

MEMORANDUM TO CLIENTS

ENVIRONMENTAL, NON-PROFIT AND EXEMPT ORGANIZATIONS - CORPORATE SOCIAL RESPONSIBILITY

November 27, 2015

Federal Law N^o 13.123/2015
New legal framework for accessing the Brazilian
Biodiversity is now in force

Federal Law No. 13,123/2015 ("New Law") came into force on November 17, 2015 introducing innovations for scientific research and technological development with respect to access to genetic heritage and associated traditional knowledge. It also stipulates sharing of benefits deriving from commercialization of a final product or reproductive material developed from such components.

In general terms, the New Law reduces bureaucracy and simplifies the procedure for accessing genetic heritage and traditional knowledge. Companies are required to observe specific rules contained in the New Law. More detailed regulations are expected to provide further clarification of the New Law.

Companies from different sectors, such as, the pharmaceutical, food, cosmetics, biotechnology and agricultural sectors, that exploit genetic heritage or traditional knowledge are subject to the New Law.

Among the innovations in the New Law, we highlight the following:

- I) **Rights of holders of associated traditional knowledge, such as indigenous people and local communities:**
 - Right to be part of the Brazilian Heritage Genetic Council (article 6 of the New Law);
 - Right to participate in nationwide discussions and decisions on matters related to the conservation and sustainable use of their traditional knowledge that relates to Brazil's genetic heritage (article 8, paragraph 1 and article 10 of section IV of the New Law);

- Traditional knowledge associated with genetic resources that is held by indigenous and local communities may only be accessed with the prior and informed consent and involvement of these indigenous and local communities (article 9 of the New Law);
- Formal recognition of community protocols in relation to access to traditional knowledge associated with genetic resources; their use and dissemination are encouraged by the New Law (article 9, §1, section IV of the New Law);
- Right to have their contributions with respect to the development and conservation of genetic heritage and associated traditional knowledge acknowledged by any form of publication, utilization, exploitation or other disclosure (article 10, sections I and II of the New Law);
- Guaranteed right to receive benefits for the direct and indirect commercial exploitation of their associated traditional knowledge by others (article 10, section III of the New Law);
- The right to use and freely sell products containing genetic heritage or associated traditional knowledge, pursuant to Laws 9,456/1997 and 10,711/2003, as well as the right to preserve, maintain, exchange, develop and improve reproductive material containing genetic heritage or associated traditional knowledge (article 10, sections V and VI of the New Law);
- Power to decide as to how the resources of the National Sharing Benefits Fund will be used (article 31, of the New Law);
- The creation of a National Sharing Benefits Program to support efforts, demands and policies for indigenous people and local communities with respect to sustainable management and preservation of their genetic heritage (article 33, section VIII of the New Law).

II) Obligation to share benefits:

- The benefits from commercial exploitation of a finished product or a reproductive material, even if produced abroad, that derives from access to genetic heritage or traditional knowledge must be shared with indigenous people, local communities and the National Sharing Benefits Fund (article 17 of the New Law);
- The genetic heritage or the associated traditional knowledge component in a final product must be one of its key elements and essential in its production and functional benefits or in its commercial exploitation (article 2 section XVIII and article 17 of the New Law);
- The obligation to share benefits of a final product derived from genetic heritage or traditional knowledge is imposed exclusively on manufacturers of a finished product and primary producers of reproductive materials, regardless of whether others have previously utilized these products (article 17, paragraph 1 of the New Law);

Manufacturers of intermediary products or participants in the process to develop products which are derived from genetic heritage or traditional knowledge, that are part of a chain to develop a product, are exempt from the obligation to share benefits (article 17, § 2 of the New Law);

- Companies exploiting genetic heritage and associated traditional knowledge from unknown sources are required to make a one-off payment to the National Sharing Benefits Fund of 1% (one per cent.) of the net sales revenue that results from the sale of a final product or materials derived from genetic resources. The amount payable to the National Sharing Benefits Fund may be reduced 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% (zero point one per cent.) of the companies' annual sales revenue (articles 20, 21, 23 and 25 of the New Law);

- Companies exploiting associated traditional knowledge from known sources that retain such knowledge may engage in free negotiations as to the sharing of benefits deriving from the exploitation of such knowledge. In addition, 0.5% (zero point five per cent.) of companies' net sales revenue derived from such products must be paid to the National Sharing Benefits Fund for so long as the product is being commercialized (article 24, paragraph 3 and article 25, paragraph 1).

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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.

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