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**Decision of the State Council on Amending the Regulations of the People's  
Republic of China on Protection of New Varieties of Plants**

(Adopted at the 231st Executive Meeting of the State Council on January 16, 2013,  
promulgated by Decree No. 635 of the State Council of the People's Republic of  
China on January 31, 2013, and effective as of March 1, 2013)

The State Council has decided to amend the Regulations of the People's Republic of China on Protection of New Varieties of Plants as follows:

1. The third paragraph of Article 39 is amended as: "In handling a case of variety right infringement *ex officio*, the administrative department for agriculture or forestry of the people's government at or above the provincial level may, for the purpose of safeguarding the public interest, order the infringer to stop the infringing act, and confiscate the illegal income and the propagating material of the plant variety; if the value of the goods is not less than 50,000 yuan, the department may impose a fine of not less than one time but not more than five times the value; if there is no value of the goods or the value is less than 50,000 yuan, the department may impose a fine of not more than 250,000 yuan in light of the seriousness of the circumstances."

2. Article 40 is amended as: "Where a right-granted variety is counterfeited, the administrative department for agriculture or forestry of the people's government at or above the county level shall, *ex officio*, order the infringer to stop the counterfeiting act, and confiscate the illegal income and the propagating material of the plant variety; if the value of the goods is not less than 50,000 yuan, the department shall impose a fine of not less than one time but not more than five times the value; if there is no value of the goods or the value is less than 50,000 yuan, the department shall impose a fine of not more than 250,000 yuan in light of the seriousness of the circumstances; where the circumstances are so serious as to constitute a crime, criminal liability shall be investigated for in accordance with law."

This Decision shall be effective as of March 1, 2013.

The Regulations of the People's Republic of China on Protection of New Varieties of Plants shall be amended in accordance with this Decision and promulgated anew.

**Regulations of the People's Republic of China on Protection of New Varieties of  
Plants**

(Promulgated by Decree No. 213 of the State Council of the People's Republic of  
China on March 20, 1997, and revised in accordance with the Decision of the State  
Council on Amending the Regulations of the People's Republic of China on  
Protection of New Varieties of Plants on January 31, 2013)

**Chapter I General Provisions**

**Article 1** These Regulations are formulated for the purpose of protecting rights in new varieties of plants, encouraging the breeding and use of new varieties of plants, and promoting the development of agriculture and forestry.

**Article 2** New varieties of plants referred to in these Regulations mean artificially cultivated plant varieties, or ones developed from discovered wild plants, which possess novelty, distinctness, uniformity and stability, and which are duly named.

**Article 3** The administrative departments of the State Council for agriculture and forestry (both hereinafter referred to as the examining and approving authorities) are jointly responsible, according to the division of their functions and duties, for the acceptance and examination of applications for rights in new varieties of plants, and for granting rights in new varieties of plants (hereinafter referred to as variety rights) to those new varieties of plants that conform to the provisions of these Regulations.

**Article 4** The people's governments at or above the county level or other relevant departments shall reward units and individuals that have accomplished the breeding of new plant varieties that have a bearing on the State or public interest, and are of great value of utility.

**Article 5** The production, marketing or popularization of a new plant variety to which a variety right has been granted (hereinafter referred to as a right-granted variety) is subject to review and approval in accordance with the provisions of laws and regulations of the State on seeds.

**Chapter II Content and Ownership of Variety Rights**

**Article 6** A unit or an individual that has accomplished the breeding enjoys an

exclusive right in its or his right-granted variety. No unit or individual shall, without authorization of the owner of the variety right (hereinafter referred to as the variety right owner), produce or market for commercial purposes the propagating material of the right-granted variety, or repeatedly use for commercial purposes the propagating material of the right-granted variety in the production of the propagating material of another variety, unless otherwise provided in these Regulations.

**Article 7** For occupational breeding that is accomplished in execution of tasks of a unit, or by primarily using material resources of a unit, the application right for a new plant variety belongs to the unit; for non-occupational breeding, the application right for a new plant variety belongs to an individual who has accomplished the breeding. After the application is approved, the variety right belongs to the applicant.

For commissioned breeding or jointly-conducted breeding, the ownership of the variety right shall be agreed upon by the parties in a contract; in the absence of a contractual agreement thereon, the variety right belongs to the unit or individual commissioned to accomplish or jointly accomplishing the breeding.

**Article 8** One new plant variety shall be granted only one variety right. If two or more applicants apply separately for a variety right in the same new plant variety, the variety right shall be granted to the person who applies first; if they apply simultaneously, the variety right shall be granted to the person who first accomplishes the breeding of the new plant variety.

**Article 9** The application right for a new plant variety and the variety right may be assigned in accordance with law.

If a Chinese unit or individual is to assign to a foreigner the application right or the variety right with respect to a new plant variety bred by it or him in China, it or he shall be subject to approval by the examining and approving authorities.

If a State-owned unit is to assign the application right or the variety right at home, it shall, in accordance with the relevant provisions of the State, submit the matter to the relevant competent administrative department for approval.

If the application right or the variety right is assigned, the parties shall conclude a written contract and register with the examining and approving authorities, which shall publish such information.

**Article 10** Use of a right-granted variety under the following circumstances is allowed with no need for authorization from or remuneration to the variety right owner. However, the other rights enjoyed by the variety right owner under these

Regulations shall be by no means prejudiced:

(1) use of the right-granted variety for breeding or other scientific research activities; or

(2) self-use or self-propagation by farmers of propagating material of the right-granted variety.

**Article 11** Where required by the State or public interest, the examining and approving authorities may make a decision on a compulsory license to exploit new varieties of plants, which shall be registered and published.

Any unit or individual that is granted a compulsory license for exploitation shall pay the variety right owner a reasonable exploitation fee and the amount thereof shall be decided on through consultation by both parties; where the parties fail to reach an agreement, the examining and approving authorities shall make a ruling.

A variety right owner dissatisfied with the decision on a compulsory license or with the ruling regarding an exploitation fee may file a suit with a people's court within three months from the date of receipt of notification.

**Article 12** Whether the period of the protection of a right-granted variety has expired, its registered denomination shall be used when the said right-granted variety is marketed.

### **Chapter III Conditions for Granting Variety Rights**

**Article 13** To apply for a variety right, a new plant variety shall belong to a botanical genus or species in the national list of protected plant varieties. The list of protected plant varieties shall be determined and published by the examining and approving authorities.

**Article 14** New varieties of plants granted variety rights shall possess the characteristic of novelty. Novelty means that the propagating material of a new plant variety for which a variety right is applied for has not been marketed prior to the application date, or the propagating material of the variety has not been marketed, with the agreement of the breeder, within the territory of China for longer than one year; or the propagating material of the variety has not been marketed outside the territory of China for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, or for longer than four years in the case of other plants.

**Article 15** New varieties of plants granted variety rights shall possess the

characteristic of distinctness. Distinctness means that a new plant variety for which a variety right is applied for is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time when the application is filed.

**Article 16** New varieties of plants granted variety rights shall possess the characteristic of uniformity. Uniformity means that a new plant variety for which a variety right is applied for is uniform, except for the variation that may be expected, in its relevant characteristics or identity after propagation.

**Article 17** New varieties of plants granted variety rights shall possess the characteristic of stability. Stability means that a new plant variety for which a variety right is applied for remains true to its relevant characteristics or identity after repeated propagation or at the end of a particular cycle of propagation.

**Article 18** A new plant variety granted a variety right shall possess an appropriate denomination, which shall be different from that of any other already known variety of the same or a closely related botanical genus or species. The denomination, after being registered, shall be the generic designation of the said new plant variety.

Any of the following denominations shall not be used for designating a variety:

- (1) consisting solely of figures;
- (2) violating social morals; or
- (3) being liable to mislead concerning the characteristics or identity of the new plant variety or the identity of the breeder.

#### **Chapter IV Application for Variety Rights and Acceptance of the Application**

**Article 19** A Chinese unit or individual that intends to apply for a variety right may file an application with the examining and approving authorities directly or by entrusting an agency.

Where a new plant variety for which a variety right is applied for by a Chinese unit or individual involves State security or major interests and therefore needs to be kept confidential, the matter shall be handled in accordance with the relevant provisions of the State.

**Article 20** If a foreigner, foreign enterprise or other foreign organization files an application in China for a variety right, the matter shall be handled in accordance

with an agreement concluded between the country to which the applicant belongs and the People's Republic of China, or an international treaty to which both countries have acceded, or handled in accordance with these Regulations on the basis of the principle of reciprocity.

**Article 21** When applying for a variety right, a written request and a specification conforming to the prescribed format and requirements as well as a photograph of the variety shall be submitted to the examining and approving authorities.

The application documents shall be written in Chinese.

**Article 22** The date on which the examining and approving authorities receive the variety right application documents shall be the filing date of the application; where the application documents are sent by mail, the date of mailing indicated by the postmark shall be the filing date of the application.

**Article 23** An applicant who, within 12 months from the date on which an application for a variety right was first filed in a foreign country, files an application for a variety right in China for the same new plant variety, may enjoy a right of priority in accordance with an agreement concluded between the said foreign country and the People's Republic of China or an international treaty to which both countries have acceded, or on the basis of the principle of mutual recognition of the right of priority.

An applicant who claims a right of priority shall make a written declaration when the application is filed and shall, within three months, submit a copy of the variety right application documents that were first filed, confirmed by the original receiving authority; if the applicant fails to make the written declaration or to submit a copy of the application documents in accordance with the provisions of these Regulations, the claim to the right of priority shall be deemed not to have been made.

**Article 24** Where an application for a variety right conforms to the provisions of Article 21 of these Regulations, the examining and approving authorities shall accept the application, define the filing date, assign a filing number and, within one month from the date of receipt of the application, notify the applicant that an application fee shall be paid.

Where an application for a variety right does not conform to the provisions of Article 21 of these Regulations or, after being revised, still does not conform to the provisions, the examining and approving authorities shall not accept the application

and shall notify the applicant accordingly.

**Article 25** An applicant may amend or withdraw the application for a variety right at any time before the variety right is granted.

**Article 26** Where a Chinese unit or individual intends to file an application in a foreign country for a variety right in a new plant variety bred in China, it or he shall register with the examining and approving authorities.

#### **Chapter V Examination and Approval of Variety Rights**

**Article 27** After an applicant has paid the application fee, the examining and approving authorities shall carry out a preliminary examination of the following contents of an application for a variety right:

(1) whether the variety belongs to a botanical genus or species included in the list of protected plant varieties;

(2) whether the application conforms to the provisions of Article 20 of these Regulations;

(3) whether the variety conforms to the provisions on novelty; and

(4) whether the denomination of the new plant variety is appropriate.

**Article 28** The examining and approving authorities shall complete preliminary examination within six months from the date of acceptance of an application for a variety right. Where the application for a variety right is found to meet the requirements through preliminary examination, the examining and approving authorities shall publish such application and notify the applicant that an examination fee shall be paid within three months.

Where an application for a variety right is found not to meet the requirements through preliminary examination, the examining and approving authorities shall notify the applicant that a statement or revisions shall be made within three months; where no response is made within the time limit or the application still does not meet the requirements after revisions are made, the application shall be rejected.

**Article 29** After an applicant has paid the examination fee as prescribed, the examining and approving authorities shall carry out a substantive examination of the characteristics of distinctness, uniformity and stability of the variety for which a variety right is applied for.

Where an applicant has not paid the examination fee as prescribed, the



application for a variety right shall be deemed to be withdrawn.

**Article 30** The examining and approving authorities shall carry out substantive examination chiefly on the basis of application documents and other relevant written material. The examining and approving authorities may, if they deem it necessary, entrust a designated testing institution with the testing or inspection of the results of planting or other experiments that have already been carried out.

For the purpose of examination, an applicant shall, as required by the examining and approving authorities, furnish necessary information and propagating material of the new plant variety.

**Article 31** Where an application for a variety right is found through substantive examination to be in conformity with the provisions of these Regulations, the examining and approving authorities shall make a decision to grant a variety right, issue a variety right certificate, and register and publish it.

Where an application for a variety right is found through substantive examination not to be in conformity with the provisions of these Regulations, the examining and approving authorities shall reject the application and notify the applicant accordingly.

**Article 32** The examining and approving authorities shall set up a Reexamination Board for New Varieties of Plants.

An applicant may, if dissatisfied with a decision of the examining and approving authorities to reject the application for a variety right, request the Reexamination Board for New Varieties of Plants to make a reexamination within three months from the date of receipt of notification. The Reexamination Board for New Varieties of Plants shall, within six months from the date of receipt of the written request for reexamination, make a decision and notify the applicant accordingly.

An applicant may, if dissatisfied with the decision of the Reexamination Board for New Varieties of Plants, file a suit with a people's court within 15 days from the date of receipt of notification.

**Article 33** After a variety right has been granted, the variety right owner is entitled to claim compensation from any unit or individual that, during the period beginning on the date on which the application is published after being accepted through preliminary examination and ending on the date of grant of the variety right, has produced or marketed the propagating material of the right-granted variety for commercial purposes without authorization of the applicant.

## Chapter VI Duration, Termination and Nullity

**Article 34** The period of protection of a variety right shall, computed from the date of grant of the right, be 20 years for vines, forest trees, fruit trees and ornamental trees and be 15 years for other plants.

**Article 35** A variety right owner shall pay an annual fee beginning in the year in which the variety right is granted, and shall furnish propagating material of the right-granted variety for the purposes of testing as required by the examining and approving authorities.

**Article 36** A variety right shall be terminated prior to the expiration of the period of protection in any of the following cases:

- (1) where the variety right owner renounces the right by a written declaration;
- (2) where the variety right owner fails to pay the annual fee as prescribed;
- (3) where the variety right owner fails to furnish, as required by the examining and approving authorities, propagating material of the right-granted variety needed for testing; or
- (4) where, upon testing, the right-granted variety is found to be no longer in conformity with the characteristics and identity that existed when the variety right was granted.

The termination of a variety right shall be registered and published by the examining and approving authorities.

**Article 37** From the date of publication of the grant of a variety right by the examining and approving authorities, the Reexamination Board for New Varieties of Plants may, *ex officio* or on the basis of a written request made by a unit or individual, declare the variety right null and void where the variety is not in conformity with the provisions of Article 14, 15, 16 or 17 of these Regulations, or change the variety denomination that is not in conformity with the provisions of Article 18 of these Regulations. A decision to declare a variety right null and void or to change a denomination shall be registered and published by the examining and approving authorities, and shall be notified to the parties.

The parties may, if dissatisfied with the decision of the Reexamination Board for New Varieties of Plants, file a suit with a people's court within three months from the date of receipt of notification.

**Article 38** A variety right that has been declared null and void shall be deemed to be non-existent from the beginning.

A decision to declare a variety right null and void shall have no retroactive effect on any judgment or order on infringement of a new plant variety right, pronounced by a people's court, any decision on infringement of a new plant variety right, made by the administrative department for agriculture or forestry of the people's government at or above the provincial level, any license contract for exploitation of a new plant variety, and any contract of assignment of a new plant variety right, all of which have been enforced prior to the declaration; however, damage caused to any other person by the variety right owner in bad faith shall be reasonably compensated.

If, according to the provisions of the preceding paragraph, no repayment of the fee for the exploitation of a variety or the price for the assignment of a variety right is made by the variety right owner or assignor to the licensee or assignee, which is obviously contrary to the principle of equity, the owner or assignor shall repay the whole or part of the exploitation fee or of the assignment price to the licensee or assignee.

#### **Chapter VII Penalty Provisions**

**Article 39** Where the propagating material of a right-granted variety is produced or marketed for commercial purposes without the authorization of the variety right owner, the owner or an interested party may request the administrative department for agriculture or forestry of the people's government at or above the provincial level to handle the case *ex officio*, or directly file a suit with a people's court.

The administrative department for agriculture or forestry of the people's government at or above the provincial level may, *ex officio* and on the basis of the principle of free will of the parties, mediate the compensation for damage caused by infringement. Where an accord is reached through mediation, it shall be executed by the parties; where no accord is reached through mediation, the variety right owner or an interested party may file a suit with a people's court according to the civil procedures.

In handling a case of variety right infringement *ex officio*, the administrative department for agriculture or forestry of the people's government at or above the

provincial level may, for the purpose of safeguarding the public interest, order the infringer to stop the infringing act, and confiscate the illegal income and the propagating material of the plant variety; if the value of the goods is not less than 50,000 yuan, the department may impose a fine of not less than one time but not more than five times the value; if there is no value of the goods or the value is less than 50,000 yuan, the department may impose a fine of not more than 250,000 yuan in light of the seriousness of the circumstances.

**Article 40** Where a right-granted variety is counterfeited, the administrative department for agriculture or forestry of the people's government at or above the county level shall, *ex officio*, order the infringer to stop the counterfeiting act, and confiscate the illegal income and the propagating material of the plant variety; if the value of the goods is not less than 50,000 yuan, the department shall impose a fine of not less than one time but not more than five times the value; if there is no value of the goods or the value is less than 50,000 yuan, the department shall impose a fine of not more than 250,000 yuan in light of the seriousness of the circumstances; where the circumstances are so serious as to constitute a crime, criminal liability shall be investigated for in accordance with law.

**Article 41** When the administrative departments for agriculture or forestry of the people's governments at or above the provincial level investigate and handle cases of variety right infringement *ex officio*, or when such departments of the governments at or above the county level investigate and handle cases of counterfeited right-granted varieties *ex officio*, all the said departments may, as necessitated, seal up or detain the propagating material of the plant varieties related to the cases, and have access to, make copies of, or seal up contracts, account books and other documents related to the cases.

**Article 42** Where a right-granted variety is marketed without using its registered denomination, the administrative department for agriculture or forestry of the people's government at or above the county level shall order corrections to be made within a specified time limit and may impose a fine of not more than 1,000 yuan *ex officio*.

**Article 43** Where a dispute arises as to the ownership of the application right or the variety right with respect to a new plant variety, the parties may file a suit with a people's court.

**Article 44** Where any staff member of the administrative departments for

agriculture or forestry of the people's governments at or above the county level or of other relevant departments abuses his power, neglects his duty, commits illegalities for personal interest, or seeks or accepts bribes, which constitutes a crime, he shall be investigated for criminal liability in accordance with law; if a crime is not constituted, an administrative sanction shall be imposed on him in accordance with law.

#### **Chapter VIII Supplementary Provisions**

**Article 45** The examining and approving authorities may formulate adaptive provisions on the requirement of novelty for botanical genera or species first included in the list of protected plant varieties before the entry into force of these Regulations and for ones newly included in the list after the entry into force of these Regulations.

**Article 46** These Regulations shall take effect as of October 1, 1997.

本译本仅供参考，若有歧义，请以中文版本为准。

**The English version is for reference only. In case of any discrepancy or ambiguity of meaning between this English translation and the Chinese version, the latter shall prevail.**