

ABS in Argentina

Overview of legal requirements, procedures and relevant authorities



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1. Legal framework

International agreements

- Convention on Biological Diversity (CBD): Party since 20 February 1995
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Resulting Benefits (Nagoya Protocol): Party since 9 March 2017
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA): Party since 15 August 2016

ABS laws and regulations

Argentina has a federal system, which divides the powers of government – including in relation to access and benefit sharing (ABS) – between the Nation and the provinces.

- Provinces in Argentina hold dominion over natural resources, including genetic resources. Provinces are therefore recognized the right to grant prior informed consent and establish mutually agreed terms for genetic resources accessed in their jurisdictions.
- The national government in Argentina is responsible for establishing minimum standards on environmental protection, including on ABS, and is, in certain exceptional cases directly responsible for granting prior informed consent and establishing mutually agreed terms.
 - The national government establishes minimum standards and procedures on ABS, which must be followed by competent authorities in the provinces, to ensure a common approach and an effective management of genetic resources and associated traditional knowledge.
 - The Administration for National Parks, an agency of the national government, holds dominion over genetic resources within national parks and is directly responsible for granting and establishing the terms for access to genetic resources, in line with national minimum standards.
 - The national competent authority for ABS, the Secretariat of Environment and Sustainable Development, is directly responsible for granting access to genetic resources in the country's exclusive economic zone, as well as in the regularization of certain cases of access to genetic resources prior to 1994.

National rules on ABS

- Resolution 410/2019,¹ which entered into force on 25 October 2019, establishes that, in Argentina, access to genetic resources for their utilization is subject to prior informed consent and mutually agreed terms, and sets out the minimum standards and procedures that competent authorities must follow in granting such access.
- Resolution 81/2016,² which entered into force on 21 July 2016, regulates scientific research in national parks, including through specific requirements on ABS.

Provincial rules on access to genetic resources

Several of Argentina's 23 provinces have adopted measures on access to genetic resources or regulate such activities under broader environmental or natural resources instruments (see Annex I for the full list of provincial laws and regulations with ABS-related provisions).

¹ <https://www.boletinoficial.gob.ar/detalleAviso/primera/219599/20191024>

² <https://www.argentina.gob.ar/normativa/nacional/resolución-81-2016-263670/texto>

Draft rules or amendments

With the adoption of Resolution 410/2019, provincial measures on ABS, as well as the ABS regime established for national parks, must be updated and aligned with its minimum standards and procedures. Discussions for the revision of Resolution 81/2016 and several provincial laws and regulations is already underway.

Further to the recent ratification of the ITPGRFA, Argentina is discussing its implementation strategy at federal and provincial levels. One of the topics under consideration is the need to develop specific legislation for plant genetic resources for food and agriculture.

2. Scope and use of terms

In Argentina, the ABS national standards adopted in 2019 cover access to genetic resources for their utilization. There are no definitions as such, but the use of terms in Resolution 410/2019 is described as follows:

- Genetic resources are understood to cover all genetic material of real or potential value. The term “genetic material,” in turn, includes not only plant, animal, microbial and other type of biological material, but also derivatives – that is, naturally occurring biochemical compounds.
- Access to domesticated and cultivated species are expressly excluded from the regulation. “Domesticated or cultivated species” are defined as species in which the evolutionary process has been influenced by humans. That is, ABS requirements would not apply to the acquisition of plant cultivars, produced through breeding and selection, for research, development or further breeding. ABS requirements would apply to access to plant species not modified or grown through human intervention (e.g. crop wild relatives) for such activities.
- The term “utilization of genetic resources” is defined as in the Nagoya Protocol – that is, research and development on the genetic or biochemical composition of genetic resources. Uses of biological material or derivatives that do not involve utilization of genetic resources are expressly excluded from ABS requirements.
- Access is covered whether it is direct (e.g. collection) or indirect (e.g. sample obtained through intermediary)

Access to traditional knowledge associated with genetic resources is not covered within national ABS standards outlined in Resolution 410/2019. No other laws or regulations specifically deal with traditional knowledge associated with genetic resources, though the Constitution of Argentina recognizes the ethnic and cultural pre-existence of indigenous peoples of Argentina and their ownership over lands they traditionally occupy, and guarantees their participation in issues related to their natural resources and in other interests affecting them.

It is important to note that provincial ABS measures may complement or build on national standards, including in relation to the activities or resources covered by ABS requirements (see Annex I). However, as noted above, national standards on ABS aim to establish common approaches across jurisdictions and provincial measures are expected to be revised in line with Resolution 410/2019. No specific timeframe has been established for this process, which will therefore depend on priorities and dynamics in the evolving political framework in Argentina.

Box 1. Specific questions on scope

- *Native and non-native plants*: National ABS standards in Argentina make no distinction between native and non-native species.
- *ITPGRFA*: National ABS standards explicitly exclude plant genetic resources for food and agriculture covered by Annex 1 of the ITPGRFA from ABS requirements. No rules implementing the ITPGRFA have been adopted to date, so it is not clear how tools such as the standard material transfer agreement will be used. For plant genetic resources for food and agriculture not included in Annex 1, please note the exclusion of cultivated plant species described above.
- *DNA samples*: National ABS standards apply to genetic resources collected or acquired through any means. It does not distinguish between material accessed *in situ* or *ex situ* and can be understood to cover DNA samples.
- *Microbes*: Access to microorganisms for utilization would be covered by national ABS standards.
- *Digital sequence information (DSI)*: Access to DSI or genetic information such as nucleic acid sequence data or molecular structures of gene products is not specifically covered in national ABS standards. Nevertheless, references to genetic information are included in ABS procedures. For example, a new ABS authorization would be required for the utilization of genetic information resulting from research activities previously authorized for non-commercial research.

3. Access requirements

As mentioned above, provinces in Argentina are recognized the right to grant prior informed consent and establish mutually agreed terms for genetic resources accessed in their jurisdictions. Nevertheless, the national government in Argentina is responsible for establishing minimum standards on ABS, which are meant to harmonize requirements and procedures for access to genetic resources across provincial jurisdictions.

National standards on access to genetic resources

National standards on access to genetic resources are established in Resolution 410/2019. This resolution distinguishes between access to genetic resources for their utilization for commercial or non-commercial purposes. **Non-commercial research**, for example, is understood as activities whose results do not lead to a process or product subject to intellectual property protection or to the commercialization of a process or product. Research for **commercial purposes** refers to activities undertaken with the purpose of obtaining a development or product for marketing or sale. Likewise, research with the purpose of obtaining a patent or a product to which restrictions on access are applied through intellectual or industrial property rights would be considered to have commercial purposes.

Different requirements apply to access to genetic resources for utilization for commercial or non-commercial purposes. In particular, utilization of genetic resources for commercial purposes requires an ABS contract, while utilization for non-commercial purposes does not (see Box 2). In utilization for both commercial and non-commercial purposes, foreign applicants may be asked to have a local institution collaborating or participating in the research and development project, depending on requirements established in provincial rules.

Additionally, Resolution 410/2019 sets out requirements for the export of genetic resources for their utilization in a foreign country. Namely, the person or legal entity seeking to export genetic resources for their utilization must notify the Secretariat of Environment and Sustainable Development through a pre-established form, which requires information such as the country where the resources are being exported, the institution or company where the genetic resource will be utilized, and a description of the objectives and activities to be carried out.

Box 2. National standards for access to genetic resources

	Utilization for commercial purposes	Utilization for non-commercial purposes
Minimum information in application	Information on the user and planned utilization, including the research and development project, its objectives, and its potential commercial value. Foreign applicants may be required to collaborate with local institution.	Information on the user and planned utilization, including the research and development project, its objectives, the genetic resources to be accessed and possible transfer to third parties. Foreign applicants may be required to collaborate with local institution.
Terms of access and utilization	<ul style="list-style-type: none"> • An access contract is required, with clauses on issues such as rights and obligations of parties; transfer of material; benefit sharing, including those derived from intellectual property rights; new uses; and dispute settlement. • The access authorization must include a description of the resources and activities covered by the authorization; information on the commercial purpose for which authorization granted; and evidence that terms for commercial utilization were mutually agreed. 	<ul style="list-style-type: none"> • A legal declaration is required, through which user commits to provisions such as not to use genetic resources or resulting information for commercial purposes; not to facilitate access to third parties; and to report on research results. • The access authorization must include a description of the resources and activities covered by the authorization; and a clause on the need to obtain new authorization if potential commercial utilization of the genetic resource or related information is identified.
Application forms	Annex II of Resolution 410/2019	Annex IV of Resolution 410/2019

Additionally, in exceptional cases, national authorities are directly responsible for granting prior informed consent and establishing mutually agreed terms. This is the case for national parks, for instance, where the national parks administration is the competent authority for issuing prior informed consent and establishing mutually agreed terms. Box 3 describes existing ABS requirements in national parks in Argentina. Nevertheless, as indicated above, these requirements are expected to be updated and aligned with Resolution 410/2019.

Box 3. Access to genetic resources in national parks in Argentina

Application	Standard application form to request access to natural resources in national park for scientific research, to be presented to regional authorities for national parks administration
Supporting documentation	Documentation required includes: <ul style="list-style-type: none"> • Copy of research project • Letter of institutional support • Accident insurance policies
Additional requirements	<ul style="list-style-type: none"> • For foreign individuals or organizations, proof of collaboration with a national research institution may be requested • If the research project involves indigenous peoples, proof of their free and prior informed consent is required • The deposit of samples of biological material collected in national institutions may be required • The export and/or possible commercial use of biological material and/or its derivatives requires signature of a standard material transfer agreement between the researcher and the National Parks Administration. This agreement includes, among others, clauses related to authorized uses, confidentiality, benefit-sharing, intellectual property rights and third-party transfers.

Timeline	The request is to be considered by the National Parks Administration within 30 working days, following which a written authorization or notification that request is not granted must be issued
Benefit sharing requirements	Material transfer agreements include provisions on benefit sharing. Additionally, rules on national parks foresee the sharing of information and publications related to the outcomes of the research. If a possible commercial use is identified, researchers must inform national parks authorities within 10 working days to establish the fair and equitable sharing of potential benefits. Researchers must also inform national parks authorities and reach agreement on ownership and sharing of potential benefits.
Compliance	Sanctions foreseen include suspending or revoking research authorization or denying new authorizations for research to researchers who do not submit information or publications related to the research carried out until such information is submitted. Fines and seizure of genetic resources are also foreseen, in relation to the gravity of the infraction.
Application form	"Formulario de solicitud" available in Annex II of Resolution 81/2016

Provincial requirements on access to genetic resources

As mentioned, several provinces have established procedures for access to genetic resources within their jurisdiction or regulate such access under broader laws or regulations. An overview of current approaches to access to genetic resources is provided in Annex I, but such approaches are expected to be reviewed further to the adoption of Resolution 410/2019. No specific parameters or timeline, however, has been established for this process.

At present, these procedures vary greatly from one province to the other. In many provinces, there are no ABS measures as such, but rather measures that deal more generally with the collection of natural or biological resources for scientific research and may cover access to genetic resources in certain circumstances. This is the case in provinces such as Chubut, Corrientes, La Rioja, Mendoza, Salta, San Juan, Santa Cruz, Santa Fe and Tucumán.

In other provinces, including Entre Ríos, Misiones, Neuquén, Río Negro, San Luis y Tierra del Fuego, specific measures on ABS have been adopted. These measures may include the requirement for foreigner researchers to collaborate with national institutions in order to obtain a collection permit (e.g. in Catamarca, Chubut and Entre Ríos). Others require the consent of the landowner where the resource is accessed if the genetic resources are located on private property (e.g. in Neuquén and San Luis). Finally, measures may also call for ABS agreements between the provider and provincial authorities when resources are being accessed for commercial purposes (e.g. in San Luis).

Certificate of compliance

Once the access authorization has been issued by competent authorities in the provinces or national parks, the Secretariat for the Environment and Sustainable Development is responsible for checking permits, prior informed consent, mutually agreed terms issued or concluded, as may be the case, by competent authorities in the provinces or national parks. It is also charged with issuing, upon request, the certificate of compliance and making it available to the ABS Clearing-House, in accordance with the Nagoya Protocol. A standard form for requesting the certificate of compliance is included as an annex in Resolution 410/2019.

4. Benefit sharing requirements

There is limited guidance on fair and equitable benefit sharing, both at the national and provincial levels. National ABS standards establish that sharing of benefits from commercial utilization is addressed in the access contract between the competent authority in the jurisdiction where the genetic resource is accessed (e.g. in the province or national park) and the user requesting access. In situations of non-commercial use, minimum standards include the presentation of the results of research carried out to the competent authority having authorized access.

At the provincial level, multiple laws or regulations establish benefit-sharing requirements. Requirements also vary significantly between provinces. In some provinces, including Chubut and Misiones, where measures focus on scientific research, benefit sharing is limited to provisions on the sharing of research results and reporting on activities. In provinces with specific measures on ABS, benefit sharing requirements tend to be more elaborate, including calling for agreements with provincial authorities on benefit sharing, particularly monetary benefits arising from the commercial use of resources (e.g. in Neuquén, San Luis and Tierra del Fuego), and establishing specific percentages for monetary benefit sharing (e.g. in Catamarca and Misiones).

5. Sanctions and compliance

Resolution 410/2019, this resolution creates a national roundtable for the monitoring of genetic resources presided by the Secretary of Environmental Policy on Natural Resources and composed of representatives of several additional agencies and ministries. This roundtable is responsible for coordinating and supporting compliance and transparency with respect to the utilization of genetic resources.

Additionally, in accordance with the Nagoya Protocol, Resolution 410/2019 establishes requirements to ensure that the utilization of genetic resources in Argentina complies with ABS laws and regulations of the country where the genetic resources were accessed. Requirements are established for the import of foreign genetic resources into Argentina, including information on the country of origin and any relevant permits or certificates of compliance. A standard form for importing genetic resources for their utilization is contained as an annex of Resolution 410/2019.

No specific sanctions are foreseen in national standards on ABS, though sanctions established for non-compliance with laws, regulations, permits or other authorizations at the provincial level may apply (see Annex I).

Box 4. Regularization

Resolution 410/2019 includes two provisions related to regularization of activities that may have been conducted or are still undertaken without necessary permits.

- As of its entry into force on 25 October 2019, Resolution 410/2019 foresees the opportunity for individuals or legal entities having utilized or in the process of utilizing genetic resources for commercial or non-commercial purposes without an access authorization to regularize their activities and request access to genetic resources in line with its minimum standards and procedures.
- Resolution 410/2019 also authorizes the Secretariat of Environment and Sustainable Development to grant an access authorization for genetic resources collected and deposited in national ex situ collections prior to the entry into force of the CBD, in cases in which the precise origin of such resources within the country is unknown.

6. Competent national authorities

In Argentina, the national focal point on ABS for the Nagoya Protocol is also the national focal point for the ITPGRFA and is located within the Ministry of Foreign Affairs, as the entity responsible for formulating foreign policy and strategies on a range of issues, including the preservation and protection of natural resources.

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The competent national authority on ABS is the Secretariat of Environmental Policy on Natural resources, part of the Secretariat of Environment and Sustainable Development.

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