

The background of the entire page is a 3D-rendered landscape composed of various geometric shapes, primarily rectangular prisms and trapezoidal blocks, in shades of teal and light blue. These shapes are arranged to create a sense of depth and perspective, resembling a stylized mountain range or a modern architectural structure. The lighting is soft, coming from the upper right, which creates subtle shadows and highlights on the edges of the shapes.

PLANTS VARIETIES IN AGRIBUSINESS

1

INITIAL CONSIDERATIONS

Agriculture is one of Brazil's economic bases and represents a large part of the country's exports. Driven by global competitiveness, technology has played an increasingly important role in agriculture in recent decades. Among the sector's innovations, plants varieties stand out, a term used to refer to a variety of plant species, developed and selected for having specific characteristics, such as resistance to diseases, adaptation to different climatic conditions, etc.

The research and development of plants varieties are fundamental for the evolution of agriculture and require a lot of investment, since it involves several stages, such as the selection of genetic materials, the performance of controlled crossings, and the evaluation of agronomic characteristics. This process still requires significant financial contributions in land, greenhouses, laboratory equipment, and a multidisciplinary team of qualified labor.

In view of so many investments, the protection of plants varieties is important to guarantee their developers their financial return, further stimulating the production of new plants varieties and innovation in general. It is no coincidence that the protection of plants varieties and the regulation of this institute are topics of discussion in the field of Intellectual Property.

Thus, this booklet will explore the main legal aspects related to plants varieties, from their definition to the registration process in Brazil.

2

AFTER ALL, WHAT ARE PLANTS VARIETIES?

The concept of **plants varieties** is provided for in the Federal Law No. 9,456/1997 ("**Plant Variety Protection Law**" or "**LPC**"), regulated by Decree No. 2,366/1997, which also provides for the National Service for the Protection of Plants Varieties ("**SNPC**"), which is managed by the Ministry of Agriculture, Livestock, and Food Supply ("**MAPA**" or "**Ministry of Agriculture**").

According to item IV of article 3 of the LPC, plants varieties are cultivated plant varieties of any genus or superior plant species that are clearly distinguishable from other known Plants Varieties by a minimum margin of descriptors, by their own name, which are homogeneous and stable in terms of descriptors through successive generations, belonging to species that can be used by the agroforestry complex, described in a specialized publication available and accessible to the public, as well as the lineage that composes hybrids.

In other words, plants varieties are cultivated varieties of plants obtained through genetic improvement techniques that make them different from each other, whether in their color, size or even resistance to diseases.

3

HOW DOES PLANT VARIETY PROTECTION WORK?

The protection of plants varieties is governed by the LPC and the International Convention for the Protection of New Plant Varieties (“**UPOV**”). It is a sui generis system, arising from a commitment assumed by Brazil within the scope of the TRIPS Agreement, an international treaty that establishes appropriate standards and principles regarding the existence, scope, and exercise of intellectual property rights related to trade.

This protection applies to material for reproduction or vegetative multiplication of the entire plant, guaranteeing the holder the right to commercial reproduction in Brazilian territory and prohibiting third parties, during the term of protection, from producing propagation material of the plant variety for commercial purposes, offering it for sale or commercializing it without its authorization. Without this protection, anyone could multiply the seeds or propagation material of the plant and sell it without paying any compensation to the breeder.

The LPC establishes that “new plants varieties” and “essentially derived plants varieties” of any plant genus or species may receive legal protection in Brazil. In this sense, the LPC provides that:

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a new plant variety is one that has not been sold in the country for more than twelve (12) months in relation to the date of the application for protection and that, observing its marketing period in Brazil, has not been offered for sale in other countries without the consent of the breeder for more than six (6) years for trees and vines and four (4) years for other species; and

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a new essentially derived plant variety is predominantly derived from the parent plant variety or another essentially derived plant variety, without losing the essential characteristics resulting from the genotype or combination of genotypes of the plant variety from which it was derived, but clearly distinct from the original plant variety by a minimum margin of descriptors established by the competent body, and that has not been offered for sale in Brazil or in other countries without the consent of the breeder, during the same terms established for the “new plant variety”.

The protection of rights relating to the intellectual property of plants varieties is carried out through the granting of a **Plant Variety Protection Certificate**, granted by the SNPC. This certificate grants its holder the exclusive right to produce, reproduce, market, export, import, use, and sell the protected plant variety.

Its protection is valid only within Brazilian territory. However, there are international agreements that facilitate the protection of plants varieties in several countries, such as the already mentioned UPOV and the “International Treaty on Plant Genetic Resources for Food and Agriculture” (“**TIRFAA**”). Through these agreements, it is possible to obtain protection in different countries, provided that the requirements established in each of them are met.

It is important to mention that the Plant Variety Protection Certificate is not to be confused with the registration of the plant variety in the National Registry of Plants Varieties (“**RNC**”), which has the sole purpose of qualifying it for production and commercialization in the country. The RNC, by itself, does not guarantee the applicant/maintainer the exclusive right over the plant variety.

The term of protection of plants varieties is also not to be confused with the terms of protection of patents: as it is a *sui generis* right, the LPC determines that the protection of new plant varieties is valid for a determined period, which varies between fifteen (15) and eighteen (18) years, depending on the species and form of propagation, also requiring the payment of an annuity.

It should be noted that the protection given to plants varieties is not absolute, and there are exceptions that allow the free use of certain plants varieties. For example, small rural producers are allowed to multiply seeds for donation or exchange between small rural producers who meet certain prerequisites in financing or support programs conducted by public bodies or non-governmental organizations authorized by the Government. These exceptions allow traditional farmers to access plants varieties without breaking the law.

The breeder of a protected plant variety is obliged to keep a live sample available to the competent body during the entire period of protection. If they do not comply with this obligation, their Cultivar Protection Certificate may be cancelled.

Once the Plant Variety Protection Certificate expires, the plant variety loses its protection and becomes public domain, which may be used freely by anyone, without the need for authorization or payment of *royalties*.

Protection requirements

To be eligible for protection, according to current legislation, the plant variety must meet the following requirements:



be the product of genetic improvement;



be of a species subject to protection in Brazil;



not have been offered for sale or marketed abroad for more than 4 years, or for more than 6 years, in the case of vines or trees;



not have been offered for sale or marketed in Brazil for more than 12 months;



have an appropriate name;



be clearly distinct from other existing plant variety;



be homogeneous; and



be stable.

In this sense, the **homogeneous plant variety** is the one that, used in planting on a commercial scale, presents minimal variability in terms of the descriptors that identify it, according to criteria established by the SNPC. In turn, a **stable plant variety** is the one reproduced on a commercial scale that maintains its homogeneity through successive generations.

The role of the National Service for the Protection of Plants Varieties (SNPC)

The SNPC, a body that is part of the Ministry of Agriculture, is responsible for analyzing applications for the protection of plants varieties, issuing the corresponding certificates, and disclosing the new plant species and their minimum characteristics so that they can be differentiated from the others. Its role is fundamental for guaranteeing the protection of the intellectual property rights of breeders of new plants varieties and for the development of the Brazilian agricultural sector.

In addition, it is possible to query the SNPC list to find out which plants varieties are protected in the country, as its public database contains information on the scientific and common name of the species, the name of the plant variety, and the protocols for requesting protection.

Application

To request the granting of a plant variety's Protection Certificate, it is necessary to fill out an application signed by the breeder, who can be an individual, legal entity, or their legal representative, and file it with the SNPC. The breeder's heirs, successors or assignees also have the right to request protection of the plant variety, as long as they present the documents that prove this condition.

The application for protection must be specific to a single plant variety and must contain the following information:



botanical species and name of the plant variety;



genetic origin of the plant variety;



a descriptive report filling in all required descriptors;



a statement guaranteeing the existence of a live sample available for examination by the competent body, together with its storage location;



name and address of applicant and breeders;



proof of DHE ("Distinguishable, Homogeneous, and Stable") characteristics for both national and foreign plant variety;



report of other descriptors that indicate the distinction, homogeneity, and stability of the plant variety, or proof of tests conducted by the applicant together with specific controls designated by the competent body;



proof of payment of the protection application fee;



statement on the existence of commercialization of the plant variety in Brazil or abroad;



statement on the existence of protection, requirement for protection or application for priority right in another country, related to the plant variety in question; and



extract that clearly identifies the object of the application.

It is important to highlight that the tests to evaluate the plant variety's distinction, homogeneity, and stability, essential requirements for its concession, must be carried out before the submission of the application. The technical procedure known as "DHE" is used to prove that the new plant variety, or a derivative, is distinctly identifiable in relation to other plants varieties with known characteristics, in addition to being homogeneous in its characteristics throughout each reproductive cycle and stable in the repetition of these characteristics over successive generations. MAPA provides specific instructions regarding DHE for each plant variety species.

Procedure

The process of analyzing an application containing all the necessary information, described above, takes up to sixty (60) days to complete.

After publication of the application, the Provisional Protection Certificate is issued, a temporary document that allows the holder to commercially exploit the plant variety in accordance with the LPC.

Subsequently, once the period of fifteen (15) days for filing appeals has elapsed, or after the official publication of the decision if there is an appeal, the Plant Variety Protection Certificate is issued.

Termination of Protection

The right of protection related to plants varieties can be terminated or canceled in several situations. As previously mentioned, according to the LPC, the right of protection is terminated after a certain period, depending on the species in question (18 or 15 years).

However, the legislation also provides for the possibility of terminating the right of protection related to plants varieties by: (a) waiver by the holder, as long as it does not harm the rights of third parties; and (b) cancellation of the Protection Certificate.

Regardless of the circumstance, when the protection is terminated, the plant variety becomes public domain. Specifically in relation to cancellation hypotheses, the Protection Certificate can be canceled administratively or upon request of any person with a legitimate interest. Reasons for cancellation include loss of homogeneity or stability, non-payment of annual fees, non-compliance with legal requirements, non-submission of live sample, and proof that the plant variety has caused negative impacts on the environment or human health.

The holder is notified about the opening of the cancellation process and has the right to present a defense during the procedure. The cancellation decision takes effect from the date of application or the date of publication of the initiation of the process.

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FINAL CONSIDERATIONS

The seed and plant market plays an important role in the Brazilian economy, but it still faces significant challenges in relation to the legal protection of plants varieties.

In this sense, both the public and private sectors are discussing the importance of changing the law to increase the competitiveness of Brazilian agribusiness. It is extremely important that any modification be designed to encourage the development of technologies and increase agricultural productivity.

It is no coincidence that the future perspectives for the legal protection of plants varieties are promising. With the modernization of legislation, a significant increase in research and development of new plant varieties is expected, in addition to stimulating the competitiveness of the Brazilian agricultural sector.

The team of Campos Thomaz & Meirelles Advogados is prepared to assist its clients in obtaining and defending plants varieties, among other intellectual property assets, and is always up to date with legislative news and available to offer advice on the subject.

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Meet our Partners



Alan Campos Thomaz

Partner

Technology & Digital Business, Privacy and Data
Protection, Fintechs and Intellectual Property
at@camposthomaz.com

+55 11 9 8375.2627 +1 (650) 6436652



Sérgio Meirelles

Partner

Corporate, M&A, Venture Capital
and Wealth
sergio@camposthomaz.com

+55 11 9 7551.9865



Filipe Starzynski

Partner

Litigation & Law Enforcement, Civil,
Real State, Labor and Family
filipe@camposthomaz.com

+55 11 9 7151.9639



Juliana Sene Ikeda

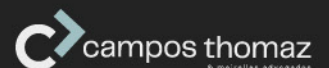
Partner

Intellectual Property, Technology,
Agreement and Life Sciences
juliana@camposthomaz.com

+55 11 9 8644.1613



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