

## **On Protection of Selection Achievements**

### *Unofficial translation*

The Law of the Republic of Kazakhstan dated 13 July 1999 No. 422-I.

#### *Unofficial translation*

Footnote. Throughout the whole text, the words “state commissions”, “state commission”, “State Commissions” are substituted respectively by the words “state commissions”, “state commission”, “State Commissions” by the Law of the Republic of Kazakhstan dated 2 March 2007 No. 237 (shall be enforced from the date of its official publication);

throughout the text, the words "allowed" and " allowed" shall be replaced by the words " recommended" and "recommended", respectively, in accordance with the Law of the Republic of Kazakhstan dated 27.11.2015 No. 424-V (shall be enforced upon expiry of six months after the day of its first official publication).

## **Chapter 1. General provisions**

### **Article 1. Relations regulated by the Law**

The Law determines legal, economic and organizational grounds of activity in the field of protection of selection achievements, regulates property, as well as personal non-property relations linked with them arising due to creation, discovery, breeding, legal protection and use of selection achievements.

### **Article 2. Basic definitions used in the Law**

The following basic definitions shall be used in the Law:

1) exclusive right – property right of a patent holder to use selection achievement by any method at own discretion;

2) is excluded by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI ( shall be enforced upon expiry of ten calendar days after the day of its first official publication );

3) breeding animal - a purebred animal that meets the direction and level of productivity of the breed, registered with the republican chamber in the manner prescribed by the legislation of the Republic of Kazakhstan on breeding livestock;

4) breeding products (material) – a breeding animal, as well as semen, embryos, hatching eggs, day-old chickens, eggs, larvae and baby fish, breeding queen bees, breeding bee families and bee packages received from breeding animals;

5) State Commission for variety testing of agricultural crops - an organization being under the jurisdiction of the authorized body in the field of development of the agro-industrial complex, carrying out examination and testing of plant varieties for patentability and economic usefulness;

6) bulletin – official periodical publication on the issues of protection of selection achievements;

7) license contract – the contract under which a patent holder (licenser) shall provide the right to other party (licensee) to temporary use of selection achievement in a certain manner;

8) state commissions – State Commission on variety testing of agricultural crops and State Commission on testing and probation of the breeds of authorized body in the field of development of agroindustrial complex;

9) planting material – planting material of any type including reproductive and vegetative propagating material (seeds, transplant seedling, plants and parts and plants, intended for their propagation);

10) applicant – individual or legal entity that filed application for grant of patent on selection achievement;

11) patent holder – patent owner;

12) patent administrators – citizens of the Republic of Kazakhstan to whom the right to representation of individuals and legal entities before authorized body and expert organization is provided in accordance with the legislation of the Republic of Kazakhstan;

13) selection achievement - a new plant variety, a new breed of animal (including additional branches of animal husbandry, such as fur farming, rabbit breeding, maral breeding, mule breeding, deer breeding, donkey breeding, poultry farming, beekeeping, fish farming, dog breeding), which are the result of human intellectual creative activity, for which a patent has been issued;

14) author of selection achievement (breeder) (hereinafter – author) – an individual that created, discovered or bred a variety, breed;

15) State Register of selection achievements – State Register of the Republic of Kazakhstan of plant varieties under protection and State Register of the Republic of Kazakhstan of animal breeds under protection that include the varieties, breeds to which the patents are granted;

16) the State register of breeding achievements recommended for use - the State register of the Republic of Kazakhstan of breeding achievements recommended for use, which includes varieties, breeds, recommended for economic use in production;

17) variety - a group of agricultural plants within the lowest botanical taxa, which is determined by the severity of traits characterizing a given genotype or combination of genotypes, differs from other groups of agricultural plants of the same botanical taxon by one or more traits or the severity of traits and is stable. The protected categories of the variety are: clone, line, hybrid of the first generation, population;

18) commercial animal – animal used for production of commercial products;

19) breed – group of agricultural animals of one type of general origin existing under the influence of creative activity of a human in particular economic and natural environment, quantitative sufficient for breeding “between themselves” and having economic and pedigree value supported by selection, adjustments, creation of technological conditions being relevant to their genotype, as well as having particular specificity in morphological, physiological and economically useful properties differing it from other breeds of one type. Protected categories of breed are: type, cross, line;

20) State Commission on testing and probation of breeds – advisory-consultative body of the authorized body in the field of development of agroindustrial complex carrying out examination of breeds of animals to patentability and serviceability;

21) seeds – all botanical forms of seed material:

seeds, fruits, collective fruits, parts of compound fruits, bulbs and nodules;

22) is excluded by the Law of the Republic of Kazakhstan dated 27.11.2015 No. 424-V ( shall be enforced upon expiry of six months after the day of its first official publication).

Footnote. Article 2 is in the wording of the Law of the Republic of Kazakhstan dated 2 March 2007 No. 237 (shall be enforced from the date of its official publication); as amended by the Laws of the Republic of Kazakhstan dated 12.01.2012 No. 540-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 17.01.2014 No. 165-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 27.11.2015 No. 424-V (shall be enforced upon expiry of six months after the day of its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 28.10.2019 No. 268-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 10.10.2022 No. 144-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

### **Article 3. Legal protection of selection achievement**

1. Right to selection achievement shall be protected by the legislation of the Republic of Kazakhstan and confirmed by patent. Patent shall certify the exclusive right of patent holder for use of selection achievement, its priority and authorship of a breeder.

2. (Is excluded).

3. is excluded by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI ( shall be enforced upon expiry of ten calendar days after the day of its first official publication ).

4. Volume of legal protection provided by patent for selection achievement shall be determined by a set of characteristics included to description of variety, breed.

5. Validity term of patent for plant varieties is 25 years, animal breeds – 30 years, varieties of grapes, tree decorative, horticultural and forestry crops, including their parent stocks is 35 years from the date of filing the application to expert organization.

The validity period of a patent may be renewed at the request of the patent holder, taking into account the payment made for each year of renewal, but not more than ten years.

**Footnote. Article 3 as amended by the Laws of the Republic of Kazakhstan dated 09.07.2004 No. 586; dated 02.03.2007 No. 237 (shall be enforced from the date of its official publication); dated 10.01.2011 No. 383-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

### **Article 3-1. Authorized state body in the scope of protection of selection achievements**

1. Authorized state body in the scope of protection of selection achievements (hereinafter – authorized body) – state body determined by the government of the Republic of Kazakhstan and carrying out state regulation in the field of protection of selection achievements.

2. The competence of the authorized body shall include:

1) participation in implementation of state policy in the field of legal protection of breeding achievements;

2) development and approval of:

the rules for conduct of a preliminary examination of applications for breeding achievements;

the rules for registration of breeding achievements in the State register of breeding achievements and issuance of protection documents and their duplicates, cancelation and early termination of patents;

the rules of registration in the State register of breeding achievements of transfer of exclusive rights, granting the right to use a breeding achievement, open or compulsory license ;

the rules for providing extracts from the State register of breeding achievements;

the rules for consideration of objections by the appeal board;

the rules for consideration of applications for breeding achievements in accordance with international treaties ratified by the Republic of Kazakhstan;

provisions on the certification commission;

provisions on the appeal board;

provisions on the appeal commission;

3) determination of the procedure for publication of information in the bulletin, relating to the registration of breeding achievements;

4) attestation of persons claiming to be a patent attorney, their registration in the register of patent attorneys, exclusion from the register of patent attorneys, invalidation of the

certificate of a patent attorney and cancellation of information in the register of patent attorneys;

5) organization of the activities of the certification commission, appeal board and appeal commission;

6) the exercise of other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

**Footnote.** The Law is supplemented by Article 3-1 in accordance with the Law of the Republic of Kazakhstan dated 09.07.2004 NO. 586; as amended by the Laws of the Republic of Kazakhstan dated 05.07.2011 No. 452-IV (shall be enforced from 13.10.2011); dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

### **Article 3-2. Expert organization**

1. An expert organization, established by the decision of the Government of the Republic of Kazakhstan in the legal form of a republican state enterprise on the basis of the right of economic management, subordinate in its activities to the authorized body, shall:

- 1) conduct a preliminary examination of applications for breeding achievements;
- 2) register breeding achievements in the State register of breeding achievements and issue protection documents and their duplicates, annul and terminate patents ahead of schedule;
- 3) register in the State register of breeding achievements the transfer of the exclusive right, the granting of the right to use the breeding achievement, an open or compulsory license;
- 4) maintain the State register of breeding achievements, a bulletin and post them on its Internet resource;
- 5) provide extracts from the State register of breeding achievements;
- 6) publish information in the bulletin, relating to the registration of breeding achievements ;
- 7) search for information on registered breeding achievements based on the requests from interested parties;
- 8) consider applications for breeding achievements in accordance with international treaties, ratified by the Republic of Kazakhstan;
- 9) carry out other activities not prohibited by the legislation of the Republic of Kazakhstan.

2. The expert organization, in agreement with the authorized body, shall approve the prices of services in the field of protection of breeding achievements, provided that the full

reimbursement of the costs incurred by this organization for their rendering, break-even of its activities and financing from its own revenues is ensured.

**Footnote.** Is supplemented by Article 3-2 in accordance with the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

## **Chapter 2. Patentability of selection achievement**

### **Article 4. Conditions of patentability of selection achievement**

1. Patent shall be granted on selection achievement that has a novelty, distinguishability, homogeneity and stability.

2. Variety, breed shall be considered as new if on the date of filing application, the seeds or other planting material, breeding material of this selection achievement was not sold and transferred to other persons by the author or his (her) legal successor for using the variety, breed in the territory of:

1) Republic of Kazakhstan – earlier than one year before until the date of filing the application;

2) any other state – earlier than four years before on annual crops and earlier than six years on permanent crops, breeds until the date of filing the application.

A breed that, on the date of inclusion of the corresponding genera and species in the State registers of selection achievements, is registered in the State register of selection achievements, recommended for use, may be recognized as patentable without making the requirements of novelty to the breed.

Validity term of patent mentioned in Article 3 of the Law to such selection achievements shall be reduced for the period from the year of admission to use to the year of granting patent . In respect of such selection achievements, temporary legal protection provided by Article 9 of the Law shall not be remained in force.

3. Variety, breed shall meet the criteria of distinguishability, if they obviously differ from any other variety, breed, the existence of which to the moment of filing the application is commonly known. Filing of application for receipt of a patent or introduction of the variety, breed to official registers of new varieties, breeds in any country shall make a variety, breed as commonly known from the date of filing the application, in condition that in result of filing of this application, the patent or variety were granted, the breed was included to mentioned registers.

Common knowledge of varieties, breeds may be established also in fact of growth, use and publication. Characteristics allowing determination of descriptive and differential special aspects of the variety, breed shall be restorable and describable.

4. Variety, breed shall be considered as homogeneous if in recognition of special aspect of their propagation, the plants of this variety or breed are homogeneous according to selecting characteristics.

5. Variety, breed shall meet the stability criteria, if their main characteristics remain unchanged after each propagation, and in case of special genesial cycle – in the end of each genesial cycle.

**Footnote. Article 4 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; dated 28.10.2019 No. 268-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 5. Application for grant of patent to selection achievement**

1. Application for grant of patent shall be filed to expert organization.

Right to filing of application for grant of patent shall belong to author or his (her) legal successor.

In case if selection achievement is created, discovered or bred upon performance of duty assignment or official duties, the right to filing of application for grant of patent shall belong to an employer, unless otherwise is provided by the author and employer.

Application may be filed by several applicants, if they created, discovered or bred selection achievement jointly or that are legal successors of authors.

Application may be filed through the representative that in virtue of powers based on power of attorney shall process the cases linked with receipt of patent.

1-1. Employees of state commissions on variety testing of agricultural crops within the whole period of work in commission shall not have the right to file applications for grant of patent of the Republic of Kazakhstan for selection achievement, with the exception of cases of selection work on creation, discovery and breeding of selection achievement conducted before carrying out of labour functions in the state commission.

2. Individuals residing beyond the borders of the Republic of Kazakhstan, or foreign legal entities shall process the cases on receipt of patents and their keeping in force shall file objections to appeal board and shall take participation in their consideration through the patent administrators registered in the authorized body.

Individuals permanently residing in the Republic of Kazakhstan but temporary staying beyond its borders may process the cases linked with patents without patent administrator upon specification of address for correspondence within the Republic of Kazakhstan.

Powers of patent administrator shall be certified by power of attorney issued to him (her) by the applicant or patent holder.

3. Application for issuance of patent for selection achievement shall be drawn up for each plant varieties, animal breeds and shall contain:

- 1) application on grant of patent;
- 2) form of selection achievement;



3) power of attorney in case of maintenance of record management through the representative.

The application for grant of patent for selection achievement shall be accompanied by the document confirming payment of filing the application in established manner, and document confirming the ground for reduction of its amount that may be represented together with application or within two months from the date of acceptance of application.

Upon non-representation of documents on payment in established term, the application shall be considered as non-filed.

4. Application for grant of patent shall be represented in the Kazakh or Russian language.

5. Requirements to documents of application and procedure for their consideration shall be determined by the authorized body. Other documents and materials required for examination of discovered variety, breed shall be provided upon request of the state commission.

The procedure for considering an application for examination and testing of patentability shall be determined by the authorized body in the field of development of the agro-industrial complex.

6. The application and information on the progress of its consideration shall not be provided to third parties, except for the cases, provided for by the laws of the Republic of Kazakhstan.

**Footnote.** Article 5 as amended by the Laws of the Republic of Kazakhstan dated 09.07.2004 No. 586; dated 02.03.2007 No. 237 (shall be enforced from the date of its official publication); dated 10.01.2011 No. 383-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of 10 calendar days after its first official publication); dated 29.09.2014 No. 239-V ( shall be enforced upon expiry of ten calendar days after the date of its first official publication ); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 28.10.2019 No. 268-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

## **Article 6. Name of selection achievement**

1. Name of selection achievement shall allow identifying selection achievement, being short, differing from the names of existing selection achievements of the same or close botanical or zoological type. It shall not consist of figures only, misinform concerning the properties, origin, meaning of selection achievement, personality of a breeder, shall not be inconsistent with the principles of humanity and moralization.



Inspection of correctness of suggested name of selection achievement shall be carried out by the state commissions within two month term from the date of receipt of materials of the application from expert organization.

2. If application for selection achievement for one and the same variety, breed is filed to the Republic of Kazakhstan and other countries, the name of one and the same variety, breed shall be similar, with the exception of cases when the name of variety, breed does not meet the requirements of paragraph 1 of this Article.

3. If the name of variety, breed does not meet the requirements established by paragraphs 1 and 2 of this Article, upon request of expert organization, the applicant shall be obliged to suggest a new name within two month term.

If, within the specified time period, the applicant does not propose a new name that meets the specified requirements, or does not challenge the refusal to approve the name of the breeding achievement in the appeal board, the expert organization shall refuse to register the breeding achievement.

4. Any person using selection achievement shall be obliged to specify the name of variety, breed under the name of which they are registered in State Registers of selection achievements, even after expiry of validity term of patent.

**Footnote. Article 6 as amended by the Laws of the Republic of Kazakhstan dated 09.07.2004 No. 586; dated 02.03.2007 No. 237 (shall be enforced from the date of its official publication); dated 10.01.2011 No. 383-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of 10 calendar days after its first official publication); dated 20.06.2018 No. 161-VI ( shall be enforced upon expiry of ten calendar days after the day of its first official publication ).**

## **Article 7. Priority of selection achievement**

1. Priority of variety, breed shall be established on the date of filing of application to expert organization.

If there are two or more applications at the same time sent to the expert organization for grant of patent for one and the same selection achievement, the priority shall be established for the earliest date of filing the application. In case of these applications have one and the same date of sending, the patent shall be granted on application having the earliest registration number acquired by the expert organization, unless otherwise provided by agreements between the applicants.

The date of submission of the application to the expert organization shall be the date of receipt of the documents, referred to in subparagraphs 1) and 2) of part one of paragraph 3 of Article 5 of this Law, and if the documents are submitted not simultaneously - the date of receipt of the last of them.

2. Priority may be established on the date of filing the first application in participating country of International Convention on protection of selection achievements (convention priority). Applicant shall enjoy the right to convention priority of the first application within 12 months from the date of its filing.

Applicant willing to use the right of convention priority shall specify the date of propriety of the first application in the application directed to expert organization and provide copies of the first application notarized by the body to which the application was filed within three months from the date of filing of the following application.

Upon performance of these conditions, the applicant shall have the right not to provide additional documentation and material required for testing within three years from the date of filing the first application.

**Footnote. Article 7 as amended by the Laws of the Republic of Kazakhstan dated 09.07.2004 No. 586; dated 02.03.2007 No. 237 (shall be enforced from the date of its official publication); dated 10.01.2011 No. 383-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

### **Chapter 3. Examination of application for grant of patent for selection achievement**

#### **Article 8. Preliminary examination**

1. Within one month from the date of application, subject to payment for applying, the expert organization conducts a preliminary examination on it. During the preliminary examination, the priority date of the application shall be established, and the availability of the necessary documents and their compliance with the requirements established for them shall be checked.

When necessary, the applicant may introduce clarifications into the application within two months from the date of its filing.

When these changes are made within two months from the date of receipt of the application, payment will not be charged.

Changes regarding the indication of the applicant when ceding the right to receive a title of protection or changing the name of the legal entity or the surname, name, patronymic (if indicated in the identity document) of the individual applicant, as well as correction of technical errors in the application documents may be made before the date of entering information about the registered selection achievement in the State Register of Selection Achievements, subject to appropriate payment.

The expert organization may request missing documents or corrected materials, which the applicant must submit within three months from the date of sending the request.

If the applicant fails to submit the missing documents or corrected materials within the prescribed period, the clerical work on the application shall be terminated.

An application may be withdrawn by the applicant prior to registration of a breeding achievement in the State register of breeding achievements.

2. Additional materials accompanying application in respect of variety, breed and containing the characteristics that were not provided in initial materials of the application and changing the essence of applied variety, breed shall not be considered upon application processing.

3. With a positive result of the preliminary examination, the expert organization shall decide on further consideration of the application, of which the applicant is notified within five working days from the date of the decision. Simultaneously copies of the application and the selection achievement questionnaire shall be sent to the state commission.

4. If the preliminary examination establishes that the application does not meet the established requirements, then a decision shall be made to refuse its further consideration, of which the applicant shall be notified within five working days.

5. Applicant may file an objection to the authorized body to decision on refusal in the further application processing within two months from the date of receipt of decision. Objection shall be considered by appeal board within the term of two month from the date of its receipt.

6. Information about applications for which a positive decision was made as a result of the preliminary examination shall be published in the bulletin within five working days from the date of the decision.

7. Author of variety, breed shall have the right to refuse from publication of his (her) name in materials of the application.

**Footnote. Article 8 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004, No. 586; dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

## **Article 9. Temporary legal protection of selection achievement**

1. Temporary legal protection shall be granted for selection achievement applied for protection from the date of publication of details on the application till the date of granting patent.

2. After obtaining a patent, the patent holder shall have the right for compensation from a person that committed actions mentioned in paragraph 1 of Article 14 of this Law without permission of the applicant during the temporary legal protection of selection achievement.

3. During the period of temporary legal protection of selection achievement, the applicant shall be allowed to sell or otherwise transfer the seeds, pedigree material only for scientific purposes and in cases, if the sale and other transfer are linked with assignment of right to

selection achievement or with production of seeds, pedigree material as ordered by the applicant for the purpose of creation of their reserve.

In case of violation of mentioned requirements by the applicant or by other person with his (her) agreement, the temporary legal protection shall be recognized as not effectuated.

#### **Article 10. Examination and testing of a selection achievement for patentability**

**Footnote. The title of Article 10 as amended by the Law of the Republic of Kazakhstan dated 28.10.2019 No. 268-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

1. Any interested person may direct a claim in respect of applied selection achievement to the state commission within six months from the date of publication of details on application.

State commission shall notify the applicant by stating the essence of claim on receipt of substantiated claim. Upon disagreement with claim, the applicant shall have the right to direct substantiated objection to the state commission within the term of three months from the date of receipt of notification.

The expert organization, based on the conclusion of the state commission, shall make a decision and inform the interested person about it.

If the variety, breed does not conform to novelty criteria, the decision on refusal in granting patent shall be made.

2. Tests of variety, breed for distinguishability, homogeneity and stability shall be conducted by state commissions according to accepted methods within established terms.

State commissions shall notify expert organization on particular terms of conducting tests for patentability within one months from the date of directing materials of application by the expert organization.

The applicant shall be obliged to submit the required amount of seeds or breeding material for testing.

3. State commissions shall have the right to use results of testing conducted by other organizations of the Republic of Kazakhstan, as well as other states with which the relevant contracts are concluded, and data provided by the applicant.

4. upon conformance of the variety, breed to conditions of patentability, the state commission shall draw up official description of the variety, breed on the basis of which the authorized body shall make decision on granting patent.

Based on the conclusion of the state commission, the expert organization within five working days shall decide to grant a patent for a selection achievement, of which a written notification shall be sent to the applicant within five working days.

Within three months from the date the applicant was notified of the decision to issue a patent, the applicant shall submit a document to the expert organization, confirming the appropriate payment for preparation of the patent for issuance and publication. If the specified document is not submitted, the payment term can be restored within three months, provided

that the document on payment for restoration of the missed period is submitted. Otherwise, the application is deemed withdrawn, the processing of the application is terminated, about which the applicant is notified within ten working days from the date of expiration of the restoration period.

5. If during the examination and testing it is established that the variety or breed does not meet the requirements for patentability, the expert organization, based on the conclusion of the state commission, within five working days, shall decide to refuse to grant a patent, of which a written notification shall be sent to the applicant in within five working days.

Applicant may file an objection to the authorized body to decision on refusal in granting patent within three months term from the date of its receipt. Objection shall be considered by appeal board within three months term from the date of its receipt.

6. The applicant may study all materials opposed by the examination. The expert organization shall send copies of the materials requested by the applicant within one month from the date of receipt of the request.

**Footnote. Article 10 as amended by the Laws of the Republic of Kazakhstan dated 09.07.2004 No. 586; dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of 10 calendar days after its first official publication); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 28.10.2019 No. 268-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Chapter 4. Author and patentability**

##### **Article 11. Author of selection achievement**

1. Author of selection achievement shall be recognized as individual through creative labour of whom it is created, discovered or bred.

2. If selection achievement is created by collective creative labour of several persons, all of them shall be recognized as its authors (co-authors). Procedure for using the rights belonging to co-authors shall be determined by the contract between them.

3. Persons that rendered to the author (authors) only technical, organizational, material (financial) assistance or facilitated the preparation and registration of rights to variety, breed shall not be recognized as authors.

**Footnote. Article 11 as amended by the Law of the Republic of Kazakhstan dated 07.04.2015 No. 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).**

## **Article 12. Rights of author of selection achievement**

1. The personal non-property rights of the author are inalienable and shall be protected indefinitely.

2. The expert organization shall issue an official certificate confirming its authorship to the author of a breeding achievement, included in the State register of breeding achievements, who is not the patent holder.

3. Author shall have the right to assign his (her) name to selection achievement.

4. The author has the right to receive remuneration from the patent holder for the use of the selection achievement created, revealed or displayed by him during the term of the patent. The amount and terms of payment of remuneration are determined by the agreement concluded between the patent holder and the author. In the absence of an agreement, the amount and procedure for the payment of remuneration to the author shall be determined by legislative acts of the Republic of Kazakhstan.

By this, the amount of compensation to the author shall not be less than five percent from the sums of annual proceeds received by a patent holder for use of selection achievement including proceeds from the sale of license.

Compensation shall be paid to the author within six months after expiration of every year in which selection achievement is used, unless otherwise provided by the contract of the author with the patent holder.

If a selection achievement is created, identified or bred by several authors, the remuneration shall be paid to the authors in equal shares, unless otherwise established by agreement between them.

**Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; dated 07.04.2015 No. 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 31.10.2015 № 382-V (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Article 13. Patent holder of selection achievement**

Patent shall be granted to:

- 1) author (authors);
- 2) his (her) legal successor (legal successors);
- 3) individuals and (or) legal entities (with their consent), indicated by the author (s) or his (their) successor in the application for breeding achievement or in the application submitted to the expert organization prior to the decision made to issue a patent for breeding achievement;
- 4) to the employer, if the selection achievement is created, identified or removed by the employee in the performance of a job or official duties.



In existence of several persons in the name of whom the patent is sought, they shall be granted by one patent.

Footnote. Article 13 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

#### **Article 14. Rights and obligations of a patent holder**

1. Patent holder shall have exclusive right to use selection achievement, if this use does not violate the rights of other patent holders. Permission of a patent holder shall be required to the following actions in respect of selection achievement:

- 1) production or reproduction (propagation);
- 2) bringing of seeds to planting conditions for the purpose of propagation;
- 3) offer for sale;
- 4) sale or other types of sale;
- 5) export from the territory of the Republic of Kazakhstan;
- 6) import to the territory of the Republic of Kazakhstan;
- 7) storage for above mentioned purposes.

2. Right of a patent holder shall be also applied to plant material, commercial animals that were made from seeds, from pedigree animals introduced to the civil turnover without permission of a patent holder.

3. Provision of paragraph 1 of this Article shall be applied in respect of seeds of the variety and written material of breed of selection achievements that:

- 1) significantly inherit the characteristics of selection achievements, if these selection achievements did not inherit themselves the characteristics of other selection achievements;
- 2) do not obviously differ from selection achievement;
- 3) (is excluded);
- 4) reproduction of which requires multiple use of selection achievement.

Selection achievement that inherits significantly the characteristics of other (original) selection achievement shall be recognized as selection achievement that upon obvious difference from the original:

1) inherits the most significant characteristics of original selection achievement or selection achievements that inherits itself significant characteristics of original selection achievement preserving main characteristics by this reflecting genotype or combination of genotypes of original selection achievement;

2) conforms to the genotype or combination of genotypes of original selection achievement, with the exception of deviations caused by application of the methods as individual selection from original variety, breed, selection of individual or somaclonal mutant, back-crossing and genetic engineering.

**4. (Is excluded);**

5. Patent holder shall be obliged to:

- 1) to introduce a variety, breed, recommended for use in production, into civil circulation;
- 2) keep the variety, breed within the validity term of patent for preservation of characteristics mentioned in official descriptions established by the state commission for the purpose of protection of variety, breed;
- 3) make a payment for keeping a patent valid on an annual basis.

**Footnote. Article 14 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586.**

**Article 15. Responsibility for violation of rights of a patent holder**

1. Individual or legal entity using the variety of plant, breed of animal in violation of the Law shall be considered as guilty in violation of the right of a patent holder.

2. Individual or legal entity shall be considered as violating of the rights of a patent holder , if he (she):

- 1) divulges details about variety, breed to which the application is filed composing the commercial secret without permission of the owner of patent;
- 2) assigns the names to produced and sold protected plant varieties, pedigree animal breeds that differs from the registered names;
- 3) assigns the names to produced and sold protected plant varieties, pedigree animal breeds being confusingly similar to the names of selection achievement;
- 4) assigns name of selection achievement to produced and (or) sold seeds, pedigree material that factually are not as such;
- 5) represents documents containing inaccurate details on a selection achievement.

3. Person that violated the rights of a patent holder shall be obliged to pay compensation to a patent owner for use of selection achievement, as well as compensate for other losses arising in the result of violation of the Law in accordance with the legislation.

4. A holder of exclusive or non-exclusive license may submit requirements to a violator of the patent upon written permission of a patent holder or under his (her) power of attorney.

5. Suit on compensation for losses shall be determined from the date of infliction of losses and for the period of violation of the patent.

**Article 16. Inheritance of right**

The right to file an application for and obtain a patent for a selection achievement, the exclusive right to use the selection achievement, as well as to remuneration and income from its use shall be transferred by inheritance or in the manner of legal succession.

Footnote. Article 16 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; dated 07.04.2015 No. 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

#### **Article 17. Actions not recognized as violation of exclusive right of a patent holder**

The following actions shall not be recognized as violations of the right of a patent holder in respect of use of selection achievement:

- 1) committed in personal and non-commercial purposes;
- 2) committed in experimental purposes;
- 3) on use of selection achievements as original material for breeding of other varieties and breeds, with the exception of cases provided by paragraphs 1 and 2 of Article 14 of the Law;
- 4) on the use of selection achievements for their own needs without the right to sell for seed purposes.

Footnote. Article 17 as amended by the Law of the Republic of Kazakhstan dated 28.10.2019 No. 268-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 17-1. Right of prior use**

1. Person that until the priority date of selection achievement used the plant variety or animal breed being identical to selection achievement in good faith in the territory of the Republic of Kazakhstan created independently from the author or made preparations required for this, shall preserve the right to its gratuitous use without extension of volume of this use (right of prior use).

Right of prior use may be transferred to other person only together with production on which the use of identical plant variety or animal breed had the place or the preparations required for this were made.

2. Person that began use of selection achievement after the priority date, but before the date of publication of details on granting patent shall be obliged to terminate the following use upon request of a patent holder. However, such person shall not be obliged to compensate for losses inflicted by him (her) in the result of such use.

Footnote. Chapter shall be supplemented by Article 17-1 by the Law of the Republic of Kazakhstan dated 22 November 2005 No. 90 (the order of enforcement see Article 2 of the Law).

#### **Chapter 5. Use of selection achievement**

#### **Article 18. Granting the right to use a breeding achievement**

1. Any person who is not a patent holder (licensee) shall be entitled to use the protected breeding achievement with the permission of the patent holder (licensor) on the basis of a

license agreement, an integrated business license agreement or another agreement with the licensor, that includes the terms of the license agreement (license agreement).

2. The license agreement may allow the licensor to grant the licensee the right to use the breeding achievement:

1) with the licensor retaining the possibility of its use and the right to issue a license to other persons (simple, non-exclusive license);

2) with the licensor retaining the possibility of its use, but without the right to issue a license to other persons (the only license);

3) without any possibility for the licensor to use it and without the right to issue a license to other persons (exclusive license).

If the terms of use are not indicated in the license agreement, the right to use the breeding achievement shall be granted on the basis of a simple, non-exclusive license.

The licensee shall have the right to use the breeding achievement throughout the territory of the Republic of Kazakhstan, unless otherwise provided in the license agreement.

The validity period of the right to use a breeding achievement shall be determined in the license agreement and may be extended by mutual agreement of the parties.

In case of failure to indicate the period of validity in the license agreement, the period of validity of the right to use the breeding achievement shall be equal to five years from the date of registration of this agreement.

Termination of the exclusive right to a breeding achievement shall entail the termination of the license agreement.

The licensee shall have the right to transfer to another person (sub-licensee) the right to use the breeding achievement on the basis of a sub-license agreement or an integrated business sub-license agreement taking into account the terms of the license agreement. Responsibility to the licensor for the actions of the sub-licensee shall be borne by the licensee, unless otherwise provided by the license agreement.

Transfer of the exclusive right to a breeding achievement to another person shall not entail the termination of the license agreement.

3. Agreements on granting the right to use a breeding achievement and additional agreements shall be concluded in writing and shall be subject to registration in the State Register of breeding achievements.

**Footnote. Article 18 shall be in the wording of the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Article 19. Open license**

A patent holder may submit an application to an expert organization on granting any person the right to obtain a license to use a breeding achievement (open license).

A person who has expressed a desire to acquire the specified license shall be required to conclude an agreement with the patent holder with the obligatory registration of it in accordance with this Law. Disputes under the terms of the agreement shall be considered by the court.

Application of a patent holder on provision of the right to open license shall be valid within three years from the date of publication of details on open license in a bulletin. Within the mentioned term, the payment for keeping a patent valid shall be reduced to fifty percent from the year following next to the year of publication of details on open license.

**Footnote. Article 19 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Article 20. Compulsory license**

1. Upon non-use of selection achievement by a patent holder and his (her) refusal from conclusion of license contract on acceptable commercial conditions, any other person may go to the court with application on provision of compulsory non-exclusive license to him (her), if the selection achievement was not used permanently after publication of details on granting patent on selection achievement within three years from the date of publication of details on granting patent. Court shall provide mentioned license with determination of terms, amount and procedure for payments, if the patent holder does not prove that non-use of selection achievement is conditioned by reasonable excuses. Amount of payments shall be established no lower than market price of license determined in accordance with existing practice.

Any compulsory license shall be granted primarily for meeting the requirements of local market of the Republic of Kazakhstan.

Right to use mentioned selection achievement may be transferred by a person to whom the compulsory license is granted to another person only together with enterprise on which this selection achievement is used.

Compulsory license shall be subject to cancellation by court in case of cessation of the circumstances that led to its issuance.

2. Patent holder that may not use selection achievement without violating the rights of another holder of a patent on selection achievement that refused from conclusion of license contract on acceptable commercial conditions, shall have the right to go to the court with application on provision of compulsory non-exclusive license to him (her) for use of selection achievement in the territory of the Republic of Kazakhstan.

Upon granting the mentioned license, court shall determine the limits of using selection achievement, patent on which belongs to another person, terms, amount and procedure for payments. Amount of payments by this shall be established lower than market prices of the license determined in accordance with existing practice.

Right to use selection achievement received on the basis of this paragraph may be transferred only upon cession of a patent on this selection achievement due to which the right is granted.

#### **Article 20-1. Transfer of exclusive right to a breeding achievement**

1. A patent holder shall have the right to transfer his exclusive right to a breeding achievement to another individual or legal entity under an assignment agreement.

An agreement on the transfer of the exclusive right to a breeding achievement shall be concluded in writing during the period of validity of this exclusive right.

2. The transfer of the exclusive right to a breeding achievement shall be subject to registration in the State register of breeding achievements.

**Footnote.** Chapter 5 is supplemented by Article 20-1 in accordance with the Law of the Republic of Kazakhstan dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of 10 calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

#### **Article 20-2. Terms of registration of transfer of exclusive rights and granting the right to use a breeding achievement**

1. Registration of the transfer of exclusive rights and the granting of the right to use a breeding achievement shall be carried out by entering information into the State register of breeding achievements within ten working days following the day of receipt of the application from the interested party to the agreement.

Failure to comply with the written form and (or) registration requirement shall entail the nullity of the agreement.

2. Amendments to the State register of breeding achievements in connection with the termination of the agreement or cancellation of registration on the basis of a court decision that has entered into legal force shall be made within one working day following the day of receipt of the application from the interested party to the agreement.

Errors of a technical nature that do not change their affiliation, nature or content may be corrected in the registration information within one working day from the date of receipt of the application from the interested person and subject to the submission of a written notification to other interested parties to the agreement.

3. The grounds temporarily preventing registration shall be:

1) the existence of a period for restoration of the terminated effect of the exclusive right to a breeding achievement;

2) submission of an incomplete package of documents or inconsistency of information in the submitted documents;



3) inconsistency of the information in the submitted documents with the information in the State register of breeding achievements;

4) the presence in the contract of provisions that contradict the legislation of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

4. If the grounds specified in paragraph 3 of this article are identified, a request shall be sent to the applicant for their elimination. From the date the request is sent, the registration period shall be suspended for three months.

5. The grounds for refusal of registration shall be:

1) the expiration of the period for restoration of the terminated effect of the exclusive right to a breeding achievement;

2) the expiration of the period for elimination of grounds temporarily preventing registration;

3) receipt of an application for registration from a person who is not a party to the agreement;

4) absence of registration of a license agreement or an additional agreement to it;

5) whether the party has accepted obligations that impede granting of the right to use the breeding achievement.

**Footnote.** Chapter 5 shall be supplemented by Article 20-2 in accordance with the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

## **Chapter 6. Termination of validity of a patent**

### **Article 21. Recognition of a patent invalid**

1. Within the whole validity term, a patent may be contested and recognized invalid in case of objection against its grant, if it is established that:

1) it was granted on the basis of not confirmed data on homogeneity and stability of selection achievement represented by the applicant;

2) on the date of granting a patent, selection achievement was not in conformance with criteria of novelty and distinguishability;

3) person mentioned in patent as a patent holder did not have legal grounds for receipt of a patent.

2. is excluded by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI ( shall be enforced upon expiry of ten calendar days after the day of its first official publication ).

**Footnote.** Article 21 as amended by the Laws of the Republic of Kazakhstan dated 09.07.2004 No. 586; dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of 10

calendar days after its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

**Article 21-1. Restoration of the validity of a patent for a selection achievement. Right of posterior use**

1. The validity of a patent for a selection achievement, terminated due to non-payment within the established period of maintaining the patent in force from the date of expiration of the established payment period, may be restored at the request of the patent owner.

Such an application must be filed within three years from the date of expiration of the established period of payment for maintaining the patent in force when submitting a document on payment for the restoration of the patent, but before the expiration of the period of validity of the patent established in accordance with this Law.

The expert organization shall publish information on the restoration of the patent in the bulletin, as well as shall post them on its Internet resource. The date of publication shall be the date of restoration of the patent.

2. Any person who has started using a patented selection achievement in the territory of the Republic of Kazakhstan between the date of termination of the patent and the date of publication in the Bulletin of information about the restoration of the patent or who has taken the necessary preparations for this within the specified period shall retain the right to further free use of the patented selection achievement without extension scope of such use (right of posterior use).

The right of posterior use may be transferred to another individual or legal entity with the production in which the use of this selection achievement took place or the necessary preparations were made for this.

**Footnote. Chapter 6 is amended by Article 21-1 in accordance with the Law of the Republic of Kazakhstan dated 07.04.2015 No. 300-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).**

**Article 22. Annulment and early termination of validity of a patent**

1. A patent for a breeding achievement shall be canceled by an expert organization in the following cases:

- 1) its recognition as invalid in accordance with Article 21 of this Law;
- 2) non-conformance of the variety, breed to indications of homogeneity and stability;
- 3) non-presentation of necessary information, seeds, pedigree material and documents for inspection of preservation of the variety, breed by a patent holder at the request of expert body within 12 months or absence of conditions for conduct of inspection of the variety, breed at the place for these purposes;

4) annulment of the name of selection achievement after granting a patent, if a patent holder did not suggest otherwise, more applicable name.

2. Validity of a patent shall be early terminated:

1) on the basis of the application, submitted by the patent holder to the expert organization from the date of publication in the bulletin of the information on the early termination of the patent;

2) upon non-payment of keeping a patent valid within established term from the date of expiration of established term for payment.

**Footnote. Article 22 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Chapter 6-1. Appeal board and patent administrators**

**Footnote. The Law is supplemented by chapter 6-1 in accordance with the Law of the Republic of Kazakhstan dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of 10 calendar days after its first official publication).**

### **Article 22-1. Appeal board**

1. The Appeal board shall be a collegial body under the authorized body for pre-trial consideration of the applicants' objections.

2. Objections to decisions of an expert organization may be filed to the Appeal board on refusal of:

- 1) consideration of an application for issuance of a patent for a breeding achievement;
- 2) issuance of a patent for a breeding achievement.

Pre-trial consideration of these objections shall be mandatory.

3. The composition of the Appeal board should include an odd number (at least five) of members, including representatives of the authorized bodies in the field of development of the agro-industrial complex and in the field of protection of breeding achievements, as well as public councils from these authorized bodies.

4. The composition of the Appeal board may not include:

- 1) patent attorneys;
- 2) spouses, close relatives or those related by marriage;
- 3) employees of an expert organization.

5. Replacement of any member of the Appeal board shall be possible in case of:

1) recusal or challenge, declared by the participants at the meeting of the Appeal board, on the basis of paragraph 4 of this article;

2) absence due to temporary disability, being on vacation or on a business trip.

6. Each meeting of the Appeal board shall be held using video recording in the manner determined by the authorized body.

**Footnote. Article 22-1 as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

#### **Article 22-2. Grounds for refusal in consideration of objection in the appeal board**

It shall be refused to accept an objection for consideration if:

- 1) the objection is not subject to consideration in the appeal board;
- 2) the objection is not signed or signed by a person not having the powers for its signing;
- 3) the objection is filed with violation of established term and possibility of prolongation and restoration of mentioned term is lost;
- 4) the applicant did not eliminate deficiencies within established term concerning the requirements to drawing up, content and procedure for filing the objection.

In existence of mentioned circumstances, a person that filed the objection shall be notified that the received objection may not be accepted for consideration and shall be deemed as unfiled.

Person that filed the objection or his (her) representative may revoke the filed objection until disclosure of decision by the college of the appeal board.

#### **Article 22-3. Consideration of objection**

1. The consideration of an objection shall be carried out by the Appeal board in the manner determined by the authorized body and within the time periods provided for by this Law.

2. If the deadline for filing an objection is missed, the Appeal board may take it into consideration if the reasons for missing the deadline are recognized as valid on the basis of the submitted documents.

3. The term for consideration of an objection may be extended up to three months, including at the written request of the applicant.

4. The Appeal board shall have the right to postpone the date of the meeting if:

- 1) the applicant does not appear to object, except for the case that he has filed a petition to consider the objection without his participation;
- 2) petition of the applicant on the need for time to submit additional evidence;
- 3) the need for additional study of the applicant's arguments and (or) circumstances related to the objection.

5. The Appeal board shall make one of the following decisions:

- 1) on the satisfaction of the objection;
- 2) on partial satisfaction of the objection;

3) on refusal to consider the objection;

4) on refusal to satisfy the objection.

The Appeal board shall not be entitled on its own initiative to change the subject or basis of the objection.

6. All members of the Appeal board, when considering an objection, shall enjoy equal rights. The decision of the Appeal board shall be adopted by a majority of votes of the total number of its members.

7. The decision made shall be sent to the applicant of the objection within ten working days from the date of its adoption.

8. The Appeal board, on its own or at the request of the participants of the meeting, may correct the clerical errors or obvious technical errors made in the decision.

Corrections to the decision of the Appeal board shall be made out by an additional decision of the Appeal board.

9. The Appeal board may leave the objection without consideration at the request of the applicant of the objection. The decision to leave the objection without consideration shall be made out by the minutes of the meeting of the Appeal board.

10. The decision may be appealed in court.

**Footnote.** Article 22-3 shall be in the wording of the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

#### **Article 22-4. Patent attorneys**

1. A capable citizen of the Republic of Kazakhstan, permanently residing in its territory, having a higher education, having passed attestation and registered in the register of patent attorneys, shall have the right to be a patent attorney.

Certification of persons applying for the activities of a patent attorney shall be carried out in the form of testing for knowledge of the legislation of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan in the field of intellectual property.

The attestation commission, created under the authorized body, consists of an odd number of employees of the authorized body.

The procedure for attestation of persons applying for the activity of a patent attorney, registration in the register of patent attorneys and making changes to it shall be determined by the authorized body.

The register of patent attorneys shall be posted on the Internet resource of the authorized body.

2. The following persons shall not be allowed to be certified:

- 1) who, in accordance with the laws of the Republic of Kazakhstan, are prohibited from engaging in entrepreneurial activities;
- 2) who are employees of the authorized body and its subordinate organizations, as well as their close relatives, spouse;
- 3) having an outstanding or unexpunged conviction for committing a crime in accordance with the procedure established by law;
- 4) excluded from the register of patent attorneys in accordance with this Law.

3. Persons who have experience in the field of protection and protection of intellectual property rights for at least four years or who have completed an internship in the Chamber of Patent Attorneys for at least one year shall be eligible for attestation.

4. The activity of a patent attorney shall be suspended by a protocol decision of the attestation commission:

- 1) based on an application of a patent attorney submitted to the attestation commission;
- 2) for the period of referring to persons who, in accordance with the laws of the Republic of Kazakhstan, are prohibited from engaging in entrepreneurial activities to employees of the authorized body and its subordinate organizations;
- 3) to clarify the circumstances provided for in paragraph 1 of Article 22-6 of this Law.

In the case specified in subparagraph 3) of part one of this paragraph, the activity of a patent attorney shall be suspended until the relevant decision is made by the attestation commission within three months.

The activities of a patent attorney shall be resumed by a protocol decision of the attestation commission if the grounds that served to suspend his/her activities are eliminated.

Information that a patent attorney receives from a principal in connection with the execution of his instructions shall be recognized as confidential subject to the requirements imposed by the laws of the Republic of Kazakhstan on confidential information or other secrets protected by law.

**Footnote. Article 22-4 - as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Article 22-5. Rights and obligations of a patent attorney**

1. A patent attorney shall have the right to:
  - 1) advise on the protection of intellectual property rights, acquisition or transfer of intellectual property rights;
  - 2) carry out work on the execution and preparation of applications for breeding achievements on behalf and on instructions from the customer, principal, and employer;
  - 3) interact with the authorized body and (or) the expert organization on the protection of rights to selection achievements, including correspondence, prepare and send objections to the decisions of the examination;



4) assist in the preparation and review of licensing (sublicense) agreements and (or) assignment agreements, as well as in the subsequent registration of the transfer and granting of rights in an expert organization;

5) be a member of the Chamber of Patent Attorneys;

6) carry out other activities related to the protection and protection of intellectual property, not prohibited by the laws of the Republic of Kazakhstan.

2. The powers of a patent attorney shall be certified by a power of attorney.

When conducting cases related to filing an objection to the Board of Appeal, the patent attorney shall be obliged to submit the original power of attorney to the authorized body.

3. If the power of attorney is drawn up in a foreign language, then a notarized translation of the power of attorney into Kazakh or Russian, depending on the language in which the objection is filed, must be submitted.

4. A patent attorney shall be obliged not to accept an assignment in cases where he has previously represented or advised persons in this case whose interests are contrary to the interests of the person who applied to conduct the case, or otherwise participated in its consideration, as well as if an official is involved in the consideration of the case. a person who is a close relative of a patent attorney, spouse or in-law.

**Footnote. Article 22-5 - as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Article 22-6. Exclusion from the register of patent attorneys, invalidation of the certificate of a patent attorney and cancellation of information in the register of patent attorneys**

1. A patent attorney shall be excluded from the register of patent attorneys by the decision of the attestation commission:

1) based on a personal application of a patent attorney submitted to the attestation commission;

2) upon the termination of citizenship of the Republic of Kazakhstan or upon departure for a permanent place of residence outside the Republic of Kazakhstan;

3) in case of a break in the professional activity of a patent attorney for more than five years;

4) upon entry into force of a judgment of conviction by which the patent attorney was convicted of committing a crime;

5) in the event of the death of a patent attorney or his/her recognition as missing or declared dead;

6) in case of recognition of a patent attorney as incapable or partially incapacitated;

7) based on the results of consideration of complaints of individuals and (or) legal entities, as well as the presentation of the Chamber of Patent Attorneys.

2. Based on the decision of the attestation commission or a decision that has entered into legal force or a judgment of conviction of the court, the patent attorney's certificate shall be

recognized as invalid and the relevant information shall be entered in the register of patent attorneys.

3. A patent attorney excluded from the register of patent attorneys shall lose the right to carry out the activities of a patent attorney from the date of entering information about it, and the certificate of his/her registration as a patent attorney shall be cancelled.

4. In the event of a complaint from an individual and (or) legal entity or a presentation by the Chamber of Patent Attorneys against the actions of a patent attorney, the authorized body shall form an appeal commission from an odd number of employees of the authorized body. For the period of consideration of the complaint of an individual and (or) legal entity or presentation of the Chamber of Patent Attorneys, the validity of the certificate of a patent attorney shall be suspended, which shall be noted in the register of patent attorneys.

Based on the results of consideration of the complaint of an individual and (or) legal entity or the presentation of the Chamber of Patent Attorneys, one of the following decisions shall be made:

1) revoke the certificate of a patent attorney and make an appropriate entry in the register of patent attorneys;

2) refuse to satisfy the complaint of an individual and (or) legal entity or the presentation of the Chamber of Patent Attorneys.

The decision of the appeal committee shall be taken by a simple majority of votes, drawn up in a protocol and may be appealed to the court.

**Footnote. Article 22-6 - as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

## **Chapter 7. Final provisions**

### **Article 23. Settlement of disputes linked with application of the Law**

1. The following disputes shall be subject to judicial review:

1) on authorship to a variety, breed;

2) on identification of the patent holder;

3) on violation of the exclusive right to use and other property rights of the patent holder;

4) on conclusion and performance of license contracts for use of selection achievement;

5) on payment of compensations provided by this Law;

6) on payment of reward to the author in accordance with the contract;

7) on granting a patent;

7-1) on recognition of a patent as invalid;

8) on issuance of compulsory license;

9) other disputes linked with protection of rights arising from a patent.

These disputes, except for those specified in subparagraphs 1), 2), 7), 8) and 9) of part one of this paragraph, may be considered by agreement of the parties in arbitration or mediation, if this is not prohibited by the laws of the Republic of Kazakhstan "On arbitration" and "On mediation."

2. Objections to the decisions of the expert organization, referred to in paragraph 2 of Article 22-1 of this Law, shall be filed to the court after their consideration by the appeal board.

**Footnote. Article 23 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (enacted with 01.01.2016); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 21.01.2019 No. 217-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

#### **Article 24. Industrial use of selection achievements**

1. The following breeding achievements shall be included by the authorized body in the field of development of the agro-industrial complex to the state registers of breeding achievements recommended for the use:

1) on breeds – following the results of state tests for serviceability conducted by the State Commission on test and approbation of breeds;

2) on varieties – following the results of state tests for serviceability conducted by the State Commission on variety testing of agricultural crops, or according to data of applicants.

2. Saleable seeds and pedigree material shall be accompanied by the relevant documents certifying their variety, breed accessory, origin and quality.

The document shall be issued for the seeds of the variety, pedigree material, approved for the use in the relevant region.

**Footnote. Article 24 as amended by the Law of the Republic of Kazakhstan dated 10.01.2011 No. 383-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 25. Payment of legally significant actions**

State commission on variety testing of agricultural crops shall charge payment for conduct of variety testing of agricultural crops for patentability in accordance with the legislation of the Republic of Kazakhstan.

**Footnote. Article 25 is in the wording of the Law of the Republic of Kazakhstan dated 10.07.2012 No. 34-V (shall be enforced from the date of its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

#### **Article 26. Publications**

1. Details related to registration of selection achievement shall be published in a bulletin:
  - 1) on applications for the grant of a patent that has passed a preliminary examination with a positive result, indicating the priority date of the selection achievement, the name of the legal entity or the last name, first name, patronymic (if it is indicated in the identity document) of the individual applicant, the name of the selection achievement, surname and initials of the author, if the latter has not refused to be mentioned as such;
  - 2) on decisions made upon application on granting a patent;
  - 3) on changes in names of selection achievements;
  - 4) on recognition of patents as invalid and on their annulment;
  - 5) other changes concerning protection of selection achievements.
2. After publication of details on application, any person shall have the right to familiarize with its materials.

**Footnote. Article 26 as amended by the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586; dated 20.06.2022 No. 128-VII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Article 27. Patenting of selection achievements abroad**

The applicant shall have the right to file the first application for protection of selection achievement to the competent body of other state with which the Republic of Kazakhstan is linked by bilateral or multilateral international treaty on protection of selection achievements.

The applicant shall have the right to file application to the competent bodies of other states without waiting for the granting of protection document by the competent body of the state to which he (she) filed the first application.

The applicant shall bear the costs linked with protection of rights to selection achievements beyond the borders of the Republic of Kazakhstan.

**Footnote. Article 27 is in the wording of the Law of the Republic of Kazakhstan dated 9 July 2004 No. 586.**

#### **Article 28. Rights of foreign persons, stateless persons and foreign legal entities**

1. Foreign persons and foreign legal entities shall enjoy the rights provided by this Law and other legislative and regulatory legal acts of the Republic of Kazakhstan in the field of protection of selection achievements equally with individuals and legal entities of the Republic of Kazakhstan on the basis of international treaties of the Republic of Kazakhstan or on the principles of mutuality.

2. Stateless persons residing in the Republic of Kazakhstan shall enjoy the rights provided for by this Law and other acts relating to the legal protection of breeding achievements on an equal basis with individuals and legal entities of the Republic of Kazakhstan, unless otherwise follows from this Law.

Footnote. Article 28 as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

## **Article 29. International treaties**

If international treaty ratified by the Republic of Kazakhstan established other rules than those contained in this Law, the rules of international treaty shall be applied.

*The President of the Republic of Kazakhstan*

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