



ASSAM STATE BIODIVERSITY BOARD

ARANYA BHAWAN, 2nd FLOOR

PANJABARI, GUWAHATI-781037


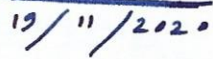
www.asbb.gov.in

No. ABB/ABS/2017/131/230

Dated Guwahati, the 19th November, 2020

Notification

In terms of Rule 22(1) of the Assam Biodiversity Rules 2010 as amended in 2019, and as per the decision taken in the 26th Board Meeting held on 18.08.2020, and as per the approval of the competent authority dated 27.10.2020, the Assam State Biodiversity Board hereby notifies the Standard Operating Procedure (SOP) for Access and Benefit Sharing under the Biological Diversity Act 2002 in Assam, in line with the provisions of the ABS Regulation 2014 notified by the National Biodiversity Authority vide Gazette Notification dated 21.11.2014.

Member Secretary
Assam State Biodiversity Board

Member Secretary
Assam State Biodiversity Board

**Standard Operating Procedure (SoP) for commercial users of 'Biological Resources' for
Access & Benefit Sharing (ABS) Mechanism in Assam**

1. As per Section 7 of the Biological Diversity Act, 2002, no person, who is a citizen of India or a body corporate, association or organisation which is registered in India, shall obtain any biological resource for commercial utilisation, or bio-survey and bio-utilisation for commercial utilisation except after giving **prior intimation** to the State Biodiversity Board concerned: Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and vaidas and hakims, who have been practising indigenous medicine.
 - i. **"Biological Resources"** means plants, animals and microorganisms or parts thereof, their genetic material and by products (excluding value added products) with actual or potential use or value, but does not include human genetic material. (Section 2.c of the Act)
 - ii. **"Value added products"** means products which may contain portion or extracts of plants and animals in unrecognizable and physically inseparable form. Any product for qualifying as value added product must satisfy two conditions- (i) It is unrecognizable and (ii) physically inseparable. (Section 2.p of the Act)
 - iii. **"Bio-survey and Bio-utilization"** means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay. (Section 2.d of the Act)
 - iv. **"Commercial Utilization"** means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping. (Section 2.f of the Act)
2. As per Sections 7 & 24 of the Biological Diversity Act, 2002, read with Rule 18.1 of the Assam Biodiversity Rules, 2010, such prior intimation is required to be given in the prescribed format by filling up the prescribed form (Format-I & Form-A) along with a fee of Rs 1,000/- in the form of Demand Draft drawn on any nationalized bank payable at Guwahati in favour of 'Assam State Biodiversity Board'.
3. On receipt of an intimation, the Assam State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquiries as it may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity. (Section 24 of the Act)

4. No order of restriction/prohibition shall be passed without giving reasonable opportunity of being heard to the affected person. *(Section 24 of the Act)*
5. The '**Access & Benefit Sharing**' (ABS) amount is calculated on the basis of the access and benefit sharing regulations/guidelines 2014 notified by National Biodiversity Authority (NBA) / Govt. of India on 21.11.2014 named as '**Guidelines on Access to Biological Resources and associated knowledge and Benefit Sharing Regulations, 2014**'. *(Notified by NBA in exercise of its powers conferred under Section 21.4 of the Act)*
6. **Mode of Benefit Sharing for access to biological resources for commercial utilization or for bio-survey and bio-utilization for commercial utilization as per Regulation-3 of Guidelines on Access to Biological Resources and associated knowledge and Benefit Sharing Regulations, 2014:**
 - i. Where the applicant/ trader/ manufacturer **has not entered** into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/ Forest dweller/ Tribal cultivator/ Gram Sabha, and purchases any biological resources directly from these persons, **the benefit sharing obligations on the trader shall be in the range of 1.0 to 3.0%** of the purchase price of the biological resources and **the benefit sharing obligations on the manufacturer shall be in the range of 3.0 to 5.0%** of the purchase price of the biological resources:
 - Provided that where the trader sells the biological resource purchased by him to another trader or manufacturer, the benefit sharing obligation on the buyer, if he is a trader, shall range between 1.0 to 3.0% of the purchase price and between 3.0 to 5.0%, if he is a manufacturer:
 - Provided further that where a buyer submits proof of benefit sharing by the immediate seller in the supply chain, the benefit sharing obligation on the buyer shall be applicable only on that portion of the purchase price for which the benefit has not been shared in the supply chain.
 - ii. Where the applicant/ trader/ manufacturer **has entered** into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/ Forest dweller/ Tribal cultivator/ Gram Sabha, and purchases any biological resources directly from these persons, **the benefit sharing obligations on the applicant shall be not less than 3.0% of the purchase price of the biological resources in case the buyer is a trader and not less than 5.0% in case the buyer is a manufacturer.**
 - iii. In cases of biological resources having **high economic value such as sandalwood, red sanders, etc.** and their derivatives, the benefit sharing may include an **upfront payment of not less than 5.0%**, on the proceeds of the auction or sale amount, as decided by the NBA or SBB, as the case may be, and the successful bidder or the purchaser shall pay the amount to the designated fund, before accessing the biological resource.

7. **Option of benefit sharing on sale price of the biological resources accessed for commercial utilization as per Regulation-4 of Guidelines on Access to Biological Resources and associated knowledge and Benefit Sharing Regulations, 2014—**

When the biological resources are accessed for commercial utilization or the bio-survey and bio-utilization leads to commercial utilization, the applicant shall have the option to pay the benefit sharing ranging from 0.1 to 0.5 % at the following graded percentages of the annual gross ex-factory sale of the product which shall be worked out based on the annual gross ex-factory sale minus government taxes as given below:-

Annual Gross ex-factory sale of product	Benefit sharing component
Upto Rs 1,00,00,000 (1 Crore)	0.1%
Rs 1,00,00,001 upto Rs 3,00,00,000	0.2%
Above Rs 3,00,00,000 (3 Crore)	0.5%

8. **Collection of Fees, as per Regulation-5 of Guidelines on Access to Biological Resources and associated knowledge and Benefit Sharing Regulations, 2014:** Collection of fees, if levied by Biodiversity Management Committee (BMC) for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction under sub-section (3) of section 41 of the Act, shall be in addition to the benefit sharing payable to the NBA/SBB under these regulations.
9. **Calculation of ABS:** Calculation of access and benefit sharing (ABS) payable shall be done separately for each year as per **Regulation-3** or **Regulation-4** of 'Guidelines on Access to Biological Resources and Associated knowledge and Benefit Sharing Regulations', 2014. However, the percentage of the benefit sharing obligation on the buyer shall vary from time to time, which shall be decided by the Board.
10. The order pertaining to the calculated ABS amount by the commercial users, calculated on the basis of Regulation-3 or Regulation-4 of the Guidelines, 2014, shall be communicated to the users (traders/manufacturers) for objections, if any. After resolving the objections, if any, request for payment of ABS shall be made as per **mutually agreed terms (MAT)**.
11. An **Agreement of ABS** shall be signed between the authorized representative of the commercial user and the Assam State Biodiversity Board after payment of calculated ABS amount. This agreement duly signed is deemed as approval for access to the biological resources and a valid document of ABS compliance.
12. **Duration of Agreement:** The agreement for access to bioresources and benefit sharing for commercial utilization shall be for a period of 1 year (Financial year-wise basis) or on need basis.
13. **Renewal of Agreement:** If the applicant wants to access the biological resources for more than one year, they have to apply again one month prior to the expiry of the existing agreement.



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14. **Time for disposal of ABS application:** As per Rule-18 (2) of Assam Biodiversity Rules 2010, the time for disposal of Format-I complete in all respects shall be 3 months.
15. **Procurement of bioresources from outside the State:** If a trader/manufacturer procures bioresources from outside the state, the proof of Benefit Sharing done by the trader/manufacturer in the respective State Biodiversity Board shall be produced. If not, the ABS for the said bioresources will be deposited by the trader/manufacturer in the Assam State Biodiversity Board.
16. **Procedure to utilize ABS amount as per Regulation-15 (2) of 'Guidelines on Access to Biological Resources and Associated knowledge and Benefit Sharing Regulations', 2014:**The sharing of accrued benefits shall be as under— the SBB may retain a share, not exceeding 5% of the benefits accrued towards their administrative charges and the 95% remaining share shall be passed on to the BMC concerned or to benefit claimers, where identified:
- Provided that where any individual or group of individuals or organizations cannot be identified, such funds shall be used to support conservation and sustainable use of biological resources and to promote livelihoods of the local people from where the biological resources are accessed.
17. **Certain activities or persons exempted from purview of the ABS Regulation 2014:**
- i. Local people and communities of the area, including growers and cultivators of biological resources, and *vaid*s and *hakims*, practising indigenous medicine, except for obtaining intellectual property rights;
 - ii. Accessing biological resources for conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping, in India;
 - iii. Accessing value added products, which are products containing portions or extracts of plants and animals in unrecognizable and physically inseparable form; and
 - iv. Biological resources, **normally traded as commodities** notified by the Central Government under **Section-40** of the Act (see www.asbb.gov.in for the list of 421 species notified as NTC by Govt. of India).
 - v. Human genetic material is excluded from the definition of biological resources.
20. **Penalties for Non- Compliance of the provisions of the Biological Diversity Act, 2002:**
- i. Concerned parties (Firms/companies/industries/traders/manufacturers etc) are hereby informed to seek approval of the Board for access to collection of biological resources for commercial utilization as described in para-2 above, within three months' time.
 - ii. If any concerned party does not comply as informed, within given time frame, to Assam State Biodiversity Board, collection of any bio-resources for commercial

utilization is violation of Section 7 and 24 of Biological Diversity Act, 2002 and will attract Section-55 (2) of Biological Diversity Act, 2002 under which **violation of said Act and provisions shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees, or with both.**

- iii. **Under Section 56 of the Act, it is stated that** if any person contravenes any direction given or order made by the Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to **one lakh rupees and in case of a second or subsequent offences, with fine which may extend to 2 lakh rupees and in the case of continuous contravention with additional fine which may extend to 2 lakh rupees every day during which the default continues.**
- iv. **Under Section 57 (1) –** Where an offence or contravention under this Act has been committed by a company, every person who at the time the offence or contravention was committed was in charge of, and was responsible to, the company, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

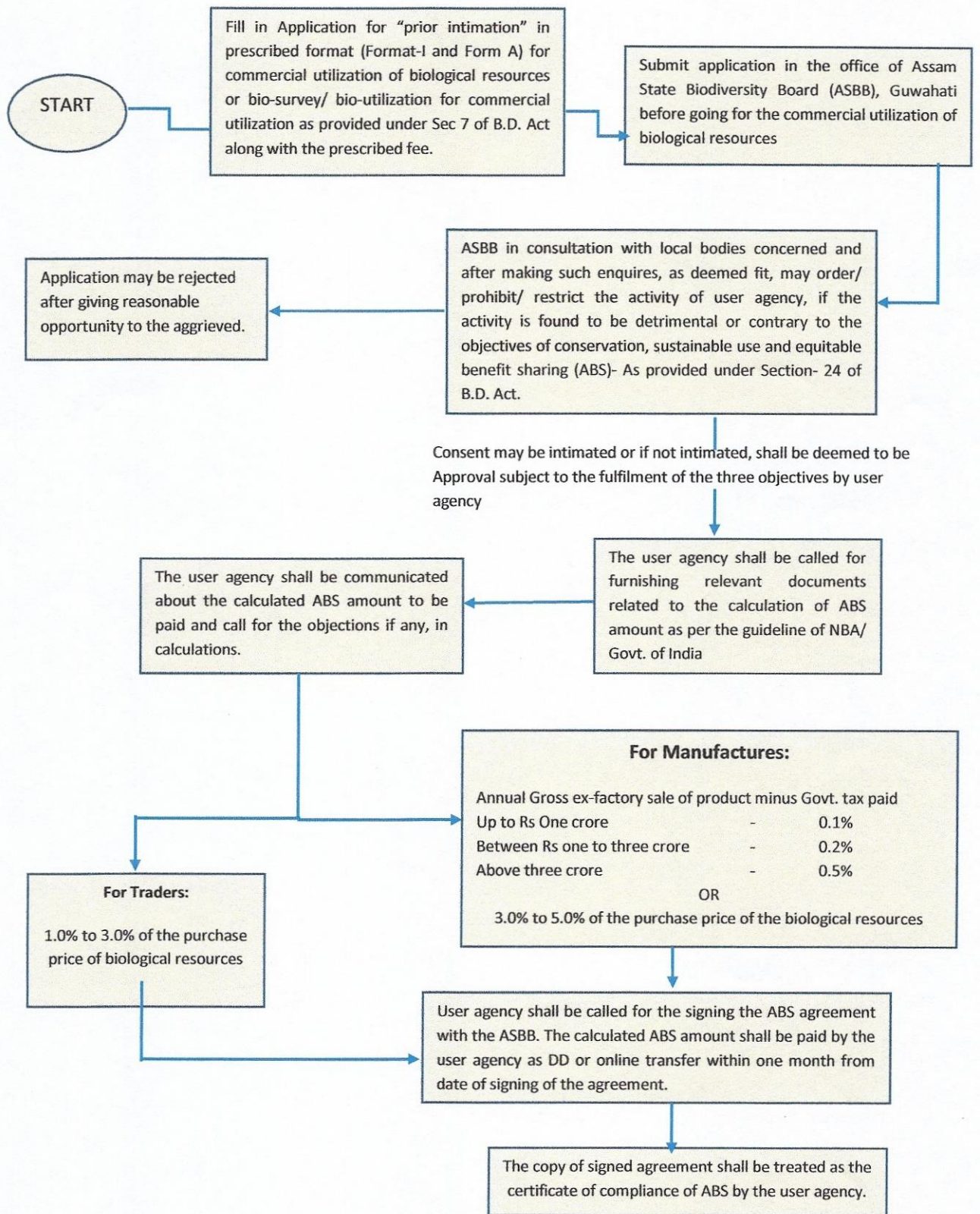
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.
- v. **Under Section 58 –** The offences under this Act shall be cognizable and non-bailable.
- vi. **Under Section 59 –** The provision of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife.

Therefore, it is hereby informed to the concerned persons to strictly comply with the provisions of Biological Diversity Act, 2002 and Rules 2004 along with Assam Biodiversity Rules, 2010 with immediate effect, failing which, will attract above stated provisions of the Biological Diversity Act, 2002 and non-compliant parties shall be taken into Court of Law for violation of the Biological Diversity Act, 2002.



19/11/2020

**Workflow chart (SoP) for commercial users of "Biological Resources"
for Access & Benefit Sharing (ABS) Mechanism-Indian Entity
(Time period 3 months)**



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