Legal Commentary

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Key Takeaways on the New HGR FAQs Issued by the MOST of China[1]

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On September 8, 2023, the China National Center for Biotechnology Development (the "**CNCBD**"), a public institution under direct charge of the China's Ministry of Science and Technology (the "**MOST**"), released the *"Notice on Issuing Answers for Frequently Asked Questions on Human Genetic Resource Administration"* (the "**Updated FAQs**"), which summarized and responded to questions that are constantly raised among the relevant industry (the "**Industry**"). This newly-drafted FAQs is seen to boost the public's understanding on new administrative regulations such as the *Implementation Rules on the Administrative Regulations on Human Genetic Resources* (the "**Implementation Rules**") and certain guidelines thereto, thus to benefit the Industry with more guidance in their applying, filing and reporting activities, (for our interpretation of the *Implementation Rules* and the corresponding guidelines, please refer to: *Highlights on HGR Regulation Implementation Rules* and *Key Takeaways of the New HGR Guidelines*).

Noteworthily, the *Updated FAQs* is believed to convey the latest standards and the attitudes of authorities, who had introduced *Implementation Rules* in June 2023. It has been announced in the Notice that the *Updated FAQs* is to supersede the Previous FAQs, i.e., *Notice on Updating FAQs on Human Genetic Resource Administration* and *Notice on Updating FAQs on Human Genetic Resource Administration-Series Q&A 2* (the "**Previous FAQs**").

In this article, the key questions will be analyzed on a basis of regulations with reference to practical notes from our experiences, aiming for more discussions and insights from the Industry. For conveniences, the analysis and interpretation will be assembled in the same order as the questions listed in the Notice.

Approvals on collection and biobanking

As set forth in the Previous FAQs, any HGR collection in relation to international collaboration approval which either i) involve specified types of HGR or ii) surpass a specified quantity of HGR (the "**International Collaboration with Collection of HGR**"), shall be subject to a separate collection approval. However, unlike the Previous FAQs, *Updated FAQs* adopted the *Implementation Rules* which has slightly relaxed

[1] For the Chinese version, please click 《*汉坤 • 观点 | 新规速评：解读科技部最新人遗问答*》.

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the filing/approval requirements since June. It is more than welcomed that the *Updated FAQs* reiterates that the International Collaboration with Collection of HGR may simply satisfy the rule by applying for approval of international collaboration scientific research ("**International Collaboration Scientific Research**") or as the case may be, filing for International Collaboration Clinical Trials (collectively, the "**International Collaboration Approvals/Filings**"). No separate collection approval will be needed for International Collaboration with Collection of HGR. The *Updated FAQs* further clears that stance. It saves much trouble for and indeed benefit the relevant parties of International Collaboration with Collection of HGR in their applying.

International collaboration approvals/filings (the "ICA/F")

I. The supplier of electronic data capture system (the "EDC") as the sole foreign party in clinical trials.

In consistence with the Previous FAQs, the *Updated FAQs* restates that among the collaborating parties, when the EDC is the only foreign party in clinical trials, no ICA/F is needed.

II. The sponsor of international collaboration clinical trials ("International Collaboration Clinical Trials") versus the applicant of clinical trials

In consistence with the Previous FAQs, the *Updated FAQs* restates that the Sponsor named in ICA/F with registration purposes shall be consistent with the Applicant as in the approval documents, notice or public documentation of the Clinical Trials. Thus, any parties (inclusive of their affiliates) that are not yet approved/filed for Clinical Trials normally shall not be listed as the Sponsor of International Collaboration Clinical Trials. However, the *Updated FAQs* grants an exemption that, in presence of relevant agreements setting out rights and obligations between parties, who are not yet approved/filed for Clinical Trials may apply to be the Sponsor of International Collaboration Clinical Trials, in a way leaving flexibilities for applicants of INA or NDA to arrange their application.

III. Alteration of the status of the parties

In consistence with the Previous FAQs, the *Updated FAQs* restates that if any party of the ongoing International Collaboration Clinical Trials transforms into a foreign entity, the project shall be suspended, awaiting till the ICA/F is obtained or completed.

IV. No substantial involvement of the foreign party

In consistence with the Previous FAQs, the *Updated FAQs* restates that if the foreign party i) is not substantially involved in the scientific research project; ii) does not acquire relevant data & information and iii) does not own or share the ownership of the research results (for instance, when the foreign-held pharmaceutical companies simply supply drugs for clinical research or financially support the research in part), no ICA/F is needed.

V. International collaboration: filed or approved

Similar to the Previous FAQs, the *Updated FAQs* provides that for a project subject to International Collaboration Clinical Trial filings, if it is later transferred into International Collaboration Scientific

Research that calls for approval, such project shall be suspended and resubmitted for approval. A summary to explain shall be enclosed amid other evidencing documentations. The research may be resumed upon obtaining the relevant approval.

VI. Other participating parties as in international collaboration

The *Updated FAQs* makes one remarkable move to clarify that certain parties are within/outside of the scope of the other participating parties as mentioned in these FAQs (the "**Other Participating Parties**"), please find a comparison below:

Other participating parties as in previous FAQs	Other participating parties as in *Updated FAQs*
Other Participating Parties refers to parties excluding sponsors, medical institutions (leading sites), CROs and third-party laboratories.	Other Participating Parties refers to relevant entities i) that **have access to the HGR materials or information with substantial involvement**; but ii) who are not sponsors, leading sites, CROs, third-party laboratories and **participating sites**.

Accordingly, it is our understanding that the *Updated FAQs* clearly exclude the "participating medical institution" from the scope of Other Participating Parties. By the definition, EDC suppliers, among other parties, who have access to HGR information and are substantially involved shall still be deemed as Other Participating Parties.

VII. International collaboration agreements as application materials

It has been major concerns among the Industry in respect of the types of agreements required to be submitted for the ICA/F procedures and whether the submitted international collaboration agreements should be duly executed by the parties. The *Updated FAQs* have specified the scope of international cooperation agreements as required by the ICA/F procedures as follows:

For International Collaboration Scientific Research approval	For International Collaboration Clinical Trial filing
Signed, stamped and Chinese version of international collaboration agreements among sponsors, **leading sites**, CROs, and third-party laboratories.	Signed, stamped and Chinese version of international collaboration agreements among all collaborating parties (including sponsors, **leading sites**, CROs, and third-party laboratories and **Other Participating Parties**).

It is worth noting that international collaboration agreements, including agreement with Other Participating Parties, should be submitted for international collaboration filings. Therefore, we understand the HGR information exchange with Other Participating Parties may be exempted from additional data sharing reporting and backup procedures after the completion of the filings as long as such information exchange arrangements are within the scope of the ongoing international collaboration project. It is also of great convenience that international collaboration agreements executed by the participating sites other than leading sites are not required to be submitted in the ICA/F procedures.

Data sharing reporting

I. The use of publicly available HGR information

The *Updated FAQs* aligns with the Previous FAQs and provides that the use of publicly available HGR information by foreign parties are exempted from data sharing reporting and backup procedures.

II. Data sharing with collaborating foreign parties

According to the *Updated FAQs*, transferring the HGR information that are generated in the collaboration to foreign Electronic Data Capture system (EDC) suppliers or foreign data statistics companies shall be exempted from data sharing reporting and backup procedure as long as the information sharing arrangements are within in the agreed scope of data management. However, if the data sharing and any use of data by foreign parties are beyond the agreed scope, the Chinese holder of such data and information is still obliged to complete data sharing reporting and backup procedure.

Other issues

I. The scope and regulatory requirements of HGR materials and HGR information

The MOST has been cautiously but gradually loosening its regulatory scope of HGR from the promulgation of the *Implementation Rules* and the *New Administrative Guidelines* to the release of the *Updated FAQs*. The *Updated FAQs* have further clarified the regulatory requirements on biological samples such as serum, plasma and their test data. Such clarification aligns with the views expressed at a recent forum we participated as held by Shanghai Center of Biomedicine Development.

1. HGR materials

According to the *Updated FAQs*, biological samples such as urine, feces, serum and plasma are no longer within the regulatory scope of HGR materials, even if such biological samples may contain very small amounts of shed, residual, free cells or genes, which has further clarified and eased the regulatory scope of HGR materials stipulated in the *New Administrative Guidelines*.

It is also worth noting that only the samples like serum and plasma themselves are excluded from the HGR regulatory scope, but the materials like whole blood used for production of such serum and plasma shall still be regulated as HGR materials. Accordingly, there are also distinctions in the determination and regulations on the testing institutions as follows:

Method of processing serum or plasma	Involved type of tests	Determination of testing institutions
The whole blood has been processed into samples of serum or plasma by a medical institution before its delivery to the testing institution.	Not conducting any test regarding genes, genomes, transcriptomes, epigenomes and nucleic acid biomarkers, etc.	Not regulated as third-party laboratories
	Conduct tests regarding genes, genomes, transcriptomes, epigenomes and nucleic acid biomarkers, etc.	Regulated as third-party laboratories

Method of processing serum or plasma	Involved type of tests	Determination of testing institutions
The collected whole blood is processed into serum or plasma after its delivery to the testing institution.	All types of tests	Regulated as third-party laboratories

2. HGR information

According to the *Updated FAQs*, data generated from tests using materials like urine, feces, serum and plasma regarding genes, genomes, transcriptomes, epigenomes and nucleic acid biomarkers, etc. for scientific research are still regulated as HGR information, but the regulatory requirements are only applicable when involving international collaborations and external provision or access opening of such HGR information.

We understand that although the *Updated FAQs* have explicitly exempted materials like serum and plasma from regulatory requirements as HGR materials, they can still be used to generate HGR information like nucleic acid biomarkers such as ctDNA. The sole regulatory requirements on HGR information generated by materials like serum and plasma in international collaborations and external provision or access opening have reflected the MOST's regulatory methodology of "regulate the matters that must be regulated and relax the matters that should be relaxed". Therefore, the requirements are as follows:

Biological samples such as urine, feces, serum and plasma						
Procedures	Collection approval	Biobanking approval	International collaboration scientific research (the "**ICSR**") approval	International collaboration clinical trial filing	Exportation approval	Data sharing reporting
Materials	No	No	No	No	No	/
Derivative data generated from materials	No	No	Yes	Yes	/	Yes

II. Enrollment of subjects in the process of amendment application

The *Updated FAQs* also clarify that in case of any amendment to the project which has already obtained ICSR approval or completed international collaboration filing, the screening and enrollment of subjects may proceed in accordance with the previously obtained approval or completed filing. However, if the screening of subjects is based on additional criteria not covered by the initially obtained approval or initially completed filing, such screening shall await and only be conducted after the completion of the amendment procedure. We understand this stipulation is merely for the purpose of clarification and is consistent with the provision in the Previous FAQs.

Conclusion

Since the promulgation of the *Implementation Rules*, the regulatory requirements on HGR in China have been constantly evolved and refined. The HGR regulations have shown more flexibility and will bring much benefit for the Industry on carrying out activities utilizing HGR, for example, the *Implementation Rules* have loosened the restrictions of foreign parties and requirements of international collaboration filing, and the *Updated FAQs* have eased restrictions on collection approval and regulatory scope of HGR materials. However, China's HGR regulations still overall features high standards and strict supervision with high priority on during and post-event supervision (as compared to pre-event supervision). Therefore, we suggest relevant parties should continue to pay due attention to the evolving regulatory requirements and monitor closely on the changing trends.

Important Announcement

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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