

ENFORCEMENT DECREE OF THE ACT ON ACCESS TO AND UTILIZATION OF GENETIC RESOURCES AND BENEFIT- SHARING

Presidential Decree No. 28246, Aug. 16, 2017
Amended by Presidential Decree No. 29385, Dec. 18, 2018

Article 1 (Purpose)

The purpose of this Decree is to prescribe matters delegated by the Act on Access to and Utilization of Genetic Resources and Benefit-Sharing and matters necessary for the enforcement thereof.

Article 2 (Scope of Information Provided by National Focal Points)

(1) To perform duties under Article 7 (1) 1 of the Act on Access to and Utilization of Genetic Resources and Benefit-Sharing (hereinafter referred to as the “Act”), the Minister of Foreign Affairs shall provide the following information to the secretariat of the Convention on Biological Diversity (hereafter referred as the “Secretariat” in this Article):

1. Information on the following agencies and their duties:
 - (a) National focal points under Article 7 (1) of the Act (hereinafter referred to as the “National Focal Point”);
 - (b) Competent national authorities under Article 8 (1) of the Act (hereinafter referred to as the “Competent National Authority”);
 - (c) National checkpoints under Article 13 (1) of the Act (hereinafter referred to as the “National Checkpoint”);
2. Any Information (excluding information referred to in Article 7 (1) 2 of the Act) requested from the Secretariat pursuant to the Nagoya Protocol On Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (hereinafter referred to as the

“Protocol”) .

(2) To perform duties under Article 7 (1) 2 of the Act, the Minister of the Environment shall provide the following information to any person who intends to access domestic genetic resource(s) and traditional knowledge associated with genetic resources (hereinafter referred to as “genetic resource(s)”):

1. Information concerning the Competent National Authority and genetic resource(s) under their jurisdiction;
2. Information concerning procedures for reporting access to domestic genetic resource(s) under Article 9 of the Act;
3. Information concerning exemptions from reporting access to domestic genetic resource(s), etc. under Article 10 of the Act;
4. Information concerning the method of sharing benefits arising from the utilization of domestic genetic resource(s) under Article 11 of the Act;
5. Information concerning domestic genetic resource(s) restricted or prohibited on accessing and utilizing under Article 12 of the Act;
6. Other information deemed necessary by Minister of Environment for access to and utilization of domestic genetic resource(s) and benefit-sharing.

(3) If necessary to perform the duties under each subparagraph of Article 7 (1) of the Act, the Minister of Foreign Affairs and the Minister of the Environment may request the heads of the Competent National Authority, National Checkpoint, or any other relevant administrative agency to submit related materials. In such cases, the head of such agency in receipt of such request shall comply therewith, except in extenuating circumstances.

(4) The Minister of Foreign Affairs and the Minister of Environment shall share with each other any materials submitted under paragraph (3), and shall mutually cooperate to facilitate the performance of their duties.

Article 3 (Duties of the Competent National Authorities)

“Matters prescribed by Presidential Decree” in Article 8 (2) 4 of the Act shall mean the following:

1. Investigating and managing the current status of utilizing domestic genetic resource(s);
2. Investigating and managing the establishment of the agreement on sharing benefits from domestic genetic resource(s) pursuant to Article 11 of the Act (hereinafter referred to as "mutually agreed terms") and the implementation status thereof.

Article 4 (Reporting Access to Domestic Genetic Resource(s))

(1) A person who seeks to report access to domestic genetic resource(s) pursuant to Article 9 (1) of the Act shall submit a report on access to domestic genetic resource(s) stating the following matters, to the head of the Competent National Authority classified in each subparagraph of Article 8 (1) of the Act, as prescribed by Ordinance of the Ministry of Environment. In such cases, the head of the Competent National Authority shall verify corporate registration certificates (in cases of corporations) or foreigner registration certificates (in cases of individuals) by sharing administrative information pursuant to Article 36 (1) of the Electronic Government Act; however, if a reporting person does not consent to verification of a foreigner registration certificate or if it is impossible to verify the identification or affiliation of the reporting person as a foreigner by sharing the relevant information, the head of the Competent National Authority shall request him/her to attach alternative documents that can verify his/her identification and affiliation, such as passport, copy of nationality certificate, foreigner registration certificate, copy of overseas Korean national register or certificate registered in his/her own country:

1. The reporting person's name and affiliation (in the case of a corporation, its corporate name and the name of its representative), address (in the case of a corporation, the location of its place of business), date of birth or corporate registration number, and contact number;
2. Name of the genetic resource(s) to be accessed (common name and scientific name of the relevant species), quantity, or concentration;
3. Methods for accessing the relevant genetic resource(s) (including information on third parties, if genetic resource(s) are provided through third parties contracts, etc.) and period of use;
4. The name and affiliation of the person providing the relevant genetic resource(s) (in the case of a corporation, its corporate name and the name of its representative), address (in the case of a corporation, the location of its place of business), date of birth or corporate registration number, and contact number;
5. The purpose(s) for accessing the relevant genetic resource(s);
6. Method for utilizing genetic resource(s), including biotechnology that will be applied to the relevant genetic resource(s);
7. Country(ies) seeking to utilize the relevant genetic resource(s);

8. Whether mutually agreed terms are established regarding the relevant genetic resource(s), and the details thereof.
- (2) If it is deemed that the details of a report under paragraph (1) need to be supplemented, the head of the Competent National Authority may request in writing the person who has filed the report to provide supplemental documents, specifying a subject to be supplemented and deadline. In such cases, no period for submitting the supplemental documents shall be included in the period under paragraph (3).
- (3) Upon receipt of a report under paragraph (1), the head of the Competent National Authority shall notify the person who has filed the report as to whether such report is accepted, within 30 days from receipt thereof. In such cases, he/she shall issue a declaration certificate for access to domestic genetic resource(s), as prescribed by Ordinance of the Ministry of Environment.
- (4) Where a person in receipt of a declaration certificate pursuant to paragraph (3) establishes mutually agreed terms after the certificate is issued, he/she may request the head of the Competent National Authority to verify the conclusion of mutually agreed terms, as prescribed by Ordinance of the Ministry of Environment. In such cases, the head of the Competent National Authority in receipt of such request shall issue a verification certificate thereof, as prescribed by Ordinance of the Ministry of Environment.
- (5) "To change any matters prescribed by Presidential Decree" in Article 9 (3) of the Act means the following:
1. To change purpose for accessing the declared genetic resource(s);
 2. To increase at least 10/100 of the declared genetic resource(s) content or concentration (excluding microorganisms);
 3. To change the details of mutually agreed terms concerning the relevant genetic resource(s) (only applicable where mutually agreed terms are established).
- (6) A person who seeks to report a change pursuant to Article 9 (3) of the Act shall submit a change report on access to domestic genetic resource(s) to the head of the Competent National Authority, as prescribed by Ordinance of the Ministry of Environment.
- (7) The head of the Competent National Authority in receipt of a change report pursuant to paragraph (6) shall issue a declaration certificate for access to domestic genetic resource(s) to which the changes are applied, to the person filing for the relevant change report, within 30 days from receipt of such change report.
- (8) "Cases prescribed by Presidential Decree, such as where it is necessary to verify that a

country providing the genetic resource(s) (referring to either a country that provides the genetic resource(s) as the country of origin, or a country that has legally acquired and provides the genetic resource(s) in accordance with the Convention on Biological Diversity) is the Republic of Korea" in Article 9 (4) of the Act, means any of the following cases:

1. Where it is necessary to verify that domestic genetic resource(s) has been legally accessed and the Republic of Korea is the country providing such resource(s) pursuant to the Article 9 (4) of the Act (hereinafter referred to as the "providing country") upon request of a foreign country or a third party;
2. Where another country, other than the Republic of Korea, is the providing country of the genetic resource(s) to be accessed.

Article 5 (Exemptions from Reporting Access to Domestic Genetic resource(s))

(1) Where the head of the Competent National Authority seeks to simplify procedures for reporting access to genetic resource(s) or waive such reporting under Article 10 of the Act, he/she shall submit the details of exemption of the targeted genetic resource(s) and grounds therefor, to the Council for deliberation pursuant to Article 18 (1) of the Act.

(2) Where the head of the Competent National Authority determines to simplify procedures for reporting access to genetic resource(s) or waive such reporting, following deliberation under paragraph (1), he/she shall publicly notify the details of exemption of the targeted genetic resource(s), grounds therefor, details of exemption from reporting, and details of simplified procedures under paragraph (1), without delay.

Article 6 (Procedural Compliance Reporting on Foreign Genetic Resource(s))

A person who intends to report in accordance with Article 15 (1) of the Act shall submit a procedural compliance report on accessing and utilizing foreign genetic resource(s), stating the following matters, to the head of the relevant National Checkpoint classified in each subparagraph of Article 13 (1) of the Act, within 90 days from receipt of consent to accessing foreign genetic resource(s) (hereinafter referred to as "prior informed consent") from the providing country of the relevant foreign genetic resource(s), as prescribed by Ordinance of the Ministry of Environment. In such cases, the head of the National Checkpoint shall verify corporate registration certificates (in cases of corporations), certified copies of resident registration cards, or foreigner registration certificates (in cases of individuals) by sharing administrative information pursuant to Article 36 (1) of the Electronic Government Act;

however, if a reporting person does not consent to verification of a certified copy of his/her resident registration card or foreigner registration certificate, the head of the National Checkpoint shall request him/her to attach the relevant documents:

1. The reporting person's name and affiliation (in the case of a corporation, its corporate name and the name of its representative), address (in the case of a corporation, the location of its place of business), date of birth or corporate registration number, and contact number;
2. Name of the providing country of the foreign genetic resource(s);
3. Name and address of the person providing the foreign genetic resource(s);
4. Name of the providing country's institution granting the prior informed consent, date of granting, and granting number;
5. Name of the foreign genetic resource(s) granted by the prior informed consent (common name and scientific name of the relevant species), quantity, or concentration;
6. Purpose for utilizing the foreign genetic resource(s) granted by the prior informed consent;
7. Whether mutually agreed terms are established regarding the relevant genetic resource(s), and the details of such terms if concluded.

Article 7 (Integrated Reporting System)

To electronically process and efficiently manage reporting on access to domestic genetic resource(s) under Article 9 and procedural compliance reporting on access to foreign genetic resource(s) under Article 15, the Minister of the Environment may establish and operate an integrated reporting system following consultation with the heads of the Competent National Authority and the National Checkpoint.

Article 8 (Investigation, etc. of Procedural Compliance)

To monitor whether a person utilizing foreign genetic resource(s) domestically under Article 16 (1) of the Act has complied with the procedures prescribed in Article 14 (1) of the Act, the head of the National Checkpoint shall pre-consult with the head of the Competent National Authority in charge of the genetic resource(s) concerned.

Article 9 (Genetic Resources Information Center)

(1) The Minister of the Environment establishes the Genetic Resources Information Center

pursuant to Article 17 (1) of the Act in the National Institute of Biological Resources.

(2) The President of the National Institute of Biological Resources shall establish and operate an information sharing system for genetic resource to perform the duties referred to in subparagraphs of Article 17 (2) of the Act. In such cases, the President of the National Institute of Biological Resources may interlink such information sharing system with the integrated information system for biological research resources established and operated by the National Information Center of Biological Research Resources designated under Article 11 (1) of the Act on the Acquisition, Management, and Utilization of Biological Research Resources.

(3) "Matters prescribed by Presidential Decree" in Article 17 (2) 3 of the Act means the following:

1. Matters concerning administrative and technical support for the duties of the National Focal Point, Competent National Authority and National Checkpoint;
2. Matters concerning international cooperation, including information exchanges with foreign genetic resource(s) information management organizations for investigation of the utilization status of the domestic genetic resource(s) in abroad;
3. Matters concerning public relations in order for providers and users of genetic resource(s) to raise awareness of access to and utilization of genetic resource(s) and benefit-sharing.

(4) "Matters prescribed by Presidential Decree" in Article 17 (3) 3 of the Act means the following:

1. Matters concerning prohibiting or restricting access to and utilization of domestic genetic resource(s) under Article 12 of the Act;
2. Matters concerning verification of the establishment of mutually agreed terms;
3. Other matters necessary to implement provisions prescribed in the Protocol concerning access to and utilization of genetic resource(s) and benefit-sharing, as a Party to the Protocol.

Article 10 (Composition of the Council)

(1) The Council prescribed in Article 18 (1) of the Act (hereinafter referred to as the "Council") shall be comprised of not more than 20 members, including one chairperson.

(2) The Minister of the Environment shall appoint the chairperson of the Council from among members of the Senior Executive Service in the Ministry of Environment; and the

heads of the following central administrative agencies shall appoint members of the Council from among public officials of Grade III and IV belonging to the relevant central administrative agency (including corresponding public officials in special service):

1. Ministry of Science and ICT;
2. Ministry of Foreign Affairs;
3. Ministry of Agriculture, Food and Rural Affairs;
4. Ministry of Trade, Industry and Energy;
5. Ministry of Health and Welfare;
6. Ministry of Environment;
7. Ministry of Oceans and Fisheries;
8. Central administrative agencies entrusted with the authority of the Competent National Authority or the National Checkpoint under Article 23 of the Act;
9. Other central administrative agencies deemed necessary by the Minister of Environment related to implementation of the Protocol.

Article 11 (Operation of the Council)

(1) The Council shall deliberate on the following:

1. Determining any unclear scopes of authority between Competent National Authorities or National Checkpoints;
2. Determining exemption from reporting access under Article 10 of the Act;
3. Prohibiting or restricting access and utilization under Article 12 of the Act;
4. Any other matters to be referred for deliberation by the head of the National Focal Point, Competent National Authority, or the National Checkpoint to implement the Protocol.

(2) The chairperson shall convene and preside over meetings of the Council.

(3) The Council meetings shall be convened when a majority of current members are present and shall pass resolutions by concurrent vote of a majority of members present.

(4) Except as otherwise expressly prescribed in paragraphs (1) through (3), matters necessary for the operation of the Council shall be determined by the Minister of the Environment.

Article 12 (Protection of Information)

"Cases prescribed by Presidential Decree" in Article 19 (2) of the Act means any of the

following cases:

1. Where the provider and the user of the relevant genetic resource(s) agree in writing;
2. Where information regarding specific genetic resource(s) and related persons is provided in an unidentifiable manner, as necessary for statistical preparation or academic research;
3. Where means of utilizing genetic resource(s) widely known at home and abroad are commercially exploited or used.

Article 13 (Delegation and Entrustment of Authority)

(1) Pursuant to Article 23 (1) of the Act, the Minister of Agriculture, Food and Rural Affairs shall delegate the following authority (excluding the authority in matters related to forest bio-resources and microbial pathogen resources of “agricultural bio-resources” defined in subparagraph 1 of Article 2 of Act on the Conservation, Management, and Use of Agricultural Bio-Resources) to the Administrator of Rural Development Administration:

1. Authority over the following matters, as the head of the Competent National Authority:
 - (a) Supporting the fair and equitable sharing of benefits arising from domestic genetic resource(s) under Article 8 (2) 3 of the Act;
 - (b) Processing access reporting or reporting on changes for domestic genetic resource(s) under Article 9 of the Act;
 - (c) Prohibiting or restricting access to and utilization of domestic genetic resource(s) under Article 12 of the Act;
 - (d) Imposing and collecting administrative fines pursuant to Article 28 (1) 1 and Article 28 (2) of the Act;
 - (e) Investigating and managing the current status of utilizing genetic resource(s) under subparagraph 1 of Article 3;
 - (f) Investigating and managing the establishment of mutually agreed terms on domestic genetic resource(s) and the implementation status thereof under subparagraph 2 of Article 3;
2. Authority over the following matters, as the head of the National Checkpoint:
 - (a) Supporting persons who utilize foreign genetic resource(s) in the Republic of Korea, under Article 13 (2) 3 of the Act;
 - (b) Processing procedural compliance reporting under Article 15 of the Act;
 - (c) Monitoring and recommending procedural compliance under Article 16 of the Act;

(d) Imposing and collecting administrative fines pursuant to Article 28 (1) 2 of the Act.

(2) Pursuant to Article 23 (1) of the Act, the Minister of Agriculture, Food and Rural Affairs shall delegate the authority vested under each subparagraph of Article 13 (1) of this Decree to the Minister of the Korea Forest Service in matters related to forest bio-resource of “agricultural bio-resources” defined in subparagraph 1 of Article 2 of the Act on the Conservation, Management, and Use of Agricultural Bio-Resources

(3) Pursuant to Article 23 (1) of the Act, the Minister of Agriculture, Food and Rural Affairs shall delegate the authority vested under each subparagraph of Article 13 (1) of this Decree to the Commissioner of the Animal and Plant Quarantine Agency in matters related to microbial pathogen resources of “agricultural bio-resources” defined in subparagraph 1 of Article 2 of Act on the Conservation, Management, and Use of Agricultural Bio-Resources.

(4) The Minister of Health and Welfare delegates the following authority to the Director of the Korea Centers for Disease Control and Prevention in accordance with Article 23 (1) of the Act:

1. Authority over the following matters, as the head of the Competent National Authority:

- (a) Processing a report on access to domestic genetic resource(s) or a report on changes under Article 9 of the Act;
- (b) Prohibiting or restricting access to and utilization of domestic genetic resource(s) under Article 12 of the Act;
- (c) Monitoring and managing the current status of utilizing genetic resource(s) under subparagraph 1 of Article 3;

2. Authority over the following matters, as the head of the National Checkpoint:

- (a) Processing procedural compliance reporting under Article 15 of the Act;
- (b) Investigating and recommending procedural compliance under Article 16 of the Act.

(5) The Minister of Environment delegates the following authority to the President of the National Institute of Biological Resources pursuant to Article 23 (1) of the Act:

1. Authority over the following matters, as the head of the Competent National Authority:

- (a) Supporting the fair and equitable sharing of benefits arising from domestic genetic resource(s) under Article 8 (2) 3 of the Act;
- (b) Processing a report on access to domestic genetic resource(s) or a report on changes under Article 9 of the Act;

- (c) Imposing and collecting administrative fines pursuant to Article 28 (1) 1 and Article 28 (2) of the Act;
 - (d) Investigating and managing the current status of utilizing genetic resource(s) under subparagraph 1 of Article 3;
 - (e) Investigating and managing the establishment of mutually agreed terms on domestic genetic resource(s) and the implementation status thereof under subparagraph 2 of Article 3;
2. Authority over the following matters, as the head of the National Checkpoint:
- (a) Supporting persons who utilize foreign genetic resource(s) in the Republic of Korea, under Article 13 (2) 3 of the Act;
 - (b) Processing procedural compliance reporting under Article 15 of the Act;
 - (c) Investigating and recommending procedural compliance under Article 16 of the Act;
 - (d) Imposing and collecting administrative fines pursuant to Article 28 (1) 2 of the Act.
- (6) The Minister of Oceans and Fisheries shall delegate the following authority (limiting the authority in matters related to fisheries bio-resources of “Marine fishery bio-resource” defined in subparagraph 1 of Article 2 of the Act on Securing, Management, Use, etc. of Marine and Fisheries Bio-Resources) to the President of National Institute of Fisheries Science in accordance with Article 23 (1) of the Act:
1. Authority over the following matters, as the head of the Competent National Authority:
- (a) Supporting the fair and equitable sharing of benefits arising from domestic genetic resource(s) under Article 8 (2) 3 of the Act;
 - (b) Processing a report on access to domestic genetic resource(s) or a report on changes under Article 9 of the Act;
 - (c) Prohibiting or restricting access to and utilization of domestic genetic resource(s) under Article 12 of the Act;
 - (d) Imposing and collecting administrative fines pursuant to Article 28 (1) 1 and (2) of the Act;
2. Authority over the following matters, as the head of the National Checkpoint:
- (a) Supporting persons who utilize foreign genetic resource(s) in the Republic of Korea, under Article 13 (2) 3 of the Act;
 - (b) Processing procedural compliance reporting under Article 15 of the Act;

- (c) Monitoring and recommending procedural compliance under Article 16 of the Act;
- (d) Imposing and collecting administrative fines pursuant to Article 28 (1) 2 of the Act.

Article 14 (Entrustment of Duties)

(1) The Minister of Science and ICT shall entrust the following duties in accordance with Article 23 (2) of the Act to a competent authority designated pursuant to Article 10 (1) of the Act on the Acquisition, Management, and Utilization of Bio Research Resources:

1. Following duties, as the head of the Competent National Authority:

- (a) Supporting the fair and equitable sharing of benefits arising from domestic genetic resource(s) under Article 8 (2) 3 of the Act;
- (b) Investigating and managing the current status of utilizing genetic resource(s) under subparagraph 1 of Article 3;
- (c) Investigating and managing the establishment of mutually agreed terms on domestic genetic resource(s) and the implementation status thereof under subparagraph 2 of Article 3;
- (d) Receiving a report on access to domestic genetic resource(s) under Article 4 (1) and notifying whether such report is accepted under former part of paragraph (3) of the same Article;
- (e) Receiving a change report on access to domestic genetic resource(s) under Article 4 (6);

2. Following duties, as the head of the National Checkpoint:

- (a) Monitoring procedural compliance under Article 16 (1) of the Act;
- (b) Providing information pursuant to Article 17 (3) of the Act;
- (c) Receiving a procedural compliance report on accessing and utilizing foreign genetic resource(s) under former part of Article 6.

(2) The Minister of the Ministry of Trade, Industry and Energy shall, as the head of the National Checkpoint, entrust the following duties to the Biosafety ClearingHouse prescribed in Article 32 of the Transboundary Movement, etc. of Living Modified Organisms Act:

- 1. Supporting persons who utilize foreign genetic resource(s) in the Republic of Korea, under Article 13 (2) 3 of the Act;
- 2. Receiving a procedural compliance report on accessing and utilizing foreign genetic resource(s) under former part of Article 6.

(3) Pursuant to Article 23 (2) of the Act, the Minister of Oceans and Fisheries shall entrust the duties referred to in each subparagraph of Article 14 (1) of this Decree to Marine Biodiversity Institute of Korea established by Act on Establishment and Operation of Marine Biodiversity Institute of Korea in matters related to marine bio-resources of “Marine fishery bio-resource” defined in subparagraph 1 of Article 2 of the Act on Securing, Management, Use, etc. of Marine and Fisheries Bio-Resources.

Article 15 (Process of Personally Identifiable Information)

The heads of the Competent National Authority and the National Checkpoint (including persons to whom the authority and duties of the head of the Competent National Authority and the National Checkpoint is delegated or entrusted pursuant to Article 13 and Article 14) may process the data containing resident registration numbers or foreigner registration numbers pursuant to Article 19 of the Enforcement Decree of the Personal Information Protection Act, if necessary to perform the following duties:

1. Duties concerning reporting access to domestic genetic resource(s) under Article 9 (1);
2. Duties concerning compliance reporting for foreign genetic resource(s) under Article 15 (1).

Article 16 (Administrative Fines)

Criteria for imposing administrative fines pursuant to Article 28 of the Act are as specified in the attached Table.

ADDENDUM

This Decree shall enter into force on the date the Protocol becomes effective in the Republic of Korea: Provided, That subparagraph 2 of Article 3, Articles 4 through 6, 8, 9 (4) 2, 16, and the attached Table shall enter into force one year after the date the Protocol becomes effective in the Republic of Korea.