

Biological Diversity Act, 2002

Chapter 5 - Approval by the National Biodiversity Authority

(1) Any person referred to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

(2) Any person who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in sub-section (1) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under sub-section (1) or sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Section 20 - Transfer of biological resource or knowledge

(1) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.

(2) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Section 21 - Determination of equitable benefit sharing by National Biodiversity Authority

(1) The National Biodiversity Authority shall while granting approvals under section 19 or section 20 ensure that the terms and conditions subject to which approval is granted secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers.

(2) The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:--

(a) grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;

(b) transfer of technology;

(c) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(d) association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilisation;

(e) setting up of venture capital fund for aiding the cause of benefit claimers;

(f) payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

(3) Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund:

Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organisations in accordance with the terms of any agreement and in such manner as it deems fit.

(4) For the purposes of this section, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.