

# SEED INDUSTRY ACT

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Act No. 5024, Dec. 6, 1995  
Amended by Act No. 5153, Aug. 8, 1996  
Act No. 5170, Dec. 12, 1996  
Act No. 5453, Dec. 13, 1997  
Act No. 5668, Jan. 21, 1999  
Act No. 6190, Jan. 21, 2000  
Act No. 6374, Jan. 26, 2001  
Act No. 6626, Jan. 26, 2002  
Act No. 6999, Dec. 11, 2003  
Act No. 7678, Aug. 4, 2005  
Act No. 8597, Aug. 3, 2007  
Act No. 8852, Feb. 29, 2008  
Act No. 9401, Jan. 30, 2009  
Act No. 10332, May. 31, 2010

## CHAPTER I GENERAL PROVISIONS

### Article 1 (Purpose)

The purpose of this Act is to promote the development of the seed industry and to contribute to the stabilization of the production by agriculture, forestry, and fisheries by prescribing the matters concerning the protection of the rights of breeders to new varieties of plants, management of properties of varieties of major crops, seed production, certification and distribution or such.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "seed industry" means breeding, propagation, production, processing, assignment, lending, exportation, importation, or display of seeds;
2. The term "crops" means all plants which are grown or cultivated for the production of farm products, forest products, or fishery products;
3. The term "seeds" means seeds, spawns of mushrooms, trophosome or spores used for the purpose of propagation, cultivation or culture;
4. The term "variety" means a flora of the lowest taxonomic rank used in botany, not less than one property among the properties which appear genetically, regardless of whether it satisfies the necessary conditions for the protection of a variety pursuant to [Article 12](#), of which is distinguished from that of any other flora and which may propagate without a change;
5. The term "breeder" means any person who has bred a new variety or who has discovered and developed a new variety;

6. The term "variety protection right" means a right granted to any person who holds an entitlement to protection of a variety pursuant to this Act;

7. The term "variety protection right-holder" means any person who holds a variety protection right;

8. The term "protected variety" means a variety granted with a variety protection right because it satisfies the necessary conditions for the protection of a variety under this Act;

9. The term "licensing" means propagating, producing, processing, assigning, lending, exporting or importing, or applying for assignment or lending (including displaying for assignment or lending; hereinafter the same shall apply) a seed of a protected variety;

10. The term "properties of variety" means capacity of a variety to produce its value in cultivation, culture and use above a certain level provided for in this Act;

11. The term "certified seed" means a seed at any seed-gathering stage, the genuineness of the relevant variety and quality of a seed of the relevant variety of which are certified by this Act;

12. The term "seed manager" means a person qualified under this Act, who certifies the seeds that a seed business operator produces and intends to sell, export or import;

13. The term "seed business" means production and sale of seeds;

14. The term "seed business operator" means any person who conducts a seed business pursuant to this Act.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

## **CHAPTER II PROTECTION OF RIGHTS OF BREEDER**

### **SECTION 1 Common Provisions**

#### **Article 3 (Variety Protection Agent of Residents Abroad)**

(1) No person who has neither a domicile nor a place of business in the Republic of Korea (hereinafter referred to as "resident abroad") shall, except cases in which he/she applies for registration under paragraph (3), or other cases prescribed by Presidential Decree, undergo formalities relating to the protection of a variety (hereinafter referred to as "formalities relating to the protection of a variety") at the Ministry for Food, Agriculture, Forestry and Fisheries or at the Variety Protection Appeals Commission under [Article 91](#) (1) (hereinafter referred to as the "Appeals Commission"), or institute legal action against any disposition conducted by an administrative agency in accordance with this Act or any order under this Act, unless any person who has a domicile or a place of business in the Republic of Korea, as an agent for the protection of a variety of such resident abroad (hereinafter referred to as "variety protection agent"), undergoes formalities or institutes legal action as stated above on his/her behalf.

(2) A variety protection agent shall represent the principal, especially by authority given to him/her, in any procedure relating to the protection of a variety and in legal action against any disposition conducted by an administrative agency in accordance with this Act or any order under this Act.

(3) Unless a resident abroad who has a variety protection right or a right registered on the protection of a variety files for registration for the appointment or change of his/her variety protection agent, or of the grant or revocation of the authority of agency, he/she shall not bind the third party.

(4) When a resident abroad files for registration for the establishment of a variety protection right or during a term of existence of the relevant variety protection right, he/she shall appoint and register a variety protection agent.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 4 (Scope of Authority of Agency)**

Unless an agent who has been entrusted to undergo formalities on the protection of a variety by a person who has a domicile or a place of business in the Republic of Korea receives the special authority, he/she shall not engage in any of the following activities:

1. Alteration, abandonment or withdrawal of an application for the protection of a variety;
2. Withdrawal of a request or an application;
3. Claim for priority pursuant to [Article 27](#) (1) or withdrawal thereof;
4. Application for trial under [Article 93](#);
5. Appointment of a subagent.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 5 (Representative of Several Parties Concerned)**

(1) Where two or more persons undergo formalities on the protection of a variety, each person shall represent all of them, except for acts falling under any of subparagraphs 1 through 4 of [Article 4](#): *Provided*, That this shall not apply where their appointed representative reports to the Minister for Food, Agriculture, Forestry and Fisheries (in cases referred to in subparagraph 4, the Chairperson of the Variety Protection Appeals Commission under [Article 91](#) (2) (hereinafter referred to as "Chairperson of the Appeals Commission")).

(2) Where reporting pursuant to the proviso to paragraph (1), the representative shall prove that he/she has been appointed as the representative in writing.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 6 (Extension of Period)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission may, for the benefit of a person in a remote area, extend the period of application for trial pursuant to [Article 93](#) or the period of revision of the grounds for a formal objection against registration for the denomination of a variety pursuant to [Article 111-3](#) at his/her request or *ex officio*.

(2) Where the Minister for Food, Agriculture, Forestry and Fisheries, the Chairperson of the Appeals Commission, a presiding judge under [Article 97](#) (3) (hereinafter referred to as "presiding judge"), or a judge under [Article 33](#) (hereinafter referred to as "judge") has determined a period for undergoing formalities on the protection of a variety pursuant to this Act, he/she may extend the period, by request or *ex officio*.

(3) Where a presiding judge or a judge has determined a date for undergoing formalities on the protection of a variety pursuant to this Act, he/she may change the fixed date, by request or *ex officio*.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 7 (Revision of Formalities)**

Where the formalities on the protection of a variety fall under any of the following subparagraphs, the Minister for Food, Agriculture, Forestry and Fisheries, the Chairperson of the Appeals Commission or a presiding judge may order the revision thereof for a fixed period:

1. Where the formalities violate [Article 4](#) of this Act or [Article 3 \(1\) of the Patent Act](#) applicable *mutatis mutandis* pursuant to [Article 10](#) of this Act;
2. Where the formalities violate a method prescribed by this Act or an order under this Act;
3. Where fees that should be paid in accordance with [Article 160](#) remain unpaid.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 8 (Invalidation of Formalities)**

(1) Where any person who has been ordered to make a revision pursuant to [Article 7](#) fails to revise the formalities within the designated period, the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission may invalidate the formalities on the protection of a variety.

(2) Where the formalities have been invalidated pursuant to paragraph (1) and where it is deemed that any person ordered to make a revision fails to revise the formalities within the designated period due to a natural disaster or other extenuating circumstances, the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission may revoke the disposition of such invalidation within 14 days from the date the grounds therefor have ceased to exist or within one year after the period has expired at the request of a person who has been ordered to make a revision.

(3) Where the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission conducts the disposition of invalidation pursuant to paragraph (1) or the disposition of revocation thereof pursuant to paragraph (2), he/she shall promptly issue a notice of disposition to any person who has been ordered to make the revision.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 9 (Effective Date of Documents Submitted)**

- (1) An application, claim or any other document (including goods; hereafter the same shall

apply in this Article) submitted to the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission pursuant to this Act or any order under this Act shall become effective from the date it reaches the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission.

(2) Where an application, claim or any other document pursuant to paragraph (1) is submitted by mail to the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission, it shall be deemed to have reached the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission on the date stamped on the mail, if the date stamped on the mail is clear, or on the date when the mail was submitted to a post office (referring to the date proven by a receipt of the mail), if the date stamped is unclear.

(3) In addition to the matters prescribed by paragraphs (1) and (2), matters concerning presentation of a document in which a problem appears due to delay in delivery, loss of mail, or the suspension of mail service shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 9-2 (Performance of Formalities on Protection of Variety by Electronic Document)**

(1) Any person who undergoes formalities on the protection of a variety may convert an application for the protection of a variety, or any other document, being submitted to the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission pursuant to this Act to an electronic document and submit it by making use of an information and communications network or by recording on electronic recording media, such as mobile storage media.

(2) Any electronic document submitted pursuant to paragraph (1) shall have the same effect as any other form of document submitted pursuant to this Act.

(3) Any electronic document submitted by making use of an information and communication network pursuant to paragraph (1) shall be deemed to have been received when it is electronically recorded on the electronic data processing system for receipt being used by the Ministry for Food, Agriculture, Forestry and Fisheries or the Appeals Commission.

(4) Kinds of documents which may be submitted by electronic document, methods of submission thereof and other matters necessary for submission of electronic documents shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

#### **Article 9-3 (Reporting on Use of Electronic Document and Electronic Signature)**

(1) Any person who intends to undergo formalities on the protection of a variety by electronic document pursuant to [Article 9-2](#) (1) shall report the proposed use of electronic documents to the Minister for Food, Agriculture, Forestry and Fisheries or the Chairperson of the Appeals Commission and affix his/her electronic signature to electronic documents that are submitted to the Ministry for Food, Agriculture, Forestry and Fisheries or the Appeals Commission so that a submitter may be identified.

(2) Procedures for reporting on the use of electronic documents, a method of affixing electronic signature, etc., pursuant to paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

#### **Article 9-4 (Giving Notice by Making Use of Information and Communications Network)**

(1) Where the Minister for Food, Agriculture, Forestry and Fisheries, the Chairperson of the Appeals Commission, a presiding judge or a judge intends to give notice of or serve a document (hereinafter referred to as "notice of a document, etc") to or on any person who has reported the use of electronic documents pursuant to [Article 9-3](#) (1), he/she may do so, by making use of an information and communications network.

(2) Notice of documents, etc., by making use of an information and communications network pursuant to paragraph (1) shall have the same effect as notice in writing.

(3) Notice of documents, etc. shall be deemed to have been served when they are electronically recorded on the electronic data processing system used by a person who receives them.

(4) Matters concerning kinds and methods of notice of documents, etc., by making use of an information and communications network pursuant to paragraph (1) shall be prescribed by Ordinance of the Ministry of Food, Agriculture, Forestry and Fisheries.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

**Article 10 (Application *Mutatis Mutandis* of the [Patent Act](#))**  
[Articles 3, 4, 7, 8, 9, 10](#) (1), (2) and (4), [13, 14](#) and [17 through 24 of the Patent Act](#) and [Articles 58](#) (2), [59, 63, 87, 88, 92, 94](#) and [96 of the Civil Procedure Act](#) shall apply *mutatis mutandis* to the formalities on the protection of a variety. In such cases, "seat of the Korean Intellectual Property Office" in [Article 13 of the Patent Act](#) shall be construed as "seat of the Ministry for Food, Agriculture, Forestry and Fisheries", and "[Article 132-3](#)" in [Article 17 of the Patent Act](#) shall be construed as "[Article 93](#)"

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

## **SECTION 2 Conditions Necessary for Protection of Variety and Application for Protection of Variety**

### **Article 11 (Crops Subject to Protection of Variety)**

A genus or a species of the crops, the variety of which may be protected in accordance with this Act shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 12 (Conditions Necessary for Protection of Variety)**

A variety which satisfies the necessary conditions referred to in the following subparagraphs may be entitled to protection as a variety in accordance with this Act:

1. Originality;
2. Distinctness;
3. Homogeneity;
4. Stability;
5. The denomination of a variety pursuant to [Article 108](#) (1).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 13 (Originality)**

(1) Where a seed or harvest of a variety has not been transferred for the purpose of use, for not less than one year in the Republic of Korea or for not less than four years (in cases of a fruit tree and a forest tree, referring to six years) in any other country before the date of application for the protection of the variety pursuant to [Article 28](#) (2) (where a right of priority is claimed pursuant to [Article 27](#) (1), before the date of the first application for the protection of the variety), such variety shall be deemed to have the originality referred to in subparagraph 1 of [Article 12](#).

(2) Notwithstanding paragraph (1), in cases of transfer falling under any of the following subparagraphs, a variety shall be deemed to have originality pursuant to subparagraph 1 of [Article 12](#):

1. Where a seed of a variety used by stealth or the harvest thereof is transferred;
2. Where a seed of a protected variety or the harvest thereof is transferred in order to transfer an entitlement to protection of the variety;
3. Where a seed of a variety or the harvest thereof is transferred to propagate seeds and a breeder acquires the seeds or the harvest thereof after having the seeds propagated;
4. Where a seed of a variety or the harvest thereof is transferred to make a field experiment, quality inspection or small-scale processing trials for the evaluation of the variety;
5. Where a seed of a variety or the harvest thereof is transferred for inspection for the conservation of biological resources or for registering it in the national catalogue of varieties in accordance with [Article 114](#) (hereinafter referred to as "catalogue of varieties");
6. Where a by-product or surplus product produced by any act referred to in subparagraphs 3 through 5 is transferred without using the denomination of the relevant variety.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 13-2 (Protection of Established Varieties)**

- (1) As a variety already known as at the time of designating a genus or a species of the

crops, the variety of which may be protected by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries pursuant to [Article 11](#), where a variety which falls under any of the following subparagraphs is applied for the protection of a variety within one year from the date it is designated as a species or a genus of the crops, the variety of which may be protected, notwithstanding [Article 13](#) (1), such variety may be deemed to be original and be protected under this Act:

1. A variety of high quality seeds pursuant to Article 2 of the previous Seeds of Staple Crops Act (referring to the Act before repealed by [Article 2](#) of the Addenda to the [Seed Industry Act](#), Act No. 5024);

2. A variety registered pursuant to [Article 18 \(1\) of the Creation and Management of Forest Resources Act](#);

3. A variety, the protection right of which is established and registered in a foreign country;

4. A variety that has evidence on a breeder and the date of the first distribution thereof.

(2) The term of existence of the protection right of a variety entitled to be protected pursuant to paragraph (1) shall be reckoned from the date which falls under any of the following subparagraphs: *Provided*, That where the relevant variety falls under two or more of the following subparagraphs, its term of existence shall be reckoned from the earliest date:

1. For a variety under paragraph (1) 1, the date it is designated as a variety of high quality seeds in accordance with the previous Seeds of Staple Crops Act;

2. For a variety under paragraph (1) 2, the date of registration for such variety;

3. For a variety under paragraph (1) 3, the date of registration for the establishment of the variety protection right;

4. For a variety under paragraph (1) 4, the date of its first distribution.

(3) The protection right of a variety falling under any subparagraph of paragraph (1), established and registered pursuant to [Article 55](#) (1), shall have no effect on licensing given before the date an application for such variety is published.

(4) Where a variety is protected pursuant to paragraph (1), any person who is conducting or preparing a licensing business involving the protected variety in the Republic of Korea before the date an application for such variety is published shall have a nonexclusive license as to the variety protection right within the extent of the object of such business that he/she is conducting or preparing. In such cases, a person who holds a nonexclusive license shall pay a reasonable price to a person who holds the variety protection right.

(5) [Article 75](#) (2) shall apply *mutatis mutandis* to a nonexclusive license under paragraph (4).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 14 (Distinctness)**

(1) Any variety that is clearly distinguished from varieties known to the public before the date of application for the protection of a variety pursuant to [Article 28](#) (2) (where the right of priority is



claimed pursuant to [Article 27](#) (1), before the date of the first application for the protection of a variety) shall be deemed to be distinct referred to in subparagraph 2 of [Article 12](#).

(2) Varieties known to the public referred to in paragraph (1) mean any of the following varieties: *Provided*, That this shall not apply to a variety known to the public against the will of a person who has an entitlement to protection of a variety:

1. Varieties in distribution;
2. Protected varieties;
3. Varieties registered in the catalogue of varieties;
4. Varieties registered with an association related to the seed industry prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

(3) In cases referred to in paragraph (2) 2 or 3, any variety that is applied for the protection as a variety or applied for registration in the catalogue of varieties shall be deemed a variety known to the public from the date of application: *Provided*, That a variety that is not protected in accordance with this Act or not registered in the catalogue of varieties shall be excluded herefrom.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 15 (Homogeneity)**

Where the intrinsic properties of a variety are fully homogeneous under the circumstances of taking variations expected in the propagation of the variety into consideration, the variety shall be deemed to be homogeneous as referred to in subparagraph 3 of [Article 12](#).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 16 (Stability)**

Where the intrinsic properties of a variety do not vary after the variety has been propagated repeatedly (where it has a specific propagation cycle, such as F1 hybrid, after the completion of each propagation cycle), the variety shall be deemed to be stable, as referred to in subparagraph 4 of [Article 12](#).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 17 (Persons who Hold Entitlement to Protection of Variety)**

(1) A breeder, or his/her successor, shall hold an entitlement to protection of a variety, as prescribed by this Act.

(2) Where two or more breeders have bred a variety jointly, they shall hold an entitlement to protection of the variety jointly.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 18 (Capacity to Enjoy Rights of Foreigners)**

Only where a foreigner, among residents abroad, falls under any of the following subparagraphs, he/she may hold a variety protection right or an entitlement to protection of a variety:

1. Where a country to which such foreigner belongs allows nationals of the Republic of Korea to enjoy a variety protection right or an entitlement to protection of a variety on the same condition as to its own nationals;
2. Where the Republic of Korea allows such foreigner to enjoy a variety protection right or an entitlement to protection of a variety, cases where a country to which such foreigner belongs allows nationals of the Republic of Korea to enjoy a variety protection right or an entitlement to protection of a variety on the same condition as to its own nationals;
3. Where such foreigner is allowed to enjoy a variety protection right or an entitlement to protection of a variety in accordance with a treaty or its equivalent (hereinafter referred to as "treaty").

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 19 (Application for Protection of Variety by Person with No Right and Protection of Legitimately Entitled Person)**

Where any person who is not a successor to an entitlement to protection of a variety or any person who falsely indicates that an entitlement to protection of a variety belongs to him/her (hereinafter referred to as "person with no right") applies for the protection of a variety, an application for the protection of a variety made by a legitimately entitled person after an application made by such person with no right shall be deemed to have been made when a person with no right has made an application for the protection of a variety: *Provided*, That this shall not apply where a legitimately entitled person has made an application for the protection of a variety after 30 days have passed from the date a person with no right receives a certified transcript of the decision of refusal pursuant to [Article 37](#) (3).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 20 (Protection of Variety of Person with No Right and Protection of Legitimately Entitled Person)**

Where a trial decision that the protection of a variety is invalidated by reason pursuant to [Article 94](#) (1) 2 is upheld, an application for the protection of a variety made by a legitimately entitled person after the application for the protection of a variety shall be deemed to have been made at the time the application for the protection of a variety which has been invalidated is made: *Provided*, That this shall not apply where an application for the protection of a variety is made after two years have passed from the date the protection of the variety was published in the official publication pursuant to [Article 55](#) (3) or an application for the protection of a variety is made after 30 days have passed from the date the trial decision is upheld.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 21 (First-to-File Rule)**

- (1) Where two or more applications are filed for the protection of the same variety on different dates, only a person who has applied for the protection of a variety in the first instance

shall be entitled to the protection of a variety.

(2) Where two or more applications are filed for the protection of the same variety on the same date, only a person agreed and determined by and among persons who intend to enjoy the protection of a variety (hereinafter referred to as "applicants for the protection of a variety") shall be entitled to the protection of a variety. In such cases, if no agreement is reached or no agreement may be made, none of those applicants shall be entitled to the protection of a variety.

(3) Where an application for the protection of a variety is invalidated or withdrawn, such application for the protection of a variety shall not, when paragraph (1) or (2) is applied, be deemed to have been filed from the beginning.

(4) An application for the protection of a variety filed by a person who is not a successor to an entitlement to protection of a variety, as a person who is not a breeder, shall not, when paragraph (1) or (2) is applied, be deemed to have been filed from the beginning.

(5) The Minister for Food, Agriculture, Forestry and Fisheries shall, in cases provided for in paragraph (2), order applicants for the protection of a variety to notify him/her of the result of agreement for a fixed period. If no notification is made within the period, an agreement pursuant to paragraph (2) shall not be deemed to have been reached.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 22 (Transfer of Entitlement to Protection of Variety)**

(1) An entitlement to protection of a variety may be transferred.

(2) No entitlement to protection of a variety shall be the object of the right of pledge.

(3) Where an entitlement to protection of a variety is shared, no joint owner shall not transfer his/her share without the consent of the other joint owners.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 23 (Succession to Entitlement to Protection of Variety)**

(1) Where any person who has succeeded to an entitlement to protection of a variety before an application for the protection of the variety fails to file such application, he/she shall not bind third parties.

(2) Where two or more applications for the protection of a variety are filed on the same entitlement to protection of a variety that has been succeeded from the same person, the right shall be effective on only a person agreed and determined by and among applicants for the protection of a variety.

(3) Except cases of inheritance or any other general succession, unless an applicant for the protection of a variety reports transfer of the title, the succession to an entitlement to protection of a variety after application for the protection of a variety shall not become effective.

(4) In cases of the inheritance of an entitlement to protection of a variety or any other general succession after application for the protection of a variety, a successor shall report the effect thereof to the Minister for Food, Agriculture, Forestry and Fisheries without delay.

(5) Where two or more reports concerning the succession to the same entitlement to protection of a variety from the same person are submitted on the same date, only the report made by a person agreed and determined by and among persons who have reported shall be effective.

(6) [Article 21](#) (5) shall apply *mutatis mutandis* to cases under paragraphs (2) and (5).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 24 (Official Breeding by Public Officials)**

(1) Where a variety bred by a public official falls within the scope of work of the State or a local government from its nature and breeding of the variety falls within the scope of his/her present or past duties (hereinafter referred to as "official breeding"), the State or a local government shall succeed to the relevant public official's entitlement to protection of a variety: *Provided*, That where the variety falls within the scope of the official breeding by the staff member of a national school and a public school under the [Higher Education Act](#), an exclusively responsible organization established pursuant to [Article 11 \(1\) of the Technology Transfer and Commercialization Promotion Act](#) (hereinafter referred to as "exclusively responsible organization") shall succeed to the relevant public official's entitlement to protection of a variety.

(2) Notwithstanding [Article 8 of the State Property Act](#), the Minister for Food, Agriculture, Forestry and Fisheries shall take charge of the disposal and management of an entitlement to protection of a variety which the State has succeeded to pursuant to paragraph (1).

(3) Matters necessary for the disposal and management of an entitlement to protection of a variety pursuant to paragraph (2) shall be prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 25 (Compensation for Official Breeding by Public Official)**

(1) Where the State, a local government or an exclusively responsible organization succeeds to a variety that a public official has bred officially pursuant to [Article 24](#) (1), it shall pay reasonable compensation to the public official.

(2) The standards for compensation, a method of payment thereof, and other matters necessary for compensation under paragraph (1) shall be prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 26 (Application for Protection of Variety)**

(1) An applicant for the protection of a variety shall file an application for the protection of a variety in which matters referred to in the following subparagraphs are mentioned with the Minister for Food, Agriculture, Forestry and Fisheries:

1. The name and address of the applicant for the protection of a variety (in cases of a juristic person, its name and the seat of its place of business);

2. Where there is an agent of the applicant for the protection of a variety, the name and

address or the seat of a place of business of the agent;

3. The name and address of a breeder;
4. The botanical name and common name of crops to which the variety belongs;
5. The denomination of the variety;
6. The date of the application;
7. Matters referred to in [Article 27](#) (3) (only where the priority is claimed);
8. Descriptions of properties of the variety and descriptions of the breeding process of the variety;
9. Photographs of the variety and seed samples. In such cases, where seed samples are trophosome and marine plants, time, a method or such, of submission thereof shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries;
10. An application fee stamp for the protection of a variety.

(2) Where an entitlement to protection of a variety is shared pursuant to [Article 17](#) (2), all joint owners shall file an application for the protection of a variety jointly.

(3) Matters necessary for the descriptions of properties of a variety and the descriptions of the breeding process pursuant to paragraph (1) 8 shall be prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 27 (Claim for Priority)**

(1) Where a national of a foreign country that grants priority to an application for the protection of a variety filed by a national of the Republic of Korea claims priority to an application for the protection of a variety filed in the Republic of Korea after he/she has filed an application for the protection of the same variety in such foreign country, when [Article 21](#) applies, the date of application in such foreign country shall be deemed the date of application in the Republic of Korea. The same shall also apply where a national of the Republic of Korea has filed an application for the protection of a variety in a foreign country that grants priority to an application for the protection of a variety filed by a national of the Republic of Korea and then files an application for the protection of the same variety in the Republic of Korea.

(2) No person intending to claim priority in accordance with paragraph (1) shall claim priority unless he/she files an application for the protection of a variety within one year from the date following the date of the first application for the protection of a variety.

(3) Any person intending to claim priority in accordance with paragraph (1) shall specify, the purpose thereof, the name of the country where the first application for the protection of a variety has been filed and the date thereof in an application for the protection of a variety.

(4) Any person who has claimed priority in accordance with paragraph (3) shall submit within 90 days from the date of an application for the protection of a variety pursuant to [Article 28](#) (2), a certified transcript of the application recognized by the government of a country with which the

first application for the protection of a variety was filed.

(5) Any person who has claimed priority in accordance with paragraph (3) may request the Minister for Food, Agriculture, Forestry and Fisheries to postpone the examination of the relevant variety applied, for up to three years from the date of the first application for the protection of a variety, and the Minister for Food, Agriculture, Forestry and Fisheries shall comply with such request unless extenuating circumstances exist: *Provided*, That where any person who claims priority has abandoned the first application for the protection of a variety or a decision of refusal by a country with which an application for the protection of a variety was filed, has been upheld, the Minister for Food, Agriculture, Forestry and Fisheries may examine such variety even before the postponed date of examination of a variety applied for at the request of a person who has claimed priority.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 28 (Receipt of Applications)**

(1) Where a variety applied for the protection (hereinafter referred to as "variety applied for") pursuant to [Article 26](#) (1) falls under a genus or a species of the crops subject to the protection of a variety pursuant to [Article 11](#), the Minister for Food, Agriculture, Forestry and Fisheries shall receive an application for the protection of such variety, and where an application for the protection of such variety is not in violation of [Article 26](#) (1) or is revised pursuant to subparagraph 2 of [Article 7](#), the Minister for Food, Agriculture, Forestry and Fisheries shall register such application on the register of applications for the protection of a variety.

(2) The date of receipt of an application for the protection of a variety pursuant to paragraph (1) shall be deemed the date of an application for the protection of a variety.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 29 (Revision of Applications)**

An applicant for the protection of a variety may revise an application for the protection of such variety within the extent not changing the gist first mentioned in the application for the protection of the variety by the deadline according to the classification referred to in the following subparagraphs:

1. Where notice of ground for refusal is issued pursuant to [Article 37](#): The period for presentation of a written opinion on the notice of ground for refusal;
2. Where a decision for the protection of a variety is made pursuant to [Article 46](#): Before delivery of a certified transcript of a decision of the protection of a variety;
3. Where a tribunal on a decision of refusal is requested pursuant to [Article 93](#): Within 30 days from the date of such request.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 30 Deleted.** <by Act No. 10332, May 31, 2010>

#### **Article 31 (Change of Gist of Application)**

Where a revision in accordance with [Article 29](#) is made in any of the following cases, the gist of an application for the protection of a variety shall not be deemed to have been changed:

1. Where a clerical error is corrected;
2. Where an unclear description is clarified;
3. Other cases prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 32 (Rejection of Revision)**

(1) Where a revision made after an application for the protection of a variety was filed changes the gist of such application, a judge shall reject such revision by decision and notify an applicant for the protection of a variety of such rejection without delay. *<Amended by Act No. 10332, May 31, 2010>*

(2) through (4) Deleted. *<by Act No. 10332, May 31, 2010>*

(5) A decision for rejection pursuant to paragraph (1) shall be made in writing and the ground therefor shall be stated therein. *<Amended by Act No. 10332, May 31, 2010>*

(6) No person shall protest against a decision of rejection pursuant to paragraph (1): *Provided*, That this shall not apply to cases of contending in the tribution on a decision of rejection under [Article 93](#). *<Amended by Act No. 10332, May 31, 2010>*

### **SECTION 3 Examination**

#### **Article 33 (Examination by Judge)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall have a judge examine an application for the protection of a variety pursuant to Article 26 and an application for registration for the denomination of a variety pursuant to [Article 111](#).

(2) Matters necessary for qualification as a judge shall be prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 34 (Publication of Application)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall promptly publish an application for the protection of a variety registered on the register of applications for the protection of varieties in accordance with [Article 28](#) (1) in the official publication for the protection of varieties pursuant to [Article 54](#) (hereinafter referred to as "official publication").

(2) Where an application is published under paragraph (1), any person may furnish the Minister for Food, Agriculture, Forestry and Fisheries with information to the effect that the relevant variety shall not be protected because it violates [Article 12](#), [17](#), or [18](#), together with evidence thereof.

(3) When an application is published pursuant to paragraph (1), matters to be published in the official publication shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 34-2 (Right to Provisional Protection)**

(1) Any applicant for the protection of a variety shall have the exclusive right to license such variety for business purposes from the date of publication of an application.

(2) Where an application for the protection of a variety falls under any of the following subparagraphs after the publication of the application, a right pursuant to paragraph (1) shall not be deemed to have come into existence from the beginning:

1. Where the application for the protection of the variety is abandoned, withdrawn or invalidated;
2. When a decision to refuse the application for the protection of the variety is upheld.
- (3) Where any person who holds the right pursuant to paragraph (1) exercises his/her right, if an application for the protection of a variety falls under any subparagraph of paragraph (2), he/she shall be liable to indemnify the other party for loss incurred by the exercise of such right.
- (4) [Articles 84 through 90](#) shall apply *mutatis mutandis* to the right pursuant to paragraph (1).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 34-3 (Exercise of Right to Provisional Protection and Suspension of Legal Procedure)**

(1) Where a lawsuit is filed against an infringement of the right pursuant to [Article 34-2](#) (1) or an application for provisional seizure or a provisional disposition is filed, the court may, if deemed necessary, suspend such legal procedure by decision until a decision or a trial decision for an application for the protection of a variety is upheld by request or *ex officio*.

(2) No person shall object to a decision for an application pursuant to paragraph (1).

(3) The court may revoke a decision pursuant to paragraph (1) when the grounds for the suspension pursuant to paragraph (1) cease to exist or other relevant circumstances change.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 35 (Examination of Variety Applied for)**

(1) A judge shall examine whether a variety applied for satisfies the necessary conditions referred to in [Articles 13, 13-2, 14 through 16](#).

(2) The Minister for Food, Agriculture, Forestry and Fisheries may entrust a research institute, university, or any other person deemed appropriate with investigation or testing for examination under paragraph (1).



(3) Matters necessary for a method of, standards and procedures for examination under paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 36 (Submission of Materials)**

(1) If necessary for examination pursuant to [Article 35](#) (1), the Minister for Food, Agriculture, Forestry and Fisheries may order an applicant for the protection of a variety to submit materials, such as seed samples.

(2) An applicant for the protection of a variety who has been ordered to submit materials, such as seed samples, under paragraph (1) shall comply with the order, unless extenuating circumstances exist.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 37 (Notice of Decision of Refusal and Ground for Refusal)**

(1) Where an application for the protection of a variety falls under any of the following subparagraphs (hereinafter referred to as "ground for refusal"), a judge shall decide to refuse the application for the protection of a variety:

1. Where a variety cannot be protected because it violates [Article 3](#), [11](#), [12](#), [17](#), [18](#), [21](#) (1) and (2), [23](#) (2) and (5), [24](#) (1), [26](#) (2) or [36](#) (2);

2. Where it is filed by a person who has no right;

3. Where it violates a treaty.

(2) Where a judge decides to refuse an application for the protection of a variety pursuant to paragraph (1), he/she shall notify the applicant of the ground for refusal in advance and provide him/her with an opportunity to submit a written opinion within a fixed period.

(3) Where a judge decides to refuse an application for the protection of a variety pursuant to paragraph (1), he/she shall serve a certified transcript of such decision on an applicant therefor and publish it in the official publication.

(4) Matters to be published in the official publication on the decision of refusal under paragraph (3) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 38 Deleted.** <by Act No. 10332, May 31, 2010>

**Articles 39 and 40 Deleted.** <by Act No. 6999, Dec. 11, 2003>

**Articles 41 through 45 Deleted.** <by Act No. 10332, May 31, 2010>

#### **Article 46 (Decision of Protection of Variety)**

(1) Where a judge is unable to find any ground to refuse an application for the protection of a variety, he/she shall decide in favor of the protection of the variety.

(2) A judge shall decide in favor of the protection of a variety pursuant to paragraph (1) in writing and disclose the ground therefor.

(3) Where a judge decides in favor of the protection of a variety pursuant to paragraph (1), the Minister for Food, Agriculture, Forestry and Fisheries shall serve a certified transcript of such decision on an applicant therefor, and publish it in the official publication.

(4) Matters to be published in the official publication on the decision to protect a variety under paragraph (3) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 47 (Suspension of Examination or Legal Procedure)**

(1) If necessary for examination of an application for the protection of a variety, a judge may suspend the examination procedure of such application until a trial decision is upheld or the legal procedure is completed.

(2) A court may, if necessary for litigation, suspend the legal procedure until a decision is upheld.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 48 (Application *Mutatis Mutandis* of the Patent Act)**

Subparagraphs 1 through 5 and 7 of [Article 148 of the Patent Act](#) shall apply *mutatis mutandis* to the examination of an application for the protection of a variety.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **SECTION 4 Charge for Protection of Variety and Registration for Protection of Variety**

#### **Article 49 (Charge for Protection of Variety)**

(1) Any person who intends to obtain registration for the establishment of a variety protection right pursuant to [Article 55](#) (1) shall pay a charge for the protection of a variety.

(2) Any person who holds a variety protection right shall pay a charge for the protection of the variety to the Minister for Food, Agriculture, Forestry and Fisheries each year during the term of existence of the variety protection right.

(3) Regardless of the will of a person liable to pay a charge for the protection of a variety pursuant to paragraph (1) or (2), any person interested in the variety protection right may pay a

charge for the protection of a variety.

(4) Where any person interested in a variety protection right who has paid a charge for the protection of the variety in accordance with paragraph (3), he/she may request reimbursement of such expenses to the extent that a person liable to pay benefits at present.

(5) Necessary matters concerning the amount of a charge for the protection of a variety, a method of payment thereof, a period for payment or such, pursuant to paragraph (1) or (2) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 50 (Payment of Charges for Protection of Variety after Expiration of Period for Payment)**

(1) Any person who intends to obtain registration for the establishment of a variety protection right or a variety protection right-holder may pay a charge for the protection of the variety within six months even after the expiration of the period for payment of the charge for the protection of the variety pursuant to [Article 49](#) (5).

(2) Where any person who intends to obtain registration for the establishment of a variety protection right or a variety protection right-holder pays a charge for the protection of the variety pursuant to paragraph (1), he/she shall pay double the charge for the protection of the variety pursuant to [Article 49](#) (5).

(3) If a person who intends to obtain registration for the establishment of a variety protection right fails to pay a charge for the protection of the variety by the deadline provided for in paragraph (1), his/her application for the protection of the variety shall be deemed to have been abandoned, and if a variety protection right-holder fails to pay a charge for the protection of the variety by the deadline provided for in paragraph (1), his/her variety protection right shall be deemed to have ceased to exist retroactively to the day following the date when a period falling under a charge for the protection of a variety paid pursuant to [Article 49](#) (5) expires.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 51 (Exemption of Charge for Protection of Variety)**

Notwithstanding [Article 49](#), where a charge for the protection of a variety falls under any of the following subparagraphs, it shall be exempted:

1. Where the State or a local government shall pay a charge for the protection of a variety in order to obtain registration for the establishment of a variety protection right;

2. Where the State or a local government shall pay a charge for the protection of a variety during the term of existence of a variety protection right;

3. Where any beneficiary pursuant to [Article 5 of the National Basic Living Security Act](#) shall pay a charge for the protection of a variety in order to obtain registration for the establishment of a variety protection right.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 52 (Refund of Charge for Protection of Variety)**

A charge paid for the protection of a variety shall be refundable only when it has been paid in error.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 53 (Original Register for Protection of Varieties)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall keep the original register for the protection of varieties and register the matters referred to in the following subparagraphs:

1. The establishment, transfer, lapse, or restriction on disposal of a variety protection right;
2. The establishment, transfer, modification, lapse, or restriction on disposal of an exclusive license or a nonexclusive license;
3. The establishment, transfer, modification, lapse, or restriction on disposal of the right of pledge of a variety protection right, an exclusive license or a nonexclusive license.

(2) In addition to the matters provided for in paragraph (1), matters to be registered, registration procedure, and other matters required for registration shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 54 (Official Publication on Protection of Varieties)**

The Minister for Food, Agriculture, Forestry and Fisheries shall publish the official publication on the protection of varieties periodically.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **SECTION 5 Variety Protection Rights**

#### **Article 55 (Registration for Establishment of Variety Protection Rights)**

(1) A variety protection right shall come into force by registration for its establishment in accordance with [Article 53](#) (1) 1.

(2) Where a person pays a charge for the protection of a variety pursuant to [Article 49](#) (1) or [50](#) (1), or receives exemption from a charge for the protection of a variety pursuant to [Article 51](#), the Minister for Food, Agriculture, Forestry and Fisheries shall register for the establishment of a variety protection right.

(3) Where the Minister for Food, Agriculture, Forestry and Fisheries has registered for the establishment of a variety protection right pursuant to paragraph (2), he/she shall publish the matters referred to in the following subparagraphs in the official publication:

1. The name and address of a variety protection right-holder (in cases of a corporation, its

name, the name of its representative and the seat of its place of business);

2. A variety protection registration number;
3. The date of registration for establishment;
4. The term of existence of a variety protection right.

(4) When the Minister for Food, Agriculture, Forestry and Fisheries has registered for the establishment of a variety protection right pursuant to paragraph (2), he/she shall promptly issue a certificate of registration for the variety protection right to a variety protection right-holder.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 56 (Term of Existence of Variety Protection Rights)**

The term of existence of a variety protection right shall be 20 years from the date it is established and registered: *Provided*, That in cases of a fruit tree and a forest tree, it shall be 25 years.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 57 (Effects of Variety Protection Rights)**

(1) A variety protection right-holder shall have an exclusive right to license the protected variety for business purposes: *Provided*, That where he/she has established an exclusive license on the variety protection right, this shall not apply to the extent that the exclusive license holder has an exclusive right to license the protected variety pursuant to [Article 62](#) (2).

(2) In addition to the right pursuant to paragraph (1), a variety protection right-holder shall also have an exclusive right to license the harvest of seeds of the protected variety or products directly produced from the harvest for business purposes: *Provided*, That this shall not apply to products directly produced by a person who does not know that he/she has no legitimate title to the harvest.

(3) The effect of a variety protection right under paragraphs (1) and (2) shall also be applicable to varieties falling under any of the following subparagraphs:

1. A variety basically derived from a protected variety (only applicable to a protected variety that is not basically derived from other varieties);
2. A variety that is not clearly distinguishable from a protected variety pursuant to [Article 14](#);
3. A variety, the production of seeds of which is possible by repeated use of a protected variety.

(4) A variety derived from an initial variety or from an existing derived variety, which retains the expression of the essential properties that result from the genotype or combination of genotypes of the initial variety except for differences that result from the act of derivation, and which is clearly distinguishable from the initial variety, shall be deemed a derived variety.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 58 (Extent beyond Effect of Variety Protection Rights)**

(1) In cases falling under any of the following subparagraphs, a variety protection right under [Article 57](#) shall be ineffective:

1. Licensing of a protected variety for self-consumption for a purpose other than profit;
2. Licensing of a protected variety for experimental or research purposes;
3. Licensing of a protected variety for the purpose of breeding other varieties.

(2) Where a farmer or a fisherman gathers the seeds of a variety for himself/herself for the purpose of self-production, the Minister for Food, Agriculture, Forestry and Fisheries may restrict a variety protection right on the relevant variety.

(3) Necessary matters concerning the extent of restriction, procedures therefor, a method thereof, etc. under paragraph (2) shall be prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 59 (Restriction on Effect of Variety Protection Rights)**

A variety protection right under [Article 57](#) shall be ineffective in relation to seeds of a protected variety, its harvest and products directly produced from the harvest sold or distributed in the Republic of Korea by a person who has a variety protection right, an exclusive license or a nonexclusive license, excluding any of the following acts:

1. Propagating the seeds of a protected variety by using the seeds of a protected variety, its harvest and products directly produced from the harvest sold or distributed;
2. Exporting the seeds of a protected variety, its harvest and products directly produced from the harvest for the purpose of propagation.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 60 (Prohibition from Restricting Variety Protection Rights)**

In addition to the matters prescribed by this Act, the Government shall not impose any restrictions on licensing of a variety protection right.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 61 (Transfer of Variety Protection Rights)**

(1) A variety protection right may be transferred.

(2) Where a variety protection right is shared, no joint owner of the variety protection right shall engage in any of the following acts without the consent of the other joint owners:

1. Transferring his/her share or establishing the right of pledge of his/her share;

2. Establishing an exclusive license, or granting a non-exclusive license concerning the relevant variety protection right.

(3) Where a variety protection right is shared, each joint owner may, except for cases specially prescribed by agreement, license the protected variety by himself/herself without the consent of the other joint owners.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 62 (Exclusive License)**

(1) A variety protection right-holder may grant an exclusive license on his/her variety protection right to a third party.

(2) An exclusive licensee who has obtained an exclusive license pursuant to paragraph (1) shall have an exclusive right to license the relevant protected variety for business purposes within the extent provided by such establishment.

(3) No exclusive licensee shall transfer an exclusive license without the consent of a variety protection right-holder, except in cases where he/she transfers the exclusive license together with the licensing business or cases of inheritance or other general succession.

(4) No exclusive licensee shall establish the right of a pledge of the exclusive license or grant a nonexclusive license without the consent of a variety protection right-holder.

(5) [Article 61](#) (2) shall apply *mutatis mutandis* to an exclusive license.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 63 (Effects of Registration of Variety Protection Right and Exclusive Licenses)**

(1) Matters referred to in the following subparagraphs shall be effective only when they are registered in the original variety protection register under [Article 53](#):

1. Transfer (excluding cases of inheritance or other general succession), lapse by abandonment or restrictions on disposal of a variety protection right;

2. Establishment, transfer (excluding cases of inheritance or other general succession), modification, lapse or restrictions on disposal of an exclusive license;

3. Establishment, transfer (excluding cases of inheritance or other general succession), modification, lapse or restrictions on disposal of the right of pledge of a variety protection right or an exclusive license.

(2) Any person who has inherited or succeeded generally to a variety protection right, an exclusive license, or the right of pledge shall notify the Minister for Food, Agriculture, Forestry and Fisheries of the effect thereof within 30 days from the date such ground arises.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 64 (Non-Exclusive Licenses)**

- (1) A variety protection right-holder may grant a nonexclusive license on his/her variety protection right to a third party.
- (2) A non-exclusive licensee who has obtained a non-exclusive license pursuant to paragraph (1) shall have a right to license the protected variety for business purposes, as prescribed by this Act or within the extent prescribed by the establishment.
- (3) A non-exclusive license pursuant to [Article 68](#) may be transferred only when it is transferred together with the licensing business.
- (4) No non-exclusive license, other than that referred to in paragraph (3), shall be transferred without the consent of a variety protection right-holder (a variety protection right-holder and an exclusive licensee in case of a non-exclusive license on an exclusive license), except in cases where it is transferred together with the licensing business.
- (5) No non-exclusive license, other than that referred to in paragraph (3), shall be subject to the establishment of the right of pledge, without the consent of a variety protection right-holder (a variety protection right-holder and an exclusive licensee in case of a non-exclusive license on an exclusive license).
- (6) [Article 61](#) (2) shall apply *mutatis mutandis* to a non-exclusive license.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 65 (Non-Exclusive Licenses by Prior Use)**

Any person who was unaware of details of a variety applied for the protection as at the time of the application for the protection of a variety but becomes aware of the details thereof from a person who breeds or bred the protected variety, and then engages in a business licensing the protected variety or is preparing such business in the Republic of Korea shall have a nonexclusive license on the variety protection right applied for the protection of such variety within the extent of the purpose of the business he/she engages in or prepares.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 66 (Non-Exclusive License by Licensing prior to Registration of Request for Tribunal for Invalidation)**

(1) Where any person falling under any of the following subparagraphs engages in a business licensing a protected variety or prepares such business in the Republic of Korea without knowing that a variety protection right falls under grounds for invalidation prior to the registration of request for a tribunal for invalidation of the relevant variety protection right, he/she shall have a non-exclusive license on a variety protection right or an exclusive license existing at the time the variety protection right is invalidated within the extent of the purpose of such business he/she engages in or prepares:

1. An initial variety protection right-holder, where protection of one of not less than two varieties, on the same variety, is invalidated;
2. An initial variety protection right-holder, where a person invalidates the protection of a variety and grants the protection of a variety to a legitimately entitled person on the same variety;



3. In the case referred to in subparagraph 1 or 2, a person who has obtained an exclusive license, a nonexclusive license, or a nonexclusive license on such exclusive license and has already obtained registration thereof as at the time of registration of request for a tribunal for invalidation on the invalidated variety protection right: *Provided*, That where he/she falls under [Article 75](#) (2), registration is not required.

(2) Any person who has a non-exclusive license in accordance with paragraph (1) shall pay reasonable royalties to a variety protection right-holder or an exclusive licensee.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 67 (Non-Exclusive Licenses by Transfer of Variety Protection Rights due to Exercise of Rights of Pledge)**

Where a variety protection right-holder engages in a business licensing the relevant protected variety prior to the establishment of the right of pledge of a variety protection right, he/she shall have a non-exclusive license on the variety protection right even if the variety protection right is transferred by auction or such. In such cases, he/she shall pay reasonable royalties to a person to whom the variety protection right has been transferred by auction or such.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 68 (Rulings on Establishment of Non-Exclusive Licenses)**

(1) Where a protected variety falls under any of the following subparagraphs, a person who intends to license the protected variety may apply for a ruling on the establishment of a non-exclusive license (hereinafter referred to as "ruling") to the Minister for Food, Agriculture, Forestry and Fisheries: *Provided*, That an application for a ruling pursuant to subparagraph 1 or 2 may be made only where he/she is unable to consult on the grant of a non-exclusive license with a variety protection right-holder or an exclusive licensee of the protected variety, or fails to reach an agreement after consultation:

1. Where a protected variety has not been licensed for three or more consecutive years in the Republic of Korea without a natural disaster, other *force majeure* or other justifiable grounds prescribed by Presidential Decree;

2. Where a protected variety has not been licensed for three or more consecutive years in the Republic of Korea, without justifiable grounds, on a reasonable business scale or has failed to satisfy the domestic demand in due degree and on reasonable conditions;

3. Where a protected variety is required to be licensed noncommercially because an urgent adjustment of supply and demand or dissemination is required due to a war, a natural disaster or a calamity;

4. Where a protected variety is required to be licensed in order to correct matters recognized as unfair trading practices in accordance with judicial or administrative procedures.

(2) Paragraph (1) shall not apply to a protected variety where three years have not passed from the date of registration for the establishment of a variety protection right.

(3) Where the Minister for Food, Agriculture, Forestry and Fisheries makes a ruling, he/she shall review the necessity for the establishment of a nonexclusive license for each application.

(4) Where the Minister for Food, Agriculture, Forestry and Fisheries makes a ruling, he/she shall set conditions that a non-exclusive license shall be mainly used for the purpose of supply for the domestic demand: *Provided*, That this shall not apply where he/she makes a ruling on the application pursuant to paragraph (1) 4.

(5) Where the Minister for Food, Agriculture, Forestry and Fisheries makes a ruling pursuant to paragraph (1) 4, he/she may take the purport that the ruling is to correct unfair trading practices, into consideration in the decision of such royalties.

(6) Where the Minister for Food, Agriculture, Forestry and Fisheries makes a ruling, he/she shall undergo deliberation by the Seed Council pursuant to Article 158.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 69 (Service of Application for Rulings)**

Where the Minister for Food, Agriculture, Forestry and Fisheries receives an application for a ruling pursuant to [Article 68](#) (1), he/she shall serve a copy of such application on a variety protection right-holder or an exclusive licensee related to the application, and on any other person having a registered right to the protection of the variety, and shall provide them with an opportunity to submit a written reply within a fixed period.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 70 (Method of Rulings)**

- (1) A ruling shall be made in writing and the grounds therefor shall be stated therein.
- (2) Matters referred to in the following subparagraphs shall be specified in a ruling under paragraph (1):
  1. The scope and period of a non-exclusive license;
  2. Royalties for a non-exclusive license, and a method and time of payment thereof.
- (3) Where the Minister for Food, Agriculture, Forestry and Fisheries has received an application for extension of a period of a non-exclusive license pursuant to paragraph (2) 1, he/she shall not reject such application if the previous grounds for the establishment of the non-exclusive license remain unchanged.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 71 (Service of Certified Transcript of Rulings)**

- (1) Where the Minister for Food, Agriculture, Forestry and Fisheries has made a ruling, he/she shall serve a certified transcript of the ruling on the parties concerned and any person having a registered right to the variety protection right.
- (2) When a certified transcript of the ruling has been served on the parties concerned pursuant to paragraph (1), an agreement shall be deemed to have been reached between such parties as stated in the ruling.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 72 (Deposit of Royalties)**

Where any person liable to pay royalties under [Article 70](#) (2) 2 falls under any of the following subparagraphs, he/she shall deposit such royalties:

1. Where any person who is to receive royalties refuses to or is unable to receive them;
2. Where a lawsuit pursuant to [Article 106](#) (1) is filed against the royalties;
3. Where the right of pledge of the relevant variety protection right or nonexclusive license is established: *Provided*, That this shall not apply where a pledgee provides his/her consent.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 73 (Lapse of Rulings)**

(1) Where any person who has received a ruling pursuant to [Article 70](#) (1) fails to pay or deposit royalties (where royalties are paid on a regular basis or in installments, the first payment thereof) by the due date for payment pursuant to paragraph (2) 2 of the same Article, the ruling shall lapse.

(2) The Minister for Food, Agriculture, Forestry and Fisheries may cancel a ruling under [Article 70](#) (1) at the request of an interested party or *ex officio* in cases falling under any of the following subparagraphs:

1. Where any person who has received a ruling pursuant to [Article 70](#) (1) fails to conduct his/her non-exclusive license;
2. Where the grounds for having ruled a non-exclusive license have lapsed and they are not likely to arise again;
3. Where any person who has received a ruling pursuant to [Article 70](#) (1) fails to pay or deposit the balance of the royalties after the first payment thereof when he/she pays such royalties on a regular basis or in installments.

(3) [Articles 68](#) (6), [69](#), [70](#) (1) and [71](#) shall apply *mutatis mutandis* to cases falling under paragraph (2).

(4) Where a ruling has been cancelled pursuant to paragraph (2), a non-exclusive license shall lapse therefrom.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 74 (Restrictions on Grounds for Objection to Ruling)**

No person shall file an administrative appeal against a ruling pursuant to [Article 3 \(1\) of the Administrative Appeals Act](#) on the grounds that he/she is dissatisfied with the amount of royalties determined by the ruling.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 75 (Effects of Registration of Non-Exclusive Licenses)**

- (1) When a non-exclusive license is registered, it shall also have an effect on any person who acquires a variety protection right or an exclusive license after the registration thereof.
- (2) Even though a non-exclusive license pursuant to [Articles 65 through 68](#) and [104](#) is not registered, it shall take effect pursuant to paragraph (1).
- (3) Unless transfer, modification, lapse or restriction on disposal of a non-exclusive license, or the establishment, transfer, modification, lapse or restriction on disposal of the right of pledge of a non-exclusive license is registered, it shall not bind a third party.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 76 (Restrictions on Abandonment of Variety Protection Rights)**

- (1) No variety protection right-holder shall abandon his/her variety protection right without the consent of an exclusive licensee, a pledgee, or a non-exclusive licensee under [Article 62](#) (4) or [64](#) (1).
- (2) No exclusive licensee shall abandon his/her exclusive license without the consent of a pledgee or a non-exclusive licensee under [Article 62](#) (4).
- (3) No non-exclusive licensee shall abandon his/her non-exclusive license without the consent of a pledgee.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 77 (Effects of Abandonment)**

Where a variety protection right, an exclusive license, or a non-exclusive license is abandoned, it shall lapse thenceforth.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 78 (Right of Pledge)**

Where the right of pledge of a variety protection right, an exclusive license, or a non-exclusive license is established, a pledgee shall not license the relevant protected variety except for cases specially provided by contract.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 79 (Subrogation of Rights of Pledge)**

A right of pledge may be exercised also on the royalties or goods receivable for the licensing of a protected variety. In such cases, the royalties or goods shall be seized before payment or delivery thereof.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 80 (Cancellation of Variety Protection Right)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries may cancel a variety protection right in cases falling under any of the following subparagraphs: *Provided*, That in cases referred to in subparagraph 2, he/she shall cancel a variety protection right:

1. Where the requirements referred to in [Article 15](#) or [16](#) cannot be met;
2. Where a duty to keep a protected variety pursuant to [Article 83](#) is not performed;
3. Where the registration of a variety denomination is cancelled pursuant to [Article 113](#) (1).

(2) Where a variety protection right has been cancelled pursuant to paragraph (1), it shall become extinct thenceforth.

(3) [Article 37](#) (2) and (3) shall apply *mutatis mutandis* to the cancellation prescribed in paragraph (1).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 81 (Lapse of Variety Protection Rights in Absence of Successor)**

A variety protection right shall become extinct if no successor exists where the succession commences.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 82 (Report on Licensing of Variety Protection Rights)**

The Minister for Food, Agriculture, Forestry and Fisheries may have a variety protection right-holder, an exclusive licensee or a non-exclusive licensee report whether to license a protected variety, the scale thereof, or such.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 83 (Obligations to Preserve Protected Variety)**

(1) A variety protection right-holder shall discharge his/her obligations so that the intrinsic properties of the protected variety at the time of registration for the establishment of the variety protection right may be preserved during the term of existence of the variety protection right.

(2) The Minister for Food, Agriculture, Forestry and Fisheries may require a variety protection right-holder to submit materials, such as seed samples, necessary for ascertaining whether the intrinsic properties of the protected variety pursuant to paragraph (1) are preserved, or may test them.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

## **SECTION 6 Protection of Variety Protection Right-Holders**

### **Article 84 (Claim to Prohibit Infringement of Rights)**

(1) A variety protection right-holder or an exclusive licensee may request a person who has infringed or is likely to infringe his/her rights to discontinue or refrain from such infringement.

(2) Where a variety protection right-holder or an exclusive licensee makes a request under paragraph (1), he/she may request the destruction of the articles that constitute the infringement, the removal of the facilities provided for the infringement, or other measures necessary to prevent the infringement.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 85 (Acts Deemed Infringement)**

Any act falling under any of the following subparagraphs shall be deemed infringement of a variety protection right or an exclusive license:

1. Licensing a protected variety of another person for business purposes without permission of a variety protection right-holder or an exclusive licensee;

2. Using the denomination of a variety identical with or similar to the denomination of a protected variety of another person for a variety of the species or genus of the crops to which the relevant protected variety belongs.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 86 (Claims for Damages)**

(1) A variety protection right-holder or an exclusive licensee may claim damages against any person who has infringed his/her rights intentionally or in error.

(2) [Articles 128 and 132 of the Patent Act](#) shall apply *mutatis mutandis* to a claim for damages under paragraph (1).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 87 (Presumption of Negligence)**

Any person who has infringed a variety protection right or an exclusive license of another person shall be presumed to have been held culpable for the infringement.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 88 (Recovery of Credit of Variety Protection Right-Holders)**

At the request of a variety protection right-holder or an exclusive licensee, the court may order any person who has injured the business credit of a variety protection right-holder or an exclusive licensee by infringing the variety protection right or exclusive license intentionally or in error or to take measures instead of compensation for loss or measures necessary for recovery of the business credit of the variety protection right-holder or exclusive licensee together with compensation for loss.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 89 (Markings of Protection of Varieties)**

A variety protection right-holder, an exclusive licensee, or a non-exclusive licensee may mark the relevant variety as a protected variety.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 90 (Prohibition of False Markings)**

No person shall engage in any of the following acts:

1. Marking containers or packages of the seeds of a variety that is not subject to the protection or the protection of which is not pending with expression that they are subject to the protection of a variety or the protection of a variety is pending, or marking them with expression readily confusable;
2. Indicating a variety that is not subject to the protection or the protection of which is not pending, as if it is a protected variety or a variety, the protection of which is pending in commercial advertisements, labels, business documents or such.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **SECTION 7 Trial**

#### **Article 91 (Variety Protection Appeals Commission)**

- (1) The Variety Protection Appeals Commission shall be established in the Ministry for Food, Agriculture, Forestry and Fisheries to take charge of a trial and a retrial on the protection of a variety.
- (2) The Appeals Commission shall be comprised of the chairperson and judges of the protection of varieties (hereinafter referred to as "judges"), one of whom shall be a standing judge.
- (3) The organization and operation of the Appeals Commission shall be prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 92 Deleted.** <by Act No. 8597, Aug. 3, 2007>

#### **Article 93 (Trial on Decision of Refusal or Decision of Revocation)**

Where any person who has received a decision of refusal under [Article 37](#) (1) or a decision of revocation under [Article 80](#) dissatisfies with the decision, he/she may file a trial within 30 days from the date he/she receives a certified transcript of the decision.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 94 (Trial for Invalidation of Protection of Variety)**

(1) A person interested in the protection of a variety or an examiner may file a trial for invalidation if the protection of a variety falls under any of the following subparagraphs:

1. Where the protection of a variety violates [Article 12, 17, 18, 21](#) (1) and (2), [24](#) (1), or [26](#) (2): *Provided*, That where he/she intends to file a trial for invalidation on the grounds that the protection of a variety has violated homogeneity or stability under subparagraphs 3 and 4 of [Article 12](#), he/she may file a trial for invalidation only where he/she has examined homogeneity or stability with the documents submitted by an applicant;

2. Where the protection of a variety has been granted to a person with no right;

3. Where the protection of a variety has violated a treaty;

4. Where, after a variety has been protected, the variety protection right-holder becomes unentitled to the variety protection right pursuant to [Article 18](#), or the protection of a variety protection has violated a treaty.

(2) A request for a trial under paragraph (1) may be filed at any time as long as there is merit in the request.

(3) Where a trial decision to invalidate a variety protection right is upheld, the variety protection right shall not be deemed to have existed from the beginning: *Provided*, That if a trial decision to invalidate the protection of a variety is upheld pursuant to paragraph (1) 4, the variety protection right shall not be deemed to have existed from the time the protection of the variety falls under the same subparagraph.

(4) Where a request for a trial has been filed under paragraph (1), the presiding judge shall notify a variety protection right-holder and an exclusive licensee of the relevant variety protection, and other persons who have any registered right relating to the protection of a variety of the purport thereof.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 95 (Method of Filing Request for Trial)**

(1) Any person who intends to request a trial shall submit to the chairperson of the Appeals Commission a written request for trial in which any of the following matters is stated:

1. The name and address of the person concerned and his/her agent (in case of a legal person, its name, the name of its representative and the seat of its place of business);

2. The denomination of a variety;

3. The date of application for the protection of a variety and the application number thereof;

4. The date when a judge makes a decision of refusal, a decision of the protection of a variety or a decision of revocation;



5. The purpose of a request and the grounds therefor.

(2) Where he/she revises a written request for trial submitted pursuant to paragraph (1), he/she shall not change the gist thereof: *Provided*, That this shall not apply to the grounds for request under paragraph (1)5.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 96 (Judges)**

(1) Where the chairperson of the Appeals Commission receives a request for a trial pursuant to [Article 95](#) (1), he/she shall have the judges adjudge the request.

(2) The judges shall make an official adjudgment in an independent manner.

(3) Qualifications for the judges shall be prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 97 (Designation of Judges)**

(1) For each trial, the chairperson of the Appeals Commission shall designate judges who are to form a collegiate body under [Article 98](#).

(2) Where any person has difficulty in participating in a trial from among judges referred to in paragraph (1), the chairperson of the Appeals Commission may have another judge perform the duties of such person.

(3) The chairperson of the Appeals Commission shall designate one of the judges designated pursuant to paragraph (1) as the presiding judge.

(4) The presiding judge shall preside over the affairs on the relevant trial case.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 98 (Collegiate Body for Trial)**

(1) A trial shall be conducted by a collegiate body composed of three judges.

(2) The collegiate body referred to in paragraph (1) shall make its decisions by a majority vote.

(3) An agreement of the collegiate body shall not be disclosed.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 99 (Application of Examination Provisions Mutatis Mutandis to Trial on Decision of Refusal)**

Articles 29, 32, 37 (2) and 46 shall apply mutatis mutandis to a trial decision of refusal pursuant to Article 93.

[This Article Wholly Amended by Act No. 10332, May 31, 2010]

#### **Article 100 (Application Mutatis Mutandis of the Patent Act)**

(1) [Articles 139, 141, 142, 147 through 153, 153-2, 154 through 160, 161](#) (1) and (3), [162 through 166, 171, 172](#) and [176 of the Patent Act](#) shall apply *mutatis mutandis* to a trial under [Articles 93](#) and [94](#). <Amended by Act No. 10332, May 31, 2010>

(2) In cases referred to in paragraph (1), "invalidation trial under Articles 133 (1), 134 (1) and 137 (1) or a trial to confirm the scope of a patent right under [Article 135](#) (1)" in [Article 139 \(1\) of the Patent Act](#) shall be construed as a "trial for invalidation under Article 94 (1)" <Amended by Act No. 10332, May 31, 2010>

(3) In cases referred to in paragraph (1), "[Article 140](#) (1), (3) through (5) or [140-2](#) (1)" in [Article 141 \(1\) 1 of the Patent Act](#) shall be construed as "Article 95 (1)", and "Article 82" in subparagraph 2 (b) of the same paragraph shall be construed as "Article 160" <Amended by Act No. 10332, May 31, 2010>

(4) Deleted. <by Act No. 8597, Aug. 3, 2007>

(5) In cases referred to paragraph (1), "Articles 133 (1), 134 (1), 135 and 137 (1)" in [Article 165 \(1\) of the Patent Act](#) shall be construed as "Article 94 (1)", "[Article 132-3, 136](#) or [138](#)" in paragraph (3) of the same Article shall be construed as "Article 93", and "patent attorney" in paragraph (7) of the same Article shall be construed as "person" <Amended by Act No. 10332, May 31, 2010>

(6) In cases referred to in paragraph (1), "trial against a ruling to refuse a patent or against a ruling of refusal to register for an extension of the term of a patent right" in [Article 171 of the Patent Act](#) shall be construed as "trial on a decision of refusal under Article 93" <Amended by Act No. 10332, May 31, 2010>

(7) In cases referred to in paragraph (1), "Article 132-3" in [Article 176 \(1\) of the Patent Act](#) shall be construed as "Article 93" <Amended by Act No. 10332, May 31, 2010>

### **SECTION 8 Retrials and Litigation**

#### **Article 101 (Requests for Retrials)**

- (1) A party may request a retrial against a trial decision upheld.
- (2) [Articles 451](#) and [453 \(1\) of the Civil Procedure Act](#) shall apply *mutatis mutandis* to a request for a retrial under paragraph (1).

[This Article Wholly Amended by Act No. 10332, May 31, 2010]

#### **Article 102 (Request for Dissatisfaction with Fraudulent Ruling)**

(1) Where a party of a trial has caused a trial decision to be made in conspiracy by fraud for the purpose of infringing the rights or interests of a third party, such third party may request a retrial against the trial decision upheld.

(2) In cases of a request for retrial under paragraph (1), the parties of the retrial shall be made joint claimees.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 103 (Restrictions on Effect of Variety Protection Right Restored upon Retrial)**

No variety protection right falling under any of the following subparagraphs shall become effective against a *bona fide* act before registration of a request for retrial after the relevant trial decision has been upheld:

1. Where a variety protection right that was invalidated has been restored upon retrial;
2. Where an application for the protection of a variety on which a trial decision that a request for trial against a decision of refusal is not accepted has been made is turned to registration for the establishment of a variety protection right upon retrial.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 104 (Non-Exclusive License of Prior User on Variety Protection Right Restored by Retrial)**

Where a variety protection right falls under any subparagraph of [Article 103](#), any person who engages in a business licensing the protected variety in the Republic of Korea in good faith, or prepares such business before registration of a request for retrial after the relevant trial decision has been upheld shall have a non-exclusive license on the variety protection right within the extent of purposes of the business which he/she engages in or prepares.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 105 (Appeals against Trial Decision)**

(1) The Patent Court shall take exclusive charge of appeals against a trial decision and appeals against a decision to refuse the revision of a written request for retrial.

(2) An appeal pursuant to paragraph (1) may be made only by a party, a participant, or a person whose application for participation in the relevant trial or retrial has been filed, but rejected.

(3) An appeal pursuant to paragraph (1) shall be made within 30 days from the date a person receives a certified transcript of a trial decision or a decision.

(4) The period prescribed in paragraph (3) shall be invariable.

(5) An appeal against matters for which a request for a trial may be filed shall not be made unless the appeal is against a trial decision.

(6) An appeal pursuant to paragraph (1) shall not be made against a trial decision or a decision on costs of a trial pursuant to [Article 165 of the Patent Act](#), which is applied *mutatis mutandis* by [Article 100](#), separately.

(7) Any person may appeal to the Supreme Court against adjudication of the Patent Court.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 106 (Action against Decision on Royalties)**

(1) Any person dissatisfied with a decision on royalties under [Article 70](#) (2) 2 may bring an action before the court.

(2) An action under paragraph (1) shall be filed within 30 days from the date a person receives a certified transcript of the decision.

(3) In an action under paragraph (1), a variety protection right-holder, an exclusive licensee, or a non-exclusive licensee shall be the defendant.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 107 (Application of Patent Act Mutatis Mutandis)**

(1) [Articles 180](#) and [184 of the Patent Act](#) and [Article 459 \(1\) of the Civil Procedure Act](#) shall apply *mutatis mutandis* to procedures and request for retrial on the protection of a variety.

(2) [Articles 187, 188](#), and [189 of the Patent Act](#) shall apply *mutatis mutandis* to an action on the protection of a variety.

(3) In cases referred to in paragraph (2), "Commissioner of the Korean Intellectual Property Office" in the main sentence of [Article 187 of the Patent Act](#) shall be construed as "Minister for Food, Agriculture, Forestry and Fisheries", "[Articles 133](#) (1), [134](#) (1), [135](#) (1), [137](#) (1), and [138](#) (1) and (3)" in the proviso to the same Article shall be construed as "[Article 94](#) (1)", and "[Article 186](#) (1)" in [Article 189 \(1\) of the Patent Act](#) shall be construed as "[Article 105](#) (1)"

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **CHAPTER III DENOMINATION OF VARIETIES**

#### **Article 108 (Denomination of Varieties)**

(1) Any of the following varieties shall have one unique denomination:

1. A variety, an application for the protection of which is filed pursuant to [Article 26](#) (1);
2. A variety, an application for entry in a catalogue of varieties of which is filed pursuant to [Article 115](#) (1);
3. A variety reported to produce or import for sales its seeds pursuant to [Article 138](#) (3).

(2) Where the denomination of a variety has already been registered, or an application for its registration has been filed in the Republic of Korea or in a foreign country, such denomination

shall be used.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 109 (Requirements for Registration for Denomination of Variety)**

No denomination of a variety falling under any of the following subparagraphs shall be registered under [Article 111](#) (8):

1. The denomination of a variety indicated solely by numbers or signs;
2. The denomination of a variety indicated only by the relevant variety, or the quality, yield, time of production, a method of production, the usage or time of use of the harvest of the relevant variety;
3. The denomination of a variety likely to be misunderstood or confused because it is identical with or similar to the denomination of another variety in a genus or a species of crops to which the relevant variety belongs;
4. The denomination of a variety that is, contrary to the fact, derived from another variety or likely to be misunderstood or confused as if it is related to another variety;
5. The denomination of a variety that uses the name of the crops or the denomination of a genus or a species, or which is likely to be misunderstood or confused as the name of the crops or the denomination of a genus or a species;
6. The denomination of a variety that is apprehended to slander or insult a country, race, ethnic group, gender, person with a disability, public organization, religion or deceased person;
7. The denomination of a variety including the name, title or abbreviation of a renowned person: *Provided*, That this shall not apply where such renowned person's consent has been obtained;
8. The denomination of a variety, the origin of which is apprehended to be misunderstood or confused;
9. The denomination of a variety, an application for registration of which has been filed under the [Trademark Act](#) prior to the date of application for registration for the denomination of the variety, or which is apprehended to be misunderstood or confused because it is identical with or similar to a registered trademark.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 110 (First-to-File Rule)**

- (1) Where two or more applications for registration have been filed for the same denomination of a variety, only a person who has filed for the first application for registration for the denomination of a variety may obtain registration for the denomination of such variety.
- (2) [Article 21](#) (2) and (5) shall apply *mutatis mutandis* to paragraph (1).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 111 (Procedures for Registration for Denomination of Variety)**

(1) Any person who intends to obtain registration for the denomination of a variety (hereinafter referred to as "applicant for registration for the denomination of a variety") shall file an application for registration for the denomination of the variety with the Minister for Food, Agriculture, Forestry and Fisheries, along with documents, etc., prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

(2) An application for registration for the denomination of a variety shall be deemed to have been filed where an application for the protection of a variety has been filed with the Minister for Food, Agriculture, Forestry and Fisheries in cases referred to in [Article 108](#) (1) 1, an application for registration of the catalogue of such variety has been filed with him/her in cases referred to in subparagraph 2 of the same paragraph, or a declaration of the production or importation and sale of such variety has been filed with him/her in cases referred to in subparagraph 3 of the same paragraph.

(3) A judge shall examine whether the denomination of a variety applied for pursuant to paragraph (1) satisfies the necessary conditions for registration for the denomination of a variety under [Article 109](#).

(4) Where the denomination of a variety applied for registration falls under any of the following subparagraphs, a judge shall make a decision to refuse the application for registration for the denomination of such variety:

1. Where a decision to refuse an application for the protection of the relevant variety has been made pursuant to [Article 37](#) (1);
2. Where the denomination of a variety violates [Article 108](#) (1);
3. Where the denomination of a variety falls under any subparagraph of [Article 109](#);
4. Where the denomination of a variety cannot be registered pursuant to [Article 110](#);
5. Where an application for registration for the catalogue of the relevant variety has been rejected pursuant to [Article 116](#) (2).

(5) Where a judge intends to reject an application for registration for the denomination of a variety in accordance with paragraph (4) 2 through 4, he/she shall notify an applicant for registration for the denomination of the relevant variety, of the grounds for rejection, and request him/her to submit a new denomination of a variety within 30 days from the date the applicant for registration for the denomination of the relevant variety is notified.

(6) Where a judge is unable to find grounds falling under any subparagraph of paragraph (4) on the application for registration for the denomination of a variety under paragraph (1), he/she shall publicly announce the application for registration for the denomination of such variety, by publishing it in the official publication.

(7) Where an application for registration for the denomination of a variety under paragraph (6) is publicly announced, any person may file an objection to registration for the denomination of such variety with the Minister for Food, Agriculture, Forestry and Fisheries within 30 days from the date of the public announcement.

(8) Where the Minister for Food, Agriculture, Forestry and Fisheries is unable to find grounds falling under any subparagraph of paragraph (4) on an application for registration for the denomination of a variety after the completion of a public announcement of the application for registration for the denomination of such variety pursuant to paragraph (6) and of the procedures for a formal objection to registration for the denomination of such variety pursuant to paragraph (7), he/she shall promptly register the denomination of the relevant variety in the catalogue of varieties and notify the applicant for registration for the denomination of the variety thereof.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 111-2 (Formal Objection to Registration for Denomination of Variety)**

Where a person files an objection to registration for the denomination of a variety pursuant to [Article 111](#) (7), he/she shall submit to the Minister for Food, Agriculture, Forestry and Fisheries a written formal objection to registration for the denomination of the variety in which grounds therefor are mentioned with necessary evidence attached thereto.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

#### **Article 111-3 (Revision of Grounds for Formal Objection to Registration for Denomination of Variety)**

Any person who has filed an objection to registration of the denomination of a variety pursuant to [Article 111](#) (7) (hereafter referred to as "applicant for an objection to registration of the denomination of a variety") may revise grounds or evidences mentioned in a written formal objection to registration of the denomination of the variety within 30 days after the period for formal objection to registration of the denomination of the variety has expired.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

#### **Article 111-4 (Decision on Formal Objection to Registration of Denomination of Variety)**

(1) Where an objection to registration of the denomination of a variety pursuant to [Article 111](#) (7) is filed, a judge shall serve a duplicate of a written formal objection to registration of the denomination of a variety on the applicant for registration of the denomination of the variety and provide him/her with an opportunity to submit a written reply within a fixed period.

(2) A judge shall make a decision on a formal objection to registration of the denomination of a variety after a period pursuant to paragraph (1) expires.

(3) A decision on a formal objection to registration of the denomination of a variety shall be made in writing and the grounds therefor shall be given.

(4) Where a decision pursuant to paragraph (2) is made, the Minister for Food, Agriculture, Forestry and Fisheries shall serve a certified transcript of the decision on an applicant for registration of the denomination of a variety and an applicant for an objection to registration of the denomination of a variety.

(5) Where a decision on a formal objection to registration of the denomination of a variety is made, another objection shall not be filed for the same reason.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

**Article 111-5 (Decision of Refusal Ex Officio after Public Announcement of Application for Registration of Denomination of Variety)**

(1) Where a judge finds grounds falling under any subparagraph of [Article 111](#) (4) after the public announcement of an application for registration of the denomination of a variety, he/she may make a decision of refusal *ex officio*.

(2) Where a judge makes a decision of refusal pursuant to paragraph (1), even though an objection to registration of the denomination of a variety pursuant to [Article 111](#) (7) is filed, he/she shall not make a decision on a formal objection to registration of the denomination of such variety.

(3) Where a decision of refusal is made pursuant to paragraph (1) and an objection to registration of the denomination of a variety pursuant to [Article 111](#) (7) is filed, the Minister for Food, Agriculture, Forestry and Fisheries shall serve a certified transcript of a decision of refusal on an applicant for the objection to registration of the denomination of a variety.

(4) [Article 37](#) (2) and (3) shall apply *mutatis mutandis* to a decision of refusal pursuant to paragraph (1).

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

**Article 111-6 (Competition for Formal Objection to Registration of Denomination of Variety)**

(1) For not less than two formal objections to registration of the denomination of a variety, a judge may merge or separate such examination or decision on such objects.

(2) In cases of not less than two formal objections to registration of the denomination of a variety, where a judge recognizes that as a result of examination on one of the formal objections to registration of the denomination of the variety, such formal objection is well-founded, he/she need not make a decision on another formal objection.

(3) Where a judge makes a decision of refusal because he/she recognizes that a formal objection to registration of the denomination of a variety is well-founded pursuant to paragraph (2), the Minister for Food, Agriculture, Forestry and Fisheries shall also serve a certified transcript of the decision of refusal on an applicant for formal objection on which a decision has not been made.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

**Article 111-7 (Formal Objection to Decision to Refuse Registration of Denomination of Variety)**

[Articles 111-2 through 111-6](#) shall apply *mutatis mutandis* to a formal objection to a decision to refuse registration of the denomination of a variety.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

**Article 112 (Use of Denomination of Variety)**

(1) No person shall sell, supply, import, or export seeds by making a fraudulent use of the



denomination of a third party's variety registered pursuant to [Article 111](#) (8) (excluding a variety, the establishment of protection of which has been registered pursuant to [Article 55](#) (2)).

(2) No person shall sell or supply seeds by using an unregistered denomination of a variety in the catalogue of varieties under [Article 111](#) (8).

(3) Where an applicant for registration of the denomination of a variety or a successor to such variety uses the denomination of a variety registered pursuant to [Article 111](#) (8), he/she may indicate the name of a trademark or such, as well. In such cases, the denomination of such variety shall be indicated so as to be readily recognizable.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 113 (Cancellation of Variety Denomination)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall cancel the denomination of a variety registered pursuant to [Article 111](#) (8), in cases falling under any of the following subparagraphs:

1. Where grounds falling under [Article 111](#) (4) 2 through 4 are found;
2. Where a judicial decision to prohibit the use of the denomination of a variety is made;
3. Other cases prescribed by Presidential Decree.

(2) Where the Minister for Food, Agriculture, Forestry and Fisheries intends to cancel the denomination of a variety pursuant to paragraph (1), he/she shall notify an applicant for the relevant denomination of the variety registered, of the grounds for cancellation and request such applicant to submit a new denomination of the variety within 30 days from the date of the notification.

(3) [Articles 111](#) (3) through (8) and [111-2 through 111-6](#) shall apply *mutatis mutandis* to a new denomination of a variety submitted pursuant to paragraph (2).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **CHAPTER IV MANAGEMENT OF PROPERTIES OF VARIETY**

#### **Article 114 (Varieties subject to Registration in National Catalogue of Varieties)**

Varieties to be registered in the national catalogue of varieties in order to manage the properties of seeds of main crops for the stabilization of the production in agriculture, forestry, and fisheries shall be rice, barley, beans, corn, potatoes, and other crops prescribed by Presidential Decree: *Provided*, That crops for feed shall be excluded therefrom.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 115 (Application for Registration in Catalogue of Varieties)**

(1) Any person who intends to register a variety of crops pursuant to [Article 114](#) in the

national catalogue of varieties (hereinafter referred to as "applicant for registration in the catalogue of varieties") shall file an application for registration in the catalogue of varieties with the Minister for Food, Agriculture, Forestry and Fisheries along with samples of the seed of the relevant variety. In such cases, where a sample of the seed is trophosome, time, a method, etc., for the presentation thereof shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

(2) Matters necessary for the preparation of an application for registration in the catalogue of varieties under paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 116 (Examination of Variety Applied for Registration in Catalogue of Varieties)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall examine a variety applied for registration in the catalogue of varieties pursuant to [Article 115](#) (1), according to the standards for examination of the properties of a variety prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

(2) Where a variety applied for registration in the catalogue of varieties, fails to meet the standards for examination of the properties of a variety under paragraph (1), the Minister for Food, Agriculture, Forestry and Fisheries shall reject the application for registration of such variety.

(3) Where the Minister for Food, Agriculture, Forestry and Fisheries intends to reject an application for registration in the catalogue of varieties pursuant to paragraph (2), he/she shall notify the applicant for registration in the catalogue of varieties, of the grounds for rejection, and provide him/her with an opportunity to submit a written opinion within a fixed period.

(4) Where the Minister for Food, Agriculture, Forestry and Fisheries is unable to find grounds for rejection on an application for registration in the catalogue of varieties as a result of an examination pursuant to paragraph (1), he/she shall promptly notify the applicant for registration in the catalogue of varieties and register the relevant variety in the catalogue of varieties.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 117 (Public Announcement of Variety Registered in Catalogue of Varieties)**

Where the Minister for Food, Agriculture, Forestry and Fisheries registers a variety in the catalogue of varieties pursuant to [Article 116](#) (4), he/she shall publicly announce a species of the crops to which the relevant variety belongs, the denomination of a variety, a term of validity of registration pursuant to [Article 118](#), etc. In such cases, the same shall also apply where a term of validity of registration is extended pursuant to [Article 118](#) (2).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 118 (Term of Validity of Registration in Catalogue of Varieties)**

(1) A term of validity of registration in the catalogue of varieties pursuant to [Article 116](#) (4) shall be ten years from the year following the date a variety is registered.

(2) A term of validity of registration in the catalogue of varieties under paragraph (1) may be extended continuously by application for extension of the term of validity.

(3) An application for extension of a term of validity of registration in the catalogue of varieties under paragraph (2) shall be made within one year before the expiration of the term of validity of registration in the catalogue of varieties.

(4) The Minister for Food, Agriculture, Forestry and Fisheries shall not reject any application for extension of a term of validity of registration pursuant to paragraph (2), if the variety applied for extension of the term of validity retains the properties of the variety at the time it is registered in the catalogue of varieties.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 119 (Cancellation of Registration in Catalogue of Varieties)**

(1) Where a variety falls under any of the following subparagraphs, the Minister for Food, Agriculture, Forestry and Fisheries may cancel registration of the relevant variety in the catalogue of varieties: *Provided*, That in cases referred to in subparagraphs 4 and 5, he/she shall cancel the registration of the relevant variety in the catalogue of varieties:

1. Where the properties of a variety fail to meet the standards for examination of the properties of a variety pursuant to [Article 116](#) (1);
2. Where the cultivation of a variety causes or is likely to cause damage to the environment;
3. Where the registered denomination of a variety is cancelled because it falls under any subparagraph of [Article 113](#) (1);
4. Where a variety is registered in the catalogue of varieties by deceit or other unlawful means;
5. Where the same variety is registered in duplicate under two or more denominations of the variety (excluding the first variety registered).

(2) [Article 37](#) (2) and (3) shall apply *mutatis mutandis* to the cancellation of registration of a variety in the catalogue of varieties under paragraph (1).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 120 (Maintenance of Catalogue of Varieties)**

The Minister for Food, Agriculture, Forestry and Fisheries shall keep the part related to the relevant variety in the catalogue of varieties during the term of validity of registration of the relevant variety pursuant to Article 118.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 121 (Production of Seeds of Variety Registered in Catalogue of Varieties)**

Where the Minister for Food, Agriculture, Forestry and Fisheries intends to produce the seeds of a variety registered in the catalogue of varieties pursuant to [Article 116](#) (4) or the seeds

of a variety publicly announced because it is necessary for the stable production of the agricultural and fishery products, he/she may request any of the following persons to produce the seeds on his/her behalf:

1. The Administrator of the Rural Development Administration, or the Chief of the Korea Forest Service;
2. The Special Metropolitan City Mayor, a Metropolitan City Mayor, a *Do* Governor or the Governor of a Special Self-Governing Province (hereinafter referred to as "Mayor/*Do* Governor");
3. The Governor of a Special Self-Governing Province, or the head of a *Si/Gun*/autonomous *Gu* (hereinafter referred to as "head of a *Si/Gun*");
4. Agricultural organizations, forestry organizations or fishery organizations prescribed by Presidential Decree (hereinafter referred to as "agricultural organization or such");
5. Seed business operators, farmers, or fishermen prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Articles 122 and 123 Deleted.** <by Act No. 5668, Jan. 21, 1999>

## **CHAPTER V CERTIFICATION OF SEEDS**

### **Article 124 (Classification of Certification of Seeds)**

Certification of seeds is classified into certification given by the Minister for Food, Agriculture, Forestry and Fisheries (hereinafter referred to as "national certification") and certification given by a seed manager (hereinafter referred to as "self-certification").

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 125 (Subject Matters of National Certification)**

(1) National certification is required in any of the following cases:

1. Where the Minister for Food, Agriculture, Forestry and Fisheries produces seeds or requests others to do such business on his/her behalf pursuant to [Article 121](#);
2. Where a seed business operator, a Mayor/*Do* Governor, the head of a *Si/Gun* or an agricultural organization prescribed by Presidential Decree, such as agricultural cooperatives and the National Agricultural Cooperatives Federation under the [Agricultural Cooperatives Act](#), intends to obtain national certification in order to produce or export seeds of crops subject to registration in the catalogue of varieties under Article 114 (hereinafter referred to as "crops subject to registration in the catalogue of varieties").

(2) The Minister for Food, Agriculture, Forestry and Fisheries may recognize a seed certified by an international seed testing organization prescribed by Presidential Decree as having obtained national certification.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 126 (Subject Matters of Self-Certification)**

Self-certification is required in any of the following cases:

1. Where a seed business operator, a Mayor/Do Governor, the head of a *Si/Gun* or an agricultural organization prescribed by Presidential Decree, such as agricultural cooperatives and the National Agricultural Cooperatives Federation under the [Agricultural Cooperatives Act](#), produces seeds of crops subject to registration in the catalogue of varieties;

2. Where a seed business operator, a Mayor/Do Governor, the head of a *Si/Gun* or an agricultural organization prescribed by Presidential Decree, such as agricultural cooperatives and the National Agricultural Cooperatives Federation under the [Agricultural Cooperatives Act](#), intends to obtain self-certification in order to produce and sell seeds of crops other than crops subject to registration in the catalogue of varieties.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 127 (Qualification for Seed Managers)**

(1) Qualification as a seed manager shall be prescribed by Presidential Decree.

(2) Where a seed manager has neglected his/her duties prescribed in this Act or committed a serious fault, the Minister for Food, Agriculture, Forestry and Fisheries may cancel his/her qualification or suspend it for a period not exceeding one year.

(3) Detailed standards for administrative measures under paragraph (2) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries taking the type of offense and the degree of violation or such, into consideration.

(4) A seed manager may be registered with the Minister for Food, Agriculture, Forestry and Fisheries and obtain a certificate of registration, as prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 128 (Field Inspections)**

(1) Any person who intends to produce seeds having national certification or self-certification shall undergo a field inspection of the Minister for Food, Agriculture, Forestry and Fisheries or a seed manager once or more.

(2) Matters concerning the standards for, methods of, procedures for a field inspection by stage of seed gathering pursuant to paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 129 (Field Conditions for Production of Seeds)**

Any person who intends to produce seeds having national certification or self-certification shall maintain a certain distance from or have facilities isolated from the cultivation area of a variety or crops having a risk of crossing to prevent crossing with another variety or crops of another family line.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 130 (Seed Certification)**

(1) Any person who intends to produce seeds having national certification or self-certification shall obtain seed certification from the Minister for Food, Agriculture, Forestry and Fisheries or a seed manager on seeds produced in a field that has passed the standards for field inspection pursuant to [Article 128](#) (2).

(2) Any person who has an objection to the results of seed certification under paragraph (1) may apply for reexamination to the Minister for Food, Agriculture, Forestry and Fisheries or the seed manager who has conducted such seed certification.

(3) Matters relating to the standards for, methods of, procedures for seed certification by stage of seed gathering or reexamination under paragraph (1) or (2) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 131 (Mark of Certification)**

(1) Any person who intends to sell or distribute a certified seed that has passed a field inspection under [Article 128](#) and has obtained seed certification under [Article 130](#) shall put a mark of certification on the relevant certified seed. In such cases, the certification documents related to the seed certification shall be retained for three years.

(2) A mark of certification or a term of validity of the certification pursuant to the former part of paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 132 Deleted.** <by Act No. 5668, Jan. 21, 1999>

#### **Article 133 (Issuance of Certificates)**

Where any person who has obtained certification on a certified seed marked with certification pursuant to the former part of [Article 131](#) (1) requests the issuance of a certificate, the Minister for Food, Agriculture, Forestry and Fisheries or a seed manager shall issue the certificate.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 134 (Ex Post Facto Control Examination)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall conduct an *ex post facto* control examination of certified seeds of crops subject to registration in the catalogue of varieties.

(2) Matters concerning the *ex post facto* control examination under paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 135 (Lapse of Certification)**

Seed certification shall be deemed to have lapsed, if a certified seed falls under any of the following subparagraphs:

1. Where the mark of certification pursuant to the former part of [Article 131](#) (1) has not been affixed or the mark of certification has been forged or altered;
2. Where the term of validity of the certification under [Article 131](#) (2) has expired;
3. Where the package of a certified seed has been unpacked or opened: *Provided*, That repackaging into smaller packages under the supervision of a certification agency or a seed manager who has certified the relevant seed shall be excluded;
4. Where the certification has been obtained by deceit or other unlawful means.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 136 (Mark of Certification on Repacked Seeds)**

A mark of certification on repacked seeds pursuant to the proviso to subparagraph 3 of [Article 135](#) shall be identical with that of the relevant variety marked prior to repacking.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

## **CHAPTER VI DISTRIBUTION OF SEEDS**

#### **Article 137 (Registration of Seed Business)**

(1) Any person who intends to operate a seed business shall be provided with facilities prescribed by Presidential Decree and register his/her business with a Mayor/Do Governor. *<Amended by Act No. 10332, May 31, 2010>*

(2) Any person who intends to operate a seed business in accordance with paragraph (1) shall employ one or more seed manager: *Provided*, That this shall not apply to a person intending to produce and sell seeds of crops prescribed by Presidential Decree. *<Amended by Act No. 10332, May 31, 2010>*

(3) Deleted. *<by Act No. 5668, Jan. 21, 1999>*

(4) Paragraphs (1) and (2) shall not apply where the Minister for Food, Agriculture, Forestry and Fisheries, the Administrator of the Rural Development Administration, the Chief of the Korea Forest Service, a Mayor/Do Governor, the head of a *Si/Gun*, or an agricultural organization prescribed by Presidential Decree, such as agricultural cooperatives and the National Agricultural

Cooperative Federation under the [Agricultural Cooperatives Act](#), propagates, produces, sells, distributes, exports or imports seeds. <Amended by Act No. 10332, May 31, 2010>

#### **Article 138 (Sale of Seeds)**

(1) Any person who intends to sell or supply seeds of crops subject to registration in the catalogue of varieties or seeds of the varieties announced because they are required for the stable production of agricultural products and fishery products under [Article 121](#) shall obtain certification of seeds under [Article 124](#), except for cases falling under any of the following subparagraphs:

1. Where seeds are used only as the parents of the first filial generation or of a synthetic variety;
2. Where a seller sells seeds for the purpose of propagation and repurchases all of the seeds produced after such sale;
3. Where seeds are used for testing or research purposes;
4. Where all of the seeds produced are exported;
5. Where a breeder directly sells or transfers seeds of a variety bred officially for them to be used for the purpose of propagation;
6. Where seeds are used for the purpose other than for seed.

(2) Where it is deemed necessary for the distribution of seeds, notwithstanding paragraph (1), the Minister for Food, Agriculture, Forestry and Fisheries may, even if registration of a variety in the catalogue of varieties has been cancelled pursuant to [Article 119](#) (1), allow the seeds of the relevant variety produced before the date of cancellation or being produced to be sold or supplied until the year following the date of cancellation. In such cases, he/she shall publicly announce the areas and a period subject to sale or supply.

(3) Any person who intends to produce or import for sale, the seeds of a variety, other than the seeds of varieties falling under any of the following subparagraphs, shall report to the Minister for Food, Agriculture, Forestry and Fisheries along with samples of a variety of the relevant variety. In such cases, where samples of seeds are trophosome and marine plants, time, a method or such, of the presentation thereof shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries:

1. Seeds of a variety, an application for which is published in accordance with [Article 34](#) (1);
2. Seeds of a variety registered in the catalogue of varieties pursuant to [Article 116](#) (4).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 139 (Cancellation of Registration of Seed Business)**

(1) Where a seed business operator falls under any of the following subparagraphs, the head of a *Si/Gun* may cancel registration of his/her seed business or order him/her to suspend his/her seed business, for a period not exceeding six months: *Provided*, That where a seed business operator falls under subparagraph 1, the head of a *Si/Gun* shall cancel such registration:



1. Where a seed business operator registers a seed business by deceit or other unlawful means;
2. Where a seed business operator fails to commence his/her business within one year from the date of registration of the seed business, or suspends his/her business consecutively for not less than one year without justifiable grounds;
3. Where a seed business operator fails to comply with an order to report whether he/she licenses a protected variety pursuant to [Article 82](#);
4. Where a seed business operator fails to meet the standards of facilities pursuant to [Article 137](#) (1) after having registered a seed business;
5. Where a seed business operator fails to employ a seed manager, in violation of the main sentence of [Article 137](#) (2);
6. Where a seed business operator sells or supplies seeds of crops subject to registration in the catalogue of varieties, certification of which has not been obtained, in violation of [Article 138](#) (1);
7. Where a seed business operator produces or imports for sales, seeds not reported, in violation of [Article 138](#) (3);
8. Where a seed business operator exports or imports seeds of crops subject to registration in the catalogue of varieties without having submitted a report, in violation of the main sentence of [Article 140](#) (1);
9. Where a seed business operator exports or imports seeds, the exportation or importation of which is restricted pursuant to [Article 140](#) (3), or distributes the imported seeds, the distribution of which is restricted in Korea;
10. Where a seed business operator sells foreign-produced seeds that have not undergone an adaptability test for importation, in violation of [Article 141](#) (1);
11. Where a seed business operator sells or supplies seeds with no quality indication, in violation of [Article 143](#);
12. Where a seed business operator refuses, hinders or evades an examination of seeds or such, or the collection of seeds under [Article 145](#) (1);
13. Where a seed business operator produces or sells seeds, the production or sale under [Article 145](#) (2) of which have been ordered to suspend.
  - (2) Where a seed business operator continues to operate his/her business during the period of suspension, in violation of a suspension order under paragraph (1), the head of a *Si/Gun* may cancel the registration of his/her business.
  - (3) No person whose registration of seed business has been cancelled pursuant to paragraph (1) or (2) shall re-register his/her seed business unless two years have passed from the date of the cancellation.

(4) Detailed standards for administrative measures under paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries, taking the type of such offense, the degree of violation or such, into consideration.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 140 (Importation and Exportation of Seeds)**

(1) Any person who intends to import or export seeds of crops subject to registration in the catalogue of varieties shall report to the Minister for Food, Agriculture, Forestry and Fisheries: *Provided*, That this shall not apply where a person prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries imports or exports the seeds less than the amount prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries for the purpose of test or research. *<Amended by Act No. 10332, May 31, 2010>*

(2) Deleted. *<by Act No. 10332, May 31, 2010>*

(3) The Minister for Food, Agriculture, Forestry and Fisheries may restrict the exportation or importation of seeds or the distribution of imported seeds in Korea, as prescribed by Presidential Decree, where he/she deems that they may cause serious impediments to the protection of the national ecological system or the preservation of natural resources. *<Amended by Act No. 10332, May 31, 2010>*

(4) Deleted. *<by Act No. 5668, Jan. 21, 1999>*

#### **Article 141 (Import Adaptability Test)**

(1) Any person who intends to import for sale, the seeds of a variety that are imported for the first time, as the seeds of crops determined and announced by the Minister for Food, Agriculture, Forestry and Fisheries, shall undergo an import adaptability test on the seeds of such variety conducted by the Minister for Food, Agriculture, Forestry and Fisheries.

(2) Where the results of an import adaptability test conducted in accordance with paragraph (1) fail to meet the standards for examination prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries, the Minister for Food, Agriculture, Forestry and Fisheries may restrict the distribution of the seeds of the relevant variety in Korea.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 142 (Recommendation of Importation of Seeds)**

(1) Any person who intends to import seeds at the concession tariff rates applicable to the market access quantity in the schedule of concessions of the Republic of Korea in accordance with the Marrakesh Agreement Establishing the World Trade Organization (WTO) shall obtain a recommendation from the Minister for Food, Agriculture, Forestry and Fisheries.

(2) The Minister for Food, Agriculture, Forestry and Fisheries may entrust the relevant institution or organization he/she designates to conduct importation recommendation affairs regarding the seeds pursuant to paragraph (1). In such cases, the recommended quantity by product, recommendation standards, or other necessary matters shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 143 (Indication of Quality of Seeds in Distribution)**

Any person who intends to sell or supply seeds not subject to national certification or seeds that do not receive self-certification shall indicate the production year, the year and month of packaging of the seeds, the warranty period of germination of the seeds and other matters prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries on the container or the package of the seeds.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 144 (Restrictions on Seeds in Distribution)**

No person shall sell or supply, or store or exhibit for sale, the seeds the warranty period of germination pursuant to [Article 143](#) of which has expired.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

#### **Article 145 (Inspection of Distribution of Seeds)**

(1) Where the Minister for Food, Agriculture, Forestry and Fisheries deems it necessary for the production of quality seeds and the smooth distribution thereof, he/she may require the public officials concerned to obtain access to the places of business or offices or such, of a seed business operator or a seed dealer to inspect such facilities, related documents or books, seeds or such, or to collect the seeds in the minimum amount necessary for the inspection.

(2) The Minister for Food, Agriculture, Forestry and Fisheries may require the public official concerned to stop the production or sale of the seeds being produced or sold, in violation of this Act, or to collect them, and shall require the public official concerned to prepare the list of the seeds collected and issue it to a person who owned or carried the seeds at the time he/she collects the seeds.

(3) The Minister for Food, Agriculture, Forestry and Fisheries shall have the public official concerned to store the seeds collected in accordance with paragraph (2) for one year: *Provided*, That he/she may return or destroy the seeds determined and publicly notified by the Minister for Food, Agriculture, Forestry and Fisheries, as those difficult to be stored, by applying paragraph (4) *mutatis mutandis* after the inspection.

(4) The Minister for Food, Agriculture, Forestry and Fisheries shall require the public official concerned to return the seeds, the storage period under paragraph (3) of which has lapsed, to a person who owned or carried the seeds at the time he/she collects the seeds after having made them unusable: *Provided*, That where he/she is unable to return the seeds because the address of a person who owned or carried the seeds at the time he/she collects them is unclear or by reason of his/her refusal to receive them, he/she may destroy such seeds.

(5) When the public official concerned performs his/her duties in accordance with paragraph (1) or (2), he/she shall carry with him/her a certificate indicating his/her authority and present it to the person concerned, and produce a document stating the matters concerning objects and time of an inspection, identity of an inspector, etc.

(6) Matters necessary for storage of seeds pursuant to paragraph (3) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 146 Deleted.** <by Act No. 5668, Jan. 21, 1999>

**Article 147 (Storage and Management of Seed Samples)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall store and manage a certain amount of samples of the seeds falling under any of the following subparagraphs: *Provided*, That where samples of a seed are trophosome and marine plants, time, a method or such, of the presentation thereof shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries:

1. A seed of a variety, the establishment of the variety protection right of which has been registered in accordance with [Article 55](#) (2);
2. A seed of a variety registered in the catalogue of varieties in accordance with [Article 116](#) (4);
3. A seed of a variety reported in accordance with [Article 138](#) (3).

(2) Matters necessary for storing samples of a seed under paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 148 (Disputes concerning Seeds in Distribution)**

(1) Where a dispute concerning seeds in distribution occurs, the parties to the dispute may request the Minister for Food, Agriculture, Forestry and Fisheries or a seed manager who has certified seeds of the relevant variety to submit materials on certification of the seeds of the relevant variety.

(2) The parties to the dispute under paragraph (1) may request the Minister for Food, Agriculture, Forestry and Fisheries to conduct a test comparing the seeds subject to the relevant dispute with samples of a seed that is stored and managed pursuant to [Article 147](#).

(3) When the parties to the dispute file an application for comparison testing pursuant to paragraph (2), they shall jointly collect and confirm the samples of a seed in dispute and submit the sealed samples of the seed to the Minister for Food, Agriculture, Forestry and Fisheries.

(4) Where the joint sample collection pursuant to paragraph (3) is not realized due to reasons prescribed by Presidential Decree, such as noncooperation of either one of the parties to the dispute or such, the parties to the dispute may request the Minister for Food, Agriculture, Forestry and Fisheries to collect such samples. In such cases, a request for comparison testing pursuant to paragraph (2) shall be deemed to have been made.

(5) Where the Minister for Food, Agriculture, Forestry and Fisheries receives a request for the collection of samples pursuant to paragraph (4), he/she shall require the relevant public official to collect the samples within seven days. In such cases, the parties to the dispute shall cooperate in the collection of samples.

(6) Where the Minister for Food, Agriculture, Forestry and Fisheries receives an application

for comparison testing pursuant to paragraph (2) or the latter part of paragraph (4), he/she shall conduct comparison testing and inform the parties to the dispute of the results thereof without delay.

(7) The Minister for Food, Agriculture, Forestry and Fisheries may request the parties to the dispute under paragraph (1) to submit materials required for comparison testing pursuant to paragraph (6).

(8) Where damage related to the seeds in distribution has occurred due to defects of the seeds, any injured person may request the compensation therefor to a seed business operator, as prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

## **CHAPTER VII Deleted.**

**Articles 149 through 157 Deleted.** <by Act No. 6190, Jan. 21, 2000>

## **CHAPTER VIII SUPPLEMENTARY PROVISIONS**

### **Article 158 (Seed Council)**

(1) The Seed Council shall be established in the Ministry for Food, Agriculture, Forestry and Fisheries to conduct the following matters:

1. Advice to the Minister for Food, Agriculture, Forestry and Fisheries concerning the promotion of the seed industry, the protection of variety protection rights, the variety catalogue system or such;
2. Deliberation on a ruling on the establishment of a non-exclusive license under [Article 68](#);
3. Mediation of a dispute on infringement of a variety protection right.

(2) The Seed Council shall be comprised of not less than 10 but not more than 15 commissioners (hereinafter referred to as "seed commissioners") including one chairperson and one standing judge of the Variety Protection Appeals Commission under [Article 91](#) (2).

(3) The seed commissioners shall be appointed or commissioned by the Minister for Food, Agriculture, Forestry and Fisheries from among persons falling under any of the following subparagraphs and the chairperson shall be appointed or commissioned by the Minister for Food, Agriculture, Forestry and Fisheries from among the seed commissioners:

1. Persons experienced in affairs related to seeds as persons who are or have been public officials in the position of Grade III or higher (including public officials in general service belonging to the Senior Civil Service);
2. Persons who have majored in the field related to seeds as persons who are or have been associate professors or higher of a university;

3. Persons who are qualified as attorneys-at-law or patent attorneys;
  4. Persons who are or have been executives of an agricultural organization, a forestry organization or a fishery organization;
  5. Persons who are or have been executives of an association related to the seed industry;
  6. Persons recommended by a civil organization (referring to a non-profit, non-governmental organization under [Article 2 of the Assistance for Non-Profit, Non-Governmental Organizations Act](#)).
- (4) A seed commissioner shall serve a two-year term, and may be reappointed only twice.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 158-2 (Mediation of Dispute)**

(1) Any person who desires the mediation of a dispute on infringement of a variety protection right may file an application for mediation with the Seed Council.

(2) Any person who intends to file an application for mediation pursuant to paragraph (1) shall submit to the Seed Council an application for mediation prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

(3) The chairperson of the Seed Council who has received an application for mediation pursuant to paragraph (2) shall, where he/she deems it necessary, refer it to the mediation department pursuant to paragraph (4) and serve a copy of such application for mediation on the other party to the dispute.

(4) The Seed Council which has received an application for mediation pursuant to paragraph (1) may organize the mediation department with three commissioners and shall complete the mediation within one year from the date it receives an application for mediation: *Provided*, That where a cultivation test or such, is required, it may extend the period for mediation, as prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

(5) The Seed Council may require a person who has applied for mediation of a dispute in infringement of a variety protection right pursuant to paragraph (1) to bear expenses incurred in an inspection: *Provided*, That where the mediation has been effected and no special agreement exists, it may require the parties to bear the expenses equally.

(6) The method of calculating and paying expenses to be borne under paragraph (5), a period therefor, etc. shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 158-3 (Exclusion of Commissioner)**

(1) Where a seed commissioner falls under any of the following subparagraphs, he/she shall be excluded from the relevant mediation:

1. Where any of the following persons becomes a party to the relevant dispute or becomes

jointly entitled or jointly liable with any of the parties:

- (a) A seed commissioner;
  - (b) A spouse of a seed commissioner;
  - (c) A person who was a spouse of a seed commissioner.
2. Where a seed commissioner is or has been a relative of the party to the relevant dispute;
  3. Where a seed commissioner has testified or appraised with respect to the relevant dispute;
  4. Where a seed commissioner takes or has taken part in the relevant dispute as a proxy of the party.
- (2) Where the party has a reason that it is difficult for him/her to expect fair performance of duties from a seed commissioner, he/she may file an application for challenge with the Seed Council and the Seed Council shall decide challenge when it recognizes that the application for challenge is appropriate.
- (3) Where a seed commissioner falls under paragraph (1) or (2), he/she may evade from the performance of duties concerning the case of his/her own accord.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 158-4 (Request for Data)**

- (1) If it is deemed necessary for mediation of a dispute, the Seed Council may request the Minister for Food, Agriculture, Forestry and Fisheries and the head of an agency under his/her control to provide necessary cooperation, such as presentation of data or opinions, a cultivation test, a genetic test or such.
- (2) The head of an agency who has been requested to cooperate under paragraph (1) shall comply with such request unless extenuating circumstances exist.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 158-5 (Request for Attendance)**

- (1) The Seed Council may, if necessary, request the party, his/her proxy, or a party interested to attend or present relevant documents.
- (2) Where the Seed Council requests the party, his/her proxy, or a party interested to attend or present relevant documents pursuant to paragraph (1), it shall so request in writing seven days prior to the day fixed for a meeting.
- (3) The Seed Council shall mention in the document referred to in paragraph (2) the purport that, where he/she fails to comply with its request without justifiable grounds, he/she shall be deemed to have abandoned a statement of his/her opinion.
- (4) Where the party fails to comply with a request for attendance or presentation of relevant

documents pursuant to paragraph (1) without justifiable grounds, the mediation shall not be deemed to have been effected.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 158-6 (Decision of Mediation Ex Officio)**

(1) Where the parties fail to reach agreement or it is judged that assertion of an applicant has a good reason, the Seed Council may make a decision that takes the place of the mediation *ex officio* (hereinafter referred to as "decision of the mediation *ex officio*") within the extent not contrary to the purport of an application, taking the interest of the parties and all the other circumstances into consideration.

(2) Any of the following matters may be included in a decision of the mediation *ex officio*:

1. The injunction of an act of infringement;
2. Compensation for damage or other necessary measures for relief;
3. Measures necessary for the prevention of the recurrence of the same or similar act of infringement.

(3) The text and reasons shall be mentioned in a decision of the mediation *ex officio* and all the mediation members who have participated therein shall affix their signature and seal thereto, and a certified transcript thereof shall be served on the parties without delay.

(4) Where a party fails to file an objection within 14 days from the date he/she is served a decision of the mediation pursuant to paragraph (3), he/she shall be deemed to have accepted the mediation.

(5) Where an objection is filed within the period referred to in paragraph (4), the Seed Council shall notify the other party to a formal objection without delay.

*[This Article Newly Inserted by Act No. 10332, May 31, 2010]*

#### **Article 158-7 (Materialization of Mediation)**

(1) The mediation shall materialize by stating the matters agreed by and between the parties in a protocol.

(2) When the mediation has materialized pursuant to paragraph (1), agreement in the same details as those of a protocol shall be deemed to have materialized by and between the parties: *Provided*, That this shall not apply to those concerning matters that the parties cannot dispose of arbitrarily.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 158-8 (Organization and Operation of Seed Council and Mediation Department)**

Matters necessary for the organization and operation of the Seed Council and the Mediation Department shall be prescribed by Presidential Decree,



*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 159 (Hearings)**

Where the Minister for Food, Agriculture, Forestry and Fisheries or the head of a *Sil/Gun* intends to take any of the following measures, he/she shall hold a hearing:

1. The cancellation of qualifications as a seed manager under [Article 127](#) (2);
2. The cancellation of registration of a seed business under [Article 139](#) (1) or (2).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 160 (Fees)**

(1) Any of the following persons shall pay a fee:

1. A person who intends to register an appointment or change of a variety protection agent pursuant to [Article 3](#) (4);
2. A person who intends to file an application for the protection of a variety pursuant to [Article 26](#) (1);
3. A person who intends to claim a right of priority pursuant to [Article 27](#) (1);
4. A person who intends to register pursuant to [Article 53](#) (excluding registration of the establishment of a variety protection right);
5. A person who intends to request a ruling on the establishment of a non-exclusive license pursuant to [Article 68](#) (1);
6. A person who intends to request a trial on a variety protection right pursuant to [Articles 93](#) and [94](#);
7. A person who intends to request a retrial under [Article 101](#);
8. A person who intends to file an application for registration in the catalogue of varieties pursuant to [Article 115](#) (1);
9. A person who intends to request the extension of a term of validity of registration in the catalogue of varieties pursuant to [Article 118](#) (2);
10. A person who intends to obtain national certification pursuant to [Article 125](#) (1) 2;
11. A person who intends to receive a certificate under [Article 133](#);
12. A person who intends to report the seeds he/she intends to produce or import for sale pursuant to [Article 138](#) (3);
13. A person who applies for an import adaptability test pursuant to [Article 141](#) (1);

14. A person who applies for a certified transcript, an abridged transcript, a copy, or a certificate of various documents.

(2) Fees, payment method thereof, payment due dates thereof or such, in accordance with paragraph (1) shall be prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 161 (Exemption from Fees)**

Notwithstanding [Article 160](#), the State, local governments and beneficiaries pursuant to [Article 5 of the National Basic Living Security Act](#) shall be exempted from fees.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 162 (Refund of Fees)**

Fees paid shall be refunded only where fees have been paid by mistake.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 163 (Language Used)**

All documents under this Act shall be prepared in Korean, and where it is necessary to use Chinese characters and other foreign letters, they shall be written in parentheses: *Provided*, That this shall not apply to cases prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 164 (Retainment of Documents)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries shall retain the documents concerning an application for the protection of a variety or a variety protection right for five years from the date a decision of abandonment, invalidation, withdrawal or refusal of the application for the protection of the variety is made or the term of existence of the variety protection right lapses.

(2) Any party interested in the protection of a variety may file an application for reading and reproduction of documents related to applications for the protection of varieties, documents for variety protection rights, documents concerning tests conducted pursuant to [Article 35](#) or [83](#) (2) with the Minister for Food, Agriculture, Forestry and Fisheries.

(3) Where the Minister for Food, Agriculture, Forestry and Fisheries has received an application pursuant to paragraph (2), he/she shall not permit it, if it falls under any of the following subparagraphs:

1. Where a variety falls under [Article 57](#) (3) 2 and an applicant for the protection of the relevant variety has requested non-disclosure of the variety;

2. Where the documents are related to an application for the protection of a variety that has

not been published;

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 165 (Promotion of Seed Industry)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries may support a budget necessary for the promotion of the seed industry and the breeding, production, sale of excellent varieties or facilities for supply of the seeds of excellent varieties. *<Amended by Act No. 10332, May 31, 2010>*

(2) and (3) Deleted. *<by Act No. 10332, May 31, 2010>*

(4) The Minister for Food, Agriculture, Forestry and Fisheries may subsidize all or some expenses incurred in the production, supply, etc., of seeds to any person who is entrusted with the production of seeds pursuant to any subparagraph of [Article 121](#). *<Amended by Act No. 10332, May 31, 2010>*

(5) Deleted. *<by Act No. 10332, May 31, 2010>*

**Article 166 (Delegation or Entrustment of Authority)**

(1) The Minister for Food, Agriculture, Forestry and Fisheries may delegate part of his/her authority under this Act to the Administrator of the Rural Development Administration, the Chief of the Korea Forest Service, a Mayor/Do Governor, the head of a *Si/Gun* or the head of an agency under his/her control, as prescribed by Presidential Decree.

(2) The Minister for Food, Agriculture, Forestry and Fisheries may entrust part of his/her authority under this Act to a juristic person or an organization related to agriculture, forestry and fisheries prescribed by Ordinance of the Ministry for Food, Agriculture, Forestry and Fisheries, as prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 167 (Relationship to other Acts)**

This Act shall govern seeds for forestry, mulberry seedlings, tobacco seeds, seeds of marine plants, and ginseng seeds, except as otherwise prescribed by the [Creation and Management of Forest Resources Act](#), the [Tobacco Business Act](#), the [Fisheries Act](#), and the [Ginseng Industry Act](#).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

**Article 168 (Application *Mutatis Mutandis* of the Patent Act)**

[Articles 217, 218 through 220](#), and [222 of the Patent Act](#) shall apply *mutatis mutandis* to the service or such, of documents in procedures for the protection of varieties.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

## CHAPTER IX PENAL PROVISIONS

### Article 169 (Offense of Infringement)

(1) Any person falling under any of the following subparagraphs shall be punished by imprisonment for not more than five years or by a fine not exceeding 30 million won:

1. A person who infringes a variety protection right or an exclusive license;
2. A person who infringes a right under [Article 34-2](#) (1): *Provided*, That this shall apply where the establishment of the relevant variety protection right has been registered;
3. A person who receives a decision or a trial decision of the protection of a variety by deceit or other unlawful means.

(2) For offenses referred to in paragraph (1) 1 and 2, a public prosecution may be instituted only when an accusation is brought.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### Article 170 (Offense of Perjury)

(1) Where a witness, expert witness or interpreter who has taken an oath pursuant to [Article 154](#) or [157 of the Patent Act](#), which applies *mutatis mutandis* in accordance with [Article 100](#), makes a false statement, gives a false expert opinion or makes a false interpretation before the Appeals Commission, he/she shall be punished by imprisonment for not more than five years, or by a fine not exceeding ten million won.

(2) Where any person who has committed an offense under paragraph (1) surrenders himself/herself to justice before a decision of such a case or the determination of a trial decision, he/she may be commuted or exempted from the punishment.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### Article 171 (Offense of False Marking)

Any person who violates [Article 90](#) shall be punished by imprisonment for not more than three years or by a fine not exceeding 20 million won.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### Article 172 (Offense of Divulgence of Confidential Information)

Where any employee of the Ministry for Food, Agriculture, Forestry and Fisheries (where the authority has been delegated pursuant to [Article 166](#), including any employee of an agency to which the authority has been delegated), any employee of the Appeals Commission or any person who was in such position divulges or uses by stealth confidential information that he/she has become aware of in the course of performing official duties on a variety the protection of which has been applied for, he/she shall be punished by imprisonment for not more than two years or by a fine not exceeding five million won.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 173 (Offense of Seed Business without Registration)**

Any person falling under any of the following subparagraphs shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won:

1. A person who sells, supplies, exports or imports seeds by making fraudulent use of the denomination of another person's variety, other than the protected variety, in violation of [Article 112](#) (1);
2. A seed manager who issues a false certificate pursuant to [Article 133](#);
3. A person who operates seed business without registration thereof, in violation of [Article 137](#) (1);
4. A person who sells or supplies seeds of crops, in violation of [Article 138](#) (1);
5. A person who sells the seeds of a variety by producing or importing them without reporting, or a person who falsely reports, in violation of [Article 138](#) (3);
6. A person who continues to operate seed business, registration of which has been cancelled, or who continues to operate seed business even after having been ordered to suspend the business, in violation of [Article 139](#) (1);
7. A person who exports or imports seeds or distributes imported seeds, in violation of [Article 140](#) (3);
8. A person who imports seeds without having an adaptability test on seeds, in violation of [Article 141](#) (1);
9. A person who produces or sells seeds, the production or sale of which has been ordered to be stopped, in violation of [Article 145](#) (2);
10. A person who refuses, hinders or evades sample gathering, in violation of the latter part of [Article 148](#) (5).

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 174 (Joint Penal Provisions)**

Where the representative of a corporation, or an agent, employee, or other servant of a corporation or an individual commits an offense under [Article 169](#) (1), [171](#) or [173](#) in connection with the business of the corporation or the individual, not only shall such violator be punished, but also the corporation or the individual shall be punished by a fine under the relevant provisions: *Provided*, That this shall not apply where the corporation or the individual has not neglected to pay due attention to and supervision concerning the relevant business in order to prevent such violation.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

### **Article 175 (Confiscation)**

- (1) The court shall confiscate an article that has caused an act falling under [Article 169](#) (1) 1

or 2 or an article generated from such act, or sentence to give the article to the injured person at his/her request.

(2) Where the injured person has received the article under paragraph (1), he/she may claim compensation for losses only exceeding the value of the article.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

#### **Article 176 (Fines for Negligence)**

(1) Any person falling under any of the following subparagraphs shall be punished by a fine for negligence not exceeding ten million won:

1. A person who sells or supplies seeds by using an unregistered denomination of a variety, in violation of [Article 112](#) (2);

2. A person who fails to retain the inspected documents related to certification of a seed, in violation of the latter part of [Article 131](#) (1);

3. A person who exports or imports seeds without reporting, in violation of the main sentence of [Article 140](#) (1);

4. A person who sells or supplies seeds without indicating quality of the seeds in distribution, in violation of [Article 143](#).

5. A person who refuses, hinders or evades an inspection or collection under [Article 145](#) (1).

(2) Any person who sells or supplies any seed, the warranty period for germination of which has expired or any person who keeps or exhibits such a seed for sale, in violation of [Article 144](#), shall be punished by a fine for negligence not exceeding two million won.

(3) Any person falling under any of the following subparagraphs shall be punished by a fine for negligence not exceeding 500,000 won:

1. A person who fails to report the purport of inheritance of a variety protection right, an exclusive license, or the right of pledge, or any other general succession, in violation of [Article 63](#) (2);

2. A person who fails to comply with an order to report licensing referred to in [Article 82](#);

3. A person, other than a witness, expert witness, or interpreter who has taken an oath pursuant to [Article 154 \(8\) of the Patent Act](#) which applies *mutatis mutandis* pursuant to Article 100, who makes a false statement before the Appeals Commission;

4. A person who, without justifiable grounds, fails to comply with an order by the Appeals Commission to present or exhibit documents or articles relating to the taking of evidence or the preservation of evidence pursuant to [Article 154](#) or [157](#) which applies *mutatis mutandis* pursuant to [Article 100](#);

5. A person summoned by the Appeals Commission as a witness, expert witness, or interpreter pursuant to [Article 154](#) or [157 of the Patent Act](#) which applies *mutatis mutandis* pursuant to [Article 100](#), who fails to obey a summons, or refuses to take an oath, to make a

statement, to testify, to give an expert opinion or to interpret without justifiable grounds.

(4) Fines for negligence under paragraphs (1) through (3) shall be imposed and collected by the Minister for Food, Agriculture, Forestry and Fisheries or a Mayor/Do Governor, as prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 10332, May 31, 2010]*

## **ADDENDA**

### **Article 1 (Enforcement Date)**

This Act shall enter into force on December 31, 1997: *Provided*, That the provisions of [Articles 91 through 107](#) shall enter into force on March 1, 1998.

### **Article 2 (Repeal of Other Acts)**

The Seeds of Staple Crops Act and the Management of Seeds and Seedlings Act shall be repealed.

### **Article 3 (Examples in Application Mutatis Mutandis of Patent Act)**

In the application of Articles 3 and 9, 10 (1), (2), and (4), 17, 19 through 23 of the [Patent Act](#) under [Article 10](#) of this Act, and in the application of Articles 157, 165 (3) through (6), and 166 of the [Patent Act](#) under [Article 48](#) of this Act, the corresponding provisions in the same Act to be effective on March 1, 1998 shall be deemed to be applied: *Provided*, That from the enforcement date of this Act to February 28, 1998, the corresponding provisions in the [Patent Act](#) at the time when this Act enters into force shall be deemed to be applied *mutatis mutandis*.

### **Article 4 (Transitional Measures for Known Varieties at Time When This Act Enters into Force)**

(1) Among the varieties which have been known at the time when this Act enters into force, notwithstanding the provisions of [Article 13](#) (1), a variety falling under any of the following subparagraphs shall be entitled for variety protection under this Act, where an application for variety protection thereof is filed within one (1) year from the enforcement date of this Act:

1. A variety which has been registered under Article 6 of the previous Management of Seeds and Seedlings Act;
2. A variety of a superior seed specified under Article 2 of the previous Seeds of Staple Crops Act;
3. A variety which has been registered under Article 45 (2) of the [Forestry Act](#);
4. A variety of which establishment of the variety protection right has been registered in a foreign country;
5. A variety for which identification of the breeder and initial circulation date can be verified.

(2) The duration of a variety protection right for a protected variety under paragraph (1) shall be calculated from the date falling under any of the following subparagraphs: *Provided*, That if the variety falls under two (2) or more subparagraphs, the earliest date shall be used:

1. The date of the registration of the variety, if the variety falls under paragraph (1) 1;
2. The date of the ruling of the Variety Committee, if the variety falls under paragraph (1) 2;
3. The date of the registration of the variety, if the variety falls under paragraph (1) 3;
4. The date of the registration of establishment of the variety protection right of the variety, if the variety falls under paragraph (1) 4; and
5. The date of initial distribution of the variety, if the variety falls under paragraph (1) 5.

(3) The effect of a variety protection right of which establishment has been registered under paragraph (1) shall not be extended to any exploitation that has been initiated before the filing of an application for variety protection of the variety.

(4) Where variety protection has been granted under paragraph (1), a person, who has been exploiting the protected variety or has been making preparation therefor, in good faith, in the Republic of Korea, prior to the filing date of an application for variety protection, shall have a nonexclusive license on that variety protection right, but such non-exclusive license shall be limited to the extent of commercial and industrial exploitation of the protected variety, which is presently ongoing or for which preparations have been made. In this case, the non-exclusive licensee shall pay an adequate compensation as consideration to the variety protection right holder.

(5) The provisions of [Article 75](#) (2) shall apply *mutatis mutandis* to the non-exclusive license under paragraph (4).

#### **Article 5 (Transitional Measures on Registration of Variety Denomination)**

A variety denomination of the variety falling under any of the subparagraphs in Article 4 (1) of Addendum shall be deemed to be a variety denomination which has been registered under [Article 111](#) (8).

#### **Article 6 (Transitional Measures on Entry of Seed)**

The superior varieties which have been produced by the Minister of Agriculture and Forestry in accordance with the previous Seeds of Staple Crops Act and the varieties which have been registered in accordance with the previous Management of Seeds and Seedlings Act, at the time when this Act enters into force, if the variety is subject to the entry in the catalogue of varieties under [Article 114](#), shall be deemed to be a variety entered in the catalogue of varieties and published under [Article 117](#); and if the variety is other than those which are subject to the entry in the catalogue of varieties, shall be deemed to be a variety reported under [Article 138](#) (3).



#### **Article 7 (Transitional Measures on Seed Certification)**

Among the superior varieties produced by the Minister of Agriculture and Forestry in accordance with the previous Seeds of Staple Crops Act at the time when this Act enters into force, the seed of a variety which is subject to the entry in the catalogue of varieties under [Article 114](#) shall be deemed to have been certified in accordance with [Article 124](#).

#### **Article 8 (Transitional Measures on Registration of Seed Farming, etc.)**

A person who has reported the business of the seed farming under the previous Management of Seeds and Seedlings Act, at the time when this Act enters into force, shall be deemed to have registered the seed farming under [Article 137](#) (1); a person who has registered the seed and seedling business under the previous Management of Seeds and Seedlings Act shall be deemed to have reported the business of the seed trade under paragraph (3) of the same Article; and a person who has reported the seed and seedling business under the previous Seeds of Staple Crops Act shall be deemed to have reported the seed trade under paragraph (3) of the same Article. In this case, a person who is deemed to have registered the seed farming shall have proper facilities for satisfying the standards prescribed in [Article 137](#) (1) and employ one(1) or more seed quality managers as prescribed in paragraph (2) of the same Article.

#### **Article 9 (Transitional Measures on Report of Import and Export of Seed)**

(1) Application of [Article 138](#) (1) shall be deferred to for two (2) years as regards imported varieties which have been imported and sold at the time when this Act enters into force.

(2) A person who has reported import and export of seeds under the previous Seeds of Staple Crops Act at the time when this Act enters into force, shall be deemed to have reported import and export thereof under [Article 140](#) (1).

(3) A person who has been recommended import of seeds under the previous Seeds of Staple Crops Act or Management of Seeds and Seedlings Act at the time when this Act enters into force, shall be deemed to have been recommended import of the seed under [Article 142](#).

#### **Article 10 (Transitional Measures on Adaptability Test of Imported Seeds)**

The seed which has been or is subject to a domestic adaptability test under the previous Seeds of Staple Crops Act or Management of Seeds and Seedlings Act at the time when this Act enters into force, shall be deemed to be the seed which has been or is subject to an adaptability test of imported seeds under the main provision of [Article 141](#) (1).

#### **Article 11 (Transitional Measures on Quality Indication of Distributed Seeds)**

A person who has indicated quality of the seed on a package of the seed and seedling under the previous Management of Seeds and Seedlings Act at the time when this Act enters into force, shall be deemed to have indicated the quality of the distributed seed under [Article 143](#).

#### **Article 12 (Transitional Measures on Establishment of Seed Fund)**

The seed fund established in accordance with the previous Seeds of Staple Crops Act at the time when this Act enters into force, shall be deemed to be the seed fund established in

accordance with [Article 149](#).

**Article 13 (Transitional Measures on Application of Penal Provisions)**

Application of the penal provisions against actions committed in violation of the previous Seeds of Staple Crops Act or the Management of Seeds and Seedlings Act at the time when this Act enters into force, shall be governed by the previous Act.

**ADDENDA <Act No. 5153, Aug. 8, 1996>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on the enforcement date of the Presidential Decree relating to the organization of the Ministry of Maritime Affairs and Fisheries and the Korea National Maritime Police Agency under the provisions as prescribed in [Article 41](#) within 30 days after its promulgation.

**Articles 2 through 4 Omitted.**

**ADDENDA <Act No. 5170, Dec. 12, 1996>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 1997.

**Articles 2 through 6 Omitted.**

**ADDENDA <Act No. 5453, Dec. 13, 1997>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

**Article 2 Omitted.**

**ADDENDA <Act No. 5668, Jan. 21, 1999>**

(1) (Enforcement Date) This Act shall enter into force on July 1, 1999.

(2) (Transitional Measures concerning Penal Provisions) In application of penal provisions to any act committed prior to the enforcement of this Act, the previous provisions shall apply.

**ADDENDA <Act No. 6190, Jan. 21, 2000>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on June 1, 2000.

#### **Article 2 (Transitional Measures concerning Termination of Seed Fund)**

The Agricultural and Fishery Product Price Stabilization Fund referred to in Article 54 of the [Act on Distribution and Price Stabilization of Agricultural and Fishery Products](#) shall succeed to all rights and duties and properties belong to the Seed Fund established under the [Seed Industry Act](#) at the time when this Act enters into force.

#### **Article 3 Omitted.**

#### **Article 4 (Relations with Other Acts according to Termination of Fund)**

Where other Acts quote the previous Seed Fund at the time when this Act enters into force, the Agricultural and Fishery Product Price Stabilization Fund referred to in Article 54 of the [Act on Distribution and Price Stabilization of Agricultural and Fishery Products](#) shall be deemed to be quoted, instead.

#### **ADDENDA <Act No. 6374, Jan. 26, 2001>**

(1) (Enforcement Date) This Act shall enter into force on July 1, 2001.

(2) (Transitional Measures on Novelty of Fruit Trees and Forest Trees) With respect to the novelty of fruit trees or forest trees that have not been assigned for the purpose of utilizing the seeds or harvests at the time of enforcement of this Act, the previous provisions shall apply, notwithstanding the amendments to [Article 13](#) (1).

(3) (Transitional Measures on Period for Objection Filing to Variety Denomination Registration) The period for filing an objection to the registration of a variety denomination for which an application has been made at the time of enforcement of this Act, shall be governed by the previous provisions, notwithstanding the amendments to [Article 111](#) (7).

#### **ADDENDA <Act No. 6626, Jan. 26, 2002>**

##### **Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2002.

#### **Articles 2 through 7 Omitted.**

#### **ADDENDA <Act No. 6999, Dec. 11, 2003>**

(1) (Enforcement Date) This Act shall enter into force three months after the date of its promulgation: *Provided*, That the amended provisions of [Articles 13-2](#) (3) and (4), [34-2](#), [34-3](#), [39](#), [40](#) and [169](#) (1) 2 shall enter force one year and three months after the date of its promulgation.

(2) (Transitional Measures concerning Right for Provisional Protection) The right for the provisional protection of any variety for which an application is filed for its protection at the time of enforcement of the provisions of the proviso to paragraph (1) of the Addenda shall be governed by the former provisions, notwithstanding the amended provisions of [Articles 13-2](#) (3) and (4), [34-2](#), [34-3](#), [39](#), [40](#) and [169](#) (1) 2.

**ADDENDA <Act No. 7678, Aug. 4, 2005>**

**Article 1 (Enforcement Date)**

This Act shall enter into force one year after the date of its promulgation.

**Articles 2 through 12 Omitted.**

**ADDENDUM <Act No. 8597, Aug. 3, 2007>**

This Act shall enter into force six months after the date of its promulgation.

**ADDENDA <Act No. 8852, Feb. 29, 2008>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 7 Omitted.**

**ADDENDA <Act No. 9401, Jan. 30, 2009>**

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 11 Omitted.**

**ADDENDA <Act No. 10332, May 31, 2010>**

**Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

**Article 2 (Applicability to Service of Notice of Disposition)**

The amended provisions of [Article 8](#) (3) shall apply beginning with the first order to revise issued after this Act enters into force.

**Article 3 (Applicability to Protection of Variety by Electronic Document)**

The amended provisions of [Articles 9-2 through 9-4](#) shall apply beginning with the first application for the protection of a variety filed after this Act enters into force.

**Article 4 (Applicability to Protection of Variety of Person with No Right and Protection of Legitimately Entitled Person)**

The amended provisions of the proviso to [Article 20](#) shall apply beginning with the first application for the protection of a variety filed after this Act enters into force.

#### **Article 5 (Applicability to Presentation of Seed Samples)**

(1) The amended provisions of the latter part of [Articles 26](#) (1) 9 shall apply beginning with the first application for the protection of a variety filed after this Act enters into force.

(2) The amended provisions of the latter part of [Article 115](#) (1) shall apply beginning with the first application for registration in the catalogue of varieties filed after this Act enters into force.

(3) The amended provisions of the latter part of [Article 138](#) (3) shall apply beginning with the first variety reported after this Act enters into force.

(4) The amended provisions of the latter part of [Article 147](#) (1) shall apply beginning with the first samples of a variety stored and managed after this Act enters into force.

#### **Article 6 (Applicability to Notice of Decision of Refusal)**

The amended provisions of [Article 37](#) (1) 1 shall apply beginning with the first person who is ordered to present materials after this Act enters into force.

#### **Article 7 (Applicability to Trial on Decision of Refusal or Decision of Revocation)**

The amended provisions of [Article 93](#) shall apply beginning with the first person who receives a decision of refusal or a decision of revocation, after this Act enters into force.

#### **Article 8 (Applicability to Requirements for Registration of Denomination of Variety)**

The amended provisions of subparagraph 2 of [Article 109](#) shall apply beginning with the first person who applies for registration of the denomination of a variety, after this Act enters into force.

#### **Article 9 (Applicability to Keeping of Inspected Documents concerning Certification of Seed)**

The amended provisions of the latter part of [Article 131](#) (1) shall apply beginning with the first seed certified, after this Act enters into force.

#### **Article 10 (Applicability to Omission of Certification of Seed)**

The amended provisions of [Article 138](#) (1) 5 shall apply beginning with the first cases where a breeder sells or transfers directly, after this Act enters into force.

#### **Article 11 (Applicability to Dispute in Seed in Distribution)**

The amended provisions of [Article 148](#) (4) and (5) shall apply beginning with the first dispute in seeds in distribution, after this Act enters into force.

**Article 12 (Applicability to Extension of Period of Mediation related to Mediation of Dispute in Infringement)**

The amended proviso to [Article 158-2](#) (4) and the amended provisions of [Article 158-2](#) (5) shall apply beginning with the first mediation filed after this Act enters into force.

**Article 13 (Applicability to Decision of Mediation Ex Officio)**

The amended provisions of Article 158-6 shall apply beginning with the first mediation filed after this Act enters into force.

**Article 14 (Transitional Measures concerning Extension of Period of Request for Trial)**

Notwithstanding the amended provisions of [Article 6](#) (1), the previous provisions shall apply to a trial case requested as at the time this Act enters into force.

**Article 15 (Transitional Measures concerning Repeal of Public Announcement of Application for Protection of Variety)**

Notwithstanding the amended proviso to [Article 19](#), the amended proviso to [Article 20](#), the amended provisions of [Articles 29 through 32](#), [33](#) (1), [38](#), [41 through 45](#), [95](#) and [160](#) (1) 4, the previous provisions shall apply to a variety under examination after an application for the protection of a variety has been filed as at the time this Act enters into force.

**Article 16 (Transitional Measures concerning Change of Terms of Assessment of Refusal and Assessment of Protection of Variety)**

As at the time this Act enters into force, the term "assessment of refusal" in the previous provisions of Article 37 shall be construed as "decision of refusal", and the term "assessment of the protection of a variety" in the previous provisions of Article 46 shall be construed as "decision of the protection of a variety" respectively.

**Article 17 (Transitional Measures concerning Registration of Seed Business)**

Registration of seed business or revocation of registration thereof and the suspension of business conducted by a Mayor/*Do* Governor pursuant to the previous provisions of [Article 137](#) or [139](#) as at the time this Act enters into force shall be deemed to have been conducted by a Mayor/*Do* Governor under this Act.

**Article 18 (Transitional Measures concerning Imported Seed)**

Notwithstanding the amended provisions of [Article 140](#) (2), the previous provisions shall apply to an imported seed for which no import declaration was made as at the time this Act enters into force.

**Article 19 (Transitional Measures concerning Fines for Negligence)**

The previous provisions shall apply to fines for negligence on any act committed before this Act enters into force.

