

The Seeds and Seedlings Law (provisional translation)

(Law No. 83 of May 29, 1998)

Note: In case of doubt, please refer to the original Japanese text which is the authentic text.

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Chapter 1. General Provisions

(Purpose)

Section 1.

The purpose of this Law is to promote the breeding of plant varieties and the rational distribution of seeds and seedlings by providing for a system relating to the registration of plant varieties for the protection of new plant varieties and regulations relating to the labeling of designated seeds and seedlings, so as to contribute to the development of agriculture, forestry and fisheries.

(Definitions)

Section 2.

(1) In this Law, “agricultural, forestry and aquatic plants” mean and other plants designated by the Cabinet Order, which are cultivated for the production of agricultural, forestry and aquatic products, and a “plant” means an individual of agricultural, forestry and aquatic plants.

(2) In this Law, “variety” means a plant grouping which can be distinguished from any other plant grouping by all s of the important characteristics (hereinafter referred to as “characteristics”) and which can be propagated while maintaining its characteristics without change.

(3) In this Law, “seeds and seedlings” means entire plants or parts of plants used for propagation.

(4) In this Law, “exploitation” in relation to a variety means the following acts:

- (i) production, conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of these acts, of seeds and seedlings the variety; and
- (ii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of these acts, of the harvested material obtained through using seeds and seedlings of the variety (unless the holder of the breeder's right or the holder of the exclusive exploitation right has had reasonable opportunity to exercise his right for the acts mentioned in the preceding paragraph).

(5) In this Law, “designated seeds and seedlings” means seeds and seedlings (excluding those of forest trees) which are designated by the Minister for Agriculture, Forestry and Fisheries, and appear in the form of seeds, spores, stems, roots, seedlings, saplings, scions, rootstocks, spawn or other parts

of plants designated their sale, in order to facilitate identification of the quality, and “seed and seedling dealer” means any person engaged in the sale of designated seeds and seedlings in the course of business.

(6) The Minister for Agriculture, Forestry and Fisheries, shall, after having heard the views of the Agricultural Materials Council, determine and publicly announce the important characteristics referred to in subsection (2) for each of the classes, specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, of agricultural, forestry or aquatic plants.

Chapter 2. Variety Registration System

Part 1. Variety Registration and Application for Variety Registration

(Conditions for Variety Registration)

Section 3.

(1) Any person who has bred (meaning resulting from artificial or natural variation) a variety fully meeting the requirements set forth below or his successor in title (hereinafter referred to as “breeder”) may have registration for the variety (hereinafter referred to as “variety registration”).

- (i) the variety is clearly distinguishable, in all or parts of the characteristics, from any other variety which has been publicly known in Japan or foreign countries before the filing of the application for variety registration.
- (ii) all of the plants of the variety at the same propagation stage are sufficiently similar in all of the characteristics.
- (iii) all of the characteristics remain unchanged after repeated propagation.

(2) Where the filing of an application for variety registration or an equivalent application in a foreign country leads to the granting of the breeder's right, the variety shall be deemed to have been publicly known at the time of the filing of the application.

Section 4.

(1) A variety may not be registered, where the denomination of the variety pertaining to the application for variety registration (hereinafter referred to as “applied variety”) falls under any of the following cases:

- (i) where there is applied variety;
- (ii) where the denomination is identical or similar to a registered trademark pertaining to the seeds and seedlings of the applied variety or a registered trademark pertaining to goods similar to the said seeds and seedlings;
- (iii) where the denomination is identical or similar to a registered trademark pertaining to services relating to the seeds and seedlings of the applied variety or goods similar to the said seeds and seedlings; or
- (iv) where it is likely to cause misunderstanding on the applied variety or confusion in respect of its identification (excluding the cases set forth in the preceding two paragraphs).

(2) A variety may not be registered when the seeds and seedlings or harvested material of the applied variety have been transferred in the course of business, in Japan earlier than one year before the date of application for variety registration, or in a foreign country earlier than four years before the date of such an application for variety registration (or earlier than six years in the case of the variety belonging to a genus or species of agricultural, forestry or aquatic plant specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as a perennial plant). However, this shall not

apply where such transfer was made for the purpose of experiment or research, or where such transfer was made against the will of the breeder.

(Application for Variety Registration)

Section 5.

(1) Any person desiring a variety registration shall submit an application to the Minister for Agriculture, Forestry and Fisheries, in the manner provided by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, stating the following:

- (i) the name the domicile or residence of the applicant for the variety registration;
- (ii) the genus or species of the agricultural, forestry or aquatic plants to which the applied variety belongs;
- (iii) the denomination of the applied variety;
- (iv) the name and the domicile or residence of the person who has bred the applied variety; and
- (v) matters prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries other than the matters in the preceding paragraph.

(2) The application shall be accompanied by a written explanation giving the information specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and a photograph of the plant of the applied variety, in accordance with the requirements of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(3) Where two or more persons have bred the variety jointly, they shall file an application for variety registration jointly.

(Application Fee)

Section 6.

(1) The applicant shall pay an application fee for his application specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries but not exceeding 47,200 Yen.

(2) The provision of the preceding subsection shall not be applied where the applicant is the national government, including Independent Administrative Agencies designated by Law on General Rules of Independent Administrative Corporations (Law No.103 of 1999) Section 2 Subsection 1 that are designated by the Cabinet Order to deal with variety breeding activities; this proviso shall apply to the next subsection, Section 38 Subsections 2 and 3, and Section 47 Subsection 2.)

(3) Notwithstanding the provision of subsection (1), where the national government and another person jointly apply for variety registration and they have an agreement on the sharing of the breeder's right to be granted by variety registration, such other person shall pay an amount calculated by multiplying the amount of the application fee of the share of such other person.

(4) Where Yen in the amount of the application fee as calculated under the preceding subsections, such a fraction shall be discarded.

(Transfer of the Title of Applicant)

Section 7.

(1) The title of applicant may be transferred.

(2) Any transfer of the title of applicant shall not take effect without notification to the Minister for Agriculture, Forestry and Fisheries pursuant to the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, except in the case of transfer by inheritance or other general succession.

(3) Where the title of applicant is transferred as a result of inheritance or other general succession, the successor shall notify, without delay, the Minister for Agriculture, Forestry and Fisheries accordingly, pursuant to the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(Variety Bred by an Employee as part of his Duties)

Section 8.

(1) With respect to a variety bred by an employee, an executive officer of a legal person, or a central or local governmental officer (hereinafter referred to as the “employee etc.”), any contractual provision, service regulation or other stipulation providing in advance that the employer, legal person, or central or local government (hereinafter referred to as the “employer etc.”) can file an application for variety registration, or have the title of applicant transferred to him, or, where the employee etc. has had a variety registered, have the breeder's right transferred to the employer etc. or establish an exclusive exploitation right on the registered variety for him, shall be null and void. However, this shall not apply where the breeding of the variety by reason of its nature falls within the scope of the business of the employer etc. and, moreover, the acts resulting in the breeding of the variety fall within the duties of the employee etc. (hereinafter referred to as a “variety bred by an employee as part of his duties”).

(2) An employee etc. may make a claim on the employer etc. for the payment of compensation to be determined in consideration of the profit receivable by the employer etc. from a variety bred by that employee as part of his duties and the extent to which the employer etc. contributed to the breeding of that variety, where, in accordance with a contract, service regulation or other stipulation, the employer etc. files an application with respect to the variety bred by that employee as part of his duties or has the title of applicant transferred to the employer etc., or, where the employee etc. has had a variety registered, has the breeder's right transferred to the employer etc. or establishes an exclusive exploitation right on the registered variety for the employer etc..

(3) Where an employee etc. or his successor has been granted a variety registration relating to a variety bred by himself as part of his duties, his employer etc. or his successor shall receive a non-exclusive exploitation right on the variety concerned.

(First-to-file Rule)

Section 9.

(1) Where two or more applications for variety registration are filed for a variety or for varieties that are identical or not clearly distinguishable from each other on the basis of characteristics, only the first applicant shall be considered for the grant of variety registration.

(2) Where an application for variety registration is withdrawn or invalidated, such an application shall, for the purpose of the preceding subsection, be deemed never to have been made.

(3) An application for variety registration filed by a person who is not a breeder shall, for the purpose of subsection (1), be deemed not to be an application for variety registration.

(Rights of Foreigners)

Section 10.

(1) A foreigner who has neither domicile nor residence (nor establishment, in the case of a legal person) in Japan shall not enjoy a breeder's right or any other right related to a breeder's right¹, except in any one of the following cases:

- (i) where the State to which the person belongs or the State in which the person has domicile or residence (in the case of a legal person, its establishment) is one of the member States of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (hereinafter referred to as "Contracting States") or member States of intergovernmental organizations which are bound by the said Convention (hereinafter referred to as "Intergovernmental Organizations" and "Contracting States and Intergovernmental Organizations" hereinafter collectively referred to as "Contracting States etc.")
- (ii) where the State to which the person belongs or the State in which the person has domicile or residence (in the case of a legal person, its establishment) is a member State of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972 and on October 23, 1978 (including the State in relation to which Japan is to apply the Convention under the provision of Article 34 (2) of the said Convention; hereinafter referred to as "Member States") and if the said State provides protection for the plant genus or species to which the person's applied variety belongs (excluding the case stated in the preceding paragraph).
- (iii) where the State to which the person belongs provides Japanese nationals with the protection of varieties under the same conditions as for its own nationals (including a State which provides such protection for Japanese nationals under the condition that Japan allows enjoyment of the breeder's right and other rights related to the breeder's right for the nationals of that State) and if the said State provides protection for the plant genus or species to which the person's applied variety belongs (excluding the cases stated in the preceding two paragraphs).

(Right of Priority)

Section 11.

(1) Any person listed in either of the paragraphs below may, if the conditions stated in the paragraphs are met, claim the right of priority at the time of application, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

- (i) a person who has filed an equivalent application or applications for variety registration in a Contracting State, an Intergovernmental Organization or a Member State (hereinafter referred to as "application in a Contracting State") or his successor (the person or his successor must be a Japanese national, a person belonging to a Contracting State etc. or Member State, or a person having a domicile or residence (in the case of a legal person, its establishment) in Japan, a Contracting State etc. or a Member State): where the application for variety registration, on the same variety as the subject of the application in a Contracting State, is filed within one year counting from the day after the filing of the first application in a Contracting State (hereinafter referred to as the "date of application in a Contracting State"); or
- (ii) a person who has filed an equivalent application or applications for variety registration in a State provided in paragraph (iii) of the preceding section which allows a Japanese national to claim the right of priority under the same conditions as Japan does (excluding Contracting State and Member State; hereinafter referred to as a "Designated State") or his successor (the person or his successor must be a Japanese national or a person belonging to the Designated State): where the application for variety registration, on the variety as the subject of the application in a

¹ Translator's note: "other rights related to the breeder's right" means exclusive and non-exclusive exploitation right, etc.

Designated State, is filed within one year counting from the day after the filing of the first application in a Designated State (hereinafter referred to as the “date of application in a Designated State”).

(2) Where the applicant claims the right of priority pursuant to the provisions of the preceding subsection, another application for variety registration, publication, such acts as transfer or other acts made in relation to a variety which is identical to or not clearly distinguishable from the applied variety on the basis of the characteristics, within a period from the date of application in a Contracting State or the date of application in a Designated State to the date of the application for variety registration, shall not constitute a ground for preventing the said variety from registration.

(Correction of Application for Variety Registration)

Section 12.

(1) The Minister for Agriculture, Forestry and Fisheries may order the application for variety registration to be corrected, fixing an adequate time limit, if:

- (i) the application for variety registration has not complied with the formal requirements specified in this Law or in orders or ordinances there under; or
- (ii) the applicant does not pay the application fee that should be paid pursuant to the provisions of subsection (1) of Section 6.

(2) The Minister for Agriculture, Forestry and Fisheries may invalidate the application for variety registration, where the person who has been ordered to correct the application for variety registration under the provisions of the preceding subsection does not correct it within the time limit fixed pursuant to the provision of the said subsection.

Part 2. Publication of Application

(Publication of Application)

Section 13.

- (1) When an application for variety registration is received (when a corrected application for variety registration is received if, under the provision of subsection (1) of the preceding Section, correction of the application for variety registration has been ordered.), the Minister for Agriculture, Forestry and Fisheries shall publish the application for variety registration without delay by publicly announcing (i) the application number and date of the application for variety registration;
 - (ii) the name and the domicile or residence of the applicant;
 - (iii) the genus or species of the agricultural, forestry or aquatic plant to which the applied variety belongs;
 - (iv) the denomination of the applied variety;
 - (v) the date of the publication of the application; and
 - (vi) necessary matters other than those mentioned in the preceding paragraphs.
- (2) Where the application for variety registration is abandoned, withdrawn or invalidated after the publication of the application, or where the application for variety registration is rejected, the Minister for Agriculture, Forestry and Fisheries shall publish information to that effect.

(Effects, etc. of Publication of Application)

Section 14

- (1) When the applicant for a variety registration has, after publication of his application, having given a notification in a written statement setting forth the particularities of the applied variety, he may claim, against a person who exploited in the course of business between the time of the notification and the registration, that applied variety, a variety which is, on the basis of its characteristics, not clearly distinguishable from that applied variety or a variety to which the provisions of each paragraph of Section 20(2) would apply if that said applied variety would have been registered, compensation equivalent to the amount of money which the applicant may receive if that applied variety were registered. Even in the absence of the notification, the same rule shall apply to a person who exploited in the course of business the applied variety (including a variety which, on the basis of its characteristics, is not clearly distinguishable from the said applied variety or a variety to which the provision of each paragraph of Section 20(2) would apply if the said applied variety had been registered; this proviso shall apply to the other subsections of this Section) before its registration, if he knew that the variety which he exploited was the applied variety in relation to which the application was published.
- (2) The right to claim compensation under the preceding subsection may not be exercised before the registration of the variety.
- (3) The exercise of the right to claim compensation under subsection (1) shall not preclude the exercise of the breeder's right.
- (4) Where the application for variety registration has been abandoned, withdrawn or invalidated after the publication of the application, or where the application for variety registration has been rejected, or where the variety registration is revoked pursuant to the provisions of either paragraph (i) or (iv) of Section 42(1), or where a decision to revoke the variety registration has become final and conclusive, which upholds the ground for an objection to the variety registration based on the Administrative Appeal Law (Law No. 160 of 1962), or where a judgment to revoke or to confirm nullity of the variety registration becomes final and conclusive, the right to claim compensation under subsection (1) shall be deemed never to have existed.

(5) Section 36 of this Law and Sections 719 and 724 of the Civil Code (Law No. 89 of 1896) shall apply mutatis mutandis to the exercise of the right to claim compensation under subsection (1). In such cases, where a person having the right to claim compensation has become aware, before the registration of the variety, of the fact that the applied variety pertaining to the application for the variety registration was exploited and could identify the person having exploited that variety, “the time when the injured party or his legal representative became aware of such damage and identified the person causing it” in Section 724 of the said Code shall be replaced by “the date of the variety registration.”

Part 3. Examination

(Examination of Applied Variety)

Section 15.

(1) The Minister for Agriculture, Forestry and Fisheries may order the applicant to submit entire plants or parts of plants of the applied variety or other material necessary for examination of the applied variety.

(2) The Minister for Agriculture, Forestry and Fisheries shall cause its officers to conduct on-site inspections or the Independent Administrative Agency National Center for Seeds and Seedlings (hereinafter referred to as NCSS) to conduct growing tests for examination of the applied variety, unless it is found unnecessary to do so for the examination of the applied variety.

(3) The Minister for Agriculture, Forestry and Fisheries may request relevant governmental organizations, educational establishments or other persons deemed to be appropriate, to conduct such on-site inspections as mentioned in the preceding subsection.

(4) Items to be checked, examination methods and other requirements for the conduct of the growing tests mentioned in Subsection 2 shall be determined by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(5) The NCSS may request relevant governmental organizations, educational establishments or other persons deemed to be appropriate, to conduct such growing tests as mentioned in Subsection 2.

(6) The Minister for Agriculture, Forestry and Fisheries may issue instructions to the NCSS in relation to the conduct of such growing tests as mentioned in Subsection 2 as far as such instructions are necessary to ensure the appropriate conduct of the growing tests.

(Order to Change Denomination)

Section 16.

(1) Where the denomination of the applied variety falls under any of the paragraphs of Section 4(1), the Minister for Agriculture, Forestry and Fisheries may order the applicant to change it to another denomination which does not fall under any of the paragraphs of the said subsection, fixing an adequate time limit.

(2) Where the denomination, after the publication of application, is changed in accordance with the preceding subsection, the Minister for Agriculture, Forestry and Fisheries shall publicly announce information to that effect.

(Rejection of Application for Variety Registration)

Section 17.

(1) The Minister for Agriculture, Forestry and Fisheries shall reject the application for variety registration, in writing, where the applied variety falls under one of the following paragraphs:

- (i) the applied variety may not be registered in accordance with the provisions of Section 3 (1), Section 4(2), Section 5(3), Section 9(1) or Section 10; or
- (ii) the applicant, without good reasons, fails to comply with the order referred to in Section 15(1), refuses to receive an on-site inspection as referred to in subsection (2) of the said Section or fails to comply with the order referred to in subsection (1) of the preceding Section.

(2) Where the application for variety registration is to be rejected under the provisions of the preceding subsection, the Minister for Agriculture, Forestry and Fisheries shall notify the applicant of the reason for the rejection and give him an opportunity to submit a statement of his arguments fixing an adequate time limit.

(Variety Registration)

Section 18

(1) The Minister for Agriculture, Forestry and Fisheries shall register the variety unless the application for variety registration should be rejected under the provisions of subsection (1) of the preceding Section.

(2) A variety shall be registered in the Register of Plant Varieties in which the following shall be entered:

- (i) the registration number and the date of variety registration;
- (ii) the genus or species of the agricultural, forestry or aquatic plant to which the variety belongs;
- (iii) the denomination of the variety;
- (iv) the characteristics of the variety;
- (v) the duration of the breeder's right;
- (vi) the name and domicile or residence of the person who has the variety registration; and
- (vii) in addition to the matters mentioned in the preceding paragraphs, matters prescribed by the

Ordinance of the Ministry of Agriculture, Forestry and Fisheries

(3) Where a variety has been registered in accordance with the provisions of subsection (1), the Minister for Agriculture, Forestry and Fisheries shall notify the person who has the said variety registration accordingly, and publicly announce the matters prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

Part 4. Breeder's Right

(Grant and Duration of Breeder's Right)

Section 19.

(1) A breeder's right shall be granted the registration of the variety twenty years (twenty-five years in the case of varieties referred to in Section 4(2)) from the date of variety registration.

(Effects of Breeder's Right)

Section 20.

(1) The holder of a breeder's right shall have an exclusive right to exploit, in the course of business, the variety which is registered (hereinafter referred to as "registered variety") and varieties which, on the basis of their characteristics, are not clearly distinguishable from the registered variety. However, where an exclusive exploitation right is granted in relation to the breeder's right, the exclusive right of the holder of the breeder's right does not extend the areas where the holder of the exclusive exploitation right has an exclusive right to exploit these varieties.

(2) The holder of the breeder's right for a registered variety shall have exclusively the same right as the right which, if varieties related to the registered variety in ways described in the following paragraphs are registered, the breeders of the aforementioned related varieties will have. In this case, the provisions of the second sentence of the preceding subsection shall be applied *mutatis mutandis*.

(i) varieties which are bred from a registered variety by changing some of the latter's characteristics while retaining the essential characteristics of the latter by selection of a variation or variations, backcrossing, transformation by genetic engineering or other methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and which are clearly distinguishable from the initial registered variety on the basis of the characteristics; or

(ii) varieties whose production requires the repeated use of

(3) Where registered variety is bred from a variety other than the said registered variety by changing some of the latter's characteristics while retaining the essential characteristics of the latter by the methods prescribed in the Ordinance of the Ministry of Agriculture, Forestry and Fisheries mentioned in paragraph (i) of the preceding subsection, the said subsection and subsection (2) of the next Section shall be applied by changing the words "the following paragraphs" to "paragraph (ii)" in the said subsection and by further changing the words "each paragraph of subsection (2) of the preceding Section" in subsection (2) of the said Section to "paragraph (ii) of subsection (2) of the preceding Section."

(Limitation of the effects of Breeder's Right)

Section 21.

(1) The effects of a breeder's right shall not extend to the following acts:

(i) use of the variety for the purpose of breeding new varieties and for other experiment and research purposes;

(ii) production of seeds and seedlings of the registered variety, by a person who has a patent for the process of breeding the registered variety (including a variety which is, on the basis of the characteristics not clearly distinguishable from the registered variety this proviso shall apply hereinafter in this subsection) or a person who has been granted an exclusive license or non-exclusive license to use the said patent, by means of the process covered by the said patent, or conditioning, offering for transfer, transferring, exporting, importing or stocking for these purposes, of the said seeds and seedlings;

(iii) production of seeds and seedlings of the registered variety after the lapse of the patent referred to in the preceding paragraph, by means of the process covered by the said patent or

conditioning, offering for transfer, transferring, exporting, importing or stocking for these purposes, of the said seeds and seedlings; or

- (iv) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for these purposes, of the harvested material obtained from the seeds and seedlings referred to in the preceding two paragraphs.

(2) Where farmers as prescribed by the Cabinet Order obtain the seeds and seedlings of a registered variety, a variety which, on the basis of the characteristics, is not clearly distinguishable from the registered variety, or varieties listed in each paragraph of subsection (2) of the preceding Section related to the registered variety (hereinafter collectively referred to as “registered variety etc.”) which have been transferred by the holder of the breeder's right, the holder of an exclusive exploitation right or the holder of a non-exclusive exploitation right, gain harvested material by using the said seeds and seedlings, and further use the said harvested material as seeds and seedlings for next production cycle on their own holdings, the effects of the breeder's right shall not extend to the seeds and seedlings used for next production cycle and the harvested material obtained from them, unless otherwise prescribed by contract.

(3) The provisions of the preceding subsection shall not be applied to the use of seeds and seedlings of a variety, which belongs to one of the genera and species designated by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as being propagated vegetatively.

(4) Where seeds and seedlings or harvested material of a registered variety etc. are transferred by the holder of the breeder's right, the holder of an exclusive exploitation right or the holder of a non-exclusive exploitation right, or as the result of the acts listed in any of the paragraphs of subsection (1), the effects of the breeder's right for the said registered variety shall not extend to the exploitation of the transferred seeds and seedlings or harvested material. However, this provision shall not apply to the production of seeds and seedlings of the said registered variety etc., nor to the exportation of seeds and seedlings to a State which does not protect varieties of the plant genus or species to which the said registered variety belongs nor to the exportation of harvested material to the said State for a purpose other than final consumption.

(Obligation of Using Denomination, etc.)

Section 22.

(1) Where seeds and seedlings of a registered variety (including a variety whose registration has already expired: this proviso shall apply to the other subsections of this Section) are offered for transfer or are transferred in the course of business, the denomination of the said registered variety (where the denomination has been changed pursuant to the provisions of Section 41(2), the denomination as changed) shall be used.

(2) Where seeds and seedlings of a variety being other than a registered variety but belonging to the same genus or species of the agricultural, forestry or aquatic plants to which the aforementioned registered variety belongs or belonging to the genus and species of agricultural, forestry and aquatic plants specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries to be similar to the genus or species to which the aforementioned registered variety belongs, are offered for transfer or are transferred in the course of business, the denomination of the said registered variety may not be used.

(Joint Holdership of Breeder's Right)

Section 23.

(1) Each of the joint holders of a breeder's right may neither transfer his share nor grant a pledge upon it without the consent of the other joint holders.

(2) Each of the joint holders of a breeder's right may, unless otherwise prescribed by contract, exploit the registered variety etc. without the consent of the other joint holders.

(3) Each of the joint holders of a breeder's right may grant holders.

(Termination of Breeder's Right due to Dissolution of Legal Person)

Section 24.

A breeder's right shall be terminated where:

- (i) a legal person holding a breeder's right dissolves, and the breeder's right should vest in the national treasury pursuant to the provisions of Section 72(3) of the Civil Code or equivalent laws; or
- (ii) a natural person holding a breeder's right dies, and the breeder's right should vest in the national treasury pursuant to the provisions of Section 959 of the Civil Code.

(Exclusive Exploitation Right)

Section 25.

(1) The holder of a breeder's right may grant an exclusive exploitation right on his breeder's right.

(2) The holder of an exclusive exploitation right shall have an exclusive right to exploit the registered variety etc. in the course of business to the extent laid down in the contract.

(3) An exclusive exploitation right may be transferred only in the following cases; together with the business in which the variety is exploited with the consent of the holder of the breeder's right, or by inheritance or other general successions The holder of an exclusive exploitation right may grant a pledge or a non-exclusive exploitation right on the exclusive exploitation right only with the consent of the holder of the breeder's right.

(5) The provisions of Section 23 shall apply mutatis mutandis to exclusive exploitation rights.

(Non-exclusive Exploitation Right)

Section 26.

(1) The holder of a breeder's right may grant a non-exclusive exploitation right on his breeder's right.

(2) The holder of a non-exclusive exploitation right shall have the right to exploit the registered variety etc. in the course of business to the extent prescribed in this Law or laid down by contract.

(Non-exclusive Exploitation Right by virtue of Prior Breeding)

Section 27.

A person who has bred, earlier than the breeder of a registered variety, a variety that, on the basis of the characteristics, is with or not clearly distinguishable from the registered variety shall have a non-exclusive exploitation right on the breeder's right pertaining to the said registered variety.

(Arbitration)

Section 28.

(1) Where a registered variety etc. has not been adequately exploited continuously during more than a period of two years in Japan or the exploitation of a registered variety etc. is especially necessary for the reason of public interest, a person who intends to exploit the said registered variety etc. in the course of business may request the holder of the breeder's right or the holder of an exclusive exploitation right on the said registered variety to hold consultations concerning the grant of a non-exclusive exploitation right thereon.

(2) Where the consultations referred to in the preceding subsection have not reached an agreement or if the consultation cannot take place, the person prescribed in the said subsection may ask the Minister for Agriculture, Forestry and Fisheries for an arbitration decision.

(3) Where a request for arbitration has been made in accordance with the preceding subsection, the Minister for Agriculture, Forestry and Fisheries shall notify in writing the holder of the breeder's right, the holder of an exclusive exploitation right or other persons who have any right registered in relation to the registered variety accordingly and shall give them an opportunity to express their opinions, fixing an adequate time limit.

(4) Unless it is especially necessary for the reason of public interest to exploit a registered variety etc., the Minister for Agriculture, Forestry and Fisheries may not render an arbitration decision ordering a non-exclusive exploitation right to be granted where there is any good reason why the registered variety etc. has not been exploited adequately.

(5) Before rendering an arbitration decision under subsection (2), the Minister for Agriculture, Forestry and Fisheries shall hear the views of the Agricultural Materials Council.

(6) An arbitration decision ordering a non-exclusive exploitation right to be granted shall set forth the scope of the non-exclusive exploitation right as well as the consideration for the right and the method of payment.

(7) Where an arbitration decision is taken in accordance with subsection (2), the Minister for Agriculture, Forestry and Fisheries shall notify the parties and other persons who have rights registered in relation to the registered variety, accordingly.

(8) Where the arbitration decision as provided for in subsection (6) has been notified to the parties pursuant to the preceding subsection, an agreement shall be deemed to have been reached between the parties concerned as provided in the arbitration decision.

(Transfer, etc. of Non-exclusive Exploitation Right)

Section 29.

(1) A non-exclusive exploitation right, with the exception of such as is granted by an arbitration under subsection (2) of the preceding Section, may be transferred together with the business in which the variety is exploited, only with the consent of the holder of the breeder's right (in the case of a non-exclusive exploitation right on an exclusive exploitation right, the holder of the breeder's right and the holder of that exclusive exploitation right; this proviso shall apply also in the next subsection), or inheritance or other general succession.

(2) The holder of a non-exclusive exploitation right, with the exception of such as is granted by arbitration under subsection (2) of the preceding Section, may grant a pledge on that non-exclusive exploitation right only with the consent of the holder of the breeder's right.

(3) A non-exclusive exploitation right which is granted by arbitration under subsection (2) of the preceding Section may be transferred only together with the business in which the variety is exploited.

(4) Subsections (1) and (2) of Section 23 shall apply mutatis mutandis to non-exclusive exploitation rights.

(Pledge)

Section 30.

(1) Where a breeder's right or an exclusive or non-exclusive exploitation right is the subject of a pledge, the pledgee may not exploit the said registered variety etc. unless prescribed by contract.

(2) A pledge on a breeder's right or on an exclusive or non-exclusive exploitation right may be exercised against the remuneration received as consideration for the breeder's right or the exclusive or non-exclusive exploitation right or against money or goods that the holder of the breeder's right or the exclusive exploitation right would be entitled to receive for the exploitation of the registered variety etc. However, an attachment order shall be obtained prior to the payment or delivery of the remuneration money or goods.

(Surrender of Breeder's Right, etc.)

Section 31.

(1) Where there is a holder of an exclusive exploitation right, a pledgee or a holder of non-exclusive exploitation right referred to in Sections 8(3), 25(4) or 26(1) in relation to a breeder's right, the holder of the breeder's right may surrender his breeder's right only with the consents of such persons.

(2) Where there is a pledgee or a holder of a non-exclusive exploitation right referred to in Section 25(4) in relation to an exclusive exploitation right, the holder of the exclusive exploitation right may surrender his exclusive exploitation right only with the consents of such persons.

(3) Where there is a pledgee in relation to a non-exclusive exploitation right, the holder of the non-exclusive exploitation right may surrender his non-exclusive exploitation right only with the pledgee's consent.

(Effects of Registration)

Section 32.

(1) The following shall have no legal effect unless they are registered:

- (i) the transfer (other than by inheritance or other general succession), termination by surrender or restrictions on the disposal of a breeder's right;
- (ii) the grant, transfer (other than by inheritance or other general succession), modification or termination (except as a result of merger or termination of the breeder's right), or restriction on the disposal, of an exclusive exploitation right, or
- (iii) the grant, transfer (other than by inheritance or other general succession), modification or termination (except as a result of merger or termination of a secured credit), or restriction on the disposal, of a pledge on a breeder's right or an exclusive exploitation right.

(2) Inheritance or other general succession referred to in the preceding subsection shall be notified to the Minister for Agriculture, Forestry and Fisheries without delay in the manner prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(3) Once a non-exclusive exploitation right on a breeder's right or an exclusive right has been registered, it shall also be effective against anyone subsequently acquiring the breeder's right or the exclusive exploitation right, or against anyone subsequently being granted an exclusive exploitation right on the breeder's right.

(4) A non-exclusive exploitation right referred to in Section 8(3) or Section 27 shall have the same effects as described in the preceding subsection without registration.

(5) The transfer, modification, termination or restriction on the disposal of a non-exclusive exploitation right or the grant, transfer, modification, termination or restriction on the disposal of a pledge on a non-exclusive exploitation right shall not be effective against any third party unless it is registered.

Part 5. Infringement

(Injunction)

Section 33.

(1) The holder of a breeder's right or the holder of an exclusive exploitation right may require a person who is infringing or is likely to infringe his breeder's right or exclusive exploitation right to discontinue or refrain from such infringement.

(2) The holder of a breeder's right or the holder of an exclusive exploitation right who is making the requisition in accordance to the preceding subsection may demand the destruction on which the act of infringement was committed, or the objects used for the act of infringement, or other measures necessary to prevent the infringement.

(Presumption, etc. of Amount of Damage)

Section 34.

(1) Where the holder of a breeder's right or of an exclusive exploitation right claims, against a person who has intentionally or negligently infringed his breeder's right or exclusive exploitation right, compensation for damage caused to him by the infringement, any profits gained by the infringer through the infringement shall be presumed to be the amount of damage suffered by the holder of the breeder's right or the holder of the exclusive exploitation right.

(2) The holder of a breeder's right or of an exclusive exploitation right may claim, against a person who has intentionally or negligently infringed his breeder's right or exclusive exploitation right, the amount of money which he would be entitled to receive from the exploitation of the registered variety etc., as the amount of damage suffered by him.

(3) The preceding subsection shall not preclude a claim to damages exceeding the amount referred to in the said subsection. In such cases, where the infringer of the breeder's right or the exclusive exploitation right had neither intention nor gross negligence

(Presumption of Negligence)

Section 35.

A person who has infringed a breeder's right or an exclusive exploitation right of another person shall be presumed to have been negligent with respect to the act of infringement.

(Submission of Documents)

Section 36.

In litigation relating to the infringement of a breeder's right or exclusive exploitation right, the court may, upon the request of a party, order the other party to submit documents necessary for the assessment of the damage caused by the said infringement. However, this provision shall not apply when the person possessing the documents has legitimate reasons for refusing their submission.

(Measures for Recovery of Reputation)

Section 37.

Upon the request of the holder of a breeder's right or of an exclusive exploitation right, the court may, in lieu of the compensation of damages or in addition thereto, order the person who has injured the business reputation of the holder of the breeder's right or of the exclusive exploitation right by infringing the breeder's right or the exclusive exploitation right intentionally or negligently, to take necessary measures for the recovery of the business reputation.

Part 6. Maintenance and Revocation of Variety Registration

(Registration Fee)

Section 38.

(1) The holder of a breeder's right shall pay a registration fee, which shall not exceed 36,000 yen for each registration and is specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, for each year until the expiration of the duration as provided for in Section 19(2).

(2) The provision of the preceding subsection shall not be applied where the holder of a breeder's right is the national government.

(3) Notwithstanding the provisions of subsection (1), where the national government and another person jointly own a breeder's right and they have an agreement on the share of the breeder's right, such other person shall pay calculated by multiplying the amount of the registration fee by the percentage of the share of such other person.

(4) Where there is any fraction less than 10 yen in the amount of the registration fee as calculated under the preceding subsection, such a fraction shall be discarded.

(5) The registration fee for the first year referred to in subsection (1) shall be paid within 30 days from the date of public announcement in accordance with the provisions of Section 18(3).

(6) The registration fee for the second year and subsequent years referred to in subsection (1) shall be paid in the previous year or earlier.

(7) Where the registration fee has not been paid within the time limit provided in the preceding subsection, the fee may be paid s from the expiration of the time limit.

(8) The holder of a breeder's right who in accordance with the provisions of the preceding subsection shall pay, in addition to the registration fee to be paid under the provision of subsection (1), a surcharge of the same amount as the registration fee.

(Payment of Registration Fee by Interested Parties)

Section 39.

(1) An interested party may pay the registration fee even against the will of the holder of the breeder's right.

(2) The interested party who has paid the registration fee in accordance with the provisions of the preceding subsection may claim reimbursement of the expenditure to the extent that the holder of the breeder's right is actually making a profit.

(Examination of Registered Variety)

Section 40.

(1) The Minister for Agriculture, Forestry and Fisheries may order the holder of a breeder's right or of an exclusive exploitation right to submit entire plants or parts of plants of the registered variety and other material, where it is found necessary to examine whether the characteristics of the registered variety are maintained.

(2) The Minister for Agriculture, Forestry and Fisheries shall cause its officers to conduct on-site inspections or cause the NCSS to conduct growing tests in accordance with the provisions of the preceding subsection.

(3) The provisions of Subsections (3) to (6) of Sections 15 shall be applied mutatis mutandis to the on-site inspections or growing tests referred to in the preceding subsection.

(Change of Denomination of Registered Variety)

Section 41.

(1) Where it is found that a denomination of a registered variety falls under any of the provisions of paragraphs (ii) through (iv) of the Section 4(1), the Minister for Agriculture, Forestry and Fisheries may order the holder of the breeder's right to submit another denomination of the registered variety which does not fall under any of the paragraphs of the said subsection, by fixing an adequate time limit.

(2) Where a denomination falling under none of the paragraphs of Section 4(1) has been submitted pursuant to the provisions of the preceding subsection, the Minister for Agriculture, Forestry and Fisheries shall change the denomination of the said registered variety to the submitted denomination by entering it in the Register of Plant Varieties.

(3) Where the Minister for Agriculture, Forestry and Fisheries changes the denomination of a registered variety in accordance with the preceding subsection, he shall notify the holder of the breeder's right of the said registered variety and publicly announce information to that effect.

(Revocation of Variety Registration)

Section 42.

(1) The Minister for Agriculture, Forestry and Fisheries shall revoke a variety registration in any one of the following cases:

- (i) where it has turned out that the variety was registered in violation of the provisions of Section 3(1), 4(2), 5(3), 9(1) or 10;
- (ii) where it has turned out that, after the variety registration, the registered variety no longer satisfies the requirements listed in paragraph (ii) or (iii) of Section 3(1);
- (iii) where, after the variety registration, the holder of the breeder's right has become a person who shall not enjoy a breeder's right pursuant to the provisions of Section 10;
- (iv) where the registration fee for the first year is not paid within the period prescribed in Section 38(5);
- (v) where the registration fee and the surcharge are not paid within the period prescribed in Section 38(7);
- (vi) where the person who was ordered to submit material in accordance with the provisions of Section 40(1) fails to comply with the order without good reasons; or
- (vii) where the person who was ordered to submit another denomination of the registered variety in accordance with the provisions of subsection (1) of the preceding Section fails to comply with the order without good reasons.

(2) A hearing pertaining to the revocation of a variety registration in accordance with any of the provisions of paragraphs (i) through (iii), (vi) or (vii) of the preceding subsection shall be held upon giving sufficient notice to the holder of an exclusive exploitation right or any other right registered in relation to the breeder's right relating to the said variety registration.

(3) Where the person referred to in the preceding subsection requests to participate in the said hearing pursuant to the provisions of Section 17(1) of the Administrative Procedure Law (Law No. 88 of 1993), the chairperson of the hearing referred to in the preceding subsection shall permit him to do so.

(4) Where the variety registration has been revoked pursuant to the provisions of subsection (1), the breeder's right shall be terminated at the time of revocation. However, in the case of any of the following paragraphs, the breeder's right shall be deemed to have been terminated retroactively from the time specified in each of the said paragraphs.

- (i) the case falling under paragraph (i) or (iv) of subsection (1): the time of variety registration;
- (ii) the case falling under paragraph (iii) of subsection (1): the time when the said paragraph became applicable; or
- (iii) the case falling under paragraph (v) of subsection (1): the time when the time provided in Section 38(6) has passed.

(5) Where the variety registration has been revoked pursuant to the provisions of subsection (1), the Minister for Agriculture, Forestry and Fisheries shall notify the holder of the breeder's right pertaining to the said variety registration and publicly announce information to that effect.

(6) With respect to the revocation of a variety registration under the provisions of paragraph (iv) or (v) of subsection (1), the provisions of Chapter 3 (excluding Sections 12 and 14) of the Administrative Procedure Law shall not be applied.

Part 7. Miscellaneous

(Jurisdiction for a Resident Abroad)

Section 43.

With respect to the breeder's right or any other right relating to a breeder's right of a person who has neither domicile nor residence (nor establishment, in the case of a legal person) in Japan, the location of the Ministry of Agriculture, Forestry and Fisheries shall be deemed to be the location of property under paragraph (iv), Section 5 of the Code of Civil Procedure (Law No. 109 of 1996).

(Special Provisions for Objection)

Section 44.

(1) The provision of Section 45 of the Administrative Appeal Law shall not be applied to an objection to a variety registration and, notwithstanding the provision of Section 48 of the said Law, the provision of Section 14(3) of the said Law shall not be applied.

(2) The hearing of an objection to a variety registration pursuant to the Administrative Appeal Law shall be held upon giving sufficient notice before the hearing, to the holder of the breeder's right or of an exclusive exploitation right or other persons who have rights registered in relation to the said variety registration.

(3) Where a person who received the notice under the provisions of the preceding subsection requests to participate in the said objection, the Minister for Agriculture, Forestry and Fisheries shall permit him to do so.

(Registration, etc. in the Register of Plant Varieties)

Section 45.

(1) The following matters shall be registered in the Register of Plant Varieties kept in the Ministry of Agriculture, Forestry and Fisheries:

- (i) the grant, transfer, termination or restriction on the disposal, of a breeder's right;

- (ii) the grant, preservation, transfer, modification, termination or restriction on the disposal, of an exclusive exploitation right or of a non-exclusive exploitation right; or
- (iii) the grant, transfer, modification, termination or restriction on disposal, of a pledge on a breeder's right, on an exclusive exploitation right or on a non-exclusive exploitation right.

(2) In addition to the matters provided in this Law, any matter necessary for variety registration and the Register of Plant Varieties shall be provided by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(Request for Certification, etc.)

Section 46.

(1) Anyone may request any of the following from the Minister for Agriculture, Forestry and Fisheries in the manner provided by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries:

- (i) certification relating to an application for variety registration or a registered variety;
- (ii) issue of an exemplified copy or extract of the Register of Plant Varieties or
- (iii) inspection or copying of the Register of Plant Varieties or an application filed in accordance with Section 5(1), photograph(s) or other material attached thereto (excluding those which the Minister for Agriculture, Forestry and Fisheries considers necessary to be kept confidential).

(2) Rules of Law Concerning Access to Information Held by Administrative Organs (Law No. 42 of 2001) shall not be applied to the Register of Plant Varieties, nor to applications as referred to in Section 5(1) nor to photographs or related material attached thereto (referred to in the next subsection as “the Register of Plant Varieties, etc.”)

(3) With regard to data entered into the Register of Plant Varieties etc. pertaining to information on individual natural persons possessed by administrative organs (as defined in Article 2(3) of the Law on the Protection of Information on Individual Natural Persons Possessed by Administrative Organs (Law No. 59 of 2003), the provisions of Chapter 4 of the said Law shall not be applied.

(note: Section 46 (3) is not yet implemented as of end of August 2004)

(Fees)

Section 47.

(1) The person filing a request under the provisions of the preceding Section shall pay the fee corresponding to an amount to be prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries in consideration of the actual costs.

(2) The provisions of the preceding subsection shall not be applied where the person who should pay the fee under the provision of the said subsection is the Government.

(Effects of Convention)

Section 48.

Where there are specific provisions relating to the protection of new plant varieties in any convention, such provisions shall prevail.

Chapter 3. Designated Seeds and Seedlings

(Notification by Seed and Seedling Dealer)

Section 49.

(1) A seed and seedling dealer shall notify the Minister for Agriculture, Forestry and Fisheries of the following information, in the manner provided by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries. This provision, however, shall not apply to those seed and seedling dealers specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

- (i) the name and the address of the dealer;
- (ii) the kind of designated seeds and seedlings which the dealer handles; and
- (iii) other information specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(2) The preceding subsection shall apply mutatis mutandis where there has been any change in the information referred to in the said subsection.

(3) The notification referred to in the two preceding subsections shall be due, where trading has been newly commenced, within two weeks after the commencement, and where there has been any change in the information referred to in subsection (1), within two weeks after such change.

(Labeling of Designated Seeds and Seedlings)

Section 50.

(1) Designated seeds and seedlings may not be sold unless the package is furnished with a label containing the following information with a voucher showing the said information has been attached. This provision, however, shall not apply where the information referred to in paragraphs (i) through (iv) and (vi) pertaining to designated seeds and seedlings is shown by a notice or other readily visible means, or where designated seeds and seedlings are sold by a person other than seed and seedling dealers.

- (i) the name and the address of the seed and seedling dealer providing the information;
- (ii) the type and the variety name (in the case of grafted saplings, the types and the variety names of scion and rootstock);
- (iii) the place of production;
- (iv) in the case of seed, the date of production or the time limit of validity, and the germination percentage;
- (v) the quantity; and
- (vi) any other information specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(2) The information referred to in paragraph (iii) of the preceding subsection shall be shown, in the case of a domestic product, by stating the prefecture in which the said place of the production is located, and, in the case of a foreign product, by stating the country in which the said place of the production is located.

(3) In addition to the two preceding subsections, with regard to certain designated seeds and seedlings for which labeling is deemed necessary for users in the identification of the location suitable for growing, usage and other characteristics relevant to growing or exploitation and in the selection of varieties suitable to their natural and economic conditions, the Minister for Agriculture, Forestry and Fisheries shall determine and publish the information to be shown for identification and any other standard relating to the said labeling, with which the seed and seedling dealer should comply.

(4) The Minister for Agriculture, Forestry and Fisheries may, when a seed and seedling dealer fails to comply with the standards determined by the provisions of the preceding subsection, issue to the seed and seedling dealer an advice concerning the standards be complied with.

(Order relating to Designated Seeds and Seedlings)

Section 51.

(1) The Minister for Agriculture, Forestry and Fisheries may order any seed and seedling dealer who has violated the provisions of subsections (1) and (2) of the preceding Section to indicate the information referred to in each of the paragraphs of subsection (1) of the said Section or to change the contents of the indicated information, or may prohibit the sale of the designated seeds and seedlings pertaining to the act of violation.

(2) The Minister for Agriculture, Forestry and Fisheries may, when any seed and seedling dealer fails to comply with the reminder issued in accordance with the provisions of subsection (4) of the preceding Section, order that seed and seedling dealer to comply with the standards set out under subsection (3) of the said Section, fixing a time limit.

(Standards relating to the Production, etc. of Designated Seeds and Seedlings)

Section 52.

(1) The Minister for Agriculture, Forestry and Fisheries may, when it is deemed particularly necessary to secure the distribution of designated seeds and seedlings of good quality, determine and publish standards relating to the production, conditioning, stocking or packaging, of the said designated seeds and seedlings, that should be complied with by persons producing the said seeds and seedlings in the course of business and seed and seedling dealers.

(2) The Minister for Agriculture, Forestry and Fisheries may, when either a person producing the designated seeds and seedlings in the course of business or a seed and seedling dealer fails to comply with the standards prescribed under the provisions of the preceding subsection, issue to such a person a reminder to the effect that the standards be complied with.

(3) The Minister for Agriculture, Forestry and Fisheries may, when any person producing the designated seeds and seedlings in the course of business or any seed and seedling dealer fails to comply with the reminder referred to in the preceding subsection, publish the fact of non-compliance.

(Collection of Designated Seeds and Seedlings)

Section 53.

(1) The Minister for Agriculture, Forestry and Fisheries may cause his officers to collect from seed and seedling dealers such quantities of designated seeds and seedlings as are necessary for inspection. However, compensation equivalent to the market value shall be paid.

(2) In the case of the preceding subsection, such officers shall, when a seed and seedling dealer so requests, show a certificate to identify his official status.

(Collection of Designated Seeds and Seedlings done by the NCSS or the National Livestock Breeding Center)

Section 53.2.

(1) The Minister for Agriculture, Forestry and Fisheries may cause the NCSS or the Independent Administrative Corporation National Livestock Breeding Center (hereinafter referred to as “NLBC”) to collect from seed and seedling dealers such quantities of designated seeds and seedlings as are necessary for inspection. However, compensation equivalent to the market value shall be paid.

(2) The Minister for Agriculture, Forestry and Fisheries shall issue an instruction to the NCSS or the NLBC to designate the date, place and other relevant items if the collection based on the provisions of the preceding subsection is done by the NCSS or the NLBC.

(3) The NCSS or the NLBC, having conducted the collection referred to in Subsection 1 in accordance with an instruction referred to in the preceding subsection, shall report the result of the inspection to the Minister of Agriculture, Forestry and Fisheries according to the rules set out in the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(4) In the case of Subsection 1, officials of the NCSS or the NLBC performing the collection in accordance to the provisions of Subsection 1 shall show a certificate to identify his status if seed and seedling dealers so require.

(Orders to the NCSS or the NLBC)

Section 53.3.

The Minister for Agriculture, Forestry and Fisheries may issue orders to the NCSS or the NLBC in relation to the collection referred to in Subsection 1 of the preceding section if such orders are appropriate to ensure an appropriate implementation of the collection.

(Submission of Reports, etc.)

Section 54.

The Minister for Agriculture, Forestry and Fisheries may, within such limits as are necessary for the enforcement of this Law, order seed and seedling dealers to submit reports relating to their operations or to submit ledgers and other documents.

(Delegation of Authority)

Section 55.

(1) Part of the authority of the Minister for Agriculture, Forestry and Fisheries under the provisions of Sections 50(4), 51, 52(2) and (3), 53 and the preceding Section may be delegated to Prefectural Governors in the manner provided by the Cabinet Order.

(2) Part of the authority of the Ministry for Agriculture, Forestry and Fisheries set out in this Chapter may be entrusted to the Regional Agricultural Administration Offices in accordance with the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

Chapter 4. Penal Provisions

Section 56.

Any person who falls under either of the paragraphs below shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.

- (i) a person who has infringed a breeder's right or an exclusive exploitation right by committing the acts listed in paragraph 1 of Section 2(4)
- (ii) a person who, without an agreement of the holder of the plant breeder's right or the holder of the exclusive exploitation license, has produced, offered for transfer or lease, transferred, leased, exported, imported or stocked for the purpose of these acts in the course of business, the harvested material obtained through using seeds and seedlings which composed infringement of a breeder's right or an exclusive exploitation right.

Section 57.

Any person who has obtained a variety registration by means of a fraudulent act shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 1,000,000 yen.

Section 58.

Any person who falls under either of the paragraphs below shall be liable to a fine not exceeding 500,000 yen.

- (i) a person who has sold designated seeds and seedlings with false labeling concerning the information to be shown in accordance with the provisions of subsections (1) and (2) of Section 50; or
- (ii) a person who has sold designated seeds and seedlings in violation of the disposition laid down in accordance with the provisions of Section 51(1) or (2).

Section 59.

Any person who falls under any of the paragraphs below shall be liable to a fine not exceeding 300,000 yen.

- (i) a person who failed to notify under the provisions of Section 49 or made false notification;
- (ii) a person who, without good reasons, has refused, obstructed or evaded collection under Section 53(1) or Section 53-2(1); or
- (iii) a person who failed to submit a report or document specified in accordance with the provision of Section 54 or submitted a false report or document.

Section 60.

Where a representative of a legal person, or an agent, a servant or any other employee of a legal or natural person has committed an act of violation falling under any of the paragraphs below with regard to the business of that legal or natural person, not only shall the offender be punished but also that legal person shall be fined as prescribed in the following paragraphs or a natural person shall be fined as prescribed in any of these Sections.

- (i) Section 56: fine not exceeding 100,000,000 yen;
- (ii) Section 57, 58 or paragraph (i) or (iii) of the preceding Section: fine prescribed in any of these Sections.

Section 61.

If the NCSS or the NLBC violated the order prescribed in Section 15 Subsection 6 (including cases stated in Section 40 Subsection 3) or Section 53-3, members of the executive organ that conducted violation shall be liable to an administrative penalty not exceeding 200,000 yen.

Section 62.

Any person who violated the provisions of Section 22 shall be liable to an administrative penalty not exceeding 100,000 yen.

Supplementary Provisions (extract)

(The Date of Entering into Force)

Section 1.

This Law shall enter into force on the day when the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, becomes effective for Japan. However, the provision of the next Section shall enter into force on the day of the promulgation of this Law.

(Special Provision for Hearing Views of the Agricultural Materials Council)

Section 2.

Concerning the designation of the important characteristics as provided in Section 2(6) of the Seeds and Seedlings Law as revised (hereinafter referred to as “the New Law”), the Minister for Agriculture, Forestry and Fisheries may hear views of the Agricultural Materials Council even before the entry into force of the New Law.

(Transitional Provisions for Application under the Provisions of the Old Law)

Section 3.

(1) Concerning a variety for which an application for variety registration has been made under the provision of Section 7(1) of the Seeds and Seedlings Law before the revision (hereinafter referred to as “the Old Law”), the said application is deemed, at the time of the entry into force of the New Law, to have been filed on its actual filing date under Section 5(1) of the New Law. In this case, “earlier than one year before the date of application for variety registration” in Section 4(2) of the New Law shall read as “earlier than the date of application for variety registration”; “When an application for variety registration is received” in Section 13(1) of the New Law shall read as “When this Law enters into force”; “where” in Section 17(1) of the New Law as “where the applied variety is not a variety belonging to the genus and species of the agricultural, forestry and aquatic plants provided in Section 1-2(1) of the Seeds and Seedlings Law (Law No. 115 of 1947) or where.”

(2) The Minister for Agriculture, Forestry and Fisheries may, to the extent deemed to be necessary for the application of the New Law, order the applicant of a variety, for which an application for variety registration is deemed to have been made under Section 5(1) of the New Law by virtue of the provision of the preceding subsection, to correct the contents of the application for variety registration, fixing an adequate time limit. In this case, “the preceding subsection” in Section 12(2) of the New Law shall be read as “Section 3(2) of the Supplementary Provisions” and “When an application for variety registration is received (where, under the provision of subsection (1) of the preceding Section” in Section 13(1), as “When this Law enters into force (where, under the provision of Section 3(2) of the Supplementary Provisions.”

(Transitional Provisions for Variety Registration under the Provisions of the Old Law)

Section 4.

(1) For a variety which remains registered under the provision of Section 12-4(1) of the Old Law at the time of the entry into force of the New Law, and for which the duration under subsection (2) of the said Section has not expired, a breeder's right under the provision of Section 19(1) of the New Law is deemed to be granted for the variety at the time of the entry into force of the New Law and remains in force until the expiry of the said duration. In this case, “for each year until the expiration of the duration as provided for in Section 19(2)” in Section 38(1) of the New Law shall be read as “for each year until the expiration of the duration as provided for in Section 12-4(2) of the Seeds and Seedlings Law (Law No. 115 of 1947).”

(2) Concerning a variety for which a breeder's right is deemed to have been granted under the provisions of the preceding subsection, the employer etc. or his general successor, who fell under paragraph 7 of Section 12-5(2) of the Old Law, shall be deemed, at the time of the entry into force of the New Law, to have a non-exclusive exploitation right set out under the provisions of Section 8(3) of the New Law.

(3) Concerning a variety for which a breeder's right is deemed to be granted under the provisions of subsection (1), an authorization under paragraph 1 of Section 12-5(2) of the Old Law, which remains valid at the time of the entry into force of this Law, shall be deemed to be a non-exclusive exploitation right granted under the provisions of Section 26(1) of the New Law.

(Transitional Provisions concerning Variety Denomination)

Section 5.

(1) For varieties for which applications for variety registration were made or variety registration made under the provision of Section 7(1) of the Old Law before the entry into force of the Amendments to the Trademark Law (Law No. 65 of 1991), and which are deemed to have been filed under Section 5(1) of the New Law by virtue of the provision of Section 3(1) of the Supplementary Provisions, “any of the following cases” in Section 4(1) of the New Law shall read as “paragraph (i), (ii) or (iv)”; “any of the paragraphs of Section 4(1)” in Section 16(1) of the New Law shall read as “paragraph (i), (ii) or (iv) of Section 4(1)” and “any of paragraphs (ii) through (iv) of Section 4(1)” in Section 41(1) of the New Law shall read as “paragraph (ii) or (iv) of Section 4(1).”

(2) For varieties for which applications for variety registration were made under the provisions of Section 7(1) of the Old Law before the entry into force of the Amendments to the Trademark Law, and for which the breeder's rights are deemed to be granted by virtue of the provisions of subsection (1) of the preceding Section, “any of paragraphs (ii) through (iv) of Section 4(1)” in Section 41(1) of the New Law shall be read as “paragraph (ii) or (iv) of Section 4(1).”

(3) Where a trademark indicating a denomination of a variety, to which one of the two preceding subsections is applied, is used in association with seeds and seedlings of the said variety, notwithstanding the provision of Section 37 of the Trademark Law (Law No. 127 of 1959) revised by the Amendments to the Trademark Law, the former law shall still be applied. However, this provision shall not be applied when a variety to which the provisions of subsection (1) are applicable is finally not registered.

(Transitional Provisions for Varieties Bred before Entry into Force)

Section 6.

(1) To a variety falling under paragraph (i) of Section 20(2) of the New Law and which has been bred before the entry into force of the New Law, notwithstanding the provisions of the said subsection, the right of the holder of the breeder's right under the said subsection shall not be extended.

(2) Concerning the variety to which the provision of the preceding subsection is applicable and falling under paragraph (i) of Section 20(2) of the New Law, notwithstanding the provision of Section 14(1) of the New Law, payment of compensation for its exploitation may not be claimed.

(Transitional Provisions for Farmers)

Section 7.

For farmers as prescribed by the Cabinet Order referred to in Section 21(2) of the New Law and who are engaged in agriculture using seeds and seedlings of a registered variety etc. at the time of the entry into force of the New Law, the provision of the said subsection shall be applied, it being deemed that the said seeds and seedlings of the registered variety etc. have been transferred by the holder of a breeder's right, of an exclusive exploitation right or of a non-exclusive exploitation right, or with his consent.

(Transitional Provisions for Registration Fee)

Section 8.

(1) The registration fee for each year paid in accordance with the provisions of Section 12-12(2) of the Old Law before the entry into force of the New Law shall be deemed as having been paid in accordance with the provisions of Section 38(1) of the New Law.

(2) Concerning the registration fee for the first year pertaining to a variety which has been registered under the provision of Section 12-4(1) of the Old Law before the entry into force of the New Law but for which the period provided in Section 12-12(4) of the Old Law has not passed at the time of the entry into force of the New Law, notwithstanding the provision of Section 38(1) of the New Law, the former laws shall still be applied.

(Transitional Provisions for Designated Seeds and Seedlings)

Section 9.

(1) Those seeds and seedlings, which have been designated by the Minister for Agriculture, Forestry and Fisheries in accordance with the provisions of Section 1-2(2) of the Old Law at the time of the entry into force of the New Law, shall be deemed to remain designated by the Minister for Agriculture, Forestry and Fisheries in accordance with the provisions of Section 2(5) of the New Law.

(2) Those seed and seedling dealers who have made notifications under the provision of Subsection (1) and (2) of Section 2 of the Old Law before the entry into force of the New Law (including seed and seedling dealers who are deemed to have made notifications under the provision of subsection (1) and (2) of Section 2 of the Old Law by virtue of the provisions of Section 3 of the Supplementary Provisions of the Amendments to the Agricultural Seeds and Seedlings Law (Law No. 89 of 1978)) shall be deemed to have made notifications under Subsection (1) and (2) of Section 49 of the New Law.

(3) The standards which have been prescribed under the provisions of Section 3(3) of the Old Law at the time of the entry into force of the New Law shall be deemed to be the standards prescribed under the provisions of Section 50(3) of the New Law.

(4) A reminder issued under the provisions of Section 3(4) of the Old Law before the entry into force of the New Law shall be deemed to be a reminder issued under the provisions of Section 50(4) of the New Law.

(5) The standards which have been prescribed under the provisions of Section 5(1) of the Old Law at the time of the entry into force of the New Law shall be deemed to be the standards prescribed under the provisions of Section 52(1) of the New Law.

(6) A reminder issued under the provisions of Section 5(2) of the Old Law before the entry into force of the New Law shall be deemed to be a reminder issued under the provisions of Section 52(2) of the New Law.

(Transitional Provisions for Application of Penal Provisions)

Section 10.

The Old Law shall still be applied to any act committed before the entry into force of the New Law as far as the application of the penal provisions is concerned.

(Delegation to the Cabinet Order)

Section 11.

In addition to the provisions of Section 3 through the preceding Section of the Supplementary Provisions, any transitional measures necessary for enforcement of the New Law shall be provided by the Cabinet Order.
