

Bilingual Chinese-English Translation¹ Of Drafting Explanation on the Regulations of the People's Republic of China on the Protection of New Varieties of Plants (Revised Draft for Comments).

I. Necessity of revision

(1) Deployment by the CPC Central Committee. The CPC Central Committee and the State Council attach great importance to the protection of intellectual property rights in the seed industry. General Secretary Xi Jinping has repeatedly emphasized that we should be determined to advance the national seed industry, seize opportunities to cultivate excellent varieties with independent intellectual property rights, and ensure national food security from the source. In March this year, General Secretary Xi Jinping pointed out at a joint group meeting of the CPPCC that we shall improve the system of variety examination and approval, and intellectual property rights protection, and promote the high-quality development of China's seed industry through construction of innovation chains. In July 2021, the Commission for Comprehensively Deepening Reform of CPC Central Committee deliberated and adopted the action plan for rejuvenation of seed industry, clearly proposing to strengthen the protection of intellectual property rights, implement whole-chain and whole-process supervision and crack down on counterfeiting,

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infringement by fake variety name and other prominent problems so as to make infringers pay a heavy price, and taking the revision of *Regulations on the Protection of New Varieties of Plants* (hereinafter referred to as "the Regulations") as an important work content of the market purifying action, which pointed out the direction for the revision of the Regulations and provided the basic guidelines.

(2) Requirements by the state. As the most important intellectual property right in the field of seed industry, the rights in new varieties of plants is one of the important tasks to build a strong intellectual property nation. In order to implement the decisions and deployments of the Central Committee on rejuvenation of seed industry, the Standing Committee of the National People's Congress deliberated and adopted the decision to amend the Seed Law in December 2021, focusing on extending the links and expanding the scope of the protection of new plant varieties, establishing an Essentially Derived Variety (EDV) system, improving the infringement damage compensation system, and clarifying that the steps and measures for implementation of the EDV system shall be prescribed by the State Council. In accordance with the relevant requirements of the Legislation Law, where the provisions of law explicitly require relevant state organs to establish specific supporting provisions on special matters, the relevant state organs shall accelerate the establishment of provisions after the revised law takes effect. As supporting regulations of the Seed Law, the Regulations urgently need to be revised to further refine the requirements of the new Seed Law.

(3) Demand in the industry. China promulgated the Regulations on the Protection of New Varieties of Plants in 1997, established a protection system for new varieties of plants, joined the International Union for the Protection of New Varieties of Plants (UPOV) in 1999, and added a special chapter on the protection of new varieties of plants to the Seed Law in 2015. At present, 19 lists of protection of new varieties of agricultural and forestry plants have been released, and as of 2021, a total of 58,000 applications for the rights in new varieties of plants have been made, and 22,000 have been authorized throughout the country. However, the protection of new varieties of plants in China is based on the 1978 text of the UPOV Convention, with low level of protection, especially insufficient protection efforts for original innovation but mostly breeding imitation, modification and improvement, and prominent problem of variety homogenization. Therefore, the

industry looks forward to learning from the 1991 text of the UPOV Convention widely used by developed countries so as to improve the level of protection of new varieties of plants. With the in-depth implementation of intellectual property strategy and innovation-driven development strategy in China, some provisions of the Regulations can no longer adapt to the new situation and new requirements, and it is urgent to improve the level of protection of new varieties of plant in terms of system, accelerate the promotion of independent innovation and original innovation in the seed industry, realize autonomous and controllable seed sources, and ensure national grain security.

II. General idea of revision

Guided by Xi Jinping's thought on socialism with Chinese characteristics for a new era, we shall thoroughly implement the decisions and deployments of the CPC Central Committee and the State Council on the construction of a strong intellectual property nation and the rejuvenation of the seed industry, keep a foothold at the new development stage, implement the new development concept, build a new development pattern, promote high-quality development, fully cohere with the implement of the newly amended seed law, open up a whole chain covering creation, application, protection, management and service of rights in new varieties of plants, and strengthen the protection of rights in new varieties of plants with greater efforts, enhance the level of international exchange and cooperation in the seed industry, and provide a strong system safeguard to accelerate the revitalization of the seed industry.

III. Main contents of revision

The current regulations are divided into eight chapters, 46 articles in total. The *Regulations of the People's Republic of China on the Protection of New Varieties of Plants (Revised Draft for Comments)* (hereinafter referred to as the "Draft for Comments") consists of eight chapters, 51 articles in total. Among them, 11 original articles are retained, 32 articles are revised, 8 new articles are added, and 1 article is deleted. The main revisions are as follows:

(1) Stipulate the steps and measures for implementation of the EDV system. Cohering with Article 28 of the Seed Law, the Draft for Comments stipulates that the competent departments of agriculture and rural affairs, forests and grasslands under the State Council shall

publish the scope of implementation of EDV system in the form of lists, issue the guidelines for determination of EDV, clarify the conditions and capabilities of appraisal institutions, and establish an expert committee to provide professional consultation.

(2) Expand the scope of protection and extend the links of protection. In line with the Seed Law, the Draft extends the scope of protection from propagating propagation materials of authorized varieties to harvest materials, and extend the links of protection from three (production, propagation and sales) to eight (production, propagation, seed treatment for propagation, offering for sales, sales, import, export and storage).

(3) Extend the term of protection. At present, the term of protection for varieties of herbaceous plants in most countries in the world is about 25 years. Drawing on internationally recognized practices and combined with China's specific national conditions and seed conditions, the Draft for Comments appropriately extends the term of protection of variety rights, from 20 years to 25 years for woody and vine plants, and from 15 years to 20 years for other plants, which can not only reflect the increase in protection efforts, but also help gradually attain international standards.

(4) Improve measures for dealing with cases of infringement and counterfeiting. Cohering with the Seed Law, the Draft for Comments increases the amount of fines for infringement of rights in varieties of new plants; stipulates that the competent departments of agriculture and rural affairs, forests and grasslands of people's governments at or above the county level may take five kinds of measures to investigate and deal with cases of infringement upon variety rights and counterfeiting of authorized varieties; and adds a provision on the defense of the lawful source of the infringer, which coheres with the *Several Provisions of the Supreme People's Court on the Specific Application of Law in the Trial of Cases Involving Disputes over Infringement upon Rights in New Plant Varieties (II)*, so as to effectively protect the normal trading of the seed market.

(5) Clarify the circumstances of recovery of rights. The Draft for Comments adds a provision that where a party loses its rights due to force majeure or justifiable reasons resulting in exceeding specified time limit, it shall request the recovery of its rights, and also adds relevant content that a party requests an extension of the prescribed time limit.

(6) Add provisions on punishments for dishonest conduct. In order to improve applicants' honesty awareness and honesty quality, the Draft for Comments stipulates that where there is deception, concealment, forgery or other dishonest conducts in the application process, it shall be included in credit records in accordance with law and announced to the public; and relevant applicants and responsible persons shall not apply for variety rights within 3 years, and shall assume compensation liability for the resulting losses according to law.

(7) Establish a professional team for the protection of new varieties of plants. We shall implement the spirit of strengthening the construction of professional talent teams and improving service levels in the *Opinions on Strengthening the Protection of Intellectual Property Rights* and the *Outline for Building a strong Intellectual Property Nation (2021-2035)*, and encourage the establishment of professional teams of application for variety rights, rights protection consultation, technical appraisal, value assessment, transformation and utilization, etc.