

LAW
OF THE REPUBLIC OF TAJIKISTAN

On Protection of Plants Varieties

The present Law regulates legal protection of varieties of plants and identifies legal platform for provision and protection of rights of plant selection breeder.

Chapter 1. GENERAL PROVISIONS

Article 1. Main Definitions

The following main definitions are used in the present Law:

- plant variety – group of plants within the lowest of known botanical taxons that, notwithstanding its complete satisfaction of provision of rights of plants selection breeder, may be defined by the degree of intensity of characteristics that represent a result of a particular genotype or combination of genes different from any other group of plants by a degree of expressiveness of, at least, one of these characteristics, is regarded as a unit from the point of view of its suitability for propagation of plant varieties as it is;
- plant selection breeder – a person that brood or detected and improved a plant variety or his/her employer, or their successor;
- certificate of right of plant selection breeder – document that authenticates the right of plant selection breeder for protection of plant variety;
- Register of protected plant varieties (hereinafter, the Register) – state source of information on protected plants varieties; the Register is kept by a certified state body;
- right of plant selection breeder – rights of plant selection breeder foreseen in the present Law;
- International Union of Protection of New Plants Varieties – the International Union founded by the International Convention on Protection of New Plants Varieties;
- member of the International Union of Protection of New Plants Varieties – member state or parties to the International Convention on Protection of New Plants Varieties.

Article 2. Legislation of the Republic of Tajikistan on protection of plants varieties

The legislation of the Republic of Tajikistan on protection of plants varieties is based on the Constitution of the Republic of Tajikistan and is comprised of the present Law, other normative statutory documents of the Republic of Tajikistan and also international legislative acts recognized by Tajikistan.

Article 3. Scope of the present Law

The present Law is applied to genus and varieties of plants the list of which is defined by the authorized state body and to all genus and varieties of plants not later than ten years after its enactment.

Article 4. Certified state body for testing, registration and protection of plants varieties

1. The authorized state body on testing, registration and protection of plants varieties (hereinafter – the authorized state body) ensures carrying out of integrated policy in the area of protection of plants varieties on the territory of the Republic of Tajikistan. The authorized state body is identified by the Government of the Republic of Tajikistan.

2. The authorized state body gives right of plant selection breeder to a breeder of a plant variety and issues certificates of right of plant selection breeder that authenticates rights of plant selection breeder for protection of plant variety.

3. The authorized state body has the following authorities regarding protection of plants varieties:

- keeps the Register and ensures availability of its information;
- solves issues regarding examination of applications;
- in case plant variety corresponds to conditions set forth in articles 8-11 of the present Law, a certificate of right of plant selection breeder is issued;
- carries out other authorities in accordance to the legislation of the Republic of Tajikistan.

4. The authorized state body following the procedure set forth in the legislation of the Republic of Tajikistan regarding issues of plants varieties protection including procedure for examination of applications for granting plant selection breeder rights, naming of plants varieties, expertise of applications, regular publication of information, appeal procedure and registration dates of plant variety in the Register, adopts rules and regulations that are approved by the state agricultural supervisory authority.

Article 5. Provision of fee-based services

The authorized state body has a right to charge fees from interested parties, legal entities and natural persons for services provided following the procedures set forth in the legislation of the Republic of Tajikistan and use funds received in accordance with the legislation.

CHAPTER 2. CONDITIONS FOR GRANTING PLANT SELECTION BREEDER RIGHTS

Article 6. Right for plant variety protection

In accordance to the present Law the plant selection breeder has a right for protection of plant variety.

Article 7. Criteria for plant variety protection

1. Plant selection breeder rights are granted in case plant variety corresponds to the criteria of plant variety protection.

2. The following are the criteria for plant variety protection:

- novelty;
- distinguishability;
- homogeneity;
- stability.

3. Granting of plant selection breeder right can not depend on additional conditions apart from those listed in part 2 of the present article if plant variety is named in accordance with article 22 of the present Law and the applicant has observed formalities set forth in the present Law.

Article 8. Novelty of plant variety

1. Plant variety is considered new if seeds or plant material of this plant variety was not sold or transferred by plant selection breeder to other people through other means or if the plant selection breeder did not give his/her consent for its use in the Republic of Tajikistan one year before submitting application to the authorized state body.

2. Plant variety is considered new if seeds or plant material of this variety was not sold or transferred by plant selection breeder to other people through other means or if the plant selection breeder did not give his consent for its use on other territories four year (in case of trees and grape - six years) before submitting application to the authorized state body.

Article 9. Distinguishability of plant variety

Plant variety is considered as distinguishable if it clearly different from any other plant variety the existence of which is well-known at the time of submission of application. In particular, submission of application for granting plant selection breeder rights or for entering plant variety in the Register in any country makes plant variety well-known from the date of application submission if, as a result of submission of this application a plant selection breeder right was granted or plant variety was entered into the Register.

Article 10. Homogeneity of plant variety

Plant variety is considered homogenous if, taking into account variation that may take place as a consequence of its propagation, it is homogenous enough on grounds of its corresponding characteristics.

Article 11. Stability of plant variety

Plant variety is considered stable if its corresponding characteristics remain unchanged after multiple propagations or, in case of special propagation cycle, at the end of such cycle.

CHAPTER 3. APPLICATION FOR GRANTING PLANT SELECTION BREEDER RIGHTS

Article 12. Application submission

1. An applicant fills out a corresponding format of application form for granting plant selection breeder right and submits it to the authorized state body.

2. Application format, names of services, information, documents and materials necessary for granting plant selection breeder right and terms of their submission are approved by the authorized state body.

3. Date of receiving the application submitted following the approved procedure is considered the application date.

4. Plant selection breeder may submit an application for granting plant selection breeder right through proxy.

5. The authorized state body can not reject granting plant selection breeder rights or limit its duration because protection of a particular plant variety was not demanded, provision of protection was rejected or its duration expired in any other state or intergovernmental organization.

Article 13. Priority right

1. Plant selection breeder who submitted the application for granting plant selection breeder right following the established procedure to one of the members of the International Union on Protection of New Plants Varieties ("first application") for 12 months enjoys the priority right for submitting application for granting plant selection breeder right for this plant variety to the authorized state body. This period is counted from the date of submitting the first application.

2. To use the priority right, in his/her application submitted to the authorized state body, plant selection breeder states the first application priority. The authorized state body requires that within three months plant selection breeder provides copies of documents constituting the first application certified by the state authorized body where the first application was submitted, as well as samples or other evidence that the plant variety that constitutes the subject matter of both applications is one and the same.

3. Plant selection breeder is given two years after expiration of priority or, when the first application was rejected or recalled, time determined by the authorized state body after the rejection or recollection for submitting to the authorized state body any information, documents or materials required for examination stipulated in article 14 of the present Law.

4. Submission of another application, its publishing or use of plant variety that is the subject matter of the first application within time period specified in part 1 of the present Article can not serve as a basis for rejection of further application. The abovementioned actions also can not serve as a basis for originating of any rights of third parties.

Article 14. Examination of application

1. Decision on granting plant selection breeder right is made after carrying out examination of correspondence of plant variety to conditions set forth in articles 8-11 of the present Law. During the examination process the authorized state body may grow plant variety or carry out other necessary testing, request the plant selection breeder to grow the plant variety, carry out other necessary tests or take into account the results of tests already conducted.

2. The authorized state body for examination purposes may request the plant selection breeder to provide all necessary information, documents or materials the list of which is approved by the authorized state body.

Article 15. Temporary protection

1. In order to guarantee interests of plant selection breeder from the date his/her application for granting plant selection breeder right is published and until such right is granted temporary protection is provided. During that period of time the authorized state body takes measures to guarantee interests of plant selection breeder.

2. Applicant has a right for material remuneration from any person who during this period of time carries out activities requiring plant selection breeder's permission as stipulated in article 16 of the present Law in case such right is granted. Temporary protection is valid in relation to activities that would require plant selection breeder's permission in case such right is granted. If the plant selection breeder right is not granted, temporary protection is not applied.

CHAPTER 4. PLANT SELECTION BREEDER RIGHTS AND DURATION OF PLANT VARIETY PROTECTION

Article 16. Plant selection breeder rights

1. The following activities in relation to seeds of protected plant variety require plant selection breeder's permission:

- production or reproduction (propagation);
- bringing to certain condition for propagation purposes;
- offering for sale;

- sale or other introduction into commercial turnover;
- import;
- export;
- storing for the abovementioned purposes.

2. To grant such permission, the plant selection breeder may require observation of certain conditions and limitations.

3. Activities indicated in Part 1 of the present article concerning plant material including whole plants and their parts received as a result of using protected variety of seed material without permission require permission of plant selection breeder if only he/she did not have a sufficient potential to use his/her right with regards to the said seed material.

4. Provisions in parts 1 and 3 of the present article also apply to:

- plant varieties essentially derived from the protected plant variety if the protected plant variety is not itself a derivative;
- plant varieties that subtly differ from the protected plant variety in accordance with article 9 of the present Law;
- plant varieties production of which requires multiple use of protected plant variety.

5. Plant variety is recognized as essentially derivative from another plant variety (“original variety”) if it is:

- predominantly produced from an original plant variety or from another plant variety that itself was predominantly produced from an original plant variety retaining degree of manifestation of main characteristics that are the result of genotype realization or combination of genotypes of an original plant variety;
- clearly different from an original plant variety;
- corresponds to the original plant variety in the degree of manifestation of main characteristics that are the result of genotype realization or combination of genotypes of an original plant variety with the exception of differences resulting from origination.

6. Essentially derivated plant varieties may be received through natural selection, mutagenesis induction, receiving of somaclonal variation, selection of original variety, backcrossing or transformation of genes through genetic engineering.

Article 17. Exceptions from plant selection breeder rights

Plant selection breeder right does not extend to activities that were carried out:

- for personal and non-commercial purposes;
- for experimental purposes;

- with the purposes of creating new plants varieties with the exception of instances when provision of part 4 of article 16 of the present Law apply to activities carried out with such plant varieties in accordance to parts 1-3 of article 16 of the present Law.

Article 18. Termination of plant selection breeder right

1. Plant selection breeder right does not apply to activities with regard to any material of a protected plant variety or plant variety that falls under provisions of parts 4-6 of article 16 of the present Law, that was sold or otherwise introduced into commercial turnover by the plan selection breeder or upon his consent on the territory of the Republic of Tajikistan, or any material received from the said material if such activities do not relate to:

- further propagation of these plants varieties;
- export of the plant variety material that allow to propagate the plant variety in country where plant varieties of this botanical class or type are not protected except for export for consumptive use.

2. For the purposes indicated in part 1 of the present article “material” in relations to plan variety, means:

- seed material of any plant variety;
- plant material including whole plants and their parts;
- any products received directly from plant material.

Article 19. Limitations on exercise of plant selection breeder rights

Free exercise of plant selection breeder right may be limited on in case stipulated in the legislation of the Republic of Tajikistan. If such limitation is the result of issuing of permission by the authorized state body to a third party for carrying out activities that require plant selection breeder’s permission , the plant selection breeder receives material remuneration.

Article 20. Measures regulating commercial activities

Plant selection breeder’s right does not depend on any measures taken with the purposes of regulation of production, certification, trade or import and export of plant materials except for measures stipulated in the legislation of the Republic of Tajikistan in the field of plants varieties protection.

Article 21. Duration of plant selection breeder right

Plant selection breeder right for protection of plant variety is granted for a period of 20 years (with regards to trees and grape – 25 years)from the date of granting such right.

CHAPTER 5. NAMING OF PLANT VARIETY

Article 22. Naming of plant variety

1. Plant variety should have a name that is suggested by the plant selection breeder to the authorized state body, and registered in the Register simultaneously with granting plant selection breeder right. Taking into account part 4 of the present article, no right with regards to denotation registered as plant variety name prevents from free use of this name with regards to this plant variety even after expiration of plant selection breeder right.

2. Plant variety name must allow for identification of plant variety. Plant variety name should not contain only figures except for the cases when that corresponds to the established practice of plant variety denotation. The name should not misguide or result in confusion regarding characteristics, qualities or identity of a particular plant variety or plant selection breeder personality. In particular, plant variety name must differ from any other names that are used for naming the existing plants of a same or similar plant variety on the territory of any member of the International Union on Protection of New Plant Varieties.

3. In case it is discovered that such name does not correspond to the criteria set forth in part 2 of the present article, the authorized state body refuses its registration and requires the plant selection breeder to suggest another name within time period determined by the authorized state body.

4. Rights of third parties acquired earlier are not affected. If, due to the rights acquired earlier, use of plant variety name is prohibited to a person that must use it according to part 1 of article 23 of the present Law the authorized state body requires that plant selection breeder suggests another name for a plant variety.

5. Plant variety must be suggested to all members of the International Union on Protection of New Plant Varieties under one and the same name. The authorized state body registers name thus suggested only if this body does not consider this name unacceptable. In this case the authorized state body must request the plant selection breeder to suggest another name.

6. The authorized state body ensures information sharing among all other relevant government authorities of members of the International Union on Protection of New Plant Varieties on the issues regarding plant varieties name, in particular on suggestion, registration and cancellation of plant varieties names. Any abovementioned relevant government body may send its comments regarding registration of plant varieties names to the authorized state body.

Article 23. Use of plant varieties name

1. Any person that offers seed material of plant variety protected on the territory of the Republic of Tajikistan or introducing it into commercial turnover on the territory of the Republic of Tajikistan must use name of this plant variety even after expiration of plant selection breeder right for this plant variety only if, according to part 4 of article 22 of the present Law, rights acquired earlier do not impede such use.

2. When a plant variety is offered for sale or introduced into commercial turnover registered plant variety name may be used together with trademark, commercial name or any other similar marking. In case of such combination plant variety name must be easily identifiable.

CHAPTER 6. NULLIFICATION AND CANCELLATION OF PLANT SELECTION BREEDER RIGHT

Article 24. Nullification of plant selection breeder right

1. Plant selection breeder right is nullified by the authorized state body in the following cases:

- if it will be determined that provisions set forth in articles 8 or 9 of the present law were not observed from the date of granting plant selection breeder rights;
- in cases when plant selection breeder right was granted based on information and documents submitted by plant selection breeder, and conditions stipulated in articles 10 or 11 were not fulfilled from the date of granting plant selection breeder rights;
- if plant selection breeder right was granted to a person who did not have a right for it unless the plant selection breeder right is not transferred to a person that had a right for it.

2. Plant selection breeder rights can not be nullified on any other grounds that are not set forth in part 1 of the present article.

Article 25. Cancellation of plant selection breeder right

1. The authorized state body may cancel the plant selection breeder right if it will be determined that conditions stipulated in articles 10 or 11 of the present Law are not observed.

2. Plant selection breeder right may be cancelled if based on the corresponding request and within the defined time period the plant selection breeder:

- has not provided to the authorized state body information, documents or materials necessary for verification of plant variety protection support;
- has not paid for the services for keeping his/her right in force;
- has not suggested another appropriate name in case plant variety name is nullified after granting plant selection breeder right.

3. Plant selection breeder right can not be cancelled on any grounds other than set forth in parts 1 and 2 of the present article.

Article 26. Halfway termination of plant selection breeder right

1. If holder of plant selection breeder right applies to the authorized state body regarding halfway cancellation of plant selection breeder right, his/her right is cancelled before expiration of specified date.

2. If expiration date of plant selection breeder right is not indicated in the application form, the date of acceptance of application for termination of plant selection breeder right by the authorized state body is regarded as a date of termination of plant selection breeder right.

CHAPTER 7. FINAL PROVISIONS

Article 27. Rights of foreign persons and legal entities for plant varieties protection

1. Regarding granting and protection of plant selection breeder rights without prejudice to rights set forth in the present Law, citizens of members of the International Union on Protection of New Plant Varieties as well as natural persons residing on the territory of a member of the International Union on Protection of New Plant Varieties or legal entities having registered their representative office on the territory of the member of the International Union on Protection of New Plant Varieties enjoy same rights that are granted to the citizens of the Republic of Tajikistan by the present Law on the territory of the Republic of Tajikistan.

2. For the purposes set forth in part 1 of the present article “citizens” means citizens of a state that is a member of the International Union on Protection of New Plant Varieties; in case when a non-governmental organization is a member of the International Union on Protection of New Plant Varieties – members of this organization.

Article 28. Protection of plant selection breeder right

Plant selection breeder right is protected in accordance to the legislation of the Republic of Tajikistan.

Article 29. Regular publication of information

The authorized state body must ensure information sharing with general public through regular publication of information regarding:

- application on granting plant selection breeder rights, and granted rights;
- suggested and approved names.

Article 30. Responsibility for transgression of the present Law

Natural persons and legal entities that infringe the present Law will be prosecuted in accordance to the legislation of the Republic of Tajikistan.

Article 31. On annulment of the Law of the Republic of Tajikistan “On selection achievements of agricultural crops”

The Law of the Republic of Tajikistan “On selection achievements of agricultural crops” of November 4, 1995 (Bulletin of Majlisi Oli of the Republic of Tajikistan, 1995, #22, p. 257; Ahbori of Majlisi Oli of the Republic of Tajikistan, 2002, #11, p. 732) shall be deemed to have lost force.

Article 32. Procedure of enacting the present Law

The present Law must be enacted after its official publication.

President of the Republic of Tajikistan
Dushanbe
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