

## 論 文 摘 要

由於地形多樣，氣候多變，生物種類繁瑣，加上長年以來對於農業發展的投入，台灣農產品之美名，眾所周知。然而近年來由於工商業之發展，台灣農業逐漸沒落，為尋求新的發展市場，農企業紛紛前往大陸及東南亞等區域發展。尤其是大陸地區，由於其南部氣候與台灣相近，加之市場廣大，更是農企業投入之目標。然而由於對當地植物新品種保護之法規及風土民情不了解，許多農企業不僅無法在大陸地區取得先機，搶佔市場，反而造成既有優勢喪失，新品種被剽竊的後果。針對此現象，本研究試圖由植物特性、兩岸種苗產業發展歷史、植物新品種保護演變、國際植物新品種保護趨勢、兩岸植物新品種保護相關法規進行一系列之探討，同時訪談相關農企業，實際印證經營層面所面臨之問題，以歸結出農企業在台灣及大陸經營植物新品種時應留意之重點，以及政府可協助之項目，希望能對農企業之發展有所助益。在一系列的探討中，本研究發現台灣及大陸之植物新品種保護分別有以下之問題，在台灣方面：(一)個別品種之實質衍生品種界定方式未明，易使品種經營者無所適從；(二)品種權審查及田間試驗之執行皆非由專責機關實行，對於審查速度及審查經驗累積，及相關試驗準則訂定上，皆有不利益之影響；(三)在品種權概念推廣上仍有待加強；(四)台灣業餘育種者與企業經營者間缺乏溝通管道，無法將現有資源有效經營；(五)基因轉殖作物採片段式保護規範，不利於未來基因轉殖作物種植之管理。在大陸方面則是：(一)農民免責範圍廣、品種權保護範圍狹窄、及品種權保護年限短等問題影響育種者申請品種權意願；(二)法規定訂詳盡，但推廣不足，且執法不嚴，影響品種權效力；(三)大陸幅員廣大，通路及運輸問題易成為影響農企業發展之重要因素；(四)由於大陸品種權維權不易，經營模式及品種維護配套措施成為主宰成敗之關鍵。針對上述問題，本研究分別由政府及農企業角度出發，提出建議，以供未來植物新品種經營參考。

關鍵字：品種權、智慧財產、植物新品種保護、兩岸植物新品種經營

**The Comparison of Plant Intellectual Property Right  
between Taiwan and Mainland China—Centered on Plant  
Variety Right Protection**

**By Chien-wen Kao**

**Abstract**

The biological diversity resulted from varied climate and the long term investment in agricultural industry have made Taiwan's agricultural product well known for its good quality. However, recent progress of commerce has brought some changes to this situation. In order to find a new market and create more possibilities, agricultural enterprises tend to start their new business in mainland China and the southeastern Asia. Because of the similar climate in Taiwan and the southern China, and the large market, mainland China becomes a preferable choice. But with the lack of knowledge of plant variety protection act and sense of local customs and practices, many agricultural enterprises not only lose their advantages but also their new plant varieties. To solve this problem, we try to make a series of explorations of plant characteristics, seed industry development history of Taiwan and mainland China, the evolvement of new plant variety protection act, new trends of international new plant variety protection, and new plant variety protection related act in Taiwan and mainland China. And to find out if the real agricultural environment did reflect our explorations, we further visit two agricultural companies to acquire their experiences. Through these explorations, we hope we can find out the key points of agriculture management, and make some distributions to agricultural enterprises' operating in Taiwan and mainland China. From our research, we find out some problems in Taiwan's and mainland China's new plant variety protection system and environment. Problems in Taiwan's: 1. The method to classify essentially derived variety remains unknown, and it confused plant variety

breeders. 2. We don't have independent authority to execute the grant of new plant variety right and DUS test, and it has negative effects on examination speed, examination knowledge accumulation, and DUS test guideline development. 3. The education of new plant variety protection concepts still needs to be enhanced. 4. Lack of communication between nonprofessional breeders and agricultural enterprises causes waste of research resource. 5. The nonsystematic regulations of gene modified plants protection will bring some troubles to future management of gene modified plants. Problems in Mainland China's : 1. The broad range of exceptions to the breeder's right of farmers, the extremely restricted breeder's right, and the shortness of plant variety protection years all affect breeders' will to apply plant variety right. 2. Lack of plant variety protection concepts of farmers and the weak enforcement of the regulations decline the effect of plant variety right. 3. The broad land of mainland China makes the delivering channels and transportation become important factors to the development of agricultural business. 4. The hardness of enforcement of plant variety right makes business model and cooperation of other protection methods become the key factors of success. To solve the problems, we try to provide some suggestions to government and agricultural enterprises and hope these suggestions can benefit the management of plant variety in the future.

Key words: Plant variety right, intellectual property, protection of new plant variety, new plant variety management in Taiwan and Mainland China