

An introduction of China's Newly Revised Seed Law

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BACKGROUND OF THE AMENDMENT

The Seed Law was issued in 2000 and amended respectively in 2004 and 2013. This time, the overall amendment of the Seed Law was an important step towards marketization of crop seed industry. The agriculture commission of the National People's Congress took the lead in the amendment, with verification from the Commission of Legislative Affairs and the Law Committee, as well as the participation of the MoA and the State Forestry Bureau. After the second review and the 17th meeting of the Standing Committee of the National People's Congress, the amendment of the Seed Law was approved with 149 votes of agreement, no objection, and five abstention on November 4, 2015. On the same day, Chinese President Xi Jinping issued the No. 35 Presidential Decree and the newly-amended Seed Law, which will be implemented on January 1, 2016.

The issue and implementation of the Seed Law in 2000 broke the market structure of regional segmentation and industrial monopoly and realized the disconnection between the government and enterprises, which developed diversified market players with the private enterprises playing a leading role. It kicked off the marketization of China's seed industry, and made contributions to agricultural development and grain security. In recent years, as the reform and opening-up were further deepened and the agricultural modernization enjoyed rapid development, the Seed Law did not adapt to new situations, and did not meet the requirements of giving full play of the market's decisive role in resource allocation, which were made at the third plenary session of the 18th Congress of the Party, thus the law should be revised.

It fully implemented the spirits of the third plenary session of the 18th Congress of the Party, met the requirements of developing modern seed industry, and increased the capability of independent innovation and market competition. It made regulations on genetic resources conservation, scientific innovation, variety management, new varieties protection, and seed production, management and supervision, in order to build a scientific, rational and sound legal system. There are five principles in the revision of the Seed Law. The first one is to encourage independent innovation, enhance new varieties conservation, and prohibit and fight counterfeit and infringement of rights. The second one is to achieve a smooth development of seed breeding and innovation system, and provide support for basic, frontier and public-welfare research. The third one is to make the enterprises play a leading role in the market, and support their development. The fourth one is to safeguard the security of the seed industry, and bio-safety. The fifth is to supervise the whole process with the market playing a leading role.

MAIN CONTENT

The revised law has ten chapters, one chapter fewer than the previous version. The revised law combined the previous seed production, management and use into seed production and management, combined the seed quality and public administration into seed supervision and

management, and added two chapters such as new varieties conservation and supporting policies. The revised law has 94 articles, with 27 articles newly added, 11 articles deleted, 72 articles revised, and 6 articles remained. Major amendments are below:

Firstly, it increased the status of the seed industry and enhanced safety management. The revised law pointed out the objectives of developing modern seed industry and safeguarding the national grain security in the general rules. It also granted more responsibilities of all levels of government in law enforcement and supervision, making the actions of seed industry management departments become the actions of the government. It established the national security review system.

Secondly, it confirmed the resource utilization and enhanced resource management. It confirmed that the seed resources were public properties which should be open to development by law. It stressed protection on genetic resources, and required the agencies that occupied the facilities of seed resources should ask for approval. It managed foreign cooperation in the generic resources management, and called for mutual-beneficial cooperation agreement with foreign agencies and people, and approval from the MoA.

Thirdly, it reformed the variety management system, and established variety registration system. It reduced the range of crops that should be examined, and reformed the current review system featuring 5+2+2 model, which reduced the past 28 crop varieties to the current five, referring to rice, wheat, corn, cotton and soybean. It simplified the introduction system of seed within the same eco-region, and changed the approval system by the MoA to records. It created green channels for enterprises that promoted the integration of breeding and cultivating, and expanded the review range of major grain crops. It established registration system of non-staple crops, and put the 23 crops that abolished review, and other non-staple crops into the categories of registration system. The registration categories were decided by the MoA.

Fourthly, it increased the status of variety protection and enhanced the intensity of protection. It added a chapter of variety conservation to increase the legal status of new variety conservation. It integrated law enforcement resources, and granted the investigation rights of agricultural administrative departments at county level. It made it clear that one variety should use the same name in the process of review, registration, protection and sales. It severely punished the infringement and counterfeiting actions, and increased the aggregate amount of compensation to three times more than the previous one. For those which are difficult to confirm the loss or benefits, it increased the amount of compensation from 500 000 to 3 million yuan, and increased the penalties of infringement from the previous 1 to 5 times of the goods value to the current 5 to 10 times.

Fifthly, it reformed on the license and management and strengthened after-event supervision. It integrated the production license and management license into one, and transferred the approval right of license examination and authority on enterprises to the provincial level, in order to promote the integration of breeding and cultivation. It canceled related requirements on funds and capitals in license production, and abolished regulations of production license first and then certificate. It stopped the examination and review system on seed inspectors. It transferred license in advance to supervision during the process and after event. It stressed variety review, registration, conservation, and production archives managements, established four record systems that did not need to apply for licenses by the means of sub-contract production and sales by proxy, and built certification system on seed quality.

Sixthly, it enhanced the law enforcement and improved the supervision. It pointed out that the comprehensive law enforcement agencies that belonged to the competent departments of the MoA and the Ministry of Forestry, as well as the seed management agencies should be the main subjects of law enforcement, it granted the compulsory power to law enforcement

officers of detaining and sealing up seeds, and for those who refused and obstructed law enforcement, it confirmed their legal responsibilities. It confirmed the legal status of rapid detection method of seed varieties, and put the seeds without labels into the categories of pseudosperm, requiring all the labels should list information code. It required the conventional seeds that farmers produced by themselves should be only sold at the local market. The law also added regulations on the information code of seed labels, and confirmed a unified information platform on seed review, registration and conservation, seed production license, and market supervision, which provided legal support for enhancing seed quality information trace and the correspondent system of seed management.

Seventhly, it promoted seed industry system reform and confirmed supporting polices. It confirmed the No. 8 document and No. 109 document of the State Council, issued since 2011, and other documents on deepening reform of seed industry system and promoting the modern development of modern seed industry in the form of law. It abolished the regulations in the previous law that encouraged scientific and educational agencies to launch promotion protects on seed management, and stressed that the country should support scientific research agencies of public welfare in carrying out basic research for public-welfare purposes, and prohibited private transactions of research outcomes. It encouraged scientific researchers to flow into enterprises and transfer their outcomes into business benefits. It encouraged enterprises to develop fine breeds with proprietary intellectual property rights. It provided support for large seed-producing counties, and granted subsidies to the purchase of seed machinery. It classified advantageous land into the basic farmland to give permanent protection, and confirmed regulations on credit loan support and production insurance to seed enterprise.

Eighthly, it increased the entity responsibilities and the intensity of punishment. For the management entities, it increased the legal responsibilities in the aspects of variety examination, test, review and seed inspection, as well as the punishment on fraud and bending the law for personal gains of law enforcement officials. For enterprise entities, it added regulations on responsibilities of enterprises promoting the integration of breeding and cultivation and registers applying varieties on the authenticity of materials and samples, and responsibilities of producing managers to the authenticity of labels. It added regulation that seed producers should pay compensatory damages due to false labels, increased the penalties of selling false seeds to 10 to 20 times of goods prices from the previous 5 to 10 times, and forced them to stop business.

REMARK

The amendment reflected the spirits of streamlining administration and delegating power to the lower levels and a combination of delegating power and strengthening regulation. It was reflected in three aspects of delegating power and three aspects of regulation. The first one of delegating power is to open more channels for the access of varieties. It reduced the number of reviewed crops, open green channel, implemented the filing system of introducing a fine variety, and implemented the registration system of non-staple crop varieties. The second one is to loosen restrictions on the market entry. It abolished the requirement on enterprises capitals, abolished the regulations of license first and then certificate, and delegated the power of examination and approval authority of breeding and cultivating to the lower levels. The third one is to delegate the administrative power. It delegated the supervision functions, market regulatory power, the law enforcement power on infringement and the examination and approval authority to the lower levels. The first aspect of regulation refers to the regulation on the subjects. It continued the legal responsibilities of enterprises, managing agencies, breeders, entrusted seed producers, and transactors. The second refers to regulation

on labels. It expanded the contents on the labels, and brought in the management concepts of label authenticity. The third refers to regulations on safety. It established national safety supervision management on the seed industry, made restrictions on the management of genetic resources, and retained the review system on staple food grain.

REFERENCE

The Seed Law:

全国人大《种子法》

http://www.moa.gov.cn/fwllm/zxbs/xzxk/bszl/201405/t20140527_3917992.htm

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