



# ENCOURAGING ABS AGREEMENTS AND SUSTAINABLE USE OF GENETIC RESOURCES

Building practical and workable access and benefit-sharing frameworks that encourage and support ABS-compliant partnerships and sourcing by businesses



## ENCOURAGING ABS AGREEMENTS AND SUSTAINABLE USE OF GENETIC RESOURCES

The three objectives of the Convention on Biological Diversity (CBD)—conservation of biological diversity; sustainable use of its components; and fair and equitable sharing of benefits from the utilisation of genetic resources—are mutually supportive. Their attainment requires the collaboration of all actors in the conservation and use of genetic resources.

The third objective is no exception. To give it effect and to fulfil its important role in encouraging conservation and sustainable use, practical and workable access and benefit-sharing frameworks and a collaborative working relationship between government and business and other users is essential.

By working together to build an environment that supports innovation and the creation of societal and other benefits which can then be shared, governments, business and other stakeholders will be able to contribute more effectively to the goals of the CBD and to the UN SDGs.

To help advance such collaboration, ICC has developed this booklet to promote a better understanding of what is required to build practical and workable access and benefit sharing (ABS) frameworks that would encourage and support ABS partnerships and sourcing by businesses.



## A COLLABORATIVE, POSITIVE AND CONSTRUCTIVE APPROACH

Governments and users share a common aim: to create benefits from the sustainable use of genetic resources while ensuring their conservation.

Such benefits—whether in kind, monetary, or societal—are generated through innovation using genetic resources. A proactive approach to encourage and facilitate sourcing and partnerships will help support the innovation necessary to create benefits to be shared.

Innovation requires research and development—a form of sustainable use of biodiversity which may lead to the creation of new knowledge, technologies, products and services. These outcomes can contribute to all three objectives of the CBD as well as the UN Sustainable Development Goals (SDGs).

Promoting conservation and building local capacity through other measures and collaborations within the ABS framework is also important to achieving the CBD's aims. Countries can move up the value chain by developing local expertise and skills that can help unlock the potential and value of genetic resources.

To achieve agreements that are mutually beneficial and workable, expectations and requirements on both sides have to be realistic. To facilitate this, a better understanding of the constraints and needs of all parties should be developed.

## BUSINESS CONTEXT

Significant investments in time and in human and financial resources are needed to produce commercially viable products from research and development with genetic resources. Even with such investments, the risk of failure is high, as most projects do not result in commercial success.

Businesses thus have to evaluate the risk and cost (human and financial) of using genetic resources against the potential return on investment.

Predictable time frames and costs are also necessary for the planning of any potential research and development project.



### Business decisions weigh

**Risks and costs:** e.g. legal uncertainty/unpredictability; lack of transparency/information; administrative/regulatory costs; research and development costs/risks; risk to reputation



### Against

**Investment incentives:** e.g. legal certainty; predictability; commercial potential of genetic resources; transparency; simple, efficient and cost-effective procedures; innovation incentives

## INCENTIVES FOR SOURCING

When business users make decisions as to whether to source genetic resources from a country, they look for:

- > Legal certainty and predictability (especially clarity on scope)
- > Simple, efficient, timely and cost-effective process and procedures that are workable for both users and governments
- > Transparent requirements
- > Guidance and support for users of genetic resources with respect to the regulatory process and requirements
- > Compatibility with existing practice in business and research and development
- > A cooperative and facilitative approach

Facilitative measures are especially important for SMEs, start-ups, and users in developing countries.



## LEGAL CERTAINTY & PREDICTABILITY

Legal certainty and predictability is a key requirement to make the system workable for all parties. This refers to:

- > Clear, unambiguous legislation and regulation
  - > Clearly-defined scope
  - > Specific—not vague—terms that can be understood without further clarification
  - > Limited referrals to other pieces of legislation
- > Clear provisions and information on which genetic resources are subject to ABS rules, with definitions that allow easy identification e.g. clarity on status and definition of:
  - > Genetic resources on public/private property
  - > Genetic resources in situ/ex situ
  - > Genetic resources in different parts of the territory
  - > Cultivated/wild species
  - > Genetic resources used for commercial/non-commercial purposes
- > Clarity as to when and how legal obligations are triggered
  - > A forward-looking non-retroactive approach provides more certainty and clarity.





## SIMPLE, TRANSPARENT & EFFICIENT SYSTEM

A simple, transparent and efficient process reduces administrative costs and time spent by both users and governments. Suggestions on how this could be achieved include:

- > A single set of rules at the national level, if possible. If more than one set of rules is necessary, ensuring that the different rules are coordinated and consistent will help avoid confusion and uncertainty.
- > Clarity and transparency on different steps in the process and the time-frame for obtaining necessary authorisations and responses.
- > Simple, streamlined and user-friendly approval systems and administrative procedures for all types of use (e.g. a 'one-stop shop' for permits; standard application forms).
- > Processes that support and facilitate negotiation—e.g. negotiations with a single party, whether direct providers or national authorities—simplify the negotiation process for both governments and users.
- > Timeframe that is reasonable—lengthy processes may cause projects to be abandoned.



## TRANSPARENCY OF REQUIREMENTS

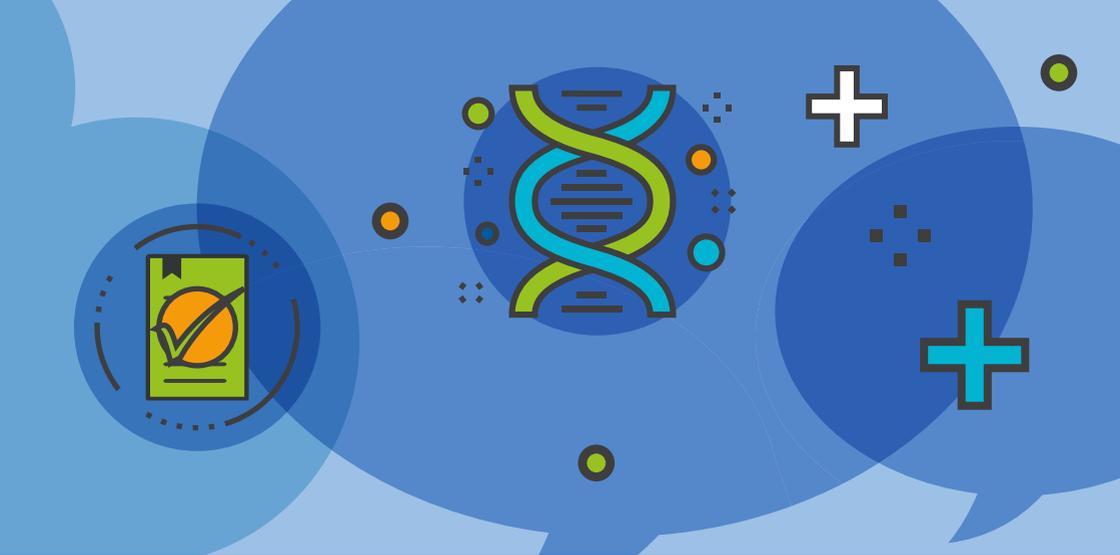
So that users understand requirements and procedures, comprehensive, accurate and up-to-date information on the ABS Clearing House (ABSCH) is essential. Providing users with clarity on their obligations will support governments' efforts to promote compliance.

### Basic minimum information (Article 14 NP)

- > ABS legislation and administrative and policy measures
- > National focal point and competent national authority/ies names and contact details

### Additional helpful information

- > English translations of ABS measures/requirements
- > Identity and contact details of authorities/persons providing Prior Informed Consent and negotiating MAT (if feasible in the national context)
- > Simplified official information explaining the legislation and procedures on which users can rely (e.g. FAQs addressing basic questions; flow charts)
- > Terms required as part of ABS arrangements (e.g. examples of benefit-sharing or sample agreements)



## OTHER MEASURES FACILITATING COMPLIANCE AND ABS AGREEMENTS

Below are suggestions for additional measures that could help governments to facilitate compliance and encourage ABS agreements and sourcing by users.

- > Accurate, timely responses to questions from users by the National Focal Point contact on the ABSCH.
- > Information on genetic resources and their availability (e.g. taxonomic catalogue of species; information on where to find materials; establishment of local ex situ collections; trained guides to assist for in situ locations).
- > Indication of the ABS status of genetic resources available for sourcing (validated by local authorities).
- > Initial preparation of genetic resources so that they are more easily usable for research and development. This will add value to the basic genetic resources.

## MUTUALLY AGREED TERMS (MATs)

Achieving mutually beneficial and workable ABS agreements requires:

- > Expectations and requirements on both sides to be realistic and a better understanding of the constraints and needs of all parties.
- > Processes that support and facilitate the timely conclusion of agreements (e.g. by providing for MATs to be agreed with a single party such as direct provider or national authorities).
- > Benefit-sharing terms that are fair, reasonable, clear and take into account commercial realities.
- > Taking into account the following factors:
  - > Flexibility to consider different options for benefit-sharing (e.g. in-kind; lump sum) to allow for solutions best adapted to the situation of all parties.
  - > Benefit sharing that is fair but also realistic, taking into account the expected value of the resource and investments required to develop a commercially viable product.
  - > Reasonable cut-off points for obligations.
  - > Business needs for confidentiality.
  - > Need to allow transfers for certain purposes (e.g. quality control or customer service).
  - > Practical management of research and development results (e.g. joint ownership is more complex for all parties to manage than licences/co-operation).



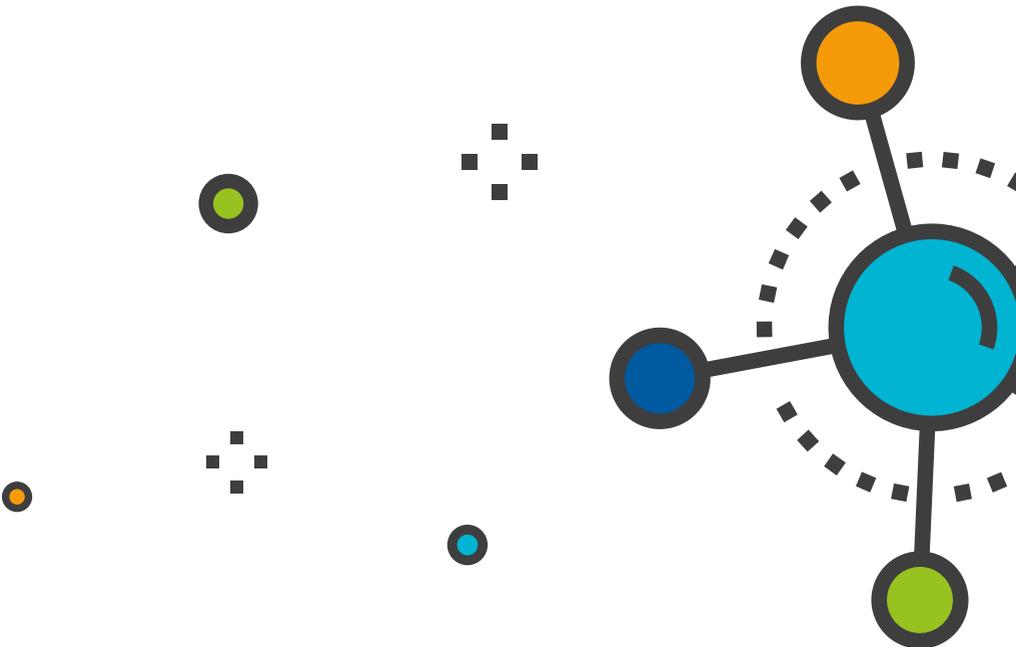
## CONCLUSION

Governments play an essential role in providing the appropriate framework and incentives for innovation utilising genetic resources, while businesses provide the necessary investment and expertise and bear the risks and costs of research and development.

By working together, governments and business users can help support innovation and the creation of societal and other benefits that can then be shared.

Opportunities for the building of local capacity and incentivising conservation can also be created during the sourcing and research and development process through a proactive approach and supportive measures.

ICC hopes that these insights into the characteristics of practical and workable ABS regimes that enable sourcing and innovation with genetic resources will help businesses and governments to collaborate more effectively to incentivise conservation and promote the innovation and benefit creation necessary to achieve the aims of the CBD and the UN Sustainable Development Goals.





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