

PLANT VARIETIES PROTECTION ACT

(CHAPTER 232A)

History	Act 22 of 2004	->	2006 REVISED EDITION
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An Act to provide for the protection of plant varieties.

[1st July 2004]

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PLANT VARIETIES PROTECTION ACT

(CHAPTER 232A)

An Act to provide for the protection of plant varieties.

[1st July 2004]

Notes:— Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act:

Aust. Plant Act 1994	:	Australia, Plant Breeder's Rights Act 1994
HK Plant Ord. 1997	:	Hong Kong, Plant Varieties Protection Ordinance (Chapter 490, 1997 Ed.)
ICPNVP 1991	:	International Convention for the Protection of New Varieties of Plants 1991
UPOV Model Law 1996	:	Model Law on the Protection of New Varieties of Plants by UPOV, 1996
Sweden Plant Act 1997	:	Sweden, Act on the Protection of Plant Breeders' Rights, 1997
Patents 1995 Ed.	:	Singapore Patents Act (Chapter 221, 1995 Revised Edition)
Trade Marks 1999 Ed.	:	Singapore Trade Marks Act (Chapter 332, 1999 Revised Edition)

PART I

PRELIMINARY

Short title

1.—This Act may be cited as the Plant Varieties Protection Act.

Interpretation

2.—In this Act, unless the context otherwise requires —

"applicant" , in relation to any application, means the person by whom or on whose behalf the application is made;

"application" means an application for a grant of protection;

"breeder" , in relation to any plant variety, means —

(a) subject to paragraph (b), a person who bred, or discovered and developed, the plant variety;

(b) if the plant variety was bred, or discovered and developed, by a person in the course of performing his duties or functions as an employee of another person, that other person; or

(c) the successor in title to the person in paragraph (a) or (b), as the case may be;

"Convention" means the international agreement called the International Convention for the Protection of New Varieties of Plants of 2nd December 1961, as revised or amended from time to time;

"Court" means the High Court;

"denomination" means the distinguishing name or identification for a plant variety;

"grant of protection" means a grant of protection made by the Registrar under section 21;

"grantee" means the holder of a grant of protection;

"harvested material" means any harvested material to which the rights of a grantee under section 28 (1) are extended by virtue of section 28 (7);

"Office" means the Intellectual Property Office of Singapore incorporated under the Intellectual Property Office of Singapore Act (Cap. 140);

"plant" includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages;

"plant variety" means a plant grouping within a single botanical taxon of the lowest rank which, irrespective of whether the conditions for a grant of protection are fully met, can be —

(a) defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes;

(b) distinguished from any other plant grouping by the expression of at least one of those characteristics; and

(c) considered as a unit with regard to its suitability for being propagated unchanged;

"prescribed examination authority" means such plant variety examination authority in Singapore or any other UPOV member as the Minister may from time to time prescribe;

"procedural representative", in relation to any plant variety, means a person who is resident or has an office in Singapore and who is appointed by the breeder of that variety to act on his behalf in respect of the making of any application for, or any proceedings relating to, a grant of protection for that variety;

"propagating material", in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics can be produced;

"propagation", in relation to a plant or any of its components, means the growth, culture or multiplication of that plant or component;

"protected variety" means a plant variety in respect of which a grant of protection is in force, and includes any essentially derived or other plant variety to which the grant of protection is extended by virtue of section 29 (1);

"register" means the register of plant varieties maintained under section 39;

"Registrar" means the Registrar of Plant Varieties referred to in section 5;

"Registry" means the Registry of Plant Varieties referred to in section 7;

"relevant characteristics", in relation to any plant variety, means the phenotypical and genotypical expressions of the variety that permit its identification;

"term", in relation to a grant of protection, means the term of the grant of protection under section 24;

"UPOV member" means a state or an intergovernmental party to the Convention which is a member of the International Union for the Protection of New Varieties of Plants constituted pursuant to the Convention.

[*HK Plant Ord. 1997, s. 2; ICPNVP 1991, Art. 1 (iv); Aust. Plant Act 1994, s. 3*]

Act to bind Government

3.—This Act shall bind the Government but nothing in this Act shall render the Government liable to be prosecuted for an offence.

[*Patents 1995 Ed., s. 3; Trade Marks 1999 Ed., s. 100*]

Application of Act to certain plants

4.—(1) This Act only applies to the plant genera and species listed in the Schedule.

(2) The Minister may, by notification in the *Gazette*, amend the Schedule.

[*HK Plant Ord. 1997, s. 4*]

PART II

ADMINISTRATION

Registrar of Plant Varieties and other officers

5.—(1) There shall be a Registrar of Plant Varieties who shall have the chief control of the Registry of Plant Varieties.

(2) There shall be one or more Deputy Registrars of Plant Varieties who shall, subject to the control of the Registrar, have all the powers and functions of the Registrar under this Act, other than the powers of the Registrar under section 6.

(3) There shall be one or more Assistant Registrars of Plant Varieties.

(4) The Registrar and all the other officers under this section shall be appointed by the Minister.

[*HK Plant Ord. 1997, s. 5*]

Delegation by Registrar

6.—(1) The Registrar may, in relation to a particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Act (except this power of delegation) to an Assistant Registrar of Plant Varieties so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

(2) A delegation under this section is revocable at will and no delegation shall prevent the exercise of a power or function by the Registrar or by any Deputy Registrar of Plant Varieties.

Registry of Plant Varieties

7.—For the purposes of this Act, there shall be an office which shall be known as the Registry of Plant Varieties.

Seal of Registry

8.—There shall be a seal of the Registry and impressions of the seal shall be judicially noticed.

Powers of Registrar

9.—The Registrar may, for the purposes of this Act —

- (a) summon witnesses;
- (b) receive evidence on oath, whether orally or otherwise; and
- (c) require the production of documents or articles.

Disobedience to summons an offence

10.—(1) A person who has been summoned to appear as a witness before the Registrar shall not, without lawful excuse, fail to appear in obedience to the summons.

(2) A person who has been required by the Registrar to produce a document or article shall not, without lawful excuse, fail to produce the document or article.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

Refusal to give evidence an offence

11.—(1) A person who appears before the Registrar shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, which he is lawfully required to produce or answer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

Costs awarded by Registrar

12.—(1) The Registrar may award costs in respect of the matters, and in the amounts provided for in rules made under this Act, against any party to proceedings brought before him.

(2) The rules may provide for the taxation of the costs, or any part of the costs, by the Registrar.

(3) A party desirous to obtain costs or to have the costs taxed must apply to the Registrar in accordance with the rules.

(4) If a party is ordered to pay the costs of another party, the costs may be recovered in a court of competent jurisdiction as a debt due by the first party to the other party.

PART III

APPLICATION FOR GRANT OF PROTECTION

Application for grant of protection

13.—(1) An application for a grant of protection for a plant variety shall be made by the breeder of that plant variety in the prescribed manner to the Registrar.

(2) The application shall contain or be accompanied by the following:

(a) a description of the plant variety;

(b) the proposed denomination for the plant variety which qualifies for approval and registration under section 36;

(c) an address for service in relation to that application, being an address within Singapore; and

(d) if a right of priority is claimed under section 14, full particulars of the relevant priority application.

(3) The application shall be accompanied by an application fee and such other fees as may be prescribed.

(4) An application that complies with subsections (1), (2) and (3) at the time it is received at the Registry shall, for the purposes of this Act, be deemed to be made at that time.

(5) An application that does not comply with subsection (1), (2) or (3) at the time it is received shall nevertheless be deemed to be made at that time if it is rectified within such time and in such manner as the Registrar may specify.

(6) The Registrar shall, if satisfied that an application complies with subsections (1), (2) and (3) —

(a) publish the application and the proposed denomination for the plant variety in the prescribed manner; and

(b) notify the applicant of the publication.

[Sweden Plant Act 1997, Art. 2]

Priority resulting from foreign application

14.—(1) If —

(a) the breeder of a plant variety has made an application in any UPOV member other than Singapore (referred to in this section as the foreign application) for the equivalent of a grant of protection; and

(b) within 12 months after —

(i) the date on which the foreign application was made; or

(ii) where more than one foreign application has been made (whether in one UPOV member or more than one UPOV member), the date the earliest foreign application was made,

the breeder makes an application for the grant of protection in respect of the plant variety in Singapore,

the breeder may, when making the application under this Act, claim a right of priority and sections 22 and 23 shall apply to the application for a grant of protection in Singapore as if it had been made on the date the foreign application (or the earliest foreign application) was made.

(2) The breeder shall, within 3 months of making the claim of a right of priority under subsection (1), submit to the Registrar a copy of any document constituting the foreign application, which must be certified as correct by the authority in the UPOV member to which the foreign application was made.

(3) The breeder shall be allowed a period of 2 years after the expiration of the period referred to in subsection (1) (b) or, where the foreign application (or the earliest foreign application) is rejected or withdrawn, a period of 2 years after such rejection or withdrawal, in which to furnish any necessary information, document or material required for the purpose of the examination under section 17 to the Registrar or a local prescribed examination authority, as the case may be, or an examination report under section 18 to the Registrar.

[HK Plant Ord. 1997, s. 20]

Publication

15.—The Registrar shall publish the following information in the prescribed manner at regular intervals:

- (a) applications for grant of protection;
- (b) registrations of denominations for protected varieties;
- (c) withdrawals of applications for grant of protection;
- (d) rejections of applications for grant of protection;
- (e) grants of protection made;
- (f) any change in the breeder or procedural representative in respect of a plant variety;
- (g) lapses of grants of protection;
- (h) licences in relation to grants of protection, where applicable;
- (i) any other matters which the Registrar thinks fit.

[UPOV Model Law 1996, Art. 30]

Objections to denomination and grant of protection

16.—(1) Any person may, within the prescribed period after the publication of a denomination, by notice in writing to the Registrar, object to the approval of that denomination.

(2) Any person may, within the prescribed period after the publication of an application for a grant of protection for a plant variety, by notice in writing to the Registrar, object to the making of a grant in respect of that plant variety on the ground that the plant variety is not new within the meaning of section 22.

(3) The Minister may make rules to provide for objection proceedings and for matters relating thereto.

(4) If a person who neither resides nor carries on business in Singapore makes an objection under this section, the Registrar may require the person to give security for the costs of the proceedings and may, if security is not given, dismiss the proceedings.

[HK Plant Ord. 1997, s. 14]

Examination of plant variety

17.—(1) Subject to section 18, the applicant shall, within the prescribed period after making an application, give to the Registrar or any prescribed examination authority in Singapore (referred to in this section as a local prescribed examination authority) —

(a) in such detail as the Registrar or the local prescribed examination authority may require for examination under subsection (2), a description of —

(i) the origin and breeding of the plant variety concerned (referred to in this section as the candidate variety);

(ii) the botanical features of the candidate variety; and

(iii) at least one plant variety that is, to the knowledge of the breeder, most similar to the candidate variety and at least one characteristic which distinguishes the candidate variety from such other variety or varieties; and

(b) propagating material of the candidate variety.

(2) The Registrar or the local prescribed examination authority shall examine the candidate variety —

(a) to verify whether the candidate variety belongs to the stated botanical taxon;

(b) to establish whether the candidate variety is distinct, uniform and stable; and

(c) where the candidate variety is found to meet the requirements in paragraphs (a) and (b), to establish an official description of the variety.

(3) The Registrar or the local prescribed examination authority may, by way of written notice, request the applicant to furnish any further information, document or propagating material of the candidate variety and of any similar plant variety in addition to any plant variety referred to in subsection (1) (a) (iii).

(4) Where the Registrar or the local prescribed examination authority has made a request for further information, documents or propagating material under subsection (3), the applicant shall —

(a) furnish such information, document or propagating material within the period stated in the written notice; or

(b) where such information, document or propagating material is not available, notify the Registrar or the local prescribed examination authority, as the case may be, of this fact within that period.

[HK Plant Ord. 1997, s. 13; UPOV Model Law 1996, Art. 37]

Corresponding examination

18.—(1) Subject to subsection (2), the applicant may, instead of complying with the provisions in section 17, lodge with the Registrar in such manner as the Registrar may require and within the prescribed period, an examination report issued and certified by a prescribed examination authority in any UPOV member other than Singapore.

(2) The Registrar may reject an examination report lodged under subsection (1), in which case the applicant shall comply with the provisions in section 17.

Withdrawal or lapse of application

19.—(1) Any application may be withdrawn by the applicant at any time before a grant of protection is made in respect of it.

(2) The withdrawal of an application shall not affect the liability of the applicant for any fees that may have become payable up to the date of that withdrawal.

(3) Where any information, document or material required to be given to the Registrar or a local prescribed examination authority under the provisions of this Act is not supplied within the period stated in the written notice issued by the Registrar or the local prescribed examination authority, as the case may be, requiring such information, document or material, the application concerned shall lapse upon the expiration of that period.

[HK Plant Ord. 1997, s. 15]

Provisional protection

20.—Where a grant of protection for a plant variety has been made under section 21, the grantee shall have the right to take proceedings in respect of the protected variety under this Act as if the grant of protection had been made on the date the application for that grant of protection was published under section 15.

[HK Plant Ord. 1997, s. 17; ICPNVP 1991, Art. 13]

PART IV

GRANT AND REVOCATION OF PROTECTION

Making of grant of protection

21.—(1) The Registrar shall —

(a) except where an application has been withdrawn or has lapsed under section 19, make a grant of protection in respect of every application that is eligible for the making of a grant of protection; and

(b) decline to make a grant of protection in respect of every application that is not eligible for the making of a grant of protection.

(2) An application shall be treated as being eligible for the making of a grant of protection if, and only if —

(a) the applicant has complied with section 13 and section 17 or 18, as the case may be; and

(b) the Registrar —

(i) has approved, for the plant variety in respect of which the application was made, the denomination proposed by the applicant under section 36;

(ii) is satisfied that the applicant is the breeder of that plant variety; and

(iii) is satisfied that that plant variety is new, distinct, stable and uniform within the meaning of section 22.

[HK Plant Ord. 1997, s. 18; ICPNVP 1991, Arts. 6, 7, 8 and 9]

Conditions for grant of protection

22.—(1) For the purpose of sections 16 (2), 21 (2) (b) (iii) and 25 (2) (a) —

(a) a plant variety is new if harvested or propagating material of the plant variety has not been sold or otherwise disposed of to another person, by or with the consent of the breeder for the purposes of exploitation of the plant variety —

(i) earlier than 12 months before the date the application is made, where the sale or disposal and the exploitation of the plant variety is in Singapore; and

(ii) earlier than 6 years before that date in the case of trees or vines, or earlier than 4 years before that date in any other case, where the sale or disposal and the exploitation of the plant variety is outside Singapore;

(b) a plant variety is distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of the making of the application;

(c) a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle; and

(d) a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

(2) For the purposes of subsection (1) (a), where, in order to increase the stock of a plant variety or for any testing of a plant variety, the breeder of the plant variety makes any arrangement under which —

(a) propagating material of that plant variety is to be sold to or used by some other person; and

(b) any unused portion of that propagating material, and all the material of any type produced from that propagating material, is —

(i) to be sold to the breeder by that other person; or

(ii) otherwise to become the property of the breeder,

no account shall be taken of any sale or disposal under that arrangement.

(3) For the purposes of subsection (1) (a), a plant variety does not cease to be new by virtue only of the sale or disposal at any time of —

(a) material that is not propagating material or harvested material; or

(b) propagating material if sold or disposed of as a by-product or a surplus product of the creation of that plant variety, provided that —

(i) the material is sold or disposed of without variety identification for purposes of consumption; and

(ii) having been produced during the breeding, increase of stock, test, or trial of that plant variety, the material is not or no longer required for any of those activities.

(4) For the purpose of subsection (1) (b), the making of an application in any country for —

(a) a grant of protection in respect of a plant variety; or

(b) the entering of a plant variety in an official register of plant varieties,

shall be deemed to render that plant variety a matter of common knowledge from the date of application, provided that the application leads to a grant of protection in respect of that plant variety or to the entering of that plant variety in the official register of plant varieties, as the case may be.

[HK Plant Ord. 1997, s. 18]

Varieties bred or discovered and developed by 2 or more persons independently

23.—Where —

(a) before a grant of protection has been made in respect of any plant variety, 2 or more applications in respect of that plant variety have been made;

(b) the Registrar is satisfied that the applicants concerned are persons who bred, or discovered and developed, that plant variety independently, or are successors of such persons; and

(c) the Registrar is satisfied that, but for this section, each of those applicants would be entitled to a grant of protection in respect of that plant variety,

the Registrar shall make a grant of protection to the applicant whose application was made first.

[HK Plant Ord. 1997, s. 19]

Term of grant of protection

24.—(1) The Registrar shall endorse on every grant of protection the date of the grant of protection.

(2) Subject to sections 25 and 26, the term of a grant of protection shall be a period of 25 calendar years from the date of the grant of protection.

(3) The grantee shall during the term of the grant of protection pay an annual fee of a prescribed amount and furnish such information as the Registrar may require in the prescribed manner and within the prescribed period.

[ICPNVP 1991, Art. 19]

Grounds of invalidity of grant of protection

25.—(1) An application for a declaration of invalidity of any grant of protection on any ground referred to in subsection (2) may be made by any person to the Court.

(2) A grant of protection shall be declared invalid if the Court is satisfied that —

(a) the plant variety concerned is not new or distinct within the meaning of section 22;

(b) where the grant of protection was made on the basis of an examination report by a prescribed examination authority lodged under section 18, the plant variety was not, at the time the grant of protection was made, stable or uniform within the meaning of section 22 (1)

(c) or (d), respectively; or

(c) the grant of protection has been made to a person who is not entitled to it, unless it has since been transferred to the person who is so entitled.

(3) The Registrar shall remove from the register any grant of protection which has been declared invalid by the Court under this section.

[ICPNVP 1991, Art. 21]

Cancellation of grant of protection

26.—(1) An application for cancellation of any grant of protection may be made by any person —

(a) to the Registrar, on any ground referred to in subsection (2); or

(b) to the Court, on the ground referred to in subsection (3).

(2) A grant of protection shall be cancelled by the Registrar at any time during its term in the event that —

(a) the grantee, after having been requested by the Registrar to provide such information, documents or material as the Registrar thinks fit for verifying the maintenance of the plant variety, failed to do so within the period specified by the Registrar;

(b) in any particular year, the annual fee required under section 24 (3) to be paid, has not been paid within the prescribed period; or

(c) the grantee, after having been requested by the Registrar to propose another suitable denomination under section 38, failed to do so within the prescribed period.

(3) A grant of protection shall be cancelled by the Court at any time during its term in the event that it is established that the plant variety is no longer stable or uniform within the meaning of section 22 (1) (c) or (d), respectively.

(4) The Registrar shall remove from the register any grant of protection which has been cancelled under this section.

[HK Plant Ord. 1997, s. 24; ICPNVP 1991, Art. 22]

Renunciation of grantee's right

27.—(1) A grantee may, in writing to the Registrar, renounce his grant of protection.

(2) The Registrar shall remove from the register any grant of protection which has been renounced under subsection (1).

PART V

SCOPE AND NATURE OF GRANT OF PROTECTION

Scope and nature of grant of protection

28.—(1) Subject to sections 31 and 32, a grantee in respect of any protected variety shall be entitled to prevent a person from doing any of the following acts in respect of the propagating material of the protected variety without the authorisation, by way of a licence or otherwise, of the grantee:

(a) production or reproduction;

(b) conditioning for the purpose of propagation;

- (c) offering for sale;
- (d) selling or other forms of marketing;
- (e) export;
- (f) import;
- (g) stocking for any of the purposes specified in paragraphs (a) to (f).

(2) The grantee may give his authorisation subject to conditions and limitations.

(3) A grant of protection is personal property and may be assigned or transmitted in the same way as other personal property.

(4) An assignment of a grant of protection under subsection (3) is not effective unless it is in writing and signed by or on behalf of the assignor.

(5) Subject to subsection (6), a licence granted by a grantee in respect of any protected variety is binding on every successor in title to the grantee's interest —

(a) except any person who, in good faith and without any notice (actual or constructive) of the licence, has given valuable consideration for the interest in the grant of protection; or

(b) unless the licence provides otherwise,

and any reference in this Act to doing anything with, or without, the consent of the grantee shall be construed accordingly.

(6) Every person shall be deemed to have notice of a licence if the prescribed particulars of the grant of the licence are entered in the register under section 42.

(7) Subject to sections 31 and 32, the rights of a grantee under subsection (1) shall also apply to harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety unless the grantee has had a reasonable opportunity, before the harvested material was obtained, to exercise his rights in relation to the unauthorised use of the propagating material.

[HK Plant Ord. 1997, s. 25; ICPNVP 1991 Art. 14 (1) and (2)]

Essentially derived and certain other plant varieties

29.—(1) Where a grant of protection is made under section 21, that grant of protection shall also extend to —

(a) any plant variety which is essentially derived from the plant variety in respect of which the grant of protection was made (referred to in this section as the original plant variety);

(b) any plant variety which is not distinct in accordance with section 22 (1) (b) from the original plant variety; and

(c) any plant variety the production of which requires the repeated use of the original plant variety.

(2) For the purposes of this section, a plant variety shall be treated as being essentially derived from the original plant variety if —

- (a) it is predominantly derived from the original plant variety or from a plant variety that is itself predominantly derived from the original plant variety;
- (b) it retains the expression of the essential characteristics that result from the genotype or a combination of genotypes of the original plant variety;
- (c) it is clearly distinguishable from the original plant variety; and
- (d) except for the differences which result from the act of derivation, it conforms to the original plant variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the original plant variety.

Infringement of grant of protection

30.—(1) A grant of protection is infringed by any person who —

- (a) not being entitled by any licence or transfer or otherwise, does in Singapore, or authorises the doing in Singapore of, any act specified in section 28 (1) in respect of any propagating material or harvested material of a protected variety;
- (b) where propagating material of the protected variety has been imported into Singapore, propagates, sells or uses that material as propagating material without the authority of the grantee concerned; or
- (c) imports into Singapore, without the consent of the grantee —
 - (i) from a country that is not a UPOV member, any harvested material of the protected variety; or
 - (ii) from a UPOV member, any harvested material of the protected variety in respect of which it is not possible to make the equivalent of a grant of protection under the law of that member.

(2) Subject to the provisions of this Act, the relief that the Court may grant in an action for an infringement of a grant of protection includes an injunction (subject to such terms, if any, as the Court thinks fit) and either damages or an account of profits.

(3) Where, in an action under this section —

- (a) an infringement of a grant of protection is established; and
- (b) the Court is satisfied that it is proper to do so, having regard to —
 - (i) the flagrancy of the infringement;
 - (ii) any benefit shown to have accrued to the defendant by reason of the infringement; and
 - (iii) all other relevant matters,

the Court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

(4) Where, in any action under this section, it is proved or admitted that an infringement was committed but proved by the defendant that, at the time of that infringement, the defendant was not aware and had no reasonable grounds for supposing that it was an infringement, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of that infringement, but shall be entitled instead to an account of profits in respect of that infringement.

(5) Nothing in subsection (4) shall affect any entitlement of a grantee to any relief in respect of the infringement of that grantee's rights under this Act other than damages.

Exceptions to infringement of grant of protection

31.—(1) It is not an infringement of a grant of protection in respect of a protected variety for any person to do —

- (a) any act privately and for a non-commercial purpose;
- (b) any act for any experimental or research purpose; or
- (c) any act for the purposes of breeding any other plant variety and, except in the case of an essentially derived or other plant variety to which the grant of protection is extended by virtue of section 29 (1), any act that requires the authorisation of the grantee under section 28 (1) in respect of such other variety.

(2) It is not an infringement of a grant of protection for any person engaging in farming activities to use, for propagating purposes and for the purpose of safeguarding agricultural or horticultural production, on his own holdings, harvested material from the protected variety where —

- (a) the genera or species within which the protected variety is classified has been prescribed for the purposes of this section as exempt from the rights of a grantee; and
- (b) the harvested material —
 - (i) has been obtained by purchase or otherwise with the authority of the grantee concerned; or
 - (ii) having been obtained in accordance with sub-paragraph (i), has subsequently been propagated or grown on those holdings.

[HK Plant Ord. 1997, s. 26; ICPNVP 1991, Art. 15]

Exhaustion of grant of protection

32.—(1) An act concerning —

- (a) any material of a protected variety which has been sold or otherwise marketed in Singapore by or with the consent of the grantee; or
- (b) any material that is derived from such material,

does not infringe a grant of protection, unless such act involves —

- (i) further propagation of the protected variety; or
- (ii) the export of any material of that protected variety which enables the propagation of the protected variety to a country which does not protect varieties of the plant genus or species to which the protected variety belongs, except where the exported material is for final consumption purposes.

(2) In this section, “material” means —

- (a) propagating material of any kind; and
- (b) harvested material, including entire plants and parts of plants.

PART VI

AUTHORISATION AND COMPULSORY LICENCES

Rights under authorisation

33.—Where a person has been authorised to do any act referred to in section 28 (1) by licence by a grantee, that person shall have the same rights as the grantee to take proceedings in respect of any infringement of the rights of that grantee in respect of the protected variety which affects any right given under that licence and committed after the authorisation was granted.

[HK Plant Ord. 1997, s. 27]

Compulsory licences

34.—(1) Any person may apply to the Court for the grant of a compulsory licence to exploit a protected variety in Singapore.

(2) The Court may make an order for the grant of a compulsory licence, subject to such terms as it thinks fit, in accordance with an application under subsection (1) if, and only if, the Court is satisfied that the grant of a compulsory licence is in the public interest.

(3) Without prejudice to the generality of subsection (2), the Court may set out in its order —

(a) the extent to which the protected variety may be exploited; and

(b) the right of the licensee to obtain propagating material from the grantee to the extent reasonable.

(4) The Court shall set out in its order the equitable remuneration which the licensee shall pay to the grantee.

(5) A licence shall not be granted under this section to any person who is unable to demonstrate to the Court that he will be able to exploit the protected variety in a manner acceptable to the Court.

(6) No licence shall be granted under this section unless the person applying for the licence has first taken all reasonable steps to obtain authorisation from the grantee on reasonable commercial terms and conditions and has failed to obtain such authorisation within a reasonable period of time.

(7) A licence granted under this section shall not prevent the grantee from exploiting the protected variety himself or from granting a licence in this respect.

(8) A licence in respect of a protected variety granted under this section may be transferred to another person, but only together with the business activity in connection with which the protected variety is exploited or is intended to be exploited.

(9) Any licence granted under this section may, upon the application of any interested party, be terminated by the Court where the Court is satisfied that the ground upon which the licence was granted has ceased to exist.

PART VII

NOTICE OF PROTECTION

Notice of protection

35.—(1) Where an applicant sells any propagating material of the plant variety in respect of which his application relates, he shall take all reasonable steps, by means of suitable labeling or other identification of that material to inform the purchaser of the existence of his application, unless and until his application is withdrawn or lapses or the Registrar declines to make a grant in respect of that application.

(2) Any person who —

(a) has acquired any rights in respect of any plant variety under section 21, or who is a licensee of such rights; and

(b) sells any propagating material of that plant variety,

shall take all reasonable steps, by means of suitable labeling or other identification of that material, to inform the purchaser of those rights.

(3) In determining, for the purposes of section 30 (4), whether or not any person had reasonable grounds for supposing that any action was an infringement of a grant of protection, the Court may take into account the extent, if any, to which a person referred to in subsection (1) or (2), as the case may be, has complied with that subsection in respect of any propagating material in relation to which that infringement occurred.

[HK Plant Ord. 1997, s. 28]

PART VIII

DENOMINATION

Approval and registration of denomination

36.—(1) A plant variety in respect of which an application for a grant of protection is made shall have a denomination and, subject to subsections (2) and (3), the denomination shall be approved by the Registrar and registered at the time the grant of protection is made.

(2) The Registrar shall approve and register a proposed denomination for a plant variety if, and only if, in the opinion of the Registrar, it complies with the prescribed requirements.

(3) The Registrar shall not approve or register a denomination for the plant variety which —

(a) consists solely of figures, except where this is an established practice for designating plant varieties;

(b) is likely to mislead or cause confusion concerning the characteristics, value or identity of the plant variety, or the identity of the breeder;

(c) is contrary to any written law or public order, or is likely to be offensive to the public;

(d) 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

(e) is likely to cause confusion 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.

(4) Where a denomination for a plant variety has previously been submitted in any UPOV member other than Singapore for the purpose of registration in that UPOV member, the denomination submitted for the purpose of an application in Singapore in respect of that plant variety must be the same as the denomination submitted in the UPOV member.

(5) The Registrar shall approve the denomination submitted under subsection (4) upon the grant of protection, unless the Registrar considers the denomination to be unsuitable for use within Singapore.

(6) Where the Registrar refuses to approve a denomination under subsection (2), (3) or (5), the Registrar shall require, and the applicant shall propose, another denomination within the prescribed period.

Use of denomination

37.—(1) Any person who offers for sale or disposes of propagating material of a protected variety shall use the registered denomination for that protected variety, whether or not the term of the grant of protection has expired.

(2) A person shall not offer for sale or dispose of, under the registered denomination of a protected variety, propagating material of some other plant variety, whether or not the term of grant of protection has expired.

(3) A registered denomination for a protected variety or a denomination which is confusingly similar to the registered denomination shall not be used for any plant variety of the same plant species as the protected variety or for a plant specie which is closely related thereto or for any material of such a plant variety, so long as —

(a) the registration of the registered denomination of the protected variety is in force; or

(b) the registered denomination of the protected variety is still in use in respect of the commercial exploitation of the protected variety, even if the term of the grant of protection has expired.

(4) A person who sells or markets the propagating material or harvested material of a protected variety may, for that purpose, associate a trade mark, trade name or other similar indication which he owns with the registered denomination of that protected variety.

(5) Where a person associates a trade mark, trade name or other similar indication with the registered denomination under subsection (4), the denomination must nevertheless be easily recognisable and distinct from the trade mark, trade name or other similar indication.

[ICPNVP 1991, Art. 20; Sweden Plant Act 1997, Art. 1]

Invalidation of registration of denomination

38.—(1) An application for a declaration of invalidity of a registered denomination may be made to the Court on the ground that it is registered in breach of section 36 (3).

(2) Where —

(a) the registration of a denomination has been declared invalid by the Court under subsection (1); or

(b) the use of the registered denomination by the grantee has been prohibited or restricted by an order of Court pursuant to any proceedings taken under any law,

the Registrar shall require the grantee to submit another suitable denomination for registration within the prescribed period.

PART IX

REGISTER OF PLANT VARIETIES

Register to be maintained

39.—(1) The Registrar shall maintain a register of plant varieties.

(2) There shall be entered in the register —

(a) grants of protection made;

(b) every decision of the Registrar making or declining the making of a grant;

(c) the approved denomination for a plant variety;

(d) such particulars of the grantee as the Registrar may determine; and

(e) any other matters and information relating to a protected variety or grant of protection whose entry in the register appears to the Registrar to be useful.

(3) The register may be kept in whole or in part using a computer.

(4) Any record of a particular or other matter made by using a computer used for the purpose of keeping the register, or any part of the register, is taken to be an entry in the register.

[HK Plant Ord. 1997, s. 8]

Inspection of and extract from register

40.—(1) The register shall be available at the Registry for inspection by any person during the hours when the Registry is open for business.

(2) If the register, or any part of the register, is kept by using a computer, subsection (1) is satisfied if a person who wants to inspect the register or that part of the register is given access to a computer terminal from which he can read on a screen, or obtain a printed copy of, the particulars or other matters recorded in the register or that part of the register.

(3) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of the prescribed fee.

(4) Any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of the prescribed fee.

(5) In relation to any portion of the register kept otherwise than in documentary form, the right to a copy or extract conferred by subsection (3) or (4) is a right to a copy or extract in a form in which it can be taken away.

(6) In this section, “certified copy” and “certified extract” mean a copy and extract certified by the Registrar and sealed with the seal of the Registrar.

[Trade Marks 1999 Ed., s. 68]

Rectification of register

41.—(1) Any person having a sufficient interest may apply to the Registrar for the rectification of an error or omission in the register.

(2) Except where the Registrar directs otherwise, the effect of a rectification of the register is that the error or omission in question is deemed never to have been made.

(3) Subject to subsection (4), an application for rectification may not be made in respect of a matter affecting the validity of a grant of protection.

(4) The Registrar may make any correction in the register pursuant to any Court order affecting a grant of protection.

(5) The Registrar may remove from the register any matter which appears to him to have ceased to have effect.

[HK Plant Ord. 1997, s. 9]

Changes reflected in register

42.—(1) The Registrar may enter the following in the register:

- (a) any change in the name or address of the grantee;
- (b) any change in ownership of the rights in relation to a grant of protection;
- (c) a note of any licence granted by a grantee,

upon receiving such information under section 24 (3) or on request made in the prescribed manner by the grantee of a registered grant of protection.

(2) Where a grant of protection has been transferred to another person, or a licence (including a licence granted under section 34) has been granted or transferred, an entry of this fact shall, upon request and the payment of the prescribed fee, be made in the register.

Registration to be prima facie evidence of validity

43.—In any proceedings before the Court relating to a grant of protection —

- (a) the entry in the register of a person as a grantee shall be prima facie evidence of the validity of the grant of protection; and
- (b) the entry in the register of any change in ownership of the rights in relation to the grant of protection shall be prima facie evidence of such change in ownership.

[HK Plant Ord. 1997, s. 10]

PART X

OFFENCES

Falsification of register

44.—Any person who —

- (a) makes, or causes to be made, a false entry in the register;
- (b) makes, or causes to be made, any thing false purporting to be a copy of an entry in the register; or
- (c) produces or tenders, or causes to be produced or tendered in evidence any thing referred to in paragraph (b),

knowing or having reason to believe that the entry or thing, as the case may be, is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

[Trade Marks 1999 Ed., s. 50]

Falsely representing plant variety as protected variety

45.—Any person who —

- (a) falsely represents that a plant variety is a protected variety; or
- (b) makes a false representation as to the propagating material of a protected variety,

knowing or having reason to believe that the representation is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

[Trade Marks 1999 Ed., s. 51]

Misuse of denomination

46.—Any person who wilfully or negligently acts in contravention of section 37 (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

[HK Plant Ord. 1997, s. 40]

PART XI

MISCELLANEOUS

Registrar not liable in respect of official acts

47.—(1) The Registrar and any officer of the Registry shall not be taken to warrant the correctness or validity of a grant of protection or the registration of a denomination under this Act or under any international agreement or convention to which Singapore is a party.

(2) The Registrar, any officer of the Registry and any officer of a local prescribed examination authority referred to in section 17 (1), shall not incur any liability by reason only of, or in connection with, any examination required or authorised by this Act, or any such international agreement or convention, or any report or other proceedings consequent on such examination.

Right of appeal

48.—(1) Except as provided in subsection (2) or by rules made under this Act, there shall be no appeal to the Court from a decision of the Registrar for any matter under this Act.

(2) The following shall be subject to appeal to the Court:

- (a) a decision of the Registrar to decline to make a grant of protection;
- (b) a decision of the Registrar to make a grant of protection;
- (c) a decision of the Registrar approving or disapproving a proposed denomination.

[HK Plant Ord. 1997, s. 6]

Forms and directions of Registrar

49.—The Minister may make rules for the publication by the Registrar of —

- (a) the forms to be used for any purpose relating to a grant of protection or any other proceedings before the Registrar under this Act; and
- (b) the practice directions issued by the Registrar.

Fees

50.—(1) There shall be paid in respect of applications and other matters before the Registrar under this Act such fees as may be prescribed.

(2) The Minister may make rules as to the remission of fees under prescribed circumstances.

(3) All fees collected shall be paid into the funds of the Registry.

[Trade Marks 1999 Ed., s. 77]

Hours of business and excluded days

51.—(1) The Registrar may issue practice directions to specify —

- (a) the hours of business of the Registry; and
- (b) the days which are to be treated as excluded days.

(2) The Minister may prescribe the effect of doing any business under this Act —

- (a) on any day after the hours of business of the Registry; or
- (b) on any day which is an excluded day.

(3) For the purposes of subsections (1) and (2) —

- (a) different hours of business may be specified for different classes of business;
- (b) different excluded days may be specified for different classes of business; and
- (c) different effects of doing business —
 - (i) outside the hours of business of the Registry; or

(ii) on an excluded day,

may be prescribed for different classes of business.

[Trade Marks 1999 Ed., s. 78]

Composition of offences

52.—(1) The Registrar or any person authorised by him in writing may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$2,000.

(2) The Office may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded.

(2A) On payment of such sum of money, no further proceedings shall be taken against such person in respect of the offence.

(3) All sums collected under this section shall be paid into the funds of the Office.

[HK Plant Ord. 1997, s. 42]

Jurisdiction of court

53.—Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

Rules

54.—(1) The Minister may make rules —

- (a) for prescribing anything authorised or required by this Act to be prescribed; and
- (b) generally for regulating practice and procedure under this Act.

(2) Without affecting the generality of subsection (1), rules made under this section may make provision —

- (a) as to the manner of making applications and filing other documents and in respect of anything that is to accompany or to be furnished together with any application;
- (b) as to the procedure to be followed in connection with any application or request to the Registrar or in connection with any proceedings or other matter before the Registrar, and the rectification of irregularities of procedure;
- (c) providing for the testing and treatment of plant varieties to which applications relate;
- (d) requiring and regulating the translation of documents and the filing and authentication of any translation;
- (e) as to the service of documents;
- (f) prescribing time limits for anything required to be done under this Act;
- (g) providing for the extension of any time limit prescribed or specified by the Registrar, whether or not it has already expired;

- (h) providing for the forfeiture of any priority given in respect of an application;
- (i) authorising the preparation, publication, sale and exchange of copies of diagrams, photographs and documents filed with the Registry, and indexes and abridgments to them;
- (j) prescribing the mode of publishing any matters required by this Act to be published;
- (k) prescribing the requirements to be met in selecting the denomination of plant varieties, and providing for the approval or rejection by the Registrar of any denomination or the amendment to any denomination; and
- (l) prescribing fees and charges for the purposes of this Act.

THE SCHEDULE

Section 4

PLANT GENERA AND SPECIES TO WHICH ACT APPLIES

	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
	Cry	Cryptocoryne
	Ech	Sword Plant
	Lin	Limnophilla
	Hel	Heliconia
	(3) Vegetables	Brassica chinensis L.
Brassica chinensis var parachinensis		Caixin

**PLANT
GENERA AND
SPECIES TO
WHICH ACT
APPLIES**

LEGISLATION HISTORY

Act 22 of 2004 — Plant Varieties Protection Act 2004

Date of First Reading	:	19 May 2004 (Bill No. 21/2004 published on 20 May 2004)
Date of Second and Third Readings	:	15 June 2004
Date of commencement	:	1 July 2004
