

# 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 plant varieties and the rational distribution of propagating material by providing for a system relating to the registration of plant varieties for the protection of new plant varieties and regulations relating to the indication of designated seeds, so as to contribute to the development of agriculture, forestry and fisheries.

### (Definitions)

Article 2 (1) The term "agricultural, forestry and aquatic plants" as used in this Act means spermatophyte, pteridophyte, bryophyte, multicellular algae and other plants specified by the Cabinet Order, which are cultivated for the production of agricultural, forestry and aquatic products, and the term "plant" means an individual of agricultural, forestry and aquatic plants.

(2) The term "variety" as used in this Act means a plant grouping which can be distinguished from any other plant grouping by the expressions of at least one of the important characteristics (hereinafter referred to as "the expressions of the characteristics") and which can be propagated while maintaining all its expressions of characteristics without change.

(3) The term "propagating material" as used in this Act means entire plants or parts of plants used for propagation.

(4) The term "processed products" as used in this Act means the products which are made directly from the harvested material obtained through the use of propagating material and are specified by the Cabinet Order.

(5) The term "exploitation" in relation to a variety as used in this Act means the following acts:

(i) production, conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts, of propagating material of the variety;

(ii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of the harvested material obtained through the use of propagating material of the variety (limited to cases where the holder of the breeder's right or the holder of the

exclusive exploitation right has not had reasonable opportunity to exercise his/her right against the acts prescribed in the preceding item).

(iii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of the processed products of the variety (limited to cases where the holder of the breeder's right or the holder of the exclusive exploitation right has not had reasonable opportunity to exercise his/her right against the acts prescribed in the preceding two items).

(6) The term "designated seeds" as used in this Act means seeds (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 the Cabinet Order, which are designated by the Minister of Agriculture, Forestry and Fisheries as requiring certain matters to be labeled at the time of sale thereof in order to facilitate identification of their quality, and the term "seed dealer" as used in this Act means persons engaged in the sale of designated seeds in the course of business.

(7) The Minister of Agriculture, Forestry and Fisheries, shall, after having heard the opinions of the Agricultural Materials Council, determine and publicly notify the important characteristics referred to in paragraph (2) of this Article for each of the classes, specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, of agricultural, forestry or aquatic plants.

## **Chapter II Variety Registration System**

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

#### **Registration**

(Condition for Variety Registration)

Article 3 (1) Any person who has bred (meaning the fixation or determination of the expression of the characteristics resulting from artificial or natural variation; the same shall apply hereinafter) a variety fully meeting the requirements set forth below or his/her successor in title (hereinafter referred to as "breeder") may obtain a registration for the variety (hereinafter referred to as "variety registration").

(i) the variety is clearly distinguishable, by at least one of its expressions of the characteristics, from any other variety whose existence is a matter of common knowledge in Japan or in any foreign state at the time of the filing of the application for variety registration.

- (ii) all of the plants of the variety at the same propagation stage are sufficiently similar in all of its expressions of the characteristics.
  - (iii) all of the expressions of the characteristics of the variety remain unchanged after repeated propagation.
- (2) Where the filing of an application for variety registration or an equivalent application in a foreign state in relation to a variety has led to the granting of the protection in relation to the breeding of the variety, the existence of the variety shall be deemed to have been a matter of common knowledge retroactively since the time of the filing of the application.

Article 4 (1) A variety may not be registered, if the denomination of the variety pertaining to the application for variety registration (hereinafter referred to as "applied variety") falls under any of the following items:

- (i) where there is more than one denomination for the applied variety;
  - (ii) where the denomination is identical or similar to a registered trademark pertaining to the propagating material of the applied variety or a registered trademark pertaining to goods similar to the said propagating material;
  - (iii) where the denomination is identical or similar to a registered trademark pertaining to services relating to the propagating material of the applied variety or goods similar to the said propagating material;
  - (iv) where the denomination is likely to cause misidentification of the applied variety or confusion in respect of its identification (excluding the cases set forth in the preceding two items).
- (2) A variety may not be registered when the propagating material or harvested material of the 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 the said date (or earlier than six years in the case of varieties belonging to a genus or species of agricultural, forestry or aquatic plant specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as a perennial plant). However, this shall not apply where such a transfer was made for the purpose of experiment or research, or where such a transfer was made against the will of the breeder.

(Application for Variety Registration)

Article 5 (1) A person intending to obtain a variety registration shall, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, submit to the Minister of Agriculture, Forestry and Fisheries an application stating the following matters:

- (i) the name and the domicile or residence of the applicant;
- (ii) the genus or species of the agricultural, forestry or aquatic plant to which the

- applied variety belongs;
- (iii) the denomination of the applied variety;
  - (iv) the name and the domicile or residence of the person who has bred the applied variety; and
  - (v) matters prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries in addition to what is listed in the preceding items.
- (2) The application set forth in paragraph (1) of this Article shall be attached with a written explanation stating the matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and photographs of the plant of the applied variety, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.
- (3) Where two or more persons have bred a variety jointly, they shall file an application for variety registration pertaining to the variety jointly.

(Application Fee)

- Article 6 (1) The applicant shall pay an application fee in an amount specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries but not exceeding 47,200 yen per application.
- (2) The provision set forth in the preceding paragraph shall not apply where the applicant is the national government (including Incorporated administrative agencies provided by the Act on General Rules of Incorporated administrative agency (Act No. 103 of 1999) Article 2 paragraph (1) which are specified by the Cabinet Order as dealing with activities relating to breeding of plant varieties; the same shall apply to the paragraph (3) of this Article, Article 45 paragraphs (2) and (3), and Article 54 paragraph (2)).
- (3) Notwithstanding the provision of paragraph (1) of this Article, where the national government and other person jointly file an application for variety registration and they have an agreement on the portion of their respective shares of the breeder's right to be granted upon variety registration, the amount of the application fee set forth in paragraph (1) of this Article shall be the amount calculated by multiplying the amount of the application fee specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries pursuant to paragraph (1) of this Article by the percentage of the share of such other person, which shall be paid by such other person.
- (4) Where there is a fraction less than 10 yen in the amount of the application fee as calculated pursuant to the provision of paragraph (3) of this Article, such a fraction shall be discarded.

(Transfer of the Title of Applicant)

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

- (2) Any transfer of the title of applicant shall not come into effect without a notification to the Minister of Agriculture, Forestry and Fisheries pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, except in the case of inheritance or other general succession.
- (3) Where the title of applicant has been transferred as a result of inheritance or other general succession, the successor in title shall notify, without delay, the Minister of Agriculture, Forestry and Fisheries accordingly, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(Employee-bred Variety Bred as part of his/her Duties)

Article 8 (1) With respect to a variety bred by an employee, an executive officer of a juridical person, or a national or local governmental officer (hereinafter referred to as "employee etc."), any contractual provision, service regulation or any other stipulation providing in advance that the employer, juridical person, or national or local government (hereinafter referred to as "employer etc.") shall file an application for variety registration, or have the title of applicant transferred, or have, if the employee etc. obtain a variety registration, the breeder's right transferred or an exclusive exploitation right granted shall be null and void. However, this shall not apply where the breeding of the variety, by its nature, falls within the scope of the business of the employer etc. and, moreover, the acts which have lead to the said breeding fall within the duties of the employee etc. (hereinafter referred to as "employee-bred variety as part of his/her duties").

- (2) An employee etc. may make a claim on the employer etc. for the payment of compensation to be determined in consideration of the profit to be received by the employer etc. from the employee-bred variety as part of his/her duties and the extent to which the employer etc. has contributed to the breeding of that variety, when, in accordance with a contract, service regulation or any other stipulation, the employer etc. filed an application with respect to the said employee-bred variety as part of his/her duties or had the title of applicant transferred, or had, after the employee etc. obtained a variety registration, the breeder's right transferred or an exclusive exploitation right granted.
- (3) Where an employee etc. or his/her successor in title has obtained a variety registration relating to an employee-bred variety as part of his/her duties, his/her employer etc. or his/her general successor shall be granted a non-exclusive exploitation right on the variety concerned.

(First-to-file Rule)

Article 9 (1) Where two or more applications for variety registration has been filed in relation to an identical variety or to varieties that are not clearly

distinguishable from each other by the expressions of the characteristics, only the applicant who filed the application for variety registration first shall be entitled to obtain a variety registration.

- (2) Where an application for variety registration has been withdrawn or dismissed, such an application shall, for the purpose of paragraph (1) of this Article, be deemed never to have been filed.
- (3) An application for variety registration filed by a person who is not the breeder of the variety concerned shall, for the purpose of paragraph (1) of this Article, be deemed not to be an application for variety registration.

(Enjoyment of Rights by Foreign Nationals)

Article 10 (1) A foreign national who has neither domicile nor residence (nor business office, in the case of a juridical person) in Japan may not enjoy a breeder's right or any other rights relating to a breeder's right, except in cases falling under any of the following items:

- (i) where the state to which the person belongs or the state in which the person has domicile or residence (in the case of a juridical person, 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, 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 the said 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) where the state to which the person belongs or the state in which the person has domicile or residence (in the case of a juridical person, 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 in relation with which Japan is to apply the said Convention pursuant to the provision of Article 34 (2) of the said Convention; hereinafter referred to as "Member State") and if the said state provides protection for the plant genus or species to which the person's applied variety belongs (except for the case prescribed in the preceding item).
- (iii) where the state to which the person belongs provides Japanese nationals with the protection on varieties under the same conditions as for its own nationals (including states which provide Japanese nationals with such protection, provided that Japan allows nationals of that state to enjoy a breeder's right and other rights related to a breeder's right) and if the said

state provides protection for the plant genus or species to which the person's applied variety belongs (except for the cases prescribed in the preceding two items).

(Right of Priority)

Article 11 (1) Any person listed in any of the following items may, if the conditions prescribed respectively in those items are met, claim a right of priority at the time of filing the application, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

- (i) a person who has filed an equivalent application (s) 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 his/her successor in title (limited to a Japanese national, a person belonging to a Contracting Party or a Member State, or a person having a domicile or residence (in the case of a juridical person, business office) in Japan, a Contracting Party or a Member State): where the person or his/her successor in title files an application for variety registration in relation to the variety pertaining to the said application in a State Party, within one year from the day following the date of filing of the first application in a State Party (hereinafter referred to as "date of application in a State Party"); or
- (ii) a person who has filed an equivalent application(s) to the application for variety registration in a state provided in item 3 of Article 10 which allows Japanese nationals to claim a right of priority under the same conditions as Japan does (excluding State Parties and Member States; hereinafter referred to as "Designated State")(hereinafter referred to as "application in a Designated State") or his/her successor in title (limited to a Japanese national or a person belonging to a Designated State): where the person or his/her successor in title files an application for variety registration in relation to the variety pertaining to the said application in a Designated State, within one year from the day following the date of the filing of the first application in a Designated State (hereinafter referred to as "date of application in a Designated State").

(2) Where the applicant has claimed the right of priority in relation to an applied variety pursuant to the provisions of paragraph (1) of this Article, any application for variety registration, publication, transfer or any other acts made in relation to varieties which are identical to or not clearly distinguishable from the applied variety by its expressions of the characteristics, within a period from the date of application in a State Party or the date of application in a Designated State to the date of the application for variety registration in relation to the said applied variety, shall not constitute a ground for preventing the said applied variety from registration.

(Correction of Application for Variety Registration)

Article 12 (1) The Minister of Agriculture, Forestry and Fisheries may order the applicant to correct the application for variety registration, designating a reasonable period of time, in any of the following cases;

- (i) where the application for variety registration does not comply with the formal requirements prescribed in this Act or in orders or ordinances thereunder; or
- (ii) where the applicant does not pay the application fee payable under the provisions of paragraph (1) of Article 6.

(2) The Minister of Agriculture, Forestry and Fisheries may dismiss the application for variety registration, if the person who has been ordered to correct the application for variety registration pursuant to the provisions of paragraph (1) of this Article does not correct it within the time limit designated pursuant to the provision of the said paragraph.

## **Section 2 Publication of Application**

(Publication of Application)

Article 13 (1) When an application for variety registration is received (or when a corrected application for variety registration is received if, pursuant to the provision of paragraph (1) of Article 12, correction of the application for variety registration has been ordered), the Minister of Agriculture, Forestry and Fisheries shall publish the application for variety registration without delay by publicly notifying the following matters:

- (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, forestry or aquatic plant to which the applied variety belongs;
  - (iv) the denomination of the applied variety;
  - (v) the date of the publication of the application; and
  - (vi) other necessary matters in addition to what is listed in the preceding items.
- (2) Where the application for variety registration has been abandoned, withdrawn or dismissed after the publication of the application, or when the application for variety registration has been rejected, the Minister of Agriculture, Forestry and Fisheries shall publicly notify that effect.

(Effects etc. of Publication of Application)

Article 14 (1) Where the applicant has, after the publication of his/her application,



given warning by presenting a written statement setting forth the particularities of the applied variety, he/she may claim, against a person who has exploited in the course of business, after the warning and prior to the variety registration, that applied variety, a variety which is, by its expressions of the characteristics, not clearly distinguishable from that applied variety, or a variety to which the provisions of each item of Article 20 paragraph (2) would apply if the said applied variety were registered, compensation in an amount equivalent to the amount which the applicant would be entitled to receive if that applied variety were registered. Even in the absence of such warning, the same shall apply to a person who has exploited in the course of business an applied variety (including a variety which, by its expressions of the characteristics, is not clearly distinguishable from the applied variety and a variety to which the provision of each item of Article 20 paragraph (2) would apply if the applied variety were registered; the same shall apply hereinafter in this Article) with knowledge that the variety which he/she exploited was an applied variety pertaining to the publication of application, prior to the variety registration.

- (2) The right to claim compensation prescribed in paragraph (1) of this Article can be exercised only after the variety registration with respect to the variety concerned.
- (3) The exercise of the right to claim compensation prescribed in paragraph (1) of this Article shall not preclude the exercise of the breeder's right.
- (4) Where the application for variety registration has been abandoned, withdrawn or dismissed after the publication of application where the application for variety registration has been rejected where the variety registration has been canceled pursuant to the provisions of either item 1 or 4 of Article 49 paragraph (1), where a decision to cancel the variety registration has become final and binding, which upholds the ground for an objection to the variety registration pursuant to the Administrative Appeal Act (Act No. 160 of 1962), or where 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) of this Article shall be deemed never to have established.
- (5) Articles 36, 37, 38, 40, 41, 42 and 43 of this Act as well as Articles 719 and 724 of the Civil Code (Act No. 89 of 1896) shall apply mutatis mutandis to the exercise of the right to claim compensation as prescribed in paragraph (1) of this Article. In this case, where a holder of the right to claim compensation has become aware of the fact that the applied variety pertaining to the application for variety registration had been exploited and of the person who had exploited the applied variety prior to the variety registration with respect to that variety, the term "the time when the victim or his/her legal representative became aware of such damage and perpetrator" in Article 724 of the said Code shall be deemed to

be replaced with "the date of the variety registration."

### **Section 3 Examination**

#### **(Examination of Applied Variety)**

- Article 15 (1) The Minister of Agriculture, Forestry and Fisheries may order the applicant to submit entire plants or parts of plants of the applied variety or other material necessary for examination of the applied variety.
- (2) The Minister of Agriculture, Forestry and Fisheries shall, in the course of the examination of the applied variety, cause officers of the Ministry of Agriculture, Forestry and Fisheries to carry out on-site inspections or the Incorporated administrative agency National Center for Seeds and Seedlings (hereinafter referred to as "NCSS") to carry out growing tests. However, this shall not apply where it is found unnecessary to do so for the purpose of the examination of the applied variety.
- (3) The Minister of Agriculture, Forestry and Fisheries may request relevant administrative organs, educational institutions or other persons whom he/she finds appropriate, to carry out on-site inspections prescribed in paragraph (2) of this Article.
- (4) Items to be tested, test methods and other matters necessary for the carrying-out of the growing tests set forth in paragraph (2) of this Article shall be specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.
- (5) The NCSS may, with the consent of the Minister of Agriculture, Forestry and Fisheries, request relevant administrative organs, educational institutions or other persons whom it finds appropriate, to carry out growing tests prescribed in paragraph (2) of this Article.
- (6) The Minister of Agriculture, Forestry and Fisheries may, where he/she finds it necessary in order to ensure the proper carrying-out of the growing tests, issue orders to the NCSS in relation to growing tests prescribed in paragraph (2) of this Article.

#### **(Order to Change Denomination)**

- Article 16 (1) Where the denomination of the applied 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 the said paragraph, designating a reasonable period of time.
- (2) Where the denomination, after the publication of application, has been changed pursuant to the provision of the preceding paragraph, the Minister of Agriculture,

Forestry and Fisheries shall publicly notify information to that effect.

(Rejection of Application for Variety Registration)

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

- (i) the applied 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 the said Article or fails to comply with the order prescribed in paragraph (1) of Article 16.
- (2) When the Minister of Agriculture, Forestry and Fisheries intends to reject an application for variety registration pursuant to the provision of paragraph (1) of this Article, he/she shall notify the applicant of the reason for the rejection and give him/her an opportunity to submit a written opinion of his/her arguments, designating a reasonable period of time.

(Variety Registration)

Article 18 (1) The Minister of Agriculture, Forestry and Fisheries shall register the variety unless the application for variety registration shall be rejected pursuant to the provision of paragraph (1) of Article 17.

- (2) A variety registration shall be completed upon the entry of the following matters in the Register of Plant Varieties:
- (i) the registration number and the date of variety registration;
  - (ii) the genus or species of the agricultural, forestry or aquatic plant to which the variety belongs;
  - (iii) the denomination of the variety;
  - (iv) the expression of the characteristics of the variety;
  - (v) the duration of the breeder's right;
  - (vi) the name and domicile or residence of the person obtaining the variety registration; and
  - (vii) in addition to what is listed in the preceding items, the matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.
- (3) When he/she has registered a variety pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall notify the person who obtains the variety registration accordingly, and publicly notify the matters prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

## **Section 4 Breeder's Right**

(Grant and Duration of the Breeder's Right)

Article 19 (1) A breeder's right shall become effective upon a variety registration.

(2) Duration of a breeder's right shall be twenty-five years (thirty years, in the case of varieties provided in Article 4 paragraph (2)) from the date of variety registration.

(Effects of the Breeder's Right)

Article 20 (1) The holder of a breeder's right shall have an exclusive right to exploit, in the course of business, the variety which is registered (hereinafter referred to as "registered variety") and varieties which, by the expressions of the characteristics, are not clearly distinguishable from the registered variety.

However, this shall not apply where an exclusive exploitation right is granted in relation to the breeder's right, to the extent where the holder of the exclusive exploitation right is granted an exclusive right to exploit those varieties.

(2) The holder of the breeder's right for a registered variety shall also have an exclusive right to exploit varieties described in following items, the scope of which shall be the same as the right which the breeders of the said varieties would, if obtained a variety registration, be granted. In this case, the proviso of paragraph (1) of this Article shall apply *mutatis mutandis*.

(i) varieties which are bred by changing parts of the expressions of the characteristics of the registered variety while retaining the expressions of its essential characteristics using such methods as selection of a mutant, backcrossing, transformation by genetic engineering or other methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and which are clearly distinguishable from the initial registered variety by the expressions of the characteristics; or

(ii) varieties whose production requires the repeated use of the registered variety.

(3) Where a registered variety is bred by changing parts of the expressions of the characteristics of a variety other than the registered variety while retaining the expressions of its essential characteristics using methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries prescribed in item 1 of paragraph (2) of this Article, for the purpose of the application of paragraph (2) of this Article and paragraph (2) of Article 21, the words "following items" in paragraph (2) of this Article and "each item of paragraph (2) of Article 20" in paragraph (2) of Article 21 shall be deemed to be replaced with the words "item 2" and "item 2 of paragraph (2) of Article 20," respectively.

(Limitation of the effects of the Breeder's Right)

Article 21 (1) The effects of a breeder's right shall 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 of propagating material of the registered variety, by a person who has a patent right for the process of breeding the registered variety (including varieties which are, by the expressions of the characteristics, not clearly distinguishable from the registered variety; hereinafter the same shall apply in this paragraph) or by a person who has been granted an exclusive license or non-exclusive license on the said patent right, by means of the process pertaining to the said patent, or conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts, of the said propagating material;
- (iii) production of propagating material of the registered variety after the lapse of the patent right set forth in item (ii) of this paragraph, by any person, by means of the process pertaining to the said patent, or conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts, of the said propagating material; or
- (iv) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of the harvested material obtained through the use of the propagating material set forth in items (ii) and (iii) of this paragraph.
- (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 pertaining to the harvested material set forth in item (iv) of this paragraph.

(2) Where farmers as prescribed by the Cabinet Order has obtained harvested material through the use of propagating material of a registered variety, varieties which, by the expressions of the characteristics, are not clearly distinguishable from the registered variety, or varieties listed in each item of paragraph (2) of Article 20 pertaining to the registered variety (hereinafter collectively referred to as "registered variety etc.") which have been transferred by the holder of the breeder's right, the holder of an exclusive exploitation right or the holder of a non-exclusive exploitation right, and further use, on their own holdings, the said harvested material as propagating material for the next production cycle, the effects of the breeder's right shall not extend to the said propagating material used for the next production cycle, the harvested material obtained through the use of it, and processed products pertaining to such harvested material, unless otherwise agreed upon by contract.

- (3) The provision of paragraph (2) of this Article shall not apply where farmers use propagating material of varieties which belong to any one of the genera or species designated by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as being propagated vegetatively.
- (4) Where propagating material, harvested material or processed products of a registered variety etc. has been transferred by the holder of the breeder's right, the holder of an exclusive exploitation right or the holder of a non-exclusive exploitation right, or as the result of the acts listed in any of the items of paragraph (1) of this Article, the effect of the breeder's right for the said registered variety shall not extend to the exploitation of the transferred propagating material, harvested material or processed products. However, this shall not apply to the acts which involve further propagation of the said registered variety etc., nor to the exporting of propagating material of the said registered variety to a state which does not provide protection for the plant genus or species to which that registered variety belongs, nor to the exporting of harvested material of the said registered variety to such a state for a purpose other than final consumption.

(Obligation to Use the Denomination)

Article 22 (1) When any person offers for transfer or transfers propagating material of a registered variety (including varieties whose registration have already expired: the same shall apply hereinafter in this Article) in the course of business, he/she shall be obliged to use the denomination of the said registered variety (where the denomination has been changed pursuant to the provisions of Article 48 paragraph (2), the denomination as changed.)

- (2) When any person offers for transfer or transfers propagating material of a non-registered variety in the course of business, he/she shall be prohibited from using denomination of any registered varieties which belong to the genus or species of agricultural, forestry or aquatic plants to which the said non-registered variety belongs, or to the genus or species of agricultural, forestry or aquatic plants specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as similar to the genus or species of agricultural, forestry or aquatic plants to which the said variety belongs.

(Jointly Held Breeder's Right)

Article 23 (1) Each of the joint holders of a breeder's right may neither transfer his/her share nor establish a pledge on it without the consent of all the other joint holders.

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

joint holders.

- (3) Each of the joint holders of a breeder's right may grant neither an exclusive exploitation right nor a non-exclusive exploitation right on the breeder's right without the consent of all the other joint holders.

(Extinct of a Breeder's Right due to the Dissolution of a Juridical person)

Article 24 A breeder's right shall be extinct in the following cases:

- (i) where a juridical person holding a breeder's right dissolves, and the breeder's right shall vest in the national treasury pursuant to the provisions of Article 72 paragraph (3) of the Civil Code or equivalent Acts; or
- (ii) where a natural person holding a breeder's right dies, and the breeder's right shall vest in the national treasury pursuant to the provisions of Article 959 of the Civil Code.

(Exclusive Exploitation Right)

Article 25 (1) The holder of a breeder's right may grant an exclusive exploitation right on his/her breeder's right.

- (2) The holder of an exclusive exploitation right shall have an exclusive right to exploit the registered variety etc. pertaining to the exclusive exploitation right in the course of business to the extent laid down in contract granting the right.
- (3) An exclusive exploitation right may be transferred only where the transfer is together with the transfer of the business in which the variety is exploited, where it is with the consent of the holder of the breeder's right, or where it is as a result of inheritance or other general successions.
- (4) The holder of an exclusive exploitation right may establish a pledge or grant a non-exclusive exploitation right on the exclusive exploitation right only with the consent of the holder of the breeder's right.
- (5) The provisions set forth in Article 23 shall apply mutatis mutandis to exclusive exploitation rights.

(Non-exclusive Exploitation Right)

Article 26 (1) The holder of a breeder's right may grant a non-exclusive exploitation right on his/her breeder's right.

- (2) The holder of a non-exclusive exploitation right shall have the right to exploit the registered variety etc. pertaining to the non-exclusive exploitation right in the course of business pursuant to the provision of this Act or to the extent laid down in contract granting the right.

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

Article 27 A person who has bred, earlier than the breeder of a registered variety, a

variety that, by the expressions of the characteristics, is identical to or not clearly distinguishable from the registered variety shall have a non-exclusive exploitation right on the breeder's right pertaining to the said registered variety.

(Arbitration)

- Article 28 (1) Where a registered variety etc. has not been adequately exploited continuously for two years or more in Japan, or where the exploitation of a registered variety etc. is especially necessary for the reason of public interest, a person who intends to exploit the said registered variety etc. in the course of business may request the holder of the breeder's right or the holder of an exclusive exploitation right for the said registered variety to hold consultations concerning the grant of a non-exclusive exploitation right thereon.
- (2) Where no agreement has been reached by the consultations set forth in paragraph (1) of this Article, or if such consultation has been unable to take place, the person provided in the said paragraph may apply for an arbitration decision with the Minister of Agriculture, Forestry and Fisheries.
- (3) Where an application for the arbitration decision prescribed in paragraph (2) of this Article has been filed, the Minister of Agriculture, Forestry and Fisheries shall notify in writing the holder of the breeder's right, the holder of an exclusive exploitation right, or other persons who have any right registered in relation to the registered variety pertaining to the said application accordingly and shall give them an opportunity to state their opinion, designating a reasonable period of time.
- (4) Unless he/she finds the exploitation of a registered variety, etc. especially necessary for the reason of public interest, the Minister of Agriculture, Forestry and Fisheries shall not render an arbitration decision ordering a non-exclusive exploitation right to be granted where there is any justifiable ground why the registered variety etc. has not been exploited adequately.
- (5) Before rendering an arbitration decision set forth in paragraph (2) of this Article, the Minister of Agriculture, Forestry and Fisheries shall hear the opinions of the Agricultural Materials Council.
- (6) An arbitration decision ordering a non-exclusive exploitation right to be granted shall set forth the scope of the non-exclusive exploitation right as well as the amount of consideration and the method of payment thereof.
- (7) When he/she has rendered an arbitration decision in accordance with paragraph (2) of this Article, the Minister of Agriculture, Forestry and Fisheries shall notify the parties and other persons who have rights registered in relation to the registered variety, accordingly.
- (8) Upon the notification of the arbitration decision prescribed in paragraph (6) of this Article has been notified to the parties pursuant to the provisions of



paragraph (7) of this Article, an agreement shall be deemed to have been reached between the parties concerned as provided in the arbitration decision.

(Transfer of a Non-exclusive Exploitation Right)

Article 29 (1) A non-exclusive exploitation right, with the exception of such as is granted by an arbitration decision set forth in paragraph (2) of Article 28, may be transferred only where the transfer is together with the transfer of the business in which the variety is exploited, where it is with the consent of the holder of the breeder's right (in the case of a non-exclusive exploitation right on an exclusive exploitation right, both the holder of the breeder's right and the holder of that exclusive exploitation right; the same shall apply also to paragraph (2) of this Article), or where it is as a result of inheritance or other general succession.

(2) The holder of a non-exclusive exploitation right, with the exception of such as is granted by an arbitration decision set forth in paragraph (2) of Article 28, may establish a pledge on that non-exclusive exploitation right only with the consent of the holder of the breeder's right.

(3) A non-exclusive exploitation right which has been granted by an arbitration decision set forth in paragraph (2) of Article 28 may be transferred only together with the business in which the variety is exploited.

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

(Pledge)

Article 30 (1) Where a pledge is established on a breeder's right or an exclusive or non-exclusive exploitation right, the pledgee may not exploit the registered variety etc. unless otherwise agreed upon by contract.

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

(Waiver of the Breeder's Right)

Article 31 (1) Where there is any holder of an exclusive exploitation right, any pledgee or any holder of non-exclusive exploitation right under Article 8 paragraph (3), Article 25 paragraph (4) or Article 26 paragraph (1) in relation to a breeder's right, the holder of the breeder's right may waive his/her breeder's right only with the consent of all such persons.

- (2) Where there is any pledgee or any holder of a non-exclusive exploitation right under Article 25 paragraph (4) in relation to an exclusive exploitation right, the holder of the exclusive exploitation right may waive his/her exclusive exploitation right only with the consent of all such persons.
- (3) Where there is any pledgee in relation to a non-exclusive exploitation right, the holder of the non-exclusive exploitation right may waive his/her non-exclusive exploitation right only with the pledgee's consent.

(Effects of Registration)

Article 32 (1) The following matters shall take 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 right, or
  - (iii) establishment, 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 right.
- (2) Inheritance or other general succession referred to in each item of paragraph (1) of this Article shall be notified to the Minister of Agriculture, Forestry and Fisheries without delay, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.
  - (3) Once a non-exclusive exploitation right has been registered on a breeder's right or an exclusive exploitation right, it shall also be effective against anyone subsequently acquiring the breeder's right or the exclusive exploitation right, or against anyone subsequently being granted an exclusive exploitation right on the breeder's right.
  - (4) A non-exclusive exploitation right under Article 8 paragraph (3) or Article 27 shall have the same effects as prescribed in paragraph (3) of this Article without registration.
  - (5) The transfer, modification, extinction or restriction on the disposition of a non-exclusive exploitation right, or the establishment, transfer, modification, termination or restriction on the disposition of a pledge on a non-exclusive exploitation right may not be duly asserted against any third party without registration.

## **Section 5 Infringement**

(Injunction)

- Article 33 (1) The holder of a breeder's right or the holder of an exclusive exploitation right may demand a person who infringes or is likely to infringe his/her breeder's right or exclusive exploitation right to discontinue or refrain from such infringement.
- (2) The holder of a breeder's right or the holder of an exclusive exploitation right, in making the demand prescribed in paragraph (1) of this Article, may demand the destruction of the propagating material, the harvested material or the processed products which is a component of the act of infringement, or the objects used in the commission of the act of infringement, or other measures necessary for the prevention of such infringement.

(Presumption of Amount of Damages)

- Article 34 (1) Where the holder of a breeder's right or of an exclusive exploitation right claims, against a person who has intentionally or negligently infringed his/her breeder's right or exclusive exploitation right, compensation for damages caused to him/her by the infringement, if the person has transferred the propagating material, the harvested material or the processed products which is the component of the act of infringement, the amount of damage suffered by the holder of the breeder's right or the holder of the exclusive exploitation right may be presumed, within the limit attainable by the holder of the breeder's right or the holder of the exclusive exploitation right in consideration of his/her capability to exploit such propagating material, harvested material or processed products, to be the amount given by multiplying the quantity of the propagating material, the harvested material or the processed products transferred by the person (hereinafter referred to in this paragraph as the "transferred quantity") by the profit per unit of the propagating material, the harvested material or the processed products which would have been sold by the holder of the breeder's right or the holder of the exclusive exploitation right if there had been no such an act of infringement. However, if there exists any circumstance under which the holder of the breeder's right or the holder of the exclusive exploitation right may not be able to sell the transferred quantity in whole or in part, the amount corresponding to the quantity which would not have been sold due to such a circumstance shall be deducted.
- (2) Where the holder of a breeder's right or of an exclusive exploitation right claims, against a person who has intentionally or negligently infringed his/her breeder's right or exclusive exploitation right, compensation for damages caused to him by the infringement, if the person has gained any profits as a result of the act of infringement, the amount of the said profits shall be presumed to be the amount

of damage suffered by the holder of the breeder's right or of the exclusive exploitation right

- (3) The holder of a breeder's right or of an exclusive exploitation right may claim, against a person who has intentionally or negligently infringed his/her breeder's right or exclusive exploitation right, compensation for damage caused to him by the infringement, by regarding the amount of money which he/she would be entitled to receive from the exploitation of the registered variety etc., as the amount of damage suffered by him/her.
- (4) The provision of paragraph (2) of this Article shall not preclude a claim for compensation for damages in an amount exceeding the amount provided in the said paragraph. In such cases, where the infringer of the breeder's right or the exclusive exploitation right had neither intent nor gross negligence in the commission of the act of infringement, the court may take such circumstances into consideration in determining the amount of damages.

(Presumption of Negligence)

Article 35 A person who has infringed a breeder's right or an exclusive exploitation right of another person shall be presumed to have been negligent in the commission of the said act of infringement.

(Obligation to Clarify the Specific Conditions)

Article 36 In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, in order to deny the specific conditions of the propagating material, the harvested material or the processed products which the holder of a breeder's right or of an exclusive exploitation right claims as the component of the act of infringement, the opponent shall clarify the specific conditions of his/her act. However, this shall not apply where the opponent has reasonable grounds for being unable to do so.

(Submission of Documents)

Article 37 (1) In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, the court may, upon the motion of a party, order the other party to submit documents necessary for proving the said act of infringement or for calculating of the damages caused by the said act of infringement. However, this shall not apply where the person possessing the documents has justifiable grounds for refusing the submission of the said documents.

- (2) When the court finds it necessary for determining whether there are justifiable grounds as provided in the proviso of the preceding paragraph, the court may cause the person possessing the documents to present such documents. In this

case, no person shall request the disclosure of the documents presented.

(3) In the case referred to in the preceding paragraph, when the court finds it necessary to hear opinions concerning the existence of justifiable grounds as provided in the proviso of paragraph (1) by disclosing the documents as provided in the second sentence of the preceding paragraph, the court may disclose the documents to the parties, etc. (the parties (or, in the case of juridical persons, their representatives), their agents (excluding counsels and assistant in court), or their employees or any other workers; the same shall apply hereinafter), counsels or assistant in court.

(4) The preceding three paragraphs shall apply mutatis mutandis to the presentation of purposes to be inspected necessary for proving the act of infringement in litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right.

(Expert Opinion for Calculation of Damages)

Article 38 In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, when, upon the motion of a party, the court orders an expert opinion necessary for the calculation of the damages caused by the said act of infringement, the other party shall explain to the expert witness the matters necessary for the expert opinion.

(Determination of a Reasonable Amount of Damage)

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

(Protective Order)

Article 40 (1) In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, where there is prima-facie evidence of the fact that trade secrets (refers to trade secrets as provided in Article 2 (6) of the Unfair Competition Prevention Act (Act No. 47 of 1993), the same shall apply hereinafter) possessed by a party satisfy all of the following conditions, the court may, upon the motion of the party, order by a ruling that the parties, etc., counsels or assistant in courts shall 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 who receive the order regarding the trade secrets

under this provision. However, this shall not apply where the parties, etc., counsels or assistant in courts have, prior to the filing of the motion, already obtained or been in the possession of the trade secrets by a method other than by reading of the briefs under item (i) or through the examination or disclosure of evidence under the said item.

- (i) where the trade secrets possessed by the party were or 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 provision in Article 37 paragraph (3) or Article 43 paragraph (4)); and
  - (ii) where it is necessary to restrict the use or the disclosure of the trade secrets prescribed in the preceding item to prevent any possible interference with the party's business activities based on the trade secrets, which might arise if the trade secrets are used for any purpose other than proceedings of the litigation or if the said trade secrets are disclosed.
- (2) A motion requesting the order under the preceding paragraph (hereinafter referred to as "protective order") shall be made in writing specifying the following matters:
- (i) the person(s) to whom the protective order is to be issued;
  - (ii) the facts that clearly identify the trade secrets to be protected by the protective order; and
  - (iii) the facts corresponding to the reasons each of the items in the preceding paragraph is applicable.
- (3) Where the protective order is issued, a written ruling thereof shall be served to the person(s) to whom the protective order is issued.
- (4) The protective order shall take effect as of the date the written ruling is served to the person(s) to whom the protective order is issued.
- (5) The judicial decision dismissing a motion requesting the protective order may be subject to immediate appeal against a ruling.

#### (Rescission of Protective Order)

- Article 41 (1) A person(s) who has filed a motion requesting a protective order or to whom a protective order is issued may file a motion with the court where the record of a case is maintained (or, in the case of no such court maintaining the record of a case(s), the court issuing the protective order), requesting the rescission of the protective order on the ground that the requirements as provided in the previous Article paragraph (1) are not met or are no longer met.
- (2) Where a judicial decision on a motion requesting the rescission of a protective order is rendered, a written ruling thereof shall be served to the person who filed the motion and the opponent in the case.
- (3) The judicial decision on a motion requesting the rescission of a protective order

may be subject to immediate appeal against a ruling.

- (4) A judicial decision to the effect that a protective order is to be rescinded shall have no effect unless the judicial decision becomes final and binding.
- (5) Where a judicial decision to the effect that a protective order is to be rescinded is rendered, the court shall immediately notify the person(s) who, in the litigation in which the said protective order was issued, received the protective order pertaining to the trade secrets who are neither the person filing the motion requesting the rescission of the protective order nor the opponent, if any, of the fact that the judicial decision to the effect that the protective order is to be rescinded was rendered.

(Notice of a Request Inspection of Record)

- Article 42 (1) Where a ruling under Article 92 (1) of the Code of Civil Procedure (Act No. 109 of 1996) was rendered pertaining to the record of litigation in which a protective order was issued (excluding litigation in which all protective orders have been rescinded), where a party to whom the protective order was not issued in the litigation requests inspection etc. of a part of the record in which the confidential information is contained, etc. under the said Article, immediately after the filing of the request, the court clerk shall notify the party who filed the motion under the said Article (excluding the person who filed the request, the same in paragraph (3)) of the fact that the said request has been filed.
- (2) In the case of the preceding paragraph, the court clerk shall not allow the person who filed the request to inspect etc. the part in which confidential information is contained before a lapse of two weeks from the date of filing of the said request (or, where a motion requesting a protective order is filed prior to the day in which two weeks have lapsed, against the person who filed the request, before the judicial decision on the motion becomes final and binding).
  - (3) The preceding two paragraphs shall not apply where all the parties who filed a motion under Article 92 (1) of the Code of Civil Procedure give the consent to allow the person who filed a request under paragraph (1) to inspect etc. the part in which confidential information is contained.

(Suspension on Open Examination of Parties)

- Article 43 (1) When a party, etc., to litigation pertaining to the infringement of a patent right or exclusive exploitation right is to be examined as a party to the litigation, its statutory representative or a witness, with pertaining to matters that will be a basis for the determination of the existence or non-existence of the said infringement, and such matters are trade secrets possessed by a party, the court may, by a ruling, elect to hold closed examinations of such matters where the court, upon the unanimous consent of all judges, finds that the parties, etc.

will be unable to make sufficient statements regarding the matters due to the obvious fact that making statements regarding the matters at an open examination will significantly interfere with the business activities of the party based on such trade secrets and that, without such statements, a proper decision on the fact of the existence or non-existence of the infringement of a patent right or exclusive exploitation right that ought to be made based on the said matters may not be made based solely on other evidence.

- (2) The court shall, in rendering the ruling as provided in the preceding paragraph, hear the opinions of the parties, etc. in advance.
- (3) In the case of the preceding paragraph, where necessary, the court may cause the parties, etc., to present a document stating the gist of the matters to be stated. In such a case, no person may request the disclosure of the document presented.
- (4) When the court finds it necessary to hear opinions by disclosing the document as provided in the second sentence of the preceding paragraph, the court may disclose the document to the parties, etc., their counsels or assistant in courts.
- (5) Where the examination on certain matters is to be closed under paragraph (1), the court shall render such fact and reasons therefor prior to requiring the public to leave the court. Upon completion of the examination on said matters, the court shall allow the public to re-enter the court.

(Measures for Recovery of Credit)

Article 44 Upon the request of the holder of a breeder's right or of an exclusive exploitation right, the court may, in lieu of the compensation for damages or in addition thereto, order the person who has harmed the credit of the holder of the breeder's right or of the exclusive exploitation right by intentionally or negligently infringing his/her breeder's right or exclusive exploitation right, to take measures necessary for the recovery of the credit of the holder of the breeder's right or of the exclusive exploitation right.

## **Section 6 Maintenance and Rescission of a Variety Registration**

(Registration Fee)

Article 45 (1) The holder of a breeder's right shall pay a registration fee, the amount of which shall be specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries but not exceeding 36,000 yen for each variety registration each year until the expiration of the duration as provided in Article 19 paragraph (2).

- (2) The provision of paragraph (1) of this Article shall not apply where the holder of



a breeder's right is the national government.

- (3) Notwithstanding the provision of paragraph (1) of this Article, where the national government and other 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 paragraph (1) of this Article shall be the amount calculated by multiplying the amount of the registration fee specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries pursuant to paragraph (1) of this Article by the percentage of the share of such other person, which shall be paid by such other person.
- (4) Where there is a fraction less than 10 yen in the amount of the registration fee as calculated pursuant to the provision of paragraph (3) of this Article, such a fraction shall be discarded.
- (5) The registration fee for the first year prescribed in paragraph (1) of this Article shall be paid within 30 days from the date of public notice in accordance with the provisions of Article 18 paragraph (3).
- (6) The registration fee for each year after the second year prescribed in paragraph (1) of this Article shall be paid by the end of the previous year.
- (7) Where the holder of the breeder's right fails to pay registration fee within the time limit prescribed in paragraph (6) of this Article, he/she may make a late payment of the registration fee within 6 months after the expiration of period of time.
- (8) The holder of a breeder's right who makes a late payment of the registration fee pursuant to the provision of paragraph (7) of this Article shall pay, in addition to the registration fee to be paid under the provision of paragraph (1) of this Article, a registration surcharge of the same amount as the registration fee.

(Payment of the Registration Fee by Interested Persons)

Article 46 (1) An interested person may pay the registration fee even against the will of the holder of the breeder's right.

- (2) The interested person who has paid the registration fee pursuant to the provision of paragraph (1) of this Article may claim reimbursement of the expenses to the limit of the actual profit gained by the holder of the breeder's right.

(Examination of a Registered Variety)

Article 47 (1) The Minister of Agriculture, Forestry and Fisheries may order the holder of a breeder's right or of an exclusive exploitation right to submit entire plants or parts of plants of the registered variety or other material, where he/she finds it necessary in order to verify the maintenance of the expressions of the characteristics of the registered variety.

- (2) The Minister of Agriculture, Forestry and Fisheries shall cause officers of the Ministry of Agriculture, Forestry and Fisheries to carry out on-site inspections or cause the NCSS to carry out growing tests in the case prescribed in paragraph (1) of this Article.
- (3) The provisions of paragraphs (3) to (6) inclusive of Article 15 shall apply mutatis mutandis to the on-site inspections or growing tests set forth in paragraph (2) of this Article.

(Change of Denomination of a Registered Variety)

Article 48 (1) When it is found that the denomination of a registered variety falls under any of the provisions of items 2 to 4 inclusive of Article 4 paragraph (1), the Minister of Agriculture, Forestry and Fisheries may, upon the request of an interested person or ex officio, order the holder of the breeder's right to submit another denomination which does not fall under any of the items of the said paragraph, designating a reasonable period of time.

- (2) When a denomination falling under none of the items of Article 4 paragraph (1) has been submitted pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall change the denomination of the said registered variety to the submitted denomination by entering it in the Registry of Plant Varieties.
- (3) When the Minister of Agriculture, Forestry and Fisheries has changed the denomination of a registered variety pursuant to the provision of paragraph (2) of this Article, he/she shall notify the holder of the breeder's right for the said registered variety and publicly notify information to that effect.

(Rescission of the Variety Registration)

Article 49 (1) The Minister of Agriculture, Forestry and Fisheries shall rescind a variety registration in any one of the following cases:

- (i) where it has turned out that the variety was registered in violation of the provisions of Article 3 paragraph (1), Article 4 paragraph (2), Article 5 paragraph (3), Article 9 paragraph (1) or Article 10;
- (ii) where it has turned out that, after the variety registration, the registered variety no longer satisfies the requirements listed in item 2 or 3 of Article 3 paragraph (1);
- (iii) where, after the variety registration, the holder of the breeder's right has become a person who may not enjoy a breeder's right pursuant to the provisions of Article 10;
- (iv) where the registration fee for the first year is not paid within the period provided in Article 45 paragraph (5);
- (v) where the registration fee and the registration surcharge are not paid within

- the period provided in Article 45 paragraph (7);
- (vi) where the person who was ordered to submit material pursuant to the provisions of Article 47 paragraph (1) fails to comply with the order without justifiable grounds; or
  - (vii) when the person who was ordered to submit another denomination of the registered variety pursuant to the provisions of paragraph (1) of this Article fails to comply with the order without justifiable grounds.
- (2) A hearing pertaining to the rescission of a variety registration pursuant to any of the provisions of items 1, 2, 3, 6, or 7 of paragraph (1) of this Article shall be held upon giving a notice sufficiently before the hearing, to the holder of an exclusive exploitation right or of any other rights registered in relation to the breeder's right pertaining to the said variety registration.
- (3) Where the persons prescribed in paragraph (2) of this Article request to participate in the said hearing pursuant to the provisions of Article 17 paragraph (1) of the Administrative Procedure Act (Act No. 88 of 1993), the chairperson of the hearing set forth in paragraph (2) of this Article shall permit him/her to do so.
- (4) When the variety registration has been rescinded pursuant to the provisions of paragraph (1) of this Article, the breeder's right shall be extinct at the time of cancellation. However, in the case of any of the following items, the breeder's right shall be deemed to have been extinct retroactively from the time specified respectively in those items.
- (i) the case falling under item 1 or 4 of paragraph (1) of this Article: the time of variety registration;
  - (ii) the case falling under item 3 of paragraph (1) of this Article: the time when the said item became applicable; or
  - (iii) the case falling under item 5 of paragraph (1) of this Article: the time when the time limit provided in Article 45 paragraph (6) has elapsed.
- (5) When the variety registration has been canceled pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall notify the holder of the breeder's right pertaining to the said variety registration and publicly notify information to that effect.
- (6) With respect to the rescission of a variety registration under the provisions of item 4 or 5 of paragraph (1) of this Article, the provisions of Chapter III (excluding Articles 12 and 14) of the Administrative Procedure Act shall not apply.

## **Section 7 Miscellaneous Provisions**

(Jurisdiction for an Overseas Resident)

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

(Special Provisions for application of an Objection to a Variety Registration)

Article 51 (1) The provision of Article 45 of the Administrative Appeal Act shall not apply to application of an objection to a variety registration and, notwithstanding the provision of Article 48 of the said Act, the provision of Article 14 paragraph (3) of the said Act shall not apply.

(2) The proceedings of an objection to a variety registration pursuant to the Administrative Appeal Act shall be held upon giving a notice sufficiently before the proceedings, to the holder of the breeder's right or of the exclusive exploitation right or of any other rights registered in relation to the said variety registration.

(3) Where the person who received a notice pursuant to the provisions of paragraph (2) of this Article requests to participate in the said application of an objection, the Minister of Agriculture, Forestry and Fisheries shall permit him/her to do so.

(Registration in the Registry of Plant Varieties)

Article 52 (1) The following matters shall be registered in the Register of Plant Varieties kept in 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 right or of a non-exclusive exploitation right; or
- (iii) establishment, transfer, modification, extinction or restriction on disposition, of a pledge on a breeder's right, on an exclusive exploitation right or on a non-exclusive exploitation right.

(2) In addition to what is provided for in this Act, matters necessary for variety registration and the Registry of Plant Varieties shall be prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(Request 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 the Ordinance of the Ministry of Agriculture, Forestry and Fisheries:

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

- (ii) issue of an transcript or extract of the Registry of Plant Varieties or
  - (iii) inspection or copying of the Registry of Plant Varieties or an request filed set forth in Article 5 paragraph (1), photograph or other material attached thereto (excluding those which the Minister of Agriculture, Forestry and Fisheries considers necessary to be kept confidential).
- (2) The provisions of Rules of Act on Access to Information Held by Administrative Organs (Act No. 42 of 1999) shall not apply to the Registry of Plant Varieties, to applications filed under Article 5 paragraph (1), nor to photographs or other material attached thereto (referred to in the next paragraph as "the Registry of Plant Varieties, etc.")
- (3) The provisions of Chapter IV of the Act on the Protection of Personal Information Held by Administrative Organs (Act No. 58 of 2003) shall not apply to possessed personal information (referring to possessed personal information as provided in Article 2 paragraph (3) of the said Act) recorded in the Registry of Plant Varieties, etc.

(Fees)

- Article 54 (1) The person filing a request pursuant to the provisions of paragraph (1) of Article 46 shall pay the fee in an amount to be specified, in consideration of the actual costs, by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.
- (2) The provisions of paragraph (1) of this Article shall not apply where the person who should pay the fee pursuant to the provision of the said paragraph is the national government.

(Mark of Registered Variety)

Article 55 Any person who transfers propagating material in the course of business shall make efforts to place a mark, on the propagating material of a registered variety he/she transfers or the package thereof, which indicates the said propagating material is of a registered variety (hereinafter referred to as "mark of registered variety"), pursuant to the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(Prohibition of Fictitious manifestation of intention)

- Article 56 Any person shall be prohibited from doing any of the following acts;
- (i) placing a mark of registered variety or a confusing mark therewith on propagating material of anon-registered variety or the package thereof,
  - (ii) transferring or displaying for the purpose of transfer the propagating material of a non-registered variety with a mark of registered variety or a confusing mark therewith on them or on the package thereof,

- (iii) giving in an advertisement, for the purpose of transferring the propagating material of a non-registered variety, an indication that the propagating material is of a registered variety or a confusing indication therewith.

(Effects of Convention)

Article 57 Where there are specific provisions relating to the protection of new plant varieties in any convention, such provisions shall prevail.

### **Chapter III Designated Seed**

(Notification by Seed Dealers)

Article 58 (1) A seed dealer shall notify the Minister of Agriculture, Forestry and Fisheries of the following matters, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries. However, this shall not apply to those seed dealers specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

- (i) the name and the domicile of the seed dealer;
  - (ii) the kinds of designated seeds which the seed dealer handles; and
  - (iii) other matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.
- (2) The same shall apply whenever any change is made in the matters set forth in paragraph (1) of this Article.
- (3) The notification under paragraphs (1) and (2) of this Article shall be due, where business has been newly commenced, within two weeks after the commencement, and whenever any change is made in the matters referred to in paragraph (1) of this Article, within two weeks after such change.

(Indication of Designated Seeds)

Article 59 (1) Designated seeds shall not be sold unless its package is furnished with an indication containing the following matters or it is attached with a voucher indicating the said matters. However, this shall not apply where the matters listed in items 1 to 4 inclusive and item 6 of this paragraph pertaining to designated seeds are indicated by a notice or other readily visible means, or where designated seeds are sold by a person other than seed dealers.

- (i) the name and the domicile of the seed dealer providing these matters;
- (ii) the type and the variety name (in the case of grafted saplings, the types and the variety names of scion and rootstock);
- (iii) the place of production;
- (iv) in the case of seed, the date of production or the time limit of validity and the

- germination percentage;
- (v) the quantity; and
- (vi) any other matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.
- (2) The indication of the place of production under item 3 of paragraph (1) of this Article shall be done, in the case of a domestic product, by stating the prefecture in which the said place of the production is located, and, in the case of a foreign product, by stating the country in which the said place of the production is located.
- (3) In addition to what is provided in paragraphs (1) and (2) of this Article, with regard to certain designated seeds for which he/she finds an indication is necessary for users to identify its suitable location for cultivation, usage and other features relevant to cultivation or exploitation in the selecting seeds of varieties suitable to the natural and economic conditions, the Minister of Agriculture, Forestry and Fisheries shall determine and publicize the matters to be indicated for such identification and any other standard relating to the said indication, with which the seed dealers should comply.
- (4) The Minister of Agriculture, Forestry and Fisheries may, where any seed dealer fails to comply with the standards determined pursuant to the provisions of paragraph (3) of this Article, issue to the seed dealer a recommendation concerning the standards to be complied with.

(Order relating to Designated Seeds)

- Article 60 (1) The Minister of Agriculture, Forestry and Fisheries may order any seed dealer who has violated the provisions of paragraphs (1) and (2) of Article 50 to indicate the matters listed in each item of paragraph (1) of the said Article or to change the contents of the indicated matters, or may prohibit the sale of the designated seeds pertaining to the act of violation.
- (2) The Minister of Agriculture, Forestry and Fisheries may, where any seed dealer fails to comply with the recommendation issued pursuant to the provisions of paragraph (4) of Article 50, order the seed dealer to comply with the standards set out under paragraph (3) of the said Article, designating a time limit.

(Standards relating to the Production of Designated Seeds)

- Article 61 (1) The Minister of Agriculture, Forestry and Fisheries shall, where he/she finds it particularly necessary in order to secure the distribution of designated seeds of good quality, determine and publicize standards relating to the production, conditioning, stocking or packaging, of the said designated seeds, that should be complied with by persons producing the said seeds in the course of business and seed dealers.

- (2) The Minister of Agriculture, Forestry and Fisheries may, where a person producing the designated seeds in the course of business or a seed dealer fails to comply with the standards determined under the provisions of paragraph (1) of this Article, issue to such a person a recommendation concerning the standards be complied with.
- (3) The Minister of Agriculture, Forestry and Fisheries may, where any person producing the designated seeds in the course of business or any seed dealer fails to comply with the recommendation issued under paragraph (2) of this Article, publish the fact of non-compliance.

(Collection of Designated Seeds)

Article 62 (1) The Minister of Agriculture, Forestry and Fisheries may cause officers of the Ministry of Agriculture, Forestry and Fisheries to collect from seed dealers such quantities of designated seeds as are necessary for inspection. However, compensation equivalent to the market value shall be paid.

- (2) In the case referred to in paragraph (1) of this Article, such officers shall, where the seed dealer so requests, show a certificate to identify his/her official status.

(Collection of Designated Seeds made by the NCSS or the National Livestock Breeding Center)

Article 63 (1) The Minister of Agriculture, Forestry and Fisheries may, when he/she finds it necessary, cause the NCSS or the Incorporated administrative agency National Livestock Breeding Center (hereinafter referred to as "NLBC") in accordance with the classes, specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries to collect from seed dealers such quantities of designated seeds as are necessary for inspection. However, compensation equivalent to the market value shall be paid.

- (2) Where the collection is conducted by the NCSS or the NLBC pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall issue an instruction to the NCSS or the NLBC to designate the date, place and other relevant items of information.

(3) The NCSS or the NLBC, having conducted the collection referred to in paragraph (1) of this Article in accordance with an instruction set forth in paragraph (2) of this Article, shall report the result of the inspection to the Minister of Agriculture, Forestry and Fisheries pursuant to the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

- (4) In the case referred to in paragraph (1) of this Article, officials of the NCSS or the NLBC performing the collection pursuant to the provisions of the said paragraph shall, if the seed dealer so requests, show a certificate to identify his/her status.



(Orders to the NCSS or the NLBC)

Article 64 The Minister of Agriculture, Forestry and Fisheries may, when he/she finds it necessary in order to ensure an appropriate implementation of the collection under paragraph (1) of Article 52, issue orders to the NCSS or the NLBC in relation to the collection.

(Collection of Reports)

Article 65 The Minister of Agriculture, Forestry and Fisheries may, within such limits as are necessary for the enforcement of this Act, order seed dealers to submit reports relating to their business or to submit books or other documents.

(Delegation of Authority to Prefectural Governors)

Article 65 (1) Part of the authority of the Minister of Agriculture, Forestry and Fisheries under the provisions of Article 59 paragraph (4), Article 60, Article 61 paragraph (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 Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

## **Chapter IV Penal Provisions**

(Crime of Infringement)

Article 67 Any person who has infringed a breeder's right or an exclusive exploitation right shall be punished by imprisonment with work for not more than ten years or by a fine of not more than 10,000,000 yen, or combination thereof.

(Crime of Fraud)

Article 68 Any person who has obtained a variety registration by means of a fraudulent act shall be punished by imprisonment with work for not more than three years or by a fine of not more than 3,000,000 yen.

(Crime of Fictitious manifestation of intention)

Article 69 Any person who fails to comply with the provision of Article 56 shall be punished by imprisonment with work for not more than three years or by a fine of not more than 3,000,000 yen.

(Crime of Breach of Protective Order)

- Article 70 (1) Any person who fails to comply with the protective order shall be punished by imprisonment with work for not more than five years or by 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 complaint is filed.
- (3) The crime prescribed in paragraph (1) of this Article shall also apply to a person who commits the said crime abroad.

(Crime of Sales of Designated Seeds with False Labeling)

- Article 71 Any person who falls under any of the following items shall be punished by a fine of not more than 500,000 yen.
- (i) a person who has sold designated Seeds with false indication concerning the matters to be shown pursuant to the provisions of paragraphs (1) and (2) of Article 59; or
- (ii) a person who has sold designated Seed in violation of the dispositions taken pursuant to the provisions of Article 60 paragraph (1) or (2).

(Crime of False Notification)

- Article 72 Any person who falls under any of the following items shall be punished by a fine of not more than 300,000 yen.
- (i) a person who failed to notify pursuant to the provisions of Article 58 or made false notification;
- (ii) a person who, without justifiable grounds, has refused, obstructed or evaded the collection set forth under Article 62 paragraph (1) or Article 63 paragraph (1); or
- (iii) a person who failed to submit a report or document specified pursuant to the provision of Article 65 or submitted a false report or document.

(Dual Liability)

- Article 73 (1) Where a representative of a juridical person, or an agent, an employee or any other worker of a juridical person or an individual has committed an act in violation of provisions prescribed in any of the following items with regard to the business of the juridical person or the individual, not only the offender shall be punished but also the said juridical person shall be punished by the fine prescribed respectively in those items, or the said individual shall be punished by the fine prescribed in the respective 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;

(iii) Articles 71 or item 1 or 3 of Article 70: fine prescribed in any of these Articles.

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

(3) When a juridical person or an individual is to be punished by fine due to the act of violation prescribed in Article 67 or Article 70 paragraph (1) pursuant to the provision of paragraph (1) of this Article, the period of prescription shall be the one for the crime prescribed in those provisions.

(Civil Non-penal fine for Violation of the Order)

Article 74 Where the NCSS or the NLBC violated the order prescribed in Article 15 paragraph (6) (including the cases where it is applied mutatis mutandis pursuant to Article 47 paragraph (3)) or Article 64, members of the executive organ that directed the violation shall be punished by a civil non-penal fine of not more than 200,000 yen.

(Civil Non-penal fine for Violation of the Obligation of Using a Denomination)

Article 75 Any person who violated the provisions of Article 22 shall be punished by a civil non-penal fine of not more than 100,000 yen.

### **Supplementary Provisions (Extract from the Act No. 49 of May 18, 2007)**

(Effective Date)

Article 1 This Act shall come into effect as from December 1st, 2007. However, the provision of Article 6 of the Supplementary Provisions of this Act shall come into force as from the day of promulgation.

(Transitional Measure pertaining to the Application of the Provisions on Infringement)

Article 2 The provisions of Chapter II, Section 5 (including the cases where they are applied mutatis mutandis under Article 14 paragraph (5) of the New Act) of the Plant Variety Protection and Seed Act as revised by this Act (hereinafter referred to as "New Act") shall also apply to matters arose prior to the enforcement of this Act, unless otherwise provided for by this Act. However, this shall not preclude the effect given by the provisions of Chapter II, Section 5 (including the cases

where they are applied mutatis mutandis under Article 14 paragraph (5) of the Former Act) of the Plant Variety Protection and Seed Act before the revision by this Act (hereinafter referred to as "Former Act").

Article 3 (1) The provisions of Article 34 paragraph (1) and Article 39 of the New Act shall not apply to cases in which the oral argument has, prior to the enforcement of this Act, been concluded in the High Court or the District Court as the second instance and cases in which an agreement has, prior to the enforcement of this Act, been reached to reserve the right to appeal against the judgment of the Summary Court or the judgment of the District Court as the first instance.

(2) The provisions of Article 40 to Article 42 of the New Act shall not apply to cases in which the court procedure has, prior to the enforcement of this Act, terminated, cases in which the oral argument has, prior to the enforcement of this Act, been concluded in the High Court or the District Court as the second instance and cases in which an agreement has, prior to the enforcement of this Act, been reached to reserve the right to appeal against the judgment of the Summary Court or the judgment of the District Court as the first instance.

(Transitional Measure concerning Property Arising from a Criminal Act Committed prior to the Enforcement of this Act)

Article 4 In the case where this Act enters into force after the enforcement of the Act for Partial Revision of the Penal Code to Respond to an Increase in International and Organized Crimes and Advancement of Information Processing (Act No. of 2007), the provisions of Article 9 paragraph (1) to (3), Article 10 and Article 11 of the Act for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters (Act No. 136 of 1999) shall also apply to acts committed after the enforcement of this Act with regard to properties arising from or acquired through a criminal act constituting of Article 56 of the Former Act (including a criminal act committed outside Japan, which would constitute any of these offenses if it were committed in Japan and which constitutes an offense under the laws and regulations of the place of the act) that was committed prior to the enforcement of this Act in order to acquire illicit gains, or properties acquired as a reward for Article 56 of the Former Act. In this case, these properties shall be deemed as criminal gains under Article 2 paragraph (2) item (i) of the Organized Crime Punishment Act.

(Transitional Measure concerning Penal Provisions)

Article 5 With regard to a period of statute of limitations of a crime that was committed prior to the enforcement of this Act, notwithstanding the provision of

Article 73 paragraph (3) of the new Act, the provisions then in force shall remain applicable.

(Delegation to the Cabinet Order)

Article 6 In addition to what is provided for in Articles 2 to 5 of the Supplementary Provisions of this Act, the transitional measures necessary for the enforcement of this Act shall be specified by the Cabinet Order.

(Review)

Article 7 After five years have passed since the enforcement of this Act, the government, when it finds it necessary by taking into consideration the state of enforcement of the New Act, shall review the provisions of the New Act, and shall take necessary measures based on the review results.

(Partial Revision of the Act on the Incorporated administrative agency National Center for Seeds and Seedlings and Act on the Incorporated administrative agency National Livestock Breeding Center)

Article 8 The term "Article 53-2 paragraph (1)" in the provisions of the following Acts shall be replaced with the term "Article 63 paragraph (1)";

- (i) Act on the Incorporated administrative agency National Center for Seeds and Seedlings (Act No. 184 of 1999) Article 11 paragraph (2) item (i)
- (ii) Act on the Incorporated administrative agency National Livestock Breeding Center (Act No. 185 of 1999) Article 11 paragraph (2) item (ii)