

Annex 5|*Relevant Law*

Law of Kyrgyz Republic

On the Protection of Traditional Knowledge

Bishkek city, July 31, 2007, № 116

LAW OF THE KYRGYZ REPUBLIC

On the Protection of Traditional Knowledge

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The present Law secures general provisions of the State policy and legal, economic and social guarantees in the field of Traditional Knowledge, including Traditional Knowledge using genetic resources (hereinafter referred to as Traditional Knowledge) aimed at further sustainable development of the country and arrangement of conditions for fair distribution of benefits arising from the use of Traditional Knowledge, which is an historical heritage and property of the Kyrgyz Republic people.

Legislation of the Kyrgyz Republic on Traditional Knowledge consists of Constitution of the Kyrgyz Republic, the present Law and other normative legal acts of the Kyrgyz Republic.

Section I General Provisions

Article 1. Legal Regime of the Traditional Knowledge Protection

The present Law shall establish a legal regime for the protection of Traditional Knowledge in the Kyrgyz Republic territory.

The present Law shall not cover expressions of folklore and national handicraft arts.

Legal relationships in the field of use of genetic resources and the order of access to genetic resources of the Kyrgyz Republic shall be regulated in accordance with legislation of the Kyrgyz Republic.

Article2. General Concepts used in this Law

Traditional Knowledge shall mean knowledge, methods and manners, including use of genetic resources, used in different fields of the human activities, which have been transferred from one generation to another eventually in certain order and meaning. This knowledge have been kept and adapted for different needs of the local communities and the owners of traditional knowledge and represent particular value for the development of various fields of activities;

Traditional Knowledge holders shall mean the local communities, natural persons and legal entities with any legal structure and with any pattern of ownership who are the possessors of Traditional Knowledge;

Local community shall mean a population permanently residing on the territory of a village, township or city administration and other particular territories of the Kyrgyz Republic with their own national and cultural traditions, way of life and traditional knowledge in different fields of the human activities which possibly may improve the level of living standards;

Genetic Resources include all fauna and flora of terrestrial, marine and any other origin, which may be used by the owners of Traditional Knowledge to obtain specific practical outputs in any field of the human activities.

Section II State Regulation of Traditional Knowledge

Article3. Objectives and tasks of the State regulation

The objective of the state regulation in the field of Traditional Knowledge is a legal protection, promotion of reservation and wide use of Traditional Knowledge in different fields of human activities, assistance in use of Traditional Knowledge, including knowledge based on genetic resources in industrial production, as well as further commercialization of objects produced as a result of their use.

State regulation in the field of Traditional Knowledge shall include the following:

- 1) Creation of the preventive mechanism aimed at protection of Traditional Knowledge from illegal patenting of subject-matters created on the bases of Traditional Knowledge and use of associated genetic resources by the inclusion the Traditional Knowledge into database;
- 2) Fair distribution of benefits received due to usage of Traditional Knowledge in favor of local communities;
- 3) Establishment of the fund for development of local communities, which

- can be supported by financial transfers collected during the usage of Traditional Knowledge and genetic resources;
- 4) Establishment of the State fund for development of the system of usage of Traditional Knowledge;
 - 5) conducting scientific researches on Traditional Knowledge and existing genetic resources as to their practical use, inter alia:
 - reveal the priority trends in researches in the field of Traditional Knowledge using genetic resources, which may contribute significantly to the preservation of environment;
 - development and improvement of new types of genetic resources utilization;
 - making scientific studies in order to create the inventory on Traditional Knowledge on the territory of the Kyrgyz Republic;
 - reveal of well-known and widely used Traditional Knowledge.

Article 4. Authorized State Body

The state policy in the field of Traditional Knowledge shall be performed by the Authorized State Body in the field of Intellectual Property (hereinafter referred to as the Authorized Body). Pursuant to this Law the Authorized Body shall receive applications for registration of Traditional Knowledge, fulfill the State registration, include the data on the registration into the State Register, form the database on Traditional Knowledge, publish data on Traditional Knowledge, elaborate and issue normative legal acts for enforcement of this Law.

Section III

Legal subjects in the field of Traditional Knowledge

Article 5. Legal subjects

Legal subjects in the field of Traditional Knowledge are the State, local communities, natural persons and legal entities irrespective of their structural and legal forms and patterns of ownership as well as foreign natural persons and legal entities.

Article 6. Representation of the interests of Traditional Knowledge holders

Interests of the holders of Traditional Knowledge may be represented by the public organizations of natural persons and legal entities established by Traditional Knowledge holders of particular area acting on the base of appropriate statute of such organization and state registration.

Interests of a natural person who is a traditional knowledge holder may be

represented both by that natural person himself and by the representative assigned by him.

Foreign natural persons and legal entities in accordance with the present Law shall be entitled to act through their official representatives.

Section IV

Rendering the protection in the field of Traditional Knowledge

Article 7. Legal protection of Traditional Knowledge

Legal protection shall cover Traditional Knowledge, which is practically applicable in appropriate field of the human activities and which has positive result in the appropriate field.

Legal protection shall not cover Traditional Knowledge, which is actually or possibly may cause damage to human life and health as well as to environment.

For the rise of legal protection of traditional knowledge an official registration shall be required in the order established by this Law or entered into force in the order established by the legislation of the Kyrgyz Republic or in virtue of an international agreement of the Kyrgyz Republic.

Traditional Knowledge may be registered by one or jointly by several legal entities or natural persons irrespective of their patterns of ownership, who are the holders of Traditional Knowledge.

In order to protect Traditional Knowledge in the Kyrgyz Republic, inclusion them into the database, applications for registration of Traditional Knowledge may be filed by State bodies and institutions.

The order of registration and use of Traditional Knowledge by State bodies and institutions shall be determined by the Government of the Kyrgyz Republic.

Registration of Traditional Knowledge in the Kyrgyz Republic shall not be limited in time.

Article 8. Patenting of subject-matters created on the base of Traditional Knowledge

Patenting of subject-matters, which are representing Traditional Knowledge shall not be allowed in the Kyrgyz Republic.

When patenting the subject-matters created on the base of Traditional

Knowledge, materials of the application must contain reveal of origin of Traditional Knowledge which is used as prior art or prototype. The applicant shall indicate the source of making Traditional Knowledge available to the public.

Holder of a certificate, which name is indicated in the registered Traditional Knowledge shall be entitled to receive remuneration from the owner of a patent for invention created by use of Traditional Knowledge.

The order of payment of remuneration for use of Traditional Knowledge with the purpose of creation of invention shall be determined by an agreement between the owner of certificate for Traditional Knowledge and the owner of a patent for invention.

At the same time such agreement must specify assignments to be made for use of Traditional Knowledge to the Fund for development of local communities or the State fund for development of the system of Traditional Knowledge usage.

In order to prevent illegal patenting of subject-matters created on the base of Traditional Knowledge the Traditional Knowledge database shall be maintained, which shall be used during examination of subject-matters to be patented.

The database shall be maintained by the Authorized State Body based on the data on registered Traditional Knowledge and information regarding Traditional Knowledge which has entered into public domain.

Section V

Registration of Traditional Knowledge

Article9. Application for registration and granting the right to use Traditional Knowledge or for granting the right to use registered Traditional Knowledge

An application for registration and granting the right to use Traditional Knowledge or for granting the right to use registered Traditional Knowledge (hereinafter referred to as Application) shall be filed to the Authorized Body by applicant personally or through his/her representative (representatives) acting on the basis of a power of attorney granted by the applicant whose interests are represented by him.

An application shall be filed in the State or Official language.

An application shall contain the following:

- 1) application for traditional knowledge registration and granting the right

to use Traditional Knowledge or granting the right to use registered Traditional Knowledge stating the applicant as well as his location and place of residence;

- 2) specific and complete description of Traditional Knowledge, including:
 - point of origin of Traditional Knowledge (borders of a geographic object);
 - description of genetic resource, which is being used in connection with particular traditional knowledge;
 - field of application and expected positive result of traditional knowledge used;
 - information relevant to previously issued publications regarding a particular traditional knowledge.

The following documents shall be attached to the application:

- 1) An official document granted by the competent authority confirming a practical applicability of Traditional Knowledge and positive result of use thereof in appropriate field of activity.
- 2) Conclusion of the competent body (bodies) confirming membership of the applicant in a local community and/or is located in geographic object for which Traditional Knowledge is pertained to.

In case of filing the application for registration of Traditional Knowledge by State bodies, the said conclusion shall not be required.

- 3) For foreign applicant a document confirming his/her right for the claimed Traditional Knowledge in the country of origin

The Authorized body shall establish any other requirements to the abovementioned documents and order of their filing in accordance with the legislation of the Kyrgyz Republic.

Article 10. Consideration of the application

Consideration of the application shall be carried out within three months since the date of filing to the Authorized body. During consideration of the application the contents of required documents, correctness of registration thereof and correspondence of the claimed traditional knowledge with the requirements provided by Article 9 of this Law shall be checked.

According to the results of consideration of the application a decision to register or refuse registration of Traditional Knowledge shall be taken.

Failure to meet the conditions provided by Article 9 of this Law shall be considered as the grounds for refusal of Traditional Knowledge registration.

Article 11. Registration of Traditional Knowledge and Certificates Granting

The Authorized Body upon positive decision taken on Traditional Knowledge registration and payment of appropriate registration fees shall enter the information on registration into the State Register of Traditional Knowledge of the Kyrgyz Republic (hereinafter referred to as Register). The order of entering and list of information entered into the Register shall be determined by the Authorized Body.

The information related to registration of Traditional Knowledge can be published in official publications of the Authorized Body if Traditional Knowledge holder wishes to do so. The Authorized Body upon consultation with the traditional knowledge holder shall define the scope and contents of the information subject to publication.

Traditional Knowledge, which is being published partially or not published at all, shall be kept by the Authorized Body confidentially.

Appropriate fee shall be paid within two months since the date of decision receipt by the applicant.

Applicants, whose names are indicated as Traditional Knowledge owners or who were granted the right to use Traditional Knowledge in appropriate manner shall receive certificates with a form prescribed by the Authorized Body. A form of certificates and content of the data contained therein shall be specified by the Authorized Body.

A certificate shall be granted by the Authorized Body within two months after publication in the Official Bulletin.

Article 12. Term of validity of a certificate for the right to use Traditional Knowledge

This certificate shall be valid within five years since the date of application filing to the Authorized Body.

Term of validity of a certificate may be extended upon the request of the certificate owner provided that appropriate fee is paid.

Application for extension of the term of validity of a certificate shall be filed within last year of the certificate's validity.

Term of validity of a certificate shall be extended for ten years each time.

Upon solicitation by the certificate owner for extension of the term of validity he/she may receive additional six-month-period of extension provided that additional fee is paid.

Record on the extension of term of validity of a certificate shall be made by the Authorized Body in the Register and certificate.

Article 13. Making alterations into the Register and certificate

Certificate owner shall notify the Authorized Body on the change of his/her title, surname, given or patronymic names and any other changes related to registration and granting the right to use Traditional Knowledge.

Record of the change shall be made in the Register and certificate provided that appropriate fee is paid.

Corrections of obvious and technical mistakes, which were made not because of applicant's fault shall be made by the Authorized Body in the Register and certificate of registration and/or of the right to use Traditional Knowledge without payment of any additional fees.

Article 14. Agreement for Traditional Knowledge utilization

Pursuant to this Law a person who is not the owner of Traditional Knowledge may receive a right to use Traditional Knowledge provided that appropriate agreement is concluded between him/her and the owner of Traditional Knowledge, who has registered Traditional Knowledge in the Authorized Body.

According to the agreement the owner of Traditional Knowledge shall grant the right to use Traditional Knowledge to other person in the scope of transferred rights, time-limits, territory and order of payments established by this agreement. Conditions of the agreement are subject to the mutual consent of the parties concerned. The agreement shall be registered in the Authorized Body provided that appropriate fee is paid.

The agreement must provide a provision of assignments for use of Traditional Knowledge to the Fund for the development of a local community or the State Fund for development of the system of Traditional Knowledge usage.

At the same time assignments for use of Traditional Knowledge provided by the agreement to the Fund for the development of a relevant local community or the State Fund for development of the system of Traditional Knowledge usage shall be not less than 20%.

Article 15. Fees

For performance of any legal actions related to registration or granting the right to use Traditional Knowledge appropriate fees shall be charged, which shall be paid to the Authorized Body.

List of actions for which fees shall be paid, their size and terms of payment as well as grounds for exemptions to pay fees, reduction and refunds thereof shall be determined by the Government of the Kyrgyz Republic.

Fees shall be paid to the Authorized Body by the applicant, certificate owner or as agreed by any natural persons or legal entities.

All funds assigned to the account of the Authorized Body in the form of fees, including currency funds and payment for services and materials shall be used by the Authorized Body for technical equipment, creation and application of automated system, maintenance the database on Traditional Knowledge, training and motivation of the staff as well as development of Intellectual Property system.

Article 16. Funds

In order to reserve Traditional Knowledge and distribute fairly benefits from use thereof the owners of Traditional Knowledge shall establish the Fund for development of a local community.

In order to develop the Traditional Knowledge system the State Fund for development of Traditional Knowledge usage shall be established under the Authorized Body.

The sources of financing of the Fund shall include assignments under the agreements for use of Traditional Knowledge and other sources, which are not forbidden by the legislation of the Kyrgyz Republic.

Article 17. Use of Traditional Knowledge

Production, application, import, distribution, offer for sale, sale and other entering to economic turnover shall be deemed as a usage of Traditional Knowledge in subject-matters containing and created on their base.

Use in production with commercial purposes without conclusion of agreements with Traditional Knowledge holders shall be deemed as illegal use of Traditional Knowledge.

Use of Traditional Knowledge shall be allowed without consent of Traditional Knowledge holder if such a usage takes place for educational and research purposes provided that the source is indicated and exclusively for personal purposes.

In case of nonuse or insufficient use of registered Traditional Knowledge by the owner of certificates during three years from the date of issuance of certificates, any person wishing to use protected Traditional Knowledge if the owner of certificate refuses to conclude the agreement to use Traditional Knowledge with such person subject to conditions corresponding a common practice, shall be entitled to go to court with a suit for granting him/her such a permission to use Traditional Knowledge concerned.

In the event that the owner of certificate fails to prove that nonuse or insufficient use was caused by reasonable excuse, the court shall give the said permission with identification of the scope of use, size, terms and order of payment.

Size of payments for use of Traditional Knowledge shall be specified in accordance with common practice.

In case of force-majeure (disasters, catastrophes, accidents) as well as in the interest of national security the Government of the Kyrgyz Republic shall be entitled to issue permission to use Traditional Knowledge provided that reasonable compensation is paid to the owner of certificate; scope and duration of use of Traditional Knowledge shall be limited by the purposes for which permitted. Any disputes, which can rise as a result of such use, shall be settled by the court.

Article 18. Consideration of disputes related to application of this Law

Disputes related to application of this Law shall be considered in the order prescribed by the legislation of the Kyrgyz Republic.

Article 19. International agreements of the Kyrgyz Republic

If an international agreement signed by the Kyrgyz Republic and entered into force in the order prescribed by the legislation of the Kyrgyz Republic provides for provisions other than provisions provided by this Law an appropriate international agreement shall prevail.

Article 20. Enter into force of this Law

This Law shall enter into force since the date of official publication.
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President of the Kyrgyz Republic K. Bakiev

Approved by the Jogorku Kenesh of the Kyrgyz Republic on June 26, 2007