



PLANT VARIETIES PROTECTION

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OFFICE OF SINGAPORE

PLANT VARIETIES PROTECTION

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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, all plant genera and species are eligible for protection.

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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 that is itself predominantly derived from the original plant variety;
- it 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 2004 (“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 PVP Act or the latest legislation update at the AGC website <http://statutes.agc.gov.sg>.

>> Copies of the legislation are available at <http://www.toppanleefung.com/webshop> or Toppan Leefung Pte. Ltd Legal Publishing at 1 Kim Seng Promenade, Great World City East Tower, #18-01/06 Singapore 237994, Tel (65) 6826 9685 / 6826 9629.

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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, all new plant genera and species are eligible for protection.

The candidate plant variety must meet the following criteria:

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

It must also be given a suitable denomination.

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- 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 <http://www.upov.int/pluto/en/>. For denominations registered in Singapore, you may access the IPOS Register at <https://www.ipos.gov.sg/resources/plant-varieties-protection>.

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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.

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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.

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APPLICATION PROCESS

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 and the technical examination will be administered by IPOS.

>> 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

The application may be submitted in person (through an appointment) or mailed to IPOS. For more information on payment and application submission methods, please refer to the “Forms & Fees” section under Plant Varieties Protection Resources page [here](#).

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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 examiner. Otherwise, applicant relies on examination report from corresponding UPOV country.

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.

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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 examiner 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.

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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 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.

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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.

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.



The Intellectual Property Office of Singapore or IPOS (<http://www.ipos.gov.sg>) is the lead government agency that formulates and regulates intellectual property (IP) laws, promotes IP awareness and provides the infrastructure to facilitate the greater development of IP in Singapore. With IP fast becoming a critical resource in today's new economy, IPOS' vision is to foster a creative Singapore where ideas and intellectual efforts are valued, developed and exploited. Formerly known as the Registry of Trade Marks and Patents, IPOS was established as a statutory board of the Ministry of Law on 1 April 2001.