

Ratification of the Nagoya Protocol in Progress on National Congress

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Approved by the House of Representatives last July 8, Legislative Decree Bill (PDL) 324/2020 now awaits approval by the Senate to ratify the Nagoya Protocol, regarding access to genetic resources and associated traditional knowledge, and sharing of benefits arising from the exploitation of biological diversity. The move represents a major step forward since the international agreement was signed in 2010 at the 10th meeting of the Conference of the Parties to the United Nations Convention on Biological Diversity (COP-10) in Nagoya, Japan, by representatives of several countries, including Brazil, and the approval of the Brazilian Biodiversity Law No. 13,123 in 2015.

Effective internationally since 2014 in more than 50 countries, the Nagoya Protocol still requires ratification by domestic legislation for Brazil's accession to be confirmed. According to the Protocol, countries have sovereignty over their genetic resources and traditional knowledge whereby the exploitation of products from native plants, animals or microorganisms depends on prior informed consent of the providing countries. Further, monetary benefits resulting from the production and commercialization of related products must be shared with the party providing the genetic resource or associated traditional knowledge, for example through the payment of royalties, while non-monetary benefits include the establishment of partnerships, technology transfer or training, joint ownership of relevant intellectual property rights, among others.

Upon ratification, the country will be entitled to actively participate in negotiations regarding the Protocol's provisions with other signatory parties, including countries with relevant genetic heritage and economic potential, such as China. In effect, several innovation-based industry sectors will benefit from the move, such as pharmaceuticals, cosmetics, biotechnology and agroindustry, which often depend on access to national genetic resources and will have a better direction as of the request to access, effective exploitation, up to the benefit sharing. Particularly for the agribusiness, it is worth mentioning that the Brazilian Biodiversity Law No. 13,123 defines in article 46 that no benefit sharing is applicable to agriculturally exploited genetic resources that were internalized before the Protocol becomes effective.

Thus, taking into account that the Nagoya Protocol protects biodiversity laws in force in each signatory party, applicable to Brazil with its Biodiversity Law, the ratification will enable the country to assume a prominent role in discussions regarding genetic resources and associated traditional knowledge, further improving legal certainty to companies and institutions that depend on such accession.

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