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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Seventeenth Extraordinary Session
Geneva, April 7, 2000****EXAMINATION OF THE CONFORMITY OF THE LAWS OF KAZAKHSTAN WITH
THE 1991 ACT OF THE UPOV CONVENTION***Document prepared by the Office of the Union*Introduction

1. By note verbale dated February 22, 2000, the Permanent Mission of the Republic of Kazakhstan to the United Nations Office and Other International Organizations at Geneva, requested the advice of the Council of UPOV on the conformity with the UPOV Convention of the Law on the Protection of Selection Achievements, Law No. 4224 (hereinafter referred to as “the Law”) which was signed by the President of the Republic of Kazakhstan, Mr. Nursultan Nazarbayev, on July 13, 1999 (Laws of the Republic of Kazakhstan), in Astana. The Annex to this document contains a translation of the Law into English from Russian, as submitted by the Kazakhstan authorities. The Law is analyzed below for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as “the Convention”).

2. Kazakhstan 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 Kazakhstan

3. The protection of new plant varieties will be governed in Kazakhstan by the Law and its implementing regulations. An analysis of the Law follows in the order of the substantive law provisions of the Convention. It should be noted that the Law provides a system of protection for “selection achievements,” which expression is defined so as to include animal breeds as well as plant varieties. No analysis of the provisions of the Law relating to animal breeds is made in this document.

4. Article 29 of the Law provides that if an international agreement to which Kazakhstan 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 Kazakhstan 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 Patent Organization (hereinafter referred to as “Kazpatent”) of Kazakhstan. The Law thus complies with Article 2 of the Convention.

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

7. Article 4(2), last paragraph envisages the progressive eligibility for protection of the plant genera and species by their addition to the State Register of Protected Selection Achievements. At the time that Kazakhstan deposits its instrument of accession, it must protect a minimum of 15 plant genera and species. Accordingly, it will be necessary for a minimum of 15 plant genera and species to be entered in the Register prior to deposit.

Article 4 of the Convention: National Treatment

8. Article 28 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 Kazakhstan. Upon the accession of Kazakhstan to the 1991 Act, nationals and residents of member States of UPOV bound by the said Act will receive national treatment in conformity with Article 4 of the 1991 Act as a result of the International Treaty Provision. The Law thus enables Kazakhstan 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 can be taken to essentially conform with Articles 5 to 9 of the Convention.

Article 10 of the Convention: Filing of Applications

10. Article 27 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 to the competent bodies of another State. It specifies that such an application can be filed not earlier than three month after the filing of the corresponding application with Kazpatent or, after verification of the presence of information constituting a State secret, before the prescribed time. Any lack of conformity between the Law and the 1991 Act here is remedied by the International Treaty Provision.

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 Kazakhstan 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 three months to file a certified copy of the earlier application (as 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 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 9 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 14(1) of the Law reproduces the substance of Article 14(1)(a) of the 1991 Act. Articles 18 and 19 of the Law make clear that a breeder may grant licenses under the right granted under Article 13 of the Law, subject to conditions and limitations as required by Article 14(1)(b) of the 1991 Act.

15. Article 14(2) 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 Article 14(3) provides for the extension of the right to the varieties specified in Article 14(5) (i), (ii), and (iii) of the

Convention. Article 14(4) provides that “other rights shall be determined by the legislation of the Republic of Kazakhstan.” However, the third indent contains a fourth category of variety which results from confusion with the definition of an essentially derived variety in Article 14(5) of the Convention. The third indent should be deleted when opportunity presents and the definition of an essentially derived variety in Article 14(5)(b) of the Convention should be added. The above problem could be overcome by implementing regulations.

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

16. Article 17 of the Law sets out the compulsory exceptions to the breeder’s right in terms which satisfy Article 15(1) of the Convention.

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 Court where the patent holder has no reasonable cause for refusing the grant to the applicant of a license for a selection achievement. The requirements for the grant of compulsory licenses can be taken to 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 Court 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 5 of the Law provides that protection lasts for 35 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 25 years for all other varieties. These periods of protection are in each case 5 years longer than the minimum periods of protection required by the 1991 Act.

Article 20 of the Convention: Variety Denomination

22. Article 6 of the Law contains provisions concerning variety designations which satisfy the requirements of paragraphs (2), (3), (5), and (7) of Article 20 of the 1991 Act. There are

no provisions of the Law which satisfy the requirements of paragraphs (1), (4), (6), 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), 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 21 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 22 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. Article 15 of the Law provides that a person performing actions considered illegal shall bear responsibility in keeping with the current legislation of Kazakhstan. 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 3(2) of the Law appoints the "Kazpatent" as the competent State authority in the sphere of the legal protection of plant breeder's rights in Kazakhstan, and describes in detail the powers of the said Kazpatent. Article 3(3) of the Law appoints the State Commission for Crop Variety Testing to carry out examination and testing of crop varieties. 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. Article 26 of the Law empowers the Kazpatent to publish official information on the granting of patents on plant varieties. These provisions entirely satisfy the requirements of Article 30(1)(iii) of the 1991 Act.

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) filing of applications outside Kazakhstan (see paragraph 10);
- (b) scope of the Breeder's Right (see paragraph 15).

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

(a) to advise the Government of Kazakhstan that the Law, after adoption of suitable regulations, provides the basis for a system of protection 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 Kazakhstan that it may wish to correct the (possible) deviations and inconsistencies at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of Kazakhstan for the drafting of any regulations and the preparation of translations into one or more of the official languages of UPOV.

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]

ANNEX

**LAW OF THE REPUBLIC OF KAZAKHSTAN
ON THE PROTECTION OF SELECTION ACHIEVEMENTS**

TITLE I

GENERAL PROVISIONS

Article 1

Relations Governed by This Law

This Law shall determine legal, economic and organizational basis for activities in the field of protection of selection achievements and shall govern both economic and relevant moral relations arising out of the creation, discovery, development, legal protection and use of selection achievements.

Article 2

Basic Definitions

For the purposes of this Law:

- (1) “*author of the selection achievement*” (“breeder”) (hereinafter referred to as “author”) means a natural person who bred, or discovered and developed, a variety or breed;
- (2) “*Board of Appeals*” means a subordinated body of Kazpatent responsible for non-judicial settlement of disputes;
- (3) “*Gazette*” means an official periodical on selection achievements protection matters published by Kazpatent;
- (4) “*State Commission*” means the State Commission for Crop Variety Testing and the State Inspection for Pedigree Breeds of the Ministry of Agriculture of the Republic of Kazakhstan;
- (5) “*State Register*” means “State Register of the Protected Plant Varieties of the Republic of Kazakhstan” and “State Register of the Protected Animal Breeds of the Republic of Kazakhstan” which contain plant varieties and breeds, respectively, for which patents have been granted;
- (6) “*State Register of Selection Achievements Authorized for Use for Production Purposes*” means “State Register of Selection Achievements Authorized for Use for Production Purposes in the Republic of Kazakhstan” which contains plant varieties and breeds authorized for economic uses;
- (7) “*applicant*” means a natural person or legal entity that has filed an application for the grant of a selection achievement patent;
- (8) “*the exclusive right*” means an economic right of the patent owner to use the selection achievement in any way at his discretion;

(9) “*licence contract*” means a contract by virtue of which the patent owner (the licensor) grants, for a specified period of time, the right to use the selection achievement in a specified way to another person (the licensee);

(10) “*Patent agent*” means a national who, under the legislation of the Republic of Kazakhstan, is authorized to represent natural persons or legal entities before Kazpatent;

(11) “*Patent owner*” means a person holding a selection achievement patent;

(12) “*pedigree animal*” means a purebred, high class, high-producing animal whose origin is certified by a pedigree certificate and which animal conforms to type trend and level of productivity and satisfies the breed standards:

(13) “*pedigree production (material)*” means a pedigree animal, gametes or embryos thereof;

(14) “*breed*” means a grouping of agricultural domestic animals of the same species resulting from the creative activity of man in the specific economic and environmental conditions quantitatively sufficient for durable breeding “from within” related by descent from common ancestors and having economic and breeding value maintained by way of artificial selection, combination and creation of technological conditions specific to their genotype, and distinguished from any other animal grouping by the expression of morphological, physiological and economic characteristics. Breed shall be deemed to comprise the following protected categories: type, line, crossing of lines;

(15) “*propagating material*” means any material of generative and vegetative reproduction inclusive of seeds, set, plants or parts thereof used for the purposes of reproduction;

(16) “*selection achievement*” means anew variety or animal breed resulting from the creative activity of man for which a patent has been granted;

(17) “*seeds*” means all botanical forms of seed material, i.e. seeds as such, fruit, syncarpy, parts of composite fruit bulbs or tubers;

(18) “*variety*” means a grouping of cultivated plants related by descent and defined by the expression of uniform biological, morphological and economic characteristics which retain hereditary stability in subsequent generations 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. Variety shall be deemed to comprise the following protected categories: clone, line, first generation, hybrid, population;

(19) “*marketable animal*” means an animal used for the purpose of production for the market.

Article 3 Legal Protection of Selection Achievements

(1) Rights in a selection achievement shall be protected under the legislation of the Republic of Kazakhstan and shall be certified by a patent. The patent shall certify the

exclusive right of the patent owner to use the selection achievement, the priority thereof, as well as the authorship of the breeder.

(2) The State Patent Organization (hereinafter referred to as “*Kazpatent*”) shall be a competent State authority which shall, under this Law, receive applications for the grant of patents for selection achievements of the Republic of Kazakhstan, organize a preliminary examination thereof, keep the State Register of Selection Achievements, grant patents, publish information relating to selection achievements, and shall perform other functions of the patent Office.

(3) The State Commissions shall carry out examination of patentability of selection achievements and testing the compliance thereof with the requirements of economic utility, and register them in the State Register of Selection Achievements Authorized for Use for Production Purposes.

(4) The scope of the legal protection conferred by a patent for a selection achievement shall be determined by the description of plant variety or animal breed containing the essential characteristics thereof

(5) The term of a variety patent shall be 25 years from the date of filing an application with Kazpatent. For animal breeds the said period shall be 30 years. For grapevines, ornamental, fruit and forest trees, including rootstocks thereof, the said period shall be 3 5 years.

At the request of the patent owner Kazpatent may extend the term of the patent for a period not exceeding 10 years.

TITLE II

PATENTABILITY OF SELECTION ACHIEVEMENTS

Article 4

Conditions of Patentability of Selection Achievements

(1) The patent shall be granted where a selection achievement is new, distinct, uniform and stable.

(2) A plant variety or animal breed shall be deemed new if, at the date of filing of the application for the grant of a patent, the seeds or other propagating material or pedigree material of the selection achievement has not been sold or otherwise disposed of to others, by the breeder or his successor in title, for the purposes of exploitation of the variety or breed:

- in the territory of the Republic of Kazakhstan, earlier than one year before that date;
- in the territory of any other State, earlier than four years in the case of annual varieties and breeds or, in the case of perennial varieties and breeds, earlier than six years before the said date.

Where, at the date of entry of the corresponding genera and species in the State Register of the Protected Selection Achievements, a plant variety or animal breed has been registered in the State Register of Selection Achievements Authorized for Use for Production Purposes, it may be recognized as patentable without compliance thereof with the condition of novelty. The priority of the selection achievement shall be determined by the date of receipt by the relevant State Commission of the application containing the request for the grant of an authorization to use the said selection achievement.

The term of a patent provided for in Article 3 of this Law shall be reduced in relation to such selection achievements by the period starting from the year in which the authorization to use has been granted and ending in the year in which a patent has been granted. No provisional protection provided for in Article 9 of this Law shall apply to such selection achievement.

(3) A plant variety or animal breed shall be deemed to satisfy the condition of distinctness if it is clearly distinct from any other variety or breed well-known at the time of the filing of the application. The filing of an application for the grant of a patent or the entry of another variety or breed in the official register of varieties or breeds, in any country, shall render that variety or breed a matter of common knowledge from the date of the application, provided that the application leads to the grant of a patent or the entry.

Well-known varieties or breeds may be those which have been bred, used and published. Characteristics intended to determine descriptive and distinctive features of the variety or breed shall be susceptible of recovery and precise description.

(4) A plant variety or animal breed shall be deemed uniform if, subject to the variation that may be expected from particular features of its propagation or reproduction, it is uniform in its relevant selective characteristics.

(5) A plant variety or animal breed shall be deemed to satisfy the condition of stability, if its relevant characteristics remain unchanged after repeated propagation or reproduction or, in the case of particular cycle of propagation or reproduction, at the end of each such cycle.

Article 5

Application for the Grant of a Selection Achievement Patent

(1) Application for the grant of a patent shall be filed with Kazpatent.

The right to file an application shall belong to the breeder or his successor in title.

The right to file an application for the grant of a patent for a selection achievement that has been bred, discovered or developed by a breeder in the line of duty, or as a result of a specific task entrusted to him by his employer, shall belong to the employer unless otherwise provided in the employment contract.

Where a selection achievement has been bred, discovered or developed jointly by several persons or where several persons are successors in title of the breeder, the application may be filed jointly by them.

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

(2) Natural persons having their residence outside the territory of the Republic of Kazakhstan or foreign legal entities shall be required to act through patent agents registered in the Republic of Kazakhstan in all proceedings conducted for the grant and maintenance of patents and lodging appeals with the Board of Appeals.

Natural persons having their permanent residence in the Republic of Kazakhstan but temporarily residing outside its territory may act in all patent proceedings on their own provided they indicate address for service in the territory of the Republic of Kazakhstan.

The powers of the patent agent shall be certified in a power of attorney issued by the applicant or patent owner.

(3) The application for the grant of a selection achievement patent shall relate to one variety or breed only.

The application shall contain:

- the request for the grant of a patent;
- the official technical questionnaire related to the selection achievement;
- where the application is filed through a patent agent, a power of attorney.

The application for the grant of a selection achievement patent shall be accompanied by proof of payment of the prescribed fee or of circumstances affording entitlement to exemption from payment, or to reduction in the amount, of the prescribed fee which may be presented together with the application or within two months following the date of receipt thereof. This term may, subject to payment of the prescribed fee, be extended for a period not exceeding two months.

If the applicant fails, within the prescribed time limit, to present the above documents, the application shall be deemed to have not been filed.

(4) The application for the grant of a selection achievement patent shall be filed in the State or Russian language.

(5) The conditions to be met by the elements of the application and the procedure for consideration thereof shall be determined by Kazpatent. Other documents and material required for the purposes of examination and testing of the claimed variety or breed shall be presented at the request of the State Commission.

Article 6 Denomination of Selection Achievement

(1) The denomination must enable the selection achievement to be identified. It must be short and different from any other 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 characteristics, origin or value of the selection achievement or the identity of the breeder. It must not be contrary to humanitarian principles or morality.

(2) Where the application for the grant of a patent for the same variety or breed is filed in the Republic of Kazakhstan and in other countries, the variety or breed must be submitted under the same denomination to all countries concerned, except where the denomination does not satisfy the requirements of paragraph (1) of this Article.

(3) Where the denomination does not satisfy the requirements of paragraphs (1) or (2) of this Article, Kazpatent shall require the applicant to submit another denomination for the variety or breed within two months.

(4) Any person who uses the protected selection achievement shall be required to use the denomination of the variety or breed as registered in the respective State Register even after the expiration of the patent.

Article 7 Priority of Selection Achievements

(1) The priority of the variety or breed shall be determined by the filing date of the application containing the request for the grant of a patent and the official technical questionnaire to the selection achievement with Kazpatent.

(2) Priority may be determined by the filing date of the first application in any State party to the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "Convention priority"). The applicant shall enjoy the Convention priority within 12 months from the said date.

The applicant wishing to enjoy the Convention priority shall make a declaration to that effect to be submitted to Kazpatent, stating the priority date of the first application and shall, within three months following the filing date of the first application, furnish a copy of the first application duly certified by the Office it has been filed with.

Where the applicant complies with the said conditions, he shall not be required to furnish the additional documents and any material necessary for the purposes of testing for a period of three years following the filing date of the first application.

TITLE III

EXAMINATION OF APPLICATIONS FOR THE GRANT OF A SELECTION ACHIEVEMENT PATENT

Article 8 Preliminary Examination

(1) Within two months following the filing date of the application, Kazpatent shall carry out preliminary examination in order to determine the priority date of an application and

verify the presence of the required documents and their compliance with the prescribed conditions.

A preliminary examination shall be carried out within two months following the date of receipt of the application.

Where necessary, the applicant may furnish, within two months following the filing date of the application, additional elements in respect of the application.

(2) The additional elements containing characteristics that did not figure in the initial application or modifying the subject matter of the claimed variety or breed shall not be taken into consideration for the purposes of examination.

(3) Where the preliminary examination of an application has produced a favorable result, Kazpatent shall take a decision to proceed with a further examination. A copy of the application and of the technical questionnaire related to the selection achievement shall be transmitted to a respective State Commission.

(4) Where the preliminary examination finding is that the application does not comply with the prescribed conditions, a decision to reject the application shall be taken and the applicant shall be notified accordingly.

(5) Where the applicant wishes to contest the decision taken by the preliminary examination, he may do so, within two months following the date of receipt of the decision, by lodging an appeal with Kazpatent. The appeal shall be decided upon by the Board of Appeals within two months from the date of its receipt.

The decision taken by the Board of Appeals may, within six months following the date of receipt thereof, be contested by the applicant in court.

(6) The particulars of the application on which the preliminary examination has produced a favorable result shall be published in the Gazette after expiration of 18 months from the date of its receipt. At the request of the applicant Kazpatent may effect the publication before the expiration of the said time limit.

(7) The breeder of the variety or breed may waive his right to be identified in the published particulars of the application.

Article 9 Provisional Legal Protection of Selection Achievements

(1) During the period between the date of publication of the particulars of the application and the date of the grant of the patent the selection achievement shall be afforded provisional legal protection.

(2) 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 patent owner, any acts provided for in Article 14(1) of this Law.

(3) 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 scientific purposes or where such acts are performed in connection with the assignment of rights in a variety or breed, or where the production of seeds or pedigree material is commissioned by the applicant for the purpose of the creation of stocks.

Where the applicant or any other person authorized by him fail to comply with the above conditions, the provisional legal protection shall be deemed never to have been granted.

Article 10 Examination of Patentability of Selection Achievement Applications

(1) Any interested party may, within six months following the date of publication of the particulars of the application, file with the State Commission a notice of opposition contesting the claimed selection achievement. The State Commission 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 State Commission stating the grounds thereof.

Kazpatent shall, on the basis of the decision of the State Commission, take its decision and inform the applicant accordingly. Where the variety or breed does not comply with the condition of novelty, a decision to refuse the patent grant shall be taken.

(2) Testing of the variety or breed as to compliance with the prescribed conditions of distinctness, uniformity and stability shall be carried out by the respective State Commission in accordance with approved methodology and within the prescribed periods. The applicant shall furnish a quantity of seed or pedigree material required for the purposes of testing.

(3) The State Commissions may take into account the results which have been carried out by other organizations of the Republic of Kazakhstan, the results of tests which have been carried out by the competent authorities of other States on the basis of concluded contracts, as well as information provided by the applicant.

(4) Where the variety or breed is found to comply with the conditions of patentability, the State Commission shall make the official description thereof on the basis of which Kazpatent shall take a decision to grant a patent.

(5) Where the variety or breed does not comply with the conditions of patentability, Kazpatent shall, on the basis of the report of the State Commission, take a decision to refuse the grant of a patent and the applicant shall, within one month from the date of the decision, be notified accordingly. Where the applicant wishes to contest the decision taken by Kazpatent, he may do so, within three months following the date of receipt of the decision, by lodging an appeal with Kazpatent.

The Board of Appeals shall consider the appeal within three months from the date of its receipt. The applicant may, within six months from the date of the decision taken by the Board of Appeals, contest it in court.

(6) The applicant may acquaint himself with all documents cited by the examiner. Kazpatent shall, within one month from the date of receipt of the applicant's request, furnish him copies of all cited documents.

TITLE IV

AUTHOR AND PATENT OWNER

Article 11

Author (Breeder) of a Selection Achievement

- (1) A natural person whose creative work resulted in the breeding, development or discovery of a selection achievement shall be recognized as the author thereof
- (2) Where a selection achievement is the result of joint creative work of several natural persons, those persons shall be recognized as joint authors (co-authors) thereof. The conditions for exercising the rights that belong to co-authors shall be determined by agreement between them.
- (3) Natural persons shall not be recognized as joint authors where they have simply given the author (or authors) technical or organizational assistance or helped him (or them) in securing legal rights in the variety or breed.

Article 12

Rights of the Author of a Selection Achievement

- (1) The authorship of a selection achievement shall be an inalienable personal right. That right shall enjoy protection of unlimited duration.
- (2) The authorship shall be attested by a certificate of authorship granted by Kazpatent to the author of a selection achievement that has been entered in the respective State Register.
- (3) The author shall have the right to give his own name to his selection achievement.
- (4) The author shall, for the life of the patent, be entitled to remuneration from the patent owner for the use of the selection achievement that he bred, discovered or developed. The amount of remuneration and the terms of payment shall be stipulated in a contract between the patent owner and the author. In such a case the amount of annual remuneration shall be not less than 5% from any proceeds derived by the patent owner from the use of a selection achievement including earnings derived from the sale of licenses.

The remuneration shall be paid to the author within six months following the expiration of the year in which the use of the selection achievement started unless otherwise provided in the contract between the patent owner and the author.

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

Article 13
Owners of a Selection Achievement Patent

A patent shall be granted to:

- author (or authors);
- author's heir (or authors' heirs);
- natural persons and/or legal entities (subject to their consent) specified by the author (or authors) or his (or their) successor in title in the application for the grant of a patent or in the request that has been filed with Kazpatent prior to the date of registration of the selection achievement in the State Register;
- the employer where the variety or breed has been bred by the employee in the line of duty and the contract concluded between the author and the employer does not provide otherwise.

Where there are several persons in whose name a patent is sought, only one patent shall be granted.

Article 14
Rights and Obligations of Patent Owners

(1) The owner of the patent shall have the exclusive right to use a selection achievement provided that such use does not infringe the rights of other patent owners. The following acts in respect of the selection achievement require the authorization of the patent owner:

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

(2) The right of the patent owner shall also extend to propagating material produced from the protected seeds or marketable animals bred from the protected pedigree animals which have been on the market without the authorization of the patent owner.. (3) The provisions of paragraph (1) of this Article shall also extend to:

- seeds of varieties or pedigree material of breeds which are essentially derived from the selection achievement, where the selection achievement is not itself an essentially derived selection achievement;

- seeds of varieties or pedigree material of breeds which are not clearly distinguishable from the selection achievement;
 - seeds of varieties or pedigree material of breeds distinguishable from the selection achievement only by variations caused by any method allowing to maintain the genotype or combination of genotypes of the initial variety or breed except for such methods as individual selection, selection of induced mutant, or of a somaclonal variety, backcrossing, or transformation by genetic engineering;
 - seeds of varieties or pedigree material of breeds whose reproduction requires the repeated use of the selection achievement.
- (4) Other rights shall be determined by the legislation of the Republic of Kazakhstan.
- (5) The patent owner shall:
- put to civil turnover the variety or breed authorized for use for production purposes;
 - throughout the life of the patent, maintain the variety of breed in such a way that all characteristics defined in the official description of the variety of breed established by a respective State Commission are maintained;
 - pay an annual maintenance fee in respect of the patent.

Article 15
Liability for Infringement of the Rights of Patent Owners

- (1) Any natural person or legal entity using a variety or breed in a manner contrary to the provisions of this Law shall be deemed to be infringing the rights of the patent owner.
- (2) Any natural person or legal entity who:
- discloses, without the authorization of the patent owner, information constituting a trade secret in relation to any variety or breed for which an application has been filed;
 - uses for the produced and sold protected variety or pedigree animals a denomination which is different from the registered denomination of the variety or breed;
 - uses for the produced and sold protected variety or pedigree animals a denomination which corresponds so closely to a registered denomination that it is misleading;
 - uses for the produced and/or sold seeds or pedigree material a denomination of a registered selection achievement where the said seed or pedigree material is not of the registered selection achievement;
 - furnishes documents containing false information on the selection achievement;

shall be deemed to be infringing the rights of the patent owner.

(3) The owner of the patent shall be compensated by the infringer for the unlawful use of the selection achievement, as well as for other damage sustained in the result of infringement of this Law in accordance with legislation in force.

(4) The exclusive or non-exclusive licensee may, acting on the basis of a written authorization of the patent owner or a power of attorney issued by him, also bring an action against the infringer.

(5) Damages may be claimed within the period from the date an infringement has been committed and throughout the period of the infringement of the patent.

Article 16 Succession in Title

The right to file an application for the grant of a selection achievement patent and also the right to obtain the same, the exclusive right to use a selection achievement, as well as the right to remuneration and proceeds from the use thereof shall be transferable by succession.

Article 17 Acts Not Infringing the Exclusive Right of the Patent Owner

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

- acts done privately and for non-commercial purposes;
- acts done for experimental purposes;
- the use of the selection achievements as the initial material for the purpose of breeding other variety or breed, except for the cases provided for in Article 14 (1) and (2) of this Law.

TITLE V

THE USE OF SELECTION ACHIEVEMENTS

Article 18 License Contract

(1) Any person who is not the patent owner shall have the right to use the selection achievement subject to authorization of the patent owner (granted on the basis of a license contract).

(2) Under a license contract the licensee may be afforded:

-
the right to use the selection achievement while the licensor retains the right to use the same

selection achievement and the right to grant licenses to third parties (a non-exclusive license contract):

- the right to use the selection achievement while the licensor retains the right to use the same selection achievement but has no right to grant licenses to third parties (an exclusive license contract);
- the right to use the selection achievement while the licensor has neither the right to use the same selection achievement nor the right to grant licenses to third parties (a full license).

Where a license contract does not specify the type of a license, it shall be presumed to be non-exclusive.

(3) A contract (a sub-license contract) by virtue of which a licensee affords a nonexclusive license to use the selection achievement to another person (a sub-licensee) may be concluded only in cases provided for in the license contract.

Liability before the licensor for actions carried out by a sub-licensee shall be borne by the licensee except where the license contract provides otherwise.

(4) A license and sub-license contracts shall be concluded in writing and shall be registered with Kazpatent. Failure to comply with the said conditions shall render the contract null and void.

(5) In case of extraordinary situations in the State or other *force majeure* conditions, the Government of the Republic of Kazakhstan has the right to permit the use of selection achievement without permission from the patent owner but must inform the patent owner immediately and provide suitable remuneration. Any dispute arising out of the amount of remuneration shall be settled in court.

Article 19 Open License

The patent owner may file with Kazpatent a notice to the effect that he undertakes to grant the right to obtain a license to any interested party (an open license).

Any person wishing to acquire an open license shall conclude with the patent owner a contract of payments. The contract shall be registered with Kazpatent. Any dispute arising out of the terms of the contract shall be settled in the court.

The above notice of the patent owner shall be valid for three years from the date of publication of the particulars of an open license in the Gazette. During the said period the maintenance fee shall be reduced by 50% as from January I of the year following the year of publication of the particulars of the open license.

Article 20
Compulsory License

(1) Where the patent owner has failed to continuously use the selection achievement within three years following the date of publication of the particulars of the patent grant and has declined an offer to conclude a license contract on commercially acceptable terms, any person may file an appeal with the court requesting the grant of a compulsory non-exclusive 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 the said license and shall determine the time limits of the use, the amount and terms of payment. The amount of payment shall not be lower than the market value of the license to be determined in accordance with the established practice.

Any compulsory license shall be primarily granted in order to satisfy the requirements of internal market in the Republic of Kazakhstan.

The person to whom a compulsory license was granted may assign the right to use the selection achievement to another person only together with the enterprise that uses the selection achievement.

The court may decide to revoke a compulsory license if the grounds leading to the grant thereof no longer exist.

(2) The patent owner who cannot use the selection achievement without infringing the rights of the owner of another selection achievement patent who has declined an offer to conclude a license contract on commercially acceptable terms, shall have the right to file an appeal with the court requesting the grant of a compulsory non-exclusive license to use the selection achievement in the territory of the Republic of Kazakhstan.

When the said compulsory license is granted, the court shall determine the scope of use of the selection achievement the patent for which belongs to another person, the time limits of the use, the amount and terms of payment. The amount of payment shall not be lower than the market value of the license to be determined in accordance with the established practice.

The right to use the selection achievement acquired on the basis of this provision may be assigned only together with the patent granted for this selection achievement.

TITLE VI

LAPSE OF PATENT

Article 21
Invalidation of Patent

(1) A patent may be contested and invalidated, at any time during its period of validity, if it is established:

- that the patent has been granted on the basis of incorrect information as to uniformity and stability of the selection achievement supplied by the applicant;
- that on the date on the grant of a patent the selection achievement did not meet the condition of novelty or distinctness;
- that the patent owner indicated in the patent is not entitled to the patent.

(2) The notice of opposition filed on the grounds specified in subparagraphs one and two of Article 21 (1) shall be filed with Kazpatent. The Board of Appeals shall, within six months from the date of receipt of the notice of opposition, consider it unless an additional testing must be carried out. The person who has filed the notice of opposition shall acquaint the patent owner with the grounds stated in the notice.

The decision taken by the Board of Appeals on the opposition to the patent grant may, within six months from the date of the decision, be contested by the person who has filed the notice or by the patent owner.

Article 22 Cancellation and Premature Expiration of Patent Validity

(1) Kazpatent shall cancel a selection achievement patent if it is established:

- that the patent has been invalidated in conformity with Article 21 of this Law;
- that the conditions of uniformity and stability are no longer fulfilled by the variety or breed;
- that the patent owner does not provide at the request of the competent testing authority, within 12 months, the seeds, pedigree material, documents or information deemed necessary
- for verifying the maintenance of the variety or breed or fails to provide opportunity for in-site inspection of the variety or breed for the above purpose;
- that the patent owner does not propose, where the denomination of the selection achievement is cancelled, another suitable denomination.

(2) The validity of a patent shall expire prematurely at the request of the patent owner, filed with Kazpatent as from the date of publication of information concerning the cancelled patent in the Gazette.

Where the patent owner fails to pay the prescribed maintenance fee by the prescribed time limit.

TITLE VII

FINAL PROVISIONS

Article 23

Settlement of Disputes Arising from the Application of This Law

Disputes arising from the infringement of Law on selection achievement patents granted for varieties or breeds shall be settled by courts.

The competence of courts shall extend to disputes arising from:

- the authorship of a variety or breed;
- the identification of the patent owner;
- infringements of the exclusive right to use the selection achievement and of other economic rights of the patent owner;
- the conclusion and execution of license contracts for the use of the selection achievement;
- the payment of compensation under this Law;
- the remuneration payable to the author under the contract;
- the grant of a patent;
- the grant of a compulsory license;
- other disputes arising from the protection of rights afforded by a patent.

Article 24

The Use of Selection Achievements for Production Purpose

(1) The entry of plant varieties and animal breeds in the State Registers of Selection Achievements Authorized for Use for Production Purposes shall be effected by the State Commissions on the basis of results of State tests carried out in order to determine economic utility of the variety or breed. With regard to vines, trees, ornamental plants, fruit and forest trees, the entry into the State Register shall be effected on the basis of expert evaluation in accordance with the prescribed procedure

(2) Marketed seeds or pedigree material shall be accompanied by a certificate attesting the variety or breed and the origin and quality thereof. The certificate shall be issued only for seeds of the variety or pedigree material of the breed which has been authorized for use in that region (area).

Article 25
Fees Payable for Legal Acts

The performance by Kazpatent or the State Commissions of legal acts provided for in this Law including the receipt of applications for the grant of a patent and registration thereof, carrying out examination of selection achievements, grant of patents and any other legal acts giving rise to rights and obligations for participating parties, shall, under legislation in force, be subject to the payment of patent fees to Kazpatent.

Article 26
Publications

(1) Kazpatent shall publish the Gazette containing the following information:

- the particulars of applications for the grant of a patent on which preliminary examination has produced a favorable result, stating the priority date of the selection achievement, the name of the applicant, the denomination of the selection achievement, the name and forenames of the author where the latter has not waived his right to be identified in that capacity;
- any decision taken in respect of an application for the grant of a patent;
- any change in the denomination of a selection achievement;
- any decision for invalidation or cancellation of patents;
- any other information relating to the protection of selection achievements.

(2) Any person shall have the right to inspect the documents of an application on which examination has produced a favorable result once the particulars of the application have been published.

Article 27
Patenting of Selection Achievements Abroad

Nationals and legal entities of the Republic of Kazakhstan shall have the right to file an application for the protection of selection achievements bred in the territory of the Republic of Kazakhstan with a competent authority of another State no earlier than three months after the filing of the corresponding application with Kazpatent or, after verification of the presence of information constituting a State secret carried out in accordance with the procedure prescribed by the legislation of the Republic of Kazakhstan, before the expiration of the prescribed time limit.

Article 28
Rights of Foreign Natural Persons and Legal Entities

(1) Foreign natural persons and legal entities shall, on the basis of international treaties to which the Republic of Kazakhstan is party, or on the basis of reciprocity, enjoy the rights

provided for in this Law and other legislative and regulatory enactments of the Republic of Kazakhstan in the field of protection of selection achievements on the same footing as natural persons and legal entities of the Republic of Kazakhstan.

(2) Natural persons who are not nationals of the Republic of Kazakhstan but having their residence in its territory shall enjoy the rights provided for in this Law and other legal enactments relating to the legal protection of selection achievements on the same footing as natural persons and legal entities of the Republic of Kazakhstan unless otherwise provided in this Law and other legal enactments.

Article 29
International Treaties

Where an international treaty that has been ratified by the Republic of Kazakhstan contains provisions different from those specified in this Law, the former shall prevail.

President of the Republic of Kazakhstan

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