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# THE NEW BRAZILIAN ABS LEGISLATION

5/21/2015

L13123



#### Presidência da República

Casa Civil Subchefia para Assuntos Jurídicos

The law was published on May 21, 2015 and entered into force on November 17, 2015

LAW Nº 13.123, FROM 20 OF MAI 2015

Regulates the section II of § 1 and § 4 of article 225 of the Federal Constitution, Article 1, point i of Article 8, point c of Article 10, Article 15 and §§ 3 and 4 of Article 16 of the Convention on Biological Diversity, promulgated by Decree No. 2519 of 16 March 1998, provides for access to genetic heritage, on the protection and access to associated traditional knowledge and the benefit sharing for conservation and sustainable use of biodiversity; revokes the Provisional Act 2.186/2001, 23 August 2001, and takes other measures.

13/05/2016

Decreto nº 8772

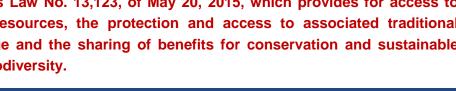


#### Presidência da República

Casa Civil Subchefia para Assuntos Jurídicos

#### **DECREE Nº 8.772, FROM 11 OF MAY 2016**

Regulates Law No. 13,123, of May 20, 2015, which provides for access to genetic resources, the protection and access to associated traditional knowledge and the sharing of benefits for conservation and sustainable use of biodiversity.



After almost 6 months since the law came into force, the Decree regulating it was published

# **ABS NATIONAL COMPETENT AUTHORITY**

The Brazilian ABS National Competent Authority is the **Genetic Heritage Management**Council - CGen

CGen will consist of representatives from bodies and entities of the federal public administration that are competent on the various actions of this law with maximum participation of 60% and the representation of civil society in at least 40% of the members.

Based on the Decree, there will be 11 Ministries and 9 representatives of civil society, 3 of each of the following sectors:

- Business sector
- Academia
- Indigenous peoples, traditional communities and traditional farmers



THE LAW
COVERS THE
ACTIVITY OF

- RESEARCH
- TECHNOLOGICAL DEVELOPMENT

**ACCESS = UTILIZATION** 

**ECONOMIC EXPLOITATION** 



- FINISHED PRODUCT OR
- REPRODUCTIVE MATERIAL

THIS IS THE MOMENT WHEN THERE IS BENEFIT SHARING

ORIGINATED FROM THE ACCESS OF GENETIC HERITAGE

ORIGINATED FROM THE ACCESS OF ASSOCIATED TRADITIONAL KNOWLEDGE



# **ECONOMIC EXPLOITATION**

#### **FINISHED PRODUCT**

Product whose nature does not require any additional production process, arising from access to genetic heritage or associated traditional knowledge, in which the component of the genetic heritage or associated traditional knowledge is a key element of added value to the product, being able to be used by the final consumer, whether natural or legal person

#### REPRODUCTIVE MATERIAL

It refers to plant propagation material or animal reproduction of any genus, species or cultivation from sexual or asexual reproduction



# DIFERENTLY FROM THE PREVIOUS LEGISLATION, THE NEW LAW:

REACHES ALL RESEARCH
(EXPERIMENTAL OR
THEORETICAL) CONDUCTED
WITH THE BRAZILIAN

**GENETIC HERITAGE** 

**DEFINITION** 

information of genetic origin from plants, animals, microorganisms or species of other nature, including substances derived from the metabolism of these living beings



# DIFERENTLY FROM THE PREVIOUS LEGISLATION, THE NEW LAW:

REACHES ALL RESEARCH
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**GENETIC HERITAGE** 

**DEFINITION** 

information of genetic origin from plants, animals, microorganisms or species of other nature, including substances derived from the metabolism of these living beings



#### **BASIC RESEARCH SUCH AS:**

- EPIDEMIOLOGY
- MOLECULAR ECOLOGY
- MOLECULAR TAXONOMY
- PHYLOGENY



# DIFERENTLY FROM THE PREVIOUS LEGISLATION, THE NEW LAW:

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**GENETIC HERITAGE** 

**DEFINITION** 

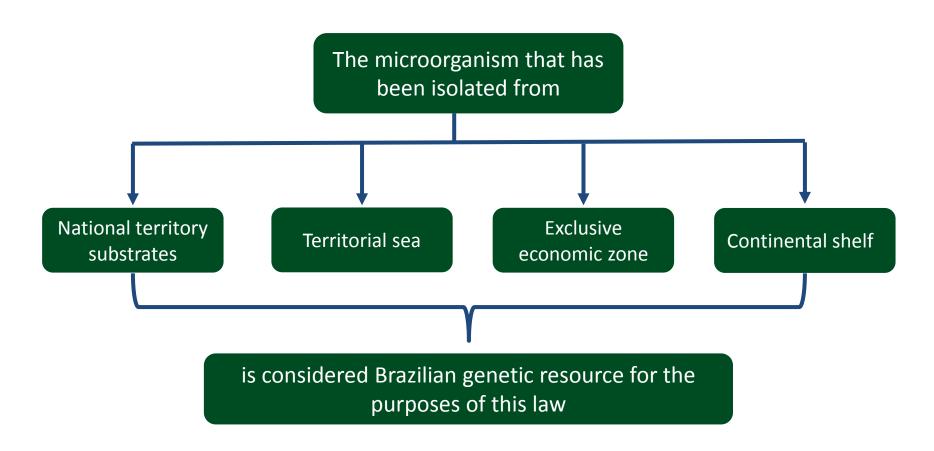
information of genetic origin from plants, animals, microorganisms or species of other nature, including substances derived from the metabolism of these living beings



USE OF INFORMATION FROM GENETIC SEQUENCES PUBLISHED IN PUBLIC DATA BASES (GenBank)



### OTHER NOVELTY IN THE LAW IS THE PARAGRAPH ON MICROORGANISMS



# **ACTIVITIES THAT ARE SUBJECT TO THE LAW**

- Access to genetic heritage and associated traditional knowledge;
- II. Shipment abroad of genetic heritage
- III. Economic exploitation of finished product or reproductive material from access to genetic heritage and associated traditional knowledge



# FOR COMPLYING WITH THE LAW

REGISTRATION

TECHNOLOGICAL DEVELOPMENT

NOTIFICATION BEFORE

ECONOMIC EXPLOITATION



# FOR COMPLYING WITH THE LAW

REGISTRATION

**RESEARCH** 

TECHNOLOGICAL DEVELOPMENT

### THE REGISTRATION SHOULD BE CONDUCTED PRIOR TO:

- Shipment abroad
- Request of any intellectual property right
- Commercialization of any intermediate product
- Release of results, final or partial, in scientific or communication circles
- Notification of finished product or reproductive material developed as a result of the access



# **NOTIFICATION**



# **NOTIFICATION**

# For economic exploitation will be required:

- I. prior notification of the finished product or the reproductive material to CGen
- II. presentation of the benefit-sharing agreement (BSA) within 1 year from the time of notification, except in the case of finished product or reproductive material from access to ATK of identifiable origin. In this case, the agreement must be presented at the time of notification



# **AUTHORIZATION**

# THE AUTHORIZATION SHALL BE CARRIED OUT PRIOR TO:

- Access to GH or ATK in area indispensable to national security
- Access to GH or ATK in Brazilian territorial waters, continental shelf and exclusive economic zone

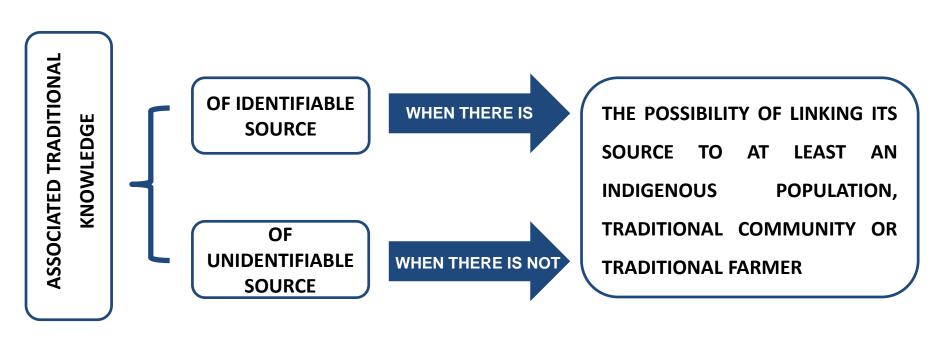
The authorization will be required only in cases where there is some involvement of foreigners:

- I National legal entity whose controlling shareholders or members who are natural or legal foreign persons
- II national institution of scientific research and technology, public or private, when access is made in association with legal entity based abroad
- III Brazilian natural person associated, funded or contracted by a legal entity based abroad



# **ACCESS TO ASSOCIATED TRADITIONAL KNOWLEDGE**

THE TRADITIONAL KNOWLEDGE ASSOCIATED TO GENETIC HERITAGE CAN BE RECOGNIZED IN SCIENTIFIC PUBLICATIONS, RECORDS IN REGISTERS OR DATABASES AND CULTURAL INVENTORIES





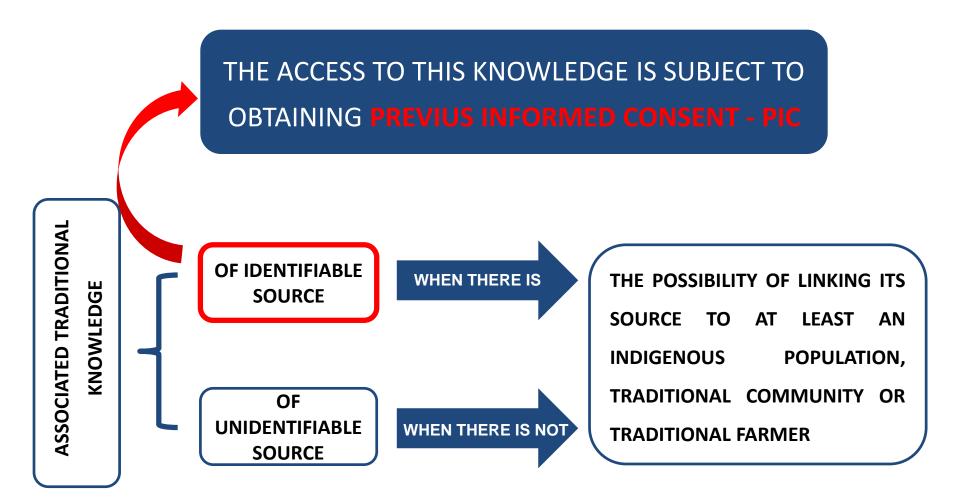
# **ACCESS TO ASSOCIATED TRADITIONAL KNOWLEDGE**

ANY INDIGENOUS POPULATION, TRADITIONAL COMMUNITY OR TRADITIONAL FARMER WHO CREATES, DEVELOPS, HOLDS OR PRESERVES CERTAIN TRADITIONAL KNOWLEDGE IS AN IDENTIFIABLE SOURCE OF SUCH KNOWLEDGE **ASSOCIATED TRADITIONAL OF IDENTIFIABLE** WHEN THERE IS THE POSSIBILITY OF LINKING ITS KNOWLEDGE **SOURCE SOURCE** AT LEAST TO AN **INDIGENOUS** POPULATION, TRADITIONAL COMMUNITY OR OF UNIDENTIFIABLE WHEN THERE IS NOT TRADITIONAL FARMER



**SOURCE** 

# **ACCESS TO ASSOCIATED TRADITIONAL KNOWLEDGE**





# SHIPMENT ABROAD OF GENETIC HERITAGE

DEFINITION: TRANSFERENCE OF GENETIC HERITAGE TO AN INSTITUTION LOCATED IN ANOTHER COUNTRY WITH THE PURPOSE OF ACCESS, IN WHICH THE RESPONSABILITY OF THE GH IS TRANSFERRED TO THE RECEPIENT INSTITUTION

SHIPMENT ABROAD WILL HAVE TO BE REGISTERED IN CASES WHERE ACCESS TO GENETIC RESOURCES ARE CONDUCTED BY:

- LEGAL ENTITY LOCATED ABROAD THAT IS ASSOCIATED TO NATIONAL INSTITUTION (PUBLIC OR PRIVATE)
- NATIONAL INDIVIDUAL OR LEGAL ENTITY (PUBLIC OR PRIVATE) THAT IS ABROAD



# SHIPMENT ABROAD OF GENETIC HERITAGE

DEFINITION: TRANSFERENCE OF GENETIC HERITAGE TO AN INSTITUTION LOCATED IN ANOTHER COUNTRY WITH THE PURPOSE OF ACCESS, IN WHICH THE RESPONSABILITY OF THE GH IS TRANSFERRED TO THE RECEPIENT INSTITUTION

REGISTRATION FOR SHIPMENT ABROAD MUST BE PERFORMED PRIOR SHIPMENT AND DEPENDS ON:

- THE SIGNATURE OF MATERIAL TRANSFER AGREEMENT MTA
- THE SUPLY OF INFORMATION ABOUT THE PROVIDER AND RECIPEINT INSTITUTIONS, GENETIC HERITAGE AND INTENDED USE



# MATERIAL TRANSFER AGREEMENT

The MTA formalizes the shipment abroad of samples of genetic heritage accessed or available for access

### It will predict that:

- It shall be interpreted in accordance with Brazilian law
- The recipient institution will not be considered provider of the GH

#### It will contain clauses that:

- Inform on access to ATK when applicable
- Authorizes or prohibits the transfer of the GH to third parties



# **MATERIAL TRANSFER AGREEMENT**

The MTA formalizes the shipment abroad of samples of genetic heritage accessed or available for access

### It will predict that:

- It shall be interpreted in accordance with Brazilian law
- The recipient institution will not be considered provider of the GH

#### It will contain clauses that:

- Inform on access to ATK when applicable
- Authorizes or prohibits the transfer of the GH to third parties

In the case of authorization, the transfer of genetic heritage to third parties will also depend on a MTA containing the above requirements. This obligation will be applied to all subsequent transfers



# **SENDING OF GENETIC HERITAGE**

DEFINITION: SENDING OF GH FOR SERVICES PROVIDED ABROAD, AS PART OF A RESEARCH OR TECHNOLOGICAL DEVELOPMENT, IN WHICH THE RESPONSIBILITY FOR THE GH IS NOT TRASFERED



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DEFINITION: SENDING OF GH FOR SERVICES PROVIDED ABROAD, AS PART OF A RESEARCH OR TECHNOLOGICAL DEVELOPMENT, IN WHICH THE RESPONSIBILITY FOR THE GH IS NOT TRASFERED

SERVICES PROVIDED

ABROAD ARE CONSIDERED

**TESTS** 

**SPECILIZED TECHNIQUES** 

PERFORMED BY AN INSTITUTION COLABORATING WITH THE NATIONAL INSTITUTION RESPONSIBLE BY THE ACCESS OR BY WHICH IT WAS HIRED



# **RESEARCH BY FOREIGNERS**

#### BRAZILIAN BIODIVERSITY CAN ONLY BE ACCESSED BY

FOREIGN INSTITUTION
(LEGAL ENTITY LOCATED
ABROAD)

in partnership with

BRAZILIAN INSTITUTION (PUBLIC OR PRIVATE)

THAT WILL BE RESPONSIBLE FOR THE **REGISTRATION AND** UPDATING SisGen (REGISTRY, NOTIFICATION, BENEFIT SHARING PAYMENT)





If access occurs in Brazil, an Authorization's
Request for Collecting and Research
(Scientific Expeditions) has to be obtained
from the Brazilian Institution for the Foreign
Institution before the Registration in SisGen

# NATIONAL COUNCIL FOR SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENT





### CLEAR AND FIXED RULES FOR BENEFIT SHARING WERE ESTABLISHED

#### **THAT CAN BE:**

- MONETARY, WITH THE PERCENTAGE OF 1% OF ANNUAL NET REVENUE OR UP TO 0.1% BY SECTORIAL AGREEMENT, OR
- NON MONETARY

ONLY THE MANUFACTURER OF THE FINISHED PRODUCT OR THE PRODUCER OF THE REPRODUCTIVE MATERIAL WILL BE SUBJECT TO BENEFIT-SHARING, REGARDLESS OF WHO PREVIOUSLY PERFORMED THE ACCESS



# **CLEAR AND FIXED RULES FOR BENEFIT SHARING WERE ESTABLISHED**

#### **THAT CAN BE:**

- MONETARY, WITH THE PERCENTAGE OF 1% OF ANNUAL NET REVENUE OR UP TO 0.1% BY SECTORIAL AGREEMENT, OR
- NON MONETARY
- a. projects for conservation, sustainable use of biodiversity, protection and maintenance of knowledge, innovations and practices of populations holders of traditional knowledge
- b. technology transfer
- c. training of human resources on issues related to conservation and sustainable use of genetic heritage or associated traditional knowledge
- d. free distribution of products in programs of social interest, etc...



### IN THE CASE OF ACCESS TO:

Genetic Heritage and Associated TK of unidentifiable source

The beneficiary of benefit sharing:

Is the Government, represented by the Ministry of the Environment

Associated TK of identifiable source

The beneficiary of benefit sharing:

Are the indigenous people, traditional communities and traditional farmers



THE PAYMENTS FROM THE BENEFIT SHARING AND FINES DUE TO NONCOMPLIANCE OF THE LAW SHALL BE DEPOSITED IN



THE NATIONAL FUND FOR BENEFIT SHARING - FNRB

ESTABLISHED FOR VALORIZING GENETIC HERITAGE AND ASSOCIATED
TRADITIONAL KNOWLEDGE AS WELL AS TO PROMOTE THEIR USE IN A
SUSTAINABLE WAY



### WHEN THE BENEFIT SHARING COMES FROM:

**Genetic Heritage** 



The payments will go entirely to the FNRB

Associated Traditional Knowledge of unidentifiable source



The payments will go entirely to the FNRB

Associated Traditional Knowledge of identifiable source



The TK holders negotiate freely the benefit sharing and additional 0.5% of annual net revenue from the economic exploitation of the knowledge will go to the FNRB and will be administered by providers



THE MONETARY FUNDS DEPOSITED IN THE NATIONAL FUND OF BENEFIT SHARING (FNRB) ARISING FROM ECONOMIC EXPLOITATION OF FINISHED PRODUCT OR REPRODUCTIVE MATERIAL OBTAINED FROM THE ACCESS TO:

Genetic Heritage from *ex*situ Collections



Will be **partially (60 to 80%)** intended for the benefit of these collections

Associated Traditional Knowledge



Will be used **exclusively** for the benefit of traditional knowledge holders



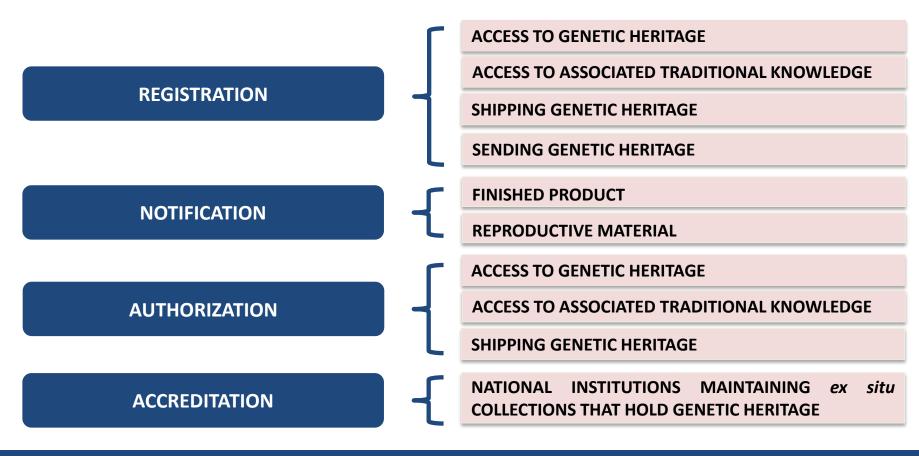
Through the National Fund of Benefit Sharing the National Program of Benefit Sharing – PNRB will be established in order to promote, among others:

- Conservation of biological diversity
- Survey and inventory of genetic heritage
- Recovery, creation and maintenance of ex situ collections
- Training of human heritage associated with the use and conservation of genetic heritage and associated traditional knowledge
- Support for the efforts of indigenous peoples, traditional communities and traditional farmers in the sustainable management and conservation of genetic heritage



# **CGEN CREATED ELECTRONIC SYSTEM**

The National System for Genetic Heritage and Associated Traditional Knowledge Management (SisGen) was created to manage:





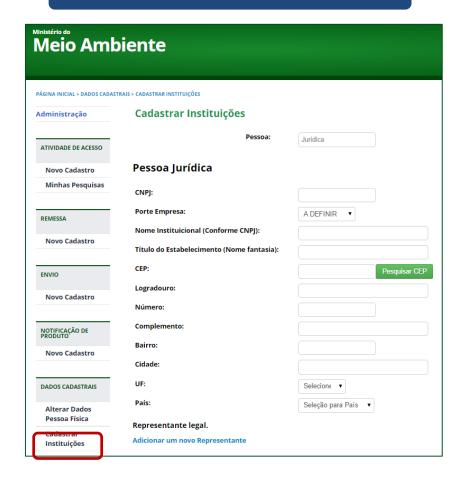
# **ELECTRONIC SYSTEM FOR REGISTRATION**





# **ELECTRONIC SYSTEM FOR REGISTRATION**

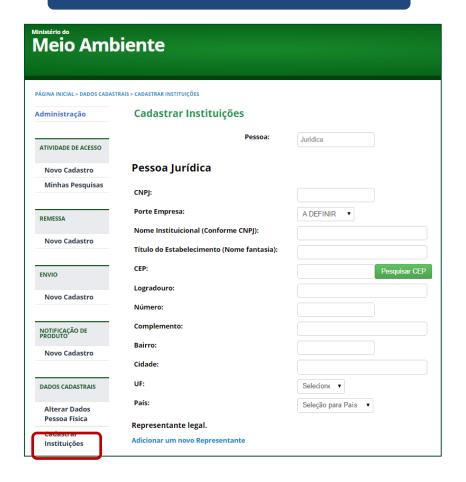
#### **REGISTRATION OF THE INSTITUTION**





# **ELECTRONIC SYSTEM FOR REGISTRATION**

#### **REGISTRATION OF THE INSTITUTION**

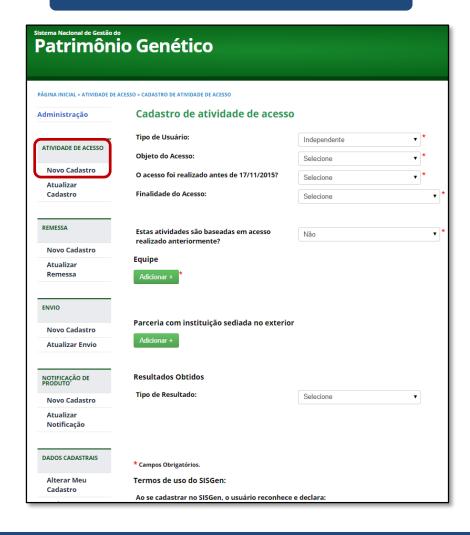


#### **REGISTRATION OF THE USER**

Meio Ambiente		
PÁGINA INICIAL > DADOS CADAS	TRAIS > ALTERAR DADOS DA PESSOA FÍSICA	
Administração	Alterar Dados da Pessoa Físi	ca
ATIVIDADE DE ACESSO	Pessoa Física	
Novo Cadastro	CPF:	i
Minhas Pesquisas	Nome (Conforme RG):	
REMESSA	Data de Nascimento:	
	Sexo:	Selecione ▼
Novo Cadastro	Raça ou cor:	Selecione v
ENVIO	Nacionalidade:	
	CEP:	Pesquisar CEP
Novo Cadastro	Logradouro:	
NOTIFICAÇÃO DE PRODUTO	Número:	
	Complemento:	
Novo Cadastro	Bairro:	
DADOS CADASTRAIS	Cidade:	
	UF:	Selecion∈ ▼
Pessoa Física	País:	Seleção para País ▼
Cadastrar Instituições	Telefone:	
	E-mail:	
	E-mail Alternativo:	
	Possui Vínculo Institucional:	Selecion∈ ▼ i

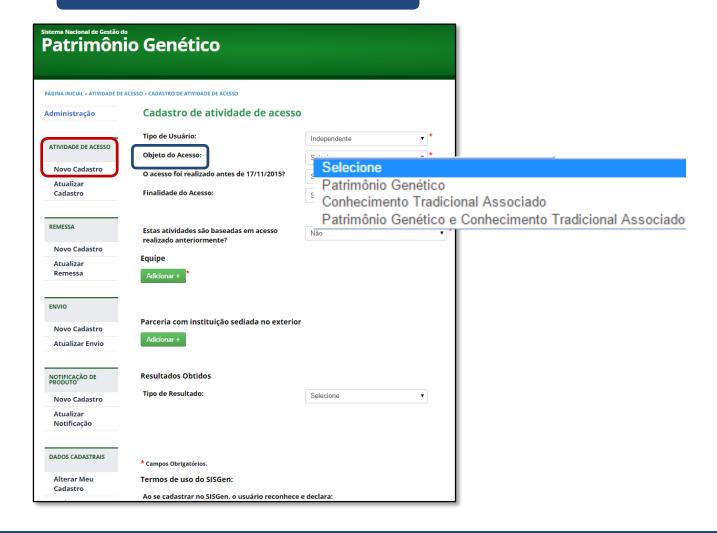


#### **REGISTRATION OF THE ACCESS ACTIVITY**



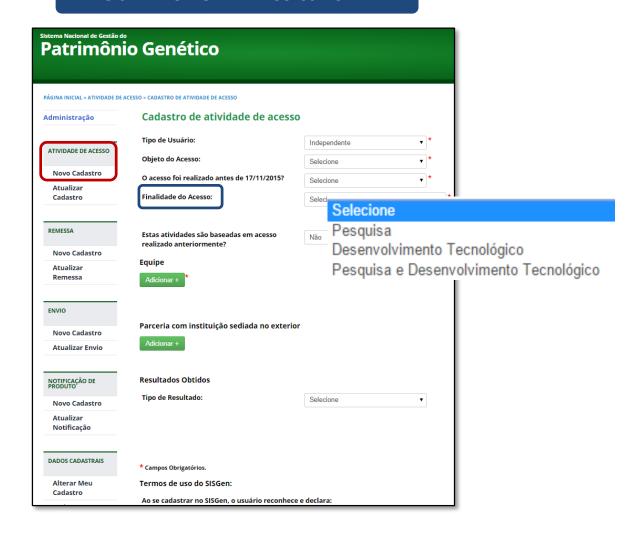


#### **REGISTRATION OF THE ACCESS ACTIVITY**





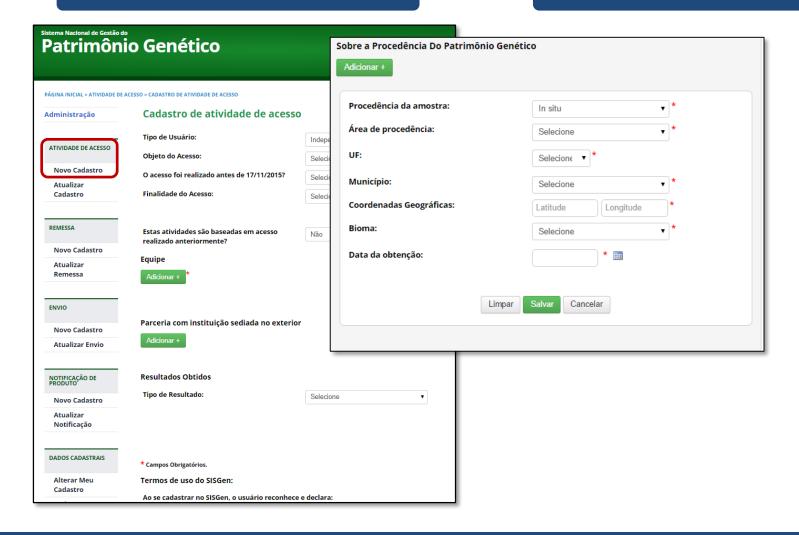
#### **REGISTRATION OF THE ACCESS ACTIVITY**





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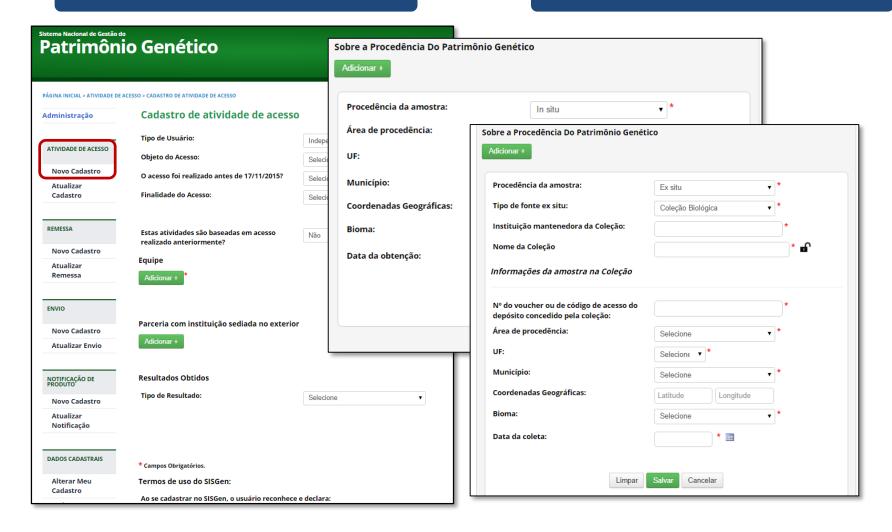
#### **ABOUT THE GENETIC HERITAGE SOURCE**





#### **REGISTRATION OF THE ACCESS ACTIVITY**

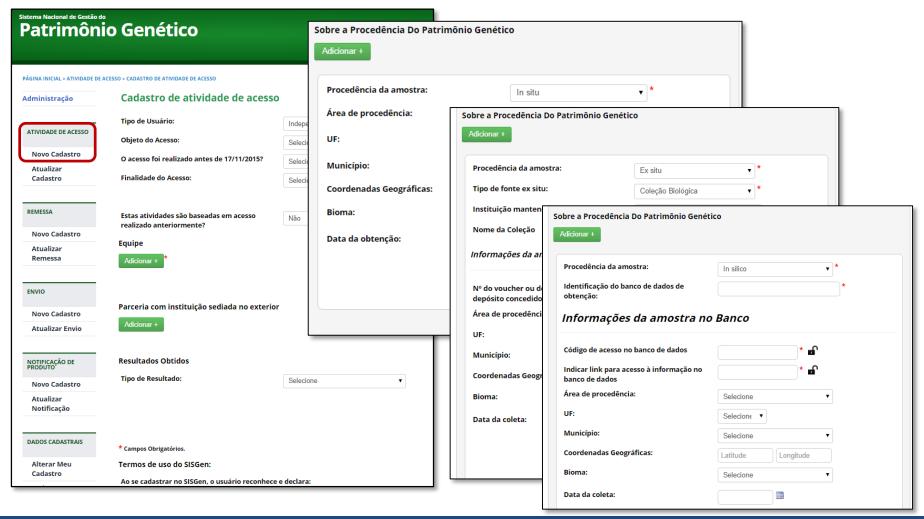
#### **ABOUT THE GENETIC HERITAGE SOURCE**





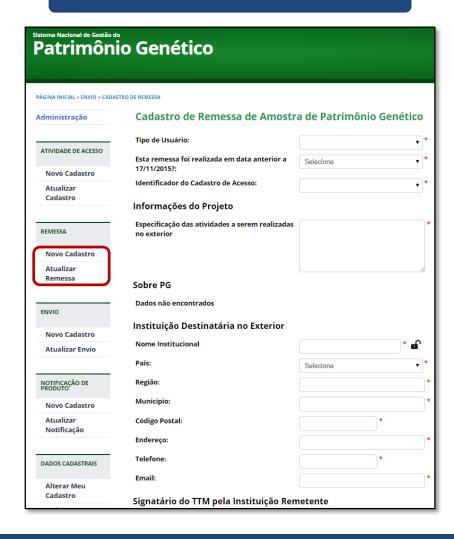
#### **REGISTRATION OF THE ACCESS ACTIVITY**

### **ABOUT THE GENETIC HERITAGE SOURCE**



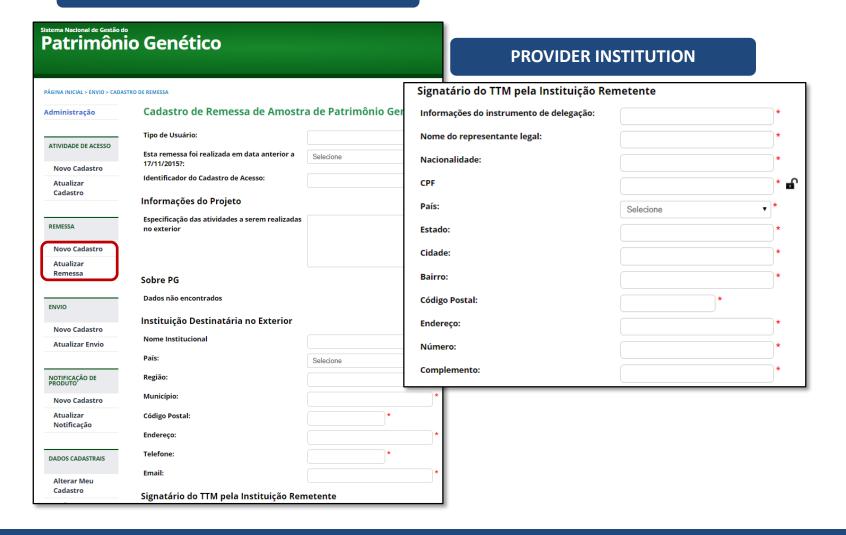


### **REGISTRATION OF THE SHIPMENT ABROAD**



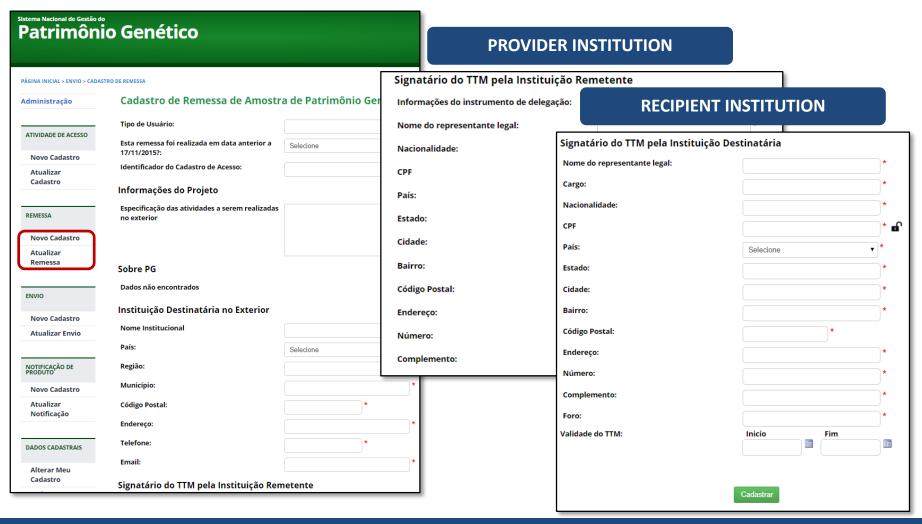


### **REGISTRATION OF THE SHIPMENT ABROAD**



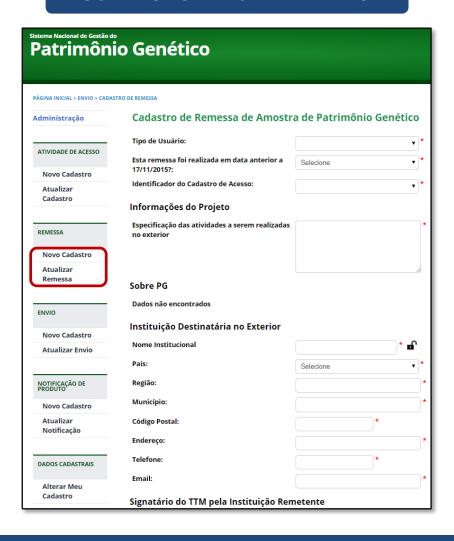


#### **REGISTRATION OF THE SHIPMENT ABROAD**





### **REGISTRATION OF THE SHIPMENT ABROAD**



#### **DEPOSIT IN EX SITU COLLLECTION**

Área de Coleta "in situ":	Selecione ▼
UF:	Selecione ▼
Município:	
Coordenadas Geográficas:	Latitude Longitude
Bioma:	•
Data da coleta:	
Quantidade de PG a ser Remetido, Conforme TTM:	
Depósito de Sub-Amostra	
Identificação da Coleção de Depósito:	
Nº do Voucher de depósito concedido pela Coleção:	



### **REGISTRATION OF THE SHIPMENT ABROAD**

#### Patrimônio Genético PÁGINA INICIAL > ENVIO > CADASTRO DE REMESSA Cadastro de Remessa de Amostra de Patrimônio Genético Administração Tipo de Usuário: • ATIVIDADE DE ACESSO Esta remessa foi realizada em data anterior a ▼ Selecione 17/11/2015?: Novo Cadastro Identificador do Cadastro de Acesso: Atualizar Cadastro Informações do Projeto Especificação das atividades a serem realizadas REMESSA no exterior Novo Cadastro Atualizar Remessa Sobre PG Dados não encontrados **ENVIO** Instituição Destinatária no Exterior **Novo Cadastro** Nome Institucional Atualizar Envio País: Selecione NOTIFICAÇÃO DE PRODUTO Região: Município: **Novo Cadastro** Atualizar Código Postal: Notificação Endereço: Telefone: DADOS CADASTRAIS Alterar Meu Cadastro Signatário do TTM pela Instituição Remetente

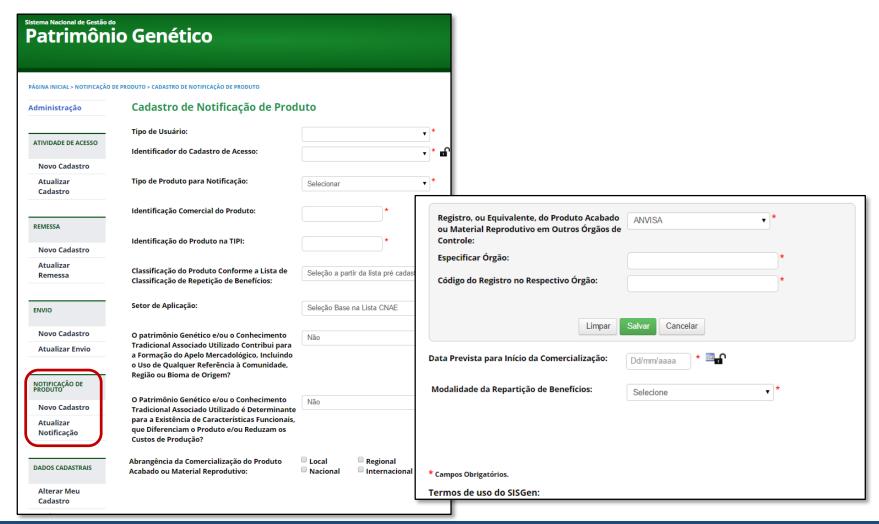
### **REGISTRATION OF THE SENDING ABROAD**

Patrimôni	io Genético		
PÁGINA INICIAL > ENVIO > CADAS	STRO DE ENVIO		
Administração	Cadastro de Envio de Amostra o Exterior para Prestação de Serv	ue Contenha Patrimônio iços	Genético a
ATIVIDADE DE ACESSO	Tipo de Usuário:	•	*
Novo Cadastro	Identificador do Cadastro de Acesso:	•	*
Atualizar Cadastro	Informações do Projeto		
	Especificação das atividades a serem realizada: no exterior	5	* 🔐
REMESSA			
Novo Cadastro			
Atualizar Remessa	Sobre PG		
	Dados não encontrados		
ENVIO	Instituição Destinatária no Exterior		
Novo Cadastro	Nome Institucional	* 🖍	
Atualizar Envio	País:	Selecione ▼	*
	Região:		*
NOTIFICAÇÃO DE PRODUTO	Município:		*
Novo Cadastro	Código Postal:	*	
Atualizar Notificação	Endereço:		*
	Telefone:	*	
DADOS CADASTRAIS	Email:		*



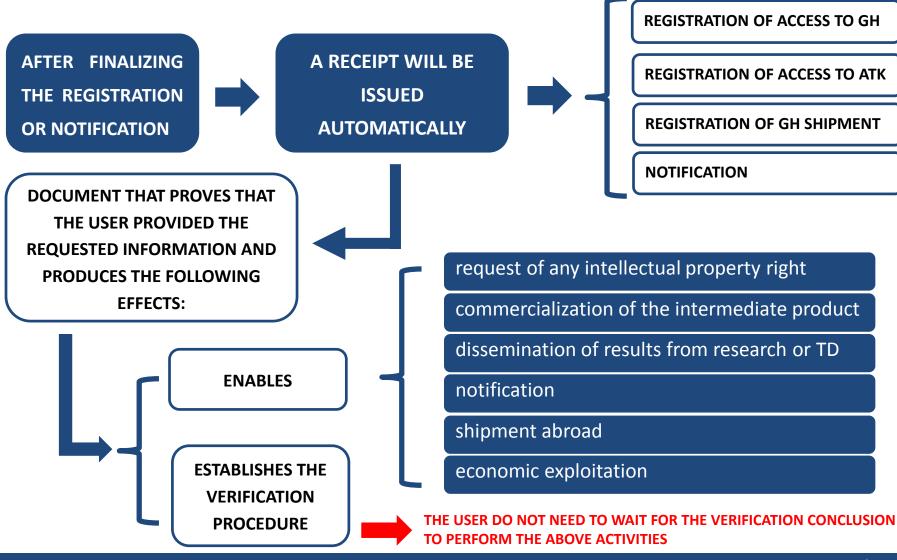
## **ELECTRONIC SYSTEM FOR NOTIFICATION**

#### **NOTIFICATION OF PRODUCT**





## **ELECTRONIC SYSTEM FOR REGISTRATION AND NOTIFICATION**



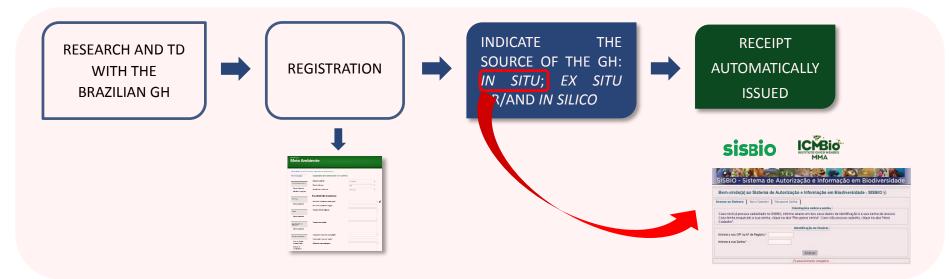


### **CERTIFICATE OF ACCESS REGULARITY**

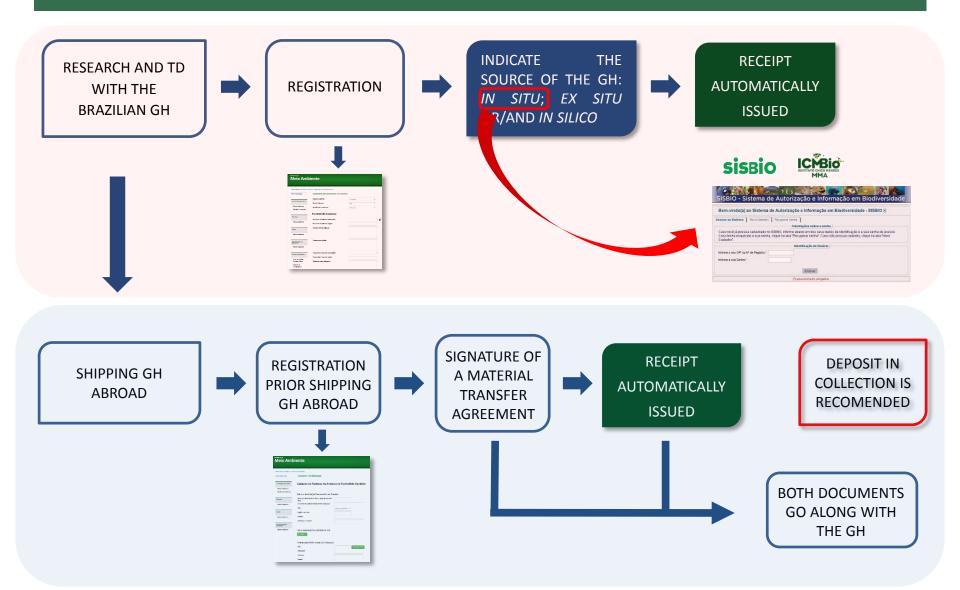
**UPON REQUEST OF THE USER AND CERTIFICATE OF ACCESS** AFTER DETERMINATION OF CGEN WILL **REGULARITY BE ISSUED ADMINISTRATIVE ACT BY** WHICH THE COMPETENT **AUTHORITY DECLARES THAT ACCESS TO GENETIC HERITAGE COMPLY WITH THE REQUIREMENTS OF THE** LAW **ACCESS TO ASSOCIATED** TRADITIONAL KNOWLEDGE PREVENTS APPLICATION OF ADMINISTRATIVE PENALTIES SPECIFICALLY REGARDING ACCESS ACTIVITIES UNDERTAKEN UNTIL ISSUING THE CERTIFICATE



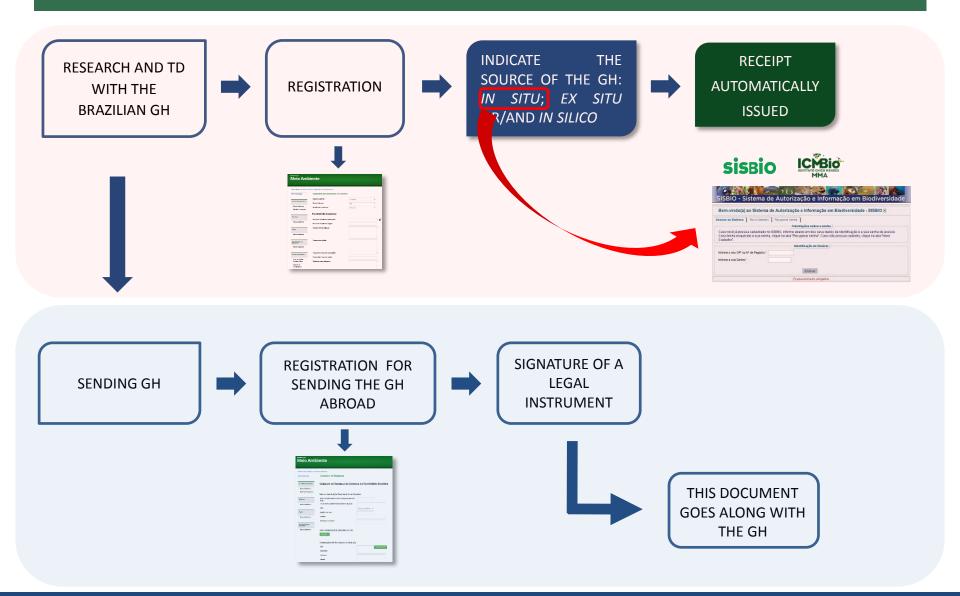




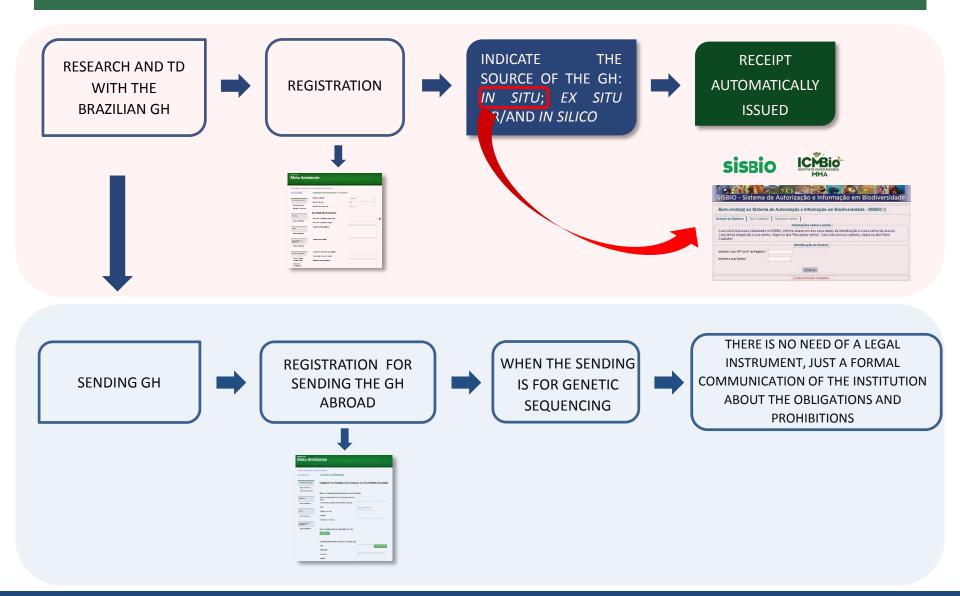






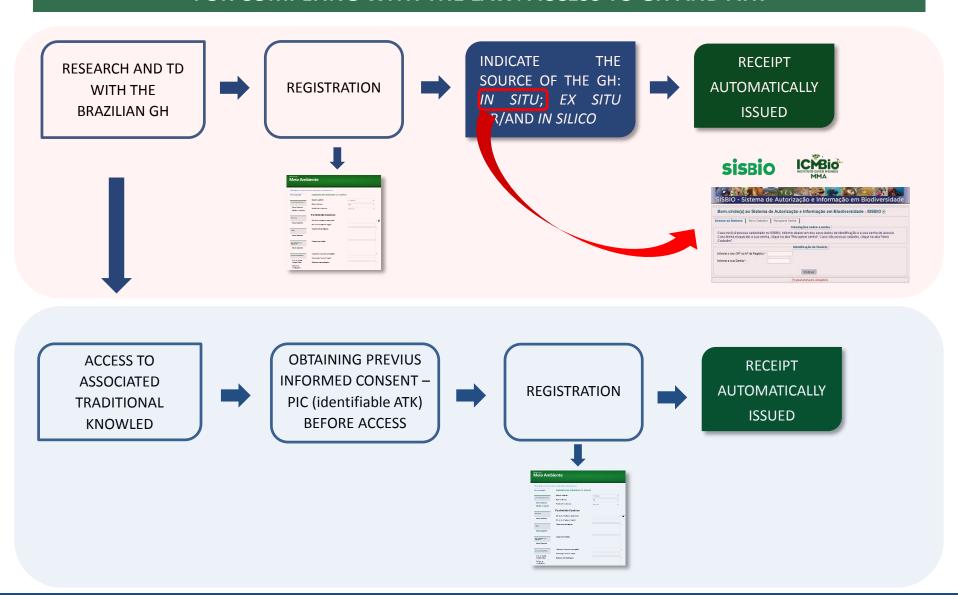






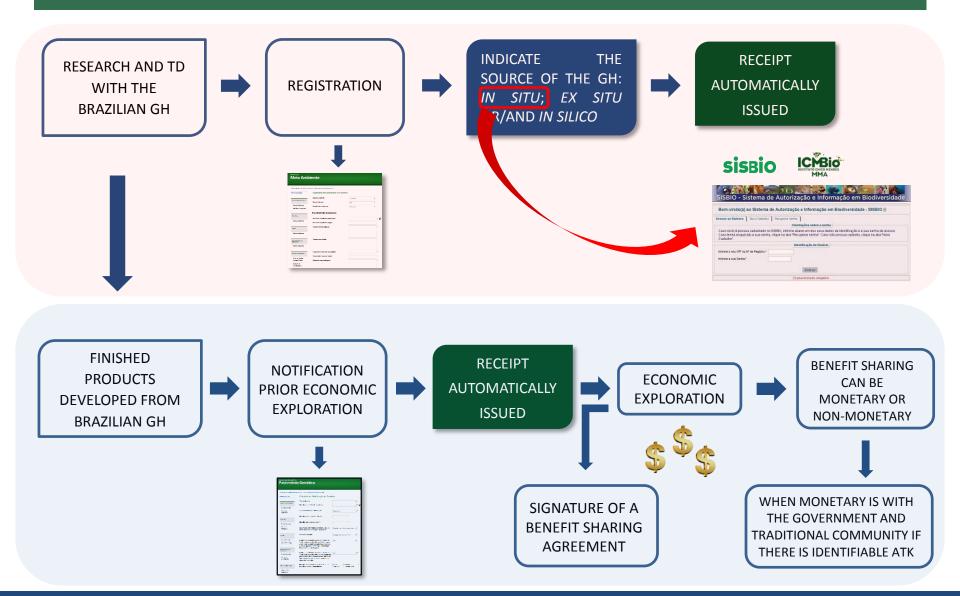


### FOR COMPLYING WITH THE LAW: ACCESS TO GH AND ATK





### FOR COMPLYING WITH THE LAW: ECONOMICAL EXPLORATION





### **REGULARIZATION**

Flexible rules were established for the regularization of the liability resulting from the failure to comply with the Provisional Act 2.186/2001. All the penalties were extinguished, with the exception of fines

RESEARCH

TECHNOLOGICAL DEVELOPMENT

90% fine exemption

with the remaining balance with the possibility to be reversed, for instance, conservation projects, in the distribution of products in programs of social interest



### **REGULARIZATION**

Flexible rules were established for the regularization of the liability resulting from the failure to comply with the Provisional Act 2.186/2001. All the penalties were extinguished, with the exception of fines



The regularization is conditioned to the signature of a Commitment Agreement



### **REGULARIZATION**

Flexible rules were established for the regularization of the liability resulting from the failure to comply with the Provisional Act 2.186/2001. All the penalties were extinguished, with the exception of fines



**TECHNOLOGICAL DEVELOPMENT** 

90% fine exemption

In the case of access to genetic heritage or associated TK for research purposes, the user will be exempted from signing the Commitment Agreement, regularizing through the registration



## **VIOLATIONS AGAINST GH AND ATK**

# THOSE WHO FAIL TO MEET THE REQUIREMENTS OF THE LAW REGARDING ACCESS TO GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE, INCLUDING, AMONG OTHERS:

- Explore economically finished product or reproductive material from access to GH or ATK without notification
- Shipping GH abroad without prior registration or in disagreement with this
- Disseminate results, final or partial, in scientific or communication circles without prior registration
- Access ATK of identifiable source without obtaining prior informed consent or in disagreement with this
- Failing to indicate the origin of ATK of identifiable source in publications, utilizations, explorations and disclosures of results from the access

### **CAN BE PUNISHED WITH PENALTIES SUCH AS:**

- Warning
- Fine
- Suspension of certificate
- Cancellation of certificate
- Embargo on the specific activity related to the offense
- Apprehension of materials
- Temporary suspension of the manufacture and sale of the finished product or reproductive materials
- Partial or total prohibition of the establishment, activity or enterprise



# **THANK YOU!**

Manuela da Silva
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FIOCRUZ
FUNDAÇÃO OSWALDO CRUZ
HEALTH MINISTRY

