

1. 法例

《植物品種保護條例》(香港法例第490章)設立了法律途徑,供植物育種者(或植物品種擁有人)申請專利權,保障其培育或發現並發展的栽種植物品種。喬木及藤本植物的植物品種權利授權證的有效期為25年,其他品種的授權證則為20年。申請這項權利與否,純屬自願性質,植物育種者可自行決定。

2. 植物品種權利所涵蓋的範圍

植物品種權利的承授人可享有以下專利權:

- 生產受保護品種的生殖材料,作商業售賣用途;
- 出售或要約出售受保護品種的生殖材料;
- 入口/出口受保護品種的生殖材料;以及
- 以特許方式授權他人進行上述活動。

此外,保護範圍亦擴大至透過盜用受保護品種的繁殖材料而收獲得的材料。

植物品種權利註冊處及植物品種權利註冊處處長(處長)不會插手監理任何侵犯《植物品種保護條例》所授予權利的事宜。承授人的權利如被侵犯,他/她有責任向民事法院提出訴訟,向侵權者採取法律行動。

植物品種保護授權證只在香港才有效。如欲在本港以外地方獲得植物品種保護,須另行向有關當局提出申請。

3. 保護的準則

《植物品種保護條例》適用於所有維管植物的屬種及植物品種,以及可供食用的藻類和真菌。任何類別的植物品種(例如供食用的作物、蔬菜及觀賞植物等),均在受保護之列。

植物品種必須符合以下的準則:

- 屬於新有的品種** 有關品種在本港售賣不得超過1年,在其他國家則不得售賣超過4年。如屬喬木及藤本植物,則在其他國家不得售賣超過6年,才可獲考慮提供保護。
- 屬於獨特的品種** 如要獲考慮保護,必須令處長信納,該新有品種可在一或多個重要特徵上,與在提出申請時,眾所週知已存在的現有品種清楚區別出。此外,該新有品種的辨別特徵必須可以被精確地描述。
- 屬於同質的品種** 必須令處長信納,該新有品種除了某些生殖或繁殖特點而可預期的變異外,在有關特徵上夠劃一或同質,然後它才可獲考慮保護。
- 屬於穩定的品種** 必須令處長信納該新有品種經過數代生殖或繁殖後,仍保留其有關特徵,或如申請人指明某一生殖或增殖周期,則在每一周期結束時,仍保留有關特徵。

4. 植物品種的名目

植物品種授權證的申請人,必須在提交申請時,或在提交申請後的兩個月內,提供有關品種的建議名目。處長只可批准符合指明規定的建議名目。一俟獲授植物品種權利,有關品種必須以核准的名目出售,即使在保護期屆滿後亦然。

5. 臨時保護

由申請已視作提出當日起,申請人便立即享有該有關品種的臨時保護權利。如其後他的申請被撤回或失效,或處長拒絕就該項申請發出授權證,則上述權利將視作從未賦予該申請人。

6. 文獻資料

處長須備存植物品種權利註冊紀錄冊,記錄所有申請及授權證的詳情。市民可在辦公時間內查閱紀錄冊,並可繳付訂明的費用,購取有關紀錄的已核證或未核證副本/節錄。處長會在憲報公布植物品種的建議名目,以及就該申請而作出的其他重要決定。此外,亦會在每年年初,在憲報公布上一年獲記入註冊紀錄冊內的有關品種和受保護品種的名單。

7. 誰可申請

植物品種的擁有人可提出申請。植物品種擁有人指培育或發現並發展該品種的人或其代理人或繼承人。如擁有人並非該品種的育種人,則須出示文件來證明其擁有權。如植物品種擁有人委派其在香港的代理人申請植物品種權利,代理人則須出示授權書以證明他是獲指定的代表。

8. 如何申請

申請表、問卷及有關指引,可向下列辦事處索取:

九龍 長沙灣道303號 長沙灣政府合署5樓

漁農自然護理署 植物品種權利註冊處

電話號碼: 2150 7008 傳真號碼: 2736 9904

申請人必須把申請表格填妥,連同在本港供送達用的地址,以及一切所需的附件、生殖材料樣本和申請費用,一併呈交處長,其申請才算有效。植物品種權利的申請手續,詳載於另一份名為申請指南的刊物。

9. 費用及檢驗費

除申請費外,承授人亦須繳付年費,以維持他在植物品種保護期內的權利;不繳付年費,會導致最終失去在該植物品種方面享有的權利。

另申請人亦須支付處長為辦理其植物品種保護權利的申請而招致的所有費用和開支,例如檢驗費或獲取檢驗報告費用。

10. 罪項

任何人士如提供虛假或有誤導成分的資料,或作出任何虛假的陳述,以支持其申請,即屬違法,一經定罪,可處第6級罰款(現時的最高罰款額為100,000元)。

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. THE LEGISLATION

The Plant Varieties Protection Ordinance, Cap. 490 provides plant breeders (or the owners of the variety) the legal means to apply for proprietary rights over cultivated plant varieties they have bred or discovered and developed. The grant shall be in force for a term of 25 years in the case of trees and vines and of 20 years in every other case. Application for such rights is entirely voluntary and it is up to individual breeders to decide whether or not to apply.

2. SCOPE OF PLANT VARIETY RIGHTS

A grantee of Plant Variety Rights shall have the exclusive rights to:

- a) produce reproductive material of the protected variety for the purpose of commercial marketing;
- b) sell or offer for sale reproductive material of the protected variety;
- c) export/import reproductive material of the protected variety; and
- d) licence others to carry out the above activities.

In addition, protection also extends to harvested material where these have been obtained through the unauthorised use of propagating material of the protected variety.

The Plant Variety Registry and the Registrar for Plant Variety Rights (the "Registrar") are not involved in the policing of any infringements of rights granted under the Plant Varieties Protection Ordinance. It is the responsibility of the grantees to bring legal action against any person infringing on his/her rights through proceedings in the civil courts.

A grant of Plant Variety Rights are only valid in Hong Kong. To obtain protection outside Hong Kong, the application must apply separately to the appropriate authority.

3. CRITERIA FOR PROTECTION

The Plant Varieties Protection Ordinance applies to all botanical genera and species of vascular plants as well as edible fungi and algae. Varieties of all types of plants (e.g. food crops, vegetables, ornamentals) are eligible for protection.

Criteria Varieties must meet are as follows:

- a) **Novelty** Protection can only be considered for a variety that has not been sold in Hong Kong for more than 12 months and elsewhere in the world for 6 years in the

case of trees and vines or for more than 4 years in every other case.

b) **Distinctness** To be considered for protection, the Registrar must be satisfied that the variety is clearly distinguishable in one or more important characteristic from existing varieties whose existence is a matter of common knowledge at the time of application. Distinguishing characteristics must be capable of precise description.

c) **Uniformity** The Registrar must be satisfied that the variety is sufficiently uniform or homogeneous in its relevant characteristics, subject to any variation that may be expected having regard to any particular features of its sexual reproduction or vegetative propagation, before the variety can be considered for protection.

d) **Stability** The Registrar must be satisfied that the variety retains its relevant characteristics over a number of generations of reproduction or propagation or, where a particular cycle of reproduction or multiplication is specified by the application, at the end of each cycle.

4. DENOMINATION

An application for a grant of plant variety rights must, on application, or within two months after making the application, propose a name for the variety concerned. The Registrar shall only approve a proposed denomination that complies with the prescribed requirements. Once the plant variety rights is granted, the variety shall be sold under the approved denomination and shall continue to be sold under that denomination even the period of protection has expired.

5. PROVISIONAL PROTECTION

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

6. DOCUMENTATION

The Registrar shall maintain a Register of Plant Variety Rights recording all the particulars in relation to the application and grants. The Register is available for public inspection during business hours. Besides, certified or uncertified copies/extracts are also made available to the public at prescribed fees.

The proposed denominations and other important decisions made by the Registrar in related to the application will be advertised in the Gazette. In addition, a list of the relevant

varieties and the protected varieties that have been entered in the Register in the preceding year will also be published in the Gazette at the beginning of each year.

7. WHO CAN APPLY

An application may be filed by the owner of the variety. The owner, in relation to any variety, means the person who bred or discovered and developed the variety or an agent of that person or a successor to that person. Where the owner is not the breeder, documentation supporting this ownership will be required.

If an agent in Hong Kong is appointed by the owner of the variety to apply for Plant Variety Rights on his behalf, a letter of authorisation must be provided to establish that he is the designated representative.

8. HOW TO APPLY

Application and questionnaire forms as well as guidelines are available from the following address:

The Registrar of Plant Varieties Right
Agriculture, Fisheries and Conservation Department
5/F Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road, Kowloon
Tel: 2150 7008 Fax: 2736 9904

An application is only deemed to be made when a completed application form with an address for service within Hong Kong, together with all the required attachments, samples of reproductive material as well as the application fee are submitted to the Registrar. Details for application procedure of Plant Variety Rights can be found in a separate publication, the Guide for applicants.

9. FEES AND TESTING COSTS

Beside the application fee, an annual fee is also payable to maintain rights over the period of protection. Failure to pay the fee will result in the consequent loss of rights over the variety.

The applicant is also 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.

10. 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)