

Non-Agricultural Companies' Entry into the Agricultural Industry in Japan

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Introduction

The entry of non-agricultural companies into the agricultural industry is a recent trend in Japan. Various types of companies, such as construction companies, staffing agencies, and electrical equipment companies, are showing their interest in starting farming businesses. While traditional small-size family farmers still comprise a majority of Japanese agricultural management entities, an increasing number of non-agricultural companies are entering the agricultural industry¹.

This trend causes both expectation and anxiety. There is a possibility that entry by non-agricultural companies will improve the productivity of the agricultural industry by stimulating market competition. However, if they lack farming skills, agricultural land may be used inappropriately, causing damage to neighboring farmers².

Japan's Ministry of Agriculture, Forestry and Fisheries ("MAFF") does not allow non-agricultural companies to acquire ownership of agricultural land. There are, however, many ways to start farming without ownership of agricultural land. This paper explains MAFF's regulations on agricultural land use and how non-agricultural stock companies start farming.

The definition of agricultural land

Japan's Agricultural Land Act ("ALA") defines agricultural land as land that should be used for farming purposes. The ALA stipulates that land that is not used for farming temporarily but satisfies "conditions for starting farming anytime" should be recognized as agricultural land.

The ALA requires every municipal government to have its own Agricultural Commission, which manages various agricultural land issues at the local level (note 3). The Agricultural Commission is responsible for determining which parcels of land should be recognized as agricultural land. In theory, the Agricultural Commission should make the judgment based only on objective facts. In practice, however, the Agricultural Commission usually respects the landowner's subjective viewpoint. Even if a parcel of land has been kept idle for many years and is difficult to use for farming anymore, as long as the landowner declares his or her intent to farm there, the Agricultural Commission often recognizes it as agricultural land (note 4).

Agricultural production corporation

Under the ALA, an agricultural production corporation is considered a legal person and is allowed to acquire ownership of agricultural land. Aside from agricultural production corporations, other legal persons (not natural persons) are prohibited from acquiring ownership of agricultural land. Article 2 of the ALA stipulates that an agricultural production corporation must satisfy the following four conditions:

1. Required condition concerning the form of legal person
2. An agricultural production corporation must take the form of either an unlisted stock company, a limited liability company, an agricultural producers' cooperative corporation⁵ an unlimited partnership, a limited partnership, or a consolidated company.
3. Required condition concerning members of legal person
4. Every member (whether a natural person or a legal person) of an agricultural production corporation must satisfy at least one of the following six conditions: (a) a natural person who is engaged in farming permanently, (b) a natural or legal person who owns agricultural land and rents it to the agricultural production corporation (Reference 5), (c) an agricultural land possession rationalization corporation⁶, (d) a local public entity, (e) a natural or legal person who owns agricultural land and outsources a part of farming to the agricultural production corporation, and (f) a natural or legal person whose business is closely related to the agricultural industry (such as a retailer or a food processor who works with fresh vegetables). The money invested by those who satisfy condition (f) only should be less than a half of the total capital⁷.
5. Required condition concerning the business of legal person
6. The aggregated revenue from agricultural production and agriculture-related businesses must be more than half of the total revenue.
7. Required condition concerning executive officers of legal person
8. More than half of the executive officers (i.e., directors in the case of a stock company and an agricultural producers' cooperative corporation; and managing members in the case of a limited liability company, an unlimited partnership, a limited partnership, and a consolidated company) must be engaged in agriculture and/or agriculture-related businesses for more than 150 days per year. In addition, more than half of the executive officers must work in the field for more than 60 days per year.

Those who want to establish agricultural production corporations must undergo inspections by the Agricultural Commission. The Agricultural Commission is also in charge

of overseeing agricultural production corporations after their establishment. Every agricultural production corporation must submit a report on its businesses every year (within three months after the end of its business year) to the Agricultural Commission. If the Agricultural Commission finds a considerable possibility that an agricultural production corporation will fail to satisfy the required conditions in the near future, the Agricultural Commission advises it on how to proceed.

The MAFF has been gradually relaxing the regulations on agricultural production corporations over the past 15 years. Previously, agricultural production corporations were prohibited from taking the form of unlisted stock companies, but this prohibition was removed in 2000. Before 2009, funding from a non-agricultural company for an agricultural production corporation was restricted to under 10 percent of the total capital of the agricultural production corporation. This restriction was also removed in 2009. Figure 1 shows the total number of agricultural production corporations since 1970. It should be noted that farm households in addition to non-agricultural companies establish agricultural production corporations.

Regulations for purchasing and/or renting agricultural land

There are two types of farmers (in this paper, farmers include agricultural production corporations): one is the owner farmer and the other is the tenant farmer. The former holds both the ownership of agricultural land and the right to use it. The latter does not hold the ownership but has the right to use agricultural land. The tenant farmer pays rent to the landowner who holds ownership of the agricultural land.

Unless a farmer receives approval of the Agricultural Commission, he or she is not allowed to purchase (i.e., acquire ownership) and/or rent (acquire the right to use) agricultural land. In order to receive approval of the Agricultural Commission, a farmer who wants to purchase and/or rent a parcel of agricultural land must satisfy the following four conditions: (1) the farmer has enough farming ability on the parcel of agricultural land⁸; (2) the size of the farm must be over 0.5 hectares⁹; (3) in the case of natural persons, the farmer must work in the fields more than 150 days; and (4) the farmer's farming practices must be harmonized with that of neighboring farms¹⁰.

Mere establishment of an agricultural production corporation does not necessarily mean that the agricultural production corporation can purchase and/or rent agricultural land freely. Just as in the case of a natural person, an agricultural production corporation must show that it satisfies the above-mentioned four conditions.

While there are many regulations restricting entry to agriculture by non-agricultural companies, many reports indicate the difficulty of implementing those regulations¹¹. One such example involves a realtor establishing a "dummy" agricultural production corporation

to purchase agricultural land with the intent of constructing houses on it.

In Japan, in addition to the ALA there are many other laws concerning agricultural land use. Unfortunately, the lack of implementation of the laws has a poor result in Japan's actual land use. The gap between what is written as law and what is done in practice is a fundamental problem in Japanese land use policy--this problem is not limited to agricultural land use, but land use in general¹². A report of the Ministry of Internal Affairs and Communications finds many cases of the Agricultural Commission's failure to implement the regulations of the ALA¹³.

Criticisms from the Council for Regulatory Reform

Establishing an agricultural production corporation as an affiliate and then purchasing and/or renting agricultural land is the most popular way for a non-agricultural company to enter the agriculture industry. The Council for Regulatory Reform ("CRR"), an advisory board for the Japanese Prime Minister, asserts that there are two problems in today's system¹⁴. First, it claims that the required conditions for establishing an agricultural production corporation are unreasonably strict. The CRR claims that the ALA's restriction on funding from those who satisfy condition (f) only (i.e., their investment should be less than half of the total fund) and the ALA's requirements on executive officers should be relaxed or removed. Second, the CRR alleges that because the members of the Agricultural Commission are elected among exiting farmers in the rural community, they take an overly cautious attitude toward non-agricultural companies. While there are reports that control of the Agricultural Commission is ineffective, the CRR recognizes the Agricultural Commission as a major stumbling block against non-agricultural companies' entry to the agricultural industry.

Tenant farming by legal persons other than agricultural production corporations

As mentioned earlier, legal persons other than agricultural production corporations (hereinafter referred to as "general corporations") are not allowed to hold ownership of agricultural land. This does not mean, however, that general corporations cannot engage in farming activities. If the following three conditions are satisfied, a general corporation is allowed to engage in tenant farming by renting agricultural land under the condition of approval of the Agricultural Commission: (1) the tenant contract is under the condition that the contract will be canceled if the general corporation does not use the agricultural land appropriately; (2) the general corporation pledges that it will bear the responsibility for collective works in the rural community and be involved in farming for a long period; and (3) at least one of the executive officers of the general corporation (directors in the case of stock companies and agricultural producers' cooperative corporations, or managing members in the

case of unlimited partnerships, limited partnerships, and consolidated companies) is engaged in farming.

Tenant farming by general corporations was first allowed in 2002 as experimental cases in the economic reform special zones. In 2005, the MAFF allowed this type of tenant farming not only in the economic reform special zones but also in the areas where unused agricultural land was abundant. In the revision of the ALA in 2009, general corporations were allowed to engage in tenant farming nationwide.

Figure 2 shows the numbers of legal persons other than agricultural production corporations that are engaged in tenant farming. As can be seen, nearly two-thirds of them are stock companies. Figure 3 shows the acreage of agricultural land used by general corporation.

According to a survey conducted by Japan Finance Corporation, there are two major types of general corporations engaging in tenant farming¹⁵. The first are food-processing companies whose main reason for entering the agricultural industry is to keep stable sources of ingredients as agricultural products. The second are construction companies whose main reason for entering the agricultural industry is to absorb abundant employees in agriculture after the decrease in the number of public construction works.

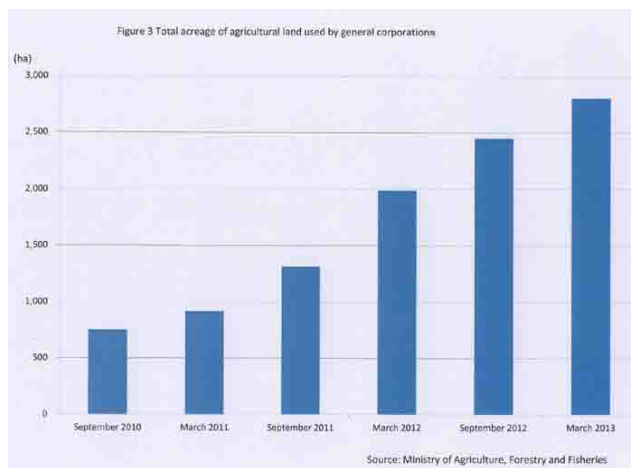
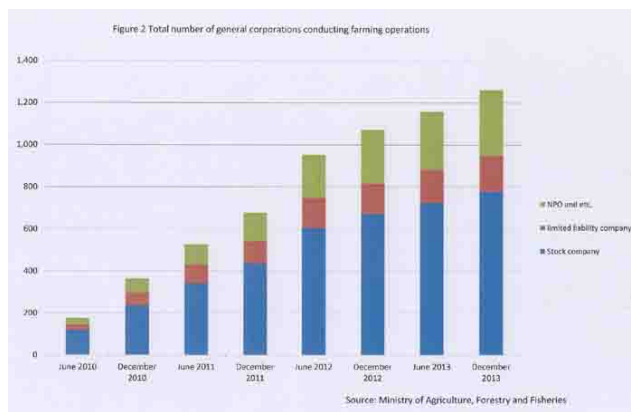
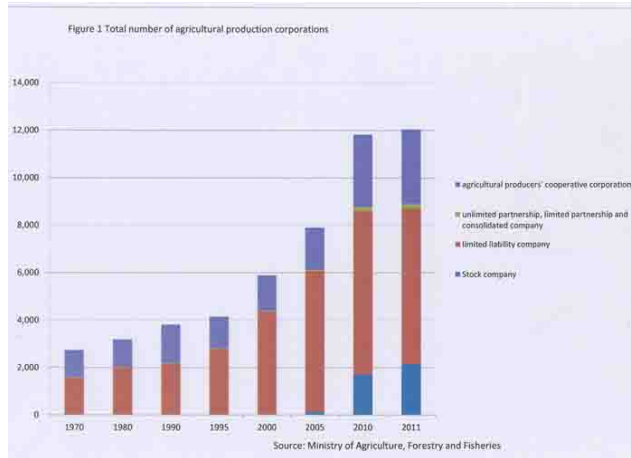
Loopholes of the Agricultural Land Act

As mentioned above, the ALA stipulates various regulations on the ownership of and the right to use agricultural land. However, there are loopholes in the ALA whereby non-agricultural companies may engage in farming activities. For example, the ALA has no regulations for contract farming. Thus, anyone (any natural or legal person) can contract to work on agricultural land freely. In theory, contract farming is different from tenant farming in the sense that the rights of farm management do not extend to those who are working on agricultural land. In practice, however, it is difficult to distinguish contract farming from tenant farming. In particular, if a contract fee is linked to revenue earned from farming, contract farming can be practically equivalent with tenant farming. The MAFF provides broad direction of the Agricultural Committee in judging each case is whether tenant farming or contract farming¹⁶. As a result, even if the Agricultural Commission finds that a farmer rents a parcel of agricultural land without its approval, the Agricultural Commission is allowed to recognize the case as one of contract farming (instead of illegal tenant farming in violation of the ALA).

References

- 1) The Ministry of Agriculture, Forestry and Fisheries introduced a new notion of 'agricultural management entities' to capture units of farming in the 2005 Agricultural Census. More details are given in Godo, Yoshihisa, "An Outlook of Japanese Farm Households," FFTC's AP website (<http://ap.fftc.agnet.org>), 2013.
- 2) Godo, Yoshihisa, "Community Order in Japanese Agriculture," FFTC's AP website (<http://ap.fftc.agnet.org>), 2013.
- 3) Godo, Yoshihisa, "Agricultural Commissions in Japan," FFTC's AP website (<http://ap.fftc.agnet.org>), 2013.
- 4) "The Dream and the Reality of Kameda-go," April 9-11, 2011, Niigatanippo.
- 5) An agricultural producers' cooperative corporation is a type of agricultural cooperative. The Agricultural Cooperative Act gives details of the requirements for an agricultural producers' cooperative cooperation.
- 6) An agricultural land possession rationalization corporation is a legal person who is approved by the governor based on the Act on Promotion of Improvement of Agricultural Management Foundation.
- 7) There are cases that the money invested by those who satisfy the condition (f) only should be less than a quarter (instead of half) of the total capital of the agricultural production corporation.
- 8) The farmer must have sufficient farming skill, agricultural labor forces, and agricultural machineries and live near to the parcel of agricultural land.
- 9) Based on the Act on Promotion of Improvement of Agricultural Management Foundation, there are cases when the Agricultural Commission approves farm size less than 0.5 hectare.
- 10) For example, if the neighboring farmers produce organic vegetables, the farmer who wants to purchase and/or rent the parcel of agricultural land must not disturb the neighboring farmers by using too much agricultural pesticide.
- 11) Inoue, Ei-ichi, "Watch the Reality of the Disorder of Agricultural Land Use," April 15, 2009, Mainichi Shimbun.
- 12) Kobayashi, Takayuki, "Problems for Keeping Effectiveness of the Administration," Reference, February 2005.
- 13) Ministry of Internal Affairs and Communications, "Report from Evaluation and Surveillance on the Maintenance and Effective use of Agricultural Land," March 12, 2013.
- 14) Council for Regulatory Reform, "A Draft of Proposal for Agricultural Policy Reform," November 21, 2013.
- 15) Japan Finance Corporation, "Non-agricultural Companies' New Entry to Farming Businesses," February 13, 2013.

16) Management Improvement Bureau, Ministry of Agriculture, Forestry and Fisheries,
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