Department of Biodiversity and Biotechnology, Govt. of Madhya Pradesh, Mantralaya, Bhopal

NOTIFICATION

In exercise of the powers conferred by section 63 of the Biological Diversity Act, 2002, the State Government hereby makes the following Rules and regulations, namely:-

1. Preliminary

1. Short title and commencement

(1) These Rules may be called "Madhya Pradesh Biological Diversity Rules, 2003".

(2) These Rules shall come into force on the date of their publication in the official gazette.

2. Definitions

In these Rules, unless the context otherwise requires ----

(a) "Act" means the Biological Diversity Act 2002.

(b) "Authority" means the National Biodiversity Authority established under Section 8 of the Act.

(c) "Board" means the State Biodiversity Board established under Section 22 of the Act.

(d) "Biodiversity Management Committees" means the Committees established by the local bodies under Section 41 of the Act.

(e) "Chairperson" means the Chairperson of the State Biodiversity Board.

(f) "Fee" means any fee stipulated in the schedule of these Rules.

(g) "Form" means form set out in the schedule of these Rules.

(h) "Member" means member of the National Biodiversity Authority or a State Biodiversity Board includes the chairperson thereof.

(i) "Section" means section of the Act.

(j) "Member Secretary" means the Member Secretary of the Board.

(k) "Schedule" means the schedule appended to these Rules.

(l) "Year" means the financial year commencing on the first day of April.

(m) Words and expressions used but not defined in these rules and defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Manner of selection and appointment of the Chairperson

(1) The chairperson of the Board shall be appointed by the Government of Madhya Pradesh.

(2) The Chairperson of the Board shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of bio-diversity and in matters relating to the equitable sharing of the benefits and will be appointed either on deputation or from outside government. In case the appointment is through deputation, the applicant should not be below that of a rank equivalent to Secretary, Government of Madhya Pradesh.

4. Term of Office of the Chairperson

(1) The Chairperson of the Board shall hold the office for a term of three years' and shall be eligible for re-appointment, provided that no Chairperson shall hold office beyond the age of 65 years.

(2) The Chairperson may resign from his office by giving at least one month notice in writing to the State Government.

(3) Notwithstanding any other consideration laid down, his continuance in the office shall be at the pleasure of the State Government.

5. Salary, allowances, conditions of service. Leave, pension, provident funds etc. of Chairperson

(1) The Chairperson shall be entitled to such salary, allowances, leave, pension, provident fund, house and other perquisites as may be determined by the State Government from time to time.

6. Nomination and Term and Allowance of non-official Member

(1) Five non official members from amongst the experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out the use of biological resources shall be nominated by the State Government.

(2) The non-official Member of the Board shall hold the office for a term not exceeding three years at a time from the date of his nomination.

(3) The non-official Member shall be entitled to sitting allowance, traveling expense, daily allowance and to such other allowances as may be fixed by the State Government for attending the meeting (s) of the Board.

7. Filling up of vacancies of non-official member

(1) A non-official member of the Board may resign his position at any time by giving in writing under his hand addressed to the State Government and the seat of that member in the Board shall become vacant.

(2) A casual vacancy in the Board shall be filled up by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term of the member in whose place he was nominated.

8. Removal of the members including chairperson of the Board

(1) No member of the Board including the chairperson shall be removed from the office on the grounds enumerated in Section 11 of the Act, without a due and proper enquiry by an officer appointed by the State Government and without giving an opportunity to the member concerned to explain his conduct.

9. Appoint of the Members Ex officio

Five members ex-officio shall be appointed from the following department s/ organizations of the State Government as long as they hold their respective office:

1) Agricultural Production Commissioner
2) Secretary Department of Biodiversity and Biotechnology
3) Principal Chief Conservator of the Forests
4) Vice Chancellor JNKVV Jabalpur
5) Member Secretary of State Bio-diversity Board

10. Member Secretary of the Board

(1) The Member Secretary shall be responsible for day today administration of the Board, management of funds and implementation of various activities of the programme under the guidance of the chairperson of the Board. For the effective discharge of his functions

the Board shall delegate necessary administrative and technical powers to the member secretary (section 16 of the Act).

(2) The Member Secretary be in-charge of all the confidential papers and records of the Board and shall be responsible for their safe custody.

(3) The Member Secretary shall be appointed by the State Government on deputation. His/Her terms and conditions of appointment shall be determined by the State Government.

11. Meetings of the Board

(1) The Board may meet at least four times a year normally after three months at the Head quarters of the Board or at such place as decided by the chairperson.

(2) The chairperson shall, upon a written request from not less than five members of the Board or upon a direction of the State Government, call a special meeting of the Board.

(3) Fifteen days' notice of an ordinary meeting and three days' notice of a special meeting specifying the purpose, the time and the place at which such meeting is to be held, shall be given to the members.

(4) Every meeting shall be presided over by the chairperson and in his absence, by a presiding officer to be elected by the members present from amongst themselves.

(5) The decision of the Board shall, if necessary, be taken by a simple majority of the members present and voting and the chairperson or in his absence; the member presiding shall have a second or casting vote.

(6) Each member shall have one vote.

(7) Quorum for the meeting of the Board shall be five.

(8) No member shall be entitled to bring forward for the consideration of a meeting any matter of which he has not given ten days' notice unless the chairperson in his discretion permits him to do so.

(9) Notice of the meeting may be given to the members by delivering the same by messenger or sending it by registered post to his last known place of residence or business or in such other manner as the Member Secretary of the Board may, in the circumstances of the case, think fit.

(10) In addition, the Board may evolve such other procedure for the transaction of its business as it may deem fit and proper.

12. Appointment of Expert Committee by the Board and their Entitlements

(1) The Board may constitute any number of committees for such purposes as it may deem fit consisting wholly of members or wholly of other persons or partly of members or partly of other persons.

(2) The members of the committee other than the members of the Board shall be paid such fees and allowances for attending the meetings as the Board may deem fit.

13. General functions of the Board

In particular and without prejudice to the generality of the other provisions, the Board may perform the following functions:

(i) Lay down the procedure and guidelines to govern the activities provided under section 23 of the Act.

(ii) Advise the State Government on any matter concerning conservation of bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge.

(iii) Provide technical assistance and guidance to the Departments of the State Government.

(iv) Regulate by granting of approval or otherwise requests for commercial utilisation or bio-survey and bio-utilisation of any biological resource by Indian nationals.

(v) facilitate updating and implementation of State Bio-diversity Strategy and Action Plan.

(vi) Commission studies and sponsor investigations and research

(vii) Engage consultant, for a specific period, not exceeding three years, for providing technical assistance to the Board in the effective discharge of its functions. Provided further that if it is necessary and expedient to engage any consultant beyond the period of three years, the Board shall seek prior approval of the State Government for such an engagement.

(vii) Collect, compile and publish technical and statistical data, manuals, codes or guides relating to conservation of Biological bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge.

vii) Organise through mass media a comprehensive programme regarding conservation of biological bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge.

ix) Plan and organise training of personnel engaged or likely to be engaged in programmes for the conservation of biological bio-diversity and sustainable use of its components

(x) Prepare the annual Budget of the Board incorporating its own receipts as also the devaluation from the State and Central Government provided that the allocation by the Central Government shall be operated in accordance with the budget provisions approved by the Central Government.

(xi) Recommend creation of posts to State Government, for effective discharge of the functions by the Board and to create such posts, provided that no such post whether permanent/ temporary or of any nature, would be created without prior approval of the State Government.

(xii) Approve the method of recruitment to such posts.

(xiii) Take steps to build up database and to create information and documentation system for biological resources and associated traditional knowledge through bio-diversity registers and electronics data bases, to ensure effective management, promotion and sustainable uses.

(xiv) Give directions to the local bodies/ Bio-diversity Management Committees in writing for effective implementation of the Act.

(xv) Report to the State Government about the functioning of the Board and implementation of the Act and the rules made therein.

(xvi) Recommend, prescribe, modify, collection fee of biological resources from time to time.

(xvii) Sanction grants-in-aid and grants to Bio-diversity Management Committees for specific purposes.

(xviii) Undertake physical inspection of any are in connection with the implementation of the Act.

(xx) Do such other functions as may be assigned or directed by the State Government from time to time.

13. Powers and Duties of the Chairperson

1) The chairperson shall ensure that the affairs of the Board are run efficiently and in accordance with the provisions of the Act and the rules made therein
2) In addition to the duties specified in the Act, the chairperson shall have the powers of general superintendence over the officers and staff of the Board and Chairperson may issue necessary directions for the conduct and management of affairs of the Board.
3) All orders and instructions to be issued by the Board shall be under the signature of the chairperson or the Member Secretary of the Board.
4) The Board shall have full powers for granting administrative and technical sanctions to all estimates; the Board may however delegate such administrative and technical sanction powers to the member secretary of the board.
5) The chairperson shall convene and preside over all the meetings of the Board and shall ensure that all decisions taken by the Board are implemented in proper manner.
6) The chairperson shall exercise such other powers and perform such other functions as may be delegated to him from time to time by the Board.

14. Terms and Conditions of Service of employees of the Board (14-1)

(1) The terms and conditions of the employees of the Board shall be the same as those of corresponding scale of pay under the State Government; the appointments in general shall be on contractual basis unless otherwise decided by the State Govt.

15. Procedure for access to /collection of biological resources (Section 24 of Act)

(1) Any person seeking approval of the Board for access to/collection of biological resources and associated knowledge for research or for commercial utilization shall make an application in Form I as given in schedule. Every application shall be accompanied by a fee of Rs. 100/- in the form of a cheque or demand draft.

(2) The Board after due appraisal of the application and after consultation with the concerned local bodies and after collecting such additional information, as it may deem necessary

shall decide the application, as far as possible within a period of 3 months of receipt of the same.

(3) On being satisfied with the merit of the application, the Board may grant the approval or may prohibit or restrict any such activity if it is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity.

(4) The approval to access/collection shall be in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement shall be decided by the Board.

(5) The conditions for approval may specifically provide measures for conservation and protection of biological resources to which the approval being granted.

(6) The Board may reject the application if it considers that the request cannot be acceded to after recording the reasons therefore. Before passing an order of rejection, the applicant shall be given a reasonable opportunity of being heard. No order shall be made without an opportunity of being heard to the person being affected.

(7) Any information given in the form referred to in the subsection (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

16. Revocation of access/approval

(1) The Board may either on the basis of any complaint or *suo-moto* withdraw the approval granted for access and revoke the written agreement under the following conditions:

(i) On the basis of reasonable belief that the person to whom the approval was granted has violated any of the provisions of this Act or the condition on which approval was granted;
(ii) When the person has failed to comply with the terms of agreement;
(iii) On failure to comply with any of the conditions of access;
(iv) On account of overriding public interest or for protection of environment and conservation of biological diversity;

(2) The revocation order shall be made only after making such inquires as required and giving the person so affected an opportunity of being heard.

(3) The Board shall send a copy of such revocation order to the Biodiversity Management Committees for prohibiting the access and also to assess the damage, if any, caused and take steps to recover the damage.

17. Restriction on activities related to access to biological resources

(1) The Board if it deems necessary and appropriate shall take the steps to restrict or prohibit the request for access to biological resources for the following reasons:

(i) The request for access is for any endangered taxa;
(ii) The request for access is for any endemic and rare species;
(iii) The request for access may likely to result in adverse effect on the livelihoods of the local people;
(iv) The request to access may result in adverse environmental impact which may be difficult to control and mitigate;
(v) The request for access may cause genetic erosion or affecting the ecosystem function

(vi) Use of resources for purposes contrary to national interest and other related international agreements entered into by the country.

Any order of restriction shall be made only after making such inquires as required and giving the person so affected an opportunity of being heard.

17. Operation of State Bio-diversity Fund (Section 31 & 32)

(1) The State Bio-diversity Fund shall be operated by the Member Secretary of the Board or by such other officer of the Board as may be authorized in this regard.

(2) The State Bio-diversity Fund will have two separate heads of accounts, one relating to the receipts (grants and loans) from the Central Government/ National Bio-diversity Authority and State Government, including receipts from such other sources as decided by the State Govt. and other concerning the fee, license fee, royalty, and other receipts of the Board.

18. Annual Report and Annual Statement of Accounts (Sections 33 & 34)

(1) The Board shall prepare its annual report for each financial year giving detailed account of it activities and annual statement of accounts and submit the same to the State Government.

(2) The Board shall lay down the procedure for upkeep of the accounts. The accounts of the Board shall be audited annually by the Charted Accountant appointed for the purpose by the Board. Accountant General of the State may as well audit the accounts and the expenditure towards this shall be payable by the Board.

(3) The Board shall submit the Annual Report together with the audited statement of accounts for each financial year to the State Government by September each year so as to enable the State Government to lay the reports before the Assembly.

19. Establishment and Management of Bio-diversity Heritage Site (Section 37)

(1) In consultation with the local bodies and other key stakeholders, the Board shall take necessary steps to facilitate setting up of areas of significant bio-diversity values as heritage sites. Following recommendation from the Board and after consultation with the Central Govt., the State Govt. shall issue notification to this effect. The State Govt. shall frame schemes for compensating and rehabilitating any person or section of people economically affected by such notification.

20. Constitution of Biodiversity Management Committees (Section 41)

(1) Every local body shall constitute a Biodiversity Management Committee (BMC) within its area of jurisdiction. However, if the local body is satisfied that the function of the BMC can be discharged by one of the existing committee of the local body, the same should be recorded as resolution passed by such local body, following due procedure.

(2) The Biodiversity Management Committee under sub-rule (1) shall consist of a chairperson and not more than six persons nominated by the local body, of which not less than one third should be women. The proportion of members belonging to Scheduled Caste and the Scheduled Tribe should not be less the SC/ST percentage of the district where such a committee is set up.

(3) The chairperson of the Biodiversity Management Committee shall be elected from amongst the members of the committee in a meeting to be chaired by the chairperson of the local body. The chairperson of the local body shall have the casting votes in case of a tie.

(4) The chairperson of the Biodiversity Management Committee shall have tenure of five years.

(5) The local MLA/MLC and MP would be special invitees to the meetings of the Committee.

(6) The BMC set up by the local body shall function through the Gram Sabha or any of its committees. The BMC may co-opt such specialists as it requires to help it in affectively discharging the role.

(7) The key mandate of the BMC will be to ensure conservation, sustainable utilization and equitable sharing of benefits from the biodiversity. The BMC shall facilitate preparation of People's Biodiversity Register through Gram Sabha/ its committee. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.

(7) The other functions of the BMC are to advice on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local Vaids and practitioners using the biological resources.

(8) The BMC shall strive to mainstream biodiversity conservation concerns in the developmental planning at the local level.

(8) The Board shall take steps to prescribe the process/ format of the People's Biodiversity Registers, and the particulars it shall contain and the format for electronic databases.

(9) The Board shall provide guidance and technical support to the Biodiversity Management Committees and the Gram Sabhas for preparing People's Biodiversity Registers.

(10) The People's Biodiversity Registers shall be maintained and validated by the Biodiversity Management Committees and the Gram Sabhas.

(11) The Committee shall also maintain a Register giving information about the details of the access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of the benefits derived and the mode of their sharing.

(12) The Biodiversity Management Committee through Gram Sabha may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purpose from area falling with in its jurisdiction. The fee so collected shall be deposited with the concerned Gram Sabha.

(13) The Board shall provide guidelines for fee collection by the BMCs.

21. Local Bio-diversity Fund: (Section 42-46)

1) At the level of local body, the local bio-diversity fund shall be constituted.

2) The Board shall provide to the local body any loan or grant received by it from State Government, Central government or from the Authority for the purpose of the Act. The local body can also access such funds from other sources as specified by the Board.

3) The fund from the local body shall be made available to the Gram Sabhas/its committee and to other agencies with in the jurisdiction of the local body and shall be applied in such manner as provided in the guidelines laid down by the Board. The Gram Sabha level committee shall also receive any fee levied as charges from any person for grant of access or collection of any biological resource for commercial purpose from areas falling with in its territorial jurisdiction.

4) The fund shall be used for the conservation and promotion of bio-diversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the local community in so far such use is consistent with conservation of bio-diversity.

5) The local body shall prepare, in such forms as specified by the Board and during each financial year at such time as may be prescribed, its annual report, giving full account of its activities during the previous financial year, and submit a copy thereof to the Board and a copy to the general body of the local body.

6) The accounts of the local bio-diversity fund shall be maintained and audited in such manner as may be specified by the Board.

22. Appeal for settlement of disputes (Section 50)

(1) If a dispute has arisen between the Authority or Board or between one Board and other Board(s) on account of implementation of any order/direction or on any issue of policy decision, either of the aggrieved parties i.e., Authority or the Board, as the case may be, prefer an appeal, under Section 50, in Form specified by the Authority to the secretary, Ministry of Environment and Forests or to the chairperson, National Bio-Diversity Authority (in the case of dispute between one Board and other Board (s).

(2) The appeal shall state the facts of the case, the grounds relied upon by the appellant and the relief sought, for preferring the appeal and shall be accompanied by an authenticated copy of the order/ direction/ policy decision, as the case may be, by which the appellant is aggrieved. The memorandum of appeal shall be duly signed by the authorized representative of the appellant.

(3) The appeal shall be submitted in quadruplicate accompanied with the authenticated copy of the order/directions/ policy decisions against which the appellant is aggrieved, either in person or through a registered post with acknowledgement due, within 30 days from the date of the order/direction/policy decision, provided that if the appellate authority is satisfied that there was good and sufficient reason for the delay in preferring the appeal, the appellate authority, for reason to be recorded in writing allow the appeal to be preferred after the expiry of the aforesaid period of 30 days but before the expiry of 45 days from the date of the order/ direction /policy decision.

(4) The notice for hearing of the appeal shall be given in Form VI as given in schedule by a registered post with an acknowledgement due.

(5) Every appeal shall be accompanied by a fee of Rs. 100/- .

6) The Board shall similarly lay down the procedure for settlement of disputes between Board and the BMCs or amongst BMCs, and between BMC and the Gram Sabhas.

FORM I

(See rule 24)

Application form for access to Biological resources *for commercial utilization* and associated traditional knowledge

Part A

1. Full particulars of the applicant

   a. Name:
   b. Permanent address:
   c. Address of the contact person / agent, if any, in India:
   d. Profile of the organization (personal profile in case the applicant is an individual). Please attach relevant documents of authentication):
   e. Nature of business:
   f. Turnover of the organization in Indian Rupee

2. Details and specific information about nature of access sought and biological material and associated knowledge to be accessed

   a) Identification (scientific name) of biological resources and its traditional use:

   b) Geographical location of proposed collection:

   c) Description / nature of traditional knowledge (oral / documented):

   d) Any identified individual / community holding the traditional knowledge:

   e) Quantity of biological resources to be collected (give the schedule):

   f) Time span in which the biological resources is proposed to be collected:

   g) Name and number of person authorized by the company for making the collection.

   h) The purpose for which the access is requested including the type and extent of research, commercial use being derived and expected to be derived from it:

   i) Whether any collection of the resource endangers any component of biological diversity and the risks which may arise from the access.

7. Estimation of benefits, which would flow to communities arising out of the use of accessed bio-resources and traditional knowledge

8. Proposed mechanism and arrangements for benefit sharing.

9. Any other information

Part B
Declaration

I/ we declare that:

- Collection of proposed biological resources shall not adversely affect the sustainability of the resources;
- Collection of proposed biological resources shall not entail any environmental impact;
- Collection of proposed biological resources shall not pose any risk to ecosystems;
- Collection of proposed biological resources shall not adversely affect the local communities;

I/we further declare the Information provided in the application form is true and correct and I /We shall be responsible for any incorrect / wrong information.

Signed
Name
Title

Place
Date

FORM V

Form of Memorandum of Appeal

BEFORE THE _____MINISTRY OF ENVIRONMENT AND FORESTS, NEW DELHI

OR

NATIONAL BIODIVERSITY AUTHORITY
(as the case may be)

(Memorandum of appeal under Section 50 of the Biological Diversity Act, 2002.)

Appeal No. _____of 200

_____
_____ ……Appellant (s)

Vs.

_____
_____ ……Respondent(s)
(here mention the designation of the Authority/
Board, as the case may be)

The appellant begs to prefer this Memorandum of Appeal against the order dated _____ passed by the Respondent on the following facts and grounds.

1. FACTS:
(Here briefly mention the facts of the case):

2. GROUND:
(Here mention the grounds on which the appeal is made) :

i.)
ii.)
iii.)

3. RELIEF SOUGHT:
i)
ii)
iii)

4. PRAYER:

a) In the light of what is stated above, the appellant respectfully prays that the order/decision of the respondent be quashed/set-aside.
b) The policy/guidelines/regulation framed by the Respondent be quashed /modified/annulled to the extent_____
_____
c)_____

3. The amount of Rs. _____(Rupees_____) as fee for this appeal has been paid to _____vide order No._____dt. _____

Place:_____ Signature of the appellant
Dated:_____ with Seal
Address:

VERIFICATION

I , the appellant do hereby declare that what is stated above is true to the best of my information and belief .

Verified on ____day of_____.

Signature of the appellant
With Seal
Address

Signature of the Authorised representative of the appellant

Enclosures: 1. Authenticated copy of the order/direction/policy decision, against which the appeal has been preferred.

FORM VI

BEFORE THE _____ MINISTRY OF ENVIRONMENT AND FORESTS, NEW DELHI

OR

NATIONAL BIODIVERSITY AUTHORITY
(as the case may be)

Appeal No. _____ of 200

Between :

_____

_____ … Appellant(s)

Vs.

_____

_____ … Respondents(s)

NOTICE

Please take notice that the above appeal filed by the appellant, against the order/direction/policy decision (give details) is fixed for hearing on _____ at _____.

The copies of the appeal memorandum and other annexure filed alongwith the appeal are sent herewith for your reference.

Please note that if you fail to appear on the said date or other subsequent date of hearing of the appeal, the appeal would be disposed of finally by placing you ex-parte.

Authorised signatory on behalf of the Appellate Authority (Seal)

Date: _____
Place : _____

FORM VII

FORM OF NOTICE

By Registered Post/Acknowledgement due

From,

Shri _____
_____
_____

To,

_____
_____
_____

Sub: NOTICE UNDER SECTION 61(b) OF THE BIOLOGICAL DIVERSITY ACT, 2002.

Whereas an offence under the Biological Diversity Act, 2002 has been committed/is being committed by_____

2. I/we hereby give notice of 30 days under Section 61(b) of the Biological Diversity Act, 2002 of my /our intention to file a complaint in the Court against _____for violation of the provisions of the Biological Diversity Act, 2002.
3. In support of my/our notice , I am/we are enclosing herewith the following documents as evidence of proof.

Place:_____
Dated:_____ Signature

EXPLANATION:

(1) In case the notice to given in the name of a company, documentary evidence authorising the person to sign the notice on behalf of the company shall be enclosed to the notice.

(2) Give the name and address of the alleged offender. In case of using biological resource/ knowledge/research/bio-survey and bio utilisation /the intellectual property right /patent , without the approval of the Authority, the details thereof and the commercial utilisation if any, may be furnished.

(3) Documentary evidence shall include photograph, technical report etc. for enabling enquiry into the alleged violation/offence.