

JAPAN

The Seeds and Seedlings Law*

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CONTENTS

<u>Section</u>		<u>Section</u>	
1	Purpose	12	Special provisions for foreigners
1-2	Definitions	12-2	Right of Priority
2	Filing of information by seed and seedling dealer	12-3	Examination of the variety the subject of an application
3	Labelling of designated seeds and seedlings	12-4	Registration of a variety
4	Order relating to designated seeds and seedlings	12-5	Effect of registration of a variety
5	Standards relating to the production etc. of designated seeds and seedlings	12-6	Restriction on the denomination of a variety
5-2	Collection of designated seeds and seedlings	12-7	Transfer of the title of a person granted registration for a variety
6	Submission of reports, etc.	12-8	Arbitration decision
7	Application for registration	12-9	Examination of a registered variety
8	Variety bred by an employee as part of his duties	12-10	Nullity and Forfeiture of registration of a variety
9	Alteration of name of applicant	12-11	Deletion of the registration of a variety, etc.
10	Denomination of the variety the subject of an application, etc.	12-12	Application and registration fees
11	First-to-file rule	12-13	Effect of convention
		13 to 16	Penal provisions

Section 1

Purpose

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

Section 1-2

Definitions

- (1) In this Law, “agricultural, forestry or aquatic plants” means plants designated by Cabinet Order that are cultivated for the production of agricultural, forestry or aquatic products.
- (2) In this Law, “seeds and seedlings” means whole plants or parts of plants (meaning here and hereinafter individual agricultural, forestry or aquatic plants) used for reproduction or propagation, and “designated seeds and seedlings” means those seeds, spores, stems, roots, seedlings, saplings, scions, rootstocks or spawn (excluding the seeds and seedlings of rice, barley, naked barley, wheat, soybeans and forest trees) designated by the Minister of Agriculture, Forestry and Fisheries (hereinafter referred to as “the Minister”) as requiring certain information to be given by visible means at the time of sale in order to facilitate identification of quality.
- (3) In this Law, “seed and seedling dealer” means any person engaging in the sale of designated seeds and seedlings in the course of business.
- (4) In this Law, “pure-bred variety” means the group of all the plants which, whatever their generation, fulfill the requirements listed below; “hybrid variety” means the group of all the plants which are obtained by crossing a plant of one pure-bred variety with a plant of another pure-bred variety and fulfill the requirements listed below; and “variety” includes both pure-bred and hybrid varieties:
 - (i) sufficient similarity of characteristics pertaining to important features (hereinafter referred to as “characteristics”);
 - (ii) clear distinction from any other plant by one or more characteristics.
- (5) The Minister, having heard the views of the Agricultural Materials Council, shall determine and publicly announce the important features referred to in paragraph (i) of the preceding subsection in regard to agricultural, forestry or aquatic plants in each of the classes specified by ordinance of the Ministry of Agriculture, Forestry and Fisheries (hereinafter referred to as “ordinance”).

Section 2

Filing of information by seed and seedling dealer

(1) Seed and seedling dealers must file with the Minister the following information, in the manner provided by ordinance:

- (i) the name of the natural or legal person, and the address;
- (ii) the kind of designated seeds and seedlings handled;
- (iii) the other information specified by ordinance.

However, this provision shall not apply to those seed and seedling dealers specified by ordinance.

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

(3) The information referred to in the two preceding subsections must be filed, where trading has been newly commenced, within two weeks of its commencement, and, where there has been any change in the information referred to in subsection (1), within two weeks of such change.

Section 3

Labelling of designated seeds and seedlings

(1) Designated seeds and seedlings shall not be sold unless the following information is given on the packaging, or a voucher giving the said information has been attached:

- (i) the name and the address of the seed and seedling dealer giving the said information;
- (ii) the genus or species and variety (in the case of grafted saplings, the genus or species and variety of scion and rootstock);
- (iii) the production district;
- (iv) with respect to seeds, the month and year of production or the time limit of validity, and the germination percentage;
- (v) the quantity;

(vi) the other information specified by ordinance.

However, this shall not apply where the information referred to in paragraphs (i) to (iv) inclusive and (vi) pertaining to designated seeds and seedlings is given by a notice or other readily visible means, or where a person other than a seed and seedling dealer makes the sale.

(2) The information referred to in paragraph (iii) of the preceding subsection shall be given, in the case of production within Japan, by stating the name of the prefecture of which the said production district is part, and, in the case of production outside Japan, by stating the name of the country of which the said production district is part.

Section 4

Order relating to designated seeds and seedlings

The Minister may order any seed and seedling dealer who has contravened the preceding Section to give the information referred to in each paragraph in subsection (1) of that Section or to alter the information given, or may prohibit the sale of the designated seeds and seedlings the subject of the contravention.

Section 5

Standards relating to the production etc. of designated seeds and seedlings

(1) The Minister may, when it is deemed particularly necessary to secure the distribution of designated seeds and seedlings of good quality, determine and publish standards relating to the production, preparation, storage, or packaging of the said designated seeds and seedlings, that shall be adhered to by seed and seedling dealers and persons engaged in the production of the said seeds and seedlings in the course of business.

(2) The Minister may, when seed and seedling dealers or persons engaged in the production of designated seeds and seedlings in the course of business fail to adhere to the standards, issue to those persons a warning to the effect that they should adhere to the standards.

(3) The Minister may, when a seed and seedling dealer or a person engaged in the production of designated seeds and seedlings in the course of business fails to comply with a warning issued under the preceding subsection, publish that fact.

Section 5-2

Collection of designated seeds and seedlings

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

(2) In the case specified in the preceding subsection, such officers shall, if a seed and seedling dealer so requests, show an identification card.

Section 6

Submission of reports, etc.

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

Section 7

Application for registration

(1) A person who has bred a variety (meaning here and hereinafter the fixation or determining of characteristics pertaining to artificial or natural variation), or his successor in title, may file an application for registration of the said variety. Where the number of persons who have bred the variety or any successors in title are two or more in total, these persons shall file an application jointly.

(2) With respect to filing an application under the preceding subsection, an application form and a description giving the information specified by ordinance, and the whole or a part of a plant of the variety for which application is made (hereinafter referred to as the “variety the subject of an application”) or its photograph shall be furnished to the Minister, in the manner provided by ordinance.

Section 8

Variety bred by an employee as part of his duties

(1) With respect to a variety bred by an employee, an executive officer of a legal person, or a national or local public officer (hereinafter referred to as the “employee etc.”), any contractual provision, service regulation or other stipulation providing in advance the right of the employer, legal person, or national or local government (hereinafter referred to as the “employer etc.”), to file an application under subsection (1) of the preceding Section, or, where the employee etc. has been granted registration of the variety under Section 12-4(1), the obligation of the employee etc. to

transfer that title to the employer etc. shall be null and void. However, this shall not apply where the breeding of the variety by reason of its nature falls within the scope of the business of the employer etc. and, moreover, the acts resulting in the breeding of the variety fall within the duties of the employee etc. (hereinafter referred to as a “variety bred by an employee as part of his duties”).

(2) An employee etc. may claim from the employer etc. payment of compensation to be determined taking into consideration the profit receivable by the employer etc. from a variety bred by an employee as part of his duties and the extent to which the employer etc. contributed to the breeding of that variety, where, in accordance with a contract, service regulation or other stipulation, either the employer etc. files an application under subsection (1) of the preceding Section with respect to a variety bred by an employee as part of his duties or the title is transferred to the employer etc. where the employee etc. has been granted registration for the variety under Section 12-4(1).

Section 9

Alteration of name of applicant

(1) The name of an applicant may not be altered except in the case of inheritance or other general succession.

(2) Where the name of an applicant has been altered as a result of inheritance or other general succession, the successor in title shall, without delay, notify the Minister to that effect, in the manner provided by ordinance.

Section 10

Denomination of the variety the subject of an application, etc.

(1) Registration relating to a variety (hereinafter referred to as “registration of a variety”) may not be granted where the denomination of the variety the subject of an application falls under any of the following cases:

(i) where there is no denomination or more than one denomination for the variety the subject of an application;

(ii) where the denomination is identical with or similar to a registered trademark pertaining to seeds and seedlings of the variety the subject of an application, or a registered trademark pertaining to goods similar to the said seeds and seedlings;

(iii) where it is possible that the denomination may mislead with regard to the variety the subject of an application, or cause confusion in respect of its identification (this paragraph does not apply where the preceding paragraph is applicable).

(2) Registration of a variety may not be granted where the whole or a part of a plant of the variety the subject of an application has been transferred in the course of business within Japan before the date of application under Section 7(1), or outside Japan for longer than four years before the date of such application (or for longer than six years in the case of a variety belonging to a genus or species of agricultural, forestry or aquatic plant specified by ordinance as a perennial plant). However, this shall not apply where such transfer has been made for the purpose of experiment or research, or where such transfer has been made against the will of the person who bred the variety (or where that person has been succeeded, that person and his successor in title).

Section 11

First-to-file rule

With respect to identical varieties, only the first applicant may be granted registration of the variety.

Section 12

Special provisions for foreigners

A foreigner who is not resident (or, in the case of a legal person, does not have its registered office) in Japan shall not be granted registration for a variety, except in one of the following cases:

(i) where his country provides Japanese nationals with the protection of varieties under the same conditions as its own nationals (including a country which provides such protection for Japanese nationals on condition that Japan provides registration of a variety for the nationals of that country) and moreover makes available protection regarding the variety the subject of an application.

(ii) where the country in which he is resident (or, in the case of a legal person, has its registered office) is one of the member States of the Union under the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972 and on October 23, 1978 (including countries in relations with which Japan is to apply that Convention in accordance with Article 34(2) of that Convention) (hereinafter referred to as “member States of the Union”) and moreover makes available protection regarding the variety the subject of an application. (This paragraph does not apply where the preceding paragraph is applicable.)

Section 12-2

Right of Priority

(1) A person referred to in the following paragraphs in the cases referred to in the said paragraphs may, at the time of filing an application, claim a right of priority in the manner provided by ordinance:

(i) a person who has filed an application equivalent to that provided for in Section 7(1) in one of the member States of the Union (hereinafter referred to as “application in a member State of the Union”) or his successor in title (the person or his successor in title having to be a Japanese national or a national of one of the member States of the Union or a person who is resident (or, in the case of a legal person, has its registered office) in Japan or one of the member States of the Union)--where the application provided for in Section 7(1) is filed for the variety the subject of an application in a member State of the Union within one year from the day after the day of the filing of the first application in a member State of the Union (hereinafter referred to as “application day in a member State of the Union”);

(ii) a person who has filed an application equivalent to that provided for in Section 7(1) in one of the countries defined in paragraph (i) of Section 12 (excluding the member States of the Union), which allows a Japanese national to claim the right of priority on the same conditions as Japan does (hereinafter referred to as the “designated countries”) or his successor in title (the person or his successor in title having to be a Japanese national or a national of one of the designated countries)--where the application provided for in Section 7(1) is filed for the variety the subject of an application in a designated country within one year from the day after the day of the filing of the first application in a designated country (in the case of a national of a designated country, the application in that designated country) (hereinafter referred to as “application day in a designated country”).

(2) Where the applicant claims the right of priority in accordance with the previous subsection, any application for registration, publication, transfer or other act in respect of a variety identical with the variety the subject of an application, made or done between the application day in a member State of the Union or the application day in a designated country and the day when the application provided for in Section 7(1) is filed, does not prevent the registration of the variety the subject of the said application.

Section 12-3

Examination of the variety the subject of an application

(1) The Minister may require the applicant to furnish such materials as are necessary for the purpose of examining the variety the subject of an application.

(2) The Minister shall, in examining the variety the subject of an application, cause his officers to conduct on-site inspections or growing tests. However, this shall not apply where it is deemed unnecessary for the purpose of examining the variety the subject of an application.

(3) The Minister may entrust related governmental organizations, educational establishments or other persons deemed appropriate, with conducting on-site inspections or growing tests under the preceding subsection.

Section 12-4

Registration of a variety

(1) The Minister shall register a variety when he is satisfied that the application under Section 7(1) fulfills all the conditions laid down in this Law and the regulations based thereon.

(2) The effective period of registration of a variety shall be fifteen years (eighteen years in the case of the varieties referred to in Section 10(2)).

(3) A variety shall be registered by entering in the Register of Plant Varieties the denomination of the variety, the characteristics of the plant, the effective period of registration, the name and the address of the person granted registration of the variety, and other information specified by ordinance.

(4) The Minister shall, when he has registered a variety according to subsection (1), publicly announce the information specified by ordinance.

Section 12-5

Effect of registration of a variety

(1) With respect to the whole or a part of any plant of a variety that has been granted registration (hereinafter referred to as a “registered variety”), no person other than the person granted registration for the said registered variety (hereinafter referred to as the “person granted registration for the variety”) may perform in the course of business any of the acts listed as follows:

(i) acts of transferring for a consideration, making an offer to transfer for a consideration, or producing or importing for the purpose of transferring for a consideration, as seeds and seedlings, the whole or a part of any plant of the registered variety;

(ii) where the registered variety belongs to a genus or species that is specified by ordinance as being a genus or species of agricultural, forestry or aquatic plant which propagates extremely readily even when a part of the plant not commonly regarded as being a seed or seedling is used--

acts of transferring for a consideration, the whole or a part of any plant obtained by propagating from such a part of the plant (excluding acts referred to in the preceding paragraph);

(iii) where the registered variety is a pure-bred variety--acts of transferring for a consideration, making an offer to transfer for a consideration, or producing or importing for the purpose of transferring for a consideration, as seeds and seedlings, any seeds or spores obtained by crossing a plant of the registered variety with a plant of another pure-bred variety.

(2) Notwithstanding the preceding subsection, a person referred to in the following paragraphs may perform in the course of business the acts specified in the relevant paragraph:

(i) a person who has been authorized by the person granted registration for the variety to perform the acts specified in each of the paragraphs of the preceding subsection--acts referred to in each paragraph of the said subsection, according to the scope of the authorization (where, after the authorization, there has been a transfer of the title of the person granted registration for the variety, except in the case of transfer by inheritance or other general succession, the said authorization shall keep its effect only if it is registered in the Register of Plant Varieties, in the manner provided by ordinance);

(ii) a person who has bred a variety identical with the registered variety before the said registered variety was bred--acts referred to in each paragraph of the preceding subsection;

(iii) a person who has been granted registration for a pure-bred variety to which a plant crossed to obtain a plant of a hybrid variety belongs (hereinafter referred to as a "parent variety")--acts referred to in paragraph (i) of the preceding subsection in respect of the whole or a part of a plant of the said hybrid variety that has been granted registration;

(iv) a person who has been granted registration of a hybrid variety prior to registration of a parent variety--acts referred to in paragraph (iii) of the preceding subsection pertaining to the said hybrid variety, performed in respect of plants of the said parent variety that has been granted registration;

(v) a person who has a patent right on the method of breeding a registered variety, or a person who has an exclusive license or a non-exclusive license with respect to that patent, and who produces the whole or a part of the plant by the method coming under the said patent--acts referred to in each paragraph of the preceding subsection, performed in respect of the whole or a part of the said plant;

(vi) a person who, after the expiry of the patent right referred to in the preceding paragraph, produces the whole or a part of a plant by the method coming under the patent in the said paragraph--acts referred to in each paragraph of the preceding subsection, performed in respect of the whole or a part of the said plant;

(vii) the employer etc., or his general successor, where the employee etc. of that employer etc., or his successor in title, has been granted registration for a variety bred by employees--acts referred

to in each of the preceding paragraphs, performed in respect of the whole or a part of a plant of the said variety bred by employees;

(viii) a person who has received, as seeds and seedlings, the whole or a part of the plant listed as follows:

- (a) the whole or a part of a plant that the person granted registration for the variety has transferred for a consideration in the course of business;
- (b) the whole or a part of a plant transferred for a consideration, as specified in an arbitration decision, by a person obtaining an arbitration decision under Section 12-8(6);
- (c) the whole or a part of a plant transferred by acts specified in each of the relevant preceding paragraphs, performed in the course of business by persons referred to in each of those preceding paragraphs;

--transfer for a consideration or making an offer to transfer for a consideration, as seeds and seedlings, the whole or a part of the said plant received, without increasing the number thereof.

(3) A person granted registration for a variety may require a person who performs, in respect of the whole or a part of a plant of the registered variety, any of the acts listed in each paragraph of subsection (1) in contravention of that subsection to cease and desist that act. This shall not, however, prevent the claiming of damages.

Section 12-6

Restriction on the denomination of a variety

(1) Where seeds and seedlings of a registered variety are sold in the course of business, no denomination other than that of the said registered variety shall be used.

(2) Where seeds and seedlings of a variety other than the registered variety, belonging to the genus or species of agricultural, forestry or aquatic plant to which the said registered variety belongs, or to a genus or species of agricultural, forestry or aquatic plant specified by ordinance as similar to that genus or species, are sold in the course of business, the denomination of the said registered variety shall not be used.

Section 12-7

Transfer of the title of a person granted registration for a variety

- (1) The title of a person granted registration for a variety may be transferred by reason of inheritance or other cause.
- (2) Transfer of the title of a person granted registration for a variety shall not take effect without registration in the Register of Plant Varieties, except in the case of transfer by inheritance or other general succession.
- (3) Section 9(2) shall apply *mutatis mutandis* to the transfer by inheritance or other general succession of the title of a person granted registration for a variety.

Section 12-8

Arbitration decision

- (1) Where an act in respect of the whole or a part of a plant of a registered variety referred to in paragraph (i) or (iii) of Section 12-5(1) has not been performed adequately and continuously during a period of two years or more, or where it is particularly necessary in the public interest that the said act be performed, a person who intends to perform the said act in the course of business in respect of the whole or a part of a plant of the said registered variety may seek to hold consultations with the person granted registration for the said variety regarding authorization for performing the said act.
- (2) If no agreement is reached or no consultation is possible under the preceding subsection, the person referred to in the said subsection may request an arbitration decision from the Minister.
- (3) The Minister shall, where a request has been made under the preceding subsection, notify to that effect in writing the person granted registration for the variety the subject of the said request and give him an opportunity to state his opinion, designating a reasonable time limit.
- (4) The Minister may not rule that authorization be granted for performing the said act where there is good reason for the failure to perform that act adequately, except where it is particularly necessary in the public interest that the acts referred to in paragraphs (i) or (iii) of Section 12-5(1) be performed in respect of the whole or a part of a plant of a registered variety.
- (5) The Minister shall hear the views of the Agricultural Materials Council where he intends to make a decision under subsection (2).
- (6) In an arbitration decision that authorization be granted in respect of the acts referred to in paragraph (i) or (iii) of Section 12-5(1), the scope of the acts that may be performed by the person requesting the decision under subsection (2), the consideration for the authorization and the method of payment thereof shall be determined.
- (7) Where a decision has been made under subsection (2), the Minister shall notify the parties concerned to that effect.

(8) Where the arbitration decision as provided in subsection (6) has been notified under the preceding subsection, it shall be deemed that an agreement in the terms of the said arbitration decision has been reached between the parties concerned.

Section 12-9

Examination of a registered variety

- (1) The Minister may, where it is deemed necessary to examine whether the characteristics of a plant of a registered variety are being maintained or not, require the person granted registration for the variety to furnish the whole or a part of a plant of the registered variety, and other materials.
- (2) The Minister shall, in the case provided in the preceding subsection, cause his officers to conduct on-site inspections or growing tests.

Section 12-10

Nullity and Forfeiture of registration of a variety

- (1) The Minister shall cancel the registration of a variety in the cases listed as follows:
 - (i) where it has been found that the characteristics of the plant of the registered variety have become different from the characteristics of the plant at the time of its registration;
 - (ii) where the person granted registration for the variety fails to pay the registration fee for each year within the period specified in Section 12-12(4) or (5).
- (2) The Minister may cancel the registration of a variety in the cases listed as follows:
 - (i) where it has been found that the application under Section 7(1) did not fulfill the conditions laid down in this Law or the regulations based thereon;
 - (ii) where the person granted registration for a variety fails, without good reason, to furnish the materials required under subsection (1) of the preceding Section, or where he refuses on-site inspection under subsection (2) of the said Section.
- (3) The Minister shall, where he intends to cancel the registration of a variety under paragraph (i) of subsection (1), or under the preceding subsection, notify the person granted such registration for the variety of the reason in writing and give him an opportunity to state his opinion, designating a reasonable time limit.

(4) The Minister shall, where he has cancelled the registration of a variety under subsection (1) or (2), notify the person granted such registration for the variety and publicly announce that fact.

Section 12-11

Deletion of the registration of a variety, etc.

(1) The Minister shall delete the registration of a variety from the Register of Plant Varieties in the cases listed as follows:

(i) where the effective period of registration in Section 12-4(2) has expired;

(ii) where the registration of the variety has been cancelled under subsection (1) or (2) of the preceding Section;

(iii) where the person granted registration for the variety has ceased to exist.

(2) In addition to the provisions of this Law, necessary matters pertaining to the registration of varieties and the Register of Plant Varieties shall be provided for by ordinance.

Section 12-12

Application and registration fees

(1) An applicant for registration of a variety must pay an application fee specified by ordinance and not exceeding 35,000 yen for each application.

(2) A person granted registration for a variety must pay a registration fee specified by ordinance and not exceeding 56,000 yen for each variety registered, each year for fifteen years, or eighteen years as specified in Section 12-4(2).

(3) The two preceding subsections do not apply where it is the State that would be required to pay application or registration fees.

(4) The registration fee for the first year under subsection (2) must be paid within thirty days from the date of public announcement under Section 12-4(4).

(5) The registration fee for the second year and each subsequent year under subsection (2) must be paid during the preceding year or prior thereto.

Section 12-13

Effect of convention

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

Section 13

Penal provisions

(1) Any person coming under any of the following paragraphs shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 300,000 yen:

- (i) a person who has obtained registration of a variety by means of a fraudulent act;
- (ii) a person who transferred for a consideration the whole or a part of a plant of a registered variety as seeds and seedlings in contravention of Section 12-5(1).

(2) Prosecution of offenses committed under paragraph (ii) of the preceding subsection shall be initiated upon complaint.

Section 13-2

Any person coming under any of the following paragraphs shall be liable to a fine not exceeding 200,000 yen:

- (i) a person who has sold designated seeds and seedlings that have been falsely labelled as to the information required under Section 3;
- (ii) a person who has sold designated seeds and seedlings in contravention of an order or prohibition made under Section 4.

Section 14

Any person coming under any of the following paragraphs shall be liable to a fine not exceeding 100,000 yen:

- (i) a person who failed to register under Section 2 or who made a false registration;
- (ii) a person who, without good reason, has refused, obstructed or evaded collection under Section 5-2(1);

(iii) a person who fails to submit a report or documents under Section 6, or who submits a false report or false documents.

Section 15

Where an officer representing a legal person or a representative, employee or any other servant of a legal or a natural person, has committed an act in contravention of Section 13(1), Section 13-2, or paragraph (i) or (iii) of the preceding Section, with regard to the business of that legal or natural person, not only shall the offender be punished but that legal or natural person shall also be fined as prescribed in any of those sections.

Section 16

Any person who has contravened Section 12-6 shall be liable to an administrative penalty not exceeding 100,000 yen.

* Translation prepared by the Japanese Ministry of Agriculture, Forestry and Fisheries, in conjunction with the Office of the Union.

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