osicelo sakhe—

(a) saba sesokuqala ukungeniswa; okanye

(b) umhla waso wokufakwa efayileni uyahlangabezana nokufunwa sisiqendu 28(1), kuxhomekeke ekubeni kokuphi okwenzeka kuqala. 5

(3) (a) UMgcini-zifayile makamazise nawuphi na umenzi-sicelo oxelwe kwisiqendwana (1) okanye (2) emazisa ngokumbhalela ukuba sithini na isigqibo soMgcini-zifayile, emxelela nezizathu zokwala.

(b) Ngodidi ngalunye olwaliweyo, uMgcini-zifayile makabhale iinkcukacha zalo kwirejista exelwe kwisiqendu 6. 10

#### Ukwamkelwa ukuba kuluhlu lwelizwe lonke

37. (1) UMgcini-zifayile makaluvume uluhlu lwelizwe lonke lodidi ekwenziwe isicelo salo ukuba olo didi luyahlangabezana neemfuneko ezixelwe kwisiqendu 27, ngokulawulwa sisiqendu 36(2) nasemva kokuba kwenziwe iimvavanyo ezixelwe kwisiqendu 35(1) nokuhlola-hlola okuxelwe kwisiqendu 38. 15

(2) UMgcini-zifayile makamazise umenzi-sicelo ngokumbhalela zingekapheli iintsuku ezingama-90 emazisa ngokuvunywa kodidi.

(3) Ngodidi ngalunye oluvunyiweyo, uMgcini-zifayile makabhale iinkcukacha ekuthethwe ngazo kwisiqendu 24 kuluhlu lweendidi lwelizwe lonke, aze abhale iinkcukacha ekuthethwe ngazo kwisiqendu 6 kwirejista. 20

### ISAHLUKO 9

#### UMGANGATHO WOLIMO NOKUSETYENZISWA

##### Ukuphonononga kodidi luphononongelwa ixabiso, ulimo nokusetyenziswa

38. (1) Kwimeko yaxa ixabiso lokulinywa nokusetyenziswa kodidi lithandabuzeka, uMgcini-zifayile unokuthi aphonononge olo didi ngendlela efunekayo ukuze aqonde ixabiso lalo. 25

(2) Ngenjongo yokusebenza kwesiqendwana (1), uMgcini-zifayile unokuthi aphonononge—

(a) naluphi na udidi ekwenziwe isicelo ngalo sokuba kuluhlu lwelizwe lonke lwaza lwamkelwa ngokwesiqendu 30; okanye 30

(b) naluphi na udidi oluthe lwadweliswa kuluhlu lweendidi lwelizwe lonke.

(3) Inani elimiselweyo lezityalo okanye ubunzima obumiselweyo bezinto zokwandia izityalo zodidi ekuthethwa ngalo olufunekayo ngenjongo yophononongo malunikwe uMgcini-zifayile ngumenzi-sicelo ngexeha elimiselweyo nakwindawo emiselweyo.

(4) Ukuze uMgcini-zifayile akwazi ukuphonononga udidi, unokuthi— 35

(a) aluhlola-hlola udidi ngendlela ayibona ifanelekile;

(b) enze ukuba udidi luhlolwe ngomnye umntu; okanye

(c) afumane iziphumo zophononongo oluqhutywe kolo didi.

(5) Ngenxa yesiphumo sophononongo sodidi, uMgcini-zifayile unokuthi—

(a) aluvume okanye alwale udidi lokuba kuluhlu lwelizwe lonke; okanye 40

(b) alugcine okanye alususe udidi kuluhlu lweendidi lwelizwe lonke.

(6) Ukuba uMgcini-zifayile ugqiba kwelokuba alwale okanye alususe udidi kuluhlu lweendidi lwelizwe lonke, makamazise umenzi-sicelo ngokumbhalela zingaphelanga iintsuku ezingama-21 ukususela kumhla wokwenza isigqibo, emxelela nezizathu zesigqibo. 45

(7) Ukuba izityalo okanye izinto zokwandisa izityalo azinakunikwa uMgcini-zifayile ngokwesiqendwana (3), uMgcini-zifayile makathi—

(a) xa kuludidi ekuthethwe ngalo kwisiqendwana (2)(a), asikhabe isicelo sokuba kuluhlu lwelizwe lonke sodidi; okanye

(b) xa kuludidi ekuthethwe ngalo kwisiqendwana (2)(b), alususe udidi kuluhlu lweendidi lwelizwe lonke. 50

**CHAPTER 10****HEARING OF OBJECTIONS****Hearing of objection**

- 39.** (1) In considering an objection lodged in terms of section 32, the Registrar must call for a hearing in accordance with this section. 5
- (2) The Registrar must determine the date on and the time and place at which the objection will be heard and must inform the person objecting and the applicant in question in writing of such date, time and place within 30 days prior to the hearing.
- (3) The Registrar when considering a matter at the hearing may utilise one or more of the persons contemplated in section 49 who have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise the Registrar with regard to the hearing of the objection. 10
- (4) The Registrar may, for the purposes of the hearing of an objection—
- (a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or control any document that has a bearing upon that subject, to appear before the registrar at a time and place specified in the summons, to be interrogated or to produce that document, and the Registrar may retain for examination any document so produced;
  - (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and 20
  - (c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or under his or her control.
- (5) The procedure at the hearing of an objection must be prescribed. 25
- (6) The person objecting and the applicant may be represented if they appear before the Registrar at the hearing of an objection.
- (7) The Registrar must inform the person objecting and the applicant in writing of his or her decision and reasons for his or her decision within 21 days after the date of the hearing of the objection. 30

**CHAPTER 11****NATIONAL VARIETAL LIST JOURNAL****Matters to be published in Journal**

- 40.** (1) The Registrar must ensure that a journal, the National Varietal List Journal, is published on an annual basis or at regular intervals within each year. 35
- (2) The subject matter of the journal contemplated in subsection (1) must be prescribed, and must include—
- (a) particulars relating to an application in terms of section 28;
  - (b) any amendments or alterations made to an application contemplated in paragraph (a); 40
  - (c) any withdrawal or rejection before the approval or rejection for national listing;
  - (d) any decisions with regard to the approval or refusal for national listing; and
  - (e) any decision with regard to the removal of variety denominations from the national list after approval for listing. 45

**CHAPTER 12****INSPECTIONS****Inspection for quality control**

- 41.** (1) Subject to subsection (2), premises must be regularly inspected in the prescribed manner during the period of registration. 50

**ISAPHLUKO 10****UKUPHULAPHULWA KWEZICHASO****Ukuphulaphulwa kwezichaso**

- 39.** (1) Ekuqwalaseleni isichaso esifakwe ngokwesiqendu 32, uMgcini-zifayile makalungiselele ukuba siphulaphulwe ngokwesi siqendu. 5
- (2) UMgcini-zifayile makenz' isigqibo ngomhla nangexesha nangendawo yokuphulaphulwa kwesichaso kwaye makazise umntu ochasayo nomenzi-sicelo ngokumbhalela emazisa ngomhla nangexesha nangendawo zingekapheli iintsuku ezingama-30 ngaphambi kokuphulaphulwa kwesichaso.
- (3) Xa uMgcini-zifayile eqwalasela udaba ekuchotshelweni kwalo usengasebenzisa umntu okanye abantu abaxelwe kwisiqendu 49 abanamava ekusingathweni kobulungisa okanye abanobuchule kulo naluphi na udaba olunokuthi luqwalaselwe, bancedise kwaye bacebise uMgcini-zifayile malunga nokuchotshelwa kodaba. 10
- (4) Ngenjongo yokuphulaphulwa kwesichaso, uMgcini-zifayile unokuthi—
- (a) abize nawuphi na umntu onokuba nengcombolo ebalulekileyo ngombandela ophulaphulweyo okanye onoxwebhu olunento yokwenza okanye olawula uxwebhu olunento yokwenza naloo mbandela, ambize ukuba avele phambi koMgcini-zifayile ngexesha nakwindawo exelwe kumsila wengwe, ukuze ancine okanye avelise uxwebhu olo, kwaye uMgcini-zifayile unokuthi agcine naluphi na uxwebhu oluvelisiweyo ukuze luhloliswe; 15
- (b) amfungise okanye amthathise isibhambathiso nawuphi na umntu obizelwe ukuba abe lingqina ekuphulaphulweni kwesichaso; kananjalo 20
- (c) unokuthi abize nawuphi na umntu okhoyo ekuphulaphulweni kwesichaso ukuba abe lingqina aze amncine okanye afune ukuba avelise naluphi na uxwebhu olukuye. 25
- (5) Inkqubo ekuphulaphulweni kwesichaso makube yemiselweyo.
- (6) Umntu ochasayo nomenzi-sicelo banokuthi bamelwe ukuba bavela phambi koMgcini-zifayile ekuphulaphulweni kwesichaso.
- (7) UMgcini-zifayile makamazise umntu ochasayo nomenzi-sicelo ngokubabhalela ebazisa ngesigqibo sakhe nangezizathu zesigqibo sakhe zingaphelanga iintsuku ezingama-21 ukususela kumhla wokuphulaphulwa kwesichaso. 30

**ISAPHLUKO 11****ULINDIXESHA WOLUHLU LWEENDIDI LWELIZWE LONKE****Iindaba emazipapasha kulindixesha**

- 40.** (1) UMgcini-zifayile makaqinisekise ukuba kupapasha ulindixesha ogama lakhe Lingulindixesha Woluhlu Lwelizwe Lonke Lwendidi, apapasha qho ngonyaka okanye aman' ukupapasha ngamaxesha athile enyakeni. 35
- (2) Okuqulethwe ngulindixesha oxelwe kwisiqendwana (1) makube kokwenziwe isigqibo ngako, kwaye makuquke—
- (a) iinkcukacha ezingesicelo esingokwesiqendu 28; 40
- (b) naluphi na utshintsho olwenziwe kwisicelo esixelwe kwisiqendu (a);
- (c) nakuphi na ukurhoxiswa okanye ukukhatywa ngaphambi kokuvunywa okanye ukukhatywa kokuba kuluhlu lwelizwe lonke;
- (d) naziphi na izigqibo ezingokuvunywa okanye ukwaliwa kokuba kuluhlu lwelizwe; kwakunye 45
- (e) nasiphi na isigqibo esingokususwa kwamacandelo odidi kuluhlu lwelizwe lonke emva kokuba evunyiwe ukuba abe kuluhlu.

**ISAPHLUKO 12****UKUHLOLWA****Ukuhlololwa ukuba semgangathweni** 50

- 41.** (1) Ngokulawulwa sisiqendwana (2), indawo yeshishini mayihlolwe rhoqo ngendlela efunekayo kwelo thuba lokuba ibhalisiwe.

- (2) The Registrar, an employee or an authorised person may during office hours, without a warrant, enter any business or premises registered in terms of this Act and—
- (a) open any container found at or on the premises which he or she believes on reasonable grounds to contain plants or propagating material;
  - (b) examine the plants or propagating material and take samples thereof; and 5
  - (c) require the person in control of or employed at the premises to produce for inspection, or for the purposes of obtaining copies or extracts, any books, labels, shipping bills, bills of lading or other documents or papers with respect to the administration of this Act.

**Power to enter premises, inspection and sampling 10**

- 42.** (1) The Registrar, an employee or an authorised person may, on the grounds of a warrant issued in terms of subsection (3), at any reasonable time —
- (a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, pre-packaged, marked, labelled, held, kept, packed, removed, transported, exhibited or sold; 15
  - (b) instruct a person in control of or employed at such place, premises or vehicle to— 20
    - (i) deliver any book, record or other document that pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person;
    - (ii) furnish such information he or she has with regard to that plant, propagating material, substance or other article; or 25
    - (iii) render such assistance that the Registrar, employee or person requires to enable him or her to perform his or her functions in terms of this Act;
  - (c) inspect any book, record or other document relating to the investigation and make copies thereof or excerpts from it;
  - (d) seize any plant, propagating material, substance, book, record or other document or article which is or might be relevant to a prosecution under this Act and keep it in his or her custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under the supervision of the Registrar, employee or person concerned, make copies thereof or excerpts from it; and 30 35
  - (e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, pre-packaging, marking, labelling, holding, keeping, packing, removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph (d), and examine, analyse or classify such samples. 40
- (2) Any sample taken in terms of subsection (1)(e) or (6) must—
- (a) consist of the quantity or mass determined by the Registrar, taken in accordance with the methods determined by him or her; 45
  - (b) be taken in the presence of the person in charge of, or the owner or custodian of such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form determined by the Registrar must be completed in respect thereof; 50
  - (c) be packed and identified in such manner as the nature thereof permits; and
  - (d) as soon as reasonably possible be tested, examined or analysed in accordance with such methods as the Registrar may determine or as may be prescribed, and the result of such test, examination or analysis must be entered on the form determined by the Registrar. 55



- (2) UMgcini-zifayile, okanye umqeshwa, okanye umntu ogunyaziweyo unokuthi ngeeyure zomsebenzi, engenaso isigunyazisi, angene nakuliphi na ishishini okanye indawo elikuyo ebhalisiweyo ngokwalo Mthetho aze—
- (a) avule nayiphi na into equlethe izinto ekwindawo yeshishini akholelwa ukuba ngesizathu esivakalayoinezityalo okanye izinto zokwandisa izityalo; 5
  - (b) ahlole izityalo okanye izinto zokwandisa izityalo aze athathe iisampulu zazo; kwaye
  - (c) afune ukuba umntu ophetheyo apho avelise naziphi na iincwadi, iilebhile, amaphepha abubungqina bokuthunyelwa, okanye amanye amaxwebhu amayela nokusetyenziswa kwalo Mthetho ukuze ahlolwe. 10

#### Igunya lokungena ngaphakathi kwamasango kuhlolwe, kuthathwe iisampulu

42. (1) UMgcini-zifayile, umqeshwa okanye umntu ogunyazisiweyo unokuthi, ngegunya lesigunyazisi esikhutshwe ngokwesiqendwana (3), ngalo naliphi na ixesha elifanelekileyo—
- (a) angene ahlole nayiphi na indawo iindawo okanye inqwelo-mafutha ekukho kuyo isityalo, izinto zokwandisa izityalo utho okanye enye into ekusebenza kuyo lo Mthetho, ekurhaneleka ukuba iveliswe, yasetyenzwa, yalungiswa, yavavanywa, yagocwagocwa, yabhalwa, yasuswa, yathuthwa okanye yathengiswa; 15
  - (b) ayalele umntu ophetheyo kuloo ndawo okanye kuloo nqwelo-mafutha— 20
    - (i) ukuba akhulule loo ncwadi okanye uxwebhu oluphathelele kweso sityalo okanye ulutho lokuhambisa okanye enye into ekuye;
    - (ii) adlulise nayiphi na ingcombolo anayo ngeso sityalo okanye ulutho lokuhambisa okanye enye into; okanye
    - (iii) anike uMgcini-zifayile okanye umqeshwa okanye umntu uncedo ukuze akwazi ukwenza imisebenzi yakhe engokwalo Mthetho; 25
  - (c) ahlole nayiphi na incwadi okanye uxwebhu olunento yokwenza nophando okanye enze iikopi zalo okanye izicatshulwa ezilapho ngaphakathi;
  - (d) athabathele kuye nasiphi na isityalo, izinto zokwandisa izityalo, iincwadi okanye uxwebhu ezisenokuba zezifanelekileyo mayela nokutshutshiswa ngokwalo Mthetho aze azigcine kuye, kodwa ke, umntu ethathwe kuye incwadi leyo okanye uxwebhu unokuthi ngendleko yakhe naphantsi kweliso loMgcini-zifayile okanye lomqeshwa okanye lomnye umntu enze iikopi okanye izicatshulwa apho ngaphakathi; kananjalo 30
  - (e) athathe iisampulu zesityalo okanye zezinto zokwandisa izityalo okanye enye into esetyenziswe ekuvelisweni okanye ekukho injongo yokuyisebenzisa ekuveliseni, ekulimeni, ekulungiseni, ekuvavanyeni okanye ekuthengisweni kwaso nasiphi na isityalo okanye izinto zokwandisa izityalo okanye enye into ethe yathathwa ngegunya ngokwesiqendu, aze ayihlole, ayiphicothe okanye ayibeke ngokodidi lwayo. 40
- (2) Nayiphi na isampulu ethathwe ngokwesiqendwana (1)(e) okanye (6)—
- (a) mayibe yeyobungakanani obuqingqwe nguMgcini-zifayile, ethatyathwe ngokweendlela ezigqitywe ngaye;
  - (b) mayithathwe ekho umntu ophetheyo okanye ongumnini okanye umgcini weso sityalo, okanye izinto zokwandisa izityalo, kungenjalo ukuba loo mntu okanye umnini okanye umgcini akafumaneki, ithathwe likho elinye ingqina kuze kuzaliswe ifomu egqitywe nguMgcini-zifayile; 45
  - (c) mayipakishwe ize ifaniswe ngendlela evunyelwa luhlobo lwayo; kananjalo
  - (d) kamsinya kangangoko kunokwenzeka ivavanywe okanye igocwagocwe ngokweendlela ezigqitywe nguMgcini-zifayile, size isiphumo solo vavanyo singeniswe kwifomu egqitywe nguMgcini-zifayile. 50

(3) A warrant referred to in subsection (1) must be issued by a magistrate who has jurisdiction in the area where the place or premises in question is situated, or where the vehicle is or will be, and must be issued if it appears to the magistrate from information on affirmation or oath that there are reasonable grounds for believing that an article mentioned in subsection (1)(a) and (b) is upon or in such place, premises or vehicle, and must specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued. 5

(4) A warrant issued in terms of this section must be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which must be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant must be conducted with strict regard to decency and order, including— 10

- (a) a person's right to, respect for and protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(5) The person executing a warrant in terms of this section must immediately before commencing with the execution— 15

- (a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle; and 20
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(6) The Registrar or authorised person may enter any place, premises or vehicle without a warrant and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so, consents to such entry, search, seizure, taking of samples and removal. 25

(7) (a) The Registrar or authorised person who may on the grounds of a warrant issued in terms of subsection (3), enter and search any place, premises or vehicle, may use such force as may be reasonably necessary to overcome resistance to such entry or search.

(b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly— 30

- (i) demanded admission to the place, premises or vehicle;
- (ii) identified himself or herself; and
- (iii) notified the occupant of the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded, such identification communicated and such purpose is first notified. 35

(8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search must, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request a magistrate who has jurisdiction to authorise the seizing and removal of that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged. 40 45

(9) A warrant issued in terms of this section may be issued on any day and remains in force until—

- (a) it is executed;
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; 50
- (c) the expiry of one month from the day of its issue; or
- (d) the purpose for which the warrant was issued, no longer exists, whichever may occur first.

(10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, book, record or other article or document must be returned to the person from whom it was seized. 60



- (3) Isigunyazisi ekuthethwe ngaso kwisiqendwana (1) masikhutshwe yimantyi enegunya kuloo mmandla ekukho kuwo indawo yeshishini okanye ekukho kuyo inqwelo-mafutha, kwaye masikhutshwe ukuba imantyi ibona ukuba kukho izizathu ezivakalayo zokukholelwa ukuba into ekhankanywe kwisiqendwana (1)(a) no-(b) ikho kwindawo yeshishini okanye kwinqwelo-mafutha, kwakuba kwenziwe isifungo okanye isibhambathiso, kwaye mayicacise ukuba zeziphi izenzo ezikhankanywe kwisiqendwana (1) ezinokwenziwa ngokwelo gunya ngumntu esikhutshelwe yena. 5
- (4) Isigunyazisi esikhutshwe ngokwesi siqendu masiphunyezwe emini ngaphandle kokuba umntu okhupha isigunyazisi ugunyaza ukuphunyezwa kwaso ebusuku ngamaxesha anokubonelela, nokungena aze agqogqe kwindawo okanye kwinqwelo-mafutha exelwe kwisiqunyazisi, ngesidima nocwangco olufanelekileyo, kuquka— 10
- (a) ilungelo lomntu lokuhlanelwa kwesidima sakhe nokukhuselwa kwaso;
- (b) ilungelo lomntu lokukhululeka nokukhuseleka;
- (c) ilungelo lomntu lokuba neemfihlo zakhe.
- (5) Umntu ophumeza isigunyazisi ngokwesi siqendu makathi ngaphambi kokuba aqalise ukusiphumeza— 15
- (a) azixele ukuba ungubani ezixela kumntu ophetheyo kuloo ndawo okanye kwinqwelo-mafutha, ukuba ukho loo mntu, aze anike loo mntu ikopi yesigunyazisi, okanye ukuba akekho umntu ayinamathisele ikopi yayo kwindawo ebonakalayo okanye kwinqwelo-mafutha; kananjalo 20
- (b) xa loo mntu ecela iinkcukacha zalo okhupha isigunyazisi amnike iinkcukacha ezimayela negunya lakhe lokusebenzisa eso sigunyazisi.
- (6) UMgcini-zifayile okanye umntu ogunyaziweyo unokungena nakuyiphi na indawo okanye inqwelo-mafutha engenaso isigunyazisi aze agqogqe, athathe nayiphi na into ekuthethwe ngayo kwisiqendwana (1) ukuba umntu uyavuma ukuba kungenwe kugqogqe, kuthathwe. 25
- (7) (a) UMgcini-zifayile okanye umntu ogunyaziweyo unokuthi ngegunya lesigunyazisi esikhutshwe ngokwesiqendwana (3), angene kwindawo okanye kwinqwelo-mafutha, okanye asebenzise izigalo ngendlela enokuthi ibe yimfuneko ukuze oyise ukuxhathisa athi adibane nako ekungeneni apho. 30
- (b) Akukho mntu ovumelekileyo ukuba angene aze agqogqe nakweyiphi na indawo ngaphandle kokuba uqale ngokuvakalayo—
- (i) wanyanzelisa ukungeniswa kuloo ndawo okanye kuloo nqwelo-mafutha;
- (ii) wazazisa ukuba ungubani;
- (iii) wamazisa umntu olapho injongo yokungena kwakhe, 35
- ngaphandle kokuba loo mntu, ngesizathu esivakalayo, unoluvo lokuba kukho into enokutshatyalaliswa ukuba uqala anyanzelise ukungeniswa, okanye ukuba uqale azazise kwaye ayixele injongo yokungena kwakhe.
- (8) Ukuba, ngexesha lokuphunyezwa kwesigunyazisi okanye lokugqogqa ngokwesi siqendu, umntu uthi into efunyenwe kwindawo yakhe okanye kwinqwelo-mafutha inengcombolo eyimfihlo aze ale ukuba ihlolwe okanye isuswe, umntu ophumeza isigunyazisi okanye oqogqayo makathi, ukuba unoluvo lokuba loo nto inengcombolo efunekayo kuphando olwenziwayo kwaye loo ngcombolo iyimfuneko ukuze kuphandwe okanye kuphulaphulwe, acele imantyi enegunya kuloo mmandla ukuba igunyaze ukuthathwa kwaloo nto iye kugcinwa kwindawo ekhuselekileyo de inkundla yomthetho ikhuphe isigqibo mayela nokuba loo nto iyimfihlo kusini na. 45
- (9) Isigunyazisi esikhutshwe ngokwesi siqendu singakhutshwa nangawuphi na umhla kwaye siqhubeka sisebenza de—
- (a) sibe siphunyeziwe;
- (b) sirhoxisiwe ngumntu owasikhuphayo, okanye ukuba loo mntu akafumaneki, sirhoxisiwe nguye nawuphi na umntu onegunya elilingana nelo; 50
- (c) kude kuphele inyanga ukususela kumhla wokukhutshwa kwaso; okanye
- (d) injongo esasikhutshelwe yona isigunyazisi eso ibe ayisekho, kuxhomekeke ekubeni kokuphi okufika kuqala.
- (10) Ukuba akubikho kutshutshiswa ngokunxulumene nesityalo, nezinto zokwandisa izityalo, incwadi, okanye enye into okanye uxwebhu, ethathwe ngegunya ngokwesiqendwana (1) okanye (6), okanye ukuba kubonakala ukuba eso sityalo, izinto zokwandisa izityalo, okanye incwadi, okanye uxwebhu okanye into, ayifuneki nganto ekuxoxweni kwetyala ukuze ibe bubungqina okanye ibe ngumyalelo wenkundla, eso sityalo okanye ezo zinto zokwandisa izityalo, okanye incwadi, okanye uxwebhu, mazibuyiselwe kumntu ezathathwa kuye. 60

## CHAPTER 13

## IMPORT AND EXPORT OF PLANTS AND PROPAGATING MATERIAL

## Import of plants and propagating material

43. (1) Plants or propagating material of a kind of plant declared in terms of this Act, may only be imported into the Republic— 5
- (a) in compliance with all relevant legislation for the consignment concerned;
  - (b) if the importer has a certificate of registration in respect of a business and premises contemplated in section 12, unless exempted in terms of section 19;
  - (c) if the plants or propagating material— 10
    - (i) is of a variety and denomination which is listed in the national varietal list or the regional varietal list;
    - (ii) complies with the prescribed requirements;
    - (iii) is packed or pre-packed in a container which is sealed and branded, marked or labelled in the prescribed manner with the prescribed information; and 15
    - (iv) is imported through a prescribed port of entry or such other place as the registrar may determine.
- (2) If the plants or propagating material is not packed or pre-packed in a container in accordance with the requirements set out in subsection (1)(c)(iii), the importer must re-label and submit the plants or propagating material for inspection in order to ensure compliance with the provisions of that subsection. 20
- (3) (a) Notwithstanding subsection (1)—
- (i) the Registrar may on good cause shown and on such conditions as he or she may determine, give authorisation in writing for the importation of a consignment of plants or propagating material which does not conform to all or any of the requirements referred to in subsection (1) and a copy of such authorisation must accompany the consignment in question; 25
  - (ii) a person who does not have a business and premises contemplated in subsection (1)(b) may import plants or propagating material for own use with the written authorisation from the Registrar and subject to such conditions as the Registrar may specify; and 30
  - (iii) the Minister may by notice in the *Gazette* determine that any particular kind of plant, or propagating material of a particular kind of plant, must only be imported with the written permission of the Registrar and on such conditions as the Registrar may specify in such permission. 35
- (b) A person requiring the authorisation or permission of the Registrar in terms of paragraph (a) must submit an application to the Registrar in the prescribed manner.
- (4) A person importing a consignment of plants or propagating material must furnish the Registrar with such particulars as the Registrar may determine regarding such consignment, and such consignment must not be removed from a port or place contemplated in subsection 1(b)(iv) unless the Registrar has authorised the removal thereof in writing. 40
- (5) Plants and propagating material imported in terms of subsection (1) or (3) must, if the Registrar so requires, be presented for examination and sampling at a port or place contemplated in subsection (1)(b)(iv). 45
- (6) (a) The Registrar must determine the manner in which plants and propagating material imported in terms of subsection (1) or (3) must be presented for examination and sampling in terms of subsection (5), and the manner in which and the time and place at which the examination and sampling must be carried out.
- (b) The provisions of section 42(1)(e) and (2), subject to the changes required by the context, apply to such examination and sampling and the analysis of such sample. 50
- (7) (a) This section does not apply to the importation of plants and propagating material intended for re-export or for purposes other than cultivation.

## ISAHLUKO 13

UKUODOLWA KWAMANYE AMAZWE NOKUTHUNYELWA KWAMANYE  
AMAZWE KWEZITYALO NEZINTO ZOKUZANDISA

## Ukuodolwa kwamanye amazwe kwezityalo nezinto zokwandisa izityalo

- 43.** (1) Izityalo okanye izinto zokwandisa izityalo zohlobo lwesityalo oluvakaliswe ngokwalo Mthetho zinokuthi ziodolwe zisuka kwelinye ilizwe zingene kwiRiphabliki—
- (a) ukuba zihambisana nayo yonke imithetho echaphazelekayo yokuthunyelwa kwazo;
  - (b) ukuba o-odolayo unesiqinisekiso sokubhaliswa kweshishini okanye indawo yeshishini exelwe kwisiqendu 12, ngaphandle kokuba ukhululwe koko kunkqanyangelwa ngokwesiqendwana 19;
  - (c) ukuba izityalo okanye izinto zokwandisa izityalo—
    - (i) zezodidi necandelo elidweliswe kuluhlu lweelizwe lonke lweendidi okanye kuluhlu lweendidi lweengingqi;
    - (ii) ziyahambisana neemfuneko ezixeliweyo;
    - (iii) zipakishwe kwisiphathi esitywiniweyo saza sabhalwa ngendlela efunekayo, kunye nengcombolo efunekayo; kananjalo
    - (iv) ziodolwe ngezibuko elimiselweyo okanye ngenye indawo enokuthi igqitywe nguMgcini-zifayile.
- (2) Ukuba izityalo okanye izinto zokwandisa izityalo azipakishwanga kwisiphatho ngokweemfuneko ezixelwe kwisiqendwana (1)(c)(iii), lowo o-odola ezivela kwelinye ilizwe makazinamathisele amagama ngokutsha aze azingenise ukuze zihlolwe ukuqinisekisa ukuba ziyahambisana na nokutshiwo seso siqendwana.
- (3) (a) Kungakhathaliseki ukuba sithini isiqendwana (1)—
- (i) uMgcini-zifayile unokuthi, ngesizathu esivakalayo nangemiqathango enokugqitywa nguye, anike isigunyazisi ngencwadi soku-odolwa komthwalo wezityalo uvela kwelinye ilizwe okanye izinto zokwandisa izityalo ezingavumelaniyo neemfuneko ekuthethwe ngazo kwisiqendwana (1) kwaye ikopi yeso sigunyazisi mayipheleke umthwalo lowo;
  - (ii) umntu ongenalo ishishini nendawo yeshishini exelwe kwisiqendwana (1)(b) angaodola kwelinye ilizwe izityalo okanye izinto zokwandisa izityalo eza kuzisebenzisa yena ngokwakhe ngesigunyaziso esibhaliweyo esivela kuMgcini-zifayile nangemiqathango enokuthi ixelwe nguMgcini-zifayile; kananjalo
  - (iii) uMphathiswa unokuthi, ngesihlokomiso kuShicilelo-Mithetho, agqibe kwelokuba naluphi na uhlobo lwesityalo okanye izinto zokwandisa izityalo maziodolwe zivela kwelinye ilizwe ngemvume ebhaliweyo kuphela yoMgcini-zifayile nangemiqathango enokuthi ixelwe nguMgcini-zifayile kuloo mvume.
  - (iv) Umntu ofuna isigunyaziso okanye imvume yoMgcini-zifayile ngokwesiqendu (a) makangenise isicelo kuMgcini-zifayile ngendlela efunekayo.
- (4) Umntu o-odola kwelinye ilizwe umthwalo wezityalo okanye izinto zokwandisa izityalo makanike uMgcini-zifayile iinkcukacha ezinokuthi zifunwe nguMgcini-zifayile ngaloo mthwalo, kwaye loo mthwalo mawungasuswa ezibukweni okanye kwindawo exelwe kwisiqendwana (1)(b)(iv) ngaphandle kokuba uMgcini-zifayile ukugunyazisile ukususwa kwawo ngencwadi.
- (5) Izityalo nezinto zokwandisa izityalo eziodolwe kwelinye ilizwe ngokwesiqendwana (1) okanye (3) mazithi, ukuba uMgcini-zifayile ufuna ngolo hlobo, zenziwe zifumaneka ukuze zihlolwe, kufumaneka nesampulu yazo kwizibuko okanye kwindawo exelwe kwisiqendwana (1)(b)(iv).
- (6) (a) UMgcini-zifayile makenze isigqibo ngendlela emazithi izityalo nezinto zokwandisa izityalo ezi-odolwe ngokwesiqendwana (1) okanye (3) zenziwe zifumaneka ukuze zihlolwe nokuze kuthathwe iisampulu ngokwesiqendwana (5), kananjalo enze isigqibo ngendlela, nangexesha, nangendawo oko kuthathwa kweesampulu okuya kwenziwa kuzo.
- (b) Okutshiwo sisiqendu 42(1)(e) nesesi-(2), ngokulawulwa lutshintsho olunokuthi lufuneke, kuyasebenza koko kuhlolwa nokuthathwa kweesampulu nokuphononongwa kweesampulu.
- (7) (a) Esi siqendu asisebenzi eku-odolweni kwezityalo nolutho lokuhambisa oluvela kwelinye ilizwe ngenjongo yokuba zibuye zithunyelwe kwelinye ilizwe okanye ngeenjongo ezingelulo ulimo.

(b) The person importing plants or propagating material in terms of paragraph (a) must, prior to arrival thereof in the Republic, furnish the Registrar with a declaration to that effect in the prescribed manner and a copy of such declaration must accompany the consignment concerned.

(8) If plants and propagating material have been imported contrary to the provisions of this section, the Registrar may— 5

(a) taking into account the preference of the importer, order that the plants or propagating material in question must within the period determined by the Registrar—

(i) be destroyed without compensation; or 10

(ii) be removed from the Republic at the expense of the importer; or

(b) permit the disposal thereof in the Republic in such manner and on such conditions as the Registrar may determine.

### Export of plants and propagating material

44. (1) Any person who intends to export plants or propagating material of a kind of plant declared in terms of this Act, must have a certificate of registration in respect of the business and premises where the plants or propagating material has been prepared for export. 15

(2) Plants and propagating material of any kind of plant declared in terms of this Act intended for export from the Republic must comply with the prescribed minimum requirements. 20

(3) If the plants or propagating material for export do not comply with one or more of the provisions of this Act, the exporter must submit an application with motivation to the Registrar in the prescribed manner before export.

(4) The Registrar must consider an application received in terms of subsection (3) and may in writing authorise the export of such consignment, subject to such conditions as he or she may determine. 25

(5) The Registrar may undertake such inspection of the plants and propagating material intended for export as he or she may deem necessary, take such samples thereof as he or she may deem necessary and test, examine or analyse the samples or cause the samples to be tested, examined or analysed in the manner contemplated in section 42(2). 30

(6) If the inspection in terms of subsection (5) has been carried out on account of an application received in terms of subsection (3), the person who has applied must pay to the Registrar the prescribed fees in connection with such inspection and for the testing, examination or analysis of such samples. 35

(7) If the Registrar prohibits the export of a consignment of plants or propagating material, he or she must inform the exporter within 14 days of the date of the decision and provide written reasons for the decision.

(8) Subsection (1) does not apply to the export of plants or propagating material intended for purposes other than cultivation. 40

## CHAPTER 14

### SCHEMES

#### Establishment of schemes

45. (1) The Minister may, after consultation with stakeholders and the Minister of Finance, by notice in the *Gazette* establish a scheme for the certification of plants and propagating material of the kinds of plants referred to in the notice, with the object of maintaining the quality of plants and propagating material of those kinds of plants and of ensuring the usefulness for agricultural or industrial purposes of the products derived therefrom. 45

(2) The Minister may, after consultation with stakeholders and the Minister of Finance, by notice in the *Gazette* establish a scheme other than a certification scheme contemplated in subsection (1). 50

(3) The Minister may, with the concurrence of the Minister of Finance, by notice in the *Gazette* establish a scheme contemplated in subsection (1) or (2) in terms of which assistance, out of money appropriated by Parliament for this purpose, may be granted to the designated authority. 55

(b) Umntu o-odola izityalo okanye izinto zokwandisa izityalo zivela kwelinye ilizwe ngokwesiqendu (a) makathi, ngaphambi kokuba zifike kwiRiphabliki, anike uMgcini-zifayile isidandalaziso esitshoyo ngendlela efunekayo kwakunye nekopi, kwaye ikopi yeso sidandalaziso mayipheleke umthwalo lowo.

(8) Ukuba izityalo nezinto zokwandisa izityalo ziodolwe zivela kwamanye amazwe ngendlela echaseneyo nokutshiwo sesi siqendu, uMgcini-zifayile unokuthi— 5

(a) ecingela okukhethwa ngulowo o-odolileyo ayalele ukuba izityalo okanye izinto zokwandisa izityalo mazithi lingaphelanga ixesha eligqitywe nguMgcini-zifayile—

(i) zitshatyalaliswe kungabikho nembuyiselo; okanye 10

(ii) zisuswe kwiRiphabliki ngendleko yalowo uzi-odileyo; okanye

(b) avumele ukuchithwa kwazo apha kwiRiphabliki ngendlela nangemiqathango enokuthi igqitywe nguMgcini-zifayile.

### Ukuthunyelwa kwamanye amazwe kwezityalo nezinto zokwandisa izityalo

44. (1) Nawuphi na umntu onenjongo yokuthumela kwelinye ilizwe izityalo okanye izinto zokwandisa izityalo zohlobo lwesityalo esivakaliswe ngokwalo Mthetho, makabe nesiqinisekiso sokubhaliswa seshishini nendawo yeshishini apho izityalo ezo nezinto zokwandisa izityalo eziye zalungiselelwa khona ukuthunyelwa kwelinye ilizwe. 15

(2) Izityalo nezinto zokwandisa izityalo zalo naluphi na uhlobo lwesityalo esivakaliswe ngokwalo Mthetho ngenjongo yokuthunyelwa kwelinye ilizwe zisuka kwiRiphabliki mazihlangabezane neemfuneko ezisisiseko ezixeliweyo. 20

(3) Ukuba izityalo nezinto zokwandisa izityalo zokuthunyelwa kwelinye ilizwe azihlangabezani nokutshiwo ngulo Mthetho, othumela kwelinye ilizwe makangenise isicelo esibeka izizathu asibhekise kuMgcini-zifayile ngendlela efunekayo ngaphambi kokuba athumele kwelinye ilizwe. 25

(4) UMgcini-zifayile makasiqwalasele isicelo asifumene ngokwesiqendwana (3) kwaye unokuthi ngokubhala agunyaze ukuthunyelwa kwelinye ilizwe komthwalo ngemiqathango enokuthi igqitywe nguye.

(5) UMgcini-zifayile unokuthi ahlole izityalo nezinto zokwandisa izityalo ekukho injongo yokuzithumela kwamanye amazwe xa kunokuthi kube yimfuneko, athabathe iisampulu zalo ngendlela enokuthi ibe yimfuneko aze ahlole okanye aphonononge iisampulu okanye acele omnye umntu ukuba aziphonononge ngendlela exelwe kwisiqendu 42(2). 30

(6) Ukuba ukhulolwa okungokwesiqendwana (5) kwenziwe ngenxa yesicelo esifunyenwe ngokwesiqendwana (3), umntu owenze isicelo makahlawule kuMgcini-zifayile imirhumo efunekayo yoko khulolwa nokuvavanywa okanye ukuphononongwa kweesampulu. 35

(7) Ukuba uMgcini-zifayile uyakwalela ukuthunyelwa kwelinye ilizwe komthwalo wezityalo okanye izinto zokwandisa izityalo, makamazise lowo othumela kwelinye ilizwe zingaphelanga iintsuku ezili-14 ukususela kumhla wokwenza kwakhe isigqibo, aze amxelele nezizathu zeso sigqibo. 40

(8) Isiqendwana (1) asisebenzi ekuthunyelweni kwamanye amazwe kwezityalo okanye izinto zokwandisa izityalo okunjongo yako ingelulo ulimo.

### ISAHLUKO 14

#### AMACEBO

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### Ukusekwa kwamaqumrhu

45. (1) Emva kokubonisana nabachaphazelekayo kunye noMphathiswa weMali, uMphathiswa unokuthi ngesihlokomiso kuShicilelo-Mithetho aseke iqumrhu lokukhutshelwa kwezityalo nezinto zokwandisa izityalo iziqinisekiso ekuthethwe ngazo kwisihlokomiso, ngenjongo yokulondoloza izityalo nezinto zokwandisa izityalo zisemgangathweni nangenjongo yokuqinisekisa ukuba luncedo kweemveliso eziveliswe kuzo ngenjongo yolimo okanye yorhwebo. 50

(2) Emva kokubonisana nabachaphazelekayo kwakunye noMphathiswa weMali, uMphathiswa unokuthi ngesihlokomiso kuShicilelo-Methetho aseke iqumrhu elingelilo iqumrhu lokukhutshwa kweziqinisekiso elixelwe kwisiqendwana (1). 55

(3) Ngokuvumelana noMphathiswa weMali, uMphathiswa unokuthi ngesihlokomiso kuShicilelo-Mithetho aseke iqumrhu elixelwe kwisiqendwana (1) okanye (2) ekunokuthi



- (4) Different schemes may be established for plants and propagating material of different kinds of plants, and the requirements for different kinds and varieties of plants and propagating material in a scheme may differ.
- (5) An organisation or association that desires to have a scheme contemplated in subsection (1) or (2) established must submit an application to the Registrar in the prescribed manner. 5
- (6) The Minister must in the notice relating to the establishment of the scheme—
- (a) designate the authority which must exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon such authority under the scheme; and 10
  - (b) if the authority referred to in paragraph (a) is not an employee in the Department, or a body consisting of such employees, subject to subsection (3), provide that such authority must exercise, perform or carry out its powers, functions or duties at its own cost and subject to the directions of the Registrar and not have any right of recourse against the State for costs so incurred. 15
- (7) The designated authority must enter into such written agreement with the Department as may be prescribed.
- (8) The Minister may by notice in the *Gazette* amend or revoke a scheme established in terms of this Act.
- (9) The Minister may terminate the appointment of the designated authority upon non-compliance with the prescribed requirements and provisions of the scheme or upon request by such authority. 20
- (10) If the appointment of a designated authority is terminated in terms of subsection (9), the Minister must inform the authority in writing and must provide reasons for the decision. 25

#### Provisions of schemes

46. (1) The Minister must in a notice relating to the establishment of a scheme—
- (a) indicate the kinds of plants and varieties to which the provisions of the scheme must apply; and
  - (b) provide for the provisions of the scheme. 30
- (2) (a) The designated authority may authorise any person to exercise, perform or carry out any power, function or duty of that authority.
- (b) When the designated authority contemplated in paragraph (a) authorises any person, it may determine that—
- (i) the power, function or duty concerned be exercised, performed or carried out at the cost of the person concerned; 35
  - (ii) the person concerned has no right of recourse against that authority or State for costs so incurred; and
  - (iii) the person concerned must exercise, perform or carry out the power, function or duty concerned subject to the directions of that authority. 40
- (c) A juristic person established under any law and so authorised, must be regarded, notwithstanding the absence of any express provision to such effect in the law under which it was established, to be competent to exercise, perform or carry out the power, function or duty concerned.
- (d) The said juristic person may authorise any person in its service in writing to exercise, perform or carry out the power, function or duty concerned. 45
- (e) A decision made or order given by any person authorised under paragraph (a) may be withdrawn by such designated authority, and any such decision or order must, until it is so withdrawn or amended, be regarded, except for the purpose of this paragraph, to have been given by such authority. 50

### CHAPTER 15

#### APPEALS

##### Right to appeal

47. A person who feels aggrieved by any decision or action taken by the Registrar or designated authority may appeal in the prescribed manner to the Minister against such decision or action. 55



ngalo kunikwe uncedo igunya elimiselweyo, ncedo olo oluphuma kwimali eyabiwe yiPalamente ngale njongo.

(4) Kungasekwa amaqumrhu ahlukeneyo ezityalo nezinto zokwandisa izityalo zeentlobo ezahlukeneyo zezityalo, kwaye iimfuneko zeentlobo ezahlukeneyo zezityalo nezinto zokwandisa izityalo kwiqumrhu zinokuthi zingafani. 5

(5) Umbutho onqwenela ukuba kusekwe iqumrhu elixelwe kwisiqendwana (1) okanye (2) mawungenise isicelo kuMgcini-zifayile ngendlela efunekayo.

(6) Kwisihlokomiso sokusekwa kwequmrhu, uMphathiswa—

(a) makamisele igunya emalisebenzise amagunya, lenze nemisebenzi enikwe okanye eyabelwe elo gunya phantsi kwequmrhu; 10

(b) ukuba igunya ekuthethwe ngalo kwisiqendu (a) alinguye umqeshwa kwiSebe okanye imbumba yabasebenzi, uMphathiswa makathi ke, ngokulawulwa sisiqendwana (3), anike elo gunya ukuba lisebenzise amagunya lenze nemisebenzi ngeendleko zalo nangokuthobela imiyalelo yoMgcini-zifayile lize lingabheneli kuRhulumente mayela neendleko elingene kuzo. 15

(7) Igunya elimiselweyo malingene kwisivumelwano esibhaliweyo neSebe ngendlela ekunokuthi kufuneka ngayo.

(8) UMphathiswa unokuthi ngesihlokomiso kuShicilelo-Mithetho enze utshintsho kwiqumrhu okanye alirhoxise iqumrhu elisekwe ngokwalo Mthetho.

(9) UMphathiswa angaliyekisa igunya elimiselweyo lisakungahlangabezani neemfuneko ezixeliweyo okanye lisakuhlangabezani nokufunwa liqumrhu okanye xa kucele lona igunya elo. 20

(10) Ukuba igunya elimiselweyo liyekisiwe ngokwesiqendwana (9), uMphathiswa makalazise igunya elo ngokulibhalela kwaye anike izizathu zeso sigqibo.

#### Ukuxhotyiswa kwamaqumrhu 25

46. (1) UMphathiswa makathi kwisihlokomiso sokusekwa kwequmrhu—

(a) abonise iintlobo zezityalo neendidi ekusebenza kuzo ukuxhotyiswa kwequmrhu; aze

(b) axele ukuxhotyiswa kwequmrhu.

(2) (a) Igunya elimiselweyo lingagunyaza nawuphi na umntu ukuba asebenzise amagunya enze nomsebenzi welo gunya. 30

(b) Xa igunya elimiselweyo elixelwe kwisiqendu (a) ligunyaza umntu, lisengagqiba kwelokuba—

(i) igunya lisetyenziswe nomsebenzi wenziwe ngeendleko zomntu lowo;

(ii) umntu lowo akanakubhenela kwelo gunya okanye kuRhulumente ngeendleko angene kuzo; kwaye 35

(iii) umntu lowo makalisebenzise igunya enze nomsebenzi ngokuthobela imiyalelo yelo gunya.

(c) Nkqu nokuba ayikho indawo etshoyo kumthetho esekwe ngawo inkampani, inkampani esekwe ngokomthetho negunyaziweyo mayithathwe njengekwaziyo ukulisebenzisa igunya nokuwenza umsebenzi. 40

(d) Loo nkampani inokuthi igunyaze nawuphi na umntu oyisebenzelayo ngokumbhalela ukuba asebenzise igunya okanye enze umsebenzi.

(e) Isigqibo esenziwe okanye umyalelo okhutshwe nguye nawuphi na umntu ogunyaziweyo ngokwesiqendu (a) unokuthi urhoxiswe lelo gunya limiselweyo, kwaye eso sigqibo okanye umyalelo mawuthathwe njengonikwe lelo gunya de ube urhoxisiwe okanye wenziwa utshintsho, ngaphandle ke kwaxa kufuneka kusebenze esi siqendu. 45

### ISAHLUKO 15

#### IZIBHENO

#### Ilungelo lokubhena 50

47. Umntu okhwiniswayo sisigqibo okanye sisenzo soMgcini-zifayile okanye segunya elimiselweyo unokuthi abhenele kuMphathiswa ngendlela efunekayo.

**Appeal Board, composition and membership**

- 48.** (1) The Minister may constitute a board known as the Appeal Board to investigate and consider any appeal referred to it in terms of section 47.
- (2) The Board must consist of at least three members appointed by the Minister, of whom— 5
- (a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and
- (b) two or more persons must have expert knowledge of the subject of the appeal.
- (3) The Minister must designate the person referred to in subsection (2)(a) as the chairperson. 10
- (4) The remuneration of a member of the Board must be prescribed after consultation with the Minister of Finance.
- (5) Any person appointed in terms of subsection (2) must recuse himself or herself as a member of the Board if he or she has any direct or indirect personal interest in the outcome of the appeal. 15

**Investigation and consideration by Board**

- 49.** (1) The Minister may refer an appeal to the Board.
- (2) An appeal must be heard on the date and at the time and place determined by the chairperson.
- (3) The chairperson must inform the appellant and any other party that has an interest in the appeal in writing of the date, time and place of the hearing 30 days prior to the hearing. 20
- (4) The chairperson may, for the purposes of the hearing of an appeal—
- (a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the Board at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain for examination any document so produced; and 25
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing. 30
- (5) A person who appeals in terms of section 47, the Registrar and the designated authority may be represented at the appeal.
- (6) If a member of the Board— 35
- (a) dies during the investigation or proceedings of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
- (b) is unable to act and another person cannot be appointed in time; or
- (c) is, after the investigation has commenced, unable to continue therewith, the parties may agree that the investigation be continued by the remaining members of the Board. 40
- (7) Where the member of the Board who has died or has become incapacitated as envisaged in subsection (6) was or is the chairperson of the Board, the Minister must designate one of the remaining members of the Board to act as chairperson.

**Consideration of appeal by Minister**

- 50.** (1) Where the Minister has referred an appeal to the Board in terms of section 49(1), he or she may— 45
- (a) confirm or set aside the recommendations of the Board; and
- (b) order the Registrar or the designated authority to execute the decision in connection therewith.
- (2) Where the Minister considers an appeal, he or she may— 50
- (a) confirm, set aside or vary the decision of the Registrar or designated authority; and
- (b) order the Registrar or designated authority to execute the decision in connection therewith.
- (3) The decision of the Minister must be in writing and a copy thereof must be furnished to the Registrar or designated authority, appellant and any other party to whom the decision must be conveyed within 90 days. 55

**IBhodi Yezibheno, ukwakheka kwayo namalungu ayo**

48. (1) UMphathiswa unokuthi akhe ibhodi eyaziwa ngokuba yiBhodi Yezibheno ukuba iphande ize iqwalasele isibheno esidluliselwe kuyo ngokwesiqendu 47.
- (2) IBhodi mayibe namalungu amathathu ubuncinane amiselwe nguMphathiswa, emakubekho kuwo— 5
- (a) umntu omnye omiselwe ngenxa yolwazi lwakhe kwimiba efanelekileyo yomthetho;
- (b) nabantu ababini okanye abangaphezu koko amababe nolwazi lobungcali ngento esingayo isibheno.
- (3) UMphathiswa makachonge umntu ekuthethwe ngaye kwisiqendwana (2)(a) abe ngusihlalo. 10
- (4) Ukuhlawulwa umvuzo kwelungu leBhodi makuqingqwe emva kokubonisana noMphathiswa Wezimali.
- (5) Nawuphi na umntu omiselwe ngokwesiqendwana (2) makazikhwebule ekubeni lilungu leBhodi ukuba unomdla kwisiphumo sesibheno kungakhathaliseki ukuba unomdla ngokungqalileyo okanye ngokungqalanga. 15

**Ukuphandwa nokuqwalaselwa yiBhodi**

49. (1) UMphathiswa usengasidlulisela isibheno kwiBhodi.
- (2) Isibheno masichotshelwe ngomhla nangexesha nakwindawo egqitywe ngusihlalo.
- (3) Usihlalo makamazise obhenayo nabo bonke abanye abantu abanomdla kwisibheno, ebazisa ngokubabhalela, ebazisa umhla, ixesha nendawo yokuchotshelwa kwesibheno kusasele iintsuku ezingama-30 ngaphambi kokuba sichotshelwe. 20
- (4) Ngenjongo yokuchotshelwa kwesibheno, usihlalo unokuthi—
- (a) abize nawuphi na umntu onokuba nengcombolo ebalulekileyo ngento esingayo isibheno okanye onoxwebhu olunento yokwenza nento esingayo isibheno, ukuba avele phambi kweBhodi ngomhla, ngexesha nakwindawo exelwe kwincwadi embizayo, kwaye usihlalo angalugcina uxwebhu ekuziwe nalo ngenjongo yokuluphicotha; kanaanjalalo 25
- (b) afungise okanye amenzise isibhambathiso umntu obizelwe ukuba lingqina;
- (5) Umntu obhena ngokwesiqendu 47, uMgcini-zifayile kwakunye negunya elimiselweyo banokuthi bamelwe kwisibheno. 30
- (6) Ukuba ilungu leBhodi—
- (a) lithi life kusaphandwa okanye sisachotshelwe isibheno okanye ngaphambi nje kokuba luqalise uphando kangangokuba ingabi nako ukuvalwa ngexesha indawo yalo; 35
- (b) lithi lingabi nako ukusebenza, kube kungenakwenzeka ukuba kumiselwe omnye umntu ngexesha; okanye
- (c) lithi, seluqalile uphando, lingakwazi ukuqhubeka nalo, ababambeneyo bangavumelana kwelokuba uphando luqhutywe ngamalungu aseleyo eBhodi. 40
- (7) Xa ilungu leBhodi elifileyo okanye elingakwaziyo ukusebenza ngenxa yempilo njengoko kuxelwe kwisiqendwana (6) belingusihlalo okanye lingusihlalo weBhodi, uMphathiswa makachonge elinye kumalungu aseleyo libambe njengosihlalo.

**Ukuqwalaselwa kwesibheno nguMphathiswa**

50. (1) Xa uMphathiswa esidlulisele kwiBhodi isibheno ngokwesiqendu 49(1), unokuthi— 45
- (a) avumelane nezindululo zeBhodi okanye azikhabe; aze
- (b) ayalele uMgcini-zifayile okanye igunya elimiselweyo ukuba lisiphumeze isigqibo ngokomyalelo.
- (2) Xa uMphathiswa eqwalasela isibheno, unokuthi— 50
- (a) avumelane nesigqibo soMgcini-zifayile okanye segunya elimiselweyo, okanye asikhabe, okanye enze uhlehlengiso kuso; aze
- (b) ayalele uMgcini-zifayile okanye igunya elimiselweyo ukuba asiphumeze asiphumeze isigqibo ngokomyalelo.
- (3) Isigqibo soMphathiswa masibhalwe phantsi ize ikopi yaso inikwe uMgcini-zifayile okanye igunya elimiselweyo, nobhenayo kunye nomnye umntu ekufuneka sidluliselwe kuye isigqibo zingaphelanga iintsuku ezingama-90. 55

- (4) If the Minister—
- (a) sets aside any decision or action by the Registrar or designated authority, the prescribed fee paid by the appellant in respect of the appeal must be refunded to the appellant; or
  - (b) varies any decision or action by the Registrar or designated authority, the Minister may direct that the whole or any part of such fee, be refunded to the appellant. 5

## CHAPTER 16

### ADVISORY COMMITTEE

#### Establishment of Advisory Committee 10

- 51.** (1) A committee to be known as the Plant Improvement Advisory Committee may be established.
- (2) The Advisory Committee may advise the Registrar on—
- (a) any technical matter arising from the provisions of this Act; and
  - (b) any other matter relating to the administration of this Act referred to the Advisory Committee by the Registrar. 15

#### Appointment of members of Advisory Committee and termination of membership

- 52.** (1) The Minister may appoint as members of the Advisory Committee—
- (a) two persons who are appropriate persons to represent breeders of plant varieties; 20
  - (b) two persons who are appropriate to represent farmers;
  - (c) one person who is an appropriate person to represent the interests of consumers of plant varieties or of the products of plant varieties;
  - (d) one person to represent conservation interests in respect of plant varieties and the potential impacts of plant varieties on the environment; 25
  - (e) one person to represent indigenous interests in respect of plant varieties and the source, use and impacts of plant varieties;
  - (f) one person with knowledge and experience in the relevant fields of law, including but not limited to administrative law; and
  - (g) two persons to represent schemes. 30
- (2) Whenever it is necessary to appoint a member of the Advisory Committee—
- (a) the Minister must, by notice in any appropriate media, call for the nomination of persons who comply with the criteria contemplated in subsection (1);
  - (b) the Minister must establish a selection committee, consisting of not more than five members appointed by the Minister; 35
  - (c) the Minister must refer all nominations received to such selection committee;
  - (d) the selection committee must compile a short-list of candidates in accordance with the provisions of subsection (1);
  - (e) the selection committee must, within 30 days after the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories referred to in subsection (1); and 40
  - (f) the Minister must appoint such number of members as is required from the list of candidates recommended by the selection committee.
- (3) A member of the Advisory Committee serves in a part-time capacity.
- (4) A member of the Advisory Committee serves for a period not exceeding three years as specified in the letter of appointment and may be reappointed for one more term not exceeding three years. 45
- (5) If, upon the expiration of the term of office of the members of the Advisory Committee, the Minister has not yet appointed new members to take their place, the existing members continue in office until new members have been appointed to replace them. 50
- (6) The Minister may at any time terminate the appointment of a member of the Advisory Committee if that member is incapable of performing his or her functions or is found guilty of misconduct.

- (4) Ukuba uMphathiswa—
- (a) uyasikhaba isigqibo okanye isenzo soMgcini-zifayile okanye segunya elimiselweyo, umrhumo ofunekayo ohlawulwe ngulowo obhenayo mawubuyiselwe kuye; okanye
- (b) wenza uhlehlengiso kwisigqibo okanye kwisenzo soMgcini-zifayile okanye segunya elimiselweyo, uMphathiswa angayalela ukuba wonke umrhumo wokubhena okanye inxalenye yawo ibuyiselwe kobhenayo. 5

## ISAHLUKO 16

### IKOMITI ECEBISAYO

#### Ukusekwa kweKomiti Ecebiso 10

**51.** (1) Kunokuthi kusekwe ikomiti eyaziwa ngokuba yiKomiti Ecebiso Ngokuphuculwa Kwezityalo.

(2) Le Komiti inokucebisa uMgcini-zifayile—

- (a) ngayo nayiphi na into ebangelwa kokutshiwo ngulo Mthetho; kwakunye
- (b) nayo nayiphi na enye into emalunga nokusetyenziswa kwalo Mthetho edluliselwe kwiKomiti Ecebiso nguMgcini-zifayile. 15

#### Ukumiselwa kwamalungu eKomiti Ecebiso nokuyekiswa ukuba ngamalungu

**52.** (1) UMphathiswa unokumisela babe ngamalungu eKomiti Ecebiso—

- (a) abantu ababini abangabantu abafanelekileyo bokumela abavelisi beendidi ngeendidi zezityalo; 20
- (b) abantu ababini abafanelekileyo ukuba bamele abalimi;
- (c) umntu omnye ongumntu ofanelekileyo ukuba amele iimfuno zabathengi beendidi ngeendidi zezityalo okanye zabathengi beemveliso zeendidi ngeendidi zezityalo;
- (d) umntu omnye omele ukulondolozwa kweendidi ngeendidi zezityalo nendlela enokuchaphazelwa ngayo indalo esingqongileyo ziindidi ngeendidi zezityalo; 25
- (e) umntu omnye wokumela iindidi zezityalo ezizezalapha nemvelaphi, nokusetyenziswa kweendidi ngeendidi zezityalo;
- (f) umntu omnye onolwazi namava kwimiba yomthetho, kuquka nomthetho wokwenziwa kwezigqibo; kunye 30
- (g) nabantu ababini bokumela amaqumrhu.

(2) Nanini na xa kuyimfuneko ukumisela ilungu leKomiti Ecebiso—

- (a) uMphathiswa makathi, ngesihlokomiso asifake nakweliphi na ijelo leendaba, amemelele ukuba kunyulwe abantu abahlangabezanyayo neemfuneko ezixelwe kwisiqendwana (1); 35
- (b) uMphathiswa makamisele ikomiti etyumbayo, emalungu angengaphezulu kwesihlanu amiselwe nguMphathiswa;
- (c) uMphathiswa makawadlulisele onke amagama awafumeneyo abanyuliweyo kuloo komiti etyumbayo;
- (d) ikomiti etyumbayo mayenze uluhlu olufutshaniweyo lwabagqatswa ngokwesiqendwana (1); 40
- (e) ikomiti etyumbayo mayithi zingaphelanga iintsuku ezingama-30 zityikityiwe iincwadi zokumiselwa kwamalungu ayo, iphakamise uluhlu lwamagama aya kuMphathiswa angekho ngaphantsi kwesithathu engawodidi ngalunye kwiindidi ekuthethwe ngazo kwisiqendwana (1); kanaanjalalo 45
- (f) uMphathiswa makamisele amalungu alinani elifunekayo ethabatha kuluhlu lwabagqatswa abaphakanyiswe yikomiti etyumbayo.

(3) Ilungu leKomiti Ecebiso lisingxungxo.

(4) Ilungu leKomiti Ecebiso likhonza ixesha elingagqithiyo kwiminyaka emithathu exelwe kwincwadi yokumiselwa kwalo, linokuthi ke liphinde limiselwe esinye isihlandlo esingagqithiyo kwiminyaka emithathu. 50

(5) Ukuba lithi xa liphela ixesha lamalungu eKomiti Ecebiso abe uMphathiswa angekawamiseli amalungu amatsha okuthabath' indawo, amalungu abesoloko ekho ayaqhubeka de kumiselwe amalungu amatsha okuthabath' indawo yawo.

(6) UMphathiswa unokuthi nangaliphi na ixesha aliyekise ilungu leKomiti Ecebiso ukuba elo lungu alikwazi ukwenza imisebenzi yalo okanye lifunyenwe linetyala lokwenza isenzo esiphosakeleyo. 55

(7) If the appointment of a member of the Advisory Committee is terminated in terms of subsection (6), the Minister must give the person written notice informing him or her of the termination and set out the reasons for the termination.

(8) A member of the Advisory Committee may resign by written notice to the Minister. 5

(9) The Registrar is a member of the Advisory Committee by virtue of his or her office.

(10) A member of the Advisory Committee must receive such subsistence and travelling allowances as may be prescribed by the Minister after consultation with the Minister of Finance. 10

### **Recusal and disclosure of interests**

**53.** (1) Any member of the Advisory Committee who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory Committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting. 15

(2) A disclosure in terms of subsection (2) must be—

- (a) recorded in the minutes of the meeting of the Advisory Committee; and
- (b) made known in any advice given by the Committee in relation to that matter.

### **Meetings**

**54.** (1) The Registrar must convene a meeting of the Advisory Committee when it is necessary for the purposes of the performance of the functions of the Advisory Committee. 20

(2) At a meeting of the Advisory Committee, five members constitute a quorum.

(3) The members must elect one of the members present at the meeting to preside at the meeting. 25

(4) The Advisory Committee may determine the procedure to be followed in the performance of its functions.

## **CHAPTER 17**

### **GENERAL PROVISIONS**

#### **Request for test results by authority of another country** 30

**55.** The Registrar may provide to an appropriate authority of another country the test reports for distinctness, uniformity and stability and variety descriptions derived from tests and trials undertaken by him or her in terms of section 35(1)(a) against payment of a prescribed fee.

#### **Disclosure of information** 35

**56.** (1) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), a person must not disclose any information obtained by him or her in the performance of his or her functions in terms of this Act, except—

- (a) to the extent that it may be necessary for the proper administration of this Act;
- (b) for the purposes of any legal proceedings under this Act; 40
- (c) upon an order of a competent court; or
- (d) at the request of the Minister, the Director-General or any other person whose right has been affected.

(2) Notwithstanding subsection (1), the designated authority may, in respect of the relevant scheme, furnish to the holder or the appointed agent of a plant breeder's right granted under the Plant Breeder's Rights Act, 1976 (Act No. 15 of 1976), in respect of a variety, information regarding—

- (a) the persons who applied for the certification of plants or propagating material of the variety in question;
- (b) the area of land of each unit for certification for which application for registration in respect of such plants or propagating material has been made; and 50



- (7) Ukuba ilungu liyekisiwe ngokwesiqendwana (6), uMphathiswa makalinike isaziso esibhaliweyo emazisa ngokuyekiswa kwalo aze achaze izizathu zokuliyekisa.
- (8) Ilungu leKomiti Ecebisayo linokuziyekela ngokubhalela uMphathiswa.
- (9) UMgcini-zifayile ulilungu leKomiti Ecebisayo ngenxa yesikhundla sakhe.
- (10) Ilungu leKomiti Ecebisayo malifumane isixhaso sokutya nesixhaso seendleko zohambo esinokuthi siqingqwe nguMphathiswa emva kokubonisana noMphathiswa Wezimali. 5

#### Ukuzikhwebula nokudandalaziswa kwezinto azincwasileyo umntu

- 53.** (1) Naliphi na ilungu leKomiti Ecebisayo elinento eliyincwasileyo ngokwasemalini kudaba oluxoxwayo kwintlanguaniso yeKomiti Ecebisayo malithi, kamsinya emva kokuba liyazile loo nto, liyidandalazise kwintlanguaniso loo nto liyincwasileyo. 10
- (2) Into edandalazisiweyo ngokwesiqendwana (1)—
- (a) mayibhalwe kumanqaku entlanguaniso yeKomiti Ecebisayo; ize
- (b) yenziwe yaziwe kulo naliphi na icebiso elinikwa yiKomiti ngaloo mcimbi. 15

#### Intlanguaniso

- 54.** (1) UMgcini-zifayile makabize intlanguaniso yeKomiti Ecebisayo xa kuyimfuneko ngenjongo yokwenza imisebenzi yeKomiti Ecebisayo.
- (2) Kwintlanguaniso yeKomiti Ecebisayo kufuneka ubuncinane amalungu amahlanu ukuze intlanguaniso iqhubeke. 20
- (3) Amalungu makanyule omnye wawo kumalungu akhoyo ongamele kuloo ntlanguaniso.
- (4) IKomiti Ecebisayo inokwenza isigqibo ngenkqubo emayilandelwe ekwenzeni imisebenzi yayo.

### ISAHLUKO 17

25

#### OKUTSHIWO NGULO MTHETHO GABALALA

#### Ukucelwa kweziphumo zovavanyo zicelwa ligunya lelinye ilizwe

- 55.** UMgcini-zifayile unokunika igunya elifanelekileyo lelinye ilizwe iingxelo zovavanyo zokucaca, ukufana, ukuzinza nokuchazwa kweendidi okufunyenwe kwiimvavanyo eziqhutywe nguye ngokwesiqendu 35(1)(a) kusakuhlululwa umrhumo ofunekayo. 30

#### Ukudandalaziswa kwengcombolo

- 56.** (1) Ngokulawulwa yi*Promotion of Access to Information Act, 2000* (uMthetho 2 ka-2000), umntu makangayidandalazisi ingcombolo efunyenwe nguye xa ebesenza imisebenzi yakhe engokwalo Mthetho, ngaphandle kwaxa— 35
- (a) kuyimfuneko ukuze usetyenziswe kakuhle lo Mthetho;
- (b) kuyimfuneko ukuze kuthatyathwe amanyathelo omthetho ngokwalo Mthetho;
- (c) kuyalele inkundla enegunya lokwenza njalo; okanye
- (d) kucele uMphathiswa, uMlawuli-Jikelele okanye omnye umntu olungelo lakhe lichatshazelweyo. 40
- (2) Kungakhathaliseki ukuba sithini isiqendwana (1), igunya elimiselweyo linokuthi, ngokumayela nequmrhu elifanelekileyo, linike umnini-lungelo okanye umthunywa omiselweyo womvelisi-zityalo ngokwe*Plant Breeder's Rights Act, 1976* (uMthetho 15 ka-1976), limnike ingcombolo—
- (a) engabantu abenze izicelo zokukhutshelwa iziqinisekiso kwezityalo okanye izinto zokwandisa izityalo zodidi; 45
- (b) engommandla womhlaba wesiqwenga ngasinye sokukhutshelwa isiqinisekiso ekwenziwe isicelo ngaso; kanye

(c) the quantity of such plants or propagating material which has been certified under that scheme.

(3) For the purposes of this section, “unit for certification” means an area of land which is registered in terms of a certification scheme for the cultivation of plants and propagating material of the kinds of plants and varieties to which the scheme applies. 5

#### **Publication or distribution of false or misleading advertisements**

**57.** (1) (a) A person must not publish, distribute, cause or permit to be published or distributed, any false or misleading advertisement concerning plants, propagating material or premises.

(b) For the purposes of this section, “advertisement” means any written, illustrated, 10 visual or other descriptive material or verbal statement, communication, representation or reference brought to the attention of a member of the public and which is intended to promote the sale of plants or propagating material or encourage the use thereof or is intended to offer the services of a laboratory or designated authority.

(2) It is a defence for any person, other than the person selling the plants or 15 propagating material to which the false or misleading advertisement relates, who is charged with a contravention of subsection (1), if he or she proves to the satisfaction of the court that he or she did not know and could not reasonably be expected to have known that the advertisement was false or misleading in any respect, unless it is proved that the accused failed on demand by the registrar or a police official to furnish the name 20 and address of the person at whose instance the advertisement was published or distributed.

#### **Regulations**

- 58.** (1) The Minister must make regulations by notice in the *Gazette* regarding—
- (a) any matter that may or must be prescribed; 25
  - (b) any certificate or other document or form to be issued or used for the purposes of this Act;
  - (c) the fees payable in respect of any application, matter or document;
  - (d) the information and particulars to be contained in registers and publications;
  - (e) requirements and standards relating to the facilities for the types of business 30 and premises and the requirements relating to qualifications for the person in control of the premises;
  - (f) the information and facilities to be provided to the registrar by an applicant for registration of a business and premises to be submitted at the time of an application and thereafter; 35
  - (g) requirements and procedure for inspections relating to the Registration and renewal of registration of premises;
  - (h) requirements and procedure for inspections relating to the sampling and testing of plants and propagating material;
  - (i) requirements and standards for plants and propagating material and the 40 marking of containers and labels;
  - (j) requirements for acceptability or not of variety denominations;
  - (k) the information and facilities to be provided to the registrar by an applicant for national listing, and the plants and propagating material to be submitted at the 45 time of an application and thereafter;
  - (l) the tests, trials, examinations and other steps to be taken by an applicant or the registrar before approval for national listing, and the time within which they are to be taken;
  - (m) the records relating to plants and propagating material for sale, multiplication, 50 import or export to be kept by any person who has such material in his or her possession or under his or her control, the form and manner in which they are to be kept, and how and to whom they must be available for inspection;
  - (n) requirements and information required for establishment of schemes;
  - (o) requirements and obligations of designated authorities;
  - (p) the procedures for lodging objections and appeals; and 55

(c) nangobungakanani beso sityalo okanye izinto zokwandisa izityalo ezithe zakhutshelwa isiqinisekiso phantsi kwelo qumrhu.

(3) Ngenjongo yokusebenza kwesi siqendu, elithi “isiqwenga sokukhutshelwa isiqinisekiso” lithetha ummandla womhlaba obhalisiweyo ngokwequmrhu lokukhutshelwa iziqinisekiso wolimo lwesityalo nezinto zokwandisa izityalo zeentlobo zezityalo neendidi ekusebenza kuzo iqumrhu. 5

**Ukupapashwa okanye ukusasazwa kwezibhengezo ezibubuxoki okanye ezikhohlisayo**

57. (1) (a) Umntu makangapapashi okanye asasaze, okanye abangele okanye avumele ukuba kupapashwe okanye kusasazwe isibhengezo esibubuxoki okanye esikhohlisayo ngezityalo okanye ngezinto zokwandisa izityalo okanye ngendawo yeshishini. 10

(b) Ngokwenjongo yokusebenza kwesi siqendu, elithi “isibhengezo” lithetha nantoni na ebhaliweyo engomfanekiso okanye echazayo, elunxibelelwano eziswa kwinqalelo yoluntu, nenjongo yayo ikukukhuthaza ukuthengiswa kwezityalo okanye izinto zokwandisa izityalo okanye ukukhuthaza ukusetyenziswa kwazo okanye enjongo ikukunika iinkonzo zelaboratri okanye igunya elimiselweyo. 15

(2) Kuya kuba sisizathu esivakalayo sokuzithethelela kuye nawuphi na umntu, ongenguye umntu othengisa izityalo okanye izinto zokwandisa izityalo ekukho isibhengezo sobuxoki okanye esikhohlisayo ngazo, omangalelwe ngokwaphula isiqendwana (1), xa enokubonisa ngendlela engathandabuzekiyo ngendlela eyanelisa inkundla ukuba ebengazi kwaye ebengenakulindelwa ukuba azi ukuba isibhengezo esi sibubuxoki okanye siyakhohlisa nangayiphi na indlela, ngaphandle kokuba kuboniswe ubungqina bokuba ummangalelwa woyisakele xa eyalelwa nguMgcini-zifayile okanye lipolisa ukuba anike igama nedilesi yomntu ebepapashelwa yena okanye sisasazelwa yena isibhengezo eso. 25

**Imimiselo**

58. (1) UMphathiswa unokwenza imimiselo ngesihlokomiso kuShicilelo-Mithetho—

- (a) ngawo nawuphi na umcimbi enokunokuthi kwenziwe ummiselo ngawo okanye emakwenziwe ummiselo ngawo;
- (b) ngesiqinisekiso okanye olunye uxwebhu okanye ifomu emayikhutshwe okanye isetyenziswe ngenjongo yokusebenza kwalo Mthetho; 30
- (c) ngemirhumo emayihlawulelwe isicelo ngombandela othile okanye uxwebhu;
- (d) ngengcombolo okanye iinkcukacha emaziqukathwe kwiirejista neencwadi;
- (e) ngeemfuneko nemilinganiselo yeendawo zeentlobo zamashishini neemfuneko mayela nemfundo yomntu ophetheyo kuloo ndawo; 35
- (f) ngengcombolo emayinikwe uMgcini-zifayile ngumenzi-sicelo ukuze kubhaliswe ishishini nendawo elikuyo emayingeniswe ngexesha lokwenziwa kwesicelo nasemva koko;
- (g) ngeemfuneko nenkqubo yokuhlolwa nguMgcini-zifayile nokuvuselelwa kokubhaliswa kwendawo yeshishini; 40
- (h) ngeemfuneko nenkqubo yokuhlolwa yokuthathwa kweesampulu nokuvavanywa kwezityalo nezinto zokwandisa izityalo;
- (i) ngeemfuneko nemilinganiselo emayiginwe yezityalo nezinto zokwandisa izityalo nokubhalwa kwezitya neelebhile;
- (j) ngeemfuneko zokwamkelwa okanye ukungamkelwa kwamacandelo eendidi; 45
- (k) ngengcombolo emayinikwe uMgcini-zifayile nomenzi-sicelo ukuze abe kuluhlu lwelizwe lonke, nezityalo nezinto zokwandisa izityalo emazingeniswe ngexesha lokwenziwa kwesicelo nasemva koko;
- (l) ngeemvavanyo namanye amanyathelo amakathatyathwe ngumenzi-sicelo okanye nguMgcini-zifayile ngaphambi kokuvunywa koluhlu lwelizwe lonke, nexesha emalingapheli zingekathatyathwa; 50
- (m) ngamaxwebhu angezityalo nolutho lokuhambisa okuthengiswa, ukwandiswa, ukuodolwa kwelinye ilizwe okanye ukuthunyelwa kwelinye ilizwe omakugcinwe ngumntu onaloo maxwebhu, nendlela amakagcinwe ngayo, nendlela amakenziwe afumaneke ngayo, nomntu amakenziwe afumaneke kuye ukuze ahlolwe; 55
- (n) ngeemfuneko nengcombolo efunekayo yokusekwa kwamaqumrhu;
- (o) ngeemfuneko neembopheleleko zamagunya amiselweyo;
- (p) ngeenkqubo zokufaka izichaso nezibheni; kanye

- (q) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Different regulations may be made in respect of different—
- (a) types of business; 5
  - (b) types of premises;
  - (c) kinds of plants or propagating material; and
  - (d) schemes.
- (3) The regulations may in respect of any contravention thereof, or failure to comply therewith, prescribe a fine. 10
- (4) A regulation prescribing a fee may be made only after consultation with the Minister of Finance.

### Offences

- 59.** A person is guilty of an offence if he or she—
- (a) (i) makes a false entry in the register or national varietal list or causes it to be made therein or makes a document or causes a document to be made which falsely purports to be a copy of or excerpt from the register or national varietal list; or 15
  - (ii) produces, tenders or causes to be produced or tendered as evidence any such entry, copy or excerpt, knowing it to be false; 20
  - (b) (i) makes a false statement or representation or furnishes false information knowing it to be false; or
  - (ii) fails or refuses to comply with any instruction issued under section 42(1)(b);
  - (c) obstructs or hinders the registrar or an employee or an authorised person or a designated authority in the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties under this Act or a scheme; 25
  - (d) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse so to appear; 30
  - (e) having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn in or to make affirmation or to produce any document or answer any question which he or she may be lawfully required to produce or answer;
  - (f) conducts a business in conflict with the provisions of this Act; 35
  - (g) sells any plant or propagating material in contravention of section 22;
  - (h) imports any plant or propagating material in contravention of section 43, or uses for the purposes of cultivation any plant or propagating material imported in accordance with section 43(7) for purposes other than cultivation or for immediate export; 40
  - (i) exports any plant or propagating material in contravention of section 44;
  - (j) furnishes any particulars in connection with a plant or propagating material on any container in which it is sold or on a label which is attached to such plant or container, which do not correspond with the true properties thereof;
  - (k) fails to display or return a certificate of registration of premises; 45
  - (l) fails to comply with a provision of a scheme while he or she is under an obligation to do so;
  - (m) except in the circumstances referred to in section 56, discloses information acquired by him or her in the course of his or her duties or in the performance of his or her functions under this Act; 50
  - (n) contravenes section 57(1);
  - (o) sells, removes or tampers with any plant, propagating material, substance or other article, or any book or document seized in terms of section 42, or tampers with an identification mark or seal attached thereto in terms of that section; 55
  - (p) falsely holds himself or herself to be the registrar, an employee or an authorised person; or

- (q) nangawo nawuphi na omnye umbandela wenkqubo ekuyimfuneko ngawo ukwenza imimiselo ukuze lo Mthetho usetyenziswe ngokufanelekileyo.
- (2) Kunokwenziwa imimiselo engafaniyo mayela—
- (a) neentlobo zamashishini ezingafaniyo;
- (b) neendawo zamashishini ezingafaniyo; 5
- (c) neentlobo zezityalo okanye izinto zokwandisa izityalo; kanye
- (d) namaqumrhu.
- (3) Imimiselo inokuthi ifune ukuhlawulwa kwefayini ngokwaphulwa kwayo okanye ukungenzi ngokuvumelana nayo.
- (4) Ummiselo ofuna ifayini unokwenziwa kuphela emva kokubonisana 10 noMphathiswa weMali.

### Izenzo ezikukona

#### 59. Umntu waphul' umthetho ukuba—

- (a) (i) ubhala into ebubuxoki kwirejista okanye kuluhlu lwelizwe lonke lweendidi okanye abangele ukuba kwenziwe ezo zinto okanye ukuba wenza uxwebhu okanye abangele ukuba kwenziwe uxwebhu oluzenza ngathi luyikopi yesicatshulwa esisuka kwirejista okanye esisuka kuluhlu lweendidi lwelizwe lonke; 15
- (ii) uvelisa okanye abangele ukuba kuveliswe njengobungqina loo nto ayibhalileyo, ikopi okanye isicatshulwa sayo, esazi ukuba ibubuxoki; 20
- (b) (i) wenza inkcazelo ebubuxoki okanye anike ingcombolo ebubuxoki esazi ukuba ibubuzoki; okanye
- (ii) uyoyisakala okanye uyala ukwenza okufunwa ngumyalelo okhutshwe ngokwesiqendu 42(1)(b);
- (c) uthintela uMgcini-zifayile okanye umqeshwa okanye umntu ogunyaziweyo ekusebenziseni kwakhe igunya okanye ekwenzeni kwakhe imisebenzi engokwalo Mthetho okanye iqumrhu; 25
- (d) uthi ebiziwe ukuba avele ngokwalo Mthetho, angaveli abe engenasizathu sivakalayo emthethweni sokungaveli;
- (e) uthi evelile njengengqina ekuxoxweni kwetyala ngokwalo Mthetho, athi engenasizathu sivakalayo emthethweni ale ukufungiswa okanye ukwenza isibhambathiso okanye ukuvelisa uxwebhu okanye ukuphendula umbuzo ekufuneka ngokomthetho aluvelise uxwebhu olo okanye awuphendule umbuzo lowo; 30
- (f) uqhuba ishishini ngendlela engqubana noko kutshiwo ngulo Mthetho; 35
- (g) uthengisa isityalo okanye izinto zokwandisa izityalo ngendlela eyaphula isiqendu 22;
- (h) uodola kwelinye ilizwe isityalo okanye izinto zokwandisa izityalo ngendlela eyaphula isiqendu 43, okanye usebenzisa ngenjongo yolimo isityalo okanye izinto zokwandisa izityalo eziodolwe kwelinye ilizwe ngokwesiqendu 43(7) ngeenjongo ezingelulo ulimo okanye ukuthumela kwelinye ilizwe ngokukhawuleza; 40
- (i) uthumela kwelinye ilizwe isityalo okanye izinto zokwandisa izityalo ngendlela eyaphula isiqendu 44;
- (j) unika iinkcukacha ezingesityalo okanye ezingezinto zokwandisa izityalo ezikwisitya ezithengiswa ngaso okanye ezikwilebhile enanyathiselwe kweso sityalo okanye isitya ezingahambelaniyo neenkukacha eziyinyaniso; 45
- (k) uyoyisakala ukuxhoma okanye ukubuyisa isiqinisekiso sokubhaliswa kwindawo yeshishini;
- (l) uyoyisakala ukwenza okufunwa liqumrhu abe enyanzelekile ukuba enze njalo; 50
- (m) kwiimeko ezingezizo ekuthethwe ngazo kwisiqendu 56, udandalazisa ingcombolo ayizuzileyo xa ebesenza imisebenzi yakhe engokwalo Mthetho;
- (n) waphula isiqendu 57(1);
- (o) uthengisa, ususa okanye uphazamisana nesityalo, izinto zokwandisa izityalo, okanye enye into okanye incwadi okanye uxwebhu olohluthwe ngokwesiqendu 42, okanye uphazamisana nophawu lofaniso okanye itywina elinanyathiselweyo ngokweso siqendu; 55
- (p) uzenza ngathi unguMgcini-zifayile engenguye, okanye uzenza ngathi ungumqeshwa okanye umntu ogunyaziweyo engenguye; okanye 60

- (q) makes a document or causes a document to be made which purports to be a certificate, authorisation or other document or label issued in terms of this Act.

### Penalties

- 60.** (1) A person convicted of an offence in terms of section 59 is liable—
- (a) in the case of a conviction of an offence referred to in section 59(a), (b), (f), (g), (h), (i), (j), (m), (n), (o), (p) or (q), to a fine or to imprisonment for a period not exceeding six years; and 5
  - (b) in the case of a conviction of an offence referred to in section 59(c), (d), (e), (k) or (l), to a fine or to imprisonment for a period not exceeding four years.
- (2) Notwithstanding anything to the contrary in any other law, a Magistrates' court has jurisdiction to impose any penalty prescribed by this Act. 10
- (3) The court convicting any person of an offence under this Act may upon the application of the prosecutor declare any plant or propagating material in respect of which the offence was committed and all other plants and propagating material of a similar nature of which such person is the owner or which is in his or her possession, to be forfeited to the State. 15

### Presumptions and evidence

- 61.** In criminal proceedings under this Act or a scheme—
- (a) any plant, propagating material, substance or other article in or upon any premises, place or vehicle at the time a sample thereof is taken pursuant to the provisions of this Act must, in the absence of evidence to the contrary which raises reasonable doubt, be deemed to possess the same properties as such sample; 20
  - (b) any sample taken in terms of section 42(1)(e) must, in the absence of evidence to the contrary which raises reasonable doubt, be deemed to be representative of that plant, propagating material, substance or other article from which it was taken; 25
  - (c) a form on which particulars have been entered in terms of section 42(2)(d) is *prima facie* proof of the facts stated therein;
  - (d) any statement or entry contained in any book or document kept or purporting to be issued by any person, or by the manager, agent or employee of such a person, is, in the absence of evidence to the contrary which raises reasonable doubt, admissible in evidence against such person as an admission of the facts set forth in that statement or entry; and 30
  - (e) an excerpt from or a copy of the varietal list certified as such by the registrar, is *prima facie* proof of the information contained therein. 35

### Limitation of liability

- 62.** No compensation is payable by the State, the Minister, the Registrar, any designated authority, any authorised person or any employee in respect of any act done in good faith under this Act or a scheme. 40

### Delegation

- 63.** The Minister may, either generally or in any particular case or in relation to particular property, delegate in writing any function conferred upon the Minister under this Act, except a function referred to in section 58, to the Director-General of the Department, any employee of the Department or any other person. 45



- (q) wenza uxwebhu okanye ubangela ukuba kwenziwe uxwebhu olungathi lusisiqinisekiso okanye isigunyaziso okanye olunye uxwebhu okanye ilebhile ekhutshwe ngokwalo Mthetho.

### Izohlwayo

- 60.** (1) Umntu ofunyenwe enetyala lokwenza isenzo esikukona ngokwesiqendu 59— 5
- (a) xa efunyenwe enetyala lokwenza isenzo esikukona ekuthethwe ngaso kwisiqendu 59(a), (b), (f), (g), (h), (i), (j), (m), (n), (o), (p) okanye (q) uya kugwetywa ifayini okanye ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emithandathu; kuze kuthi
- (b) xa efunyenwe enetyala lokwenza isenzo esikukona ekuthethwe ngaso kwisiqendu 59(c), (d), (e), (k) okanye (l) agwetywe ifayini okanye ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emine. 10
- (2) Kungakhathaliseki ukuba kukho omnye umthetho otsho okuchasene noku, inkundla yeMantyi inegunya lokuwisa nasiphi na isohlwayo esixelwe ngulo Mthetho.
- (3) Inkundla efumanisa umntu enetyala lokwenza isenzo esikukona ngokwalo Mthetho inokuthi xa umtshutshisi enze isicelo soko ivakalise isityalo okanye izinto zokwandisa izityalo ekwenziwe isenzo esikukona ngaso kunye nezinye izityalo nezinto zokwandisa izityalo ezifana naso, loo mntu angumnini waso okanye zigcinwe nguye, inokuvakalisa ukuba uyaphulukana nazo, ziza kuba zezikaRhulumente. 15

### Izinto ezingathathwa njengeziyinyaniso nobungqina 20

- 61.** Kumatyala olwaphulo angokwalo Mthetho okanye iqumrhu—
- (a) isityalo, izinto zokwandisa izityalo okanye enye into ekwindawo yeshishini okanye kwenye indawo okanye inqwelo-mafutha ngexesha ekuthathwa isampulu yayo ngenxa yokutshiwo ngulo Mthetho mayithi, xa bungekho ubungqina obuphikisayo obubangela amathandabuzo, ithatyathwe njengefanayo naloo sampulu; 25
- (b) nayiphi na isampulu ethathwe ngokwesiqendu 42(1)(e) mayithi, xa bungekho ubungqina obuphikisayo obubangela ukuthandabuza, ithathwe njengemela eso sityalo, izinto zokwandisa izityalo okanye enye into ethathwe kuyo;
- (c) ifomu ekubhalwe kuyo iinkcukacha ngokwesiqendu 42(2)(d) ibubungqina kungadanga kwambiwa nzulu beenyaniso ezixelwe kuyo; 30
- (d) nayiphi na inkcazelo okanye okubhaliweyo okusencwadini okanye okukuxwebhu olugcinwe okanye ekubonakala ngathi lukhutshwe ngumntu okanye ngumphathi okanye ngumthunywa okanye ngumqeshwa waloo mntu, kuya kuthi, xa bungekho ubungqina obuphikisa oko obubangela amathandabuzo, yamkelwe njengobungqina nxamnye naloo mntu njengokuvunywa kweenyaniso ezixelwe kuloo nkcazelo okanye kuloo nto ibhaliweyo; kananjalo 35
- (e) isicatshulwa esivela okanye ikopi evela kuluhlu lweendidi ekhutshelwe isiqinisekiso nguMgcini-zifayile, ibubungqina kundadanga kwambiwa nzulu bengcombolo equlethwe apho. 40

### Umda kubutyala

- 62.** Akukho mbuyekezo eya kuhlululwa nguRhulumente, nguMphathiswa, nguMgcini-zifayile, ligunya elimiselweyo okanye ngumntu ogunyaziweyo okanye ngumqeshwa mayela nesenzo esenziwe ngentsusa entle ngokwalo Mthetho okanye ngokwequmrhu. 45

### Ukuphathisa

- 63.** UMphathiswa unokuthi, jikelele okanye kwimeko ethile ephathelele kwimpahla ethile, unokuthi aphathise umsebenzi wakhe ngokubhala, kungumsebenzi awunikwe ngokwalo Mthetho, ngaphandle komsebenzi ekuthethwe ngawo kwisiqendu 58, ewuphathisa uMlawuli-Jikelele weSebe, umqeshwa weSebe okanye umntu. 50

**Transitional provisions and savings**

**64.** (1) The employee designated as registrar in terms of section 3(1) of the Plant Improvement Act, 1976 (Act No. 53 of 1976), immediately before the commencement of this Act, must be regarded as having been designated as Registrar in terms of section 3(1) of this Act. 5

(2) Premises that have been registered in terms of sections 7 and 9 of the Plant Improvement Act, 1976, and which are still registered immediately before the commencement of this Act, must be regarded as having been registered in terms of sections 12 and 17 of this Act, and every provision of this Act apply with the changes required by the context in respect to any such registered premises. 10

(3) Approval for recognition of a variety in terms of section 20 of the Plant Improvement Act, 1976, that is valid immediately before the commencement of this Act, must be regarded as approval granted in terms of section 37 of this Act, and every provision of this Act apply with the changes required by the context in respect to any such approval for national listing. 15

(4) (a) A certification scheme that has been established in terms of section 23 of the Plant Improvement Act, 1976, and which was valid immediately before the date of commencement of this Act, must be regarded as having been established in terms of section 45 of this Act, and every provision of this Act apply with the changes required by the context in respect to any such scheme for a period of one year after the date of such commencement. 20

(b) Each designated authority must enter into a written agreement with the Department within one year from the date of such commencement.

(5) An authorisation issued in terms of sections 13(2) and 26(2) in terms of the Plant Improvement Act, 1976, and which is in force at the commencement of this Act, must be regarded as an authorisation issued in terms of sections 22(3) and 44(4) of this Act. 25

(6) Any application which was received by the Registrar on a date before the date of commencement of this Act and in respect of which a decision has not been made in terms of the Plant Improvement Act, 1976, before the date of such commencement, must be dealt with in all respects as if this Act had commenced on the date of receipt of such application. 30

**Repeal of laws**

**65.** The laws referred to in the second column of the Schedule are hereby repealed to the extent set out in the third column of that Schedule.

**Short title and commencement** 35

**66.** This Act is called the Plant Improvement Act, 2018, and takes effect on a date determined by the President by proclamation in the *Gazette*.

**Okuza kwenzeka okwethutyana nemithetho elondolozwayo**

- 64.** (1) Umqeshwa omiselwe njengoMgcini-zifayile ngokwesiqendu 3(1) se*Plant Improvement Act, 1976* (uMthetho 53 ka-1976) ngaphambi kokuqalisa kwalo Mthetho ukusebenza, makathathwe njengomiselwe njengoMgcini-zifayile ngokwesiqendu 3(1) salo Mthetho. 5
- (2) Indawo yeshishini ebhaliswe ngokwesiqendu 7 nese-9 se*Plant Improvement Act, 1976*, nesisabhalisiweyo ngaphambi kokuqalisa kwalo Mthetho ukusebenza, mayithathwe njengebhaliswe ngokwesiqendu 12 nese-17 salo Mthetho, kwaye konke okutshiwo ngulo Mthetho kuyasebenza kuloo ndawo ebhalisiweyo, kubekho nje utshintsho olunokuthi lufuneke. 10
- (3) Ukwamkelwa kodidi ngokwesiqendu 20 se*Plant Improvement Act, 1975*, okusebenzayo ngaphambi kokuqalisa kwalo Mthetho ukusebenza makuthathwe njengokwamkelwe ngokwesiqendu 37 salo Mthetho, kwaye konke okutshiwo ngulo Mthetho kuyasebenza koko kwamkelwa koluhlu lwelizwe lonke, kubekho nje utshintsho olunokuthi lufuneke. 15
- (4) (a) Iqumrhu lokukhutshwa kweziqinisekiso ezikhutshwe ngokwesiqendu 23 se*Plant Improvement Act, 1976*, elalisebenza ngaphambi kokuqalisa kwalo Mthetho ukusebenza malithathwe njengelisekwe ngokwesiqendu 45 salo Mthetho, kwaye konke okutshiwo ngulo Mthetho kuyasebenza kulo naliphi na iqumrhu ixesha elingunyaka emva kokuqalisa kwawo ukusebenza, kubekho nje utshintsho olunokuthi lufuneke. 20
- (b) Igunya ngalinye elimiselweyo malingene kwisivumelwano esibhaliweyo neSebe ungekapheli unyaka ukususela kumhla wokuqalisa ukusebenza.
- (5) Isigunyaziso esikhutshwe ngokwesiqendu 13(2) nesama-26(2) se*Plant Improvement Act, 1976*, nesisebenzayo ekuqaliseni kwalo Mthetho ukusebenza, masithathwe njengesigunyaziso esikhutshwe ngokwesiqendu 22(3) nesama-44(4) salo Mthetho. 25
- (6) Nasiphi na isicelo esafunyanwayo nguMgcini-zifayile ngomhla ongaphambi kokuqalisa kwalo Mthetho ukusebenza, nekungekenziwa sigqibo ngaso ngokwe*Plant Improvement Act, 1976*, ngaphambi komhla wokuqalisa ukusebenza, masingathwe ngokungathi lo Mthetho wawusele uqalisile ngomhla wokufunyanwa kweso sicelo. 30

**Ukutshitshiswa kwemithetho**

**65.** Imithetho ekuthethwe ngayo kumhlathi wesibini weSihlomelo iyatshitshiswa kwaye ubungakanani bokutshitshiswa kwayo buboniswe kumhlathi wesithathu weSihlomelo.

**Igama lawo nokuqalisa kwawo ukusebenza**

35

**66.** Lo Mthetho ubizwa ngokuba uMthetho Wokuphuculwa Kwezityalo ka-2018 kwaye uqalisa ukusebenza ngomhla ogqitywe nguMongameli ngesihlokomiso kuShicilelo-Mithetho.

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**SCHEDULE***(Section 65)*

<b>NUMBER AND YEAR OF LAW</b>	<b>SHORT TITLE</b>	<b>EXTENT OF REPEAL</b>
Act No. 53 of 1976	Plant Improvement Act, 1976	The whole
Act No. 10 of 1979	Plant Improvement Act, 1979	The whole
Act No. 36 of 1983	Agricultural Pests Act, 1983	Section 20
Act No. 39 of 1983	Plant Improvement Amendment Act, 1983	The whole
Act No. 17 of 1991	Plant Improvement Amendment Act, 1991	The whole
Act No. 25 of 1996	Plant Improvement Act, 1996	The whole
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	Section 60

**ISIHLOMELO***(Isiqendu 65)*

<b>Inombolo yoMthetho nonyaka wawo</b>	<b>Igama lawo</b>	<b>Indawo etshitshiswayo</b>
UMthetho 53 ka-1976	<i>iPlant Improvement Act ka-1976</i>	Wonke
uMthetho 10 ka-1979	<i>iPlant Improvement Act ka-1979</i>	Wonke
uMthetho 36 ka-1983	<i>iAgricultural Pests Act ka-1983</i>	Isiqendu 20
uMthetho 39 ka-1983	<i>iPlant Improvement Amendment Act ka-1983</i>	Wonke
uMthetho 17 ka-1991	<i>iPlant Improvement Amendment Act ka-1991</i>	Wonke
uMthetho 25 ka-1996	<i>iPlant Improvement Act ka-1996</i>	Wonke
uMthetho 88 ka-1996	<i>iAbolition of Restrictions on the Jurisdiction of Courts Act ka-1996</i>	Isiqendu 60

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