

**Voluntary Report** – Voluntary - Public Distribution

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**Report Name:** China Draft Seed Law Update Open for Comment

**Country:** China - People's Republic of

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**Report Category:** Planting Seeds, Agricultural Situation, Trade Policy Monitoring

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**Report Highlights:**

A draft amendment to the Seed Law was released for public comment on August 20, 2021. The amendment expands intellectual property rights for new plant varieties, extends and improves the level of protection, and attempts to stimulate domestic innovation. The draft amendment strengthens plant variety protections (PVP), particularly for essentially derived varieties (EDV). This report provides an unofficial translation of the full text of the document. The comment period closes on September 18, 2021.

## Summary:

The most important modification of the amendment is to establish an essentially derived variety (EDV) system within China. The full text of the amendment can be found on the [National People's Congress website](#). The previous version of the Seed Law is attached in the Appendix for comparison.

Major modifications are as follows:

- 1) Expands the scope of protection for new plant variety rights. The draft extends the scope of protection from the propagation material to the harvest material of the granted variety, and extends the protected sections from production, propagation, and sales to production, propagation, processing (seed treatment for propagation), offering for sale, sale, import, export, and storage, etc.
- 2) Establishes an EDV system. In order to encourage original innovation and reduce seed homogeneity, the draft establishes a system of EDVs - which can be granted new plant variety protection. However, when used for commercial purposes, the consent of the owner of the original variety must be obtained when seeking protection of new varieties.
- 3) In order to increase the deterrence against the infringement of new plant variety rights, the amount of punitive damages have been increased. The upper limit of the amount of compensation is increased from three times to five times the loss if the amount can be determined from the loss of the rights holder, the benefit obtained by the infringer, or from the variety right license fee. If it is difficult to determine the amount the compensation limit is increased from RMB three million (approximately USD\$462,000) to RMB five million (approximately USD\$ 770,000).
- 4) The draft clarifies and strengthens the legal responsibility for investigations for non-compliant production behaviors, such as no isolation and cultivation conditions for breeding seeds, no seed production sites free of quarantine pests, or failing to follow seed inspection and quarantine procedures.

China's seed industry has improved over the last ten years, but this year gained attention at the highest levels, including as a top priority for President Xi. High-level officials have stressed in remarks over the first half of 2021 that germplasm and breeding are key to China's agricultural stability and food security. The Seed Law was last amended in 2015 and the industry has long clamored for stronger protections. Once adopted, this updated law will allow for the formulation of updated PVP regulations. Additional background on China's seed industry can be found in the report [Seed Industry Development a High Priority for Leadership](#).

Interested U.S. parties should contact Elaine Wu at the U.S. Patent and Trademark Office at [Elaine.Wu@USPTO.GOV](mailto:Elaine.Wu@USPTO.GOV) with comments.

The public can log onto the [National People's Congress website](#) to submit comments or mail them to the Legislative Affairs Commission of the Standing Committee of the National People's Congress (Address: No. 1 Qianmen West Street, Xicheng District, Beijing, 100805).

**The deadline for comments is September 18.**

Note: New updates from the previous version of the law are in blue font below.

BEGIN TRANSLATION

## **Seed Law of the People's Republic of China**

### **Draft for comments**

Time: August 19, 2021

Chapter I General Provisions

Chapter II Germplasm Protection

Chapter III Variety Selection and Breeding, Registration and Record

Chapter IV New Varieties Protection

Chapter V Seed Production and Business Operation

Chapter VI Supervision and Administration on Seed

Chapter VII Seed Imports and Exports, and Foreign Cooperation

Chapter VIII Supporting Measures

Chapter IX Legal Liabilities

Chapter X Supplementary Provisions

#### **Chapter I General Provisions**

**Article 1** This Law is enacted for the purpose of protecting and making rational use of germ plasm resources, standardizing the variety selection and the production and management of seeds, protecting the right of new plant variety, [stimulate the original innovation of breeding](#), safeguarding the lawful rights and interests of seed producers, traders and seed users, improving the quality of seeds, pushing forward the industrial management of seeds, developing modern seed industry, safeguarding national food security, and promoting the development of crop cultivation and the forestry industry.

**Article 2** This Law shall apply to the activities such as variety selection, production of, trading in and management of seeds engaged in within the territory of the People's Republic of China.

The term "seed" in this Law mean the materials for planting or propagating crops and forest trees, including grains, fruits, roots, stems, seedlings, sprouts, leaves and flowers, etc.

**Article 3** The administrative departments for agriculture and for forestry under the State Council shall be respectively in charge of the work related to crop seeds and forest tree seeds throughout the country. The administrative departments for agriculture and for forestry under the local people's governments at or above the county level shall be in charge of the work related to crop seeds and forest tree seeds within their respective administrative regions.

Government agencies and related departments at all levels shall take measures to strengthen legal enforcement and supervision in seed industry, and panelize illegal activities violating the rights of farmers.

**Article 4** The State supports the efforts to protect germplasm resources and to select, produce, update, and popularize improved varieties, encourages the combination of variety selection with seed production and trading, and rewards the entities and individuals that achieve outstanding successes in the protection of germ plasm resources and in the selection and popularization of improved varieties.

**Article 5** The people's government at or above provincial level should make development plans according to the guidelines of Making Use of Science and Education to Improve Agriculture and to the requirements for the development of the planting and forestry industries, and organize for implementation.

**Article 6** People's governments at or above the province level shall establish a system for reserving seeds, mainly to meet the need of production in times of calamities and swap of positions, and to ensure the security of agricultural and forestry production. The seeds kept in reserve shall be regularly inspected and replaced with new seeds. Specific measures for seed reserve shall be formulated by the State Council.

**Article 7** The selection, experiment, validation and popularization of transgenic plant varieties shall be subject to safety assessment and strict safety control measures shall be taken. The administrative departments for agriculture and for forestry under the State Council shall strengthen tracking and supervision, and promptly announce the information regarding the validation and popularization of transgenic plant varieties. Specific measures in this respect shall be formulated by the State Council.

## **Chapter II Germplasm Protection**

**Article 8** The State protects germ plasm resources in accordance with law, and no entities or individuals may seize or impair germ plasm resources.

Collecting and cutting natural germ plasm resources that are under special protection of the State are prohibited. Where such collecting or cutting is required for scientific research or other special purposes, the matter shall be subject to approval by the administrative department for agriculture or for forestry under the State Council or under the people's government of a province, autonomous region or municipality directly under the Central Government.

**Article 9** The State, surveys, collects, sorts out, verifies, registers, conserves, exchanges and utilizes germ plasm resources in a planned way, and regularly issues the catalog of available germ plasm resources. Specific measures in this respect shall be formulated by the administrative departments for agriculture and for forestry under the State Council.

### **Article 10**

The administrative departments for agriculture and for forestry under the State Council shall establish a national bank of germ plasm resources, germ plasm resources conservation zones or germ plasm resources reserves. The administrative departments for agriculture and for forestry under the people's governments of provinces, autonomous regions or municipalities directly under the Central Government may, in light of their need, establish germ plasm resources banks, conservation zones or germ plasm resources reserves. The germ plasm resources at the germ plasm resources banks, conservation zones or reserves are the public resources, and shall be open and utilize according to law.

To occupy any germ plasm resources bank, conservation zone or germ plasm resources reserve must obtain the approval from the authority who established it.

**Article 11** The State has the sovereignty over germ plasm resources. Any entities or individuals that wish to provide germ plasm resources to abroad, or carry out joint research on utilizing germ plasm resources with any

overseas enterprises or individuals shall apply to the administrative department for agriculture and rural affairs or for forestry and grass under the State Council, and is required to provide the plan on sharing benefits with the state. Among them, those who provide or cooperate with overseas institutions or individuals to conduct research and utilization of crop germplasm resources shall also be reviewed by the agricultural and rural authorities under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government.

The introduction of germ plasm resources from abroad shall be handled in accordance with the relevant regulations laid down by the administrative department for agriculture or for forestry under the State Council.

### **Chapter III Variety Selection and Breeding, Registration and Record**

**Article 12** The State supports the public research institutes, colleges and universities to focus on conducting fundamental, advanced, applicable and technical researches on breeding of seeds, breeding of conventional crop seeds, selection and breeding of asexual propagation materials and other researches for the public welfare.

The State encourages the seed enterprises to make full use of the results from public welfare researches and cultivate quality varieties with independent intellectual property rights. Encourage seed enterprises, research institutes, colleges and universities to build technology research and development platforms, to establish a market-oriented, capital-linked, benefit-sharing and risk-sharing technology innovation system for the seed industry with the combination of production, academic and researching resources.

The State strengthens the scientific and technical innovation capacity building in seed industry, promotes technology results transformation, and safeguards the legal rights of scientific and technical staffs in seed industry.

**Article 13** The invention patents and rights of new plant varieties relating to seed breeding developed with public finance shall belong to the corresponding project undertakers according to law, unless such inventions or varieties involve national security, national interests, or major social and public interests.

Transfer and licensing of the rights of new plant varieties, which are generated mainly from public finance, shall be transacted through a public trading platform, and unauthorized private trading is prohibited.

**Article 14** Where the earnings of entities or individuals are reduced because the administrative departments for forestry establish testing stands, experimental stands, fine tree collection areas or gene banks for selection of improved varieties of forest trees, the administrative departments for forestry that give the approval shall make economic compensation to the entities or individuals in accordance with the relevant regulations of the State.

**Article 15** The State shall implement a registration scheme for major crop and forest tree varieties. The major crop and forest tree varieties shall be subject to registration at the national or provincial level prior to their popularization and application. The major forest tree varieties determined by the administrative departments for agriculture and for forestry under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be subject to registration at the province level.

Varieties applying for registration shall comply with the requirements of distinctness, uniformity and stability.

The registration measures for major crop and forest tree varieties shall be determined by the administrative departments for agriculture and for forestry under the State Council. The registration measures shall embody the principles of fairness, openness, scientificity and efficiency and shall solicit the opinions from seed breeders, users, producers, traders and representatives of relevant industries when developing or revising the registration measures.

**Article 16** The administrative departments for agriculture and for forestry under the State Council and those under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall respectively set up crop and forest tree varieties registration committees composed of professionals, which shall be in charge of the registration of major crop and forest tree varieties. The committee should establish the registration files, which should include information such as application documents, testing data of variety registration, seed samples, review opinion and review conclusions. The registration files must be traceable. Review opinion shall be included when varieties passing registration release related information in accordance with the law, and subject to public surveillance.

Variety registration adopts avoidance system. Members and staffs of variety registration committee and related testing staffs shall be devoted to their duties, justice and incorruption. Offences by above-mentioned people reported by entities or individuals, or discovered by supervision and inspection shall be timely handled by the administrative departments for agriculture and for forestry at or above provincial level.

**Article 17** For enterprise with combination of breeding, propagation and popularization, and satisfying conditions of the administrative departments for agriculture and forestry under the State Council, the enterprise may complete the experiment according to the registration standards in case the major crop or forest tree variety is independently developed by itself. Variety Registration Committee shall issue registration certificates to the varieties reaching registration standards. Seed enterprise is responsible for truth of the experiment data, and traceability must be guaranteed. Seed enterprise should also accept supervision from the administrative departments for agriculture and forestry at or above provincial level and the society.

**Article 18** Where applicants have objections to the decision that their crop or forest tree varieties fail to pass the registration, they may apply for review to the original Variety Registration Committee, or to the National Variety Registration Committee.

**Article 19** The crop and forest tree varieties that passed the registration at the national level shall be published by the administrative departments for agriculture and for forestry under the State Council, and such varieties may be popularized at the suitable ecological regions around the country. The crop and forest tree varieties that passed the registration at the province level shall be published by the people's government's administrative departments of provinces, autonomous regions and municipalities directly under the Central Government, and such varieties may be popularized in the suitable ecological regions in their corresponding administrative regions. Similar ecological regions in other provinces, autonomous regions and municipalities directly under the Central Government may introduce such varieties after record to the corresponding people's government administrative departments of agriculture and forestry of the provinces, autonomous regions and municipalities directly under the Central Government.

The introduction of any forest tree variety that is not naturally distributed in the region shall pass the test according to the national plant introduction standard.

**Article 20** The administrative departments for agriculture and forestry of provinces, autonomous regions and municipalities directly under the Central Government shall improve regional coordination system of variety selection and registration to promote the breeding and popularization of good varieties.

**Article 21** For the crop and tree varieties passing the registration, if discovered to be with major defects that cannot be overcome and cannot be continuously sold and popularized, the registration would be revoked after the original Variety Registration Committee review and confirm. The original department announcing the registration announces to terminate the sales and popularization.

**Article 22** The State shall apply variety registration system to some of non-major crops. Varieties listed in Non-major Crop Record Category shall be recorded prior to its popularization.

Crop scope subject to record shall be strictly controlled, and defined based on principles of biodiversity protection, assuring consumption safety and seed use safety. The record category shall be formulated and adjusted by the administrative departments for agriculture and forestry under the State Council.

For variety record application, applicants shall submit application documents and seed samples to the administrative departments for agriculture of provinces, autonomous regions and municipalities directly under the Central Government. The applicant will be responsible for the authenticity of the application documents and seed samples provided, ensure the traceability, and accept supervision and inspection. Application documents shall include the type, name, origin, characteristics, breeding process as well as testing results of distinctness, uniformity and stability of the variety.

The administrative departments for agriculture of provinces, autonomous regions and municipalities directly under the Central Government shall implement paper inspection of application documents submitted by the applicants within 20 working days after the record application is accepted. For the application documents satisfying the requirements, they should report to the administration departments for agriculture under the State Council for record.

For recorded varieties whose application documents or seed samples exist falsity, the administration departments for agriculture under the State Council shall revoke the variety record, input the applicant's violation information into society integrity profile, and publish to the public; for recorded varieties that caused losses to seed users or other seed operators, compensation responsibility shall be undertaken based on the law.

For recorded varieties, if discovered to be with major defects that cannot be overcome, the administration departments for agriculture under the State Council shall revoke the variety record, and announce to the public to terminate the popularization.

The measures for non-major crop variety record shall be formulated by the administrative departments of agriculture under the State Council.

**Article 23** The crop varieties that are subject to registration but fail to be registered shall not be advertised, popularized, or sold.

No forest tree varieties that are subject to registration but fail to pass the registration may be sold or popularized as improved varieties. However, where such varieties are really needed for production, the matter shall be subject to the confirmation of the forest tree Varieties Registration Committee.

**Article 24** Foreigners, foreign enterprises and other foreign organizations that have no regular abode or business place from which to apply for the examination and approval of seeds should entrust the matter to Chinese institutions of scientific research, production and operation, and these institutions must have legal personality.

Where foreign organizations or foreigners that have no regular domiciles or business places in China apply for registration or record of their varieties in China, they shall ask Chinese seed enterprise with the status of legal person to serve as their agents.

#### **Chapter IV New Varieties Protection**

**Article 25** The State shall establish a new plant varieties protection system, whereby the rights of new plant varieties shall be granted by the administrative department for agriculture or for forestry under the State Council to those varieties listed in the national protected plant varieties catalog, cultured or discovered in the wilderness and then selected and bred, characterized by novelty, uniqueness, uniformity and stability and appropriately named. The legal rights of the new plant variety owner shall be protected. Other terms shall be implemented in

accordance with this Law, related laws and regulations such as the new plant variety content and belonging, granting conditions, application and acceptance, review and approval, duration, cessation and invalidation, etc.

The State encourages and supports seed scientific and technical innovation, new plant variety breeding and result transformation. Where the variety is granted new plant variety right and popularized, the breeder shall be entitled to obtain corresponding appropriate economic profits according to the laws.

**Article 26** One new plant variety shall be granted only one set of variety rights. Where two or more than two applicants apply for the new variety right to an identical new plant variety, the new variety right shall be granted to the first applicant; where the applications are submitted simultaneously, the new variety right shall be granted to the person who bred the new plant variety at first.

The new plant variety that violates the laws, regulations, harms the public interests and the ecological environment will not be granted with the right of new plant variety.

**Article 27** The denomination of the new plant variety which was granted with new plant variety right shall be distinguishable from every denomination which designates a known variety of the same botanical genus or varieties or of a closely related genus or varieties. After registration, the denomination shall be the generic designation of the new plant variety.

The following denominations shall not be used in the designation of varieties:

- (a) those consisting solely of figures;
- (b) those contrary to social morality;
- (c) those apt to cause misunderstanding as to the special characteristics and properties of new varieties of plants or the identities of breeders.

The same plant variety shall only use one name for new variety protection, variety registration, variety record, sales and popularities. The seeds for production, marketing and sales must be the consistent with the sample provided for the new variety protection, variety registration, and variety record.

**Article 28** The entity which or the person who is granted with variety right has an exclusive right in their protected variety. No other entity or individual shall, without permission from the owner of the variety rights, produce, reproduce, [process, promise to sell, sell, import, export and store for the above behaviors](#) the propagation material of the protected variety, or repeatedly use the propagation material of the protected variety for commercial purposes in the production of the propagation material of another variety. Except as otherwise provided in this Law, related laws and regulations.

[Engaging in the activities specified in the first paragraph of this article , involves the harvested material obtained by using propagating material of the protected variety without permission, unless he has a reasonable opportunity to exercise his rights to the propagating material when he should have get permission from the owner of the protected variety.](#)

[Essentially derived varieties can apply for new plant variety rights and can obtain authorization. However, if the behavior mentioned in the first and second paragraphs of this article is carried out, shall obtain the consent of the owner of the initial variety rights.](#)



The implementation list and determination guidelines of essentially derived varieties shall be determined by the competent department of agriculture, rural affairs, forestry and grassland under the State Council in accordance with this law and relevant regulations.

New plant varieties that submit application since the release of the implementation list of essentially derived varieties, shall be regulated according to the relevant essentially derived varieties regulation.

**Article 29** To use a granted variety in the following circumstances is not required to obtain permission from or pay royalty to the new variety right owner, but such use shall not infringe other rights of the new variety right owner according to this Law, related laws and regulations:

- (1) Use the granted new variety to breed seeds, or carry out other research activities;
- (2) Reproduce or use the propagation materials of the granted variety by farmers.

**Article 30** Where the national interest or public interest so requires, the administrative departments for agriculture and forestry under the State Council may make a decision on a compulsory license to exploit new plant varieties, which shall be registered and publicly announced.

The entity which or the person who is granted a compulsory license for exploitation do not enjoy the exclusive right and has no right to allow any other to exploit.

## **Chapter V. Seed Production and Business Operation**

Article 31 The seed production and business license for seed import and export shall be issued by administrative departments of agriculture and rural affairs, forestry and grassland under the State Council. [Among them, those applying for seed production and operation license for the import and export business of crop seeds, shall also be reviewed by the administrative departments of agriculture and forestry of the people's governments of the provinces, autonomous regions, municipalities directly under the State Council.](#)

The production and operation licenses for enterprises engaged in businesses including [propagating materials of major crop hybrid seeds and parent seeds, tree seeds of improved variety, as well as the enterprises with integrated business in crop seeds breeding, production and marketing, eligible for requirements of the administrative departments for agriculture and rural affairs under the State Council shall be issued by the administrative departments of agriculture and rural affairs, forestry and grassland of the people's governments of the provinces, autonomous regions, municipalities directly under the State Council.](#)

The license of production and business of any seeds other than those listed in the two preceding paragraphs shall be issued after examination by administrative department for agriculture and rural affairs, forestry and grassland under the people's government at or above the county level where the seed producer or trader is located.

The seed production and business license is not required for the persons that only produce non-major crop seeds or non-major forest tree seeds.

**Article 32** Entities or individuals that apply for the seed production and business license shall have facilities and equipment , as well as professionals commensurate with seed production and business, and satisfy other conditions provided for in the laws and regulations and by the administrative departments for agriculture and for forestry under the State Council.

For those who produce seeds shall also have the isolating and breeding facilities for propagating seeds, and have seed production sites free of quarantine pests or nurse-crop stands designated as such by the administrative department for forestry under the people's government at or above the county level.

To apply for seed production and business license for variety that was granted the new plant variety rights, written consent shall be obtained from the owner of the new plant variety.

**Article 33** The seed production and business license shall indicate the name and address of producer or trader, name of legal representative, the variety and location of produced seed, scope of seed production and business, term of license and covered territory, etc.

In case of changes to the previous matters, the application for change registration shall be submitted to the original license issuing organ within thirty (30) days after the change.

Unless otherwise prescribed, seed production and business without a seed production and business license, and violation of the provisions stated in the seed production and trading license are prohibited. Forgery, alteration, transfer and lease of the seed production and trading license are prohibited.

**Article 34** Seeds shall be produced in compliance with technical regulations for seed production, inspection and quarantine.

**Article 35** Collection of seeds within forest seed production bases shall be arranged by the operators of the seed production bases, and the seeds shall be collected in conformity with the relevant national standards.

Plundering of unripe seeds and doing damage to mother trees are prohibited, and no seeds may be collected in inferior forest stands or from inferior mother trees.

**Article 36** A seed trader shall establish and keep the production and business files indicating the seed source, origin, quantity, quality, sales destination, sales date, and responsible personnel, and so on to ensure traceability. The items listed in seed production and business file, the period for keeping the production and business files and seed samples shall be specified by the administrative departments for agriculture and for forestry under the State Council.

**Article 37** The leftover conventional seeds self-propagated and used by farmers can be sold and exchanged on the market without a seed production and business license.

**Article 38** The territory covered by a seed production and business license shall be determined by the authority that issues the license within its jurisdiction. Where a seed producer or trader establishes any branch within the territory covered by the seed trading license, or trades specially in packed seeds that are not to be divided into smaller packages, or produces/sells seeds on the basis of written commission as the agent of a seed producer/trader that has the seed production and business license, are not required to be accompanied with a seed production and business license, but the producer or trader shall file with the local administrative department for agriculture or forestry.

The valid area of the production and business licenses can be the whole country for the seed enterprises with integrated business in breeding, production and marketing, and eligible for the requirements of the administrative departments for agriculture and forestry under the State Council.

**Article 39** Seeds for sale shall be processed, graded and packed, except those that cannot be processed or packed.

Seeds in large package or imported may be divided and repacked; in such cases, the repackaging entities shall be clearly stated and they shall be responsible for the quality of the seeds.

**Article 40** The seeds for sale shall be in conformity to the national or industrial standards, and attached the specific label and instructions, on which the content indicated shall be consistent with the seeds to be sold. The seed producers and traders shall be responsible for the accuracy of the information indicated in the seed labels and instructions, and for the quality of their seeds.

The label shall clearly indicate the seed category, variety name, serial number of variety registration or record, suitable planting areas and seasons for the variety, producer/trader and registered venue, quality index, serial number of quarantine certificate, serial number of the seed production and business license, and information code, as well as other matter stipulated by the administrative departments of agriculture and forestry under the State Council.

For the sale of seeds with protected variety, the serial number of variety right shall be attached.

For the sale of imported seeds, the serial number of import approval and a label in Chinese shall be attached.

For the sale of the seeds of transgenic plant varieties, it must be marked with visible words, and the safety control measures for the use thereof shall be indicated.

Seed producers/traders shall comply with the relevant laws and regulations, be honest and faithful, provide seed users with the information of seed producer, main traits of seeds, primary cultivation measures, instructions for use of the seeds, risk warning and relevant advisory services. Propaganda being false or making misleading is now allowed.

No entity or individual may illegally interfere in the seed producers' or traders' exercise of their right to independent production or operation.

**Article 41** The contents of seed advertisements shall conform to the provisions of this Law and the relevant advertisement laws and regulations, and the descriptions of main traits shall be consistent with those stated in the registration or record announcement.

**Article 42** The seeds being transported or posted shall be subject to quarantine in accordance with related laws and regulations.

**Article 43** Seed users shall have the right to purchase the seeds of their own free will. No entities or individuals may illegally interfere in such purchases.

**Article 44** The State provides support to the afforestation which popularizes and uses improved forest tree varieties. For the afforestation projects invested by the State or invested mainly by the State and for afforestation by state-owned forestry entities, improved forest tree varieties shall be used in accordance with the plans formulated by the administrative departments for forestry.

**Article 45** Where seed users suffer losses due to seed quality problems, or inauthentic information on seed label and instructions, the seed user could claim compensation from the traders selling the seeds, or claim compensation from seed producers or other traders. The amount of such compensation shall include purchase price of the seeds, losses of anticipated profits, and other relevant losses. Where the liability rests on seed producers or other traders, the trader selling the seeds that have paid the compensation shall have the right to recover the paid compensation from other producers or traders. Where the liability rests on the trader selling the

seeds, the seed producers or other traders trader who have paid the compensation shall have the right to recover the paid compensation from the trader selling the seeds.

## **Chapter VI. the Supervision and Administration on Seed**

**Article 46** The administrative departments of agriculture and forestry shall strengthen supervision and inspection on seed quality. The administrative measures, industrial standards and test methods shall be formulated by the administrative departments for agriculture and for forestry under the State Council.

The administrative departments of agriculture and forestry could detect the seed varieties produced and traded using rapid detecting method prescribed by the state, and the detection result can serve as evidence for administrative punishment. In case that the people being detected dissent with the result, s/he could apply for redetection, which could not use the same detection method. Where the parties suffer loss due to the wrong detection result, compensation shall be made in accordance with the laws.

**Article 47** The administrative departments for agriculture and for forestry may entrust seed quality inspection institutions with the inspection of seed quality.

The institutions for inspection of seed quality shall have the necessary testing facilities and capabilities, and shall pass the examination and assessment by the competent authorities under the people's government at or above the province level. Seed quality inspection institutions shall be manned with seed inspectors. Seed inspectors shall graduate from the secondary vocational or technical schools related to the profession or have received such education at a higher level, and possess relevant seed inspecting capacity and level.

**Article 48** Production and trading in fake and inferior seeds are prohibited. The administrative departments for agriculture and forestry and other related departments combat the illegal activities of producing and trading fake and inferior seeds in accordance with the laws, protect the legal rights and benefits of the farmers, and safeguard the fair and competitive market order. The following are fake seeds:

- (1) non-seeds passed off as seeds, and the seeds of one variety passed off as the seeds of another variety; and
- (2) the family, variety of seeds don't conform to what is stated in the label.

The following are inferior seeds:

- (1) the quality is lower than the standards set by the State;
- (2) the quality is lower than the index indicated in the label;
- (3) carrying the harmful organisms under quarantine specified by the State.

**Article 49** The administrative departments for agriculture and for forestry are the seed administrative enforcement organ. When seed law enforcement officials perform their duties in accordance with law, they shall show their administrative law-enforcement papers. The seed administrative enforcement organ shall have the power to take the following measures in order to enforce seed supervision and inspection duties according to the law:

- (1) Access to the production and operation sites for inspection;
- (2) Sampling, analysis and testing of seeds;
- (3) Check and copy relevant contracts, vouchers, books, production and trading files and other materials;

(4) Seize and detain the seeds which can be proved to be produced or traded illegally with evidence, as well as the premises, tools, equipment and vehicles used for illegal production and trading of seeds.

(5) Seal up the places for illegal seed production and business activities.

When the administrative departments of agriculture and forestry exercise the functions as required by this Law, the parties concerned shall give assistance and cooperation, and not refuse or obstruct.

The comprehensive law enforcement organ under the administrative departments for agriculture and for forestry or its entrusted seed administrative organ could conduct legal enforcement related to seed.

**Article 50** Seed producers and traders may lawfully and voluntarily form the seed industry associations to strengthen self-management for the industry, and safeguard the lawful rights and interests of members. The associations provide the members and industry development thereof with such services as information exchanges, technical training, credit building, marketing, and consulting.

**Article 51** Seed producers and traders may voluntarily apply to eligible certificate agencies for seed quality certification. The qualified ones may use the certification marks on packaging.

**Article 52** Where, due to force majeure, it is necessary to use the crop seeds that are lower than the standards of seeds for use set by the State or by the local authorities, the matter shall be subject to approval by the local people's government at or above the county level where the seeds are to be used.

**Article 53** Entities or individuals engaged in variety selection, seed production, trading or management shall comply with the laws and administrative regulations on plant quarantine in order to prevent dangerous plant diseases, insect pests, weeds and other harmful organisms from spreading.

No entities or individuals may conduct inoculation experiments against quarantine harmful organisms at seed production bases.

**Article 54** The administrative departments of agriculture and forestry at or above the province level shall publish such information as variety registration, variety record, new plant variety protection, seed production and trade license, supervision and management on the unified government information releasing platform.

The administrative departments under the State Council shall establish standardized sample bank of plant varieties to provide basis to seed supervision and management.

**Article 55** The administrative department of agriculture and forestry its staffs are not allowed to take part in or undertake activities related to seed production and business.

## **Chapter VII. Seed Imports and Exports, and Foreign Cooperation**

**Article 56** Any seeds imported or exported shall be subject to inspection and quarantine for the purpose of preventing dangerous plant diseases, insect pests, weeds and other harmful organisms from spreading into or out of China, and inspection and quarantine shall be carried out in accordance with the provisions of the laws, rules and regulations on entry or exit plant inspection and quarantine.

**Article 57** Those engaged in seed imports or exports shall in addition to the seed production and operation license; among them, those in the business of crop seeds imports and exports, shall obtain the seed import and export permit in accordance with related laws and regulations of the state.

The State Council shall set the limits of authority for examining and approving the introduction of the seeds of crops and forest trees from abroad, and formulate measures for validation of the import and export of such seeds and administrative measures for the introduction of transgenic plant varieties.

**Article 58** The quality of the imported seeds shall meet the national or industrial standards. Where there are no such standards, the standards stipulated in a contract may be applied.

**Article 59** Where seeds are imported for producing seeds for other countries, such imports may be exempt from the restriction provided in Paragraph 1, Article 58 of this Law, provided that a contract is signed for producing seeds for foreign countries. The imported seeds are only to be used for the production of hybrid seeds, and the products are not allowed to be sold at domestic markets.

The crop seeds or forest tree seeds introduced from abroad for experiment shall be planted in isolation, and no harvests therefrom may be sold as commodity seeds.

**Article 60** The import and export of fake and inferior seeds and of the seeds the import and export of which are prohibited by State regulations are prohibited.

**Article 61** The State shall establish the safety examination system for the seed industry. Where the foreign entities or individuals invest or acquire the domestic seed enterprises, or conduct technical cooperation with the domestic scientific research institutions and seed enterprises, the approval and management for the engagement of variety development, seed production and business shall be implemented by the relevant departments in accordance with the relevant laws and administrative regulations.

## **Chapter VIII. Supportive Measures**

**Article 62** The state increases support on the development of seed industry. Variety selection, production, demonstration, germplasm protection, seed reservations, and major seed producing counties shall be given financial supports.

The state encourages popularizing the application of efficient and safe seed producing and collecting machineries, and incorporates advanced and practical seed producing and collecting machines into agricultural machinery subsidized scope.

Actively channel the social funds into the seed industry.

**Article 63** The State shall strengthen construction of public infrastructures for the seed industry.

The arable lands in the advantageous seed breeding bases shall be protected perpetually as the basic farmland preservation area. The advantageous seed breeding bases shall be determined by the administrative departments for agriculture under the State Council after consultation with the local people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

**Article 64** Supports shall be given to seed enterprises engaging in variety selection, breeding and production of crops and forest trees according to the relevant regulations.

**Article 65** The State encourages and guides financial institutes to provide credit support to production, operation, purchasing and storage of seeds.

**Article 66** The State supports insurers to engage in the business of seed production insurance. The people's governments at or above the province level shall support the development of seed production insurance through such measures as subsidy for insurance premiums.

**Article 67** Research institutions, colleges and universities are encouraged to conduct cooperation regarding breeding talents with seed enterprises. Scientific research personnel in research institutions, colleges and universities are encouraged to conduct commercial seed breeding work in enterprises. Scientific research talents are encouraged to make innovation and start business.

**Article 68** The administrative department for agriculture or forestry under the State Council, the people's government of the province, autonomous region or municipality directly under the Central Governments where the host place of non-local breeding practices is located, shall improve the coordination and management of non-local breeding practices, and the transport departments shall give priority to the transport of seeds.

## **Chapter IX. Legal Liabilities**

**Article 69** Where the administrative departments for agriculture or forestry failed to make administrative license decision according to the laws, failed to investigate and punish illegal activities found or reported, or other activities failed to implement duties according to this Law, the people's government at the same level or above shall order to correct, and give sanctions to responsible executives in charge and other staffs with direct responsibility.

If anyone violates provisions of article 56 hereof, where staffs of the administrative departments of agriculture and forestry engaged in seed production and business, sanctions shall be applied based on the laws.

**Article 70** If anyone violates provisions of article 16 hereof, where the members and staffs of Variety Registration Committee fails to implement their duties according to the laws, resorts to deceit, plays favoritism and commits irregularities, sanctions shall be applied based on the laws; they are not allowed to engage in variety registration work within in five years counting from the date when the sanction is applied.

**Article 71** The variety testing, experimenting and seed quality inspection institutions which issue false test, experiment and inspection data or certificates shall be ordered to correct by the administrative department for agriculture or forestry at or above county level. The entity shall be imposed a fine between RMB50,000 and RMB100,000; the executives with direct responsibility and other staffs with direct responsibility shall be imposed a fine between RMB10,000 and RMB50,000; in case illegal gains exist, the illegal gains shall be confiscated; in case losses caused to seed users or other seed producers and traders, joint liability shall be undertaken with the seed producer and trader; in case of gross violation, the qualification for seed quality inspection will be abolished by the administrative department for agriculture or forestry at or above provincial level.

**Article 72** If anyone violates provisions of article 28 hereof to conduct any behavior infringing upon the new plant variety right, the parties shall negotiate settlement; when negotiation is reluctant or unsuccessful, the owner or stakeholder of the variety right may apply for settlement to the administrative departments of agriculture and rural affairs, forestry and grassland under the people's government at or above county level. The party concerned may also directly file a lawsuit to the people's court.

The administrative departments of agriculture and rural affairs, forestry and grassland under the people's government at or above county level may, subject to voluntariness of the parties, conduct mediation on damage caused by the infringement. Any agreement reached through the mediation shall be performed by the parties. If the parties fail to perform the agreement or no agreement is reached through the mediation, the owner or stakeholder of the new plant variety right may file a lawsuit to the people's court according to law.

The indemnity of infringing new plant variety right shall be determined in accordance with the right holder's actual losses resulted from infringement; in case actual losses are difficult to determine, the indemnity can be determined in accordance with the infringer's benefits gained from infringement; in case both right holder's losses and infringer's benefits are difficult to determine, the indemnity can be appropriately determined with reference to the times of the new plant variety right license fee. The indemnity shall include right holder's reasonable expenses to cease infringement. In case new plant variety right is seriously infringed, the indemnity can be between one times and **five** times of the value determined by above-mentioned method.

Where the right holder's losses, infringer's benefits, and new plant variety right license fee are all difficult to determine, the people's court can determine an indemnity under RMB **5** million in accordance with such factors as the type of new plant variety right, infringement nature and circumstances.

Where it is not known that the propagating material or harvesting material of an authorized variety have not acquired the permission of the owner of the new plant variety right , and it can be proved that the propagating material or harvesting material has a legal source, it shall not be liable for compensation.

When settling a case regarding infringement of the new plant variety right, the administrative departments of agriculture and rural affairs, forestry and grassland under the people's government at or above county level may order the infringer to cease the infringing act and confiscate the illegal gains and the seeds to safeguard public benefits. In case the amount is less than RMB 50,000, a fine between RMB 10,000 and RMB 250,000 will be imposed; if such amount is more than RMB 50,000, a fine of 5 times to 10 times as that of the amount will be imposed.

When settling a case of counterfeit of authorized varieties, the administrative departments of agriculture and rural affairs, forestry and grassland under the people's government at or above county level may order the cease of the counterfeit act and confiscate the illegal gains and the seeds to safeguard public benefits. In case the amount is less than RMB 50,000, a fine between RMB 10,000 and RMB 250,000 will be imposed; if such amount is more than RMB 50,000, a fine of 5 times to 10 times as that of the amount will be imposed.

**Article 73** If there's any dispute between the parties regarding the application right of the new plant variety and the ownership of the new plant variety right, either party may file a lawsuit to the people's court.

**Article 74** If any one violates the provisions of article 49 hereof to produce and trade false seeds, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease the production and trade, confiscate the illegal gains and the seed, and the seed production and trade license will be revoked. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 10,000 and RMB 100,000 will be imposed; if such amount is more than RMB 10,000, a fine of 10 times to 20 times as that of the amount will be imposed.

Where a fixed-term imprisonment or above penalty is sentenced due to crime from false seed production and trade, the legal representative and executive with direct responsibility of the seed enterprise or other entity are not allowed to hold the position of legal representative or high level manager in seed enterprises within five years counting from the date when the penalty is completed.

**Article 75** If anyone violates provisions of article 49 hereof to produce and trade low-quality seeds, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease the production and trade, confiscate the illegal gains and the seeds. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 5,000 and RMB 50,000 will be imposed; if such amount is more than RMB 10,000, a fine of 5 times to 10 times as that of the amount will be imposed; in case of gross violation, the seed production and trade license will be revoked.



Where a fixed-term imprisonment or above penalty is sentenced due to crime from low-quality seed production and trade, the legal representative and executive with direct responsibility of the seed enterprise or other entity are not allowed to hold the position of legal representative or high level manager in seed enterprises within five years counting from the date when the penalty is completed.

**Article 76** If anyone violates provisions of article 32, article 33 and article 34 hereof to conduct any of the following behaviors, the administrative departments of agriculture and rural affairs, forestry and grassland under the people's government at or above county level shall order it to correct such behavior and confiscate the illegal gains and the seeds. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 3,000 and RMB 30,000 will be imposed; if such amount is more than RMB 10,000, a fine of 3 times to 5 times as that of the amount will be imposed; the seed production and trade license may be revoked.

- (I) Producing and selling seeds without the seed production and trade license;
- (II) Obtaining the seed production and trade license through fraud, bribery or other improper means;
- (III) Failing to produce and sell seeds according to stipulations of the seed production and trade license;
- (IV) Forging, altering, transferring or lending the seed production and operation license.

For the entity with the seed production and trade license revoked, its legal representative and the executive with direct responsibility are not allowed to hold the position of legal representative or high level manager in seed enterprises within five years counting from the date when the penalty decision is made.

(V) Those engage in seed production while do not have the isolation and cultivation conditions for breeding seeds, do not have seed production sites that are free of quarantine pests, or have seed collection forests determined by the forestry and grassland authorities of the people's governments at or above the county level.

(VI) Producing seeds without implementing seed inspection and quarantine procedures.

**Article 77** If anyone violates provisions of article 21, article 22 and article 23 hereof to conduct any of the following behaviors, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease illegal behavior, confiscate the illegal gains and the seeds, and impose a fine between RMB 20,000 and RMB 200,000.

- (I) Popularize or sell crop varieties that should be subject to registration but actually not so;
- (II) Popularize or sell improved forest tree variety that should be subject to registration but actually not so;
- (III) Popularize or sell crop varieties or improved varieties of forest tree that should be ceased to popularization and sales;
- (IV) Popularize crop varieties that should be subject to record but actually not so; or sell in the name of the recorded variety;
- (V) Popularize crop varieties whose record have been revoked, or sell in the name of recorded variety.

If anyone violates provisions of article 23 and article 42 hereof to advertise crop varieties that should be subject to registration or record but actually not so, or the description of major characters of the variety in the advertisement is not consistent with registration or record announcement, legal liability shall be imposed according to related rules of Advertising Law of the People's Republic of China.

**Article 78** If anyone violates provisions of article 58, article 60 and article 61 hereof to conduct any of the following behaviors, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to correct such behavior and confiscate the illegal gains and the seeds. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 3,000 and RMB 30,000 will be imposed; if such amount is more than RMB 10,000, a fine of 3 times to 5 times as that of the amount will be imposed; in case of gross violation, the seed production and trade license will be revoked:

(I) Importing and exporting seeds without permit;

(II) Selling seeds produced for foreign countries in China;

(III) Selling the harvest of the crop or forest seeds introduced into China from foreign countries for introduction test in China; and

(IV) Importing and exporting false or low quality seeds or seeds that are not allowed for import and export by the state.

**Article 79** If anyone violates provisions of article 36, article 38, article 40 and article 41 hereof to conduct any of the following behaviors, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to correct such behavior and shall impose a fine between RMB 2,000 and RMB 20,000:

(I) Selling seeds which should be packed but actually not packed;

(II) Selling seeds without instructions or with nonconforming label contents;

(III) Altering labels;

(IV) Failing to establish and maintain seed production and trade files as required;

(V) Failing to file as required where a seed producer or trader establishes any branch out of territory, or trades specially in packed seeds that are not to be divided into smaller packages, or produces/sells seeds on the basis of written commission as the agent.

**Article 80** If anyone violates provisions of article 8 hereof to occupy or damage germplasm, or collect or cut the natural germplasm resources under state protection, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease illegal behaviors, confiscate the illegal gains and the seeds, and shall impose a fine between RMB 5,000 and RMB 50,000; and such person shall be liable for any losses caused thereby according to law:

**Article 81** If anyone violates provisions of article 11 hereof to provide germplasm resources to foreign countries or introduce germplasm resources from foreign countries; conduct cooperative research using germplasm resources with foreign entities or individuals, the administrative departments of agriculture and forestry under the State Council or under the people's government of provinces, autonomous regions and municipalities directly under the Central Government shall confiscate the illegal gains and germplasm resources and shall impose a fine between RMB 20,000 and RMB200,000:

If anyone takes or transports germplasm resources out of China without the approval of the administrative department of agriculture and forestry, the custom should detain the germplasm resources and transfer them to the

administrative departments of agriculture and forestry under people's government of provinces, autonomous regions and municipalities directly under the Central Government.

**Article 82** If anyone violates provisions of article 35 hereof to snatch the immature seeds, damage the parent trees, or to collect seeds from the low quality parent trees or forest, the administrative departments of agriculture and forestry under people's government at or above county level shall order it to stop the seed collection, confiscate the seeds collected, and impose a fine of 2 times to 5 times as the amount of the forest seeds collected.

**Article 83** If any seed enterprise violates provisions of article 17 hereof to conduct any counterfeiting, the administrative departments of agriculture and forestry under people's government at or above provincial level shall impose a fine between RMB one million and RMB five million; the seed enterprise is not allowed to apply for variety registration according to the provisions of article 17 of this law; where the seed users or other seed producers and traders suffer losses, compensation shall be made in accordance with the laws.

**Article 84** If anyone violates provisions of article 45 hereof to fail to use the improved forest varieties according to the plan developed by the administrative department of forestry, the administrative department of forestry of the people's government at the same level shall order it to correct such violation within a time limit; if such violation is not corrected after expiration of the specified time limit, a fine between RMB3000 and RMB30,000 shall be imposed.

**Article 85** If anyone violates provisions of article 54 hereof to make quarantine pest inoculation experiment in the seed production base, the administrative departments of agriculture and forestry under people's government at or above county level shall order it to cease the experiment and impose a fine between RMB 5,000 and RMB 50,000.

**Article 86** If anyone violates provisions of article 50 hereof to refuse or obstruct supervision and inspection conducted by the administrative departments of agriculture and forestry according to this law, such departments shall impose a fine between RMB2000 and RMB50,000, and order it to stop production and business for rectification; where acts violate the public security administration, the public security agencies shall impose public security administration punishment according to the law.

**Article 87** If anyone violates provisions of article 13 hereof to privately trade breeding result, and results in economic losses to the entity, s/he should assume compensation liabilities.

**Article 88** If anyone violates provisions of article 44 hereof to force seed users to purchase or use seeds against their willing, thus causing losses to such users, shall indemnify such users against such losses.

**Article 89** If anyone violates provisions hereof and such violation constitutes a crime, it shall be investigated for criminal liability according to law.

## **Chapter X. Supplementary Provisions**

**Article 90** The following terms used in this Law shall mean:

(1) Germplasm resources refer to the basic materials for breeding new varieties, including the propagating materials for the cultigens and wild varieties of various plants as well as the hereditary materials of the various plants artificially created with the above-mentioned propagating materials.

(2) Varieties mean the flora artificially bred or discovered and improved, and their morphological characteristics are in conformity with their biological characteristics and their hereditary properties are relatively stable.

(3) The major crops refer to rice, wheat, maize, cotton and soybean.

(4) The major forest trees are determined and announced by the administrative department for forestry and grassland under the State Council; the administrative department for forestry and grassland under the people's government of a province, autonomous region or municipality directly under the Central Government may determine no more than eight other trees in addition to the ones determined by the said department under the State Council.

(5) Improved varieties of forest trees refer to the verified tree seeds which, in a given area, are obviously better than those of the propagating and planting materials mainly planted at the time in terms of output, adaptability and resistance.

(6) Novelty in respect of a variety, in case of applying for a New Variety Title, refers to the circumstances under which the seeds of such variety has been offered for sale or popularized, by the applicant or through its permit, for less than a year within China till the date when the application is submitted; if out of China, less than six years for woody or vine plant; less than four years for other plants.

In respect of any plant variety which has been added to the List of Protected Plant Varieties as a genera or varieties, if the application for New Variety Right has been submitted within one year of the List being published, and the seeds of such variety has been offered for sale or popularized less than four years, then the novelty shall be deemed still available.

In addition to the losses of novelty in sales and promotion, following circumstances shall be deemed to have lost their novelty:

1. The variety is actually spread as confirmed by the administrative departments of agriculture and rural affairs, forestry and grassland of the provinces, autonomous regions and municipalities directly under the Central Government based on the sown area.

2. The variety has not applied for new plant variety right after it has been registered or recorded for more than two years.

(7) Distinctiveness means that the new plant variety shall have one and above traits which are clearly distinguishable from varieties of plants known.

(8) Uniformity means that the relevant special characteristics or properties of a new plant variety, with the exception of foreseeable variation, remain consistent within the flora and among the individuals.

(9) Stability means that the main traits of a new plant variety, after repeated propagation or at the end of a particular cycle of reproduction, remain unchanged.

(10) An essentially derived variety (EDV) refers to a variety that is essentially derived from the original variety or derived from an EDV of the original variety. It is obviously different from the original variety. Except for the difference in traits caused by derivation, it is the same as the original variety in terms of expressing the basic characters produced by the genotype or combination of genotypes of the original variety.

(11) Known varieties shall mean the plant varieties that have been accepted, or passed the variety registration, variety record, new variety protection, or have been sold and popularized.

(112) Label refers to the specific patterns and text descriptions which are printed, pasted, fixed or attached to the seed or its packaging surface.

**Article 91** The germplasm management and selection, production and trade, and management of grass seed, tobacco seed, herbs seed and edible fungus strains shall be carried out in accordance with this law.

**Article 92** The Law will be enforced from XX (month)XX(date)XX (year).

## **Appendix**

### **Seed Law of the People's Republic of China**

Chapter I General Provisions

Chapter II Germplasm Protection

Chapter III Variety Selection and Breeding, Registration and Record

Chapter IV New Varieties Protection

Chapter V Seed Production and Business Operation

Chapter VI Supervision and Administration on Seed

Chapter VII Seed Imports and Exports, and Foreign Cooperation

Chapter VIII Supporting Measures

Chapter IX Legal Liabilities

Chapter X Supplementary Provisions

#### **Chapter I General Provisions**

**Article 1** This Law is enacted for the purpose of protecting and making rational use of germ plasm resources, standardizing the variety selection and the production and management of seeds, protecting the right of new plant variety, safeguarding the lawful rights and interests of seed producers, traders and seed users, improving the quality of seeds, pushing forward the industrial management of seeds, developing modern seed industry, safeguarding national food security, and promoting the development of crop cultivation and the forestry industry.

**Article 2** This Law shall apply to the activities such as variety selection, production of, trading in and management of seeds engaged in within the territory of the People's Republic of China.

The term "seed" in this Law mean the materials for planting or propagating crops and forest trees, including grains, fruits, roots, stems, seedlings, sprouts, leaves and flowers, etc.

**Article 3** The administrative departments for agriculture and for forestry under the State Council shall be respectively in charge of the work related to crop seeds and forest tree seeds throughout the country. The administrative departments for agriculture and for forestry under the local people's governments at or above the county level shall be in charge of the work related to crop seeds and forest tree seeds within their respective administrative regions.

Government agencies and related departments at all levels shall take measures to strengthen legal enforcement and supervision in seed industry, and panelize illegal activities violating the rights of farmers.

**Article 4** The State supports the efforts to protect germplasm resources and to select, produce, update, and popularize improved varieties, encourages the combination of variety selection with seed production and trading, and rewards the entities and individuals that achieve outstanding successes in the protection of germ plasm resources and in the selection and popularization of improved varieties.

**Article 5** The people's government at or above provincial level should make development plans according to the guidelines of Making Use of Science and Education to Improve Agriculture and to the requirements for the development of the planting and forestry industries, and organize for implementation.

**Article 6** People's governments at or above the province level shall establish a system for reserving seeds, mainly to meet the need of production in times of calamities and swap of positions, and to ensure the security of agricultural and forestry production. The seeds kept in reserve shall be regularly inspected and replaced with new seeds. Specific measures for seed reserve shall be formulated by the State Council.

**Article 7** The selection, experiment, validation and popularization of transgenic plant varieties shall be subject to safety assessment and strict safety control measures shall be taken. The administrative departments for agriculture and for forestry under the State Council shall strengthen tracking and supervision, and promptly announce the information regarding the validation and popularization of transgenic plant varieties. Specific measures in this respect shall be formulated by the State Council.

## **Chapter II Germplasm Protection**

**Article 8** The State protects germ plasm resources in accordance with law, and no entities or individuals may seize or impair germ plasm resources.

Collecting and cutting natural germ plasm resources that are under special protection of the State are prohibited. Where such collecting or cutting is required for scientific research or other special purposes, the matter shall be subject to approval by the administrative department for agriculture or for forestry under the State Council or under the people's government of a province, autonomous region or municipality directly under the Central Government.

**Article 9** The State, surveys, collects, sorts out, verifies, registers, conserves, exchanges and utilizes germ plasm resources in a planned way, and regularly issues the catalog of available germ plasm resources. Specific measures in this respect shall be formulated by the administrative departments for agriculture and for forestry under the State Council.

### **Article 10**

The administrative departments for agriculture and for forestry under the State Council shall establish a national bank of germ plasm resources, germ plasm resources conservation zones or germ plasm resources reserves. The administrative departments for agriculture and for forestry under the people's governments of provinces, autonomous regions or municipalities directly under the Central Government may, in light of their need, establish germ plasm resources banks, conservation zones or germ plasm resources reserves. The germ plasm resources at the germ plasm resources banks, conservation zones or reserves are the public resources, and shall be open and utilize according to law. To occupy any germ plasm resources bank, conservation zone or germ plasm resources reserve must obtain the approval from the authority who established it.

**Article 11** The State has the sovereignty over germ plasm resources. Any entities or individuals that wish to provide germ plasm resources to abroad, or carry out joint research on utilizing germ plasm resources with any overseas enterprises or individuals shall apply to the administrative department for agriculture or for forestry under the people's governments of provinces, autonomous regions or municipalities directly under the Central Government, and provide the plan on sharing benefits with the state. The administrative department for agriculture or for forestry receiving the application shall review and report to the administrative department for agriculture or for forestry under the State Council for approval.

The introduction of germ plasm resources from abroad shall be handled in accordance with the relevant regulations laid down by the administrative department for agriculture or for forestry under the State Council.

### **Chapter III Variety Selection and Breeding, Registration and Record**

**Article 12** The State supports the public research institutes, colleges and universities to focus on conducting fundamental, advanced, applicable and technical researches on breeding of seeds, breeding of conventional crop seeds, selection and breeding of asexual propagation materials and other researches for the public welfare.

The State encourages the seed enterprises to make full use of the results from public welfare researches and cultivate quality varieties with independent intellectual property rights. Encourage seed enterprises, research institutes, colleges and universities to build technology research and development platforms, to establish a market-oriented, capital-linked, benefit-sharing and risk-sharing technology innovation system for the seed industry with the combination of production, academic and researching resources.

The State strengthens the scientific and technical innovation capacity building in seed industry, promotes technology results transformation, and safeguards the legal rights of scientific and technical staffs in seed industry.

**Article 13** The invention patents and rights of new plant varieties relating to seed breeding developed with public finance shall belong to the corresponding project undertakers according to law, unless such inventions or varieties involve national security, national interests, or major social and public interests.

Transfer and licensing of the rights of new plant varieties, which are generated mainly from public finance, shall be transacted through a public trading platform, and unauthorized private trading is prohibited.

**Article 14** Where the earnings of entities or individuals are reduced because the administrative departments for forestry establish testing stands, experimental stands, fine tree collection areas or gene banks for selection of improved varieties of forest trees, the administrative departments for forestry that give the approval shall make economic compensation to the entities or individuals in accordance with the relevant regulations of the State.

**Article 15** The State shall implement a registration scheme for major crop and forest tree varieties. The major crop and forest tree varieties shall be subject to registration at the national or provincial level prior to their popularization and application. The major forest tree varieties determined by the administrative departments for agriculture and for forestry under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be subject to registration at the province level.

Varieties applying for registration shall comply with the requirements of distinctness, uniformity and stability.



The registration measures for major crop and forest tree varieties shall be determined by the administrative departments for agriculture and for forestry under the State Council. The registration measures shall embody the principles of fairness, openness, scientificity and efficiency and shall solicit the opinions from seed breeders, users, producers, traders and representatives of relevant industries when developing or revising the registration measures.

**Article 16** The administrative departments for agriculture and for forestry under the State Council and those under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall respectively set up crop and forest tree varieties registration committees composed of professionals, which shall be in charge of the registration of major crop and forest tree varieties. The committee should establish the registration files, which should include information such as application documents, testing data of variety registration, seed samples, review opinion and review conclusions. The registration files must be traceable. Review opinion shall be included when varieties passing registration release related information in accordance with the law, and subject to public surveillance.

Variety registration adopts avoidance system. Members and staffs of variety registration committee and related testing staffs shall be devoted to their duties, justice and incorruption. Offences by above-mentioned people reported by entities or individuals, or discovered by supervision and inspection shall be timely handled by the administrative departments for agriculture and for forestry at or above provincial level.

**Article 17** For enterprise with combination of breeding, propagation and popularization, and satisfying conditions of the administrative departments for agriculture and forestry under the State Council, the enterprise may complete the experiment according to the registration standards in case the major crop or forest tree variety is independently developed by itself. Variety Registration Committee shall issue registration certificates to the varieties reaching registration standards. Seed enterprise is responsible for truth of the experiment data, and traceability must be guaranteed. Seed enterprise should also accept supervision from the administrative departments for agriculture and forestry at or above provincial level and the society.

**Article 18** Where applicants have objections to the decision that their crop or forest tree varieties fail to pass the registration, they may apply for review to the original Variety Registration Committee, or to the National Variety Registration Committee.

**Article 19** The crop and forest tree varieties that passed the registration at the national level shall be published by the administrative departments for agriculture and for forestry under the State Council, and such varieties may be popularized at the suitable ecological regions around the country. The crop and forest tree varieties that passed the registration at the province level shall be published by the people's government's administrative departments of provinces, autonomous regions and municipalities directly under the Central Government, and such varieties may be popularized in the suitable ecological regions in their corresponding administrative regions. Similar ecological regions in other provinces, autonomous regions and municipalities directly under the Central Government may introduce such varieties after record to the corresponding people's government administrative departments of agriculture and forestry of the provinces, autonomous regions and municipalities directly under the Central Government.

The introduction of any forest tree variety that is not naturally distributed in the region shall pass the test according to the national plant introduction standard.

**Article 20** The administrative departments for agriculture and forestry of provinces, autonomous regions and municipalities directly under the Central Government shall improve regional coordination system of variety selection and registration to promote the breeding and popularization of good varieties.

**Article 21** For the crop and tree varieties passing the registration, if discovered to be with major defects that cannot be overcome and cannot be continuously sold and popularized, the registration would be revoked after the original Variety Registration Committee review and confirm. The original department announcing the registration announces to terminate the sales and popularization.

**Article 22** The State shall apply variety registration system to some of non-major crops. Varieties listed in Non-major Crop Record Category shall be recorded prior to its popularization.

Crop scope subject to record shall be strictly controlled, and defined based on principles of biodiversity protection, assuring consumption safety and seed use safety. The record category shall be formulated and adjusted by the administrative departments for agriculture and forestry under the State Council.

For variety record application, applicants shall submit application documents and seed samples to the administrative departments for agriculture of provinces, autonomous regions and municipalities directly under the Central Government. The applicant will be responsible for the authenticity of the application documents and seed samples provided, ensure the traceability, and accept supervision and inspection. Application documents shall include the type, name, origin, characteristics, breeding process as well as testing results of distinctness, uniformity and stability of the variety.

The administrative departments for agriculture of provinces, autonomous regions and municipalities directly under the Central Government shall implement paper inspection of application documents submitted by the applicants within 20 working days after the record application is accepted. For the application documents satisfying the requirements, they should report to the administration departments for agriculture under the State Council for record.

For recorded varieties whose application documents or seed samples exist falsity, the administration departments for agriculture under the State Council shall revoke the variety record, input the applicant's violation information into society integrity profile, and publish to the public; for recorded varieties that caused losses to seed users or other seed operators, compensation responsibility shall be undertaken based on the law.

For recorded varieties, if discovered to be with major defects that cannot be overcome, the administration departments for agriculture under the State Council shall revoke the variety record, and announce to the public to terminate the popularization.

The measures for non-major crop variety record shall be formulated by the administrative departments of agriculture under the State Council.

**Article 23** The crop varieties that are subject to registration but or fail to be registered shall not be advertised, popularized, or sold.

No forest tree varieties that are subject to registration but fail to pass the registration may be sold or popularized as improved varieties. However, where such varieties are really needed for production, the matter shall be subject to the confirmation of the forest tree Varieties Registration Committee.

**Article 24** Foreigners, foreign enterprises and other foreign organizations that have no regular abode or business place from which to apply for the examination and approval of seeds should entrust the matter to Chinese institutions of scientific research, production and operation, and these institutions must have legal personality.

Where foreign organizations or foreigners that have no regular domiciles or business places in China apply for registration or record of their varieties in China, they shall ask Chinese seed enterprise with the status of legal person to serve as their agents.

#### **Chapter IV New Varieties Protection**

**Article 25** The State shall establish a new plant varieties protection system, whereby the rights of new plant varieties shall be granted by the administrative department for agriculture or for forestry under the State Council to those varieties listed in the national protected plant varieties catalog, cultured or discovered in the wilderness and then selected and bred, characterized by novelty, uniqueness, uniformity and stability and appropriately named. The legal rights of the new plant variety owner shall be protected. Other terms shall be implemented in accordance with this Law, related laws and regulations such as the new plant variety content and belonging, granting conditions, application and acceptance, review and approval, duration, cessation and invalidation, etc.

The State encourages and supports seed scientific and technical innovation, new plant variety breeding and result transformation. Where the variety is granted new plant variety right and popularized, the breeder shall be entitled to obtain corresponding appropriate economic profits according to the laws.

**Article 26** One new plant variety shall be granted only one set of variety rights. Where two or more than two applicants apply for the new variety right to an identical new plant variety, the new variety right shall be granted to the first applicant; where the applications are submitted simultaneously, the new variety right shall be granted to the person who bred the new plant variety at first.

The new plant variety that violates the laws, regulations, harms the public interests and the ecological environment will not be granted with the right of new plant variety.

**Article 27** The denomination of the new plant variety which was granted with new plant variety right shall be distinguishable from every denomination which designates a known variety of the same botanical genus or varieties or of a closely related genus or varieties. After registration, the denomination shall be the generic designation of the new plant variety.

The following denominations shall not be used in the designation of varieties:

- (a) those consisting solely of figures;
- (b) those contrary to social morality;
- (c) those apt to cause misunderstanding as to the special characteristics and properties of new varieties of plants or the identities of breeders.

The same plant variety shall only use one name for new variety protection, variety registration, variety record, sales and popularities. The seeds for production, marketing and sales must be the consistent with the sample provided for the new variety protection, variety registration, and variety record.

**Article 28** The entity which or the person who is granted with variety right has an exclusive right in their protected variety. No other entity or individual shall, without permission from the owner of the variety rights, produce, reproduce or sell the propagation material of the protected variety, or repeatedly use the propagation material of the protected variety for commercial purposes in the production of the propagation material of another variety. Except as otherwise provided in this Law, related laws and regulations.

**Article 29** To use a granted variety in the following circumstances is not required to obtain permission from or pay royalty to the new variety right owner, but such use shall not infringe other rights of the new variety right owner according to this Law, related laws and regulations:

- (1) Use the granted new variety to breed seeds, or carry out other research activities;
- (2) Reproduce or use the propagation materials of the granted variety by farmers.

**Article 30** Where the national interest or public interest so requires, the administrative departments for agriculture and forestry under the State Council

may make a decision on a compulsory license to exploit new plant varieties, which shall be registered and publicly announced.

The entity which or the person who is granted a compulsory license for exploitation do not enjoy the exclusive right, and has no right to allow any other to exploit.

## **Chapter V Seed Production and Business Operation**

**Article 31** The seed production and business license for seed import and export shall be subject to examination by administrative departments of agriculture and forestry of the people's governments of the provinces, autonomous regions, municipalities directly under the State Council, and be issued by the administrative departments of agriculture and forestry under the State Council.

The production and operation licenses for enterprises engaged in businesses including major crop hybrid seeds and parent seeds, tree seeds of improved variety, as well as the enterprises with integrated business in breeding, production and marketing, eligible for requirements of the administrative departments for agriculture and forestry under the State Council shall be subject to examination by the people's government administrative departments of agriculture and forestry at county level, and be issued by the administrative departments of agriculture and forestry of the people's governments of the provinces, autonomous regions, municipalities directly under the State Council.

The license of production and business of any seeds other than those listed in the two preceding paragraphs shall be issued after examination by administrative department for agriculture or for forestry under the people's government at or above the county level where the seed producer or trader is located.

The seed production and business license is not required for the persons that only produce non-major crop seeds or non-major forest tree seeds.

**Article 32** Entities or individuals that apply for the seed production and business license shall have facilities and equipment, as well as professionals commensurate with seed production and business, and satisfy other conditions provided for in the laws and regulations and by the administrative departments for agriculture and for forestry under the State Council.

For those who produce seeds shall also have the isolating and breeding facilities for propagating seeds, and have seed production sites free of quarantine pests or nurse-crop stands designated as such by the administrative department for forestry under the people's government at or above the county level.

To apply for seed production and business license for variety that was granted the new plant variety rights, written consent shall be obtained from the owner of the new plant variety.

**Article 33** The seed production and business license shall indicate the name and address of producer or trader, name of legal representative, the variety and location of produced seed, scope of seed production and business, term of license and covered territory, etc.

In case of changes to the previous matters, the application for change registration shall be submitted to the original license issuing organ within thirty (30) days after the change.

Unless otherwise prescribed, seed production and business without a seed production and business license, and violation of the provisions stated in the seed production and trading license are prohibited. Forgery, alteration, transfer and lease of the seed production and trading license are prohibited.

**Article 34** Seeds shall be produced in compliance with technical regulations for seed production, inspection and quarantine.

**Article 35** Collection of seeds within forest seed production bases shall be arranged by the operators of the seed production bases, and the seeds shall be collected in conformity with the relevant national standards.

Plundering of unripe seeds and doing damage to mother trees are prohibited, and no seeds may be collected in inferior forest stands or from inferior mother trees.

**Article 36** A seed trader shall establish and keep the production and business files indicating the seed source, origin, quantity, quality, sales destination, sales date, and responsible personnel, and so on to ensure traceability. The items listed in seed production and business file, the period for keeping the production and business files and seed samples shall be specified by the administrative departments for agriculture and for forestry under the State Council.

**Article 37** The leftover conventional seeds self-propagated and used by farmers can be sold and exchanged on the market without a seed production and business license.

**Article 38** The territory covered by a seed production and business license shall be determined by the authority that issues the license within its jurisdiction. Where a seed producer or trader establishes any branch within the territory covered by the seed trading license, or trades specially in packed seeds that are not to be divided into smaller packages, or produces/sells seeds on the basis of written commission as the agent of a seed

producer/trader that has the seed production and business license, are not required to be accompanied with a seed production and business license, but the producer or trader shall file with the local administrative department for agriculture or forestry.

The valid area of the production and business licenses can be the whole country for the seed enterprises with integrated business in breeding, production and marketing, and eligible for the requirements of the administrative departments for agriculture and forestry under the State Council.

**Article 39** Without the approval of the administrative departments for forestry under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, no person may purchase valuable tree seeds, or forest seeds that are restricted from purchase by the people's government of same level.

**Article 40** Seeds for sale shall be processed, graded and packed, except those that cannot be processed or packed.

Seeds in large package or imported may be divided and repacked; in such cases, the repackaging entities shall be clearly stated and they shall be responsible for the quality of the seeds.

**Article 41** The seeds for sale shall be in conformity to the national or industrial standards, and attached the specific label and instructions, on which the content indicated shall be consistent with the seeds to be sold. The seed producers and traders shall be responsible for the accuracy of the information indicated in the seed labels and instructions, and for the quality of their seeds.

The label shall clearly indicate the seed category, variety name, serial number of variety registration or record, suitable planting areas and seasons for the variety, producer/trader and registered venue, quality index, serial number of quarantine certificate, serial number of the seed production and business license, and information code, as well as other matter stipulated by the administrative departments of agriculture and forestry under the State Council.

For the sale of seeds with protected variety, the serial number of variety right shall be attached.

For the sale of imported seeds, the serial number of import approval and a label in Chinese shall be attached.

For the sale of the seeds of transgenic plant varieties, it must be marked with visible words, and the safety control measures for the use thereof shall be indicated.

Seed producers/traders shall comply with the relevant laws and regulations, be honest and faithful, provide seed users with the information of seed producer, main traits of seeds, primary cultivation measures, instructions for use of the seeds, risk warning and relevant advisory services. Propaganda being false or making misleading is now allowed.

No entity or individual may illegally interfere in the seed producers' or traders' exercise of their right to independent production or operation.

**Article 42** The contents of seed advertisements shall conform to the provisions of this Law and the relevant advertisement laws and regulations, and the descriptions of main traits shall be consistent with those stated in the registration or record announcement.

**Article 43** The seeds being transported or posted shall be subject to quarantine in accordance with related laws and regulations.

**Article 44** Seed users shall have the right to purchase the seeds of their own free will. No entities or individuals may illegally interfere in such purchases.

**Article 45** The State provides support to the afforestation which popularizes and uses improved forest tree varieties. For the afforestation projects invested by the State or invested mainly by the State and for afforestation by state-owned forestry entities, improved forest tree varieties shall be used in accordance with the plans formulated by the administrative departments for forestry.

**Article 46** Where seed users suffer losses due to seed quality problems, or inauthentic information on seed label and instructions, the seed user could claim compensation from the traders selling the seeds, or claim compensation from seed producers or other traders. The amount of such compensation shall include purchase price of the seeds, losses of anticipated profits, and other relevant losses. Where the liability rests on seed producers or other traders, the trader selling the seeds that have paid the compensation shall have the right to recover the paid compensation from other producers or traders. Where the liability rests on the trader selling the seeds, the seed producers or other traders trader who have paid the compensation shall have the right to recover the paid compensation from the trader selling the seeds.

## **Chapter VI the Supervision and Administration on Seed**

**Article 47** The administrative departments of agriculture and forestry shall strengthen supervision and inspection on seed quality. The administrative measures, industrial standards and test methods shall be formulated by the administrative departments for agriculture and for forestry under the State Council.

The administrative departments of agriculture and forestry could detect the seed varieties produced and traded using rapid detecting method prescribed by the state, and the detection result can serve as evidence for administrative punishment. In case that the people being detected dissent with the result, s/he could apply for redetection, which could not use the same detection method. Where the parties suffer loss due to the wrong detection result, compensation shall be made in accordance with the laws.

**Article 48** The administrative departments for agriculture and for forestry may entrust seed quality inspection institutions with the inspection of seed quality.

The institutions for inspection of seed quality shall have the necessary testing facilities and capabilities, and shall pass the examination and assessment by the competent authorities under the people's government at or above the province level. Seed quality inspection institutions shall be manned with seed inspectors. Seed inspectors shall graduate from the secondary vocational or technical schools related to the profession or have received such education at a higher level, and possess relevant seed inspecting capacity and level.

**Article 49** Production and trading in fake and inferior seeds are prohibited. The administrative departments for agriculture and forestry and other related departments combat the illegal activities of producing and trading fake and inferior seeds in accordance with the laws, protect the legal rights and benefits of the farmers, and safeguard the fair and competitive market order. The following are fake seeds:

(1) non-seeds passed off as seeds, and the seeds of one variety passed off as the seeds of another variety; and

(2) the family, variety of seeds don't conform to what is stated in the label.

The following are inferior seeds:

(1) the quality is lower than the standards set by the State;

(2) the quality is lower than the index indicated in the label;

(3) carrying the harmful organisms under quarantine specified by the State.

**Article 50** The administrative departments for agriculture and for forestry are the seed administrative enforcement organ. When seed law enforcement officials perform their duties in accordance with law, they shall show their administrative law-enforcement papers. The seed administrative enforcement organ shall have the power to take the following measures in order to enforce seed supervision and inspection duties according to the law:

(1) Access to the production and operation sites for inspection;

(2) Sampling, analysis and testing of seeds;

(3) Check and copy relevant contracts, vouchers, books, production and trading files and other materials;

(4) Seize and detain the seeds which can be proved to be produced or traded illegally with evidence, as well as the premises, tools, equipment and vehicles used for illegal production and trading of seeds.

(5) Seal up the places for illegal seed production and business activities.

When the administrative departments of agriculture and forestry exercise the functions as required by this Law, the parties concerned shall give assistance and cooperation, and not refuse or obstruct.

The comprehensive law enforcement organ under the administrative departments for agriculture and for forestry or its entrusted seed administrative organ could conduct legal enforcement related to seed.

**Article 51** Seed producers and traders may lawfully and voluntarily form the seed industry associations to strengthen self-management for the industry, and safeguard the lawful rights and interests of members. The associations provide the members and industry development thereof with such services as information exchanges, technical training, credit building, marketing, and consulting.

**Article 52** Seed producers and traders may voluntarily apply to eligible certificate agencies for seed quality certification. The qualified ones may use the certification marks on packaging.

**Article 53** Where, due to force majeure, it is necessary to use the crop seeds that are lower than the standards of seeds for use set by the State or by the local authorities, the matter shall be subject to approval by the local people's government at or above the county level where the seeds are to be used; where forest tree seeds are concerned, the matter shall be subject to approval by the people's government of the province, autonomous region or municipality directly under the Central Government where the seeds are to be used.

**Article 54** Entities or individuals engaged in variety selection, seed production, trading or management shall comply with the laws and administrative regulations on plant quarantine in order to prevent dangerous plant diseases, insect pests, weeds and other harmful organisms from spreading.



No entities or individuals may conduct inoculation experiments against quarantine harmful organisms at seed production bases.

**Article 55** The administrative departments of agriculture and forestry at or above the province level shall publish such information as variety registration, variety record, new plant variety protection, seed production and trade license, supervision and management on the unified government information releasing platform.

The administrative departments under the State Council shall establish standardized sample bank of plant varieties to provide basis to seed supervision and management.

**Article 56** The administrative department of agriculture and forestry its staffs are not allowed to take part in or undertake activities related to seed production and business.

## **Chapter VII Seed Imports and Exports, and Foreign Cooperation**

**Article 57** Any seeds imported or exported shall be subject to inspection and quarantine for the purpose of preventing dangerous plant diseases, insect pests, weeds and other harmful organisms from spreading into or out of China, and inspection and quarantine shall be carried out in accordance with the provisions of the laws, rules and regulations on entry or exit plant inspection and quarantine.

**Article 58** Those engaged in seed imports or exports shall in addition to the seed production and business license, obtain the seed import and export permit in accordance with related laws and regulations of the state.

The State Council shall set the limits of authority for examining and approving the introduction of the seeds of crops and forest trees from abroad, and formulate measures for validation of the import and export of such seeds and administrative measures for the introduction of transgenic plant varieties.

**Article 59** The quality of the imported seeds shall meet the national or industrial standards. Where there are no such standards, the standards stipulated in a contract may be applied.

**Article 60** Where seeds are imported for producing seeds for other countries, such imports may be exempt from the restriction provided in Paragraph 1, Article 58 of this Law, provided that a contract is signed for producing seeds for foreign countries. The imported seeds are only to be used for the production of hybrid seeds, and the products are not allowed to be sold at domestic markets.

The crop seeds or forest tree seeds introduced from abroad for experiment shall be planted in isolation, and no harvests therefrom may be sold as commodity seeds.

**Article 61** The import and export of fake and inferior seeds and of the seeds the import and export of which are prohibited by State regulations are prohibited.

**Article 62** The State shall establish the safety examination system for the seed industry. Where the foreign entities or individuals invest or acquire the domestic seed enterprises, or conduct technical cooperation with the domestic scientific research institutions and seed enterprises, the approval and management for the engagement of variety development, seed production and business shall be implemented by the relevant departments in accordance with the relevant laws and administrative regulations.

## **Chapter VIII Supportive Measures**

**Article 63** The state increases support on the development of seed industry. Variety selection, production, demonstration, germplasm protection, seed reservations, and major seed producing counties shall be given financial supports.

The state encourages popularizing the application of efficient and safe seed producing and collecting machineries, and incorporates advanced and practical seed producing and collecting machines into agricultural machinery subsidized scope.

Actively channel the social funds into the seed industry.

**Article 64** The State shall strengthen construction of public infrastructures for the seed industry.

The arable lands in the advantageous seed breeding bases shall be protected perpetually as the basic farmland preservation area. The advantageous seed breeding bases shall be determined by the administrative departments for agriculture under the State Council after consultation with the local people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

**Article 65** Supports shall be given to seed enterprises engaging in variety selection, breeding and production of crops and forest trees according to the relevant regulations.

**Article 66** The State encourages and guides financial institutes to provide credit support to production, operation, purchasing and storage of seeds.

**Article 67** The State supports insurers to engage in the business of seed production insurance. The people's governments at or above the province level shall support the development of seed production insurance through such measures as subsidy for insurance premiums.

**Article 68** Research institutions, colleges and universities are encouraged to conduct cooperation regarding breeding talents with seed enterprises. Scientific research personnel in research institutions, colleges and universities are encouraged to conduct commercial seed breeding work in enterprises. Scientific research talents are encouraged to make innovation and start business.

**Article 69** The administrative department for agriculture or forestry under the State Council, the people's government of the province, autonomous region or municipality directly under the Central Governments where the host place of non-local breeding practices is located, shall improve the coordination and management of non-local breeding practices, and the transport departments shall give priority to the transport of seeds.

## **Chapter IX Legal Liabilities**

**Article 70** Where the administrative departments for agriculture or forestry failed to make administrative license decision according to the laws, failed to investigate and punish illegal activities found or reported, or other activities failed to implement duties according to this Law, the people's government at the same level or above shall order to correct, and give sanctions to responsible executives in charge and other staffs with direct responsibility. If anyone violates provisions of article 56 hereof, where staffs of the administrative departments of agriculture and forestry engaged in seed production and business, sanctions shall be applied based on the laws.

**Article 71** If anyone violates provisions of article 16 hereof, where the members and staffs of Variety Registration Committee fails to implement their duties according to the laws, resorts to deceit, plays favoritism and commits irregularities, sanctions shall be applied based on the laws; they are not allowed to engage in variety registration work within in five years counting from the date when the sanction is applied.

**Article 72** The variety testing, experimenting and seed quality inspection institutions which issue false test, experiment and inspection data or certificates shall be ordered to correct by the administrative department for agriculture or forestry at or above county level. The entity shall be imposed a fine between RMB50,000 and RMB100,000; the executives with direct responsibility and other staffs with direct responsibility shall be imposed a fine between RMB10,000 and RMB50,000; in case illegal gains exist, the illegal gains shall be confiscated; in case losses caused to seed users or other seed producers and traders, joint liability shall be undertaken with the seed producer and trader; in case of gross violation, the qualification for seed quality inspection will be abolished by the administrative department for agriculture or forestry at or above provincial level.

**Article 73** If anyone violates provisions of article 28 hereof to conduct any behavior infringing upon the new plant variety right, the parties shall negotiate settlement; when negotiation is reluctant or unsuccessful, the owner or stakeholder of the variety right may apply for settlement to the administrative departments of agriculture and forestry under the people's government at or above county level. The party concerned may also directly file a lawsuit to the people's court.

The administrative departments of agriculture and forestry under the people's government at or above county level may, subject to voluntariness of the parties, conduct mediation on damage caused by the infringement. Any agreement reached through the mediation shall be performed by the parties. If the parties fail to perform the agreement or no agreement is reached through the mediation, the owner or stakeholder of the new plant variety right may file a lawsuit to the people's court according to law.

The indemnity of infringing new plant variety right shall be determined in accordance with the right holder's actual losses resulted from infringement; in case actual losses are difficult to determine, the indemnity can be determined in accordance with the infringer's benefits gained from infringement; in case both right holder's losses and infringer's benefits are difficult to determine, the indemnity can be appropriately determined with reference to the times of the new plant variety right license fee. The indemnity shall include right holder's reasonable expenses to cease infringement. In case new plant variety right is seriously infringed, the indemnity can be between one times and three times of the value determined by above-mentioned method.

Where the right holder's losses, infringer's benefits, and new plant variety right license fee are all difficult to determine, the people's court can determine an indemnity under RMB 3 million in accordance with such factors as the type of new plant variety right, infringement nature and circumstances.

When settling a case regarding infringement of the new plant variety right, the administrative departments of agriculture and forestry under the people's government at or above county level may order the infringer to cease the infringing act and confiscate the illegal gains and the seeds to safeguard public benefits. In case the amount is less than RMB 50,000, a fine between RMB 10,000 and RMB 250,000 will be imposed; if such amount is more than RMB 50,000, a fine of 5 times to 10 times as that of the amount will be imposed.

**Article 74** If there's any dispute between the parties regarding the application right of the new plant variety and the ownership of the new plant variety right, either party may file a lawsuit to the people's court.

**Article 75** If any one violates the provisions of article 49 hereof to produce and trade false seeds, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease the production and trade, confiscate the illegal gains and the seed, and the seed production and trade license will be revoked. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 10,000 and RMB 100,000 will be imposed; if such amount is more than RMB 10,000, a fine of 10 times to 20 times as that of the amount will be imposed.

Where a fixed-term imprisonment or above penalty is sentenced due to crime from false seed production and trade, the legal representative and executive with direct responsibility of the seed enterprise or other entity are not allowed to hold the position of legal representative or high level manager in seed enterprises within five years counting from the date when the penalty is completed.

**Article 76** If anyone violates provisions of article 49 hereof to produce and trade low-quality seeds, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease the production and trade, confiscate the illegal gains and the seeds. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 5,000 and RMB 50,000 will be imposed; if such amount is more than RMB 10,000, a fine of 5 times to 10 times as that of the amount will be imposed; in case of gross violation, the seed production and trade license will be revoked.

Where a fixed-term imprisonment or above penalty is sentenced due to crime from low-quality seed production and trade, the legal representative and executive with direct responsibility of the seed enterprise or other entity are not allowed to hold the position of legal representative or high level manager in seed enterprises within five years counting from the date when the penalty is completed.

**Article 77** If anyone violates provisions of article 32 and article 33 hereof to conduct any of the following behaviors, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to correct such behavior and confiscate the illegal gains and the seeds. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 3,000 and RMB 30,000 will be imposed; if such amount is more than RMB 10,000, a fine of 3 times to 5 times as that of the amount will be imposed; the seed production and trade license may be revoked.

- (I) Producing and selling seeds without the seed production and trade license;
- (II) Obtaining the seed production and trade license through fraud, bribery or other improper means;
- (III) Failing to produce and sell seeds according to stipulations of the seed production and trade license;
- (IV) Forging, altering, transferring or lending the seed production and operation license.

For the entity with the seed production and trade license revoked, its legal representative and the executive with direct responsibility are not allowed to hold the position of legal representative or high level manager in seed enterprises within five years counting from the date when the penalty decision is made.

**Article 78** If anyone violates provisions of article 21, article 22 and article 23 hereof to conduct any of the following behaviors, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease illegal behavior, confiscate the illegal gains and the seeds, and impose a fine between RMB 20,000 and RMB 200,000.

- (I) Popularize or sell crop varieties that should be subject to registration but actually not so;
- (II) Popularize or sell improved forest tree variety that should be subject to registration but actually not so;
- (III) Popularize or sell crop varieties or improved varieties of forest tree that should be ceased to popularization and sales;
- (IV) Popularize crop varieties that should be subject to record but actually not so; or sell in the name of the recorded variety;
- (V) Popularize crop varieties whose record have been revoked, or sell in the name of recorded variety.

If anyone violates provisions of article 23 and article 42 hereof to advertise crop varieties that should be subject to registration or record but actually not so, or the description of major characters of the variety in the advertisement is not consistent with registration or record announcement, legal liability shall be imposed according to related rules of Advertising Law of the People's Republic of China.

**Article 79** If anyone violates provisions of article 58, article 60 and article 61 hereof to conduct any of the following behaviors, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to correct such behavior and confiscate the illegal gains and the seeds. If the amount gained from the illegal production and trade is less than RMB 10,000, a fine between RMB 3,000 and RMB 30,000 will be imposed; if such amount is more than RMB 10,000, a fine of 3 times to 5 times as that of the amount will be imposed; in case of gross violation, the seed production and trade license will be revoked:

- (I) Importing and exporting seeds without permit;
- (II) Selling seeds produced for foreign countries in China;
- (III) Selling the harvest of the crop or forest seeds introduced into China from foreign countries for introduction test in China; and
- (IV) Importing and exporting false or low quality seeds or seeds that are not allowed for import and export by the state.

**Article 80** If anyone violates provisions of article 36, article 38, article 40 and article 41 hereof to conduct any of the following behaviors, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to correct such behavior and shall impose a fine between RMB 2,000 and RMB 20,000:

- (I) Selling seeds which should be packed but actually not packed;
- (II) Selling seeds without instructions or with nonconforming label contents;
- (III) Altering labels;

(IV) Failing to establish and maintain seed production and trade files as required;

(V) Failing to file as required where a seed producer or trader establishes any branch out of territory, or trades specially in packed seeds that are not to be divided into smaller packages, or produces/sells seeds on the basis of written commission as the agent.

**Article 81** If anyone violates provisions of article 8 hereof to occupy or damage germplasm, or collect or cut the natural germplasm resources under state protection, the administrative departments of agriculture and forestry under the people's government at or above county level shall order it to cease illegal behaviors, confiscate the illegal gains and the seeds, and shall impose a fine between RMB 5,000 and RMB 50,000; and such person shall be liable for any losses caused thereby according to law:

**Article 82** If anyone violates provisions of article 11 hereof to provide germplasm resources to foreign countries or introduce germplasm resources from foreign countries; conduct cooperative research using germplasm resources with foreign entities or individuals, the administrative departments of agriculture and forestry under the State Council or under the people's government of provinces, autonomous regions and municipalities directly under the Central Government shall confiscate the illegal gains and germplasm resources and shall impose a fine between RMB 20,000 and RMB200,000:

If anyone takes or transports germplasm resources out of China without the approval of the administrative department of agriculture and forestry, the custom should detain the germplasm resources and transfer them to the administrative departments of agriculture and forestry under people's government of provinces, autonomous regions and municipalities directly under the Central Government.

**Article 83** If anyone violates provisions of article 35 hereof to snatch the immature seeds, damage the parent trees, or to collect seeds from the low quality parent trees or forest, the administrative departments of agriculture and forestry under people's government at or above county level shall order it to stop the seed collection, confiscate the seeds collected, and impose a fine of 2 times to 5 times as the amount of the forest seeds collected.

**Article 84** If anyone violates provisions of article 39 hereof to purchase valuable tree seeds, or forest seeds that are restricted from purchase, the administrative departments of agriculture and forestry under people's government at or above county level shall confiscate the seeds purchased and impose a fine of 2 time to 5 times as the amount of the forest seeds purchased.

**Article 85** If any seed enterprise violates provisions of article 17 hereof to conduct any counterfeiting, the administrative departments of agriculture and forestry under people's government at or above provincial level shall impose a fine between RMB one million and RMB five million; the seed enterprise is not allowed to apply for variety registration according to the provisions of article 17 of this law; where the seed users or other seed producers and traders suffer losses, compensation shall be made in accordance with the laws.

**Article 86** If anyone violates provisions of article 45 hereof to fail to use the improved forest varieties according to the plan developed by the administrative department of forestry, the administrative department of forestry of the people's government at the same level shall order it to correct such violation within a time limit; if such violation is not corrected after expiration of the specified time limit, a fine between RMB3000 and RMB30,000 shall be imposed.

**Article 87** If anyone violates provisions of article 54 hereof to make quarantine pest inoculation experiment in the seed production base, the administrative departments of agriculture and forestry under people's government at or above county level shall order it to cease the experiment and impose a fine between RMB 5,000 and RMB 50,000.

**Article 88** If anyone violates provisions of article 50 hereof to refuse or obstruct supervision and inspection conducted by the administrative departments of agriculture and forestry according to this law, such departments shall impose a fine between RMB2000 and RMB50,000, and order it to stop production and business for rectification; where acts violate the public security administration, the public security agencies shall impose public security administration punishment according to the law.

**Article 89** If anyone violates provisions of article 13 hereof to privately trade breeding result, and results in economic losses to the entity, s/he should assume compensation liabilities.

**Article 90** If anyone violates provisions of article 44 hereof to force seed users to purchase or use seeds against their willing, thus causing losses to such users, shall indemnify such users against such losses.

**Article 91** If anyone violates provisions hereof and such violation constitutes a crime, it shall be investigated for criminal liability according to law.

## **Chapter X Supplementary Provisions**

**Article 92** The following terms used in this Law shall mean:

- (1) Germplasm resources refer to the basic materials for breeding new varieties, including the propagating materials for the cultigens and wild varieties of various plants as well as the hereditary materials of the various plants artificially created with the above-mentioned propagating materials.
- (2) Varieties mean the flora artificially bred or discovered and improved, and their morphological characteristics are in conformity with their biological characteristics and their hereditary properties are relatively stable.
- (3) The major crops refer to rice, wheat, maize, cotton and soybean.
- (4) The major forest trees are determined and announced by the administrative department for forestry under the State Council; the administrative department for forestry under the people's government of a province, autonomous region or municipality directly under the Central Government may determine no more than eight other trees in addition to the ones determined by the said department under the State Council.
- (5) Improved varieties of forest trees refer to the verified tree seeds which, in a given area, are obviously better than those of the propagating and planting materials mainly planted at the time in terms of output, adaptability and resistance.
- (6) Novelty in respect of a variety, in case of applying for a New Variety Title, refers to the circumstances under which the seeds of such variety has been offered for sale or popularized, by the applicant or through its permit, for less than a year within China till the date when the application is submitted; if out of China, less than six years for woody or vine plant; less than four years for other plants.

In respect of any plant variety which has been added to the List of Protected Plant Varieties as a genera or varieties, if the application for New Variety Right has been submitted within one year of the List being published, and the seeds of such variety has been offered for sale or popularized less than four years, then the novelty shall be deemed still available.

In addition to the losses of novelty in sales and promotion, following circumstances shall be deemed to have lost their novelty:

1. The variety is actually spread as confirmed by the administrative departments of agriculture and forestry of the provinces, autonomous regions and municipalities directly under the Central Government based on the sown area.
2. The variety has not applied for new plant variety right after it has been registered or recorded for more than two years.

(7) Distinctiveness means that the new plant variety shall have one and above traits which are clearly distinguishable from varieties of plants known.

(8) Uniformity means that the relevant special characteristics or properties of a new plant variety, with the exception of foreseeable variation, remain consistent within the flora and among the individuals.

(9) Stability means that the main traits of a new plant variety, after repeated propagation or at the end of a particular cycle of reproduction, remain unchanged.

(10) Known varieties shall mean the plant varieties that have been accepted, or passed the variety registration, variety record, new variety protection, or have been sold and popularized.

(11) Label refers to the specific patterns and text descriptions which are printed, pasted, fixed or attached to the seed or its packaging surface.

**Article 93** The germplasm management and selection, production and trade, and management of grass seed, tobacco seed, herbs seed and edible fungus strains shall be carried out in accordance with this law.

**Article 94** The Law will be enforced from January 1, 2016.

**Attachments:**

No Attachments.