

MEMORANDUM TO CLIENTS

ENVIRONMENTAL, INTELLECTUAL PROPERTY AND LIFE SCIENCE

June 19, 2015

Federal Law N° 13.123/2015 New Legal Framework concerning Brazilian Biodiversity

Brazil is the most biologically diverse country in the world. According to the United Nations Organization, it is ranked as one of the world's top mega-diverse countries and second only to Indonesia in terms of species. Brazil has six terrestrial biomes and three large marine ecosystems. Currently, there are approximately 103,870 known animal species and another 43,020 known plant species in the country; these numbers represent 70% of the world's catalogued animal and plant species.¹ Brazil's rich biodiversity allows the country to produce a wide variety of plant, animal and microbe based food, drugs, cosmetics, fibers and building materials.

After more than a decade since the enactment of Provisional Measure No. 2,186/2001 ("MP"), the Brazilian Biodiversity Law, (Federal Law No. 13,123/2015), was signed by President Dilma Rousseff on May 20, 2015. Industries, including the pharmaceuticals, chemical, personal care, cosmetics, horticulture, agricultural seeds and inputs, food and biotechnology sectors, that exploit biodiversity are subject to the new law.

The new law will come into force on 17th November this year. It regulates access to genetic heritage components, protection and access to associated traditional knowledge and the fair and equitable sharing of benefits for preserving and sustaining Brazilian biodiversity.

The new law repeals the MP, which has been extremely criticized by manufacturing companies and by the scientific community as being overly complex and bureaucratic. Pursuant to the MP, authorization from the Federal Government was required to access genetic heritage or traditional knowledge in Brazil and the Federal Government took up to a year to issue this authorization. Research conducted without the authorization of the Genetic Heritage Management Council was considered "biopiracy"

¹ For additional information on Brazilian Biodiversity, please click here www.cbd.int/countries/profile/default.shtml?country=br#facts

under the MP. There were also various restrictions on sharing benefits for preserving and sustaining Brazilian biodiversity. In addition, the use and commercialization of products derived from genetic heritage for any purpose had to be submitted to inspection.

The new law seeks to simplify and accelerate the process for scientific research with respect to native plants, animals, microbes and other materials containing functional units of heredity. It also seeks to facilitate the process for economic exploitation of biodiversity resources and to innovate and develop scientific and technological research.

One of the main highlights of the new law is the creation of an electronic registration system for companies interested in exploiting genetic heritage or associated traditional knowledge. Pursuant to the new law, any company that, between June 30, 2000 and November 17, 2015, utilized genetic heritage or associated traditional knowledge and commercially exploited final product or materials derived from these has a year from the date the electronic registration system is put in place to comply with the requirements of the new law.

However, if these companies have not become compliant with the MP within this one year period, the new law gives them the option of signing an agreement with the Federal Government in order to reduce certain liabilities stipulated in the MP. For a company that had access to traditional knowledge and signs this agreement, the new law provides for a reduction of 90% (ninety per cent) of the amount of the penalties imposed by the relevant environmental authority (IBAMA – Brazilian Institute for the Environment and Renewable Natural Resources).

The new law establishes that the acquisition of genetic heritage component samples for scientific research, technological development, bioprospecting and for industrial or other purposes does not require government authorization. However, article 13 sections I and II of the new law, establish that authorization from the National Defense Council is required in order to access genetic heritage or traditional knowledge in essential national security areas. In addition, authorization from the relevant maritime authority is required if the genetic heritage access occurs in maritime regions within Brazilian jurisdictional waters, the continental shelf or Brazil's exclusive economic zone.

It is also important to note that the new law protects local communities by establishing minimum royalties they are entitled to receive for economic exploitation of biodiversity resources in their region. It also demands that companies share, with local communities and the National Fund for Sharing Benefit ("FNRB"), the profits arising from the sale of final products or materials derived from the exploitation of national genetic heritage or associated traditional knowledge.

The FNRB was created by the new law and is under the jurisdiction of the Brazilian Ministry of the Environment. The FNRB will receive part of the funds generated from the exploitation of genetic resources and associated traditional knowledge. Small companies and suppliers are exempt from having to share their profits.

Pursuant to the new law, companies that exploit genetic heritage are required to make a one-off payment to the FNRB of an amount equivalent to 1% (one per cent.) of their annual net sales revenue that results from the sale of a final product or materials derived from genetic resources. However, the new law contemplates the reduction of the amount payable to FNRB if companies in the same sector collectively sign an agreement with the government to reduce such payment, in which case the law authorizes a reduction of up to 0.1 (point one per cent.) of the annual net sales revenue.

The new law permits companies involved in utilizing traditional knowledge and communities that retain such knowledge to engage in free negotiations as to the sharing of benefits deriving from the exploitation of such knowledge

Notwithstanding the innovations introduced by the Brazilian Biodiversity Law, IBAMA and private entities are currently discussing this law and more detailed regulations are expected to provide further clarification of the law. For example, FNBR's activities and the electronic registration system stipulated in the new law need to be further regulated. We are closely monitoring these discussions and will update our clients accordingly.

For additional information, please contact:

Lina Pimentel Garcia

lpg@mattosfilho.com.br

T +55 11 3147 2824

Viviane Otsubo Kwon

vkwon@mattosfilho.com.br

T +55 11 3147 2735

Fabio Ferreira Kujawski

kujawski@mattosfilho.com.br

T +55 11 3147 2795

Juliana Gebara de Sene

jsene@mattosfilho.com.br

T +55 11 3147 7599

The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

The reproduction or dissemination, in whole or in part, of the contents of this memorandum without the prior written consent of Mattos Filho is prohibited.

SÃO PAULO

Al. Joaquim Eugênio de Lima 447
01403-001 São Paulo SP Brasil
T +55 11 3147 7600

RIO DE JANEIRO

Praia do Flamengo 200 11º andar
22210-901 Rio de Janeiro RJ Brasil
T +55 21 3231 8200

BRASÍLIA

SHS Qd. 06 Cj A, Bloco C - Sala 1901
70322-915 Brasília DF Brasil
T +55 61 3218 6000

NEW YORK

712 Fifth Avenue 26th Floor
New York NY 10019 USA
T + 1 646 695 1100