

Origin Agritech LTD  
Form 8-K  
November 14, 2005

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

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**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Date of Report:  
(Date of earliest event reported)  
**November 8, 2005**

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**ORIGIN AGRITECH LIMITED**  
(Exact name of registrant as specified in charter)

**BRITISH VIRGIN ISLANDS**  
(State or other Jurisdiction of Incorporation or Organization)

(Commission File Number)

**000-51576**

(IRS Employer Identification  
No.)

**N/A**

**625 Broadway, Suite 1111  
San Diego, CA 92101**

(Address of Principal  
Executive Offices and zip  
code)

**(619) 795-4627**

(Registrant's telephone number, including area code)

**N/A**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12(b) under the Exchange Act (17 CFR 240.14a-12(b))
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Section 2 Financial Information

*The financial statements of Origin are prepared using Renminbi, the currency of the Peoples Republic of China (“PRC”). For convenience, the Renminbi amounts have been converted throughout the text of this Form 8-K Report into United States dollars. Until recently, the Renminbi was a controlled currency, and the exchange rate maintained by the PRC was approximately 8.27 Renminbi to one United States dollar. This is the exchange rate used for the translated dollar amounts in the text of this proxy statement/prospectus. The Chinese government has recently altered its policy toward the rate of exchange of the Renminbi versus the US dollar. Changing from a previously fixed rate policy regarding the dollar, the Renminbi has recently been permitted to float within a fixed range against a basket of currencies, including the US dollar, Japanese Yen and European Euro, which has resulted in the Renminbi being allowed to appreciate 2% +/- 0.3% vs. the dollar. Since the company’s business is presently 100 percent within the PRC, this change will have no effect on the company’s business, but will result in a concomitant increase in its after-tax earnings when stated in dollar terms. In the future, the company’s earnings stated in US dollars will fluctuate in accordance with the change in exchange rate.*

*Under the law of the British Virgin Islands, Agritech is authorized to issue “ordinary shares” and holders of ordinary shares are “members.” References to ordinary shares and members have been translated to common stock stockholders, which are terms more familiar to United States persons.*

*The following company names for the PRC related entities are used in this document: (1) State Harvest Holdings Ltd. is referred to either as “Origin” or “State Harvest,” (ii) Beijing Origin Seed Limited is referred to as “Beijing Origin” throughout this document, (iii) Henan Origin Cotton Technology Development Limited, sometimes written He Nan Origin Cotton Technology Limited, is referred to as “Henan Origin” in the text or “He Nan Cotton” in the Origin financial statements, and (iv) Changchun Origin Seed Technology Development Limited is referred to as “Changchun Origin” in the text or “Chang Chun Origin” in the Origin financial statements. The differences in names, in part, arise from the difference in writing Chinese names in English for which there are no uniform rules.*

### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

On November 8, 2005, Origin Agritech Limited, a company organized under the laws of the British Virgin Islands (“Agritech”), consummated the merger with Chardan China Acquisition Corp., a Delaware corporation (“Chardan”), in which merger Agritech was the survivor, and immediately thereafter it consummated the acquisition of State Harvest Holding Limited, a company organized under the laws of the British Virgin Islands (“State Harvest”), which acquisition included the controlled affiliated operating corporations, Beijing Origin Seed Limited (“Beijing Origin”), Henan Origin Cotton Technology Development Limited (“Henan Origin”), Changchun Origin Seed Technology Development Limited (“Changchun Origin”) and Beijing Origin State Harvest Biotechnology Limited (“Origin Biotechnology”) (these four companies are referred to as the “Origin Operating Companies”). (Together the Origin Operating Companies and State Harvest are sometimes referred to on a fully consolidated basis as “Origin”.)

The merger of Chardan with and into Agritech was pursuant to a Certificate of Merger and Plan of Merger between Chardan and Agritech, dated November 8, 2005.

The acquisition of State Harvest was pursuant to the Stock Purchase Agreement dated as of December 20, 2004, as amended.

At the closing, the State Harvest stockholders and their designee were paid an aggregate of \$10,000,000 in cash, using the funds held in the trust account of Chardan, and were issued an aggregate of 10,000,000 shares of Agritech common stock for all the outstanding common stock of Origin. Of the cash portion of the purchase price, \$250,000 has been held back for one year by Agritech to secure certain indemnification obligations of the State Harvest

stockholders.

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Additional purchase price payments will be made to the State Harvest stockholders and their designee, up to an aggregate of \$15,000,000, if either of the following occurs during any fiscal year of Agritech after the closing date until December 31, 2008 (or June 30, 2009 if the fiscal year is changed to a July 1 - June 30 fiscal year) from funds generated in the additional financing or from operational earnings as described below:

A. If Agritech receives at least \$40,000,000 in gross proceeds in additional financing as a result (i) of the call of the issued and outstanding public warrants assumed by Agritech at the closing; (ii) Agritech's successful completion of a follow-on offering; or (iii) a private investment into Agritech by a strategic investor ("Financing Adjustment"), then Agritech will pay an additional \$15,000,000 to the State Harvest stockholders and their designee; or

B. If Agritech generates net positive cash flow of \$2,000,000 or more on a consolidated basis ("Earnings Adjustment"), then the State Harvest stockholders and their designee will be entitled to receive 75% of the net positive cash flow up to a maximum of \$7,500,000 per fiscal year and \$15,000,000 in the aggregate.

If both an Earnings Adjustment and a Financing Adjustment occur, the maximum aggregate amount to be paid to the State Harvest stockholders from one or both adjustments is \$15,000,000.

As further additional purchase price, certain State Harvest stockholders and their designee will be issued an aggregate of 1,500,000 shares of common stock of Agritech for any of the next four years if, on a consolidated basis, Agritech generates after-tax profits (excluding after-tax operating profits from any subsequent acquisitions of securities that have a dilutive effect and before the expenses of this transaction and director and employee option expense) of at least the following amounts:

Year ending June 30,	After-Tax Profit
2006	\$11,000,000
2007	\$16,000,000
2008	\$21,000,000
2009	\$29,000,000

The designee, A Plus Resources Limited, a company formed under the laws of the British Virgin Islands, is owned by Ms. Song Baoqing and provided financial advisory services to the Origin Parties.

In connection with the above described acquisition, 200,000 shares of common stock were issued to a consultant to Chardan and Agritech.

All the above-mentioned shares were issued pursuant to Section 4(2) of the Securities Act of 1933 and are "restricted shares."

On November 8, 2005, Agritech, State Harvest and the Origin Companies issued a press release announcing the closing of the above transactions ("Closing"), a copy of which is attached to this Current Report on Form 8-K as Exhibit 99.1.

In connection with the approval of the above described transaction, the Chardan stockholders adopted the 2005 Performance Equity Plan, which authorizes a total of 1,500,000 shares of common stock available for awards under the plan. As a result of the merger of Chardan with and into Agritech, the plan became the 2005 Performance Equity Plan of Agritech. The purpose of the plan is to enable Agritech to offer its and its affiliated companies' employees, officers, directors and consultants whose past, present and/or potential contributions to the company have been, are or will be important to the success of Agritech, an opportunity to acquire a proprietary interest in Agritech. The various types of incentive awards that may be provided under the stock option plan will enable Agritech to respond to changes in compensation practices, tax laws, accounting regulations and the size and diversity of its business.

#### **Item 2.02 Results of Operations and Financial Condition.**

Reference is made to the disclosure set forth under Item 8.01 of this Current Report on Form 8-K, which disclosure is incorporated herein by reference, concerning the management's discussion and analysis of financial statements of Origin.

### **Section 3 Securities and Trading Markets**

#### **Item 3.02 Unregistered Sales of Equity Securities.**

Reference is made to the disclosure set forth under Item 2.01 of this Current Report on Form 8-K, which disclosure is incorporated herein by reference, concerning the stock portion of the consideration issued to the State Harvest stockholders and a designee and to a consultant to Chardan and Agritech.

#### **Item 3.03 Material Modification to Rights of Security Holders**

Incorporated by reference from the Form S-4 (No. 333-124709), effective September 27, 2005, are the following: (A) "Chardan Redomestication Merger" found at pages 75 - 87, including the "Plan of Reincorporation and Redomestication Merger," "Differences of Stockholders Rights," "Indemnification of Officer and Directors," "Defenses Against Hostile Takeovers," "Rights of Minority Shareholders," and "Transfer of Agritech Securities upon Death of Holder," (B) "Description of the Combined Company's Securities Following the Stock Purchase" found at pages 149 -151 and (C) the Articles and Memorandum of Association of Agritech included as Exhibits B and C to the proxy statement/prospectus.

### **Section 5 Corporate Governance and Management**

#### **Item 5.01 Changes in Control of Registrant.**

Reference is made to the disclosure set forth under Items 2.01 and 8.01 of this Current Report on Form 8-K, which disclosure is incorporated herein by reference.

#### **Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

Reference is made to the disclosure set forth under Items 2.01 and 8.01 of this Current Report on Form 8-K, which disclosure is incorporated herein by reference.

Effective as of the Closing, and as a result of the merger of Chardan with and into Agritech, the officer positions of Chardan were eliminated and the directors of Chardan (other than Kerry Propper, Remo Richli, Steven Urbach and Michael Chermak) resigned. Messrs. Propper, Richli, Urbach and Chermak will continue as directors of Agritech. In

connection with the acquisition of State Harvest, five additional persons were appointed as directors of Agritech, who are Messrs. Gengchen Han, Yashang Yang, Liang Yuan, Bailiang Zhang and DaFang Huang.

### **Item 5.03 Amendments to Articles of Incorporation or Bylaws.**

As a result of the merger of Chardan with and into Agritech, the Articles and Memorandum of Association of Agritech are the constituent documents of the company governing shareholders rights. The forms of Articles and Memorandum of Association were filed as Exhibits B and C to the Form S-4 (No. 333-124709), effective September 27, 2005, and are incorporated herein by reference.

### **Item 5.06 Change in Shell Company Status**

The filing that describes the material terms of the transaction by which Chardan merged with and into Agritech and Agritech acquired Origin are described in the Form S-4 (No. 333-124709), effective September 27, 2005.

## **Section 8**

### **Item 8.01 Other Events.**

Incorporated by reference from the Form S-4 (No. 333-124709), as effective on September 27, 2005, are the following: (A) "Enforcement of Civil Liabilities Against Foreign Persons" found at pages 11 - 12, (B) "Selected Historical Financial Information - The Origin Parties Historical Financial Information" found at page 24, (C) "Market Price Information" found at pages 28 - 29, (D) "2005 Performance Equity Plan" found at pages 88 - 96, (E) "Certain Relationships and Related Transactions" found at pages 140 - 142, (F) "Shares Eligible for Future Sale" found at page 148, and (G) "Where You Can Find More Information" found at pages 153-154.

## **BUSINESS OF ORIGIN**

### *General*

State Harvest was established on October 6, 2004. On December 25, 2004, it entered into stock consignment agreements for the control of the Origin Operating Companies, other than Origin Biotechnology of which it owns 100% of the outstanding stock. Through the control of the four Origin Operating Companies, it will conduct operations in the field of hybrid crop seed development, production and distribution through its subsidiaries, which are Beijing Origin, Changchun Origin, Henan Origin and Origin Biotechnology, the technology-intellectual property holding and licensing company. All of the Origin Operating Companies are organized under the laws of the PRC.

The first Origin Operating Company formed was Beijing Origin, which was founded in Beijing in 1997 and began operations in 1998. The initial operations consisted of licensing existing proprietary hybrid corn seeds for development and production and initial commercial distribution of its first hybrid corn seed, YuYu 22. Although Beijing Origin and the other Origin Operating Companies have continued to license hybrid seeds from others, it is increasingly relying on its own proprietary hybrid seed varieties which it began to develop in 1998. In 2003, it began commercial distribution of OS 19, the first of Origin's products to be entirely internally developed. To date, the majority of its revenues have depended on licensed seed. The loss of the right to grow and distribute licensed seed would result in a substantial loss of revenues to Origin and affect its ability to continue in business as it is currently operating.

### *The Chinese Crop Seed Market*

The Chinese agricultural sector is primarily made up of small, family-owned farms. Increasingly, corn is becoming an important crop in China because it has a number of uses, including as livestock feed and a source of fuel in the form of ethanol. In addition, rice is an important human food crop and cotton is an important industrial crop.

The Chinese agricultural seed industry is fragmented, with the corn seed market being served by approximately 5,000 small, local seed suppliers. Most of these seed companies were established in the 1960s and 1970s by local county governments to address Chinese central government agricultural initiatives. They were designed at the time to provide service and support to local farmers. These local seed providers usually sell varieties of agricultural seed that have been grown in their respective locales for years.

Improved seed products have been generally available in China through large multinational suppliers, the largest being Pioneer International, Monsanto and Sygenta, each of which established operations in China more than a decade ago. These multinational companies, however, have not yet penetrated the Chinese market to any appreciable extent.

Origin was founded with a business strategy that would meet what it believes to be the needs of the small Chinese farmers. That business strategy consisted of the following elements:

- (i) Relying on proprietary seed products, initially licensed and increasingly internally developed, to deliver superior value to customers and establish barriers to competition;
- (ii) Devising a process for obtaining regulatory approvals for new crop seeds (a Chinese legal requirement) that has proven efficient and effective;
- (iii) Establishing a broad network of farmers in several regions to participate in the seed development process and to produce crop seeds for commercial distribution once approval is received;
- (iv) Creating an effective distribution system using a relatively small network of primary distributors, only one in each county with exclusive territories, with which it can deal directly and efficiently which, in turn, develop their own secondary distribution network to reach out directly to the family farmers. This distribution network is not only a means for securing and fulfilling orders, but it acts as a conduit for Origin's marketing and technical support activities.
- (v) Relying on a number of marketing activities to retain existing customers and attract new ones. These marketing activities include:
  - a demonstration program that provides technical assistance to customers regarding the correct seed choice and proper cultivation methods;
  - television advertising and a newsletter published three times per year that reaches nearly 2 million seed customers and provides them with information on the benefits of Origin's products and the techniques for maximizing yields;
  - a database of over 1 million customers that Origin uses to keep repeat sales at a high level, an important component of revenue growth.
- (vi) Delivering service and technical support to customers throughout the growing season for its products. Customers can contact Origin through a dedicated call center that handles up to 6,000 calls per day. Field service representatives are dispatched within 48 hours of a customer's request for help.



This business model and strategy has proven effective. Origin has increased its annual revenues by an average of more than 30% over the three year period of fiscal 2002 through fiscal 2004. Management believes that it will also increase revenues for fiscal 2005, based on the fact that Origin receives orders with deposits well in advance of the next year's growing season, which enables it to calculate demand and make estimates of its sales volume and revenue.

Generally, Beijing Origin products carry a premium price. As explained in the Government Regulation section, approval of new seeds is granted only if seeds have an 8% or higher yield compared to control seeds and also rank in the top six of all seeds being tested in that cycle, based on monitored production in at least five different locations. Further, in China, corn, rice, cotton and other major crop seeds cannot be sold unless they pass government variety registration trials and obtain a certificate of "Authorized Crop Variety" from the Crop Variety Authorizing Committee. The committee sets standards about yields, grain quality, disease and insect resistance and requires approved seeds to meet these standards, as well as a yield increase of greater than 5% over selected base hybrids or varieties. There is no assurance that Origin's seeds are the best in any one year or that others will not be developed that are better. By reason of this government regulation, however, it is likely that new hybrids offered in China will supplant prior approved ones in terms of quality. In addition, Beijing Origin currently provides dealers a higher profit margin, and management finds that they therefore tend to promote Origin products more actively in the market place.

### Intellectual Property Base

Origin has a growing portfolio of its own seed hybrids and varieties, some of which are subject to Chinese patents and patent applications. Origin considers its proprietary products and patents to be important to its business. The basis for a patent on a seed is the use of DNA fingerprinting. The presence of a DNA fingerprint enables identification of the seed and can be used to determine if others are infringing on the patent. Origin also uses additional measures of identification, including holographic coding of each bag of seed, to limit infringement and support enforcement of its rights. Farmers can call the technical support line to verify the code, ensuring the seed is a genuine Origin product. Operators note each time a code is verified, negating the possibility of a counterfeiter's repeatedly using the same number. Origin receives as many as 6,000 phone calls per day for technical assistance and code verification.

The patented seeds are as follows:

Patent	Name of Patent	Patent Number	Proprietor of Patent	Effective Period*
Design Patent	Packing bag	ZL 993 14865.4	Beijing Origin Limited	November 1, 1999 to October 31, 2009
Invention Patent	A method of producing hybrid corn seed	ZL 02146510.X	Beijing Origin Limited** Henan Agriculture University**	October 18, 2002 to October 17, 2022
Seed	LinAol	CAN 19990108.2	Beijing Origin Limited	March 1, 2003 to February 28, 2018

\* Effective period means the period from approval of the patent until its expiration.

\*\*Henan Agricultural University and Origin share this patent relating to a proprietary method of producing hybrid corn seed. Both parties may use the method to produce seed and are not required to pay any sum to the other.

Neither party has the right to allow a third party to use the patent. Those provisions are embodied in the patent and not in a separate agreement.

The following is a list of patents for which Origin has made application.

Name of Seed	Applicant	Date Filed	Date of Announcement	Filing Number
OS 3101	Beijing Origin Limited	January 13, 2004	May 1, 2004	20040020.7
OS 3102	Beijing Origin Limited	January 13, 2004	July 1, 2004	20040021.5
Zhongyou 85 (rice seed)	Beijing Origin Limited	August 24, 2004	January 1, 2005	20040347.8
OS (silage com) 5102	Beijing Origin Limited	April 7, 2005	September 1, 2005	20050215.8
OS 3108	Beijing Origin Limited	April 7, 2005	July 1, 2005	20050214.X
OS 3202	Beijing Origin Limited	April 7, 2005	July 1, 2005	20050213.1
OS 3111	Beijing Origin Limited	April 7, 2005	July 1, 2005	20050212.3

In addition, Origin has seven trademarks that have been registered in the PRC, which registrations cover periods expiring between 2009 through 2015. These trademarks include names and artwork and are used in connection with all their seed products and packaging.

Origin launched its first proprietary product in 2003 after six years of research and development. In 2004, Origin delivered three new proprietary seed products, and in 2005, to date, it has delivered four new proprietary seed products. With its research, breeding system and management, Origin is planning to introduce approximately 40 new proprietary products into the government testing and approval cycle in the calendar years 2005 through 2008. The testing and approval process takes three full years. Currently, Origin has seven products in the third and last year of the testing and approval cycle, 16 products in the second and 23 products in the first.

In addition to the development of its own proprietary seeds, Origin licenses the distribution of seeds developed by independent research and development institutions which have no commercialization ability or distribution channels of their own. Currently, Origin licenses 14 varieties of corn and two varieties of cotton seed which currently account for the majority of its sales. Under the typical license agreement, one of the Origin Operating Companies will license a designated product for exclusive production and marketing within China. The license fees vary in their method of determination, but generally they are a percentage of revenues from the sale of the variety or are a flat fee arrangement. No agreement either in the past or currently results in a payment in excess of 1% of the revenues of Origin. Beijing Origin has these types of agreements with Hubei Province Shiyan Agricultural Sciences Institute, China Academy of Sciences Microbiology Institute, and Corn Research Institution of Li County in Hebei Province and Henan Agricultural University. Except for the agreement with Hubei Province Shiyan Research Institute, which has a term expiring on January 10, 2008, these agreements generally have no term. The agreements may be terminated for breaches by either party. Origin may terminate the agreements at any time, in effect, by not producing seeds thereunder, without penalty.

Origin has joint development agreements with the Corn Research Institute of Li County, Hebei Province, under which Origin and the Institute are to develop several varieties of corn seed. Under these two agreements, Origin has developed and produced five seeds, which together have represented a substantial amount of sales in each of 2003 and 2004 as follows:



Seed Name	Percentage of 2003 Sales	Percentage of 2004 Sales
Liao No. 1	49.00%	50.50%
OS 17	1.14%	7.44%
Liyu 16	0.00%	0.11%
OS 19	0.09%	0.57%
Liyu 26	0.00%	0.02%
<b>Total</b>	<b>50.23%</b>	<b>58.64%</b>

The seeds developed under the agreements are exclusive to Origin until the agreements are terminated, and the Institute has agreed that it will not develop any derivative hybrids from these seeds. Moreover, the Institute will pay the government fees to protect the exclusivity rights of Origin. Origin must promote the seeds licensed under the agreements and is obligated to pay 0.4 RMB for each kilogram of seed produced by Origin, as a license fee, which has been less than 4.01% of the cost of goods sold. The agreement has no termination date, hence it continues until the parties jointly agree to terminate or the breach of the agreement by one party or the other.

Only one corn seed product, YuYu 22, is licensed on a non-exclusive basis. The YuYu 22 variety is licensed from Henan Agricultural University for an indefinite term. The university has granted Beijing Origin the right to produce, distribute and propagate the variety. The university also will provide technical materials and instructions, supervise seed quality and evaluate growing areas. It will also pursue the PRC New Plant Variety Notification for YuYu 22. Beijing Origin pays a technology license fee of 20RMB for each mu (unit of area equivalent to .164 of an acre) of seed production area per year which has been less than 1% the cost of goods sold. Beijing Origin is responsible for all the propagation costs, maintaining quality standards, and safeguarding the variety reputation and rights of the university. The YuYu22 seed product represented approximately 37% and 13% of sales in each of the fiscal years 2003 and 2004, respectively. There is no term for this agreement.

Except as discussed immediately above, no other seed products represented more than 10% of sales in these years. In addition, except as disclosed above, no one entity is responsible for a seed product or group of seed products that represent more than one percent of the revenues of Origin.

As