

The Act for Partial Revision of the Plant Variety Protection and Seed Act

1. Outline of the registration of plant varieties for the protection of new plant varieties

The Plant Variety Protection and Seed Act stipulates the registration of plant varieties for the protection of new plant varieties.

Under the Plant Variety Registration System, a person who has bred a new variety of plant (breeder) is granted exclusive rights in order to recover the expenses incurred by the breeder with respect to the breeding of the variety, thereby raising motivation to breed new varieties of plants, and promoting the development of agriculture, forestry, and fisheries.

2. Background to the revision of the Plant Variety Protection and Seed Act

In recent years, some high-quality Japanese plant varieties were taken overseas without authorization, produced overseas, and exported to third-party countries. In addition, it has been difficult for breeders to prove that their breeder's right was infringed by a third party. Therefore, the rights have been reviewed to make it easier to protect the breeder's right.

3. Main points of the revisions

(1) Designation of a state to which propagating materials of registered varieties are to be exported (Restrictions on the act of taking propagating materials outside Japan) [came into effect on April 1, 2021]

The revised Act enables an applicant for variety registration to restrict the relevant propagating materials of a registered variety from being taken outside Japan if the applicant files a notification with the Ministry of Agriculture, Forestry and Fisheries (MAFF) at the time of filing of its application, specifying:

- (i) a state, that is a contracting party of the UPOV Convention, designated by the applicant as the "designated state" where appropriate protection of the applied variety is provided; and
- (ii) use conditions restricting the act of taking the relevant propagating material of the applied variety outside the designated state.

(2) Designation of a cultivation area within Japan (Restrictions on the cultivation of registered varieties outside the designated area) [came into effect on April 1, 2021]

The revised Act enables an applicant for variety registration to restrict the applied variety from being cultivated outside the designated area within Japan if the applicant files a notification with MAFF at the time of its application, specifying:

- (i) an area designated by the applicant as a geographical production area of the registered variety (the "designated area"); and
- (ii) use conditions restricting cultivation (production of harvested materials) outside the designated area.

(3) Propagation of registered varieties is to be made under a license [to come into effect on April 1, 2022]

Under the revised Act, farmers who intend to propagate any registered varieties are required to obtain a license from holders of the relevant breeder's rights. In Japan, before the revision of Act, farmers are allowed to propagate the registered varieties without obtaining a license.

(4) Obligation to put a label on registered varieties [came into effect on April 1, 2021]

Any person who sells or transfers propagating material of a registered variety is required to put a label on it indicating that the relevant propagating material is of a registered variety, and that the relevant propagating material is subject to the restrictions on exportation, or production areas, if applicable.

(5) Setting of examination fees, reduction of application fees and registration fees [to come into effect on April 1, 2022]

(6) Measures to make it easier to protect the breeder's right [to come into effect on April 1, 2022]

- (i) Utilization of the characteristic table

In order to make it easy to prove an act of infringement, a new system has been established by which the distinction between the characteristics of a registered variety and those of an allegedly infringing variety can be presumed by comparing the expression of the characteristics of the registered variety entered into the registry of varieties (the "characteristic table") and the characteristics of the allegedly infringing variety.

(ii) Introduction of a system to revise the characteristic table

Prior to the registration of a variety, MAFF notifies an applicant for variety registration of the relevant characteristic table to be entered into the registry of varieties, and the applicant may, within a certain period of time, request MAFF to revise the characteristic table.

(iii) Introduction of a system to request advisory opinion

A holder of a breeder's right, an alleged infringer, or any interested parties with regard to a registered variety may request MAFF to provide an advisory opinion by comparing the registered variety and an allegedly infringing variety.

(7) Reviews on the provisions of varieties bred in the course of duties [came into effect on April 1, 2021]

An employer, etc. is entitled to the variety registration for a variety bred developed by an employee in the course of their duties if it is stipulated in advance in work regulations, etc. to that effect.

(8) Obligation of overseas resident applicants to have a local agent [came into effect on April 1, 2021]

Any overseas resident who applies for variety registration is required to do so through an agent who has domicile or residence in Japan.

(9) Clarification of labeling of designated propagating materials at the time of their sale [came into effect on April 1, 2021]

With respect to labeling that is required under the designated propagating system, in the case where:

- (i) it is clear that there is no variety name, or
- (ii) the variety name cannot be clarified even though a dealer in propagating materials has made efforts at a certain level,

the dealer in the relevant propagating materials is requested to indicate to that effect ("the variety name is unknown," etc.).

(Regarding the designated propagating system, please see the following URL: <https://www.maff.go.jp/j/shokusan/tizai/syubyo/attach/pdf/index-5.pdf>)