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The long-awaited regulatory landmark on Biodiversity has been recently enacted by the Brazilian Government.

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The Convention on Biological Diversity, signed in Rio de Janeiro, Brazil, back in 1992, set out that the genetic resources should no longer be considered as a heritage of the Humanity, but rather that each country should have sovereign to its own resources.

Brazil has signed the Convention in 1992, such International Treaty having been ratified in Brazil by means of Decree No. 2,519 of March 16, 1998. Nevertheless, it was only in 2000 that a legislation regulating the access to Brazilian genetic resources and associated traditional knowledge was enacted.

In compliance with the Convention on Biological Diversity (CBD), more specifically, in its articles 1, 8, letter "j", 10 letter "c", 15 and 16 items 3 and 4, previous Provisional Ruling 2,186-16/01 was enacted to regulate the access to and use of genetic heritage and associated traditional knowledge (TK) in the Brazilian territory, fair and equitable benefit sharing and access and transfer of technology for the conservation and use of biological diversity.

Brazil was since then awaiting that a new and definitive Law ruling on the access to genetic resources was enacted. The expectation was that such Law both restrain biopiracy, but also enables the sustainable exploitation of the huge potential of our Biodiversity, in the benefit of the humanity.

The long waited legislation was recently enacted by Brazilian Government.

Law No. 13,123 of May 20, 2015, which regulates the access to, and use of, genetic heritage and associated traditional knowledge (TK) in the Brazilian territory, now replaced Provisional Ruling 2186-16 of 2001.

It is noteworthy that the Law simplifies the access to genetic heritage when comparing with the previous ruling, which provisions made the obtainment of the necessary authorization for access to genetic heritage excessively slow, bureaucratic and time consuming.

It is hoped that this new Law will stimulate the sustainable use of Brazilian Biodiversity.

Particularly, according to the new Law, which shall enter into force on November 20, 2015, the access and remittance of genetic heritage material, or associated traditional knowledge, will require a simple declaratory registration of these activities before the Genetic Heritage Management Council (CGen), this being the agency responsible for the application of the dispositions of the Biodiversity Law in our country. Notwithstanding, according to article 13 of the new law, the prior authorization for access of Brazilian genetic heritage or associated traditional knowledge may be required if it occurs in areas essential for national security or in maritime regions within Brazilian jurisdictional waters, the continental shelf and Brazil's exclusive economic zone.

According to the Law, benefit sharing may be either monetary or nonmonetary, and the guidelines and criteria for elaboration and compliance with the Benefit Sharing Agreement will be under the competence of CGen.

This new Law also affects Intellectual Property since it sets forth that the granting of intellectual property rights, on the finished product or on reproductive material obtained from access to genetic resources or associated traditional knowledge, is conditioned to the registration or authorization under the terms of the Law. In this context, it is believe that the formal proceedings before the Brazilian PTO will remain the same as presently in practice.

Specifically, Applicants will still be required to report to the PTO as to whether inventions as claimed in patent applications have somehow derived from accessing Brazilian genetic heritage, and, in the affirmative, it is more than likely that the information on registration and/or authorization obtained from CGen will need to be provided, as presently required. We shall keep you posted on the next developments of this issue as they arise, especially as to possible further rulings that may be issued in order to implement the Law in its different embodiments, but please do not hesitate to contact us should you require any additional clarification hereon.