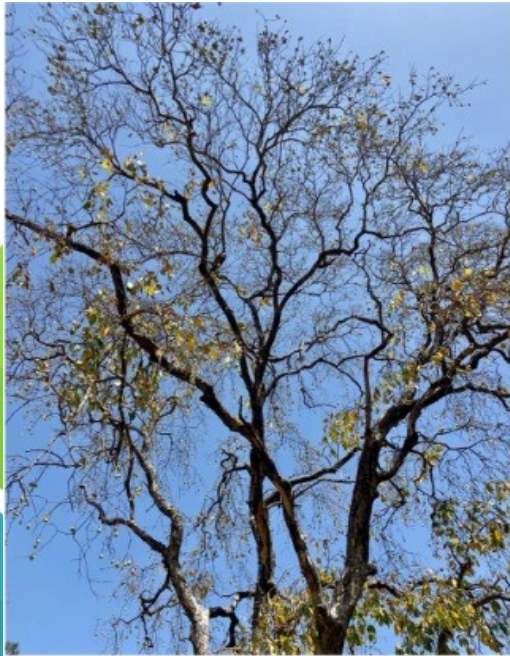




हरियाणा राज्य जैव विविधता बोर्ड, पंचकुला  
Haryana State Biodiversity Board, Panchkula



## Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing



HARAR TREE, MORNI (PANCHKULA)

The Convention on Biological Diversity's 10th Conference of the Parties (CoPs) held on 29th October, 2010 in Nagoya, Japan adopted an international legally binding Protocol on Access to Biological Resources and Associated Knowledge and Benefits Sharing. This Protocol has broad applicability to guide how we do international research, plan future collection of Biological Resources and information. In pursuance of the Nagoya Protocol and as per provisions of Biological Diversity Act, 2002, National Biodiversity Authority has notified Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations in the year 2014.

Access to Benefit Sharing (ABS) refers to the way in which genetic resources may be accessed, and how users and providers

reach agreement on the fair and equitable sharing of the benefits that might result from their use. The agreement created a framework that balances access to genetic resources, including those related to traditional knowledge of indigenous and local communities, on the basis of prior informed consent and mutually agreed terms, with the fair and equitable sharing of benefits, thereby contributing to the conservation and sustainable use of biodiversity. In return for these benefits, providers of biodiversity will enable access to their genetic resources for research or other purposes. This can contribute to the advancement of science and to human well-being through the use of genetic resources in pharmaceuticals, cosmetics, agriculture and other sectors. Benefit-sharing with providers will take various forms, ranging from royalties to joint ventures, technology transfer, capacity-building, etc.

### Procedure for access to biological resources and associated traditional knowledge for research or bio-survey and bio-utilization for research:—

- Any person referred to under sub-section (2) of section 3 of the Biological Diversity Act, who intends to have access to biological resources and/or associated traditional knowledge for research or bio-survey and bio-utilization for research shall apply to the National Biodiversity Authority (NBA) in Form I of the Biological Diversity Rules, 2004, for obtaining access to such biological resource and associated knowledge, occurring in India.
- The NBA shall, on being satisfied with the application under sub-regulation (1), enter into a benefit sharing agreement with the applicant which shall be deemed as grant of approval for access to biological resource for research referred to in that sub-regulation:
- Provided that in case of biological resources having high economic value, the agreement may contain a clause to the effect that the benefit sharing shall include an upfront payment by applicant, of such amount, as agreed between the NBA and the applicant.

### Procedure for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for commercial utilization:-

- Any person who intends to have access to biological resources including access to biological resources harvested by Joint Forest Management Committee (JFMC)/ Forest



Nursery

dweller/Tribal cultivator/Gram Sabha, shall apply to the NBA in Form-I of the Biological Diversity Rules, 2004, or to the State Biodiversity Board (SBB), in such form as may be prescribed by the SBB, as the case may be, along with Form 'A' annexed to these regulations.

- The NBA or the SBB, as the case may be, shall, on being satisfied with the application under sub-regulation (1), enter into a benefit sharing agreement with the applicant which shall be deemed as grant of approval for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for commercial utilization referred to in that sub-regulation.

### Mode of benefit sharing for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for commercial utilization:—

Where the applicant/trader/ manufacturer has not entered into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/ Forest dweller/ Tribal cultivator/ Gram Sabha, and purchases any biological resources directly from these persons, the benefit sharing obligations on the trader shall be in the range of 1.0 to 3.0% of the purchase price of the biological resources and the benefit sharing obligations on the manufacturer shall be in the range of 3.0 to 5.0% of the purchase price of the biological resources:

Provided that where the trader sells the biological resource purchased by him to another trader or manufacturer, the benefit

sharing obligation on the buyer, if he is a trader, shall range between 1.0 to 3.0% of the purchase price and between 3.0 to 5.0%, if he is a manufacturer:

Provided further that where a buyer submits proof of benefit sharing by the immediate seller in the supply chain, the benefit sharing obligation on the buyer shall be applicable only on that portion of the purchase price for which the benefit has not been shared in the supply chain.

- Where the applicant/ trader/ manufacturer has entered into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/ Forest dweller/ Tribal cultivator/ Gram Sabha, and purchases any biological resources directly from these persons, the benefit sharing obligations on the applicant shall be not less than 3.0% of the purchase price of the biological resources in case the buyer is a trader and not less than 5.0% in case the buyer is a manufacturer.
- In cases of biological resources having high economic value such as sandalwood, red sanders, etc. and their derivatives, the benefit sharing may include an upfront payment of not less than 5.0%, on the proceeds of the auction or sale



amount, as decided by the NBA or SBB, as the case may be, and the successful bidder or the purchaser shall pay the amount to the designated fund, before accessing the biological resource.

### Option of benefit sharing on sale price of the biological resources accessed for commercial utilization:-

When the biological resources are accessed for commercial utilization or the bio-survey and bio-utilization leads to commercial utilization, the applicant shall have the option to pay the benefit sharing ranging from 0.1 to 0.5 % at the following graded percentages of the annual gross ex-factory sale of the product which shall be worked out based on the annual gross ex-factory sale minus government taxes as given below:-

#### Collection of fees:—

Collection of fees, if levied by Biodiversity Management Committee (BMC) for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction under sub-section (3) of section 41 of the Act, shall be in addition to the benefit sharing payable to the NBA/SBB under these regulations.

Annual Gross ex-factory sale of product	Benefit sharing component
Up to Rupees 1,00,00,000	0.1%
Rupees 1,00,00,001 up to 3,00,00,000	0.2%
Above Rupees 3,00,00,000	0.5%

#### Processing of applications received by NBA:—

While processing the application for access to any biological resource (including plants and or animals and or their parts or genetic material or derivatives), the NBA may consider the following factors, namely:--

##### Whether the biological resource is—

- cultivated or domesticated or wild;
- rare or endemic or endangered or threatened species;
- accessed directly through the primary collectors living in natural habitat or obtained through intermediaries like traders;

- developed or maintained under ex-situ conditions;
- of high value/ importance to livelihoods of local communities;
- restricted under the Act or any other law for time being in force;
- exempted under section 40 of the Act;
- included in crops listed under Annex I to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), to which India is a contracting party;
- included in the Appendices of the Convention on International Trade on Endangered Species (CITES).

The NBA while taking any decision on the application relating to the use of biological resources and/or knowledge associated thereto may consult through the SBBs, the BMCs within whose jurisdiction the biological resources and/or the knowledge occur.

The NBA shall reject the application requesting access to biological resources for the reasons specified under rule 16 of the Biological Diversity Rules, 2004.

Approval granted by the NBA shall be in the form of written agreement duly signed by an authorised officer of the NBA, the applicant and others as applicable:

Provided that the NBA may grant approval without a written agreement for the purposes of conducting of non-commercial research or research for emergency purposes outside India by



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Indian researchers/ Government institutions under regulation 13. Based on any complaint or suo moto, the NBA may withdraw the approval granted for access and revoke the written agreement on the grounds specified under rule 15 of the Biological Diversity Rules, 2004;

Provided that a copy of the order of such revocation shall be issued to the concerned State Biodiversity Board and the Biodiversity Management Committees for the purposes of prohibition of access.

#### Certain activities or persons exempted from approval of NBA or SBB:—

The following activities or persons shall not require approval of the NBA or SBB, namely:--

- Indian citizens or entities accessing biological resources and/ or associated knowledge, occurring in or obtained from India, for the purposes of research or bio-survey and bio-utilization for research in India;
- collaborative research projects, involving the transfer or exchange of biological resources or related information, if such collaborative research projects have been approved by the concerned Ministry or Department of the State or Central Government and conform to the policy guidelines issued by the Central Government for such collaborative research projects;
- local people and communities of the area, including growers and cultivators of biological resources, and vaid and hakims, practicing indigenous medicine, except for obtaining intellectual property rights;
- accessing biological resources for conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping, in India;
- publication of research papers or dissemination of knowledge, in any seminar or workshop, if such publication is in conformity with the guidelines issued by the Central Government from time to time;
- accessing value added products, which are products containing portions or extracts of plants and animals in unrecognizable and physically inseparable form; and
- biological resources, normally traded as commodities notified by the Central Government under section 40 of the Act.