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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

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**Geneva, October 28, 1998**

EXAMINATION OF THE CONFORMITY OF THE LAWS  
OF THE KYRGYZ REPUBLIC  
WITH THE 1991 ACT OF THE UPOV CONVENTION

*Document prepared by the Office of the Union*

Introduction

1. By letter dated October 20, 1998, Mr. B. Silaev, Vice-Prime Minister of the Kyrgyz Republic, requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as "the Convention") of the Law on the Legal Protection of Selection Achievements (hereinafter referred to as "the Law") which was adopted by the Legislative Assembly of the Kyrgyz Republic on May 26, 1998. The Annex to this document contains a translation of the Law.
2. The Kyrgyz Republic did not sign the Convention. Under Article 34(2) of the Convention, it must deposit an instrument of accession in order to become a member State of UPOV on the basis of the Convention. Under Article 34(3), an instrument of that kind can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the Convention and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in the Kyrgyz Republic

3. The protection of new plant varieties will be governed in the Kyrgyz Republic by the Law and its implementing regulations. An analysis of the Law follows in the order of the substantive law provisions of the Convention.

4. Article 37 of the Law states that

“Where an international treaty to which the Kyrgyz Republic is party contains provisions different from those specified in this Law, the former shall prevail.”

Once the Kyrgyz Republic has acceded to the Convention, this provision will remedy all the cases, recorded below, of lack of conformity of the Law with the Convention. The provision also enables the Kyrgyz Republic to deposit an instrument of accession to the Convention on the basis of the Law, despite the existence of discrepancies with the Convention.

Article 1 of the Convention: Definitions

5. Article 1 of the Law defines the breeder as the natural person whose creative work resulted in the creation, discovery or development of a selection achievement (a plant variety or animal breed). Article 5, first paragraph, of the Law states that the right to file an application belongs to “the breeder or employer or his successor in title”; the rules applying to employee breeding appear in Article 6 (and 21 and 22 for the status as an “author of a selection achievement” and its consequences). Article 23 then sets out, in a similar way, who is entitled to the patent. Those provisions reproduce and amplify the essence of the definition of “breeder” appearing in Article 1(iv) of the Convention.

6. “Variety” is defined in Article 1 in terms very similar to those of Article 1(vi) of the Convention.

Article 2 of the Convention: Basic Obligation of the Contracting Parties

7. As set out in its preambular part, the Law governs the protection of new varieties of plants and breeds of animals, and related matters. Breeders’ rights are granted and protected through specially designed patents called “selection achievement patents.” Article 2 of the Law contains specific provisions on this. The Law thus complies with Article 2 of the Convention.

Article 3 of the Convention: Genera and Species to be Protected

8. The preambular part of the Law provides that it applies “to genera and species the list of which shall be approved by the Government of the Kyrgyz Republic.” Article 3 repeats and amplifies this. There is thus a basis for compliance with Article 3 of the Convention.

9. It is to be noted that the Law also applies to animal breeds.

10. Article 3 contains, however, a provision similar to Article 2(2) of the 1978 Act of the Convention, on the possible exclusion from protection of varieties of a given genus or species with a particular manner of reproduction or multiplication, or a certain end-use. It is to be understood that this provision may only be applied during the period of 10 years from the date of accession to the Convention, during which the Kyrgyz Republic would (only) be obligated to protect at least 15 plant genera and species.

#### Article 4 of the Convention: National Treatment

11. Under Article 36 of the Law, foreigners have access to protection in the Kyrgyz Republic, on the same footing as nationals, on the basis of the relevant provisions of international treaties to which the Kyrgyz Republic is a party or on the basis of reciprocity. This is fully in conformity with Article 4 of the Convention.

#### Articles 5 to 9 of the Convention: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

12. The conditions for protection are set out in Article 4 of the Law in terms which conform with Articles 5 to 9 of the Convention. The formal requirements for the application are dealt with in Article 7 of the Law.

#### Article 10 of the Convention: Filing of Applications

13. Article 35 of the Law sets out the right to file applications abroad, but requires that, prior to its filing with the authority of another State, the application must be registered with Kyrgyzpatent. The Law is thus not entirely consistent with Article 10 of the Convention as it imposes a formality at national level for applications abroad.

#### Article 11 of the Convention: Right of Priority

14. Article 9 of the Law sets out the right of priority in accordance with Article 11 of the Convention.

#### Article 12 of the Convention: Examination of the Application

15. Title III of the Law (Articles 10 *et seq.*) makes provisions for the processing of the application and the examination of the variety that is the subject of an application in terms which satisfy Article 12 of the Convention.

16. The possibility of cooperation in examination is contemplated in Article 14, seventh paragraph.

Article 13 of the Convention: Provisional Protection

17. Article 13 of the Law provides for provisional protection in the form of compensation for damages caused by any person who has exploited the variety, during the period between the date of publication of the application and the date of grant of the patent, in a manner that would require the authorization of the holder after the grant of the patent. This conforms with Article 13 of the Convention.

18. It should be noted, however, that Article 13 of the Law effectively prohibits the exploitation of the variety by the applicant himself since he may only sell or otherwise furnish seeds for experimental purposes, or in connection with an assignment of his rights, or again for the bulking-up of a seed stock. This provision is highly questionable in terms of conformity with the Convention, since the latter's Article 6 (novelty) implies that the breeder may have exploited his variety even before the filing of the application and since the latter's Article 13 is based on the premise that he may also do so whilst the application is pending; the provision at issue should be reconsidered at the earliest opportunity.

Article 14 of the Convention: Scope of the Breeder's Right

19. Article 24 of the Law defines the scope of the right of the patent holder in respect of the propagating material, listing the acts specified in Article 14(1)(a) of the Convention and also the varieties specified in Article 14(5). Its first and second paragraphs set out a positive right to do in respect of the protected selection achievement, whilst its fourth paragraph provides for an authorization to do (or a "negative right") in respect of certain other varieties; this approach, which is to some extent similar to that adopted in the Regulation of the European Union on Community Plant Variety Rights, would deserve further reflection insofar as a positive right to do may compete with another right (in the Kyrgyz Republic, a negative right), for instance in the case of an essentially derived variety.

20. The Law does not contain any provision which would restrict the right of the holder of a patent to make his authorization subject to conditions and limitations (Article 14(1)(b) of the Convention); the provisions of Articles 32 and 33 of the Law correspond to established principles.

21. Where is no provision on the rights of the patent holder in respect of the harvested material that would implement Article 14(2) of the Convention at national level.

Article 15 of the Convention: Exceptions to the Breeder's Right

22. Article 25 of the Law sets out the compulsory exceptions to the breeder's right in terms which satisfy Article 15(1) of the Convention.

23. It also establishes a "farmer's privilege," in accordance with Article 15(2) of the Convention, consisting in the right to produce two generations of farm-saved seed in the case of genera and species to be determined by the Government of the Kyrgyz Republic.

Article 16 of the Convention: Exhaustion of the Breeder's Right

24. The Law contains no provision on the exhaustion of the right that would expressly implement Article 16 of the Convention. The exhaustion principle may, however, be implicit, as is the case for many patent laws; an amendment of the Law should nevertheless be contemplated in order to provide for the exceptions set out in Article 16 of the Convention.

Article 17 of the Convention: Restrictions on the Exercise of the Breeder's Right

25. Article 34 of the Law contains provisions concerning the grant of compulsory licenses which satisfy the provisions of Article 17 of the Convention, except that there is no limitation to compulsory licensing based upon the need to meet public interest.

Article 18 of the Convention: Measures Regulating Commerce

26. Article 3 of the Law sets out functions of the State Commission for Variety Testing of Agricultural Crops which are clearly germane to the measures regulating commerce. The provisions in question, however, are clearly descriptive in nature. There is thus no conflict with Article 18 of the Convention.

Article 19 of the Convention: Duration of the Breeder's Right

27. Article 17 of the Law provides that protection lasts 30 years, or 35 years in the case of trees and grapevine (and animal breeds). These periods are longer than the minimums set out in Article 19 of the Convention.

Article 20 of the Convention: Variety Denomination

28. Article 8 of the Law contains provisions which are modelled after Article 20 of the Convention. It should be noted, however, that certain provisions (on the uniqueness of the denomination and its use in trade) erroneously dictate the conduct to be followed abroad, rather than in the Kyrgyz Republic.

Article 21 of the Convention: Nullity of the Breeder's Right

29. Article 29 of the Law contains provisions on the revocation of the patent, where the selection achievement was not new, distinct, uniform or stable on the date of grant or where the patent owner is not entitled thereto. This is not entirely in conformity with Article 21 of the Convention.

Article 22 of the Convention: Cancellation of the Breeder's Right

30. Article 30 of the Law is concerned with the cancellation of the patent. Although it takes over language from Article 10(3) of the 1978 Act and does not include the case of lack of cooperation in the registration of a new variety denomination, it may be deemed to conform with Article 22 of the Convention.

Article 30 of the Convention: Implementation of the Convention

31. The Law makes adequate provisions for the implementation of the Convention in the Kyrgyz Republic. Thus:

(a) Article 3 of the Law refers to the possibility of lodging appeals, with an internal board, against decisions taken in the operation of the protection system for selection achievements; provisions on the impugnation of administrative decisions are also included in Title III, devoted to the examination of the applications and selection achievements; Article 15 is of particular relevance. Article 31 further provides for the possibility to go to court. Title VII sets out the remedies available to the holder of a patent in the case of infringement; the latter entails civil, administrative and criminal liability. (Article 30(1)(i) of the Convention).

(b) Article 3 of the Law entrusts the administrative functions related to the operation of the protection system to the State Agency of Intellectual Property (Kyrgyzpatent), the examination of the varieties for novelty, distinctness, uniformity and stability being entrusted to the State Commission for Variety Testing of Agricultural Crops (Article 30(1)(ii) of the Convention).

(c) Article 3 of the Law states that it is one of the functions of Kyrgyzpatent to publish official information on matters relating to the protection of selection achievements; further provisions appear in Titles III and IV – devoted to the examination of applications and selection achievements, and to the registration of the selection achievements and the grant of the patents – particularly in Articles 12 and 19 (Article 30(1)(iii) of the Convention).

General Conclusion

32. The Law, in its main provisions, incorporates the substance of the Convention. However, the substantive-law provisions of the Law will not satisfy the Convention unless the Law is properly interpreted, supplemented or amended with respect, in particular, to

- (a) the right to file applications abroad (see paragraph 13, above);
- (b) provisional protection (see paragraph 18, above);
- (c) the scope of the rights of the patent holder in respect of harvested material (see paragraph 21, above);
- (d) the exhaustion of the right of the holder of a patent (see paragraph 24, above);

- (e) compulsory licenses (see paragraph 25, above);
- (f) variety denominations (see paragraph 28, above);
- (g) nullity (revocation of the patent) (see paragraph 29, above);

33. However, as noted in paragraph 4, above, once the Kyrgyz Republic has acceded to the Convention, Article 37 of the Law will cure all discrepancies from the Convention, and that Article also enables the Kyrgyz Republic to deposit an instrument of accession to the Convention on the basis of the Law, despite the existence of those discrepancies.

34. The Office of the Union therefore suggests that the Council may wish

(a) to advise the Government of the Kyrgyz Republic that the Law provides the basis for a legal system of protection conforming with the Convention and that the Government may deposit an instrument of accession to the Convention on the basis of the Law;

(b) to request the Secretary-General to advise the Government of the Kyrgyz Republic of this decision whilst drawing its attention to the discrepancies referred to in paragraph 32, above, and offering the assistance of the Office of the Union in respect of the amendments that ought to be made in the Law to achieve conformity with the Convention without the need to draw upon Article 37 of the Law.

*35. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.*

[Annex follows]

**THE KYRGYZ REPUBLIC**

**LAW ON THE LEGAL PROTECTION OF SELECTION ACHIEVEMENTS**

*adopted by the Legislative Assembly on May 26, 1998*

This Law shall govern both economic and moral relations arising out of the creation [discovery, development], legal protection and use of selection achievements for which patents have been granted in the Kyrgyz Republic.

This Law shall apply to genera and species the list of which shall be approved by the Government of the Kyrgyz Republic.

**TITLE I**

**GENERAL PROVISIONS**

**Article 1  
Basic Terms**

For the purposes of this Law:

- “*author*”(“*breeder*”) means a natural person whose creative work resulted in the creation, discovery or development of a selection achievement;
- “*breed*” means an animal grouping which, irrespective of its protectability, has genetically determined biological and morphological characteristics some of which are specific for the given grouping and distinguish it from other animal groupings. The breed may be represented by female or male animals or by pedigree material. Breed shall be deemed to comprise the following protected categories: type, line, crossing of lines and family;
- “*pedigree animal*” means an animal used for the purpose of reproduction of a breed;
- “*pedigree material*” means a pedigree animal, gametes or zygotes(embryos) thereof;
- “*selection achievement*” means a plant variety or animal breed;
- “*protected selection achievement*” means a plant variety or an animal breed registered in the State Register of Protected Selection Achievements;



- “*variety*” means a plant grouping within a single botanical taxon of the lowest known rank, 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 and considered as a unit with regard to its suitability for being propagated unchanged. Variety shall be deemed to comprise the following protected categories: clone, line, first generation hybrid, population.
- “*seeds*” means generative and vegetative parts of a plant used for the purpose of reproduction of the variety;
- “*plant material*” means a plant or parts thereof used for purposes other than reproduction of the variety;
- “*infringing selection achievement*” means a selection achievement propagation and [or] marketing of which entails an infringement of the exclusive rights of the patent owner.

## **Article 2**

### **Legal Protection of Selection Achievements**

The rights in selection achievements shall be protected by this Law and shall be certified by selection achievement patents.

The patent shall certify the authorship of the breeder, the priority of the selection achievement and the exclusive right of the patent owner to use the selection achievement.

The scope of the legal protection conferred by a selection achievement patent shall be determined by the sum of essential characteristics as contained in the description of the selection achievement.

## **Article 3**

### **State Regulation in the Field of Legal Protection of Selection Achievements**

State Agency of Intellectual Property attached to the Government of the Kyrgyz Republic (hereinafter referred to as “Kyrgyzpatent”) shall, in accordance with this Law, carry out the State policy in the field of legal protection of selection achievements. It shall receive applications for the protection of selection achievements and publish them, effect the preliminary examination of selection achievements, take a decision, basing on the results of examination of novelty and testing distinctness, uniformity and stability of the selection achievement, to grant or to refuse the grant of a patent, effect registration thereof in the State Register of Protected Selection Achievements of the Kyrgyz Republic (hereinafter referred to as “the State Register of Protected Selection Achievements”), publish official information relating to the legal protection of selection achievements, grant patents and monitor their validity, and shall perform other functions specified in the Statute of Kyrgyzpatent enacted by the Government of the Kyrgyz Republic.

Disputes arising with respect to selection achievements shall be examined by the Board of Appeal which shall be created for the purpose under Kyrgyzpatent. The Statute of the Board of Appeal shall be approved by Kyrgyzpatent.

A centralized State authority responsible for agriculture and aquiculture shall determine the List of Genera and Species ( hereinafter referred to as “the List”). The List shall be approved by the Government of the Kyrgyz Republic.

The centralized State authority responsible for agriculture and aquiculture shall be competent to introduce, for consideration by the Government of the Kyrgyz Republic, proposals relating to:

- the addition to the List of new genera and species;
- the amendment of denomination of genera and species included in the List;
- the deletion of certain genera and species from the List.

When adding a new genus and species to the List, the Government of the Kyrgyz Republic may delete therefrom all varieties of the genus and species which are not characterized by a special method of propagation or reproduction or by a known final use.

Where some genera and species are deleted from the List, the deletion must not infringe the rights of applicants who filed an application for the protection of the genera and species prior to the date of entry into force of such deletion.

The State Commission for Variety Testing of Agricultural Crops (hereinafter referred to as “the State Commission”) and the State Pedigree Animal Breeding and Pasture Monitoring Inspection( hereinafter referred to as “the State Pedigree Animal Inspection”), both attached to the centralized State authority responsible for agriculture and aquiculture, shall be the competent State organizations and shall perform the following functions:

- carry out, under an agreement with Kyrgyzpatent, examination of novelty and testing distinctiveness, uniformity and stability of selection achievements;
- keep the State Register of Regionized Varieties of the Kyrgyz Republic and the State Register of Pedigree Animals of the Kyrgyz Republic, respectively;
- issue a certificate attesting the suitability of the selection achievement for economic exploitation and shall perform other functions under their respective Statutes approved by the centralized State authority responsible for agriculture and aquiculture.

## **TITLE II**

### **CONDITIONS OF PATENTABILITY OF SELECTION ACHIEVEMENTS AND THE PROCEDURE FOR FILING APPLICATIONS FOR THE GRANT OF PATENT**

#### **Article 4**

##### **Conditions of Patentability of Selection Achievements**

The patent shall be granted where the selection achievement satisfies the criteria of patentability and relates to the protected botanical or zoological genera and species.

The said criteria shall be the following:

#### **(1) Novelty**

A selection achievement shall be deemed new if, at the date of filing the application for the grant of a patent, seeds or pedigree material of the selection achievement have not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for the purposes of exploitation of the selection achievement:

- in the territory of the Kyrgyz Republic, earlier than one year before that date;
- in the territory of any other State, earlier than six years in the case of grapevines, forest, ornamental and fruit trees, or in the case of other varieties, earlier than four years before the said date.

Novelty of the selection achievement shall not be void, where marketing of any material of the variety or breed has been carried out by others, before the expiration of the time-limits specified in this paragraph, for the following purposes:

- deliberate infliction of damage to the applicant;
- execution of a contract for transfer of the right to obtain a patent;
- execution of a contract under which a third party supplies, with the consent of the applicant, additional material for the purposes of propagation of the variety or reproduction of the breed, provided that the supplies are carried out under his control;
- execution of a contract under which a third party carries out field tests, laboratory analysis or evaluation of the variety or breed.

#### **(2) Distinctness**

A selection achievement shall be deemed distinct if it is clearly distinct from any other selection achievement well-known at the time of the filing of the application.

Well-known selection achievements may be those which have been entered in an official register or reference files or of which a precise description has been published or those which have been registered in the State Register of Protected Selection Achievements.

The notion of a well-known selection achievement shall be determined in respect of:

- selection achievements that have become a matter of common knowledge as a result of production, reproduction, conditioning for the purpose of propagation, stocking and maintenance for any of the aforementioned purposes;
- selection achievements that have been offered for sale, sold, exported or imported.

### **(3) Uniformity**

A selection achievement shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation or reproduction, the plants or animals are sufficiently uniform in their relevant characteristics.

### **(4) Stability**

A selection achievement shall be deemed stable if its relevant characteristics remain unchanged after repeated propagation or reproduction or, in the case of a particular cycle of propagation or reproduction, at the end of such cycle.

## **Article 5** **Persons Entitled to File an Application for the Grant of a Patent**

The right to file an application for the grant of a patent (hereinafter referred to as “the application”) shall belong to the breeder or employer or his successor in title (hereinafter referred to as “the applicant”).

Where there are several persons who jointly bred [developed or discovered] the same selection achievement, they shall be entitled to file the application jointly.

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

Natural persons having their residence or foreign legal entities having their principal place of business outside the territory of the Kyrgyz Republic, shall be required to act through patent agents registered in the Kyrgyz Republic in all proceedings conducted in the Kyrgyz Republic for the grant and maintenance of the patent unless otherwise provided in the international treaty to which the Kyrgyz Republic is party.

No staff member of Kyrgyzpatent or the State Commission or the State Pedigree Animal Inspection shall have the right to file an application for the grant of a patent for the duration of his employment contract.

## **Article 6**

### **Selection Achievements Bred in the Line of Duty**

Where a selection achievement has been bred [developed or discovered] by the breeder while carrying out specific duties or duties entrusted to him by virtue of his position, the right to file the application shall belong to the employer unless otherwise provided in the employment contract.

A selection achievement shall be deemed to have been bred [developed or discovered] in the line of duty if in breeding [developing or discovering] of the selection achievement the breeder:

- carried out duties entrusted to him by virtue of his position;
- carried out specific duties entrusted to him for the purpose of breeding [developing or discovering] a selection achievement.

Where the employer, within four months after having been notified by the breeder of the bred [developed or discovered] selection achievement, has not filed an application with Kyrgyzpatent or has not assigned his right to file an application to another person, the breeder shall have the right to file an application and to be granted a patent in his own name. The employer shall in that case be entitled to use the selection achievement, subject to the payment of compensation to the patent owner. The amount of the compensation shall be stipulated in a contract between the parties.

Where a selection achievement has been bred by the employee using the expertise, material, technical or other means made available to him by the employer, but not as a result of carrying out duties entrusted to him by the employer or specific duties entrusted to him for the purpose of breeding a selection achievement, the right to obtain a patent shall belong to the employee. The employer shall in that case be entitled to use the selection achievement on the priority basis, subject to the payment of compensation to the patent owner. The amount of the compensation shall be stipulated in a contract between the parties.

Other relations arising out of the breeding [development or discovery] by the employee of a selection achievement shall be governed by the legislation of the Kyrgyz Republic.

## **Article 7**

### **Filing of the Application for the Grant of a Patent**

The application for the grant of a patent shall be filed with Kyrgyzpatent. The application for the grant of a patent shall contain:

- (1) the request for the grant of a patent;
- (2) a short abstract containing the description of the variety or breed;
- (3) proof of payment of the prescribed fee or of circumstances affording entitlement to exemption from payment, or to a reduction in the amount, of the prescribed fee.

The conditions to be met by the the above documents of the application shall be determined by the Regulations for Drawing Up, Filing and Examination of Selection Achievement Applications (hereinafter referred to as “the Regulations”) established and approved by Kyrgyzpatent.

The application for the grant of a patent shall relate to one selection achievement only.

The applicant shall be responsible for authenticity of information contained in the documents of the application.

The documents of the application shall be submitted in the Kyrgyz or Russian language. If the documents are submitted in a language other than specified above , the application shall be accompanied by a translation into Kyrgyz or Russian.

The filing date of an application shall be determined by the date of receipt by Kyrgyzpatent of the documents specified in the first part of this Article.

The applicant may withdraw his application at any time prior to his receipt of the decision to grant a patent.

## **Article 8**

### **Selection Achievement Denomination**

The selection achievement shall be designated by a denomination which will be its generic designation.

The denomination must enable the selection achievement to be identified. It must be short and different from any denomination which designates an existing selection achievement of the same or of a closely related plant or animal species. It may not consist solely of figures. It must not be liable to mislead concerning the characteristics, origin or value of the selection achievement or the identity of the breeder. It must not be contrary to humanitarian principles of morality.

Any person who uses the selection achievement shall be required to use the denomination thereof as registered in the State Register of Protected Selection Achievements.

Where the denomination of the selection achievement does not satisfy the requirements of this Article, the applicant shall be required, within the time limit prescribed by the Regulations, to submit another denomination. The change of the denomination at the initiative of the breeder shall be subject to payment of the prescribed fee.

The variety or breed shall be submitted in other countries under the denomination as registered in the State Register of Protected Selection Achievements. A competent authority of a foreign country shall register the submitted denomination of the selection achievement unless such denomination is found unacceptable in its territory. The breeder, in that case, may be required to submit another denomination.

Any person who, within the territory of one of the foreign countries, offers for sale or markets the selection achievement protected within the said territory shall be obliged to use the denomination of that selection achievement, even after the expiration of the term of patent protection of or breeder's right for that selection achievement, except where, in accordance with part seven of this Article, a prior right prevents such use.

Prior rights of the third parties shall not be affected. Where the use of a denomination of a variety or breed by virtue of a prior right is prohibited to a person, who is obliged to use it in accordance with part six of this Article, the breeder shall be required to submit another denomination of the variety or breed.

The denomination of a selection achievement shall not be used as a trademark.

### **Article 9** **Priority of the Selection Achievement**

The priority of the selection achievement shall be determined by the filing date of the application with Kyrgyzpatent.

Where two [or more ] applications claiming the same selection achievement are filed with Kyrgyzpatent on the same date, the priority of the selection achievement shall be determined by the application whose sending date is earlier. Where the examination finding is that the said applications have the same sending date, the patent may be granted on the application having an earlier registration number with Kyrgyzpatent.

The priority of the selection achievement may be determined by the filing date of the first application filed in a foreign country party to a bilateral or multilateral agreement for the protection of plant varieties / animal breeds concluded with the Kyrgyz Republic, if the first application was received by Kyrgyzpatent within 12 months from the filing date thereof.

The applicant wishing to enjoy the priority of the first application shall, when filing the application with Kyrgyzpatent, indicate the date of priority of the first application. The applicant shall be required, within three months following the filing date of the subsequent application, to furnish to Kyrgyzpatent a copy of the documents which constitute the first application, certified to be a true copy by the authority which received that application, and a sample or other evidence that the selection achievement which is the subject matter of both applications is the same.

The applicant shall be given an adequate opportunity and sufficient time, within two years following the expiration of priority of the first application or where the first application was rejected or withdrawn, to furnish to Kyrgyzpatent any information, documents or material required for the purposes of examination.

### **TITLE III**

## **EXAMINATION OF SELECTION ACHIEVEMENTS**

### **Article 10**

#### **Examination of Selection Achievement Applications**

Examination of selection achievement applications shall be carried out by Kyrgyzpatent and shall include a preliminary examination of the claimed selection achievement and examination of its compliance with the prescribed conditions of protectability.

### **Article 11**

#### **Preliminary Examination of Selection Achievement Applications**

A preliminary examination of a selection achievement application shall be carried out after two months have elapsed following the date of its filing with Kyrgyzpatent. A preliminary examination shall be carried out in order to determine the priority date of the selection achievement and verify the presence of the required documents and their compliance with the conditions prescribed by the Regulations and this Law.

A preliminary examination shall be carried out subject to payment of the prescribed fee.

Within one month after the filing date of the application the applicant shall have the right to supplement, amend or correct the documents of the application on his own initiative.

Where the filed application does not comply with the prescribed requirements with respect to form or content, the applicant shall be invited to furnish the corrected or missing documents within two months from the date of receipt of the invitation.

During the preliminary examination procedure the applicant may be invited to furnish additional materials. The applicant in that case shall comply with the invitation within two months following the date of its receipt.

At the request of the applicant containing valid reasons therefor and subject to payment of the prescribed fee, Kyrgyzpatent may extend the time limits specified in parts three and four of this Article up to six months.

If the applicant fails, within the prescribed time limit, to comply with the invitation or to file a request for extension of the said time limit, the application shall be deemed to have been withdrawn.

Where the applicant wishes to contest the decision taken on the basis of the preliminary examination finding he may do so, within three months following the date of receipt of the decision, by lodging an appeal with the Board of Appeal.

The procedure and time limits for consideration of appeals contesting the decision of the preliminary examination by the Board of Appeals shall be prescribed by Kyrgyzpatent.



Filing an appeal contesting the decision of the preliminary examination with the Board of Appeal shall be subject to payment of the prescribed fee.

Where the preliminary examination has produced a favorable result, the applicant shall be notified to the effect that his application has been accepted for the purposes of examination of its compliance with the conditions of protectability.

## **Article 12**

### **Publication of Selection Achievement Applications**

No later than four months after the date on which the preliminary examination of the selection achievement application has been completed, Kyrgyzpatent shall publish the particulars thereof in the official Gazette. The content of the published particulars shall be determined by Kyrgyzpatent.

Subject to payment of the prescribed fee, any person shall have the right to inspect the documents of the application after the particulars thereof have been published.

Publication of the particulars of the application shall not be effected if, before the expiration of the time limit for publication, the application has been withdrawn or a decision to grant a patent or to refuse the patent grant has been taken and may not be contested any longer.

The author of the selection achievement, who is not the patent owner, may waive his right to be identified in the published particulars of the application.

## **Article 13**

### **Provisional Legal Protection of Selection Achievements**

During the period between the date of publication of the application and the date of the grant of a patent the selection achievement claimed by the applicant shall be afforded the provisional legal protection.

After the patent has been granted, the patent owner shall be entitled to compensation for damages from any person who, during the period of the provisional legal protection, has carried out, without the authorization of the applicant, any acts provided for in part one of Article 24 of this Law.

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

The provisional legal protection shall be deemed never to have been granted where the applicant or any other person with his consent has failed to comply with conditions provided for in part three of this Article.

#### **Article 14**

##### **Examination of Selection Achievements for Compliance with Conditions of Protectability**

During the examination of the claimed selection achievement the compliance of the variety or breed with the conditions of protectability shall be verified and its priority shall be determined, where it has not been determined in the preliminary examination.

The examination shall consist in testing compliance of the claimed variety or breed with the conditions of distinctness, uniformity and stability and determining novelty, provided for in Article 4 of this Law and shall be carried out in accordance with methodology and within the periods approved by the State Commission and the State Pedigree Animal Inspection, respectively. The examination shall be carried out subject to payment of examination fee.

When the novelty of a selection achievement is determined, a notice of opposition of any interested person shall be taken into consideration provided it was received by Kyrgyzpatent within six months following the date of publication of the particulars of the application in accordance with Article 12 of this Law.

Kyrgyzpatent shall notify the applicant of the notice and give essential grounds of the opposition. In the case of disagreement with the notice of opposition the applicant may, within three months from the date of receipt of the said notice, lodge an appeal with the Board of Appeal stating the grounds thereof. The filing and consideration of the notice of opposition shall be subject to payment of the prescribed fee.

The Board of Appeal shall, on the basis of all available documents, take a decision and notify the applicant accordingly.

Where the selection achievement does not comply with the condition of novelty, a decision to refuse the patent grant shall be taken.

When testing a selection achievement as to its compliance with the conditions of distinctness, uniformity and stability, the State Commission and the State Pedigree Animal Inspection may take into account the results of tests which have been carried out on the basis of contracts concluded with natural persons/legal entities of the Kyrgyz Republic or competent authorities of other States on the basis of bilateral or multilateral agreements on the protection of plant varieties/animal breeds to which the Kyrgyz Republic is party, or which have been carried out by the applicant or with his authorization in the Kyrgyz Republic or abroad.

The State Commission and the State Pedigree Animal Inspection may require that the applicant furnish all information, documents or seeds /pedigree material required for the purposes of testing or invite him to carry out specific tests in respect of the variety or breed.

The State Commission and the State Pedigree Animal Inspection shall, on the basis of the results of tests of the selection achievement, take a decision as to compliance thereof with the requirements of protectability and shall make the official description of the selection achievement.

During the technical development of the selection achievement, the State Commission and the State Pedigree Animal Inspection shall have the right, within the life of the patent, to supplement the official description.

Kyrgyzpatent shall, on the basis of results of testing of a selection achievement as to its compliance with the conditions of novelty, distinctness, uniformity and stability, and proceeding from the reports and findings of the State Commission and the State Pedigree Animal Inspection and subject to compliance of its denomination with the conditions prescribed in Article 8 of this Law, take a decision to grant or to refuse the grant of a patent.

The applicant may acquaint himself with the documents of examination and inspect the carrying out of tests.

The applicant may, within two months following the date of receipt of the decision on his application, request to furnish copies of all documents cited by the opposition and complete information on the tests which have been carried out.

### **Article 15**

#### **Contesting the Examination Decision and Reinstatement of Rights Contingent on a Time Limit**

In the case of disagreement with the examination decision the applicant may, within three months from the date of receipt of the decision or of the requested copies of documents cited by the opposition and complete information on the tests which have been carried out, lodge an appeal with the Board of Appeal stating the grounds therefor. The Board of Appeal shall consider the appeal within four months from the date of its receipt. With respect to complicated applications, subject to the applicant's approval, the above period may be extended. The applicant himself or through his patent agent may participate in the consideration of his appeal.

Lodging an appeal contesting the examination decision with the Board of Appeal shall be subject to payment of the prescribed fee.

The applicant may, within six months from the date of the decision taken by the Board of Appeal, contest it in court.

If the applicant fails to respect time limits prescribed in parts three, four and seven of Article 11, parts three and four of Article 14, part one of this Article, in Article 18 and in part one of Article 29 of this Law, Kyrgyzpatent may yet reinstate his rights provided that he presents legitimate reasons for the delay and pays the prescribed fee.

The request for reinstatement of rights contingent on a time limit may be filed by the applicant no later than 12 months after the expiration of the time limit in question.

## **TITLE IV**

### **REGISTRATION OF SELECTION ACHIEVEMENTS AND THE GRANT OF PATENT**

#### **Article 16**

##### **Registration of Selection Achievements and the Grant of Patent**

Within two months after the decision to grant a patent has been taken and subject to payment of the prescribed fee, Kyrgyzpatent shall register the selection achievement in the State Register of Protected Selection Achievements.

The registration fee shall be paid within two months following the receipt by the applicant of the examination decision to register his selection achievement or, subject to payment of an additional fee, within three months after the date of expiration of the said two month period.

The selection achievement patent shall be granted to the applicant. Where several applicants are indicated in the request for the grant of a patent, the patent shall be granted to the applicant whose name is mentioned first and shall be used jointly by all applicants on the basis of agreement between them.

Selection achievement patents shall be granted on behalf of the Kyrgyz Republic and shall be signed by Kyrgyzpatent.

The layout of the patent and the list of particulars contained therein shall be prescribed by Kyrgyzpatent.

The author of the selection achievement who is not the patent owner shall be granted by Kyrgyzpatent a certificate of authorship in accordance with Article 21 of this Law.

Kyrgyzpatent shall, at the request of the patent owner, rectify obvious and clerical errors in the granted patent.

In case of damage or loss of the granted patent the patent owner shall, subject to payment of the prescribed fee, be granted a duplicate of the patent.

#### **Article 17**

##### **The Term of Patent**

The term of patent for plant varieties shall be 30 years from the date of registration of the claimed selection achievement in the State Register of Protected Selection Achievements. For grapevines, ornamental, fruit and forest trees, including rootstocks thereof, and animal breeds, the said period shall be 35 years.

**Article 18**  
**Maintenance of Patents**

Every patent owner shall, throughout the life of the patent, pay an annual maintenance fee. The first year in which the annual fee is due shall be the first calendar year following the year in which the patent was granted.

**Article 19**  
**Publication of Particulars of the Patent Grant**

Kyrgyzpatent shall, within six months following the registration of the selection achievement in the State Register of Protected Selection Achievements, publish the particulars of the patent grant in the Official Gazette. The full list of the published particulars shall be determined by Kyrgyzpatent.

**Article 20**  
**Patent Fees**

Filing an application for the grant of a selection achievement patent, the carrying out of examination of the claimed selection achievement and the grant and maintenance of the selection achievement patent, as well as performance of any other legal acts in relation with the selection achievement shall be subject to payment of fees.

A list of acts for which fees are payable, the amounts of the fees and the time limits for payment thereof, and also conditions governing exemption from fees, the reduction or reimbursement of fees, shall be determined by the Government of the Kyrgyz Republic.

The fees shall be payable to Kyrgyzpatent by the applicant or the patent owner, or subject to an agreement between the parties, by any natural person or legal entity.

Any proceeds from collected fees, including foreign currency earnings, and payments for services and materials transferred to the account of Kyrgyzpatent shall be used to cover expenses incurred in connection with the carrying out of acts provided for in part one of this Article, as well as to procure technical equipment, to develop the automated system, to replenish the collection of patent information and to provide training and create incentives for the staff.

**TITLE V**

**THE RIGHTS OF AN AUTHOR OF A SELECTION ACHIEVEMENT**

**Article 21**  
**The Author of a Selection Achievement**

A natural person whose creative work resulted in the breeding [development or discovery] of a selection achievement shall be recognized as the author thereof. Whereas

selection achievement was bred [developed or discovered] by the joint creative work of several natural persons, those persons shall be recognized as joint authors thereof. The conditions for exercising the rights in the selection achievement shall be determined by agreement between them.

Natural persons shall not be recognized as joint authors where they have not made a personal creative contribution to the breeding [ development or discovery] of the variety/breed, but have simply given the author (or authors) technical, organizational or material assistance or helped him (or them) in securing legal rights in the selection achievement.

Any person who usurps the breeder's authorship or acquires the status of a joint author by coercion shall be liable to criminal sanctions under the legislation of the Kyrgyz Republic.

The authorship of a selection achievement shall belong to its author and shall be an inalienable personal right. The right shall enjoy protection of unlimited duration.

Any dispute arising from the authorship of a selection achievement shall be settled in court.

Any dispute between the patent owner who is not the author of the selection achievement and the author who is not the patent owner shall be settled in court.

A certificate of authorship shall be granted by Kyrgyzpatent to all authors. The certificate shall attest the authorship and the entitlement of the author to remuneration from the patent owner for the use of the selection achievement.

In case of damage or loss of the granted certificate the author shall, subject to payment of the prescribed fee, be granted a duplicate of the certificate.

The layout of the certificate and the list of particulars contained therein shall be prescribed by Kyrgyzpatent.

## **Article 22**

### **Remuneration Payable to the Author of the Selection Achievement Who Is Not the Patent Owner**

The author of the selection achievement who is not the patent owner shall, for the life of the patent, be entitled to remuneration from the patent owner for the use of the bred [developed or discovered] selection achievement. The amount of remuneration and the terms of payment shall be stipulated in a contract between the patent owner and the author of the selection achievement.

Where there are several authors who bred [developed or discovered] the selection achievement, their respective share in remuneration shall be determined by agreement between the parties.

In the absence of agreement between the parties on the amount of remuneration and the terms of payment the dispute shall be referred to court.

## **TITLE VI RIGHTS AND OBLIGATIONS OF PATENT OWNERS**

### **Article 23 The Patent Owner**

The right to obtain a patent shall belong to:

- the author (or authors) of the selection achievement;
- the employer in cases provided for in Article 6 of this Law;
- their successor in title, including the person who has acquired the right through its assignment.

### **Article 24 The Rights of the Patent Owner**

The owner of the patent shall have the exclusive right to use a selection achievement.

The exclusive right of the patent owner shall extend to the following acts in respect of seeds/pedigree material of the protected selection achievement:

- production or reproduction;
- conditioning of seeds for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting from the territory of the Kyrgyz Republic;
- importing into the territory of the Kyrgyz Republic;
- stocking for any of the aforementioned purposes.

The right to a patent and the right to use the selection achievement arising out of the patent may be assigned to any natural person or legal entity. Assignment of rights may be effected on the basis of a contract of assignment or license contract.

The authorization of the patent owner shall be required in order to carry out acts provided for in part one of this Article with respect to:

- seeds of varieties or pedigree material of breeds which are essentially derived from the protected (initial) variety or breed, where the protected variety or breed is not itself an essentially derived selection achievement,
- seeds of varieties or pedigree material of breeds which are not clearly distinguishable from the protected variety or breed,
- seeds of varieties or pedigree material of breeds whose production requires the repeated use of the protected variety or breed.

A selection achievement shall be deemed to be essentially derived from another (initial) protected selection achievement when, being clearly distinguishable from the initial variety or breed,

- it is predominantly derived from the initial selection achievement, or from a selection achievement that is itself predominantly derived from the initial selection achievement, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial selection achievement,
- except for the differences which result from the act of deviation such as individual selection from the initial varieties or breeds, selection of induced mutant, or transformation by genetic engineering, it conforms to the initial selection achievement in the expression of essential characteristics that result from the genotype or combination of genotypes of the initial selection achievement.

## **Article 25**

### **Acts Not Infringing the Rights of the Patent Owner**

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

- acts done privately and for non-commercial purposes [the use of new plant varieties for the purpose of propagation on private plots for subsequent use as alimentary products];
- acts done for experimental purposes;
- the use as the initial material for the purpose of breeding other selection achievements, as well as acts referred to in part one of Article 24 of this Law in relation to the so bred selection achievements, except for the cases provided for in part four of Article 24 of this Law;
- 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 holdings. The list of such plant genera and species shall be determined by the Government of the Kyrgyz Republic;



- the reproduction of marketable animals for purposes of use on a given farm.

## **Article 26**

### **Maintenance of Selection Achievements**

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

On the request of the State Commission or the State Pedigree Animal Inspection the patent owner shall furnish seeds of the variety or pedigree material of the breed for the purposes of testing a new variety or breed and provide the opportunity for in-site inspection and approbation.

## **TITLE VII**

### **DEFENCE OF THE RIGHTS OF PATENT OWNERS**

#### **Article 27**

##### **Liability for Infringement of the Rights of Patent Owners**

Any infringement of the patent owner's rights provided for in this Law shall entail civil, administrative and criminal liability.

Any licensee may also lodge an infringement appeal where a license contract provides for such opportunity.

Any natural person or legal entity who, in violation of the requirements prescribed by this Law in respect of the exclusive rights of the patent owner and without his authorization, imports into the territory of the Kyrgyz Republic seeds, pedigree material or other selection achievement shall be deemed to be an infringer of the patent and his selection achievement shall be deemed infringing.

Selection achievements imported into the territory of the Kyrgyz Republic from other States where they have never been or ceased to be protected but at the same time are protected under this Law, shall also be deemed infringing.

#### **Article 28**

##### **Defence of the Rights of Patent Owners**

At the request of the patent owner, the infringer shall:

- (a) recognize the rights of the patent owner;

(b) restore the situation that existed before the infringement has occurred and cease the acts infringing or potentially liable to infringe the rights of the patent owner;

(c) compensate the damages sustained, including lost profits;

(d) recover profits derived by him from the infringement of the rights of the patent owner, instead of compensating the damages sustained;

(e) take any other measures provided for in legislative enactments in relation with defence of the rights of patent owners.

Measures prescribed in paragraphs (c) and (d) of this Article shall be applied by the patent owner at his choice.

In order to defend his rights, the patent owner may file an appeal with court or with a competent investigation authority.

At the judgement of the court infringing seeds or pedigree material must be seized. The seized infringing seeds or pedigree material shall be destroyed unless where the patent owner requests to deliver up the same to him.

Where there is sufficient proof that the rights of the patent owner have been infringed, the competent investigation authority or the court shall be obliged to take measures in order to find and seize the allegedly infringing selection achievement.

## **TITLE VIII**

### **REVOCATION AND CANCELLATION OF PATENTS**

#### **Article 29**

##### **Revocation of the Patent**

Any person may, within three months following the date of publication of the particulars of the patent grant, file with the Board of Appeal a request for revocation of the patent stating the grounds therefor. Kyrgyzpatent shall send a copy of the request to the patent owner. The patent owner shall, within three months from the sending date of the copy, furnish his reply stating valid reasons in support of the grant.

Filing and consideration of a request for revocation of a patent shall be subject to payment of the prescribed fee.

The Board of Appeal shall take a decision on the request within six months from its receipt unless additional testing is required.

The patent shall be revoked in the following cases:

- where on the date of the grant of the patent the selection achievement did not comply with the condition of novelty, distinctness, uniformity or stability;
- where the person indicated in the patent as the patent owner had no legitimate grounds for obtaining the patent.

### **Article 30**

#### **Cancellation of Patent**

Kyrgyzpatent shall cancel the patent in the following cases:

- where the patent owner fails to pay the annual maintenance fee by the prescribed time limit;
- where the patent owner does not provide at the request of the State Commission or the State Pedigree Animal Inspection, within the prescribed time limit, seeds, pedigree material, documents or other relevant information deemed to be necessary for testing the protectability of the selection achievement or fails to provide opportunity for in-site inspection of the selection achievement;
- where the selection achievement no longer complies with the conditions of uniformity and stability.

### **Article 31**

#### **Contesting the Decisions of the Board of Appeal or Kyrgyzpatent**

A decision to grant or to refuse the grant of a patent, or to revoke a patent taken by the Board of Appeal and a decision to cancel a patent taken by Kyrgyzpatent may be contested in court.

## **TITLE IX**

## **LICENSES**

### **Article 32**

#### **License Contract**

Under a license contract (a contract for the grant of an exclusive or non-exclusive license) the patent owner (the licensor) grants, within the limits of rights, periods, territory and terms of payment specified in the contract, the right to use the selection achievement to another person (the licensee).

Under a non-exclusive license the licensee is afforded the right to use the selection achievement within the periods and the scope of the transferred rights specified in the license

contract. Under a non-exclusive license the licensor retains his right to grant licenses to third parties or to use the selection achievement by himself. The licensee shall not transfer the license to the third parties and shall have no right to grant sub-licenses.

Under an exclusive license the licensee is afforded the exclusive right to use the selection achievement on agreed terms and within the periods and territory specified in the license contract. While granting an exclusive license the licensor shall have no right to use the selection achievement or to grant licenses to third parties in a given territory.

The terms of a license contract imposing on the licensee limitations which do not arise from rights afforded to him by the patent or which are not indispensable for the maintenance of the patent shall be deemed null and void.

Any license contract or contract of assignment provided for in part two of Article 24 of this Law shall be registered with Kyrgyzpatent within one month following the date of its conclusion, failing which it shall be deemed null and void. The registration of a license contract or a contract of assignment shall be subject to payment of the prescribed fee.

### **Article 33**

#### **Open Licenses**

The patent owner may publish in the Official Gazette of Kyrgyzpatent a notice to the effect that he undertakes to grant the right to use the selection achievement to any person subject to payments specified in the notice. The payments shall be effected as from the date on which the patent owner has been notified accordingly.

In such a case the maintenance fee shall be reduced by 50% as from January 1 of the year of publication of the notice.

Kyrgyzpatent shall enter particulars of the grant of an open license including the amount of payments in the State Register of Protected Selection Achievements.

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

Filing the request for the lapse of an open license and publication of the particulars of the lapse in the Official Gazette shall be subject to payment of the prescribed fee.

### **Article 34**

#### **Compulsory Licenses**

Where the patent owner or the person to whom the right to use the selection achievement was assigned has failed to use the selection achievement within three years following the date of the patent grant and has declined an offer to conclude a license contract on terms conforming to established practice, any person wishing and being in a position to use

the selection achievement may file an appeal with the court requesting the grant of a compulsory license.

If the patent owner fails to furnish proof to the effect that non-use of the selection achievement is justified by reasonable grounds, the court shall grant a compulsory license and shall determine the limits of the use, the amount and the terms of payments. The amount of payments shall not be lower than the value of the license to be determined in accordance with established practice.

When granting a compulsory license the licensee shall be afforded the right to use the selection achievement within the scope of rights afforded by the grant of non-exclusive license.

At the order of court the patent owner may be required to furnish the licensee, against payment of equitable compensation and on reasonable terms, with seeds of the variety or pedigree material of the breed in a quantity sufficient for the purposes of use of the compulsory license in an efficient manner.

A compulsory license shall only be granted where the following conditions are met:

- a person requesting the grant of a compulsory license must be in a position, financially, technically and scientifically, to use the rights of the patent owner in an efficient manner;
- the patent owner has refused the applicant the right to produce or market seeds of the variety or pedigree material of the breed in relation to the protected selection achievement in a way sufficient to satisfy the needs of the society or does not intend to grant the right on reasonable terms;
- there are no grounds hindering the patent owner from granting the right to use the selection achievement in a required manner;
- the application requesting the grant of a compulsory license has been filed after three years have passed after the date of publication of the particulars of the patent grant.

A compulsory license shall be granted for a period to be determined by the court.

The court may decide to revoke a compulsory license if its holder has infringed the terms under which the license was granted.

The particulars of the compulsory license grant shall be published in the Official Gazette and registered in the State Register of Protected Selection Achievements.

Registration and publication of the particulars of the compulsory license grant in the Official Gazette shall be subject to payment by the licensee of the prescribed fee.

## **TITLE X**

### **INTERNATIONAL COOPERATION**

#### **Article 35**

##### **The Right To File an Application Abroad**

The applicant shall have the right to file an application for the protection of the selection achievement with a competent authority of any other State. Prior to filing an application abroad it shall be registered with Kyrgyzpatent.

The cost of obtaining a protection right of a selection achievement outside the territory of the Kyrgyz Republic shall be borne by the applicant.

#### **Article 36**

##### **Rights of Foreign Natural Persons and Legal Entities**

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

#### **Article 37**

##### **The Effect of International Treaties**

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

## **TITLE XI**

### **FINAL PROVISIONS**

#### **Article 38**

##### **Export and Import Control with Respect to Selection Achievements**

Export and import control with respect to selection achievements registered in the State Register of Protected Selection Achievements shall be carried out by the organizations within the State Customs Committee of the Kyrgyz Republic.

### **Article 39**

#### **Legal Regime of Certificates and Inventor's Certificates Granted for Selection Achievements Registered by the USSR State Committee for Inventions and Discoveries**

The effect of certificates and inventor's certificates granted for selection achievements registered by the USSR State Committee for Inventions and Discoveries shall be recognized in the territory of the Kyrgyz Republic.

The owners of certificates and inventor's certificates granted for plant varieties whose terms of 20 years and 25 years for grapevines, ornamental, fruit and forest trees and animal breeds, respectively, from the filing date have not expired, shall have the right to request the exchange thereof for the patents of the Kyrgyz Republic. The request shall be filed with Kyrgyzpatent. The procedure for filing and consideration of the request shall be prescribed in the Regulations.

The applicant shall have the right, with respect to applications for the grant of inventor's certificate for a new variety or breed filed prior to enactment of this Law and which variety or breed has been tested by the State Commission or the State Pedigree Animal Inspection, respectively, and in respect of which a decision to approve its use has been taken, to request the grant of a selection achievement patent of the Kyrgyz Republic provided that the selection achievement complies with the conditions of protectability specified in this Law.

The request for the grant of the patent shall be filed with Kyrgyzpatent within 12 months from the date of enactment of this Law.

The applications on which the request specified in part three of this Article has been filed within the prescribed time limit, shall be considered in accordance with the procedure prescribed in this Law and the Regulations. In such a case the condition of novelty of the selection achievement in accordance with Article 4 of this Law shall be disregarded.

The selection achievement patent of the Kyrgyz Republic granted on the above request shall be valid from the date of registration of the claimed selection achievement in the State Register of Protected Selection Achievements and until the expiration of 20 years for plant varieties and 25 years for grapevines, ornamental, fruit and forest trees and animal breeds, respectively, from the filing date.

### **Article 40**

#### **Enactment of this Law**

1. This Law shall enter into force as of the date of publication thereof.
2. The Government of the Kyrgyz Republic, within three months from the date of entry into force of this Law, shall be responsible:
  - for approving a list of botanical and zoological genera and species to be protected under this Law,

for bringing its legal enactments into line with this Law.

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