

ARGENTINA

Information and Opinions Regarding Decision X/1 on Access and Benefit-Sharing (ABS) Provided in Preparation for the First Meeting of the Intergovernmental Committee of the Nagoya Protocol

This document describes the nationwide implementation of the normative framework in question over the course of one year.

1. Identification of Capacity-Building Needs

a. Capacity-Building

- ✓ Strengthening of capacities among civil servants at various administrative levels (such as the provincial level, for example) for the implementation of the normative framework related to genetic resource management
- ✓ Strengthening of control and management tools
- ✓ Training of border control authorities as regards the scope of the normative framework
- ✓ Equipping with the appropriate information technology (both software and hardware)
- ✓ Strengthening of the provincial and national authorities concerned with administration and control of national legislation protecting access to genetic resources and distribution of benefits

b. Promotion of mechanisms and tools for the extensive dissemination of the Protocol

Actors identified:

- ✓ Scientific community
- ✓ Local communities and indigenous peoples
- ✓ NGOs, businesses, others

2. Opinions

• **Modalities of Operation of the Access and Benefit-Sharing Clearing-House Mechanism**

The operating model of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is considered an example of a good coordination mechanism.

• **Measures to Assist in Capacity-Building, Capacity Development, and Strengthening of Human Resources and Institutional Capacities in Developing Countries**

Sharing of implementation experience as regards a normative framework for access to genetic resources by means of training workshops and sharing of human resources

Promotion of the regional exchange of experts and information (South-South Cooperation)

Promotion and strengthening of knowledge-sharing among the members of ad hoc Mercosur groups

Creation of an interdisciplinary team with representatives from the various organizations and institutions involved in the application of the Protocol (the scientific community and organizations concerned with intellectual property, for example) in order to coordinate its nationwide implementation

• **Measures to Raise Awareness of the Importance of Genetic Resources and Associated Traditional Knowledge and ABS-related Issues**

Development, promotion, and implementation of communication and awareness campaigns across digital, print, and mass media

Training workshops for all the actors involved

- **Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Protocol and to Address Cases of Non-compliance, Including Procedures and Mechanisms to Offer Advice or Assistance**

Adaptation of national regulations to incorporate the Protocol as a domestic normative framework; establishment of the regulations defining violations and the sanctions imposed for non-compliance

Ensuring available financial assistance from developed countries for Protocol implementation in various countries

3: Existing ABS-related Codes of Conduct, Guidelines, and Information-sharing Mechanisms

Model Contractual Clauses

Below are model texts available to applicants seeking authorization for the export or import of genetic resources. Their aim is to facilitate the processing of permits under Ministry of Environment and Sustainable Development Resolution (SAyDS) N°226/2010.

Model 1

Terms and Conditions of the Agreement

This Agreement is made and entered into by and between the following Parties:, herein represented by its director, (profession) Dr., an Argentine national with DNI N°, whose domicile is located at ("PROVIDER"), AND, herein represented by its director, (profession), a(n) (nationality) national with identification document N°, whose domicile is located at ("RECIPIENT"). The Parties agree as follows:

FIRST: PROVIDER shall supply the tissue samples from the species detailed in the annex which is part of this contract for

SECOND: All material used is the property of PROVIDER, who shall supply it at no cost; said material shall be used exclusively for academic and scientific research purposes.

THIRD: The material used shall be consumed during analysis; any remaining material shall either be destroyed upon completion of analysis or returned to PROVIDER after use.

FOURTH: The country of PROVIDER shall exclusively retain all intellectual property rights related to the material used and its derivatives.

FIFTH: The project shall be carried out by (detailed) on behalf of PROVIDER, and by(detailed) on behalf of RECIPIENT.

SIXTH: DURATION - POSSIBILITY OF EXTENSION

SEVENTH: RECIPIENT shall collaborate with PROVIDERconcerning the project.

EIGHTH: The research results published in respect of the material used shall be published jointly by RECIPIENT scientist(s) and PROVIDER scientist(s). RECIPIENT and PROVIDER shall duly acknowledge the source of the material in all publications related to the material used; RECIPIENT and PROVIDER

shall send copies of the publications and preliminary reports related to the material used and its modifications to the Argentine Ministry of Environment and Sustainable Development.

NINTH: PROVIDER and RECIPIENT shall take all necessary measures to ensure the respect, preservation, and maintenance of the knowledge, innovations, and practices of the communities of their respective countries; PROVIDER and RECIPIENT shall likewise take all necessary measures to ensure compliance with all the applicable laws, rules, guidelines and regulations of both countries.

ELEVENTH [sic]: The Parties shall maintain the conditions stipulated for the duration of the field work conducted. In the event of any changes, the Agreement shall be re-negotiated, taking into account: (conditions).

TWELFTH: TERMINATION. In the event that either Party fails to comply with any of the obligations set forth herein, the non-breaching party may terminate this contract by giving certified notice. In the event of continued breach of contract, either Party may terminate this Agreement.

THIRTEENTH: Both Parties constitute special domicile for all judicial and extrajudicial purposes deriving from the provisions of this Agreement, as stated above, and voluntarily submit to the jurisdiction of the Courts of the City of Buenos Aires, Argentina, for approval, application, interpretation, or any other purpose in respect of these presents, and expressly waive any other forum or jurisdiction to which they may have recourse.

IN WITNESS WHEREOF, this Agreement is executed in two counterparts, each of which shall be deemed an original of equal validity.

Model 2:

“~~----~~” Project Research Collaboration Agreement

This Agreement is entered into in _____, this first day of October of 2010

BY AND BETWEEN

XXXXXXX, ... professor and researcher at AAAA, on his/her own behalf and in the exercise of his/her authority to define his/her own topic of research,

DNI, Domicile in Argentina

Guarantee of AAAA

AND

YYYYYY, tenured scientist at BBBB, on his/her own behalf and in the exercise of his/her authority to define his/her own topic of research,

DNI-PASSPORT, Domicile in his/her country and in Argentina

Guarantee of BBBB

Both Parties mutually acknowledge their legal capacity to execute this Collaboration Agreement within the framework of their scientific activity;

WHEREAS

Existing scientific information on is very limited;

Both Parties share an interest in furthering the study of

Both Parties have collaborated on research in the past;

The Argentine Party does not have sufficient means or sufficient experience to undertake a study with this objective;

Party B both has the means to finance said study for at least one year and has experience with multiple similar studies;

IN WITNESS WHEREOF, both Parties agree to execute this Collaboration Agreement, subject to the following:

Terms and Conditions of the Agreement

This Agreement is made and entered into by and between the following Parties:, herein represented by its director, (profession) Dr., an Argentine national with DNI N° -----, whose domicile is located at ("PROVIDER"), AND, herein represented by its director, (profession), a(n) (nationality) national with identification document N° -----, whose domicile is located at ("RECIPIENT"). The Parties agree as follows:

CLAUSES

1. The objective of this Agreement is to lay the foundations for the first year of collaboration on the research project entitled ".....".

2. Management of and responsibility for the development of the project shall be shared by both Parties . By mutual consent, the Parties may introduce research collaborators to the project.

3. The country of PROVIDER shall exclusively retain all intellectual property rights related to the material used and its derivatives .

4. The research results published in respect of the material used shall be published jointly by RECIPIENT scientist(s) and PROVIDER scientist(s). RECIPIENT and PROVIDER shall duly acknowledge the source of the material in all publications related to the material used; RECIPIENT and PROVIDER shall send copies of the publications and preliminary reports related to the material used and its modifications to the Argentine Ministry of Environment and Sustainable Development.

5. PROVIDER and RECIPIENT shall take all necessary measures to ensure the respect, preservation, and maintenance of the knowledge, innovations, and practices of the communities of their respective countries; PROVIDER and RECIPIENT shall likewise take all necessary measures to ensure compliance with all the applicable laws, rules, guidelines and regulations of their respective countries .

6. Both Parties constitute special domicile for all judicial and extrajudicial purposes deriving from the provisions of this Agreement, as stated above, and voluntarily submit to the jurisdiction of the Courts of the City of Buenos Aires, Argentina, for approval, application, interpretation, or any other purpose in respect of these presents, and expressly waive any other forum or jurisdiction to which they may have recourse .

7. The Argentine Party

8. The other Party

9. The biological samples shall be cold-preserved and transported to ... for analysis in specialized laboratories. The purpose of such analysis shall be

10. Any remainder of the biological samples shall be(detail).

11. Research results shall be jointly published to reflect the collaboration described herein.

12. Both Parties shall disseminate the research results as extensively as possible, publishing said results in international periodicals. The Argentine Party shall, moreover, disseminate the results across all spheres of administration, particularly those of public administration, which might consider them useful.

13. This Agreement shall be valid for one year.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate at the place and on the date above mentioned.

MODEL 3

Terms of Material Transfer Agreement

Provider Institution: Description, full particulars

Name of Representative of Provider Institution:

Title of Representative of Provider Institution:

Recipient Institution: Description, full particulars

Name of Representative of Recipient Institution:

Title of Representative of Recipient Institution:

Project/Associated Agreement (where applicable):

Description of Material Transferred: Description, full particulars

Provider Institution Shipping Form:

In consideration of the provisions of the Convention on Biological Diversity, the qualified Signatory Institutions, through their duly authorized representatives, agree to use the samples transferred between them in accordance with the following terms and conditions:

1. The Material provided shall be used by the Recipient Institution exclusively for the scientific research stipulated, and shall not be used for commercial purposes.
2. In the event of discovery of a potential commercial use for a product or process which is or is not subject to copyright protection and which derives from the sample provided as genetic heritage under these terms, the Recipient Institution shall notify the Provider Institution of said discovery. The activity related to said potential use shall be suspended. In respect of the circumstances, a new contract containing the relevant legal provisions shall be executed.
3. No sample component of genetic heritage shall be released to a third party by the Recipient Institution without the prior execution of a new material transfer agreement between the original Provider Institution and the new Recipient Institution.
4. A Recipient Institution which receives a sample component of genetic heritage shall comply with these terms of material transfer in any transaction related to the sample in question. The Recipient Institution shall not be considered a Provider and shall not be entitled to any benefits related to the Material.
5. Any publication issuing from the study of the sample component of genetic heritage provided shall explicitly acknowledge the source of the material and recognize the Provider Institution. A copy of the publication in question shall be sent to the Provider Institution and to the Argentine Ministry of Environment and Sustainable Development.
6. Non-compliance with these terms shall entail the applicable statutory sanctions.

7. The headquarters of the Provider Institution shall be a competent forum for the settlement of disputes between the Institutions Parties to this material transfer agreement.
8. Regardless of the length of time for which the material is lent (six months), this Material Transfer Agreement shall be valid for one year and may be renewed upon express formal request and mutual accord of the Parties prior to the expiration of the Agreement.
9. Independently of the renewal of this Agreement, the commitments in respect of the material transferred under these terms shall survive indefinitely.

IN WITNESS WHEREOF, **Provider Institution** and **Recipient Institution** have caused this Agreement to be executed in triplicate by their respective duly authorized representatives.

Place and Date

Representative of **Recipient Institution**

Representative of **Provider Institution**

Minimum Clauses Common to All Material Transfer Agreements (MTAs)

- The samples shall be used exclusively for the purposes set out in the Research description. The Research description shall not be modified and the material shall not be used for other purposes unless a new authorization is submitted in writing.
- Whether provided temporarily or permanently, the material shall be used by the Recipient Institution exclusively for non-commercial scientific research.
- A Recipient Institution which temporarily or permanently receives a sample component of genetic heritage shall comply with the terms of the transaction related to the sample in question. The Recipient Institution shall not be considered a Provider and shall not be entitled to any benefits related to the Material.
- No sample component of genetic heritage, provided temporarily or permanently, shall be released to a third party by the Recipient Institution without the prior execution of a new material transfer agreement between the original Provider Institution and the new Recipient Institution. No part or by-product shall be lent or transferred to another researcher or institution without prior written authorization, which shall require a new procedure.
- In the event of discovery of a potential commercial use for a product or process which is or is not subject to copyright protection and which derives from the sample provided as genetic heritage under these terms, the Recipient Institution shall notify the Provider Institution of said discovery. The activity related to said potential use shall be suspended. In respect of the circumstances, a new contract containing the relevant legal provisions shall be executed. Argentina shall have exclusive title to all intellectual property rights related to the material used and its derivatives.
- Any remaining part or by-product of the sample shall be returned upon completion of analysis, unless the final destination of the material was stipulated beforehand. The material used shall be consumed during analysis; otherwise, any material remaining after analysis shall be destroyed or returned.

- Both Parties shall disseminate the research results as extensively as possible, publishing said results in international periodicals. The Argentine Party shall, moreover, disseminate the results across all spheres of administration, particularly those of public administration, which might consider them useful.
- Research results shall be published jointly by Recipient and Provider. Recipient and Provider shall duly acknowledge the source of the material in all publications related to the material used; Recipient and Provider shall send copies of the publications and preliminary reports related to the material used and its modifications to the Argentine Ministry of Environment and Sustainable Development. Any publication issuing from the study of the sample component of genetic heritage provided shall explicitly acknowledge the source of the material and recognize the Provider Institution. A copy of the publication in question shall be sent to the Provider Institution and to the Argentine Ministry of Environment and Sustainable Development.
- Non-compliance with these terms shall entail the applicable statutory sanctions.
- The headquarters of the Provider Institution shall be a competent forum for the settlement of disputes between the Institutions Parties to this agreement.
- Independently of the renewal of this Agreement, the commitments in respect of the material transferred under these terms shall survive indefinitely.

Existing Guidelines and Codes of Conduct Related to Access and Benefit-Sharing:

In Argentina, Resolution No. 226/2010 of the Ministry of Environment and Sustainable Development (SAyDS) governs and regulates access to genetic resources in order to ensure that the benefits derived from their use are shared fairly and equitably with the providers of said resources in accordance with the Convention on Biological Diversity (National Act No. 24.375). The Resolution covers all genetic material which is representative of biological diversity as defined in Article 2 of the Convention on Biological Diversity and which is collected or obtained by any means for scientific purposes or for research purposes applied to industry or trade, with a view to its import or export.

All information regarding procedures in respect of and compliance with the relevant national regulations is available at www.ambiente.gob.ar/biodiversidad.