

ABS IN THAILAND

Rules | Specific requirements | Practical considerations | Contacts

International agreements on ABS

- *Convention on Biological Diversity (CBD)*: Party since 29 January 2004, by ratification
- *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits resulting from their Utilization (ABS)*: Non-Party
- *International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)*: Non-Party

Disclaimer: This document is for information purposes only. The information provided is not legal advice. UEBT aims to ensure its accuracy, but provides no guarantees in this regard. Official information on laws and regulations on ABS is available through national focal points or the ABS Clearing House (<https://absch.cbd.int/countries>).

Introduction

Biodiversity is central to the Thai culture, recognised for its contribution to food, medicines and livelihoods tools, as well as its potential for scientific, economic and social development. For example, in 2016, Thailand reported that, with modern technology, there is growing use of local herbs in medicines, food supplements, cosmetics, drinks and spa treatments. The National Center for Genetic Engineering and Biotechnology (BIOTEC) has several ex-situ collections of genetic resources, including a culture collection that preserves over 80 thousand strains of microorganisms.

Thailand is not a party to the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits resulting from their Utilization. Nevertheless, it does have requirements on access and benefit sharing (ABS) in place, based on provisions in laws and regulations on plant varieties, biodiversity and Thai traditional medicine. Moreover, there are new bills on biodiversity and plant varieties currently under discussion.

Legal framework on ABS

The following laws and regulations contain legally-binding provisions related to ABS:

- *Plant Varieties Protection Act (PVP Act)* – published on 25 November 1999. It entered into force one day later.
- *Protection and Promotion of Thai Traditional Medicinal Knowledge Act (Traditional Knowledge Act)* – published on 29 November 1999. It entered into force 180 days later.
- Office of the Prime Minister's Regulations on the Conservation and Utilization of Biodiversity, which entered into force in January 2000.
- *National Committee on the Conservation and Sustainable Use of Biodiversity's Regulations on Criteria and Procedures for Access to Biological Resources and Sharing of Benefits (ABS Regulations)* – published on 4 March 2011. It entered into force one day later.

Draft rules or amendments

Several texts or amendments with provisions on ABS are currently under discussion, but have not yet been adopted, including:

- *Bill on Plant Variety Protection (No. 2)* – proposed in 2018. A revised version is expected to be completed and circulated in early 2019.
- *Bill on Biodiversity* – Discussions launched by Ministry of Natural Resources and Environment in January 2019. Text has not been published to date.
- *Draft amendment to the Patent Act* – approved by the Thai Cabinet on 29 January 2019 requiring disclosure of origin genetic resources or traditional knowledge and submission of ABS documents when filing relevant patent application.

Scope of ABS-related requirements

Laws and regulations establish different scope of application for ABS-related requirements, depending on the type of genetic resource and associated

PVP Act

The Plant Variety Protection Act (PVP Act) establishes ABS requirements for use of the following types of resources for plant breeding or research for commercial purposes:

- Local domestic plant varieties (registered farmer varieties)
- Wild plant varieties (wild crop relatives)
- Other plant varieties (any plant varieties originating or existing in Thailand, with no exception for commercial varieties)

Traditional Knowledge Act

The Protection and Promotion of Thai Traditional Medicinal Knowledge Act (Traditional Knowledge Act) establishes different categories within Thai traditional medicine, including national, personal and general medicinal formulas. ABS requirements are established in relation to national formulas, which are the texts, formulas, processes and ingredients of Thai traditional

medicine that have been identified by the authorities as having benefits or value for national public health. Access to these national formulas for research and development with commercial purposes triggers ABS-related requirements.

Additionally, the Traditional Knowledge Act grants authorities the power to issue regulations specifying wild plants considered to have study and research value, important economic significance, or risks of becoming extinct. Any sale, processing or export of these “controlled plants” would require a license. To date, such regulations have not been issued.

ABS Regulations

The National Committee on the Conservation and Sustainable Use of Biodiversity’s Regulations on Criteria and Procedures for Access to Biological Resources and Sharing of Benefits (ABS Regulations) encourages government agencies with jurisdiction over biological resources that are not covered by the PVP Act or Traditional Knowledge Act to develop their own ABS mechanism. In 2014, Thailand reported that 11 organizations, including the Department of National Parks, Wildlife and Plants and BIOTEC had developed mechanisms to apply the ABS Regulations.

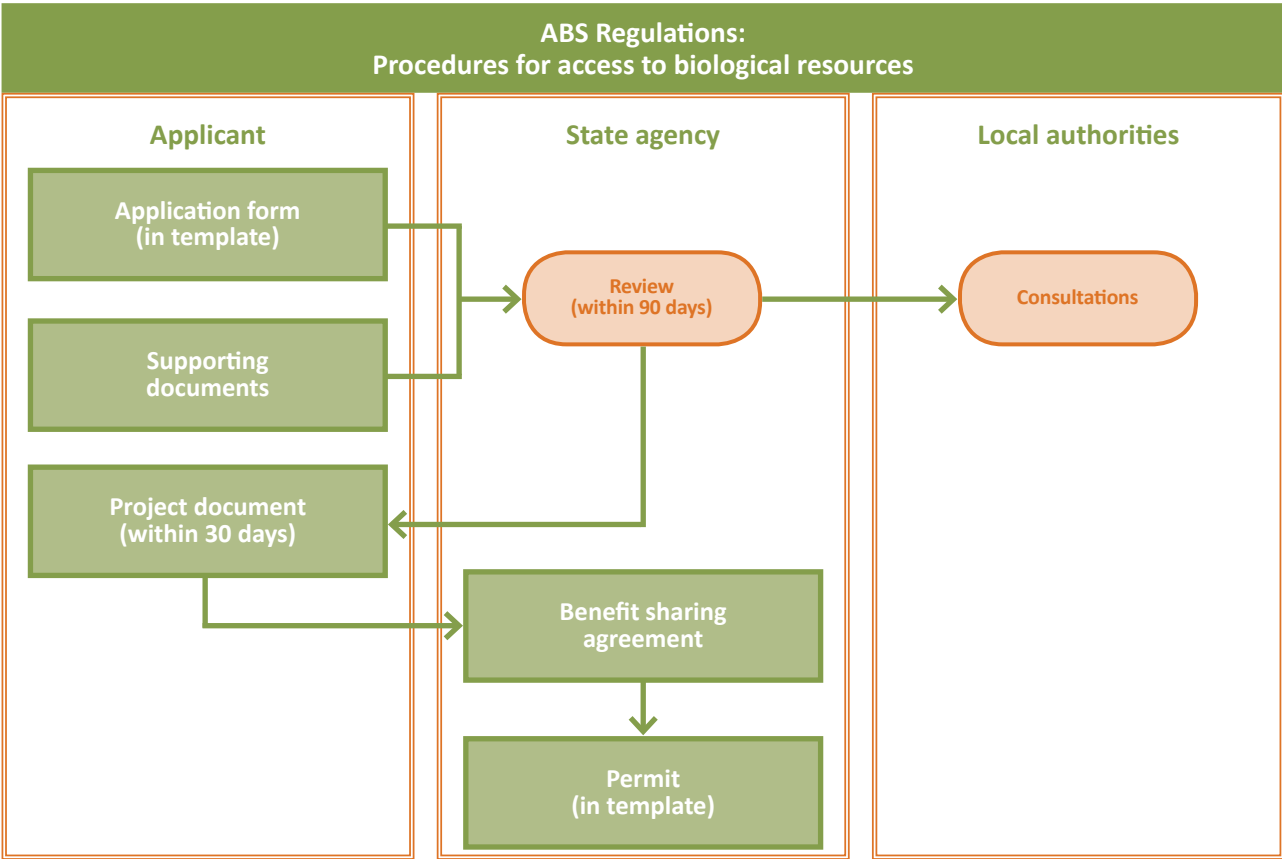
Access requirements

ABS-related requirements are established in the PVP Act, the Traditional Knowledge Act and the ABS Regulations. However, ABS-related rules and procedures foreseen in the PVP Act and Traditional Knowledge Act have not yet

been adopted, including the prior authorization form for access to plant varieties, the licence for the export of “controlled plants,” or the parameters for access to traditional medicinal knowledge.

According to the ABS Regulations, access to biological resources for their utilization requires the authorization of the state agency with jurisdiction over the biological resources or the land at issue. Each agency may define its own ABS mechanism, but these requirements may not conflict with those in other laws and must be based on the procedure established in the regulations (see

figure). Information and commitments required from applicants include the list of species, cultivars or other biological resources to be accessed, the specific research and development activities to be conducted, restrictions on transfer to third parties and on changes in use, and ways in which any intellectual property rights arising from access to biological resources will be managed.



Benefit sharing requirements

Provisions in the PVP Act, the Traditional Knowledge Act and the ABS Regulations all contain various references to sharing profits and benefits.

- The PVP Act states that access to local domestic, general domestic and wild plant varieties is subject to fair and equitable benefit sharing, including through a Plant Variety Protection Fund. Benefit-sharing agreements shall include, for example, provisions on intellectual property rights and the specific amount or percentages of monetary benefits to be shared, as well as the duration of benefit sharing obligations.
- The Traditional Knowledge Act refers to regulations that would provide the conditions for benefit sharing in relation to national formulas, but such regulations have not, to date, been issued.
- The ABS Regulations provide certain parameters on the type of benefits to be shared:
 - Benefit agreement between the user and the state agency issuing the permit must foresee monetary and non-monetary benefits
 - Non-monetary benefit sharing includes participation of Thai researchers or scientists in the project
 - Monetary benefit sharing includes benefits deriving from the utilization of biological resources and subsequent applications of resulting products, processes and information



Relevant authorities

In 2000, the ABS Regulations set up an autonomous government body, the Thailand Biodiversity Center, and charged it with coordinating among public agencies and other actors working on biodiversity. In 2002, these tasks were transferred to the newly-established Ministry of Natural Resources and Environment. The national focal point on ABS is currently the Biodiversity Division at the Office of Natural Resources and Environmental Policy and Planning.

Under the PVP Act and Traditional Knowledge Act, competent authorities are:

- The Department of Agriculture for access to wild plant varieties and general domestic plant varieties
- Farmer groups, cooperatives or local authorities with certificate of registration for access to the relevant local domestic plant varieties
- The Department for Development of Thai Traditional and Alternative Medicine or the Ministry of Public Health for access to national formulas

Under the ABS Regulations, agencies with jurisdiction over biological resources may establish ABS mechanisms. To date, several organizations have such mechanisms in place, including:

- Department of National Park, Wildlife and Plant Conservation – for access to biological resources within protected areas in Thailand
- National Center for Genetic Engineering and Biotechnology (BIOTEC) – for access to biological material in its culture collection.

Prepared by:



Union for Ethical BioTrade Secretariat
De Ruyterkade 6
1013 AA, Amsterdam, Netherlands
info@uebt.org
www.uebt.org