Regulations on the Protection of New Varieties of Plants of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

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

Article 2 — The term "new variety of plant" as used in these Regulations means a new plant variety that is artificially cultivated or developed from discovered wild plants, possesses novelty, distinctness, uniformity and stability, and has an appropriate denomination.

Article 3 — The administrative departments of agriculture and forestry under the State Council (hereinafter collectively referred to as "examination and approval authorities") shall, in accordance with the division of responsibilities, be jointly responsible for the acceptance and examination of applications for variety rights and the granting of variety rights. The examination and approval authorities may entrust other examination bodies to conduct specific work relating to the examination of applications for variety rights.

Article 4 — The variety rights granted with respect to new plant varieties that fall within the scope of the list of protected plant genera and species published by the State shall be protected in accordance with these Regulations.

Chapter II — Content and Ownership of Variety Rights

Article 5 — A variety right holder shall have the exclusive right to exploit the protected variety. Without the permission of the variety right holder, no entity or individual may produce, reproduce, offer for sale, sell or use for commercial purposes the propagating material of the protected variety. The provisions of the preceding paragraph shall not apply to the use of the protected variety for the following purposes:

(1) Breeding and other scientific research activities;

(2) The use by farmers of the propagating material from their own harvest for propagation on their own holdings.

Article 6 — Where an entity or individual has completed the cultivation of a new plant variety, it or he may apply for a variety right directly. Where a new plant variety is cultivated in the course of performing the tasks of the entity to which the cultivator belongs, or is cultivated mainly by utilizing the material conditions of the entity, the right to apply for a variety right shall be vested in the entity. Where a new plant variety is cultivated not in the course of performing the tasks of the entity, and not mainly by utilizing the material conditions of the entity, the right to apply for a variety right shall be vested in the individual cultivator. Where the application is approved, the variety right shall be vested in the applicant.

Article 7 — Where a new plant variety is cultivated under a commission, the ownership of the right to apply for a variety right shall be agreed upon by the commissioning party and the commissioned party through a contract. In the absence of such agreement, the right to apply for a variety right shall be vested in the commissioned party.

Article 8 — Where a new plant variety is jointly cultivated, the ownership of the right to apply for a variety right shall be agreed upon by the co-cultivators through a contract. In the absence of such agreement, the right to apply for a variety right shall be jointly owned by the co-cultivators.

Article 9 — The right to apply for a variety right and the variety right may be assigned in accordance with the law. Where a Chinese entity or individual assigns the right to apply for a variety right or the variety right to a foreigner, the matter shall be subject to the approval of the examination and approval authorities.

Chapter III — Conditions for Granting Variety Rights

Article 10 — The variety for which a variety right is applied shall be novel. Novelty means that, prior to the filing date of the application, the propagating material of the variety for which the variety right is applied has not been sold or, with the consent of the cultivator, transferred by any other means for the purpose of

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commercial exploitation for more than one year within the territory of China. The propagating material of vines, forest trees, fruit trees and ornamental trees has not been sold or, with the consent of the cultivator, transferred by any other means for the purpose of commercial exploitation for more than six years, or for more than four years for other plants, in a foreign territory.

Article 11 — The variety for which a variety right is applied shall be clearly distinguishable from any other variety whose existence is a matter of common knowledge prior to the filing date of the application. Distinctness means that the variety is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application.

Article 12 — The variety for which a variety right is applied shall be uniform. Uniformity means that, subject to the variation that may be expected from the particular features of its propagation, the variety is sufficiently uniform in its relevant characteristics.

Article 13 — The variety for which a variety right is applied shall be stable. Stability means that the relevant characteristics of the variety remain unchanged after repeated propagation or at the end of each particular cycle of propagation.

Article 14 — The variety for which a variety right is applied shall have an appropriate denomination. The denomination shall distinguish the variety from the denominations of other varieties. The denomination of the variety shall not consist solely of figures and shall not be liable to mislead as to the characteristics and value of the variety or the identity of the cultivator.

Chapter IV — Application for and Receipt of Variety Rights

Article 15 — An application for a variety right shall be filed with the examination and approval authorities. The applicant shall submit an application form, a description and a photograph of the variety conforming to the prescribed format. Where the applicant claims priority, the applicant shall submit a written declaration when filing the application and, within three months, submit a copy of the documents of the first application. Where the applicant fails to submit the written declaration or fails to submit the copy of the documents of the first application within the time limit, the claim of priority shall be deemed not to have been made.

Article 16 — An application for a variety right shall be limited to one variety.

Article 17 — Where two or more applicants apply for a variety right with respect to the same variety, the variety right shall be granted to the applicant who filed the application first. Where the applications are filed on the same date, the variety right shall be granted to the applicant who first completed the cultivation of the variety.

Article 18 — An applicant may, before the variety right is granted, withdraw the application for the variety right.

Article 19 — Where the variety for which a variety right is applied falls within the scope of a national security interest or major interest requiring confidentiality, the application shall be handled in accordance with the relevant State provisions.

Article 20 — The examination and approval authorities shall complete the preliminary examination within six months from the date of receipt of the application documents. Where the application passes the preliminary examination, the examination and approval authorities shall make a public announcement and notify the applicant to pay the examination fee. The examination and approval authorities shall complete the substantive examination within 12 months from the date of payment of the examination fee. Where the application is approved, the examination and approval authorities shall grant the variety right, issue a variety right certificate, and make a public announcement.

Article 21 — Where an entity or individual is dissatisfied with the decision of the examination and approval authorities to reject the application, it or he may, within three months from the date of receipt of the

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notification, request the review committee for new plant varieties to conduct a review. Where the entity or individual is dissatisfied with the review decision, it or he may, within 15 days from the date of receipt of the notification, institute legal proceedings in a people's court.

Chapter V — Termination and Invalidation of Variety Rights

Article 22 — A protected variety shall be protected for a term of 20 years for vines, forest trees, fruit trees and ornamental trees and 15 years for other plants, commencing from the date of grant.

Article 23 — A variety right holder shall, commencing from the year following the year in which the variety right is granted, pay annual fees. Where the variety right holder fails to pay the annual fees as required, the variety right shall terminate prior to the expiration of the protection term.

Article 24 — A variety right shall terminate prior to the expiration of the protection term in any of the following circumstances:

(1) The variety right holder makes a written declaration renouncing the variety right;

(2) The variety right holder fails to pay the annual fees as required;

(3) The variety right holder fails to provide the propagating material of the protected variety for testing as required by the examination and approval authorities;

(4) The protected variety no longer possesses the characteristics that existed at the time the variety right was granted.

Article 25 — Any entity or individual may, from the date of the public announcement of the grant of the variety right, request the review committee to declare the variety right invalid on the grounds that the grant of the variety right does not conform to the relevant provisions of these Regulations. The review committee shall make a decision and notify the requesting party and the variety right holder in writing.

Chapter VI — Compulsory Licenses

Article 26 — For the purpose of the public interest, the examination and approval authorities may make a decision to grant a compulsory license for the exploitation of a protected variety and shall register and make a public announcement thereof. The entity or individual that has obtained a compulsory license shall pay a reasonable royalty to the variety right holder. The amount of the royalty shall be agreed upon by the parties. Where the parties fail to reach an agreement, the examination and approval authorities shall make a ruling.

Article 27 — Where a variety right holder is dissatisfied with the decision of the examination and approval authorities to grant a compulsory license or with the ruling on the royalty for a compulsory license, it or he may, within three months from the date of receipt of the notification, institute legal proceedings in a people's court.

Chapter VII — Legal Liability

Article 28 — Where a protected variety is exploited without the permission of the variety right holder, the variety right holder or an interested party may request the administrative departments of agriculture or forestry of the people's governments at or above the provincial level to handle the matter in accordance with their respective functions and duties. The administrative departments of agriculture or forestry may order the infringer to cease the infringing act, confiscate the illegal gains and the propagating material of the plant variety, and impose a fine of not less than one time but not more than five times the value of the goods. The variety right holder or interested party may also directly institute legal proceedings in a people's court.

Article 29 — Where a dispute arises over the ownership of the right to apply for a variety right or over the variety right, the parties may institute legal proceedings in a people's court.

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Article 30 — Where any staff member of the examination and approval authorities or the review committee, or any other relevant State functionary, neglects his or her duties, abuses his or her powers, engages in malpractices for personal gain, or divulges any commercial secrets of the party concerned, and the violation constitutes a crime, criminal liability shall be pursued in accordance with the law. Where the violation does not constitute a crime, administrative sanctions shall be imposed in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 31 — Foreign enterprises, other foreign organizations or individuals shall file applications for variety rights and handle other matters relating to variety rights through a representative designated in accordance with the law.

Article 32 — These Regulations shall take effect as of October 1, 1997.

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