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EXAMINATION OF THE CONFORMITY OF THE LAWS OF TAJIKISTAN WITH THE
1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated August 16, 1999, Mr. Sh. Kabirov, Minister, Ministry of Agriculture of Tajikistan, requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention of the Law on the Selection Achievements of Agricultural Crops (hereinafter referred to as "the Law") which was adopted by the Parliament of Tajikistan on November 4, 1995. The Annex to this document contains a translation of the Law into English from Russian, as submitted by the Tajikistan authorities. The Law is analyzed below for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as "the Convention").

2. Tajikistan 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 Tajikistan

3. The protection of new plant varieties will be governed in Tajikistan by the Law and its implementing regulations. The Law provides for the grant of a form of protection called “a patent”. An analysis of the Law follows in the order of the substantive law provisions of the Convention.

4. Article 33 of the Law provides that if an international agreement to which Tajikistan is a party has established rules other than those contained in the Law, the international agreement would prevail. This provision (hereinafter called the “International Treaty Provision”) means that if Tajikistan accedes to the UPOV Convention any lack of conformity between the Law and the 1991 Act will be remedied.

Article 1 of the Convention: Definitions

5. Article 2 of the Law contains a definition of plant variety which is similar to that in Article 1(vi) of the 1991 Act.

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

6. As set out in its Preamble, Articles 3 and 5, the Law is dedicated to the protection of new varieties of plants through the grant of patents issued by the State Commission for Agriculture Crops Variety Testing and Variety Protection of the Ministry of Agriculture of Tajikistan. The Law thus complies with Article 2 of the Convention.

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

7. Article 4 of the Law empowers the State Commission to establish the list of “botanical varieties” which may be protected. At the time that Tajikistan deposits its instrument of accession, it must provide protection to a minimum of 15 plant genera and species.

Article 4 of the Convention: National Treatment

8. Article 32 of the Law provides that foreign nationals and legal entities shall enjoy the rights provided for by the Law on a par with the citizens and legal entities of Tajikistan. Upon the accession of Tajikistan to the 1991 Act, residents of member States of UPOV bound by the said Act will also receive national treatment in conformity with Article 4 of the 1991 Act as a result of the International Treaty Provision. The Law thus enables Tajikistan to conform with Article 4 of the Convention.

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

9. The conditions for protection are set out in Article 4 of the Law in language which mirrors Articles 5 to 9 of the Convention and the UPOV Model Law. The Law conforms with Articles 5 to 9 of the Convention.

Article 10 of the Convention: Filing of Applications

10. Article 31 of the Law provides that a patent holder or his representative shall be authorized to file an application for the legal protection of a selection achievement with the competent bodies of other States. The Law contains no provisions which conflict with those of Article 10 of the Convention.

Article 11 of the Convention: Right of Priority

11. Article 6 of the Law permits a claim for priority based upon an earlier application in a UPOV member State to be made in an application in Tajikistan during the period of 12 months from the date of the earlier application as required by Article 11(1) of the 1991 Act. The Law gives the applicant six months to file a certified copy of the earlier application (compared with the minimum of three months required by Article 11(2) of the 1991 Act) and three years to furnish documents, information and material (compared with the two years required by Article 11(3) of the 1991 Act). Article 6 of the Law thus meets the requirements of Article 11 of the 1991 Act.

Article 12 of the Convention: Examination of the Application

12. Articles 8, 9 and 10 of the Law contain detailed provisions relating to the examination of candidate varieties and conform with Article 12 of the 1991 Act.

Article 13 of the Convention: Provisional Protection

13. Article 15 of the Law provides measures designed to safeguard the interests of the breeder between filing and grant in terms which conform with Article 13 of the 1991 Act.

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

14. Article 13 of the Law reproduces the substance of Article 14(1)(a) of the 1991 Act, but exporting and importing are not mentioned. Provisions of Article 14(e) of the Law require permission from the patent owner for exporting to a State where the breeder's right is not protected. Accordingly only "importing" is missing. Articles 16, 17 and 18 of the Law make clear that a breeder may grant licenses under the patent, subject to conditions and limitations as required by Article 14(1)(b) of the 1991 Act.

15. Article 13 of the Law extends the right of the breeder to harvested material of the variety as required by Article 14(2) of the 1991 Act and provides for the extension of the right to the varieties specified in Article 14(5) (i) and (iii) of the Convention. The extension to varieties which are not clearly distinguishable from the protected variety is omitted however.

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

16. Article 14 of the Law sets out the compulsory exceptions to the breeder's right in terms which satisfy Article 15(1) of the Convention. The provisions envisage that the exception will exist only in relation to a limited list of plant genera and species and would seem to limit the farmer to the reproduction of propagating material of the variety through two generations.

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

17. The Law at present contains no provisions for the exhaustion of the breeder's right although this omission is remedied by the International Treaty Provision.

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

18. Article 20 of the Law contains provisions concerning the grant of compulsory licenses by the State Commission where the patent holder has no reasonable cause for refusing a license for a selection achievement. The requirements for the grant of a compulsory license fall within the public interest condition of Article 17 of the 1991 Act.

19. Article 20 of the Law further provides that when granting a compulsory license the State Commission shall fix the amounts to be paid by the compulsory licensee to the patent holder. It specifies that the amount so fixed must constitute equitable remuneration as required by Article 17(2) of the 1991 Act.

Article 18 of the Convention: Measures Regulating Commerce

20. The Law contains no provisions which conflict with Article 18 of the Convention.

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

21. Article 12 of the Law provides that protection lasts 20 years in the case of fruit, forest and ornamental trees, and grapevine from the date of registration of the variety in the State Register, and 15 years for all other varieties. These periods of protection are in each case 5 years shorter than the minimum periods of protection required by the 1991 Act. However, the patent owner has a right to ask the State Commission to prolong the period of protection for up to 10 years. Any lack of conformity is remedied by the International Treaty Provision.

Article 20 of the Convention: Variety Denomination

22. Article 1 of the Law contains provisions concerning variety designations which satisfy the requirements of paragraphs (2), (3), and (5) of Article 20 of the 1991 Act. There are no provisions of the Law which satisfy the requirements of paragraphs (1), (4), (6), (7), and (8) of Article 20 of the 1991 Act. The provisions of the Law are effectively supplemented in respect of the substance of the said paragraphs (1), (4), (6), (7), and (8) by the International Treaty Provision so as to enable the Law to conform fully with the 1991 Act.

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

23. Article 25 of the Law contains provisions concerning nullity which reproduce the substance of Article 21 of the 1991 Act.

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

24. Article 26 of the Law contains provisions which reproduce the substance of Article 22 of the 1991 Act.

Article 30 of the Convention: Implementation of the Convention

25. Article 30(1)(i) of the 1991 Act requires adhering States to provide for appropriate legal remedies for the effective enforcement of breeders' right. Articles 27 and 28 of the Law provide that a person performing actions considered illegal shall bear responsibility in keeping with the current legislation of Tajikistan. The Law thus fully conforms with the said Article 30(1)(i).

26. Article 30(1)(ii) of the 1991 Act requires adhering States to "maintain an authority entrusted with the task of granting breeders' rights...". Article 29 of the Law appoints the State Commission as the authority in the sphere of the legal protection of plant breeder's rights in Tajikistan, and describes in detail the powers of the said Commission. The Law thus conforms fully with Article 30(1)(ii) of the 1991 Act.

27. Article 30(1)(iii) of the 1991 Act requires adhering States to publish information concerning applications and grants of breeders' rights and proposed and approved denominations. Articles 8 and 19 of the Law mention the publication of information relating to applications in the Official Gazette of the State Commission. More comprehensive regulations concerning the publication of information concerning applications and grants should be included in implementing regulations.

General Conclusion

28. The Law, in its main provisions, incorporates the substance of the Convention and deviates from it in the following aspects only:

- (a) scope of the Breeder's Right (see paragraph 14);
- (b) scope of the Breeder's Right (see paragraph 15);
- (c) duration of the Breeder's Right (see paragraph 21);

29. The Office of the Union suggests that the Council may wish

(a) to advise the Government of Tajikistan that the Law, after the adoption of suitable regulations, provides the basis for an Act conforming with the Convention, and that it may deposit an instrument of accession to the Convention after making such regulations;

(b) to further advise the Government of Tajikistan that it may wish to correct the minor deviations and inconsistencies at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of Tajikistan for the drafting of any regulations and the correction of the Law.

30. 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]

LAW OF THE REPUBLIC OF TAJIKISTAN

“On Selection Achievements of Agricultural Crops”

This Law shall govern relations arising out of the creation, use and protection of selection achievements of agricultural crops for which patents have been granted.

I. GENERAL PROVISIONS

Article 1.

Selection of Agricultural Crops

Selection of agricultural crops consists of a set of selection activities aimed at creating new varieties of plants.

Article 2.

Selection Achievement

A new variety of plant which, 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 of the same botanical taxon by the expression of at least one of the characteristics.

A variety may be represented by several plants, a single plant or part or parts thereof provided that such part or parts could be used for the purposes of reproduction of plants of the variety.

A new selection achievement shall have a denomination proposed by the applicant and approved by the State Commission for Variety Testing of Agricultural Crops and Protection of the Variety attached to the Ministry of Agriculture (hereinafter referred to as “the State Commission”) and registered in the State Register.

The denomination must enable the selection achievement to be identified, be short and different from that of any existing selection achievement of the same or of a closely related botanical species and be easily recognized.

Where the application for a selection achievement is filed in the Republic of Tajikistan and in another country it shall have the same denomination.

Under certain circumstances the denomination of a selection achievement may be modified with the agreement of the State Commission.

Protected selection achievements must be used with the denomination that had been registered in the State Register of Protected Selection Achievements.

The protected categories comprise: variety, clone, line, first-generation hybrid, population.

Article 3.
Legislation on Selection of Agricultural Crops

The legislation of the Republic of Tajikistan on the selection of agricultural crops shall be deemed to comprise this Law and regulatory enactments of State authorities and administrations according to their competence, that are published under this Law.

II. CONDITIONS OF PROTECTABILITY OF SELECTION ACHIEVEMENTS

Article 4.
Conditions of Protectability of Selection Achievements

Patents shall be granted for selection achievements satisfying the criteria of protectability and relating to botanical varieties the list of which shall be approved by the State Commission.

The criteria of protectability of a selection achievement shall be:

(a) novelty: a selection achievement shall be deemed new if, on the filing date of the application for the grant of a patent the seeds or plant material

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 production on the territory of the Republic of Tajikistan earlier than one year before the date of the application;

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 purpose of exploitation of the selection achievement in production in the territory of any other State earlier than six years before the filing date of the application in the case of vines, forest, ornamental and fruit trees and earlier than four years in the case of any other plant;

(b) distinctness: a selection achievement shall be clearly distinguishable from any other well-known selection achievement existing on the filing date of the application;

a selection achievement used for production purposes or entered in an official catalogue or reference files, or of which a precise description is contained in a publication, shall be deemed well-known.

The filing of an application for the grant of a patent or for a State test shall render the selection achievement well-known, provided that the application leads to the grant of a patent

for the selection achievement or to the selection achievement being admitted to exploitation in production.

Elements serving to define typical and distinctive characteristics shall be identifiable and describable.

(c) uniformity: a plant variety shall be sufficiently uniform in its characteristics subject to some variation due to the particular features of its propagation.

(d) stability: a plant variety shall correspond to its description after repeated propagation or at the end of each cycle of propagation.

Varieties which on the date of commencement of the protection of the corresponding genera and species with zoning at the regional level, registered in the State Register of selection achievements and authorized to be used for the purposes of production, may be declared protectable without the species or variety meeting the condition of novelty. The term of the patent for a selection achievement as referred to in the first paragraph of Article 12 shall be reduced by a period from the commencement of zoning until the grant of the patent, and it shall be covered by the provisional protection provided for in Article 15.

Article 5. Application for the Grant of a Patent

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 a year before the species is subjected to a State test.

If a selection achievement satisfies the conditions of protectability, the State Commission shall take a decision to grant a patent.

Where a selection achievement has been created in the line of duty, the right to file an application for the grant of a patent shall belong to the employer, unless otherwise provided in a contract between the breeder and the employer or in the constituent documents.

In that case the contract or the constituent documents shall provide for an amount and terms of payment of remuneration to the breeder for the use of selection achievement.

An application shall be filed by several persons if they have created a selection achievement jointly or are the successors in title of one or more breeders.

An application may be filed through a patent agent who in pursuance of his powers of attorney shall act in order to obtain a patent.

Foreign legal entities and natural persons shall be entitled to file an application where a treaty on the protection of selection achievements has been concluded between the Republic of Tajikistan and the other State.

In that case, in order to obtain and maintain a patent, they shall act through a patent agent of the Republic of Tajikistan.

Article 6.
Rights of Priority

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

Where the application filed with the State Commission has been preceded by an application filed in one of the States (first application) with which the Republic of Tajikistan had concluded a treaty on the protection of selection achievements, the applicant shall have a right of priority deriving from the first application for 12 months from the filing date thereof.

In order to determine the date of priority under the second paragraph of this Article, the applicant shall be required to specify, in the application to the State Commission, the date of priority of the first application. The applicant shall be also required to furnish to the State Commission, within six months from the filing date, a copy of the first application, certified by the competent authorities of the State concerned, together with a translation thereof.

In order to meet the conditions of the second and third paragraphs of this Article, the applicant shall be allowed to furnish any additional documents and materials needed for the test within three years from the filing date of the first application.

III. ASSESSMENT OF PROTECTABILITY

Article 7.
Preliminary Examination of the Application

A preliminary examination of the application shall be carried out within one month from the filing date thereof. It shall be carried out in order to determine the date of priority and to verify the compliance of the required documents with the prescribed conditions.

The State Commission may request additional and missing documents, which the applicant shall be obliged to furnish within prescribed time limit.

During the preliminary examination the applicant shall have the right to supplement, amend or correct the documents of the application on his own initiative. If the applicant fails, within the prescribed time limit, to make the necessary amendments or to submit documents missing on the date of receipt of the application, the application shall not be accepted for examination and the applicant shall be notified accordingly.

Where the applicant wishes to contest the decision taken on the basis of the preliminary examination finding, he may contest it in court within three months following the date of receipt thereof.

Where the preliminary examination has produced a favorable result the applicant shall be notified that his application has been accepted for examination of the compliance of the selection achievement with the conditions of protectability.

Article 8.
Examination of the Novelty of the Selection Achievement

Within six months from the date of publication of the particulars of the application any interested person may file a notice with the State Commission contesting novelty of the claimed selection achievement.

The State Commission shall notify the applicant of its receipt of the notice, stating the grounds thereof.

In the case of disagreement with the notice the applicant may, within three months from the date of receipt of the said notice, send reasoned rebuttal to the State Commission.

The State Commission shall take a decision on the basis of available documents and notify the persons concerned accordingly.

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

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

Article 9.
Testing of Selection Achievements for Compliance with the Conditions of
Distinctness, Uniformity and Stability

The testing of selection achievements for compliance with the conditions of distinctness, uniformity and stability shall be carried out within time limit fixed by the State Commission.

The State Commission shall have the right to use the results of testing carried out by the competent authority of another country with which a treaty to that end has been concluded, and also the results of testing carried out by other organizations of the Republic of Tajikistan under a contract with the State Commission, or data furnished by the applicant.

IV. PROTECTION OF SELECTION ACHIEVEMENTS

Article 10.
Registration of the Selection Achievement

A selection achievement in relation to which a decision to grant a patent had been taken shall be registered by the State Commission in the State Register of Selection Achievements according to the established procedure.

Article 11.
Patent

A patent shall certify the exclusive right of the patent owner or his successor in title to use a selection achievement.

The patent shall be granted to the applicant. Where two or more applicants are mentioned in the application, the patent shall be granted to the first mentioned among them.

Where the patent had been lost or destroyed, a duplicate may be issued on payment of the prescribed fee.

Article 12.
Term of the Patent

The term of the patent shall be 15 years from the date of the registration of the selection achievement in the State Register. For vines and ornamental, fruit or forest trees, including rootstocks, the term shall be 20 years.

At the request of the patent owner the State Commission may extend the term of a patent for a period not exceeding ten years.

Article 13.
Rights of the Patent Owner

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

The right of the patent owner shall be attested by the patent and protected by law.

This right means that any person shall be required to obtain a license (authorization) from the patent owner for the performance of the following act in relation to planting material of the protected selection achievement:

- (a) production and reproduction;
- (b) treatment of seed for the purpose of subsequent propagation;
- (c) offering for sale;
- (d) sale or other marketing;
- (e) stocking.

The right of the patent owner shall extend also to planting material produced from seed marketed without his authorization. The authority of the patent owner shall be required for the performance of the acts provided for in the second paragraph of this Article in relation to the seed of varieties:

- (a) that are essentially derived from the initial variety where the initial variety is not itself a selection achievement essentially derived from another selection achievement;
- (b) or where the protected variety has to be repeatedly used for the production of seed.

A selection achievement shall be deemed essentially derived from another (initial) selection achievement when, while clearly distinguishable from the initial variety:

it is predominantly derived from the initial selection achievement, but retains the expression of the essential characteristics reflecting the genotype or combination of genotypes of the initial selection achievement;

it conforms to the genotype or combination of genotypes of the initial selection achievement except for the differences that result from the application of such methods as individual selection from the initial variety, selection of an induced mutant, back-crossing or genetic engineering.

Article 14.

Acts not Deemed to be Infringements of the Rights of the Patent Owner

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

- (a) acts done for non-commercial purposes;
- (b) acts done for experimental purposes;
- (c) use of the protected selection achievement as initial material for the breeding of other varieties and their subsequent use for the purposes, mentioned in the second paragraph of Article 13;
- (d) use of planting material produced on farms within two years as seed for propagation of varieties on their own holdings (the list of such plant genera and species shall be drawn up by the Government of the Republic of Tajikistan);
- (e) any acts in relation to seed or plant material marketed by the patent owner or by another person with his authorization, except for export of seed or plant material that would allow the variety to be propagated in a country in which this genus or species is not protected.

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 be given provisional protection for his selection achievement.

After the grant of a patent its owner shall have the right to compensation from a person infringing his rights of the patent owner provided for in Article 13 during the period of provisional protection.

During the period of provisional protection of the selection achievement the applicant shall be authorized to sell or otherwise furnish seeds of the variety only for scientific purposes or where their selling or other furnishing is connected with the assignment of rights in a selection achievement or with the production of seeds commissioned by the applicant for the creation of stocks.

V. USE OF THE SELECTION ACHIEVEMENT

Article 16. License Contract

By means of a license contract (in the case of an exclusive or non-exclusive license) the patent owner (licensor) may transfer the right to use the selection achievement to another person (the licensee), either for a consideration or free of charge.

The license contract shall be concluded in writing.

Under an exclusive license the licensee is afforded the exclusive right to use the selection achievement within the limits specified in the contract, while the patent owner retains his partial right to use it.

Under a non-exclusive license the patent owner retains all the rights afforded by the selection achievement patent, including the right to grant licenses to third parties.

An exclusive license shall enter into force after its registration in the State Commission.

Article 17. Rights of the Licensee

The licensee shall be entitled to use a selection achievement during the life of the patent on the territory of the Republic of Tajikistan and to perform the acts, specified in Article 13, unless otherwise provided in the license contract.

The licensee shall not be entitled to transfer the license to other persons or to grant sublicenses unless the license contract so provides.

Article 18. Conditions of the License Contract Concerning Restrictions on the Licensee's Rights

Conditions in a license contract imposing restrictions on the licensee that do not derive from the rights afforded by the patent, and are not necessary for the maintenance of the patent, shall not be valid.

Article 19. Open Licenses

The patent owner may publish a notice in the Official Gazette of the State Commission stating that any person has the right, against payment specified in the contract, to use his selection achievement as from the date on which the patent owner is notified accordingly.

The State Commission shall make an entry in the State Register of Protected Selection Achievements concerning the grant of the open license, specifying the amounts of payment.

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

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

Article 20.
Compulsory Licenses

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

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

- (a) the request for the grant of a compulsory license has been filed after the expiration of a three-year period from the date of the grant of the patent;
- (b) the patent owner has declined the applicant's request that he should grant the right to produce or market seed of the variety, or does not intend to grant such a right;
- (c) the person requesting the grant of a compulsory license has proved that he is in a position, financially or otherwise, to use the license effectively;
- (d) the fee for the grant of a compulsory license has been paid.

A compulsory license may give to the licensee the right to perform all or some of the acts specified in the second paragraph of Article 13.

When granting a compulsory license the State Commission shall determine the amounts to be paid by the licensee to the patent owner for seed of the variety in a quantity sufficient for the use of the compulsory license.

The term of a compulsory license shall be determined by the State Commission but shall not exceed four years.

The term may be extended if on verification it is established that the circumstances under which the compulsory license was granted continue to exist.

The State Commission may cancel a compulsory license if its owner has infringed the terms under which it was granted.

A decision of the State Commission concerning a compulsory license may be contested in court.

Article 21.
Right of the Licensee to Sue

Where the rights of the patent owner has been infringed, the licensee shall have the right to initiate court proceedings in accordance with the established procedure.

Article 22.
Breeder's Certificate

The breeder's certificate attests the authorship of a selection achievement and the breeder's entitlement to remuneration from the patent owner for the use of the selection achievement.

A breeder's certificate shall be granted to every breeder who is not a patent owner.

Any dispute regarding authorship shall be settled in court.

Article 23.
Remuneration Payable to the Breeder of a Selection Achievement Who is Not the Patent Owner

The amount of remuneration payable for the use of a selection achievement shall be determined by a contract concluded between the breeder and his successor in title and shall be not less than 2 per cent of the annual proceeds received by the patent owner for the use of the selection achievement, including earnings from the grant of licenses.

Where a variety has been created jointly by two or more breeders, the remuneration shall be shared as agreed between them.

The remuneration shall be payable to the breeder not later than three months after the end of each year in which the selection achievement has been used.

Where the patent owner has not paid the remuneration on time, he shall pay the breeder a penalty fee of 0,04% of the sum owed for each day of delay in payment.

Article 24.
Maintenance of the Selection Achievement

The patent owner shall maintain the variety throughout the life of the patent in such a way that all the characteristics thereof specified in the description on the date of priority, are maintained.

At the request of the State Commission the patent owner shall be obliged to furnish seed of the variety for testing and provide the opportunity of on-site inspection.

Article 25.
Invalidation of a Patent

Any person may file a request with the State Commission for invalidation of a patent.

The State Commission shall send a copy of the request to the patent owner, who, within three months, may submit his reasoned rebuttal, and shall rule on the substance of the request within six months unless additional testing is required.

The State Commission shall deem the patent invalid if it is established that:

- (a) the patent has been granted on the basis of information on uniformity and stability on the date of grant that has been furnished by the applicant but not confirmed;
- (b) on the date of the grant of the patent the selection achievement did not comply with the conditions of novelty or distinctness;
- (c) the person named in the patent as the patent owner had no legal right to the grant of the patent.

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

Article 26.
Cancellation of a Patent

The patent shall be cancelled by the State Commission:

- (a) where a selection achievement no longer complies with the conditions of uniformity and stability;
- (b) where the patent owner fails to provide within 12 months, at the request of the State Commission, seed, documents and information deemed necessary for testing the protectability of the selection achievement, or fails to provide the opportunity of on-site inspection for the above purposes;
- (c) where the patent owner fails to pay a maintenance fee by the prescribed time limit.

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

Article 27.
Liability for Infringement of the Right of the Patent Owner

Any natural person or legal entity, who uses a selection achievement in violation of this Law, shall be deemed liable for infringement of the rights of the patent owner.

At the request of the patent owner the infringement shall be stopped and compensation shall be provided for all damages sustained.

When examining a complaint of infringement of the rights of the patent owner the Court may, at the instigation or request of the parties involved in the case or on its own initiative, take the following action to secure a claim:

- (a) order the seizure of seed and plant material constituting the subject matter of infringement;
- (b) prohibit the use, production or sale of seed or plant material.

Article 28.

Liability for Infringement of Other Rights of the Patent Owner and the Breeder

A natural person or legal entity shall be deemed liable for infringement of other rights of the patent owner and the breeder where he or it:

- (a) discloses information constituting a commercial secret in relation to any selection achievement for which an application has been filed if the information has been acquired by him in the performance of acts under this Law, except where the disclosure is to the Minister of Agriculture of the Republic of Tajikistan or to a person carrying out his official duties with a view to securing the protection of breeders' rights under this Law;
- (b) uses for seed produced and sold a denomination that is different from that of the registered selection achievement;
- (c) uses for seed produced and sold the denomination of a registered selection achievement to which it does not relate;
- (d) uses for seed produced and sold denomination that corresponds so closely to that of a registered selection achievement that it could be confused with the latter;
- (e) makes a false statement;
- (f) makes a false entry in the State Register of Selection Achievements or supporting documents or causes such an entry to be made;
- (g) forges documents required under the provisions of this Law or causes such documents to be forged;
- (h) furnishes documents containing false information.

Persons performing acts listed in the first paragraph of this Article shall be liable under the laws in force.

Article 29.

State Commission

The State Commission shall ensure the performance of the functions entrusted to it by this Law. The State Commission shall have the right to conclude contracts with any organization capable of carrying out tests to determine the protectability of plant varieties.

The staff of the State Commission, of its units in the Gorno-Badakhshan Autonomous Region, other regions, towns and districts shall have no right to file an application for the grant of a patent, throughout the term their employment contract and for three years after termination of their service.

Article 30.

Use of Selection Achievements for Production Purposes

Only those plant varieties that have been included in the variety zoning of agricultural crops and breeds of silkworm and admitted for use in production shall be cultivated on the territory of the Gorno-Badakhshan Autonomous Region and other regions and districts.

Seed intended for marketing shall be accompanied by a certificate of quality attesting their variety and sowing characteristics.

The production of seed for export to another region shall not require inclusion of the variety in the list of varieties admitted for use on the territory of that region.

For selection achievements registered in the State Register a certificate shall be issued only to the patent owner, his licensees and to users of open licenses.

The inclusion of plant varieties admitted for use in production and variety zoning shall be carried out by the State Commission on the basis of the State testing results.

For individual variety and genera specified by the State Commission, the inclusion in the variety zoning of varieties admitted for use in production shall be carried out on the basis of expert opinions and data furnished by the applicant.

VII. INTERNATIONAL COOPERATION

Article 31.

Right to File an Application Abroad

The breeder or his successor in title may file an application for the protection of a selection achievement abroad.

The cost of the protection of the rights in selection achievements abroad shall be borne by the applicant.

Article 32.

Rights of Foreign Natural Persons or Legal Entities

Foreign natural persons and legal entities shall enjoy the rights provided for in this Law and in other regulatory enactments of the Republic of Tajikistan concerning the protection of selection achievements on the same footing as natural persons and legal entities of the Republic of Tajikistan if a treaty on the protection of selection achievements is concluded between the foreign States concerned and the Republic of Tajikistan.

The provisions of Articles 22 and 23 of this Law shall not apply to foreign nationals and stateless persons.

Article 33.
International Treaties

Where an international treaty to which the Republic of Tajikistan is party introduces rules that differ from those contained in this Law, the rules of the international treaty shall prevail.

President of the Republic of Tajikistan

E.Rakhmonov

Dushanbe, November 4, 1995
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[End of Annex and of document]