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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
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**EXAMINATION OF THE CONFORMITY OF THE SEED INDUSTRY LAW OF
THE REPUBLIC OF KOREA WITH THE 1991 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. By letter dated September 3, 1999, Mr. Kim Sung-Hoon, Minister for Agriculture and Forestry of the Republic of Korea, requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as "the Convention") of the Seed Industry Law (hereinafter referred to as "the Law") which was first enacted in December 6, 1995, entered into force on December 31, 1997, and last amended on January 21, 1999. The Annex to this document contains a translation of the Law in English provided by the Government of the Republic of Korea.
2. The Republic of Korea did not sign the Convention. Under Article 34(2) of the Convention, it must deposit an instrument of accession in order to become a member State of UPOV on the basis of the Convention. Under Article 34(3), an instrument of that kind can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the Convention and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in the Republic of Korea

3. In the Republic of Korea, two different forms of protection are available for the protection of new plant varieties, namely a “variety protection right” governed by the Seed Industry Law and its implementing regulations, and a patent granted pursuant to Article 31 of the Patent Law for asexually reproduced varieties which are new and distinct. It should be noted that the request for advice on conformity with the UPOV Convention from the Korean Government relates only to the Seed Industry Law. An analysis of the Seed Industry Law follows in the order of the provisions of the Convention.

Article 1 of the Convention: Definition

4. Article 2(iv) of the Law provides for the definition of “variety” which reproduces the definitions of Article 1(vi) of the Convention except for two phrases, “defined by the expression of the characteristics resulting from a given genotype or combination of genotypes” and “irrespective of whether the conditions for the grant of a breeder’s right are fully met.” The definition in the Law contains the basic elements of the Convention. However, unless the omissions of these phrases are due to translation, the addition of these phrases should be considered on the occasion of a revision of the Law in order to ensure that the expression of characteristics which is used for defining “variety” results from genotype and to ensure that “variety” encompasses some non-protectable plant groupings, e.g. varieties which are not sufficiently uniform for protection.

5. Article 2(v) of the Law defines the breeder as “the person who has bred or developed from discovery, a variety”. The first paragraph of Article 17 of the Law states that “the entitlement to the breeder’s right shall be vested in the breeder or his successor in accordance with this Law.” Articles 24 and 25 make provision for the transfer of the entitlement of a variety protection right to the employer (e.g., the Government) in the case of breeding, as part of the duties of public officials. These provisions reproduce and amplify the essence of the definition of “breeder” as set out in Article 1(iv) of the Convention.

Article 2 of the Convention: Basic Obligation of the Contracting Parties

6. Article 1 states that “The purpose of the Law is to develop seed industry and to contribute to stability of agriculture, forestry and fisheries by enacting provisions on protection of the breeder’s right...” Parts I to III of the Law makes provisions for the granting and protection of the breeder’s right called “variety protection right”. The Law thus complies with Article 2 of the Convention.

Article 3 of the Convention: Genera and Species to be Protected

7. Article 11 of the Law states that “species or genus of the plants entitled to variety protection under this Law shall be determined in accordance with an Ordinance of the Ministry of Agriculture and Forestry.” Protection under the Law is currently available for 27 botanical genera or species in the Republic of Korea, which satisfies a minimum requirement (15 genera or species) as of the date on which it becomes bound by the Convention.

8. Article 3(2)(ii) of the Convention requires new members of the Union to grant and protect plant breeder's rights conforming to the Convention in respect of all plant genera and species, at the latest 10 years after becoming a UPOV member State. On the other hand, as mentioned in paragraph 3, the Patent Law also provides for the grant of patents for asexually reproduced varieties (seemingly similar to "plant patent" in the United States of America). There appears to be no provisions other than Article 31 in the Patent Law concerning plant variety protection which presumably means that all other provisions of the Patent Law apply for asexually reproduced varieties, including provisions which do not conform with the Convention. Therefore, it is important that protection under the Seed Industry Law should extend in due course to varieties of all plant genera and species including asexually reproduced varieties, in order to maintain its conformity with the Convention. The Office has noted, however, that the list of 27 plant genera and species referred to above already includes potatoes, apples, plums and peaches.

Article 4 of the Convention: National Treatment

9. The Law does not contain any provisions that conflict with those of Article 4 of the Convention, except for Article 51(iii) of the Law concerning the exemption of "life protectees" prescribed by the Life Protection Act from the payment of the variety protection fees. This special provision may be applied to a very few cases and seems to be acceptable. The Law thus conforms with the Article 4 of the Convention. It is to be noted that Article 18 of the Law sets out the conditions under which foreigners who have neither a domicile nor a place of business in the Republic of Korea can enjoy variety protection rights.

Articles 5 to 9 of the Convention: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

10. The conditions for protection are set out in Articles 12 to 16 of the Law which, subject to the following, conform to Articles 5 to 9 of the Convention:

(a) Article 13(1)(i) of the Law allows a grace period of six years in respect of an "assignment" of trees and fruit trees even in the territory of the Republic of Korea, which does not conform with the Convention. It may be a clerical error. If so, words in parenthesis should be deleted.

(b) Article 15 of the Law reproduces the provision of Article 8 of the Convention without the phrase "subject to the variation that may be expected from the particular features of its propagation". The introduction of this phrase into the Law or the supplementing of appropriate provisions in implementing regulations should be considered in order to clarify that the uniformity requirement is not absolute, but rather depends on the mode of propagation, e.g., vegetative propagation or sexual reproduction (self- and cross- pollination).

Article 10 of the Convention: Filing of Applications

11. The Law contains no provisions which conflict with Article 10 of the Convention.

Article 11 of the Convention: Right of Priority

12. Article 27 of the Law sets out the right of priority in accordance with Article 11 of the Convention. The only minor discrepancy is that the Law gives the applicant only 30 days to submit a certified copy of the first application documents (compared with the minimum of three months required by Article 11(2) of the Convention).

Article 12 of the Convention: Examination of the Application

13. Articles 28, 33, 35 and 36 of the Law make provisions for the processing of the application, the examination of the application and the submission of materials in accordance with Article 12 of the Convention.

Article 13 of the Convention: Provisional Protection

14. Article 39(1) of the Law sets out provisional protection provisions that give the applicant an exclusive right (a positive right) to commercially and industrially exploit the variety after the publication of the application. Article 39(2) provides that the provisional protection shall be deemed never to have arisen, where an application has been abandoned, invalidated or withdrawn, or where the examiner's decision that the application is to be rejected has become final and conclusive. The Law thus conforms to Article 13 of the Convention.

Article 14 of the Convention: Scope of the Breeder's Right

15. Article 57(1) of the Law sets out an exclusive right of exploitation with respect to the propagating material of the protected varieties. It is set out as a positive right to do the specific acts rather than a negative right to exclude others. This approach would deserve further reflection insofar as a positive right to do may compete with another such right, for instance, in the case of an essentially derived variety.

16. Articles 62 to 67 of the Law contain provisions concerning exclusive and non-exclusive licenses, which can be granted to the extent provided for in the license or prescribed in the Law. Article 57(1) of the Law provides that the grant of an exclusive right restricts the right of the variety protection right holder to the extent of the contract. The Law thus satisfies Article 14(1)(b) of the Convention.

17. Article 2(ix) of the Law defines "exploiting" as "an act of propagating, producing, processing, assigning, leasing, exporting, importing or offering for sale (including displaying for assignment or lease) of the seeds [defined in Article 2 (iii)] to be protected." According to the correspondence of the Office with the Ministry of Agriculture and Forestry of the Republic of Korea, the original Hangul word corresponding to "assigning" means any transaction involving transfer of property, such as "selling or other marketing". However, it would be advisable to prepare a comprehensive translation for the word "assigning".

18. Article 57(2) of the Law extends an exclusive right of exploitation to the harvested material of the protected varieties and the product which has been made directly from the harvested material. The Law complies with Article 14(2) and (3) of the Convention.

19. Article 57(3) and (4) of the Law corresponds to Article 14(5) of the Convention. Article 57(3) provides that (i) varieties which are essentially derived from the protected varieties and (ii) varieties produced by repeated use of the protected varieties shall be “deemed to be the protected variety”. However, Article 57(3) does not include “varieties which are not clearly distinguishable in accordance with Article 7 from the protected varieties” as specified in Articles 14(5)(a)(ii) of the Convention. In addition, the limitations of Article 14(5)(i) of the 1991 Act “where the protected variety is not itself an essentially derived variety” is not contained in the Law either. It is important that this phrase be inserted on the occasion of a revision of the Law.

20. On the other hand, the language of Article 57(3) of the Law may be problematic. Article 57(3) should have been applied only in respect of exploitation (Article 57(1) and (2)) by the variety protection right holders of the initial varieties of essentially derived varieties and parent lines of hybrids. However, Article 57(3) does not contain such limitation. It means that, for example, this provision may make essentially derived varieties non-protectable because the essentially derived varieties should be treated as a part of the protected varieties. Unless the wording is confusing because of the translation, this provision should be revised in line with Article 14(5) of the Convention.

Article 15 of the Convention: Exceptions to the Breeder’s Right

21. Article 58(1) of the Law sets out the compulsory exceptions to the breeder’s right in terms which satisfy Article 15(1) of the Convention.

22. Article 58(2) and (3) of the Law provides a basis for establishing a “farmer’s privilege”. The scope of restriction, procedures and method are prescribed by a Presidential Decree.

Article 16 of the Convention: Exhaustion of the Breeder’s Right

23. Article 59 of the Law contains provisions concerning the exhaustion of the breeder’s right which satisfy those of Article 16 of the Convention.

Article 17 of the Convention: Restriction on the Exercise of the Breeder’s Right

24. Articles 68 to 74 make provisions for the grant of a non-exclusive license pursuant to an arbitration procedure that is, in effect, a compulsory license. The justification for the grant of compulsory licenses is limited to public interest in the Convention. However, Article 68(1) of the Law appears to allow wider justifications for arbitration decisions, including, for instance, the lack of the exploitation of protected varieties for the prescribed period without appropriate reasons and possibility of agreement concerning the grant of non-exclusive right outside of the trial. Nevertheless, the Law may be deemed to satisfy the substance of Article 17 of the Convention if Article 68(3) is taken as a loose reference to public interest.

Article 18 of the Convention: Measures Regulating Commerce

25. Article 60 of the Law states that “other than the measures prescribed by this Law, the Government shall not impose any restriction on the exploitation of the variety protection right.” In addition, the Law contains no provisions in the section of management of variety performance (Part VI), certification of the seeds (Part V), and circulation of the seeds (Part VI), which influence the grant and protection of the breeder’s right. The Law thus conforms with Article 18 of the Convention.

Article 19 of the Convention: Duration of the Breeder’s Right

26. Article 56 of the Law provides that protection last until the end of the 20th calendar year following the registration, or until the end of the 25th calendar year in the case of trees and fruit trees. The Law thus conforms with Article 19 of the Convention.

Article 20 of the Convention: Variety Denomination

27. Part III of the Law (Articles 108 to 113) contains provisions which satisfy Article 20 of the Convention.

28. It is to be noted that these provisions are applied not only to varieties for variety protection, but also to varieties entered in an official catalogue of varieties and any other varieties to be sold in the Republic of Korea. In addition, Article 85(ii) of the Law states that “an act of commercially using a variety denomination, which is identical with or similar to the variety denomination of the protected variety of another person, for a variety of the species or genus of the plant to which the protected variety belongs” shall be deemed to be infringing a variety protection.

Article 21 of the Convention: Nullity of the Breeder’s Right

29. Article 94 of the Law enables an interested person or examiner to demand an “invalidation trial” of the variety protection right. Article 94 lists the conditions for the request for an invalidation trial. One of the conditions is a grant of protection contrary to Article 12 (Conditions for Protection). However, this provision does not reproduce all the elements of Article 21(1)(ii) of the Convention. The Law should clearly prescribe that a lack of uniformity and stability at the time of the grant can constitute a reason for the request for an invalidate trial, only “where the grant of the breeder’s right has been essentially based on information and documents furnished by the breeder”.

Article 22 of the Convention: Cancellation of the Breeder’s Right

30. Articles 80 of the Law governs the cancellation of the variety protection right. In addition, Article 50(3) provides that the non-payment of variety protection fees within the prescribed payment period leads to the extinguishing of the variety protection right. These Articles satisfy Article 22 of the Convention except for the following:

(a) Article 80(1)(ii) of the Law refers to one of the cases for cancellation “where a protected variety has not been continuously exploited in the Republic of Korea for two or more years from the date of a ruling on an arbitration decision [of compulsory license]...” It is an additional reason for the cancellation which is prohibited by Article 22(2) of the Convention. Furthermore, not to exercise compulsory license is not the problem of the breeder, but that of the licensee. Therefore, the lack of exploitation after the issuance of a compulsory license should result not in the cancellation of a variety protection right, but in the cancellation of the compulsory license.

(b) The language of Article 80(1)(iv) could be interpreted to mean that the Minister may cancel the variety protection right immediately after the cancellation of the variety denomination without giving the holder of the right the opportunity of submitting another denomination. This would not satisfy Article 22(1)(iii) of the Convention.

Article 30 of the Convention: Implementation of the Convention

31. The Law makes adequate provisions for the implementation of the Convention in the Republic of Korea. Thus:

(a) Chapter VI (Articles 84 to 90) of the Law provides for remedies for the effective enforcement of the variety protection right. Chapter VII (Articles 91 to 100) of the Law establishes the Variety Protection Trial Committee that conducts trial and retrial proceedings on variety protection. It gives an opportunity for applicants or other persons concerned to challenge the decision of the Minister in relation to variety protection. Furthermore, Chapter VIII (Articles 101 to 107) of the Law makes provision for retrial in the Committee and litigation in the Patent Court.

(b) The Minister of the Ministry of Agriculture and Forestry is responsible for all tasks in relation to variety protection rights. The Minister must arrange examination of candidate varieties (Article 33(1) of the Law) and may entrust a research institute, university, or any appropriate person, with the investigation or testing for the examination (Article 35(2) of the Law).

(c) Article 53 of the Law makes provision for the establishment of a variety protection register for variety protection rights and for exclusive or non-exclusive license. Article 54 of the Law provides for periodical publication of an Official Gazette containing information on applications (Article 38), refusals of protection (Article 37), grants (Article 46(3)) and approved denominations (Article 111(6)). The Law then conforms with Article 30(1)(iii) of the Convention.

General Conclusion

32. The Law, in its main provisions, incorporates the substance of the Convention. The deviations from strict conformity referred to above should be corrected at the earliest opportunity.

33. The Office of the Union therefore suggests that the Council may wish

(a) to advise the Government of the Republic of Korea that the Law in its main provisions incorporates the substance of the Convention, and that it may deposit an instrument of accession to the Convention;

(b) to further advise the Government of the Republic of Korea that it may wish to correct the deviations and inconsistencies at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of the Republic of Korea in the preparation of a revised translation into one or more of the official languages.

34. The Council is invited to take note of the information given above and to adopt the decisions set out in the preceding paragraph.

[Annex follows]

REPUBLIC OF KOREA

Seed Industry Law

Consolidated Text of the Seed Industry Law of December 6, 1995, under Law No. 5024
as to be enforced as of December 31, 1997,
and part of which is to be enforced as of March 1, 1998
Revised Text of the Seed Industry Law of January 21, 1999 under Law No. 5668
to be enforced as of July 1, 1999

PART I

PURPOSE AND DEFINITIONS OF THE LAW

Article 1

Purpose of the Law

The purpose of the Law is to develop seed industry and to contribute to stability of agriculture, forestry, and fishery by enacting provisions on protection of the breeder's right, management of variety performance of major crops, seed production, certification, marketing, etc.

Article 2

Definitions

For the purposes of this Law:

- (i) "Seed industry" means doing business in connection with breeding, propagation, production, processing, assignment, leasing, export, import, or display of the seeds;
- (ii) "crops" mean all plants which are raised for the production of farm products, forest products, or marine products;
- (iii) "seed" means a seed, a mushroom spawn, or vegetative material used for the propagation or cultivation of plants;
- (iv) "variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be distinguished from any other plant grouping by the expression of at least one of the characteristics, and considered as a unit with regard to its suitability for being propagated unchanged;
- (v) "breeder" means the person who has bred, or developed from discovery, a variety;

- (vi) "variety protection right" means the right granted to a person who is entitled to have variety protection pursuant to this Law;
- (vii) "variety protection right holder" means the holder of a variety protection right;
- (viii) "protected variety" means the variety which is the subject matter of a variety protection right meeting the requirements for variety protection defined by this Law;
- (ix) "exploiting" means an act of propagating, producing, processing, assigning, leasing, exporting, importing, or offering for sale (including displaying for assignment or lease) of the seeds to be protected ;
- (x) "variety performance" means ability for a variety to produce its value in cultivation and usage of more than the level defined by this Law;
- (xi) "certified seed" means the seed at each production stage of which identity, genetic purity, and quality are certified by this Law;
- (xii) "seed quality manager" means the person who is entitled by this Law to certify the seeds produced by seed traders for their marketing, export, or import;
- (xiii) "seed business" means doing business in the production and marketing of the seeds;
- (xiv) "seed merchant" means the person who practices seed business pursuant to this Law;
- (xv) (Deleted)
- (xvi) (Deleted)

PART II

PROTECTION OF THE RIGHTS OF THE BREEDER

CHAPTER I SUBSTANTIVE LAW

Article 3

Variety Protection Agent for Non-Residents

(1) A person who has neither a domicile nor a place of business in the Republic of Korea (hereinafter referred to as a "non-resident") may not, except for the cases that an application for registration under Paragraph (3) has been made, or a Presidential Decree otherwise prescribes, initiate any procedure relating to variety protection defined by the Ministry of Agriculture and Forestry or the Variety Protection Examination Committee (hereinafter referred to as "Examination Committee") under Paragraph (1) of Article 91 (hereinafter

referred to as a "procedure for variety protection"), nor appeal against any decision taken by an administrative agency in accordance with this Law or any decree thereunder, unless he is represented by an agent with respect to his variety protection who has an address or place of business in the Republic of Korea (hereinafter referred to as a "variety protection agent").

(2) The variety protection agent shall, in addition to the powers specially conferred on him, represent the principal in all procedures relating to variety protection and in any appeal against a decision taken by an administrative agency in accordance with this Law or any decree thereunder.

(3) If a non-resident is the holder of a variety protection right or has a registered right in variety protection, the appointment or change of his variety protection agent, or the grant of a power of attorney or the revocation thereof, shall not be effective against any third party unless it is registered.

(4) When a non-resident intends to register the establishment of a variety protection right, he shall appoint and register a variety protection agent, for the duration of the variety protection right.

Article 4

Scope of Power of Attorney

An agent of a person who is domiciled or has his place of business in the Republic of Korea, and who is instructed to initiate a procedure relating to variety protection shall not, unless expressly so empowered, do any one of the actions of:

- (i) amendment, abandonment or withdrawal of an application for variety protection;
- (ii) request for an application or withdrawal of such application;
- (iii) request for priority claim under Paragraph (1) of Article 27 or withdrawal of such claim;
- (iv) demand for a trial under Article 92 or 93; and
- (v) appointment of a sub-representative.

Article 5

Representative of Plural Parties

(1) Where two or more persons jointly initiate a procedure relating to variety protection, each of them shall represent the joint initiators except for actions falling under Items (i) through (iv) of Article 4; however, this provision shall not apply where those persons have appointed a common representative and notified the appointment of the representative to the Minister of the Ministry of Agriculture and Forestry (in case of Item (iv), to the Committee Chairman of the Variety Protection Examination Committee under Paragraph (2) of Article 91 (hereinafter referred to as "Examination Committee Chairman")).

(2) Where the common representative has been appointed and notified as referred to in proviso of Paragraph (1), written proof of the fact that the representative has been appointed shall be presented.

Article 6

Extension of Time, etc.

(1) The Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman may, for the benefit of the persons residing in a place that is remote or difficult to access, extend upon request or *ex officio*, the period for presenting amendments to the grounds for opposition against variety protection under Article 42, or the period for demanding a trial under Article 92 or 93.

(2) The Minister of the Ministry of Agriculture and Forestry, the presiding examiner under Paragraph (3) of Article 97 (hereinafter referred to as "presiding examiner"), or the examiner under Article 33 (hereinafter referred to as "examiner") may, where a time limit for a procedure relating to variety protection to be initiated under the Law has been designated, extend the time, upon request or *ex officio*.

(3) The presiding examiner or examiner may, when a date for a procedure relating to variety protection to be initiated has been designated under this Law, change the date, upon request or *ex officio*.

Article 7

Amendment of Procedure

The Minister of the Ministry of Agriculture and Forestry or the presiding examiner may order correction of a procedure relating to variety protection, designating a time limit if such procedure falls under any of the following items:

- (i) where the procedure has not complied with the provisions of Article 4 of this Law or Paragraph (1) of Article 3 of the Patent Act applied under Article 10 of this Law;
- (ii) where the procedure has not complied with the formalities specified in this Law or an order under this Law; and
- (iii) where fees required in accordance with Article 160 have not been paid.

Article 8

Invalidation of Procedure

(1) The Minister of the Ministry of Agriculture and Forestry may invalidate a procedure relating to variety protection when a person who has been advised to make an amendment in accordance with Article 7 fails to do so within the time limit designated.

(2) If the procedure relating to variety protection is invalidated in accordance with Paragraph (1), but the expiry of the time limit is deemed to be due to a natural disaster or unavoidable circumstances, the Minister of the Ministry of Agriculture and Forestry may withdraw the invalidation upon a request made within fourteen (14) days from the day on which the reasons for the delay ceased to exist or within one (1) year following the expiry of the time limit.

Article 9

Effective Date of Submitted Documents

(1) Application, demands or other documents (including articles, the same applying hereinafter) submitted to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman under the provisions of this Law, or any decree thereunder, shall have effect as of the date on which they are delivered to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman.

(2) Where applications, demands or other documents are submitted by mail to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman, they are deemed to be delivered to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman on the date indicated on the date stamp by the mail service, if the date stamped is clear; however, if such date stamp is unclear, they are deemed to be delivered on the date when the mail was submitted to a post office (as shown by a receipt thereof).

(3) Details concerning the submission of documents with regard to the delay of mail, loss of mail, or interruption of mail service, other than the provisions of Paragraphs (1) and (2), shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 10

Mutatis Mutandis Application of Patent Law and Others

To the procedure relating to variety protection, the provisions of Articles 3, 4, 7, 8, and 9, Paragraphs (1), (2), and (4) of Article 10, Articles 13, 14, and 17 through 24 of the Patent Act as well as Paragraph (2) of Article 54, Articles 55, 59, 80, 83, 85, and 87 of the Code of Civil Procedure shall apply. In this case, "the location of the Korean Industry Property Office" in Article 13 of the Patent Act shall be regarded as "the location of the Ministry of Agriculture and Forestry," and "(3) of Article 132 and (4) of Article 132" in Article 17 of the Patent Act shall be regarded as "Articles 92 and 93."

CHAPTER II

CONDITIONS OF VARIETY PROTECTION AND VARIETY PROTECTION APPLICATIONS

Article 11

Plants Entitled to Variety Protection

Species or genus of the plants entitled to variety protection under this Law shall be determined in accordance with an Ordinance of the Ministry of Agriculture and Forestry.

Article 12

Conditions of Variety Protection

Protection shall be granted for a variety, provided such variety is:

- (i) new,
- (ii) distinct,
- (iii) uniform,
- (iv) stable, and
- (v) the subject of a denomination established pursuant to the provisions of Paragraph (1) of Article 108.

Article 13

Novelty

(1) The variety is new under Paragraph (1) of Article 12 of this Law if, at the date of filing of the application pursuant to Paragraph (2) of Article 28 (or, where relevant, at the priority date pursuant to Paragraph (1) of Article 27), propagating material or harvested material of the variety has not been assigned, by or with the consent of the breeder, for purposes of exploitation of the variety,

- (i) in the territory of the Republic of Korea for longer than one (1) year (or, in case of trees and fruit trees, for longer than six (6) years), and
- (ii) in a territory other than that of the Republic of Korea for longer than four (4) years (or, in case of trees and fruit trees, for longer than six (6) years).

(2) Notwithstanding the provisions in Paragraph (1), novelty under Item (i) of Article 12 shall not be lost through an assignment to others,

- (i) which is the result of an abuse to the detriment of the breeder of the propagating or harvested materials;

- (ii) which forms part of an agreement for the transfer of the right in the variety;
- (iii) which forms part of an agreement under which a third party increases the supplies of propagating material of the variety concerned on behalf of the breeder, provided that the multiplied supply comes again under the control of the breeder;
- (iv) which forms part of an agreement under which a third party undertakes field tests or laboratory trials, or small-scale processing trials, with a view to evaluating the variety;
- (v) which forms part of the fulfillment of a statutory or administrative obligation, in particular concerning biological conservation or the entry of varieties in an official catalogue of varieties admitted to trade (hereinafter referred to as a "catalogue of varieties") in accordance with Article 114; or
- (vi) which involves harvested material being a by-product or a surplus product of the creation of the variety or of the activities referred to in items (iii) to (v) of this Article, provided that said material is assigned without variety identification.

Article 13-2

Variety Protection for Known Varieties

(1) Among the varieties which have been known at the time of prescribing species or genus of the plants to be entitled to variety protection under an Ordinance of the Ministry of Agriculture and Forestry under Article 11, notwithstanding Paragraph (1) of Article 13, a variety falling under any of the following items shall be entitled for variety protection under this Law, where an application for variety protection thereof is filed within one (1) year from the enforcement date of this Law:

- (i) a variety of a superior seed specified under Article 2 of the previous Main Crops Seed Law;
- (ii) a variety which has been registered under Paragraph (2) of Article 45 of the Forestry Law;
- (iii) a variety of which establishment of the variety protection right has been registered in a foreign country; and
- (iv) a variety for which identification of the breeder and initial circulation date can be verified.

(2) The duration of the variety protection right for a protected variety under Paragraph (1) shall be calculated from the date falling under any of the following items; however, where the variety falls under two (2) or more items, the earliest date shall be used:

- (i) the date of being rendered a ruling of the Variety Committee under the previous Main Crops Seed Law, if the variety falls under Item (i) of Paragraph (1);
- (ii) the date of the registration of the variety, if the variety falls under Item (ii) of Paragraph (1);

- (iii) the date of the registration of establishment of the variety protection right of the variety, if the variety falls under Item (iii) of Paragraph (1); and
 - (iv) the date of initial circulation of the variety, if the variety falls under Item (iv) of Paragraph (1).
- (3) Among the varieties falling under any of the Items in Paragraph (1), the effect of the variety protection right of which establishment has been registered under Paragraph (1) of Article 55 shall not be extended to any exploitation that has been initiated before the filing of an application for variety protection of the variety.
- (4) Where variety protection has been granted under Paragraph (1), a person, who has been exploiting the protected variety or has been making preparation thereof, in the Republic of Korea, prior to the filing date of an application for variety protection, shall have a non-exclusive license on that variety protection right, but such non-exclusive license shall be limited to the purpose of commercial and industrial exploitation of the protected variety, which is being made or for which preparations have been made. In this case, the non-exclusive licensee shall pay an adequate remuneration as consideration to the variety protection right holder.
- (5) Paragraph (2) of Article 75 shall apply *mutatis mutandis* to matters concerning the non-exclusive license under Paragraph (4).

Article 14

Distinctness

- (1) The variety is distinct in accordance with Item (ii) of Article 12, if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application pursuant to Paragraph (2) of Article 28 (or, where relevant, at the priority date pursuant to Paragraph (1) of Article 27).
- (2) Common knowledge in the above item may be established by reference to various factors such as any of the following items; however, common knowledge established against intent of the entitled breed is excluded:
- (i) circulation of the variety already in progress,
 - (ii) grant of a breeder's right in the variety,
 - (iii) entry of the variety in a catalogue of varieties admitted to trade, and
 - (iv) entry in the register of varieties kept by a professional association recognized by the Ministry of Agriculture and Forestry.
- (3) In case of Items (ii) or (iii) of the above Paragraph (2), the filing, in any country, of an application for a breeder's right or for entry in a catalogue of varieties admitted to trade shall be deemed to render the variety being the subject of the application a matter of common

knowledge from the date of the application, provided that the application leads to the granting of the breeder's right or the entry in the catalogue, as the case may be. However, a variety which is not entitled to protection or not entered in a catalogue of varieties under this Law is excluded.

Article 15

Uniformity

The variety is uniform under Item (iii) of Article 12 if it is sufficiently uniform in its basic characteristics.

Article 16

Stability

The variety is stable under Item (iv) of Article 12 if its basic characteristics remain unchanged after repeated propagation (or, in case of a particular cycle of propagation such as F1 hybrid, at the end of each such cycle).

Article 17

Persons Entitled to Variety Protection

- (1) The entitlement to the breeder's right shall be vested in the breeder or his successor in accordance with this Law.
- (2) Where two or more persons have bred, or discovered and developed, a variety jointly, the entitlement to protection shall be vested in them jointly.

Article 18

Capacity of Foreigners to Enjoy Rights

Foreigners who have neither a domicile nor a place of business in the Republic of Korea shall not enjoy variety protection rights or other rights relating to a variety, except as provided for in any one of the following items:

- (i) where their country allows nationals of the Republic of Korea to enjoy variety protection rights or other rights relating to a variety under the same conditions as its own nationals;
- (ii) where their country allows nationals of the Republic of Korea to enjoy variety protection rights or other rights relating to a variety under the same conditions as its own nationals in the case that the Republic of Korea allows their country's nationals to enjoy variety protection rights or other rights relating to a variety; or
- (iii) where they may enjoy variety protection rights or other rights relating to a variety according to a treaty or equivalents of a treaty (hereinafter referred to as a "treaty").

Article 19

Application filed by an Unentitled Person; Protection of Entitled Person

If a variety protection can not be granted because of an application having been filed by a person who did not have the right as a successor in title or who has misappropriated such right (hereinafter referred to as an "unentitled person"), a subsequent application filed by the lawful holder of the right shall be deemed to have been filed on the date of filing of the first application filed by the unentitled person. This provision shall not apply, however, if the subsequent application is filed by the lawful holder of the right more than thirty (30) days after the first application by the unentitled person was not accepted under Item (ii) of Article 38, or more than sixty (60) days after its date of publication.

Article 20

Variety Protection of Unentitled Person; Protection of Entitled Person

If a variety protection is invalidated under the provisions of Item (ii) of Paragraph (1) of Article 94, a subsequent application filed by the lawful holder of the right shall be deemed to have been filed on the date of filing of the application which led to the grant of the variety protection that was invalidated; however, this provision shall not apply if the subsequent application is filed more than two (2) years after the date of publication of the first application or more than thirty (30) days after the decision to invalidate it became final.

Article 21

First-to-File Rule

- (1) Where two or more applications relating to the same variety are filed on different dates, only the applicant filing the application having the earlier filing date may obtain a variety protection for the variety.
- (2) Where two or more applications relating to the same variety are filed on the same date, only the person agreed upon by all applicants (hereinafter referred to as a "variety protection applicant") after consultation may obtain a variety protection for the variety and, if no agreement is reached or no consultation is possible, none of the applicants shall obtain a variety protection for the variety.
- (3) Where a variety protection application is invalidated or withdrawn, such application shall, for the purposes of Paragraph (1) or (2), be deemed never to have been filed.
- (4) A variety protection application filed by a person who is not the breeder, the creator, nor the successor in title to the right to obtain a variety protection shall, for the purposes of Paragraph (1) or (2), be deemed never to have been filed.
- (5) The Minister of the Ministry of Agriculture and Forestry shall, in the case provided for in Paragraph (2), order the applicants to notify him of any agreement they have concluded, and to report to him the terms thereof. If such a report is not submitted within the period designated, the applicants shall be deemed not to have concluded an agreement within the meaning of Paragraph (2).

Article 22

Transfer of the Right to Obtain Variety Protection

- (1) The right to obtain a variety protection may be transferred.
- (2) The right to obtain a variety protection shall not be the subject of a pledge.
- (3) In case of joint ownership of the right to obtain a variety protection, a joint owner shall not assign his share without the consent of all other joint owners.

Article 23

Succession to the Right to Obtain Variety Protection

- (1) The succession to the right to obtain a variety protection before the filing of the variety protection application shall not be effective against third persons unless the successor in title files the variety protection application.
- (2) Where two or more applications for a variety are filed on the same date on the basis of a right to obtain a variety protection for the same variety derived by succession from the same person, the succession to that right to obtain the variety protection by the person agreed upon by all variety protection applicants shall be effective.
- (3) The succession to the right to obtain a variety protection after the filing of the variety protection application shall not be effective unless the applicant files a notice of change of applicant, except for the case of inheritance or other general succession.
- (4) Upon inheritance or other general succession with respect to the right to obtain a variety protection, the successor in title shall notify the Minister of the Ministry of Agriculture and Forestry accordingly without delay.
- (5) Where two or more notifications are made on the same date, on the basis of a right to obtain a variety protection for the same variety that has been derived by succession from the same person, a notification made by the person agreed upon after consultations among all persons who made notifications shall be effective.
- (6) Paragraph (5) of Article 21 shall apply *mutatis mutandis* to the cases under Paragraphs (2) and (5).

Article 24

Breeding or Others as Part of Duties of a Public Official

- (1) A variety protection right entitled to a public official shall pass to the Government or a District Self-Ruling Entity, where a variety which has been bred, or discovered and developed by a public official, by reason of its nature, falls within the scope of the Government or the District Self-Ruling Entity, and an act or acts of breeding, discovery, or development of the variety were part of the present or past duties of the public official.

(2) The disposal and management of the variety protection right which has passed to the Government in accordance with Paragraph (1) shall be governed by the Minister of the Ministry of Agriculture and Forestry, notwithstanding Article 6 of the National Property Law.

(3) The disposal and management of the variety protection right under Paragraph (2) which has passed to the Government shall be prescribed by a Presidential Decree.

Article 25

Remuneration for Breeding or Others as Part of Duties of a Public Official

(1) If the Government or a District Self-Ruling Entity succeeds to the variety which has been bred, or discovered and developed by a public official in accordance with Paragraph (1) of Article 24, the Government or the District Self-Ruling Entity shall provide reasonable remuneration to the public official for it.

(2) The standards for remuneration, payment method thereof, and other matters relating to the remuneration under the above Paragraph (1) shall be prescribed by a Presidential Decree.

Article 26

Application for Variety Protection

(1) A variety protection applicant shall file, in the prescribed manner, an application with the Minister of the Ministry of Agriculture and Forestry. The application shall comprise the following elements:

- (i) the name and address of the applicant (in case of a legal entity, the title, place of business and the name of its representative);
- (ii) the name and address, or place of business, of the agent, if any;
- (iii) the name and address of the person who bred, or discovered and developed, the variety (if that person is not the applicant);
- (iv) the identification of the botanical taxon (Latin and common name);
- (v) the denomination proposed for the variety, or a provisional designation;
- (vi) the filing date;
- (vii) matters prescribed in Paragraph (3) of Article 27 (where the priority of an earlier application is claimed);
- (viii) a technical description of the variety and a procedural description of the variety breeding;
- (ix) photographs and samples of a variety; and
- (x) the proof of payment of the application fee.

- (2) Where the entitlement to a variety protection is vested in the joint breeders in accordance with Paragraph (2) of Article 17, all joint breeders shall file an application jointly.
- (3) Matters relating to the technical description of the variety and a procedural description of the breeding shall be prescribed by a Presidential Decree.

Article 27

Priority Claiming

- (1) If a national of one of the countries which recognizes a right of priority for a variety protection application filed by a national of the Republic of Korea, claims the right of priority for a variety protection application in the Republic of Korea on the basis of the first application for the same variety in his country or in one of said countries, the filing date of the first application in the foreign country shall be deemed to be the filing date in the Republic of Korea for the purpose of Article 21. Where a national of the Republic of Korea has filed a variety protection application in a country which recognizes the right of priority for variety protection applications filed by nationals of the Republic of Korea, and claims the right of priority for a variety protection application in the Republic of Korea on the basis of the first application for the same variety in said country, this provision shall also apply.
- (2) A person intending to claim the right of priority in accordance with Paragraph (1) shall file the variety protection application claiming the right of priority within one (1) year from the filing date of the first application.
- (3) A person intending to claim the right of priority in accordance with Paragraph (1) shall specify such claim, the name of the country in which the first application was filed and the filing date of such application in the variety protection application which he files in the Republic of Korea.
- (4) A person who has claimed the right of priority in accordance with Paragraph (3) shall submit, within thirty (30) days from the filing date referred to in Paragraph (2) of Article 28, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed.
- (5) A person who has claimed the right of priority in accordance with Paragraph (3) shall be entitled to request the Minister of the Ministry of Agriculture and Forestry that the examination of the variety be deferred by up to three (3) years from the date of filing of the first application. Upon receiving such request, the Minister of the Ministry of Agriculture and Forestry shall accept the request unless there are legitimate reasons for not accepting the request. However, where the first application is rejected or withdrawn, the applicant may request to initiate the examination of the variety before the date specified by the applicant.
- (6) In case of proviso of Paragraph (5), the Minister of the Ministry of Agriculture and Forestry shall give the applicant an appropriate period of time to furnish the information, documents or material required for the purpose of the examination of the variety of which application is filed in accordance with Paragraph (1) of Article 26 (hereinafter referred to as "applied variety").

Article 28

Processing of the Application

- (1) The documents constituting the application shall be received by the Minister of the Ministry of Agriculture and Forestry, where the applied variety belong to the species or genus of the plants entitled to variety protection under Article 11 of this Law. Any application that is complete and correct under Paragraph (1) of Article 26, or any application that is amended under Item (ii) of Article 7, shall be given a filing date and shall be recorded in the Register of Applications.
- (2) The filing date shall be taken to be the day on which the documents constituting the application has been received in accordance with the above Paragraph (1).

Article 29

Amendment before the Decision of Publication

- (1) An applicant may amend the application before the transmittal of a certified copy of the decision of publication under Paragraph (2) of Article 38, if the amendment does not change the gist of the original application.
- (2) The amendment in accordance with the above Paragraph 1 shall not be made after the transmittal of a certified copy of the decision of rejection. However, where a demand for a trial against a decision of rejection under Article 93 is filed, an applicant may amend the application within thirty (30) days from the filing date of the demand.

Article 30

Amendment after the Decision of Publication

- (1) An applicant may, after the transmittal of a certified copy of the decision of publication under Paragraph (2) of Article 38, amend the application under any of the following items, provided that such amendment does not change the gist of the original application:
 - (i) where an amendment is made, when a demand for a trial against a rejection under Article 93 is filed, after receipt of a rejection notice under Paragraph (1) of Article 37, within thirty (30) days from the date of filing a demand for an appellate trial against the reasons for rejection;
 - (ii) where an amendment is made when an opposition is filed under Paragraph (1) of Article 41, within the time limit designated for submission of a written answer against the grounds for opposition under Paragraph (1) of Article 43; and
 - (iii) where an amendment is made within the time limit designated for submission of the written opinion against the reasons for rejection after receipt of the notice of reasons for rejection under Paragraph (4) of Article 44.
- (2) Where an amendment of the application, made after the transmittal of a certified copy of the decision of publication, is found not to have complied with the provisions of Paragraph

(1) after registration of the establishment of the variety protection right, the variety protection shall be deemed to have been granted on the application without such amendment.

Article 31

Change of Gist of the Application

Where an amendment made in accordance with Articles 29 and 30 falls under any of the following items, the amendment shall be deemed not to change the gist of the application:

- (i) where errors are corrected;
- (ii) where unclear description is clarified; and
- (iii) the cases prescribed by a Presidential Decree.

Article 32

Quash of Amendment

(1) Where an amendment of the application made before the transmittal of a certified copy of the decision of publication changes the gist of the application, the examiner shall quash the amendment by a decision and notify the applicant of such decision without delay.

(2) Where a decision to quash an amendment under Paragraph (1) has been made, before the expiration of thirty (30) days from the transmittal of a certified copy of that decision, the examiner shall neither make a decision with respect to an application nor make a decision of publication.

(3) Where an applicant has demanded a trial under Article 92 against a decision to quash an amendment under Paragraph (1), the examiner shall suspend the examination of the application until the trial decision has become final and conclusive.

(4) Where, before the examiner's decision has been made under Article 46, an amendment to the application made after the transmittal of a certified copy of the decision of publication is found not to comply with Paragraph (1) of Article 30, the examiner shall quash the amendment by a decision and notify the applicant of such decision without delay.

(5) The decision to quash an amendment under Paragraph (1) or (4) shall be in writing and shall state the reasons therefor.

(6) No appeal shall be made against a decision to quash an amendment under Paragraph (1) or (4). However, this provision shall not apply in case of the demand for a trial under Article 92.

CHAPTER III
EXAMINATION

Article 33

Examination by Examiner

- (1) The Minister of the Ministry of Agriculture and Forestry shall have applications for variety protection under Article 26, oppositions to the grant of variety protection under Article 41, and applications for the registration of variety denomination under Article 111, examined by an examiner.
- (2) Matters relating to the qualifications for examiners in accordance with the provisions of Paragraph (1) shall be prescribed by a Presidential Decree.

Article 34

Publication of the Application

- (1) The Minister of the Ministry of Agriculture and Forestry shall publish the variety protection application, which has been registered in the register of variety protection applications in accordance with the provisions of Paragraph (1) of Article 28, by publishing the application in the Variety Protection Gazette (hereinafter referred to as an "Official Gazette") under Article 54 without delay.
- (2) Any person may, when the application is published under Paragraph (1), furnish the Minister of the Ministry of Agriculture and Forestry with information, together with evidence, that the variety concerned is unprotectable under Article 12, 17, or 18.
- (3) Matters which shall be published in the Official Gazette on the publication of the application under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 35

Examination of Applied Variety

- (1) An examiner shall examine whether an applied variety meets the requirements prescribed in Articles 13 through 16.
- (2) The Minister of the Ministry of Agriculture and Forestry may entrust a research institute, university, or any appropriate person with investigation or testing to perform the examination under Paragraph (1).
- (3) Matters relating to the method, standard, and procedures of the examination under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 36

Submission of Materials

- (1) The Minister of the Ministry of Agriculture and Forestry may order the applicant to furnish all materials, if necessary, for the purposes of the examination under Paragraph (1) of Article 35.
- (2) The applicant who has been ordered to furnish the materials under Paragraph (1) shall comply with the order, unless the applicant has a legitimate reason for his failure.

Article 37

Rejection Ruling and Notification of Reasons Therefor

- (1) The examiner shall render a ruling to reject a variety protection application where it falls under any of the following items (hereinafter referred to as "reason for rejection"):
 - (i) it is not protectable under Article 3, 11, 12, 17, or 18, Paragraphs (1) and (2) of Article 21, Paragraphs (2) and (5) of Article 23, Paragraph (1) of Article 24, or Paragraph (2) of Article 26;
 - (ii) it is filed by a person who is not entitled to obtain a variety protection right; and
 - (iii) it is in violation of a treaty.
- (2) An examiner shall, when he intends to render a ruling on rejection under Paragraph (1), notify the applicant of the reasons and give him an opportunity to submit a written opinion designating a time limit for such submission.
- (3) Where a ruling of rejection under Paragraph (1) is rendered, a certified copy of the ruling shall be transmitted to the applicant and the ruling shall be published in the Official Gazette.
- (4) Matters which shall be published in the Official Gazette on the ruling of rejection under Paragraph (3) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 38

Publication of the Application for Public Inspection

- (1) Where an examiner finds no reason for rejecting a variety protection application, he shall render a decision that the application is to be published.
- (2) Where a decision to publish the application is made under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall transmit a certified copy of the decision of publication of the application to the applicant and publish the application in the Official Gazette.

(3) The Minister of the Ministry of Agriculture and Forestry shall make the application files and their attachments available for public inspection for sixty (60) days following the date of publication of the application.

(4) Matters which shall be published in the Official Gazette on the publication of the application under Paragraph (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 39

Right to Provisional Protection

(1) After publication of his application, the applicant for variety protection shall have an exclusive right to commercially and industrially exploit the variety claimed in the variety protection application.

(2) After the publication of the application, where the application falls under any of the following items, the right under Paragraph (1) shall be deemed never to have arisen:

- (i) where an application has been abandoned, invalidated or withdrawn; and
- (ii) where the examiner's decision that the application is to be rejected has become final and conclusive.

(3) Where a person having the right under Paragraph (1) has exercised the right and the application falls under either of the items in Paragraph (2), such person shall be liable to indemnify any damage caused to another party by exercising that right.

(4) Articles 84 through 90 shall apply *mutatis mutandis* to the right under Paragraph (1).

Article 40

Exercise of the Right of Provisional Protection and Suspension of Litigation Proceedings

(1) Where a suit or an application for provisional attachment or provisional disposal has been filed with respect to the infringement of the right under Paragraph (1) of Article 68, the court may, if necessary, suspend the litigation proceedings by a ruling upon request, or *ex officio*, until the examiner's decision or the trial decision has become final and conclusive.

(2) No appeal shall lie from a ruling with respect to a request under Paragraph (1).

(3) When the reason for the suspension is no longer applicable, the court may revoke the ruling of suspension under Paragraph (1).

Article 41

Opposition to Grant of Variety Protection

- (1) Within sixty (60) days from the date of publication of an application, any person can file an opposition to the grant of variety protection with the Minister of the Ministry of Agriculture and Forestry, if an application falls under either of the following items:
 - (i) where the variety in the variety protection application does not comply with the requirements of Articles 13 through 16; and
 - (ii) where the variety protection application is filed by a person other than the one entitled to variety protection under Article 17.
- (2) When filing an opposition pursuant to Paragraph (1), the opponent shall submit the written opposition documents containing the reasons therefor, together with necessary evidence, to the Minister of the Ministry of Agriculture and Forestry.

Article 42

Amendments to Grounds for Opposition, etc.

An opponent who has filed an opposition to the grant of variety protection under Paragraph (1) of Article 41 (hereinafter referred to as a "variety protection opponent") may amend the grounds and evidence set forth in the written opposition within thirty (30) days for the expiration of the time limit for opposition.

Article 43

Ruling on Opposition

- (1) When an opposition to the grant of variety protection is filed under Paragraph (1) of Article 41, the examiner shall transmit a copy of the notice of opposition to the applicant and give him an opportunity to submit a written answer, designating a time limit for submitting such answer.
- (2) After the expiry of the time limits provided for under Article 42 and under Paragraph (1), the examiner shall render a ruling on the opposition.
- (3) The ruling on an opposition to the grant of variety protection shall be in writing and shall state the reasons therefor.
- (4) When a ruling under Paragraph (2) has been rendered, the Minister of the Ministry of Agriculture and Forestry shall transmit a certified copy of the ruling to the applicant as well as to the opponent.

Article 44

Decision of Rejection taken *Ex Officio* after Publication

- (1) Where the examiner finds reasons for rejection after the publication of the application, he can make a decision of rejection *ex officio*.
- (2) When the examiner makes a decision to reject an application under Paragraph (1), he shall not render a ruling on a variety protection opposition even if the opposition is filed in accordance with Paragraph (1) of Article 41.
- (3) Where a decision of rejection is rendered under Paragraph (1) and an opposition to the grant of variety protection is filed in accordance with Paragraph (1) of Article 41, the Minister of the Ministry of Agriculture and Forestry shall transmit the certified copy of the decision of rejection to the opponent.
- (4) Where a decision of rejection is rendered under Paragraph (1), the provisions of Paragraphs (2) and (3) of Article 37 shall apply *mutatis mutandis*.

Article 45

Conflict in Applications for Variety Protection Opposition

- (1) In case there are two or more applications for variety protection oppositions, the examiner may combine or separate their examination or ruling.
- (2) In case there are two or more applications for variety protection opposition, if one of the applications is deemed to be justifiable upon its examination, the examiner may not render a decision on other applications.
- (3) If an application for variety protection opposition is deemed to be justifiable and a decision to reject the application is made under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall transmit a copy of the decision to other applicants for variety protection opposition, for whom the decisions are not made.

Article 46

Decision on Grant of Variety Protection

- (1) Where no grounds for rejecting a variety protection application are established, the examiner shall render a decision that variety protection is to be granted for the application.
- (2) The decision on grant of variety protection shall be in writing and shall state the reasons therefor.
- (3) When the decision on grant of variety protection has been rendered under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall transmit a certified copy of the decision to the applicant, and publish the decision in the Official Gazette.

(4) Matters which shall be published in the Official Gazette on the decision on grant of variety protection under Paragraph (3) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 47

Suspension of Examination or Litigation Proceedings

(1) The examination procedure of a variety protection application may, if necessary to the examination, be suspended until a trial decision becomes final or litigation proceedings are concluded.

(2) The court may, if necessary to the litigation, suspend proceedings until the examiner's decision becomes final and conclusive.

Article 48

Mutatis Mutandis Application of Patent Law

(1) To the examination relating to variety protection applications, the provisions of Items (i) through (v), and (vii) of Paragraph (1) of Article 148 of the Patent Act shall apply.

(2) To the examination relating to an opposition to the grant of variety protection, the provisions of Articles 133, 271, and 339 of the Code of Civil Procedure as well as Article 157, Paragraphs (3) through (6) of Article 165, Article 166 of the Patent Act shall apply.

CHAPTER IV

**VARIETY PROTECTION FEES
AND VARIETY PROTECTION REGISTRATION, ETC.**

Article 49

Variety Protection Fees

(1) A person desiring to register the establishment of a variety protection right under Paragraph (1) of Article 55 shall pay the variety protection fees.

(2) A variety protection right holder shall pay an annual variety protection fee to the Minister of the Ministry of Agriculture and Forestry for the entire duration of the protection right.

(3) Regardless of the will of a person liable to pay the variety protection fees under the terms of Paragraph (1) or (2), any interested person in the variety protection right may pay the variety protection fees.

(4) Any interested person in the variety protection right who has paid the variety protection fees in accordance with Paragraph (3) may demand reimbursement of his expenses to the extent that the person liable to pay is actually making a profit.

(5) Matters relating to the variety protection fees, its payment method, its payment due date, etc. under Paragraph (1) or (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 50

Payment of Variety Protection Fees after Expiration of the Payment Period

(1) Any person wishing to register the establishment of a variety protection right or a variety protection right holder may pay the variety protection fees during the 6-month grace period following the expiration of the payment period prescribed by Paragraph (5) of Article 49.

(2) Where the variety protection fees are paid during the grace period prescribed in Paragraph (1), an amount equivalent to twice of the variety protection fees under Paragraph (5) of Article 49 shall be paid.

(3) If the person wishing to register the establishment of a variety protection right does not pay the variety protection fees during the grace period provided for under Paragraph (1), the variety protection application shall be deemed to have been abandoned and the variety protection right concerned shall be deemed to have been extinguished retroactively to the time when the period for payment of the variety protection fees expired.

Article 51

Exemption of Variety Protection Fees

Notwithstanding Article 49, the payment of the variety protection fees shall be exempted, if the situation falls under any of the following items:

- (i) where the variety protection fees are to be paid by the Government or a District Self-Ruling Entity in order to register the establishment of a variety protection right;
- (ii) where the variety protection fees are to be paid by the Government or a District Self-Ruling Entity for the entire duration of the protection right; and
- (iii) where the variety protection fees are to be paid by a life protectee prescribed by Article 3 of the Life Protection Act in order to register the establishment of a variety protection right.

Article 52

Refund of Variety Protection Fees

Variety protection fees which have been paid shall not be refunded unless they have been paid by mistake.

Article 53

Variety Protection Register

- (1) The Minister of the Ministry of Agriculture and Forestry shall keep a variety protection register and shall register the following items:
- (i) the establishment, transfer, extinction, or restriction on disposal, of a variety protection right;
 - (ii) the establishment, transfer, modification, extinction, or restriction on disposal, of an exclusive or non-exclusive license; and
 - (iii) the establishment, transfer, modification, extinction, or restriction on disposal, of a pledge on a variety protection right or on an exclusive or non-exclusive license.
- (2) Besides the matters prescribed in Paragraph (1), registration requirements, registration procedure, and other matters relating to the registration shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 54

Variety Protection Gazette

The Minister of the Ministry of Agriculture and Forestry shall publish the Official Gazette periodically.

CHAPTER V

THE VARIETY PROTECTION RIGHT

Article 55

Registration of Establishment of the Variety Protection Right

- (1) A variety protection right shall come into force upon registration of its establishment in accordance with Item (i) of Paragraph (1) of Article 53.
- (2) Where the variety protection fees have been paid in accordance with Paragraph (1) of Article 49 or Paragraph (1) of Article 50, or where an exemption from payment of fees has been granted under Article 51, the Minister of the Ministry of Agriculture and Forestry shall register the establishment of the variety protection right.
- (3) Where a registration has been made under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall publish the following items in the Official Gazette:
- (i) the name and address of the variety protection right holder (in case of a legal entity, the title, place of business and the name of its representative);
 - (ii) the registration number of the variety protection;

- (iii) the date of registration of establishment; and
 - (iv) the duration of the variety protection right.
- (4) When the establishment of a variety protection right has been registered, the Minister of the Ministry of Agriculture and Forestry shall issue a certificate of registration of a variety protection right to the variety protection right holder.

Article 56

Duration of the Variety Protection Right

The variety protection right shall expire at the end of the twentieth (20th) calendar year following the registration of its establishment; for trees and fruit trees, it shall expire at the end of the twenty-fifth (25th) year.

Article 57

Effects of the Variety Protection Right

- (1) A variety protection right holder shall have an exclusive right to exploit the protected variety commercially and industrially. However, where the variety protection right is subject to an exclusive license, this provision shall not apply to the extent that the exclusive licensee has the exclusive right to exploit the protected variety under Paragraph (2) of Article 62.
- (2) Besides the right prescribed in Paragraph (1), a variety protection right holder shall also have an exclusive right to exploit harvested material and the product which has been made directly from harvested material of the seed of the protected variety commercially and industrially. However, where the product is made directly by a person who has no knowledge of the right when producing the product, this provision shall not apply.
- (3) A variety falling under either of the following items shall be deemed to be a protected variety:
- (i) when the variety is essentially derived from the protected variety (hereinafter referred to as a "derived variety"); and
 - (ii) when the production of the seed requires the repeated use of the protected variety.
- (4) A variety shall be deemed to be a derived variety when it is derived from the initial variety or from a variety that is itself derived from the initial variety, and retains the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, and essential characteristics of the corresponding variety are the same as those of the initial variety except for differences in the particular characteristics which result from the particular breeding method although the corresponding variety is clearly distinguishable from the initial variety.

Article 58

Scope of No Effect of the Variety Protection Right

- (1) The effects of the variety protection right under Article 57 shall not extend to any of the following items:
 - (i) exploitation of the protected variety for self-consumption and for non-commercial purposes;
 - (ii) exploitation of the protected variety for experimental and research purposes; and
 - (iii) exploitation of the protected variety for the purpose of breeding other varieties.
- (2) The Minister of the Ministry of Agriculture and Forestry may restrict a variety protection right for a variety, if a farmer collects the seeds of the variety for himself for the purpose of self-production.
- (3) Matters relating to the scope of restriction, procedures, method, etc. under Paragraph (2) shall be prescribed by a Presidential Decree.

Article 59

Exhaustion of the Variety Protection Right

The variety protection right under Article 57 shall not extend to acts concerning any material of the protected variety which has been sold or otherwise marketed in the Republic of Korea by the holder of the variety protection right, or an exclusive or non-exclusive license, or its harvested material, or any material directly made from said material, unless such act falls under either of the following items:

- (i) an act of propagating the seed of the protected variety by using the seeds of the protected variety which has been sold or otherwise marketed, its harvested material, or any material directly made from said material; and
- (ii) an act of exporting the seeds of the protected variety, its harvested material, or any material directly made from said material for the purpose of propagation.

Article 60

Measures Restricting the Variety Protection Right

Other than the measures prescribed by this Law, the Government shall not impose any restriction on the exploitation of the variety protection right.

Article 61

Transfer of the Variety Protection Right

- (1) A variety protection right may be transferred.

(2) A joint owner of a variety protection right may not do either of the following acts without the consent of all other joint owners:

- (i) an act of assigning his share or establishing a pledge upon his share; and
- (ii) an act of establishing an exclusive license, or granting a non-exclusive license, for the variety protection right.

(3) Each of the joint owners may, except as otherwise agreed by a contract among all joint owners, exploit the protected variety by himself without the consent of other joint owners.

Article 62

Exclusive License

(1) A variety protection right holder may establish for another person an exclusive license on the variety protection right.

(2) An exclusive licensee, who has an exclusive license established under Paragraph (1), shall have an exclusive right to exploit the protected variety commercially and industrially to the extent provided for in the license contract.

(3) An exclusive licensee may not transfer the license without the consent of the variety protection right holder, except where it is transferred together with the business of the licensee or in case of inheritance or other general succession.

(4) An exclusive licensee may not establish a pledge or grant a non-exclusive license on the exclusive license without the consent of the variety protection right holder.

(5) Paragraph (2) of Article 61 shall apply *mutatis mutandis* to an exclusive license.

Article 63

Effects of Registration of the Variety Protection Right and Exclusive License

(1) The matter falling under any of the following items shall be of no effect, unless it is registered in the variety protection register under Article 53:

- (i) the transfer (excluding the case of inheritance or other general succession) or extinction by abandonment of a variety protection right, or restriction on the disposal thereof;
- (ii) the establishment, transfer (excluding the case of inheritance or other general succession), modification, or extinction of an exclusive license, or restriction on the disposal thereof; and
- (iii) the establishment, transfer (excluding the case of inheritance or other general succession), modification, or extinction of a pledge, or restriction on the disposal thereof for the purpose of the exploitation of the variety protection right or exclusive license.

(2) A person who has inherited, or succeeded generally to, a variety protection right, exclusive license, or pledge shall notify the Minister of the Ministry of Agriculture and Forestry of its purport within thirty (30) days from the effect.

Article 64

Non-Exclusive License

- (1) A variety protection right holder may grant to another person a non-exclusive license on his variety protection right.
- (2) A non-exclusive licensee who has been granted a non-exclusive license under Paragraph (1) shall have a right to exploit the protected variety commercially and industrially to the extent prescribed in this Law or provided for by the license contract.
- (3) A non-exclusive license granted under Article 68 may be transferred only with the business in which it is exploited.
- (4) A non-exclusive license, other than the one referred to in Paragraph (3), may not be transferred without the consent of the variety protection right holder (or the variety protection right holder and the exclusive licensee in case of a non-exclusive license on an exclusive license), except for the case of transferring it with the business in which it is exploited.
- (5) A pledge, other than the one referred to in Paragraph (3), may not be established on a non-exclusive license, without the consent of the variety protection right holder (or the variety protection right holder and the exclusive licensee in case of a non-exclusive license on an exclusive license).
- (6) Paragraph (2) of Article 61 shall apply *mutatis mutandis* to the non-exclusive license.

Article 65

Non-Exclusive License by virtue of Prior Use

Where, at the time of filing a variety protection application, a person who has bred a protected variety without having knowledge of the contents of the protected variety described in a variety protection application, or has learned how to exploit the protected variety from such person and has been exploiting the protected variety commercially and industrially, in good faith, in the Republic of Korea, or has been making preparations therefor, shall have a non-exclusive license on that variety protection right for which the variety protection application has been filed. Such license shall be limited to the purpose of commercial and industrial exploitation of the protected variety, which is being exploited or for which preparations have been made.

Article 66

Non-Exclusive License due to Exploitation prior to Registration of Demand for Invalidation Trial

- (1) When a person falling under any of the following items has been exploiting commercially and industrially the protected variety, or has been making preparations therefor,

in good faith, in the Republic of Korea, prior to the registration of a demand for an invalidation trial of the variety protection right concerned, without knowing that the variety protection right falls under the grounds of invalidation, such person shall have a non-exclusive license on that variety protection right or on the exclusive license existing at the time that the variety protection right was invalidated, but such non-exclusive license shall be limited to the purpose of commercial and industrial working of the protected variety, which is being made or for which preparations have been made:

- (i) the original variety protection right holder, where one of more than two variety protections granted to the same variety has been invalidated;
 - (ii) the original variety protection right holder, where his protected variety has been invalidated and a protected variety for the same variety has been granted to the entitled person; and
 - (iii) in the case referred to in Item (i) or (ii), a person, who, at the time of registration of the demand for an invalidation trial of the invalidated variety protection right, has been granted an exclusive or non-exclusive license, or a non-exclusive license on the exclusive license, and such license has been registered. However, a person falling under Paragraph (2) of Article 75 is not required to register the license.
- (2) A person who has been granted a non-exclusive license in accordance with Paragraph (1) shall pay an adequate remuneration as consideration to the variety protection right holder or exclusive licensee.

Article 67

Non-Exclusive License subject to Transfer of the Variety Protection Right due to Exercise of Pledge

If a variety protection right holder exploits the protected variety prior to the establishment of a pledge on the variety protection right, even if the variety protection right is subsequently transferred by an act such as an auction, the variety protection right holder shall have a non-exclusive license on the variety protection right. However, in this case, he shall pay an adequate remuneration to a person to whom the variety protection right is transferred through an act such as an auction.

Article 68

Arbitration Decision on Grant of Non-Exclusive License

- (1) Where a protected variety falls under any of the following items, a person who intends to exploit the protected variety may request for an arbitration decision on the grant of a non-exclusive license (hereinafter referred to as "arbitration decision") to the Minister of the Ministry of Agriculture, Forestry, and Fishery. However, request for an arbitration decision under the following Item (i) or (ii) can only be made if no consultation on the grant of a non-exclusive license is possible, or no agreement is reached, with the variety protection right holder or exclusive licensee of the protected variety:

- (i) where the protected variety has not been continuously exploited for three (3) or more years in the Republic of Korea without any natural or terrestrial disaster, other *force majeure*, or any justifiable reason prescribed by a Presidential Decree;
 - (ii) where the protected variety has not been commercially and industrially worked continuously in the Republic of Korea, without any justifiable reason, on a considerable commercial scale for three (3) or more years, or where the domestic demand for the protected variety has not been satisfied to a proper extent and under reasonable conditions;
 - (iii) where there is a significant necessity for the non- commercial exploitation of the protected variety for the benefit of the public; and
 - (iv) where it is necessary to exploit the protected variety in order to correct business practice which has been deemed to be unfair through judicial or administrative procedures.
- (2) Paragraph (1) shall not apply before the expiration of three (3) years from the date of registration of the establishment of a variety protection right of the protected variety.
- (3) In making an arbitration decision, the Minister of the Ministry of Agriculture, Forestry, and Fishery shall review if it is necessary to grant a non-exclusive license for each request.
- (4) In making an arbitration decision, the Minister of the Ministry of Agriculture and Forestry shall require that the non-exclusive license be exploited for the main purpose of supplying the domestic demand. However, this shall not apply to an arbitration decision requested in accordance with Item (iv) of Paragraph (1).
- (5) In making an arbitration decision under Item (iv) of Paragraph (1), the Minister of the Ministry of Agriculture and Forestry may take into consideration that the purport of the arbitration decision is for correcting unfair business practice when deciding its remuneration.
- (6) Before making an arbitration decision, the Minister of the Ministry of Agriculture and Forestry shall hear the view of the Variety Committee established under Article 158.

Article 69

Transmittal of Written Request for Arbitration

Where a request has been made for an arbitration decision under Paragraph (1) of Article 68, the Minister of the Ministry of Agriculture and Forestry shall transmit a copy of the written request to the variety protection right holder and exclusive licensee related to the request, and to any other persons having a registered right to the protected variety, and shall give them an opportunity to submit a written reply within the time limit.

Article 70

Manner of Arbitration

- (1) An arbitration decision shall be in writing and shall state the reasons therefor.

- (2) The following items shall be indicated in the arbitration decision of Paragraph (1):
- (i) the scope and duration of the non-exclusive license, and
 - (ii) the remuneration for the license, and the method and time of its payment.
- (3) Where an extension of the duration of a non-exclusive license is requested under Item (i) of Paragraph (2), the Minister of the Ministry of Agriculture and Forestry may not reject such request as long as previous reasons for the extension remain to be valid.

Article 71

Transmittal of Certified Copies of the Arbitration Decision

- (1) Where an arbitration decision is made, the Minister of the Ministry of Agriculture and Forestry shall transmit certified copies of the decision to the parties and any other person having a registered right to the variety protection right.
- (2) When an arbitration decision has been transmitted to the parties under Paragraph (1), an agreement to the terms of the arbitration decision shall be deemed to have been reached by the parties.

Article 72

Deposit of Remuneration

A person who is to pay a remuneration under Item (ii) of Paragraph (2) of Article 70 shall make a deposit thereof under any of the following circumstances:

- (i) where the person to receive the remuneration refuses or is unable to receive it;
- (ii) where a lawsuit prescribed in Paragraph (1) of Article 106 is filed against the remuneration; and
- (iii) where the variety protection right or exclusive license is the subject of a pledge, except for the case that the pledge gave his consent.

Article 73

Lapse and Cancellation of Arbitration Decision

- (1) When a person who is subject to a ruling under Paragraph (1) of Article 70 fails to pay or deposit the remuneration (if the remuneration is paid at a fixed period or in installments, the first portion of such payment) by the payment due date prescribed in Item (ii) of Article 70, the ruling shall lose its effect.
- (2) The Minister of the Ministry of Agriculture and Forestry may cancel the ruling under Paragraph (1) of Article 70 upon the request of an interested party or *ex officio* under any of the following circumstances:

- (i) here a person who is subject to a ruling under Paragraph (1) of Article 70 fails to exercise his non-exclusive license;
 - (i) here the reasons for requesting an arbitration decision on a non-exclusive license have become invalid and there is no basis for their recurrence; and
 - (iii) When a person who is subject to a ruling under Paragraph (1) of Article 70 fails to pay or deposit the subsequent portions of the remuneration following the first portion if the remuneration is paid at a fixed period or in installments.
- (3) Paragraph (6) of Article 68, Article 69, Paragraph (1) of Article 70, and Article 71 shall apply *mutatis mutandis* to the cases described in Paragraph (2).
- (4) The non-exclusive license shall be extinguished from the time a ruling on an arbitration decision has been cancelled under Paragraph (2).

Article 74

Restriction on Objection to Arbitration Decision

Where a demand for an administrative trial is filed against the arbitration decision under Paragraph (1) of Article 3 of the Administrative Trial Law, the remuneration determined in an arbitration decision may not be a ground for objection.

Article 75

Effects of Registration of Non-Exclusive License

- (1) When a non-exclusive license is registered, it shall be also effective against any person who subsequently acquires the variety protection right or an exclusive license after the registration.
- (2) A non-exclusive license granted under Articles 64 through 68, and 104 shall have the same effect as prescribed under Paragraph (1) even when it is not registered.
- (3) The transfer, modification, extinction, or restriction on disposal of a non-exclusive license, or the establishment, transfer, modification, extinction, or restriction on disposal of a pledge relating to a non-exclusive license shall not be effective against a third party unless it is registered.

Article 76

Restriction on Abandonment of the Variety Protection Right and Others

- (1) variety protection right holder shall not abandon his variety protection right without the consent of the exclusive licensee, or pledgee, or non-exclusive licensee under Paragraph (4) of Article 62 or Paragraph (1) of Article 64.
- (2) n exclusive licensee shall not abandon his exclusive license without the consent of a pledgee or non-exclusive licensee under Paragraph (4) of Article 62.

(3) non-exclusive licensee shall not abandon his non-exclusive license without the consent of a pledgee.

Article 77

Effects of Abandonment

The variety protection right, exclusive license, or non-exclusive license shall be extinguished from the time of abandonment of the variety protection right, exclusive license, or non-exclusive license.

Article 78

Pledge

Where a variety protection right, exclusive license, or non-exclusive license is the subject of a pledge, the pledgee may not exploit the protected variety except as otherwise provided by the contract.

Article 79

Subrogation of the Pledge Right

A pledge may be exercised against the remuneration or goods to be received for the exploitation of the protected variety; however, it shall be seized before payment or delivery thereof.

Article 80

Cancellation of the Variety Protection Right

(1) The Minister of the Ministry of Agriculture and Forestry may cancel the variety protection right under any of the following circumstances; however, in case of Item (iii), the variety protection right shall be cancelled:

- (i) where requirements prescribed in Article 15 or 16 have not been met;
- (ii) where a protected variety has not been continuously exploited in the Republic of Korea for two (2) or more years from the date of a ruling on an arbitration decision under each item of Paragraph (1) of Article 68;
- (iii) where an act of maintaining the protected variety under Article 83 has not been performed; and
- (iv) where the registration of a variety denomination has been cancelled under Paragraph (1) of Article 113.

(2) The variety protection right shall be extinguished from the time of cancellation of the variety protection right under Paragraph (1).

(3) Paragraphs (2) and (3) of Article 37 shall apply *mutatis mutandis* to the cancellation prescribed in Paragraph (1).

Article 81

Extinction of the Variety Protection Right in absence of Successor

A variety protection right shall be extinguished in the event that there is no successor thereto when the succession is commenced.

Article 82

Report on Exploitation of the Variety Protection Right

The Minister of the Ministry of Agriculture and Forestry may require a variety protection right holder, exclusive licensee or non-exclusive licensee to report whether the protected variety has been exploited, and the scale, etc. thereof.

Article 83

Maintenance Obligation of the Protected Variety

(1) The variety protection right holder shall have the obligation to maintain the basic characteristics of the protected variety at the time of the registration of establishment of the variety protection right for the entire duration of the right.

(2) The Minister of the Ministry of Agriculture and Forestry may require the variety protection right holder to furnish materials deemed necessary for verifying the maintenance of the basic characteristics of the protected variety under Paragraph (1), or may undertake the examination of varieties for the purposes of verification.

CHAPTER VI

PROTECTION OF THE VARIETY PROTECTION RIGHT HOLDER

Article 84

Injunction and Prevention against Infringement

(1) A variety protection right holder or exclusive licensee may request a person who is infringing or is likely to infringe his right to discontinue or refrain from such infringement.

(2) A variety protection right holder or exclusive licensee who is acting under Paragraph (1) may demand the destruction of the articles by which the act of infringement was committed, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

Article 85

Acts deemed to be Infringement

Any act falling under either of the following items shall be deemed to be infringing a variety protection right or an exclusive license:

- (i) an act of exploiting a protected variety of another person commercially and industrially without permission of the variety protection right holder or exclusive licensee; and
- (ii) an act of commercially using a variety denomination, which is identical with or similar to the variety denomination of the protected variety of another person, for a variety of the species or genus of the plant to which the protected variety belongs.

Article 86

Right to Claim Compensation for Damage

- (1) A variety protection right holder or exclusive licensee may claim a compensation for damage from a person who has intentionally or negligently infringed the variety protection right or exclusive license.
- (2) Articles 128 and 132 of the Patent Act shall apply *mutatis mutandis* to claiming a compensation for damage under Paragraph (1).

Article 87

Presumption of Negligence

A person who has infringed a variety right or exclusive license of another person shall be presumed to have been negligent in the infringement.

Article 88

Recovery of Reputation of Variety Protection Right Holder
or Exclusive Licensee

At the request of a variety protection right holder or exclusive licensee, the court may, in lieu of damages or in addition thereto, order the person who has injured the business reputation of the variety protection right holder or exclusive licensee by intentionally or by negligently infringing the variety protection right or exclusive license to take measures necessary for recovering the business reputation of said variety protection right holder or exclusive licensee.

Article 89

Marking of Variety Protection

A variety protection right holder, exclusive licensee, or non-exclusive licensee may indicate that the variety is a protected variety.

Article 90

Prohibition of False Marking

No person shall be allowed to perform either of the following acts:

- (i) an act of making a mark, on a container or package of the seeds for which variety protection has not been granted or a variety protection application is not pending, that the variety has been granted or a variety protection application has been filed, or of indicating any sign which is likely to cause confusion therewith on the container or package; and
- (ii) an act of indicating the variety, for which variety protection has not been granted or a variety protection application has not been filed, in commercial advertisements, signboards or labels, trading documents, etc. that variety protection has been granted or a variety protection application has been filed.

CHAPTER VII

TRIAL

Article 91

Variety Protection Trial Committee

- (1) The Variety Protection Trial Committee shall be established in the Ministry of Agriculture and Forestry in order to conduct trial and retrial proceedings on variety protection.
- (2) In the Trial Committee, there shall be the Chairman of the Variety Protection Trial Committee and Variety Protection Trial Committee Members (hereinafter referred to as "trial members"), of which one member is a standing member.
- (3) Matters relating to the composition and operation of the Trial Committee shall be prescribed by a Presidential Decree.

Article 92

Trial against Quash of Amendment

If a person, who has been made a decision to quash the amendment under Paragraph (1) or (4) of Article 32, has an objection to the decision, he may demand a trial within thirty (30) days from the date of receipt of a certified copy of the decision.

Article 93

Trial against Rejection Ruling

If a person, who has been rendered a ruling on rejection under Paragraph (1) of Article 37, has an objection to the ruling, he may demand a trial within thirty (30) days from the date of receipt of a certified copy of the ruling.

Article 94

Invalidation Trial of Variety Protection

- (1) An interested person or examiner in variety protection may demand an invalidation trial, if variety protection falls under any of the following items:
 - (i) where variety protection has been granted contrary to Article 12, 17, or 18, Paragraph (1) or (2) of Article 21, Paragraph (1) of Article 24, or Paragraph (2) of Article 26;
 - (ii) where variety protection has been granted to a person who is not entitled to obtain the right;
 - (iii) where variety protection has been granted in violation of a treaty; and
 - (iv) where, after the grant of variety protection, the variety protection right holder is no longer capable of enjoying the variety protection right under Article 18, or variety protection no longer complies with a treaty.
- (2) A trial under Paragraph (1) may be demanded at any time as long as there is a benefit in demanding.
- (3) Where a trial decision invalidating the variety protection right has become final and conclusive, the variety protection right shall be deemed to have never existed; however, where a trial decision invalidating variety protection under Item (iv) of Paragraph (1) has become final and conclusive, the variety protection right shall be deemed to have not existed from the time that variety protection fell under said item.
- (4) Where a trial under Paragraph (1) has been demanded, the Chairman of the Trial Committee shall notify the purport of the demand to the variety protection right holder and exclusive licensee of the variety protection right as well as to other persons who have any registered right relating to variety protection.

Article 95

Manner of Demanding a Trial

- (1) Any person desiring to demand a trial shall submit a written trial demand stating the following items to the Chairman of the Trial Committee:

- (i) the name and address of the demandant and his agent (in case of a legal entity, the title, place of business and the name of its representative);
 - (ii) the variety denomination;
 - (iii) the filing date of a variety protection application and application number of variety protection;
 - (iv) the ruling date or decision date by an examiner; and
 - (v) the purport of the demand and the reasons therefor.
- (2) An amendment of the written trial demand submitted under Paragraph (1) may not change the gist thereof; however, this provision shall not apply to the reasons for the demand under Item (v) of Paragraph (1).
- (3) When a trial is demanded against the rejection ruling under Article 93, if the rejection ruling has been rendered based on an opposition to the grant of variety protection, the Chairman of the Trial Committee shall notify the purport of the demand to the variety protection opponent.

Article 96

Trial Member

- (1) When a trial is demanded under Paragraph (1) of Article 95, the Chairman of the Trial Committee shall have trial members adjudge the demand.
- (2) The trial members shall conduct their official duties in an independent manner.
- (3) The qualifications of the trial members shall be prescribed by a Presidential Decree.

Article 97

Designation of Trial Members

- (1) For each trial, the Chairman of the Trial Committee shall designate the trial members constituting a collegial body under Article 98.
- (2) When any trial member designated under Paragraph (1) is unable to participate in the trial, the Chairman of the Trial Committee may have another trial member act for the former.
- (3) The Chairman of the Trial Committee shall designate one of the trial members designated under Paragraph (1) as the presiding trial member.
- (4) The presiding trial member shall preside in all matters relating to the trial.

Article 98

Collegial System in Trial

- (1) A trial shall be conducted by a collegial body composed of three trial members.

- (2) The collegial body referred to in Paragraph (1) shall make its decisions by a majority vote.
- (3) The collegial decision of a trial shall not be disclosed.

Article 99

Mutatis Mutandis Application of Provisions on Examination to Trial

- (1) Paragraph (1) of Article 29, Articles 30 and 32, Paragraph (2) of Article 37, Articles 38 through 43, Paragraphs (2) through (4) of Article 44, and Articles 45 and 46 shall apply *mutatis mutandis* to the trial against rejection ruling under Article 93; however, Article 38 shall not apply where the variety protection application has been already published.
- (2) In case of Paragraph (3) of Article 32 being applied in the first portion of Paragraph (1), "Where an applicant has demanded a trial under Article 92" shall read "Where an appeal to the Patent Court has been demanded under Paragraph (1) of Article 105" which means "until the trial decision has become final and conclusive."

Article 100

Mutatis Mutandis Application of Patent Law

- (1) Articles 139, 141, and 142, Articles 147 through Paragraphs (1) and (3) of Article 160, Articles 162 through 166, Paragraph (2) of Article 171, Articles 172 and 176 of the Patent Act shall apply *mutatis mutandis* to the trial under Articles 92 through 94.
- (2) In case of Paragraph (1), "an invalidation trial under Paragraph (1) of Article 133, Paragraph (1) of Article 134, and Paragraph (1) of Article 137 or a confirmation trial of the scope of a right under Paragraph (1) of Article 135" in Paragraph (1) of Article 139 of the Patent Act shall be deemed to be "an invalidation trial under Paragraph (1) of Article 94."
- (3) In case of Paragraph (1), "Paragraphs (1) and (3) through (5) of Article 140 or Paragraph (1) of Article 140-2" in the former portion of Paragraph (1) of Article 141 shall be deemed to be "Paragraph (1) of Article 95," and "Article 82" of the latter portion of the same paragraph shall be deemed to be "Article 160."
- (4) In case of Paragraph (1), "Paragraph (1) of Article 133, Paragraph (1) of Article 134, and Paragraph (1) of Article 137" in Paragraph (1) of Article 154 of the Patent Act shall be deemed to be "Paragraph (1) of Article 94."
- (5) In case of Paragraph (1), "Paragraph (1) of Article 133, Paragraph (1) of Article 134, Article 135, and Paragraph (1) of Article 137" in Paragraph (1) of Article 165 of the Patent Act shall be deemed to be "Paragraph (1) of Article 94," "Article 132-3, 132-4, 136, or 138" in Paragraph (3) of the same article shall be deemed to be "Article 92 or 93," and "a patent attorney" in Paragraph (7) of the same article shall be deemed to be "a person."
- (6) In case of Paragraph (1), "a trial against rejection ruling under Article 132-3 and a decision to quash an amendment under Article 132-4" in Paragraph (2) of Article 171 of the Patent Act shall be deemed to be "a trial against rejection ruling under Article 93 and a decision to quash an amendment under Article 92."

(7) In case of Paragraph (1), "Article 132-3 or 132-4" in Paragraph (1) of Article 176 of the Patent Act shall be deemed to be "Article 92 or 93."

CHAPTER VIII

RETRIAL AND LITIGATION

Article 101

Demand for Retrial

- (1) The party concerned may demand a retrial against a trial decision which has become final and conclusive.
- (2) Article 422 and Paragraph (1) of Article 424 of the Code of Civil Procedure shall apply *mutatis mutandis* to the demand for a retrial against Paragraph (1).

Article 102

Demand for Retrial against Fraudulent Trial Decision

- (1) Where the parties in a trial acted in collusion to cause a trial decision to be rendered with the purpose of injuring the rights or interests of a third person, such third person may demand a retrial against the trial decision which has become final and conclusive.
- (2) In case of the demand for retrial under Paragraph (1), the parties in the trial shall be made joint defendants.

Article 103

Restriction on Effects of Variety Protection Right Restored by Retrial

The effects of variety protection right shall not extend to any act falling under either of the following items, performed in good faith, after the trial decision has become final and conclusive but before the demand for a trial has been registered:

- (i) where the variety protection right which was invalidated has been restored by a retrial; and
- (ii) where the establishment of the variety protection right with respect to a variety application previously rejected by a trial decision has been registered through a retrial.

Article 104

Non-Exclusive License for Prior User of Variety Protection Right Restored by Retrial

Where, in the case referred to in any of the items of Article 103, any person, who has, in good faith, commercially and industrially exploited the protected variety in the Republic of

Korea, or been making preparations therefor, after the trial decision has become final and conclusive but before the registration of the demand for a retrial, shall have a non-exclusive license on the variety protection right, said license being limited to the scope of the purpose of such exploitation or preparation.

Article 105

Appeal to Patent Court

- (1) The person, objecting to a trial decision or a decision to quash an amendment of a variety protection application, written trial demand, or written retrial demand, may appeal to the Patent Court.
- (2) An appeal under Paragraph (1) may be filed only by an appellant, a participating party, or a person who has applied participation in the trial or retrial but has been rejected.
- (3) An appeal under Paragraph (1) shall be submitted within thirty (30) days from the date of receipt of a certified copy of the trial decision or ruling.
- (4) The time limit prescribed in Paragraph (3) is invariable.
- (5) An appeal against matters to be demanded in the trial shall not be filed unless the appeal is against a trial decision.
- (6) An appeal against the trial decision or ruling on trial expenses under Article 165 of the Patent Act, which is applied *mutatis mutandis* by Article 100, shall not be filed independently from Paragraph (1).
- (7) Any person objecting to a judgment of the Patent Court may appeal to the Supreme Court.

Article 106

Action against Decision on Amount of Remuneration

- (1) A person, who is dissatisfied with a decision on the amount of remuneration under Item (ii) of Paragraph (2) of Article 70, may bring an action before the court.
- (2) An action under Paragraph (1) shall be filed within thirty (30) days from the date of receipt of a certified copy of the arbitration decision.
- (3) In an appeal under Paragraph (1), the variety protection right holder, exclusive licensee, or non-exclusive licensee shall be the defendant.

Article 107

Mutatis Mutandis Application of Patent Law and Others

- (1) Article 180 and 184 of the Patent Act and Paragraph (1) of Article 429 of the Code of Civil Procedure shall apply *mutatis mutandis* to the procedure and demand of a retrial with respect to variety protection.

(2) Articles 187, 188, and 189 shall apply *mutatis mutandis* to the litigation with respect to variety protection.

(3) In case of Paragraph (2), "the Commissioner of the Korean Industrial Property Office" in the main portion of Article 187 of the Patent Act shall be deemed to be "the Minister of the Ministry of Agriculture and Forestry," "Paragraph (1) of Article 133, Paragraph (1) of Article 134, Paragraph (1) of Article 135, Paragraph (1) of Article 137, and Paragraphs (1) and (3) of Article 138" of the proviso of the same article shall be deemed to be "Paragraph (1) of Article 94," and "Paragraph (1) of Article 186" in Paragraph (1) of Article 189 of the Patent Act shall be deemed to be "Paragraph (1) of Article 105."

PART III

VARIETY DENOMINATION

Article 108

Variety Denomination

(1) A variety falling under any of the following items shall have its unique variety denomination:

- (i) a variety for which an application for variety protection is to be filed under Paragraph (1) of Article 26;
- (ii) a variety for which an application for the entry in a catalogue of varieties is to be filed under Paragraph (1) of Article 155; and
- (iii) a variety for which a declaration to produce and sell its seed is to be submitted under Paragraph (3) of Article 138.

(2) Where a denomination has already been registered, or its registration has been applied, in the Republic of Korea or in another country, that denomination alone shall be used; however, a denomination which is contrary to *ordre public* or morality shall not be used.

Article 109

Requirements for Variety Denomination Registration

A variety denomination falling under any of the following items may not be registered under Paragraph (8) of Article 111:

- (i) the variety denomination which is indicated solely in terms of a number or sign;
- (ii) the variety denomination indicating the origin, quality, yield, price, use, or production time of the variety or harvested material of the variety;
- (iii) the variety denomination which is identical with or similar to the variety denomination of another variety of the species or genus of the plant to which the variety belongs, and therefore, it is likely to cause mistake or confusion;

- (iv) the variety denomination for which variety is derived from another variety contrary to the fact, or which is likely to cause mistake or confusion as to be related to another variety;
- (v) the variety denomination using the denomination of the species or genus of the plant, or which is likely to cause mistake or confusion as to be the denomination of the species of genus of the plant;
- (vi) the variety denomination which is liable to disturb public order or good public morals;
- (vii) the variety denomination including the name or title, or their short names, of a renowned person; however, in case of obtaining approval of that person, this provision shall not apply;
- (viii) the variety denomination which is likely to cause mistake or confusion as to its origin; and
- (ix) the variety denomination for which application for registration has been filed under the Trademark Law prior to the filing date of the variety denomination application, or which is identical with or similar to a registered trademark, and therefore, it is likely to cause mistake or confusion.

Article 110

First-to-File Rule

- (1) Where two (2) or more applications for the registration of a variety denomination relating to an identical variety denomination have been filed, only the applicant having the earlier filing date may obtain a variety denomination registration for the variety denomination.
- (2) Paragraphs (2) and (5) of Article 21 shall apply *mutatis mutandis* to Paragraph (1).

Article 111

Registration Procedure of Variety Denomination

- (1) Any person wishing to obtain a variety denomination registration (hereinafter referred to as an "applicant for variety denomination registration") shall file an application for the registration of a variety denomination with the Minister of the Ministry of Agriculture and Forestry.
- (2) An application for the registration of a variety denomination shall be deemed to have been filed if its application for variety protection in case of Item (i) of Paragraph (1) of Article 108, its application for entry in a catalogue of varieties in case of Item (ii) of the same paragraph, or a declaration on the production and sale of the variety in case of Item (iii), is filed with the Minister of the Ministry of Agriculture and Forestry.

(3) An examiner shall examine whether requirements for the variety denomination under Article 109 have been met for variety denominations which have been filed in accordance with Paragraph (1).

(4) An examiner shall render a rejection ruling against an application for the registration of a variety denomination, if the variety denomination filed falls under any of the following items (hereinafter referred to as "reasons for rejection"):

- (i) where an application for variety protection has been rejected by a ruling under Paragraph (1) of Article 37;
- (ii) where the variety denomination is in violation of Paragraph (1) of Article 108;
- (iii) where the variety denomination falls under any of the items in Article 109;
- (iv) where registration of the variety denomination can not be obtained under Article 110; and
- (v) where an application for the entry in a catalogue of varieties has been rejected under Paragraph (2) of Article 116.

(5) Where an application for the registration of a variety denomination is to be rejected in accordance with Items (ii) through (iv) of Paragraph (4), the examiner shall notify the applicant for variety denomination registration of the reasons for rejection, and request him to submit a new variety denomination within thirty (30) days from the date of receipt of the notification.

(6) Where the examiner finds no reason for rejecting an application for the registration of a variety denomination under Paragraph (1), he shall publish the application in the Official Gazette.

(7) Where an application for the registration of the variety denomination is published under Paragraph (6), any person can file an opposition to the grant of variety protection with the Minister of the Ministry of Agriculture and Forestry within sixty (60) days from the date of publication of an application.

(8) Where no reasons for rejecting a variety protection applications are found after completion of the procedures of publishing an application for the registration of a variety denomination under Paragraph (6) and of filing an opposition against the registration of a variety denomination under Paragraph (7), the Minister of the Ministry of Agriculture and Forestry shall register the variety denomination in a variety denomination register without delay and notify the applicant of the registration.

(9) Paragraph (2) of Article 41, Articles 42 through 45 shall apply *mutatis mutandis* to a rejection ruling under Paragraph (4) and an opposition filing under Paragraph (7).

Article 112

Use of the Variety Denomination

- (1) No person shall sell, distribute, import, or export the seeds by falsely using a variety denomination of a variety of another person other than the protected variety of which establishment has been registered under Paragraph (2) of Article 55, or by using a variety denomination which has not been registered in a variety denomination register under Paragraph (8) of Article 111.
- (2) In using a registered variety denomination under Paragraph (8) of Article 111, an applicant for the registration of a variety denomination or a successor of the variety may indicate a trademark name, etc. along with the variety denomination. In this case, the variety denomination shall be readily distinguishable.

Article 113

Cancellation of a Denomination

- (1) The Minister of the Ministry of Agriculture and Forestry shall cancel a variety denomination registered under Paragraph (8) of Article 111, if the variety denomination falls under any of the following items:
- (i) when a reason for rejecting the variety denomination under Items (2) through (4) of Paragraph (4) of Article 111 has been found;
 - (ii) when a judicial decision prohibiting the use of the variety denomination has been produced; and
 - (iii) any other cases prescribed by a Presidential Decree.
- (2) When a variety denomination is to be cancelled under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall notify the applicant of the registered variety denomination of the reasons for cancellation and request him to submit a new variety denomination within thirty (30) days from the date of the notification.
- (3) Paragraphs (3) through (9) of Article 111 shall apply *mutatis mutandis* to a new variety denomination which has been submitted under Paragraph (2).

PART IV

MANAGEMENT OF VARIETY PERFORMANCE

Article 114

Plants to be Entered in an Official Catalogue of Varieties

Objects of the entry in an official catalogue of varieties to manage the variety performance of the seeds of the plants which are important for the sake of stability in agricultural, forestry, and fishery production shall include rice plants, barley, beans, corn,

potatoes, and any other plants prescribed by a Presidential Decree. however, a corn which is imported for forage shall not be included.

Article 115

Application for Entry in a Catalogue of Varieties

(1) Any person desiring to enter a variety of a plant under Article 114 (hereinafter referred to as an "applicant for the entry in a catalogue of varieties") shall file an application for the entry in a catalogue of varieties with the Minister of the Ministry of Agriculture and Forestry along with seed samples of the variety attached thereto.

(2) Matters relating to the description in an application for the entry in a catalogue of varieties under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 116

Examination of the Variety for which Entry in a Catalogue of Varieties is Applied

(1) The Minister of the Ministry of Agriculture and Forestry shall examine a variety, for which an application for the entry in a catalogue of varieties has been filed under Paragraph (1) of Article 115, according to the standards for examination of variety performance prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

(2) In the case that a variety, for which an application for the entry in a catalogue of varieties has been filed, fails to meet the requirements for examination standards of variety performance under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall reject the application for the entry of the variety.

(3) Where an application for the entry in a catalogue of varieties is to be rejected in accordance with Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall notify the applicant for the entry in a catalogue of varieties of the reasons for rejection, and give him an opportunity to submit a written opinion within a time limit designated.

(4) Where no reasons for rejecting an application for the entry in a catalogue of varieties are found after completion of an examination under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall enter the variety in a catalogue of varieties without delay and notify the applicant of the entry.

Article 117

Publication of the Variety Entered in a Catalogue of Varieties

Where a variety is entered in a catalogue of varieties under Paragraph (4) of Article 116, the Minister of the Ministry of Agriculture and Forestry shall publish the type of a plant to which the variety belongs, variety denomination, duration of the entry in accordance with Article 118, etc. Where duration of the entry is extended under Paragraph (2) of Article 118, the above provision shall also apply.

Article 118

Duration of the Entry in a Catalogue of Varieties

- (1) The entry of a variety in a catalogue of varieties under Paragraph (4) of Article 116 shall expire at the end of the tenth (10th) calendar year following the date of its entry of the next year.
- (2) The duration of the entry in a catalogue of varieties under Paragraph (1) may be extended by requesting for an extension of time.
- (3) An extension of time of the entry in a catalogue of varieties under Paragraph (2) shall be requested within one (1) year of the expiration date of the duration of the entry in a catalogue of varieties.
- (4) Where an extension of time of the entry is requested under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry may not reject such request as long as the variety retains variety performance which is the same as that at the time of its entry in a catalogue of varieties.

Article 119

Cancellation of the Entry in a Catalogue of Varieties

- (1) The Minister of the Ministry of Agriculture and Forestry may cancel the entry of a variety in a catalogue of varieties, if the variety falls under any of the following items; however, the entry of the variety in Items (iv) and (v) shall be cancelled:
 - (i) when the variety fails to meet the requirements for examination standards of variety performance prescribed in Paragraph (1) of Article 116;
 - (ii) when the cultivation of the variety caused damage to environment or is likely to cause such damage;
 - (iii) when the variety denomination falls under any of the items in Paragraph (1) of Article 113 and the registered variety denomination is cancelled;
 - (iv) when the entry of the variety in a catalogue of varieties is obtained through a fraudulent act or any unlawful method; and
 - (v) when one variety is entered under two (2) or more variety denominations in duplicate (excluding the variety which has been entered first among all).
- (2) Paragraphs (2) and (3) of Article 37 shall apply *mutatis mutandis* to cancellation of the variety entry in a catalogue of varieties under Paragraph (1).

Article 120

Maintenance of a Catalogue of Varieties

The Minister of the Ministry of Agriculture and Forestry shall maintain a portion of a catalogue of varieties related to the variety for the entire duration of the entry of the variety prescribed in Article 118.

Article 121

Production of the Seed of a Variety Entered in a Catalogue of Varieties

The Minister of the Ministry of Agriculture and Forestry desiring to produce the seed of a variety which is entered in a catalogue of varieties under paragraph (4) of Article 116 may have a person falling under any of the following items produce the seed:

- (i) Minister of the Ministry of Ocean Industry, Administrator of the Rural Development Administration, or Administrator of the Forestry Administration;
- (ii) Mayor of Seoul, Mayors of Wide Cities, or Provincial Governors (hereinafter referred to as "Mayors or Provincial Governors");
- (iii) Any agricultural, forestry, and fishery organization prescribed by a Presidential Decree (hereinafter referred to as an "agricultural organization"); and
- (iv) any seed merchant, farmer, or fisherman prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 122

Management of Maintenance of the Variety
Entered in a Catalogue of Varieties

(Deleted)

Article 123

Order to Prohibit Cultivation

(Deleted)

PART V

CERTIFICATION OF THE SEED

Article 124

Classification of Seed Certification

The certification of the seeds is classified into certification by the Minister of the Ministry of Agriculture and Forestry (hereinafter referred to as "national certification") and certification by a seed quality manager (hereinafter referred to as "internal certification").

Article 125

Objects of National Certification

(1) A case falling under either of the following items shall be subject to national certification:

- (i) where the seed of a crop to be entered in a catalogue of varieties under Article 114 is produced by the Minister of the Ministry of Agriculture and Forestry, Mayor, Provincial Governor, or agricultural organization; and
- (ii) where a seed merchant wishes to obtain national certification in order to produce and export the seed of a variety of a crop prescribed by the Minister of the Ministry of Agriculture and Forestry.

(2) The Minister of the Ministry of Agriculture and Forestry may recognize the seed, which has been certified by an international seed testing organization prescribed by a Presidential Decree, to have obtained national certification.

Article 126

Objects of Internal Certification

A case falling under either of the following items shall be subject to internal certification:

- (i) where the seed of a crop to be entered in a catalogue of varieties under Article 114 is produced by a seed merchant; and
- (ii) where a seed merchant wishes to obtain internal certification in order to produce and sell seeds of a crop excluding those to be entered in a catalogue of varieties under Article 114.

Article 127

Qualifications of Seed Quality Managers

(1) Matters relating to the qualifications for seed quality managers shall be prescribed by a Presidential Decree.

(2) Where a seed quality manager has neglected his duties prescribed in this Law or committed a serious fault, the Minister of the Ministry of Agriculture and Forestry may cancel his qualification or suspend his qualification for a period of less than one (1) year.

(3) The detailed standards for administrative measures under Paragraph (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry taking into consideration of the type of violated act, degree of violation, etc.

(4) A seed quality manager shall be registered to the Minister of the Ministry of Agriculture and Forestry as prescribed by the Ordinance of the Ministry of Agriculture and Forestry, and shall be served a certificate of registration at his/her request.

Article 128

Field Inspection

(1) A person desiring to produce seeds having national or internal certification shall have the seeds be subject to field inspection given by the Minister of the Ministry of Agriculture and Forestry or a seed quality manager more than once.

(2) Matters relating to the standards, method, procedure, etc. of the field inspection for each seed production step prescribed in Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 129

Field Conditions for Seed Production

A person desiring to produce seeds having national or internal certification shall maintain some distance from or install isolation facilities at a cultivation area of a variety or crop that might contaminate in order to prevent the variety from being cross-pollinated with other varieties or crops of the same or related species.

Article 130

Seed Examination and Re-Examination

(1) A person desiring to produce seeds having national or internal certification shall have the seeds, which have been produced from a field having passed field inspection given by the Minister of the Ministry of Agriculture and Forestry or a seed quality manager under Paragraph (2) of Article 128, be subject to a seed examination.

(2) Any person who has an objection to the results of the seed examination under Paragraph (1) may request a re-examination to the Minister of the Ministry of Agriculture and Forestry or seed quality manager who has undertaken the examination.

(3) Matters relating to the standards, method, procedure, etc. of a seed examination for each seed production step or re-examination under Paragraph (1) or (2) shall be prescribed by the Ministry of Agriculture and Forestry.

Article 131

Indication of Certification

- (1) A person desiring to sell or distribute a certified seed which has passed field inspection under Article 128 and has been subject to a seed examination under Article 130 shall indicate the certification thereof.
- (2) Matters relating to the certification indication or duration of the certification under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 132

Submission of Materials

(Deleted)

Article 133

Issuance of a Certificate

At the request of a person who has had a certified seed having certification indication under Paragraph (1) of Article 133 be subject to an examination, the Minister of the Ministry of Agriculture and Forestry or seed quality manager shall issue a certificate.

Article 134

Control Examination

- (1) The Minister of the Ministry of Agriculture and Forestry shall give a control examination for a certified seed of a plant prescribed by the Minister of the Ministry of Agriculture and Forestry.
- (2) Matters relating to the control examination under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 135

Effects of the Certification

Effects of the certification shall be deemed to have been lost, if a certified seed falls under any of the following items:

- (i) where the certification under Paragraph (1) of Article 131 has not been indicated;
- (ii) where the duration of the certification under Paragraph (2) of Article 131 has been expired; and
- (iii) where the certified seed packed has been unpacked or repacked; however, repackaging into smaller packages under the authority of a certifying agency or

seed quality manager who has certified the seed shall not be deemed to be the loss of the effects of the certification.

Article 136

Certification Indication of Unpacked Seeds

Certification indication of the unpacked seeds under the proviso of Paragraph (3) of Article 135 shall have an identical certification indication with that of the variety which has been indicated prior to unpacking.

PART VI

CIRCULATION OF THE SEEDS

Article 137

Registration of Seed Business

- (1) A person desiring to practice seed business shall be equipped with facilities prescribed by a Presidential Decree and register his business with the Mayor or Provincial Governor.
- (2) Any person desiring to practice seed business in accordance with Paragraph (1) shall have one (1) or more seed managers; however, a person desiring to produce and sell the crop seeds prescribed by a Presidential Decree may not have a seed manager.
- (3) (Deleted)
- (4) Paragraphs (1) and (2) shall not apply to the case of the propagation, production, sales, distribution, export, or import by any of Minister of the Ministry of Agriculture and Forestry, Minister of the Ministry of Ocean Industry, Administrator of the Rural Development Administration, Administrator of the Forestry Administration, Mayors or Provincial Governors, or agricultural organization.

Article 138

Selling and Distribution of the Seeds

- (1) A person desiring to sell or distribute the seeds to be entered in a catalogue of varieties under Article 114 shall enter the seeds in a catalogue of varieties under Paragraph (4) of Article 116 and obtain the certification of the seed under Article 124, except for the case falling under any of the following items:
 - (i) where the seed is used as the parents of the first generation hybrid or of the synthetic variety;
 - (ii) where the seller buys the entire seeds again which have been sold and produced for the purpose of propagation;
 - (iii) where the seed is used for the purpose of undertaking the test or research;

- (iv) where the entire seeds produced are exported; and
 - (v) where the seed is used for the purpose of other than seeding.
- (2) Where it is deemed to be necessary for the circulation in spite of the provisions in Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall publish the period of selling or distribution of the seeds of a cancelled variety, which have been produced prior to the date of cancellation or which are being produced, to be until the next calendar year from the date of cancellation, even though the entry of the variety in a catalogue of varieties has been cancelled in accordance with Paragraph (1) of Article 119.
- (3) Any person desiring to sell, by producing or importing, the seeds of a variety other than the seeds of a variety falling under any of the following items shall report to the Minister of the Ministry of Agriculture and Forestry with seed samples of the variety attached:
- (i) the seed of a variety for which establishment of the variety protection right has been registered under Paragraph (2) of Article 55; and
 - (ii) the seed of a variety which has been entered in a catalogue of varieties under Paragraph (4) of Article 116.

Article 139

Cancellation of the Registration of Seed Business

- (1) Mayors or Provincial Governors may cancel the registration of seed business, or order suspension of the business for less than six(6) months, in the case that a seed merchant falls under any of the following items:
- (i) when the seed merchant has not initiated his business within one (1) year from the date of registration of his business, or has closed his business for more than one (1) year continuously without any justifiable reason;
 - (ii) when the facilities of the seed business have not satisfied the requirements prescribed in Paragraph (1) of Article 137 after the seed merchant registered his seed business.
 - (iii) when the seed merchant has not hired a seed manager in violation of the main provision of Paragraph (2) of Article 137;
 - (iv) when the business has been registered through a fraudulent act or illegal method; and
 - (v) when the seed merchant or seed trader has committed a violation of the provisions or order of this Law.
- (2) In the case that a seed merchant continuously runs his business during the time of a suspension in violation of a suspension order under Paragraph (1), the Mayor or Provincial Governor may cancel the registration of his business.

- (3) A person who has been disposed of the provisions of Paragraph (1) shall not apply for the re-registration of his seed business unless two (2) years have passed from the date of disposal.
- (4) The detailed standards for administrative measures under Paragraph (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry taking into consideration of the type of violated act, degree of violation, etc.

Article 140

Import and Export of the Seeds

- (1) A person desiring to import or export crop seeds to be entered in a catalogue of varieties in accordance with Article 114 shall report to the Minister of the Ministry of Agriculture and Forestry; however, in the case that a person prescribed by the Ordinance of the Ministry of Agriculture and Forestry imports or exports the seeds in an amount of less than the amount prescribed by the Ordinance of the Ministry of Agriculture and Forestry for the purpose of undertaking the test or research, this provision shall not apply.
- (2) Imported seeds which fail to meet the requirements for examination of variety performance under Paragraph (1) of Article 116 shall not be subject to import report under the main provision of Paragraph (1).
- (3) The Minister of the Ministry of Agriculture and Forestry may restrict export or import of the seeds or domestic circulation of the imported seeds as prescribed by the Ordinance of the Ministry of Agriculture and Forestry, in the case that it is deemed to incur serious problems in the protection of national ecological system and preservation of natural resources.
- (4) (Deleted)

Article 141

Adaptability Test of Imported Seeds

- (1) A person desiring to import crop seeds, which are prescribed by the Minister of the Ministry of Agriculture and Forestry, for the first time in the Republic of Korea for the purpose of selling shall have the seeds be subject to an adaptability test of imported seeds given by the Minister of the Ministry of Agriculture and Forestry.
- (2) In the case that the result of an import adaptability test given in accordance with Paragraph (1) fails to meet the requirements for examination standards prescribed by the Ordinance of the Ministry of Agriculture and Forestry, the Minister of the Ministry of Agriculture and Forestry may restrict domestic circulation of the seeds of the variety.

Article 142

Recommendation of Import of the Variety

- (1) A person desiring to import the seeds at a tax rate of raising permission applicable to the market approaching quantity of the Korean raising permission symbols in accordance with

Marrakech Convention for the establishment of WTO shall obtain recommendation from the Minister of the Ministry of Agriculture and Forestry.

(2) The Minister of the Ministry of Agriculture and Forestry may have a related agency or organization designated by the Minister of the Ministry of Agriculture and Forestry undertake the task of recommending import of the seeds under Paragraph (1). In this case, the recommended quantity for each product, recommendation standards, and other matters relating to the recommendation shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 143

Indication of Quality of the Circulated Seeds

A person desiring to sell or distribute the seed which is not subject to national or internal circulation shall indicate the year of the production of the seed and other matters prescribed by the Ordinance of the Ministry of Agriculture and Forestry on a container or package of the seed.

Article 144

Prohibition of False Indication, etc.

(Deleted)

Article 145

Circulation Inspection, Etc. of the Seeds

(1) Where it is deemed to be necessary for the production of quality seeds and smooth circulation thereof, the Minister of the Ministry of Agriculture and Forestry may have a seed merchant or seed trade have a related public official enter a place of business, business office, etc. and inspect facilities at the time, related documents or files, seeds, etc. or collect the seeds in the minimum amount necessary for the inspection.

(2) The Minister of the Ministry of Agriculture and Forestry may have a related public official stop the production or selling of, or seize, the seeds which have been produced or sold in violation of this Law. For the seized seeds, their list shall be made, and they shall be distributed to a person who has owned or possessed the seeds.

(3) The Minister of the Ministry of Agriculture and Forestry shall have a related public official take custody of the seeds which have been seized in accordance with Paragraph (2) for one (1) calendar year.

(4) The Minister of the Ministry of Agriculture and Forestry shall have a related public official prohibit the use of the seeds of which preservation durations under Paragraph (3) have been expired, and return such seeds to a person who has owned or possessed the seeds at the time of seizure thereof; however, where return thereof is not possible because the address of a person who has owned or possessed the seeds at the time of seizure thereof is uncertain or the person rejects receipt of the seeds, such seeds may be destroyed.

(5) When a related public official assumes his duties in accordance with Paragraph (1) or (2), he shall have an identification card showing his authority and present this card to a person concerned.

(6) Matters relating to keeping the seeds in accordance with the provisions of Paragraph (3) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 146

Stockpiling of the Seeds

(Deleted)

Article 147

Keeping the Seed Samples

(1) The Minister of the Ministry of Agriculture and Forestry shall keep and manage a prescribed amount of the seed sample, in case of the seed falling under any of the following items:

- (i) the seed of a variety of which establishment of the protection variety right has been registered in accordance with the provisions of Paragraph (2) of Article 55;
- (ii) the seed of a variety which has been entered in a catalogue of varieties in accordance with the provisions of Paragraph (4) of Article 116; and
- (iii) the seed of a variety which has been reported in accordance with the provisions of Paragraph (3) of Article 138.

(2) Matters relating to keeping the seed samples under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 148

Disputes Concerning Circulated Seeds

(1) Where there is a dispute concerning the seeds under circulation, the interested party in the dispute may request for materials on seed certification of the variety to the Minister of the Ministry of Agriculture and Forestry or seed quality manager who has certified the seed of the variety.

(2) The interested party in the dispute under Paragraph (1) may request the Minister of the Ministry of Agriculture and Forestry to undertake a comparative examination between the seed which is subject to the dispute and the seed sample which has been kept and managed under Article 147.

(3) When interested parties in the dispute file an application for a comparative examination under Paragraph (2), the interested parties shall verify collection of the seed samples in dispute jointly and submit sealed seed samples to the Minister of the Ministry of Agriculture and Forestry.

(4) Upon receipt of an application for a comparative examination under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall undertake the comparative examination and notify the interested parties in the dispute of the results thereof without delay.

(5) The Minister of the Ministry of Agriculture and Forestry may have the interested parties in the dispute under Paragraph (1) submit materials necessary for the comparative examination prescribed in Paragraph (4).

(6) Where damages related to the variety under circulation have occurred due to defects in the seeds, the injured party may demand a compensation thereof from the seed merchant as prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

PART VII

THE SEED FUND

Article 149

Establishment of the Seed Fund

The Government shall establish the seed fund (hereinafter referred to as the "fund") for the enhancement of variety performance as well as smooth supply of quality seeds and proper management thereof.

Article 150

Composition of the Fund

The fund shall be composed of the following funding resources:

- (i) the seeds produced by the Minister of the Ministry of Agriculture and Forestry in accordance with Article 121, money earned by selling such seeds, and other floating assets;
- (ii) donation and donated varieties or seeds;
- (iii) transferred fund or borrowed fund from other accounts;
- (iv) surplus fund after balancing the fund; and
- (v) other profits coming from utilizing the fund.

Article 151

Borrowing of the Fund

When it is deemed to be necessary for the utilization of the fund, the Minister of the Ministry of Agriculture and Forestry may borrow a fund from the financial investment special account, financing institution, or other funds based on the subject fund.

Article 152

Utilization and Management of the Fund

- (1) The fund shall be utilized and managed by the Minister of the Ministry of Agriculture and Forestry.
- (2) Matters relating to the utilization and management of the fund shall be prescribed by a Presidential Decree.

Article 153

Classified Accounting

Where it is deemed to be necessary for the utilization of the fund, the Minister of the Ministry of Agriculture and Forestry may handle accounting matters by classifying the accounts.

Article 154

Usage of the Fund

- (1) The fund shall be utilized for a use falling under any of the following items:
 - (i) for purchasing the seeds produced or imported by the Minister of the Ministry of Agriculture and Forestry under Article 121;
 - (ii) for assisting or financing breeding and development of superior varieties;
 - (iii) repayment of the principal and interest of the borrowed money;
 - (iv) expenses necessary for the operation and management of the fund; and
 - (v) other expenses necessary for the projects prescribed by a Presidential Decree in order to fulfill the purpose of establishing the fund.
- (2) Where there are surplus funds, the Minister of the Ministry of Agriculture and Forestry may deposit the surplus fund in a financial institution.

Article 155

Accounting Agency of the Fund

- (1) In order to undertake the task of handling incoming and outgoing of the fund, the Minister of the Ministry of Agriculture and Forestry shall have a fund accounting supervisor and fund accounting officer hold offices among public officials concerned.
- (2) Where a portion of duties to utilize and manage the fund is entrusted or consigned in accordance with Article 166, the Minister of the Ministry of Agriculture and Forestry shall appoint a fund accounting supervisor or fund accounting director, and a fund accounting officer or fund accountant to undertake entrusted or consigned duties among the personnel of

the entrusted or consigned agency. In this case, a fund accounting director shall assume the duties of a fund accounting supervisor, and a fund accountant shall assume the duties of a fund accounting officer.

(3) The appointment of a fund accounting supervisor and fund accounting officer in accordance with Paragraph (1) may be substituted by designating the corresponding positions in a department handling fund accounting matters.

(4) When a fund accounting supervisor or fund accounting director, and a fund accounting officer or fund accountant have been appointed by the Minister of the Ministry of Agriculture and Forestry in accordance with Paragraphs (1) and (2), the Minister of the Ministry of Agriculture and Forestry shall notify the Chairman of the Board of Audit and Inspection, the Chairman of the Finance and Economy Board, and the President of the Bank of Korea of the appointment.

(5) Among the provisions related to holding offices of the personnel involved in accounting matters, those concerning a financial officer and tax collecting officer shall apply *mutatis mutandis* to those concerning a fund accounting supervisor or fund accounting director; while those concerning an expenditure officer and accounting officer shall apply *mutatis mutandis* to those concerning a fund accounting officer or fund accountant.

Article 156

Collection of Supporting Fund and Loans

When a person who has been supported or financed through the fund in accordance with Item (ii) of Paragraph (1) of Article 154 is in violation of the provisions concerning fund supporting or loans, the Minister of the Ministry of Agriculture and Forestry may collect the entire supporting fund, or the entire or partial loans, respectively.

Article 157

Supervision and Order

Where the utilization and management of the fund has been entrusted or consigned in accordance with Article 166, the Minister of the Ministry of Agriculture and Forestry may order the entrusted or consigned agency to submit a report or relevant documents concerning the utilization and management of the fund within a range necessary for the supervision, or have a public official concerned investigate the work assignment thereof.

PART VIII

SUPPLEMENTARY PROVISIONS

Article 158

Seed Council

(1) The Seed Council shall be established in the Ministry of Agriculture and Forestry to advise the Minister of the Ministry of Agriculture and Forestry on the matters concerning

development of the seed industry, protection of the variety protection right, catalogue of variety system, etc.

(2) The Seed Council is composed of eight (8) or less council members including professional experts in each seed industry field and one (1) lawyer.

(3) Matters relating to the composition and operation of the Seed Council shall be prescribed by a Presidential Decree.

Article 159

Hearing

The Minister of the Ministry of Agriculture and Forestry, Mayors, or Provincial Governors desiring to take a measure falling under either of the following items shall give hearing:

- (i) cancellation of the qualification of seed quality managers in accordance with Paragraph (2) of Article 127; and
- (ii) cancellation of the registration of seed business in accordance with Paragraph (1) or (2) of Article 139.

Article 160

Official Fees

- (1) A person falling under any of the following items shall pay the official fees:
 - (i) a person desiring to register the appointment or change of a variety protection agent under Paragraph (4) of Article 3;
 - (ii) a person desiring to file an application for variety protection under Paragraph (1) of Article 26;
 - (iii) a person desiring to claim the right of priority under Paragraph (1) of Article 27;
 - (iv) a person who has filed an application for variety protection, where an application is to be published under Paragraph (1) of Article 38;
 - (v) a person desiring to register variety protection under Article 53 (excluding the registration of establishment of the variety protection right);
 - (vi) a person desiring to request for an arbitration decision on the grant of a non-exclusive license under Paragraph (1) of Article 68;
 - (vii) a person desiring to demand a trial on the variety protection right under Articles 92 through 94;
 - (viii) a person desiring to demand a retrial under Article 101;

- (ix) a person desiring to file an application for the entry in a catalogue of varieties under Paragraph (1) of Article 115;
 - (x) a person desiring to request for an extension of the duration of the entry in a catalogue of varieties under Paragraph (2) of Article 118;
 - (xi) a person desiring to obtain national certification under Item (ii) of Paragraph (1) of Article 125;
 - (xii) a person desiring to be issued of a certification of the seed under Article 133;
 - (xiii) a person desiring to report the seed to be sold by producing or importing under Paragraph (3) of Article 138;
 - (xiv) a person desiring to have the seeds be subject to an import adaptability test under the main provision of Paragraph (1) of Article 141; and
 - (xv) a person desiring to apply for a certified copy, abstract copy, duplicate copy, or certificate.
- (2) Matters relating to the official fees, payment method thereof, payment due dates thereof, etc. in accordance with the provisions of Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 161

Exemption of Official Fees

Notwithstanding the provisions in Article 160, a case falling under either of the following items shall be granted for an exemption from the payment of official fees:

- (i) where the Government or a District Self-Ruling Entity is taking the procedure for variety protection or the entry in a catalogue of varieties; and
- (ii) where a life protectee under Article 3 of the Life Protection Act is taking the procedure for variety protection or the entry in a catalogue of varieties.

Article 162

Refund of Official Fees

The official fees which have been paid shall not be refunded, except where those fees have been paid by mistake.

Article 163

Language Used

All documents specified in this Law shall be in Korean; however, where it is necessary to use Chinese characters and other foreign letters, they shall be indicated in parentheses, except for the case prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 164

Storage, Etc. of the Documents

- (1) The Minister of the Ministry of Agriculture and Forestry shall store the documents relating to the variety protection application or variety protection right for five (5) calendar years from the date of abandonment, invalidation, or withdrawal of the variety protection application, rejection ruling, or extinction of the variety protection right.
- (2) Any interested party in variety protection may request inspection or copying of the documents related to variety protection applications, variety protection right, or an examination given in accordance with Article 35 or Paragraph (2) of Article 83 to the Minister of the Ministry of Agriculture and Forestry.
- (3) The Minister of the Ministry of Agriculture and Forestry shall not grant a request referred to in Paragraph (2), if it is related to any of the following items:
 - (i) where the variety falls under Item (ii) of Paragraph (3) of Article 57, and the applicant of variety protection has requested non-disclosure of the variety;
 - (ii) where the documents are for an application for variety protection which has not been published; and
 - (iii) where it is contrary to *ordre public* or morality.

Article 165

Development of Seed Industry

- (1) The Minister of the Ministry of Agriculture and Forestry may support the promotion of the seed industry; the collection, evaluation, preservation, and management of useful germplasms; and the development of superior varieties.
- (2) The Minister of the Ministry of Agriculture and Forestry may assist an agent of variety production under Article 121 by providing with the entire or partial expenses necessary for the production, distribution, etc. of the variety for him.
- (3) The Minister of the Ministry of Agriculture and Forestry may prescribe matters which are necessary for the support of collection, evaluation, preservation, and management of useful germplasms, and for the systematic management of information thereon.

Article 166

Entrustment and Consignment of the Authority

A portion of the authority of the Minister of the Ministry of Agriculture and Forestry prescribed in this Law may be entrusted or consigned to the Administrator of the Rural Development Administration, Administrator of the Forestry Administration, or Minister of the Ministry of Ocean Industry, Mayor, Provincial Governor, or a legal entity or organization involved in agricultural, forestry, and fishery business as prescribed by a Presidential Decree.

Article 167

Relationship with Other Law Provisions

Matters relating to the seeds for forestry, mulberry nursery stocks and silkworm eggs, trees, tobacco seeds, seeds for marine plants, and ginseng seeds shall be prescribed by this Law, except where there are special law provisions concerning these seeds in the Forestry Law, Sericulture Law, Tobacco Business Law, Fishery Law, and Ginseng Industry Law.

Article 168

Mutatis Mutandis Application of Patent Law

To the transmittal of the documents, etc. in the procedure relating to variety protection, the provisions of Articles 217 through 220, and 222 of the Patent Act shall apply.

PART IX

PENAL PROVISIONS

Article 169

Offense of Infringement

(1) Any person falling under any of the following items shall be punished by imprisonment for not more than five (5) years or a fine not exceeding thirty million (30,000,000) Won:

- (i) a person who infringes a variety protection right or exclusive license;
- (ii) a person who infringes a right under Paragraph (1) of Article 39; however, this provision shall apply only where the establishment of a variety protection right has been registered; and
- (iii) a person who is rendered a variety protection ruling or trial decision through a fraudulent act or any unlawful method.

(2) Prosecution for offenses under Items (i) and (ii) of Paragraph (1) shall be initiated upon filing of a complaint by an injured party.

Article 170

Offense of Perjury

(1) Where a witness, expert witness or interpreter, having taken an oath under Article 154 or 157 of the Patent Act which is applied to in accordance with Article 100 of this Law, has made a false statement or given a false expert opinion or interpreted falsely before the Examination Committee, he shall be punished by imprisonment for not more than five (5) years, or a fine not exceeding ten million (10,000,000) Won.

(2) Any person, having committed an offense under Paragraph (1), who admits it before the examiner's decision is rendered or before a trial decision on the case becomes final and conclusive, may be partially or entirely exempted from the application of the sentence.

Article 171

Offense of False Marking

Any person who has violated Article 90 shall be punished by imprisonment for not more than three (3) years or a fine not exceeding twenty million (20,000,000) Won.

Article 172

Offense of Divulging Secrets

Where any present or former employee of the Ministry of Agriculture and Forestry (including an employee of any organization if the authority is entrusted by the Minister of the Ministry of Agriculture and Forestry under Article 166) or Examination Committee has divulged or appropriated a variety of which application for variety protection is pending to which he had access in the course of his duties, he shall be punished by imprisonment for not more than two (2) years or a fine not exceeding five million (5,000,000) Won.

Article 173

Offense of Non-Registration of the Seed Business

Any person falling under any of the following items shall be punished by imprisonment for not more than one (1) year or a fine not exceeding ten million (10,000,000) Won:

- (i) a person who has sold, distributed, imported, or exported the seed through appropriation of a variety denomination of another person's variety other than the protected variety in violation of Paragraph (1) of Article 112;
- (ii) (Deleted)
- (iii) a seed quality manager who has issued a certification prescribed in Article 133 falsely;
- (iv) a person who has practiced the seed business without registration thereof in violation of Paragraph (1) of Article 137;
- (v) a person who has sold or distributed the crop seed in violation of Paragraph (3) of Article 138;
- (vi) a person who has sold by producing or importing the seed of a variety without report thereof in violation of Paragraph (3) of Article 138;
- (vii) a person, who has continuously practiced the seed business of which registration had been cancelled, or who has continuously practiced the seed business after having been ordered suspension of the business, in violation of Paragraph (1) of Article 139;

- (viii) a person who has exported or imported, or circulated the imported seed in violation of Paragraph (3) of Article 140;
- (ix) (Deleted)
- (x) a person who has imported the seed without having the imported seed be subject to an adaptability test of imported seeds in violation of Paragraph (1) of Article 141;
- (xi) a person who has produced or sold the seed, of which production or sale had been stopped, in violation of Paragraph (2) of Article 145.

Article 174

Dual Liability

Where a representative of a legal entity, or an agent, serviceman, or other employee of a legal entity or natural person has committed an act in violation of Paragraph (1) of Article 169, Article 171 or 173 with regard to the business of the legal entity or natural person, the penalty of fine as prescribed in each corresponding article shall also be imposed on the legal entity or natural person, in addition to the punishment of the offender.

Article 175

Confiscation

- (1) The Court shall confiscate, or sentence to deliver to the injured party upon request of the injured party, any article which is the subject of an act falling under Item (i) or (ii) of Paragraph (1) of Article 169, or any article which is produced by such act.
- (2) Where the article is delivered to the injured party under Paragraph (1), he may claim the compensation for damages only in the limit to the amount of loss exceeding the value of the article.

Article 176

Administrative Fine

- (1) Any person falling under any of the following items shall be punished by an administrative fine not exceeding five million (5,000,000) Won:
 - (i) a person who has sold, distributed, exported, or imported the seed by using a variety denomination which had not been registered (including a variety denomination of which an application for the registration of the variety denomination has been filed or of which an application for the registration of the variety denomination is deemed to have been filed) in violation of Paragraph (1) of Article 112;
 - (ii) (Deleted)

- (iii) (Deleted)
 - (iv) (Deleted)
 - (v) (Deleted)
 - (vi) (Deleted)
 - (vii) a person who has exported or imported the seed without reporting in violation of the main provision of Paragraph (1) of Article 140;
 - (viii) (Deleted)
 - (ix) a person who has sold or distributed the seed without indicating quality of the circulated seed in violation of Article 143; and
 - (x) a person who has refused, hindered, or evaded the inspection or seizure prescribed in Paragraph (1) of Article 145.
 - (xi) (Deleted)
- (2) Any person falling under any of the following items shall be punished by an administrative fine not exceeding five hundred thousand (500,000) Won:
- (i) the concerned party, who has taken an oath under Article 271 of the Code of Civil Procedure which is applied to under Paragraph (2) of Article 48, or his legal representative, and has made a false statement before the Ministry of Agriculture and Forestry;
 - (ii) a person who has failed to report the purport of the inheritance of a variety protection right, exclusive license, or pledge, or other general successions in violation of Paragraph (2) of Article 63;
 - (iii) a person who has failed to comply with an order to report exploitation as prescribed in Article 82;
 - (iv) a person other than a witness, expert witness, or interpreter, who has taken an oath under Paragraph (8) of Article 154 which is applied to under Article 100, and has made a false statement before the Examination Committee;
 - (v) a person who has failed without any justifiable reason to comply with an order of the Examination Committee to submit or present the documents or articles relating to evidence investigation or evidence preservation as prescribed in Article 157 of the Patent Act which is applied to under Article 100;
 - (vi) a person, who has been summoned by the Examination Committee as a witness, expert witness, or interpreter under Article 154 or 157 of the Patent Act which is applied to under Article 100, and has failed to comply with the subpoena, or has refused to take an oath, make a statement, testify, given an expert opinion, or interpret without any justifiable reason.

(3) The administrative fine prescribed in Paragraph (1) or (2) shall be imposed and collected by the Minister of the Ministry of Agriculture and Forestry, Mayors, or Provincial Governors (hereinafter referred to as an "imposer") as prescribed by a Presidential Decree.

(4) Any person who objects to the imposition of an administrative fine under Paragraph (3) may file an opposition with the imposer within thirty (30) days from the date of notification of the imposition.

(5) The imposer shall, upon receipt of an opposition filed by a person under Paragraph (4) who has been disposed of an administrative fine under Paragraph (3), notify the opposition without delay to the competent court, which shall adjudicate upon the case of an administrative fine in accordance with the provisions of the act on non-contentious procedures.

(6) Where no opposition has been filed within the period prescribed in Paragraph (4) and the fine has not been paid, the fine shall be collected on the basis of examples of the disposition of national taxes in arrears.

ADDENDUM

Article 1

Entry into Force

This Law shall enter into force as of December 31, 1997; provided that the provisions in Articles 91 through 107 shall enter into force as of March 1, 1998.

Article 2

Abrogation of Other Laws

Main Crops Seed Law and Seed and Seedling Control Law shall be abrogated.

Article 3

Examples in *Mutatis Mutandis* Application of Patent Law

In applying Articles 3 and 9, Paragraphs 1, 2, and 4 of Article 10, Articles 17, 19 through 23 of the Patent Act under Article 10 of this Law, as well as applying Article 157, Paragraphs 3 through 6 of Article 165, and Article 166 of the Patent Act under Article 48 of this Law, the corresponding provisions in the same law to be effective as of March 1, 1998 shall be deemed to be applied; however, from the enforcement date of this Law to February 28, 1998, the corresponding provisions in the Patent Law at the time of enforcement of this Law shall be deemed to be applied.

Article 4

Interim Measures for Known Varieties at the time of Enforcement of this Law

(1) Among the varieties which have been known at the time of enforcement of this Law, notwithstanding Paragraph (1) of Article 13, a variety falling under any of the following items shall be entitled for variety protection under this Law, where an application for variety protection thereof is filed within one (1) year from the enforcement date of this Law:

- (i) a variety which has been registered under Article 6 of the previous Seed and Seedling Control Law;
- (ii) a variety of a superior seed specified under Article 2 of the previous Main Crops Seed Law;
- (iii) a variety which has been registered under Paragraph (2) of Article 45 of the Forestry Law;
- (iv) a variety of which establishment of the variety protection right has been registered in a foreign country; and
- (v) a variety for which identification of the breeder and initial circulation date can be verified.

(2) The duration of the variety protection right for a protected variety under Paragraph (1) shall be calculated from the date falling under any of the following items; however, where the variety falls under two (2) or more items, the earliest date shall be used:

- (i) the date of the registration of the variety, if the variety falls under Item (i) of Paragraph (1);
- (ii) the date of being rendered a ruling of the Variety Committee, if the variety falls under Item (ii) of Paragraph (1);
- (iii) the date of the registration of the variety, if the variety falls under Item (iii) of Paragraph (1);
- (iv) the date of the registration of establishment of the variety protection right of the variety, if the variety falls under Item (iv) of Paragraph (1); and
- (v) the date of initial circulation of the variety, if the variety falls under Item (v) of Paragraph (1).

(3) The effect of the variety protection right of which establishment has been registered under Paragraph (1) shall not be extended to any exploitation that has been initiated before the filing of an application for variety protection of the variety.

(4) Where variety protection has been granted under Paragraph (1), a person, who has been exploiting the protected variety or has been making preparation therefor, in good faith, in the Republic of Korea, prior to the filing date of an application for variety protection, shall have a non-exclusive license on that variety protection right, but such non-exclusive license shall be

limited to the purpose of commercial and industrial exploitation of the protected variety, which is being made or for which preparations have been made. In this case, the non-exclusive licensee shall pay an adequate remuneration as consideration to the variety protection right holder.

(5) Paragraph (2) of Article 75 shall apply *mutatis mutandis* to the non-exclusive license under Paragraph (4).

Article 5

Interim Measures on the Registration of Variety Denomination

The variety denomination of the variety falling under any of the items in Paragraph (1) of Article 4 of Addendum shall be deemed to be a variety denomination which has been registered under Paragraph (8) of Article 111.

Article 6

Interim Measures on the Entry of the Seed

Among the superior varieties which have been produced by the Minister of the Ministry of Agriculture and Forestry in accordance with the previous Main Crops Seed Law and the varieties which have been registered in accordance with the previous Seed and Seedling Control Law, at the time of the enforcement of this Law, the variety which is subject to the entry in a catalogue of varieties under Article 114 shall be deemed to be a variety entered in a catalogue of varieties and published under Article 117, while the variety other than those which are subject to the entry in a catalogue of varieties shall be deemed to be a variety reported under Paragraph (3) of Article 138.

Article 7

Interim Measures on Seed Certification

Among the superior varieties produced by the Minister of the Ministry of Agriculture and Forestry in accordance with the previous Main Crops Seed Law at the time of the enforcement of this Law, the seed of a variety which is subject to the entry in a catalogue of varieties under Article 114 shall be deemed to have been certified in accordance with Article 124.

Article 8

Interim Measures on the Registration of Seed Business, Etc.

A person who has reported practice of the seed business under the previous Seed and Seedling Control Law, at the time of the enforcement of this Law, shall be deemed to have registered the seed business under Paragraph (1) of Article 137; a person who has registered the seed and seedling business under the previous Seed and Seedling Control Law shall be deemed to have reported practice of the seed trade under Paragraph (3) of the same article; and a person who has reported the seed and seedling business under the previous Main Crops Seed Law shall be deemed to have reported the seed trade under Paragraph (3) of the same article. In this case, a person who is deemed to have registered the seed business shall furnish proper facilities for satisfying the standards prescribed in Paragraph (1) of Article 137 and

employ one (1) or more seed quality managers as prescribed in Paragraph (2) of the same article.

Article 9

Interim Measures on Report of Import and Export of the Seed

- (1) Application of Paragraph (1) of Article 138 to imported varieties which have been imported and sold at the time of the enforcement of this Law shall be reprieved for two (2) years.
- (2) A person who has reported import and export of the seed under the previous Main Crops Seed Law at the time of the enforcement of this Law shall be deemed to have reported import and export of the seed under Paragraph (1) of Article 140.
- (3) A person who has been recommended import of the seed under the previous Main Crops Seed Law or Seed and Seedling Control Law at the time of the enforcement of this Law shall be deemed to have been recommended import of the seed under Article 142.

Article 10

Interim Measures on an Adaptability Test of Imported Seeds

The seed which has been or is subject to a domestic adaptability test under the previous Main Crops Seed Law or Seed and Seedling Control Law at the time of the enforcement of this Law shall be deemed to be the seed which has been or is subject to an adaptability test of imported seeds under the main provision of Paragraph (1) of Article 141.

Article 11

Interim Measures on Quality Indication of the Circulated Seeds

A person who has indicated quality of the seed on a package of the seed and seedling under the previous Seed and Seedling Control Law at the time of the enforcement of this Law shall be deemed to have indicated the quality of the circulated seed under Article 143.

Article 12

Interim Measures on Establishment of the Seed Fund

The seed fund established in accordance with the previous Main Crops Seed Law at the time of enforcement of this Law shall be deemed to be the seed fund established in accordance with Article 149.

Article 13

Interim Measures on Application of Penal Provisions

Application of the penal provisions against actions committed in violation of the previous Main Crops Seed Law or Seed and Seedling Control Law at the time of enforcement of this Law shall be governed by the previous Law.

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