

Draft

REPUBLIC OF ARMENIA

THE LAW

ON

PROTECTION OF SELECTION ACHIEVEMENTS

CHAPTER I

General Provisions

Article 1

**Legislation on the Protection of
Selection Achievements**

The legal relations in the field of utilisation and protection of plant varieties and animal breeds shall be regulated on the basis of the present law and other legislative acts of the Republic of Armenia.

Article 2

Subject of the Law

The present law shall regulate property and personal non-property relations associated with plant varieties and animal breeds and the preservation of their genetic fund, as well as the utilisation and legal protection of selection achievements.

Article 3

General Terms

Variety: A combination of cultivated plants, which differs from that of other combinations in one or more distinguishing characters or properties and preserves its distinguishing characters after the reproduction.

The variety can be represented by any part of the plant or by some parts of it, provided these parts can be used for reproducing the whole plant of the same variety.

The protected categories of the variety are the clone, first generation hybrid, population, and the selection line.

Breed: a group of animals that possesses genetically conditioned biological and morphological features and properties, some of them being typical of the given group and therefore making it different from the other groups of animals. The protected categories of the breed are the type and cross line.

Selection Achievement: a licensed plant variety; a licensed animal breed.

Seed (plant): a plant or some parts of it, used for plant variety reproducing.

Plant: plants or parts of them used for other purposes besides those for plant variety reproducing.

Pedigree animal: an animal providing the reproduction of breed.

Breed matter: pedigree animal, its gametes and zygotes (embryos).

Marketable animal: an animal used for other purposes besides those for breed reproducing.

Protected selection achievement: plant varieties, animal breeds registered in the State Register of Protected Selection Achievements of the Republic of Armenia (hereinafter *State Register*).

Well-known selection achievement: selection achievement precisely described and registered in the licensor's official bulletin.

Breeder : a person (author) whose creative activities have contributed to breeding and cultivating selection achievement.

Employer: a natural or legal person who has set and financed the task of Selection Achievement attainment.

Applicant: a natural or legal person, or organisation without legal status, that applies for a selection achievement license.

Licensor: a grantor of a license, State administration body authorised by the Government of the Republic of Armenia.

CHAPTER II

The Genetic Protection of Plants and Animals

Article 4.

Genetic Fund of Plants and Animals

The genetic fund of cultivated plants and domestic animals, their new varieties and breeds as well as their wild representatives are declared the national property of the Republic of Armenia.

The utilisation, protection and production of the above genetic fund shall be regulated by the Legislation of the Republic of Armenia

Article 5

Protection of Ancient Varieties and Breeds of National Selection

In the field of agriculture, on the basis of the data presented by the State administrative body authorised by the Government of the Republic of Armenia, the licensor shall ensure the permanent protection of ancient varieties and breeds through their registration in the State Register.

CHAPTER III

Terms of Protection of Selection Achievement

Article 6.

Standards of Selection Achievement Protection

The right of selection achievement shall be protected by the present Law and certified by the license. The license shall certify the proprietor's exclusive right to the use of selection achievement. The license shall be granted for the selection achievement that complies with the protection standards.

The protection standards are as follows:

1. *Novelty*: a variety or breed shall be considered new, if the seeds (plant) or breed-matter of selection achievement were not sold or passed to other persons for the utilisation:
 - a. In the territory of the Republic of Armenia earlier than one year before the date of application (year, month, date).
 - b. In the territory of other state more than four years before the date of application filing, and more than six years before for vineyards, fruit-trees, decorative and forestry plantations.
2. *Distinguishing characters*: at the moment of submitting the license application the selection achievement should evidently differ from other well-known selection achievement.
3. *Homogeneity*: during the reproduction, the varieties and breeds shall preserve homogeneity of main characters, with the exception of some separate deviations, which may occur by virtue of reproduction peculiarities.
4. *Permanency*: selection achievement shall be considered permanent if its main characters remain unchanged after several reproduction processes.

Article 7.

License Application

The application for a selection achievement license (hereinafter, application) shall be submitted to the licensor by the breeder. Should the selection achievement be attained during the fulfilment of business assignments or liabilities, the employer shall be entitled to submit the application and obtain the license unless otherwise stipulated by contractual relationship between the employer and the author.

The application for jointly attained selection achievement shall be submitted either by the authors or their

legal successors (assignees).

The application may be submitted by the applicant's representative that shall be entitled by attorney to carry out activities required for obtaining the license.

The application for a selection achievement license shall contain:

- Application
- Description of the Selection Achievements
- Tax-payment receipt

The application should concern only one selection achievement.

Where the applicant is an employer the agreement concluded with the author of selection achievement shall be presented.

The application shall be in Armenian. Other documents may be presented in any language, with the Armenian translation attached.

The licensor shall set requirements for the documents to be submitted.

Article 8.

Title of Selection Achievement

The selection achievement shall be named according to the applicant's presentation and approved by the licensor.

The variety, breed name should sound well, be short, differ from that of other varieties and breeds of similar groups, should not consist of figures only or be repugnant to social moral norms, or create a suspicion about the selection achievement quality and origin.

The selection achievement shall be used only under the name registered in the State Register.

Article 9.

Priority of Selection Achievement

The priority of selection achievement shall be set up according to the date of application. The priority may be also established according to the date of the first application submitted by a foreign Member State of Geneva Convention on Selection Achievement Protection, when the application for the same selection achievement is submitted to the licensor within a period of 12 months from the above date.

To enjoy the right of priority while submitting next applications the applicant shall advise the licensor about the first application and provide him with the ratified copy of parent application within a period of three months.

CHAPTER IV

Evaluation of Selection Achievement Protection

Article 10

Preliminary Examination of Application

The licensor shall carry out the preliminary examination of an application within a month period. Pending the preliminary examination the priority shall be set and the regularity of the documents verified, and if required additional materials shall be provided. In the event of failure to submit the above documents within a specified period the application shall be considered withdrawn, about which the applicant shall be informed accordingly.

The applicant shall be entitled to make the information submitted more precise on his initiative pending the preliminary examination.

Should the results of preliminary examination be positive the applicant shall be advised about the application consideration. The information on the submitted applications shall be published in the licensor's official bulletin.

Article 11

Consideration of Selection Achievement Novelty

A person shall be entitled to lodge a complaint against the novelty of selection achievement to the licensor within a period of 6 months from the date of publishing the information on a selection achievement application. Should the complaint be well grounded the licensor shall advise the applicant about the nature of complaint. The latter shall be entitled to submit a well-founded protest to the licensor within a period of 3 months. The licensor shall arrive at a decision on the basis of materials available and advise accordingly the claimant. Should the selection achievement not comply with the novelty standards the application shall be refused.

Article 12

Test of Homogeneity, Permanency and Distinguishing Characters of Selection Achievement

Test of homogeneity, permanency, and distinguishing characters of selection achievement shall be carried out in accordance with the procedure established by the licensor. The applicant shall provide the licensor with seeds or breed-matter in the quantity required for the above test performance. The data provided by the applicant or competent bodies of foreign states that have entered into the relevant agreements with the Republic of Armenia, as well as by the organisations that have concluded the agreement with the licensor may be used as test results.

Test of homogeneity, permanency, and distinguishing characters of selection achievement may be

carried out jointly with the State testing of economic expediency of selection achievement.

The licensor shall make a final decision on granting the license on the basis of test results of the protection standards of selection achievement and draw up a description of selection achievement.

CHAPTER V

Protection of Selection Achievement

Article 13

Registration of Selection Achievement

The licensor shall register the selection achievement in the State Register where the following data shall be recorded:

- Plant variety, animal breed;
- Name of plant variety and animal breed;
- Registration number and date of selection achievement;
- Name and address of the applicant;
- Family name, first name and address of the selection achievement author (authors);
- Data on the assignment of a license to other person;
- Data on exclusive, open, compulsory licenses;
- Term of license validity.

Article 14

License and Validity Period

License for selection achievement shall be granted to the applicant. Should several applicants be designated in the application, they shall be granted one license, and their relations shall be regulated by the agreement concluded between them.

License for selection achievement shall be valid within a period of 20 years from the date of registration in the State Register. License for variety of vineyards, fruit-trees, decorative and forestry plantations and their stocks shall be valid within a period of 25 years.

Article 15

Rights of Licensee

The licensee shall have the exclusive right to the use of selection achievement. In compliance with the license agreement a person may obtain the licensee's permission to carry out the following activities associated with selection achievement:

- Manufacturing and reproducing;
- Insuring of the fitness of seeds for propagation purposes;
- Selling and other ways of realisation;
- Exporting from the Republic of Armenia;

- Importing into the Republic of Armenia;
- Warehousing for the foregoing purposes.

The licensee's rights shall also extend over those plants and marketable animals, which have been reproduced and put into circulation without his permission.

To carry out the scope of activities defined in the first part of the present Article the licensee's permission shall be required for those types of variety seeds and breed matter that:

1. Shall inherit substantially the characters of the protected original variety and animal breed, provided that latter ones have not substantially inherited the characters of other selection achievements.
2. Shall not evidently differ from the variety and breed protected.
3. Shall require repeated use of the protected variety for the purposes of seed manufacturing.

The term of selection achievement with substantially inherited characters of the protected original selection achievement shall be applied to the selection achievement that in the event of marked difference from the original one shall:

- a. Inherit more substantial characters of the original selection achievement or other selection achievement with substantially inherited characters, while preserving distinguishing characters of genotype or genotype combination of the original selection achievement;
- b. Correspond to genotype or genotype combination of the original selection achievement with the exception of deviations that have been caused by the employment of the following methods:
 - selection of a single representative from the original variety or animal breed;
 - selection of induced transmutation (mutant);
 - reverse crossing;
 - genetic engineering.

Article 16

Activities Non-infringing Licensee's Rights

The licensee's rights shall not be considered violated in the event of:

- a. personal and non-trade utilisation of selection achievement;
- b. trial utilisation of selection achievement;
- c. utilisation of selection achievement as original matter for the creation of new varieties and breeds;
- d. long term utilisation of seeds and plants for the propagation purposes in the territory of the given enterprise;
- e. utilisation of selection achievement for the reproduction of marketable animals in the territory of the given enterprise;
- f. all the activities associated with the utilisation of seeds, plants, breed matter and marketable animals put into circulation by the licensee or his authorised person with the exception of:

- further reproduction of the above variety and breed;
- exportation of the variety, marketable animal to other county (saved further processing) for reproduction purposes.

Article 17

Temporary Legal Protection of Selection Achievement

Selection achievement shall be considered under the temporary legal protection from the releasing date of official information about license application through the date of granting the license.

Having obtained the license, the licensee shall have the right to compensation from the person that, pending the temporary legal protection of selection achievement, has carried out activities defined in the first part of Article 15 of the present Law.

The applicant shall be entitled to sell seeds and breed matter or carry out other activities only for scientific purposes pending the temporary legal protection of selection achievement, and for stocking purposes when the right of selection achievement is assigned to other person, or seeds and breed matter are produced under the applicant order.

Should the applicant or his authorised person violate the requirements defined in the present Article, the temporary legal protection shall be considered null and void.

Article 18

Assignment of the Right to the Use of Selection Achievement

The utilisation of selection achievement shall be regulated by license (exclusive, ordinary, open and compulsory) agreements.

In the event of exclusive license the exclusive rights for the utilisation of selection achievement shall be transferred to the licensee within the framework of the agreement, while the licensor shall reserve that part of the right, which has not been transferred to the licensee.

In the event of ordinary license the licensor, having transferred the right for the utilisation of selection achievement to the licensee, shall reserve the rights ensuing from the license including the right of license transferring to a third person.

In the event of open general license the licensee may request the licensor to release information about the assignment of his right of selection achievement to other person. Should a person apply for an open general license he shall enter into agreement with the licensee on the terms of payment.

In the event of compulsory license the Government of the Republic of Armenia in a state of emergency shall be entitled to authorise without the licensee's permission a third person to utilise selection achievement and impose the obligation of paying adequate monetary compensation to the licensee.

The validity period of compulsory license shall be specified for a period of 4 years, and shall be extended if the terms of granting the compulsory license are still in force. The compulsory license shall be considered invalid should the licensee violate the terms of granting the compulsory license.

The procedure of license agreement registration and dispute settlement shall be established in compliance with the Legislation of the Republic of Armenia.

CHAPTER VI

Selection Achievement Author's Rights

Article 19

Author's Certificate

The licensor shall grant an author, who does not possess the license for selection achievement, the author's certificate confirming his authorship of the given selection achievement and the right to receive adequate remuneration from the licensee for the utilisation of selection achievement.

Article 20

Payment to Selection Achievement Author Not Possessing Licence

Terms and amount of payment to the author of selection achievement shall be established in compliance with the agreement concluded between the licensee and the author of selection achievement.

Terms of payment to the co-authors of selection achievement shall be established in compliance with the agreement concluded between them.

CHAPTER VII

Government Regulation of Selection Achievement Creation and Utilisation

Article 21

Government Promotion of the Creation and Utilisation of Selection Achievement

Selection activities shall be considered of paramount importance and financed from the budgetary funds and other financial sources.

Article 22

Protection of Selection Achievement

During license period the licensee shall be liable to secure permanent protection of the characters of plant variety and animal breed indicated in the State Register, as well as provide the licensor with variety seeds and breed matter required for check test and furnish necessary facilities to make inspection at site.

Article 23

License Contest and Invalidation Grounds

During license period a person shall have the right to appeal against license genuineness, about which the licensor shall inform the licensee. The latter shall be entitled to lodge a well-founded protest within a period of 3 months. Should an additional test not be required the Authorised Body shall make a final decision within a period of 6 months.

The license shall be invalid in the event of:

- non-conformity of selection achievement with the protection standards at the date of granting the license;
- lack of legal grounds required for granting the license;
- the licensee's failure to provide required seeds, breed matter, relevant documents ensuring protection of selection achievement, as well as furnish necessary facilities for the inspection at site within a period of 12 months;
- the licensee's failure to pay license validity annual tax within a specified period of time;
- invalidity of selection achievement title that has not been replaced by other adequate title.

Article 24

Amenability for Violation of Rights of Licensee and Selection Achievement Author

Natural and legal persons shall incur liability of infringement of the rights of licensee and selection achievement author in compliance with the Legislation of the Republic of Armenia. The violator of rights shall compensate for damages on demand of the licensee and selector.

The possessor of exclusive or ordinary license shall have the right to lodge a complaint against the violator of the licensee's rights provided it is stipulated by the license agreement.

Licensee and author's rights shall be considered violated in the event of:

- renaming the selection achievement being produced and on sale;
- deliberate entitling the selection achievement being produced and on sale by the well-known name of other selection achievement;
- entitling the produced or sold seeds and breed matter by the confusing name similar to the title of other registered selection achievement;
- giving orders to make inaccurate records or doing it in the State Register and reports;
- submitting forged documents or their falsification in pursuit of conformity with the requirements of the present Law;
- submitting documents containing inaccurate information on selection achievement;

- marketing seeds and breed matter without certificates of quality and origin.

In the event of infringement defined in the third part of the present Article legal steps shall be taken against the violator in compliance with the procedure established by the Legislation of the Republic of Armenia.

Article 25

Publication of Official Information

The licensor shall periodically publish official bulletin and provide the list of data published in the bulletins.

After the publication of information on license application and relevant rendered decisions, a person shall reserve the right to familiarise himself with the content of applications.

Article 26

Appeal against Licensor's Decision

The applicant shall be entitled, in due course of law, to appeal against the decision on granting or refusing the license, or declaring the license unlawful or invalid.

Article 27

Selection Achievement Utilisation

The licensed selection achievement to be utilised for production purposes shall be subject to the obligatory State testing of economic expediency.

The State testing of economic expediency of selection achievement shall be carried out by the State Administration Body authorised by the Government of the Republic of Armenia, which on the basis of test results shall draw up and publish monthly the list of plant varieties and animal breeds (variety list, breed list) available in agricultural regions of the Republic of Armenia.

The utilisation of selection achievement that has been licensed but not entered in the above list shall be prohibited in the Republic of Armenia.

Certificates of quality and origin shall be issued for the seeds and breed matter marketed in the Republic of Armenia.

Article 28

Licensed Variety

State taxes shall be imposed on the activities associated with the legal protection of selection achievement and performance of State testing of selection achievement economic expediency in compliance with the size and procedure established by the Legislation of the Republic of Armenia.

CHAPTER VIII

International Co-operation

Article 29

Right of Application Submission to Foreign Countries

The selector or his legal successor (assignee) shall be entitled to file an application for selection achievement protection to the authorised body of the foreign state in compliance with the procedure established by the Legislation.

Article 30

Rights of Foreign Nationals and Legal Persons

In compliance with the ratified international treaties nationals and legal persons of foreign states shall enjoy the same rights as those of nationals and legal persons of the Republic of Armenia defined by the present Law and other legislative acts of the Republic of Armenia concerning the protection of selection achievement.

Article 31

Validity of International Treaties

Should the standards stipulated by the present Law differ from those set by the ratified international treaties the latter ones shall prevail.

CHAPTER IX

Transitional Provisions

Article 32

Granting the License on the Basis of Author's Certificate and Variety and Breed Register of the Former USSR

On the basis of the author's certificate of the former USSR and information available in the register of circulating plant varieties, hybrids and animal breeds the license for selection achievement shall be granted for an unexpired period of license validity in compliance with the procedure established by the licensor.

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Selection Achievements primary experimentation is done by the official-supervisor within one month. During the primary experimentation the primary date is decided, the validity of the application documents is checked. If necessary, the supervisor asks for other required materials to submit. If the mentioned materials are not provided on time, for the document complement, the application is considered 'called back', about which the applicant is being notified. During the primary experimentation the applicant has the right to correct the materials of the application. If the primary experimentation results are positive, the applicant is being informed about its further discussion.

Information about the application is being published in the official's bulletin.