

Law on Protection of Selected Achievements

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Chapter I **General Provisions**

Basic Concepts

1. Definition of the concepts used in the Law:

“the selected achievement” – a variety of plants or a breed of animal representing the result of the purposeful economic activity of a person;

“a variety of plant” – a group of plants which is defined, regardless of the protective ability, according to the properties characterizing the given genotype or a combination of genotypes and differs from other plant groups of the same botanical taxon with one or several signs.

The variety may be represented by one or several plants, by some or several parts of a plant, provided such part or parts may be used for reproduction of the whole plants of the variety.

The protected categories of the selected achievements are: breed, clone, line, hybrid of the first class generation and population.

“a plant seed” – a plant or part thereof, used for the purposes different from those of the reproduction of a variety;

“a breed of animal” – group of animals, which possesses, regardless of the protective ability, the genetically conditioned biological and morphological properties; herewith, some of them have specific nature and it differs them from animals of other groups. Breed may be represented by male or female individuals, or by breeding material.

The protected categories of animal breed are: type and line;

“The pedigree animal” – an animal considered for the reproduction and propagation of the breed;

“the breeding material” – a pedigree animal, its gametes or zygotes (embryo);

“the marketable animal” – an animal which is used for the purposes different from those of the reproduction of the breed;

“a selected achievement protected by a certificate” – the breed of animals or a variety of plants, which is registered in the State Register of the protected selected achievements;

“the applicant” – a natural or a juridical person (employer), who has filed an application for a selected achievement;

“the inductive mutant” – a body which, as a result of mutation caused by reaction of chemical or physical factors, has a different sign and properties;

“beckros” – rising cross-breeding, when hybrid is crossed with one of the parents for the second time;

“clone” – vegetatively reproductive generation of one plant.

Legislation of Georgia on Protection of Selected Achievements

2. Legislation of Georgia on protection of selected achievements consists of this Law and other legislative acts.

The Legal Protection of Selected Achievements

3.—(1) The right to a selected achievement shall be protected by the Law and confirmed by a patent certifying the exclusive right.

(2) The patent shall certify the exclusive right of a patentee to the use of a selected achievement.

(3) In accordance with this Law, the State Commission of the Ministry of Agriculture and Food of Georgia for Testing and Protecting Selected Achievements (hereinafter referred to as “the Commission”) shall pursue a single policy in the sphere of the legal protection of selected achievements. The Commission accepts and considers applications for new varieties, conducts expert examination and trials, takes control over the risk factors related to the use of selected achievements created under the biotechnology, keeps the State Register of Protected Selected Achievements, and the State Register of Selected Achievements Admitted for Use, issues a patent certifying the exclusive right, publish official information on granting a patent on selected achievements.

(4) A selected achievement, on which the Commission has issued a patent, shall be registered in the State Register of the protected selected achievements.

(5) The scope of the legal protection of the rights provided for by the patent for a selected achievement, shall be determined by a totality of essential features fixed in the description of the selected achievement.

(6) The terms of validity of a patent is 30 years from the date of the registration of selected achievements in the State Register, as for such cultures as grape varieties, woody, fruit and forest trees, decorative, tea, subtropical and forest species, including rootstock cultures shall make up 35 years.

Chapter II

The Conditions for Protection of Selected Achievements and the Procedure for the Registration of an Application for the Issue of a Patent

The Conditions for Protection of Selected Achievements

4.—(1) A patent certifying the exclusive right to a selected achievement is issued in the case it meets the protection criteria, and the species to which this breed belongs is included in the list of botanical and zoological genera and species.

(2) The protection criteria of a selected achievement include:

(a) novelty

A variety or breed shall be regarded as new, if the seeds of this variety of plants or pedigree material of a given selected achievement have not been sold or transferred to other persons in any other way by a plant breeder or his legal successor (employer) for the use of the selected achievement; on the territory of Georgia – earlier than one year before the date of filing an application for the issue of a patent; on the territory of another State – earlier than four years before filing the application, and earlier than six years before this date as this concerns grapes, woody, decorative, fruit and forest trees.

(b) distinctiveness

A selected achievement, according to basic properties, shall differ from any other widely known selected achievement existing by the time of the filing of an application.

A breed shall be regarded as widely known, if the data about it are indicated in the official catalogues or the reference stock, or are strictly described in the publications.

The filing of an application for a patent or publication shall also make a selected achievement widely known since the date of its filing, provided that a patent has been issued for this selected achievement, or that a selected achievement has been admitted for use.

(c) homogeneity

One and the same variety plants or animal breeds, according to morpho-biological properties, shall be sufficiently homogeneous with account of some deviations typical of the process of their specific reproduction.

(d) stability

A selected achievement shall be regarded as stable, if its basic properties remain invariable in the process of repeated propagation or at the end of each cycle of propagation in case of special cycle.

(3) If a selected achievement is included in the State Register of Selected Achievement Admitted for Use, and the genera and species, to which the selected achievement belongs, have been included in the list of botanical and zoological genera and species and put in the State Register after the registration, the right considered under Article 18, and the requirements of points (1) and (2) of this Article shall not be applied to such species.

An Application for the Issue of a Patent

5.—(1) The right to the presentation of an application for a patent to the Commission shall belong to an author of a selected achievement or his legal successor (employer).

(2) If a selected achievement has been bred, created or revealed during the performance of official assignment or official duties, the right to file an application for patent belongs to the employer, unless the contrary is provided by the agreement concluded between the breeder and the employer.

(3) The application may be presented by several applicants, if they have bred the selected achievement in common.

The application may be presented by the representative, who by dint of the powers based on the letter of attorney deals with cases associated with the receipt of patents.

The employees of the Commission shall have no right to file an application for patents for selected achievements, with the exception of the employees, who, before starting their work in the Commission, used to participate in creation of the selected achievements and their creative contribution is proved.

(4) The application for a patent shall contain:

(a) the request for a patent;

(b) the inquiry form of a selected achievement;

(c) the document that confirms the payment of a fixed duty, or exempts from the duty.

(5) The form and the content of the listed documents are constituted by the Law.

(6) An application shall concern one selected achievement.

(7) If the applicant is an employer, in accordance with the requirement of point (2) of this Law, the application shall be appended with the copy of the agreement concluded with the author of the selected achievement.

(8) The application shall be presented either in Georgian or any other languages. If the application is submitted in other than the Georgian language, the application shall be appended with translations into Georgian. The application about the request for a patent is registered in the Georgian language according to the form constituted by the Commission.

The Name of a Selected Achievement

6.—(1) A selected achievement shall have its name offered by the applicant and approved by the Commission. If the Commission does not approve the name, the applicant is obligated, within the stated term, to present a new name. The name of a selected achievement shall make it possible to identify this achievement; it shall be brief and differ from the names of the existing selected achievements of the same or related botanical and zoological species; it shall not contradict to the principles of humanity and morality; it shall not consist of the figures only, mislead about its properties and origin, its significance, the breeder's personality.

(2) Any person who makes use of the protected selected achievement shall use the name registered in the State Register of Protected Selected Achievements.

(3) The name of a selected achievement, with the consent of the Commission, may be altered only in exceptional cases.

The Priority of a Selected Achievement

7.—(1) The priority of a selected achievement shall be established according to the date of the receipt by the Commission of the application for a patent.

(2) If two or more applications for one and the same selected achievement are filed on one and the same date, a priority shall be fixed according to the earlier date of the dispatch of the application; if the date of the dispatch is the same as well, then priority shall be given to the application that has been registered earlier in the Commission.

(3) If the application received by the Commission was preceded by the application filed with one of the foreign States with which Georgia had concluded the agreement on the legal protection of selected achievements, the applicant shall enjoy the priority of the first application during 12 months from the date of presentation of the application to the Commission.

(4) In the application addressed to the Commission the applicant shall indicate the date of priority of the first application. Within six months from the date of receipt of the application by the Commission, the applicant shall be obligated to present the copy of the first application certified by the competent organization of the respective State and its translation into Georgian. In this case the applicant shall have the right to submit to the Commission the additional documents and the material needed for tests within three years from the date of filing the application with the foreign State.

Appeal Against the Decision of the Commission

8. The decision of the Commission on approval or refusal on the issuance of a patent, or on regarding the patent as invalid or cancelled, may be protested in the court.

Chapter III

Appraisal of the Protective Ability of a Selected Achievement

Preliminary Expert Examination of the Application for a Patent

9.—(1) A preliminary expert examination of the application for a patent shall be conducted within a month from the date of priority. During the preliminary expert examination the experts shall fix the date of priority and verify the necessary documents whether they comply with the current requirements.

(2) In the process of preliminary expert examination, the applicant shall be authorized to supplement, or clarify or correct the application materials.

(3) If, in accordance of the requirements of the preliminary expert examination, the necessary clarifications and supplements have not been introduced within the fixed period, or the documents missing on the date of receipt of the application have not been submitted, the application shall not be accepted for consideration and the applicant shall be notified about this.

(4) The applicant shall be authorized, within three months from the date of receipt of the notification, to appeal against the negative decision of the preliminary expert examination in the expert's council of the Commission.

In the case of a positive decision taken by the preliminary expert examination, the applicant shall be notified about the receipt of the application and about the publication of the accepted applications in the official bulletin of the Commission.

The Expert Examination of a Selected Achievement as to its Novelty

10.—(1) Any interested person is authorized, within six months from the date of publication of information about the application, to send to the Commission his claim about the novelty of the stated selected achievement; the Commission shall notify the applicant who, on his side, shall have the right, within three months, to send to the Commission his motivated objection about the issues raised in the claim.

(2) The commission, on the basis of the available materials, shall take a decision and inform the applicant.

(3) If a selected achievement fails to comply with the novelty criterion, a negative decision shall be taken to refuse to issue a patent.

(4)

*Tests of a Selected Achievement for its Distinctiveness,
Homogeneity and Stability*

11.—(1) Tests of a selected achievement on distinctiveness, homogeneity and stability shall be carried out according to the methods and within the periods fixed by the Commission.

(2) The applicant shall be obligated to present for tests the necessary quantity of seeds, sapling or pedigree materials and send at the address and within the period indicated by the Commission.

(3) The Commission, on the basis of the corresponding agreement, shall have the right to use the results of the tests carried on by the competent bodies of other States with which the appropriate agreements have been concluded, and by other organizations under the agreement concluded with the Commission, and also to apply the data presented by the applicant.

(4) If a selected achievement corresponds to the protection criteria and the name of this achievement meets the requirements of Article 6 of this Law, the Commission shall take a decision on the issue of a patent and the applicant, in cooperation with the Commission, shall describe the selected achievement.

The Fee

12. The fee, established for implementation of the activity in relation to the issue of a patent for a selected achievement, is paid in the Commission. The list regarding the activities for implementation of which the fee is paid, its amount, the period of payment, the rule for reduction, exemption from, or refund of the fee is defined by the Ministry of Agriculture and Food of Georgia.

Publication

13. The Commission issues a special official bulletin where they publish the information about filing the application for the issue of a patent, granting the license for the use of a selected achievement and on introduction of changes into these data.

Chapter IV **Protection of a Selected Achievement**

Registration of a Selected Achievement

14. The following records shall be made in the State Register of Protected Selected Achievements:

- (a) the genus and species of a plant or animal;
- (b) the name of a selected achievement;
- (c) the date of registration of a selected achievement and its registration number;
- (d) the name and address of the owner of a selected achievement;
- (e) the name, patronymic and surname of the author of the selected achievement and his address;
- (f) the document certifying the transfer of the patent to another person, indicating the name, patronymic and surname of that person and his address;
- (g) the data on licenses;
- (h) the date of expiration, or termination of the patent's validity (with indication of reasons).

The Patent

15.—(1) A patent, certifying the exclusive right to a selected achievement, shall be handed over to a person, whose right is certified under the regulation set forth by this Law. All the authors shall be indicated in the patent.

(2) In the event of the loss of the patent or damage inflicted on it, a duplicate may be issued.

The Right of the Patent Holder

16.—(1) The exclusive right of the patent holder implies that any person shall be obliged to receive a license (permission) from the patent holder about the use of the following selected achievements protected by the patent:

- (a) production and reproduction;
- (b) the sowing conditions for subsequent propagation (reproduction);
- (c) storage;
- (d) sale and other types of marketing;
- (e) exportation from the territory of Georgia;
- (f) importation onto the territory of Georgia.

(2) Right of the patent holder shall also extend to the vegetative material obtained from seeds and to the marketable animals, which have been introduced into the economic turnover without the permission of the patentee.

It is necessary to obtain the permission of the patent holder in order to perform the actions referred to in point (1) of this Law with the seeds of a variety and the pedigree material of a breed, which essentially inherit the signs of varieties or breeds protected by the patent, or, require the repeated use of protected varieties for the production of seeds.

(4) The right of the patentee to the use of a selected achievement, indicated in point (1) of this Article, is certified in the case:

(a) it inherits the most essential signs of the selected achievement protected by a patent preserving, as it does, the basic signs reflecting the genotype or the combination of the genotypes;

(b) it corresponds to the genotype or genotype combinations of a selected achievement protected by the patent, with the exception of deviations which may be caused by the use of such methods as the individual selection from the initial variety or breed, the selection of induced mutant backcross, and genetic engineering.

Actions which Are not Recognized as a Breach of the Patentee's Rights

17. The following actions shall not be recognized as a breach of the right of a patent holder:

(a) actions performed on a protected selected achievement for personal and selective purposes;

(b) the use of a protected selected achievement as initial material for creation of new varieties or breeds; actions in respect of these varieties and breeds indicated in point (1) of Article 16, with the exception of the cases provided for by point (2) of the same Article;

(c) the use of the locally raised vegetative materials obtained in an enterprise for two years as seeds for growing a variety on its territory (The list of species of plants shall

be determined by the Ministry of Agriculture and Food).

(d) reproduction of marketable animals for the purposes of their use at given enterprises;

(e) any actions with seeds, vegetative and pedigree materials and marketable animals which have been introduced into the economic turnover with the consent of the patent holder.

Protection of a Selected Achievement before Adoption of a Patent

18.—(1) The applicant is granted a right to protect a selected achievement from the date of receipt of the application by the Commission to the date of issue of a patent.

(2) After the receipt of a patent, the patentee shall be authorized to get compensation from the person who has performed the actions indicated in point (1) of Article 16 of this Law without the consent of the applicant during the period of the temporary protection of the selected achievement.

(3) The applicant, before the receipt of a patent, shall be permitted to sell or transfer seeds and pedigree materials for scientific purposes alone, or give them to production with the aim of creating the stock of seeds and pedigree materials.

(4) If the applicant or another person with his consent breach the above-named requirements, the right considered under point (2) of this Article shall not be applicable.

Chapter V **The Use of a Selected Achievement**

License Agreement

19. Under the conditions set by the license agreement, a patent holder (licensor) shall transfer the right to the use of a selected achievement to another person (licensee).

The Licensee's Right

20. A licensee shall be authorized to use a selected achievement and perform the actions envisaged by point (1) of Article 16 of this Law.

A licensee may not assign a license to the third persons and shall not have the right to grant sub-licenses unless this is provided by the license agreement.

Limitations Imposed on the Licensee under the Conditions of the License Agreement

21. A license agreement the conditions of which do not derive from the rights provided under the patent, and impose limitations on the licensee's rights shall be regarded as cancelled.

A License

22.—(1) A patent holder is authorized to publish in the official bulletin of the Commission the statement to the effect that any person, in agreement with him, shall have the right to use a selected achievement.

(2) The Commission shall make record on granting an open license with an indication of the amount of payments in the State Register of Protected Selected Achievement.

(3) The amount of the fee for keeping the patent in force shall be reduced by 50 per cent since January 1 of the year that succeeds the year of the publication of the application for granting an open license.

(4) Upon the application of the patent holder and given the consent of all the owners of the license, the Commission shall make a record about the termination of the license validity in the State Register of Protected Selected Achievements.

The Issue of a License without the Consent of a Patent Holder

23.—(1) After expiration of three years period from the date of the receipt of a license, the Commission may issue a license without the consent of a patent holder, provided only the following conditions are observed:

(a) the patent holder does not perform a selected achievement, or performs less than the needed amount, or performs it outside Georgia;

(b) there are no reasonable excuses that prevent the patent holder from granting to the applicant the license for a selected achievement;

(c) the person who requests the license has proved that financially and in other respects he is competent to make effective use of the license.

(2) The Commission, without consent of the patent holder, shall fix the payments which the owner of the license is obliged to make to the patent holder.

(3) The licensee is given right to perform actions indicated in point (1) of Article 16 of this Law, so that the patent holder shall retain all the rights granted by the patent for a selected achievement.

(4) The patent holder is obligated to transfer to the licensee seed and breeding materials of the race for use.

(5) The term of validity of the license shall be fixed by the Commission for four years without the consent of the patent holder. This term may be prolonged, if the inspection confirms that the conditions for the issue of the license continue to exist. The Commission shall annul the license if its owner violates the conditions for its issue.

Chapter VI

The Rights of the Author of a Selected Achievement

The Right of the Author of a Selected Achievement

24.—(1) The author of a selective achievement is a natural person, whose creative labour has been used to create, breed and reveal a selected achievement.

(2) The author of a selected achievement is authorized to receive remuneration from the patent holder (employer) for the use of a selected achievement.

(3) Disputes regarding authorship shall be settled in court.

Remuneration of the Author of a Selected Achievement

25.—(1) The author of a selected achievement shall be authorized to receive remuneration from the patent holder (employer) for the use of the breed, created and revealed selected achievement in the period of the patent's validity. The amount and terms of the payment of the remuneration shall be defined by the agreement concluded between the patent holder and the author of the selected achievement.

(2) If a variety and breed has been created or revealed by several authors, the remuneration shall be distributed on the basis of their agreement.

(3) The remuneration shall be paid to the author within six months after the expiration of every year in which the selected achievement has been used, or within the period considered by the agreement.

(4) For the delayed payment of the remuneration, the patent holder (employer) shall pay to the author a penalty for every day of default of payment in an amount fixed by the agreement.

Chapter VII

The State Regulation of the Creation and Use of Selected Achievements

The Stimulation by the State of the Creation and Use of a Selected Achievement

26.—(1) The program financing of the selective works shall be performed for the purposes of stimulation of the creation and use of selected achievements.

(2) The program includes special bonuses for the stimulation of popular and scientific selections, for the creation of productive and high quality species, for the development of selective technologies, for the introduction of domestic and international experiences, for the organizational and economic support of the selective activity.

The Preservation of a Selected Achievement

27.—(1) The patent holder shall be obligated to sustain the variety or breed (hybrid) within the entire period of the patent's validity in order to preserve the signs indicated in the description of the variety or breed made on the date of their registration in the State Register of Protected Selected Achievement.

(2) The patent holder shall be obligated, upon the inquiry, to present variety seeds or pedigree material for control tests to the Commission, and make it possible to carry on inspections on the spot.

Recognition of a Patent as Void

28.—(1) Any person shall be authorized to address to the Commission with the application for the recognition of the patent void.

(2) The Commission shall be obliged to consider the application and take a decision on this matter within six months. The term for taking a decision may be extended unless additional tests are required.

(3) The Commission shall recognize the patent as void, if:

(a) it was issued on the basis of unconfirmed data on the homogeneity and stability of a selected achievement, submitted by the applicant;

(b) the selected achievement failed to comply with the novelty and distinctiveness criterion on the date of the issue of the patent;

(c) the person referred to in the patent as a patent holder had no legal basis for receipt of the patent.

Cancellation of a Patent

29. A patent shall be cancelled by the Commission, if:

(a) the selected achievement no longer complies with the conditions of the homogeneity and stability;

(b) the patent holder has failed to submit within 12 months, at the request of the Commission, seeds and pedigree material, documents and information needed to verify the safety of the selected achievement, or has failed to make it possible to carry on inspection of the selected achievement on the spot;

(c) the patent holder has failed to pay the fee for keeping the patent in force within the fixed period;

(d) the name of the selected achievement is being cancelled, but the patent holder has failed to offer another suitable name.

*Breaching the Other Rights of a Patent Holder and
Plant or Stock Breeder*

30.—(1) A natural or juridical person shall be deemed to be guilty of breaching the other rights of a patent holder, if he:

(a) confers on the produced and sold seeds and pedigree material the name that differs from the registered name of the given selected achievement;

(b) confers on the produced and sold seeds and pedigree material the name of the registered selected achievement, although the produced and sold seeds and pedigree material are not the seeds and pedigree material of this selected achievement;

(c) confers on the produced and sold seeds and pedigree material the name so much similar to the name of the registered selected achievement that they could be confused;

(d) makes unreliable records in the State Register of a Protected Selected Achievement and in the accounting documents or gives instructions on their entry;

(e) forges documents or issues false documents for the implementation of the provisions of this Law or gives instructions on forging or making such documents;

(f) presents the documents containing inauthentic information about selected achievements;

(g) sells seeds and pedigree material without certificates.

(2) A person performing actions considered by point (1) of this Article shall bear responsibility in keeping with the current legislation of Georgia.

Regulations for Dispute Settlement

31. Disputes over implementation of this Law shall be examined in court.

**Chapter VIII
International Cooperation**

The Right to File an Application in Another Country

32. A patent holder or his representative shall be authorized to file an application for the legal protection of a selected achievement to the competent bodies of another State.