

IMPLEMENTATION OF THE NAGOYA PROTOCOL: SOME EARLY EXPERIENCES FROM THE MEDICINAL PLANTS SECTOR IN INDIA

DRAFTING A MODEL CONTRACT - LEGAL GAPS

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Draft Model PIC Agreement

Captures

- The parties – the Provider & the Recipient
- The access to BR, TK or both
- Type of BR, Quantity, Duration of access
- Purpose of access
- Access fee in case / kind
- Proposed BS on commercialization
 - In cash or kind or both (based on the Schedule A)

Legend : BS - Benefit Sharing,
BR – Bioresource
TK – Traditional Knowledge

ENDURING QUESTIONS

- What is the mechanism to rectify the oversight of PIC by the accessor who fails to obtain PIC before commencing the project
- If an Indian company conducts research (validation study etc) that is sponsored by a foreign company (S.3 Company), where the results are transferred to the S.3 Company only at the end of the study for further research or for commercialization, what kind of approvals are required :
 - By the Indian company for accessing
 - BS with TK,
 - BS without TK
 - Only TK using commonly available BS
 - By the S.3 Company (as above on transfer)
 - when should approvals if any be taken
- Who has to obtain approvals when BS is being accessed by a S.3 Company from a regular market supplier? (the supplier or the S.3 Company)

ENDURING QUESTIONS

- Value added product (VAP) - Would an extract of a BR or a combination from 2 or more BR be VAP for which the NBA approvals are not required?
- Do we still need a PIC if VAP is being accessed
 - From a community or
 - From the open market through a supplier?
- What is the form to be submitted when the result of research is being transferred for further research (Form II?)
- The S.21 of the BD Act says that the BS may be in cash or kind; how is 5% of BS to be deposited in NBA computed under Rule 20 if the BS is in kind
- The commodity list may be subject to change, if so what is the period allocated for compliance for delisted commodities before enforcement takes effect.

THANK YOU

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