Personal Care Products Council
Committed to Safety, Quality & Innovation

Access to Genetic Resources and Sharing of Benefits Arising from Their Utilization
Guidance for Members of the Personal Care Products Council

Personal Care Products Council (PCPC) members:

- Support the objectives of the Convention on Biological Diversity and recognize that the conservation of biological diversity has significant long-term advantages for all stakeholders;

- Support efforts to make the world more environmentally responsible;

- Desire to conduct their activities in a manner that complies with relevant national and international laws and regulations; and

- Recognize their important role in contributing the unique expertise and practical experience of the *personal care products industry* so as to inform policy decision-making related to access to genetic resources arising from their utilization.

PCPC has therefore developed the following Guidance on Access to Genetic Resources and Sharing of Benefits Arising from Their Utilization.

1. SCOPE

This Guidance is designed to establish principles that govern the conduct of PCPC members on access to *Regulated Genetic Resources* and sharing of benefits arising from their utilization.

2. STEPS TO TAKE BEFORE ACCESSING GENETIC RESOURCES

For samples to be collected *In Situ, PCPC members should:*

Identify and contact the *Focal Point* and/or the *Competent National Authority* of the *Party* for the *Regulated Genetic Resource*;

In cooperation with the *Focal Point* or *Competent National Authority*, identify all applicable national access and benefit sharing requirements.

For samples to be collected from an *Ex Situ Collection, PCPC members should:*

Identify the Focal *Point* and/or the *Competent National Authority* identified by the *Ex Situ Collection's* custodian (i.e., university, gene bank, botanical garden); or

If the *Ex Situ Collection's* custodian does not know nor undertake reasonable efforts to identify the applicable *Competent* National *Authority*;

Once identified, work with the *Competent National Authority* to obtain *Prior Informed Consent* in accordance with #4 in this Guidance, to collect and use *Regulated Genetic Resources* lawfully controlled by the *Party*.

Conclude an *Agreement* with the *Party* which documents the *Prior Informed Consent* as well as the establishment of *Mutually Agreed Terms.*

Because PCPC members are typically part of a complex supply chain, PCPC members who access *Regulated Genetic Resources* are encouraged to anticipate the involvement of third parties in the supply chain and ensure that the *Prior Informed Consent* and *Mutually Agreed Terms* explicitly address the rights and responsibilities of these third parties (i.e., parties that did not directly contract with the *Party*). Because PCPC members often serve as third parties themselves, PCPC members are also encouraged to educate their partners to ensure that all parties are able to meet obligations established in any *Prior Informed Consent* and *Mutually Agreed Terms* applicable to the relevant genetic resources.

3. ESTABLISHING PRIOR INFORMED CONSENT

PCPC members should undertake reasonable due diligence to:

Determine if *Prior Informed Consent* requirements apply to a *Genetic Resource* (i.e., determining whether it is a *Regulated Genetic Resource*) that the PCPC member is considering *Utilizing* or which is incorporated in its products;

Ensure that *Prior Informed Consent* was received for *Regulated Genetic Resources* incorporated into the PCPC member's intermediate and final products;

Ensure that pre-existing *Prior Informed Consent* authorizes the *Utilization* of the *Regulated Genetic Resource* by the PCPC member; and

Receive written documentation of *Prior Informed Consent* from suppliers; and

Provide written documentation of *Prior Informed Consent* for all *Regulated Genetic Resources.*

4. ENSURING FAIR AND EQUITABLE BENEFIT SHARING

PCPC members that enter into an *Agreement* with a *Party* should agree with the *Party* regarding the fair and equitable sharing of benefits resulting from the anticipated use of the *Regulated Genetic Resources*

The terms of the agreed benefit sharing, including its applicability to third parties, new uses, or changes in intent, should be included in the written *Agreement*.

Types of benefits may include, but are not limited to, those detailed in the Annex to the Nagoya Protocol entitled "Monetary and Non-Monetary Benefits":

5. RECORD KEEPING AND PROTECTION OF CONFIDENTIAL INFORMATION

PCPC members should:

Maintain relevant records regarding the access, transportation and use of *Regulated Genetic Resources* for a minimum of the longer of 5 years or the period required by local law;

Be prepared to share such records with applicable national authorities upon request, provided adequate protection is provided for confidential business information.

Take reasonable steps to prevent the disclosure of information provided in confidence by a member of an indigenous or local community, and handle such information in accordance with the terms specified by the community that has provided the information. These terms should be included in the *Agreement* where possible.

6. COMPLIANCE WITH TERMS OF AN AGREEMENT AND THIS GUIDANCE

PCPC members should:

Utilize and transfer *Regulated Genetic Resources* in a manner consistent with the terms and conditions specified in an applicable *Agreement*.

PCPC members should not:

Utilize Regulated Genetic Resources for purposes other than those specified in the *Prior Informed Consent* provisions of an applicable *Agreement*, unless first obtaining a separate written *Prior Informed Consent* for the alternative use of the *Regulated Genetic Resource*.

Transfer samples of *Regulated Genetic Resources* to third parties unless such transfer is consistent with the terms and conditions of an applicable *Agreement*.

7. MEASURES TO PROTECT INTERESTS AND RIGHTS OF INDIGENOUS OR LOCAL COMMUNITIES

PCPC members should:

Respect the customs, traditions, values and customary practices of indigenous and local communities within a *Party* and from which *Genetic Resources* have been obtained.

Respond to requests from indigenous and local communities for information concerning the handling, storage or transfer of *Genetic Resources* consistent with the terms of an applicable *Agreement*.

8. CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

PCPC members should:

Take reasonable steps to prevent harm or alteration to the local environment incidental to acts of collecting samples of *Genetic Resources* from an *In Situ* location in a *Party*.

Avoid taking actions that pose a threat to the conservation or sustainable use of biological diversity incidental to acts of collecting samples of *Genetic Resources* from an *In Situ* location in a *Party*.

Take all reasonable steps and give good faith consideration to sharing data with the *Party* which was derived from research on the *Genetic Resources* and which may be useful in the support of conservation efforts related to a species, environment, or habitat from which the *Genetic Resources* collected.

9. AWARENESS RAISING

PCPC members should:

Develop an internal compliance procedure for compliance with national *Access and Benefit Sharing* procedures as well as this Guidance.

Work diligently to ensure that companies responsible for key (or relevant) functions/geographic areas are knowledgeable of national implementing legislation requirements, including through the regular dissemination of updates to national implementing requirements.

10. DEFINITIONS

ABS - Access and Benefit Sharing

Agreement - a written agreement between a *Personal Care Product* company and the *Party* that documents *Prior Informed Consent* and *Mutually Agreed Terms*;

Competent National Authority(ies) – The entity(ies) established by the *Party* which is responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and is responsible for advising on applicable procedures and requirements for obtaining *Prior Informed Consent* and entering into *Mutually Agreed Terms*. (NP, at Art. 13(2)).

Party - A country that has ratified the Nagoya Protocol.

The Convention (CBD) – The Convention on Biological Diversity

Ex Situ Collection– A collection of *Genetic Material* in a location external to the *In Situ* location in which the G*enetic Material* has been previously obtained. (CBD, at Art. 2)

National Focal Point (Focal Point) – The entity designated by each *Party* to make information available regarding procedures for obtaining *Prior Informed Consent* and *Mutually Agreed Terms* for access to *Genetic Resources* or *Traditional Knowledge Associated with Genetic Resources* as well as for making information available concerning *Competent National Authorities*. (NP, at Art. 13(1)).

Genetic Material – Any material of plant, animal, microbial or other origin containing functional units of heredity. (CBD, Art. 2).

Genetic Resources – *Genetic Material* of actual or potential value. (CBD, at Art. 2)

In Situ – The location in which *Genetic Material* exists within ecosystems and natural habitats, and in the case of domesticated or cultivated species, in the surroundings where it has developed its distinctive properties. (CBD, at Art. 2)

Mutually Agreed Terms (MAT) – Terms agreed between the entity providing and the entity seeking access to the *Genetic Resource* to be included in a written *Agreement*;

Nagoya Protocol (The Protocol or NP) – The Nagoya Protocol to the Convention on Biological Diversity.

Prior Informed Consent (PIC) – The requirement that the Party providing access to *Genetic Resources* shall provide its consent on the basis of *mutually agreed terms* before access to the *genetic resources* is granted in accordance with Article 6 of the Nagoya Protocol.

Regulated Genetic Resource – A *Genetic Resource* that is accessed in the jurisdiction of a *Party* on or after the effective date of the *Party's* ratification of the *Protocol*.

Utilization of Genetic Resources **–** To conduct research and development on the genetic and/or biochemical composition of *genetic resources* including through the application of *biotechnology* (NP, at Art. 2(c)). Examples of R&D for the *Personal Care Products*

include the following, but do not include routine testing for compliance with health and safety regulations or legislation:

- Research and development on plant, animal, microbial or other DNA/RNA and extracts or compounds (e.g., oils, sugars/starches, vitamins);
- Genetic Modification;
- Biosynthesis;
- Breeding and selection;
- Propagation and cultivation of the genetic resource in the form received;
- Conservation;
- Characterization and evaluation;
- Sequencing genes or genomes;
- Production of compounds naturally occurring in genetic material (extraction of metabolites, synthesis of DNA segments and production copies);

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