

UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)



GLOBAL ENVIRONMENTAL FACILITY (GEF)



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ACCESS AND BENEFIT-SHARING IN VIET NAM

(Decree No.59/2017/NĐ-CP dated May 12, 2017)

ABS PROJECT

The Vietnam Environmental Administration, the Ministry of Natural Resources and Environment (MONRE) is implementing the GEF-UNDP funded Project "Capacity Building for the Ratification and Implementation of the Nagoya Protocol on Access and Benefit Sharing in Viet Nam" (hereinafter referred to as "the ABS Project") over a period from 2016 to 2020.

The project's goal is to contribute to the conservation and sustainable use of globally significant biodiversity in Viet Nam through strengthening national capacities on access and benefit sharing of genetic resources to facilitate the implementation of the Nagoya Protocol on Access and Benefit Sharing.

The above objective would be achieved through four components, including:

- Component 1: Strengthening the National Policy, Legal, and Institutional Framework on ABS;
- Component 2: Developing administrative measures on ABS;
- Component 3: Increasing awareness and capacity building of all relevant stakeholders on the National ABS Framework;
- Component 4: Demonstrating Private-Public Community Partnerships on Access and Benefit Sharing.



Photo: Pham Ha Thanh Tung

THE IMPORTANCE OF "ACCESS AND BENEFIT-SHARING"

Access to genetic resources and benefit-sharing ensures that the way in which genetic resources are accessed and used maximizes the benefits for users, providers, and the ecology and communities where they are found. Access and benefit-sharing is based on Contract negotiated between both providers and users, and License to access to genetic resources issued by the Competent National Authority.

Users seek genetic resources to deliver a range of benefits; from basic scientific research, such as taxonomy, to developing commercial products which contribute to human well-being, such as pharmaceuticals.

Providers of genetic resources grant access to these resources in return for a fair share of the benefits that result from their use. In cases where research and development leads to a commercialized products, monetary benefits such as royalties, milestone payments or licensing fees must be shared with the provider.

Providers can also benefit from technology transfer or the enhancement of research skills. Ideally, these benefits will also be used to improve conservation and the sustainable use of biological diversity. For developing countries, granting access to genetic resources in exchange for a share of monetary and non-monetary benefits could contribute significantly to poverty alleviation and sustainable development. However, these benefits can only be realized if the conditions for fair and equitable benefit-sharing are agreed upon before access.

In some cases, access to genetic resources may depend on using the traditional knowledge of indigenous and local communities (ILCs). Access and benefit-sharing rules recognize the value of this knowledge by requiring users to obtain permission to use it, and to share any benefits that result from its use with the communities who own it.

DECREE NO.59/2017/NĐ-CP DATED MAY 12, 2017 OF THE GOVERNMENT ON THE MANAGEMENT OF ACCESS TO GENETIC RESOURCES AND THE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION



I. The Ministry of Natural Resources and Environment is the national focal point to the Nagoya Protocol (Clause 1, Article 5, Decree No. 59/2017/NĐ-CP)

II. Competent national authority to grant, renew and withdraw licenses to access genetic resources (Article 6, Decree No.59/2017/NĐ-CP)

1. The Ministry of Agriculture and Rural Development shall grant, renew and withdraw licenses to access genetic resources of agricultural crop varieties, livestock, aquatic species, and forest seedlings.
2. The Ministry of Natural Resources and Environment shall grant, renew and withdraw licenses to access genetic resources other than those specified in Clause 1 of this Article.

III. Entities registering and requesting a license to access genetic resources (Clause 1 Article 7 Decree No. 59/2017/NĐ-CP)

1. Vietnamese individuals and organizations wishing to access to genetic resources for commercial purposes or for the development of commercial products;
2. Foreign individuals and organizations wishing to access genetic resources within Vietnamese territory for any purpose;
3. Vietnamese individuals and organizations wishing to transfer genetic resources abroad, unless otherwise specified in Article 20 of the Decree.

*** Individuals who register and request a license to access genetic resources as mentioned above, must meet the following requirements:**

- a. A graduate academic degree (Bachelor's degree or higher) in a field relevant to genetic resources such as biology, biotechnology, pharmaceutical or agricultural sciences;
- b. Is a member of a science and technology organization operating in accordance with the law of the country where the organization is established

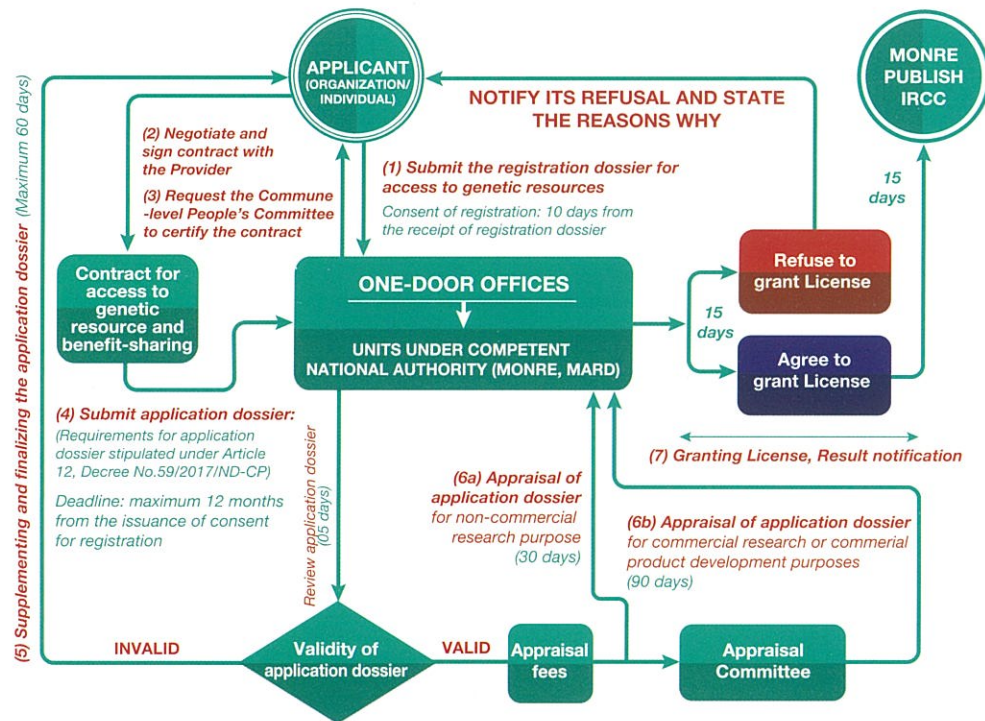
in the fields of biology, biotechnology, pharmaceutical, or agricultural sciences, and is guaranteed by such organization in writing according to the sample form 01 provided in Annex attached to the Decree.

IV. Benefit - Sharing

1. Benefits from the utilization of genetic resources include monetary and nonmonetary benefits (Clause 1 Article 21 Decree No. 59/2017/NĐ-CP)
2. Sharing of monetary benefit (Article 22 Decree No. 59/2017/NĐ-CP)
 - a. The share of monetary benefits of the product generated from the utilization of genetic resources shall be not less than 1% of the total annual revenue of such product.
 - b. The share of monetary benefits for the Provider when obtained by the transfer of genetic resources or derivatives thereof, or the utilization of intellectual property rights based on the genetic resources, shall be not less than 2% of such total transfer value or total revenue from the use of intellectual property rights.
 - c. Sharing of monetary benefits from utilization of genetic resources prescribed in 2a & 2b of this article shall be divided to the following stakeholders:
 - *When the Provider is Commune-level People's Committees, or Protected Area's Management Board, or state-managed facilities for storing or preserving genetic resources, or Biodiversity conservation facilities, or institutes for research and technology development assigned by the State: 30% of the shared money shall be paid to the genetic resources Provider; 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 genetic resources by the State: 50% of the shared money shall be paid to the genetic resource Provider; and 50% of the shared money shall be paid into the State Budget to be used for conservation and sustainable use of biodiversity.*

DIAGRAM FOR GRANTING LICENSE TO ACCESS GENETIC RESOURCES

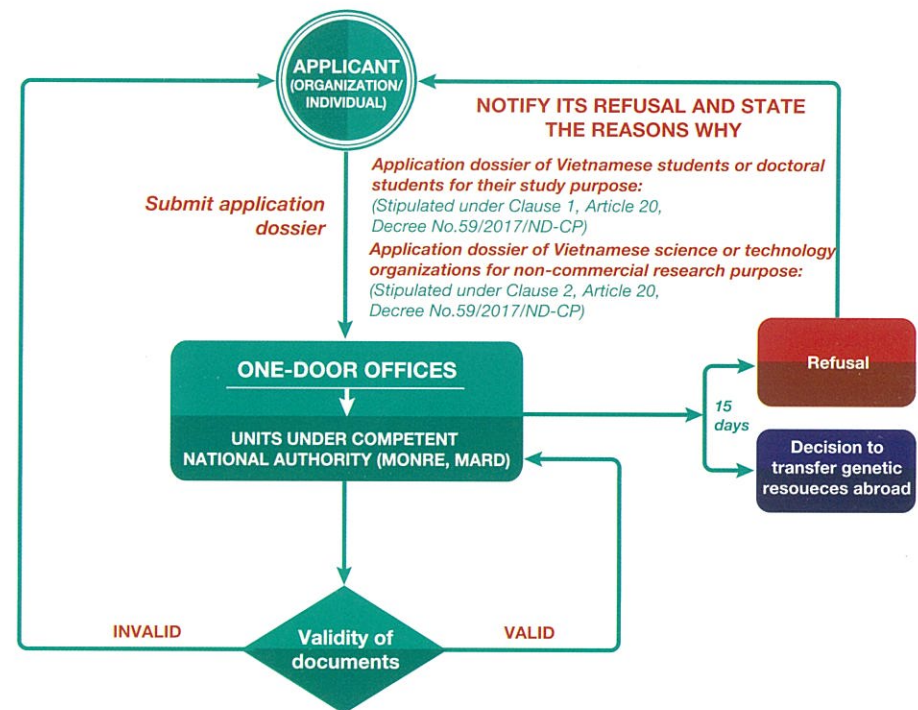
(Article 9, 10, 11, 12 and 13 Decree No. 59/2017/ND - CP)



- The processing duration of application for access to genetic resources for non-commercial research purposes upon the receipt of valid dossier is 65 days.
- The processing duration of application for access to genetic resources for commercial research or commercial product development purposes upon the receipt of valid dossier is 125 days.

DIAGRAM FOR VIETNAMESE STUDENTS, DOCTORAL STUDENTS, OR SCIENCE AND TECHNOLOGY ORGANIZATIONS TO TRANSFER GENETIC RESOURCES ABROAD FOR STUDY OR NON-COMMERCIAL RESEARCH PURPOSES

(Article 20 Decree No. 59/2017/ND - CP)



- The processing duration upon the receipt of valid dossier is 15 days.