

**Baker
McKenzie.**

Plant Variety Rights Summary



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Foreword

Plant breeders innovate and invest to bring new varieties to the world. There has never been a time when they have been more important. But with significant variations in plant variety rights (PVR) systems around the world, it's challenging to know how best to protect your investment everywhere that counts.

Baker McKenzie's Global Plant Variety Rights Guide provides an easy way to get to know and compare different PVR systems around the world. It is the first of its kind, prepared by specialist lawyers from many of our offices around the globe. The Guide covers 18 key jurisdictions, from China to Peru, from the USA to Australia, and from the European Union to Japan – and much of the content is not readily available elsewhere in English.

Using the Plant Variety Rights Summary, plant breeders and PVR holders can quickly check the basics by country. For a deeper dive, the substantive Plant Variety Rights Guide provides the detail.

Both the Summary and the Guide enable instant comparisons to be made between jurisdictions, reducing the time and uncertainty of PVR decision-making.

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1. General

1.1 Responsible authority

Registrar, Plant Breeder's Rights Office (PBRO), IP Australia

Address: P.O. Box 200, Woden, A.C.T. 2606

Tel. (61-2) 6283 2999

Fax. (61-2) 6283 7999

E-mail: pbr@ipaustralia.gov.au

Website: <https://www.ipaustralia.gov.au/plant-breeders-rights>

1.2 Legal framework

- Plant Breeder's Rights Act 1994 (Commonwealth) ("**PBR Act**")
- Plant Breeder's Rights Regulations 1994 (Commonwealth) ("**PBR Regulations**")
- Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018 ("**IP Laws Amendment Act**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1991 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for plant breeder's rights (PBR) protection, the plant variety must:

- Have a breeder (a person who bred the variety)

- Satisfy the distinct, uniform and stable (DUS) requirements
- Satisfy the novelty requirements
- Have an appropriate denomination

2.2 Protectable genera and species

All genera and species protected, including algae and fungi, but not bacteria, bacterioids, mycoplasmas, viruses, viroids and bacteriophages.

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In Australia - one year
- Outside Australia - six years for trees and vines; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes.

2.5 Are there designated official sites for carrying out DUS testing?

Yes. However, applicants have the option to use designated test centers or to conduct the testing themselves under the supervision of a Qualified Person (QP).

2.6 Is an agent required for foreign applications?

No (s 24 of the PBR Act), but an address in Australia or New Zealand for service of notices must be provided

2.7 Are online applications available?

Yes, either directly to the PBRO or using the UPOV PRISMA tool

2.8 Is UPOV PRISMA available?

Yes, Australia has implemented UPOV PRISMA 2.0 for all crops and species

2.9 Will a priority date of an earlier application be recognized?

Yes, for earliest application in UPOV contracting party if the Australian application is lodged within 12 months of the earliest application.

2.10 Is provisional protection available?

Yes, from the date the application is accepted until the application is granted or disposed of. However, action cannot be taken for infringement during the provisional protection period until the right is finally granted.

2.11 Fees

Application fee: AUD 345 / variety
Examination fee: AUD 1,610 / variety
Annual renewal fee: AUD 345 / variety
Lower fees apply for multiple applications.

2.12 Timeframe

Two-and-a-half years (on average), depending on the species

3. Scope of protection**3.1 Duration of protection**

25 years for trees and vines; otherwise, 20 years.

3.2 Acts covered by the right

The following acts performed in relation to the propagating material of the variety:

- Produce or reproduce
- Condition for the purpose of propagation (conditioning includes cleaning, coating, sorting, packaging and grading)
- Offer for sale
- Sales (including letting on hire or exchange by way of barter)
- Import and export
- Stocking for any of the purposes described above

3.3 Does the protection cover harvested material?

Yes. The right extends to harvested material in certain circumstances.

3.4 Does the protection cover products?

Yes. The right extends to products obtained from harvested material in certain circumstances.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

"Propagating material" is defined as any part or product of a plant or plant variety 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.

There is no definition of "harvested material".

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes. The exemption applies broadly to all crops.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

PBR is infringed by a person:

- **Doing an act covered by the right** – without, or otherwise than in accordance with, authorization from the grantee
- **Claiming the right to do an act covered by the right** – without, or otherwise than in accordance with, authorization from the grantee
- **Using the variety denomination** in relation to another plant variety, or plant, of the same plant class

4.2 Standing to bring action

The grantee and exclusive licensees of the grantee of the PBR have standing to bring action.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are available:

- Preliminary injunctions (ex parte available)
- Search orders to seize and preserve relevant evidence, also known as an Anton Piller (ex parte available)

4.4 Available remedies

- Injunction
- Damages or an account of profits (at the option of the plaintiff)
- Additional damages

4.5 Will an infringer be criminally liable?

Yes, with penalties of AUD 105,000 for infringement and AUD 12,600 for misrepresentations.

4.6 Other causes of action

Non-infringement declarations

Unjustified threats of proceedings for PBR infringement

China



China

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1. General

1.1 Responsible authority

Office for the Protection of New Variety Plants under the Ministry of Agriculture and Rural Affairs ("**MARA**") and Office for the Protection of New Variety Plants under the State Forestry and Grasslands Administration ("**SFGA**")

Contact details of MARA and SFGA are listed below:

MARA (<http://www.moa.gov.cn/>)

11 South Lane of Agriculture Exhibition Hall, Beijing

Tel: 010-59193366

Email: webmaster@agri.gov.cn

SFGA (<http://www.forestry.gov.cn/>)

18 East Hepinli, Dongcheng District, Beijing

Tel: 010-84239000

1.2 Legal framework

- Seed Law of the People's Republic of China (revised in 2015) ("**Seed Law**")
- Regulations of the People's Republic of China on the Protection of New Plant Varieties (revised in 2014) ("**Regulations**")
- Detailed Rules for the Implementation of the Regulation of the People's Republic of China on the Protection of New Varieties of Plants (Agriculture Part) (revised in 2014) ("**MARA Implementing Rules**")

- Detailed Rules for the Implementation of the Regulation of the People's Republic of China on the Protection of New Varieties of Plants (Forestry Part) (revised in 2011) ("**SFGA Implementing Rules**")
- Supreme People's Court Interpretation on Several Questions Relating to the Trial of New Plant Variety Disputes (2001) ("**SPC Interpretation on PVR Disputes**")
- Supreme People's Court - Several Rules on the Application of the Law to the Trial of New Plant Variety Infringement Cases (2007) ("**SPC Interpretation on PVR Infringement**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1978 UPOV Convention.

2. Applications

2.1 Registration requirements

The variety must:

- Fall within one of the lists of protectable genera or species (MARA has published 11 instalments for the National List of Protected Plants covering 191 species and SFGA has published six instalments covering 206 species. Please see the PVR Guide for details.)
- Be novel
- Be distinct
- Show uniformity
- Have stability

Varieties must also have an appropriate name.

2.2 Protectable genera and species

Only plants listed in the "National Lists of Protected Plants" (中华人民共和国植物新品种保护名录) of MARA and SFGA are eligible for protection. So far, MARA has published 11 instalments for the National List of Protected Plants covering 191 species, and SFGA has published six instalments covering 206 species.

2.3 Novelty

Period of grace within China:

There is a one-year period of grace for sales and advertising of sales of "propagating material" of varieties in China, by or with the breeder's agreement.

Period of grace outside of China:

There is a four-year period of grace for sale and advertising of sales of "propagating material" of varieties outside of China by or with the breeder's agreement (six years for vines, forest trees, fruit trees and ornamental trees).

2.4 Is it possible to take over DUS test reports?

As a general rule, MARA does not accept foreign DUS test reports. SFGA does accept foreign DUS test reports, but this is done on a discretionary basis (generally where China has no expertise in conducting DUS tests for the specific crop).

DUS testing conducted in China is the preferred examination method.

2.5 Are there designated official sites for carrying out DUS testing?

Yes. There are designated DUS testing sites for certain crops.

For crops where there are no designated DUS testing sites, and in certain other circumstances, applicants will be given the option to conduct DUS testing themselves. The relevant authority will send an official inspector to conduct the "on-sight inspection."

2.6 Is an agent required for foreign applications?

Foreign applicants not residing in China must use a local agent to file applications.

2.7 Are online applications available?

Yes, but if a Chinese agent is required, the Chinese agent must complete.

2.8 Is UPOV PRISMA available?

Yes. UPOV PRISMA is available for lettuce.

2.9 Will a priority date of an earlier application be recognized?

Yes. Applicants can claim priority based on the date of a foreign application if the Chinese application is made within 12 months of the first application for the variety and if the country of that foreign application has an arrangement with China recognizing priority.

2.10 Is provisional protection available?

Yes, subject to limitations in the detailed section of the PVR Guide.

2.11 Fees

MARA and SFGA currently do not charge any official fees.

2.12 Timeframe

MARA or SFGA must complete the preliminary examination within six months of receiving the PVR application.

Afterwards, MARA/SFGA will conduct a substantive examination, which often requires DUS testing.

The time frame of the substantive examination is highly dependent on the nature of DUS testing required by the examiner (different varieties will have different growth periods). This DUS process could take a year or more.

3. Scope of protection

3.1 Duration of protection

The term of protection is 20 years for vines, forest trees, fruit trees and ornamental plants, and 15 years for other plants.

3.2 Acts covered by the right

No person can, without the consent of the rights holder:

- Produce, propagate or sell the propagating material of the protected variety
- Use for commercial purposes the propagating material of the protected variety in a repeated manner in the production of the propagating material of another variety

3.3 Does the protection cover harvested material?

There is no concept of harvested material under China's Regulations or Seed Law.

3.4 Does the protection cover products?

No.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

Propagating material is defined as:

- For the purpose of forestry crops, "the whole plant (including stock), seed (including root, stem, leaf, flower and fruit etc.) and any part, which constitutes the plant body (including tissue and cell)
- For the purpose of agricultural crops "planting material or another part of the plant, including seeds, fruit, roots, stems, seedlings, buds, leaves, etc., that can be used to propagate"

3.6 Is the concept of essentially derived varieties (EDV) recognized?

No.

3.7 Is there a farmers' exemption?

Yes.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

PVR will be infringed by performing an act covered by the scope of the right without the rights holder's permission.

There are two avenues for enforcement: administrative and civil action.

4.2 Standing to bring action

The following persons have standing to bring PVR infringement action:

- The rights holder
- Related stakeholders

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

With respect to civil action - yes.

With respect to MARA / SFGA administrative enforcement - the situation is unclear.

4.4 Available remedies

With respect to administrative enforcement:

- Injunction to stop infringement
- Confiscation of illegal proceeds and plant material
- Fines up to five times the value in question (if the value in question is RMB 50,000 or above) and up to RMB 250,000 (if the value in question is below RMB 50,000)
- Mediation of compensation

With respect to civil action:

- Destruction of the infringing material
- Injunctions against future infringement
- Damages of one to three times the amount of the loss of the rights holder, profits of the infringer, or reasonable license

fees or statutory damages of up to RMB 3 million, depending on the nature of the infringement and other circumstances

- Costs reasonably incurred in stopping the infringement

4.5 Will an infringer be criminally liable?

Criminal liability may arise for counterfeits.

4.6 Other causes of action

- Invalidation of a PVR
- Counterfeit of PVR varieties
- Failure to use the registered denomination when selling a granted variety
- Dispute on ownership over a PVR

Indonesia

Indonesia

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1. General

1.1 Responsible authority

Center for Plant Variety Protection and Licensing of Agriculture,
Ministry of Agriculture ("**PVP Office**")

Address:

Ministry of Agriculture of the Republic of Indonesia, Gedung B, 5th Floor, Jl. Harsono RM, No. 3 Ragunan, Pasar Minggu, South Jakarta, Jakarta 12550, Indonesia

Telephone:

021-7816386 (Plant Variety Registration Service)

021-78840405 (Plant Variety Protection Service)

SMS Center of PVP and Agriculture Licensing: 081281068805

Email: pvt@pertanian.go.id

Website: <http://pvtppt.setjen.pertanian.go.id/>

1.2 Legal framework

- Law No. 29 of 2000 ("**PVP Law**")
- Government Regulation No. 13 of 2004 on the Naming, Registration and use of Original Varieties for Producing Essential Derivative Varieties
- Regulation of Minister of Agriculture No. 01/Pert/SR.120/2/2006 on Denomination Terms and Registration Procedure for Plant Varieties

- Regulation of Minister of Agriculture No. 121/Permentan/OT.140/11/2013 on Denomination Terms and Registration Procedure for Plant Variety Rights

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

No, but Indonesia has been in contact with the Office of the Union for assistance in the development of laws based on the UPOV convention.

2. Applications

2.1 Registration requirements

To be eligible for plant variety protection (**PVP**) the variety must meet the following requirements:

- New
- Unique/distinctive
- Uniform
- Stable
- Appropriately denominated

According to the PVP Law, any plant variety that contradicts prevailing laws and regulations, public order, decency, religious norms, and health and environmental sustainability is not eligible for protection.

2.2 Protectable genera and species

Varieties of all botanical genera and species, including hybrids between genera or species and genetic mutations, may form the object of PVP.

This includes all types of plants, whether they reproduce sexually or asexually (except bacteria, bacterioids, microplasmas, viruses, viroids and bacteriophages).

2.3 Novelty

A plant variety is deemed new if at the filing date of the PVP application, the reproductive material or the harvest of the variety has not been traded in Indonesia for more than a year, or traded overseas for not more than four years for annual plants and six years for perennial plants.

There is no specific requirement under the PVP Law that the sales must be made by the breeder or with the breeder's consent.

2.4 Is it possible to take over DUS test reports?

No.

2.5 Are there designated official sites for carrying out DUS testing?

Yes.

The official sites (i.e., *Stasiun Pengujian BUSS*) for conducting the DUS test are:

- *For plateau plants*: Jl Manoko, Desa Cikahuripan, Lembang, Bandung Barat, West Java
- *For lowland plants*: Kebun Percobaan (KP) BPTP Mojosari Jln. Gajah Mada No. 17 Mojosari, Mojokerto, East Java

2.6 Is an agent required for foreign applications?

Yes.

2.7 Are online applications available?

Yes

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes.

2.10 Is provisional protection available?

Yes.

2.11 Fees

The official fees to file an application depend on the applicant:

- Local individuals, government research institutions and national universities: IDR 150,000/variety (approximately USD 11)
- Foreign individuals and non-government research institutions (including off-shore companies): IDR 250,000/variety (approximately USD 18)

See section 2.3 of the PVR Guide for detailed information on fees.

2.12 Timeframe

If the registration process is smooth, the duration to grant will be around 31-37 months from the filing date, but in practice it may take longer.

See section 2.3 of the PVR Guide for detailed information on timeframes.

3. Scope of protection

3.1 Duration of protection

The period of protection provided by the PVP Law is 20 years for annual plants and 25 years for perennial plants.

The duration of PVP commences from the registration date.

3.2 Acts covered by the right

The following acts in respect of seeds and harvested material (provided the purpose of use of the harvested material is for propagation) are covered by the right:

- a. Production and multiplication of seeds
- b. Preparation for propagation purposes
- c. Advertisement
- d. Offering
- e. Selling or trading
- f. Exporting
- g. Importing
- h. Preparation for any of the activities stipulated in points (a) through (g).

3.3 Does the protection cover harvested material?

No. However, protection is available for harvested material, provided the purpose of the use of the harvested material is for propagation.

3.4 Does the protection cover products?

No.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

No.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

Anyone who deliberately and without authorization of the rights holder does an act covered by the scope of the right with respect to a PVP variety will be liable to a claim for damages for PVP infringement.

4.2 Standing to bring action

PVP rights holders

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

No.

4.4 Available remedies

The following remedies are available:

- Damages
- Delivery of the infringing products

4.5 Will an infringer be criminally liable?

Yes.

4.6 Other causes of action

There are no other specific causes of action or offenses detailed in the prevailing regulations. However, according to an official of the PVP Office, it is possible in practice to assess on a case-by-case basis other offenses that are not included in the PVP Law, including the following:

- Making a false representation that a person is the grantee of a PVP right
- Making a false representation that a person's PVP right extends to cover another plant variety when it does not
- Making a false representation that a PVP right has been granted when it has not

Japan



Japan

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1. General

1.1 Responsible authority

Ministry of Agriculture, Forestry and Fishery

Address: 1-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8950, Japan

Tel : 03-3502-8111

Website: <http://www.maff.go.jp/e/index.html>

1.2 Legal framework

- Plant Variety Protection and Seed Act ("**PVR Act**")
- Plant Variety Protection and Seed Act Implementation Regulation ("**Implementation Regulation**")
- Plant Variety Protection and Seed Act Implementation Order

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1991 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for plant variety rights (PVR) protection, the plant variety must:

- Satisfy the distinct, uniform and stable (DUS) requirements
- Satisfy the novelty requirements
- Have an appropriate denomination

2.2 Protectable genera and species

All spermatophyte, pteridophyte, bryophyte, multicellular algae and certain types of champignon; this may be amended from time to time by Cabinet Order.

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In Japan – one year
- Outside Japan – six years for trees; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes. However, it is unclear whether or how often the Ministry of Agriculture, Forestry and Fishery (**MAFF**) takes over DUS test reports from agencies in foreign jurisdictions.

2.5 Are there designated official sites for carrying out DUS testing?

Yes.

2.6 Is an agent required for foreign applications?

Yes. The MAFF's practice requires foreign applicants to retain an agent in Japan.

2.7 Are online applications available?

Yes. The online application system commenced in 2018.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes. Priority can be claimed by a UPOV contracting party if the Japanese application is lodged within one year of the prior application.

2.10 Is provisional protection available?

Yes.

2.11 Fees

Application fee: JPY 47,200 / variety

Examination fee: N/A

Annual renewal fee:

JPY 6,000 / variety per year for the first three years

JPY 9,000 / variety per year for the fourth to sixth years

JPY 18,000 / variety per year for the seventh to ninth years

JPY 36,000 / variety per year for the 10th to 30th years

2.12 Timeframe

Widely varies depending on species (can take more than five years for trees but less for others)

3. Scope of protection

3.1 Duration of protection

30 years for trees, 25 years for others

3.2 Acts covered by the right

The following acts performed in relation to propagating material of the variety are covered by the right:

- Produce or reproduce
- Conditioning for the purpose of propagation
- Offer for sale
- Assignment (either for a fee or free of charge)
- Import and export
- Stocking for any of the purposes described above

3.3 Does the protection cover harvested material?

Yes. The right extends to harvested material in certain circumstances.

3.4 Does the protection cover products?

Yes. The right extends to products obtained from harvested material in certain circumstances.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

"Propagating material" is defined as a plant or a part of a plant used for propagation.

"Harvested material" is not defined.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

The exemption applies broadly to all agricultural products except for those enumerated in the Implementation Regulation.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

PVR is infringed if a person does an act covered by the right without being entitled to do so.

In addition, the following acts are prohibited and punishable by criminal sanctions:

- Omitting the correct usage of a variety denomination (i.e., must use the designated denomination when offering or otherwise disposing of a protected variety's propagating materials for commercial purposes to others)
- Using a variety denomination identical or similar to a denomination of a protected variety in relation to offering to sell propagating material of another plant variety in the same class for commercial purposes

4.2 Standing to bring action

The holder of the PVR and the registered licensee have standing to bring action; whether non-registered licensees have standing to bring action is unclear.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are available, but only on an inter partes basis:

- Injunctions
- Search orders to seize and preserve relevant evidence

4.4 Available remedies

- Injunction
- Compensation
- Restitution

4.5 Will an infringer be criminally liable?

Yes.

Penalties of up to JPY 10 million in fines and/or imprisonment of up to 10 years for infringement; penalties of up to JPY 3 million in fines or three years of imprisonment for misrepresentations

4.6 Other causes of action

Non-infringement declarations

Malaysia



Malaysia

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1. General

1.1 Responsible authority

Plant Variety Protection Registration Office, Department of Agriculture, Malaysia

Address:

Plant Variety Protection Registration Office ("Registration Office")

Crop Quality Control Division

Department of Agriculture Malaysia

Wisma Tani

Level 7, No. 30, Persiaran Perdana

Presint 4, 62624 Putrajaya

Tel: (60-3) 8870 3448 (Director)

E-mail: saudah57@gmail.com (Director)

Website: <http://pvpbkkt.doa.gov.my/>

1.2 Legal framework

- Protection of New Plant Varieties Act 2004 (Act 634) ("**Act**")
- Protection of New Plant Varieties Regulations 2008 ("**Regulations**")
- Administrative Guidelines On Application And Registration Of New Varieties Of Plants 2008 ("**Guidelines**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

No.

2. Applications

2.1 Registration requirements

To be eligible for protection under the Act, a plant variety must:

- Be a protectable genera or species
- Be new
- Meet the distinct, uniform and stable (DUS) requirements.
- Not be contrary to public policy
- Have an appropriate denomination

If a plant variety is bred or discovered and developed by a farmer, a local community or indigenous people, then to be eligible for protection under the Act, the variety must be distinct and identifiable (D&I) instead of satisfying the criteria under point three above. See expanded section for the definition of "identifiable."

2.2 Protectable genera and species

All plant species, except microorganisms, are protected.

2.3 Novelty

The applicant variety is not new if it is sold or otherwise disposed of on a commercial basis by the breeder or with the breeder's consent prior to the application for longer than:

- One year if within Malaysia
- Six years if outside of Malaysia for trees and vines; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes.

2.5 Are there designated official sites for carrying out DUS testing?

Yes. However, applicants have the option to use other appropriate sites that have the necessary expertise for the crop in question, as long as testing is supervised by the Crop Examiner and done according to the National Test Guidelines. The breeder/applicant's own premises can also be used.

2.6 Is an agent required for foreign applications?

Yes. Applicants need to use an agent who is a resident or has a registered office in Malaysia upon which relevant matters may be served if their ordinary residence or principal place of business is outside of Malaysia, or if they are a local community or an indigenous people.

2.7 Are online applications available?

No.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

The Act or relevant guidelines do not allow PVR applicants to claim priority for their applications from an earlier application filed in another jurisdiction.

Where two or more plant breeder's rights applications are received by the Plant Variety Board ("**Board**") in respect of the same plant variety, priority shall be given to the application that is accorded an earlier filing date by the Board.

2.10 Is provisional protection available?

Yes. The plant variety is protected from the filing date of the application, but an infringement action can only be brought after the certificate of registration has been granted.

2.11 Fees

Application fee – MYR 100 / variety

Examination fee – Between MYR 500 and MYR 3,500 (depending on the type of examination and whether subsequent growing test is required)

Renewal fee – None

2.12 Timeframe

Testing can take anywhere from two to eight years, depending on the type of substantive test used and the plant variety.

3. Scope of protection

3.1 Duration of protection

- Trees and vines - 25 years
- For all other varieties:
 - 20 years for plants that are new, distinct, stable and uniform
 - 15 years for plants that are new, distinct and identifiable (i.e., those varieties that have been bred or discovered and developed by a farmer, a local community or indigenous people and are eligible for plant variety rights protection by being distinct and identifiable)

3.2 Acts covered by the right

The following acts performed in relation to the propagating material of the protected variety are covered by the right:

- a. Producing or reproducing
- b. Conditioning for the purpose of propagation
- c. Offering for sale
- d. Marketing, inclusive of selling
- e. Exporting
- f. Importing
- g. Stocking the material for the purposes mentioned in items (a) to (f)

3.3 Does the protection cover harvested material?

Yes. The right covers harvested material if the propagating material is obtained through unauthorized means, i.e., without the consent or permission of the rights holder.

3.4 Does the protection cover products?

No.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

"Propagating material" is defined as any material or plant, or any part of the plant, used for multiplication or reproduction.

There is no definition for "harvested material."

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

The farmers' exemption applies to the following:

- Any act of propagation by small farmers using the harvested material of the registered plant variety on their own holdings
- Any exchange of reasonable amounts of propagating materials among small farmers
- The sale of farm-saved seed where a small farmer cannot make use of the seeds on their own holding due to a natural disaster or emergency or any other factor beyond the control of the small farmer, as long as the amount sold is not what is required on their own holding

3.8 Is there a breeders' exemption?

Yes, any act done for the purpose of breeding other plant varieties

4. Enforcement

4.1 Infringement

Plant breeder's rights are infringed by the performance of any of the acts covered by the right in Malaysia by a person without the authorization of the holder.

4.2 Standing to bring action

Only the holder of the right may institute court proceedings against any person who threatens to infringe or is infringing his rights.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are available:

- Preliminary injunctions (ex parte may be available)
- Search orders to seize and preserve relevant evidence, otherwise known as an Anton Piller (ex parte may be available)

4.4 Available remedies

- Damages
- Injunctions
- Any other legal remedies the Court thinks fit, such as account of profits

4.5 Will an infringer be criminally liable?

Yes. These include:

- Providing false or misleading information to the Board with respect to an application – a penalty of a fine of up to MYR 20,000 and/or imprisonment for up to two years
- Contravening the terms and conditions imposed upon a breeder's right holder or licensee – a penalty of a fine of up to MYR 5,000 and/or imprisonment for up to six months
- Using or causing the samples deposited at Board-approved centers to be used – a penalty of a fine of up to MYR 5,000 and/or imprisonment for up to six months

4.6 Other causes of action

- Invalidation of breeder's right
- Non-infringement declarations

Vietnam



Vietnam

Contributors

Contacts



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1. General

1.1 Responsible authority

New Plant Variety Protection Office (PVPO) – Ministry of Agricultural and Rural Development

Address: No 2, Ngoc Ha, Ba Dinh Str., Hanoi, Vietnam

Tel: (84.4) 38435182

Fax: (84.4) 37342844

E-mail: pvpvietnam@mard.gov.vn

Website: <http://pvpo.mard.gov.vn>

1.2 Legal framework

- Intellectual Property Law 2005 and Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property ("**IP Law**")
- Seed Ordinance 2004
- Decree 88/2010/ND-CP detailing and guiding a number of articles of the Law on Intellectual Property and the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property regarding rights to plant varieties ("**Decree 88**")
- Circular 16/2013/TT-BNNPTNT on the protection of plant variety rights ("**Circular 16**")
- Circular 28/2015/TT-BNNPTNT on issuing list of protected plant species ("**Circular 28**")
- Decree No. 31/2016/ND-CP on Penalties for Administrative Violations in the field of Plant Varieties, Plant Protection and Quarantine ("**Decree 31**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1991 Act of UPOV.

2. Applications

2.1 Registration requirements

Plant varieties eligible for protection are those that are new, distinct, uniform, stable and designated by a proper denomination.

They must have also been bred, or discovered and developed, and be on the list of state-protected plant species promulgated by the Ministry of Agriculture and Rural Development.

2.2 Protectable genera and species

107 species

2.3 Novelty

A plant variety will be deemed new if reproductive materials or harvested materials of the variety have not yet been sold or otherwise distributed for the purpose of exploitation in the territory of Vietnam by the registered rights holder or his or her licensee one year before the filing date of the application; or for exploitation outside the territory of Vietnam, six years before the filing date of the application for timber trees or vines, or four years for other plant varieties.

2.4 Is it possible to take over DUS test reports?

Yes. The PVPO may accept an available technical test result supplied by the applicant (upon the applicant's request).

If certain practical conditions are met, the PVPO will accept an existing distinct, uniform and stable (**DUS**) test report. There is

currently no relevant interpretation of "practical conditions" under the law.

2.5 Are there designated official sites for carrying out DUS testing?

Yes. However, applicants can opt to use designated test centers or conduct the testing themselves.

2.6 Is an agent required for foreign applications?

An agent is required if the applicant is a foreign organization or individual that does not have an office or permanent residence in Vietnam, or has premises that produce and trade plant varieties in Vietnam.

2.7 Are online applications available?

Yes, either via the PVPO or by using the UPOV PRISMA tool.

2.8 Is UPOV PRISMA available?

Vietnam has implemented UPOV PRISMA 2.0

2.9 Will a priority date of an earlier application be recognized?

Yes. An applicant may claim a priority right where an application for registration for protection is filed within 12 months of the date of filing an application for registration for protection for the same plant variety in a country that has concluded an agreement on plant variety protection with the Socialist Republic of Vietnam. The date on which the first filing occurred will not be included in this time limit.

2.10 Is provisional protection available?

Provisional protection is available from the date of publication of the application for registration for protection until the date of grant of the

plant variety certificate. The registrant will not have the temporary right in circumstances where the protection certificate is not granted.

2.11 Fees

Application fee: VND 100,000 (~ USD 4.30)

Examination fee: VND 2 million (~ USD 85) – VND 4.5 million (~ USD 192), depending on species fee group

Annual renewal fee: VND 3 million (~ USD \$ 127.50) – VND 20 million (~ USD 851), depending on each year of renewal

2.12 Timeframe

Between 18 months and five years (on average), depending on the species

3. Scope of protection

3.1 Duration of protection

25 years from date of grant (for trees and vines)

20 years from date of grant (for other plant species)

3.2 Acts covered by the right

A rights holder has the right to exercise or authorize others to exercise the following rights in relation to reproductive material of a protected plant variety:

- a. Conduct production or propagation
- b. Process for the purpose of propagation
- c. Offer for sale
- d. Sell or conduct other marketing activities

- e. Export
- f. Import
- g. Store for conducting the acts specified in points (a) to (f) above

3.3 Does the protection cover harvested material?

Yes. The right extends to harvested material in certain circumstances.

3.4 Does the protection cover products?

N/A

3.5 Are "propagating material" and "harvested material" defined in the legislation?

"Propagating materials" is defined to mean whole plants, weeds, algae, micro-algae or parts thereof, such as seeds, tubers, fruits, roots, trunks, branches, leaves, saplings, grafts, buds, flowers, tissues, cells, spores and spawns to be used for production of new plants.

However, there is no definition of "harvested material."

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes, on the basis that production households use the harvested products of the protected variety for propagation and cultivation in the next season in their own field.

3.8 Is there a breeders' exemption?

Yes. An exemption is available for breeding and for scientific research purposes.

4. Enforcement

4.1 Infringement

The following acts will be deemed an infringement of the rights of a rights holder:

- Exploiting or performing the rights of the rights holder without his or her permission
- Using a plant variety denomination that is identical or similar to a denomination protected for a plant variety of the same species or a species closely linked to the protected plant variety
- Using a protected plant variety without payment of compensation

4.2 Standing to bring action

Standing is limited to the holder of the certificate of registration. Therefore, licensees have no standing to sue.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

A court may make a decision in respect of interim urgent measures before hearing at the request of a rights holder upon or after the initiation of a lawsuit, in circumstances where: (i) there is a danger of irreparable damage to the rights holder; and/or (ii) suspected infringing goods or evidence related to the act of infringement are likely to be dispersed or destroyed unless they are protected in time.

Provisional urgent measures that may be ordered in respect of allegedly infringing goods, materials, or facilities of production for trading of such goods include:

- Retention
- Seizure
- Sealing, prohibiting any alteration of the original state or any movement
- Prohibiting transfer of ownership

Other provisional urgent measures may be ordered in accordance with the Civil Procedure Code.

4.4 Available remedies

The main remedies are: (i) a warning; and (ii) monetary fines.

Remedial measures include:

- Transfer of illegal benefits obtained from the violation to state budget
- Re-export or destruction of plant varieties
- Change in the purpose of use of plant varieties (into non-commercial purposes)
- Labeling of each source of plant variety with varietal batch code
- Making records of delivery of propagating materials
- Transfer of rights to use plant varieties
- Payment of compensation to plant breeders as ordered

- Assistance to owners of plant variety patents in controlling propagating materials of registered plant varieties

Civil remedies:

- Orders to cease the infringing acts
- Public apology and rectification
- Compulsory performance of civil obligations
- Compulsory payment of damages for loss
- Compulsory destruction, distribution or use for non-commercial purposes of goods, raw materials and materials, and facilities used principally for the production or trading of goods that infringe intellectual property rights, provided that such destruction, distribution or use will not affect the exploitation of rights by the intellectual property rights holder

4.5 Will an infringer be criminally liable?

No.

4.6 Other causes of action

None.

European Union



European Union

Contributors

Contacts



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1. General

1.1 Responsible authority

Community Plant Variety Office (CPVO)

Address: Community Plant Variety Office (CPVO), 3 Boulevard
Maréchal Foch, CS 10121, 49101 ANGERS CEDEX 2 - FRANCE

Tel. (+33) (0) 2 - 41 . 25 . 64 . 00

E-mail: cpvo@cpvo.europa.eu

Website: <http://cpvo.europa.eu/en>

1.2 Legal framework

- EC Regulation 2100/94 (Community plant variety rights) ("Regulation")
- EC Regulation 874/2009 ("Implementing Regulations")
- EC Regulation 1768/95 as amended by EC Regulation 2605/98 ("Implementing rules on the farmers' exemption")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1991 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for community plant variety rights (CPVR) protection, the plant variety must:

- Satisfy the distinct, uniform and stable (DUS) requirements

- Satisfy the novelty requirements
- Have an appropriate denomination

2.2 Protectable genera and species

Varieties of all botanical genera and species, including hybrids

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In the EU — one year
- Outside the EU — six years for trees and vines; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes, but only reports from offices of EU Member States.

As an exception, if there is no DUS expertise for a particular species available within the EU, then a DUS report may be taken over from the examination offices extra-EU of any UPOV member country where the technical examination was carried out under the same conditions as in the EU.

2.5 Are there designated official sites for carrying out DUS testing?

Yes. These are designated by the CPVO according to species.

2.6 Is an agent required for foreign applications?

Yes, if there is no seat/domicile in the EU

2.7 Are online applications available?

Yes, either directly to the CPVO or using the UPOV PRISMA tool

2.8 Is UPOV PRISMA available?

The EU is currently participating in UPOV PRISMA 2.1 for ornamentals, fruits and vegetables, soybean and potato.

2.9 Will a priority date of an earlier application be recognized?

Yes. If the Community application is lodged within 12 months of an earlier application in an EU member state or a UPOV member state, it may claim priority from that earlier application.

2.10 Is provisional protection available?

If a granted application is infringed, compensation can be claimed for infringing acts starting from the publication date.

2.11 Fees

Application fee: EUR 450 (online); EUR 650 (paper)

Examination fee: EUR 1,530-3,350, depending on the species fee group

Annual renewal fee: EUR 330

Fees updated as of the date of publication of this PVR Summary.
Subject to change by CPVO

2.12 Timeframe

One year for most ornamental species to six years for certain fruit tree varieties.

3. Scope of protection

3.1 Duration of protection

30 years for trees and vines and potatoes; otherwise, 25 years

3.2 Acts covered by the right

The following acts performed in relation to "variety constituents" (propagating material) of the variety:

- Produce or reproduce
- Conditioning for the purpose of propagation
- Offer for sale
- Sales or marketing
- Import and export
- Stocking for any of the purposes described above

3.3 Does the protection cover harvested material?

Yes. The right extends to harvested material obtained through the unauthorized use of variety constituents of the protected variety, but provided the owner has not had a reasonable opportunity to exercise its right over the propagating material. This is also referred to as the "cascade" effect of the CPVR.

3.4 Does the protection cover products?

No. The Regulation provides for rules to be implemented to extend the rights to products directly obtained from material of the protected variety in certain circumstances. As at the publication date of this PVR Summary, however, no rules have been enacted.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

Yes. "Variety constituents" (otherwise known as propagating material) are defined as entire plants or parts of plants as far as such parts are capable of producing entire plants.

There is no definition of "harvested material."

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes. A variety is deemed to be "essentially derived" when (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety; (b) it is clearly distinguishable from the initial variety; and (c) except for the differences that result from the act of derivation, it conforms essentially to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety.

3.7 Is there a farmers' exemption?

Yes, but only for certain agricultural plants (listed in full in the PVR Guide) and subject to the farmer paying equitable remuneration to the right holder (with the exception of "small farmers" who do not have to pay equitable remuneration).

3.8 Is there a breeders' exemption?

Yes. CPVR does not extend to acts done for the purpose of breeding or discovering and developing other varieties.

4. Enforcement

4.1 Infringement

CPVR is infringed by a person:

- Doing an act covered by the right without being entitled to do so
- Failing to use the variety denomination when offering or disposing of "variety constituents" for commercial purposes

- Failing to inform the variety denomination when offering or disposing of "harvested material" for commercial purposes, if required by other provisions of law, or if a request is made by an authority, purchaser or any other person having a legitimate interest
- Using the variety denomination of a plant-variety-rights-protected variety, or a designation that may be confused with it, in connection with another variety of the same botanical species

4.2 Standing to bring action

The holder of the CPVR, as well as the persons enjoying exploitation rights unless expressly excluded by an agreement with the holder.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are available (member state law will apply):

- Preliminary injunctions (ex parte may be available)
- Search orders to seize and preserve relevant evidence (ex parte may be available)

4.4 Available remedies

- Injunction
- Compensation (further damages where acts are intentional or negligent or reduced further damages in cases of slight negligence)
- Restitution (subject to availability under national laws)

4.5 Will an infringer be criminally liable?

Possibly, depending on national law

4.6 Other causes of action

Possibly, depending on national law

Russia



Russia

Contributors

Contacts



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1. General

1.1 Responsible authority

The Federal State Budget Enterprise "State Commission of the Russian Federation for Breeding Achievements Test and Protection" ("**Gossortkomissia**")

Address: Orlikov per., 1/11, 107139 Moscow, Russian Federation

Tel.: +7 (495) 607 6827; +7 (495) 607 4944; +7 (495) 607 8626

Fax.: +7 (495) 411 8366

E-mail: gossort@gossort.com

Website: <http://gossortrf.ru/>

1.2 Legal framework

- Civil Code of the Russian Federation, Part IV, Chapter 73 "The Right to a Breeding Achievement"
- Federal Law No. 149-FZ "On Seed Farming"
- Rules for preparing and filing an application for issuing a patent for a breeding achievement (approved by Gossortkomissia on 14 October 1994, reg. no. 2-01/3; registered by the Ministry of Justice of the Russian Federation in December 1994, reg. no. 749)
- Rules for preparing and filing an application for admission of a breeding achievement to use (approved by Gossortkomissia on 14 October 1994, reg. no. 2-01/4; registered by the Ministry of Justice of the Russian Federation in December 1994, reg. no. 750)

- Rules on assignment of the name to a breeding achievement (approved by Gossortkomissia on 30 August 1994, reg. no. 13-3/63, with amendments of 12 March 1997, reg. no. 12-04/3)

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1991 Act of UPOV

2. Applications

2.1 Registration requirements

The criteria for the protection of a breeding achievement are:

- Novelty
- Distinctness
- Uniformity
- Stability

2.2 Protectable genera and species

All plant varieties, including fungi and algae, as well as clones, lines, first-general hybrids and populations

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In the Russian Federation — one year
- Outside the Russian Federation — six years for varieties of vine, arboreal decorative and arboreal fruit cultures; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes, but only from the competent bodies of other states that have concluded relevant contracts with the Russian federal body

2.5 Are there designated official sites for carrying out DUS testing?

Yes. However, applicants have the option to use designated test centers or to conduct testing themselves.

2.6 Is an agent required for foreign applications?

Yes, if there is no seat in the Russian Federation

2.7 Are online applications available?

No.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes, for the earliest application in a foreign state with which the Russian Federation has concluded an agreement on the protection of breeding achievements, if the Russian application is filed within 12 months of said application

2.10 Is provisional protection available?

Yes. Provisional protection is available from the date of filing the application up to the date of issuance of a patent for the breeding achievement. Claims for monetary compensation can only be made after the patent has been issued. The amount of the compensation will be defined by an agreement of the parties or by a court.

2.11 Fees

Application fee: RUB 660 (residents); RUB 3,300 (non-residents)

Examination for novelty: RUB 330 (residents); RUB 1,650 (non-residents)

DUS test fee: RUB 5,280 (residents); RUB 26,400 (non-residents)

Examination of results of DUS test provided by the applicant: RUB 1,320 (residents); RUB 6,600 (non-residents)

Registration fee: RUB 2,640 (residents); RUB 13,200 (non-residents)

The annual renewal fee depends on the plant variety. It starts from RUB 200 (residents) and RUB 1,000 (non-residents) and increases yearly up to RUB 13,200 (residents) and RUB 29,700 (non-residents).

2.12 Timeframe

One year for most ornamental species to five years for certain fruit tree varieties

3. Scope of protection

3.1 Duration of protection

35 years for varieties of vine, arboreal decorative, fruit cultures and forest varieties, including their stock; otherwise, 30 years

3.2 Acts covered by the right

The following acts performed with seeds and breeding materials of the breeding achievement:

1. Production and reproduction
2. Bringing to planting condition for subsequent multiplication

3. Offering for sale
4. Sale and other methods of introduction in civil law transactions
5. Exportation from the territory of the Russian Federation
6. Importation into the territory of the Russian Federation
7. Storage for the purposes set out in 1-6 above

3.3 Does the protection cover harvested material?

Yes. The right extends to harvested material in certain circumstances.

3.4 Does the protection cover products?

No.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

Yes, for seeds

Seeds are parts of plants (tubers, bulbs, fruits, seedlings, seeds, parts of complex fruits and others) used for the reproduction of varieties of agricultural plants or for the reproduction of forest plant species.

There is no definition of "harvested material."

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

Rights are infringed by a person:

- Performing an act listed in paragraph 3, Article 1421 of the Civil Code of the Russian Federation
- Assigning produced and/or sold seeds or breeding materials with a name different from the name of the relevant registered breeding achievement
- Assigning the name of the relevant registered breeding achievement to produced and/or sold seeds or breeding materials that are not seeds or breeding materials of that breeding achievement
- Assigning produced and/or sold seeds or breeding materials with a name similar to the name of a registered breeding achievement resulting in confusion

4.2 Standing to bring action

The plant variety rights (PVR) holder

Exclusive licensees do not have standing to bring action.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are theoretically available:

Preliminary injunctions (ex parte may be available)

Search orders to seize and preserve relevant evidence (ex parte may be available)

4.4 Available remedies

- Recognition of the right
- Injunctions against infringement of the right or the threat of infringement
- Stopping the actions that infringe the right or create the threat of infringement thereof
- Damages
- Seizure of infringing material
- Publication of a court decision on the infringement committed with reference to the rights holder

4.5 Will an infringer be criminally liable?

No.

4.6 Other causes of action

N/A

Switzerland



Switzerland

Contributors

Contacts



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1. General

1.1 Responsible authority

Federal Office for Agriculture, [Office of Plant Variety Rights](#)

Mattenhofstrasse 5, 3003 Bern, Switzerland

Tel.: +41 58 462 25 24

E-mail: Manuela.brand@blw.admin.ch or info@blw.admin.ch

Website: <https://www.blw.admin.ch/blw/en/home/nachhaltige-produktion/pflanzliche-produktion/sortenschutz.html>

1.2 Legal framework

- Federal Act on the Protection of Plant Varieties ("**PVR Act**")
- Ordinance on the Protection of Plant Varieties ("**PVR Ordinance**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1991 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for PVR protection, the plant variety must:

- Have a breeder (a person who bred the variety)
- Satisfy the novelty requirements
- Satisfy the distinct, uniform and stable (DUS) requirements

- Have an appropriate denomination

2.2 Protectable genera and species

All genera and species are protectable.

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In Switzerland: one year
- Outside Switzerland: six years for trees or vines; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes.

2.5 Are there designated official sites for carrying out DUS testing?

Yes, a federal station for agronomic research commissioned by the office or another qualified authority.

2.6 Is an agent required for foreign applications?

Yes. Any person who has neither his/her residence nor his/her head office in Switzerland may only be a party to PVR proceedings if he/she has an authorized agent established in Switzerland.

2.7 Are online applications available?

No, only by post

2.8 Is UPOV PRISMA available?

Yes.

2.9 Will a priority date of an earlier application be recognized?

Yes, the priority date of the earliest application abroad if the Swiss application is lodged within 12 months of said application

2.10 Is provisional protection available?

No. Protection is granted only after examination and when all the requirements have been met but the right holder has a right to bring a suit before the granting of protection to put a halt to an unlawful act or state of affairs.

2.11 Fees

Application filing fee with definitive indication of the variety denomination: CHF 300/variety

Application filing fee with provisional or future indication of the variety denomination: CHF 400/variety

Examination fee: to be calculated based on the amount of time spent

Annual fee: CHF 240/variety

See Annex 2 of the PVR Ordinance for other fees

2.12 Timeframe

One to five years

3. Scope of protection

3.1 Duration of protection

30 years for trees and vines; otherwise, 25 years

3.2 Acts covered by the right

The following acts performed in relation to the protected variety:

- Production or reproduction of the propagating material or conditioning for the purpose of propagation
- Offering
- Selling or marketing
- Exporting and importing
- Stocking for any of the purposes described above

3.3 Does the protection cover harvested material?

Yes. The right extends to harvested material from a protected variety if it was obtained through the use of propagating material without the breeder's authorization, and the breeder has not had reasonable opportunity to exercise his/her right over such use in an appropriate fashion.

3.4 Does the protection cover products?

No.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

Yes. "**Propagating material**" is defined as seeds, seedlings, grafts, stocks and any other parts of the plant, including the material obtained by in vitro production, which are meant to be propagated, sown, planted or replanted.

Harvested material is any product and by-product resulting from the harvest of the cultivation of plant propagating material, as defined in Art 2 para b of the draft Ordinance on agricultural measures for the coexistence of genetically modified plants and non-genetically-

modified plants (dated 15 January 2013). Please note that this ordinance has not been ratified, as genetically modified plants/organisms are not allowed and nor are they widespread in Switzerland. Nevertheless, said definition is instructive, as it pertains to harvested material from plants in general.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes, protected under Art 5 para 2 let d of the PVR Act and defined in Art 2 para 2 of the PVR Act

3.7 Is there a farmers' exemption?

Yes. The farmers' exemption applies to determined plant species according to Annex 1 of the Ordinance.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

PVR is infringed by a person:

- Carrying out an act covered by the right (Art 5 of the PVR Act) without being entitled to do so
- Using protected material on an ongoing basis with a view to producing the propagating material of a new variety
- Giving misleading indications capable of inducing a wrongful belief that a product is protected
- Failing to use the variety denomination when he/she sells a protected variety's propagating material

- Using a variety denomination of a protected variety for another variety of the same or a similar botanical species
- Any other infringement of the PVR law if the person acted intentionally

4.2 Standing to bring action

Anyone whose right deriving from the PVR, or whose right to the variety denomination, has been threatened or infringed. The right holder and the exclusive licensee can have standing to sue.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following provisional measures are available, but these cannot be granted ex officio in civil proceedings:

- Retaining evidence
- Ascertaining the origin of the material bearing the variety denomination of a variety protected in Switzerland
- Safeguarding the state of affairs
- Provisionally ensuring the exercise of an action to prevent or restrain the disturbance

4.4 Available remedies

- Putting a halt to the act
- Eliminating the resulting unlawful state of affairs
- Seizing the unlawfully produced products
- Awarding compensation (damages)
- Fining the defendant for acts of negligence

- Fining the defendant or up to one year's imprisonment for intentional acts of infringement

4.5 Will an infringer be criminally liable?

Yes. If the defendant has acted by negligence, the penalty is a fine. If the defendant has acted intentionally, the penalty is up to one year's imprisonment or a fine.

4.6 Other causes of action

None.

Turkey



Turkey

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1. General

1.1 Responsible authority

The Ministry of Agriculture and Forestry

Address: Üniversiteler Mah. Dumlupınar Bulvarı, No: 161, 06800, Çankaya, Ankara, Turkey

Tel.: (+90) 312 287 33 60

Website: <https://www.tarimorman.gov.tr/Sayfalar/AnaSayfa.aspx>

1.2 Legal framework

- Law No. 5042 on the Protection of Plant Breeders' Rights for New Plant Varieties ("**Law**")
- Regulation on the Protection of Plant Breeders' Rights for New Plant Varieties ("**Regulation**")
- Regulation on the Assignment of Plant Varieties, Possible Plant Varieties and Breeding Materials to Seed Growing Establishments, Seed Manufacturing, Seed Marketing and Seed Sales
- Regulation on the Authorization and Auditing of the Seed Growing Industry
- Regulation on Implementing Rules on the Farmers' Exception

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1991 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for plant variety rights (PVR) protection, the plant variety must:

Satisfy the novelty requirements

Satisfy the distinct, uniform and stable (DUS) requirements

Have an appropriate denomination

2.2 Protectable genera and species

Varieties of all botanical genera

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In Turkey — one year
- Outside Turkey — six years for trees and vines; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes, but only from the responsible offices of UPOV contracting states that have the same climate conditions as Turkey

2.5 Are there designated official sites for carrying out DUS testing?

Yes. The Seed Registration and Certification Directorate (Tohumluk Tescil ve Sertifikasyon Merkez Müdürlüğü) designate these.

2.6 Is an agent required for foreign applications?

Yes.

2.7 Are online applications available?

No.

2.8 Is UPOV PRISMA available?

Yes.

2.9 Will a priority date of an earlier application be recognized?

Yes. The application should be made within 12 months following the prior application in a UPOV contracting state.

2.10 Is provisional protection available?

The applicant is entitled to claim for compensation after the application date.

The Law explicitly states that the applicant has a right to file a special lawsuit called a "remuneration lawsuit" after the application date against those who exploit the plant variety between the application date and the grant date.

2.11 Fees

Application fee: TRY 1,310

Examination fees:

- TRY 1,400 (if the technical examination is performed by another institution)
- TRY 1,200 (novelty examination)
- TRY 150 (denomination examination)
- TRY 4,500-9,000 (depending on the species fee group) (for two years)

Annual renewal fee: TRY 335-810

The above fees are correct at the time of publication but are to be reviewed.

2.12 Timeframe

There is no fixed timeframe, but approximately six months to one year depending on the variety and the workload of the local authority.

3. Scope of protection

3.1 Duration of protection

25 years, in principle, and 30 years for trees, vines and potatoes

3.2 Acts covered by the right

The following acts performed in relation to the protected variety:

- Produce or reproduce
- Conditioning for the purpose of propagation
- Offer for sale
- Sales or marketing
- Import and export
- Stocking

3.3 Does the protection cover harvested material?

Yes. The right extends to harvested material in certain circumstances.

3.4 Does the protection cover products?

The Law only provides for rules to be implemented to extend the rights to products obtained directly through the unauthorized use of propagation material.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

Yes. "Propagating material" is defined as entire plants or parts of a plant to the extent that such parts are capable of producing plants.

There is no definition of "harvested material."

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes, but only for certain agricultural plants and subject to the farmer paying equitable remuneration to the rights holder (with the exception of "small farmers" who do not have to pay equitable remuneration)

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

PVR is infringed by a person:

- Performing any of the acts covered by the scope of the PVR
- Transferring to third parties or broadening rights acquired under a licensing contract or compulsory licensing

- Omitting the correct usage of a variety denomination as referenced in Article 9(4) or failing to use the variety denomination of the protected variety while selling or otherwise marketing the propagating material of the protected variety as per Article 9(5)
- Seizing the right
- Participating or assisting in, or encouraging or promoting the acts referred to above in any way
- Refusing to explain where and how the unjustly produced or marketed material was obtained when found to be in possession thereof

4.2 Standing to bring action

The following persons have standing to bring action:

- The holder of the PVR
- Exclusive licensees (who may institute proceedings in their own name against third-party infringers unless otherwise agreed in the contract)

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following precautionary measures can be requested by the court:

- Cessation of the acts of infringement
- Seizure within the borders of Turkey, including at customs or in free ports or free trade areas, i.e., holding in custody the produced or imported materials that have infringed the right

4.4 Available remedies

- Cessation of the infringing acts

- Remedies for infringement and material and immaterial compensation
- Confiscation of the material produced as a result of the infringement and the equipment and machinery used to produce the material
- Recognition of ownership of the goods confiscated under the paragraph above, in which case the value of the goods shall be deducted from the compensation awarded; where the value of the goods is found to be greater than the compensation awarded, the owner of the rights shall repay the balance to the infringing party
- Enforcement measures to prevent the continued infringement of rights, changing the form of the material, equipment and machinery confiscated under the third paragraph, or the destruction of such material, equipment or machinery
- Disclosure of the court judgment to the public and all those concerned, the cost thereof to be covered by the offending party

4.5 Will an infringer be criminally liable?

- Those who have committed offenses a, b, and e in Section 4.1 (Infringement) will be sentenced to imprisonment for a term of between one and two years or to a judicial fine for up to 1,000 days.

The daily amount of judicial fine can be a minimum of TRY 20 up to a maximum of TRY 100. The exact amount is determined by the courts on a case-by-case basis.

- Those who have committed offenses c, d and g above will be sentenced to no less than 200 days of judicial fine.

- Persons who make a false statement as to the true identity of the applicant or the holder of the right will be sentenced to no less than 250 days of judicial fine.
- Where the offenses above have been committed within the activities of a legal entity, the security measures for the legal entities, such as cancellation of the license (if the legal entity is operating under a specific license granted by a public institution) or confiscation of goods and assets relating to the infringement, will be applied.

4.6 Other causes of action

None.

Argentina



Argentina

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1. General

1.1 Responsible authority

National Institute of Seeds ("INASE")

Address: Azopardo 1025, C1102AAB C1107ADQ, Buenos Aires, Argentina

Website: <https://www.inase.gov.ar>

1.2 Legal framework

- Law No. 20,247
- Decree Law 2183/91
- 1978 Act of UPOV ("**UPOV 78**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to UPOV 78

2. Applications

2.1 Registration requirements

To be eligible for protection, the plant variety must be:

- Novel: It must not have been sold or commercialized by the breeder or with his/her consent at the time the application is filed
- Distinct: It must be clearly distinguishable, by means of one or more characteristics, from any other variety whose existence is a matter of common knowledge at the time the application is filed

- Homogeneous (uniform): Although it is subject to predictable variations due to the specific features of its propagation, it must be sufficiently uniform in its hereditary characteristics
- Stable: Its most relevant hereditary characteristics must remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle
- Have an appropriate denomination

2.2 Protectable genera and species

Varieties of all botanical genera and species

2.3 Novelty

The plant variety must not have been sold or commercialized by the breeder or with his/her consent within Argentina, or within the permitted timeframes outside of Argentina, at the time the application is filed.

Novelty is not lost if the acts carried out are not done for profit but constitute prior steps taken before the filing of the plant variety application and its commercial exploitation.

Novelty is not lost if the testing does not involve its commercialization or sale.

2.4 Is it possible to take over DUS test reports?

Yes.

2.5 Are there designated official sites for carrying out DUS testing?

No.

2.6 Is an agent required for foreign applications?

Yes. It is advisable to designate two agents — an agronomist and a legal representative.

2.7 Are online applications available?

No.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes. The date of the earliest application in a UPOV contracting party will apply if the Argentine application is lodged within 12 months of that application.

2.10 Is provisional protection available?

Yes.

2.11 Fees

Registration fees: USD 350

Certification fees: USD 20

Annual renewal fee: USD 150

2.12 Timeframe

The whole registration process may take from one to four years from the filing date if INASE requires specific test data.

3. Scope of protection

3.1 Duration of protection

The duration of protection is a minimum of 10 years and a maximum of 20 years, depending on the plant species or group of species.

3.2 Acts covered by the right

The following acts are covered by the scope of the right:

- Production and reproduction
- Supply and sale
- Any other means to make the protected variety available on the market
- Export
- Import
- Advertising
- Any kind of commercialization
- Storage of the plant variety for any of the above purposes

3.3 Does the protection cover harvested material?

In principle, harvested material is not covered under Argentine law (the only exception set forth by law covers ornamental plants when used commercially as multiplication material).

3.4 Does the protection cover products?

No.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

No.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Not applicable in Argentina

3.7 Is there a farmers' exemption?

Yes. Farmers who legally acquire seeds have the right to reserve seeds for their own production on their own holding for their own use.

3.8 Is there a breeders' exemption?

Yes. A protected variety may be used by breeders to breed other varieties, provided that the original variety is not used repeatedly and/or systematically for the commercial production of the new variety.

4. Enforcement**4.1 Infringement**

The variety is infringed by carrying out an act that falls within the scope of the right without the rights holder's authorization.

4.2 Standing to bring action

The rights holder, including licensees, may file actions before the courts.

All seed users may file an action before INASE for selling protected varieties without the owner's authorization.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

No.

4.4 Available remedies

- Forfeiture of goods
- Fines
- Temporary or definitive suspension of the registration before the National Trade Registry and seed audit
- Prohibition against acting as an importer, exporter, seedbed, seed processor, analyst, identifier or seller of seeds
- Incorrect use of labels for "controlled seeds" — a fine of twice the value set for each label

4.5 Will an infringer be criminally liable?

No.

4.6 Other causes of action

All seed users, including licensees, in principle, are entitled to file complaints before INASE on the following grounds:

- The trader is not registered with the National Registry of Commerce and Fiscalization of Seeds
- Lack of labeling on seeds made available to the public or furnished to users
- False declarations on labels
- Promoting cultivar seeds that have not been registered with the National Registry of Cultivars

- Selling seeds that have not passed certification (i.e., have not been submitted for prior fiscalization/supervision in cases where fiscalization/supervision is mandatory).

Brazil



Brazil

Contributors

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1. General

1.1 Responsible authority

The National Plant Varieties Protection Service ("SNPC") is responsible for the management of administrative and technical aspects under the authority of the Ministry of Agriculture, Livestock and Supply

Address:

Serviço Nacional de Proteção de Cultivares

Esplanada dos Ministérios - Bloco D - Anexo A - Sala 251

70.043-900- Brasília - DF - Brazil

Tel.: (+55) (61) 32182547/2549

Fax.: (+55) (61) 32242842

E-mail: snpc@agricultura.gov.br

Website: <http://www.agricultura.gov.br/>

1.2 Legal framework

- Law No. 9,456/1997 (Plant Variety Protection Law — "**PVP Law**")
- Decree No. 2,366/1997 (Regulatory Decree of the PVP Law)
- Legislative Decree No. 28/1999 (Legislative Decree that approved the UPOV Convention)
- Decree No. 3,109/1999 (Presidential Decree that promulgated the UPOV Convention)

- Law No. 10,711/2003 (Law of Seeds and Seedlings) (Portuguese version)
- Decree No. 5,153/2004 (Regulatory Decree of the Law of Seeds and Seedlings) (Portuguese version)
- Law No. 13,123/2015 (Law on Access to Genetic Resources)
- Decree No. 8,772/2016 (Regulates access to components of genetic heritage, protection of and access to associated traditional knowledge, and the fair and equitable sharing of benefits for the conservation and sustainable use of Brazilian biodiversity)

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1978 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for plant variety protection, the plant variety must:

- Be a product of genetic improvement
- Belong to a species that is eligible for protection in Brazil
- Satisfy the novelty requirement
- Satisfy the distinctness requirement
- Satisfy the uniformity requirement
- Satisfy the stability requirement
- Have the appropriate denomination

2.2 Protectable genera and species

A new plant variety or an essentially derived plant variety of any genus or species is eligible for protection.

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In Brazil — 12 months
- Outside Brazil — six years for trees and vines; otherwise, four years

2.4 Is it possible to take over DUS test reports?

Yes. It is possible for breeders to submit previous test reports.

2.5 Are there designated official sites for carrying out DUS testing?

DUS tests are the responsibility of the breeder and results must be submitted to SNPC. Brazil uses a system called the Breeder Testing System.

As Brazil is a member of UPOV, SNPC accepts tests conducted abroad, which are provided by the testing entity to this authority upon the applicant's request and the payment of a fee to said entity.

2.6 Is an agent required for foreign applications?

Yes, if the applicant is not domiciled in Brazil

2.7 Are online applications available?

SNPC provides a database called "CultivarWeb," which allows one to electronically send the documents supporting the application and monitor the progress and visualization of the application. The

database is also open to the public for research purposes regarding protected plant varieties.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes. For an application filed earlier in a country that has an agreement with Brazil, or in an international organization of which Brazil is a member, the right of priority is assured for up to 12 months.

2.10 Is provisional protection available?

Yes. A provisional certificate of protection is issued upon publication of the application.

2.11 Fees

Application fee: BRL 713.16

Issuance of provisional certificate: BRL 2,139.47

Annuity: BRL 1,426.31

2.12 Timeframe

There is an average of 60 days between filing and publication of the application.

There is a term of 90 days from publication for third parties' challenges to the application. If there are no challenges or objections, the final protection will be granted.

However, additional queries or office actions during prosecution may expand the timeframe.

3. Scope of protection

3.1 Duration of protection

The term of protection of a plant variety is 15 years from the granting of the provisional protection certificate, except for vines, fruit, forest and ornamental trees, whose term of protection lasts for 18 years.

3.2 Acts covered by the right

The following acts performed in relation to the reproduction or vegetative propagating material of the entire plant variety are covered:

- Produce or reproduce
- Condition for the purpose of propagation (conditioning includes cleaning, coating, sorting, packaging and grading)
- Offer for sale
- Sell (including letting on hire or exchange by way of barter)
- Import and export
- Stock for any of the purposes described above

3.3 Does the protection cover harvested material?

No. The scope of the right only covers harvested material where the sale or use is for reproductive purposes.

3.4 Does the protection cover products?

No. The scope of the right only covers food or raw material if these are used or sold for reproductive purposes.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

Propagating material is defined as every and any part of the plant or plant structure that is used in the reproduction and multiplication thereof.

There is no definition of harvested material.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes. Small farmers are allowed to multiply seeds, for donation or exchange solely to other small farmers, in the context of financing programs for the support of small rural producers conducted by public agencies or non-governmental organizations authorized by the government.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

Selling, offering for sale, reproducing, importing or exporting, packing or storing for such purposes, or supplying the propagating material of a protected plant variety for any purpose, whether or not under the correct variety designation, without authorization from the holder of the plant variety rights (**PVR**), constitute infringement of the holder's rights.

The production, processing, storage, repackaging, trade and transport of seeds or seedlings of protected plant varieties without the permission of the holder of the PVR are prohibited and deemed as breaches of a very serious nature.

4.2 Standing to bring action

The holder of the PVR

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are available and may be made on an ex parte basis in certain circumstances: (i) **precautionary measures** are aimed at ensuring that the practical result of the main request can be achieved by preventing irreparable harm caused by the disclosure and delay in having a final decision from the court; and (ii) **anticipated remedy** generally has the effect of anticipating the final decision in view of having very strong evidence that a claim is well grounded.

4.4 Available remedies

Brazilian law provides different interim remedies, such as search and seizure measures (preparatory or incidental), anticipated production of evidence (exhibition of documents, interrogation of a party, witness hearings and expert examinations), preliminary (even ex parte) and permanent injunctions.

The remedies available at the full trial stage are damages, declaratory judgment and specific performance of a legal or contractual obligation, among others. Owners of PVR can seek compensation for damages in case of infringement before the Brazilian civil courts.

4.5 Will an infringer be criminally liable?

No. The PVP Law provides that the infringer will be deemed guilty of the crime of infringement of the breeder's rights. However, the law

does not establish/define criminal sanctions or penalties for those who violate breeders' rights, so criminal enforcement is currently not available..

4.6 Other causes of action

N/A

Chile



Chile

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1. General

1.1 Responsible authority

Seed Department of the Agricultural and Livestock Service
("Department")

Address: Av. Presidente Bulnes 140, Santiago, Chile

Tel.: (56-2) 2345 11 11

Website: <http://www.sag.cl/ambitos-de-accion/semillas>

1.2 Legal framework

- New Plant Varieties Breeders Rights Law 19.342 ("**Law**")
- New Plant Varieties Breeders Rights Regulation (Decree 373 of the Ministry of Agriculture — "Regulation")
- Rates for Activities Linked to the Register of Protected Varieties
- Chilean Civil Code (supplementary application)

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded to the 1978 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for plant variety rights (**PVR**) protection, the plant variety must:

- Have and maintain a representative sample
- Satisfy the distinct, uniform and stable (**DUS**) requirements
- Satisfy the novelty requirements

- Have an appropriate denomination

2.2 Protectable genera and species

Varieties of all botanical genera and species, including hybrids

2.3 Novelty

Permitted sales (made by or with the breeder's consent):

- In Chile — one year
- Outside Chile — six years for forest trees, fruit trees, ornamental trees and vines; otherwise, four years

2.4 Is it possible to take over DUS test reports?

No. However, foreign DUS test reports can be used as a precedent to obtain provisional protection.

2.5 Are there designated official sites for carrying out DUS testing?

The DUS test for agricultural species must be conducted on test stations of the Agricultural and Livestock Service (**SAG**).

For ornamental, forest and fruit species, the DUS test is conducted in the location indicated by the owner in the application form.

2.6 Is an agent required for foreign applications?

Yes, if the applicant does not have a seat in Chile

2.7 Are online applications available?

No. Nevertheless, according to current information, online applications will be available in the near future.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes, for the earliest application abroad if the Chilean application is lodged within one year of said application. Yes, for the earliest application abroad if the Chilean application is lodged within one year of said application.

2.10 Is provisional protection available?

Yes, for the time defined by the Variety Qualification Committee ("**Committee**") (which is part of the Department) in each case. Nevertheless, if the definitive protection is granted, the protection will be counted from the date on which the provisional protection was granted.

2.11 Fees

- Application fee: UTM¹ 6.9(approximately USD 500)/variety
- Examination fee:
 - UTM 16.5 (approximately USD 1,190)/in the SAG's test centers
 - UTM 35.25 (approximately USD 2,315)/in the applicant's location for forestry and fruit trees
 - UTM 29.25 (approximately USD 2,100)/in the applicant's location for other species
- Annual renewal fee: UTM 3.21 (approximately USD 230)/variety

2.12 Timeframe

Four years (on average) depending on the species

¹ Monthly tax units.

3. Scope of protection

3.1 Duration of protection

18 years for trees and vines; otherwise, 15 years

3.2 Acts covered by the right

The following acts performed in relation to the propagating material of the variety:

- Production of propagation material of the variety
- Sales and offer for sale of propagation material
- Commercialization, import and export of propagation material
- Repeated use of a variety for producing another variety

3.3 Does the protection cover harvested material?

Yes, in certain circumstances

3.4 Does the protection cover products?

No.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

Yes. Propagating material is defined as "seeds, fruits, plants or parts of plants intended for vegetal propagation."

No definition of "harvested material" is provided.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

No.

3.7 Is there a farmers' exemption?

Yes. However, the produced material cannot be advertised or transferred via any title as a seed.

3.8 Is there a breeders' exemption?

Yes. A PVR is not infringed by doing any act for the purpose of breeding or discovering and developing other plant varieties.

4. Enforcement

4.1 Infringement

A PVR is infringed by a person who:

- Multiplies and executes any act for the commercialization of a protected variety without the authorization of the breeder or without a valid license
- Offers, distributes, imports, exports, commercializes or delivers in any form or title a protected variety for its use as propagation material

4.2 Standing to bring action

- The holder of the PVR
- The SAG

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The SAG, ex officio or ex parte, can order the retention of the propagated material if there is an infringement of the PVR.

4.4 Available remedies

- Injunction

- Damages

4.5 Will an infringer be criminally liable?

Yes. The following may apply:

- Imprisonment for 61 to 1095 days
- A fine in the range of UTM 5-50 (approximately USD 360-3,600), which is doubled if there is a recurrence

4.6 Other causes of action

- It is possible to include non-infringement declarations in license agreements in regard to PVR.
- It is possible to include penal clauses in license agreements determining specific compensation if PVR is infringed.

Colombia



Colombia

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1. General

1.1 Responsible authority

Instituto Colombiano Agropecuario (ICA)

Address: Avenida Calle 26 No. 85B-09

Tel.: (57 1) 2328643

E-mail: obtentores.semillas@ica.gov.co

Contact: Ana Luisa Diaz Jimenez

Website: <https://www.ica.gov.co/Areas/Agricola/Servicios/Derechos-de-Obtentores-de-Variedades-y-Produccion.aspx>

1.2 Legal framework

- International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised in Geneva on 10 November 1972, and on 23 October 1978, approved by Law 243 of 28 December 1995, and approved under constitutional review by the Colombian Constitutional Court in Ruling C-262/96
- Decision 345 of 29 October 1993 — common regime for the protection of PBR
- Decree 533 of 8 March 1994 — regulates the common regime for the protection of PBR in Colombia
- ICA Resolution 1974 of 27 May 1994 — assigns functions in the field of PBR
- Decree 2468 of 4 November 1994 — partially modifies Article 13 of Decree 533 of 8 March 1994
- Resolution 1893 of 29 June 1995 — orders the opening of the National Registry of Protected Plant Varieties and establishes

the procedure for obtaining the breeder's certificate and other provisions

- ICA Resolution 3123 of 30 October 1995 — adds and clarifies Resolution 1893 of 29 June 1995
- Decree 2687 of 2002 — modifies Article 7 of Decree 533 of 1994 (modifying the terms of protection)
- Law 1032 of 2006 — modifies the Colombian Criminal Code, adding as an offense the misappropriation of a plant breeder's rights (**PBR**) under Article 306
- Law 1564 of 2012 — provides the ICA with jurisdiction over infringements of PBR
- Resolution 3328 of 2015 — by which ICA assumes jurisdictional functions regarding processes of infringement of PBR, in compliance with provisions of Article 24 of Law 1564 of 2012
- Decree 1156 of 2018 — regulates the sanitary registration regime of phytotherapeutic products

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, as revised on 23 October 1978

2. Applications

2.1 Registration requirements

To be eligible for PBR, the plant variety must satisfy the following requirements:

- Novelty
- Uniformity

- Distinctness stability

2.2 Protectable genera and species

Protection is available for all cultivated genera and botanical species where their cultivation, possession or use is not prohibited for reasons of human, animal or plant health

Protection is not available for wild species (those species or plants that have not been planted or improved by man).

2.3 Novelty

A variety will be novel if reproduction or multiplication material, or harvested material, has not been sold or otherwise delivered to third parties, beyond the permitted timeframes, by the breeder or his/her successor in title, or with his/her consent, for commercial exploitation purposes.

2.4 Is it possible to take over DUS test reports?

Yes.

2.5 Are there designated official sites for carrying out DUS testing?

No.

2.6 Is an agent required for foreign applications?

Yes.

2.7 Are online applications available?

No.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes.

2.10 Is provisional protection available?

Yes.

2.11 Fees

Official fees are provided below:

Application: USD 500

Certification: USD 70

DUS test: USD 2,300

Publication: USD 50

Maintenance fees: USD 125-500

2.12 Timeframe

- Three years for short cycle varieties, counted from the date of application
- Ten years for medium and long cycle varieties, counted from the date of application

3. Scope of protection**3.1 Duration of protection**

Protection will last for 25 years for vines, fruit and forest trees, and 20 years for other species, counted from the date of the grant.

3.2 Acts covered by the right

The following acts are covered by the scope of the right:

- Production, reproduction, multiplication or propagation
- Preparation for reproduction, multiplication or propagation purposes
- Offering for sale
- Sales or any other act that implies the introduction into the market of the material of reproduction, propagation or multiplication for commercial purposes
- Export
- Import
- Possession for any of the purposes mentioned in the preceding points
- Commercial use of ornamental plants or parts of plants as material of multiplication to produce ornamental and fruit plants or parts of ornamental plants, fruit or cut flowers

3.3 Does the protection cover harvested material?

As a rule, no. Harvested material could be covered if used in commerce as reproduction or multiplication material and if it relates to fruit or ornamental or forest species.

3.4 Does the protection cover products?

As a rule, no. Products could be covered if used in commerce as material of reproduction or multiplication and if they relate to fruit or ornamental or forest species.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

No.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement**4.1 Infringement**

PBR is infringed by a person who, without the prior consent of the rights holder, does an act reserved to the owner with respect to a protected plant variety.

The holder of a breeder's right whose rights are threatened or have been infringed may bring legal action either before the specialized court at the ICA or civil courts to prevent the infringement or its continuation.

The ICA and civil courts are competent to decide infringement actions in a single instance. No appeals are available.

4.2 Standing to bring action

Only the rights holder has standing to bring action.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

Yes, these are available on an ex parte basis

4.4 Available remedies

The following remedies are available:

- Cessation of all infringing acts
- Compensation for damages
- Withdrawal from commercial channels of all products resulting from the infringement
- Prohibition against the importation or exportation of the products
- Adjudication of the ownership of the products, materials or implements (the value of such goods will be charged to the amount of compensation due for damages)
- Adoption of necessary measures to avoid continuation or repetition of the infringement

4.5 Will an infringer be criminally liable?

Yes.

4.6 Other causes of action

N/A

Mexico



Mexico

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1. General

1.1 Responsible authority

National Service for the Inspection and Certification of Seeds (**SNICS**)

Address: Av. Guillermo Pérez Valenzuela 127, Del Carmen, 04100 Coyoacan, Mexico City, Mexico

Tel.: +52 55 4196 0535

E-mail: enlacesnics@sagarpa.gob.mx

Website: <https://www.gob.mx/snics>

1.2 Legal framework

- Plant Varieties Federal Law (**PVFL**)
- Regulations of the Plant Variety Federal Law ("**Regulations**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes. Mexico acceded to the 1978 Act of UPOV.

Based on the new United States-Mexico-Canada Agreement, Mexico is committed to accede to the 1991 Act of UPOV.

2. Applications

2.1 Registration requirements

To be eligible to obtain a breeder's certificate for a plant variety, the following requirements must be satisfied:

- Novelty
- Distinctiveness
- Stability

- Homogeneity

2.2 Protectable genera and species

All botanical genera and species, including perennial species (forestry, fruits, vines and ornamentals), as well as their rootstock

2.3 Novelty

A plant variety will be considered new in the following cases:

- In Mexico — the plant variety has not been the subject of disposal in Mexico or has not been the subject of such disposal for a year prior to the filing date of the application for a breeder's certificate
- Outside Mexico — the plant variety has not been the subject of disposal abroad or has not been the subject of a disposal abroad for six years prior to the filing of the application in the case of perennials (vines, forest and fruit trees, and ornamentals), including their rootstocks, and for four years prior to the filing of the application in the case of all other species

2.4 Is it possible to take over DUS test reports?

Yes. SNICS will accept test results performed by any other authorized laboratory in the world.

If required, SNICS may reach out to foreign laboratories to request DUS test reports for the study of a local plant variety application.

2.5 Are there designated official sites for carrying out DUS testing?

No. There are no designated official sites for carrying out DUS testing.

2.6 Is an agent required for foreign applications?

Yes. Foreign applicants must designate a legal representative within the Mexican territory.

2.7 Are online applications available?

Yes, through the PRISMA 2.0 tool

2.8 Is UPOV PRISMA available?

Yes. Mexico has implemented UPOV PRISMA 2.0 for all crops and species.

2.9 Will a priority date of an earlier application be recognized?

Yes, if the priority is claimed within 12 months counted from the filing date in a UPOV member state

2.10 Is provisional protection available?

Yes, however, the rights holder can only claim damages once the right is granted

2.11 Fees

Application filing fee: USD 850/variety

Filing certificate issuance: USD 50/variety

Breeder certificate issuance: USD 450/variety

Claim of priority rights: USD 50/priority

Annual renewal fee: USD 200/variety

The above fees are correct at the time of this publication but are reviewed on a yearly basis.

2.12 Timeframe

One year (on average)

3. Scope of protection

3.1 Duration of protection

- 18 years for perennial species (forest and fruit trees, vines and ornamentals) and their rootstocks
- 15 years for other species

The above periods are calculated from the date the plant variety rights (PVR) certificate is granted.

3.2 Acts covered by the right

The following acts are covered by the right:

- Production
- Reproduction
- Distribution
- Sale
- Use in the repeated production of another variety for commercial purposes

3.3 Does the protection cover harvested material?

Yes, however, only to the extent that the use is for propagating purposes

3.4 Does the protection cover products?

Yes, however, only to the extent that the use is for propagating purposes

3.5 Are "propagating material" and "harvested material" defined in the legislation?

"Propagating material" is defined as any reproductive or vegetative propagating material that can be used for the production or multiplication of a plant variety, including seeds for sowing and any whole plant or part of a plant from which it is possible to reproduce plants or seeds

There is no definition for "harvested material."

3.6 Is the concept of essentially derived varieties (EDV) recognized?

No.

3.7 Is there a farmers' exemption?

Yes.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

The following acts constitute infringement to the PVFL and will be dealt with and sanctioned by the Ministry of Agriculture ("**Ministry**") through SNICS:

- Profiting from or exploiting a protected plant variety or its propagation material, for its production, distribution or sale without the plant variety titleholder's authorization, is sanctioned with a fine from USD 9,000 to USD 44,800.

- Modifying the denomination of the protected plant variety without authorization from the Ministry is sanctioned with a fine from USD 1,000 to USD 9,000.
- Falsely acting as the titleholder of the protected plant variety is sanctioned with a fine from USD 2,300 to USD 13,500.
- Divulging or commercializing a plant variety by falsely indicating that it has a foreign or national origin is sanctioned with a fine from USD 1,350 to USD 13,500.
- Opposing the conduct of verification visits carried out by the Ministry is sanctioned with a fine from USD 1,350 to USD 13,500.
- Commercially exploiting the characteristics or content of a protected plant variety by attributing the same characteristics to another unprotected plant variety is sanctioned with a fine from USD 4,500 to USD 44,800.
- Failing to comply with or violating the measures established in Article 42 of the PVFL (on merchants to refrain from selling infringing propagating material) is sanctioned with a fine from USD 1,350 to USD 13,500.
- Other violations to the provisions of the PVFL and the Regulations are sanctioned with a fine between USD 1,000 and USD 22,500.

4.2 Standing to bring action

The rights holder and its authorized licensee are entitled by law to bring legal actions against infringers.

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are available:

- Ordering the removal from commerce or preventing the circulation of the infringing plant variety or propagation material
- Ordering the removal from commerce of objects, packaging, containers, wrapping, stationery, advertising material and similar material relating to the infringing plant variety or propagation material
- Seizing the goods, infringing plant variety or propagation material
- Ordering the alleged infringer to suspend or cease the acts that constitute a violation of the PVFL's provisions

These preliminary measures are not available on an ex parte basis.

4.4 Available remedies

- Injunction
- Damages
- Losses

4.5 Will an infringer be criminally liable?

There is no criminal liability for the infringement of PVR in Mexico.

4.6 Other causes of action

Arbitration, regulated by the PVFL and the Regulations, is applicable in the following cases:

- In claims for payment of material damages or indemnification for damages and losses
- If there is a challenge to the rights granted by the PVFL and the Regulations

- In disputes regarding the maintenance, preservation, sale and purpose of the goods seized

Peru



Peru

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1. General

1.1 Responsible authority

For administrative matters:

Directorate of Inventions and New Technologies, National Institute for the Defense of Competition and the Protection of Intellectual Property (*Dirección de Invenciones y Nuevas Tecnologías, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI)*)

Address: Calle de la Prosa 104, San Borja, Lima, Peru

Tel.: +51 (1) 224 - 7800

E-mail: consultas@indecopi.gob.pe

Website: <https://www.indecopi.gob.pe/en/indecopi>

For technical matters:

Directorate of Genetic Resources and Biotechnology, National Institute for Agricultural Research (*Dirección de Recursos Genéticos y Biotecnología, Instituto Nacional de Innovación Agraria (INIA)*)

Address: Av. la Molina 1981, La Molina, Lima, Peru

Tel.: +51 (1) 240 - 2100

E-mail: informes@inia.gob.pe

Website: <http://www.inia.gob.pe/>

1.2 Legal framework

- Andean Decision No. 345 establishing the Common Regime on the Protection of the Rights of Breeders of New Plant Varieties ("**Andean Decision No. 345**")

- International Convention for the Protection of New Varieties of Plants (**UPOV**)
- Supreme Decree No. 035-2011-PCM approving the Regulations for the Protection of the Rights of Breeders of New Plant Varieties ("**Supreme Decree No. 035-2011-PCM**")
- Act No. 28126 - Sanctions on Infringements to the Rights of Breeders of Protected Plant Varieties ("**Act No. 28126**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, acceded in 2011 to the 1991 Act of UPOV

2. Applications

2.1 Registration requirements

To be eligible for plant breeder's rights (**PBR**) protection, the plant variety must satisfy the following requirements:

- Novelty
- Distinction
- Uniformity
- Stability
- Have an appropriate generic denomination

2.2 Protectable genera and species

All grown varieties of botanical genera and species, provided that it is not prohibited to grow, possess or use them on grounds of human, animal or plant health

2.3 Novelty

A variety is new if reproductive or multiplication material or harvested material has not been lawfully sold or delivered to others, by or with the consent of the breeder or his/her successor, for commercial exploitation purposes.

2.4 Is it possible to take over DUS test reports?

Yes, in which case those test reports must be validated (if carried out by the breeder) or approved (if carried out abroad)

2.5 Are there designated official sites for carrying out DUS testing?

No. However, the technical body (i.e., INIA) will verify the authenticity of the documents filed by the applicant, as well as the test reports' compliance with the applicable regulations in force for the corresponding species.

2.6 Is an agent required for foreign applications?

Yes. If the applicant is a natural or legal entity domiciled abroad, it should designate a legal representative domiciled in Peru.

2.7 Are online applications available?

No.

2.8 Is UPOV PRISMA available?

No.

2.9 Will a priority date of an earlier application be recognized?

Yes.

2.10 Is provisional protection available?

Yes, for the period between the filing of the application and the grant of the plant variety rights (**PVR**)

2.11 Fees

Application fee: USD 130

Priority fee: USD 15

Publication fee (official gazette El Peruano): depends on the size of the excerpt of the application

Examination fee:

- USD 2,010 for DUS evaluation
- USD 1,610 for DUS evaluation at the breeder's field
- USD 390 for DUS validation
- USD 260 for DUS homologation

Annual renewal fee: USD 75

2.12 Timeframe

Five to seven years on average

3. Scope of protection

3.1 Duration of protection

25 years for vines, forest trees and fruit trees, including their rootstocks; otherwise, 20 years

3.2 Acts covered by the right

With regard to reproductive, propagating or multiplication material of the protected variety, the rights holder is entitled to prevent third parties from engaging in the following acts without prior consent:

- Production, reproduction, multiplication or propagation
- Preparation for the purposes of reproduction, multiplication or propagation
- Offering for sale
- Selling or any other act that entails placing reproductive, propagating or multiplication material on the market for commercial purposes
- Exportation
- Importation
- Possession for any of the purposes mentioned above
- Commercial use of ornamental plants or parts of ornamental or fruit plants as multiplication material for the production of ornamental and fruit plants, parts of ornamental or fruit plants, or cut flowers
- Performance of acts mentioned above in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the rights holder has had reasonable opportunity to exercise his/her exclusive right in relation to the said reproductive or multiplication material
- Performance of acts mentioned above in respect of varieties that are not clearly distinguishable from the protected variety and in respect of varieties whose production calls for repeated use of the protected variety

- Performance of acts mentioned above in respect of varieties essentially derived from the protected variety, except where the protected variety is itself an essentially derived variety

3.3 Does the protection cover harvested material?

Yes. The rights extend to harvested material, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the rights holder has had a reasonable opportunity to exercise his/her exclusive right in relation to the said reproductive or multiplication material.

3.4 Does the protection cover products?

Yes. The rights extend to harvested material, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the rights holder has had a reasonable opportunity to exercise his/her exclusive right in relation to the said reproductive or multiplication material.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

No.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes. Whoever stores and sows for his/her own use, or sells as a raw material or food, the product of his/her cultivation of the protected variety does not infringe the breeder's right. This exemption does not apply to the commercial use of reproductive or propagating material, including whole plants and parts of plants of fruit, ornamental and forest species.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement**4.1 Infringement**

The unauthorized performance of any of the acts covered by the rights of the protected variety constitutes an infringement.

PVR gives the rights holder the right to bring administrative or judicial actions to prevent or restrain any acts that constitute an infringement or violation of his/her right as set forth by law.

4.2 Standing to bring action

The rights holder

The licensee, provided that the right is established in the license agreement and the rights holder has been notified

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures are available (ex parte):

- The cessation of infringing acts
- The seizure of reproduction or propagation or multiplication material of the protected variety, or of the product of the harvest
- The temporary closure of the infringer's business
- The adoption of the necessary measures so that customs authorities may prevent infringing products from entering the country
- The publication of the sentence at the expense of the infringer

- Any necessary measures to prevent the infringement from taking place or continuing

The rights holder can file a request for any of these measures prior to or during the infringement action.

4.4 Available remedies

- Warning
- Fines of 100-400 Tax Units (approximately USD 135,000-535,000)
- Preliminary measures
- Damages

4.5 Will an infringer be criminally liable?

Yes. Anyone who stores, manufactures, uses for commercial purposes, offers, distributes, sells, imports or exports, in part or whole, a protected variety registered in the country, as well as its reproductive, propagating or multiplication material, will be punished.

Taking the severity of the crime and the value of damages into consideration, the following sanctions apply:

- Imprisonment from two to five years
- A fine equivalent to 60 to 365 fine days (this is a structured fine payment plan calculated according to a convicted individual's financial status and the severity of the crime)
- Seizure and confiscation of goods, including the materials and means used to commit the infringement
- Destruction of goods, including the materials and means used to commit the infringement

4.6 Other causes of action

None.

Canada



Canada

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1. General

1.1 Responsible authority

Canadian Food Inspection Agency, Plant Breeders' Rights Office
(**PBRO**)

Plant Breeders' Rights Office
c/o Pre-market Application Submissions Office
Canadian Food Inspection Agency
59 Camelot Drive
Ottawa, Ontario, Canada
K1A 0Y9

1.2 Legal framework

- Plant Breeders' Rights Act, SC 1990, c 20 ("**PBR Act**")
- Plant Breeders' Rights Regulations, SOR/91-594 ("**PBR Regulations**")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes.

2. Applications

2.1 Registration requirements

As per s. 4(2) of the PBR Act, in order to be eligible for plant breeders' rights (**PBR**) protection, a given plant variety must be: (a) a new variety; (b) by reason of one or more identifiable characteristics, clearly distinguishable from all varieties whose existence is a matter of common knowledge at the filing date of the application; (c) stable in its essential characteristics so that it remains true to its description at the end of each cycle; and (d) a sufficiently homogenous variety.

2.2 Protectable genera and species

As per the definition of "plant variety" under s. 2(1) of the PBR Act, the following is considered to be protectable:

"any plant grouping within a single botanical taxon of the lowest known rank that, whether or not the conditions for the grant of plant breeder's rights are fully met, is capable of being

- a. defined by the expression of the characteristics resulting from a given genotype or 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 reproduced unchanged."

Since, under some regulatory systems, "plants" have been interpreted broadly (and scientifically inaccurately) to include other organisms (e.g., fungi, bacteria, and algae), the Canadian PBR regime explicitly excludes bacteria, fungi and algae from protection.

2.3 Novelty

Permitted sales made by the breeder or with breeder consent:

- In Canada - up to one year before the filing date of the application for the grant of plant breeder's rights
- Outside Canada - up to six years before the filing date of the application for the grant of plant breeder's rights in the case of a tree or vine; up to four years before the filing date of the application for the grant of plant breeder's rights in any other case

2.4 Is it possible to take over DUS test reports?

Yes.

Foreign DUS test results can be relied on for all varieties considered to be ornamental or horticultural (fruit and vegetable, excluding potato [*Solanum* species]) regardless of how they are propagated and where they are grown, so long as certain criteria are met.

Please note that in order to rely on Foreign DUS test results in Canada, the PBR applicant must request to purchase such results through the PBRO.

2.5 Are there designated official sites for carrying out DUS testing?

No.

2.6 Is an agent required for foreign applications?

Yes.

2.7 Are online applications available?

With the availability of UPOV PRISMA, online applications can be made via the "UPOV PRISMA PBR Application Tool".

Absent this tool, applications must be submitted by mail to the PBRO.

2.8 Is UPOV PRISMA available?

Yes.

2.9 Will a priority date of an earlier application be recognized?

Yes.

Applicants can claim priority when they submit a Canadian PBR application as long as a preceding PBR application has been filed outside of Canada in a UPOV member country, agreement country, or WTO member country. Any claim for priority must be requested

within 12 months from when the first foreign PBR application was filed.

The applicant must file a copy of the preceding application – certified by an authority from said UPOV member country, agreement country, or WTO country (translated into either English or French) – **within 3 months** following a request for claiming priority.

2.10 Is provisional protection available?

Yes, as of the filing date of the application

2.11 Fees

Application fee: CAD 250

Examination fee: CAD 750

Filing of an objection to an application: CAD 500

Annual fee: CAD 300

(For the full price list, see Schedule II of the PBR Regulations.)

2.12 Timeframe

At least one year for registration; maximum timeframe will depend on various factors and can only be determined on a case-by-case basis.

3. Scope of protection

3.1 Duration of protection

The term of the grant of PBR, subject to earlier termination, is 25 years in the case of a tree, vine or any category specified by the regulations; 20 years in any other case.

3.2 Acts covered by the right

As per s. 5 of the PBR Act, the holder of PBR with respect to a plant variety has the following exclusive rights:

- a. "to produce and reproduce propagating material of the variety;
- b. to condition propagating material of the variety for the purposes of propagating the variety;
- c. to sell propagating material of the variety;
- d. to export or import propagating material of the variety;
- e. to make repeated use of propagating material of the variety to produce commercially another plant variety if the repetition is necessary for that purpose;
- f. in the case of a variety to which ornamental plants belong, if those plants are normally marketed for purposes other than propagation, to use any such plants or parts of those plants as propagating material for the production of ornamental plants or cut flowers;
- g. to stock propagating material of the variety for the purpose of doing any act described in any of paragraphs (a) to (f); and
- h. to authorize, conditionally or unconditionally, the doing of any act described in any of paragraphs (a) to (g)."

3.3 Does the protection cover harvested material?

Yes. As per s. 5.1 of the PBR Act, rights extend to harvested material.

3.4 Does the protection cover products?

Products stemming from harvested materials are not specifically identified as being subject to protection under the PBR Act or the PBR Regulations and therefore may not be subject to protection.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

"Propagating material" is defined in s. 2(1) of the PBR Act as "any reproductive or vegetative material for propagation, whether by sexual or other means, of a plant variety, and includes seeds for sowing and any whole plant or part thereof that may be used for propagation."

"Harvested material" is not defined.

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Protected varieties may be propagated or stored by farmers for private, non-commercial or experimental purposes.

3.8 Is there a breeders' exemption?

PBR in a plant variety does not apply to any act done:

- Privately and for non-commercial purposes
- For experimental purposes
- For the purpose of breeding other plant varieties

4. Enforcement

4.1 Infringement

Absent prescribed exceptions, PBR is infringed by the unauthorized production, reproduction, conditioning, sale, export, import, use or storing of any plant variety subject to a PBR (see definition of "infringement," s. 2(1)). This includes harvested materials.

4.2 Standing to bring action

The holder of the PBR, and all persons claiming under the holder

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The following preliminary measures may be available (Canadian laws will apply):

- Interim injunction (ex parte available)
- Search orders to seize and preserve relevant evidence, otherwise known as an Anton Piller order (*ex parte* available)
- Mareva injunction to freeze the assets of an infringing party (ex parte available)

4.4 Available remedies

As per s. 41(2) of the PBR Act, a court or judge may make any interim or final order sought by the parties that is deemed just. This includes provisions for relief by way of injunction and recovery of damages. The court may also make an order:

- a. "for restraint of such use, production or sale of the subject matter of those rights as may constitute such an infringement and for punishment in the event of disobedience of the order for that restraint
- b. for compensation of an aggrieved person;
- c. for and in respect of inspection or account; and
- d. with respect to the custody or disposition of any offending material, products, wares, or articles."

4.5 Will an infringer be criminally liable?

Yes. An individual who commits offenses related to any of the following is liable on summary conviction to a fine of not more than CAD 5,000, or on conviction on indictment to a fine of not more than CAD 15,000, or to imprisonment for a term not exceeding five years:

- Secrecy
- Offenses with respect to denominations and sales
- Falsifying documents in relation to administration

A corporation that commits the same is liable on summary conviction to a fine of not more than CAD 25,000, or on conviction on indictment to a fine that is subject to the discretion of the court.

4.6 Other causes of action

Yes, non-infringement declarations.

Any person who has reasonable cause to believe that any thing they do or propose to do might cause a PBR holder to allege infringement can seek a declaration from the Federal Court of Canada that their action or proposed action does not infringe the PBR holder's rights.

USA



USA

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1. General

1.1 Responsible authority

Plant Variety Protection Office (**PVPO**)

Address: USDA, AMS, S&T, Plant Variety Protection Office
1400 Independence Ave., S.W.
Rm. 4512-South Bldg., Mail Stop 0274
Washington, DC 20250-0002

Office Telephone: (202) 260-8983

Email: PVPOmail@ams.usda.gov

Website: <http://www.ams.usda.gov/services/plant-variety-protection>

1.2 Legal framework

- The Plant Variety Protection Act – 7 U.S.C. 2321 et seq. (PVPA)
- Plant Variety Protection Act and Rules of Practice (pdf) – ("PVPA Rules of Practice")

1.3 Is this jurisdiction a member of UPOV (International Union for the Protection of New Varieties of Plants)?

Yes, the US became a party to the 1991 Act on 22 February 1999.

2. Applications

2.1 Registration requirements

A breeder is entitled to plant variety protection (**PVP**), subject to the conditions and requirements of the PVPA, if the variety is:

- Novel

- Fulfills distinctiveness, uniformity and stability (**DUS**) requirements

A seed deposit or tissue culture deposit is required.

2.2 Protectable genera and species

Varieties of all sexually reproduced, asexually reproduced and tuber propagated plants

2.3 Novelty

Sales permitted (being made by breeder or with the breeder's consent):

- In the US – up to one year prior to date of filing
- Outside the US – up to six years for trees and vines; otherwise, up to four years

There is a limited exception where the period for allowable sales of tuber propagated plants outside of the US may be extended; however, it is unlikely that any new variety would fall within the exception.

2.4 Is it possible to take over DUS test reports?

No. However, evidence of distinctiveness and uniformity are fulfilled based upon the declaration of the applicant; test results are not required. Evidence of stability can be provided from any official seed-certifying agency in the US. For non-seed crops, other forms of stability data will be considered (e.g., breeder declarations).

2.5 Are there designated official sites for carrying out DUS testing?

Yes. Evidence of stability may be accepted only from an official seed-certifying agency in the United States.

2.6 Is an agent required for foreign applications?

No. A non-resident may appoint an attorney or agent to act on their behalf, but it is not required, provided that the non-resident is a national of either: (1) a UPOV member nation; or (2) a nation that affords similar protection for the same genus species to a national of the US.

Further, a non-resident applicant may file a written designation with the PVPO, designating an individual to whom process or notice of proceedings may be served.

2.7 Are online applications available?

Yes. An applicant may submit electronic applications by either of the following:

- Using the e-PVP System
- Completing an ST-470 Application for PVP Certificate and Objective Description of Variety and emailing both to pvomail@ams.usda.gov

2.8 Is UPOV PRISMA available?

Yes.

2.9 Will a priority date of an earlier application be recognized?

Priority to US applications: Earliest application filed in the US, including US plant patent applications, provided that the earlier application has not resulted in an issued certificate or other termination of proceedings

Priority to foreign applications: Earliest application in a foreign country that affords similar protections to US nationals, provided that the US application is within 12 months of the date of the earliest foreign filing

2.10 Is provisional protection available?

Yes, provided that the PVPA applicant provides notice of the provisional rights.

Notice may be provided by affixing a label to a container containing a seed, plant or plant part, or to the plant itself, including either of the following:

- The words "Unauthorized Propagation Prohibited"
- The words "Unauthorized Seed Multiplication Prohibited"

2.11 Fees

Application fee: USD 518

Examination fee: USD 3,864

Fee for Allowance, Issuance of Certificate and Public Notification:
USD 768

Annual renewal fee: None

Note that the above fees were correct at the time of this publication but are subject to change.

2.12 Timeframe

Variable, but normally between one and two years from filing

3. Scope of protection

3.1 Duration of protection

Term is 20 years, provided that:

- Term is 25 years for trees and vines.

- Term may be shortened in cases where a certificate is not issued within three years of the filing date.

The term may be adjusted for tuber propagating varieties falling under the limited exception provided in **PVPA § 2402(a)(1)**. It is unlikely that any new variety falls within this exception.

3.2 Acts covered by the right

Performing, inducing the performance of, or stocking the variety for the performance of any of the following acts in relation to the variety:

- Sale, marketing, offering for sale, etc.
- Importing into, or exporting from, the US
- Sexually or asexually multiplying or propagating by tuber as a step in marketing
- Using in production of a hybrid or different variety
- Propagation from seed properly marked* for notice
- Dispensing to another without conveying protected status
- Conditioning for the purpose of propagation

3.3 Does the protection cover harvested material?

Yes. The protections apply to harvested material obtained through the unauthorized use of propagating material of a protected variety, unless the owner has had a reasonable opportunity to exercise rights.

3.4 Does the protection cover products?

Products stemming from harvested materials are not specifically identified as being subject to protection under the PVPA and therefore may not be subject to protection.

3.5 Are "propagating material" and "harvested material" defined in the legislation?

"Propagating material" is not explicitly defined by the PVPA. However, **PVPA § 2541(a)(6)** describes one act of infringement as "dispen[ing] the variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received." Thus, it is likely that "propagating material" would be interpreted as material that can propagate the protected variety.

"Harvested material" is defined as "including entire plants and parts of plants" in PVPA § 2541(c)(4).

3.6 Is the concept of essentially derived varieties (EDV) recognized?

Yes.

3.7 Is there a farmers' exemption?

Yes.

3.8 Is there a breeders' exemption?

Yes.

4. Enforcement

4.1 Infringement

A person performs an act constituting infringement by:

- Doing an act covered by the right without being entitled to do so
- Stocking the variety for the purpose of performing any of the acts covered by the right without being entitled to do so

- Instigating or actively inducing performance of any of the acts covered by the right without being entitled to do so

4.2 Standing to bring action

The owner of the PVP

4.3 Are preliminary measures available? If so, are they available on an ex parte basis?

The PVPA does not explicitly provide for ex parte preliminary measures, but preliminary relief may be available to PVR holders in the form of a preliminary injunction. However, there are no border measures available for plant varieties protected under the PVPA.

4.4 Available remedies

- Injunction;
- Damages (including up-to-treble damages in cases of willfulness);
- Attorney fees;

4.5 Will an infringer be criminally liable?

Yes, for false marking with the intent to deceive the public

4.6 Other causes of action

Anyone whose business is damaged or is likely to be damaged due to false marking may have a remedy by civil action.



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