

ABS IN ARGENTINA

Overview of legal requirements, procedures and relevant authorities



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*

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Introduction

Argentina covers most of the southern portion of the South American continent, encompassing plains, deserts, and forests, as well as mountains, rivers, and thousands of miles of sea. As a result, it has a great variety of landscapes and climates and a broad diversity of ecosystems. It has many different species and genetic diversity.

Also possibly linked to its vast geography, Argentina has a federal system of government, the powers of government – including in relation to access and benefit sharing (ABS) – are divided between the Nation and the provinces. This note focuses on the minimum standards on ABS recently adopted at the national level, while also providing some insights into provincial requirements on ABS.

ABS laws and regulations

National level

The national government in Argentina is responsible for establishing minimum standards on environmental protection, including on ABS, these standards must be followed by competent authorities in the provinces.

Additionally, 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.

Finally, 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 in Argentina include:

- [Resolution 410/2019](#), 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.
- [Rules for scientific research in national parks](#), adopted through Resolution 81/2016



Provincial level

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.

Several of Argentina's 23 provinces have adopted measures on access to genetic resources (see box for provincial laws and regulations with specific ABS provisions). Others may regulate such activities under broader provisions on wildlife or environmental protection.

With the adoption of minimum standards on ABS at the national level, provincial measures will be updated and aligned. Discussions for the revision of several provincial laws and regulations is already underway.

| Province | Laws with specific ABS provisions | Scope | Access requirements | Benefit sharing requirements |
|------------------|--|--|--|---|
| Entre Ríos | Res 1721/2014 on access to genetic resources | Collection of biological material for scientific research | Permit | Payment of royalties over benefits derived from access to genetic resources and derivatives. The amount of royalties is set at 50% of taxable revenue. |
| Formosa | Res 40/2015 on access to genetic resources | Access (direct or through an intermediary) to in-situ or ex-situ native biological resources, derivatives or associated traditional knowledge, with exception of plant varieties and processed biological material | Permit | Benefit sharing on basis of mutually agreed terms |
| Jujuy | Resolution 15/2013 on access to biodiversity | Access (direct or indirect) to in-situ or ex-situ native genetic or biochemical resources | Permit | Access fee. Sharing of results. If monetary benefits, benefit sharing arrangements are required. |
| Neuquén | Law 2.503/2005 on access to genetic resources | Genetic and biochemical resources located within provincial jurisdiction | For research with commercial purposes, a contract is required. | Access fee is foreseen, as well as payment of royalties over benefits derived from access to genetic resources. The amount of royalties is set at 20% of taxable revenue. |
| Río Negro | Law 2600/93 on genetic heritage Decree 1135/1998 regulates Law 2600 | Genetic resources located within provincial jurisdiction | For research with commercial purposes, a contract is required. | None |
| San Luis | Law 851/2013 on access to genetic resources Decree 8804/2015 regulating Law 851 | Collection of wild fauna and flora and associated traditional knowledge for research purposes | Permit | Access fee is foreseen, as well as payment of royalties over benefits derived from access to genetic resources. The amount of royalties is fixed annually. |
| Santa Fe | Protocol for access to biodiversity (2019) | Collection of wild flora or fauna, and associated traditional knowledge, for research purposes | Permit | If potential commercial application, proposal for benefit sharing with government (or local communities if link to traditional knowledge) must be presented |
| Tierra del Fuego | Res 570/2012 on research on genetic resources | Collection of wild flora or fauna for research purposes | Permit | If foreign application, collaboration with local partners is required, including fair and equitable benefit sharing |



What is the scope of ABS requirements?

In Argentina, the ABS national standards adopted in 2019 cover access to genetic resources for their utilization. Resolution 410/2019 includes the following information on use of terms:

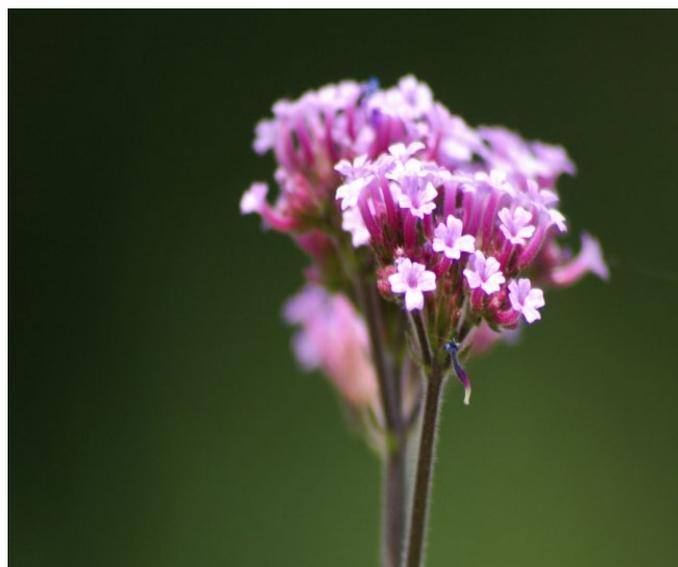
- Genetic resources are understood to cover genetic material. The term “genetic material,” in turn, includes not only plant, animal, microbial and other type of biological material, but also derivatives – that is, naturally occurring biochemical compounds.
- Access to domesticated and cultivated species are expressly excluded from the regulation. “Domesticated or cultivated species” are defined as species in which the evolutionary process has been influenced by humans.
- 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.

What are access requirements?

National level

Different requirements apply to access to genetic resources for utilization for commercial or non-commercial purposes. Utilization of genetic resources for commercial purposes requires an ABS contract, as described in the box below. 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.



Access requirements for utilization for 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. |
| 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. |
| Application forms | Annex II of Resolution 410/2019 |

Additionally, national ABS measures in Argentina set 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.

In national parks, current rules establish a different set of access requirements (see box below). Nevertheless, these requirements are expected to be updated and aligned with the 2019 national minimum standards.

Access to genetic resources in national parks

| | |
|------------------------------|---|
| Application | Standard application form to request access to natural resources in national parks for scientific research, to be presented to regional authorities for national parks administration |
| Supporting documentation | Documentation required includes a copy of research project, a letter of institutional support, and 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 Deposit of samples of biological material collected in national institutions may be required Export and/or possible commercial use of biological material and/or its derivatives requires signature of a standard material transfer agreement |
| 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. |

Provincial level

At present, access requirements vary greatly from one province to the other. ABS measures may include the requirement for foreign 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). 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).



What are 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. At the provincial level, multiple laws or regulations establish benefit-sharing requirements. Requirements also vary significantly between provinces. Benefit sharing requirements include monetary benefits arising from the commercial use of resources (e.g. in Neuquén, San Luis and Tierra del Fuego), and specific percentages for monetary benefit sharing (e.g. in Catamarca and Misiones).

Regularization

National measures on ABS adopted in 2019 include 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, individuals or legal entities having utilized or in the process of utilizing genetic resources for commercial or non-commercial purposes without an access authorization may regularize their activities and request access to genetic resources in line with its minimum standards and procedures.
- These measures also authorize 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.



Competent national authorities

The national focal point on ABS for the Nagoya Protocol 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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