

# Law of Turkmenistan on Scientific Intellectual Property

*In conformity with the Turkmen Law “On Property in Turkmenistan” this law shall govern social relationships arising in the sphere of science and technology in the course of creation and use of scientific intellectual property as one of the types of intellectual property.*

**Scientific intellectual property** is deemed to be ownership in the results of research, design, exploration, development or experimental-technical works (hereinafter referred to as the “scientific works”).

## **Article 1. Turkmenistan regulation of scientific intellectual property**

1. Relationships arising apropos scientific intellectual property shall be governed by this Statute, other acts of Turkmenistan and the orders of the Cabinet of Ministers issued pursuant to the aforementioned.
2. The provisions of this Statute shall apply to enterprises, organizations, associations or joint ventures with foreign investment established in Turkmenistan, as well as Turkmenistan nationals.
3. The state bodies of Turkmenistan shall within their authority issue acts regulating the relations arising in the exercise of the right to scientific intellectual property pursuant to this law.
4. Should an international treaty of Turkmenistan provide otherwise than the effective Turkmen law governing scientific intellectual property relationships, the provisions of the international treaty shall prevail.

## **Article 2. Items and forms of scientific intellectual property**

1. Scientific intellectual property shall include intermediate, ultimate or incidental results of scientific research embodied in a tangible form.
2. A result achieved in the course of contractual research or pursuant to a service/specific assignment in an attempt to reach the ultimate outcome provided for by the respective contract or assignment shall be deemed intermediate.

3. The result targeted at by the research contract or a service/specific assignment shall be deemed the ultimate research or assignment result.

4. A result achieved in the course of contractual research or pursuant to a service/specific assignment apart from those targeted at by the research contract or a service/specific assignment shall be deemed incidental.

5. An item of scientific intellectual property may be in any form, or on any medium nowadays known or developed in future.

### **Article 3. Right to scientific intellectual property and its background**

1. The right to scientific intellectual property shall mean a recognized and protected by law right of the owner to possess, use or at its discretion dispose of the results of scientific work in any tangible form, no other party being entitled to use such results without the owner's consent.

2. In exceptional cases the Cabinet of Ministers may permit a limited use of proprietary scientific intellectual property to another legal entity.

3. Exercise of the right to scientific intellectual property shall serve humane purposes; it shall not violate any rights or legal interests of the state, an individual, enterprise, institution or organization; neither shall it harm the environment.

4. Right to scientific intellectual property arises out of:

- acquiring or making use of intermediate or ultimate results of scientific research embodied in various tangible means of expression and achieved pursuant to a specific agreement of the parties (contract);
- an individual or a group (association) of individuals obtaining a tangible scientific result in the course of independent research, including a business enterprise;
- obtaining an incidental scientific result as provided for by Article 2(4) of this Statute.

### **Article 4. Right-holders of scientific intellectual property**

1. The right to scientific intellectual property may be held by a natural of Turkmenistan or a legal entity established in Turkmenistan, as well as a foreign natural or entity, or an international organization.

2. The right to scientific intellectual property may be owned by the developer (author, creator) of the item of such property, i.e. the individual or association who took immediate part in the creation of the respective item of scientific intellectual property.

3. The right to scientific intellectual property may be owned by the employer (a legal entity: research institution, organization, enterprise, educational institution, a state or government authority) when the item of scientific intellectual property is created (developed) under a contract or specific assignment (scheduled by a research institution or organization) with the help of equipment, materials and/or resources belonging to the employer of the creator (developer) of the item of scientific intellectual property under a labor agreement or contract.

4. An item of scientific intellectual property shall belong to the employer (a legal entity: scientific institution, organization, enterprise, educational institution, state or government authority) having a contract with the developer undertaking to transfer the total of her rights to scientific intellectual property for the whole term of their duration. However, the transfer shall be subject to the employer's obligation to provide the developer with every necessary for efficient work and in case of success pay the latter a proper fee.

5. Unless otherwise agreed upon by the employer (a research institution, etc.) and the developer (creator) of scientific intellectual property, the right to such property may be jointly held by the creator and her employer on whose assignment the respective item has been created.

In this case both the developer and the employer shall have the right to use the respective scientific intellectual property or to license another party to do so.

6. An item of scientific intellectual property created at a research institution or organization in the course of research and development work, shall belong to the developer (creator) of such item of scientific intellectual property, should the employer internally license or otherwise assign her right to the aforementioned item to the developer under mutually beneficial conditions.

7. An item of scientific intellectual property developed in the course of independent research carried out by an individual or a group of individuals shall belong to such individual/individuals.

8. The right to scientific intellectual property shall belong to the developer (creator) creating (developing) the item of scientific intellectual property without the scope of her employment or any service or specific assignment (research institution schedule), not using any equipment, materials or resources belonging (managed by) to the employer: an enterprise, research institution, organization or educational institution.

9. The result incidentally achieved in the course of development of scientific intellectual property shall belong to an individual or a legal entity, achieving such result.

The owner of an incidental item of scientific intellectual property shall suggest the party contracting her to carry out research or perform a specific assignment make use of this item under a several agreement. In case of decline or a failure to come to terms, the owner may dispose of the aforementioned item at her own discretion.

10. Should a newly created item of scientific intellectual property include as its inherent part a prior item of intellectual property owned by another party, the terms of possession, use and/or disposal of the new object shall be determined by an agreement of the owners.

### **Article 5. Contract as the ground for legal protection of scientific intellectual property**

1. The right to scientific intellectual property may arise out of a contract (agreement) between the customer and the contractor for research aimed at a particular scientific result.

2. The contract shall determine the legal status of scientific intellectual property for the intermediate, ultimate and incidental results of the work, the sources of funding and supplies, the owner of the work results, the conditions of patentability of these results; confidentiality requirements, creation or use of a single item of scientific intellectual property or a number of such items; terms of assignment (transfer) of the right to scientific intellectual property, liability for infringement of this right, distribution of income derived from the use of this right, etc.

3. Should the owner of the results of scientific work be a public institution, organization or enterprise, provided such results are patentable, the contractor shall, unless the contract provides otherwise, on her own account prepare and properly file an application for a patentability examination.

## **Article 6. Employment or collective agreement as the ground for legal protection of scientific intellectual property**

1. The right to scientific intellectual property may arise under a labor contract (agreement) in the course of research carried out pursuant to a service or specific assignment (work schedule) of a research institution or organization.

A labor contract to carry out research shall be governed by the provisions of this Statute governing protection of the right to scientific intellectual property and provide for personal or another liability for the infringer.

2. The management of an enterprise, organization or institution may modify a labor agreement silent on protection of scientific intellectual property to supply provisions aimed at such protection as provided for by this Statute, as well as provide for personal or another liability for the infringer.

Should the developer refuse to accept the aforementioned substantial modifications to the labor conditions, the labor agreement with such developer shall be terminated.

3. The right to scientific intellectual property may arise under a collective agreement between a research institution or another customer organization and a group of executors either employed by the customer or having no labor relations with the latter.

A collective agreement shall determine the legal standing of the property in the research results achieved, terms and conditions of their use, conditions of organization and execution of the research.

## **Article 7. Rights of the developer (creator) of an item of scientific intellectual property**

1. The developer (creator) of an item of scientific intellectual property has a heritable right to remuneration as provided for by the contract, or an employment or collective agreement.

2. The contract, employment or collective agreement may provide for the right of the developer (creator) of an item of scientific intellectual property to a share of profits (income), derived by the owner from the use of such item.

## **Article 8. Use of scientific intellectual property**

1. Income, including currency earnings, derived from the use of the items of scientific intellectual property in economic activity (including business) belongs to the owner, except for the share of the developer stipulated by the contract, employment or another agreement.
2. The right to a specific item of scientific intellectual property may be contributed to the authorized capital of a joint-stock company, joint venture, business partnership or another enterprise, organization, agency or a group of the same.
3. An enterprise, organization or agency may under a contract with the owner mediate in the use or onerous transfer of an item of scientific intellectual property acquired from the owner to its contractor.
4. A legal entity or an individual may be restricted in the right of disposal of an item of scientific intellectual property for reasons of national security or the country's defense. The list of such objects and the terms of restriction shall be prescribed by the Cabinet of Ministers of Turkmenistan.
5. An individual or a legal entity that independently of the author and owner of the item of scientific intellectual property has created and used a similar object of scientific intellectual property or made the necessary preparations for such use before the registration of the respective item shall retain the right of subsequent gratuitous use without extension of the scope of such right (i. e. "the right of prior use").

## **Article 9. Assignment (transfer) of the rights to scientific intellectual property**

1. The owner may assign (transfer) her right to scientific intellectual property entirely or in part to another individual or legal entity.
2. Assignment of the right by the owner may be gratuitous or for value or mutually beneficial providing for an appropriate share of income to be received by the owner from the use of the assigned right by the assignee.
3. The assignment contract may provide for the owner's right to a specific share of profit actually derived by the assignee from the use of the respective right, as well as for the method of such profit and share calculation, assessment and verification.

4. The assignment may be exclusive. In this case the assignee may within the scope of the assignment use the respective rights independently of any other party, including the owner, and unless the contract provides otherwise, grant to another party a non-exclusive license to use the assigned rights.

An assignment may be irrevocable. In this case, the owner may not revoke the permit (license) to use the scientific intellectual property assigned to another party.

An assignment of scientific intellectual property shall be in writing executed in the form of a contract, and in cases provided for by the law, require a proper official permit.

### **Article 10. Duty of confidentiality**

1. A contract, employment or collective agreement for scientific research or the use of any obtained results may include a mutual obligation to keep confidential and not to disclose the results of the research, as well as the information about the techniques of obtaining such results, any marketing, financial, business etc. information concerning the subject and terms of the contract deemed to be confidential (hereafter - “confidential information”).

2. Disclosure of confidential information shall be deemed an infringement of the right to scientific intellectual property and a breach of contract or law resulting in personal or other liability for the infringer.

3. The only exception shall be made for the information:

- known to the parties before the contract conclusion;
- obtained from a third party not subject to confidentiality obligation;
- otherwise as provided for by the contract or applicable law.

4. When provided for by the law of Turkmenistan or the contract (employment contract/ agreement), the duty of confidentiality may for one year survive the termination of the contract or labor relationship, unless the contract provides otherwise.

5. The owner or the assignee of scientific intellectual property may claim damages caused by a breach of confidentiality, as provided for by the applicable law.

6. Both an individual and a legal entity shall keep confidential any and all information concerning an item of scientific intellectual property received for examination or review.

### **Article 11. Protection of the right to scientific intellectual property**

1. The right to scientific intellectual property shall be judicially protected. The court considering the dispute shall also rule on the owner's indemnification of any and all damages incurred.

2. An infringement shall be enjoined as provided for by the applicable law.

3. The owner may have any infringement of her right to scientific intellectual property enjoined even when the owner has not been deprived of the right of possession, use or disposal of the item of scientific intellectual property.

4. The owner shall be indemnified by the party at fault for any moral harm caused by the infringement even in the absence of any evidence of economic loss. In order to assess the harm and its economic equivalent the court shall consider the circumstances and severity of the infringement, as well as the extent of unauthorized use of the right to scientific intellectual property.

### **Article 12. Infringement of the right to scientific intellectual property**

Any damages, caused by an individual or a legal entity as a result of enactment of an unlawful regulation or performance of an unlawful act infringing on the owner or another party's right of possession, use or disposal of scientific intellectual property, shall be fully reimbursed on account of the assets of the respective state or municipal authority, or individual causing such damage.

### **Article 13. Scientific intellectual property of joint ventures, foreign nationals, entities or states**

1. A transnational joint venture participated by a foreign legal entity or national, organized on the territory of Turkmenistan, may possess, use or dispose of scientific intellectual property.

2. The provisions of this Statute shall also apply to scientific intellectual property owned by foreign nationals or stateless persons on the territory of Turkmenistan.



3. A foreign state or an international organization may enjoy the right to scientific intellectual property in Turkmenistan when and as provided for by the applicable international treaties and the law of Turkmenistan.

4. The list of the items of scientific intellectual property created on the territory of Turkmenistan whose export is to be licensed shall be issued by the Cabinet of Ministers of Turkmenistan.

#### **Article 14. Duration of the right to scientific intellectual property**

1. Unless the contract or employment agreement (contract) provides otherwise, the duration of the right to scientific intellectual property in a specific item shall be 25 years as of January 1 of the year following that when it was obtained and registered.

2. In case of reorganization or winding up of the owner's business or death of the individual owner of scientific intellectual property, the respective right shall pass to their successors.

#### **Article 15. Registration and recording of scientific intellectual property**

The state body authorized to register and record scientific intellectual property shall collect and process the data on the scientific research in progress or completed in Turkmenistan and shall establish the federal information fund of scientific intellectual property.

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