

VIETNAM  
BIODIVERSITY



# GUIDANCE DOCUMENT

FOR THE IMPLEMENTATION  
OF DECREE No. 59/2017/  
ND-CP ON THE MANAGEMENT  
OF ACCESS TO GENETIC  
RESOURCES AND THE  
SHARING OF BENEFITS  
ARISING FROM THEIR  
UTILIZATION

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This publication was prepared by the Nature and Biodiversity Conservation Agency (BCA), under support of the GEF-UNDP funded Project “Capacity building for implementation of the Nagoya Protocol on Access to Genetic Resources and Benefit sharing from their utilization” (Project ID: 00091409). BCA would like to express sincere thanks to all the national and international consultant for their valued contribution during development and finalization of this document.

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# **GUIDANCE DOCUMENT**

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Ha Noi, Feb 2020

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# ACRONYMS

<b>ABS</b>	Access to genetic resources and benefit sharing from utilization of genetic resources
<b>BCA</b>	Nature and Biodiversity Conservation Agency
<b>CBD</b>	Convention on Biological Diversity
<b>Decree 59/2017/ND-CP</b>	Decree No. 59/2017/ND-CP of the Government dated May 12, 2017 on the management of access to genetic resources and the sharing of benefits arising from their utilization
<b>Decree 65/2010/ND-CP</b>	Decree No. 65/2010/ND-CP of the Government dated June 11, 2010 on detailing and guiding the implementation of a number of articles of the Biodiversity Law
<b>GRs</b>	Genetic resources
<b>Nagoya Protocol</b>	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from utilization of Genetic Resources under the Convention on Biological Diversity
<b>NCA</b>	National Competent Authority
<b>NFP</b>	National Focal Point
<b>MAT</b>	Mutually Agreed Terms/Access and Benefit sharing contract (in Viet Nam context)
<b>MARD</b>	Ministry of Agriculture and Rural Development
<b>MONRE</b>	Ministry of Natural resources and Environment
<b>PIC</b>	Prior Informed Consent/Access and Benefit sharing License (in Viet Nam context)
<b>R&amp;D</b>	Research and Development
<b>TK</b>	Traditional knowledge Associated to Genetic Resources
<b>VEA</b>	Viet Nam Environment Administration

# INTRODUCTION

Located on the Indochinese peninsula, Viet Nam is one of biodiversity hotspots in the world. As one of the 12 biodiversity centers in the world<sup>1</sup>, Viet Nam has 42,900 species, of which nearly 14,000 plant species, 11,000 species of marine organisms and a large number of endemic species have been recorded<sup>2</sup>. This rich biodiversity also is reflected by the abundance of species, native crop and livestock species, medicinal plants, herbs and traditional knowledge. Such resources are of great importance for economic development, especially for a country where production is still based on the exploitation of natural resources and agriculture, and forestry and fishery are still major contributors to the national economy.

In Viet Nam, as in other countries, there is recognition that the wealth of biodiversity has significant economic, social and ecological values. In particular, access to and utilization of genetic resources have been central to research and development, including in the biotechnology, pharmaceutical and cosmetic industries. Fair and equitable sharing of benefits of using genetic resources should meaningfully contribute to poverty reduction, promoting national sustainable economic development and conservation of natural resources.

However, in Viet Nam, biological resources are being used unsustainably and a large proportion of them are in risk of disappearance. In that situation, the Government has committed to international treaties and promulgated policies on conservation and sustainable development of biodiversity resources. In 2008, the Biodiversity Law was approved and access to genetic resources and sharing of benefits (ABS) was provided in the first time. The provisions of ABS under Biodiversity Law 2008 were guided by Article 18, 19 and 20 of Decree No. 65/2010/ND-CP of the Government on June 11, 2010 on detailing and guiding the implementation of a number of articles of the Biodiversity Law.

Two years after becoming a party of the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from utilization of genetic resources under the Convention on Biological Diversity following the Resolution No.17/NQ-CP of the Government on March 17, 2014, the Prime Minister approved the project to strengthen management capacity of ABS in the period 2016-2025.<sup>3</sup> Then, on May 12, 2017, the Government enacted, Decree No. 59/2017/ND-CP on the management of access to genetic resources and the sharing of benefits arising from their utilization to implement provisions of the Nagoya Protocol and make clear provisions on ABS under the Biodiversity Law, 2008. The Decree 59/2017/ND-CP replaced provisions on ABS of Decree 65/2010/ND-CP.

In order to guide the implementation of Decree 59/2017/ND-CP, this document aims to explain basic concepts and requirements for organizations and individuals which seek access to genetic resources in Viet Nam. This material also contains detailed instructions, orders and procedures for registration, negotiation, signature of contract, licensing and benefit sharing from utilization of genetic resources; requirements for organizations and/or individuals planning to have or having access to genetic resources in Viet Nam.

The document is developed by the Nature and Biodiversity Conservation Agency, Viet Nam Environment Administration in collaboration with a team of experts under framework of the Project “Capacity Building for the Ratification and Implementation of the Nagoya Protocol on Access to genetic resources and Benefit-sharing in Viet Nam” funded by the Global Environment Facility via the United Nation Development Program.

*Ha Noi, Feb 2020*

***Nature and Biodiversity Conservation Agency  
Viet Nam Environment Administration  
Ministry of Natural Resources and Environment***

1. Hotspots of international biodiversity conservation

2. Ministry of Natural Resources and Environment (2014) Viet Nam 5<sup>th</sup> National Report on Biological Diversity, period: 2009-2013

3. Decision no. 1141/QĐ-TTg dated 27 June, 2016

## International framework on ABS

Over the past two decades, community awareness on role and importance of biodiversity in human life has been greatly enhanced; and there has been also a strong development of international laws on biodiversity. Adopted in 1992, the Convention on Biological Diversity (CBD) entered into force in 1994 as a milestone in international efforts on biodiversity conservation and sustainable development. The Convention officially recognizes national sovereignty over biodiversity resources, including genetic resources (GRs). Those resources are no longer considered the common heritage of humanity. Access to GRs is no longer considered free, but subject to prior informed consent and mutually agreed terms. The Convention provides member countries with power to regulate access to GRs within their jurisdiction.

The Convention sets out principles facilitating access to GRs (Article 15.2), and obligations to share benefits from the utilization of GRs (Article 15.7). The reason for those two principles is the fact that GRs and traditional knowledge (TK) associated with those resources are mainly concentrated in developing countries from the southern hemisphere, while the capacity for utilization of GRs (financial resources, science and technology) are concentrated in developed countries from the northern hemisphere. A mechanism for access to GRs and fair and equitable sharing of benefits from the utilization of GRs has been set out to meet increasing demands for access to GRs from developed countries and desire to get sharing of benefits from the utilization of GRs from developing countries.

Therefore, one of three objectives of the Convention is to share benefits arising from

the utilization of GRs in a fair and equitable manner. To specify this third objective of the CBD, the Nagoya Protocol on access to genetic resources and the fair and equitable of benefits arising from utilization of genetic resources under the CBD (herein after referred to as the Nagoya Protocol) was adopted in 2010 and entered into force on October 12, 2014. The objective of the Nagoya Protocol is to achieve fair and equitable sharing of benefits arising from utilization of GRs through appropriate access to GRs and technology transfer and by taking in account all rights to such resources and technologies and with appropriate funding, thereby contributing to biodiversity conservation and sustainable use of biodiversity components (Article 1 of the Nagoya Protocol).

Main contents of the Nagoya Protocol have covered fundamental elements of access to GRs and benefit sharing (hereinafter referred to as ABS) and institutional and implementation factors of the Protocol:

- Regarding fair and equitable sharing of benefits, the Nagoya Protocol set out a principle that benefits shall be shared based on mutually agreed terms (MAT) between those who hold GRs (hereinafter referred to as provider) and those who have access to GRs for their utilization (hereinafter referred to as user). The parties will take appropriate measures with a view to ensuring fair and equitable sharing of benefits. Benefits arising out from the utilization of GRs and TK associated with GRs shall be shared in mutually agreed terms (MAT) under Article 8 (j), 15, 16 and 19 of the CBD. Benefits may include monetary and non-monetary benefits,



including but not limited to those listed in Annex 1 of the Nagoya Protocol. In Viet Nam, MAT is understood as the Access and Benefit sharing Contract between provider and user.

- As its recognition of national sovereignty over natural resources, a prior informed consent (PIC) is required for access to GRs. The parties will take appropriate policy, administrative and legal measures with a view to providing information on how to apply PIC, issuing a clear and transparent written decision by a national competent authority (NCA) in the most economical way and most reasonable time; establishing appropriate criteria and/or processes to reach PIC with the involvement of local/indigenous communities on access to GRs. In Viet Nam, PIC is granted through a License for access to GRs.
- The Nagoya Protocol stipulates that the parties in consideration of effective participation of relevant local/indigenous communities shall establish a mechanism to inform potential users of traditional knowledge associated with GRs (TK) on their obligations (Article 12 of the Nagoya Protocol<sup>4</sup>).
- The Nagoya Protocol requires the parties to design a National Focal Point (NFP) on ABS and design one or more national competent authorities (NCAs) on ABS. A Party may designate a single entity to fulfil the functions of both focal point and NCA (Article 13 of the Nagoya Protocol<sup>5</sup>).
- The Nagoya Protocol requires the parties to design one or more checkpoints to collect or receive, as appropriate, relevant information related to prior informed consent, to the establishment of mutually agreed terms, and/or to the utilization of GRs, as appropriate. To manage the use of GRs, the License made available to the Access and Benefit-sharing Clearing-House, shall constitute an internationally recognized certificate of compliance (Article 17 of the Nagoya Protocol<sup>6</sup>).

***Box 1. Access to genetic resources and fair and equitable sharing of benefits derived from their utilization - access and benefit sharing or ABS for short established by international agreements such as the Convention on Biological Diversity and the Nagoya Protocol and implemented by national laws, regulations and policies.***

*Based on the recognition of sovereign rights over biodiversity, including genetic resources, countries regulate the way in which genetic resources are accessed and the benefits from their utilization are shared. Guiding pillars for such regulation are the concepts of prior informed consent and mutually agreed terms, including on fair and equitable benefit sharing. In Viet Nam, these principles are implemented by the regulations on License to access to GRs and Contract on access to GRs and benefit-sharing.*

The compliance mechanism under the Nagoya Protocol is described in the below Figure 1.

4. <https://www.cbd.int/abs/text/articles/default.shtml?sec=abs-12>

5. <https://www.cbd.int/abs/text/articles/default.shtml?sec=abs-13>

6. <https://www.cbd.int/abs/text/articles/default.shtml?sec=abs-17>

## National implementation

Based on provisions of the Nagoya Protocol, member states should develop a legal framework and national policies to implement ABS principles. In Viet Nam, once ABS regulations have been implemented, fair

and equitable sharing of benefits will be an important factor, a driving force for biodiversity conservation, contributing to poverty alleviation and improved livelihoods of local communities.

## Aims and approaches to ABS implementation in Viet Nam

In Viet Nam, the utilization of GRs is significant importance as the economy is heavily dependent on natural resources. GRs play a great role and importance in many social aspects, bringing out enormous economic values and providing great potential contributions to the national economic development if applied and managed well.

ABS, as a way to promote access to GRs for their utilization and the sharing of resulting benefits, could benefit both users and providers. It ensures that GRs shall be accessed and utilized in a way that maximize benefits of the two parties, ecosystems and communities where GRs are found.

Companies and research institutions seek access to GRs for different types of utilization, from scientific research to the development of commercial goods that contribute to human life such as food, medicine, cosmetics, natural ingredients and new varieties of plants. Providers agree with access to GRs and shall receive in return fair and equitable sharing of benefits from the utilization of GRs. Ideally a part of these benefits are used to enhance conservation and sustainable use of biodiversity. The sharing of monetary and non-monetary benefits can contribute significantly to poverty reduction and sustainable development. This can be a potential channel of sustainable economic development in Viet Nam given our rich diversity of GRs as presented above.

Recognizing the importance of GRs and the ABS mechanism, the Biodiversity Law 2008 devotes chapter V on the conservation and sustainable development of GRs and related issues. Section 1 on access to GRs and benefit sharing (from Article 55 to Article 61) covers all fundamental elements of ABS. These regulations are consistent with basic principles of the CBD and the Nagoya Protocol.

To implement national sovereignty for GRs and national responsibility for conservation and sustainable use of GRs in its territory, Clause 1 of Article 55, of the Biodiversity Law, defines “The State uniformly manages all GRs in the Viet Nameese territory”. This affirms that the State is the sole owner of all GRs in the territory of Viet Nam. GRs are owned by all the people, and represented and uniformly managed by the State following Article 53, the Constitution, 2013.

Organizations and individuals assigned to manage GRs have specific rights and obligations under Article 56, the Biodiversity Law. They are entitled to get benefits shared by organizations and individuals having access to GRs as stipulated in Articles 58 and 61, the Biodiversity Law, 2008.

The Law also provides general regulations on ways and means of access, purposes of access, plans for access, time to access, subjects of access, conditions for ensuring biosafety and

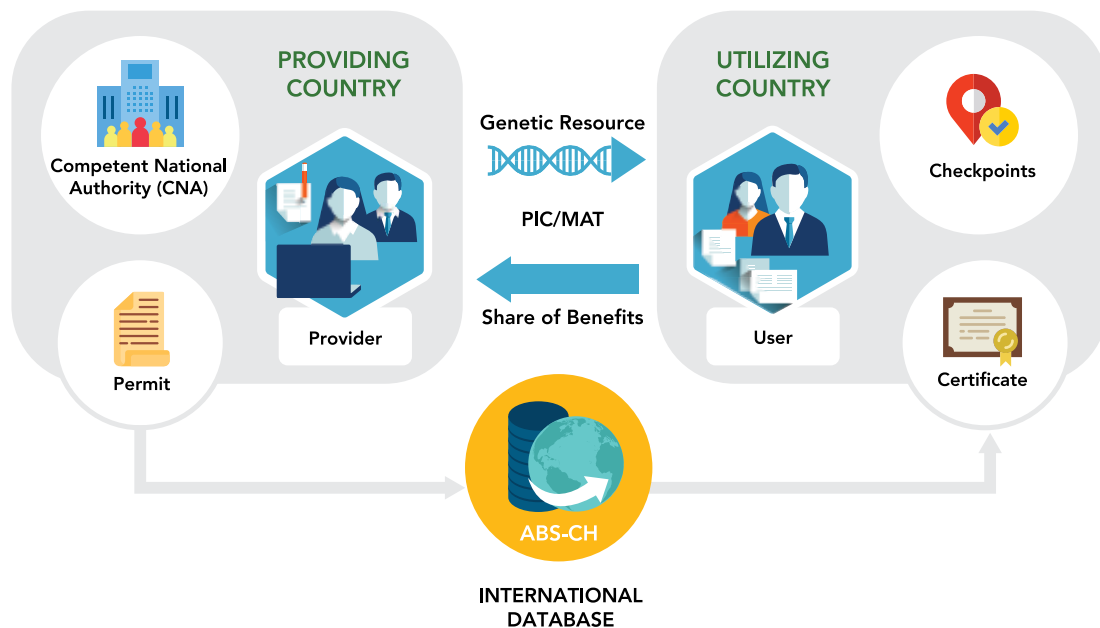
environment protection. Specifically, Article 57 determines order of and procedures for access to GRs, Article 58 on Contracts on access to GRs and benefit sharing and Article 59 on Licenses for access to GRs.

The Biodiversity Law also identifies main contents of an ABS contract and an access license along with important contents of mutually agreed terms.

On June 11, 2010, the Government has issued Decree 65/2010/ND-CP of the Government on detailing and guiding the implementation of a number of articles of the Biodiversity Law (herein after referred to as Decree 65/2010/ND-CP) with some provisions on specific orders and procedures for access to GRs and benefit sharing. However, provisions of Decree 65/2010/ND-CP were still limited and not able to be applied directly into practice. Those provisions have become more and more inadequate when Viet Nam joined the Nagoya Protocol in 2014 and the country was in an urgent need of a new decree to put the ABS mechanism into practice and

to implement provisions of the Nagoya Protocol and the Biodiversity Law. To meet the need, on May 12, 2017, Decree No. 59/2017/ND-CP of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization (herein after referred to as Decree 59/2017/ND-CP) was issued.

Decree 59/2017/ND-CP is in effect since 1<sup>st</sup> July, 2017. The decree consists of 28 articles in 5 chapters, detailing orders and procedures of the ABS process from registration and negotiation of an ABS contract to application for access to GRs and benefit sharing, and monitoring of compliance through information and reporting mechanism. Rights and obligations of the involved parties are also concretized, including the state management responsibility to designate a national focal agency and a national competent agency to grant licenses. Together with the above-mentioned main provisions, to apply directly provisions of the Decree, a series of 09 sample forms were also issued as annexes.



Source: <http://www.abs-initiative.info/>

**Figure 1. The compliance provisions of the Nagoya Protocol on ABS**

# GENERAL PRINCIPLES

Conservation and sustainable development of biodiversity elements are two inherently linked components, two mutual activities in existing policies on biodiversity conservation. They are also the focus and orientation for legislation on biodiversity in general and on ABS in particular. Therefore, the Biodiversity Law 2008 sets out the principle of *“Harmoniously combining conservation with rational exploitation and use of biodiversity; and combining conservation, rational exploitation and use of biodiversity with hunger eradication and poverty alleviation”* (Clause 2, Article 4, Biodiversity Law, 2008), concurrently with the principle of *“Organizations and individuals who benefit from biodiversity exploitation and use, shall share their benefits with involved parties: ensuring harmony between the interests of the State, organizations and individuals”* (Clause 4, Article 4, Biodiversity Law, 2008). Accordingly, along with its allowance for proper exploitation and use of biodiversity resources, the State also requires biodiversity conservation and benefits from

utilization of biodiversity must be shared to return to biodiversity conservation. The State *“encourage organizations and individuals to invest in and apply scientific and technological advances and TK to the conservation and sustainable development of biodiversity, and guaranteeing their lawful rights and interests”* (Clause 3, Article 5, Biodiversity Law, 2008). This is also a concrete declaration to implement the principle of facilitating access to GRs under Article 15 of the CBD.

The Biodiversity Law also affirms the policy of “ensuring control of access to GRs” (Clause 1, Article 5), which is a policy aimed at the exercise of national sovereignty over GRs in accordance with the CBD and the Nagoya Protocol. This is reaffirmed in Clause 1, Article 55 “The State uniformly manages all GRs in the Viet Nameese territory”.

More concretely, the Decree 59/2017/ND-CP stipulates several principles that guide the development, interpretation and putting in practice of its provisions:

## **PRINCIPLE 1: The state of Viet Nam has national sovereignty for all genetic resources in its territory<sup>7</sup>**

This is the first principle in the ABS management confirmed by Decree 59/2017/ND-CP. This provision clarifies principles stipulated in the Biodiversity Law “The State uniformly manages all GRs in the Viet Nameese territory” in accordance with provisions of the Nagoya Protocol. The provision also makes clear provisions in Article 53 of the Constitution, 2013: *“The land, water resources, mineral resources, resources in the sea and airspace, other natural resources and properly invested and managed by the State are public properties, coming under ownership of the entire people represented and uniformly managed by the State”*. Therefore, GRs are of entire people ownership represented by the State and uniformly managed by the State.

At the same time, the State assigns the following organizations and individuals rights and responsibilities in managing GRs (Article 55, Biodiversity Law):

- a) Conservation zone management units and organizations assigned to manage conservation zones shall manage GRs in conservation zones;

7. Clause 3 Article 4 Decree 59/2017/ND-CP

- b) Heads of biodiversity conservation facilities, scientific research and technological development institutions, and GRs storage and preservation establishments shall manage their own GRs;
- c) Organizations, households and individuals assigned to manage or use land, forests or water surface shall manage GRs assigned to them for management or use (to define these providers, please refer to explanation under Section - Actors, 1. Providers at page 24 of this document);
- d) Commune-level People’s Committees shall manage GRs in their localities, except cases specified at Points a. b and c of this Clause.

Under the Viet Nam ABS law, above organizations and individuals who assigned to manage GRs, are providers of the GRs. Figure 2 describes the assignment of management by the State to different actors (Providers).

However, it is important to clarify that the State maintains sovereign rights over GRs and regulation over GRs. Providers grant prior informed consent and negotiate mutually agreed terms, but it is the State that regulates access to GRs for their utilization, defines the rights and responsibilities of providers, including by authorizing the negotiation of an ABS contract and determining the minimum levels of benefit sharing.

It is also important to clarify that rights to manage GRs are separate from rights linked to traditional knowledge (TK). In Viet Nam, “TK is understood as the knowledge, experience and practices of local people on conservation and use of GRs”<sup>8</sup>. TK may be owned by an individual, family (eg, traditional remedies), an indigenous community, an ethnic minority group (eg, Red Dao bathing remedy), or spread among communities and of national ownership (eg, anti-allergic bathing remedy). This essential difference in ownership determines that ABS requirements on traditional knowledge are also different and separate than those for GRs.

**PRINCIPLE 2: User of genetic resources who are foreign individuals or organizations are allowed to access to genetic resources only when licensed by the competent national authorities<sup>9</sup>**

This principle has been implemented since Decree took effect from July 1, 2017. For GRs which have been accessed before the effective date of the Decree, the provisions of the Biodiversity Law and specific provisions of the Law on Forest Protection and Development, the Fisheries Law, the Ordinance on Plant Varieties and the Ordinance on Livestock Breeds shall be applied and procedures for obtaining permits are applied for specimens collected after this date.

8. Article 3.28, Law on Biodiversity 2008

9. Clause 2 Article 4 Decree 59/2017/ND-CP

**PRINCIPLE 3: The state encourages domestic organizations and individuals to carry out research and development activities on genetic resources<sup>10</sup>**

One of the objectives of the Viet Nam ABS system is to encourage national research and development on GRs. The decree sets out the principle to promote research cooperation among domestic organizations and individuals and facilitates the development of national intrinsic capabilities in scientific research and application of technologies using GRs. This is why different requirements apply for foreign and domestic users of GRs and foreign users are called to collaborate with local partners. Distinct rules on ABS for domestic organisations are relatively common in ABS legislation of biodiversity-rich countries, including India and Brazil.

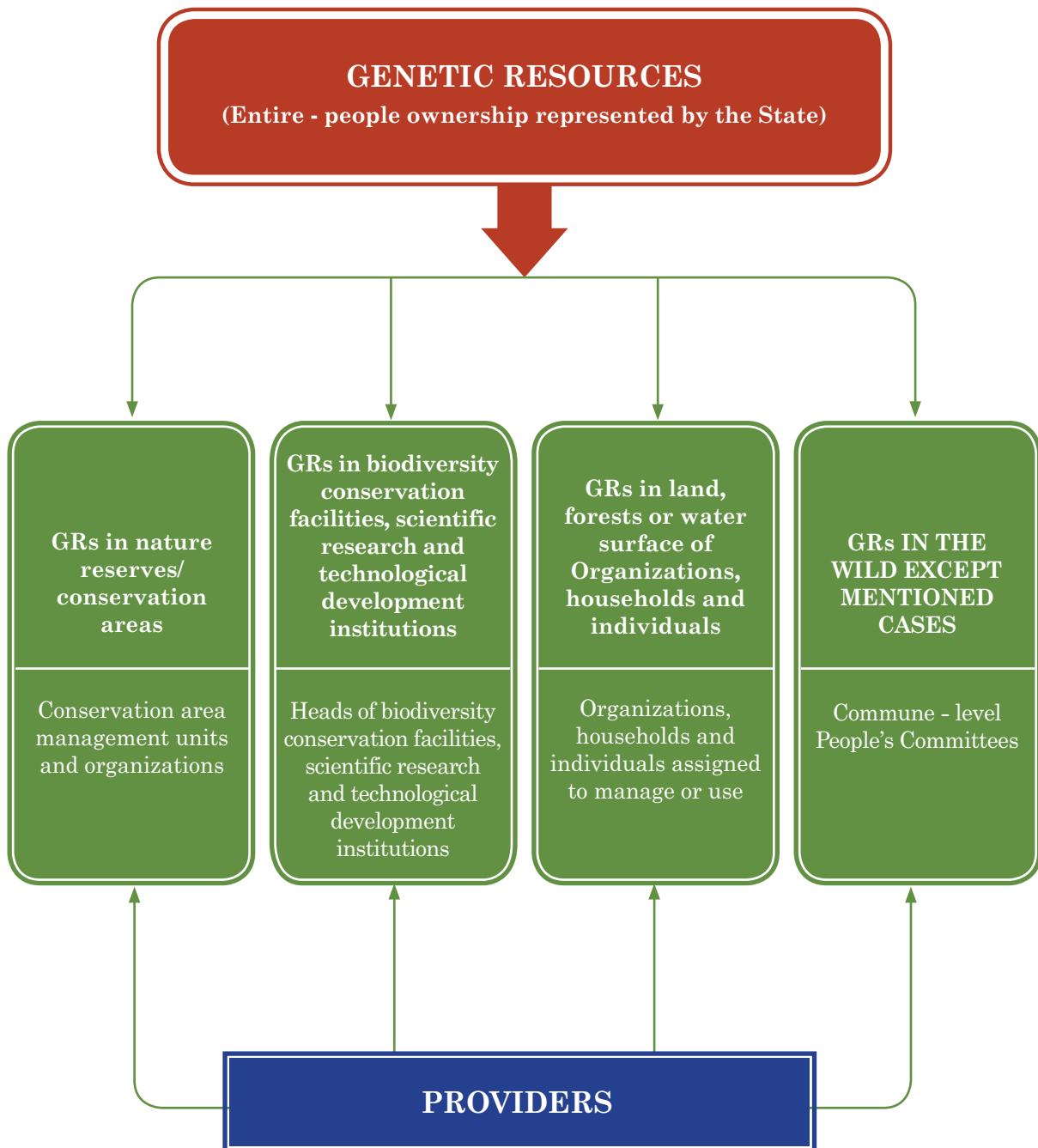
**PRINCIPLE 4: Sharing benefits from utilization of genetic resources should be fair and equitable among parties involved and contribute to an effective management of biological resources, promotion of scientific research and commercialization of genetic resources, focusing on the role of local communities in conservation and sustainable use of genetic resources<sup>11</sup>.**

This is a key principle. Thus, the Decree states that the goal of benefit sharing is to ensure fairness and equity of shared benefits for the conservation and sustainable use of biological resources, contributing to the scientific, technical and commercial development of GRs. The role of local communities is also set out in this principle.

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10. Clause 3 Article 4 Decree 59/2017/ND-CP

11. Clause 4 Article 4 Decree 59/2017/ND-CP



**Figure 2. Chart of ownership and authorization of management of genetic resources in Viet Nam**  
(According to Clause 2 Article 55 of the Biodiversity Law)

# BASIC CONCEPTS OF ACCESS TO GENERIC RESOURCES AND BENEFIT SHARING

The identification of which activities fall under the scope of ABS requirements in Decree 59/2017/ND-CP is important to provide legal certainty and ensure compliance with legal provisions. Therefore, the following basic concepts need to be considered:

## 1. Genetic resources

As an implementation document for the Biodiversity Law, Decree 59/2017/ND-CP refers to definitions in this Law, such as “GRs includes all species and genetic specimens in nature, conservation zones, biodiversity conservation facilities and scientific research and technological development institutions and in nature”<sup>12</sup>. That is, the Decree covers GRs from all biological resources in Viet Nam, whether native or exotic, wild or cultivated.

It is particularly important to note that introduced species may also be subject to ABS requirements in Viet Nam. Users often mistakenly assume that, if a species is not native to Viet Nam, it is not subject to ABS requirement. However, Decree 59/2017/ND-CP defines “origin of GRs” as locations where the wild GRs are collected OR where GRs have been domesticated and produced for a long time.<sup>13</sup> This definition in Decree 59/2017/ND-CP is in line with the definition of “country of origin” in Article 2 of the CBD.

For example, the case “*Scrophularia ningpoensis*” is not a native species of Viet Nam, but to China. However, this species has been acclimated for a long time, adaptive to the living conditions as a local variety, and is now widely cultivated in Viet Nam. It would thus be covered by ABS requirements.

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12. Clause 2 Article 3, the Biodiversity Law

13. Clause 10 Article 3 Decree 59/2017/ND-CP

14. Clause 29 Article 3, the Biodiversity Law

15. Article 1 Decree 59/2017/ND-CP

## 2. Access to genetic resources

*Access to GRs means activities of investigating and collecting GRs for research and development and production of commercial products.*<sup>14</sup>

The Biodiversity Law defines the term “Access” in a way to clarify that it requires not only collection or other acquisition of GRs, but also the intention to engage in utilization of GRs - whether by research, development or bioprospecting (as the term “investigating” should be understood). In this way, similarly to the Nagoya Protocol, the Decree 59/2017/ND-CP regulates the management of *access to GRs for utilization* and sharing benefits from their utilization under sovereignty of the Socialist Republic of Viet Nam<sup>15</sup>. As such, the Decree focuses on “access to GRs” for “utilization” purpose. The term “utilization of GRs” is also defined as “research and development activities utilizing the genetic and/or biochemical composition of GRs, including the application of biotechnology as regulated in the Decree 59/2017/ND-CP”, and further clarified in Part 3 below.

A number of examples presented below will clarify meaning of the above-mentioned term “*access to GRs for utilization*”.

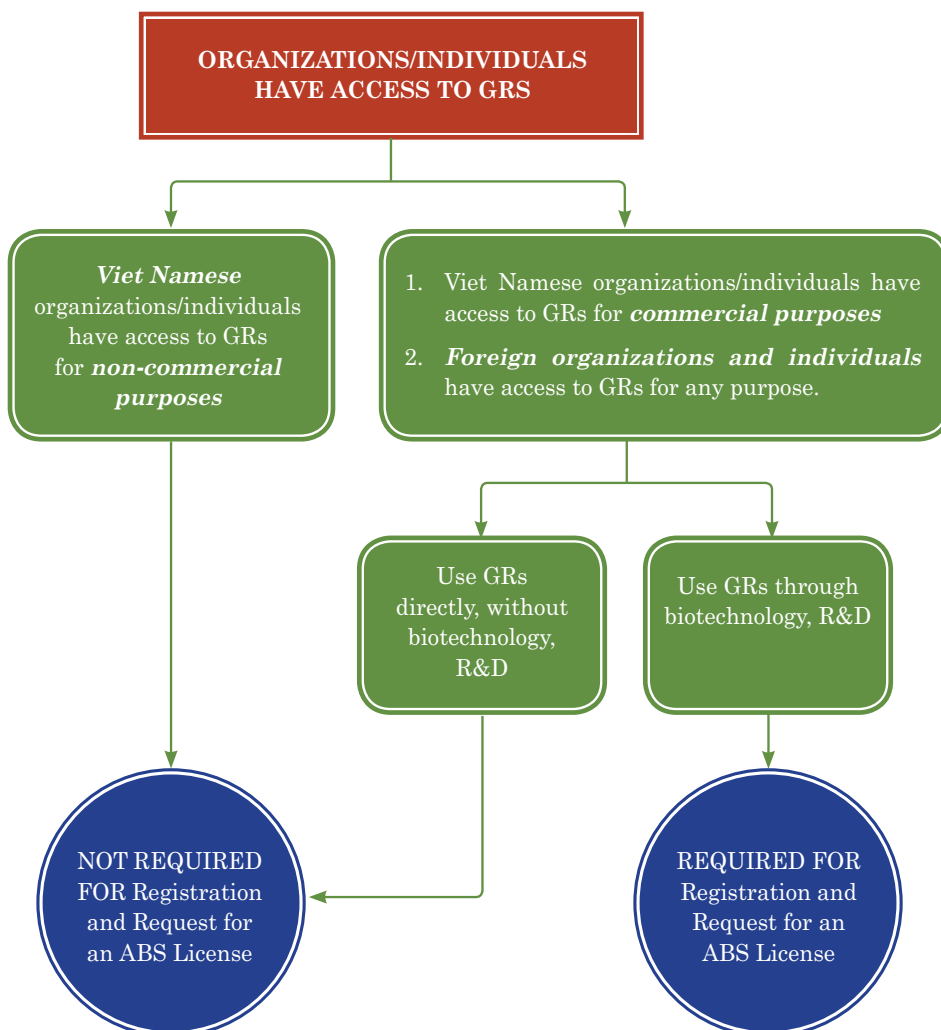
- A company collects herbs for production of tea bags for sale directly in the market, is not considered an “access activity” to GR under the Decree 59/2017/ND-CP. However, if the company purchases herbs for research into their properties/biochemical composition, and uses the identified active compound for production of new commercial product



(eg. Supplementary product), thus this type of activity is classified as an “access activity” to GR under scope of the Decree 59/2017/ND-CP.

- A farmer purchases seeds of cucumber for direct cultivation is not “access activity” but a company purchases seeds of cucumber for plant breeding with using biotechnology to create a new variety of cucumber is an “access activity” under scope of the Decree 59/2017/ND-CP.

It is important to note that ABS requirements in Viet Nam cover not only access to GRs, but also access to derivatives (which is sometimes referred to as “indirect access”). For example: access to an extract made from herbs bought in a market for research into its pharmaceutical applications would be considered “access” under Decree 59/2017/ND-CP.



**Figure 3. Map determining activities and actors within the scope of ABS**

### ***Access to genetic resources for commercial or non-commercial purposes***

Decree 59/2017/ND-CP distinguishes access to GRs for their utilization for commercial or non-commercial purposes. This distinction is not relevant for foreign organizations and individuals, which must register and apply for ABS licenses for access GRs for their utilization for any research and development purposes (Principle 2).

For Viet Nameese organizations and individuals wishing to access GRs:

- To conduct research for commercial purposes and/or development of commercial products must register and apply for ABS licenses.
- To conduct research for non-commercial purposes or development of commercial products, **do not** need to register and apply for ABS licenses.

To determine “**commercial purposes**”, it is important to understand that “*commercial activity is an open economy activity for purpose of gaining a profit*”<sup>16</sup>. Thus, the “gaining-a-profit” is a key element of commerce.

*Access to GRs for commercial purposes* is the access for a certain benefit, by developing products, commercializing them to gain a profit.

Characteristics of access to GRs for commercial use: use GRs to develop specialized bio-preparats, metabolic enzymes, boosting genes, or small molecules. Those preparats, enzymes or genes can be used in many fields such as husbandry, veterinary, crop cultivation and plant protection, pharmaceutical development, specialized chemical production or industrial processing. In addition, desired genes can also be transfered into plants with the aim to improve crop productivity, herbicide tolerance and disease resistance.

Characteristics of access to GRs for non-commercial purpose: GRs can be used to enhance knowledge or understanding of the natural world, with various activities ranging from taxonomic research, crop/livestock science, genetic mapping to ecosystem analysis.

It is important to note that different types of organizations may utilize GRs for both commercial and non-commercial purposes. Viet Nameese science and technology organizations may engage in studies with non-commercial purposes that lead to commercial applications. Or they may be involved directly in partnerships with companies to conduct research for commercial purposes.



Photo: Le Ngoc Hung

16. Clause 1 Article 3, the Law on Commerce

## **Box 2. Examples of access to genetic resources for commercial purposes:**

- Biotechnology: covers a wide range of technology industries, including pharmaceuticals, industrial and agricultural applications. The utilization of genetic resources in these industries is very diverse. For example: Institute of Microbiology and Biotechnology (National University of Ha Noi) has issued many microorganisms, such as bacteria, mold, yeast, and microbes for many facilities to apply in agriculture and industry to produce high value commercial products such as biopreparat/probiotics, enzymes used in livestock, preparations for biological combat, cosmetics and antimicrobial agents.
- Research on compounds, chemicals: The compounds or chemicals produced by living organisms in nature still play an important role in discovering new potentials for medication development. For example, the US National Cancer Institute finds the compound that has the potential to treat HIV and some cancers from species collected at Cuc Phuong National Park.
- Biotechnology in the industrial sector: Enzymes used in several industries of textile, detergents, food, feed and other industries to improve the efficiency and quality of products and processes.
- Biotechnology in agriculture: the fields of breeding, varieties crop science, plant protection and plant biotechnology are heavily dependent on genetic resources. Major seed companies focus on study of genes that improve crop productivity and efficiency of important cultivars. GRs with traits which help improve productivity and efficiency in cultivating crops are areas of concern for many large seed producers. The ABS requirements should apply for only to wild relatives, land races and farmer varieties but not commercial varieties.

Yeast strains have been used to produce growth promoters IAA<sup>i</sup> and GA3<sup>ii</sup> and increase crop productivity; microorganism has been used in controlling green wilt in some plants such as peanut, sesame,... There have been research, and successful development to apply technological processes to produce stable nitrogen fixation fertilizer, phosphate.

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<sup>i, ii</sup> Plant Growth Hormone

### 3. Utilization of genetic resources

Decree 59/2017/ND-CP provides with some definitions that are in line with the Nagoya Protocol:

- “*Utilization of GRs*” means research and development activities utilizing the genetic and/or biochemical composition of GRs, including the application of biotechnology as regulated in the Decree 59/2017/ND-CP.
- “*Biotechnology*” means any technological application that uses biological systems,
- living organisms, or derivatives thereof, to make or modify products or processes for specific use.<sup>17</sup>
- “*Derivative*” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or GRs, even if it does not contain functional units of heredity.<sup>18</sup>

*As not specified in the Decree or any specific legal documents, R&D has many different interpretations. However, being a supplying country of genetic resources, **research and experimental development (R&D)** comprise creative and systematic work undertaken in order to increase the stock of knowledge - including knowledge of humankind, culture and society - and to devise new applications of available knowledge (OECD, 2015)*

#### ***The utilization of genetic resources in the value chain***

Given the definition of “utilization of GRs”, R&D and biotechnology are critical factors to determine whether activities fall within the scope of ABS requirements. They are the basis for differentiating when biodiversity-related activities fall or not within Decree 59/2017/ND-CP. As noted in the examples above, the same type of herbs can be used for different purposes - it will only be activities that involve research and development that are subject to ABS requirements. If traders

collect plants/cultivated crops to re-sell to a third party for consumption or production, no ABS is involved because there are no R&D and biotechnology elements. However, if the third party purchases plants for R&D, its activities would then become subject to ABS regulations. Therefore, it is the utilization of GRs that triggers ABS requirements and the person or organization engaged in such utilization that is subject to the registration and application for an access license. In this regard, the term “accessor” in Decree 59/2017/ND-CP can be interpreted as the term “user.”

17. Clause 4 Article 3 Decree 59/2017/ND-CP

18. Clause 6 Article 3 Decree 59/2017/ND-CP

### **Box 3. ABS cases with involvement of intermediaries**

In the utilization of genetic resources, it is common to have value chains that involve traders or other intermediaries. It is very rare for farmers to directly provide GRs to the users for R&D. In cases where traders or other intermediaries collect or cultivate species that are later used for research and development, it may be difficult for users to sign ABS contracts directly. In these cases, a three-party ABS contract is recommended, which includes the provider, the traders/intermediaries and the user. Under such a contract, any parties and activities within the scope of ABS remain subject to ABS regulations as usual, while others outside the scope of ABS shall only help facilitate the signing of the contract and are subject to general civil provisions.

For example: Company A, operating in the agribusiness sector in the EU is looking for and selecting farmers in Viet Nam who meet requirements of growing and harvesting of a leaf upon EU organic agriculture standards. The Company shall then pay for the labour cost to look after and collection of these leaves from eligible farmers. Collected leaves are sorted and processed for sale to biotech companies that carry out R&D to extract active ingredients for cosmetic production. The supply contract between the company A and the biotech company set out conditions to be met and clearly defines the sale of those leaves is for R&D purpose. In this case, it is difficult and complicated for the biotechnology company to sign contracts directly with each farmer (identified as providers of genetic resources under Decree 59/2017/ND-CP). The solution is to involve the company A to sign ABS contract with the consensus of farmers and the biotechnology company.

**Box 4. List of utilization activities of GRs within the scope of ABS shall register and apply for granting ABS licenses include but not limited to:**

- Carrying out R&D on specific naturally existing compounds.
- Carrying out research on different extraction processes to different potential compounds in plants.
- Plant and livestock breeding using biotechnology: To create new plant and livestock varieties by recombinant DNA technology, genetic engineering, cell technology.
- Any biotechnology application that uses biological systems, living organisms or their derivatives to create or modify certain products or processes for certain uses (including antibiotic production).
- Any biotechnology application that uses enzymes and protein technology to produce a natural conversion of vegetable oil components to another fatty acid and separate plant cells that allow the separation of hydrophilic and lipophilic fractions from kernels, leaves, seeds ...
- Reproduction of genetically modified insects to control diseases as malaria...
- Microorganism culture to produce potential chemical compounds.



*Photo: Cites Viet Nam*

# ACTORS INVOLVED IN ABS CHAIN

This section explains the key actors and their specific rights and obligations within the ABS framework of Viet Nam.

From practical implementation of ABS provisions in accordance with Decree 59/2017/ND-CP, the involving actors can be divided into the following groups:

## 1. Provider

“*Provider*” refers to the individuals and/or organizations assigned to manage GRs by the State, as specified in Clause 2, Article 55 of the Biodiversity Law<sup>20</sup>, including:

- a) Protected areas management board and organizations assigned to manage conservation zones and GRs in the protected areas;
- b) Owners of biodiversity conservation facilities, scientific and technological research facilities, GRs preservation and management facilities;
- c) Organizations, households and individuals that are assigned to manage and use land, forests and water surface and gene sources within the scope of their tasks and powers;
- d) Commune-level People’s Committees shall manage GRs in their localities, except for the cases specified at Points a, b and c of this Clause.

Therefore, for organizations, households and individuals, the basis for being identified as the “*provider*” of GRs is the right to use land, forests, water surface that have GRs or called land users. Land users refer to those who are allocated or leased land, have land use rights recognized by the State and receive transfer of land use rights in accordance with the Land Law, 2013<sup>22</sup>. The proof of being land user is certificate of land use rights granted by State competent authority or other sufficient documents, papers to be granted certificate of land use rights following Article 100 of the Land Law 2013 or other evidences to be granted certificate of land use right following Article 101, 102 of the Land Law 2013.

## 2. Accessor/Users

“*Accessor*” refers to the individuals and/or organizations that access GRs under sovereignty of the Socialist Republic of Viet Nam<sup>21</sup> for their utilization. This term “*Accessor*” can be understood and is equivalent to “*users*” as referred to in the Nagoya Protocol.

Decree 59/2017/ND-CP distinguishes between domestic and foreign organizations and individual users. Following the Investment Law, 2014, foreign individuals and organizations are defined as individuals with foreign nationality, organizations established under foreign laws<sup>21</sup>.

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19. Clause 1 Article 3 Decree 59/2017/ND-CP

20. Article 5 the Law on Land, 2013

21. Clause 2 Article 3 Decree 59/2017/ND-CP

22. Clause 14 Article 3 the Law on Investment, 2014



Domestic individuals and organizations are defined as individuals having Viet Nameese nationality and organizations established under Viet Nameese law.

Users can be known as:

- Institutes, research centers and universities;
- International research organization;
- Domestic companies;
- Foreign companies;
- Individual students, researchers.

### 3. State management agencies

Although not being a party of the ABS contract as well as intermediary role in the ABS relationship, state management agencies are entities exercising the sovereignty rights over GRs, play the role of State management to grant license to access GRs, receive shared benefits and monitor compliance with ABS regulations.

State management agencies include:

#### ***National Focal Point on the Nagoya Protocol***<sup>23</sup>

The Ministry of Natural Resources and Environment (MONRE) was designated as the national focal point (NFP) on the Nagoya Protocol. Responsibilities of the NFP under the Nagoya Protocol are:

- Implementing unified management and monitoring of granting, renewal and withdrawal of licenses for access to GRs;

In order to get a license to access GRs, the users shall first register for access to GRs, negotiate in order to reach an agreement (called ABS contract, referred as MAT) for fair share of benefits, and request for granting a license to access GRs from a NCA. The user has responsibility to share benefits derived from GRs with the provider.

It is necessary to clarify the role and position of traders and intermediaries who have access to GRs (investigation, collection) to sell to others used for R&D or biotech application. These traders and intermediaries are not user according to Decree 59/2017/ND-CP, they are not entities registering and requesting a license to access GRs.

- Acting as a focal point for liaising, providing information and coordinating information exchange with the Secretariat of the CBD via the ABS Clearing-House in accordance with the Nagoya Protocol; leading the development of a national report on the implementation of the Nagoya Protocol in Viet Nam; proposing and implementing decisions of the Conference of the Parties to the Nagoya Protocol; coordinating and organizing the implementation of national obligations to the Nagoya Protocol;
- Coordinating with other countries in implementing measures to comply with the Nagoya Protocol applied to the utilization of Viet Nameese GRs in foreign countries; Organizing the implementation of bilateral and multilateral international cooperation for access to GRs and benefit sharing.

23. Provision 4 Article 59 Biodiversity Law

***The competent national authority shall grant, renew and withdraw licenses to access Genetic resources<sup>24</sup>.***

In Decree 59/2017/ND-CP, the Government assigns the authority to grant, renew and withdraw licenses to access GRs for the MONRE and the Ministry of Agriculture and Rural Development (MARD) (Article 6), specifying:

- The MARD shall grant, renew and withdraw licenses to access GRs of agricultural crop varieties, livestock, aquatic species, and forest seedlings.
- The MONRE shall grant, renew and withdraw licenses to access GRs other than those specified in Clause 1 of this Article.

In order to determine the NCA approving the dossiers of registration and applying ABS licence, organizations and individuals can refer to the lists of plant varieties, animal/aquatic breeds and forest seedlings issued by national Governmental Agencies. MARD is the NCA to receive, appraise and grant the ABS License belonging to the following lists (List 1-6 below).

- (1) List of plant varieties permitted for trade and production;
- (2) List of animal breeds permitted for trade and production;
- (3) List of aquatic breeds permitted for trade and production;
- (4) List of forest plant varieties permitted for trade and production;
- (5) List of precious and rare animal breeds banned from export;
- (6) List of precious and rare plants varieties banned from export.

For GRs under lists of GRs for utilization with conditions (List 7-12), organizations and individuals shall submit application at MARD for GRs that have been approved as animal breeds and/or plant varieties; all remaining cases shall submit applications at MONRE with “Written consent” of other relevant competent agencies<sup>25</sup>. *For example, one company has demand to access to plant in a conservation area under management of Viet Nam Forestry Administration for utilization of R&D for cosmetic product. In this case, the company should submit application for license of access to GRs to the MONRE and the application should include a written consent of Viet Nam Forestry Administration.*

- (7) List of fishery species for export under conditions, banned from export;
- (8) List of plant GRs, restricted for international exchange; resources for international exchange in special cases;
- (9) List of precious and rare livestock gene sources to be preserved;
- (10) List of endangered, rare and precious forest animals and plants;
- (11) List of threatened, rare and precious species prioritized for conservation;
- (12) List of wild plants and animals of the Annex of Convention on international trade in endangered species of wild fauna and flora (CITES).

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24. PArticle 6 Decree 59/2017/ND-CP

25. In addition to the Biodiversity Law and Decree 59/2017/ND-CP, some access to some genetic resources (with or without ABS) are governed by relevant legislation. Accordingly, these approaches need to be approved by the relevant sector authorities. Therefore, in the case of access to genetic resources under ABS scope, the accessor must include written approval from the relevant authorities in accordance with the law when submitting the dossier requesting the ABS License to the NCA (Article 12, Decree 59/2017/ND-CP).

**Table 1. GRs for access versus national competent authorities in charge**

List	GR category		Competent Authority	Official comments (if any) needed before submitting application for Access License
GRs of animal breeds, plant varieties in list 1-6	All GRs		MARD	(to obtain comments internally among functional units under MARD)
GRs in list 7- 11	GRs have been approved as animal breeds, plant varieties		MARD	
	GRs not approved as animal breeds, plant varieties	Plant GRs	MONRE	Department of Crop Cultivation
		Forest seedlings		Department of Forestry
		Animal GRs		Department of Husbandry
		Fishery GRs		Department of Fisheries
Forest plants, animals	Department of Forestry			
List 12 (CITES annex)	Wild plants, animals		MONRE	CITES Management Authority Viet Nam
All other cases	All GRs		MONRE	

**Ministries are responsible for the management of ABS operations**

*(\*) The Ministry of Natural Resources and Environment:*

In addition to the responsibilities of the NFP on the Nagoya Protocol, the NCA to grant, renew and withdraw a ABS license in accordance with Decree 59/2017/ND-CP, MONRE is also responsible for:

- + Developing national databases of GRs, TK on GRs, access to GRs and benefit sharing arising from their utilization;
- + Setting up and operating the Electronic Portal, registration and reporting system via

the electronic information networks on GRs, access to GRs and benefit sharing arising from their utilization;

- + Providing detailed guidance on access to TK on GRs;
- + Coordinating with the concerned ministries in guiding the benefit sharing from the utilization of GRs and TK on GRs;

(\*) *The Ministry of Agriculture and Rural Development:*

In addition to the responsibilities of the NCA to grant, renew and withdraw a license to access GRs, the MARD is responsible for developing a database of GRs under its management; having the responsibility to supply and exchange information and data on GRs with the MONRE.

(\*) *The Commune-level People's Committee takes the following responsibilities:*

- + Certifying the contract in accordance with the Decree;
- + Monitoring the implementation of access to GRs and its related activities of organizations and individuals who have been licensed to access GRs in the commune;
- + Handling the issues according to its competence or reporting to the NCA on breaches of the license to access GRs or contracts;
- + Reporting, upon written request, to the NCA on the status of access to GRs and its related activities of organizations and individuals that have been granted access to GRs in the commune.

Therefore, in addition to the role of certifying the ABS contract in accordance with Article 11 of Decree 59/2017/ND-CP, Commune-level People's Committee in some cases also acts as the GRs' provider for GRs under its jurisdiction of locality management following Article 55 of the Biodiversity Law.

In the case of access to GRs in national parks, protected areas, biodiversity conservation facilities or scientific and technological organizations located in more than one commune, the ABS contract should be certified by a Commune People's Committee where its headquarters are located.

***Example:*** Sannam Co., Ltd collected two wild genetic resources: *Ficus callosa Willd* (cây bàng) and *Bauhinia viridescens Desc* (cây móng bò xanh) in Van Hoa commune - the buffer zone of Ba Vi National Park (not the area under the management of the National Park Management Board). They are acclimatized into special vegetable for processing nutrition and commercial vegetable. In this case, Van Hoa Commune People's Committee is the provider of the genetic resources, it has a different role from the case of collecting samples in the National Park (a contract with the National Park Management Board is requested and the Commune-level People's Committee shall certify the contract)

In general, actors involving in ABS are described in the following figure:

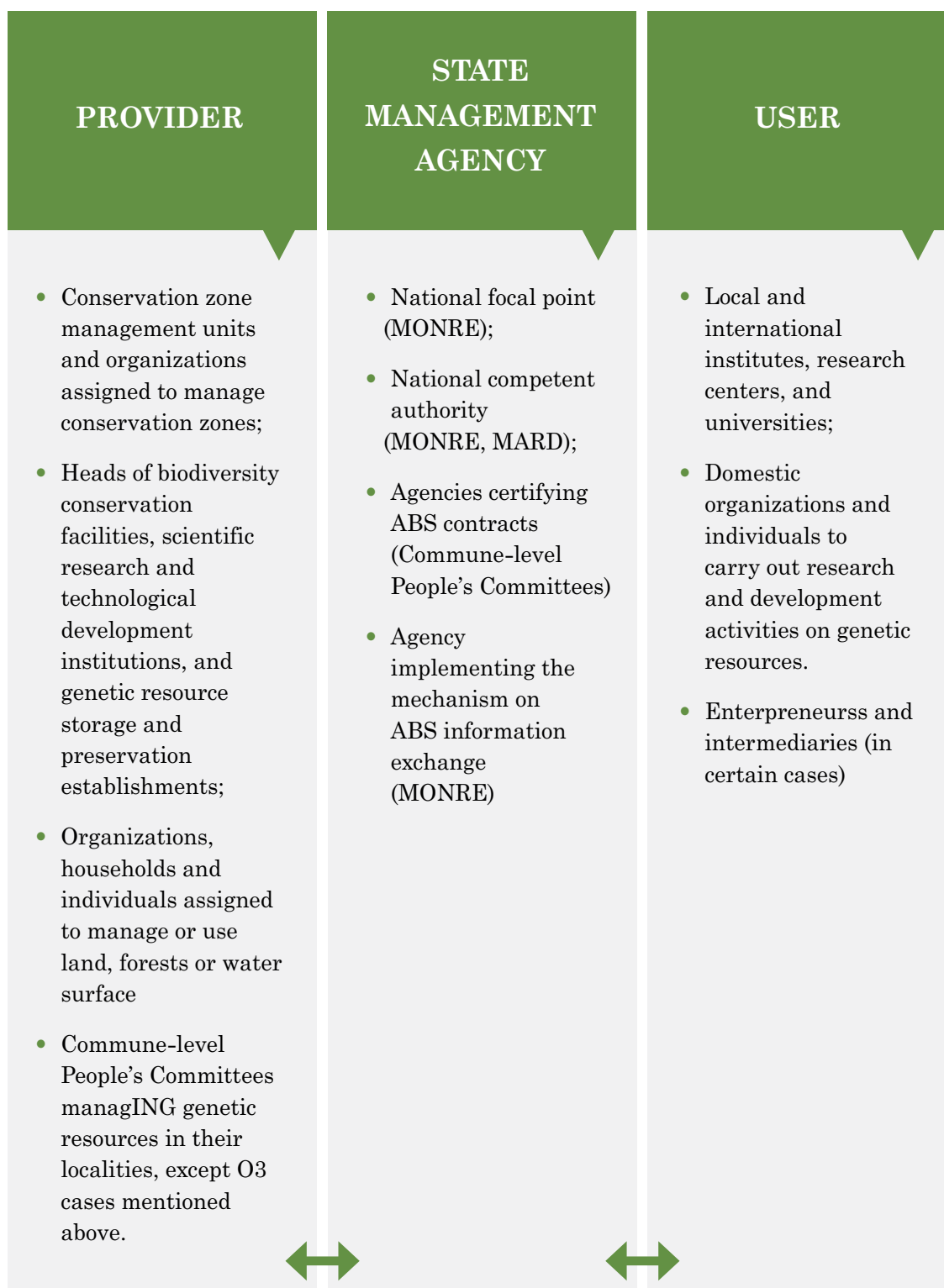
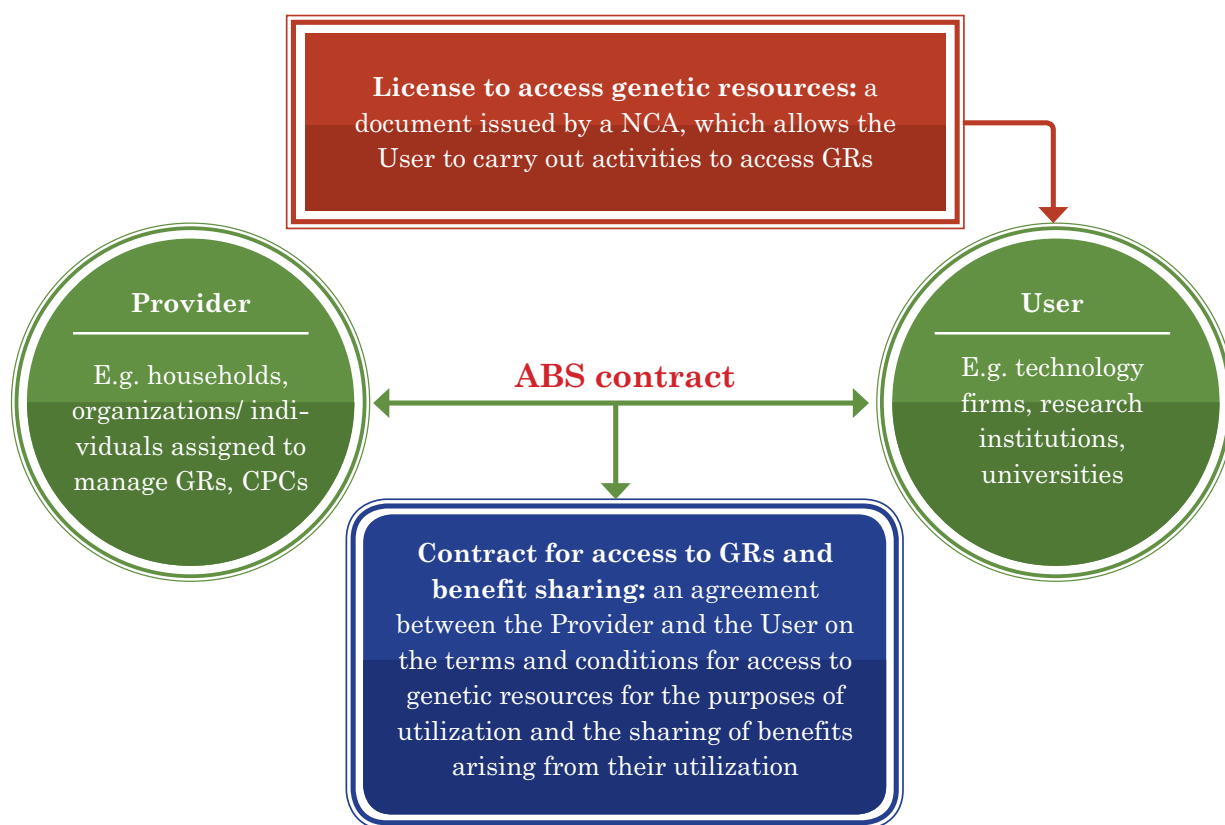


Figure 4. Diagram of entities involved in ABS

# REQUIREMENTS FOR ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING

In accordance with the Biodiversity Law and Decree 59/2017/ND-CP, prior to accessing GRs, the Accessor must negotiate and sign the Access and Benefit Sharing Agreement with the Supplier and request the National Competent Authorities to grant License for access to GRs. The linkage between the actors and the requirements for access to GRs and benefit sharing is illustrated in Figure 5.



**Figure 5. The linkage between the actors and the requirements for ABS**

## Requirements for access to GRs and benefit-sharing as following:

### 1. General requirements for obtaining access to genetic resources:

To be granted a license to access GRs, organization or individual must meet the following requirements<sup>26</sup>:

- a) Register for access to GRs with the NCA;
- b) Negotiate and sign a contract with the Provider;
- c) Request the Commune-level People's Committee to certify the contract.
- d) Submit the dossier requesting a license to access GRs to the NCA;
- e) Provide information and additional documents; and finalize the dossier at the request of the NCA during the process of appraisal of the dossier requesting a license to access GRs.

#### Note:

*The use of GRs must not be granted in the following cases: GRs belong to list of endangered precious and rare species prioritized protection utilization of GRs threatens to harm humans, the environment, security, defense or national interests<sup>27</sup>.*

*In the interest of the country and community, NCAs to grant licenses for access to GRs may grant such licenses without having to seek the consent of organizations, households or individuals assigned to manage GRs.*

### 2. The specific requirements for different entities regulated by Decree 59/2017/ND-CP:

#### 2.1. Requirements for Viet Nameese entities wishing to access genetic resources for commercial purposes, or for the development of commercial products

- In case of being an organization, there must be a document proving the legal person status as prescribed by law.
- Individuals must meet the following requirements:
  - + A graduate academic degree (Bachelor's degree or higher) in a field relevant to GRs such as biology, biotechnology, pharmaceutical or agricultural sciences;
  - + Is a member of a scientific and technological organization operating in accordance with the law of the country where the organization is established in the fields of biology, biotechnology, pharmaceutical, or agricultural sciences, and is guaranteed by such organization in writing according to the sample form 01 provided in Annex attached to the Decree 59/2017/ND-CP.
- In the case of joint programs or projects with the participation of many individuals and organizations that all or several individuals and organizations wish to include in the application dossier and on the license, they can apply jointly. If an individual or organization does not wish to appear on the application dossier and on the license, he/she can make a letter of authorization for the individual or organization to carry out procedures. This authorization must be submitted in the application dossier for registration and the application for a license.

*Note: Local users to GRs for non-commercial purpose are not subject to any ABS procedures until they have changes in purpose of use (for example: switching from non-commercial research to commercial research or development of product; transfer the research results to any third party...)*

26. Article 58 of the Biodiversity Law; Article 10 of Decree 59/2017/ND-CP

27. Article 15 of Decree 59/2017/ND-CP

However, some misleading circumstances should be clarified:

- Scientific institutions, research institutes, research centers, universities are often engaged in non-commercial research activities, but there are research activities for commercial purposes and for the development of commercial products.
- Companies that have R&D or biotechnology for commercial purpose or commercial product development can still engage in non-commercial scientific research.

Determination of commercial purpose, development of commercial products should be based on specific activities.



*Photo: Pham Ha Thanh Tung*

## 2.2. Requirements for foreign entities wishing to access genetic resources for any purpose

	Organizations	Individuals
<b>Particular requirements</b>	Documents identifying the legal status in accordance with law of the country where the organization is established	A graduate academic degree (Bachelor's degree or higher) in a field relevant to GRs such as biology, biotechnology, pharmaceutical or agricultural sciences; being a member of a science and technology organization operating in accordance with the law of the country where the organization is established in the fields of biology, biotechnology, pharmaceutical, or agricultural sciences, and is guaranteed by such organization in writing according to the sample form 01 provided in Annex attached to the Decree 59/2017/ND-CP.
<b>Collaboration requirements</b>	Cooperation agreements with a Viet Nameese scientific and technological organization	Cooperation agreements with a Viet Nameese scientific and technological organization

For foreign organizations and individuals wishing to access to GRs in Viet Nam, it is imperative to have cooperation with Viet Nameese scientific and technological organizations who will be involved as part of or the entire R&D process (including collection step) depending on the agreement of the two parties. For the purpose of this decree, Viet Nameese scientific and technological organizations are determined in accordance with the Law on Science and Technology - it is not any

research organization in Viet Nam. Scientific and technological organizations refer to as organizations that function in scientific research, technological development research, science and technology service activities, being established, certified with a registration certificate, and operated according to laws<sup>28</sup>.

28. Provision 11, Article 3 Law on Science and Technology 2013



### *Cases of joint projects*

In the case of programs and projects involving both domestic and foreign individuals and organizations, foreign entities can register by themselves or authorize domestic entities who they cooperate to register access to GRs as prescribed.

In the case of joint programs or projects with the participation of many individuals and organizations that all or several individuals

and organizations wish to include in the application dossier and on the license, they can apply jointly. If an individual or organization does not wish to appear on the application dossier and on the license, he/ she can make a letter of authorization for the individual or organization to carry out procedures. This authorization must be submitted in the application dossier for registration and the application for a license.

### **3. Requirements for contracts on access to genetic resources and benefit sharing**

This is the basis for granting the license, no license is granted without ABS contract. The contract serves both as the informed consent of the provider and the mutually agreed between parties on benefit sharing.

#### ***Requirements of ABS contracts<sup>29</sup>:***

The contract is prescribed in sample form 03 of the Annex attached to the Decree 59/2017/ND-CP for the parties to apply<sup>30</sup>.

Accordingly, the following basic requirements for the contract must be met:

- The contract must be in writing and signed with the Provider of GRs after receiving a letter to registration on accessing GRs from the national competent authorities.
- The contract must be certified by commune-level People's Committees (representing the State's sovereign rights over GRs) of localities where GRs are accessed.
- A contract on access to GRs and benefit sharing must contain the following principal details:
  - + Purpose of access to GRs;
  - + GRs to be accessed and volume of GRs to be collected;
  - + Place of access to GRs;
  - + Plan on access to GRs;
  - + The transfer of the results of survey and collection of GRs to a third party;

- + Activities of research and development or production of commercial products using GRs;
- + Participants in research and development or production of commercial products using GRs;
- + Place for conducting research and development or production of commercial products using GRs;
- + Sharing of benefits with the State and involved parties, including the distribution of intellectual property rights over inventions resulting from access to GRs and TK copyrights on GRs.

Disputes over or complaints about access to GRs and benefit sharing shall be settled under Viet Namese law and treaties to which the Socialist Republic of Viet Nam is a contracting party.

#### ***Note:***

- The ABS contract shall be effective only after the NCA grants the license to access GRs.
- When the license to access GRs expires, the user will be not allowed to access GRs after expiration of validity of the license, but benefit-sharing provisions of the contract will remain in force.

29. Article 58 of the Biodiversity Law; Article 10 of Decree 59/2017/ND-CP

30. Article 15 of Decree 59/2017/ND-CP

- When the license to access GRs is withdrawn<sup>31</sup>, the user will not be allowed to continue to access or utilize licensed GRs, but must continue to fulfill the agreement on benefit-sharing of the

accessed GRs as stipulated under the ABS contract and must compensate for damage and restoration of the environment and biodiversity, according to the provisions of Viet Nameese law (if any).

Example	Case summary	
<p><b>Company A conducts R&amp;D</b> in the field of cosmetics, beauty care and health. The purpose of company A is after successful R &amp; D, the company will provide ingredients and formula for big cosmetic manufacturers in Europe.</p> <p>To carry out the research, Company A plans to receive plant materials such as leaves and fruits from a company B specializing in supplying agricultural products of Viet Nam</p> <p>Company B directly signs contracts with farms and farmer households from many provinces in Viet Nam to carry out cultivation of the above crops with strict requirements on labor, and technique cultivation. The products selected for sending to Company A must meet EU standards.</p> <p>Company A wishes to carry out ABS procedures and obtain The internationally recognized certificate of compliance on ABS for materials from Viet Nam.</p>	User	<i>Company</i>
	Using purpose	<i>Research for commercial purposes</i>
	Viet Nameese partner (a scientific and technological organization)	<i>No</i>
	Provider	<i>Farmers</i>
	TK	<i>No</i>
	Local, indigenous communities	<i>No</i>
	Access place	<i>Household gardens</i>

**Answer:**

In the above case, Company B is a commercial intermediary, not a domestic partner (science and technology organization) as stipulated in the Decree. Therefore, in order to register and be granted license for access to GRs and obtain the internationally recognized certificate of compliance in accordance to the NP, Company A should take the following steps:

- Identification of a domestic partner as a domestic science and technology organization and have a cooperation agreement between the two sides;
- Application for access to GRs (sample form 02 - Decree 59/2017/ND-CP);
- Contract on access to GRs and benefit-sharing (sample form 03 - Decree 59/2017/ND-CP) with the above households;
- Request of certification of the Commune-level People’s Committee on the signed contract;
- Submitting the application dossiers under Article 12 of the Decree to the NCA (the MONRE or the MARD based on the accessed GRs - Article 6 of the Decree 59/2017/ND-CP) for handling.
- 15 days after being granted with the License, MONRE will automatically publish the IRCC on the ABS-CH.

31. Article 18 Decree 59/2017/ND-CP

## MECHANISM FOR INFORMATION EXCHANGE

Decree 59/2017/ND-CP regulates the responsibility to set up and operate the electronic portal, registration and reporting systems via electronic information networks on GRs, access to GRs, and benefit arising from their utilization of MONRE (<http://vietnamabs.gov.vn>)

Moreover, acting as a focal point, MONRE is responsible for liaising, providing information and coordinating information exchange with the Secretariat of the CBD via the ABS Clearing-House in accordance with the Nagoya Protocol; leading the development of a national report on the implementation of the Nagoya Protocol in Viet Nam; proposing and implementing decisions of the Conference of the Parties to the Nagoya Protocol; coordinating and organizing the implementation of national obligations to the Nagoya Protocol.

Within 05 working days from the date of the decision on granting, renewal or withdrawal of the license to access GRs, the MARD shall have the responsibility to send 01 original copy of such decision to the MONRE to update the national database.

Within 15 working days from the date of the decision for granting, renewal or withdrawal of the license to access GRs, the MONRE shall be responsible to publish or cancel information on the internationally recognized certificate of compliance for access to GRs and benefit-sharing, and other related issues on the Access and Benefit-sharing Clearing-house of the Secretariat of the CBD, in accordance with the Nagoya Protocol<sup>32</sup>.

In addition to compliance with compulsory regulations, users (big companies) are now voluntarily promoting ethical biotrade. Ethical

biotrade comes not only from the sense of self-respect and ethics of scientists, researchers and traders, who want to be responsible for biodiversity conservation but also from requirements of consumers for big brands. Consumers in developed countries not only pay attention to the quality, design and price of products, but also require manufacturers and suppliers to ensure that measures for environmental protection and biodiversity conservation have been taken. Consumers only accept “green”, “clean” products that are environmentally friendly and natural, and have tendency to boycott products from “unethical biotrade”. According to market rules, in order to consume products, improve the brand image of the company in eyes of consumers, big companies want to comply with the laws of the country where provide GRs and have evidence of the compliance that is the license to access GRs and is valid as the internationally recognized certificate of compliance through the provision of information by the NFP to the CBD Secretariat through the ABS Clearing House.



*Photo: Pham Ha Thanh Tung*

32. Clause 2 Article 24 Decree 59/2017/ND-CP

***The internationally recognized certificate of compliance on ABS*** is an important evidence of compliance with the requirements of the Nagoya Protocol and CBD by the users.

In accordance to Article 3.5 Decree 59/2017/ND-CP: “The internationally recognized certificate of compliance on access to genetic resources and sharing benefits” is an electronic document containing basic information of the License to access genetic resources and the Contract for access to genetic resources and the sharing of benefits arising from their utilization, published by the national focal point to the Access and Benefit-sharing Clearing-house of the Convention on Biological Diversity

At present, in most developed countries (where is using genetic resources), there are strict legal regulations or recommendations for accessors in their countries to comply with legislation on access to genetic resources, such as Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol in the Union was adopted on 16 April 2016.<sup>33</sup> Accordingly, if there is no compliance with the provisions of the Regulations, penalties will be imposed.



*Photo: Pham Ha Thanh Tung*

33. Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union was adopted on 16 April 2014. Điều 11 Quy chế EU số 511/2014: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0511&from=EN>

# ORDER AND PROCEDURES FOR ACCESS TO GENETIC RESOURCES

The order and procedures for access to GRs include:

1. Register access to GRs to NCAs.
2. Make an agreement and sign the ABS contract with the Provider.
3. Request the commune-level People's Committee to certify the contract.
4. Submit application dossiers for access to GRs to NCAs.
5. Implement license on access to GRs and benefit sharing.

Description of ABS steps with the information requirements to be provided such as the implementer and timeline, milestones, results is presented in the Table below.

For online registration at the Ministry of Natural Resources and Environment, organizations, individuals shall submit the application via the Public Services Portal at <https://dvctt.monre.gov.vn/Pages/Default.aspx> with the following main steps:

[gov.vn/Pages/Default.aspx](https://dvctt.monre.gov.vn/Pages/Default.aspx) with the following main steps:

1. Create an account on the website.
2. Account confirmation will be sent 24 hours at the latest from time of registration;
3. Choose type of administrative procedure based on the purpose of access (Granting Access License, Allow to take GRs out of the country, Extend Access License)
4. Fill information as requested in the form and submit the application;
5. The National Competent Authorities receive, handle and send results via the registered email address. In case more information is required or clarification is needed, organizations, individuals will receive notification from the NCAs handling the applications.

Step	Required information and documents	Relevant entities, Implementer	Result	Duration	Note
<b>Step 1. Registration</b> (Article 9, Decree 59/2017/ND-CP)	<ul style="list-style-type: none"> <li>- A registration form for access to GRs (as provided in sample form 02 in the Annex attached to Decree 59/2017/ND-CP);</li> <li>- Documents identifying the legal status in accordance with law of the country where the organization is established;</li> <li>- Cooperation agreements of a Viet Nameese science and technology organizations with foreign individuals and organizations;</li> <li>- Written authorization(s) for a representing organization or individual to register under joint programs or projects involving the participation of many organizations and individuals</li> </ul>	<p>NCA:</p> <ol style="list-style-type: none"> <li>1. The MARD shall grant, renew and withdraw licenses to access GRs of agricultural crop varieties, livestock, aquatic species, and forest seedlings.</li> <li>2. The MONRE shall grant, renew and withdraw licenses to access GRs other than those specified in clause 1 mentioned above</li> </ol>	Step 1: consent for registration	10 days	<p>The application dossiers can be submitted:</p> <ul style="list-style-type: none"> <li>- Directly at the head office of the NCA;</li> <li>- By post;</li> <li>- Online registration: <ul style="list-style-type: none"> <li>+ Ministry of Natural Resources and Environment: Online public service portal at <a href="https://dvctt.monre.gov.vn">https://dvctt.monre.gov.vn</a></li> <li>+ MARD: online service portal at <a href="https://dvc.mard.gov.vn">https://dvc.mard.gov.vn</a></li> </ul> </li> </ul>

Step	Required information and documents	Relevant entities, Implementer	Result	Duration	Note
<b>Step 2. Negotiate an agreement and signing an ABS contract</b>	Compliance with Form 03 as provided in the Annex attached to Decree 59/2017/ND-CP	Providers and Users	Step 2: Signing an ABS contract	12 months of the issuance of consent for registration to access GRs (Clause 2 Article 12)	<p>The period of validity of the license to access GRs shall be decided by a NCA based on the proposed objective and the plan of access to GRs in the application dossier for the license to access GRs, but it shall be no longer than 3 years.</p> <ul style="list-style-type: none"> <li>- Where the license for access to GRs expires, based on their need the parties shall register the extension of the license</li> <li>- Where there is no need to continue to access GRs, there is not necessary to register the renewal of the license. The parties can still use the collected data, and fulfill the agreement on benefit-sharing of the accessed GRs stipulated under the contract signed</li> </ul>

Step	Requied information and documents	Relevant entities, Implementer	Result	Duration	Note
<b>Step 3.</b> Requesting the commune-level People's Committee to certify the contract <i>(Article 11, Decree 59/2017/ND-CP)</i>	<ul style="list-style-type: none"> <li>a) A copy of consent for registration issued by the NCA;</li> <li>b) ABS contract signed between the relevant parties;</li> <li>c) Presenting valid original document of any one of identifications</li> </ul>	Commune-level People's Committees in localities where GRs are accessed or where the registered address of the Provider is located,	Step 3: Signed ABS contract must be certified by Commune - level People's Committee	03 working days	

Step	Required information and documents	Relevant entities, Implementer	Result	Duration	Note
<b>Step 4.</b> <b>Requesting a license to access GRs</b> <i>(Articles 12, 13, 14, 16, 17, Decree 59/2017/ND-CP)</i>	<p>The application dossier submitted directly or by post includes:</p> <p>a) Copy of consent for registration issued by the NCA;</p> <p>b) A contract which has been agreed and signed between the Provider and User, with the certification of the Commune-level People's Committee;</p> <p>c) In cases where the GRs are in the list of GRs limited for accession and utilization, written approval of the sectorial management Ministries and agencies is required;</p> <p>d) If the applicant is an individual, documents specified in Clause 2, Article 7 of the Decree 59/2017/ND-CP are required</p>	<ul style="list-style-type: none"> <li>- The NCA receives the application dossier</li> <li>- The Appraisal Committee shall include representatives of the MONRE and Environment, MARD, other Ministries; Provincial People's Committee where the access to GRs is proposed to take place.</li> </ul>		<ul style="list-style-type: none"> <li>- Approval of application dossier: 05 working days of receipt of the valid application dossier</li> <li>- Supplementing and finalizing the application dossier: 60 working days</li> <li>- Appraisal of the application dossier</li> <li>+ 30 days after receiving the valid application dossier for non-commercial research purposes</li> <li>+ 90 days for commercial research</li> <li>- Decision granting a license to access GRs: 15 days of receiving the appraisal</li> </ul>	<ul style="list-style-type: none"> <li>- Renewal of license to access GRs is implemented 02 months prior to expiration of the license</li> <li>The dossier for license renewal to access GRs includes: <ul style="list-style-type: none"> <li>+ The sample form 05;</li> <li>+ Report on the result of access to and utilization of GRs by the time of requesting license renewal;</li> <li>+ A copy of the signed contract;</li> <li>+ A copy of the granted license to access GRs;</li> <li>+ Written consent of the Provider</li> </ul> </li> <li>Duration of renewal consideration 30 working days</li> <li>- Within 15 working days from the date of the decision on granting of the license to access GRs, the MONRE shall be responsible for informing the Secretariat on Biodiversity Convention through the Clearing-house to publish the internationally recognized certificate</li> </ul>



Step	Required information and documents	Relevant entities, Implementer	Result	Duration	Note
<b>Step 5.</b> <b>Performance of ABS contract, license to access GRs</b> <i>(Articles 21, 22, 23 and 25, Decree 59/2017/ND-CP)</i>	Report on implementation of access to GRs and benefit sharing	Users		Every 2 years	Benefit sharing under contract

### Regulations on appraisal and granting License to access genetic resources<sup>34</sup>

For the application dossier requesting for a license to access GRs for non-commercial research purposes the NCAs shall organize the appraisal of dossiers within 30 days after receiving the valid dossiers of proposals without having to set up appraisal councils.

Thus, procedures for appraisal of such application dossier are much simpler than procedures for the application dossiers for commercial purposes. This is to facilitate scientific research.

For the application dossier for a license to access GRs for commercial research or commercial product development purposes, the NCA shall set up and organize activities of Appraisal Committee to appraise the application dossier within 90 days after receiving the valid application dossier.

The Appraisal Committee shall include representatives of the MONRE, MARD, other relevant Ministries; Provincial People's Committee where the access to GRs is proposed to take place, and relevant Experts.

Content to appraise:

- Compliance with regulations stipulated at Article 59/2017/ND-CP of the Biodiversity Law;
- The completeness and accuracy of information provided in the application dossier;
- The relevance of contract content for access to GRs and benefit sharing in accordance with current regulations;
- Impact assessment of access activities to the biodiversity, economy and society;
- Capacity of organizations and individuals to implement the access to GRs and benefit-sharing.

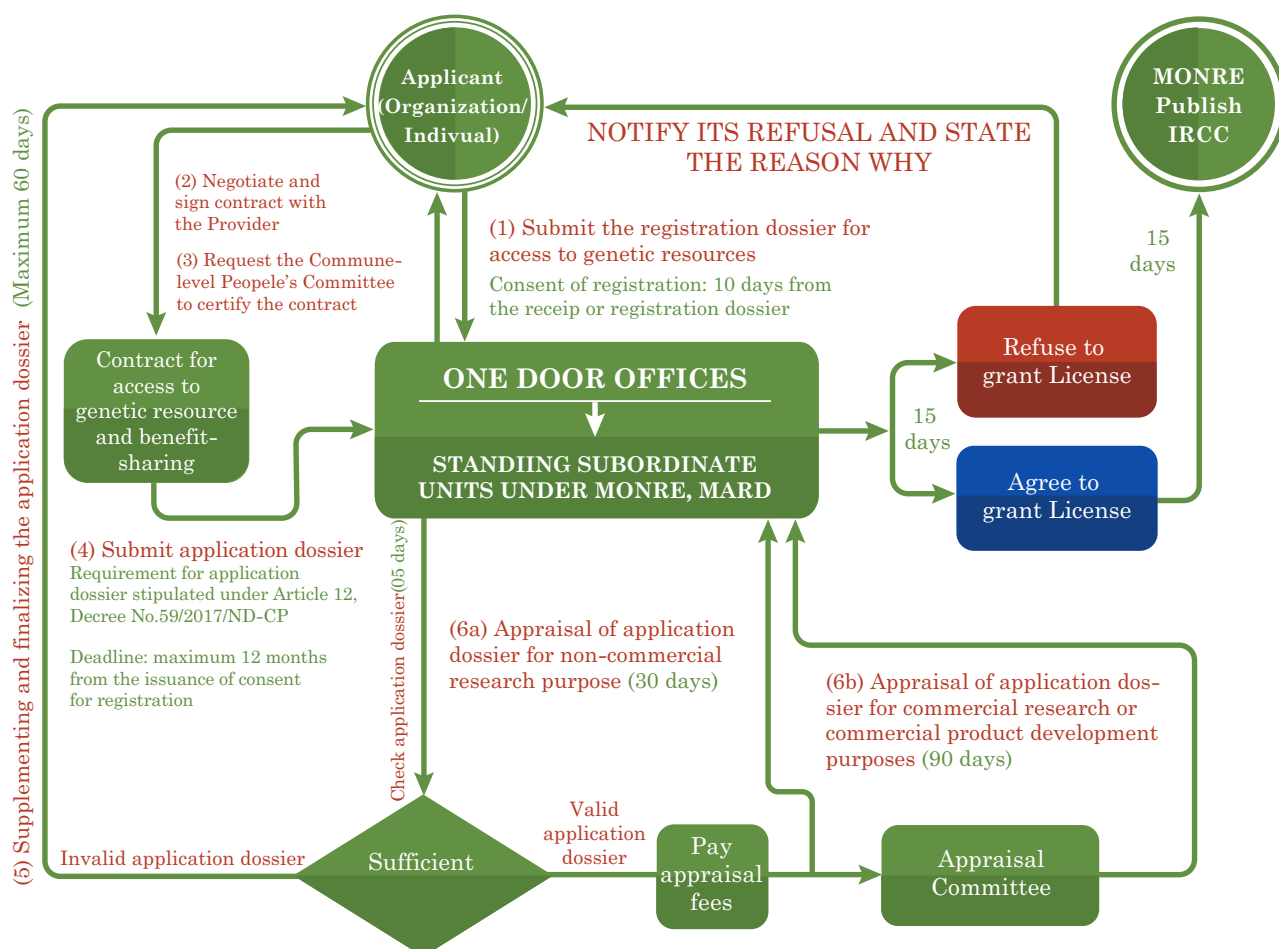
Within 15 days of receiving the appraisal result, the head of the NCA shall consider and decide whether to grant a license to access GRs. In the case of refusal, the NCA shall notify the applicant in writing of its refusal, and state the reasons therefore.<sup>35</sup>

MONRE and MARD shall regulate the structure and tasks of the Appraisal Committee, and appoint their agencies as standing subordinate units to appraise and specify the duties of these agencies.<sup>36</sup>

34. Article 13 Decree 59/2017/ND-CP

35. The MONRE issued Decision No. 2518/QĐ-BTNMT on 17 October 2017 announcing administrative procedures in the field of environment within the scope of state management of the Ministry of Natural Resources and Environment for the provisions of Decree 59/2017/ND-CP. It clearly states the order and procedures; composition of the dossiers; entities and agencies performing administrative procedures and requirements and conditions for carrying out administrative procedures.

36. The MONRE issued Decision No. 1913/QĐ-BTNMT on August 8, 2017 on the appointment of the standing agency to appraise the management of access to genetic resources and benefit sharing arising from their utilization. In this Decision, the MONRE has assigned the Viet Nam Environment Administration as the standing agency to appraise the management of access to genetic resources and benefit sharing from their utilization. The Minister of MONRE issued Circular No. 15/2019 / TT-BTNMT on September 11, 2019 on organization and operation of The Appraisal Committee to appraise the applications dossier for a license to access GRs for commercial research or commercial product development purpose.



- Average processing timeline of application for access to GRs for non-commercial research purposes upon the receipt of valid dossier is 65 days.
- Average processing timeline of application for access to GRs for commercial research or commercial product development purposes upon the receipt of valid dossier is 125 days.

**Figure 6. Diagram granting license for access to genetic resources**

## SPECIAL CASES

This section explains cases where apply special regulations or considerations to particular processes and requirements,

### 1. Requirements and procedure for cases defined by Article 8 of the Nagoya Protocol

The Decree 59/2017/ND-CP does not specifically regulate all cases defined in Article 8 of the Nagoya Protocol. However, regulations on duration of 30 days for appraisal of application dossiers for access to GRs for commercial

purposes and 90 days for non-commercial purposes is a simplified approach to access to GRs for non-commercial purposes facilitating the promotion of research as defined in Article 8.a, 8.b of the Nagoya Protocol.

### 2. Requirements and order for cases in the BioTrade

BioTrade is defined as activities related to the collection or production, transformation, and commercialization of goods and services derived from native biodiversity (GRs, species and ecosystems) according to criteria of environmental, social and economic sustainability.<sup>37</sup>

All BioTrade can be identified for commercial purposes, but comply with environmental criteria and contribute to the conservation and sustainable use of biodiversity, part of the provisions of Article 8.a of the Nagoya

Protocol should be facilitated and implemented. Once certified as an activity of the BioTrade, the activity has already applied and met the principles and criteria of fair benefit sharing and in accordance with national and international regulations on access to GRs in accordance with UNCTAD criteria. Thus, based on the nature of the BioTrade activities, National Competent Authorities shall consider to apply simplified measures or shortened appraisal time during reviewing the applications requesting for an access license.

#### ***Assumption of special provisions:***

*A pharmaceutical company specializing in the supply of ingredients and directly cultivates and manufactures traditional medicine such as tea string, artichoke, polyscias fruticosa, etc. and development of commercialized products from natural ingredients. The company implements a sustainable development strategy that focuses on integrating social responsibilities and environmental protection with economic efficiency.*

*The Company became a member of the Union for Ethical BioTrade (UEBT) in 2014. As a member of UEBT, the Company is committed to implementing the Principles and Criteria*

37. UNCTAD (2007) UNCTAD BioTrade Principles and Criteria

*of BioTrade to ensure the prices paid to producers of raw materials and contribute to the local development and capacity building. The company has developed a mechanism for direct dialogue with groups of genetic resources collection, organizational support, technical training and capacity building. The company had on-site agreements with both groups of GRs collection and local authorities with reference to ethical practices. The company also worked with UEBT to train the concepts and requirements for access to GRs and the fair and equitable sharing of benefits arising from their utilization.*

*Therefore, the company is required to register and apply for granting ABS license under Decree 59/2017/ND-CP, at the same time, applied and met the principles and criteria of Bio Trade, national competent authorities shall consider shortening the appraisal time in these cases.*

### **3. Requirements for Viet Nameese students, doctoral students, or science and technology organizations who wish to transfer genetic resources abroad**

Decree 59/2017/ND-CP includes separate regulations for Viet Nameese students, doctoral students and Viet Nameese scientific and technological organizations, as follows<sup>38</sup>:

\*) Viet Nameese students or doctoral students wishing to transfer GRs abroad in service of their study shall submit a dossier to the NCA directly at the NCA's office, by post, or online. The Dossier should include:

- The application form for transferring GRs abroad for study purposes, using the form prescribed in sample form 08 of Annex attached to Decree 59/2017/ND-CP;
- Providing valid original document or certified copy of any one of the following documents: passport, identity card, citizen identification card or other document with photo and personal information issued by the competent authority (hereinafter referred to as identification) to prove the identity of the applicant;

- Written documents of recommendation from a foreign scientific and technological organization or the educational organization where the student or doctoral student is studying, which includes general information about such student or doctoral student and the utilization of GRs for study purposes

\*) Viet Nameese scientific and technological organizations who wish to transfer GRs abroad for conducting research, analysis or evaluation for non-commercial purposes, shall submit a dossier to the NCA defined in Article 6 of Decree 59/2017/ND-CP directly at the NCA's office, by post, or online. The dossier includes:

- The application form for transfer GRs abroad for conducting noncommercial research, using the form prescribed in Sample form 08 of Annex attached to Decree 59/2017/ND-CP;
- Documents identifying the legal status of the applicant;
- Written consent of the foreign organization to receive GRs at the request of the Viet Nameese science and technology organization;

38. Article 19 Decree 59/2017/ND-CP

- The legal dossier of the program or project already approved by a competent state agency, which is relevant to the GRs proposed to be transferred abroad.

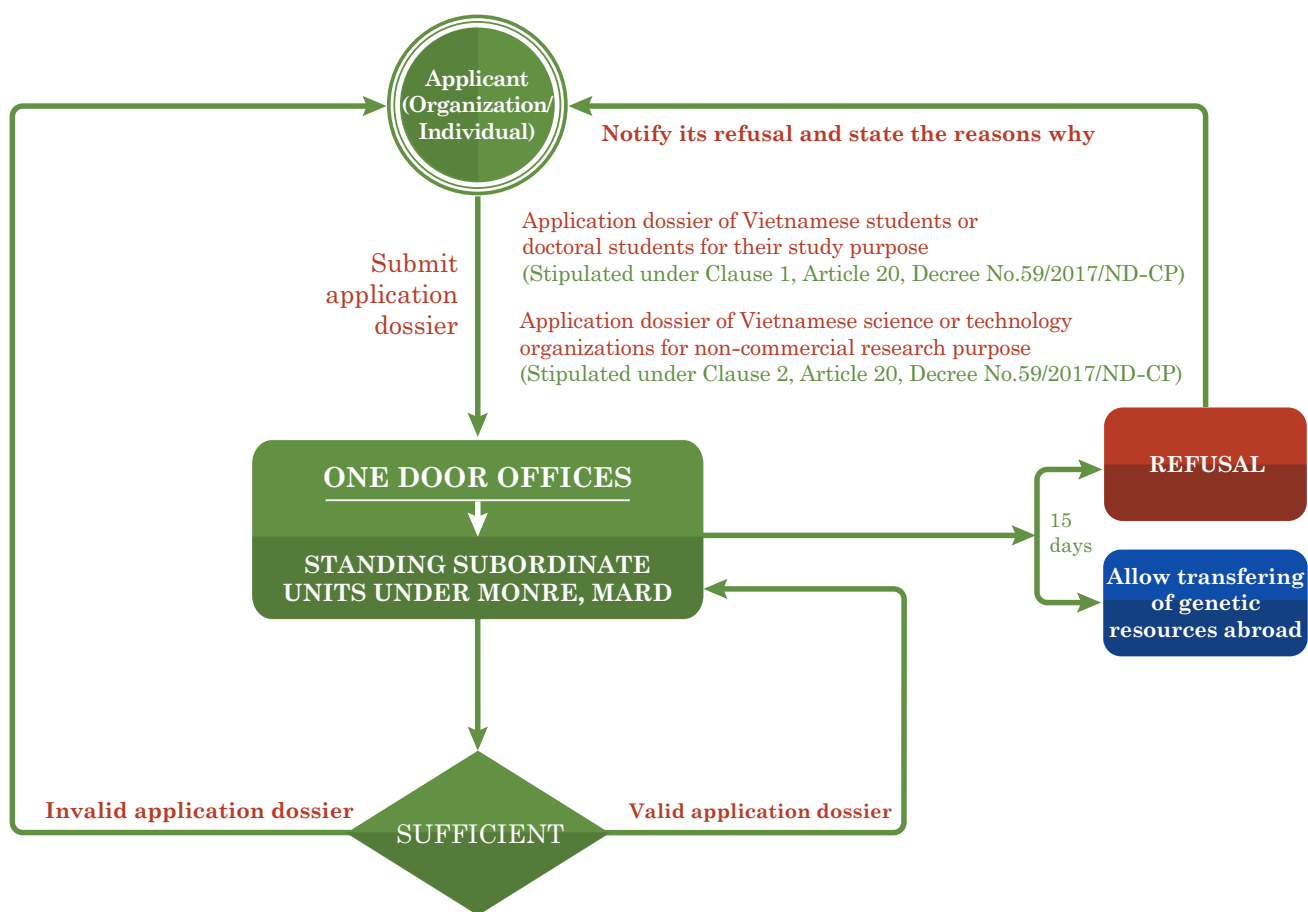
Where the GRs are on the list of conditional utilization and access, individuals and organizations must submit the written consent of managing ministries according to regulations of the Law.

Regarding procedures<sup>39</sup>, within 15 days of receiving a valid dossier, the head of the NCA shall consider and decide whether to allow the transfer of GRs abroad in the service of study. Decision shall be made according to the form prescribed in sample form 9 in the Annex attached to Decree 59/2017/ND-CP. In the case of refusal, the NCA shall notify in writing to the applicant, clearly stating the reasons therefore.



*Photo: Nguyen Tap*

39. The MONRE issued Decision No. 2518/QĐ-BTNMT on 17 October 2017 announcing administrative procedures in the field of environment within the scope of state management of the MONRE for the provisions of Decree 59/2017/ND-CP. It clearly states the order and procedures; composition of the dossiers; entities and agencies performing administrative procedures and requirements and conditions for carrying out administrative procedures.



- Average processing timeline upon the receipt of valid dossier is 15 days

**FIGURE 7. Procedures of registration for transferring genetic resources abroad for study, not for commercial purposes**

*(For Viet Nameese students, doctoral students, or science and technology organizations)*

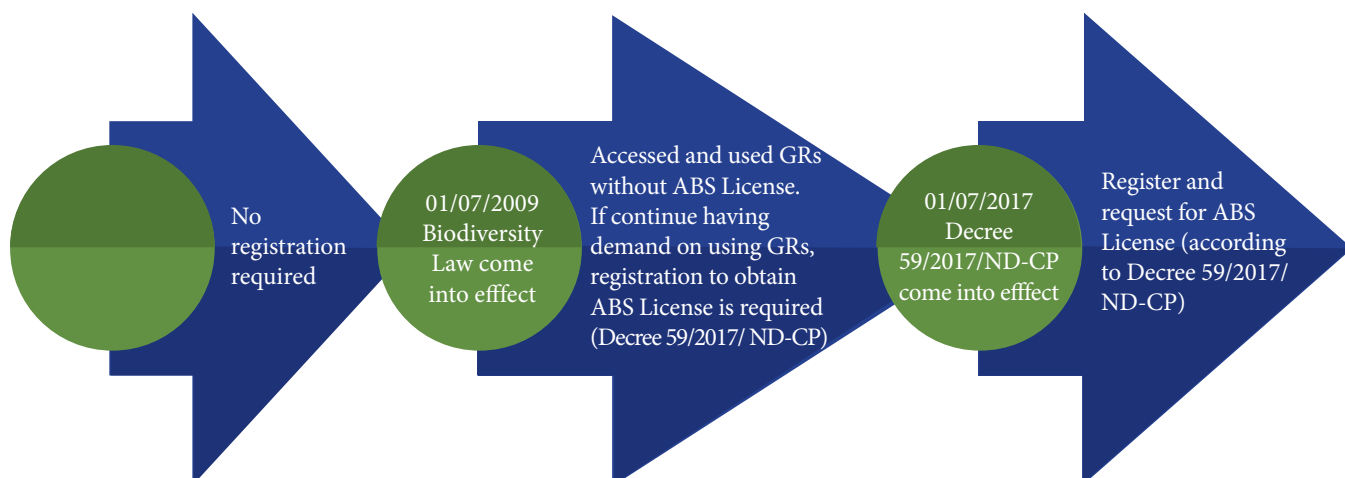
#### 4. Requirements and procedures for access to genetic resources after 2009

Application dossiers requesting a license to access GRs which have been submitted to the NCA prior to the effective date of the Decree 59/2017/ND-CP, shall be considered and appraised in accordance with the provisions of Decree 65/2010/ND-CP.

Provincial People's Committees shall be responsible for transferring the dossiers of cases that have been granted a license to access GRs to the MONRE before the 31st of December, 2017 for management.

Organizations and individuals which have accessed GRs from July 1st, 2009 up to the effective date of this Decree, and which wish to continue to utilize GRs but have not yet been granted a license, shall have to register and request the license in accordance with the provisions of the Decree 59/2017/ND-CP.<sup>40</sup>

Explanation of the regulation scope over time for access to GRs in Viet Nam (Article 27 of Decree 59/2017/ND-CP):



39. Article 17 Decree 59/2017/ND-CP

# REGULATIONS ON ABS LICENSE

This section describes the content of Licence for access to GRs and its implementation, including explaining the rights and obligations of organizations and individuals granted licenses to access GRs, the validity duration of licenses, withdrawal, renewal of licenses, conditions of change, transfer to third parties, intellectual property rights and obligations of information and reporting.

## 1. Requirements of license to access genetic resources

The License to access GRs shall be made as sample form 04 prescribed in Annex attached to the Decree 59/2017/ND-CP.<sup>41</sup>

The period of validity of the license to access GRs shall be decided by a NCA based on the proposed objective and the plan of access to GRs in the application dossier for the license to access GRs, but it shall be no longer than 3 years.



*Photo: Pham Ha Thanh Tung*

## 2. Rights and obligations of organizations and individuals that are granted licenses for access to genetic resources<sup>42</sup>

a) Organizations and individuals licensed for access to GRs have the following rights:

- To investigate and collect GRs and carry out other activities as indicated in their licenses for access to GRs;
- To take out of the Viet Nameese territory GRs not on the list of those banned from export under law;
- To trade in products made from GRs they licensed;
- To have other rights as specified in their licenses for access to GRs and contracts on access to GRs and benefit sharing.

b) Organizations and individuals licensed for access to GRs have the following obligations:

- To adhere to the provisions of their licenses for access to GRs;

- To submit written reports to NCAs on on activities of access to GRs stipulated in the license granted for access to GRs; periodical reports on the status and result of utilization of GRs every two years; other reports upon request of the competent national authorities
- To share benefits with involved parties, including the distribution of intellectual property rights over inventions results based on their access to GRs and TK copyrights on GRs;
- To have other obligations as specified in their licenses for access to GRs and contracts on access to GRs and benefit sharing.

Individuals and organizations shall pay appraisal fees at the time of submission of the dossier for requesting or renewing the license to access GRs in accordance with the law on charges and fees.<sup>43</sup>

41. Article 16 Decree 59/2017/ND-CP

42. Article 60 Biodiversity Law

43. Article 19 Decree 59/2017/ND-CP



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### 3. Obligations of benefit sharing of organizations and individuals granted ABS License

As Decree 59/2017/ND-CP mentions both monetary and non monetary benefits, there is flexibility for the parties of ABS contract to negotiate and choose which benefit are to be shared. However, Decree 59/2017/ND-CP does establish some minimum requirements for benefit sharing, which apply to both monetary and non-monetary benefits.

a) For monetary benefits, Decree 59/2017/ND-CP stipulates that the share of monetary benefits of the product generated from the utilization of GRs shall be not less than 1% of the total annual revenue of such product. By product, Decree 59/2017/ND-CP refers to the outcomes of R&D activities conducted by the user - rather than the final, consumer product (see example below). The share of monetary benefits for the Provider when obtained by the transfer of GRs or derivatives thereof, or the utilization of intellectual property rights based on the GRs, shall be not less than 2% of such total transfer value or total revenue from utilization of intellectual property rights.<sup>44</sup>

The Decree 59/2017/ND-CP only sets up the minimum ratio to be shared by the users and opens a discretion for parties of ABS contract to negotiate in details where, how and how much the benefit should be shared. It is noted that “the total annual revenue of such product” means the revenue of the user from selling the products utilizing licenced accessed GRs.

*For example*, Company A gets a license to access to GRs, conducts R&D and develops an ingredient for a natural pesticide. Company X manufactures the ingredients of the pesticide. The product here is an ingredient for a natural pesticide of company A. The revenue here is the revenue of Company A sells the ingredient to company X, and the company A is responsible to pay/share the benefit of at least 1% their total sale revenue of the ingredient. If the company A sells the ingredient not only to company X but also to many companies X1 to X10 to Xn around the world, the annual revenue of sale should be determined totally all companies around the world. If the company A transfers the licenced GRs to company X as a third party with transfer of all rights and obligations to only company X, the minimum of 2% of such total transfer value or total revenue from the use of intellectual property rights. Company A has no longer the rights to the licenced GRs.

The share of the total monetary benefit shall be handled as followings:

- When the Provider is Commune-level People’s Committees, or Protected Area’s Management Board, or state-managed facilities for storing or preserving GRs, or Biodiversity conservation facilities, or institutes for research and technology development

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44. Article 22 Decree 59/2017/ND-CP

assigned by the State: 30% of the shared money shall be paid to the GRs Provider as prescribed in Clauses 1 and 2 of Article 22, Decree 59/2017/ND-CP; and the remaining 70% of the shared money shall be paid into the State Budget to be used for conservation and sustainable use of biodiversity;

- When the Provider is an individual or a household or an organization assigned to manage GRs by the State: 50% of the shared money shall be paid to the GRs Provider as prescribed in Clauses 1 and 2 of Article 22, Decree 59/2017/ND-CP; and 50% of the shared money shall be paid into the State Budget to be used for conservation and sustainable use of biodiversity.

b) Non-monetary benefits arising from the utilization of GRs and the sharing of such non-monetary benefits will be agreed by the parties and specified in the contract.

Beneficiaries of non-monetary benefits include: Domestic Providers, domestic partners of the foreign User, and other involved organizations and individuals. The origin of the accessed GRs should be clearly stated when publishing any results of the scientific research or applying for intellectual property rights for any innovative results based on accessing and using such GRs.

#### 4. Renewal of license to access genetic resources

Regarding renewal procedures: 02 months prior to expiration of the license, the organizations and individuals wishing to continue to access GRs must submit an application to extend the license (hereinafter referred to as dossier for license renewal) to the NCA in one of the following ways: submit it directly at the head office of the NCA, or submit it by post.<sup>45</sup>

The dossier for license renewal to access GRs includes:

- An application for renewal of the license to access GRs in the sample form 05 prescribed in Annex attached to the Decree 59/2017/ND-CP;
- Report on the result of access to and utilization of GRs by the time of requesting license renewal in accordance with granted license and signed contract between the parties;
- A copy of the granted license to access GRs;
- A copy of the signed contract between the User and the Provider;

- Written consent of the Provider to extend the access to GRs between the parties.

Regarding procedures for extension approval, within maximum 30 days from receipt of valid dossier for license renewal, the NCA granting the license to access GRs has the responsibility to consider the extension. The decision to renew the license to access GRs shall be made using the form prescribed in sample form 06 of Annex attached to the Decree 59/2017/ND-CP.

The applicant must submit the renewal fee in accordance with the regulation.

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45. Article 17 Decree 59/2017/ND-CP

## 5. Withdrawal of license to access genetic resources<sup>46</sup>

The license to access GRs shall be withdrawn when NCA detects any one of the following cases:

- Individual, organization provided false information to obtain the license to access GRs;
- The activity of accessing and utilizing GRs causes harm to people, environment, security, national defense or national interests of Viet Nam;
- Conducting access and utilization of GRs outside of the licensed scope;
- Other violations in accordance with the law.

Within a maximum of 30 days from receipt of the information on violations or complaints on the license to access GRs, the NCA shall complete handling the dossier to make decision of withdrawal of the granted license to access GRs.

The decision on withdrawal of the license shall be made using the form prescribed in sample form 07 of Annex attached to the Decree 59/2017/ND-CP.

From the date of withdrawal of license, the individual or organization having the license withdrawn, must obey the following requirements:

- They shall not be allowed to continue to access or utilize GRs as previously licensed;
- They must continue to fulfill the agreement on benefit-sharing of the accessed GRs under the contract signed;
- They must pay compensation for damage and restoration of the environment and biodiversity, according to the provisions of Viet Nameese law (if any).

## 6. Change conditions; transfer of genetic resources to a third party; intellectual property rights and obligations<sup>47</sup>

a) Individuals and organizations being granted a license shall only utilize GRs for the registered purposes. Any change of purposes must be complied with provisions of registration for access to GRs and request of a new license for access to GRs in order to be granted a new license.

b) Organizations and individuals granted licenses for access to GRs are allowed to transfer of accessed GRs or derivatives of accessed GRs to a third party. The requirements for the transfer are as follows:

- Where transfer GRs or derivatives of GRs without any change of the intent specified in the license, they shall notify in writing the NCA granting the license to access GRs;

- Where the transfer of GRs or derivatives of GRs involves any change of intent specified in the license, the third party must negotiate and sign a contract with the Provider and implement the provisions of Articles 10, 11 and 12 of the Decree 59/2017/ND-CP prior to receiving the GRs or derivatives of GRs;

The transfer of accessed GRs to a third party occurs shall include the transfer of the obligations of the User under the license, and the contract signed between the User and Provider, including the provisions of the sharing of benefits arising from the utilization of GRs to the Provider.

“Third party” refers to the individuals or organizations which access GRs or derivatives of GRs transferred from the User as per the terms of the license issued by the competent national authorities.

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46. Article 18 Decree 59/2017/ND-CP

47. Article 14 Decree 59/2017/ND-CP

The transfer to a third party is a transfer of all rights and obligations of users, it is identified there is on only one third party.

Registration for intellectual property rights for innovative results from the utilization of GRs and its derivatives must state clearly the source or origin of accessed GRs, and comply with Clause 2, Article 22 of the Decree 59/2017/ND-CP.

## 7. Report on the implementation of access to genetic resources and benefit-sharing<sup>48</sup>

Organizations and individuals who wish to access to GRs and transfer GRs to abroad shall be responsible for reporting in writing to the NCA which have granted licenses as follows:

- A report on activities of access to GRs stipulated in the license granted for access to GRs.
- Periodical reports on the status and result of utilization of GRs every two years.
- Other reports upon request of the competent national authorities.

Viet Nameese students, doctoral students, and Viet Nameese scientific and technological organizations wishing to transfer GRs to abroad shall submit reports on their study or research results to the NCAs which allowed them to transfer the GRs to abroad, within 03 months of completion of the program or project.

Sample report on access to GRs and the sharing of benefits arising from their utilization shall be complied with the regulations of the MONRE.



*Photo: Cites Viet Nam*

48. Article 25 Decree 59/2017/ND-CP

# ANNEX

**Annex 1. CONTACT INFORMATION OF NATIONAL FOCAL POINT AND NATIONAL COMPETENT AUTHORITIES TO GRANT, RENEW AND WITHDRAW THE LICENSE TO ACCESS GENETIC RESOURCES**

**Annex 2. ANNEX ISSUED WITH DECREE No. 59/2017/ND-CP ON 12 MAY, 2017 OF GOVERNMENT ON THE MANAGEMENT OF ACCESS TO GENETIC RESOURCES AND THE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION**



*Photo: Pham Ha Thanh Tung*

## **Annex 1. CONTACT INFORMATION**

### **1. CBD National Focal Point:**

PhD. Nguyen Van Tai - Director General, The Viet Nam Environment Administration (VEA)

Ministry of Natural Resources and Environment (MONRE)

Address: 10 Ton That Thuyet street, Nam Tu Liem district, Ha Noi.

Webpage of the VEA: <http://www.vea.gov.vn/en>

ABS-CH: <https://vietnamabs.gov.vn/en>

### **2. Nagoya Protocol National Focal Point:**

PhD. Hoang Thi Thanh Nhan - Deputy Director, Nature and Biodiversity Conservation Agency,

Viet Nam Environment Administration, Ministry of Natural Resources and Environment

Address: 10 Ton That Thuyet street, Nam Tu Liem district, Ha Noi.

Email: [httnhan@vea.gov.vn](mailto:httnhan@vea.gov.vn); [hoangnhan.bca@gmail.com](mailto:hoangnhan.bca@gmail.com)

### **3. National Competent Authorities (NCA):**

#### **3.1. Ministry of Natural Resources and Environment:**

Contact person: *M.S. Nguyen Ba Tu* - Principal official Nature and Biodiversity Conservation Agency, Viet Nam Environment Administration, Ministry of Natural Resources and Environment

Address: 10 Ton That Thuyet street, Nam Tu Liem district, Ha Noi.

Email: [tunguyen.bca@gmail.com](mailto:tunguyen.bca@gmail.com)

ABS-CH: <https://vietnamabs.gov.vn/en>

Public Services Portal of MONRE: <https://dvctt.monre.gov.vn/Pages/Default.aspx>

#### **3.2. Ministry of Agriculture and Rural Development:**

Contact person: *Msc. Nguyen Thi Hong Thanh* - Department of Science, Technology and Environment, Ministry of Agriculture and Rural Development.

Address: No. 2 Ngoc Ha street, Ba Dinh district, Ha Noi.

Email: [thanhth.khcn@mard.gov.vn](mailto:thanhth.khcn@mard.gov.vn)

Website of the MARD: <http://www.mard.gov.vn/en>

**Annex 2. ANNEX ISSUED WITH DECREE No. 59/2017/ND-CP DATED 12 MAY, 2017 OF GOVERNMENT ON THE MANAGEMENT OF ACCESS TO GENETIC RESOURCES AND THE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION**

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Sample form 01	Guarantee of the science and technology organization for individuals requesting license to access genetic resources
Sample form 02	Application for access to genetic resources
Sample form 03	Contract on access to genetic resources and benefit-sharing
Sample form 04	License for access to genetic resources
Sample form 05	Request for renewal of license for access to genetic resources
Sample form 06	Decision on renewal of license for access to genetic resources
Sample form 07	Decision on the withdrawal of the license for access to genetic resources
Sample form 08	Request to transfer genetic resources abroad for study/ research for non-commercial purposes
Sample form 09	Decision to allow the genetic resources to be transferred abroad for study/ research for non-commercial purposes

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NAME OF GUARANTOR

\_\_\_\_\_

SOCIALIST REPUBLIC OF VIET NAM  
Independence - Freedom - Happiness

\_\_\_\_\_

Ref: .....

(Place), date .....

**To:** (Competent National Authority)

**THE GURANTOR:**

Name:

Address:

Business Registration Number or Establishment Decision Number .....

Date of issue..... Place of issue.....

The licensed field of science and technology: .....

Representative: .....

Position: .....

Tel: ..... Fax: .....

**THE GUARANTEED:**

Full name: .....

Citizenship Identification Number or equivalent: .....

Date of issue :.....; issued by:.....

Workplace: .....

Address: .....

Areas of expertise: .....

Telephone: ..... Fax: .....

E-mail address: .....

Mr. / Mrs. (the name of the guaranteed party) .....- The guaranteed is currently a member of (name of the guarantor) with the title of ...

We - ... (name of guarantor) hereby approve the guarantee for Mr / Ms (name of the guaranteed) ... in the implementation of the legal obligations of Mr / Ms (name of the guaranteed)... as specified in the Contract for Access to Genetic Resources and Benefit-Sharing number ... date ..., signed between (name of the Provider) ... and (name of the Accessor) ....



We affirm that, in the case Mr. / Ms (name of the guaranteed) ... does not fully implement his/her obligations under the commitment in Contract No. ..., we will be responsible for implementing the provisions of the obligation of Mr / Ms (the name of the guaranteed) ... under the above contract.

This guarantee document takes effect from the date of issuance.

This guarantee document is made in ... copies, not transferable and irrevocable.

This guarantee document is regulated and interpreted in accordance with the law of Viet Nam.

***Recipients:***

- As above;

-.....

- Archives:

**LEGAL REPRESENTATION OF THE  
GUARANTOR**

*(Title, full name, sign and seal to a legal entity)*

**SOCIALIST REPUBLIC OF VIET NAM**  
**Independence - Freedom - Happiness**

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## APPLICATION FOR ACCESS TO GENETIC RESOURCES

**To:** (Competent National Authority)

### 1. Applicant:

- For organization: full name of organization; number of the business license or decision on the establishment, date and place of issue; name of the representative of the organization; position; name of the liaison's representative; address; phone; fax; E-mail address.
- For individual:
  - + Full name; Citizenship Identification Number or equivalent, date and place of issue; address; phone; fax; E-mail address;
  - + Qualification and professional field of the individual;
  - + Information on the science and technology organization to which the individual is a member: full name of the organization; ; number of the business license of the organization or decision on the establishment, date and place of issue; name of the representative of the organization; position; address; phone; fax.

### 2. Application content:

- Genetic resources (Common name, other name, scientific name).
- Expected quantity/Amount of genetic resources to be accessed (specify how many samples of genetic resources, quantity/ volume).
- The purpose of access to genetic resources:
  - Research for non-commercial purposes
  - Research for commercial purposes
  - Development of commercial products
- Planned access duration: From ... To....( maximum 3 years)
- Expected access place:
- Expected Provider:
  - Information of the Provider (if any):
  - Request for introduction of recommended Provider

- Activities incurred (if any):
  - Taking the genetic resources out of Viet Nam territory
  - Transfer to third parties without any change of the intent of access

**3. Expected access method:**

- Duration (start time, end time);
- Access method (Means, tools and equipment);
- Expected access place (wild area, biodiversity conservation facilities, collections);
- Domestic organizations and individuals conducting investigation and collection of genetic resource (clearly stating name, address and contact ...).

**4. Utilization of traditional knowledge on genetic resources (if any):**

Provide general information on the expected utilization of traditional knowledge on genetic resources.

**5. Attached Documents** (Attached documents listed under the provisions of Clause 2, Article 9 of Decree No. .... / 2017 / ND-CP of May ..... 2017 of the Government on the management of access to genetic resources and the sharing benefits arising from their utilization, and other documents, if any)

**6. Commitment of applicant:**

(Name of individual/organization) commits that the information provided in this form is true and correct and we shall be for responsible for any incorrect information under the legislation of the Socialist Republic of Viet Nam.

Kindly request ..... to consider and permit the “applicant” to access genetic resources for the above-mentioned purpose./.

*(Place), date .....*

**Authority representative of Applicant**

*(Title, full name, sign and seal to a legal entity)*

## CONTRACT ON ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

(No...../ Provider- Acessor)

- Pursuant to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, of the Convention on Biological Diversity
- Pursuant to Civil Code 2015;
- Pursuant to the Law on Biodiversity 2008;
- Pursuant to Decree No...../2017/ND-CP dated ..... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization;
- Pursuant to the requirements of both parties

The Contract is made as of ..... at (place).....

### Between

#### NAME ORGANIZATION/INDIVIDUAL PROVIDING GENETIC RESOURCES

(Hereafter called “PROVIDER”)

- For organization: full name of the organization; number of the business license, date and place of issue; number the establishment decision or the certificate of land or water surface use right in which the genetic resources are accessed, date of issue and place of issue; name of the representative of the organization; position; name of the organization’s liaison representative; address; phone; fax; E-mail address.
- For individual: full name; Citizenship Identification Number or equivalent, date and place of issue; Number of the certificate on land, water surface use right where the genetic resources are accessed, date of issue and place of issue; address; phone; fax; E-mail address.

### And

#### NAME ORGANIZATION/INDIVIDUAL ACCESSING GENETIC RESOURCES

(Hereafter called “ACCESSOR”)

- For organization: full name of the organization; number of the business license or decision on the establishment, date and place of issue; name of the representative of the organization; position; name of the liaison’s representative; address; phone; fax; E-mail address.
- For individual:
  - + Full name; Citizenship Identification Number or equivalent, date and place of issue; address; phone; fax; E-mail address;
  - + Qualification and professional field of the individual;
  - + Information on the science and technology organization to which the individual is a member: full name of the organization ; number of the business license of the organization or decision on the establishment, date and place of issue; The name of the representative of the organization; position; address; phone; fax.

*(In cases where many organizations or individuals cooperate to provide or access genetic resources under a common program or project, these organizations and individuals must provide full information, jointly negotiate, jointly agree to the terms, and jointly sign the contract)*

## **THE TWO PARTIES AGREE ON THE FOLLOWING PROVISIONS:**

### **Article 1. Provider and Accessor agree on the provision and utilization of genetic resources with the following specific information:**

1. Accessed genetic resource: Common name, scientific name and other name
2. Samples of Accessed genetic resource; access method, quantity/amount, volume of genetic resources: specify how many specimens, quantity/amount, individuals .
3. Purpose of access to genetic resources: specify one of the three following purposes: Research for non-commercial purposes, Research for commercial purposes, Development of commercial products.
4. Duration: (Planned access duration: From .... To...(maximum 3 years))
5. Access place.
6. The specific information of the parties intending to use the genetic resources and the expected access place.
7. Proposed utilization of traditional knowledge associated with genetic resources (if any).
8. Plan to transfer the genetic resources abroad (if any).
9. Other agreements.

(See attached Appendix on Access to Genetic Resources Plan).

### **Article 2. Sharing of benefits arising from the utilization of genetic resources**

Depending on specific circumstances, The ACCESSOR and the PROVIDER will negotiate based on the form and benefit-sharing provisions in compliance with Articles 21, 22 and 23 of Decree No. .... /2017/ ND-CP dated ..... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization.

### **Article 3. Responsibilities of the ACCESSOR**

1. With regard to the access to genetic resources:
  - Only conduct survey and collection of genetic resources according to the plan on access to genetic resources after obtaining the license for access to genetic resources, issued by the competent national authority;
  - Only access the genetic resources as provided for in Article 1 of this contract.
2. With regard to the utilization of genetic resources:
  - Only utilize genetic resources for the purpose of access as specified in this contract;
  - For the development of commercial products, the Accessor must report periodically to the competent national authority and the Provider information on the revenue from the utilization and commercialization of products from genetic resources, in accordance with the regulations on the utilization of genetic resources.

3. Change of intent: The change in access to and utilization of genetic resources shall comply with the provisions of Clause 1, Article 14 of Decree No. .... /2017/ND-CP dated ..... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization.
4. With regard to intellectual property rights for innovative results based on access to genetic resources:
  - The ACCESSOR must ensure the source or origin of genetic resources of the Provider when registering intellectual property rights for innovative results based on access to and use of genetic resources.
  - When carrying out the commercialization of intellectual property rights for innovative results based on accessed genetic resources, the ACCESSOR must ensure benefit-sharing under Article 2 of this Contract and ensure compliance with the rules defined in Clause 2, Article 22 of the Decree No...../2017/ND-CP dated ..... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization.
5. Transfer of accessed genetic resources to a third party: must comply with the provisions of Clause 2, Article 14 of the Decree No...../2017/ND-CP dated ..... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization.
6. Sharing of benefits: Implement sharing of benefits as in Article 2 of this Contract.
7. Informing and reporting: To conduct reporting regime according to the provisions of the Decree on access to genetic resources and the sharing of benefits arising from their utilization.
8. Payments for the Provider and related parties: fees, charges, and taxes as prescribed.
9. Other obligations as mutually agreed.

#### **Article 4. Responsibilities of the PROVIDER**

1. Coordinate with the Accessor upon request in the process of applying for a license for access to genetic resources.
2. To provide genetic resources to users as stipulated in Article 1 of this Contract.
3. Other obligations as mutually agreed.

#### **Article 5. Dispute resolution**

All disputes associated with this Contract related to access to genetic resources and the sharing of benefits arising from their utilization shall be settled in accordance with the provisions of Viet Nameese law and treaties to which the Socialist Republic of Viet Nam is a member.

#### **Article 6. Reporting and accounting**

The ACCESSOR shall be responsible for maintaining and accurately updating the full accounting records and reports related to this Contract, including:

1. Transactions that have been made;
2. A separate report on receipts and invoices;

3. Accounting records must be available and accessible for checking, and made under generally accepted accounting standards;
4. Reports on and records of revenues derived from the exploitation and utilization of genetic resources/ traditional knowledge on genetic resources must be accessible to ensure correct payments.
5. The ACCESSOR must archive accounting records and reports related to specimens for ..... years after expiry or termination of the Contract, save when the Contract expires or terminates prior to its term.
6. Other agreements.

***Apart from the above-mentioned contents, depending on each specific case, the parties may agree on the following contents:***

- Taxes, fees.
- Agreement on confidentiality of information in accordance with the law
- Insurance.
- Access to files and records.
- Amendment and supplement of the contract.
- Termination and liquidation of the Contract.
- Cases of force majeure.
- Other relevant content.

The Contract was made into..... original copies (each consisting of ..... sheet,..... pages). Each party shall keep ..... copies, one (01) shall be sent to the competent national authority./.

**THE ACCESSOR**

**THE PROVIDER**

*(Title, full name, sign and seal of a legal entity)*

*(Title, full name, sign and seal of a legal entity)*

Contract on access to genetic resources and benefit-sharing between (the Accessor).... and (the Provider).... at.... (accessed place or registered address of the Provider)

01 (one) original copy shall be archived by the Commune-level People's Committee

*(Location), date... month... year...*  
**CHAIRMAN/CHAIRWOMAN OF  
 COMMUNE PEOPLE'S COMMITTEE**  
*(Signature, Full name, Stamp)*

## DETAILED PLAN ON ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

*(Attached with the Contract for access to genetic resources and benefit-sharing)*

### 1. General information on genetic resources

- Accessed genetic resource: Common name, scientific name, and other name
- Samples of Accessed genetic resource;
- Quantity/amount of accessed genetic resource, specify the number of samples, quantity/amount, weight, individuals.....
- Purpose of access to genetic resources
- Duration: (Planned access duration: From ..... To ..... (maximum 3 years)
- Expected access place:

#### *Access in the wild:*

- + Location: Specifying plots, sub-zones for forests, and geographical coordinates for other ecosystems
  - + Boundary: describe the natural boundary, attached with diagrams, maps with the smallest chart scale of 1: 10,000;
  - + Area of Expected access place:
  - + Current status of the ecosystem, fauna and flora in the accessed area.
- *Access to genetic resources at biodiversity conservation facilities and collections:*

Information on genetic resources to be accessed at biodiversity conservation facilities or collections (duration and place where genetic resources have been collected).

### 2. Access Method

- Access method and implementation method (means, tools and equipment to access and utilize, period/session for collection.)
- Domestic individuals/organizations involved in the collection process (Specify names, address, contact points.....)

### 3. Impact assessment of access to genetic resources on conservation and social - economy

- Impact assessment conducted in accessed places where biodiversity, ecosystems, and the socio-economy may be affected.
- Solutions proposed to prevent and mitigate the above impacts.



#### **4. Plan to utilize genetic resources**

- Purpose and expected results of the utilization of genetic resources
- The utilization of traditional knowledge associated with genetic resources, including identification of the characteristics, value and benefits of genetic resources (if any, describe traditional knowledge associated with genetic resources and identify communities and individuals that provide traditional knowledge if there is a difference compared to the Provider managing these genetic resources.)
- Domestic organizations and individuals engaged in conducting research and development of commercial products from genetic resources and their derivatives (clearly stating name, address and contact person....)
- Expected place to conduct research and development of commercial products from genetic resources and their derivatives.
- Activities incurred (if any):
  - + Taking genetic resources out of the territory of the Socialist Republic of Viet Nam (details on quantity / volume and number of times taking genetic resources out of the territory of Viet Nam);
  - + Transfer of genetic resources to a third party without any change of intent.

*(Attach with information on organizations and individuals receiving genetic resources, the expected time to transfer genetic resources abroad, and expected use activity)*

#### **5. Commitment to share the benefits from using genetic resources**

*(Method and implementation of benefit-sharing from the utilization of genetic resources as agreed in contract for access to genetic resources and benefit-sharing between the ACCESSOR and PROVIDER)*

**COMPETENT NATIONAL  
AUTHORITY**

**THE SOCIALIST REPUBLIC OF VIET NAM  
Independence-Freedom-Happiness**

No.: ..... /QĐ-.....

\_\_\_\_\_  
(Place), date .....

**DECISION**

**On licensing for access to genetic resources**

(Application reference number on (date).....)

**MINISTER OF.....**

*Pursuant to Decree No. ..../201.../ND-CP dated ..... of the Government regulating the functions, duties, powers and organizational structure of authorized state agencies;*

*Pursuant to Decree No. ....../2017/ND-CP dated ..... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization;*

*Considering the dossier requesting a license for access to genetic resources ..... (name of organization/ individuals);*

*According to the request of the standing subordinate unit,*

**DECIDES:**

**Article 1.** *The competent national authority grants the License to:*

- For organization: full name of the organization; number of the business license or decision on the establishment, date and place of issue; name of representative of the organization; position; name of the liaison's representative; address; phone; fax; E-mail address.
- For individual:
  - + Full name; Citizenship Identification Number or equivalent, date and place of issue; address; phone; fax; E-mail address; Qualification and professional field of the individual;
  - + Information of the Guarantor organization: name of the organization; number of the business license of the organization or decision on the establishment, date and place of issue; name of representative of the organization; position; address; phone; fax.
  - + Number, notation; Place and date of issue; name of the guarantee document; name of organization issuing such guarantee document;

**Article 2.** Scope of access to and utilization of genetic resources:

- 1) Accessed genetic resource: Common name, scientific name, and other name
- 2) Samples of the accessed genetic resource; Quantity/amount of accessed genetic resource.
- 3) Purpose of access to genetic resources:
- 4) Planned access duration: From ..... To .....
- 5) Expected access place
- 6) Provider (name, detail contact)
- 7) Information of the parties utilizing the genetic resources and the place where genetic resource activities will be implemented.
- 8) Information on the use of traditional knowledge of genetic resources.
- 9) Information on the taking of genetic resources out of the territory of the Socialist Republic of Viet Nam.

**Article 3.** Organizations/individuals shall take responsibility for:

- 1) Utilization of genetic resources for the purpose of “...” (Purpose of application);
- 2) Implement the Genetic Resources Access Plan issued with this Decision;
- 3) Implement the contents of the Contract for Access to Genetic Resources and Benefit-Sharing No. ... date ... month ... year ... between (the Accessor) and (the Provider) certified by the Commune People’s Committee of ..... date ..... month ..... year .....
- 4) Comply with the reporting obligations and other relevant regulations when accessing and using genetic resources and their derivatives originating from within Viet Nam.

**Article 4.** This Decision takes effect from its signing till date ..... month ..... year

**Article 5.** Heads of the standing subordinate unit, ..... and Organizations/individuals ..... are responsible for the implementation of this Decision./.

**Recipients:**

- As Article 5;
- The Communal People’s Committees;
- Archives: Clerical, .....

**MINISTER**

*(Signed and sealed)*

**THE SOCIALIST REPUBLIC OF VIET NAM**  
**Independence - Freedom - Happiness**

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**REQUEST FOR RENEWAL OF LICENSE FOR ACCESS  
 TO GENETIC RESOURCE**

**To:** Competent national authority

**1. General information**

General information on the individual or organization requesting renewal of the license for access to genetic resources:

- For organization: full name of the organization; number of the business license or decision on the establishment, date and place of issue; name of the representative of the organization; position; name of the liaison's representative; address; phone; fax; E-mail address.
- For individual:
  - + Full name; Citizenship Identification Number or equivalent, date and place of issue; address; phone; fax; E-mail address;
  - + Information on the science and technology organization to which the individual is a member: full name of the organization; ; number of the business license of the organization or decision on the establishment, date and place of issue; The name of the representative of the organization; position; address; phone; fax.

Already being granted a License for access to genetic resources under Decision No ... / QD ... day ... month ... year ... of the head of the competent national authority.

**2. Summary of the status and result of access to genetic resources and benefit-sharing**

**3. Request for renewal of license for access to genetic resources**

The reason (the reason and explanation): .....

Extended time: From ..... to .....

**4. Documents enclosed with this application:**

(List of required documents is prescribed in the provisions of Clause 2, Article 17 of Decree No. ....../ 201 ../ ND-CP dated ... month ... year ... 201 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization);

(Name of the organization or individual requesting) shall be fully responsible before the law of the Socialist Republic of Viet Nam for the truthfulness of the information and data provided in this application and the attached documents.

Kindly requesting .....to consider and allow the “applicant” to renew the license for access to genetic resources for the above-mentioned purposes.

*(Place), date .....*

**Applicant**

*(Title, full name, sign and seal to a legal entity)*

**THE COMPETENT  
NATIONAL AUTHORITY**

**THE SOCIALIST REPUBLIC OF VIET NAM  
Independence - Freedom - Happiness**

Ref:...../QĐ-.....

\_\_\_\_\_  
(Place), date.....

## **DECISION**

### **On Renewal of License for Access to Genetic Resources**

**MINISTER OF MINISTRY OF.....**

*Pursuant to Decree No. ..../201.../ND-CP dated ..... of the Government regulating the functions, duties, powers and organizational structure of authorized state agencies;*

*Pursuant to Decree No. ....../2017/ND-CP dated ..... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization;*

*Considering the dossiers requesting the renewal of the license for access to genetic resources ... (name of organization);*

*According to the request of the standing subordinate unit,*

### **DECIDES:**

**Article 1.** To extend the duration for access to genetic resources under the Decision No ..... date ... of the head of the competent national authority granting the License for access to genetic resources from ..... Date ..... month ..... year to ... Date ..... month ..... year.

**Article 2.** The content is not amended in this Decision and shall comply with the Decision No ... / QĐ ..... Day ..... month ..... year ..... of the Minister .....on granting access to genetic resources.

**Article 3.** This Decision takes effect from its signing till date ..... month ..... year

**Article 4.** Heads of the standing subordinate unit, ..... and Organizations/individuals ... are responsible for the implementation of this Decision. /.

### **Recipients:**

- As Article 4;
- National focal point;
- The Communal People's Committees;
- Archive: Clerical, .....

**MINISTER**

*(Signed and sealed)*

**COMPETENT NATIONAL  
AUTHORITY**

**THE SOCIALIST REPUBLIC OF VIET NAM  
Independence - Freedom - Happiness**

Ref:...../QĐ-.....

\_\_\_\_\_  
(Place), date.....

**DECISION**

**On the withdrawal of the Decision to grant a license for access to genetic resources**

\_\_\_\_\_  
**MINISTER OF MINISTRY OF.....**

*Pursuant to Decree No. ..../201.../ND-CP dated ..... of the Government regulating the functions, duties, powers and organizational structure of authorized state agencies;*

*Pursuant to Decree No. ..../2017/ND-CP dated.....2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization;*

*According to the request of the standing subordinate unit,*

**DECIDES:**

**Article 1.** To withdraw the Decision No ... date ... of the head of the competent national authority which granted the license for access to genetic resources.

... (name of organization/individual) granted the license for access to genetic resources in Decision No ..... must immediately stop accessing genetic resources in Viet Nam and perform the following obligations:

.....  
**Article 2.** This decision takes effect from the date of its signing.

**Article 3.** Heads of standing subordinate unit, .... and Organizations/individuals ... are responsible for the implementation of this Decision. /.

**Recipients:**

- As Article 3;
- National focal point;
- The Communal People's Committees;
- Archive: Clerical, ....

**MINISTER**

*(Signed and sealed)*

**THE SOCIALIST REPUBLIC OF VIET NAM**  
**Independence - Freedom - Happiness**

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**REQUEST TO TRANSFER GENETIC RESOURCES ABROAD  
 FOR STUDY/ RESEARCH FOR NON-COMMERCIAL PURPOSES**

**To:** Competent national authority

**1. Information on domestic science and technology organizations, students, and doctoral students:**

- For science and technology organizations: full name of the organization; number of the business license for science and technology activity registration, date and place of issue; name of the representative; position; address; phone; fax;
- For individuals: full name; Citizenship Identification number or equivalent, date and place of issue; address; phone; fax; E-mail address. General information of the science and technology organization or training institution in which the student or doctoral student is studying.

**2. Purpose for taking genetic resources abroad**

- Research for non-commercial purposes
- Study

**3. Information on genetic resources abroad**

No	Content	Information
1.	Name of genetic resources	<i>(Common name, scientific name and other name)</i>
2.	Accessed place	<i>(Address, Coordinates of place that genetic resources have been collected)</i>
3.	Duration	
4.	Sample of genetic resources	<i>(Part to be accessed, collected)</i>
5.	Amount/ quantity collected	
6.	Describe how it was collected	<i>(means, equipment, tools)</i>
7.	Traditional knowledge on genetic resources (if available)	
8.	The quantity/volume of genetic resources under application to be transferred abroad	

#### 4. Information on Provider

- For organizations: full name of the organization; number of the business license, date and place of issue; number the establishment decision or the certificate of land or water surface use right, date of issue and place of issue; name of the representative of the organization; position; The name of the organization's liaison representative; address; phone; fax; E-mail address.
- For individuals: full name; Citizenship Identification Number or equivalent, date and place of issue; Number of the certificate on land, water surface use right where the genetic resources are accessed, date of issue and place of issue; address; phone; fax; E-mail address.

#### 5. Information on the utilization of genetic resources abroad

To provide specific information on foreign organizations and individuals cooperating and receiving genetic resources for study.

**6. Documents enclosed with the application** (list of required documents is prescribed in Article 20 of Decree No...../2017/ND-CP dated ... month ... year ... of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization, and other documents, if any).

#### 7. Commitment

(Name of science and technology organization/ student/ doctoral student) commits to:

- Only use genetic resources to be transferred abroad for study/ research for non-commercial purposes;
- The transfer of genetic resources to a third party is not allowed;
- Comply with reporting obligations as stipulated in Decree No. ....../ 2017 / ND-CP dated ... month ... year ... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization;
- Ensure and take full responsibility before the laws of the Socialist Republic of Viet Nam for the truthfulness of the information and data provided in this application and attached documents.

Kindly requesting .....to consider and allow the "applicant" to transfer the above-mentioned genetic resources abroad for study/research for non-commercial purposes.

*(Place), date .....*

*Applicant*

*(Title, full name, sign and seal to a legal entity)*



COMPETENT NATIONAL  
AUTHORITY

THE SOCIALIST REPUBLIC OF VIET NAM  
Independence - Freedom - Happiness

Ref:...../QĐ-.....

\_\_\_\_\_  
(Place), date.....

## DECISION

**On allowing genetic resources to be transferred abroad for study/research  
for non-commercial purposes**

\_\_\_\_\_  
**MINISTER OF MINISTRY OF.....**

*Pursuant to Decree No. ..../201.../ND-CP dated ..... of the Government regulating the functions, duties, powers and organizational structure of authorized state agencies;*

*Pursuant to Decree No. ....../2017/ND-CP dated.....2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization;*

*At the proposal of the dossiers requesting to transfer genetic resources abroad for study/research for non-commercial purposes of ... (domestic science and technology organization/individual);*

*According to the request of (name of the standing subordinate unit),*

### DECIDES:

**Article 1.** Information on science and technology organization/individual that are allowed to be transferred abroad

- For science and technology organization: full name of the organization; number of the business license for science and technology activity registration, date and place of issue; Name of the representative; position; address; phone; fax;
- For individual: full name; Citizenship Identification number or equivalent, date and place of issue; address; phone; fax; E-mail address. (General information of the science and technology organization or training institution where the student or doctoral student studies)

**Article 2.** Information on genetic resources

- 1) Accessed genetic resources: Common name, scientific name, and other name
- 2) Samples of accessed genetic resources;

- 3) Information of the Provider
- 4) Accessed place
- 5) Amount/ quantity of genetic resources to be transferred out of Viet Nam
- 6) Expected foreign place for utilization of genetic resources (name of research organization, training institution, contact details).

**Article 3.** Responsibilities of (name of science and technology organization/ individual) under the license:

- 1) Only use genetic resources to be transferred out of the territory of the Socialist Republic of Viet Nam for.....(study/ research for non-commercial purpose);
- 2) Must not transfer proposed genetic resources to a third party;
- 3) Comply with reporting obligations as stipulated in Decree No. ....../ 2017./ ND-CP dated ... month ... year ... 2017 of the Government on the management of access to genetic resources and the sharing of benefits arising from their utilization and other related laws.

**Article 4.** This decision takes effect from the date of signing.

**Article 5.** Heads of standing subordinate unit, ....and.....(name of science and technology organization/ individual) ..... are responsible for the implementation of this Decision. /.

*Recipients:*

- .....
- Custom Agency;
- Archive: Clerical, .....

**MINISTER**

*(Signed and sealed)*





**UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)**



**GLOBAL ENVIRONMENTAL FACILITY (GEF)**



**NATURE AND BIODIVERSITY CONSERVATION AGENCY (BCA)**

Add: No.10 Ton That Thuyet Str., Nam Tu Liem, Ha Noi, Viet Nam

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