

# Disposal Method of Pledges in Pledge Financing of New Plant Breeding Rights

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## Abstract

**As a special kind of intellectual property pledge financing, pledge financing of new plant variety rights can give full play to the exchange value and property value of new plant variety rights, expand the financing channels of modern small and medium-sized new enterprises, and help maximise the use of resources of seed industry enterprises. However, there are limitations in the way of disposition of pledge financing of new plant variety rights in China, and the disposition of pledge of new plant variety rights is subject to various restrictions and faces the difficulty of realisation. In view of the limitations of the traditional pledge financing pledge disposal of new plant variety rights, this paper actively explores the effective and feasible disposal of new plant variety rights pledge financing pledge, puts forward the operation of new plant variety rights, centralised auction, and the debt-to-equity conversion of new plant variety rights to provide suggestions for solving the problem of the difficulty in the disposal of new plant variety rights pledge. It will broaden the disposal and circulation methods of new plant variety rights, and promote the maximisation of the value of new plant variety rights.**

## Keywords

**New Plant Variety Rights; Pledge Financing; Pledge Disposal Methods.**

## 1. Introduction

With the advancement of the reform and opening-up process, China's economy has entered into a new normal development period, and the pledge development of intellectual property rights as object rights has become an important force for China's economic development in the new period. As a large agricultural country, China's agriculture in the national economy is a pivotal position, agricultural intellectual property rights in the new plant variety rights pledge financing has become the focus of attention. Therefore, the problem of realising the pledge of new plant variety rights has become the key to solve the problem of financing difficulties. However, there are limitations in the way of disposition of pledges for pledge financing of new plant variety rights in China, and the disposition of pledges for new plant variety rights is subject to various restrictions and faces the difficulty of realisation. Poor financing channels for new plant variety rights will lead to a decrease in the number of transactions, which will affect the quality of transactions, thus deteriorating bank credit. In view of the limitations of the traditional pledge financing pledge disposal method of new plant variety rights, this paper actively explores the effective and feasible pledge disposal method of new plant variety rights pledge financing, proposes the operation of new plant variety rights, centralised auction, and the debt-to-stock conversion of new plant variety rights, which provides suggestions for solving the problem of difficult disposal of new plant variety rights pledges and broadens the disposal method and circulation method of new plant variety rights, and promotes the maximisation of the value of new plant variety rights. It will broaden the disposal and circulation methods of new plant variety rights, and promote the maximisation of the value of new plant variety rights.

## 2. Limitations in the manner of disposing of pledges for pledge financing of new plant variety rights

Firstly, the special nature of new plant variety rights itself determines that they can never be applied to lending between private individuals on a wide scale. Even though the market for new plant variety rights in China has been formed, the trading market for new plant variety rights is not like the general property rights market where a large number of buyers exist. Like pledges of trademark rights and patent rights, which are also objects of intellectual property rights, new plant variety rights are subject to dilemmas such as complicated and uncertain realisation processes, but there is a big difference between the assignees of trademark rights and patent rights and new plant variety rights. When using trademark right, patent right and other intellectual property rights to pledge, loan risk, pledge disposal channel is not smooth, the risk can not be quickly and effectively resolved, the bank can face the market all the main body of the pledged rights to auction, sell, etc. to achieve the pledge. As a special intangible pledge, new plant varieties have limited space for auction and sale, unlike tangible assets such as houses and cars, which are more mature in realisation. The subjects facing tangible assets such as houses and cars do not only involve enterprises, but also individual households and natural persons. However, for plant variety rights such as special rights, facing the realization of the subject of the pledge is limited, the general individual households, natural persons will not be concerned about the realisation of its pledge, because the realization of the variety rights of the value of the natural person is not large, unlike patent rights, natural persons will be auctioned. Only the enterprises involving varieties and other subjects will pay attention to the realisation of the new plant variety rights, and the limitation of the subjects will exacerbate the difficulty of the realisation of the new plant variety rights to a certain extent. Secondly, some characteristics of the new plant varieties themselves also have an impact on the realisation of the quality right, i.e. the process of research and development, breeding and cultivation of the new plant varieties requires a certain amount of time and risk, which will lead to difficulties in realising the new plant variety rights at the time of disposal.

Due to the small scale of operation and weak stress resistance of SMEs, the pledge financing business of new plant variety rights is special, and the main parties involved in the pledge financing of new plant variety rights have put forward a number of restrictions on both SMEs and the pledge of new plant variety rights. The traditional methods of disposal of plants in the pledge financing of new plant variety rights include auction, sale and discount, etc. These traditional methods of disposal incur high transaction costs in litigation and execution, which may restrict the circulation of new plant variety rights. As intangible property, new plant variety rights are less liquid than tangible property. Therefore, banks cannot realise the subject matter through traditional disposal methods such as auction and sale as they do with tangible property. In China's existing judicial execution rules, there are no provisions on how the ownership of new plant variety rights is transferred to the buyer of the execution auction or to the pledgee who purchases the new plant variety rights under the rules of judicial sale. As a result, the disposition of the plant variety right must be made by obtaining a final judgement from the court or by applying directly for a writ of execution to seize or realise the pledge. The process from court acceptance to final judgement is time-consuming and costly. In addition, the validity of the plant variety right affects its value at the time of realisation. Moreover, after the judgement is made, the pledgee cannot sell or auction it himself, but still needs to apply to the court for execution of the judgement. Therefore, the disposal of plant variety rights to the pledge will be restricted in many ways, which will affect the bank's ability to recover the funds quickly.

In addition, new plant variety rights also require a high degree of specialisation in knowledge and teamwork. Without professional knowledge and team, the disposal of pledge of new plant

variety rights will have unnecessary risks. The value of new plant variety rights can only be fully realised in the hands of a professional team, and without a professional team, its value will be difficult to be estimated and even easily devalued. The highly specialised requirements of the new plant variety rights will restrict the financing channels and the scope of the pledged subject matter, and increase the degree of difficulty in realising the pledge rights of new plant variety rights in pledge financing.

### **3. Innovative Path of Pledge Disposal for Pledge Financing of New Plant Breeding Rights**

New plant variety right is the core asset of seed enterprises and a key factor for them to obtain market competitiveness, which can bring huge financing benefits to enterprises. In the face of intangible intellectual property rights, the difficulty of realisation, low realisation and limited disposal channels have become the predicament of pledge financing of new plant variety rights. In addition to the traditional pledge realisation methods, under the new normal economy, innovative pledge disposal channels have become a necessary way to solve the difficulty in realisation of pledge financing of new plant variety rights. In order to solve the problem of difficult disposal of intellectual property pledge financing, the State Intellectual Property Office, the China Banking and Insurance Regulatory Commission, and the National Development and Reform Commission issued a notice on the Action Programme for Intellectual Property Pledge Financing in Parks and Benefiting Enterprises (2021-2023) on 16 June 2021, stating that In order to solve the difficulty of disposing of intellectual property pledge, it is necessary to innovate on the mode of disposal, and it is required to actively exploring effective ways and feasible modes of disposal and circulation of intellectual property rights, changing the traditional ways of disposal and circulation of intellectual property rights, and broadening the ways of disposal and circulation of intellectual property rights, so as to maximise the value of intellectual property rights.

#### **3.1. Operation of new plant variety rights**

The knowledge-based economy is the most important feature of the development of modern society. The development of the country lies in the development of the economy, the development of the economy cannot be separated from the support of science and technology, and the development of science and technology cannot be separated from the extraction of knowledge. As a new type of intellectual property rights, new plant variety rights have received great attention from the state and become a new force in market competition, promoting national economic growth and playing an important role in the comprehensive strength of the country. However, the number of new plant variety rights in China is increasing, and fewer of them have been transformed into commercial achievements, and most of them have been shelved, which restricts the development of the subject of the rights of new plant variety rights. The focus of the future development of the society lies in the rational and effective use of new plant variety rights and the active transformation of new plant variety rights. In order to fully realise the value of intellectual property rights, the operation of new plant variety rights has emerged in response to social demand.

The operation of new plant variety rights refers to the business activities of seed enterprises and related market players to optimise the allocation of resources and adopt a commercial model to realise the value of new plant variety rights. Generally speaking, it is a process from "intellectual property" to "knowledge money" or from right to money. Financing is an important activity in the operation of new plant variety rights. Pledge financing of new plant variety rights can be regarded as one of the activities of new plant variety operation. The operation of new plant varieties can make the pledge financing of new plant variety rights more economically valuable, and can encourage banks to actively carry out pledge financing of new plant variety

rights. The focus of new plant variety right operation is to optimise the service system of new plant variety right operation. Promote the construction of operation centres for new plant variety rights in key industrial fields and industrial agglomerations. Cultivate the development of a comprehensive new plant variety right operation service platform, innovate the service mode and promote the transformation of new plant variety rights. Support universities and research institutes to strengthen the construction of market-oriented new plant variety operation institutions, enhance the transformation capacity of new plant variety rights, increase the value of new plant variety rights, and give banks priority in receiving compensation when seed enterprises pledge new plant variety rights and fail to repay their debts upon maturity, and their property will not be lost.

### 3.2. Centralised auctions

The intangible nature of new plant variety rights makes it difficult to estimate their own value. Therefore, the general auction method as the disposal method of new plant variety rights is not conducive to solving the problem of difficulties in financing the pledge of new plant variety rights. The limited nature of the disposal of new plant variety rights leads to the fact that new plant variety rights cannot be successfully pledged, thus affecting the realisation of the pledge right. Changing the traditional auction method and innovating the centralised auction method will make the disposal of plant variety rights diversified and promote easier realisation of new plant variety rights and smooth realisation of pledge rights.

The centralised auction is a platform on which registered new plant variety rights are centralised for auction with the consent of banks and seed enterprises. This platform is connected to the whole country and centralises information on new plant variety rights from all over the country, which facilitates the auction. The platform is open around the clock, which facilitates the smooth running of the auction. The information of new plant variety rights on the platform is true and effective, avoiding the phenomenon of false auction. In addition, the centralised auction can hire professional appraisers to value the registered new plant variety rights, so as to avoid any decrease in the value of the new plant variety rights. The centralised auction makes it easier to realise the new plant variety rights, which makes the pledge financing of new plant variety rights feasible, and thus promotes the realisation of the pledge right of new plant variety rights.

### 3.3. Debt-to-equity conversion of new plant variety rights

In addition, in the face of the dilemma of poor financing channels for new plant variety rights, it is also possible to introduce debt-to-equity conversion as a market-based method. Debt-to-equity conversion of new plant variety rights embodies the modern concept of free disposal of private rights, and can accelerate the promotion of the development of pledge financing of new plant variety rights.

The concept of debt-to-equity conversion does not have a uniform definition at the international level. The definition of debt-to-equity conversion can be understood as the conversion of a bank's claim on an enterprise into equity between a creditor and a debtor, and many countries have applied debt-to-equity conversion to debt restructuring. Compared with domestic, foreign countries have studied the concept of debt-to-equity conversion earlier. For example, scholar Peavy put forward the concept related to debt-to-equity conversion in 1985, and he believed that by using debt-to-equity conversion, the debt of enterprises is converted into equity, which solves the predicament of enterprises unable to settle debts and is conducive to the long-term operation of debt-to-equity conversion in the market economy. Domestic scholar Wu Jinglian summed up the lessons learnt from foreign practices in 1995 and proposed to solve the severe loan problems between enterprises and banks through debt-to-equity conversion. The essence of debt-to-equity conversion is that it can solve the predicament of enterprises unable to settle their debts in a short time. Through debt-to-equity conversion, it

can solve the pressure of repayment on the one hand, and improve the operation of enterprises on the other. The Beijing Research Group proposed in 1999 to understand the concept of debt-to-equity conversion from the perspective of institutional innovation. Through debt-to-equity conversion, the government makes banks believe that when an enterprise is unable to settle its debts, it can convert its debts into equity through debt-to-equity conversion and be able to safeguard its legitimate rights and interests. Debt-to-equity conversion can contribute to the development of our economy towards a credit economy.

The majority of new plant variety rights debt-to-equity swaps are implemented for enterprises that are temporarily in financial difficulties due to the cyclical nature of the economy. Through debt-to-equity conversion, financial institutions provide financial support to seed enterprises with such problems, which can reduce the financial burden of these enterprises. For banks, through debt-to-equity conversion, banks are able to cooperate well with financial asset management companies. The financial asset management company makes reasonable disposal of new plant variety rights, and the bank sees the ability of the financial asset management company to dispose of new plant variety rights, and will cooperate more closely with the financial asset management company. As a result, banks will be more proactive in providing loans to enterprises. Banks provide loans to increase the amount of money, will get more benefits from it, the bank's own development also provides a favourable condition. As the profits of enterprises and banks increase, the amount of money paid to the government will also increase. Government revenues will also increase.

The subject of pledge financing involves not only banks, but also other seed industry enterprises. The realisation of new plant variety rights can be achieved by using debt-to-equity conversion method, which is conducive to activating the enthusiasm of the investing subject and improving the recovery rate of the bank's capital, stimulating the pledge of new plant variety rights and accelerating the financing of enterprises. However, when realising corporate debt-to-equity conversion, based on national laws and regulations, the conversion method is different for different subjects.

### **3.3.1. General seed business**

According to the provisions of the Company Law on enterprise capital increase and equity setting and the relevant legal provisions on equity acquisition, when the pledgee (creditor) of the pledge financing of new plant variety rights is an ordinary seed industry enterprise, the realisation of debt-to-equity conversion is relatively simple, and according to the debt-to-equity conversion provisions of the Company Law, the specific process of the realisation of debt-to-equity conversion is that the enterprise mainly converts the debt into equity to increase the capital, and the original creditor is transformed into the shareholder of the company and participates in the operation of the company. The original creditor becomes the shareholder of the company and participates in the operation of the financing company. The plant variety rights financing company also adopts the same practice in debt-to-equity conversion, whereby the original creditors of the plant variety rights company are transformed into shareholders of the company, and directly acquire the corresponding equity of the plant variety rights financing company. Participating in the operation of the plant variety right company, through the shareholders' dividends, to reduce the investment risk and ensure the smooth recovery of funds.

### **3.3.2. Banks**

When the pledgee (creditor) is a bank, according to Articles 42 and 43 of China's Commercial Bank Law, a commercial bank, as the pledgee, shall dispose of the equity obtained by exercising the pledge within a certain period of time, and the commercial bank shall not carry out relevant for-profit acts. On 10 October 2016, the General Office of the State Council promulgated the Guidance Opinions on Market-based Bank Debt to Equity ( hereinafter referred to as the

Guiding Opinions), which clarified for the first time that banks cannot directly convert their debts into equity, and need to convert their debts into equity with the help of asset management companies. The expertise of asset management companies can help banks to convert claims into equity appropriately. Therefore, when the creditor is a bank, under this kind of debt-to-equity conversion, the bank and the enterprise financing the new plant variety rights determine the proportion of claims for the proportion of equity on their own according to the market value of the new plant variety rights. According to relevant laws, banks are not allowed to conduct profit-making behaviour after acquiring the equity, at this time, banks legally transfer the equity held by the plant variety rights company to the four major asset management companies (Asset Management Company) (hereinafter referred to as AMC) through bidding, competitive bidding and other market-based methods according to the guidelines, and the AMC bids for the equity held by the banks. The AMC will bid for the equity held by the banks, and such debt-to-equity conversion will help the banks to recover part of their funds in a market-based manner, and reduce the banks' capital loss due to the difficulties in realising the new plant variety rights. After the market-based bidding for equity, the AMC company obtains the equity of the plant variety rights company, and the equity of the plant variety rights company obtained by the bank is converted into ordinary equity under the market bidding of the AMC company. The bank withdraws from the equity management of the plant variety rights company, and is transferred to the AMC company to participate in the asset management of the seed financing company, and the equity can be transferred to specialised equity management company through transferring to specialised equity management company again. With the participation of AMC in the management of the plant variety rights company, the equity can be transferred to a professional equity management company for long-term professional management, which will eventually help solve the difficulties in financing new plant variety rights and help turn over a new chapter of modern seed industry. The specific flow chart is shown below:

### 3.3.3. Enterprises

When the pledgee (debtor) is an enterprise, first of all, the debt-to-equity transfer should pay attention to the regulating role of the market, which means that the government cannot intervene in the market too much. In the debt-to-equity transfer agreement, the government's intervention role is more obvious, mainly in favour of the debtor enterprise, which is unfair to the bank, and will make the bank to the debt to transfer to the exclusion of psychology. Therefore, the government should reduce the influence generated in the implementation of the debt-to-equity conversion of new plant variety rights, and not intervene in the market too much. At the same time, the state should formulate relevant supporting systems and measures to regularise and institutionalise the operation of the market mechanism of market-based debt-to-equity conversion, so as to ensure the smooth implementation of new plant variety rights debt-to-equity conversion. Secondly, the fundamental reason for enterprises to fall into debt difficulties lies in the unsound organisational structure and low operational efficiency of enterprises. The market-based debt-to-stock conversion of new plant variety rights must improve and perfect the organisational structure of enterprises. Through the debt-to-equity conversion of new plant variety rights, the bank converts the debt into equity with the help of asset management company, and there will be some changes in the organisational structure of the enterprise, which are beneficial to the operation of the enterprise and can improve the operation level of the enterprise.

## 4. Conclusion

In conclusion, as a special kind of intellectual property rights pledge financing, the traditional way of realising the pledge right cannot be fully applied to the disposal of the pledge of new plant variety rights pledge financing, and it is difficult to realise the pledge right of new plant

variety rights in pledge financing. Under the new economic norm, innovative disposal channels are the necessary way to solve the difficulty of realisation of pledge financing of new plant variety rights. Aiming at the limitations of the disposal methods of pledges for pledge financing of new plant variety rights, this paper proposes three new types of pledge disposal methods, namely, operation of new plant variety rights, centralised auction and debt-to-stock conversion of new plant variety rights, which can give better play to the exchange value and property value of new plant variety rights, and expand the financing channels of modern small and medium-sized new enterprises.

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