

ABS IN VIET NAM

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New rules on ABS

On 12 May 2017, Viet Nam adopted Decree No. 59/2017/ND-CP, updating rules for access and benefit sharing (ABS) under the 2018 Biodiversity Law.

The new decree aims to harness the potential contribution of ABS to conservation and sustainable use of biodiversity, as well as to national economic development. In particular, it clarifies the role of different competent authorities and other stakeholders in ABS governance. It further defines the specific procedures for foreign individuals or organisations to secure an ABS permit for biodiversity-based research and development, through a new, five-step process. And it establishes parameters for negotiations on fair and equitable benefit sharing.

The Viet Nam Biodiversity Conservation Agency and other partners are currently developing guidance and other tools to further facilitate ABS implementation.

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Overview

Viet Nam is one of the world's most biologically diverse countries. Marine, freshwater and terrestrial ecosystems provide habitats for a rich range of fauna, flora species and microorganisms. For example, more than 13,200 species of flora have been identified to date, with forty percent of these species existing only in Viet Nam. Viet Nam is also at the centre of origin of crops such as rice, taro, banana, and tea, possessing a large number of local cultivars, land races and wild relatives.

A wealth of traditional knowledge is associated with such rich biodiversity, particularly in the context of Vietnamese traditional medicine. Surveys have identified over 250 plants traded and used for medicinal purposes in the country.

In Vietnam, there is recognition that the wealth of biodiversity has significant economic, social and ecological values. Established by the 2008 Biodiversity Law and its implementing decrees, rules on ABS aim to maximise benefits for both providers and users of genetic resources, thus contributing to improved livelihoods for local communities, conservation of biodiversity, national scientific research and long-term economic development. As in other countries, work is now ongoing to facilitate the practical application of ABS and advance its objectives.

What is the scope of ABS rules?

ABS rules apply broadly to biological resources situated in Viet Nam. These biological resources may be native or exotic. For instance, *Scrophularia ningpoensis*, known as Chinese figwort, is originally from China but considered to fall within the scope of ABS rules if accessed in Viet Nam. For cultivated species, ABS rules only apply to exotic species if these have been produced in Viet Nam “for a long time.” This phrase may allude to the Convention on Biological Diversity (CBD) reference to the “distinctive properties” developed by domesticated species over time.

In line with the Nagoya Protocol, ABS rules in Viet Nam cover access to genetic resources for their utilisation. That is, ABS requirements focus on research and development (R&D) on the genetic and/or biochemical properties of biological resources. ABS requirements do not extend to biodiversity-based activities that do not involve R&D, such as collection of plants or herbs for commercialisation or use as known raw materials or ingredients.

ABS requirements in Viet Nam cover not only access to genetic resources, but also to derivatives for R&D. For example, a company acquiring seed oil or extract for research into new properties or applications would fall within the scope of ABS rules in Viet Nam.

Finally, for foreign individuals or organisations, ABS rules apply for access with both commercial and non-commercial purposes. Domestic individuals or organisations only require permits for R&D for commercial purposes, interpreted to cover any research on genes and biochemical compounds with potential commercial applicability.

International commitments on ABS

Viet Nam is party to the following international treaties related to access to genetic resources and benefit sharing (ABS):

- Convention on Biological Diversity (CBD) – since 1994.
- International Union for the Protection of New Varieties of Plants Convention (UPOV) – since 2006.
- Nagoya Protocol on ABS – since 2014.

Viet Nam is not a party to the International Treaty for Plant Genetic Resources for Food and Agriculture.

ABS in laws and policies

Laws and regulations with specific provisions related to ABS include:

- Law on Biodiversity No. 20/2008/QH12
- Decree No. 65/2010/ND-CP on Detailed Regulations and Guidelines for Implementation of Some Article of the Law on Biodiversity
- Decree No. 59/2017/ND-CP on the Management of Access To Genetic Resources and The Sharing of Benefits Arising From Their Utilization (substituting provisions in Articles 18, 19 and 20 of the Decree No. 65/2010/ND-CP)

Other laws, policies and regulations are also relevant for ABS requirements and procedures:

- Decree 82/2006/ND-CP on Management of Export, Import, Breeding and other activities with Endangered species of Precious and Rare Wild Fauna and Flora
- Decree 117/2010/ND-CP on Personnel Arrangement and Management of Special Use Forest System
- Law on Intellectual Property No. 50/2005/QH11
- Decree No. 103/2006/ND-CP Guiding the Implementation of a number of articles of the Law on Intellectual Property regarding Industrial Property
- Circular No. 01/2007/TT-BKHCHN Guiding the Implementation of Decree No. 103/2006/ND-CP



And traditional knowledge?

In Viet Nam, the knowledge and practices of local peoples associated to genetic resources may be owned by individuals, families or specific communities. This ownership structure means that ABS requirements for traditional knowledge are different and separate than those for genetic resources.

The Viet Nam Biodiversity Law foresees provisions for the protection of traditional knowledge associated to genetic resources. The Ministry of Natural Resources and Environment (MONRE) is responsible for developing such provisions, in collaboration with other relevant ministries. Requirements and procedures for access to traditional knowledge, however, have not yet been adopted.

Who owns genetic resources?

In Viet Nam, the State has national sovereignty over genetic resources in its territory. Under the Biodiversity Law, certain individuals and organisations are assigned rights and responsibilities in managing genetic resources. These individuals and organisations are recognised as the providers of genetic resources, granting prior informed consent and negotiating mutually agreed terms. Nevertheless, it is the State that grants access permits and defines providers' rights and responsibilities, including by defining parameters for benefit sharing.

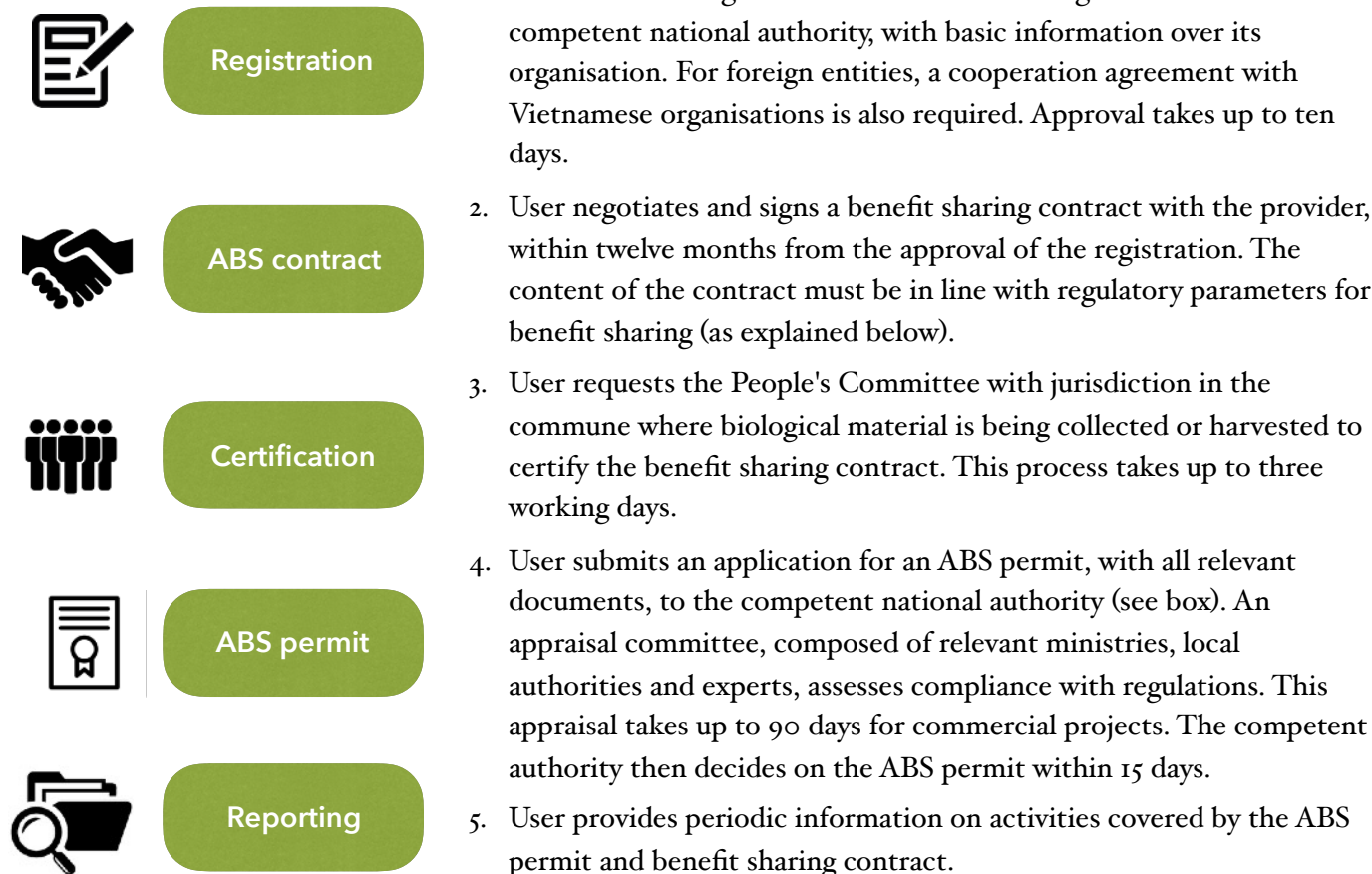
Location of genetic resources	Providers
Nature reserves	Reserve management units
Conservation and research facilities	Heads of the relevant facilities or organisations
Privately managed land or water	Organisations, households or individuals with management rights
Other wild species	Commune-level authorities (known as People's Committees)

Who should apply for an ABS permit?

Foreign individuals or organisations seeking to access genetic resources for their utilisation require authorisation from the competent national authorities. This organisation is considered the "user" of genetic resources (even if the term is sometimes translated as "accessor" in the context of Decree 59/2017). The user of genetic resources is obliged to, prior to conducting any R&D activities, establishing cooperation with national research institutions, registering with the authorities, negotiating an ABS agreement and securing a license. The user is also the entity responsible for sharing the benefits derived from the utilisation of genetic resources with the provider.

Other actors along the value chain not conducting R&D, such as traders or primary processors, do not have rights or responsibilities under the ABS system in Viet Nam. Nevertheless, competent authorities, recognising the complexity of biodiversity value chains, foresee that such intermediaries may have a role in facilitating ABS negotiations and compliance with relevant permits and agreements. Moreover, specific rules address the possible transfer of genetic resources or derivatives from the user to third parties, which - depending on whether there is change of intent or not - may require notifying the authorities or securing a new ABS permit.

What are ABS procedures?



Templates for registration, benefit sharing contracts and application forms are included in Decree 59/2017. Fees are due for the appraisal of ABS permit applications. The period of validity of ABS permits cannot exceed three years, but may be renewed. Organisations and individuals licensed for access to genetic resources may carry out the foreseen R&D activities and commercialised resulting products. In turn, they must adhere to the terms and conditions of the ABS permit and benefit sharing contract.

Competent national authorities

In Viet Nam, the Ministry of Agriculture and Rural Development (MARD) and the Ministry of Natural Resources and Environment (MONRE) share the authority and responsibility with regard to granting, renewing and withdrawing ABS licenses:

- Access to genetic resources of agricultural crop varieties, livestock, aquatic species, and forest seedlings shall be registered with MARD .
- Access to any other types of genetic resources shall be registered with MONRE.

National focal point

MONRE serves as national focal point of the Nagoya Protocol in Viet Nam. It is responsible for providing information on ABS.

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What are benefit sharing requirements?

In Viet Nam, provider and user may negotiate and agree on the terms and conditions for benefit sharing. However, Decree 59/2017 does establish minimum requirements, which apply to both monetary and non-monetary benefits. In particular, the share of benefits of the product generated from the utilisation of genetic resources shall be not less than 1% of the total annual revenue of such product (or its equivalent in non-monetary benefits). By product, Decree 59 refers to the outcomes of R&D activities conducted by the user – rather than the final, consumer product. Revenues not only in Viet Nam, but also abroad, are considered. Other parameters apply for other types of benefits.

Parameters for benefit sharing

General requirement	No less than 1% of the total annual revenue of the product based on the utilisation of genetic resources
Intellectual property	No less than 2% of the total revenue from the licensing or other use of intellectual property rights obtained from the utilisation of genetic resources
Transfer to third parties	No less than 2% of the total value of the transfer of genetic resources or derivatives to third parties.

Are there compliance requirements?

Several measures are foreseen to support compliance with national ABS requirements. For example, both rules on ABS and on patents require that the registration for intellectual property rights for innovations linked to the utilisation of genetic resources, its derivatives or associated traditional knowledge disclose the origin of the genetic resources or traditional knowledge accessed by the inventor or the applicant. Moreover, a Vietnamese clearing house on ABS, currently under development, is expected to function as a platform for information on ABS and addressing cases of non-compliance. No measures is currently in place to ensure compliance with ABS requirements that are adopted in other countries.

Is it possible to regularise access?

Decree 59/2017 foresees that organisations and individuals that have accessed genetic resources from the entry into force of the Biodiversity Law (1 July 2009) to its own entry into force and wish to continue to utilise genetic resources may register and request an ABS permit in accordance with the new ABS rules. Nevertheless, applications for access already submitted before the entry into force of Decree 59/2017 (1 July 2017) will be processed under previous ABS rules.

BioTrade in Viet Nam

In Viet Nam, the term BioTrade is used to refer to the collection or cultivation and subsequent processing and commercialisation of products derived from biodiversity, conducted in line with environmental, social and economic criteria. Such activities are supported through policy and regulation. In particular, activities with certification or other recognition in line with the Ethical BioTrade standard or the UNCTAD BioTrade Principles and Criteria may be considered by the national competent authorities for simplified ABS procedures.

Examples of ABS agreements

Over the past few years, MONRE has supported pilot cases of ABS. In these cases, negotiations took place directly between provider and user, with MONRE guiding the process and ultimately approving the outcomes. The table below presents examples of ABS agreements and negotiations in Viet Nam.

Resources	Proposed R&D	Provider	User	Benefit sharing	Conditions
Fresh water fish	Scientific research on taxonomy and population genetics	Vietnamese university	Japanese university	Agreed points include fees and technological support. Negotiations still ongoing on sharing results, intellectual property and change of intent	Periodic reporting
Horseshoe bats	Scientific research, morphology characterisation	Vietnamese research institution	Japanese university	Support for exchange students and visiting scholars, joint scientific publications and sharing research results	No transfer to any third party; Periodic reporting
Brown plant hopper	Scientific research on antibiotic resistance	Vietnamese research institution	Japanese research institution	Technology transfer, exchange of researchers, sharing research results, joint intellectual property	Consent granted, conditions under negotiation
Herbaceous plants	New ingredient for pharmaceutical, industrial or cosmetic products	Vietnamese company	French pharmaceutical company	Five-year agreement includes monetary and non-monetary benefit sharing with indigenous community providing samples	Grant of license in progress
Collection of microbial strains	Development of products for industrial use	Vietnamese research institutions	National Institute of Technology and Evaluation of Japan (NITE)	Provisions on intellectual property and non-monetary and monetary benefit sharing, including a percentage of sales.	No transfer to any third party; Periodic reporting

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