Chinese Laws & Practice on Agricultural Seeds Business

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Index

1. Seed Definitions
2. FIEs
3. Registered Capital Requirements
4. Approval Authorities
5. Agricultural Seed Business
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Introduction

This report analyzes the laws and regulations which are relevant to agricultural seeds business activities in China. It provides a general overview of investment conditions for a Chinese foreign invested enterprise (hereinafter referred to as “FIE”).

1. Definitions

(a) Seeds

According to Article 2 of the Chinese Seeds Law, “seeds” are referred to as the materials of crops and forest trees used for planting or propagation, including seeds of grains, fruits, roots, stems, seedlings, buds and leaves.

(b) Crops

According to Article 1 of the Provisions on the Scope of Main Crops (hereinafter referred to as “Crop Provisions”), promulgated by the Ministry of Agriculture of the People’s Republic of China (hereinafter referred to as “MOA”) on February 26, 2001, “crops” are defined as “including grain, cotton, oil plants, fiber crops, sugar crops, vegetables, fruit trees (excluding dry fruits, such as walnuts, chestnuts, etc.), tea plants, flowers (excluding rare wild flowers), mulberry trees, tobacco, Chinese medicinal plants, grass, green manure, edible mushrooms and tropical crops such as rubber etc.”

(c) Main Crops

Based on Article 2 Crop Provisions and Article 74 para 3 of Seeds Law, “main crops” refer to the following 7 crops: rice, wheat, maize, cotton, soybean, rape and potato1.

The Agricultural Department of each province in China (hereinafter referred to as “AD”) can designate 1 to 2 crops to qualify as “main crop” in that province. For instance, Chinese cabbage is defined as main crop in Beijing and Shandong; sunflower is defined as main crop in Shānxī, Inner Mongolia and Shānxī; cayenne pepper is considered as a main crop in Jiangsu, Jiangxi and Hunan; cabbage is a main crop in Heilongjiang; broad bean is in the list of main crops in Yunnan and Qinghai; vegetable pea is defined as main crop in Ningxia and stem leaf mustard is defined as main crop in Chongqing.

1 Rape and potatoes are added by the MOA in the list of main crops.
(d) Non Main Crops

In the category of crops, “non main crops” are referred to as crops, excluding main crops.

(e) Grass Seeds

According to the Measures for the Administration of Grass Seeds (hereinafter referred to as “Grass Seeds Measures”), promulgated by MOA on 12 January 2006, grass seeds are separated from crop seeds and they follow partly a separate legal regime.

(f) Agricultural Seeds

Agricultural seeds include seeds of main crops and seeds of non main crops.

2. FIE’s

The most important two legal forms of FIE’s are a joint venture (hereinafter referred to as “JV”) and a wholly foreign owned enterprise (hereinafter referred to as “WFOE”).

According to Article 2 of the Legal Rules for Registration and Approval of Foreign Enterprises Investing in Crops, promulgated on 8 September 1997 (hereinafter referred to as “Legal Rules”), a WFOE is prohibited for crop seeds business.

According to the Catalogue of Industries for Guiding Foreign Investment (hereinafter referred to as “Catalogue”) and the Legal Rules, a JV is subject to restrictions in the crop seed business. These restrictions should be reviewed on a case to case basis.

For instance:

- A Chinese party shall hold a controlling majority (a ratio of more than 50% of the registered capital) in a JV for:
  - grass seeds;
  - breeding of new train crop;
  - developing and/or production of seeds and
  - general business of seeds of grain, cotton and oil plants.

  The Chinese laws and regulations are silent on the ratio of a Chinese party in the registered capital of JVs that engage in other activities.

- A Chinese party in a JV shall obtain prior approval from the relevant
Chinese authorities to operate crop seeds business activities. The qualifications of the Chinese party to obtain approval are set out in the laws and regulations. In addition, the foreign party of a JV should be a reputable enterprise which has advanced breeding technologies, production technologies and business management levels and the JV should introduce quality varieties of seeds, advanced technology and equipment to China.

- The registered capital of a JV in general business of crop seeds should be not less than USD 500,000 and specifically for JV’s with business in the fields of grain, cotton and oil plants not less than USD 2,000,000.

According to the Catalogue, breeding of new train crop and developing and/or production of seeds is restricted; cultivation of China’s rare precious breeds and production and/or development of genetically modified plants’ seeds are prohibited.

However, the production of flowers and plants and development and/or production of forage grass are encouraged.

3. Registered Capital Requirements

There are special requirements with respect to the minimal registered capital of a JV for some crop seeds business activities. Examples of minimum registered capital requirements are:

- RMB 1,000,000 for the production of common main crop seeds and hybrid parent seeds;
- RMB 5,000,000 for the production of hybrid seeds;
- RMB 5,000,000 for a JV applying for an operation license regarding main crop hybrid seeds and RMB 1,000,000 for other crop seeds;
- RMB 10,000,000 for a JV which engages in import and export business and RMB 30,000,000 for a JV jointly conducts breeding, producing and operating of crop seeds when applying for operation license.
4. Approval Authorities of a JV

In general, the establishment of a JV is subject to the approval of MOFCOM on a provincial level.

The provincial MOFCOM requires an opinion from the AD at the provincial level before deciding to approve the establishment of a JV in the seeds business.

For JVs for general business of seeds of grain, cotton and oil plants, the application for approval to establish a JV should be submitted to the MOA for further review, after the MOFCOM has obtained an opinion by the provincial AD.

After obtaining approval from MOFCOM, the JV can submit applications with the State Administration of Industry and Commerce (hereinafter referred to as “SAIC”) for registration and a business license. These applications should be accompanied by an operation license (see below), together with other documents.

5. Agricultural Seed Business

5.1 Licenses

Any activity conducted by an FIE in the agricultural seeds business in China requires a business license and an operation license.

Business License

A business license is applicable to any legal entity that is established within the mainland of China. A business license is issued by SAIC or its local departments.

Operation License

The “operation” of seeds is a broadly defined term in the Chinese laws and regulations. It covers activities of importing, breeding, producing, selling and exporting.

Seed operators must obtain an operation license before applying to SAIC to obtain a business license.

The term of an operation license is normally five years.

Other specific licenses for the operation of agricultural seed business are stated here below.
5.2 Specific Activities

Breeding and production of agricultural seeds

A production license is required for breeding and production of main crop seeds and grass seeds.

For non main crops seeds, the application for a production license is at the discretion of the producer.

If a seed is defined as “non main crop” in the province where the seed is bred or produced without the producer having a production license in that province, the seeds can not be sold in another province where such seed is defined as “main crop” seeds.

Although grass seeds do not fall within the definition of “main crop” seeds, the license system shall also apply to the breeding and production of grass seeds.

The term of a production license is normally 3 years.

Sales of seeds

The pure sales of crops seeds by an FIE is prohibited according to Article 2 of the Legal Rules.

“Pure sales” is the importing of crops into China and subsequently selling them in the domestic market without breeding or production in China. This will also apply to the sale of grass seeds.

Import and export of seeds

Besides an operation license, the import and export of seeds requires a quarantine inspection, an import and export license and an import and export trading license according to Article 50 of the Seeds Law.

The production of seeds exclusive for export, therefore without a domestic sale, is not subjected to an import license and export license, an import and export trading license or an operation license. However, a production license will still be required.

A Chinese legal entity can engage in the business of import and export of seeds after it has obtained an import and export license and an import and export trading license.
According to information provided by officials of relevant authorities, FIE’s are unable to obtain an import and export license according to Article 2 of the Legal Rules.

The import and export of agricultural seeds shall therefore be conducted through import and export agents in China.

Kunming, Shanghai, 1 June 2010
## A. Agricultural Seeds laws and regulations: Foreign Investment

<table>
<thead>
<tr>
<th>Seed categories</th>
<th>Applicable laws and regulations</th>
<th>Mode of organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seeds of main crops</td>
<td>- Chinese Seeds Law</td>
<td>JV</td>
</tr>
<tr>
<td></td>
<td>- Legal rules for registration and approval of foreign enterprises investing in crops</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Management measures for production and operation licenses of crop seeds</td>
<td>WFOE</td>
</tr>
<tr>
<td></td>
<td>- Provisional measures on import and export of crop seeds (seedlings)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Provisions on the scope of main crops</td>
<td></td>
</tr>
<tr>
<td>Seeds of non main crops</td>
<td>- Foreign investment for breeding of new train crop and developing/production of seeds are restricted and the Chinese party shall hold the majority of equity and be qualified;</td>
<td></td>
</tr>
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<td></td>
<td>- Foreign investment for cultivation of China's rare precious breeds and production/development of genetically modified plants' seeds are prohibited;</td>
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<td></td>
<td>- Foreign investment for production of flowers and plants is encouraged.</td>
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</tr>
<tr>
<td></td>
<td>- Foreign Investment for Development /production of forage grass is encouraged</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Operation license is required.</td>
<td></td>
</tr>
<tr>
<td>Grass seeds</td>
<td>- Laws and regulations mentioned above</td>
<td>JV</td>
</tr>
<tr>
<td></td>
<td>- Measures for the administration of grass seeds</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- In JV, the Chinese party shall hold the majority of equity and be qualified.</td>
<td></td>
</tr>
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<td></td>
<td>- Operation license is required.</td>
<td></td>
</tr>
</tbody>
</table>
### B. Agricultural Seeds laws and regulations: Approval Authorities

<table>
<thead>
<tr>
<th>Seed Categories</th>
<th>Business Activities in China</th>
<th>Approval Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Import</td>
<td>Breeding</td>
</tr>
<tr>
<td>Seeds of main crops</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Quarantine inspection</td>
<td>Operation license</td>
</tr>
<tr>
<td>Seeds of non main crops</td>
<td>Import and export license</td>
<td>Production license</td>
</tr>
<tr>
<td>Grass seeds</td>
<td>Import and export trading license</td>
<td>Import and export trading license</td>
</tr>
</tbody>
</table>
Tables A & B are based on the following Chinese laws and regulations:

- Chinese Seeds Law
- Legal rules for Registration and Approval of Foreign Enterprises Investing in Crops
- Management Measures for Production and Operation Licenses of Crop Seeds
- Provisional Measures on Import and Export of Crop Seeds (seedlings)
- Provisions on the Scope of Main Crops
- Measures for the Administration of Grass Seeds
- Catalogue of Industries for Guiding Foreign Investment

Abbreviations:

JV: Joint Venture
WFOE: Wholly Foreign Owned Enterprise
AD: Agricultural Department
ADG: Administration Department of Grasslands
MOA: Ministry of Agriculture of People’s Republic of China