

植物品種保護資料簡介

GENERAL INFORMATION ABOUT PLANT VARIETIES PROTECTION



植物品種權利

PLANT VARIETY RIGHTS



漁農自然護理署
Agriculture, Fisheries and
Conservation Department

1. 法例

《植物品種保護條例》(第 490 章)提供法律途徑供植物品種擁有人申請所有權，以保障其培育或發現並發展的栽培植物品種。申請該權利與否純屬自願性質，擁有人可自行決定。

1. THE ORDINANCE

The Plant Varieties Protection Ordinance (Cap. 490) provides owners of plant varieties with legal means to apply for proprietary rights over cultivated plant varieties they bred or discovered and developed. Application for such rights is entirely voluntary and it is up to the owners to decide whether or not to apply.

2. 條例所適用的植物

除了不可食用的藻類和真菌外，符合以下所有準則的各類植物品種(例如作物、蔬菜和觀賞植物等)，均在受保護之列。

新有的品種

有關品種未曾於過去 12 個月以上的期間內在香港售賣；就喬木或藤本植物而言，未曾於過去 6 年以上的期間內在香港以外地方售賣，或就其他種類的植物而言，未曾於過去 4 年以上的期間內在香港以外地方售賣。

獨特的品種

在申請提出時，有關品種具備一項或多項可以被精確地描述的特徵，令人可把該品種與其他眾所周知的現有品種辨別出來。

同質的品種

除因顧及有關品種的任何個別的繁殖或生殖特點而可預期的變異外，該品種的所有植物在其有關特徵方面均帶有、展露或顯示相同的表徵。

穩定的品種

有關品種在申請人描述的每一繁殖或生殖周期結束時，以及經過多次繁殖或生殖後，其有關特徵仍確實如所描述一樣。

2. PLANTS TO WHICH ORDINANCE APPLIES

All types of plant varieties (e.g. food crops, vegetables, and ornamentals) except inedible algae and fungi, which meet all the following criteria, are eligible for protection.

Novelty

A variety has not been sold in Hong Kong for more than 12 months; and elsewhere in the world for more than 6 years in the case of trees or vines, or for more than 4 years in every other case.

Distinctness

A variety is distinguishable in one or more precisely described characteristic(s) from existing varieties whose existence was a matter of common knowledge at the time of application.

Uniformity

All plants of a variety carry, exhibit or show the same expression of that variety's relevant characteristics, subject to any variation which may be expected having regard to any particular feature of its propagation or reproduction.

Stability

A variety remains true to its description where the applicant concerned has described particular cycles of propagation or reproduction for that variety, at the end of each such cycle; and after repeated propagation or reproduction.

3. 受保護植物品種的名目

申請人必須在提交申請時或在提交申請後兩個月內提供有關品種的建議名目。植物品種權利註冊處處長(處長)只會批准符合訂明規定的建議名目。受保護品種的生殖材料必須以獲批准的名目出售。

3. DENOMINATION OF PROTECTED PLANT VARIETY

The applicant must, upon application, or within two months after making the application, propose a denomination for the variety concerned. The Registrar of Plant Variety Rights (Registrar) shall only approve a proposed denomination that complies with the prescribed requirements. Reproductive material of a protected variety shall be sold under the approved denomination.

4. 臨時保護

由提出申請當日起，申請人便享有有關品種的臨時保護權利。如其後該項申請被撤回或失效，或處長拒絕就該項申請發給植物品種權利授權證(授權證)，則上述權利將視作從未賦予該申請人。

4. PROVISIONAL PROTECTION

The applicant shall enjoy provisional protection of rights over the concerned variety starting from the day on which the application is made. The rights shall be treated as never having been conferred if the application concerned is withdrawn or lapses, or the Registrar declines to make a grant of plant variety rights (grant) in respect of that application.

5. 授權證的有效期及承授人的權利

凡申請符合處長所要求的規定，可獲發給授權證。就喬木或藤本植物所發給的授權證，有效期為 25 年，就其他物種所發給的授權證，有效期則為 20 年。這類授權證只在香港有效。如欲在香港以外地方獲得植物品種保護，必須另行向該等司法管轄區的有關當局提出申請。

承授人(即授權證的持有人)享有以下的獨有權利：

- 生產有關品種的生殖材料作售賣用途，並出售或要約出售該等材料；
- 輸入或輸出有關品種的生殖材料；
- 為該品種的果實或花卉的商業生產而繁殖該品種；以及
- 以特許方式授權他人進行上述活動。

如任何人未經承授人同意或授權而侵犯其權利，承授人可就其受侵犯的權利在民事法庭提出訴訟。

5. DURATION OF GRANT AND RIGHTS OF GRANTEES

A grant will be made in respect of every application that fulfills the requirements requested by the Registrar. The grant shall be in force for a term of 25 years in the case of trees or vines, and of 20 years in every other case. Such a grant is only valid in Hong Kong. To obtain plant varieties protection outside Hong Kong, a separate application must be made to the appropriate authority in those jurisdiction.

A grantee (i.e. a holder of a grant) shall have the exclusive right to:

- produce for sale, and to offer for sale or sell, reproductive material of the variety concerned;
- import or export reproductive material of the variety concerned;
- propagate that variety for the purposes of the commercial production of fruit or flowers of that variety; and
- authorize others by licence to carry out the above activities.

If any person infringes on the rights without the consent or authorization of the grantee, the grantee can bring legal action in civil courts against the infringement of the rights.

6. 申請程序

培育或發現並發展有關植物品種的人、其代理人或其繼承人可提出申請。申請人如並非該品種的原育種人，須提供文件以證明其擁有權。如已委託代表處理申請，則申請人須提交由其本人簽發授權該代表行事的授權書。

申請人須把填妥的申請表、申請費、一切所需文件和訂明數量的生殖材料，一併提交植物品種權利註冊處處長辦事處(註冊處)。申請人須提供香港地址，以供送達與申請有關的文件。申請人指引和申請表可在註冊處索取，或從漁農自然護理署網站下載。

6. APPLICATION PROCEDURES

The person who bred or discovered and developed the variety or an agent of that person or a successor to that person may file an application. If the applicant is not the original breeder of the variety, documentation for proof of ownership will be required. If a procedural representative has been appointed, a power of attorney issued by the applicant on whose behalf the representative is authorized to act must be submitted.

The applicant must submit a completed application form, the application fee, all the required documents and the prescribed quantity of reproductive material to the Office of the Registrar of Plant Variety Rights (The Office). The applicant must provide an address for service within Hong Kong in relation to that application. A guide for applicants and the application form are available at the Office or on the website of the Agriculture, Fisheries and Conservation Department.

7. 註冊紀錄冊及憲報

處長須備存植物品種權利註冊紀錄冊(註冊紀錄冊)，並記錄所有申請及授權證的詳情，以供公眾查閱。處長會每年在憲報公布記入註冊紀錄冊而仍然有效的品種和受保護品種名單。

7. REGISTER AND GAZETTE

The Registrar shall maintain a Register of Plant Variety Rights (Register) recording all the particulars in relation to the applications and grants for public inspection. A list of the relevant varieties and the protected varieties that have been entered in the Register and are still in force will be published in the Gazette each year.

8. 費用及檢驗費用

除申請費外，承授人亦須繳付訂明的授權證年費，否則授權證會被取消。申請人亦須承擔處長為辦理其植物品種保護權利申請而招致的所有成本和開支(例如進行檢驗或索取檢驗報告的費用)。

8. FEES AND TESTING COSTS

Other than the application fee, the grantee shall pay the annual grant fee as prescribed, otherwise the grant will be cancelled. The applicant is also responsible to pay for all the costs and expenses incurred by the Registrar for the purpose of plant variety right's application (e.g. testing trials or the obtaining of the test reports).

9. 罪行

任何人士如提供虛假或具誤導性的資料，或作出任何虛假陳述，以支持某項申請，均屬犯罪，可處第 6 級罰款(現時的最高罰款額為 100,000 港元)。

9. OFFENCES

It is an offence for any person to supply false or misleading information or to make any false representation in support of an application. The penalty for such offences is a fine at level 6 (currently set at a maximum of HK\$100,000).

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10. 查詢

漁農自然護理署
植物品種權利註冊處處長辦事處

地址 : 香港九龍長沙灣道 303 號長沙灣政府合署 5 樓
電話號碼 : (852) 2150 7008
傳真號碼 : (852) 2736 9904
電郵地址 : pvp@afcd.gov.hk
網站 : <https://www.afcd.gov.hk>

10. ENQUIRY

The Office of the Registrar of Plant Variety Rights
Agriculture, Fisheries and Conservation Department

Address : 5/F, Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road, Kowloon, Hong Kong
Phone No. : (852) 2150 7008
Fax No. : (852) 2736 9904
Email Address : pvp@afcd.gov.hk
Website : <https://www.afcd.gov.hk>



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