

# Plant Variety Protection and Seed Act

(Act No. 83 of May 29, 1998)

## Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to promote the breeding of varieties of plants and rationalization of the distribution of propagating material by introducing a registration system to protect new plant varieties, and introducing regulations for labeling designated propagating material, so as to contribute to the development of the agriculture, forestry and fisheries industries.

(Definitions)

- Article 2 (1) The term "agricultural, forest, or aquatic plant" as used in this Act means spermatophytes, pteridophytes, bryophytes, multicellular algae and other plants specified by Cabinet Order, which are cultivated for the production of agricultural, forest and aquatic products, and the term "plant" means one individual agricultural, forest, or aquatic plant.
- (2) The term "variety" as used in this Act means a plant grouping which can be distinguished from any other plant grouping by the full or partial expression of its important characteristics (hereinafter referred to as "expression of the characteristics") and which can be propagated while maintaining the full expression of its characteristics.
- (3) The term "propagating material" as used in this Act means all or parts of plants used for propagation.
- (4) The term "processed products" as used in this Act means products which are made directly from the harvested material obtained through using propagating material as specified by Cabinet Order.
- (5) The term "exploitation" in relation to a variety as used in this Act means the following:
- (i) production, conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts, of propagating material;
  - (ii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of harvested material obtained through using propagating material (limited to cases in which the holder of the breeder's right or exclusive exploitation license has not had a reasonable opportunity to exercise their right or license against the acts prescribed in the preceding item); and

- (iii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of processed products (limited to cases in which the holder of the breeder's right or exclusive exploitation license has not had a reasonable opportunity to exercise their right or license against the acts prescribed in the preceding two items).
- (6) The term "designated propagating material" as used in this Act means propagating material (excluding that of trees provided for forestry), appearing in the form of seeds, spores, stems, roots, seedlings, saplings, scions, rootstocks, spawn or other parts of plants specified by Cabinet Order, which the Minister of Agriculture, Forestry and Fisheries designates as those on which specific information is required to be labeled at the time of their sale so that their quality can easily be identified, and the term "dealer of propagating material" as used in this Act means a person engaged in the sale of designated propagating material in the course of business.
- (7) After having heard the opinions of the Agricultural Materials Council, the Minister of Agriculture, Forestry and Fisheries is to determine and issue a public notice of the important characteristics referred to in paragraph (2) of this Article for each of the classes specified by Order of the Ministry of Agriculture, Forestry and Fisheries, of agricultural, forest or aquatic plants.

## **Chapter II Variety Registration System**

### **Section 1 Variety Registration and Application for Registration**

(Conditions for Variety Registration)

- Article 3 (1) Any person that has bred a variety (meaning establishing or certifying the expression of the characteristics from artificial or natural variation; the same applies hereinafter) fully meeting the requirements set forth below, or their successor (hereinafter referred to as "breeder") may obtain registration for that variety (hereinafter referred to as "variety registration"):
- (i) the variety is clearly distinguishable, in the full or partial of expression of its characteristics, from any other variety whose existence is a matter of common knowledge in Japan or in any foreign state prior to filing the application for variety registration (meaning the application for variety registration under Article 5, paragraph (1); the same applies hereinafter);
  - (ii) all of the plants of the variety at the propagation stage are sufficiently similar in the full expression of their characteristics; and
  - (iii) the full expression of the characteristics of the variety remains unchanged after repeated propagation.
- (2) In the course of determining whether the variety in an application for variety registration (hereinafter referred to as "applied-for variety ") falls under the

requirements prescribed in item (i) of the preceding paragraph, the Minister of Agriculture, Forestry and Fisheries is to give comprehensive consideration to the content and degree of differences in the expression of the characteristics between the applied-for variety and any other variety whose existence is a matter of common knowledge, as well as to the genus or species and the nature of the agricultural, forest, or aquatic plant to which the applied-for variety belongs, etc.

- (3) If the filing of an application for variety registration or an equivalent application in a foreign state has led to the granting of breeding protection, the existence of the variety is deemed to have been a matter of common knowledge retroactively since the time of filing the application.

Article 4 (1) A variety may not be registered, if the denomination of the applied-for variety falls under any of the following:

- (i) if there is more than one denomination of the applied-for variety;
  - (ii) if the denomination is identical or similar to a registered trademark for the propagating material for that applied-for variety or a registered trademark for goods similar to that propagating material;
  - (iii) if the denomination is identical or similar to a registered trademark for services relating to the propagating material for the applied-for variety or goods similar to that propagating material;
  - (iv) if the denomination is likely to cause misidentification of or confusion in identifying the applied-for variety (excluding the cases set forth in the preceding two items).
- (2) A variety may not be registered if the propagating material or harvested material of the applied-for variety have been transferred in the course of business in Japan earlier than one year before the date of application for variety registration, or in any foreign state earlier than four years before that date (or earlier than six years before that date in the case of a variety belonging to a genus or species of agricultural, forest or aquatic plant specified by Order of the Ministry of Agriculture, Forestry and Fisheries as a perennial plant); provided, however, that this does not apply if that transfer was made for the purpose of experimentation or research, or if that transfer was made against the will of the breeder.

(Applications for Variety Registration)

Article 5 (1) Persons intending to obtain variety registration must submit an application stating the following to the Minister of Agriculture, Forestry and Fisheries pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries:

- (i) the name and the domicile or residence of the applicant;

- (ii) the genus or species of the agricultural, forest or aquatic plant to which the applied-for variety belongs;
  - (iii) the denomination of the applied-for variety;
  - (iv) the expression of the characteristics of the applied-for variety which the applicant considers that it maintains;
  - (v) the name and the domicile or residence of the person that has bred the applied-for variety; and
  - (vi) beyond what is provided for in the preceding items, particulars prescribed by Order of the Ministry of Agriculture, Forestry and Fisheries.
- (2) The application set forth in paragraph (1) of this Article must be attached with a written explanation stating the particulars specified by Order of the Ministry of Agriculture, Forestry and Fisheries, and photographs of the applied-for variety, and other material supporting that the applied-for variety maintains the expression of the characteristics prescribed in item (iv) of paragraph (1), pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries.
- (3) If two or more persons have bred a variety jointly, they must file an application for variety registration for the variety jointly.

#### (Application Fees)

- Article 6 (1) Applicants must pay an application fee in an amount specified by Order of the Ministry of Agriculture, Forestry and Fisheries within 14,000 yen per application.
- (2) The provisions set forth in the preceding paragraph do not apply if the applicant is the national government (including incorporated administrative agencies provided by the Act on General Rules of Incorporated Administrative Agencies (Act No.103 of 1999) Article 2 paragraph (1) as specified by Cabinet Order as dealing with activities relating to breeding of varieties; the same applies to the following paragraph, Article 45 paragraphs (2) and (3), and Article 54 paragraph (2)).
- (3) Notwithstanding the provisions of paragraph (1), if the national government and another person jointly file an application for variety registration and they have an agreement on the portion of their respective shares of the breeder's rights to be granted upon registration, the amount of the application fee set forth in that paragraph is calculated by multiplying the amount of the application fee specified by Order of the Ministry of Agriculture, Forestry and Fisheries as prescribed in that paragraph by the percentage of the share of that person, and that person must pay that amount.
- (4) If there are any units of less than 10 yen in the amount of application fee as calculated pursuant to the preceding paragraph, that unit is to be discarded.

(Transfer of the Title of Applicant)

Article 7 (1) The title of the applicant may be transferred.

- (2) No transfer of the title of an applicant has effect without notifying the Minister of Agriculture, Forestry and Fisheries under Order of the Ministry of Agriculture, Forestry and Fisheries, except in cases of inheritance or other general succession.
- (3) If the title of an applicant has been transferred as a result of inheritance or other general succession, that general successor must notify the Minister of Agriculture, Forestry and Fisheries to that effect without delay pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries.

(Varieties Bred in the Course of Duties)

Article 8 (1) Except for cases in which breeding of a variety by an employee, an executive officer of a corporation, or a national or local governmental officer (hereinafter referred to as "employee, etc."), by its nature, falls within the scope of the business of the employer, corporation, or national or local government (hereinafter referred to as "employer, etc."), and the actions which the employee, etc. has made for that breeding fall within the duties of the employee, etc. (the variety bred in that way is hereinafter referred to as the "variety bred in the course of duties"), any contract, service regulation or any other stipulation is null and void if it provides in advance that the employer, etc. is to file an application for variety registration for a variety which the employee, etc. has bred; the title of applicant under which the employee, etc. has filed application for variety registration is to be transferred to the employer, etc.; or if the employee, etc. obtains its variety registration, the breeder's right is to be transferred or an exclusive exploitation license is to be granted to the employer, etc.

- (2) If it has been stipulated in advance in a contract, service regulation or any other stipulation that an employer, etc. is to file an application for variety registration of a variety bred in the course of duties, that employer, etc. is to have a status of being entitled to the variety registration for that variety bred in the course of duties. In this case, the relevant employee, etc. is entitled to receive a reasonable amount of monetary compensation and other economic benefits (referred to as "reasonable benefits" in the following paragraph).
- (3) The content of reasonable benefits under the preceding paragraph must be determined in consideration of the benefits receivable by the employer, etc. from the variety bred in the course of duties, the extent to which the employer, etc. has made efforts for and contributed to the breeding of that variety, the treatment of the employee, etc. and other factors.
- (4) The provisions of the second sentence of paragraph (2) and the preceding paragraph apply mutatis mutandis if, based on any contract, service regulation

or any other stipulation, the employer, etc. has filed an application for variety registration for the variety bred in the course of duties (excluding the case in paragraph (2)); an employer, etc. has had the title of applicant under which the employee, etc. filed application for variety registration transferred to that employer, etc.; or the employer, etc. has had the breeder's right transferred or an exclusive exploitation license granted to them, after the employee, etc. obtained a variety registration.

- (5) If an employee, etc. or their successor has obtained a variety registration for a variety bred in the course of duties, their employer, etc. or a general successor of that employer, etc. is granted a non-exclusive exploitation license on the variety concerned.

#### (First-to-File Rule)

Article 9 (1) If two or more applications for variety registration have been filed in relation to an identical variety or to varieties that are not clearly distinguishable from each other by the expression of their characteristics, only the applicant that filed the application for variety registration first is entitled to obtain registration.

- (2) If an application for variety registration has been withdrawn or dismissed, for the provisions of paragraph (1) of this Article to be applied, that application is deemed never to have been filed.

- (3) For the provisions of paragraph (1) of this Article to be applied, an application for variety registration filed by a person who is not the breeder of the variety concerned is deemed not to be an application for variety registration.

#### (Enjoyment of Rights by Foreign Nationals)

Article 10 A foreign national who has neither a domicile nor residence (nor business office in the case of a corporation) in Japan may not enjoy breeder's rights or any other related rights, except in cases falling under any of the following items:

- (i) if the state to which the person belongs or in which the person has a domicile or residence (or in the case of a corporation, its business office) is a party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (hereinafter referred to as "state party") or a member state of an intergovernmental organization which is bound by that Convention (hereinafter referred to as "intergovernmental organization party"; "state parties and member states of an intergovernmental organization party" being hereinafter collectively referred to as "contracting parties");
- (ii) if the state to which the person belongs or in which the person has a

- domicile or residence (in the case of a corporation, its business office) is a state party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended at Geneva on November 10, 1972 and on October 23, 1978 (including states to which Japan is to apply that Convention pursuant to the provisions of Article 34 (2) of that Convention; hereinafter referred to as "member state"), and that state provides protection for breeding the variety which the person has applied for (except for the case prescribed in the preceding item);
- (iii) if the state to which the person belongs provides Japanese nationals with the same conditions for protection for breeding varieties as for its own nationals (including states which provide Japanese nationals with that protection on the condition that Japan allows nationals of that state to enjoy breeder's rights and other related rights), and that state provides protection for breeding the variety which the person has applied for (except for the cases prescribed in the preceding two items); or
- (iv) beyond what is provided for the preceding three items, cases in which it is otherwise provided for by any convention.

(Application Procedures for Variety Registration by Administrators)

Article 10-2 (1) Except for cases specified by Order of the Ministry of Agriculture, Forestry and Fisheries, a person that has neither a domicile nor residence (nor a business office in the case of a corporation) in Japan (referred to as an "overseas resident" in the next paragraph) may not apply for variety registration or any other relevant procedures (the application for those procedures is simply referred to as "application procedure" in the following paragraph) without going through an agent who has a domicile or residence in Japan (referred to as "variety registration administrator" in the following paragraph).

- (2) A variety registration administrator is to act as an agent for the entire application procedure; provided, however, that this does not apply if the overseas resident limits the scope of the authority of representation of the variety registration administrator.

(Right of Priority)

Article 11 (1) Any person listed in any of the following items may claim a right of priority at the time of filing the application, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries in the cases prescribed in those items:

- (i) a person that has filed an equivalent to the application for variety registration in a state party, an intergovernmental organization party or a member state (hereinafter collectively referred to as "application in a state

- party") or their successor in title (limited to a Japanese national, a person belonging to a contracting party or member state, or a person with a domicile or residence (in the case of a corporation, its business office) in Japan, a contracting party or a member state): if the person or their successor in title files an application for variety registration for the variety subject to that application in the state party, within one year from the day following the date of filing of the first application in the state party (hereinafter referred to as "date of application in a state party"); or
- (ii) a person that has filed an equivalent to an application for variety registration in a state provided in Article 10, item (iii) which allows Japanese nationals to claim a right of priority under the same conditions that apply in Japan (excluding state parties and member states; hereinafter referred to as "specified state") (hereinafter referred to as "application in a specified state") or their successor in title (limited to a Japanese national or a person belonging to the specified state): if the person or their successor in title files an application for variety registration for the variety subject to that application in the specified state, within one year from the day following the date of the filing of the first application in the specified state (hereinafter referred to as "date of application in a specified state").
- (2) If the applicant has claimed the right of priority in relation to a applied-for variety pursuant to the provisions of paragraph (1) of this Article, no application for variety registration, publication, transfer or no other act made in relation to varieties which are identical to or not clearly distinguishable from the applied-for variety by the expression of its characteristics, within a period from the date of application in a state party or in a specified state to the date of the application for variety registration, constitutes grounds for preventing registration for that variety.

(Correction of Applications for Variety Registration)

- Article 12 (1) In any of the following cases, the Minister of Agriculture, Forestry and Fisheries may order applicants to correct applications for variety registration, designating an adequate time limit to do so:
- (i) if the application for variety registration does not comply with the formal requirements prescribed in this Act or in orders under this Act; or
- (ii) if the applicant does not pay the application fee payable under Article 6, paragraph (1).
- (2) The Minister of Agriculture, Forestry and Fisheries may dismiss an application for variety registration, if the person who has been ordered to correct the application pursuant to the provisions of the preceding paragraph does not correct it within the designated time limit.



## Section 2 Publication of Applications

### (Publication of Applications)

Article 13 (1) If the Minister of Agriculture, Forestry and Fisheries receives an application for variety registration (or if an application for variety registration which the Minister has ordered to be corrected pursuant to the provisions of paragraph (1) of the preceding Article is corrected), the Minister must publish the application for variety registration without delay by issuing a public notice of the following:

- (i) the application number and the filing date of the application for variety registration;
- (ii) the name and the domicile or residence of the applicant;
- (iii) the genus or species of the agricultural, forest or aquatic plant to which the applied-for variety belongs;
- (iv) the denomination of the applied-for variety;
- (v) the date of the publication of the application; and
- (vi) beyond what is provided for in the preceding items, other necessary matters.

(2) If the application for variety registration has been abandoned, withdrawn or dismissed after the publication of that application, or if that application has been rejected, the Minister of Agriculture, Forestry and Fisheries must issue a public notice of this.

### (Effect of Public Notification of Applications)

Article 14 (1) If the applicant has given warning by presenting a written statement setting forth the matters for the applied-for variety after the publication of their application, and any other person in the course of their business has exploited that applied-for variety, a variety which is not clearly distinguishable from the applied-for variety by the expression of its characteristics, or a variety to which the provisions of each item of Article 20, paragraph (2) would apply if the applied-for variety were registered, after the warning and prior to the variety registration, the applicant may claim compensation against that other person equivalent to the amount which the applicant would be entitled to receive if that applied-for variety were registered. Even in the absence of that warning, the same applies to a person that has exploited an applied-for variety (including a variety which is not clearly distinguishable from the applied-for variety by the expression of its characteristics, and a variety to which the provisions of each item of Article 20, paragraph (2) would apply if the applied-for variety were registered; the same applies hereinafter in this Article) in the course of business with knowledge that the variety which that person exploited was an applied-for variety to be

made public, prior to the variety registration.

- (2) The right to claim compensation prescribed in the preceding paragraph may be exercised only after registration of the relevant variety.
- (3) Exercising a right to claim compensation prescribed in paragraph (1) does not preclude exercising breeder's rights.
- (4) If an application for variety registration has been abandoned, withdrawn or dismissed after publication of the application; the application has been rejected; the variety registration has been canceled pursuant to the provisions of Article 49, paragraph (1), item (i) or (iv); a decision to cancel the variety registration has become final and binding, which upholds the grounds for the objection to the registration under the Administrative Appeal Act (Act No. 160 of 1962); or a judgment to cancel or to confirm nullity of the variety registration has become final and binding, the right to claim compensation under paragraph (1) is deemed not to exist.
- (5) Articles 36 through 38, and 40 through 43 of this Act as well as Articles 719 and 724 of the Civil Code (Act No. 89 of 1896) apply *mutatis mutandis* to exercising the right to claim compensation as prescribed in paragraph (1) of this Article. In this case, if a holder of the right to claim compensation has become aware of the fact that the variety which that holder has applied for in the variety registration had been exploited and of the person that had exploited that variety prior to the registration of that variety, the term "the time when the victim or their legal representative became aware of such damage and perpetrator" in Article 724 of that Code is replaced with "the date of variety registration."

### **Section 3 Examinations**

(Examination of Applied-For Varieties)

- Article 15 (1) The Minister of Agriculture, Forestry and Fisheries may order an applicant to submit all or part of a plant of the applied-for variety, or other material necessary for examination of the applied-for variety.
- (2) Upon conducting the examination of the applied-for variety, the Minister of Agriculture, Forestry and Fisheries carries out on-site inspections or growing tests; provided, however, this does not apply if it is found unnecessary to do so for the examination of the applied-for variety.
  - (3) The Minister of Agriculture, Forestry and Fisheries may request the cooperation of the relevant administrative organs, educational institutions or other persons whom the Minister finds appropriate as necessary, to carry out on-site inspections or growing tests prescribed in the preceding paragraph.
  - (4) Items to be tested, means of testing, and other particulars necessary for the carrying-out of the growing tests set forth in paragraph (2) are specified by

Order of the Ministry of Agriculture, Forestry and Fisheries.

(Implementation of On-site Inspections or Growing Tests by NARO)

Article 15-2 (1) The Minister of Agriculture, Forestry and Fisheries may have the National Agriculture and Food Research Organization (hereinafter referred to as "NARO") carry out the on-site inspection or growing tests under Article 15, paragraph (2).

(2) The Minister of Agriculture, Forestry and Fisheries may not carry out the relevant on-site inspection or growing tests if they have NARO carry out those inspections or growing tests under the preceding paragraph.

(3) Upon the consent of the Minister of Agriculture, Forestry and Fisheries, NARO may request the cooperation of relevant administrative organs, educational institutions or other persons whom it finds appropriate as necessary for carrying out the on-site inspection or growing tests under paragraph (1).

(4) When having carried out the on-site inspection or growing tests under paragraph (1), NARO must notify the Minister of Agriculture, Forestry and Fisheries of the results of the on-site inspection or growing tests without delay, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries.

(5) The Minister of Agriculture, Forestry and Fisheries may give NARO necessary orders with regard to duties in relation to the on-site inspection or growing tests in paragraph (1), if the Minister finds this necessary to ensure appropriate performance of the duties.

(Fees for On-site Inspections or Growing Tests)

Article 15-3 (1) Applicants must pay the government (NARO, if NARO carries out the on-site inspection or growing tests under paragraph (1)) the fee in an amount to be specified by Order of the Ministry of Agriculture, Forestry and Fisheries, set in consideration of the actual costs for the on-site inspection or growing tests in Article 15, paragraph (2) or Article 15-2, paragraph (1).

(2) The Minister of Agriculture, Forestry and Fisheries or NARO is to notify the applicant of the amount of the fee in the preceding paragraph pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries.

(3) The fee paid to NARO pursuant to paragraph (1) is revenue of NARO.

(Order to Pay Fees for On-site Inspections or Growing Tests)

Article 15-4 (1) If the applicant does not pay the fee to the government pursuant to Article 15-3, paragraph (1), the Minister of Agriculture, Forestry and Fisheries may order the applicant to pay the fee by designating an adequate time limit.

- (2) If the applicant does not pay the fee to NARO pursuant to paragraph (1) of Article 15-3, NARO may file a petition with the Minister of Agriculture, Forestry and Fisheries to that effect.
- (3) If a petition under the preceding paragraph has been filed, the Minister of Agriculture, Forestry and Fisheries may give the applicant an order to pay the fee to NARO by designating an adequate time limit.

(Orders to Change Denominations)

Article 16 (1) If the denomination of the applied-for variety falls under any of the items of Article 4, paragraph (1), the Minister of Agriculture, Forestry and Fisheries may order the applicant to change it to another denomination which does not fall under any of the items of that paragraph, and designate an adequate time limit to do so.

- (2) If the denomination has been changed pursuant to the provisions of the preceding paragraph after publication of the application, the Minister of Agriculture, Forestry and Fisheries must issue a public notice of this.

(Rejection of Applications for Variety Registration)

Article 17 (1) If an application for variety registration falls under any of the following items, the Minister of Agriculture, Forestry and Fisheries must reject the application in writing:

- (i) the applied-for variety is not registerable pursuant to the provisions of Article 3, paragraph (1), Article 4, paragraph (2), Article 5, paragraph (3), Article 9, paragraph (1), or Article 10; or
  - (ii) the applicant, without justifiable grounds, fails to comply with the order prescribed in Article 15, paragraph (1), refuses the on-site inspection as prescribed in paragraph (2) of that Article or Article 15-2, paragraph (1), or fails to comply with the order prescribed in Article 15-4, paragraph (1) or (3) or paragraph (1) of the preceding Article.
- (2) If the Minister of Agriculture, Forestry and Fisheries had NARO carry out an on-site inspection or growing tests pursuant to Article 15-2, paragraph (1), the Minister is to take into consideration the results of the on-site inspection or growing tests for which NARO provides notification pursuant to Article 15-2, paragraph (4), in the course of determining whether the application for variety registration falls under item (i) of the preceding paragraph (limited to the part pertaining to the provisions of Article 3, paragraph (1)).
  - (3) If the Minister of Agriculture, Forestry and Fisheries intends to reject an application for variety registration pursuant to the provisions of paragraph (1), the Minister must notify the applicant of the reason for the rejection and give that applicant an opportunity to submit a written opinion, designating an adequate time limit to do so.

(Revision to the Identified Expression of Characteristics)

Article 17-2 (1) When registering a variety, the Minister of Agriculture, Forestry and Fisheries must notify the applicant of the expression of the characteristics of the relevant applied-for variety that are identified by the examination (hereinafter referred to as "identified expression of the characteristics") in advance.

- (2) The applicant who has received the notification under the preceding paragraph may request the Minister of Agriculture, Forestry and Fisheries to revise the relevant identified expression of characteristics pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries, if the applicant finds that the identified expression of the characteristics of the relevant applied-for variety is not correct.
- (3) If a request under the preceding paragraph has been filed, the Minister of Agriculture, Forestry and Fisheries is to conduct an investigation to verify whether the relevant identified expression of the characteristics is correct, unless it is found to be obvious that this is not the case.
- (4) The Minister of Agriculture, Forestry and Fisheries must revise the relevant identified expression of the characteristics, if the investigation under the preceding paragraph revealed that the identified expression of the characteristics was not correct.
- (5) If the Minister of Agriculture, Forestry and Fisheries makes a revision under the preceding paragraph or decides not to make the relevant revision, they must notify the applicant who filed a request under paragraph (2) thereof without delay (if it was decided not to make the relevant revision, including the reason).
- (6) The provisions of Article 15 through Article 15-4 apply mutatis mutandis to the investigation under paragraph (3).
- (7) The provisions of Article 17, paragraph (1) (limited to the part pertaining to item (ii)) applies mutatis mutandis to the petition for revision under paragraph (2). In this case, the term "Article 15, paragraph (1)" is replaced with the term "Article 15, paragraph (1) as applied mutatis mutandis pursuant to Article 17-2, paragraph (6)," the term "Article 15, paragraph (2) " is replaced with the term "Article 15, paragraph (2) as applied mutatis mutandis pursuant to Article 17-2, paragraph (6)," and the term "Article 15, paragraph (4), item (i)" is replaced with the term "Article 15-4, paragraph (1) as applied mutatis mutandis pursuant to Article 17-2, paragraph (6)" in the same item.

(Variety Registration)

Article 18 (1) The Minister of Agriculture, Forestry and Fisheries must register the variety unless the application for variety registration is rejected pursuant

to the provisions of paragraph (1) of Article 17.

- (2) A variety registration is completed upon the entry of the following matters in the Registry of Varieties:
- (i) the registration number and the date of variety registration;
  - (ii) the genus or species of the agricultural, forest or aquatic plant to which the variety belongs;
  - (iii) the denomination of the variety;
  - (iv) the identified expression of the characteristics of the variety (if a revision was made under Article 17-2, paragraph (4), the one after the relevant revision was made);
  - (v) the duration of the breeder's right;
  - (vi) the name and domicile or residence of the person obtaining the variety registration; and
  - (vii) beyond what is provided for in the preceding items, the matters specified by Order of the Ministry of Agriculture, Forestry and Fisheries.
- (3) If the Minister of Agriculture, Forestry and Fisheries has registered a variety pursuant to the provisions of paragraph (1), the Minister must notify the person that obtains the variety registration to that effect, and issue a public notice of the matters listed in items (i) through (vi) of the preceding paragraph and the matters prescribed by Order of the Ministry of Agriculture, Forestry and Fisheries.

#### **Section 4 Breeder's Rights**

(Granting and Duration of Breeder's Rights)

Article 19 (1) A breeder's right becomes effective upon variety registration.

- (2) The duration of a breeder's right is twenty-five years (or thirty years, in the case of varieties provided for in Article 4, paragraph (2)) from the date of variety registration.

(Effects of Breeder's Rights)

Article 20 (1) The holder of a breeder's right has an exclusive right to exploit the variety which is registered (hereinafter referred to as "registered variety") and varieties which are not clearly distinguishable from the registered variety by the expression of their characteristics, in the course of business; provided, however, that, if the holder of a breeder's right has granted an exclusive exploitation license on the breeder's right to another person, this does not apply to the extent for which that other person is granted the exclusive right to exploit those varieties.

- (2) The holder of the breeder's right for a registered variety also has the exclusive exploitation right to varieties related to that registered variety as

described in the following items, the scope of which is the same as the right which the breeders of those varieties would be granted if those breeders obtained their variety registration. In this case, the proviso of the preceding paragraph applies *mutatis mutandis*:

- (i) varieties which are bred by changing the partial expression of the characteristics of the registered variety by methods such as mutation selection, backcrossing, transformation by genetic engineering or other methods specified by Order of the Ministry of Agriculture, Forestry and Fisheries with the expression of their essential characteristics retained and which are clearly distinguishable from the initial registered variety by the expression of their characteristics; or
  - (ii) varieties whose production requires the repeated use of the registered variety.
- (3) If a registered variety is bred by changing the partial expression of the characteristics of a variety other than the registered variety by methods specified by Order of the Ministry of Agriculture, Forestry and Fisheries prescribed in item (i) of the preceding paragraph with the expression of its essential characteristics retained, for the provisions of paragraph (2) of this Article and Article 21, paragraph (2) to be applied, the phrases "following items" in paragraph (2) of this Article and "each item of paragraph (2) of Article 20" in Article 21, paragraph (2) are to be replaced with "item (ii)" and "Article 20, paragraph (2), item (ii)," respectively.

(Limitation of the Effects of Breeder's Rights)

Article 21 (1) The effects of a breeder's right do not extend to the following acts:

- (i) exploitation of the variety for the purpose of breeding new varieties and for other experimental and research purposes;
- (ii) production, conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts of propagating material of the registered variety by a person that has a patent right for the process of breeding the registered variety (including varieties which are not clearly distinguishable from the registered variety by the expression of their characteristics; hereinafter the same applies in this paragraph), or by a person that has been granted an exclusive license or non-exclusive license on that patent right, by means of the process for that patent;
- (iii) production, conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts of propagating material of the registered variety after the lapse of the patent right set forth in the preceding item, by means of the process for that patent;
- (iv) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts of material

harvested through using the propagating material set forth in the preceding two items; or

(v) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts of the processed products for the harvested material set forth in the preceding item.

(2) If propagating material, harvested material or processed products of a registered variety, a variety that is not clearly distinguishable from the registered variety by the expression of the characteristics and a variety specified by the items of Article 20, paragraph (2) pertaining to the registered variety (hereinafter collectively referred to as "registered variety, etc.") have been transferred as the result of acts by the holder of the breeder's right, exclusive exploitation license or a non-exclusive exploitation license, or as the result of the acts listed in any of the items of paragraph (1), the effects of the breeder's right for the registered variety in question do not extend to the exploitation of the transferred propagating material, harvested material or processed products; provided, however, that this does not apply to further propagation of that registered variety, etc., to the exporting of propagating material of the registered variety in question to a state which does not provide protection for breeding that registered variety, or to the exporting of material harvested from that registered variety to that state for a purpose other than final consumption.

(Special Provisions on the Limitation of the Effects of Breeder's Rights)

Article 21-2 (1) In the cases listed in the following items, a person that intends to obtain a variety registration may file a notification describing the particulars specified in those items to the Minister of Agriculture, Forestry and Fisheries at the same time as the application for the variety registration, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries, in order to secure appropriate exercising of the breeder's right for that variety registration:

(i) for preventing the outflow of propagating material of the applied-for variety to other countries where the measures to protect that applied-for variety might not be taken: the following particulars:

- (a) a state designated by the applicant as a state where there is no risk that appropriate measures to protect that applied-for variety would not be taken (excluding the states prescribed in the proviso of paragraph (2) of the preceding Article) (hereinafter referred to as "designated state"); and
- (b) the intention of prohibiting propagating material from being exported or harvested material from being exported for purposes other than final consumption to the states other than designated states or the states prescribed in the proviso of paragraph (2) of the preceding Article; or



- (ii) in cases of establishing a production area for the applied-for variety: the following particulars:
  - (a) an area designated by the applicant as a production area of that applied-for variety (hereinafter referred to as a "designated area"); and
  - (b) the intention of prohibiting materials harvested through using the propagating material to be produced in an area other than the designated area.
- (2) The person that has filed a notification under the preceding paragraph (including their successor in title; the same applies to paragraphs (1) and (2) of the following Article, and Article 21-4, paragraphs (1) and (2)) may notify the Minister of Agriculture, Forestry and Fisheries to the effect that all or part of the designation as a state or area subject to that will be cancelled, only before a public notice under the following paragraph is issued (limited to public notices made in conjunction with public notices under Article 13, paragraph (1)).
- (3) If a notification under paragraph (1) has been filed, the Minister of Agriculture, Forestry and Fisheries must issue a public notice of the particulars listed in Article 13, paragraph (1), items (i) through (iv) and the particulars for that notification (or if a notification has been filed under the preceding paragraph, the particulars after the changes for that notification; hereinafter the same applies to this paragraph, the following paragraph, and Article 21-4, paragraph (3)) or the particulars listed in Article 18, paragraph (2), items (i), (ii), (iii) and (vi) and the particulars for that notification, in conjunction with public notices under Article 13, paragraph (1) or Article 18, paragraph (3).
- (4) If having made a public notice under the preceding paragraph (limited to a public notice made in conjunction with the one under Article 18, paragraph (3)), the Minister of Agriculture, Forestry and Fisheries is to state the particulars for the notification under paragraph (1) and the date on which that public notice was issued, in the Registry of Varieties.
- (5) On or after the day following the day on which the Minister of Agriculture, Forestry and Fisheries makes a public notice prescribed in the preceding paragraph, when transferring the propagating material of a registered variety subject to that public notice, a person that transfers a propagating material of a registered variety in the course of business must put the label under Article 55, paragraph (1) and also the label indicating that the acts prescribed in paragraph (1), item (i), (b), or item (ii), (b) in relation to that propagating material are prohibited and that public notice has been issued on this matter, on that propagating material or its package, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries.
- (6) In accordance with Order of the Ministry of Agriculture, Forestry and

Fisheries, on or after the day following the day on which the Minister of Agriculture, Forestry and Fisheries makes a public notice prescribed in paragraph (4), a person that engages in exhibiting or advertising the propagating material of a registered variety for the transfer in the course of business must put the label under Article 55, paragraph (2), and also the label indicating that the acts prescribed in paragraph (1), item (i), (b) or (ii), (b) in relation to that propagating material are prohibited, and that public notice has been issued on this matter, on that propagating material or its package, if the person exhibits it for the transfer; or must give an indication to that effect in advertisement, if the person advertises it for transfer.

(7) Notwithstanding the provisions of the main clause of paragraph (4) of the preceding Article, on or after the day following the day on which the Minister of Agriculture, Forestry and Fisheries issues a public notice prescribed in paragraph (4), the effects of the breeder's right extends to the acts prescribed in paragraph (1), item (i), (b), or item (ii), (b) for the registered variety, etc. subject to that public notice (hereinafter referred to as "acts of export, etc.").

(Addition of Designated States or Designated Areas)

Article 21-3 (1) If a person that filed a notification under paragraph (1) of the preceding Article finds it necessary to add a designated state or designated area for the relevant registered variety after the public notice prescribed in Article 21-2, paragraph (4) has been made, the person may notify the Minister of Agriculture, Forestry and Fisheries to the effect that the person adds a designated state or designated area, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries.

(2) A person that filed a notification under the preceding paragraph may notify the Minister of Agriculture, Forestry and Fisheries to the effect that the person cancels all or part of the addition of a designated state or designated area for only before a public notice under the following paragraph is issued.

(3) If a notification under paragraph (1) has been filed (excluding cases where there is a notification under the preceding paragraph that all of the addition of a designated State or designated area is cancelled), the Minister of Agriculture, Forestry and Fisheries must issue a public notice of the particulars listed in Article 18, paragraph (2), items (i) through (iii) and (vi) for that registered variety, and the particulars for that notification (or if a notification under the preceding paragraph has been filed, the particulars after the changes for that notification; the same applies to the following paragraph, and paragraph (3) of the following Article).

(4) If the Minister of Agriculture, Forestry and Fisheries has made a public notice under the preceding paragraph, the Minister is to state the particulars for notification under paragraph (1) and the date on which that public notice

was issued, in the Registry of Varieties.

- (5) On or after the day following the day on which the Minister of Agriculture, Forestry and Fisheries issues a public notice under paragraph (3), the provisions of paragraph (7) of the preceding Article do not apply to the acts of export, etc. for the designated state or designated area that was added for the registered variety, etc. subject to that public notice.

(Withdrawal of Notifications)

Article 21-4 (1) A person that filed a notification under Article 21-2, paragraph (1) may notify the Minister of Agriculture, Forestry and Fisheries to the effect that the person will withdraw that notification, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries, if the person finds that there is no longer the need to prohibit the act of export, etc. of the registered variety, after the public notice under Article 21-2, paragraph (4) has been issued.

(2) A person that filed a notification under the preceding paragraph may notify the Minister of Agriculture, Forestry and Fisheries to the effect that they withdraw notification only before a public notice under the following paragraph is issued.

(3) If a notification under paragraph (1) (excluding cases in which a notification under the preceding paragraph has been filed) has been issued, the Minister of Agriculture, Forestry and Fisheries must make a public notice of the particulars listed in Article 18, paragraph (2), items (i) through (iii) and (vi) for that registered variety, of the particulars for notification under Article 21-2, paragraph (1) (including the particulars for notification under paragraph (1) of the preceding Article), and to the effect that the notification under Article 21-2, paragraph (1) has been withdrawn.

(4) If the Minister of Agriculture, Forestry and Fisheries issues a public notice under the preceding paragraph, the Minister is to state the fact that the notification under Article 21-2, paragraph (1) has been withdrawn and the date on which that public notice has been issued, in the Registry of Varieties.

(5) The provisions of Article 21-2, paragraphs (5) and (6) do not apply to the label on the relevant propagating material of the registered variety on or after the day following the day on which the Minister of Agriculture, Forestry and Fisheries makes a public notice under paragraph (3).

(6) The provisions of Article 21-2, paragraph (7) do not apply to the acts of export, etc. with regard to the relevant registered variety, etc. on or after the day following the day on which the Minister of Agriculture, Forestry and Fisheries makes a public notice under paragraph (3).

(Obligation to Use Denominations)

Article 22 (1) If any person offers for transfer or transfers propagating material of a registered variety (including varieties whose registration has already expired: the same applies hereinafter in this Article) in the course of business, the person must use the denomination of that registered variety (or if the denomination has been changed pursuant to the provisions of Article 48, paragraph (2), the denomination as changed).

(2) If, in the course of business, any person offers for transfer or transfers propagating material of a non-registered variety which belongs to the genus or species of agricultural, forest or aquatic plants to which a registered variety belongs, or to the genus or species of agricultural, forest or aquatic plants specified by Order of the Ministry of Agriculture, Forestry and Fisheries as similar to those to which a registered variety belongs, that person must not use a denomination of that registered variety.

(Jointly-Held Breeder's Rights)

Article 23 (1) If a breeder's right is held jointly, none of its joint holders may transfer their share nor give it as a pledge without the consent of all the other joint holders.

(2) Unless otherwise agreed upon by a contract, if a breeder's right is held jointly, each of its joint holders may exploit the registered variety, etc. without the consent of the other joint holders.

(3) If a breeder's right is held jointly, each of its holders may not grant an exclusive exploitation license on the breeder's right or grant its non-exclusive exploitation license to any other person without the consent of all the other joint holders.

(Extinction of Breeder's Rights Due to Dissolution)

Article 24 Breeder's rights are extinguished in the following cases:

(i) if the corporation holding a breeder's right dissolves, and the breeder's right is vested in the national treasury pursuant to the provisions of Article 239, paragraph (3) of the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006) or the provisions of other equivalent laws; or

(ii) if an individual holding a breeder's right dies, and the breeder's right is vested in the national treasury pursuant to the provisions of Article 959 of the Civil Code.

(Exclusive Exploitation Licenses)

Article 25 (1) The holder of a breeder's right may grant an exclusive exploitation license on their breeder's right to another person.

(2) The holder of an exclusive exploitation license has an exclusive right to

exploit the registered variety, etc. in the course of business to the extent provided for in the act granting the exclusive license.

- (3) It is permissible for an exclusive exploitation license to be transferred together with the transfer of the business in which the variety is exploited, only if it is with the consent of the holder of the breeder's right, or it is as a result of inheritance or other general succession.
- (4) The holder of an exclusive exploitation license may give the exclusive license as a pledge or grant a non-exclusive exploitation license on the exclusive exploitation license only with the consent of the holder of the breeder's right.
- (5) The provisions of Article 23 apply mutatis mutandis to exclusive exploitation license.

#### (Non-Exclusive Exploitation Licenses)

Article 26 (1) A holder of a breeder's right may grant a non-exclusive exploitation license on their breeder's right to another person.

- (2) The holder of a non-exclusive exploitation license has the right to exploit the relevant registered variety, etc. in the course of business pursuant to the provisions of this Act or to the extent provided for in the act granting the non-exclusive license.

#### (Non-Exclusive Exploitation Licenses by Virtue of Prior Breeding)

Article 27 A person that has bred, earlier than the breeder of a registered variety, a variety that is identical to a registered variety or one not clearly distinguishable by the expression of its characteristics, has a non-exclusive exploitation license on the breeder's right for that registered variety.

#### (Awards through Arbitration)

Article 28 (1) If a registered variety, etc. has not been adequately exploited continuously for two years or more in Japan, or if the exploitation of a registered variety etc. is particularly necessary for the public interest, a person who intends to exploit that registered variety etc. in the course of business may request the holder of the breeder's right or the holder of an exclusive exploitation license for that registered variety to hold consultations concerning granting a non-exclusive exploitation license thereon.

- (2) If no agreement has been reached through the consultations set forth in paragraph (1) of this Article, or a consultation could not take place, the person in that paragraph may apply to the Minister of Agriculture, Forestry and Fisheries for arbitration.
- (3) If an application for the arbitration prescribed in paragraph (2) of this Article has been filed, the Minister of Agriculture, Forestry and Fisheries must make this public and notify the holder of the breeder's right, the holder of an

exclusive exploitation license, or other persons that have any relevant right registered to that effect in writing, and must give them an opportunity to state their opinion, designating an adequate time limit in which to do so.

- (4) If an application under paragraph (2) has been filed, the holder of a non-exclusive exploitation license may state opinion within the period of time prescribed in the preceding paragraph.
- (5) Unless the Minister of Agriculture, Forestry and Fisheries finds the exploitation of a registered variety, etc. particularly necessary for the public interest, the Minister must not issue an award through arbitration to the effect that a non-exclusive exploitation license should be established on that registered variety, etc. if there is any justifiable grounds for the registered variety, etc. not to have been appropriately exploited.
- (6) Before issuing award through arbitration set forth in paragraph (2) of this Article, the Minister of Agriculture, Forestry and Fisheries must hear the opinions of the Agricultural Materials Council.
- (7) An award through arbitration to the effect that a non-exclusive exploitation license should be granted must set forth the scope of the non-exclusive exploitation license, the amount of its consideration, and the means of payment.
- (8) Having issued an award through arbitration in accordance with paragraph (2), the Minister of Agriculture, Forestry and Fisheries must notify the parties, other persons that have rights registered in relation to the registered variety, and the holder of a non-exclusive exploitation license that stated opinion pursuant to paragraph (4), to that effect.
- (9) Upon the notification of the award through arbitration prescribed in paragraph (7) being made to the parties pursuant to the provisions of the preceding paragraph, an agreement is deemed to have been reached between the parties concerned as provided in that award.

(Transfer of Non-Exclusive Exploitation Licenses)

- Article 29 (1) Except for non-exclusive exploitation licenses granted by arbitration set forth in paragraph (2) of the preceding Article, it is permissible for a non-exclusive license to be transferred together with the transfer of the business in which the variety is exploited, if it is with the consent of the holder of the breeder's right (or in the case of a non-exclusive exploitation license established on an exclusive exploitation license, with the consent of both the holder of the breeder's right and the holder of that exclusive exploitation license; the same applies also to the following paragraph), or if it is as a result of inheritance or other general succession.
- (2) The holder of a non-exclusive exploitation license, with the exception of those granted by arbitration set forth in paragraph (2) of the preceding Article, may give that non-exclusive exploitation license as a pledge only with the consent of

the holder of the breeder's right.

- (3) A non-exclusive exploitation license which has been granted by arbitration set forth in paragraph (2) of the preceding Article may be transferred only together with the business in which the variety is exploited.
- (4) The provisions of Article 23, paragraphs (1) and (2) apply *mutatis mutandis* to non-exclusive exploitation license.

#### (Pledges)

- Article 30 (1) If a breeder's right or an exclusive or non-exclusive exploitation license is given as a pledge, the pledgee may not exploit the registered variety, etc. unless otherwise agreed upon by a contract.
- (2) A pledge on a breeder's right, an exclusive exploitation license or a non-exclusive exploitation license may be enforced against consideration to be paid for the breeder's right or the exclusive or non-exclusive exploitation license or against money or other goods that the holder of the breeder's right or of the exclusive exploitation license would be entitled to receive for the exploitation of the registered variety, etc.; provided, however, that the pledgee must attach the money or goods prior to their payment or delivery.

#### (Waiver of Breeder's Rights)

- Article 31 (1) If there is a holder of an exclusive exploitation license, any pledgee or any holder of non-exclusive exploitation license under Article 8, paragraph (5), Article 25, paragraph (4), or Article 26, paragraph (1), the holder of the breeder's right may waive their breeder's right only with the consent of all of the relevant persons.
- (2) If there is a pledgee or holder of a non-exclusive exploitation license under Article 25, paragraph (4), the holder of the exclusive exploitation license may waive their exclusive exploitation license only with the consent of the relevant persons.
  - (3) If there is a pledgee, the holder of the non-exclusive exploitation license may waive their non-exclusive exploitation license only with the pledgee's consent.

#### (Effects of Registration)

- Article 32 (1) The following have no effect unless they are registered:
- (i) transfer (other than by inheritance or other general succession), extinction by waiver, or restrictions on the disposition, of a breeder's right;
  - (ii) grant, transfer (other than by inheritance or other general succession), modification, extinction (except as a result of a merger or extinction of the breeder's right), or restriction on the disposition, of an exclusive exploitation license; or
  - (iii) giving a breeder's right or an exclusive license as pledge, or transfer (other

than by inheritance or other general succession), modification, extinction (except as a result of a merger or extinction of a credit secured thereby), or restriction on the disposition, of a pledge on a breeder's right or an exclusive exploitation license.

- (2) In cases of inheritance or other general succession referred to in each item of the preceding paragraph, the Minister of Agriculture, Forestry and Fisheries must be notified of that fact without delay pursuant to the provisions of the Order of the Ministry of Agriculture, Forestry and Fisheries.

(Perfection of a Non-exclusive Exploitation License)

Article 32-2 A non-exclusive exploitation license has effect on any person that acquires the breeder's right or exclusive license, or is granted the exclusive exploitation license on the breeder's right which has been acquired, after the non-exclusive license is made effective.

## **Section 5 Infringement**

(Injunctions)

Article 33 (1) The holder of a breeder's right or exclusive exploitation license may demand a person that infringes or is likely to infringe on their breeder's right or exclusive exploitation license discontinue or refrain from that conducting that infringement.

- (2) The holder of a breeder's right or exclusive exploitation license, in making the demand prescribed in the preceding paragraph, may demand the destruction of the propagating material, the harvested material or the processed products whose existence constitutes an infringement, or the objects used in the act of infringement, or other measures necessary for the prevention of that infringement.

(Presumption of Amount of Damages)

Article 34 (1) If the holder of a breeder's right or of an exclusive exploitation license on which another person has intentionally or negligently infringed claims compensation for damage caused by that infringement, and that person has transferred the propagating material, the harvested material or the processed products whose existence constitutes the infringement, and the amount of damage suffered by the relevant holder may be presumed to be the amount arrived at when the quantity of the propagating material, harvested material or processed products transferred (hereinafter referred to in this paragraph as the "transferred quantity") is multiplied by the profit per unit of the material or products which that holder would have sold if there had been no infringement, within the limit attainable by that holder in consideration of



their capability to exploit those materials or products; provided, however, that, if any circumstances exist under which that holder could not have sold the number of the relevant material or products equivalent to all or part of the transferred quantity, the amount corresponding to the quantity which would not have been sold due to those circumstances is to be deducted.

- (2) If the holder of a breeder's right or exclusive exploitation license on which another person has intentionally or negligently infringed claims compensation for their damage caused by that infringement against that other person, and profit has been gained as a result of the act of infringement, the amount of profit is presumed to be the amount of damage suffered by that holder.
- (3) The holder of a breeder's right or exclusive exploitation license on which another person has intentionally or negligently infringed may claim compensation for damage caused by that infringement against in the amount equivalent to money which that holder would be entitled to receive from the exploitation of the registered variety, etc.
- (4) The provisions of the preceding paragraph do not preclude a claim for compensation for damage in an amount exceeding that provided for in that paragraph. In such a case, if the infringer of the breeder's right or exclusive exploitation license did not commit the relevant infringement intentionally or with gross negligence, the court may take those circumstances into consideration in determining the amount of damages.

(Presumption of Negligence)

Article 35 A person that has infringed on a breeder's right or an exclusive exploitation license of another person is presumed to have been negligent in committing that act of infringement.

(Presumption of a Variety Not Clearly Distinguishable from the Registered Variety by the Identified Expression of the Characteristics)

Article 35-2 A variety that is not clearly distinguishable from the registered variety by the identified expression of the characteristics of the registered variety which is entered in the Registry of Varieties is presumed as a variety that is not clearly distinguishable from the registered variety by the expression of the characteristics.

(Advisory Opinions)

Article 35-3 (1) A person who has an interest with regard to a registered variety may, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries, request the Minister of Agriculture, Forestry and Fisheries to provide an advisory opinion on whether a particular variety not clearly distinguishable from the relevant registered variety by the identified

expression of the characteristics of the relevant registered variety which is entered in the Registry of Plant Varieties.

- (2) If a request under the preceding paragraph has been filed, the Minister of Agriculture, Forestry and Fisheries is to provide advisory opinion after conducting necessary investigation, and provide the result to the person who filed the request and the holder of the breeder's right of the relevant registered variety.
- (3) The provisions of Article 15 through Article 15-4 apply mutatis mutandis to the investigation in the preceding paragraph.
- (4) The provisions of Article 3, paragraph (2) apply mutatis mutandis to the advisory opinion in paragraph (2), and the provisions of Article 17, paragraph (1) (limited to the part pertaining to item (ii)) apply mutatis mutandis to the request for the advisory opinion under paragraph (1), respectively. In this case, the term "Article 15, paragraph (1)" is replaced with the term "Article 15, paragraph (1) as applied mutatis mutandis pursuant to Article 35-3, paragraph (3)," the term "Article 15, paragraph (2)" is replaced with the term "Article 15, paragraph (2) as applied mutatis mutandis pursuant to Article 35-3, paragraph (3)", and the term "Article 15-4, paragraph (1)" is replaced with the term "Article 15-4, paragraph (1) as applied mutatis mutandis pursuant to Article 35-3, paragraph (3)" in the same item.

#### (Obligation to Clarify Specific Circumstances)

Article 36 In litigation for the infringement of a breeder's right or an exclusive exploitation license, in order to deny the specific circumstances in which its holder claims the existence of the propagating material, harvested material or processed products constitutes the act of infringement, the opponent must clarify the specific circumstances of their act; provided, however, that this does not apply if the opponent has reasonable grounds for being unable to do so.

#### (Submission of Documents)

Article 37 (1) In litigation for the infringement of a breeder's right or an exclusive exploitation license, upon the petition of a party, the court may order the other party to submit documents necessary for proving that act of infringement or for calculating of the damages caused by that act of infringement; provided, however, that this does not apply if the person possessing the documents has justifiable grounds for refusing the submission of those documents.

- (2) If the court finds it necessary for determining whether the documents subject to the petition in the main clause of the preceding paragraph fall under documents referred to in the main clause of the same paragraph or whether there are justifiable grounds as provided in the proviso of the same paragraph,

the court may have the person possessing the relevant documents to present them. In this case, no person may request the disclosure of the documents presented.

- (3) In cases as referred to in the preceding paragraph, if the court finds it necessary to disclose the documents referred to in the second sentence of the preceding paragraph and hear opinions on whether the documents subject to the petition in the main clause of the paragraph (1) fall under documents referred to in the main clause of the same paragraph or whether there are justifiable grounds as provided in the proviso of the same paragraph, the court may disclose the documents to the parties, etc. (meaning the parties (or in the case of corporations, their representatives), their agents (excluding counsels and assistants in court), or their employees or any other workers; the same applies hereinafter), their counsels, or their assistants in court.
- (4) In cases as referred to in paragraph (2), if the court finds it necessary to hear explanations based on expert knowledge by disclosing the documents referred to in the second sentence of the same paragraph, the court may disclose those documents to the technical advisers as provided in Part I, Chapter V, Section 2, Subsection 1 of the Code of Civil Procedure (Act No. 109 of 1996), upon the consent of the parties.
- (5) The provisions in each of the preceding paragraphs apply mutatis mutandis to the presentation of purposes of inspection necessary for proving the act of infringement in litigation for the infringement of a breeder's right or an exclusive exploitation license.

(Expert Opinions for Calculating Damages)

Article 38 In litigation for the infringement of a breeder's right or an exclusive exploitation license, if, upon the petition of a party, the court orders an expert opinion necessary for the calculation of the damage caused by that act of infringement, the other party must explain to the expert witness the particulars necessary for the expert opinion.

(Determination of a Reasonable Amount of Damages)

Article 39 In litigation for the infringement of a breeder's right or an exclusive exploitation license, if the court has determined that damages actually arose and it is extremely difficult for the holder of a breeder's right or exclusive exploitation license to prove the facts necessary for proving the amount of damages due to the nature of the facts, the court may determine a reasonable amount of damages based on the entire oral argument and examination of evidence.

(Confidentiality Orders)

- Article 40 (1) In litigation for the infringement of a breeder's right or an exclusive exploitation license, if there has been a prima-facie showing that trade secrets (meaning trade secrets as provided in Article 2, paragraph (6) of the Unfair Competition Prevention Act (Act No. 47 of 1993), the same applies hereinafter) possessed by a party satisfy all of the following conditions, the court, upon the petition of the party and by means of a ruling, may order that the parties, etc., their counsels or their assistants in courts neither use the trade secrets for any purpose other than those for the proceedings of the litigation nor disclose the trade secrets to any person other than those that receive the order under this paragraph which relates the trade secrets; provided, however, that this does not apply if the parties, etc., their counsels or their assistants in courts have already obtained or held the trade secrets prior to the filing of the petition by means other than by reading of the briefs under item (i) or through the examination or disclosure of evidence under that item:
- (i) the trade secrets possessed by the party are contained in the briefs already submitted or to be submitted or in the evidence already examined or to be examined (including documents disclosed pursuant to the provisions of Article 37, paragraph (3) or Article 43, paragraph (4)); and
  - (ii) it is necessary to restrict the use or the disclosure of the trade secrets prescribed in the preceding item in order to prevent any possible interference with the party's business activities based on the trade secrets, which might arise if the trade secrets were used for any purpose other than proceedings of the litigation or if the trade secrets were disclosed.
- (2) A petition for the order under the preceding paragraph (hereinafter referred to as "confidentiality order") must be made in writing and specify the following:
- (i) the person to whom the confidentiality order is to be issued;
  - (ii) the facts that clearly identify the trade secrets to be protected by the confidentiality order; and
  - (iii) the facts that falls within the grounds set forth in each of the items in the preceding paragraph.
- (3) If a confidentiality order is issued, its written ruling must be served to the person to whom the confidentiality order is issued.
- (4) A confidentiality order takes effect when the written ruling is served to the person to whom the confidentiality order is issued.
- (5) A judicial decision dismissing a petition for a confidentiality order may be immediately appealed against.

(Rescission of Confidentiality Orders)

- Article 41 (1) A person that has filed a petition for a confidentiality order or to whom a confidentiality order has been issued may file a petition to rescind the confidentiality order with the court where the case record is kept (or in the

case of no such court, with the court issuing the confidentiality order), on the grounds that the requirements as provided in paragraph (1) of the preceding Article are not met or are no longer met.

- (2) If a judicial decision on a petition for the rescission of a confidentiality order is rendered, its written ruling must be served to the person that has filed the petition and the opposing party.
- (3) A judicial decision on a petition for the rescission of a confidentiality order may be immediately appealed against.
- (4) A judicial decision to the effect that a confidentiality order is to be rescinded has no effect unless the judicial decision becomes final and binding.
- (5) If the court has made a judicial decision rescinding a confidentiality order, and in the litigation in which that confidentiality order was issued, any person other than the person filing the petition for the rescission of the confidentiality order or the opponent received that confidentiality order, the court must immediately notify that person of the fact that the judicial decision to the effect that the confidentiality order is to be rescinded has been rendered.

(Notice of Requests to Inspect Records)

- Article 42 (1) If a ruling under Article 92, paragraph (1) of the Code of Civil Procedure was rendered for the case record in a litigation in which a confidentiality order was issued (excluding cases in which all confidentiality orders have been rescinded), a party has requested inspection, etc. of a part of the record containing the confidential information under that paragraph, and the person that followed the procedures for that request has not received the confidentiality order in the relevant litigation, the court clerk must notify the party that filed the petition under that paragraph (excluding the person who filed the request; the same applies in paragraph (3)) of the fact that the request has been filed, immediately after the filing of the request.
- (2) In cases under the preceding paragraph, the court clerk must not allow the person that followed the procedures for the request to inspect, etc. the part containing confidential information before two weeks have passed from the date of filing that request (or if, prior to the day in which two weeks have passed, a petition for a confidentiality order is filed against the person who followed the procedures for the request, before the judicial decision on the petition becomes final and binding).
  - (3) The provisions of preceding two paragraphs do not apply if all the parties who filed a petition under Article 92, paragraph (1) of the Code of Civil Procedure give consent to allow the person that filed a request under paragraph (1) to inspect, etc. the part containing confidential information.

(Suspension on the Open Examination of Parties)

Article 43 (1) If a party, etc., to litigation for the infringement of a patent right or exclusive exploitation license is to be examined as a party to the litigation, its statutory representative or a witness, on particulars that are a basis for the determining whether or not that infringement occurred, and are trade secrets possessed by a party; and if the court, upon the unanimous agreement of all judges, finds that the parties, etc. will be unable to make sufficient statements regarding those particulars because it is clear that doing so in an open examination will significantly interfere with the business activities of the relevant party, and that a proper decision on that infringement, which should be made based on those particulars, cannot be made without the statement by the party, etc. and based solely on other evidence, the court may hold closed examinations of those particulars by a ruling.

(2) In rendering the ruling as provided in the preceding paragraph, the court must hear the opinions of the parties, etc. in advance.

(3) In cases under the preceding paragraph, if necessary, the court may have the parties, etc., present documentation stating the outline of particulars to be stated. In such a case, no person may request the disclosure of the document presented.

(4) If the court finds it necessary to hear opinions by disclosing the documents referred to in the second sentence of the preceding paragraph, the court may disclose those to the parties, etc., their counsel or their assistants in court.

(5) If examination on certain particulars is to be closed under paragraph (1), the court must state this and reasons therefor prior to requiring the public to leave the court. Upon completion of the examination on those particulars, the court must allow the public to re-enter the court.

(Measures for the Recovery of Credit)

Article 44 Upon the request of the holder of a breeder's right or exclusive exploitation license, the court may order the person that has harmed the credit of that holder by intentionally or negligently infringing their right or license to take measures necessary to recover that credit, in lieu of compensation for damage or in addition thereto.

## **Section 6 Maintaining and Rescission of Variety Registration**

(Registration Fees)

Article 45 (1) The holder of a breeder's right must pay a registration fee in an amount specified by Order of the Ministry of Agriculture, Forestry and Fisheries within 30,000 yen for each variety registration each year until the expiration of the duration as provided in Article 19, paragraph (2).

(2) The provisions of paragraph (1) of the preceding Article do not apply if the

holder of a breeder's right is the national government.

- (3) Notwithstanding the provisions of paragraph (1), if the national government and another person jointly hold a breeder's right and they have an agreement on the sharing of the breeder's right, the amount of the registration fee set forth in that paragraph is calculated by multiplying the amount of the registration fee specified by Order of the Ministry of Agriculture, Forestry and Fisheries as prescribed in that paragraph by the percentage of the share of that other person, and that person must pay that amount.
- (4) If there is a unit of less than 10 yen in the amount of registration fee as calculated pursuant to the preceding paragraph, that unit is to be discarded.
- (5) The registration fee under paragraph (1) for the first year must be paid within 30 days from the date under Article 18, paragraph (3).
- (6) The registration fee under paragraph (1) for each year after the second year must be paid by the end of the previous year.
- (7) If the holder of the breeder's right fails to pay registration fee within the time limit prescribed in the preceding paragraph, the holder may make a late payment of the registration fee within 6 months after the expiration of that time limit.
- (8) The holder of a breeder's right that makes a late payment of the registration fee pursuant to the provisions of the preceding paragraph must pay, beyond the registration fee to be paid under paragraph (1), a registration surcharge of the same amount as the registration fee.

#### (Payment of Registration Fees by Interested Persons)

- Article 46 (1) An interested person may pay a registration fee even against the will of the holder of the breeder's right.
- (2) The interested person that has paid the registration fee pursuant to the provisions of the preceding paragraph may claim reimbursement of the expenses within the limit of the actual profit gained by the holder of the breeder's right.

#### (Investigation of Registered Varieties)

- Article 47 (1) The Minister of Agriculture, Forestry and Fisheries may order the holder of a breeder's right or of an exclusive exploitation license to submit all or part of plants of the registered variety or other material, if the Minister finds it necessary to do so in order to verify whether the expression of the characteristics of the registered variety is being maintained.
- (2) The Minister of Agriculture, Forestry and Fisheries is to carry out on-site inspections or growing tests in the case prescribed in the preceding paragraph.
  - (3) The provisions of Article 15, paragraphs (3) and (4), and Article 15-2 apply mutatis mutandis to the on-site inspections or growing tests set forth in the

preceding paragraph.

(Change of Denomination of Registered Varieties)

- Article 48 (1) If it is found that the denomination of a registered variety falls under any of Article 4, paragraph (1), items (ii) through (iv), the Minister of Agriculture, Forestry and Fisheries may order the holder of the breeder's right to submit another denomination which does not fall under any of the items of that paragraph, designating an adequate time limit in which to do so, upon the request of an interested person or by the Minister's authority.
- (2) If a denomination falling under none of the items of Article 4, paragraph (1) has been submitted pursuant to the provisions of the preceding paragraph, the Minister of Agriculture, Forestry and Fisheries must change the denomination of that registered variety to the submitted denomination by entering it in the Registry of Varieties.
- (3) If the Minister of Agriculture, Forestry and Fisheries has changed the denomination of a registered variety pursuant to the provisions of the preceding paragraph, the Minister must notify the holder of the breeder's right for that registered variety to that effect and make this public.

(Rescission of Variety Registrations)

- Article 49 (1) The Minister of Agriculture, Forestry and Fisheries must rescind a variety registration in any one of the following cases:
- (i) if it has turned out that the variety was registered in violation of the provisions of Article 3, paragraph (1), Article 4, paragraph (2), Article 5, paragraph (3), Article 9, paragraph (1) or Article 10;
  - (ii) if it has turned out that, after the variety registration, the registered variety no longer satisfies the requirements listed in Article 3, paragraph (1), item (ii) or (iii);
  - (iii) if, after the variety registration, the holder of the breeder's right has become a person that may not enjoy a breeder's right pursuant to the provisions of Article 10;
  - (iv) if the registration fee for the first year is not paid within the period provided in Article 45, paragraph (5);
  - (v) if the registration fee and the registration surcharge are not paid within the period provided in Article 45, paragraph (7);
  - (vi) if the person that was ordered to submit material pursuant to the provisions of Article 4,7 paragraph (1) fails to comply with the order without justifiable grounds for not doing so; or
  - (vii) if the person that was ordered to submit another denomination of the registered variety pursuant to the provisions of paragraph (1) of the preceding Article fails to comply with the order without justifiable grounds



- for not doing so.
- (2) In conducting a hearing for the rescission of a variety registration pursuant to any of items (i), (ii), (iii), (vi), or (vii) of the preceding paragraph, a notice must be given to the holder of an exclusive exploitation license or of any other rights registered in relation to the breeder's right for that variety registration pursuant to Article 15, paragraph (1) of the Administrative Procedure Act (Act No. 88 of 1993), and public notice of the date of hearing and the place must be issued within a reasonable period of time before the date of hearing.
- (3) If the persons prescribed in paragraph (2) or the holders of a non-exclusive exploitation license for the breeder's right for the variety registration in the same paragraph request to participate in that hearing, the chairperson of the hearing set forth in the preceding paragraph must permit their participation under Article 17, paragraph (1) of the Administrative Procedure Act.
- (4) If the variety registration has been rescinded pursuant to the provisions of paragraph (1), the breeder's right is extinct at the time of cancellation; provided, however, that in a case under any of the following items, the breeder's right is deemed to have been extinct retroactively from the time specified:
- (i) a case falling under paragraph (1), item (i) or (iv): the time of variety registration;
  - (ii) a case falling under paragraph (1), item (iii): the time when that item became applicable; or
  - (iii) a case falling under paragraph (1), item (v): the time when the time limit provided in Article 45, paragraph (6) has elapsed.
- (5) If a variety registration has been canceled pursuant to the provisions of paragraph (1), the Minister of Agriculture, Forestry and Fisheries must notify the holder of the breeder's right for that variety registration to that effect and make this public.
- (6) The provisions of Chapter III (excluding Articles 12 and 14) of the Administrative Procedure Act do not apply to the rescission of a variety registration under paragraph (1), item (iv) or (v).

## **Section 7 Miscellaneous Provisions**

(Jurisdiction for Overseas Residents)

Article 50 For a breeder's right or any other rights relating to a breeder's right held by a person who has neither domicile nor residence (nor a business office, in the case of a corporation) in Japan, the location of the Ministry of Agriculture, Forestry and Fisheries is deemed to be the location of the property under Article 5, paragraph (4) of the Code of Civil Procedure.

(Special Provisions for Requests for the Examination of Variety Registrations)

Article 51 (1) The provisions of Article 18 of the Administrative Appeal Act (Act No. 68 of 2014) do not apply to requests for the examination of variety registration.

(2) For the proceedings on the variety registration subject to the request for the examination to be initiated, a notice must be given to the holder of the breeder's right, the exclusive exploitation license, or any other rights registered, and public notice of this must be issued, within a reasonable period of time in advance.

(3) If the person that received a notice under the preceding paragraph or the holder of a non-exclusive exploitation license for the breeder's right for the variety registration in the same paragraph requests to participate in the proceedings initiated upon the relevant request for examination, a review officer set forth in Article 11, paragraph (2) of the Administrative Appeal Act must permit them to do so.

(Registration in the Registry of Varieties)

Article 52 (1) The following particulars are registered in the Register of Varieties kept at the Ministry of Agriculture, Forestry and Fisheries:

(i) grant, transfer, extinction or restriction on the disposition, of a breeder's right;

(ii) grant, preservation, transfer, modification, extinction or restriction on the disposition, of an exclusive exploitation license; or

(iii) giving a breeder's right or an exclusive license as a pledge, or transfer, modification, extinction or restriction on disposition, of a pledge on a breeder's right or an exclusive exploitation license.

(2) Beyond what is provided for in this Act, particulars necessary for variety registration and the Registry of Varieties are prescribed by Order of the Ministry of Agriculture, Forestry and Fisheries.

(Requests for Certification)

Article 53 (1) Any person may file a request for any of the following from the Minister of Agriculture, Forestry and Fisheries, pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries:

(i) certification relating to an application for variety registration or a registered variety;

(ii) issuance of a transcript or extract of the Registry of Varieties; or

(iii) inspection or copying of the Registry of Varieties, an application under Article 5, paragraph (1), or photograph or other material attached to them (excluding those which the Minister of Agriculture, Forestry and Fisheries considers necessary to be kept confidential).

- (2) The provisions of the Act on Access to Information Held by Administrative Organs (Act No. 42 of 1999) do not apply to the Registry of Varieties, to applications under Article 5, paragraph (1), or to photographs or other material attached to them (referred to in the following paragraph as "the Registry of Varieties, etc.")
- (3) The provisions of Chapter 4 of the Act on the Protection of Personal Information Held by Administrative Organs (Act No. 58 of 2003) do not apply to personal information possessed (meaning personal information possessed as provided in Article 2, paragraph (3) of that Act) which is recorded in the Registry of Varieties, etc.

(Fees)

- Article 54 (1) The person filing a request pursuant to the provisions of paragraph (1) of the preceding Article must pay the fee in an amount specified by Order of the Ministry of Agriculture, Forestry and Fisheries in consideration of the actual costs.
- (2) The provisions of the preceding paragraph do not apply if the person who is to pay the fee pursuant to the provisions of that paragraph is the national government.

(Labeling of Registered Varieties)

- Article 55 (1) Any person that transfers propagating material of a registered variety in the course of business must put a label that the relevant propagating material is of a registered variety on it or its packaging pursuant to the provisions of Order of the Ministry of Agriculture, Forestry and Fisheries.
- (2) In accordance with Order of the Ministry of Agriculture, Forestry and Fisheries, any person engaging in exhibiting or advertising a propagating material of a registered variety for transfer in the course of business must put a label that the propagating material is of a registered variety on it or its packaging, if the person exhibits it for the transfer; or must give an indication to that effect in the advertisement, if the person advertises it for the transfer.

(Prohibition of False Labeling)

- Article 56 It is prohibited for any person to do any of the following;
- (i) put a label that the relevant propagating material is of a registered variety or a label which can be confused as such on propagating material of a non-registered variety or its packaging;
- (ii) transfer or exhibit for the purpose of transfer the propagating material of a non-registered variety with a label on it or its packaging that the propagating material is of a registered variety or an label which can be confused as such;

- (iii) give an indication that the propagating material is of a registered variety or an indication which can be confused as such in an advertisement, for the purpose of transferring the propagating material of a non-registered variety.

(Effects of Convention)

Article 57 If there are specific provisions relating to the protection of new varieties in any convention, those provisions prevail.

(Public Notices)

Article 57-2 (1) Public notices under this Act are to be issued through publication in the Official Gazette.

- (2) If the Minister of Agriculture, Forestry and Fisheries has issued a public notice under this Act, the Minister is to publicly announce the date and details of the public notice via the internet or through other means.

### **Chapter III Designated Propagating Material**

(Notification by Dealers of Propagating Materials)

Article 58 (1) Dealers of propagating material must notify the Minister of Agriculture, Forestry and Fisheries of the following particulars, pursuant to the provisions of the Order of the Ministry of Agriculture, Forestry and Fisheries; provided, however, that this does not apply to dealers of propagating materials specified by Order of the Ministry of Agriculture, Forestry and Fisheries:

- (i) the name and the domicile of the dealer of propagating material;
  - (ii) the kinds of designated propagating material which the dealer of propagating material handles; and
  - (iii) other particulars specified by Order of the Ministry of Agriculture, Forestry and Fisheries.
- (2) The same applies whenever any change is made in the particulars set forth in the preceding paragraph.
  - (3) The notification under the preceding two paragraphs is due, if business has been newly commenced, within two weeks after commencement, and whenever any change is made in the particulars referred to in paragraph (1), within two weeks after that change.

(Labeling of Designated Propagating Material)

Article 59 (1) Designated propagating material must not be sold unless its packaging has a label containing the following particulars or it is attached with a certificate indicating those particulars; provided, however, that this does not apply if the particulars listed in items (i) through (iv) and item (vi) for

designated propagating material are indicated by a notice or other readily visible means, or a person other than a dealer of propagating materials sells designated propagating material:

- (i) the name and the domicile of the dealer of propagating material that has provided these particulars;
  - (ii) the type and the variety name (or in the case of grafted saplings, the types and the variety names of a scion and rootstock) (or if the variety name is unknown, information to that effect);
  - (iii) the place of production;
  - (iv) in the case of seeds, the date of production or the time limit of validity and the germination percentage;
  - (v) the quantity; and
  - (vi) any other particulars specified by the Order of the Ministry of Agriculture, Forestry and Fisheries.
- (2) The indication of the place of production under item (iii) of the preceding paragraph must be given by stating the prefecture in which that place of the production is located, in the case of a domestic product; or by stating the country in which that place of the production is located, in the case of a foreign product.
- (3) Beyond what is provided for in the preceding paragraphs, the Minister of Agriculture, Forestry and Fisheries is to determine and publicize standards with which the dealer of propagating materials should comply in relation to labeling designated propagating materials for which the Minister finds labelling is necessary for users to identify a suitable environment for cultivation, usage, and other features relevant to cultivation or exploitation in selecting propagating material of varieties suitable to the natural and economic conditions, such as the particulars to be labeled for that identification.
- (4) If any dealer of propagating material fails to comply with the standards determined pursuant to the preceding paragraph, the Minister of Agriculture, Forestry and Fisheries may issue a recommendation for the dealer of propagating material to comply with them.

(Orders Regarding Designated Propagating Material)

Article 60 (1) The Minister of Agriculture, Forestry and Fisheries may order any dealer of propagating material that has violated the provisions of paragraph (1) or (2) of the preceding Article to label the particulars listed in each item of paragraph (1) of that Article or to change the contents of the labeled particulars, or may prohibit the sale of the designated propagating material for the violation.

- (2) If any dealer of propagating material fails to comply with the recommendation under paragraph (4) of the preceding Article, the Minister of

Agriculture, Forestry and Fisheries may order the dealer of propagating material to comply with the standards under paragraph (3) of that Article, designating a time limit to do so.

(Standards for the Production of Designated Propagating Material)

Article 61 (1) If the Minister of Agriculture, Forestry and Fisheries finds it particularly necessary to do so in order to secure the distribution of designated propagating material of good quality, the Minister is to determine and make public standards that a person producing that propagating material in the course of business and a dealer of propagating materials should comply with in relation to the production, conditioning, stocking or packaging, of that designated propagating material.

(2) If a person producing the designated propagating material in the course of business or a dealer of propagating material fails to comply with the standards determined under the preceding paragraph, the Minister of Agriculture, Forestry and Fisheries may issue a recommendation for a person to comply with them.

(3) If any person producing the designated propagating material in the course of business or any dealer of propagating material fails to comply with the recommendation under the preceding paragraph, the Minister of Agriculture, Forestry and Fisheries may publish that fact.

(Collection of Designated Propagating Material)

Article 62 (1) The Minister of Agriculture, Forestry and Fisheries may have officers of the Ministry of Agriculture, Forestry and Fisheries collect quantities of designated propagating material as necessary for inspection from dealers of propagating materials; provided, however, that compensation equivalent to the market value must be paid for this.

(2) In the case referred to in the preceding paragraph, officers must show a certificate of identification, if the dealer of propagating material requests them to do so.

(Collection of Designated Propagating Material made by NARO, etc.)

Article 63 (1) If the Minister of Agriculture, Forestry and Fisheries finds it necessary, they may have NARO or the Incorporated administrative agency National Livestock Breeding Center (hereinafter referred to as "NARO, etc.") collect quantities of designated propagating material as necessary for inspection from dealers of propagating materials in accordance with the classes specified by Order of the Ministry of Agriculture, Forestry and Fisheries; provided, however, that compensation equivalent to the market value must be paid for this.

- (2) If the Minister of Agriculture, Forestry and Fisheries has NARO, etc. conducts the collection pursuant to the provisions of the preceding paragraph, they are to instruct NARO, etc. to do so by designating the date, place and other relevant items.
- (3) If NARO, etc. has conducted the collection referred to in paragraph (1) in accordance with instruction under the preceding paragraph, NARO, etc. must report the result of the inspection under paragraph (1) to the Minister of Agriculture, Forestry and Fisheries pursuant to Order of the Ministry of Agriculture, Forestry and Fisheries.
- (4) In the case referred to in paragraph (1), officials of NARO, etc. performing the collection pursuant to the provisions of that paragraph must show a certificate of identification, if the dealer of propagating material requests them to do so.

(Orders to NARO, etc.)

Article 64 If the Minister of Agriculture, Forestry and Fisheries finds it necessary to do so in order to ensure an appropriate implementation of the collection under paragraph (1) of the preceding Article, the Minister may issue necessary orders for that collection to NARO, etc.

(Collection of Reports)

Article 65 The Minister of Agriculture, Forestry and Fisheries may order a dealer of propagating materials to submit necessary reports relating to their business or to submit books or other documents, within the limits necessary for the enforcement of this Act.

(Delegation of Authority to Prefectural Governors)

Article 66 (1) Part of functions belonging to the authority of the Minister of Agriculture, Forestry and Fisheries under Article 59, paragraph (4), Article 60, Article 61, paragraphs (2) and (3), Article 62, and Article 65 may be delegated to prefectural governors, pursuant to the provisions of the Cabinet Order.

(2) Part of the authority of the Ministry of Agriculture, Forestry and Fisheries provided in this Chapter may be delegated to the regional agricultural administration offices, pursuant to the provisions of the Order of the Ministry of Agriculture, Forestry and Fisheries.

## **Chapter IV Penal Provisions**

(Crime of Infringement)

Article 67 Any person who has infringed on a breeder's right or an exclusive exploitation license is subject to imprisonment for not more than ten years or to a fine of not more than 10,000,000 yen, or combination thereof.

(Crime of Fraud)

Article 68 Any person who has fraudulently obtained a variety registration is subject to imprisonment for not more than three years or to a fine of not more than 3,000,000 yen.

(Crime of False Labeling)

Article 69 Any person who fails to comply with the provisions of Article 56 is subject to imprisonment for not more than three years or to a fine of not more than 3,000,000 yen.

(Crime of Breaching a Confidentiality Order)

Article 70 (1) Any person who fails to comply with the confidentiality order is subject to imprisonment for not more than five years or to a fine of not more than 5,000,000 yen, or combination thereof.

(2) The prosecution of the crime under the preceding paragraph may not be initiated unless a criminal complaint is filed.

(3) The crime prescribed in paragraph (1) also applies to a person who commits that crime abroad.

(Crime of Selling Designated Propagating Material with False Labeling)

Article 71 Any person who falls under any of the following items is subject to a fine of not more than 500,000 yen:

(i) a person who has sold designated propagating material with false labeling concerning the particulars to be labeled pursuant to the provisions of Article 59, paragraphs (1) or (2); or

(ii) a person who has sold designated propagating material in violation of the dispositions taken pursuant to the provisions of Article 60, paragraph (1) or (2).

(Crime of Providing False Notification)

Article 72 Any person who falls under any of the following items is subject to a fine of not more than 300,000 yen:

(i) a person who failed to give notification under Article 58 or made a false notification;

(ii) a person who has refused, obstructed or evaded the collection set forth under Article 62, paragraph (1) or Article 63, paragraph (1) without justifiable grounds; or

(iii) a person who failed to submit a report or document under Article 65 or submitted a false report or document.



(Dual Liability)

Article 73 (1) If a representative of a corporation, or an agent, an employee or any other worker of a corporation or individual has committed an act in violation of provisions prescribed in any of the following items with regard to the business of the corporation or individual, beyond the offender being subject to punishment, that corporation is subject to the fine referred to in those items, or that individual is subject to the fine referred to in the relevant Articles:

(i) Article 67 or Article 70, paragraph (1): fine of not more than 300,000,000 yen;

(ii) Article 68 or Article 69: fine of not more than 100,000,000 yen; or

(iii) Articles 71 or Article 70, item (i) or (iii): fine referred to in the relevant Articles.

(2) In the case referred to in the preceding paragraph, the criminal complaint under Article 70, paragraph (2) against the offender is also effective against the corporation or individual and the criminal complaint against the corporation or individual is to also be effective against the offender.

(3) If a corporation or an individual is subject to a fine due to an act of violation prescribed in Article 67 or Article 70, paragraph (1) pursuant to the provisions of paragraph (1), the period of prescription is the one for the crime prescribed in those provisions.

(Civil Fine for Violation of the Order)

Article 74 If NARO, etc. has violated the order prescribed in Article 15-2, paragraph (5) (including as applied mutatis mutandis pursuant to Article 17-2, paragraph (6), Article 35-3, paragraph (3), and Article 47, paragraph (3)) or Article 64, officers of NARO, etc. that has committed the violation are subject to a civil fine of not more than 200,000 yen.

(Civil Fines for Violation of the Obligation to Label Restrictions)

Article 75 Any person who falls under any of the following items is subject to a civil fine of not more than 100,000 yen:

(i) a person who violated the provisions of Article 21-2, paragraph (5) or (6);

(ii) a person who violated the provisions of Article 22; or

(iii) a person who violated the provisions of Article 55 (excluding those falling under item (i)).

**Supplementary Provisions [Extract from the Act No.74 of December 9, 2020] [Extract]**

(Enforcement Date)

Article 1 This Act comes into effect as of April 1, 2021; provided however, that

the provisions listed in the following items come into effect as of the date prescribed in those respective items:

- (i) the provisions amending the table of contents (limited to the part amending "Article 57" to "Article 57-2"), the amending provisions that add one item to Article 10, and the amending provisions that add one Article after Article 57 in Chapter II, Section 7, and the provisions of Article 7 of the Supplementary Provisions; the date of promulgation; and
- (ii) the provisions amending Article 3, the provisions amending Article 4, the provisions amending Article 5, the provisions amending Article 6, paragraph (1), the provisions amending Article 15, the amending provisions that add three Articles after Article 15, the provisions amending Article 17, the amending provisions that add one Article after Article 17, the provisions amending Article 18, the provisions amending Article 21, the amending provisions that add two Articles after Article 35, the provisions amending Article 45, paragraph (1), the provisions amending Article 47, the amending provisions of Article 74, and the provisions of Article 5, Article 10, and Article 11 of the Supplementary Provisions; April 1, 2022.

(Transitional Measures in the Application Procedures for Variety Registration by Variety Registration Administrators)

Article 2 The provisions of Article 10-2 of the Plant Variety Protection and Seed Act amended by this Act (hereinafter referred to as the "New Act") apply to persons that have neither domicile nor residence (nor a registered office, in the case of a corporation) in Japan (hereinafter referred to as an "overseas resident" in this Article), and files an application for variety registration under Article 5, paragraph (1) of the new Act (or under Article 5, paragraph (1) of the Plant Variety Protection and Seed Act prior to amendment by this Act (hereinafter referred to as the "Former Act"), in cases before the date of enforcement of the provisions of item (ii) of the preceding Article (referred to as the "item (ii) enforcement date" in the Article 4 and Article 5 of the Supplementary Provisions)) after the date of enforcement of this Act (hereinafter referred to as the "date of enforcement"); and prior laws continue to govern an overseas resident that filed an application for variety registration under Article 5, paragraph (1) of the Former Act on or before the date of enforcement.

(Transitional Measures for Notification of Restrictions on the Act of Export)

Article 3 (1) Notwithstanding the provisions of Article 21-2, paragraph (1) of the New Act, a person that has filed an application for variety registration under Article 5, paragraph (1) of the Former Act or has obtained variety registration under Article 18, paragraph (1) of the Former Act at the time of the

enforcement of this Act may file a notification under Article 21-2, paragraph (1) of the New Act (limited to the part for item (i)), only within six months from the date of enforcement.

(2) For the provisions of Article 21-2, paragraph (3) of the New Act to be applied if the notification in the preceding paragraph is filed after a public notice has been issued under Article 13, paragraph (1) of the Plant Variety Protection and Seed Act and before a public notice under Article 18, paragraph (3) of the Former Act is made, the phrase "Article 13, paragraph (1) or" in Article 21-2, paragraph (3) of the New Act is replaced with "a public notice of the particulars listed in Article 13, paragraph (1), items (i) through (iv) for that applied-for variety and the particulars for that notification are issued immediately, and"; and the phrase "the particulars listed in Article 13, paragraph (1), items (i) through (iv) and the particulars for that notification (if a notification under the preceding paragraph has been filed, the particulars after the changes for that notification; hereinafter the same applies to this paragraph, the following paragraph, and Article 21-4, paragraph (3)) or Article 18, paragraph (2), item (i), respectively, in conjunction with such public notices" in the same paragraph is replaced with "paragraph (2), item (i) of the same Article in conjunction with that public notice".

(3) For the provisions of Article 21-2, paragraphs (3) and (4) of the New Act if the notification in the paragraph (1) is filed after a public notice under Article 18, paragraph (3) of the Former Act is issued, the phrase "at the time of making a public notice under Article 13, paragraph (1) or Article 18, paragraph (3), the particulars listed in Article 13, paragraph (1), items (i) through (iv) and the particulars for that notification (if a notification under the preceding paragraph, the particulars after the changes for that notification; hereinafter the same applies to this paragraph, the following paragraph, and Article 21-4, paragraph (3)) or Article 18, paragraph (2), item (i), respectively, in conjunction with that public notices" in Article 21-2, item (iii) of the New Act is replaced with "immediately, Article 18, paragraph (2), item (i) for that registered variety," and the term "public notice (limited to public notices issued in conjunction with ones under Article 18, paragraph (3))" in item (iv) of that Article is replaced with "public notice."

(Transitional Measures for the Application of the Provisions of Article 21-2, Paragraphs (1) and (7) of the New Act)

Article 4 For the provisions of Article 21-2, paragraphs (1) and (7) of the New Act to be applied during the period between the date of enforcement and the day proceeding the item (ii) enforcement date, the term "proviso of paragraph (2) of the preceding Article" in Article 21-2, paragraph (1), item (i), (a) and (b) of the New Act is replaced with "proviso of paragraph (4) of the preceding

Article" and the term "the main clause of paragraph (2) of the preceding Article" in paragraph (7) of that Article is replaced with "the main clause of paragraph (4) of the preceding Article".

(Transitional Measures for Application Fees, Fees and Registration Fees)

Article 5 The provisions of Article 6, paragraph (1), Article 15-3, Article 15-4, and Article 45, paragraph (1) apply to the application fees, fees and registration fees for applications for variety registration under Article 5, paragraph (1) of the New Act filed after the item (ii) enforcement date; and prior laws continue to govern the application fees and registration fees for applications for variety registration under Article 5, paragraph (1) of the Former Act filed prior to the item (ii) enforcement date.

(Transitional Measures for Non-Exclusive Exploitation Licenses)

Article 6 (1) Prior laws continue to govern the transfer, modification, extinction or restriction on the disposition of a non-exclusive exploitation license registered pursuant to Article 32, paragraph (5) of the Former Act prior to the enforcement date; the giving of that non-exclusive exploitation license as a pledge; or the transfer, modification, extinction or restriction on disposition, of that pledge.

(2) The provisions of Article 32-2 of the New Act apply to a person that has obtained a breeder's right or exclusive exploitation license in relation to a non-exclusive exploitation license, or an exclusive exploitation license for that breeder's right after the enforcement date; and prior laws continue to govern persons that have obtained those rights or licenses prior to the enforcement date.

(Delegation to Cabinet Order)

Article 7 Beyond what is provided for in these Supplementary Provisions, necessary transitional measures for the enforcement of this Act are prescribed by Cabinet Order.

(Consideration)

Article 8 After approximately five years from the enforcement of this Act, the government is to assess the state of enforcement of the provisions amended by this Act, review those provisions, and take measures based on the results if necessary.