

Study on Financing Risk of Pledge of New Plant Variety Right

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Abstract

Small and medium-sized science and technology enterprises play a vital role in economic development. The pledge of new plant varieties can better revitalize the company's current assets, improve the company's asset turnover rate and help the company out of financing difficulties. There are also a lot of risks in the financing of new plant variety right pledge financing enterprises, which are more restricted in the process of obtaining financing. Affected by the risk factors of pledge financing, there are material risk, external risk and internal risk in the pledge of new plant varieties. It brings difficulties to the smooth development of pledge financing of new varieties of plants. Therefore, in order to promote the smooth financing of new plant variety rights enterprises, it is urgent to solve the problems existing in the financing, prevent the risk of pledge financing according to different risk problems, and put forward perfect measures to promote the development of enterprises and improve the steady economic growth.

Keywords

Pledge of New Plant Variety Right; Risk Factor; Risk Prevention Measures.

1. Introduction

Protection and application are the most important two ' driving wheels ' in the intellectual property chain. Intellectual property pledge financing is an important way to use intellectual property and a major measure to realize the national intellectual property strategy. China is the world ' s second largest economy, small and medium-sized technology enterprises in China ' s economic jungle plays an important role. The 21st century is the century of knowledge and the era of talents. As China enters the era of "Civil Code," more and more property rights will enter the scope of security and become a new type of security, especially property rights based on intellectual property rights. As a large agricultural country, the development of seed industry plays an important role in China ' s economy, especially the strong support for seed enterprises. The reason to discuss the problems of pledge financing of new plant varieties is that in recent years, the national policy strongly supports the strategic objectives of pledge based on intellectual property rights, the development of intellectual property rights, and the establishment of intellectual property power. In order to promote the development of pledge financing of new plant variety rights and actively respond to a series of risks in pledge, corresponding solutions are put forward.

2. The Risk Factors of Pledge Financing of New Plant Variety Rights

As our country enters the era of ' Civil Code ', more and more property rights will enter the scope of security and become a new way of security, especially property rights based on intellectual property. As a big agricultural country, the development of seed industry plays an important role in our economy. In recent years, the successful cases of pledge financing with new plant variety rights have brought vitality to the development of enterprises. Due to the imperfect development of pledge financing based on intellectual property rights in China, there are many risks in pledge financing, and the factors affecting the risk of pledge financing of new varieties of plants cannot be ignored.

2.1. Legal Risk Factors of Pledge of New Plant Varieties Rights

According to Article 34 of the Regulations on the Protection of New Varieties of Plants, the protection period of vines, trees, fruit trees and ornamental trees is 20 years, and that of other plants is 15 years. It can be seen that the protection time of law is longer than the self-value period of new plant varieties, and the development of intellectual property rights is closely related to technological updates, so is the research and development of new plant varieties. New plant varieties technology enterprises with long-term strategy use technological innovation to research and develop the seed industry. Innovative seed production agricultural products companies develop new varieties with higher yield and quality on the original varieties, which leads to the risk of depreciation when the original variety rights are realized. In addition, the existence of infringement is a potential risk factor that leads to the pledge of new plant variety rights. Once infringement occurs, the pledge value of new plant variety rights will be discounted, which will bring invisible loan risk to banks.

2.2. Risk Factors of Pledge Right Defects of New Plant Varieties

To maximize the value of an intellectual property right, it must be guaranteed that the right is flawless and complete. Although our intellectual property rights are regulated by ' Civil Code ', ' Patent Law ', ' Indigenous Act ', ' Trademark Law ' and ' Regulations on the Protection of New Varieties of Plants ', each law provides for a clear obligee. But the real social situation is more complex, making intellectual property rights may appear unclear status. Since the invention and creation of intellectual property involves many subjects, of course, the research and development of new varieties of plants is no exception. As a right, it does not have a clear right holder like physical property. The invention and creation of new plant variety rights may involve multiple subjects, which may easily lead to disputes of rights. Therefore, the defects in the ownership of new plant varieties will become one of the risk factors of pledge financing.

2.3. The Imperfect Factors of the Evaluation System of New Plant Variety Right Pledge

As an intangible property right, the pledge guarantee financing of intellectual property is inseparable from the evaluation of value. The imperfect evaluation system is also one of the factors leading to the risk of pledge of new plant varieties. One is for the pledge of new varieties of plants need professionals to evaluate new varieties, using the knowledge of professionals to accurately assess. Second, for evaluation institutions, advanced technology and equipment are needed for evaluation. Affected by the factors of intellectual property and other factors, the market and transaction amount of pledge financing of new plant variety rights are small, which makes the evaluation of new plant variety rights limited. Third, it is necessary to improve the recruitment level of evaluation institutions, and professional knowledge talents are needed. However, the number of talents in the evaluation institutions is uneven, and there is a lack of professional experts in intellectual property rights and there is no evaluation credit with market credibility and evaluation value market recognition.

3. Risks in Pledge Financing of New Plant Variety Rights

The pledge financing of intellectual property rights is an important measure to realize the guarantee function. This paper expounds that the pledge financing of new varieties of plants is to ensure the optimal utilization of resources and achieve the efficiency of material use. Due to the intangibility of intellectual property itself, there is no doubt that it brings risks to the pledge financing of new varieties of plants. For example, the risks of new varieties of plants ' own substances, the external risks of pledge financing of new varieties of plants, and the internal risks of pledge financing of new varieties of plants will cause losses among financing subjects.

3.1. Risk of Pledged Financing of New Plant Varieties

3.1.1. Depreciation Risk of Pledge of New Varieties of Plants

The devaluation of pledge of new plant varieties is mainly divided into two kinds, one is normal devaluation, the other is abnormal devaluation. The normal depreciation mainly includes: (1) the legal protection life of new plant variety rights is shorter than its own economic value life ; (2) Affected by national agricultural policies, R & D technology and market demand, the pledge of new varieties of plants will be subject to depreciation risks in value. The abnormal depreciation is mainly caused by subjective reasons of financing enterprises for pledge of new plant variety rights. For example, the registration and failure of new plant variety rights make their economic pledge value depreciate. Specifically, as a right of intellectual property rights, the registration and registration of new plant varieties should be applied in accordance with the application process of intellectual property rights. Only when the application conforms to the authorization standard of the state for the identification of new plant varieties, and the agricultural sector gives recognition, it becomes the right of new varieties.

3.1.2. The Risk of New Plant Variety Right Pledge Infringement

The exercise of any right will have a boundary, especially the exercise of civil rights. The infringement of intellectual property rights is common in civil rights, as is the infringement of new plant varieties. The infringement of new plant variety right refers to the act of producing, selling and planting the alleged infringing varieties without the permission of the new plant variety owner, and the characteristics of the alleged infringing varieties are the same as those of the authorized varieties of the new plant variety owner, which causes losses to the owner. Infringement such as planting and using privately under the banner of ' farmers ' privileges ', and infringement such as sales beyond the scope of permission will bring economic losses to the grantor, trigger the risk of infringement, and make the grantor use the pledge financing of new varieties of plants to cause invisible infringement risk.

3.2. External Risks of Pledge Financing of New Plant Varieties Rights

3.2.1. Market Risk of Pledge Financing of New Plant Variety Rights

In the actual investigation, it is found that the development of seed enterprises needs financing support. To further develop into a strategic seed enterprise, it is necessary to invest a lot of medium and long-term funds, continuously improve the biological technology level of new plant varieties and upgrade the variety test system. Due to the great change of market environment, the pledge financing of new plant variety rights enterprises needs to make timely adjustment and response plan according to the market environment. The uncertainty of industry environment is easy to cause the market risk of seed companies ' financing. In addition, the market demand changes, the applicability of seed products, market promotion and operation and other uncertainties lead to the lack of market competitiveness of new plant varieties.

3.2.2. Information Risk of Pledge Financing of New Plant Variety Rights

Coase believes that the cost of information occupies a certain proportion in transaction costs. In the market economy environment, information exchange is an important factor affecting transaction costs. The asymmetry of transaction information determines the difficulty of bank's approval of loans. Since banks cannot fully grasp the information of plant variety right itself, the understanding of guarantee information is based on the information provided by new plant variety companies. Trading information asymmetry, resulting in banks can not fully grasp the new plant varieties of enterprise financial information, management information, operational information. Banks have certain limitations in obtaining information of financing companies, and this risk will further aggravate the financing difficulty of new plant varieties companies.

3.3. Internal Risks of Plant New Varieties Pledge Financing Enterprises

3.3.1. Operational Risk of Plant New Variety Right Pledge Financing Enterprises

With China entering the era of knowledge economy, agricultural production has entered the post-agricultural era, the development of seed companies is booming, but the financing difficulty has become the bottleneck of enterprise development. The internal operational risks of pledge of new plant variety rights are mainly the mistakes made by the decision makers of seed companies in the process of pledge financing management of plant variety rights, resulting in the decrease of expected production income of seed companies and the increase of bank loan risks. The operation of seed companies directly affects the decision-making of the financial industry to provide guarantees. Seed companies of new varieties of plants should bear operational risks to ensure the company's income and eliminate the worries of the financial industry in providing loans. If the obligee lacks appropriate operational management level for the new plant variety right, it is like a beggar sitting on gold.

3.3.2. Management Risk of Plant New Variety Right Pledge Financing Enterprises

The application value of intellectual property is divided into the future market value and the existing economic value, in which the financing of new plant variety rights also has the above two values. Enterprises with pledge financing of new varieties of plants have their own financing difficulties and high costs. Poor financial management is easy to cause risks. Intellectual property innovation enterprises generally have poor capital structure, difficult to realize assets, and need a lot of research and development funds, which makes the financing demand of new plant variety rights enterprises higher. The level of financial management has a great influence on the development prospect of science and technology enterprises in using their own intellectual property rights to pledge financing. In addition, the lack of excellent intellectual property research management team of new plant variety rights financing enterprises may cause a certain degree of loss to the operation of new plant variety rights pledge financing enterprises and cannot achieve the expected benefits of pledge financing.

4. Measures to Improve the Risk of Pledge Financing of New Plant Varieties

Compared with the traditional patent, trademark and other intellectual property rights, the pledge financing of new plant varieties is not mature and needs further exploration. The main reason is that the risk of new plant variety right itself is too high, which brings great losses to both parties in the transaction. Therefore, in order to promote the development of pledge financing of new varieties of plants, we must improve the pledge risk, effectively prevent the problems existing in the pledge financing of new varieties of plants in a timely manner, try to avoid the worries of the pledgee and promote the enthusiasm of financing.

4.1. Optimization of Material Risk in Pledge Financing of New Plant Variety Rights

4.1.1. Multiple Intellectual Property Pool Pledges Reduce the Risk of Devaluation

In order to promote the pledge financing of new plant variety rights, alleviate the pledge risk as soon as possible and meet the needs of both parties in the transaction. The devaluation risk of new plant varieties can provide guarantee for the pledge of new plant varieties through collective packaging of property rights in other intellectual property rights of enterprises, reduce bank losses, and increase bank financing confidence. Guarantee with collective property is to meet the overall grasp of the flow of property, Professor Wang Liming pointed out that the overall value of collective security is much higher than a single value, but also higher than the simple pledge of several single property value. When there is a risk in the pledge of an

enterprise, it can be guaranteed by other assets of the enterprise. Once the pledge is devalued, the guarantee of the collection provided by the enterprise can compensate for the losses caused by the devalued bank. Therefore, once the risk of devaluation occurs in the pledge of new plant varieties, the enterprise can use the existing property rights to collectively guarantee. When the assets of the whole enterprise are packaged and sold, the value of the encumbered property will be much greater than the market value of a single property, which is more beneficial to the realization of the security interest holder, and also reflects the concept of the best use of things. At the same time, it realizes the economic value of the collective guarantee of property rights based on intellectual property rights.

4.1.2. Strengthening the Protection of New Varieties of Plants to Prevent Infringement Risks

According to Article 73 of China's Seed Law, there are three solutions to the infringement of the right to new varieties of plants, one is the independent consultation between the parties; the second is to solve it through relevant government agencies such as the agricultural sector; the third is to regulate through judicial procedures. However, in reality, only legal provisions are insufficient to effectively punish and deter infringers, and lack effective judicial and law enforcement protection. Justice is the last line of defense to protect fairness and justice. Any illegal act is subject to legal sanctions. The infringement of new varieties of plants has caused huge losses to new varieties of plants enterprises, reduced financing efficiency, and cracked down on the confidence of bank loans, which has adversely affected the future development of the entire seed industry enterprises. According to the provisions of the 'Regulations on the Protection of New Varieties of Plants', judicial remedies can be taken for violations. Judicial proceedings can be civil proceedings, and serious cases can be elevated to criminal offenses. When the infringement dispute of the right of variety occurs, a civil lawsuit can be filed to ask the court to confirm the civil relationship and solve the infringement dispute.

4.2. Improving External Risk Resolution of Pledge Financing of New Varieties of Plants

4.2.1. Establishment of New Plant Varieties Right Risk Compensation Fund to Resolve Market Risk

In order to solve the financing difficulties of seed companies and the market risk of pledge of new varieties of plants, it is necessary to establish a multi-level and multi-source risk compensation fund for pledge of new varieties of plants at the central, local and social levels, so as to provide strong financial guarantee for pledge financing of new varieties of plants. First of all, the central and local governments should establish a special risk compensation fund for pledge of new plant varieties. The source of the fund should be given priority to with the central financial allocation, supplemented by the agricultural subsidies of the local agricultural sector, and a variety of sources of risk funds for pledge of new plant varieties, so as to reduce the risk of pledge of new plant varieties, increase bank confidence, encourage pledge of new plant varieties, and accelerate the financing development of new technology enterprises. Second, local governments can also set up new plant varieties pledge risk compensation fund. Local governments establish a special fund for pledge of new varieties of plants. The fund is mainly derived from the special agricultural subsidies of the government's agricultural sector to support the financing development of local small, medium and medium-sized seed enterprises. At the same time, it can also stimulate the development of innovative talents and cultivate new varieties of high-quality sorghum to conform to the development of agricultural economy after the new era. Finally, the establishment of social risk compensation fund, the use of social idle funds to establish social plant new varieties pledge financing pool. In order to maximize the use of resources, integrate more social wealth, and achieve optimal allocation of resources.

4.2.2. Strengthen Supply Chain Based Bank-enterprise Alliance to Reduce Information Risk

Based on the supply chain, the core enterprises and upstream and downstream financing enterprises to achieve information sharing, information communication, to avoid the resulting risk of information asymmetry. Supply chain is used in the pledge financing of new plant variety rights, mainly to guarantee the credit of the core enterprises in the seed supply chain model to the bank, the bank based on guarantee loans to upstream and downstream enterprises, to ensure that the whole supply chain enterprises based on credit, information sharing, complete the loan process. In addition, the most important link in the supply chain is that the core enterprises of the seed industry provide the data and resource information needed for the financing of the seed industry companies to the banks, which further alleviates the information asymmetry between the banks and the seed industry financing companies, the risk of evaluating new varieties of plants, and the fluctuation of seed prices, thus affecting loans, and promotes the banks to provide financial services to various types of subjects in the seed industry and even the agricultural ecological circle, breaks the "information island" dilemma of the financing of traditional seed industry companies, and uses supply chain finance to form information sharing between upstream and downstream enterprises, core enterprises and banks, and control the risk of information asymmetry.

4.3. Strengthen the Internal Risk Control of Pledge Financing of New Plant Varieties Rights

4.3.1. Establishment of New Types of Plant Varieties to Share Operational Risks

As the property right of financing for variety enterprises, the right of new varieties of plants can set up special insurance types such as the R & D insurance of new varieties of plants, the pledge insurance of new varieties of plants, and the implementation insurance of new varieties of plants according to its characteristics. The insurance types can be set up in a typological way. The specific insurance types can be used as the escort for the object of intellectual property pledge, and the unification of various types of intellectual property insurance can be removed. Firstly, for the insurance amount of the new plant variety right, the insurance amount can be negotiated and agreed between the insured and the insurance company according to the market value of the new plant variety, so as to ensure the interests and risk control of the bank and reflect the two-way protection. Secondly, the scope of insurance should be strictly stipulated. For a new type of financing property right in the pledge financing of new plant varieties, when it is insured, it is necessary to clarify the scope of insurance and minimize unnecessary insurance coverage. Finally, for claims, the application of claims is clarified. First, in terms of the realization factors of new plant variety rights. Where a new plant variety right is pledged and financed by a bank, it cannot be realized due to non-subjective factors, the insurance company shall claim it according to the agreed proportion. Second, the object of pledge of new plant variety rights. New plant variety rights financing enterprises do not pledge financing to banks, insurance companies can not claim or less claims.

4.3.2. Enhancing Corporate Intellectual Property Awareness to Prevent Corporate Management Risks

In order to create a good environment for the pledge of intellectual property rights, enhance the awareness of intellectual property rights, and accelerate the internal management of financing enterprises for the pledge of new varieties of plants. On the financial management of the pledge financing enterprise of new plant variety right, it is necessary to strictly control the capital flow of the enterprise. When the financial managers of the enterprise cannot accurately grasp the finance, the financial risk of the new plant variety right enterprise will inevitably arise. The new plant variety right enterprise should abide by the principle of economic rationality, control the capital outflow and management cost, regularly prepare the financial budget table,

minimize the occupation of funds, and strengthen the financial risk control ability of the new plant variety right enterprise. In addition, in view of the problems of scientific research personnel, the awareness of intellectual property R & D of scientific research personnel in enterprises should be enhanced. A special R & D management department for new plant varieties was established to be responsible for the transformation of initial R & D, mid-term experiments and late results of new plant varieties. Special science and technology training for new plant varieties internal staff, so that managers have a strong sense of intellectual property.

5. Conclusion

Grain safety world, planting cornerstone. Seed industry is the core of agriculture and the logical starting point of agricultural supply-side structural reform. With China ' s agricultural production entering the post-agricultural era, seed companies accelerate development, capital investment is the premise. In the financing mainly based on intellectual property pledge, the pledge financing of new varieties of plants has become a new guarantee method for modern financing. In order to adapt to social and economic development, we should actively respond to the emerging risks and constantly improve them. It lays the foundation for the pledge financing of new plant variety rights of science and technology enterprises in China and promotes the development of post-agricultural era.

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