

# Law of Georgia on New Breeds of Animals and Varieties of Plants

## Chapter I General Provisions

### Article 1

1. This Law shall regulate relations linked with the legal protection and use of new breeds of animals and varieties of plants and apply to all new genera and species of household animals and plants.
2. Use of methods of genetic engineering shall be prohibited in breeding animal husbandry and plant propagation material.

### Article 2

1. The terms used in the Law shall have the following meaning:
  - a) Breeder:
    - a.a) the person who discovered and developed, or bred a new plant variety and/or animal breed;
    - a.b) the person who is the employer or who has commissioned the work of the person referred to in Subparagraph *a.a* of this subparagraph;
    - a.c) the successor in title of the person referred to in Subparagraph *a.a* or *a.b* of this subparagraph;
  - b) Application - the package of documents, necessary for the registration of a new animal breed and/or plant variety and the granting of a certificate, drawn up under the requirements established by this Law;
  - c) Certificate - the protective document certifying the registration of the new animal breed and/or plant variety and the breeder's right under this Law;
  - d) Breed of animal - a group of animals which, in spite of its protectability, has genetically determined constitutional-exterior features; along with this, some of them are specific and differentiates it from other animal groups. A breed may be represented by a male or female individual or breeding material;
  - e) Categories of protection of an animal breed – type, line;

- f) Breeding animal – the animal envisaged for the reproduction and propagation of a breed.
- g) Breeding material – a breeding animal, its seed and embryo;
- h) Production animal – the animal used for the purposes different from the reproduction purposes of the breed;
- i) Initial breed – the animal breed selected by the breeder for breeding a new animal breed and/or plant variety.
- j) Plant variety - a plant grouping within the lowest rank of a single botanical taxon, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes, it is distinguished from other plant groupings by the expression of at least one of the said characteristics and may be considered as a unit with regard to its suitability for being reproduced unchanged;
- k) Propagation material - the seed, plant or its part intended for the propagation of a plant variety;
- l) Harvest - any output received as a result of the propagation of a plant variety;
- m) The International Convention for the Protection of New Varieties of Plants – “The International Convention for the Protection of New Varieties of Plants”, adopted on December 2, 1961;
- n) Union - the Union for the Protection of New Varieties of Plants, founded by the International Convention for the Protection of New Varieties of Plants.

### **Article 3**

1. The National Intellectual Property Center Sakpatenti (hereinafter - Sakpatenti) shall ensure granting of the breeder's right and by means of publication of an official bulletin informing the public on applications for the new animal breeds and/or plant varieties and granting of the breeder's right.
2. Testing of the new animal breed and/or plant variety for distinctness, uniformity and stability in Georgia shall be performed by a person accredited by the legal

entity of the public law – the United National Body of Accreditation – the Accreditation Center, under the requirements and testing methods approved by the Ministry of Environment Protection and Agriculture of Georgia on the basis of an order. On the basis of the results of aforesaid test, the Standing Council of Experts existing at the Ministry of Environment Protection and Agriculture of Georgia shall issue a conclusion in regard to the distinctness, uniformity and stability of the animal breed and/or plant variety. The Ministry of Environment Protection and Agriculture of Georgia shall be responsible for implementation of these procedures.

3. Sakpatenti may take the decision concerning the grant of the breeder's right in a new animal breed on the basis of the results of the tests carried out by competent authorities of another country or tests carried out by the breeder in regard to distinctness, uniformity and stability of the new animal breed, and may take the decision concerning the grant of the breeder's right in a new plant variety on the basis of the results of the tests carried out by competent authorities of other member country of the Union or tests carried out by the breeder in regard to distinctness, uniformity and stability of the new animal breed.

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#### **Article 4**

The duration of a breeder's exclusive right from the day of registration of the new variety or breed by Sakpatenti shall be:

- a) 25 years for a new plant variety, except the varieties provided for by subparagraph *b* of this Article;
- b) 30 years for of vine, caulescent, fruit, decorative, tea, subtropical cultures and forest new plant varieties (including rootstocks);
- c) 30 years for a new animal breed.

## **Chapter II**

## **Breeder and Holder of Certificate**

### **Article 5**

1. The breeder shall acquire breeder's exclusive (economic) rights as a result of the registration of the new animal breed and/or plant variety at Sakpatenti and granting of a certificate.
2. If the breeder requests so, Sakpatenti shall be obliged not to publish his/her name.
3. Where the new animal breed and/or plant variety was discovered and developed or bred as a result of joint intellectual creation of several natural persons, each shall be deemed as a co-breeder.
4. Relations between the co-breeders shall be defined on the basis of a contract.

### **Article 6**

1. A breeder shall be entitled to register the new animal breed and/or plant variety and obtain a certificate.
2. The right to register and obtain a certificate for the new animal breed and/or plant variety discovered and developed or bred as a result of joint intellectual creation of several natural persons shall be enjoyed by all the breeders jointly, as well as each of them, in the case of written refusal of the other breeders to register and obtain a certificate.

### **Article 7**

1. Where discovering and developing or breeding of the new animal breed and/or plant variety is connected with the fulfilment of duties or a special task by the employee, the right to register the new animal breed and/or plant variety and obtain the certificate shall be enjoyed by the employer, if such a task envisages breeding activity and if the contract concluded between the employee and employer does not provide for otherwise. If the certificate granted as a result of the registration of the new animal breed and/or plant variety belongs to the employer, the employee shall

be entitled to receive from the employer the remuneration adequate to the use of the variety or breed, on the basis of their mutual agreement.

2. Where discovering and developing or breeding of the new animal breed and/or plant variety is not connected with the fulfilment of duties or a special task by the employee, the right to register the new animal breed and/or plant variety and obtain the certificate shall be enjoyed by the employee. In this case from the day of filing the application, the employer shall enjoy the prior right to obtain a license to use the new animal breed/plant variety and/or to purchase the breeder's exclusive rights resulting from the registration of the new animal breed/plant variety and the grant of the certificate.

### **Article 8**

If the employer refuses to register the new animal breed and/or plant variety and obtain the certificate, the employee shall be entitled to register and obtain the certificate.

### **Article 9**

Where for one and the same new animal breed and/or plant variety two or more applications are filed with Sakpatenti at various times, the breed/variety shall be registered and a certificate granted in the name of the first applicant.

## **Chapter III**

### **Protectability of New Animal Breeds and Plant Varieties**

#### **Article 10**

1. A new animal breed and/or plant variety shall be registered and granted a certificate, if it meets the protectability criteria.

2. Protectability criteria of the new animal breed/plant variety shall be novelty, distinctness, uniformity, and stability.

#### **Article 11**

1. The animal breed shall be deemed to be new if, at the date of filing of the application for a breeder's right, breeding animal or breeding material of the breed has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation:
2. The novelty of the animal breed shall not be affected if the breeding animal or breeding material derived from this breed is used by another person:
  - a) for damaging the breeder;
  - b) for carrying out competition or production testing of the animal breed;
  - c) for the purpose of permitting distribution, identification of the quality or carrying out a test of other kind with respect to the animal breed.
3. The novelty of the animal breed shall not be affected if the surplus product obtained in the cases provided for in subparagraphs *b* and *c* of Paragraph 2 is used without its recognition as the product derived from the animal breed.

## **Article 12**

1. The plant variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating material of the variety has not been sold and/or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety.
2. Notwithstanding the requirements of Paragraph 1 of this Article, granting of the breeder's right shall be possible to the variety of plant, which for the day of enacting of this Law is no longer new, provided that the application was filed with Sakpatenti within one year from the day of entry into force of this Law and one of the following conditions is complied with:
  - a) the plant variety was entered in the National Catalogue of plants admitted for trade;
  - b) the plant variety was protected by the breeder's right in any state member of the Union, or an application was filed in any state member of the Union and filing of this application led to granting of a breeder's right;

3. Duration of the breeder's right, granted in accordance with Paragraph 2 of this Article, shall be calculated from the day of entry in the Catalogue referred to in subparagraph *a* of paragraph 2 of this Article, from the day of granting of the breeder's right referred to in Subparagraph *b* of Paragraph 2 of this Article. In relevant cases the earliest of these dates shall be used.

4. Where the breeder's right is granted in accordance with the requirements of this Article, the breeder shall be obliged to grant a license for the exploitation of the new animal breed or plant variety on reasonable conditions to enable a third person to continue exploitation of the plant variety, which he had begun in bona fide before filing the application by the breeder with Sakpatenti.

### **Article 13**

The new animal breed and/or plant variety shall be deemed to be distinct if it is clearly distinguishable from other breed/variety the existence of which is a matter of common knowledge at the time of the filing of the application with Sakpatenti; in particular, filing of an application for the granting of a breeder's right or for the entering of the breed/variety in the Register or the Catalogue of New Animal Breeds and Plant Varieties, in any country, shall make the breed/variety a matter of common knowledge from the date of filing the application, provided that the application leads to the granting of a breeder's right or the breed/variety is entered in the Register or the Catalogue of New Animal Breeds and Plant Varieties.

### **Article 14**

1. The new animal breed shall be deemed to be uniform, if animals of this breed, in spite of the particular features of propagation, are sufficiently similar in their essential constitutional-exterior features.

2. The new plant variety shall be deemed to be uniform, if in spite of the particular features of propagation, it is sufficiently uniform in its essential features.

### **Article 15**

1. The new animal breed shall be deemed to be stable if its essential features remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
2. The plant variety shall be deemed to be stable if its essential features remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

## **Chapter IV**

### **Examination, Publication, Registration and Granting of Certificate for New Animal Breed sand Plant Varieties**

#### **Article 16**

The breeder shall file an application with the request of the registration of the new animal breed or plant variety and obtaining of a certificate with Sakpatenti personally or by means of a representative.

#### **Article 17**

1. The application shall contain:
  - a) a request, with the indication of the name and address of the breeder;
  - b) the proposed denomination of the new animal breed or plant variety;
  - c) in case of a new animal breed - the description of the new animal breed, the main zoological, constitutional-exterior features and household characteristics, and in case of a plant variety – the description of the new plant variety, the main morphological, biological and botanical characteristics;
  - d) the photographic image of the new animal breed or plant variety;
  - e) a written obligation of the breeder to supply to the accredited person, under Article 3(2) of this Law, samples of breeding material of the animal breed or propagation material of the plant variety, respectively, within the prescribed term, with the prescribed quantity, free of charge;



f) indication of the date, when the breeding animal or the breeding material of the breed or the propagation material of the variety was sold with the purpose of exploitation or was otherwise disposed of to others by the breeder or with his/her consent.

2. One application shall be filed for one new animal breed or plant variety.

3. Where the application is filed by a representative, within 1 month from the day of filing the application, the application shall be attached a document confirming the representation.

4. The application shall be filed in the state language of Georgia, and the other application materials may be filed in any other language. Where the application materials are filed in a foreign language, the applicant within 3 months term shall file their translation into the Georgian language.

5. Where the application is filed by a successor, within 1 month from the day of filing the application, the application shall be attached a document confirming the succession.

6. Where the data and documents and materials defined by Paragraphs 3-5 of this Article are not submitted in relevant terms, the proceeding of the application shall be terminated.

## **Article 18**

If before its filing with Sakpatenti the application was filed, in case of an animal breed, with the competent authority of another country, or in case of a plant variety, with the competent authority of other member of the Union, the relevant country, where this application was filed, the denomination of the new animal breed or plant variety, the application number and the filing date shall be indicated.

## **Article 19**

1. If the new animal breed described in the application filed with Sakpatenti is protected and/or permitted for distribution in another country, the applicant shall be obliged to attach to the application a certified copy of the official certificate

reflecting the testing as to distinctness, uniformity and stability, issued by the competent authority of the respective country, and its translation into the Georgian language.

2. If the plant variety described in the application filed with Sakpatenti was filed in any other member state of the Union, the applicant shall be obliged to attach to the application a certified copy of the first application and its translation into the Georgian language.

## **Article 20**

1. The applicant shall propose the denomination of the new animal breed or plant variety.

2. The denomination of the animal breed shall indicate this breed, make it easily identifiable, shall be brief, shall be distinguishable from every denomination designating the breed of animal of the same or closely related zoological species, shall not be contrary to the commonly recognized norms of morality, shall not insult religious feelings, shall not consist only of figures except, where this is an established practice, and shall not cause confusion as to the characteristics, origin, value, identity of the breed, and the identity of the breeder.

3. The plant variety shall be indicated by a denomination which further shall be the generic denomination of this variety and make the variety easily identifiable. It shall be distinguishable from every denomination designating the variety of plant of the same or closely related botanic species, shall not be contrary to the commonly recognized norms of morality, shall not insult religious feelings, shall not consist only of figures except, where this is an established practice and shall not cause confusion concerning the characteristics, origin, value, identity of the variety, and the identity of the breeder.

4. If the denomination of the new animal breed or plant variety does not satisfy the requirements of Paragraph 2 or 3 of this Article, respectively, or if a prior right of a third party prevents the use of the denomination of the variety or breed in

accordance with Paragraph 5 of this Article, the applicant shall be obliged to present a new denomination within 1 month from the receipt of the notification.

5. Any person who, within the territory of Georgia, offers for sale or markets an animal breed or plant variety protected in Georgia shall be obliged to use the denomination of that breed or variety, even after the expiration of the breeder's right in that breed or variety, except where, in accordance with Paragraph 4 of this Article, his/her prior right prevent such use.

6. When an animal breed or plant variety is offered for sale or marketed, it shall be permitted to associate the registered denomination of the breed or variety with a trademark, trade name or other similar indication provided that the denomination of the animal breed or plant variety is nevertheless easily recognizable.

#### **Article 21**

The application shall be deemed filed with Sakpatenti from the day of the submission of the following materials:

- (a) the request;
- (b) the proposed denomination of the new animal breed or plant variety;
- (c) the description of the new animal breed or plant variety.

#### **Article 22**

1. In case two or more applications are filed with Sakpatenti for one and the same animal breed and/or plant variety, the priority shall be established for the application filed earlier with Sakpatenti.

2. The breeder wishing to enjoy the priority established under a treaty on the protection of new animal breeds concluded with another country shall be obliged to file an application with Sakpatenti within 12 months from filing of the application in the contracting party of this treaty.

3. The breeder wishing to enjoy the priority established under the International Convention for the Protection of New Varieties of Plants shall be obliged to file an

application with Sakpatenti within 12 months from filing of the earlier application in the contracting party of this Convention.

4. In the application filed with Sakpatenti the date of filing the application in another country shall be indicated. The applicant shall be obliged to present within 6 months from the day of filing the application with Sakpatenti the copy of the application certified by the competent authority of the country where the application was first filed, and its translation into the Georgian language.

5. In case of a new plant variety, the breeder shall be entitled within 2 years after the expiration of the period of priority or, where the first application is rejected or withdrawn - from the day of such rejection or withdrawal to submit to Sakpatenti any necessary information, document or material required for the purpose of the examination.

### **Article 23**

Sakpatenti shall perform examination of the application as to form that includes checking the completeness and drafting of the application materials, including the confirmation of the application filing date.

### **Article 24**

1. Sakpatenti shall confirm the application filing date within 2 working days from the day of filing.

2. The examination of the application as to form shall be performed within 1 month from the day of filing the application.

3. If the application does not meet the requirements of Articles 17 and 22 of this Law, during the examination as to form Sakpatenti may request from the applicant to repair the deficiency and submit the relevant materials. The applicant shall be obliged to repair the deficiency or submit relevant materials within 1 month from the day of receiving the notification.

4. If the applicant complies with the requirement of Paragraph 3 of this Article, then the date of fulfilling the above request shall be deemed to be the date of filing of the application. If the applicant fails to comply with the request, the application shall not be considered filed, and the application materials shall be returned to the applicant.

5. If the application does not comply with the conditions of the examination as to form, proceeding of the application shall be terminated, of which the applicant shall be notified.

### **Article 25**

1. If it is confirmed that the application complies with the conditions of examination as to form, Sakpatenti shall publish the data of the new animal breed or plant variety in the Official Bulletin and shall take a decision to hand over the animal breed or plant variety for testing.

2. The following shall be published in the Official Bulletin:

- a) the data on the breeder;
- b) the date of filing the application;
- c) the proposed denomination of the new animal breed or plant variety;
- d) the brief description of the new animal breed or plant variety.

3. The description of the new animal breed or plant variety shall be laid open to public for familiarization.

### **Article 26**

Within 3 months from the publication of the new animal breed or plant variety data in the Official Bulletin, any person shall be authorized to present to Sakpatenti a written objection if:

- a) the new animal breed or plant variety does not comply with the criteria of protectability;
- b) the description of the new animal breed or plant variety does not convey a complete impression for the evaluation of this breed or variety;

- c) false data are given in the description of the new animal breed or plant variety;
- d) the priority claimed in accordance with Paragraph 2 of Article 22 of this Law for the new animal breed or plant variety described in the application is baseless according to the application presented for this breed or variety in another country.

### **Article 27**

1. Within 1 week from the receipt of an objection Sakpatenti shall hand over the objection materials for making a conclusion to the accredited person defined in Paragraph 2 of Article 3 of this Law. Copies of the objection materials shall be handed over to the applicant.
2. With respect to the objection Sakpatenti shall take a decision on the basis of the conclusion made by the accredited person defined under Paragraph 2 of Article 3 of this Law.
3. Procedures and terms of consideration of the objection shall be determined by the Ministry of Environment Protection and Agriculture of Georgia together with Sakpatenti.

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### **Article 28**

1. Following the completion of examination as to form and the publication of the application materials in the Official Bulletin, within 2 weeks the new animal breed shall be handed over for testing to the accredited person defined under Paragraph 2 Article 3 of this Law.
2. The new animal breed or plant variety shall be tested for distinctness, uniformity and stability by means of examination.
3. The applicant shall be authorized to request the extension of procedure terms of the application proceeding, and where he/she fails to comply with the terms – the restoration of these terms in accordance with the established rule.

4. The applicant, at any stage of the application proceeding, may withdraw the application or request termination of the application proceeding.

### **Article 29**

1. Results of testing of a new animal breed or plant variety carried out in Georgia shall be drafted by the accredited person defined in Article 3(2), who shall hand over them to Sakpatenti within 1 month.

2. In the case of a favourable conclusion of the new animal breed or plant variety testing, the person who performed the tests, together with the applicant, shall draw up the description of the animal breed or plant variety, which he/she shall send to Sakpatenti together with the conclusion.

3. Data of the testing shall be a trade secret of the applicant; their transfer to the other person without agreement with Sakpatenti and the applicant shall be deemed to be a violation and shall result in liability under the legislation in Georgia.

### **Article 30**

1. In case of a favourable conclusion of the new animal breed/plant variety testing, Sakpatenti shall take a decision to register the new animal breed/plant variety data. Sakpatenti shall record the denomination of the new animal breed/plant variety, description and other data in the Register of New Animal Breeds and Plant Varieties and issue a certificate, which represents a document certifying the property of the exclusive right holder.

2. The following shall be recorded in the Register of New Animal Breeds and Plant Varieties:

- a) the genus and species of the new breed/variety;
- b) the denomination of the new breed/variety;
- c) the description and photographic image of the new breed/variety;
- d) the name and address of the breeder;
- e) the number and date of registration.

3. The form of a certificate issued for the new animal breed/plant variety shall be developed by Sakpatenti.
4. Sakpatenti shall publish in the Official Bulletin: the genus and species of the animal breed/plant variety, the denomination of the new animal breed/plant variety, the description and photographic image of the new animal breed/plant variety, the name and address of the breeder, the registration number and date.
5. Any person shall be entitled to familiarize with the Register of New Animal Breeds and Plant Varieties under the established order.

### **Article 31**

1. If the application filed with Sakpatenti concerns a breed protected in another country, that animal breed shall not be a subject of tests for distinctness, uniformity and stability in the territory of Georgia. For such a breed a certified copy of the official document confirming the breeder's right issued by the competent body of the respective country and its translation into the Georgian language shall be submitted to Sakpatenti together with the application or within 2 months term from the day of filing the application. For such an application only examination as to form shall be performed.
2. If the application filed with Sakpatenti concerns a variety protected in other state member of the Union, that plant variety shall not be a subject of tests for distinctness, uniformity and stability in the territory of Georgia. For such a variety a certified copy of the official documents confirming the breeder's right issued by the competent body of the respective country and its translation into the Georgian language shall be submitted to Sakpatenti together with the application or within 2 months term from filing the application. For such an application only examination as to form shall be performed.
3. If the application filed with Sakpatenti concerns a breed/variety for which tests for distinctness, uniformity and stability have been already performed by the accredited person referred to in Article 3(2) of this Law and a favourable



conclusion has been issued, only examination as to novelty, denomination requirements and formal requirements shall be performed.

4. If the applications referred to in Paragraphs 1-3 of this Article comply with the requirements of examination as to form, Sakpatenti shall take a decision to register the new animal breed/plant variety, record the data in the Register of New Animal Breeds and Plant Varieties, issue a certificate and publish the registration data in the relevant Official Bulletin.

### **Article 32**

From the day of publication of the new animal breed or plant variety data in the Official Bulletin under Article 25 of this Law to the day of registration, the applicant provisionally shall be granted the same rights that he/she would have in the case of registration. If a third party from the day of publication of the new animal breed or plant variety data to the day of registration has carried out acts which require the breeder's consent, the breeder shall be entitled to request equitable remuneration only after registration of the new animal breed or plant variety.

## **Chapter V**

### **Rights and Obligations of the Holder of Breeder's Exclusive Right**

#### **Article 33**

1. The exclusive right of the breeder shall be the right to perform, authorize and/or prohibit the following with respect to the new animal breed or plant variety:

- a) production and reproduction (in case of a new plant variety)/reproduction (in case of a new animal breed);
- b) conditioning for the purpose of propagation (in case of a new plant variety);
- c) offering for sale, alienation or other transfer of rights;
- d) exporting;
- e) importing;

- f) stocking of propagation material for the purposes mentioned in Subparagraphs *a-e* of this Paragraph (in case of a new plant variety);
- g) stocking of the breeding material for the purposes mentioned in Subparagraphs *a* and *c-e* of this Paragraph (in case of a new animal breed).
2. The breeder may authorize the acts referred to in Paragraph 1 of this Article with certain conditions and restrictions.
3. The breeder's exclusive right shall also apply to the breeding material obtained by another person from the animal breed protected by the certificate, the animal derived from this material and the product obtained from this animal.
4. Taking into account the requirements of Article 37 of this Law, the acts defined by Paragraph 1 of this Article in respect of harvested material, including the entire plant and parts of plants, obtained through the unauthorized use of the propagation material of the variety protected by the certificate, shall require the authorization of the breeder, if the breeder has not had an opportunity to exercise his/her exclusive rights in relation to the above-mentioned propagation material.
5. The exclusive right of the breeder shall also apply to:
- a) a plant variety which is essentially derived from the variety protected by the certificate, where the protected variety is not itself an essentially derived variety,
  - b) a plant variety which is not clearly distinguishable in accordance with Article 13 of this Law from the plant variety protected by the certificate;
  - c) a plant variety whose production requires the repeated use of a plant variety protected by the certificate.

#### **Article 34**

1. An animal breed shall be deemed to be derived from another animal breed if:
- a) it is derived from the initial breed, or from a breed that is itself derived from the initial breed, and if the essential features characteristic of the genotype or combination of genotypes of the initial breed are expressed clearly in these animal breeds; at the same time, it clearly differs from the initial breed in one or several describable features.

b) in it, except the variation characteristic of the propagation process, the essential features characteristic of the genotype or combination of genotypes of the initial breed are expressed completely.

### **Article 35**

1. A plant variety shall be deemed to be essentially derived from another variety if:

a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

b) it is distinguishable from the initial variety by external properties, except for the differences characteristic of the propagation process, and it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

2. An essentially derived variety may be obtained: by the selection of a natural or induced mutant, or of a somaclonal variant, or the selection of a plant from plants of the initial variety, backcrossing, or transformation by genetic engineering.

### **Article 36**

1. The exclusive right of the breeder of a new animal breed shall not apply to:

a) acts done for private use of the new animal breed and for non-commercial purposes;

b) act done for experimental-breeding purposes.

### **Article 37**

1. The exclusive right of a new plant variety breeder shall not apply to:

a) private use of the new plant variety and use for non-commercial purposes;

b) act done for experimental purposes.

c) acts done for the purpose of breeding other varieties, except the cases provided for in Article 33(4), also acts referred to in Article 33(1) to (3).

2. The Ministry of Environment Protection and Agriculture of Georgia, taking into account the legitimate interests of the breeder, shall be entitled to restrict within reasonable limits the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the propagation material which they have obtained by planting, on their own holdings, the variety protected by the certificate or a variety covered by Article 33(5)(a) or (b) or Paragraph 1 of this Article.

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### **Article 38**

1. The exclusive right of a new plant variety breeder shall not apply to acts concerning any material of the variety protected by the certificate or any material derived from it, which has been included into the civil circulation by the breeder or with his/her consent in the territory of Georgia, unless such acts involve:

- a) further propagation of the variety protected by the certificate;
- b) export of the plant material of the variety protected by the certificate, which enables the propagation of the variety, into a country which does not protect the variety belonging to this genus and species, except where the exported material is for final consumption purposes.

2. For the purposes of Paragraph 1 of this Article, *material* means in relation to a variety:

- a) propagation material of any kind;
- b) harvested material, including the entire plant and its parts;
- c) any product made from the harvested material.

### **Article 39**

The breeder shall be obliged to ensure, during the whole period of validity of the exclusive right, obtainment of the breeding material of the new animal breed or propagation material of the plant variety enabling to produce the animal breed or

plant variety having the features referred to in the description of the new animal breed or plant variety.

## **Chapter VI**

### **Nullity and Cancellation of New Animal Breed and Plant Variety Registration and Certificates**

#### **Article 40**

Upon request of the interested person, a new animal breed or plant variety registration and certificate shall be recognized to be null from the registration day, if it is established that at the time of registration and issuing the certificate:

- a) the animal breed or plant variety did not comply with the requirements of Articles 12 and 13 of this Law;
- b) the grant of the breeder's right was based on the information and documents furnished by the breeder, along with this, the animal breed or plant variety did not comply with the requirements of Article 14 or 15 of this Law, respectively;
- c) the breeder's right was granted to a person who was not entitled to it, except for the case when he/she transferred this right to the person who was entitled to obtain the breeder's right in accordance with the rule established by this Law.

#### **Article 41**

1. Upon request of the interested person, a new animal breed or plant variety registration and certificate may be recognized as cancelled from the day of taking the relevant decision, when it is established that:

- a) the new animal breed or plant variety no longer complies with the requirements of Article 14 or 15 of this Law, respectively, established for the new animal breed or plant variety;
- b) the breeder failed to submit within the prescribed term the information, documents or materials deemed necessary for verifying the maintenance of the breed or variety upon the request of the Ministry of Environment Protection and Agriculture of Georgia in accordance with Article 39 of this Law;
- c) the breeder failed to satisfy the requirements established for maintenance of rights;

d) where the denomination of the animal breed or plant variety was cancelled after the grant of the right, the breeder did not propose another, suitable denomination.

2. The registration and certificate of the new animal breed or plant variety may be recognized as null or cancelled on the basis of a written request submitted to Sakpatenti by the breeder.

3. The data of the recognition of the new animal breed or plant variety registration and certificate as null and cancelled shall be entered by Sakpatenti in the Register of New Animal Breeds and Plant Varieties and the reference of the above-mentioned shall be published in the respective Official Bulletin.

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#### **Article 42**

On the basis of a written request submitted to Sakpatenti, the holder of the exclusive right during the validity term of the new animal breed or plant variety registration shall be authorized to enter changes or additions in the registered data only in respect to the address of the breeder or his/her representative.

### **Chapter VII**

#### **License of Use of New Animal Breed or Plant Variety**

#### **Article 43**

1. The licensor (breeder) shall be authorized to grant a license to use the registered new animal breed or plant variety to another person (licensee).

2. Granting of the license for the use of the new animal breed or plant variety shall be admissible for the new animal breed or plant variety permitted for distribution in the territory of Georgia.

3. The license may be simple or exclusive.

4. On the basis of the simple license agreement, the licensor shall transfer to the licensee the right to use the new animal breed or plant variety. At the same time, the licensor shall preserve all the exclusive rights and the right to conclude other simple license agreements.

5. On the basis of the exclusive license agreement, the licensor shall transfer the right to use the new animal breed or plant variety only to the licensee. At the same time, the licensor during the validity term of the exclusive license shall forfeit the exclusive rights transferred on the basis of this agreement as well as the right to conclude other license agreements.
6. The license agreement shall be made in the written form and shall provide for: the accurate data of the new animal breed or plant variety, types of use of the breed or variety, the validity term of the agreement and the territory, amount of the remuneration or the rule of determining the amount and term, as well as other conditions considered essential by the parties.
7. The right to use the new animal breed or plant variety in any way not provided for directly by the license agreement shall belong to the licensor.
8. The licensee shall be prohibited to transfer the right resulting from the license agreement or to grant a sublicense if it is not provided for directly in the license agreement.

#### **Article 44**

1. The compulsory license may be granted upon the request of any interested person only for reasons of satisfying public interest.
2. In case of a new animal breed or plant variety the compulsory license shall be issued on the basis of a recommendation given by the National Council of Animal Husbandry and Seeds functioning at the Ministry of Environment Protection and Agriculture of Georgia, by the decision of the Minister of Environment Protection and Agriculture of Georgia.
3. The compulsory license may be issued only when the interested person earlier was trying to obtain the license from the holder of the exclusive rights with reasonable conditions and terms, but his/her attempt was not successful.
4. The decision on granting the compulsory license shall define the scope of use of the new animal breed or plant variety, duration of the compulsory license, rights and obligations of the breeder and the licensee and the amount of remuneration.

The decision on granting the compulsory license shall be legalized by the order of the Minister of Environment Protection and Agriculture of Georgia.

5. The duration of the compulsory license agreement shall be extended if by examination performed by the Ministry of Environment Protection and Agriculture of Georgia it is ascertained that conditions of the license are complied with and there is a necessity of extension.

6. If the examination carried out during the validity term of the compulsory license proves that the grounds for granting the compulsory license no longer exist, the effect of the compulsory license shall be terminated on the basis of an order of the Ministry of Environment Protection and Agriculture of Georgia.

7. In case of granting of the compulsory license, the breeder shall be entitled to receive the equitable remuneration.

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## **Chapter VIII**

### **Violation of Breeder's Rights and Liability**

#### **Article 45**

The use of this animal breed or plant variety by a third party contrary to the requirements of this Law shall be deemed to be a violation of the breeder's rights and shall result in liability under the legislation of Georgia.

## **Chapter IX**

### **Permission for Distribution of Seeds and Planting Materials in Georgia**

#### **Article 46**

1. Seeds and planting materials shall be permitted for distribution in Georgia:
  - a) by a certificate of quality;
  - b) by a phytosanitary certificate.
2. Additional conditions of distribution of seeds and planting materials in Georgia shall be defined by the resolution of the Government of Georgia.

## **Chapter IX**



## **Transitional and Final Provisions**

### **Article 47**

1. Within 3 months term from the entry into force of this Law, the Ministry of Agriculture together with the National Intellectual Property Center Sakpatenti shall prepare and approve:

a) the rule of consideration the opposition of the interested person in connection with publication of the new animal breed data, the rule of the application proceeding, extension of procedural terms, the rule of termination and reinstatement, as well as the rule of granting of compulsory licenses;

b) the rule of consideration the opposition of the interested person in connection with publication of the new plant variety data, the rule of the application proceeding, extension of procedural terms, the rule of termination and reinstatement, as well as the rule of granting of compulsory licenses.

2. The Ministry of Agriculture of Georgia shall ensure approval of the requirements for distinctness, uniformity and stability with respect of the new animal breed and methods of testing, taking into account the international practice.

3. The Ministry of Agriculture of Georgia shall ensure approval of the requirements for distinctness, uniformity and stability with respect of the new plant variety and methods of testing, taking into account the international practice.

4. The Ministry of Agriculture of Georgia shall ensure establishment of the Standing Council of Experts on the basis of Article 3 (2) of this Law and shall approve its regulations.

5. Before March 1, 2011, the resolution of the Government of Georgia *On Approval of Additional Conditions of Distribution of Seeds and Planting Materials in Georgia* shall be adopted.

### **Article 48**

1. Upon the entry into force of this Law the following shall be declared invalid:

a) The Law of Georgia *For the Protection of New Breeds of Animals* of December 29, 2006 (*The Legislative Herald of Georgia*, №4, 12.01.2007, Art. 60);

- b) The Law of Georgia *For the Protection of New Varieties of Plants* of December 29, 2006 (*The Legislative Herald of Georgia*, №4, 12.01.2007, Art. 61);
- c) The Law of Georgia *On Breeding Animal Husbandry* of September 3, 1996 (*Parlamentis Utsqebani*, №22-23, October 17, 1996, p. 43);
- d) The Law of Georgia *On Permission for Distribution of Varieties of Agricultural Crops, Quality Seeds and Planting Material* of June 25, 1999 (*The Legislative Herald of Georgia*, №29 (36), 1999, Art. 157).

2. The subordinate legislation issued on the basis of legislative acts referred to in Subparagraphs *a* and *b* of Paragraph 1 of this Article retain legal force before their compliance with this Law.

#### **Article 49**

The Law shall enter into force upon its publication.

President of Georgia

*Mikheil Saakashvili*

Tbilisi,  
December 15, 2010.  
№4066-rs