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No. S 401

PLANT VARIETIES PROTECTION ACT 2004

PLANT VARIETIES PROTECTION (AMENDMENT NO. 2) RULES 2022

In exercise of the powers conferred by section 54 of the Plant Varieties Protection Act 2004, the Minister for Law makes the following Rules:

Citation and commencement

1. These Rules are the Plant Varieties Protection (Amendment No. 2) Rules 2022 and come into operation on 26 May 2022.

Amendment of rule 2

2. In rule 2 of the Plant Varieties Protection Rules (R 1) (called in these Rules the principal Rules), replace paragraph (1) with —

“(1) In these Rules, unless the context otherwise requires —

“electronic online system” means the electronic online system established under rule 68A;

“Plant Varieties Protection Journal” means the journal by that name published under rule 78.”.

Amendment of rule 3

3. In rule 3 of the principal Rules, after paragraph (2), insert —

“(3) Subject to paragraph (4), a fee must be paid using the mode of payment permitted or directed by the Registrar.

(4) Where the electronic online system is used to carry out an act mentioned in rule 68A, the fee payable in connection with that act must, unless otherwise permitted or directed by the Registrar, be paid using the mode of payment designated by the electronic online system.”.

Amendment of rule 5

4. In rule 5 of the principal Rules, after paragraph (4), insert —
- “(5) The Registrar may require the filing of a hard copy of any document filed using the electronic online system.”.

Amendment of rule 7

5. In rule 7 of the principal Rules —
- (a) replace paragraph (1) with —
- “(1) Where the Act or these Rules authorise or require any document to be given or sent to, filed with or served on the Registrar, the giving, sending, filing or service must be effected on the Registrar by sending an electronic communication of the document using the electronic online system.”;
- (b) in paragraph (2)(c), delete “or” at the end;
- (c) in paragraph (2), after sub-paragraph (c), insert —
- “(ca) by sending an electronic communication using the electronic online system; or”;
- (d) in paragraph (2)(d), after “by any”, insert “other”;
- (e) in paragraph (3), replace sub-paragraph (d) with —
- “(d) by sending an electronic communication of the notice or other document using the electronic online system or, subject to paragraph (5), by any other electronic means.”;
- (f) in paragraph (8), replace “paragraph (2)(d)” with “paragraph (2)(ca) or (d)”; and
- (g) after paragraph (8), insert —
- “(9) Service of any notice or other document under the Act or these Rules on a person by electronic communication using the electronic online system may be effected only if the person is registered as an

account holder in accordance with any practice directions issued by the Registrar under rule 68A(5).

(10) A notice or other document sent, filed or served by means of an electronic communication (other than the electronic online system) is treated as sent, filed or served —

- (a) if the time and the day the electronic communication becomes capable of being retrieved by the person to whom the notice or document is sent, filed or served does not fall on an excluded day for the business of sending, filing or serving the notice or document — at that time and on that day; or
- (b) if that time falls on such excluded day — on the next following day that is not such excluded day.

(11) A notice or other document that is —

- (a) transmitted to the Registrar or a party by means of the electronic online system; and
- (b) received, by the server of that system set up to receive such transmissions, at any time before midnight on any day,

is treated as sent to, filed with or served on, and received by, the Registrar or the party —

- (c) if that day is not an excluded day for the business of sending to, filing with or serving on the Registrar or the party the notice or document by means of that system — at that time and on that day; or
- (d) if that day is such excluded day — on the next following day that is not such excluded day.

(12) For the purposes of paragraph (11), the notice or other document is treated as sent to, filed with or served on, and received by, the Registrar or the party if and only if the last byte of the transmission containing the notice or document is received by the server mentioned in that paragraph.

(13) Any person who sends, files or serves a notice or other document by means of the electronic online system may produce a record of transmission issued through that system as evidence of —

- (a) the sending, filing or service of that notice or document; and
- (b) the date and time when the sending, filing or service took place.

(14) This rule does not apply to notices and documents to be served in proceedings in court.”.

Amendment of rule 9

6. In rule 9 of the principal Rules —

(a) replace paragraph (6) with —

“(6) Where an address for service is not filed by or on behalf of a person as required by paragraph (1), and no address for service is effective for the purposes of any of the proceedings mentioned in paragraph (4), the Registrar may, subject to paragraph (6A), treat the person’s trade or business address in Singapore as that person’s address for service for the purposes of those proceedings.

(6A) Where the trade or business address of the person is not known to the Registrar, the Registrar may send to the person, at an alternative address of the person, a notice to furnish an address for service for the purposes of those proceedings, within 2 months after the date of the notice.

(6B) Where the Registrar does not have any alternative address of the person to send the notice under paragraph (6A) or where the Registrar has sent a notice under that paragraph but no address for service is provided within 2 months after the date of the notice —

- (a) in the case of an applicant mentioned in paragraph (1)(a) or (c) — the application is treated as withdrawn;
- (b) in the case of a person mentioned in paragraph (1)(b) — the person is treated as having withdrawn from the proceedings in question; and
- (c) in the case of a grantee mentioned in paragraph (1)(d) or a party mentioned in paragraph (1)(e) — the grantee or party is not permitted to take part in the proceedings in question.”; and

(b) replace paragraph (9) with —

“(9) In paragraphs (6A) and (6B), “alternative address” means —

- (a) any address (not being an email address) that was previously provided by the person to the Registrar in relation to a matter under these Rules concerning the person that is the same as the matter at hand; or
- (b) any email address that was previously provided by the person to the Registrar in relation to a matter under these Rules that is the same as the matter at hand, where the person had given prior consent for that email address to be used for correspondence with the person for such matter.”.

Amendment of rule 10

7. In rule 10 of the principal Rules, after paragraph (6), insert —

“(7) Where a procedural representative for a breeder to any matter intends, on or after 26 May 2022, to cease to so act, the procedural representative —

(a) must file with the Registrar in Form PVP 2 —

- (i) a notice of such intention;
- (ii) the breeder’s latest address, including any email address, on the procedural representative’s records; and
- (iii) a statement that the procedural representative has given reasonable notice to the breeder of such intention, and informed the breeder of the consequences set out in rule 9(6B) as applied by paragraph (10); and

(b) must serve such form on the breeder at the same time the form is filed with the Registrar.

(8) On receipt of the form mentioned in paragraph (7)(a), the Registrar must send to the breeder a notice requesting the breeder to provide an address for service within 3 months after the date of the notice.

(9) The notice in paragraph (8) must be sent to the address of the breeder filed under paragraph (7)(a)(ii) or any alternative address of the breeder.

(10) Rule 9(6B)(a), (b) or (c) (whichever is applicable) applies, with the necessary modifications, if —

- (a) the Registrar does not have any alternative address of the breeder to which to send a notice under paragraph (8); or
- (b) the Registrar sent a notice under paragraph (8) and no address for service was provided within 3 months after the date of the notice.

(11) In paragraphs (9) and (10), “alternative address” has the meaning given by rule 9(9).”.

Amendment of rule 13

8. In rule 13 of the principal Rules, after paragraph (2), insert —
- “(2A) For the purposes of section 14(2) of the Act, the prescribed period is 3 months.”.

Replacement of rule 16

9. Rule 16 of the principal Rules is replaced with —

“Publication

16. For the purposes of section 15 of the Act, the Registrar must publish information on the following matters:

- (a) any application for grant of protection containing the following particulars:
- (i) the date of application;
 - (ii) the priority date (if any) accorded pursuant to a claim to a right to priority under section 14 of the Act and the name of the UPOV member concerned;
 - (iii) the name, address and address for service of the applicant;
 - (iv) the proposed plant variety;
 - (v) the proposed denomination for the plant variety;
 - (vi) a representation of the plant variety, if submitted in the application;
 - (vii) any other matters that the Registrar thinks fit;
- (b) any registration of a denomination for a protected variety;
- (c) any withdrawal of an application for grant of protection;
- (d) any rejection of an application for grant of protection;

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- (e) any grant of protection made;
 - (f) any change in a breeder or procedural representative in respect of a plant variety;
 - (g) any lapse of a grant of protection;
 - (h) any grant of a licence in relation to a grant of protection, where applicable;
 - (i) any other matters that the Registrar thinks fit.”.

New rule 17A

10. After rule 17 of the principal Rules, insert —

“Publication of and objection to application for correction

17A.—(1) This rule applies where a person (*X*) makes an application under rule 17 on or after 26 May 2022 for the correction in an application for a grant of protection of an error or a mistake in —

- (a) the name or other particular of an applicant; or
- (b) any information pertaining to a priority application.

(2) If the Registrar determines that the interests of any person may be affected by the proposed correction, the Registrar may publish the application and the nature of the proposed correction in the Plant Varieties Protection Journal and in any other manner that the Registrar determines.

(3) Any person (*Y*) may, at any time within 2 months after the date of the publication, give a written notice to the Registrar of objection to the application in Form PVP 6.

(4) The notice of objection must be accompanied by a supporting statement setting out fully the facts on which *Y* relies.

(5) *Y* must, at the time the notice and the statement are filed, serve on *X* a copy of the notice and a copy of the statement.

(6) If *Y* does not comply with paragraph (5), *X*'s objection to the application is treated as not having been filed.

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- (7) If *X* desires to proceed with the application, *X* must —
- (a) within 2 months after the date on which *X* is served the copies of the notice and the statement, file a counter-statement on Form PVP 7 setting out fully the grounds on which *X* contests the objection; and
 - (b) at the time the counter-statement is filed, serve on *Y* a copy of the counter-statement.
- (8) If *X* does not comply with paragraph (7), *X*'s application under rule 17 is treated as withdrawn.
- (9) The Registrar may give such directions as the Registrar thinks fit with regard to any aspect of the procedure for the application or the objection to the application.
- (10) The Registrar must consider the objection in deciding whether to grant the application.”.

Amendment of rule 34

11. In rule 34(1) of the principal Rules, replace “Upon” with “Subject to rule 36(1), upon”.

Amendment of rule 43

12. In rule 43(4) of the principal Rules, delete “under section 15(i) of the Act,”.

Amendment of rule 45

13. In rule 45 of the principal Rules —

- (a) in paragraph (3), replace “The” with “Subject to paragraph (5), the”; and
- (b) after paragraph (4), insert —

“(5) Rule 17A applies with the necessary modifications in relation to an application made on or after 26 May 2022 to rectify an error or omission in the name or other particular of a grantee, or in any information pertaining to a priority application, in the register as it applies in relation to an application to

correct an error or a mistake in the name or other particular of an applicant, or in any information pertaining to a priority application, in an application for a grant of protection.”.

Replacement of rule 47

14. Rule 47 of the principal Rules is replaced with —

“Payment of annual fee and submission of information

47.—(1) At any time not less than 2 months but not more than 3 months before each anniversary of the date of the grant of protection (called in this rule the anniversary date), the Registrar must send a written notice to the grantee at the grantee’s address for service, notifying the grantee that the anniversary date is approaching.

(2) For the purposes of section 24(3) of the Act, the prescribed period starts at the beginning of 3 months before the anniversary date and ends at the end of 6 months after the anniversary date.

(3) If the grantee pays the annual fee within the period of 6 months after the anniversary date as described in paragraph (2), the grantee must pay the late fee set out in the Second Schedule.

(4) Payment of the annual fee and any late fee must be made to the Registry together with Form PVP 11.”.

Deletion of rule 48

15. Delete rule 48 of the principal Rules.

Replacement of rule 49

16. Rule 49 of the principal Rules is replaced with —

“Form for providing information, etc.

49. For the purposes of section 26(2)(a) of the Act, the grantee must provide the information, documents or material mentioned in that section in Form PVP 11.”.

Amendment of rule 66

17. In rule 66(6) of the principal Rules —

- (a) in sub-paragraph (a), replace “9(6)” with “9(6B)”;
- (b) in sub-paragraph (a), delete “48(2),”;
- (c) in sub-paragraph (b), delete “and” at the end;
- (d) in sub-paragraph (c), replace the full-stop at the end with a semi-colon; and
- (e) after sub-paragraph (c), insert —
 - “(d) the submission of a copy of a document constituting a foreign application under section 14(2) of the Act (which is to be done within the period prescribed in rule 13(2A)).”.

New Part VIIIA

18. After rule 68 of the principal Rules, insert —

“PART VIIIA

ELECTRONIC ONLINE SYSTEM

Establishment of electronic online system

68A.—(1) An electronic online system is established for the purposes of these Rules.

(2) Unless the Registrar permits otherwise in a particular case, the electronic online system must be used by any person for giving or sending to, filing with or serving on the Registrar any document (other than a notice or document to be served in proceedings in court).

(3) The electronic online system may be used —

- (a) by the Registrar for giving or sending to or serving on any person any notice or other document; and

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- (b) by a party for the giving or sending to or serving on another party (other than the Registrar) of any document required to be given, sent to or served on that other party under the Act or these Rules.
- (4) To avoid doubt, paragraph (3) does not apply to the service of any notice or document to be served in proceedings in court.
- (5) The Registrar may issue practice directions specifying —
- (a) the manner in which any document is to be given or sent to, filed with or served on the Registrar under paragraph (2);
 - (b) the manner in which the Registrar may give, send or serve any notice or document under paragraph (3);
 - (c) the procedures and conditions for the setting up, operation and use of the electronic online system; and
 - (d) in the event of any interruption in the operation of the electronic online system, the manner in which any document is to be given or sent to, filed with or served on the Registrar under paragraph (2), or in which the Registrar may give, send or serve any notice or document under paragraph (3).
- (6) The Registrar —
- (a) may correct any error or omission in any document or information that has occurred or arisen as a result of any interruption in the operation of the electronic online system; and
 - (b) must maintain a record of the correction so made.

Duty of person using electronic online system

68B. A person may only use the electronic online system in accordance with these Rules and any practice directions issued by the Registrar.”.

Amendment of rule 69

19. In rule 69 of the principal Rules, after paragraph (2), insert —

“(3) To avoid doubt, where the time for —

- (a) giving, sending to, filing with or serving on the Registrar any notice or other document mentioned in rule 68A; or
- (b) giving, sending to, filing with or serving on any person by the Registrar any notice or other document mentioned in rule 68A,

expires on an excluded day for the business of sending, filing or serving the notice or document, that time is extended to the next following day that is not such excluded day, despite the availability of the electronic online system.”.

Amendment of rule 70

20. In rule 70 of the principal Rules —

(a) replace paragraph (1) with —

“(1) Where, on any day, there is an interruption in —

- (a) the postal service of Singapore;
- (b) the operation of the Registry; or
- (c) the operation of the electronic online system,

the Registrar may issue practice directions to declare that day as one on which there has been such interruption.

(2) Where any period of time specified in the Act or these Rules for the giving, sending, filing or serving of any notice, application or other document expires on a day so declared, the period is extended to the next following day (not being an excluded day for such business) which is not so declared.”; and

- (b) in paragraph (3), after “postal service of Singapore”, insert “or the electronic online system”.

Amendment of rule 72

21. In rule 72 of the principal Rules —

- (a) renumber rule 72 as rule 72(1); and
(b) after paragraph (1), insert —

“(2) Where the irregularity in procedure in connection with any proceedings (other than proceedings with notice) is attributable, wholly or in part, to an omission or other error by the party to the proceedings and the irregularity has been corrected under paragraph (1) on or after 26 May 2022, the Registrar must publish a notification of the decision in the register.”.

Amendment of rule 78

22. In rule 78 of the principal Rules, replace “The Registrar shall” with “For the purposes of section 15 of the Act, the Registrar must”.

Amendment of Second Schedule

23. In the Second Schedule to the principal Rules —

- (a) in the Schedule reference, replace “47(1)” with “47(3)”;
- (b) in the item relating to Form PVP 2, under the heading “*Matter*”, replace “appointment or substitution of” with “appointment of, substitution of or intention to cease to act as”;
- (c) in the item relating to Form PVP 2, under the heading “*Corresponding Rule(s)*”, replace “and (5)” with “, (5) and (7)”;
- (d) in the item relating to Form PVP 6, under the heading “*Corresponding Rule(s)*”, after “Rules 9(4)(b),”, insert “17A(3), 17A(3) as applied by rule 45(5),”;

- (e) in the item relating to Form PVP 7, under the heading “*Corresponding Rule(s)*”, after “Rules”, insert “17A(7), 17A(7) as applied by rule 45(5),”;
- (f) in the item relating to Form PVP 8, under the heading “*Matter*”, replace “Filing of a notice of appearance at hearing” with “Attending hearing and obtaining decision”;
- (g) replace the item relating to Form PVP 11 with —

“

PVP 11	(a) Payment of annual fee and submission of information under section 24(3) of the Act	Rules 9(4)(c) and 47	\$150
	(b) Payment of late fee under section 24(4) of the Act —	Rule 47(3) and (4)	
	(i) within one month after anniversary of the date of grant of protection mentioned in that section;		\$15
	(ii) within 2 months but after one month after that anniversary;		\$45
	(iii) within 3 months but after 2 months after that anniversary;		\$75
	(iv) within 4 months but after 3 months after that anniversary;		\$105
	(v) within 5 months but after 4 months after that anniversary; or		\$135
	(vi) within 6 months but after 5 months after that anniversary		\$165

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- (h) delete the items relating to Form PVP 13 and Form PVP 14;
 - (i) in the item relating to Form PVP 15, under the heading “*Corresponding Rule(s)*”, delete “48(1),”;
 - (j) in the item relating to Form PVP 16, under the heading “*Fees*”, replace “\$30” with “\$40”;
 - (k) in the item relating to Form PVP 17, under the heading “*Fees*”, replace “\$50” with “\$80”;
 - (l) in the item relating to Form PVP 18, under the heading “*Matter*”, replace “section 15(i)” with “section 15”; and
 - (m) in the item relating to Form PVP 18, under the heading “*Fees*”, replace “\$75” with “\$100”.

Saving and transitional provision

24. Despite rules 14, 15 and 17(b), rules 47, 48 and 66(6) of the principal Rules as in force immediately before 26 May 2022 continue to apply in respect of the payment of the annual fee and furnishing of information under section 24(3) of the Act for which a notice under rule 47(1) of those Rules (as in force immediately before that date) was sent to and received by the grantee before that date.

*[G.N. Nos. S 742/2013; S 504/2014; S 437/2020;
S 689/2021; S 261/2022]*

Made on 19 May 2022.

LOH KHUM YEAN
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