

Client Alert

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Expanded protection under amendment to Japan's Plant Variety Protection and Seed Act effective April 1, 2021

A new amendment to the Japanese Plant Variety Protection and Seed Act (the "PVR Act") was passed in December 2020 and came into effect on April 1, 2021 expanding the scope of plant breeders' rights. The amended PVR Act affords greater protection to plant breeder right holders with respect to the exportation of plant materials of a registered variety used to propagate the variety, such as seeds or graft woods. The amendment also introduces a new system under which the production areas of registered varieties can be limited to designated areas within Japan.

What's new?

Restriction on exports of propagating and harvested materials

Before the amendment, a breeder's rights did not extend to the exportation of propagating materials (such as seeds and graft woods) and harvested materials (such as fruit) if registered varieties to jurisdictions with adequate plant variety protection systems if (i) an exported material was first placed in the market by the right holder or with its consent, or (ii) the exported material was derived from materials first placed in the market by the right holder or with its consent.

After the amendment, if an applicant for a breeder's right files a notification with the Ministry of Agriculture, Forestry and Fisheries (MAFF) at the same time of its application and the notification is publicized by MAFF, the breeder's right can extend to exportation of the propagating materials and harvested materials that are placed on the market by the right holder or its licensees (excluding harvested materials exported for consumption).

Existing breeder's right holders and applicants for PVRs who filed applications before April 1 this year can also utilize this new system by submitting a notification by **September 30, 2021**.

Once the notification becomes effective, if propagating materials covered by the breeder's right are sold or transferred to a third party, the seller or transferor (such as distributor of the propagating materials) needs to include a relevant warning notice affixed to the propagating materials and their packaging and in relevant advertisements that complies with the implementation regulations under the PVR Act. Failure to affix the required notice is subject to a monetary penalty. According to the guidelines issued by MAFF, the required labelling can be as simple as one or two lines.

Limitation on production areas

The amendment also introduced another new system which enables breeder's right holders to limit the production areas of registered varieties. The purpose of this system is to allow applicants who intend to make a certain geographical area within Japan (such as a prefecture or city) a





production area of the variety to have more control over the geographical area to produce the variety. To utilize this system, an applicant needs to file a notification specifying the permitted areas at the time of its application. If the notification is filed, production harvested outside the permitted area without the consent of the right holder constitutes infringement of the plant breeder's right. Local governments in Japan (such as prefectural governments) who apply for plant breeders rights seem to be in the position to make the most use of this system to develop the farming industries in their areas.

Recommendations

Filing the relevant notifications is generally recommended to take advantage of these new systems. Applicants and PVR holders who would like to utilize the new systems are advised to file their notifications before the deadline as no grace period has been provided.

Product labelling of the plant materials subject to the new system should also be reviewed in light of the amended PVR Act, its implementation regulations and the relevant guidelines issued by MAFF.