

# THE LAW OF THE REPUBLIC OF TAJIKISTAN '

## On Selection Achievements of Agricultural Crops

The present Law regulates the relations emerging in connection with creation, use and protection of selection achievements of agricultural crops, on which the patents are given.

### 1. GENERAL PROVISIONS

#### *Article 1. Selection of agricultural crops*

The selection of agricultural crops consists of a complex of selection measures directed at the receipt and production of new sort of plants.

#### *Article 2. Selection achievement*

New species of plants, which are independently of the protection ability are defined by signs characteristic of the given genotype or combination of genotypes, and differs from other plants of the same botanical taxon at least by one sign.

The sort can be represented by several plants, by one plant, by one or several parts of the plant under the condition if this part or the parts can be used for reproduction of plants of this sort.

New selection achievement should be given the name, offered by applicant and approved by the State Commission on sort testing of agricultural crops and protection of the sort attached to the Ministry of Agriculture of the Republic of Tajikistan, further, called State Commission and registered in the State Register.

The name should permit to identify the selection achievement, it should be short and differ from existing selection achievements of the same or close botanical kind and easily recognized.

In the case of application for selection achievement in the Republic of Tajikistan and other countries it should have one name.

The name of selection achievement under the certain circumstances can be changed by the consent of the State Commission.

Protecting selection achievement should be used by the name, which is registered in the State Registry of protected selection achievement.

The protecting criteria are the sort, the clone, and the line, hybrid of the first generation of the population.

#### *Article 3. Legislation on selection of agricultural crops*

Legislation of the Republic of Tajikistan on selection of agricultural crops consists of the present Law and promulgating in according with it normative legal acts, of state authority and management within the limits of their powers.

### II. TERMS OF PROTECTION ABILITY OF SELECTION ACHIEVEMENT

#### *Article 4. Terms of protection ability of selection achievement*

The patent is given out for selection achievement adequate to the criteria of protection ability and concerning botanical kinds, which list is established by the State Commission.

Criteria of protection ability of selection achievement are:

a) Novelty:

Before date of application on distribution of the patent on a seed and vegetative material;

Selection achievement that was not on sale and was not transferred by any other way though a selectionist or his assignee or with their consent to other persons for use in the production within the Republic of Tajikistan earlier than one year before application;

Selection achievement that was not on sale and was not transferred other way though a selectionist or his assignee or with their consent to o other persons for use within other country earlier than six years before application, if it concerns grapes, wood, decorative or fruit crops and timber kinds, and earlier than four years, if it concerns any other plants;

b) Difference:

The selection achievement should obviously differ from any other well-known selection achievement, existing at the moment of its application;

Well-known selection achievements can be selection achievement which is used, in the production, which is in, the official catalogues, reference fund', or which has exact description in one of the publications.

Application for a patent issue or for the realization of a state test likewise makes the selection achievement well-known from the date of application under the condition that as a result, the patent on the selection achievement would be issued or the selection achievement was allowed for general usage in the process of production.

Signs allowing to define characteristic and distinctive features and peculiarities of selection achievement, should respond to identification and exact description;

c) Homogeneity:

Plants of the sort should be rather homogeneous according to their signs with the consideration of its special deviations, which can take place because of the propagation of its peculiarities;

d) Stability:

Plants of a sort should correspond to their description after the repeated propagation or at the end of each propagation cycle;

Sorts which are at the date of the beginning of protection of the; corresponding kinds and types on division onto districts or in the State; Register of selection achievement and are allowed for use in the; production, can be recognized as protection ability without presentation to the sort, type requirements of novelty. Validity of the patent on these; selection achievements as specified in item 1 of Article 12, on a period of division onto districts year, till the year of patent issue and its provisional protection is not extended, that is stipulated by the Article 15.

*Article 5. Application for patent issue*

The right of application and of reception of the patent belongs to the selectionist or his assignee. The application is presented to the State Commission one year prior to the delivery of a sort on a state test.

When selection achievement corresponds to conditions of the protection ability the State Commission takes the decision on patent issue.

In case, when selection achievement is created during the execution of the service task and official duties, the right on application and reception of patent belongs to employer, if nothing else is stipulated by the agreement between selectionist and employer or by the constituent documents.

Besides in the agreement or constituent documents, the size and dates of the payment of compensation to the author for use of the selection achievement should be stipulated.

The order is placed by several applicants, if they have created the selection achievement together or if they are assignees of the authors.

The order can be placed through the patent agent, who owing to authority of a' letter of attorney, conducts the businesses concerned with the reception of the patent.

Physical and juridical persons of the foreign country have the right to submit the order, if between the Republic of Tajikistan and this state the agreement about protection of selection achievement is concluded.

Thus businesses on reception of the patent and maintenance it in force are conducted through the patent agent of the Republic of Tajikistan.

*Article 6. The right of priority*

The priority of the selection achievement is established by the date when the order is placed, to the State Commission.

If the order is received by the State Commission was preceded by another order placed by one of the states (the first order), with which the Republic of Tajikistan has concluded an agreement regarding protection of selection achievement, then the applicant uses the right of priority of the first order within 12 months from the date of its submission.

For the establishment of date of priority according to item 2 of the present Article in the order directed to State Commission, applicant should specify date of priority of the first order. Thus during 6 months beginning from the date of receipt of the order applicant should present to the State Commission the copy of the first order certified by the competent bodies of the appropriate state, and its transfer.

At performance of terms of items 2 and 3 of the Article applicant has the right to give the additional documentation and material, necessary for test, within three years from the date of submission of the first order.

### **III. EVALUATION OF THE PROTECTION ABILITY**

#### *Article 7. Preliminary order examination*

Preliminary order examination is conducted in a month term beginning from the date of the order presentation. During preliminary examination the date of priority is established, the conformity of all necessary documents requirements, showing them are checked.

The State Commission can set an inquiry about absent documents or defining materials, which should be presented by the applicant at established term.

During realization of the examination the applicant has the right on his own initiative to complete, verify or correct order materials.

If necessary definitions are not brought in time and documents are absent at the date of presentation the order is not accepted for consideration, the applicant shall be duly informed. A disagreement with the decision accepted according to the results of preliminary examination; the applicant must be within 3 months from the date of reception of the decision has the right to appeal against it in the judicial order.

Any positive decision of the preliminary examination compiled of an applicant is informed about order admittance to consideration on conformity of selection achievement to criteria of protection ability.

#### *Article 8. Examination of selection achievement on novelty*

Any interested person within 6 months from date of the publication of the items of information about order can direct to State Commission claim on novelty of the requested selection achievement.

State Commission informs on receipt of the reasonable claim the applicant with a statement of an essence of the claim.

At disagreement with claim of the Commission applicant has the right within 3 months from the date of reception of the information, direct to State Commission motivated objection.

According to the available materials the State Commission takes the decision and informs interested persons about fit.

If the selection achievement does not correspond to criteria of novelty, the decision about refusal of patent issue would be taken.

The decision of State Commission can be appealed against in the judicial order.

#### *Article 9. Test of selection achievement on difference, homogeneity and stability*

The test of selection achievement on difference homogeneity and stability will be carried out according to techniques and terms established by the State Commission.

State Commission has the right to use results of tests conducted by competent bodies of other states, with which corresponding agreements are conducted or test results, conducted by other organizations of the Republic of Tajikistan according to the agreement with the State Commission, or facts given by the applicant.

#### IV. PROTECTION OF THE SELECTION ACHIEVEMENT

##### *Article 10. Registration of the selection achievement*

The selection achievement, on which the decision on the patent issue is taken, is registered by the State Commission in the State Register of selection achievements, according to the established procedure.

##### *Article 11. The patent*

The patent certifies the exceptional rights of the patent owner or his assignee on use of the selection achievement.

The patent is issued to the applicant. If in applications of patent issue several applicants are specified, patent is given out to the applicant who specified the application first.

In case of loss or damage of the patent the duplicate can be issued under the condition of payment of established duty.

##### *Article 12. Validity of the patent*

Validity of the patent consists of fifteen years from the date of registration of selection achievement in the State Register. On sorts of grapes, wood-decorative, fruit crops and timber sorts, including wilding, its term makes twenty years.

At the request of patent owner the State Commission can renew the validity of the patent, but no more than for ten years since its inception.

##### *Article 13. The right patent owner*

The patent owner is given for the exceptional rights to use protected selection achievements.

The right of patent owner is certified by the patent and is protected by the law.

The right of patent owner is, that any person should receive from him a license for realization of seed material regards the protected selection achievement of the following actions:

- a) Production and reproduction;
- b) To bring sowing standards with the purpose of propagation;
- c) Offer to sale;
- d) Sale and other kinds of selling;
- e) Storage.

The right of patent owner is distributed to growing material, if it was produced from seeds, introduced in agricultural turnover without permission of the patent owner. It is necessary to get the permission of the patent owner on the initial protected selection achievement for fulfillment of pertinent actions, specified as in item 2 of the Article, with the seed material of the sort; which is:

- a) In basic way inherits signs of initial sort, if the initial sort itself is not selection achievement,
- b) Provides numerous use of a protected sort for seed production.

Selection achievement that essential way inherits signs of other initial selection achievement, is recognized that one which signs obviously differs from initial, but:

Inherits the most essential signs of the initial or selection achievement, keeping its own basic signs reflecting genotype or combination of genotypes of initial selection achievement;

Corresponds to genotype or combination of genotypes of the initial selection achievement, except for deviations caused by use of such methods, as individual selection from initial sort, selection of the inducted mutant, back-cross, gene engineering.

#### *Article 14. Actions, which are not recognized as infringement of the right of patent owner*

Following actions with protected selection achievement are not admitted as infringement of the right of patent owner:

- a) Actions accomplished for non-commercial purposes;
- b) Actions for experimental purposes;
- c) Use of protected selection achievement as initial material for creation of other sorts and their subsequent use with purposes specified in item 2 of the Article 13;
- d) Use of the growing material, received on enterprise within two years as seeds for growing of sorts within that enterprise the list of sorts and kinds are established by the Government of the Republic of Tajikistan;
- e) Any actions with seed and growing material, which are introduced into economic activities or circulation by the patent owner or any other person with his consent, except for the export of seed and growing material, allowing to propagate the sorts in the country, in which the given sort or kind is not protected.

#### *Article 15. Provisional protection*

On period from the date of order receipt to State Commission and till the patent issue to applicant provisional protection of selection achievement is presented.

After the reception of patent its owner has the right on compensation from the person who during the period of provisional protection of the patent violated rights of patent owner, stipulated in the Article 13.

During the period of provisional protection of selection achievement the sale or other transfer of seed material are allowed only for scientific purposes and in cases when the sale or other transfer of them is connected with concession of the right to selection achievement or with production of seeds according to the order of the applicant with the purpose of creation of their reserves.

### **V. USE OF SELECTION ACHIEVEMENT**

#### *Article 16. The license agreement*

According to the license agreement (exceptional or unexceptional license) patent owner (licensor) can transfer the right to use of selection achievement to another person (licensee) for payment according to the agreement or free of charge.

The license agreement is concluded in written form.

When exceptional license the licensee is passed exceptional right to use of selection achievement within limits stipulated by the agreement, with preservation by licensor rights on the use of selection achievement in the part which is not transmitted to licensee.

When unexceptional license, the licensor has all the rights to follow the patent for selection achievement, including representation of the licenses to the third persons.

Exceptional license is valid after its registration in the State Commission.

#### *Article 17. The rights of the licensee*

The licensee has the right to use selection achievement during validity of the patent on the territory of the Republic of Tajikistan and accomplish actions stipulated by the Article 13, if the license agreement does not stipulate other.

The licensee cannot concede the license to the third persons, to represent the sublicenses, if it is not stipulated by the license agreement.

#### *Article 18. Terms of the license agreement regarding restrictions of the rights of the licensee*

The terms of the license agreement imposing on the licensee restrictions, which do not expire from rights given by the patent or which are not necessary for patent preservation are not valid.

### *Article 19. The open license*

The patent owner can publish in the official bulletin of the State Commission application that any person, under the condition of payment of the sum, limited by the agreement, has the right to use his selection achievement from the date that the patent owner is informed.

The State Commission registers in the State Register of protecting selection achievements about granting of the open license with the indication of the size of payments.

The size of the duty for maintenance of the patent in force decreases to 50 percent from January 1, of the year following after year of publication of statement about granting of the open license.

According to the application of patent owner and under condition of the consent of all owners of the open license the State Commission registers in the State Register of selection achievement about cancellation of the open license.

### *Article 20. Compulsory license*

Any person can direct to State Commission the application with achievement.

The State Commission gives out the compulsory license only in exceptional cases and observance of the following terms:

a) Application for issue of the compulsory license was received after three years from the date of the patent issue;

b) Patent owner has refused to the applicant in the right of production or sale of seeds or he is not ready to give such right;

c) Person, soliciting the compulsory license, has proved, that it in financial or other relations are in state of the competent and it is effective to use the license;

e) Established duty for compulsory license is paid.

The compulsory license can give the licensee the right to carry out all actions or part of them specified in item 1 of the Article 13.

At distribution of the compulsory license the State Commission, establishes payments, which the owner of the compulsory license is obliged to ply to patent owner for seed material of sort in the quantity, sufficient for use of the compulsory license.

The validity of the compulsory license is established by the State Commissions but it should not exceed 4 years.

The term can be prolonged, if after realization of inspection check continues existing conditions, under which the compulsory license was given.

The State Commission cancels the compulsory license, if its owner violates conditions, under which it was given.

The decision of the State Commission concerning the compulsory license can be challenged in the judicial order.

### *Article 21. The right of the licensee on the claim*

In case of infringement of the right of patent owner the licensee has the right to lodge the claim to court according to the establish order.

### *Article 22. Author's certificate*

The author's certificate confirms and certifies the authorship on selection achievement and author's right to the reception of compensation from patent owner for use of selection achievement.

Author's certificate is given out to each author who is not patent owner.

The disputes on authorship are decided in the judicial order.

*Article 23. Reward to the author of selection achievement who is not patent owner*

The rate of reward on the use of the selection achievement is established by the agreement between the selectionist and his assignee and should make not less than two percent of the sum of annual receipts received by the patent owner for use of selection achievement, including receipts from the sale of the licenses.

If the sort is created by the several authors, the reward is divided between them according to their agreement.

The reward is paid to the author not later than three months after the expiration of each year, during which the selection achievement was used.

For delayed payment of compensation patent owner is guilty for it, and pays to the author per every day of delay the fine at a rate of 0,04 percent of the sum due to payment.

*Article 24. Preservation of selection achievement*

Patent owner should maintain the sort during validity of the patent so that the signs specified in their description on date of priority were kept.

Patent owner is obliged on inquiry of the State Commission to direct seed material for realization of control tests and give an opportunity for inspecting on place where the material is.

*Article 25. Recognition of the patent as void*

Any person can turn to State Commission with the application for recognition of the patent as void.

The (State Commission directs a copy of the application of patent owner, who can present during three-month term the motivated answer, and also within 6 months takes the decision on validity of the application, if the additional tests are not required.

The State Commission recognizes the patent as void, if will be established, that:

a) It was given on the basis of facts which were not proved, facts about homogeneity and stability of selection achievement on the date of patent issue submitted by the applicant;

b) On the date of patent issue the selection achievement did not correspond to criteria of novelty or difference;

c) The person specified in the patent as the patent owner, has not the lawful bases on reception of the patent.

The decision of the State Commission can be appealed against in the judicial order.

*Article 26. Cancellation of the patent*

The patent is cancelled by the State Commission, if:

a) The selection achievement does not correspond to terms of homogeneity and stability;

b) Patent owner has not given seeds, documents and information, which are necessary for testing of preservation of the selection achievement, within 12 months according to the request of the State Commission or has not given an opportunity for inspecting on the place where the achievement is in these purposes;

c) Patent owner has not paid in time duty for keeping the patent in force.

The decision of the State Commission can be appealed against in the judicial order.

*Article 27. The responsibility for infringement of the right of patent owner*

Any physical or juridical person using selection achievement in the contradiction with the present Law is considered guilty on infringement of the rights of patent ownership.

According to the requirement of patent owner the infringement should lie suspended by the compensation of all losses caused to him.

During the hearing about infringement of the right of patent owner the court according to the application or solicitation of persons participating in the case, or on their initiative can accept the following measured to claim securing

- a) To impose arrest on seed and growing materials making a subject of infringement;
- b) Prohibit the use, production or sale of seed and growing materials;

*Article 28. The responsibility for infringement of other rights of patent owner and selectionist*

Juridical person or citizen is considered as guilty on infringement of other rights of patent owner and selectionist, if he:

a) Uncovered facts that include trade secret about selection achievement, concerning which the application is sent, if these facts were received by him during the fulfillment of actions in regard with the present Law, except for cases, when the facts are revealed to the Minister of Agriculture of the Republic of Tajikistan and the person who accomplishes official actions, directed on protection of the rights of selectionist according to the present Law;

b) Gives to produced and sold seed material the name, which differs from the registered selection achievement;

c) Gives to produced and sold seed material the name of the registered selection achievement, to which it does not concern;

d) Gives to produced and sold seed material the name so similar to the name of registered selection achievement, that it can be confused with the registered sorts;

e) Submits a false application;

f) Brings in or gives order for the insertion of false registration data into the State Register of selection achievements and into the accounting documentation;

g) Counterfeits or gives order for fake of the documents necessary for observance of the present Law;

h) Represents the documents containing false or incorrect data.

Persons accomplishing, listed actions in the first part of the present Article, bear responsibility according to the current legislation.

*Article 29. State Commission*

The State Commission provides execution of the functions assigned to it by the present Law.

The State Commission has the right to conclude the agreements with any organization capable to conduct works on testing of sorts of plants on protection ability.

The workers of the State Commission and its subdivisions in Mountain-Badakhshan Autonomous Region, regions, cities and districts have no right during all the period of work, as well as within three years after dismissal to place an order for patent issue.

*Article 30. Use of selection achievement in production*

In territory of appropriate Mountain-Badakhshan Autonomous Region, regions, cities and districts cultivated only sorts of plants, included in the sort division into districts of agricultural crops, and kinds of the silkworm, allowed to use in the production.

Sold seeds should be supplied and accompanied with certificates certifying their sort and sowing qualities.

For reproduction of seeds with the purpose of their export out of the corresponding region inclusion of the sorts allowed to use within the region, is not required.

On selection achievements included in the State Register the certificate is given out only to patent owner, his licensees and users of the open licenses.

The inclusion of new sorts of plants allowed to use in production, and sort division into districts are produced by the State Commission according to results of their state tests.

On special sorts and kinds established by State Commission, the inclusion of sorts into the sort division into districts, allowed to use in the production, are produced on the basis of expert evaluations and facts of the applicant.

## VII. INTERNATIONAL COOPERATION

### *Article 31. The right on application in other states'*

Selectionist or his assignee can submit the application for protection of selection achievement to other states and nations.

The material charges and fees connected to protection of the rights to selection achievement in other states, are carried by the applicant.

### *Article 12. The rights of foreign physical and juridical persons*

Foreign (physical and juridical persons use the rights as stipulated by the present law and other normative-legal acts of the Republic of Tajikistan in the field of protection of selection achievement, equally with the physical and, juridical persons of the Republic of Tajikistan, if the agreement about t protection of selection achievement is concluded between the foreign states and by the Republic of Tajikistan.

The regulations of Articles 22 and 23 present Laws do not act concerning the foreign citizens and persons without citizenship.

### *Article 33. Action of the international agreements*

If the Republics of Tajikistan conclude other international agreements, as established by other rules, then those the international rules are accepted.

President of the Republic of Tajikistan  
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E. RAHMONOV