

# **GUIDE FOR APPLICANTS** **PLANT VARIETIES PROTECTION**

## **I) GENERAL NOTES**

### **a) Submission requirements**

In filing an application, the followings must be submitted:

- a) Completed application form
- b) Prescribed quantity of reproductive material
- c) Application fee

All correspondences and enquires should be addressed to:

The Office of the Registrar of Plant Variety Rights  
Agriculture, Fisheries and Conservation Department  
5/F., Cheung Sha Wan Government Offices,  
303 Cheung Sha Wan Road,  
Kowloon, Hong Kong  
Tel: 2150 7008 Fax: 2736 9904

### **b) Overview of the procedures**

<b>Stage</b>	<b>Procedure</b>
1	⇒ Owner/agent submits a completed application form with the prescribed quantity of reproductive material and application fee.
2	⇒ The Registrar notifies in the Gazette the making of the application and advise the applicant accordingly. The applicant shall also enjoy provisional protection of rights over the concerned variety starting on the day.
3	⇒ The technical information and description of the variety as requested in the technical questionnaire should be submitted together with the application form or within 7 days after making the application. If a proposed denomination cannot be provided in the application form, a temporary experimental number (applicant's reference) can be given. However, the proposed denomination for the relevant variety must be submitted within 2 months after making the application.
4	⇒ The Registrar notifies in the gazettes every proposed denomination and waits for 3 months to allow for objections.
5	⇒ After the 3-month period, the Registrar will make arrangements for the testing and examination of the concerned variety as he considers necessary for the purpose of determining whether the variety is distinct, uniform and stable.

## **Stage Procedure**

- 6 ⇒ The testing and examination procedures for the evaluation of an application could involve considerable amount of time as well as expenditure. If the variety has been, or is in the process of being, registered in a UPOV member state, the test report may be accepted for the evaluation of that application. The applicant should bear in mind that he is responsible to pay for all the cost and expenses incurred by the Registrar for the purpose of plant variety right's application such as testing trials or the obtaining of the test reports.
- 7 ⇒ Once the Registrar is satisfied that the variety is novel, distinct from other varieties, uniform and stable and that it has been given a name that does not clash with other varieties of the same or similar species in both Hong Kong and overseas, he will propose to grant the applicant plant variety rights for that variety.
- 8 ⇒ In receipt of the annual grant fee within one month after notification, the Registrar shall then grant/refuse to grant the applicant rights over the variety, enter the variety details into the Plant Varieties Register and shall publish the decision in the gazette.

### **c) Supply of information and reproductive material**

All information, evidence, documents and reproductive materials as required in the application form or as particularly requested by the Registrar must be provided within the prescribed period or period specified by the Registrar. If they are not supplied within the prescribed or specified period, the application concerned shall lapse or deemed to be withdrawn upon expiration of that period. It should also be noted that all information, material or instrument supplied to the Registrar in pursuant for a grant of Plant Variety Rights will be made available for public inspection.

### **d) 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 \$100,000).

### **e) Objection and appeal**

At any stage during the granting process i.e. before any decision is made by the Registrar , any person can lodge an objection with the Registrar. Only substantiated claims will be entertained. The applicant and objector will be requested to furnish evidence to the Registrar supporting/defending their particular case. On consideration of all evidence provided, the Registrar shall then make a decision on the objection.

Appeals against any decision made by the Registrar during the granting process are to the court and must be processed as detailed in Part IV of the Plant Varieties Protection Ordinance, Cap. 490.

## II) NOTES FOR FILLING IN AN APPLICATION

<u>Note No.</u>	<u>Remarks</u>
1	<ul style="list-style-type: none"><li>• If the applicant is not the original breeder of the variety, a letter of authorisation or other documentation for proof of ownership must be provided with the application.</li></ul>
2	<ul style="list-style-type: none"><li>• The applicant must provide an address for service within Hong Kong in relation to that application.</li></ul>
3	<ul style="list-style-type: none"><li>• A temporary designation or an experimental number (Applicant's reference) will also be accepted at the time of application. However, a proposed denomination in compliance with the prescribed requirement must be submitted to the Registrar for approval within two months after making the application. (See Appendix 1 - Requirements for Proposed Denominations.)</li></ul>
4	<ul style="list-style-type: none"><li>• Priority may be claimed by an applicant submitting an application for a variety which previously had been filed for protection outside of Hong Kong in a UPOV member country. It must be claimed within one year from the date when the application was originally made in a UPOV member country. A copy of the preceding application, certified by the appropriate authority must be submitted to the Registrar within 3 months of the making of the application for a grant in Hong Kong.</li></ul>
5	<ul style="list-style-type: none"><li>• The description should be as detailed as possible so as to establish the origin of the variety and provide a history of how the variety was derived. Procedures used to initiate the candidate variety, the numbers of propagating cycle, breeding techniques such as controlled pollination, induced mutation etc. should be described.</li></ul>
6	<ul style="list-style-type: none"><li>• Botanical features of the variety should be reasonably complete. It would be inappropriate to describe just the fruit, or flower or bark or leaves of any specific plant, even if only these plant parts are viewed as commercially valuable.</li></ul>
7	<ul style="list-style-type: none"><li>• The applicant should provide a description of those aspects of the candidate variety that distinguish it from those other varieties whose existence were a matter of common knowledge at the time of application</li></ul>
8	<ul style="list-style-type: none"><li>• The distinguishing aspects of the candidate variety described served as a basis to determine its distinctness. The applicant must therefore compare and describe all of the major distinguishing characteristics that is pertained to the candidate variety with the closest known varieties used for reference. Colour differences should be referenced with a standard such as the Royal Horticultural Society Colour Chart.</li></ul>
9	<ul style="list-style-type: none"><li>• The comparisons of the distinguishing characteristics should also be summarised in a tabulated form.</li></ul>

<b><u>Note No.</u></b>	<b><u>Remarks</u></b>
10	<ul style="list-style-type: none"> <li>• Comparative photographs of characteristics which clearly demonstrate that the candidate variety is distinct from the reference varieties should be submitted. Both candidate and reference variety should be in the same frame of the photograph and labelled clearly.</li> </ul>
11	<ul style="list-style-type: none"> <li>• The applicant should describe how and where the reproductive materials of the variety would be maintained throughout the duration of the protection period if plant variety rights was granted.</li> <li>• The applicant should also note that it shall be a condition of the grant that stock of the reproductive material is required to be maintained as prescribed. Failure to do so will result in the cancellation of the grant. (See Appendix 2 - Stock of Reproductive Material Required to be Maintained for prescribed varieties.)</li> </ul>
12	<ul style="list-style-type: none"> <li>• If the information as required in the Technical Questionnaire (Item 9 of the application form) is not provided at the time of filing of the application, it must be done so within 7 days after making the application.</li> </ul>
13	<ul style="list-style-type: none"> <li>• Sample of reproductive material in a prescribed quantity must be supplied at the time of filing an application. (See Appendix 2 - Quantity of Reproductive Material to Accompany Application)</li> <li>• The applicant should take note that all Plant importation and quarantine requirements must be meet if samples of reproductive material has to be imported.</li> </ul>
14	<ul style="list-style-type: none"> <li>• A non-refundable application fee of HK \$3960 must be paid at the filing of an application.</li> <li>• Besides the application fee, a grant fee for the issuance of the certificate is payable if plant variety rights is granted. An annual fee is also required to be paid to maintain rights over the period of protection and failure to pay such fee will result in the consequent loss of rights over the variety. (See Appendix 3 for all the prescribed fees under the PVP Ordinance.)</li> <li>• The applicant is responsible for all the cost and expenses incurred by the Registrar for the purpose of plant variety rights application such as testing trials or the obtaining of test reports.</li> </ul>

## **Requirements for Proposed Denominations (Regulation Section 5)**

- (1) The Registrar shall not approve a proposed denomination for a variety if it appears to him that-
- (a) it does not enable the variety to be identified;
  - (b) it is not in such script, characters, figures or punctuation marks as required by subsection (2);
  - (c) it is liable to give offence;
  - (d) it is liable to mislead a person of average attentiveness concerning the origin, derivation, characteristics, value or identity of the variety, or the identity of the person who bred or discovered or developed the variety;
  - (e) it is liable to cause confusion concerning the origin, derivation, characteristics, value or identity of the variety, or the identity of the person who bred or discovered or developed the variety;
  - (f) it is identical, or can be confused, with a denomination or designation under which another existing variety of the same or of a related botanical species is registered in Hong Kong or in a UPOV country for the purposes of protection of plant variety rights;
  - (g) it is identical, or can be confused, with a denomination or designation under which another existing variety of the same or of a related botanical species has previously been registered in Hong Kong or in a UPOV country for the purposes of protection of plant variety rights, where the protection afforded by the registration is no longer in force;
  - (h) it is identical, or can be confused, with any designation in which any other person has a prior right that prohibits its use as a denomination of the variety;
  - (i) it refers solely to attributes which are also common in other varieties of the species concerned;
  - (j) it consists of a botanical or common name of a genus or species, or includes such a name, where this is likely to mislead or cause confusion;
  - (k) it suggests that the variety is derived from or related to another variety when this is not the case; or
  - (l) it includes all or any of the following words or translation thereof in botanical sense in other languages-
    - (i) "variety";
    - (ii) "cultivar";
    - (iii) "form";
    - (iv) "hybrid";
    - (v) "cross";
    - (vi) "品種" ;
    - (vii) "栽培品種" ;
    - (viii) "變型" ;

- (ix) "雜交種" ;
  - (x) "雜交".
- (2) (a) If a variety is one in respect of which no equivalent application has been made in a UPOV country under the law of that country, the proposed denomination for that variety-
- (i) shall be in English script or Chinese characters; and
  - (ii) may consist of figures or punctuation marks or both in addition to such script or characters.
- (b) If a variety is one in respect of which an equivalent application has been made in a UPOV country under the law of that country and that application has been accepted, the proposed denomination for that variety shall be-
- (i) in case the original denomination of that variety is in Chinese characters, whether with or without figures or punctuation marks in addition thereto, the same as that original denomination;
  - (ii) in case the original denomination of that variety is in Roman script, whether with or without figures or punctuation marks in addition thereto, the same as that original denomination;
  - (iii) in case the original denomination of that variety is in non-Roman script (other than Chinese characters), whether with or without figures or punctuation marks in addition thereto-
    - (A) a sufficient transliteration or translation of that original denomination in English script, with such corresponding figures or punctuation marks or both as appropriate, to the satisfaction of the Registrar; or
    - (B) a sufficient transliteration or translation of that original denomination in Chinese characters, with such corresponding figures or punctuation marks or both as appropriate, to the satisfaction of the Registrar.
- (c) For the purposes of this subsection-
- "equivalent application"(相等的申請) means an application in a UPOV country under the law of that country that is equivalent to an application for a grant in Hong Kong;
- "original denomination"(原有名目) means the denomination or designation of a variety for the purposes of an equivalent application in a UPOV country.
- (3) If the Registrar does not approve a proposed denomination pursuant to subsection (1), the Registrar shall inform the applicant of the ground for not approving the proposed denomination and require him to propose within 1 month another denomination for the variety.

**Schedule 4 , Regulation Section.17(1)****[Quantity of Reproductive Material to Accompany Application under Section 13(1)(a) of the Ordinance]**

<b>Item</b>	<b>Kind of variety</b>	<b>Quantity of reproductive material</b>
1	Tree	Such quantity of reproductive material as is sufficient to produce 40 plants
2	Vine	Such quantity of reproductive material as is sufficient to produce 40 plants
3	Edible fungus	1 gram (measured by dry weight) net of reproductive material
4	Edible microscopic alga	1 gram (measured by dry weight) net of reproductive material
5	Edible macroscopic alga that is propagated by spore	1 gram (measured by dry weight) net of spore
6	Edible macroscopic alga that is not propagated by spore	50 grams (measured by dry weight) net of reproductive material
7	Gramineae that is propagated by seed	500 grams of seed
8	Gramineae that is not propagated by seed	2 kilograms of reproductive material
9	Any kind of variety that is propagated by seed and does not fall within any item in items 1 to 8	500 grams of seed
10	Any kind of variety that is not propagated by seed and does not fall within any item in items 1 to 8	Such quantity of reproductive material as is sufficient to produce 60 plants

**Schedule 5, Regulation. Section.17(2)****[Stock of Reproductive Material Required to be Maintained under Section 18(9)(b) of the Ordinance]**

<b>Item</b>	<b>Variety</b>	<b>Stock of reproductive material</b>
1	Any variety of tree	Such stock of reproductive material as is sufficient to produce 100 plants
2	Any variety of vine	Such stock of reproductive material as is sufficient to produce 100 plants
3	Any variety of edible fungus	2 grams (measured by dry weight) net of reproductive material
4	Any variety of edible microscopic alga	2 grams (measured by dry weight) net of reproductive material
5	Any variety of edible macroscopic alga that is propagated by spore	2 grams (measured by dry weight) net of spore
6	Any variety of edible macroscopic alga that is not propagated by spore	100 grams (measured by dry weight) net of reproductive material
7	Any variety of Gramineae that is propagated by seed	1 kilogram of seed
8	Any variety of Gramineae that is not propagated by seed	4 kilograms of reproductive material
9	Any variety that is propagated by seed and does not fall within any item in items 1 to 8	1 kilogram of seed
10	Any variety that is not propagated by seed and does not fall within any item in items 1 to 8	Such stock of reproductive material as is sufficient to produce 120 plants

### Plant Varieties Protection Ordinance, Cap.490 - Fee List

Item	Matter	Amount
1.	Application for a grant of plant variety right	\$3960
2.	Issuance of certificate (fee for grant) in respect to a grant of plant variety right	\$260
3.	Application for permission to use reproductive material under protection	\$2,270
4.	Application for extension of a grant to cover essentially derived varieties	\$3960
5.	Obtaining uncertified copy or extract of an entry in the register	\$18 copy or extract
6.	Obtaining certified copy or extract of an entry in the register	\$165 certified copy or extract
7.	Annual fee for a grant	\$1470

Note: According to the Regulation 4, the applicant pay the full cost of testing of plant varieties.