



PLANT VARIETIES PROTECTION

infopack



INTELLECTUAL PROPERTY
OFFICE OF SINGAPORE

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The information provided in this infopack is meant as a guide only and does not amount to legal advice. Please seek independent professional advice before acting on any matter contained in this infopack.

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INTRODUCTION AND FUNDAMENTALS

Intellectual Property (IP) refers to the product of your mind or intellect. IP can be an invention or innovation, special names and images used in trade, original designs or an expression of an idea. In Singapore, laws exist to protect such IP. This may be through a registration process such as patent grants for inventions, trade mark registration for signs used in trade, industrial design registration for designs applied to articles and grants of protection for plant varieties. Other forms of IP, that need not be registered, but may be protected nonetheless, include copyright works, geographical indications, layout-designs of integrated circuits, confidential information and trade secrets.

Introduction

The **Grant of Protection for a Plant Variety** is a right given by the Government to the breeder to prevent others from doing any of the following acts (Scope of Grant of Protection) in respect of the propagating material and/or harvested material of the protected plant variety without the breeder's authorisation:

1. production or reproduction;
2. conditioning for the purpose of propagation;
3. offering for sale;
4. selling or other forms of marketing;
5. exporting;
6. importing;
7. stocking for any of the purposes mentioned in 1 to 6 above.

A **Plant Variety** is a plant group within a single botanical taxon of the lowest rank. It can be

- defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes;
 - distinguished from any other plant grouping by the expression of at least one of those characteristics; and
 - considered as a unit with regard to its suitability for being propagated unchanged.
- >> Under the Schedule of the Plant Varieties Protection Act, 15 plant genera and species are eligible for protection. Please refer to the Schedule on page 11 for the list of plant genera and species.

A **Breeder** is a person who bred, or discovered and developed, the candidate plant variety. Any breeder, (an individual or a company) can apply for the grant of protection. However, if the plant variety is bred, or discovered and developed, in the course of work, under Singapore law, the rights to the plant variety may then vest with the employer.

The grant of protection can last for 25 years, subject to payment of annual fees. Annual fees are payable every year starting from the end of the first year of grant. A grant of the plant variety protection is personal property and may be licensed or assigned in the same way as other personal property.

Extension of Plant Variety Protection

Under the plant variety protection system, protection is extended to

- any plant variety which is essentially derived from the protected plant variety (referred to as the “original plant variety”);
- any plant variety which is not distinct from the original plant variety; and
- any plant where the production of such plant variety requires the repeated use of the original plant variety.

A plant variety is “essentially derived” if

- it is predominantly derived from the original plant variety or from a plant variety predominantly derived from the original plant variety;
- retains the expression of the essential characteristics that result from the genotype or a combination of the genotypes of the original plant variety except for the differences which result from the act of derivation; and
- it is clearly distinguishable from the original plant variety.

Exclusions of Plant Variety Protection

The rights conferred do not apply to acts done for

- private and for non-commercial purposes;
- for experimental or research purposes; or
- for the purpose of breeding other varieties.

Legislation Governing Plant Variety Protection

The Plant Varieties Protection Act (Cap. 232A) (“PVP Act”), together with its subsidiary legislation which consists of the Plant Varieties Protection Rules, form the legislation governing plant variety protection law in Singapore.

- >> View the Plant Varieties Protection Act (Cap. 232A) online at <http://statutes.agc.gov.sg> and the IPOS website <http://www.ipos.gov.sg> (Legislation).
- >> Copies of the legislation are available at available at <http://www.snpcorp.com/webshop> or SNP Corporation Ltd at 1 Kim Seng Promenade, Great World City East Tower, #18-01 Singapore 237994, Tel (65) 6826 9691.

UPOV Convention and National Treatment

The PVP Act conforms to the 1991 revision of The International Convention for the Protection of New Varieties of Plants (UPOV).

Under the UPOV Convention, all member countries would accord equal treatment to all nationals and residents of any other member countries of the Convention.

Benefits of Plant Variety Protection

By filing for plant variety protection, a breeder obtains a right to ownership and the right to prevent others from using his rights to the protected plant variety without his authorisation.

>> It is possible for a plant variety to be protected by both plant variety protection and patent as long as the requirements by each protection system are fulfilled.

When to File

The plant variety protection system in Singapore operates on a first-to-file basis. In other words, the first person to file for application will, in general, have priority over others.

Priority Date Claim

Singapore, as a member of the UPOV Convention, allows priority claims in the application for the grant of protection. If an applicant has a corresponding application filed earlier in a UPOV Convention member country, he may claim priority from this first-filed application, provided the Singapore application is filed within 12 months from the date of the first filing. In such a case, where the application in Singapore is a subsequent application, the Registry of Plant Varieties will treat the date of application of the first filing as the date of application in Singapore (known as priority date claim).

Plant Varieties that can be Protected

Under the PVP Act, new varieties of the 15 plant genera and species listed in The Schedule (page 11) are eligible for protection. *Brassica chinensis* L. (commonly known as *baicai*) and *Phalaenopsis* Blume (a species of orchid) are 2 of the 15 plant genera and species listed.

The candidate plant variety must meet the following criteria:

- novelty;
- distinctness;
- uniformity; and
- stability.

It must also be given a suitable denomination.

Novelty The variety has not been sold or disposed of, by or with the consent of the breeder

- i) earlier than 1 year before the date of application in Singapore where the sale or disposal is made in Singapore; and
- ii) where the sale or disposal is made outside of Singapore, earlier than 6 years before the date of application in the case of trees or vines, or earlier than 4 years before the date of application in the case of other plant varieties.

Distinctness The variety is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application. A variety that is of common knowledge does not have to be a protected variety.

Uniformity The variety is sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation.

Stability The relevant 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.

>> The distinctness, uniformity and stability (DUS) criteria are often grouped and examined together, and referred to as the "DUS Test". The candidate variety will undergo a DUS Test conducted during the technical examination to ensure conformance.

Denomination A denomination is the distinguishing name or identification for the plant variety. The breeder of the new variety has to propose a suitable denomination as its generic designation for approval. An example, "Summer Snow" is a denomination under Rosa in a particular UPOV Convention member country.

>> To conduct a search on the denominations in the UPOV Register, any member of the public may access the records at the IPOS Public Search Room.

The proposed denomination has to conform to all the criteria set out in Section 36 and 37 of the PVP Act. The following are instances where a denomination would not be acceptable.

Denomination with numbers only

The proposed denomination should not consist solely of numbers unless it is an established practice for designating plant varieties.

Misleading or confusing denomination

The proposed denomination must enable the variety to be identified and not mislead or cause confusion concerning the characteristics, value or identity of the plant variety, or the identity of the breeder.

Denomination contrary to public policy or morality

The proposed denomination will not be approved if it is contrary to any written law or public policy, or is likely to be offensive to the public.

Denomination confused with trade mark

The proposed denomination would not be suitable if it is likely to cause confusion

- with a trade mark, a name, a business or any other rights for which any person other than the applicant enjoys protection under any law; or
 - with a trade mark for any material of another plant variety, or for goods similar to any material of the first-mentioned plant variety for which the applicant enjoys protection under any law.
- >> If an application in a UPOV Convention country has been previously made for the plant variety, the same denomination has to be used when applying for the grant of plant variety protection in Singapore.

If the Registrar deems a proposed denomination unsuitable for registration, the applicant would be required to propose another denomination within the prescribed period.

Entitlement to Plant Variety Protection

Any breeder (an individual or a company) can apply for the grant of plant variety protection. However, if the plant variety is bred, or discovered and developed, in the course of work, under Singapore law, the rights to the plant variety may then vest with the employer.

There are no restrictions or discrimination as to nationality or residency. However, an applicant who is not a resident in Singapore must provide the Registry of Plant Varieties with an address for service in Singapore to which all correspondences will be sent.

Term and Maintenance

The term of protection is 25 years from the date of grant, subject to the payment of annual fees. Annual fees are payable every year starting from the end of the first year of grant.

Provisional Protection

The owner of the protected plant variety is entitled to provisional protection and is able to take legal proceedings in respect of the plant variety for infringement activities that took place between the date of publication of the application and date of grant. However, such legal proceedings should commence only after the plant variety protection has been granted.

Infringement

The rights of the owner of the protected plant variety are infringed if a party performs any act described in the Scope of Grant of Protection (page 1) without the consent of the owner in respect of the propagating material and/or harvested material of the plant variety.

Enforcement

The owner of the protected plant variety can take civil legal action against an infringing party, seek relief in the form of an injunction to stop the infringing activities, demand for the profits gained by the infringing party at his expense or seek damages for the loss suffered.

False Representation

It is a criminal offence to falsely represent a plant variety as protected when it is not.

Filing an Application

The applicant must file the application form, technical questionnaire, and necessary supporting documents together with the prescribed fee, at the Registry of Plant Varieties at IPOS. The application will be administered by IPOS and the technical examination will be conducted locally by the Agri-Food Veterinary Authority of Singapore (AVA).

- >> Propagating material of the candidate plant variety is not required upon submission of the application. The applicant will be notified in due course to provide the material of the plant variety for the technical examination.

Priority Claim

If an applicant wishes to claim priority, the declaration of priority has to be made at the point of filing the application. The priority documents and translations (if applicable) must be furnished within the prescribed period.

Address for Service

An address for service in Singapore must be provided in an application for the grant of the plant variety protection. This is the address to which all correspondences from the Registry of Plant Varieties will be sent. Where there is a change in the address for service, the applicant will have to notify the Registry of Plant Varieties.

Forms and Fees

A list of the forms and fees pertaining to plant variety protection is enclosed at the back of this infopack. All forms are available at the Registry of Plant Varieties and are downloadable from the IPOS website, www.ipos.gov.sg.

Application Submission

The application may be submitted in person to the Registry or mailed to the address below:

Address: Registrar of Plant Varieties
Registry of Plant Varieties
Intellectual Property Office of Singapore
51 Bras Basah Road
#04-01 Plaza By The Park
Singapore 189554

3 - APPLICATION PROCESS

Registry's operating hours : Monday to Friday: 8:30am to 12:30pm; 1:30pm to 5:30pm
Saturday: 8:30am to 1:00pm

Cashier's operating hours : Monday to Friday: 8:30am to 12:00pm; 1:30pm to 4:30pm
Saturday: 8:30am to 12:00pm

Customer Enquiry Hotline : (65) 6339 8616

Fax : (65) 6339 1369

Email : ipos_enquiry@ipos.gov.sg

Payment can be made by NETS, cashcard, GIRO, cheque (crossed), money order and bank draft (in Singapore dollars) made out to Intellectual Property Office of Singapore.

For submission by mail, the application form must be completed and duly signed together with all the required documents and a cheque/money order/bank draft/request for GIRO payment.

Process After Submission

Submission of Application

Date of Filing

Registry issues an acknowledgment letter with the reference number and date of application.

Preliminary Examination

Formalities and proposed denomination checks.

Publication

Information about application and proposed denomination will be published in the Plant Varieties Protection Journal, which may be accessed by any member of the public. Any party may object to the application within 2 months of publication.

Technical Examination

DUS test conducted by the AVA

Grant / Reject

Certificate of grant is sent to the applicant where application is accepted. If the application is rejected, a notification will be sent to the applicant.

Publication of Grant / Rejection

Registrar publishes decision in the Plant Varieties Protection Journal, which may be accessed by any member of the public.

Date of Filing

Once a completed application form is filed together with the technical questionnaire and the prescribed fee, it will be assigned a number and a filing date.

Preliminary Examination

After the applicant has filed all the necessary documents, the Registry of Plant Varieties examines the documents to ensure that the formalities have been met and checks the proposed denomination.

Publication

The application will be published in the Plant Varieties Protection Journal, produced by the Registry of Plant Varieties once the preliminary examination is completed.

>> The Plant Varieties Protection Journal is an online publication accessible on the IPOS website www.ipos.gov.sg.

Objection

Any member of the public or any interested third party may object to the grant of protection by filing a Notice of Objection at the Registry within 2 months from the date of publication. The party who objects or the “objector” may object to the denomination or object on the ground that the plant variety did not meet the required novelty criterion.

Technical Examination

If the objection to the grant is resolved in favour of the applicant, or if there is no objection, the Registry would notify the applicant that the application is in order and invite him to submit a request for technical examination.

The AVA may require the breeder to furnish all the necessary information, documents and propagating material of the candidate plant variety within the prescribed period. During the examination, the examiner would:

- a) verify whether the candidate variety belongs to the stated botanical taxon;
- b) establish whether the candidate variety is distinct, uniform and stable; and
- c) establish an official description of the variety after (a) and (b) have been met.

For the purpose of the DUS test, the AVA may consider the following:

- information provided by the applicant in the technical questionnaire;
- technical protocol under the UPOV guidelines;
- the results from the growing tests (this may be carried out in cooperation with the applicant); and/or
- DUS test reports by other examination authorities.

Upon completion, the outcome of the examination will be documented in a report which will be sent to the Registrar.

>> If a variety has been granted protection in another UPOV Convention member country, it is possible to rely on the examination report of that country for the purposes of the examination in Singapore. However, IPOS and the AVA have the right to reject these reports where they are not relevant or not applicable, and request for the plant to be submitted for local testing.

Grant of Plant Variety Protection

The Registrar will decide whether to grant or reject the application based on the outcome of the technical examination.

Post Grant

Term

The term of protection is 25 years from the date of grant, subject to the payment of annual fees. Annual fees are payable every year starting from the end of the first year of grant.

Provisional Protection

The owner of the protected plant variety is entitled to provisional protection and is able to take legal proceedings in respect of the plant variety for infringement activities that took place between the date of publication of the application and date of grant. However, such legal proceedings should commence only after the plant variety protection has been granted.

Invalidation

Any party may apply to the Court to challenge the validity of the grant of protection on the grounds that:

- the plant variety was not novel and distinct at the time of grant;
- the plant variety was not uniform or stable at the time of the grant and was essentially based upon information provided by the breeder; or
- the protection has been granted to a party who is not entitled to the grant.

Any party may also apply to the Court to challenge the validity of a registered denomination on the ground that it did not meet the required registration criteria.

Cancellation

Any party may apply to cancel the grant of protection on specific grounds such as the plant variety is no longer stable or uniform.

Filing for Plant Variety Protection Outside Singapore

Protection for plant varieties is territorial in nature. To obtain protection outside Singapore, it is necessary to file separate applications in the countries concerned.

As Singapore is a member country of the UPOV Convention, breeders who are nationals and residents of Singapore would be accorded national treatment in any member country of the UPOV Convention.

List of Genera and Species - The Schedule

	Botanical Name	Common Name
1. Orchids	Dendrobium Sw.	Dendrobium
	Mokara	Mokara
	Oncidium Sw.	Oncidium
	Vanda R. Br	Vanda
	Aranda	Aranda
	Aranthera	Aranthera
	Phalaenopsis Blume	Phalaenopsis
	Renantanda	Renantanda
2. Aquatic plants and Ornamentals	Anubias	Anubias
	Cryptocoryne	Cryptocoryne
	Echinodorus	Sword Plant
	Limnophilla	Limnophilla
	Heliconia	Heliconia
3. Vegetables	Brassica Chinesis L.	Baicai, Xiaobiacai
	Brassica Chinesis var parachinesis	Caixin

Frequently Used Terms

Breeder	A Breeder is a person who bred, or discovered and developed the candidate plant variety.
Denomination	The distinguishing name or identification for the plant variety.
Distinctness	The variety is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application. The variety does not have to be a protected variety.
Novelty	The variety has not been sold or disposed of, by or with the consent of the breeder <ul style="list-style-type: none">i) earlier than 1 year before the date of application in Singapore where the sale or disposal is made in Singapore; andii) where the sale or disposal is made outside of Singapore, earlier than 6 years before the date of application in the case of trees or vines, or earlier than 4 years before the date of application in the case of other plant varieties.
Priority Date Claim	An earlier date which the applicant in Singapore may claim if there is a corresponding filing in a UPOV Convention member country; provided that the Singapore application is filed within 12 months from date of the earlier filing.
Plant Variety	A plant group within a single botanical taxon of the lowest rank.
Stability	The relevant 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.
Uniformity	The variety is sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation.



INTELLECTUAL PROPERTY
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