Biological Diversity Act, 2002 – Office Memorandum for Post Facto Compliance

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Dr Neeti Wilson reviews the impact of the recent Office Memorandum of the National Biodiversity Authority. "Indian Biological Resource usage is subject to prior permissions under the Biological Diversity Act, 2002 (BDA). The Act provides a framework for access to Indian biological resources and sharing the benefits arising out of such access and use. The Act also includes in its ambit the transfer of research results and application for Intellectual Property Rights (IPRs) relating to Indian biological resources. BDA requires foreigners, non-resident Indians, body corporate, association or organization that is either not incorporated in India or incorporated in India with non-Indian participation in its share capital or management to take prior approval of the National Biodiversity Authority (NBA) when they use biological resources and associated knowledge occurring in India for commercial or research purposes or for the purposes of bio-survey or bio-utilisation. Indians and Indian institutions do not require the approval of the NBA when they engage in the above-mentioned activities. However, they would need to inform the State Biodiversity Boards prior to undertaking such activities. However, any commercial application related to the use of biological resources should be approved by the Authority. The Ministry of Environment, Forest and Climate Change (Ministry) was made aware by the NBA that there is a large number of entities/persons who are not fully aware of the provisions of the BDA but are desirous to comply with the same. Therefore, the Ministry on September 10, 2018, brought out an Office Memorandum (OM), whereby the NBA was directed to hear all such cases where prior approval under Sections 3, 4, 6 or 20 of the BDA was required but the person/entity has not obtained the same, and pass appropriate orders with respect to acts that may have occurred in past, with an objective of ensuring conservation and sustainable use of biodiversity and fair and equitable sharing of benefits arising from its use. The NBA is required to ensure that only those cases are granted approval for future activities which would have been otherwise approved in the event it had been applied for prior approval. The OM thus provides an opportunity to get absolved of all the violations under the BDA that might have been caused due to past activities. The NBA was provided a specified time period of 100 days from the date of issuance of the OM to take such decisions, including course of action for matters related to the past. The NBA has further extended the time for the same through another Office Memorandum dated March 18, 2019, so as to allow such applications and decisions to be made by May 17, 2019. As the OM and the further extension provides for a limited window period to rectify the past noncompliance, it is recommended that all applications be filed for all past activities. In case of any query or clarification with respect to any of the aforementioned issues, please write to neeti@anandandanand.com."

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