



# Access and benefit sharing (ABS)

Key concepts and principles



# What is ABS?

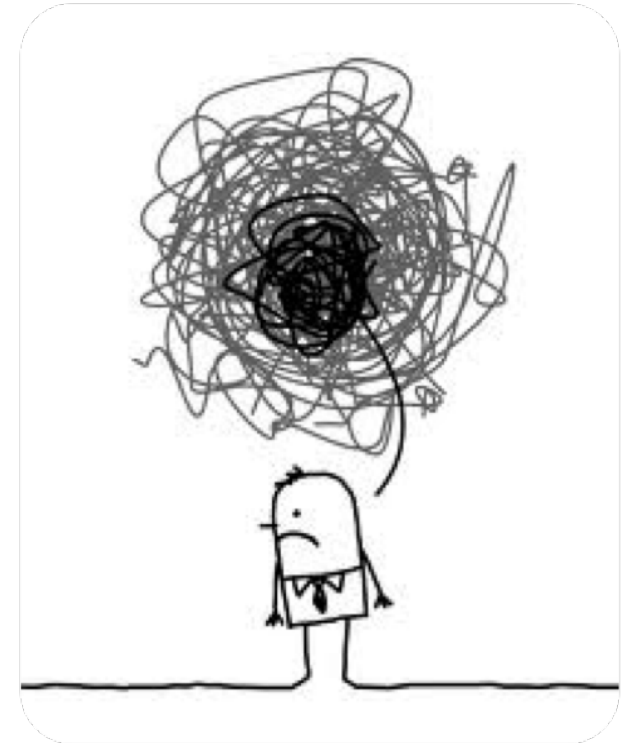
## **ABS** *acronym*

It stands for “access to genetic resources and the fair and equitable sharing of benefits derived from their utilization.”

Or “access and benefit sharing” for short.

Or “Nagoya.”

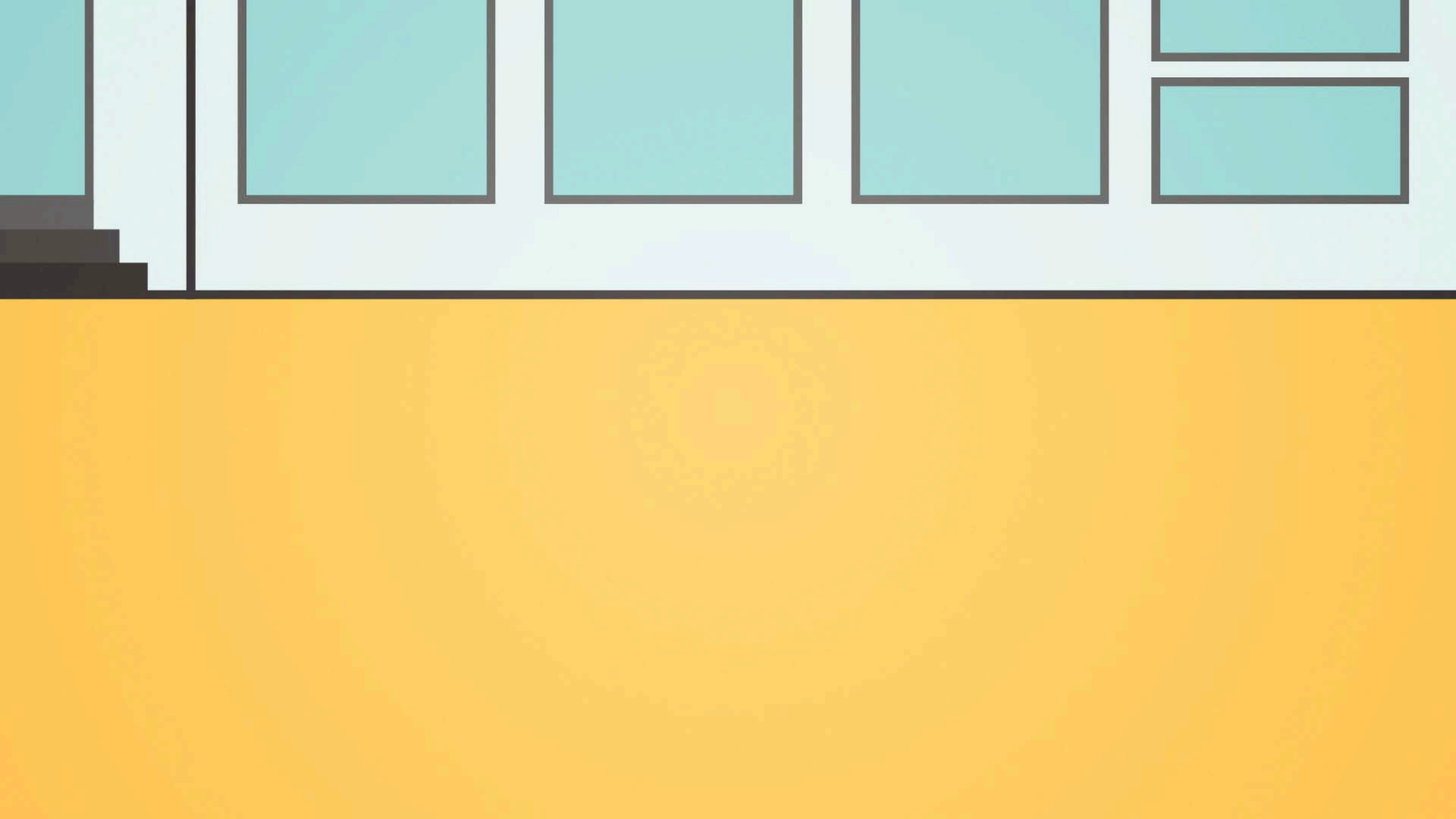
Or a set of principles, rules and best practices for biodiversity-based research, development and commercialization.



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- A short video on ABS and its implications for companies
- ABS principles in international law
- National implementation and approaches on ABS
- Implications for research, product development and sourcing of natural ingredients





# International framework on ABS

**Convention on Biological Diversity (CBD)** *international agreement*

Adopted in 1992, now almost universal membership

Three inherently-related objectives



Benefit sharing



Sustainable use



Conservation





# International framework on ABS (2)

## **Convention on Biological Diversity (CBD)**

Who owns biodiversity?

Who benefits from capturing the value of biodiversity through technology and intellectual property rights?

Sovereign rights over biodiversity, including genetic resources, to address concerns about who owns biodiversity and who benefits from tapping its potential through new technologies

Regulation of access to genetic resources based on prior informed consent and mutually agreed terms, including on fair and equitable benefit sharing



# Who owns biodiversity?

Sovereign rights ≠ Ownership rights

	Provider country	Provider	User
Tangible property	Right to regulate utilization of genetic resources, including defining who may grant PIC for utilization	Biological material (e.g. plants, plant parts, extracts)  Genetic resources, as established by national legislation	Depending on MAT, new compounds and ingredients resulting from utilization of genetic resources
Intangible property	Right to take measures to ensure PIC of indigenous peoples and local communities for utilization of TK	Knowledge and know-how on properties, uses and methodologies linked to biological material	Depending on MAT, intellectual property rights on novel compositions, processes and uses



# ABS pillars: Access

## Prior informed consent (PIC)

- Express authorization required by authorities of provider country.
- In practice, PIC may be an administrative procedure or a consultative process with certain right-holders.



## Mutually agreed terms (MAT)

- Agreement on conditions for utilization of the genetic resources (who, how, for what), as well as sharing of resulting benefits.
- Generally, negotiated between private actors, but participation or approval of authorities may be required.





# ABS Pillars: Benefit sharing

- Fair and equitable defined case-by-case
- Mutually agreed by user and provider
- Monetary and non-monetary
- Conservation and sustainable use of biodiversity



# International framework on ABS (3)

## **Nagoya Protocol** *international agreement under CBD*

Adopted in 2010, entered into force in 2014 and now with over 110 country parties  
Its scope is defined by CBD, but it clarifies and builds on concepts and requirements

### Key innovations

- Definition of utilization of genetic resources
- Clear, non-arbitrary access requirements
- Strengthening provisions on traditional knowledge
- Creation of ABS Clearing House Mechanism
- Compliance requirements



# Trigger for ABS at international level

## **Genetic resources** *term of art*


Material of plant, animal, microbial or other origin containing functional units of heredity

Difference with biological resources is based on the purpose with which they are used


## **Utilization of genetic resources** *term of art*

Introduced by Nagoya Protocol on ABS

Research and development on genetic and/or biochemical composition of genetic resources



Human genetic resources are NOT included.



What about pathogens and the human microbiome?

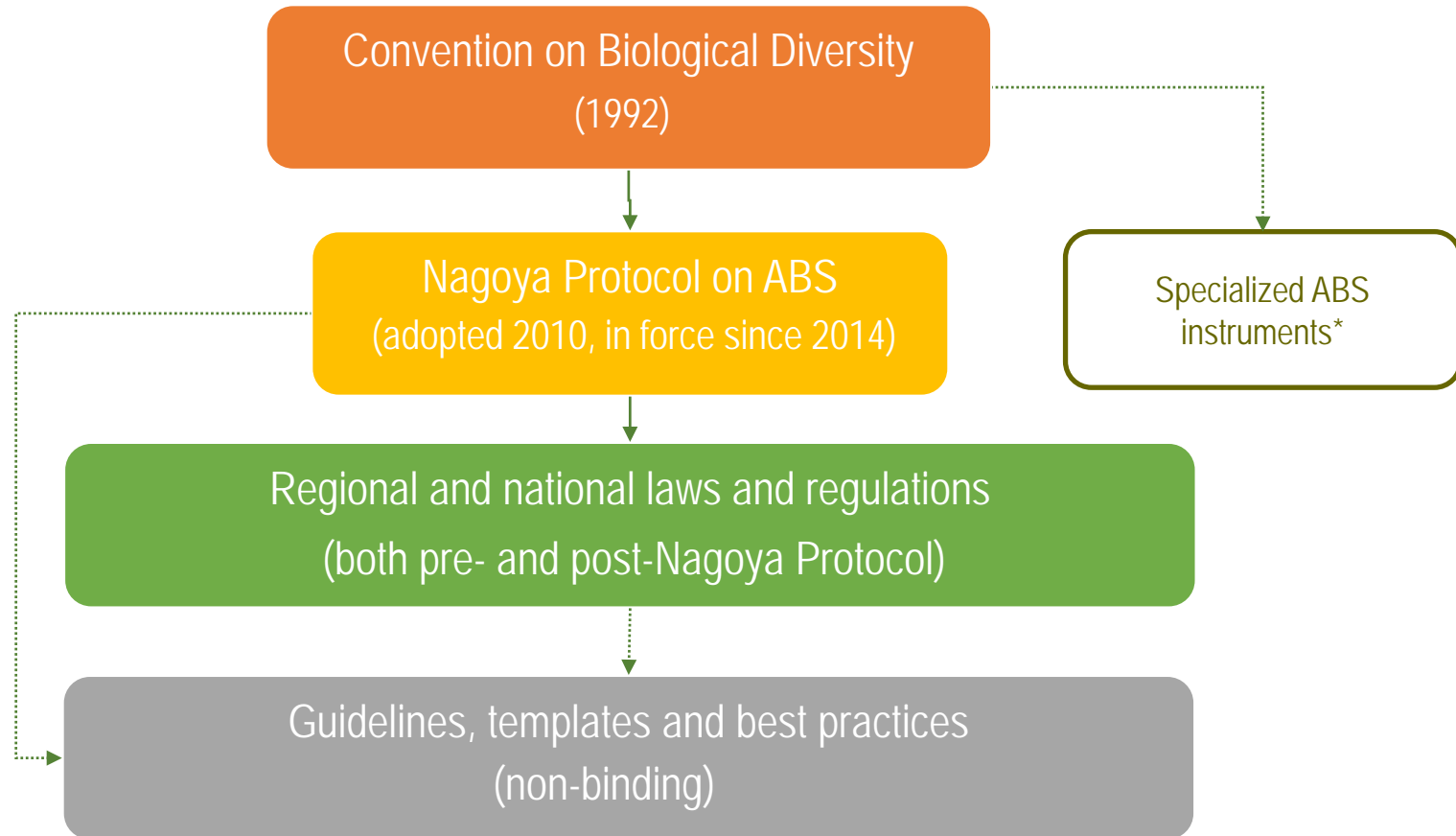


# ABS pillars: Compliance

- Countries must monitor R&D within jurisdiction
- Compliance with ABS requirements in provider country
- At least one checkpoint along value chain
- Communication to ABS Clearing House
- Collaboration in case of non-compliance



# Levels of ABS rules and practices



\* Specialized ABS instruments include the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Pandemic Influenza Preparedness (PIP) Framework





# National implementation

- CBD and Nagoya Protocol, in general, are not directly applicable
- National implementation is adoption of legal, regulatory or policy measures
- Putting ABS principles in context of legal frameworks and public policy strategies



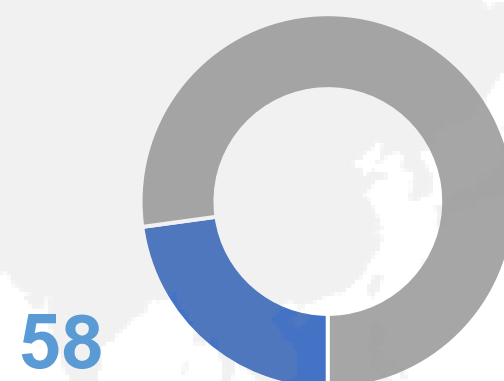
# National rules on ABS



Countries committed to Nagoya Protocol



Countries with ABS in legal framework



Countries with access requirements

# Flexibility in national implementation

## ABS elements

## Examples of approaches

Access requirements?

- Germany, NL no access requirements
- France, Brazil, South Africa, India regulate access

Which resources?

- Only indigenous or native
- Also exotic with unique properties
- "Occurring in the country"
- Wild or cultivated

Which activities?

- Certain or all types of R&D
- Formulation or product development
- Trade or commercialization

Which stakeholders?

- One-stop shop
- Various authorities
- PIC and MAT with local actors

Which benefit sharing?

- Pre-established parameters
- Case-by-case
- Non-negotiable percentages





# ABS in France

Which resources?

- Wild and native
- Not Annex I FAO Treaty
- Possible system for cultivated, not yet pursued
- Traditional knowledge– only if not widely disseminated
- Exception for microorganisms

Which activities?

- Access for utilization of genetic resources
- New utilization
- "Valorization" = Subsequent applications?
- Study and valorization of TK

Which stakeholders?

- Ministry of Environment
- Management authorities
- Local authorities
- Local communities

Which procedures?

- Application
- Consultation
- Agreement
- Authorization



A photograph of a lush tropical forest with a man standing in the foreground. The man is wearing a brown t-shirt and dark pants, looking towards the camera. The forest is dense with various types of trees and plants, including palm trees and large green leaves. The lighting is bright, suggesting a sunny day.

# ABS in Brazil

Which resources?

- Native or introduced if distinctive properties
- Not Annex I FAO Treaty
- Genetic heritage, including genetic sequencing information (i.e. DSI)
- Associated traditional knowledge – even if widely disseminated

Which activities?

- Research or technological development
- Information for traceability
- Access to TK – even through secondary sources

Which stakeholders?

- Electronic Registration System (SisGen)
- Council for Management of Genetic Heritage
- National Benefit Sharing Fund
- Indigenous peoples and local communities

Which procedures?

- Registration
- Notification
- Benefit sharing agreement
- Payments into fund





# ABS in Viet Nam

Which resources?

- Biological resources situated in Viet Nam
- Exotic species there “for long time”
- Not Annex I FAO Treaty

Which activities?

- Utilization of genetic resources
- Different rules for foreign and national entities
- Foreign entities covered for R&D for both commercial and non-commercial

Which stakeholders?

- Competent authority depends on resource type
- Providers of biological resources
- Local committees

Which procedures?

- Registration
- ABS contract
- Certification
- ABS permit

# Implications for raw material research?

- That is, developing new plant-based ingredient or identifying new properties for existing ingredient
- What would happen in...

Brazil	Registration, but not necessarily before starting R&D, with potential benefit sharing
India	Permit and up-front benefit sharing for research phase
Morocco	No legal requirements
South Africa	Difference between discovery and bioprospecting, with latter requiring permit, PIC, MTA and benefit sharing agreement
Viet Nam	Permit, with PIC and benefit sharing agreement with provider
European Union	Due diligence applies



# Implications for formulation?

- Formulation of new hair product using new plant-based ingredient developed independently by supplier in provider country
- What would happen in...

Brazil	Registration for supplier, product notification and benefit sharing for company
India	Permit for supplier, no requirements for company if value added product
Morocco	No legal requirements
South Africa	Bioprospecting permits and supporting agreement for supplier and company
Viet Nam	No legal requirements
European Union	Due diligence does NOT apply



# Implications for sourcing?

- Formulation of new hair product using new plant-based ingredient developed independently by supplier in provider country
- What would happen in...

Brazil	Registration for supplier, product notification and benefit sharing for company
India	Permit for supplier, no requirements for company if value added product
Morocco	No legal requirements
South Africa	Bioprospecting permits and supporting agreement for supplier and company
Viet Nam	No legal requirements
European Union	Due diligence does NOT apply





# Two levels of applicable rules on ABS

Country of origin

Location of R&D



Permits and certificates



Information on compliance



# In practice



**Raw material, ingredients and products from biodiversity**

What is subject to ABS requirements?

What is subject to compliance requirements?

What is subject to ABS terms and conditions?

What is subject to ABS principles?



Thank you.





Prepared by the Union for Ethical BioTrade (UEBT) for the German Federal Agency for Nature Conservation (Bundesamt für Naturschutz, BfN)

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