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The Law of the Republic of Armenia

Adopted by
the National Assembly
on November 23, 1999

on the Protection of Selection Achievements

CHAPTER I GENERAL PROVISIONS

Article 1. Purposes of the Law

The present Law regulates the economic relationships and the non-economic personal relationships associated with the creation, legal protection and exploitation or use of the plant variety selection achievements.

Article 2. Legislation on the Protection of Selection Achievements

The legal relations in the field of protection and exploitation or use of selection achievements shall be regulated by this Law, Civil Code of the Republic of Armenia (RA) and other legislative instruments of the RA. Where the international treaties of the RA contain provisions that differ from those set out in this Law, the provisions of such international treaty shall apply.

Article 3. The Main Terms Used in the Law

The following main terms are used in this Law:

- a) variety- a plant grouping within a single botanical taxon of the lowest known rank, which can be defined by the expression of characteristics resulting from a given genotype or combination of genotypes, is distinguished from any other plant grouping of the same botanical taxon by the expression of at least one of the said characteristics and can be considered as a unit with regard to its suitability for being propagated unchanged. The variety may be represented by a single part or parts of a plant provided such part or parts may be used for the purpose of reproduction of entire plants of the variety. The protected categories of the variety shall be the clone, the first generation hybrid, the population, the line;
- b) selection achievement- a plant variety acquired by an artificial way and having one or several economic characteristics that distinguish it from existing plant varieties;
- c) seed material (nursery material) - a plant or its single part used for the purpose of reproduction of the variety;
- d) plant material - a plant or its part used for purposes other than reproduction of the variety;

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- e) protected selection achievement - a plant variety registered in the State Register of Protected Selection Achievements (hereinafter, State Register);
- f) commonly known variety - a selection achievement having a precise description, which has been entered in the State Register ;
- g) applicant –a natural person or a legal entity, who has filed an application for the grant of a patent for a selection achievement;
- h) author - a natural person or a group thereof whose creative work resulted in the creation of the variety;
- i) breeder - an author of the variety, his/her heirs, persons who are the author's employers or their successors in title;
- j) Authorized Body – the State authorized body who performs the granting of the patent for the selection achievement;
- k) Appeal Board – the commission created by the Authorized Body for the settlement of disputes related to the examination of the selection achievements.

Article 4. Legal Protection of Selection Achievements.

1. The rights in a selection achievement shall be protected by the Law and shall be certified by a patent for a selection achievement.

2. The patent shall certify the exclusive right of the patent owner to use the selection achievement.

3. A selection achievement for which a patent has been granted shall be registered in the State Register.

4. The term of a patent shall be 20 years from the date of registration of the selection achievement in the State Register. For the varieties of the grapevines and ornamental, fruit and forest trees, including rootstocks thereof, the said period shall be 25 years.

CHAPTER II

**CONDITIONS FOR LEGAL PROTECTION OF SELECTION
ACHIEVEMENTS AND THE PROCEDURE FOR FILING AN
APPLICATION FOR THE GRANT OF A PATENT**

Article 5. Criteria of the Legal Protection of Selection Achievement

The criteria of the legal protection of selection achievement shall be the following:

- 1) Novelty.

A plant variety shall be deemed to be new if, at the date of filing of the application for the grant of a patent, the seed material (nursery material) of the given variety has not been sold or otherwise disposed of to others, by the breeder, for purposes of exploitation of the variety

- (a) in the territory of the RA, earlier than one year before that date;
- (b) in the territory of any other State, earlier than four years or, in the case of grapevines and ornamental, fruit and forest trees, earlier than six years before the said date;

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2) Distinctness.

A selection achievement shall be deemed having distinctness if it is clearly distinguishable from any other commonly known selection achievement existing at the time of the filing of the application;

3) Homogeneity.

A plant variety shall be deemed homogeneous if, taking into account peculiarities of its propagation, the plants of such variety are sufficiently uniform in their essential characteristics;

4) Stability.

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

Article 6. Application for the Grant of a Patent

1. The application for a patent for selection achievement (hereinafter, application) shall be filed with the Authorized Body by the breeder.

2. The request of the application shall be drawn up in Armenian.

3. The other documents of the application may be submitted in another language. In such a case, the domestic applicant shall be required to submit a translation thereof into Armenian together with the application and the foreign applicant - within two months from the filing date of the application.

4. The application shall relate to one single selection achievement.

5. The application for a patent for selection achievement shall contain:

a) the request for the grant of a patent, where a denomination of the selection achievement, an applicant (applicants), an author (co-authors) and their residence or place of location shall be indicated;

b) the description of the selection achievement.

6. The document approving the payment of the fee in a prescribed value shall be attached to the application.

7. The requirements to the document forms of the selection achievement application shall be established by the Authorized Body.

Article 7. Denomination of Selection Achievement

1. The selection achievement shall be designated by a denomination, which shall consist of genealogy of the variety.

2. The denomination must enable the variety to be identified, exclude the solely figurative expression, and not be liable to mislead or to cause confusion concerning the qualitative and genealogical issues of the variety.

3. The breeder shall propose a denomination of the variety to the Authorized Body. If it is found that such a denomination does not satisfy the requirements of paragraph 2 of this Article, the mentioned Body shall refuse the registration and shall require the breeder to propose another denomination within a period of one month. The Authorized Body shall register the denomination of the variety simultaneously with the granting of the patent.

4. Prior rights of third persons shall not be affected.

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5. The selection achievement shall be used only with the denomination registered in the State Register.

Article 8. Priority of the Selection Achievement

The priority of the selection achievement shall be determined by the date of filing of the application to the Authorized Body.

CHAPTER III

EVALUATION OF THE LEGAL PROTECTION OF THE SELECTION ACHIEVEMENT

Article 9. Preliminary Examination of the Application

1. A preliminary examination of the application shall be carried out by the Authorized Body in accordance with this Article.
2. During the preliminary examination, within a period of three months, the existence of the documents appropriate to the prescribed requirements of the application shall be verified.
3. If after the preliminary examination it appears that the documents of the application conform to the prescribed requirements, the Authorized Body shall make a decision for an official publication of the application.
4. If an application does not conform to the prescribed requirements, the Authorized Body during 15 days from the date of receipt of the application shall send to the applicant a request with a proposal to submit, within a period of two months, the corrected or the missing documents.
5. If the relevant additional or corrected materials are not submitted within a period of two months from the date of request, the application shall be deemed invalid.
6. During the preliminary examination the applicant may, on his own initiative or if requested to do so, make corrections or amendments to the application by submitting additional materials, provided such materials do not modify the subject matter of the filed selection achievement. The additional materials shall be deemed as modifying the subject matter of the selection achievement if they contain characteristics that were not contained in the application as originally filed and which should be included in the claims. The part of additional materials that modifies the subject matter of the filed selection achievement shall not be taken into consideration for the purposes of the examination and the applicant may couch it as a separate application.
7. After the preliminary examination the Authorized Body shall make a decision for refusal to grant a patent or for an official publication of the application.
8. If the applicant does not agree with the decision of the preliminary examination for refusal to grant a patent, he shall be entitled within two months as from the date of receipt of the decision to appeal to the Authorized Body with a request for repeated

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preliminary examination. The repeated preliminary examination shall be carried out within one month as from the date of receipt of the request.

9. After the repeated preliminary examination the Authorized Body shall make a decision for refusal to grant a patent or for an official publication of the application.

10. If the applicant does not agree with the decision of the repeated preliminary examination, he may apply to the court from the date of its receipt.

Article 10. Examination of Novelty of the Selection Achievement

1. Any interested party may, within six months following the date of publication of the application, submit to the Authorized Body an objection in respect of the novelty of the claimed selection achievement.

2. In case of absence of the objection the Authorized Body shall take a decision on compliance of the application to the criteria of novelty within three days and shall notify the applicant within one week from the taking a decision.

3. In case of receiving an objection the Authorized Body shall notify the applicant submitting him a copy of objection. If the applicant does not submit a written denial to the Authorized Body within three months from the date of receipt of the said notice, the Authorized Body shall take a decision to refuse the patent grant.

4. The Authorized Body, on the basis of available to him documents, within twelve months from the date of official publication of the application shall take a decision on the compliance of the application to the criteria of novelty or on refusal of the patent grant and shall notify the applicant about the decision within one week.

5. In case of disagreement with the decision to refuse the patent grant, the applicant shall be entitled, within two months as from the date of receipt of the said decision, to lodge an appeal with the Appeal Board of the Authorized Body. The Appeal Board shall consider the appeal within two months as from the date of its receipt and shall submit its decision to the applicant within three days.

6. In case of disagreement with the decision of the Appeal Board, the applicant shall be entitled to apply to the court in accordance with the procedure established by the law.

Article 11. Testing of the Distinctness, Uniformity and Stability of the Selection Achievement

1. Testing of the selection achievement as to its compliance with the criteria of distinctness, uniformity and stability shall be carried out in accordance with the procedure and in cases established by the Government of the RA.

2. As the result of test may be used the data submitted by the competent authorities of foreign states which have concluded relevant agreements with the RA, by the organizations which have concluded relevant agreements with the Authorized Body, as well as by the applicant.

3. Testing of the selection achievement as to its compliance with the conditions of distinctness, uniformity and stability may be combined with the State testing which is carried out in order to determine the economic utility of the selection achievement.

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4. Authorized Body shall, on the bases of the favorable results of the examination on protectability of the selection achievement, take a decision to grant a patent and shall make the description of the selection achievement.

5. In case of disagreement with the examination decision to refuse the patent grant, the applicant shall be entitled, within two months as from the date of receipt of the said decision, to appeal to the Authorized Body with a request for re-examination. The procedure to carry out the re-examination shall be established by the Government of the RA.

6. After the re-examination the Authorized Body shall make a decision to grant a patent or to refuse the patent grant.

7. After the re-examination, in case of disagreement with the examination decision to refuse the patent grant, the applicant shall be entitled, within two months as from the date of receipt of the said decision, to lodge an appeal with the Appeal Board of the Authorized Body. The Appeal Board shall consider the appeal within two months as from the date of its receipt and shall submit its decision to the applicant within three days.

8. In case of disagreement with the decision of the Appeal Board, the applicant shall be entitled to apply to the court in accordance with the procedure established by the law.

Article 12. Registration of a Selection Achievement

The decision of the Authorized Body to grant a patent for a selection achievement is a reason to register the selection achievement in the State Register. The procedure for keeping the State Register shall be established by the Government of the RA.

CHAPTER IV

LEGAL PROTECTION AND THE STATE REGULATION OF THE USE OF SELECTION ACHIEVEMENT

Article 13. Rights of the Patent Owner

1. The patent owner has the exclusive right to prohibit the third persons from using the patented selection achievement without his permission, as well as to use it at his discretion, if such use does not infringe the rights of other patent owners. Any person may, under the license contract, obtain a permission from the patent owner to perform the following acts in respect of the selection achievement:

- (a) production and reproduction,
- (b) conditioning of the seed material for the purpose of further propagation,
- (c) offering for sale,
- (d) selling or other way of realization (marketing),
- (e) exporting from the territory of the RA,
- (f) importing into the territory of the RA,
- (g) stocking for any of the aforementioned purposes.

2. The right of the patent owner shall also extend to plant material which has been produced and put on the market without the authorization of the patent owner.

3. The authorization of the patent owner shall be required for the performance of acts specified in paragraph (1) of this Article in relation to seeds of variety, which:

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(a) essentially derive the characteristics of the protected initial variety, where the protected variety is not itself a selection achievement, which essentially derives the characteristics of another selection achievement;

(b) are not clearly distinguishable from the protected variety;

(c) require the repeated use of the protected variety (for their production).

4. A selection achievement shall be deemed to be essentially deriving the characteristics of the protected initial selection achievement when, being clearly distinguishable from the initial selection achievement:

a) it derives the predominantly essential characteristics of an initial selection achievement, or of another selection achievement that itself derives the essential characteristics (of the initial selection achievement), while retaining the essential characteristics that express the genotype or combination of genotypes of the initial selection achievement (typical characteristics);

b) it conforms to the genotype or combination of genotypes of the initial selection achievement, except for the differences which result from the application of such methods, as the selection of an induced transformation (mutant) or of a somaclonal variant from the initial variety, the backcrossing, the genetic engineering.

Article 14. Rights of an Author of the Selection Achievement

1. The Authorized Body shall issue a certificate of authorship to each author who is not the patent owner.

2. The certificate of authorship shall attest the authorship of a selection achievement and the entitlement of the author, if he is not the patent owner, to remuneration to be paid by the patent owner for the use of the selection achievement.

3. The amount and payment conditions of remuneration of the author of a selection achievement, who is not the patent owner, shall be determined by the contract between the patent owner and the author.

4. The remuneration of the co-authors of a selection achievement shall be regulated by the contract between them.

5. The usurpation of the authorship, the coercion to the co-authorship, the publication, without the consent of the author, of the subject matter of an application before its submission, as well as the disclosure of the subject matter of the applied selection achievement before its official publication by the state patent examiner shall entail the liability in accordance with the legislation of the RA.

Article 15. Acts Not Infringing the Rights of the Patent Owner

1. It shall not be considered as an infringement of the rights of the patent owner in respect of the selection achievement, if the protected selection achievement is used:

a) for private and non-commercial purposes,

b) for experimental purposes,

c) as an initial material for the purpose of breeding the new varieties.

Article 16. Provisional Legal Protection of Selection Achievement

1. From the date of official publication of the application for selection achievement until the publication of the official data on the granted patent, the provisional legal protection shall be granted to the selection achievement, within the scope of claims laid

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open to public inspection. The provisional legal protection shall include all rights granted to the patent owner under this Law.

2. The provisional legal protection shall be deemed never to have been granted where the opportunities to appeal the decision of the Authorized Body to refuse the patent grant have been exhausted.

3. The third persons who, during the period mentioned in the item 1 of this Article, have used the selection achievement, shall pay to the patent owner an appropriate compensation for its use. The amount of compensation shall be determined by the consent of parties. Failing such a consent the issue shall be resolved by the court.

4. The period mentioned in the item 1 of this Article may begin from the date, when the applicant has notified of the selection achievement the user of it, if that date precedes the date of official publication of the application for selection achievement.

Article 17. Granting the Right to Use the Selection Achievement

1. The use of selection achievement shall be regulated by the license contract (exclusive, non-exclusive, open and compulsory).

2. The license contracts that have not been registered with the Authorized Body shall have no legal effect. The procedure for the registration of the license contracts shall be established by the Government of the RA.

3. In case of exclusive license an exclusive right to use the selection achievement is transferred within the limits provided in the contract, beyond which the licensor retains the said right.

4. In case of non-exclusive license the licensor, while transferring to the licensee the right to use the selection achievement, retains all rights deriving from the patent, including the right to grant licenses to third parties.

5. In case of open license the patent owner may appeal to the Authorized Body with the request to publish in its Official Gazette a notice on granting the right to use the selection achievement to other person. A person who expressed a wish to obtain an open license shall be required to conclude a payment contract with the patent owner.

6. In the interests of the national security and in the public interests or in situations of emergency of the RA, as well as in case of public non-commercial use the Government of the RA is empowered to use or authorize third parties to use a selection achievement without the consent of the patent owner, provided the patent owner shall be notified within 10 days and paid adequate remuneration taking into account the circumstances of each case and the economic value of such authorization.

7. The terms for granting a compulsory license are regulated in accordance with the procedure established by the Government of the RA.

8. The compulsory license shall be only non-exclusive and, depending on its objectives, shall be granted for a certain period and on certain terms. The said period may be extended if the conditions, on the bases of which the compulsory license was granted, continue to exist. The compulsory license shall be recognized invalid if the licensee has infringed the terms under which the license was been granted.

9. Disputes relating to the license contracts shall be settled by the court.

Article 18. Premature Termination of the Legal Protection of the Selection Achievement

1. The legal protection of the selection achievement shall prematurely terminate if:

- a) the Authorized Body takes a decision to refuse the grant of a patent;
- b) the applicant has withdrawn the application or the patent owner has denied from the patent in writing;
- c) it appeared that the legal protection was granted:

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- ca) to the person who has not had that right;
 - cb) predominantly on the basis of documents submitted by the breeder and the criteria of distinctness, uniformity and stability were not complied with on the date of the grant of the legal protection;
 - d) the applicant or the patent owner has failed to pay the fees prescribed by the law;
 - e) the denomination of the variety was cancelled after the granting of the legal protection and the applicant or the patent owner has failed to propose a suitable denomination.
2. The protection of the right on selection achievement can not be prematurely terminated on the grounds that differ from those established by this law.

Article 19. Publication of the Official Information

- 1. The Authorized Body shall periodically publish an Official Gazette.
- 2. After the publication of the information on the patent applications and the decisions in respect thereof any person shall have the right to inspect the documents of the patent applications.

Article 20. Patent Fees

The filing of a patent application, the grant of a patent and its maintenance in force, as well as the performance of other legal acts relating to a patent shall be subject to the payment of fees. The types of the fees, the amount and the time limits for paying the fees, together with the conditions and terms for reduction, refund or exemption of fees shall be determined by the "Law on State Duties" of the RA.

Article 21. Rights of Foreign Citizens and Legal Entities

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

CHAPTER V

TRANSITIONAL PROVISIONS

Article 22. The Granting of the Patent on the Basis of the Materials Entered into the List of Varieties and the Author's Certificates of the Former USSR

The granting of the patent for selection achievement on the basis of the materials entered into the List of divided into districts plant varieties, hybrids and the author's

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certificates of the former USSR shall be carried out for the unexpired period of the patent validity in compliance with the procedure established by the Authorized Body.

THE PRESIDENT OF THE
REPUBLIC OF ARMENIA

R.KOCHARYAN

Yerevan, December 22, 1999

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