

ABS in Thailand

Overview of legal requirements, procedures and relevant authorities



Prepared for the European Seed Association (ESA)

by the Union for Ethical BioTrade

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1. Legal framework

International agreements

- *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

National laws and regulations

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 (NCBD Regulations)* – published on 4 March 2011. It entered into force one day later.

Draft rules or amendments

The following legal texts or amendments are currently under discussion, but not yet finalised, adopted or in force):

- *Draft Bill on Plant Variety Protection (No. 2)* – proposed in 2018. A revised version is expected to be completed and circulated in early 2019.
- *Draft 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.

2. Scope of ABS-related requirements

Laws and regulations establish different scope of application for ABS-related requirements.

PVP Act

The Plant Variety Protection Act (PVP Act) establishes requirements for the collection or other acquisition, for plant breeding or research for commercial purposes, of the following types of plant varieties (or parts thereof):

- *Local domestic plant varieties*, which are only defined as plant varieties that exist in particular areas within Thailand and registered as such under this Act. In practice, the term seems to refer to plant varieties traditionally cultivated and developed by local farmers in their fields – for example, local varieties of rice – that are not yet widely available.
- *Wild plant varieties*, which are only defined as plant varieties growing or having grown in natural habitats in Thailand, and not yet cultivated widely. In practice, the term seems to

refer to wild crop relatives or wild food plants – for example, in Thailand, local varieties of spinach, palm and plums.

- *General domestic plant varieties*, which are broadly defined as plant varieties originating or existing in Thailand and widely used in the country, including all plant varieties that are not new, local domestics plant varieties or wild plant varieties. In practice, the term seems to include rice, corn and other vegetable varieties that are commonly cultivated in Thailand.

Rules are foreseen to regulate research for non-commercial purposes on such plant varieties, but no measures have been adopted to date.

Traditional Knowledge Act

The Protection and Promotion of Thai Traditional Medicinal Knowledge Act (Traditional Knowledge Act) establishes certain rights over formulas of Thai traditional medicine that, in some cases, trigger ABS-related requirements:

- *National formulas* are 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.
- *Personal formulas* are formulas, production process and ingredients of traditional medicines invented, improved or inherited by an individual. These personal formulas may be registered and licensed under the Traditional Knowledge Act, but are not subject to any additional ABS requirements.
- *General formulas* are those formulas having identified as widely known or those no longer under intellectual property protection, that are not subject to any ABS requirements.

Additionally, according to the Traditional Knowledge Act, authorities may adopt regulations that specify which wild plants are 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 adopted.

NCBD 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 (NCBD Regulation) 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. This regulation covers the collection, storage and utilization of biological resources and associated traditional knowledge. In 2014, Thailand reported that 11 organizations, including the Department of National Parks, Wildlife and Plants and the National Center for Genetic Engineering and Biotechnology (BIOTEC), had developed internal rules to apply the NCBD Regulation.

3. National rules and the ITPGRFA

The legal framework in Thailand contains no reference to the ITPGRFA. However, the PVP Act includes provisions on certain aspects of farmers’ rights and fair and equitable benefit sharing, principles reflected in the ITPGRFA.

- *Plant breeders’ rights* do not extend to, inter alia, the cultivation or propagation of a protected new plant variety by farmers, in cases defined by the authorities, as long as they use their own propagating material and do not produce more than three times the quantity received
- It is possible for farmer groups, cooperatives or local authorities to register *local domestic varieties*, with prerogatives comparable to breeders’ rights

- 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.

It is important to note that changes proposed under the draft bill on plant variety protection may significantly alter some of these provisions, including farmers' rights to cultivate or propagate a protected new plant variety and excluding general domestic plant varieties not originating on Thai plant varieties from benefit sharing requirements.

Specific questions on scope

- *Cultivated plants.* ABS-related rules in Thailand broadly include cultivated and domesticated plants. Indeed, access to all plant varieties originating OR existing in Thailand requires prior authorisation and a benefit-sharing agreement. No exception is made for commercial varieties.
- *Native and non-native plants.* No distinction is made in ABS-related rules between native or non-native plants.
- *Microbes.* Microbes may be covered by ABS mechanisms developed under the NCBD Regulations.
- *DNA samples.* Germplasm may be covered by ABS mechanisms developed under the NCBD Regulations. For example, BIOTEC hosts germplasm from various plant species, including tomato, corn, cucumber and chili.

4. Access requirements

ABS-related requirements are established in the PVP Act, the Traditional Knowledge Act and the mechanisms established under the NCBD Regulations. However, it is important to note that the PVP Act and Traditional Knowledge Act date back to 1999. Many of its terms and concepts do not reflect more recent approaches. For example, the PVP Act refers not to “prior informed consent” and “benefit-sharing,” but to “prior authorization” and “profit-sharing.”

Plant varieties

- Access to local domestic varieties requires prior authorization from the farmer groups, cooperatives or local authorities holding the relevant certificates, as well as a benefit-sharing agreement
- Access to wild and general domestic varieties requires prior governmental authorization, as well as a benefit-sharing agreement. The details of these requirements must be established by regulations, which have not yet been adopted.

Controlled plants

According to the Traditional Knowledge Act, the sale, processing or export of “controlled plants” requires a license. Nevertheless, no regulations have been issued to define the procedures for securing such a license.

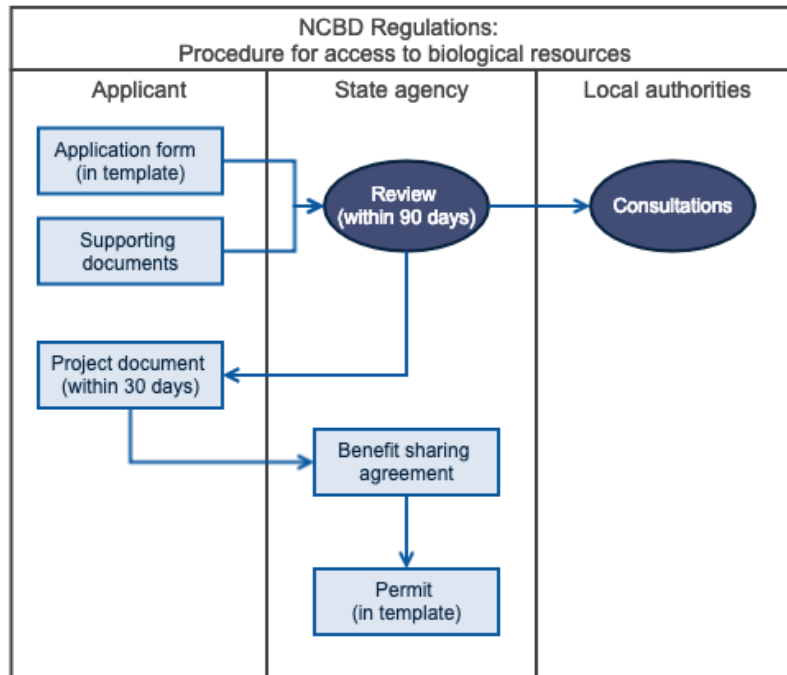
Other biological resources

According to NCBD 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 1 on page 4). 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.

It is important to note that the draft bill on biodiversity includes provisions that would standardize requirements and procedures among state agencies on the utilization of biological resources.

Figure 1.



Traditional medicinal knowledge

For traditional medicinal knowledge, access to national formulas requires prior authorization from competent authorities, as well as payment of fees and other benefits. Terms and conditions for authorization must be in line with the terms and conditions established by regulations, which have not yet been issued.

5. Benefit sharing requirements

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

- The PVP Act requires that benefit sharing agreements include, for example, provisions on intellectual property rights and mention the 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 NCBD 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

6. Sanctions and compliance

Under the PVP Act, compliance measures and sanctions include:

- For local domestic plant varieties, courts have the right to uphold the rights of certificate holders and order any persons or entities undertaking actions without the required consent of the right holders to provide adequate compensation, based on the damage, loss of interests and enforcement costs. Courts may also order the confiscation of plant varieties held in violation of these rights. Finally, the person or entity undertaking these actions is liable to fines and/or imprisonment for a period of up to two years.
- For local domestic, general domestic and wild plant varieties, violation of benefit sharing requirements may also result in fines and/or imprisonment for a period of up to two years.

Under the Traditional Knowledge Act, violation of access and benefit sharing requirements related to national formulas of Thai traditional medicinal knowledge may result in fines and/or imprisonment for a period of up to one year. In case of a legal entity, responsibility will fall on its executive director, manager, or legal representative, unless they can prove that the actions of the legal entity took place without their knowledge or consent.

Under the NCBD Regulations, no compliance measures or sanctions are established. However, these rules require the benefit sharing agreement to include the following provisions:

- Obligation to report progress in access and utilization of biological resources, at least every three months, as well as a final report of activities at the expiration of the permit
- Authorization for the state agency to access information from the user to monitor and ensure compliance with the provisions of the agreement, which it must do at least every six months
- Terms in cases of non-compliance

It is important to note that the draft bill on biodiversity includes provisions that would establish liabilities and penalties linked to the utilization of biological resources

7. Relevant authorities

In 2000, the NCBD 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 NCBD 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.

8. List and links of relevant laws and regulations

Name	Number	Date	Link
Plant Varieties Protection Act	N/A	1999	https://wipolex.wipo.int/en/legislation/details/3816
Protection and Promotion of Thai Traditional Medicinal Knowledge Act	N/A	1999	https://wipolex.wipo.int/en/legislation/details/5790
Office of the Prime Minister's Regulations on the Conservation and Utilization of Biodiversity	N/A	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	N/A	2011	