

## ANNEX VI

### LAW OF THE REPUBLIC OF TAJIKISTAN on the Quarantine of Plants

In compliance with the Constitution of The Republic of Tajikistan, and universally recognized norms of international law, this Law defines the foundations of the legal regulations that ensure the quarantine of plants in the territory of The Republic of Tajikistan, which are aimed at protecting the rights and legal interests of physical and legal persons.

#### CHAPTER 1.GENERAL

##### Article 1. The Objective of This Law

The objective of this Law is to ensure the protection of plants and their products from quarantined objects in the territory of The Republic of Tajikistan.

##### Article 2. Main Definitions

This Law uses the following main definitions:

- ‘quarantine’ (derived from *Guaranta giorni* in Italian and meaning forty days) is a complex of measures to prevent the spread of infectious diseases from human beings, animals, plants, and agricultural pests;
- ‘plants’ are plants and parts of plants, including the seeds and the genetic material of plants;
- ‘the quarantine of plants’ is a legal regime envisaging a system of measures for the protection of plants and their products from quarantined objects in the territory of The Republic of Tajikistan;
- ‘products of plant origin’ are non-processed materials of plant origin and products of plant origin, which by their nature and/or how they are processed, may create a risk of infection and/or spread of harmful organisms in the territory of The Republic of Tajikistan.
- ‘products under quarantine’ (materials under quarantine and goods under quarantine) are plants, products of plant origin, tare[??], packaging, soil or other organisms, an object or material, which may become bearers of harmful organisms or facilitate the spread of harmful organisms;
- ‘fumigation’ is a method which uses a poisonous smoke, gas, or spray against pests and carriers of plant diseases;
- ‘degassing’ is the extraction of poisonous substances;
- ‘a shipment of products under quarantine’ consists of a quantity of homogenous products under quarantine located in one place, and designated for transport by a specific means of transportation to one destination for a single physical or legal person.
- ‘phytosanitary quarantine measures’ are measures preventing infections or the spread of harmful organisms in the territory of The Republic of Tajikistan;
- ‘a harmful organism’ is a plant, of any biological species, varieties and types, or pests and pathogenic organisms of various biological species, varieties, and origin, that are capable of doing harm to plants or products of plant origin;
- ‘quarantined objects’ are harmful organisms absent and/or of limited presence in the territory of The Republic of Tajikistan;
- ‘objects under quarantine’ can consist of land used for any purpose, buildings, premises, reservoirs, storage places, equipment, means of transport, containers, products under

quarantine and other objects capable of being sources of infection or the spread of quarantined objects in the territory of The Republic of Tajikistan;

- ‘a phytosanitary quarantined zone’ is a zone where a phytosanitary quarantine regime is imposed due to its exposure to quarantined objects;
- ‘a phytosanitary quarantine regime’ consists of phytosanitary quarantine measures imposed on a phytosanitary quarantined zone;
- ‘a phytosanitary certificate’ is a document confirming compliance of quarantined objects with the rules and standards to ensure the quarantine of plants;
- ‘State phytosanitary quarantine supervisory measures’ deal with the exposure of quarantined objects, define the State phytosanitary quarantine status of objects under quarantine, and impose State phytosanitary quarantine supervision, in observance of the legislation of The Republic of Tajikistan regarding the imposition of quarantine on plants, and the rules and standards to ensure the quarantine of plants;
- ‘the rules and standards’ which ensure the quarantine of plants are set out in regulations and legal acts, specifying the technical and methodological requirements necessary to guarantee the quarantine of plants;
- ‘an import quarantine permit’ is a document confirming the compliance of products under quarantine, imported into the territory of The Republic of Tajikistan, with the rules and standards to guarantee the quarantine of plants.

### **Article 3. Legislation of The Republic of Tajikistan for the purpose of Ensuring the Quarantine of Plants**

The legislation of The Republic of Tajikistan to ensure the quarantine of plants is based on the Constitution of The Republic of Tajikistan and consists of the present law, other regulations and legal acts of The Republic of Tajikistan, and international agreements recognised by The Republic of Tajikistan.

### **Article 4. Powers of The Republic of Tajikistan to Ensure the Quarantine of Plants**

The powers of The Republic of Tajikistan to ensure the quarantine of plants include:

- the development and implementation of a single State policy to ensure the quarantine of plants in The Republic of Tajikistan;
- the application of State phytosanitary quarantine supervision;
- the imposition and cancellation of a phytosanitary quarantined zone, and the imposition and cancellation of a phytosanitary quarantine regime;
- the development and adoption of rules and standards to ensure the quarantine of plants and the list of quarantined objects;
- the carrying out of examinations to control objects under quarantine;
- the definition of the phytosanitary quarantine status of territories in The Republic of Tajikistan;
- the determination of the procedure for importing products under quarantine into, and exporting them from, the territory of The Republic of Tajikistan;
- the phytosanitary quarantine certification of products under quarantine;
- the seizure and decontamination of objects under quarantine;
- the enforcement of commitments, under international agreements on cooperation by The Republic of Tajikistan, in the sphere of the quarantine of plants;

### **Article 5. A Specially Authorized State Agency to Ensure the Quarantine of Plants**

A specially authorized State Agency to guarantee the quarantine of plants shall exert State supervision over the quarantine of plants.

The Government of The Republic of Tajikistan hereby establishes the specially authorized State Quarantine Agency to guarantee the quarantine of plants in The Republic of Tajikistan (hereinafter the 'State Quarantine Agency'), and specifies its powers.

The State Quarantine Agency shall guarantee the quarantine of plants in the interests of The Republic of Tajikistan, and shall impose State phytosanitary quarantine supervision in the territory of The Republic of Tajikistan.

The State Quarantine Agency shall approve the list of quarantine objects.

The State Quarantine Agency shall conduct phytosanitary certification and shall issue quarantine permits for the importation of products under quarantine into The Republic of Tajikistan.

## **CHAPTER II. ENSURING THE QUARANTINE OF PLANTS**

### **Article 6. The Imposition and Cancellation of a Phytosanitary Quarantine Zone, the Imposition and Lifting of Quarantine**

When an infection (or contamination) of objects under quarantine by quarantined objects is verified, The State Quarantine Agency shall define a phytosanitary quarantined zone and a phytosanitary quarantine regime, and shall empower an executive body to impose the quarantine.

In the phytosanitary quarantined zone, action to control the quarantined objects, to ensure their restriction, and the eradication of their origins, shall be conducted together with the imposition of a ban on the use of certain products under quarantine, or a ban on the removal of certain products under quarantine, from the area of a phytosanitary quarantined zone, as well as the introduction of any other bans and restrictions deemed necessary.

When the eradication of the origin of quarantined objects has been achieved, The State Quarantine Agency shall cancel the phytosanitary quarantined zone and the phytosanitary quarantine regime, and the relevant executive body shall lift the quarantine.

### **Article 7. The Phytosanitary Quarantine Certification of Products under Quarantine**

The import into the territory of The Republic of Tajikistan and zones free of quarantined objects, the export from phytosanitary quarantined zones of The Republic of Tajikistan, and the transportation of products under quarantine, are only allowed as stipulated by the rules and standards to ensure the quarantine of plants and where a phytosanitary certificate confirms compliance of products under quarantine with the rules and standards ensuring the quarantine of plants.

A phytosanitary certificate, and an import quarantine permit, shall accompany each shipment of products under quarantine imported into, or exported from, the territory of The Republic of Tajikistan.

A phytosanitary certificate and an import quarantine permit shall accompany each shipment of products under quarantine imported into the territory of The Republic of Tajikistan, or

transported within the territory of The Republic of Tajikistan, and each shipment of products under quarantine taken out of a phytosanitary quarantined zone.

#### **Article 8. Protection of the Territory of The Republic of Tajikistan from Quarantined Objects**

Products under quarantine imported into the territory of The Republic of Tajikistan, and transported within the territory of The Republic of Tajikistan, shall observe the rules and standards to ensure the quarantine of plants as determined by the legislation of The Republic of Tajikistan, as well as by the standards of international agreements on cooperation in the sphere of quarantine, which have been ratified by The Republic of Tajikistan.

The import into the territory of The Republic of Tajikistan of products under quarantine, infected by quarantined objects (except as determined by the rules and standards to ensure the quarantine of plants), as well as the import of products under quarantine, shall be prohibited, where the rules and standards to ensure the quarantine of plants have been violated.

Products under quarantine imported into the territory of The Republic of Tajikistan are subject to compulsory State phytosanitary quarantine supervision, including an examination.

Products under quarantine may be imported into the territory of The Republic of Tajikistan only through designated entry points on the State border of The Republic of Tajikistan.

The Government of The Republic of Tajikistan shall approve the locations and the number of staff at entry points on the State border of The Republic of Tajikistan, at the request of The State Quarantine Agency.

Entry points on the State border of The Republic of Tajikistan shall be equipped in accordance with the rules and standards to ensure the quarantine of plants and shall be provided with transport and communications.

Products under quarantine imported into the territory of The Republic of Tajikistan through the entry points on the State border of The Republic of Tajikistan, shall be subjected to primary State phytosanitary quarantine supervision, including an examination, and shall be subjected to secondary State phytosanitary quarantine supervision at their destinations.

The State Quarantine Agency shall exert State phytosanitary quarantine supervision on the import into the territory of The Republic of Tajikistan, and export from its territory, of products under quarantine.

The import into the territory of The Republic of Tajikistan of products under quarantine for research, is regulated by the rules and standards ensuring the quarantine of plants.

The use of objects under quarantine infected by other objects under quarantine is prohibited, except as determined by the rules and standards ensuring quarantine of plants.

The imposition of phytosanitary quarantine measures and restrictions of any form, in order to deal with situations not related to ensuring the quarantine of plants, is prohibited.

#### **Article 9. The Decontamination, Treatment, and Extraction of Poisonous Substances (Degassing) of Objects Under Quarantine**

Products under quarantine imported into the territory of The Republic of Tajikistan, which are infected by objects under quarantine, are subject to decontamination at the entry points on the State border of The Republic of Tajikistan, or at their destination, unless otherwise determined by the rules and standards ensuring the quarantine of plants.

Products under quarantine imported into the territory of The Republic of Tajikistan from countries with objects under quarantine, are subject to preventive decontamination as determined by the rules and standards ensuring the quarantine of plants.

The means of transport used for the transportation of products under quarantine are subject to compulsory treatment or, if required, to decontamination, according to the rules and standards ensuring the quarantine of plants.

The decontamination of objects under quarantine by the use of a gassing method, and the extraction of poisonous substances (by degassing), shall be carried out by The State Quarantine Agency.

The degassing, treatment, and extraction of poisonous substances shall be carried out according to the rules and standards ensuring the quarantine of plants.

#### **Article 10. The Responsibilities of Organizations, Entrepreneurs, and Individuals to Ensure the Quarantine of Plants**

Organizations, individual entrepreneurs, and citizens involved in the production, procurement, import into the territory of The Republic of Tajikistan, or the export from the territory of The Republic of Tajikistan, the transportation, storage, processing, use, and marketing of objects under quarantine are required:

- to observe the rules and standards to ensure the quarantine of plants when producing, procuring, importing into the territory of The Republic of Tajikistan, exporting from the territory of The Republic of Tajikistan, transporting, storing, processing, using, and marketing of products under quarantine;
- promptly to inform The State Quarantine Agency of the arrival of products under quarantine;
- not to allow the opening of transport means and containers with products under quarantine, upon arrival in the territory of The Republic of Tajikistan, without the written permission of The State Quarantine Agency;
- to create the conditions required for the timely execution of State phytosanitary quarantine supervision, including an examination;
- to designate premises for the storage of products under quarantine which comply with phytosanitary quarantine requirements, and provide protection for such products;
- not to allow the cleaning of the means of transport in transit, or in places not designated for such cleaning;
- to ensure the proper storage of products under quarantine, before the commencement of State phytosanitary quarantine supervision;
- to designate the transport means, specially equipped wharfs, grounds, premises, and workers if required, for the decontamination, treatment, and the extraction of poisonous substances (or degassing) from objects under quarantine;
- promptly to inform The State Quarantine Agency upon exposure to contamination, by quarantined objects, of objects under quarantine;
- to transport products under quarantine in conditions that exclude their leakage or the possible contamination by quarantined objects, in the territory of The Republic of Tajikistan;

- to fulfil other requirements, in conformity with the legislation of The Republic of Tajikistan, to ensure the quarantine of plants, and the requirements of rules and standards ensuring the quarantine of plants.

Any action taken due to the exposure of quarantined objects and to combat the effects of such exposure, the restriction and eradication of its origin, shall be implemented at the expense of the owners and users of the objects under quarantine.

The decontamination, extraction of poisonous substances (degassing), detention, destruction, and return of products under quarantine shall be implemented at the expense of their owners, users, consignees, or dispatching entities.

#### **Article 11. Exposure of Quarantined Objects and Prevention of Their Spread**

For the timely identification of quarantined objects and their country of origin, objects under quarantine are subject to systematic phytosanitary quarantine examinations.

Upon identification of the origin of the relevant territories of quarantined objects, a phytosanitary quarantine regime shall be imposed, under the procedure specified by Article 6 of the present Law.

Grain and processed grain products imported into the territory of The Republic of Tajikistan are subject to the treatment by a technology that will ensure the removal of reproductive capability, as stipulated by the rules and standards ensuring the quarantine of plants.

#### **Article 12. Withdrawal, Destruction, and Return of Products Under Quarantine**

In compliance with the legislation of The Republic of Tajikistan to prevent the infection or spread of quarantined objects in the territory of The Republic of Tajikistan, products under quarantine may be removed, destroyed, or returned on the orders of officials of The State Quarantine Agency.

#### **Article 13. Laboratory Testing and Examination of Products Under Quarantine**

The phytosanitary quarantine status of products under quarantine, which shall be subject to State phytosanitary quarantine supervision, shall be determined by an inspection, a laboratory test, or other examination as required.

To define the phytosanitary quarantine status of products under quarantine, The State Quarantine Agency shall carry out a laboratory test and examination of the products.

### **CHAPTER III. THE STATE SERVICE FOR THE QUARANTINE OF PLANTS IN THE REPUBLIC OF TAJIKISTAN**

#### **Article 14. The Major Principles of Organisation and Activities of the State Quarantine Service of Plants in The Republic of Tajikistan**

The State Service of Quarantine of Plants in The Republic of Tajikistan is a single centralised network, including the following State bodies:

- a) the State Inspection of Quarantine of Plants in The Republic of Tajikistan;
- b) the Republic Laboratory for the quarantine of plants;

- c) the Fumigation Group of the State Inspection of Quarantine of Plants in The Republic of Tajikistan;
- d) the State Inspection of Quarantine of Plants in the Gorno Badakhshan Autonomous Region and its regions;
- e) district and inter-district centres for the quarantine of plants;
- f) border entry points for the quarantine of plants at river wharfs, railway stations, airports, post offices, and highways.

The State Service of Quarantine of Plants in The Republic of Tajikistan shall carry out State activities related to the quarantine of plants through this network.

The State bodies of the State Service of Quarantine of Plants in The Republic of Tajikistan are legal persons and have seals including their titles.

The State Inspection of Quarantine of Plants in The Republic of Tajikistan shall manage the activities of the State Service of Quarantine of Plants in The Republic of Tajikistan according to its functions.

#### **Article 15. The Rights of Officials Exercising State Phytosanitary Quarantine Supervision**

The officials of The State Quarantine Agency shall exercise State phytosanitary quarantine supervision.

The officials exercising State phytosanitary quarantine supervision within their competence are entitled to:

- freely visit objects under quarantine belonging to individual entrepreneurs and citizens, as well as objects under quarantine, regardless of their institutional and legal forms, and the ownership forms of entities to which these objects belong;
- obtain documented information relating to the quarantine of plants from State authorities, bodies of the Gorno Badakhshan Autonomous Region with executive power, regions, towns, districts, local self-governing bodies, organizations, individual entrepreneurs, and citizens;
- conduct phytosanitary quarantine examination of objects under quarantine and an inspection of products under quarantine, including their means of procurement and dispatch;
- investigate or take samples from objects under quarantine;
- prohibit or suspend the production, procurement, or importation into the territory of The Republic of Tajikistan, or exportation from the territory of The Republic of Tajikistan, the transportation, storage, processing, use, and marketing of objects under quarantine;
- instruct organisations, individual entrepreneurs, and citizens to cease any violation of the rules and standards ensuring the quarantine of plants;
- take decisions on the decontamination, treatment, extraction of poisonous substances (degassing), and return of products under quarantine;
- withdraw and destroy products under quarantine;
- exercise other powers to ensure the quarantine of plants specified by the legislation of The Republic of Tajikistan.

The approach in any form to officials exercising State phytosanitary quarantine supervision, aimed at influencing the decisions taken by them, or preventing them from carrying out their activities, is prohibited and shall be punishable in accordance with the legislation of The Republic of Tajikistan.

## **Article 16. The Emblem and the Identification Mark of the State Service of Quarantine of Plants in The Republic of Tajikistan**

The State Service of Quarantine of Plants in The Republic of Tajikistan shall have an emblem and mark of identification.

The Government of The Republic of Tajikistan shall approve the Regulation on the Flag and Identification Mark of the State Service of Quarantine of Plants in The Republic of Tajikistan.

## **Article 17. Sources of Funding for the State Service of Quarantine of Plants in The Republic of Tajikistan**

The sources of funding of the State Service of Quarantine of Plants in The Republic of Tajikistan are the:

- funds from the State Budget;
- funds arising from work undertaken and services provided to ensure the quarantine of plants for bodies of the State Service of Quarantine of Plants in The Republic of Tajikistan;
- funds arising from organisations, individual entrepreneurs and citizens, in compensation for any additional expenses incurred by the bodies of the State Service of Quarantine of Plants related to the organisation of phytosanitary quarantine activities;
- funds arising from publications relating to the ensuing of the quarantine of plants;
- voluntary contributions and donations;
- other sources where not prohibited by the legislation of The Republic of Tajikistan.

## **Article 18. Uniform of Officials of the State Service of Quarantine of Plants in The Republic of Tajikistan**

Officials of the State Service of Quarantine of Plants in The Republic of Tajikistan shall have the right to wear a uniform, of a design to be determined by the Government of The Republic of Tajikistan.

## **CHAPER IV.SETTLEMENT OF DISPUTES RELATING TO THE ENSURING OF QUARANTINE OF PLANTS**

### **Article 19. The Body Examining Disputes Relating to the Ensuring of Quarantine of Plants**

Disputes relating to the ensuring of quarantine of plants shall be heard by the Government of The Republic of Tajikistan, local executive bodies, The State Quarantine Agency, as well by a court following a procedure to be determined by the legislation of The Republic of Tajikistan.

### **Article 20. Settlement of Disputes Relating to the Ensuring of Quarantine of Plants**

Disputes relating to the ensuring the quarantine of plants between The Republic of Tajikistan and other States shall be settled in accordance with mutually recognized international agreements.

### **Article 21. The Dispute Examination Procedure Linked with the Ensuring of Quarantine of Plants**

Disputes relating to ensuring the quarantine of plants are heard upon an application of one of the parties, with all the required documents attached, including a statement of The State Quarantine Agency, and the owners of products under quarantine, and based on the results of an inspection, laboratory tests, and an examination of the products under quarantine.

The State Quarantine Agency shall execute the decisions on disputes relating to ensuring the quarantine of plants.

**Article 22. Settlement of Property Disputes Linked with the Ensuring of Quarantine of Plants**

The courts shall settle property disputes related to ensuring the quarantine of plants.

**CHAPTER V. RESPONSIBILITY FOR BREACH OF LEGISLATION ON THE QUARANTINE OF PLANTS**

**Article 23. Indemnification of Damages Incurred Due to Breach of the Legislation of The Republic of Tajikistan on the Quarantine of Plants**

Physical and legal persons shall indemnify the damages incurred due to any breach of the legislation on the quarantine of plants, in the amounts as determined under the procedures of the civil legislation of The Republic of Tajikistan.

**Article 24. Responsibility for Breach of Legislation on the Quarantine of Plants**

Physical and legal persons, who have violated the legislation on the quarantine of plants, shall be punished in accordance with the legislation of The Republic of Tajikistan.

**CHAPTER VI. INTERNATIONAL COOPERATION REGARDING THE QUARANTINE OF PLANTS**

**Article 25. Principles of International Cooperation Regarding the Quarantine of Plants**

The Republic of Tajikistan is involved in international cooperation related to the quarantine of plants, guided by the principles of mutual security pertaining to the import and distribution of quarantined objects.

**Article 26. Activities of Foreign Organisations and Citizens Pertaining to the Quarantine of Plants in the Territory of The Republic of Tajikistan**

The activities of international organisations, citizens, and individuals without citizenship, related to the quarantine of plants in the territory of The Republic of Tajikistan, shall be carried out in accordance with the legislation of The Republic of Tajikistan, international treaties recognised by The Republic of Tajikistan and regulations to ensure the quarantine of plants.

President of The Republic of Tajikistan  
Dushanbe  
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No. 25

E. Rahmonov

# THE LAW OF THE REPUBLIC OF TAJIKISTAN

## On Selection Achievements of Agricultural Crops

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

### 1. GENERAL

#### **Article 1. Selection of Agricultural Crops**

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

#### **Article 2. A Selection Achievement**

Features characterizing a plant grouping within a single botanical taxon, which grouping, irrespective of its protectability, can be defined by the expression of characteristics resulting from a given genotype or combination of genotypes and can be distinguished from any other plant grouping of the same botanical taxon by the expression of at least one of the said characteristics.

A plant material means a plant or parts thereof used for purposes other than reproduction of the variety.

A new selection achievement shall be given the title proposed by an applicant and approved by the State Commission on Variety Tests of Agricultural Crops and Variety Protection of the Republic of Tajikistan, hereinafter called the State Commission, and registered in the State Register.

The title shall identify a selection achievement, be short, distinct from existing selection achievements of the same botanical or a similar botanical kind, and be easily recognized.

In case an application for a selection achievement is submitted in the Republic of Tajikistan and other states, it shall contain one and the same title.

The title of a selection achievement may be changed under certain circumstances with the consent of the State Commission.

A protected selection achievement shall be used with the title, which is registered in the State Register of Protected Selection Achievements.

The variety shall comprise the following protected categories: the clone, the line, a hybrid of the first generation of a hybrid, population.

#### **Article 3. Legislation on Selection of Agricultural Crops**

The legislation of the Republic of Tajikistan on agricultural crops consists of the present Law and relevant normative and legal texts.

### II. TERMS OF PROTECTION ABILITY OF A SELECTION ACHIVEMENT

#### *Article 4. Terms of Protection Ability of a Selection Achievement*

A patent shall be granted where the selection achievement, meets the criteria of protection ability and relates to botanical genera a list of which shall be determined by the State Commission.

The said criteria of a selection achievement shall be the following:

a) Novelty:

- not known before the date of application for a grant of a patent for the seeds and vegetative material;
- A selection achievement shall be deemed to be new if, at the date of filing of the application for the grant of a patent, the given selection achievement has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of exploitation of the selection achievement in the territory of the Republic of Tajikistan a year before submission of an application;
- a selection achievement not having been sold or transferred by any other way by a selectionist or his successor in title or with the consent of the breeder by other individuals for production use in the territory of the Republic of Tajikistan six months before submission of an application in the case of grapevines and ornamental wood, fruit and forest trees, and four years before if it relates to any other plants;

b) distinction:

- a selection achievement shall be clearly distinct from any other commonly known selection achievement existing at the time of the filing of the application;
- a well-known selection achievement may be those which have been entered in an official register of selection achievement, or reference files, or of which a precise description has been published;

Submission of an application for the grant of a patent or an authorization to use the selection achievement shall likewise render that selection achievement a matter of common knowledge from the date of the application, provided that the application leads to the grant of the patent or the authorization.

Features defining distinctive qualities of a selection achievement shall be identifiable and precisely described.

c) Uniformity:

- A plant variety shall be sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation or reproduction;

d) stability:

- Notwithstanding the provisions of Article 12, Item 1, protection may be granted to varieties which, at the date of entry of the corresponding genus in the list of protected selection achievements, have been registered in the State Register of Selection Achievements Authorized for Use for Production Purposes. The priority of the selection achievement shall be determined by the date of receipt by the State Commission of the application containing the request for the grant of an authorization to use the said selection achievement. The term of a patent provided for in Article 4 (a) shall be reduced

in relation to such selection achievement by the period starting from the year in which the authorization to use has been granted and ending in the year in which a patent has been granted. No provisional protection provided for in Article 15 shall apply for such selection achievements.

#### **Article 5. Application for the Patent Issue**

The right to file an application for the grant of a patent shall belong to the breeder or his successor in title. The application shall be filed with the State Commission one year before a variety is presented for a state test.

If a selection achievement meets the conditions of protection ability, the State Commission takes a decision to grant the patent.

Where a variety has been developed, in the line of duty, the right to file an application for the grant of the patent shall belong to the employer unless otherwise provided in the employment contract.

In addition, the agreement or constituent documents shall define the size and a period of remuneration to be paid to the author for the use of a selection achievement.

Where there are several persons who jointly bred, developed or discovered the same selection achievement or who are the joint successors in title thereof, they may file the application jointly.

An application may be filed through patent agents whose powers shall be certified in a power of attorney, and who shall act in all proceedings conducted for the grant of patents.

Physical and juridical persons of a foreign country have the right to submit an application if an agreement on protection of selection achievements has been concluded between the Republic of Tajikistan and the state concerned.

In this connection, business relating to the patent issue and its maintenance in force is conducted through patent agents of the Republic of Tajikistan.

#### **Article 6 The Right of Priority**

The priority of a selection achievement shall be determined by the date of receipt by the State Commission of the application for the grant of a patent.

If the application received by the State Commission has been preceded by another application placed by one of the states (the first application) with which the Republic of Tajikistan has concluded an agreement on protection of selection achievements, the applicant shall use the right of priority of the first application within twelve months from the date of its submission.

To establish the date of priority in compliance with Item 2 of the present Article, the applicant should specify the priority date of the first application in the application forwarded to the State Commission. Moreover, the applicant shall present a copy of the first application certified by competent authorities of the relevant state and its translation within six months from the day of submission of the application to the State Commission.

If the conditions specified in Item 2 and 3 of this Article are met, the applicant has the right to provide additional documentation and the material required for a test within three years from the date of submission of the first application.

### **III. ASSESSMENT OF PROTECTION ABILITY**

#### *Article 7. Preliminary Examination of an Application*

A preliminary examination shall be carried out within a period of one month in order to determine the priority date and to verify the presence of the required documents and their compliance with the prescribed conditions.

The State Commission may request the applicant to furnish, within the prescribed time limit, missing or corrected documents relating to the application. During the preliminary examination the applicant may, on his own initiative, supplement, clarify or correct any part of the application.

If the applicant fails, within the prescribed time limit, to furnish the corrected documents or documents missing at the filing date, the application shall be rejected and the applicant shall be notified accordingly. Where the applicant wishes to contest the decision taken in the preliminary examination, he may do so, within three months following the date of receipt of the decision, by lodging an appeal with the courts.

In case of a positive decision of the preliminary examination, the applicant shall be informed that the application is accepted for consideration to check compliance of a selection achievement with the criteria of protection ability.

#### *Article 8. Examination of Selection Achievement on Novelty*

Any interested person may place a claim on novelty of the selection achievements in the State Commission declared within six months from the date of data publication.

The State Commission informs the applicant with a statement of the essence of the claim that a reasonable claim has been received.

In case of disagreement with the claim of the Commission, the applicant is entitled to forward a justified objection to the State Commission within three months from the date a notification is received.

Based on the information available the State Commission takes a decision and informs the persons concerned.

If the selection achievement does not meet the novelty criteria, a decision to refuse the patent issue is taken.

The decision of the State Commission may be appealed in the court.

#### *Article 9. A Selection Achievement Test for Distinction, Uniformity, and Stability*

Testing a selection achievement as to its compliance with the conditions of distinctness, uniformity, and stability shall be carried out in accordance with a methodology and within the periods prescribed by the State Commission.

The State Commission may take into account the results of tests which have been carried out by the competent authorities of other States on the basis of bilateral agreements, the results of tests which have been carried out by other organizations of the Republic of Tajikistan on the basis of contracts concluded with the State Commission, as well as data provided by the applicant.

#### IV. PROTECTION OF THE SELECTION ACHIEVEMENT

##### *Article 10 Registration of the Selection Achievement*

The State Commission registers the selection achievement regarding which a decision of the patent issue has been taken in the State Register of Selection Achievements following the appropriate procedure.

##### **Article 11. The Patent**

The patent certifies an exceptional entitlement of the patent owner or his successor in title to use a selection achievement.

The patent shall be granted to the applicant. Where several applicants are indicated in the request for the grant of a patent, the patent certificate shall be granted to the applicant whose name is mentioned first.

In case of loss or damage of the patent certificate, a duplicate may be issued subject to the payment of the prescribed patent fee.

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

The validity of a patent shall be 15 years starting from the date of registration of selection achievements in the State Register. For variety of grapevines, wood- ornamental, fruit crops, and forest species, including tree stocks, the period shall be 20 years.

At the requests of the patent holder, the State Commission may extend a patent validity period but no longer than ten years.

##### *Article 13. The Right of a Patent Holder*

A patent owner is entitled to an exceptional right to use a protected selection achievement.

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

The exclusive right of the patent owner shall mean that any person who wishes to perform the following activities in respect of the seeds of the protected variety material on the protected breed shall be required to obtain a license from the patent owner:

- a) production or reproduction;
- b) development of sowing standards with the purpose of further propagation;

- c) offering for sale;
- d) selling or other marketing;
- e) storing.

The right of the patent owner shall also extend to plant material produced from the protected seeds which have been put on the market without the authorization of the patent owner. The authorization of the patent owner shall be required for the performance of acts specified in paragraph 2 of this Article in relation to

- a) seeds of varieties which are essentially derived from the protected (initial) variety where the protected variety is not itself an essentially derived selection achievement;
- b) provides for the repeated use of the protected variety for seed production.

A selection achievement essentially inheriting the features of another (initial) selection achievement is declared the one, which obviously differs from the initial achievement, but:

- inherits the most essential features of the initial selection achievement preserving the main characteristics reflecting the genotype or a combination of genotypes of the initial selection achievement;
- corresponds to the genotype or a combination of genotypes of the initial selection achievement, except for deviations caused by the use of such methods, as individual selection from the initial sort, selection of the inducted mutant, back-cross, and genetic engineering.

*Article 14. Actions not Qualified as Infringement of the Right of the Patent Owner*

The performance of the following acts in respect of the protected selection achievements shall not constitute an infringement of the rights of the patent owner:

- a) acts done privately for non-commercial purposes;
- b) acts done for experimental purposes;
- c) the use of the protected selection achievement as the initial material for development of other varieties and their subsequent use for purposes specified in Article 13, Item 2 of this law;
- d) the use, for the duration of two years, of the plant material gained on farms as seeds for the propagation of the variety on their own holding (a list of plant genera shall be determined by the Government of the Republic of Tajikistan );
- e) any acts in relation to seeds and plant material, which have been sold or otherwise marketed by the patent owner or with his consent, unless such acts involve further propagation of the variety in question, or involve an export from the territory of the Republic of Tajikistan of plant material which enable the propagation of the variety into a country which does not protect the genus to which the variety belongs.

*Article 15. Provisional Protection*

During the period between the date of receipt of the application by the State Commission and the date of the grant of the patent the applicant shall enjoy provisional legal protection of his selection achievement.

After the patent has been granted the patent owner shall be entitled to compensation from any person who, during the period of the provisional legal protection, has performed without the authorization of the owner of the patent acts specified in Article 13 of this law.

During the period of provisional legal protection of the selection achievement, the applicant shall be authorized to sell or otherwise furnish seeds of the variety for scientific purposes or where such acts are performed in connection with the assignment of rights in a selection achievement, or where the production of seeds is commissioned by the applicant for the purpose of creation of stocks.

V. USE OF THE SELECTION ACHIEVEMENT

*Article 16. The License Contract*

Under a license contract (exclusive or non-exclusive license) the owner of a patent (licensor) grants, against the payments specified in the contract or gratis, the right to use the selection achievement to another person (the licensee).

The license contract shall be concluded in writing.

An exclusive license contract affords the licensee the exclusive right to use the selection achievement within the limits specified in the contract beyond which the licensor retains the said right.

A non-exclusive license contract allows the licensor to retain all rights deriving from the patent on the selection achievement including the right to grant licenses to third parties.

The exclusive license contract shall be effective after its registration in the State Commission.

*Article 17. The Rights of the Licensee*

The licensee shall have the right, during the life of the patent, to use the protected selection achievement in the territory of the Republic of Tajikistan and to perform acts stipulated in Article 13 of this Law, except where the license contract provides otherwise. The licensee may not transfer the license to third parties neither may he grant a sublicense, except where the license contract provides otherwise.

*Article 18. Terms and Conditions of the License Contract Regarding Restrictions of the Licensee's Right*

No terms and conditions of the license contract shall impose limitations on the licensee unless they arise out of the rights conferred by the patent or are necessary to maintain it in force.

*Article 19. Open License*

The owner of the patent may publish in the Official Gazette of the State Commission a notice to the effect that he undertakes to grant, subject to the payment of the amounts specified in the notice, a license to use the selection achievement to any interested party as from the date the latter has notified the patent owner of his intention.

The State Commission shall register the grant of an open license in the State Register of Protected Selection Achievements with the specified amount of payments.

In such a case the maintenance fee shall be reduced by 50% as from January 1 of the year following the year of publication of the notice relating to the offering of an open license.

At the request of the patent owner and subject to the consent of all the holders of an open license the State Commission shall register the lapse of the open license in the State Register of Protected Selection Achievements.

*Article 20. Compulsory License*

Any person may file an application with the State Commission requesting the grant of a compulsory license for a selection achievement.

The State Commission shall only grant a compulsory license where the following conditions are fully met:

- a) an application requesting the grant of a compulsory license has been filed after three years have passed since the date of the patent grant;
- b) the patent owner has refused to the applicant the right to produce or market the seeds, or does not intend to grant the right;
- c) a person requesting the grant of a compulsory license has produced proof of being in a position, both financially and otherwise, to use the license in a competent and efficient manner;
- d) the amount of the prescribed fee for the grant of a compulsory license has been paid.

When granting a compulsory license the State Commission shall fix the amounts to be paid by the licensee to the patent owner.

The State Commission shall grant a compulsory license for a period not exceeding four years.

The said period may be extended if an inspection finds that the grounds prevailing at the time the compulsory license was granted still exist.

The State Commission shall revoke a compulsory license if its owner has infringed the terms under which the license had been granted.

A decision to grant or revoke a compulsory license taken by the State Commission may be contested in the courts.

*Article 21. Right of the Licensee to Claim*

Where the rights of the patent owner are infringed, the licensee has the right to start legal proceedings in the prescribed manner.

*Article 22. The certificate of the Author*

The certificate of authorship shall attest the authorship of a selection achievement and the entitlement of the author to remuneration to be paid by the patent owner for the use of the selection achievement.

The State Commission shall issue a certificate of authorship to each author who is not a patent owner.

Any disputes arising from the authorship shall be referred to the court.

*Article 23. Remuneration to be paid to the Author of a Selection Achievement Who is Not the Patent Owner*

The author of the selection achievement shall, for the life of the patent, be entitled to remuneration be paid by the patent owner for the use of the selection achievement, developed or discovered by him. The amount of remuneration and the terms of the payment shall be stipulated in a contract between the patent owner and the author. The amount of remuneration shall not be less than 2 per cent of the annual proceeds derived by the patent owner from the use of the protected selection achievement, including the earnings derived from the sales of licenses.

Where a variety is developed by two or more authors, their shares of remuneration shall be determined by agreement between them.

The remuneration shall be paid to the author within three months after the end of each year in which the selection achievement is used.

If the remuneration is not paid on time, the patent owner shall pay the author, for each day's delay, a monetary penalty at the rate of 0.04 percent of the sum due.

*Article 24. Preservation of the Selection Achievement*

The patent owner shall, throughout the life of the patent, maintain the variety in such a way that all characteristics defined in the description of the variety at the date of registration thereof in the State Register of Protected Selection Achievements are maintained.

At the request of the State Commission the patent owner shall furnish seeds of the variety for the purposes of testing and provide the opportunity to in situ inspection.

*Article 25. Revocation of Patent*

Any natural person or legal entity may request the State Commission to revoke the granted patent.

The State Commission shall bring a copy of the request to the attention of the patent owner. The patent owner may, within three months from the date of receipt of the said copy, furnish his reply

stating valid reasons in support of the grant. The State Commission shall take a decision on the request within six months unless additional testing is required.

The State Commission shall revoke a patent when it is established :

- a) that the patent has been granted on the basis of unconfirmed information with respect of uniformity and stability of the selection achievement provided by the applicant;
- b) that the conditions of novelty or distinctness were not complied with at the date of the grant of the patent;
- c) that the person who appears in the patent document as the owner of the patent has not had a legal basis for receiving the patent.

The decision of the State commission may be appealed in the court.

#### *Article 26. Cancellation of the Patent*

The State Commission shall cancel a patent if it is established:

- a) that the selection achievement no longer meets the conditions of uniformity and stability;
- b) that the patent owner has failed, within the 12 months period, to provide at the request of the State Commission seeds, documents or information necessary for the control of the maintenance of the selection achievement or to provide an opportunity for in situ inspection for the purpose;
- c) that the patent owner has failed to pay within the prescribed time limit, the maintenance fee;

The decision of the State Commission may be appealed in the court.

#### *Article 27. Liability for Infringement of the Rights of Patent Owners*

Any natural person or legal entity who uses the selection achievement in a manner contrary to the requirements prescribed by this Law shall be deemed an infringer of the rights of the patent owner.

At the request of the patent owner, the infringement of the patent shall cease and the owner of the patent shall be compensated by the infringer for damages sustained.

At a court hearing on infringement of the patent holder's right, based on an appeal or solicitation of persons involved in the matter on their own initiative, the court may take the following measures regarding the claim:

- a) to attach the seed and vegetation material, which is the subject of infringement;
- b) to prohibit use, production, or sale of the seed and vegetation material.

*Article 28. Liability for Infringement of Other Rights of the Patent Owner and the Selectionist*

A legal person or an individual is considered guilty of infringement of other rights of the patent owner and the selectionist if the legal person or the individual:

- a) discloses data, which are a commercial secret, on the selection achievement regarding which an application has been submitted if these data are obtained by the juridical person or the individual when taking actions relating to this Law, except for cases, when the data are disclosed to the Minister of Agriculture of the Republic of Tajikistan and to a person taking actions aimed at protection of the breeder rights in compliance with this Law;
- b) uses for the produced and/or sole seeds the denomination of a registered selection achievement where the said seed is not that of the registered selection achievement;
- c) uses for the produced and/or sold seeds a denomination which is so similar to the denomination of a registered selection achievement that it is misleading;
- d) makes a false entry in the State Register of Protected Selection Achievements or in reports or causes it to be made therein;
- e) forges or prepares the forgery of documents to fulfill the conditions required under the provisions of this Law, or instigates such forgery or its preparation;
- f) furnishes documents containing false information on the selection achievement;
- g) presents documents containing fictitious data.

Persons committing the acts referred to in Part 1 of this Article shall be responsible under the legislation in force.

*Article 29. The State Commission*

The State Commission ensures execution of the functions stipulated by the present Law.

The State Commission has the right to conclude agreements with any entity capable to accomplish works relating to tests on protection ability of a plant variety.

The staff of the State Commission and its subdivisions in the Gorno Badakshan Autonomous Region, regions, towns, and districts have no right to apply for a patent within the whole work period as well as within three years after their dismissal or termination of their services.

*Article 30. Use of the Selection Achievement in Production*

Only the variety of plants included in variety zoning of agricultural crops and silkworm kinds allowed for the production use shall be cultivated in the territory of the Gorno Badakshan Autonomous Region, regions, towns, and districts.

Certificates certifying their variety and sowing qualities should accompany the marketed seeds.

For reproduction of seeds with the purpose to bring them outside of the relevant region, the inclusion of the varieties allowed for the use in the territory of this region is not required.

For selection achievements included in the State Register, the certificate is issued to the patent owner, licensees, and users of the open license only.

The State Commission includes new varieties of plants allowed for production use and conducts variety zoning based on the outcomes of their public tests.

For specific kinds and species determined by the State Commission, the inclusion of varieties in variety zoning allowed for production use is done based on experts' assessments or the applicant's data.

## VI. INTERNATIONAL COOPERATION

### *Article 31. The Right for Submission of the Application in Other States*

The breeder or his successor in title shall have the right to file an application for the grant of a selection achievement patent with a competent authority of any foreign State. The cost of obtaining a protection of right for a selection achievement shall be borne by the applicant.

### *Article 31. The Rights of Foreign Natural Persons and Legal Entities*

Foreign natural persons and legal entities shall on the basis of international treaties to which the Republic of Tajikistan is party, or on the basis of reciprocity, enjoy the rights provided for in this Law and regulatory acts of the Republic of Tajikistan in the field of protection of selection achievements on the same footing as natural persons and legal entities of the Republic of Tajikistan.

Provisions of Articles 22 and 23 of this Law are not valid for foreign citizens and individuals without citizenship.

### *Article 33. Validity of International Treaties*

Where an international treaty to which the Republic of Tajikistan is party contains provisions different from those specified in this law, the former shall prevail.

President of the Republic of Tajikistan

E. Rahmonov

Dushanbe, November 4, 1995

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