Brazil’s New Biodiversity Law

Sunday, June 7, 2015

Brazil holds one of the richest biodiversities in the world. In fact, Brazil has long been a source of innovation and inspiration for natural ingredients used in food, cosmetics and pharmaceuticals. As a result, on May 20, 2015, Brazil’s new Biodiversity Law No. 13, 123/15 was signed into law by President Dilma Rousseff. Generally, this new law outlines access to the components of Brazilian genetic heritage, protection and access to associated traditional knowledge and the sharing of benefits for preserving and sustaining Brazilian biodiversity. The new law repeals the law passed in 2001 which was criticized as being overly complex and bureaucratic. Specifically, the law provides:

1. New rules for access to Brazilian genetic heritage by companies headquartered outside of Brazil;
2. A “benefit sharing program” that supports communities that provide their traditional knowledge for industry and a “National Sharing Fund” to manage any compensation received (The “National Sharing Fund” is tied to the Ministry of the Environment with the goal of promoting the sustainable use of resources. For products created from matter obtained from Brazilian biodiversity, a company is required to pay 0.1% to 1.0% of the net revenue obtained as a result of the economic exploitation of the product.);
3. A maximum of 1% of a company’s revenue can result from selling a final product resulting from access to an ingredient or component of Brazilian genetic heritage;
4. Guaranteed free negotiations over any traditional knowledge and an additional 0.5% of profit to the national sharing fund during the period that the product is sold;
5. If the source of the traditional knowledge cannot be identified that 1% of the profit is shared with the National Sharing Fund; and
6. Small companies and suppliers with an exemption of sharing their profits due to their lower production capability.

The main purpose of the new law is to facilitate scientific research and the economic exploitation of biological samples of Brazilian genetic heritage. The expectation is that national and international companies, such as those in the agricultural and food, cosmetic and pharmaceutical sectors, will isolate active ingredients from Brazilian genetic heritage materials to develop new products. In fact, according to President Rousseff, the new law will guarantee that companies can “without conflict, troubles or disputes” use the genetic heritage and associated traditional knowledge in Brazil. However, the new law has been criticized by indigenous peoples and local communities for not sufficiently protecting their rights and interests.

Please continue to watch the BRIC Wall for updates on the implementation of this new biodiversity law.

This post was written by Lisa Mueller and Roberto Rodrigues of Licks Attorneys.

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