

Law of Georgia for the Protection of New Breeds of Animals

Chapter I General Provisions

Article 1

This Law regulates relations linked with the legal protection of new breeds of animals and applies to all the genera and species of household animals.

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 an animal breed;

(a.b) the person who is the employer of the person referred to in subparagraph (a.a) or who has commissioned the latter's work;

(a.c) the successor in title of the person referred to in subparagraph (a.a) or (a.b);

(b) Application means the package of documents, necessary for the registration of a new animal breed and the granting of a certificate, drawn up under the requirements established by this Law;

(c) Certificate means the protective document certifying the registration of the new animal breed 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 another animal group. 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 breed.

Article 3

1. The National Intellectual Property Center "Sakpatenti" (hereinafter "Sakpatenti") shall ensure granting of the breeder's right and informing of the public by means of an official bulletin on applications for the new animal breed and granting of the breeder's right.

2. Testing of the new animal breed for distinctness, uniformity and stability in Georgia shall be performed by a person accredited by the legal entity of the public law - united national body of accreditation – accreditation center, under the requirements and testing methods approved by the Ministry of Agriculture of Georgia on the basis of an order. On the basis of the results of aforesaid tests, the Council of Experts existing at the Ministry of Agriculture of Georgia shall issue a conclusion in regard to the distinctness, uniformity and stability of the new animal breed. The Ministry of Agriculture of Georgia shall be responsible for implementation of these procedures.

3. Sakpatenti may also base its decision concerning the grant of the breeder's right on the results of the tests carried out by competent authorities of other members of the Union or tests carried out by the breeder in regard to distinctness, uniformity and stability.

Article 4

The duration of a breeder's exclusive rights in the new animal breed shall be 30 years from the day of registration of the new animal breed by Sakpatenti.

Chapter II Breeder and Holder of Certificate

Article 5

1. The breeder shall acquire personal property (exclusive) rights as a result of the registration of the new animal breed at Sakpatenti and granting of a certificate.
2. If the breeder requests so, Sakpatenti shall be obliged not to publish his name.
3. Where the new animal breed 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 defined on the basis of a contract.

Article 6

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

Article 7

1. Where breeding, discovering and developing of the new animal breed is connected with the fulfilment of duties or a special task by the employee, the right to register 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 belongs to the employer, the employee shall be entitled to receive from the employer the remuneration adequate to the use of the new animal breed, on the basis of their mutual agreement.

2. Where discovering and developing, or breeding of the new animal breed is not connected with the fulfilment of duties or a special task by the employee, the right to register 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 and/or, resulting from registration of the new animal breed and granting of the certificate, to purchase the exclusive rights.

Article 8

If the employer refuses to register the new animal breed 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 two or more applications are filed with Sakpatenti at various times, the animal breed shall be registered and a certificate granted in the name of the first applicant.

Chapter III

Protectability of the New Animal Breed

Article 10

1. The new animal breed shall be registered and granted a certificate, if it meets the protectability criteria.

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

Article 11

1. The 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:

(a) in the territory of Georgia earlier than one year before filing the application with Sakpatenti;

(b) in the territory of other country, earlier than four years before filing the application with Sakpatenti.

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 for 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 animal breed shall be deemed to be distinct if it is clearly distinguishable from any other breed whose existence 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 in the official register of breeds, in any country, shall make the breed a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the breed in the official register of breeds or the catalogue.

Article 13

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 constitutional-exterior features.

Article 14

The new animal breed shall be deemed to be stable if its relevant characteristics 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 the New Animal Breed

Article 15

1. The breeder shall file the application with the request of the registration of the new animal breed and obtainment of a certificate with Sakpatenti personally or by means of a representative.

Article 16

1. The application shall comprise:

(a) a request, with the indication of the name and address of the breeder;

(b) the proposed denomination of the new animal breed;

(c) the description of the new animal breed, the main zoological, constituiobnal-exterior features and household characteristics;

(d) the photographic image of the new animal breed;

(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 within the prescribed term and quantity, free of charge.

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

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

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

4. The application shall be filed in the state language, and the other application materials - 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 the assignee, within a month from the day of filing the application materials, the application shall be attached a document confirming the assignment.

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

Article 17

If before its filing with Sakpatenti the application was filed with the competent authority of another country, where this application was filed, the denomination of the new animal breed, the application number and the date of filing shall be indicated.

Article 18

If the new animal breed described in the application is protected and/or permitted for distribution in another country, the applicant shall be obliged to attach to the application

materials 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.

Article 19

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

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

3. If the denomination does not satisfy the requirements of paragraph 2 of this Article, or if prior right of third party prevent the use of the breed, the applicant shall be obliged to present the new denomination within a month from the receipt of notification, in accordance with paragraph 4 of this Article.

4. Any person who, within the territory of Georgia, offers for sale or markets propagating material of a breed protected within the said territory shall be obliged to use the denomination of that breed, even after the expiration of the breeder's right in that breed, except where, in accordance with the provisions of paragraph (3), prior rights prevent such use.

5. When an animal breed is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered breed denomination. If such an indication is so associated, the denomination of the animal breed must nevertheless be easily recognizable.

Article 20

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;
- (c) the description of the new animal breed.

Article 21

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

2. The applicant wishing to enjoy the priority established under the 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. In the application filed with Sakpatenti the date of filing the application in other country must 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 relevant organization of the country, where the application was first filed, and its translation into the Georgian language.

Article 22

1. Sakpatenti shall perform the formal examination of the application that includes completeness of the application materials, checking the execution of the application and the confirmation of the application filing date.

Article 23

1. Sakpatenti shall confirm the application filing date in 2 days term from the day of filing.

2. The formal examination of the application shall be performed within one month from the day of filing the application.

3. If the application does not meet the requirements of Articles 16 and 21 of this Law, during the formal requirements examination 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 one 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 formal requirements examination, proceeding of the application for the new animal breed shall be terminated.

Article 24

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

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

(a) the data of the breeder;

(b) the date of filing the application;

(c) the proposed denomination of the new animal breed;

(d) the brief description of the new animal breed.

3. Description of the new animal breed shall be laid open to public for familiarization.

Article 25

Any person shall be authorized to present to Sakpatenti a written objection within 3 months from the publication of the new animal breed data in the Official Bulletin:

(a) if the new animal breed does not comply with the requirements of protectability;

(b) if the description of the new animal breed does not convey a complete impression for the evaluation of this breed;

(c) if the data given in the description of the new animal breed are falsified;

(d) if the priority requested, in accordance with paragraph 2 of Article 21 of this Law, for the new animal breed described in the application is baseless according to the application presented for this breed in another country.

Article 26

1. Within one week from the receipt of an objection Sakpatenti shall hand over the objection materials for making a conclusion to the person referred to in paragraph 2 of Article 3 of this Law. A copy of the objection materials shall be handed over to the applicant as well.

2. Sakpatenti with respect to the objection shall take a decision on the basis of conclusion made by the person defined under paragraph 2 of Article 3 of this Law.

3. Procedures and terms of the objection shall be determined under the rule established by the Ministry of Agriculture.

Article 27

1. Following to the publication of the new animal breed application materials in the Official Bulletin as a result of completion of the formal requirements examination, the new animal breed shall be handed over for testing to the person defined under paragraph 2 Article 3 of this Law.

2. The new animal breed shall be tested for distinctness, uniformity and stability by means of examination.

3. The applicant shall be authorized to request extension of procedure terms of the new animal breed application proceeding or where he fails to comply with the terms, restoration of these terms in accordance with the established rule.

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

Article 28

1. Results of the new animal breed tests shall be done by the person referred to in Article 3(2), as an official conclusion that shall be handed over to Sakpatenti and the applicant.

2. In the case of the positive conclusion of the new animal breed testing, the person, who performed tests, together with the applicant shall draw up the description of the animal breed that he together with the conclusion shall send to Sakpatenti and the applicant.

3. Data of the tests shall be a trade secret of the applicant and its transfer to the other person without agreement with Sakpatenti and the applicant, shall be deemed to be a violation and shall result in liability defined under the existing legislation in Georgia.

Article 29

1. Where the positive conclusion of the new animal breed testing is made, Sakpatenti shall take a decision to register the new animal breed data and to grant the certificate. Sakpatenti shall record the denomination of the new animal breed, description and other data in the Register of New Animal Breeds and issue the 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:

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

3. The format of a certificate issued for the new animal breed shall be developed by Sakpatenti.

4. Sakpatenti shall publish in the Official Bulletin: the genus and species of the animal, the denomination of the new animal breed, the description and photographic image of the new animal breed, 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 under established order.

Article 30

1. If the application of the new animal breed filed with Sakpatenti concerns the breed protected in another country, that animal breed shall not be a subject of tests for novelty, 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 authorized 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 the formal requirements examination shall be performed.

2. If the application of the new animal breed filed with Sakpatenti concerns the breed for which tests for novelty, distinctness, uniformity and stability have been already performed by the person referred to in Article 3(2) of this Law and the positive conclusion has been issued, the novelty, denomination requirements and the formal requirements examination shall be performed.

3. If the applications referred to in paragraphs 1 and 2 of this Article comply with the conditions of the formal requirements examination, Sakpatenti shall take a decision to register the new animal breed, shall record the data in the Register of New Animal Breeds, issue a certificate and publish the registration data in the Official Bulletin.

Article 31

1. Under Article 24 of this Law from the day of publication of the new animal breed data to the day of registration, the applicant provisionally shall be granted the same rights, he would have in the case of registration. If a third party from the day of publication of the new animal breed data to the day of registration, has carried out acts which, once the right is granted, require the breeder's authorization, the breeder shall be entitled to equitable remuneration only after registration of the new animal breed.

Chapter V

Rights and Liabilities of the Holder of Breeder's Exclusive Right

Article 32

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

- (a) production or reproduction,
- (b) conditioning for the purpose of propagation,
- (c) offering for sale, alienation or other transfer of rights,
- (d) exporting,
- (e) importing,
- (f) stocking of the breeding material for any of the purposes mentioned in

subparagraphs (a), (b),(c) and (d), paragraph 1 of the Article.

2. The breeder may authorize the acts referred to paragraph 1 of this Article with certain conditions and restrictions.

3. The exclusive right of the new animal breed breeder 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.

Article 33

1. A 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 34

1. Exclusive right of the breeder shall not apply to:

(a) acts done privately and for non-commercial purposes,

(b) acts done for experimental-breeding purposes.

Article 35

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 enabling to produce the animal breed having the features referred to in the description of the new animal breed.

Chapter VI

Cancellation and Nullity of New Animal Breed Registration and Certificate

Article 36

Upon request of the interested person, the new animal breed registration and certificate shall be recognized to be null and cancelled from the registration day, only when it is established that at the time of registration and issuing the certificate of the new breed of animal:

(a) the animal breed did not comply with the requirements of Articles 11 and 12 of this Law;

(b) the animal breed did not comply with the requirements of Articles 13 and 14 of this Law, where the grant of the breeder's right has been based upon information and documents furnished by the breeder;

(c) the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

Article 37

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

(a) the new animal breed does no longer fulfil the requirements of Articles 13 and 14 of this Law;

(b) the breeder failed to present the information, documents or material deemed necessary for verifying the maintenance of the breed upon the request of the Ministry of Agriculture of Georgia and in accordance Article 35 of this Law .

(c) the breeder failed to satisfy the requirements established for maintenance of rights;

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

2. The registration and certificate of the new animal breed may be 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 registration and certificate as null and cancelled shall be entered by Sakpatenti in the Register of New Animal Breeds and the reference of the above mentioned shall be published in the Official Bulletin.

Article 38

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 registration shall be authorized to enter changes or additions in the registered data of the new animal breed only in respect to the address, breeder or his representative.

Chapter VII

License

Article 39

1. The holder of exclusive rights (licensor) shall be authorized to grant a license to use the registered new animal breed to the other person (licensee).

2. Granting of the license for the use of the new animal breed shall be admissible for the new animal breed 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. 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 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 these agreements 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, types of use, 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 in any way not provided for directly by the license agreement shall belong to the licensor.

8. The licensee shall not be allowed 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 40

1. The compulsory license may be granted upon the request of any interested person only for reasons of public interest.

2. The compulsory license shall be issued on the basis of a recommendation given by the National Council of Animal Husbandry functioning at the Ministry of Agriculture of Georgia, by the decision of the Minister of 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 attempt was not successful.

4. The decision on granting the compulsory license shall define the scope of use of the new animal breed, duration, rights and obligations of the breeder and the licensee and the amount of remuneration. The decision on granting the compulsory license shall be legalized with the order of the Minister of Agriculture.

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

6. If during the validity term of the compulsory license the examination proves that there are no grounds for granting the compulsory or official license, the effect of the compulsory license shall be terminated on the basis of a decision taken by the Ministry of Agriculture.

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

Chapter VIII

Violation of Breeder's Rights and Liability

Article 41

The use of this animal breed 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 existing legislation in Georgia.

Chapter IX

Final and Transitional Provisions

Article 42

1. Within 3 months term from the entry into force of this Law, the Ministry of Agriculture together with the National Intellectual Property Center of Georgia "Sakpatenti" shall prepare and approve the rule of consideration the opposition of the interested persons 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.

2. The Ministry of Agriculture of Georgia, within six months after entry into force of this Law, 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 within 2 months from the entry into force of this Law shall ensure establishment of the Council of Experts on the basis of Article 3 of this Law and shall approve its regulations.

Article 43

The Law shall enter into force on publication.

President of Georgia
Mikheil Saakashvili

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