
The Status of Taiwan's Regulations Concerning with Access to Biological Resources

Preface

In actual practice, the research and development of biotech medicine, food, and environmental products cannot be done by in-lab researches. This is a unique character of the biotechnology industry. To get the research going, the researchers need to search for and exploit new biological materials and, samples outside the lab. Therefore, the access to and management of biological resources have significant impact on the stimulation and development of national biotech industry.

Ever since the enforcement of Convention on Biological Diversity (CBD) in 1992 by 172 countries, a general principal about conserving biological diversity and using biological resources has been set. According to CBD, States have sovereign rights over their own biological resources. CBD also encourages each State to access to and manage the biological resources conformed with the principals of conservation, sustainability, NOEL environment friendly, and adequate sharing of benefit arising from biological resources. Therefore, issues such as environmental protection and sustainability have become political issues internationally.

If the ABS system for the access to biological resources is designed too strictly, the establishment of the system will make the research and development staffs and related institutions hang back with hesitation both domestically and internationally. Their intention of bioprospecting in the designated country will then be reduced. On the other hand, if the system is designed too loosely, it will not be able to protect the rights of the owner of the resources. As a result, currently, every country holds a cautious attitude in setting up the regulations of managing the access to biological resources.

Currently, many countries and regional international organizations already set up ABS system, such as Andean Community, African Union, Association of Southeast Asia Nations (ASEAN), Australia, South Africa, and India, all are enthusiastic with the establishment of the regulations regarding the access management of biological resources and genetic resources. On the other hand, there are still many countries only use traditional and existing conservation-related regulations to manage the access of biological resources. Since it has been more than 10 years that the regulation of access to biological resources and benefit sharing has been developed in some countries, how is Taiwan's current situation regarding this issue?

Taiwan's Existing Regulations on the Access to Biological Resources

In terms of regulations, Taiwan's existing management style of the access to biological resources is similar to that of the US and the EU. It refers to the existing regulations on environmental protection and conservation, and evaluates from the perspective of environmental protection to control and manage the exploitation and application of the related biological resources. These regulations include the Wildlife Conservation Act, the National Park Law, the Forestry Act, the Cultural Heritage Preservation Act, and the Aboriginal Basic Act. The paragraphs below describe the contents of the acts mentioned that are related to the access to biological resources.

1 、 Wildlife Conservation Act

According to the Wildlife Conservation Act, the Protected Species and the products made of cannot be hunted, traded, owned, imported, exported, raised, bred, and processed unless the number of protected wildlife has exceeded the amount the environment permits, or carry the objectives of academic research and education with the permits of central or regional authorities. As for the hunting of General Wildlife, pre-application and approval is needed with the exception of projects based on the objectives of academic research or education.

In addition, the import and export of the living wildlife and the products of Protected Wildlife are restricted to the condition of being permitted by management authority. With respect to the import and export of living Protected Wildlife, Academic research institutions and colleagues are the only person who can seek for the approval of management authority before they proceed.

2 、 National Park Law

The design and management of Taiwan's national parks are based on the regulations listed in the National Park Law with the purpose of protecting our country's exclusive natural scenery, wildlife and historical spots. Based on the properties and the nature of resources, the national park management structures the preserved area into general control area, playground and resting area, spot of historical interest, special landmark area, and ecological protection area. Ecological protection area refers to the areas where the natural surroundings, creatures, the society they live and propagate are strictly protected only for the research of ecology.

According to the regulation of National Park Law, inside the national park area, it is prohibited to hunt animals, fish, take off flowers or trees, not to mention the behaviours that are prohibited by the management authority. Exceptions are made based on the conditions of preserved areas and for the research purposes. In the general control area or resting area, the national park authority allows fishing or other activities agreed by the authority. However, these activities are prohibited in the preserved area of historical interest, special landmark area, and ecological protection area. To suit special purposes, in the special landmark area or ecological protection area, collection of specimens is allowed subject to the approval of authority. Under the purpose of academic research, better management of public safety, and special management of national park, the Ministry of the Interior will permit the collection of specimen. However, to enter the ecological protection area, one must obtain the permission of authority.

3 、 Forestry Act

To protect the forest resources and to maximize the public welfare and economic effectiveness, some of the properties are classified as forestry land and being managed by authority. Based on the Forestry Act, management authority has to restrict the area of cutting timber and to identify the area or period of restricted digging of greensward, tree roots, and grass roots, based on the condition of the forest. In addition, to maintain the current ecological environment in the forest, and to preserve the diversity of species, identification of natural preserved area is needed inside the forestland. The entrance and exit of human and vehicles are controlled based on the nature of the resources inside the preserve area. Unless obtaining the approval from the management authority, not a single activity of damaging, logging or digging soil, stones, greensward and roots is allowed.

Furthermore, any unauthorized activity of collecting specimen inside the forest recreation area and natural reserve will be fined. Collecting flowers and plants in these areas, or trespassing the natural reserve will also be fined. Only the activities taken by the aborigines to sustain their living or accommodate their customs are not restricted.

4 、 Cultural Heritage Preservation Act

The objectives of setting up the Cultural Heritage Preservation Act are to preserve and apply the cultural resources, to enrich the spiritual lives of citizens, and to add glory to the existing diverse cultures. The Cultural Heritage Preservation Act classifies the natural landscape and scenery as cultural assets. Vistas of Natural Culture refer to the natural areas, landforms, plants and mineral which contain the values of preservation. It can be further grouped into natural preserved area and natural monuments. Since the natural monuments include the unusual plants and mineral, it is connected to the management of biological resources.

According to the Cultural Heritage Preservation Act, unless approved by the management authority, it is prohibited to collect, log, destroy the plants or bio resources classified as natural monuments or trespass into the area of natural preserve. For the purposes of academic research, or for the memorial ceremony of aboriginal custom, research institute and the aborigines can collect the natural monuments without the approval of authority.

5 、 Aboriginal Basic Act

To protect the basic rights of the aborigines, and to sustain and develop the aboriginal society, the Aboriginal Basic Act was designed and enacted. The government not only admits the aborigine's rights in lands and natural resources, but also permits the non-profit behaviour such as hunting of wildlife, collecting of wild plants and fungi for the objective of complying with traditional culture, ceremony or private uses.

In addition, the Aboriginal Basic Act provides the requirement of Prior Informed Consent (PIC) to require government or private individual to inform the aborigines before they proceed with land development, resource exploitation, ecological preservation, and academic research in the land where the aborigines live. They need to consult and obtain the aborigines' agreement or participation, and to share the related interests derived from this project. In the case of restricting the aborigine's right of the use of land or natural resources by law, the government shall consult with the aborigines or the tribe and reach the agreement.

When the government wish to design and establish national park, national scenic area, forestry area, ecological protection area, recreational area, or other resource management authorities, the government should obtain the agreement from the local aborigines and to build up the co-management mechanism.

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