

1. [Applicability of “Fair and Equitable Benefit Sharing \(FEBS\)” to Indian entities under the Biological Diversity Act, 2002](#)

On 21.12.2018 the Uttarakhand High Court, while dealing with a Writ Petition filed by Divya Pharmacy, which is one of the largest manufactures of Ayurvedic medicines and nutraceutical products, held that the “Fair and Equitable Benefit Sharing” (FEBS) obligation under the Biological Diversity Act, 2002 (BD Act) would also apply to Indian entities and not just foreign companies.

It is undisputed that the BD Act requires foreign entities or Indian companies with foreign participation in share capital or management to ensure regular payment of FEBS. However, going into the ratio underpinning the adoption of the BD Act, the Court referred to the relevance of the Stockholm Conference, the Rio Conference, the Johannesburg Declaration, the Convention on Biological Diversity, 1992 (CBD) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. Against this background of international environmental soft law and binding treaty law, the court held that the BD Act was adopted to implement these international commitments. It also took into account the fact that the “Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014” (Regulations) adopted by India explicitly state that the Regulations are in pursuance of the Nagoya Protocol and the references in the BD Act categorically referring to “fair and equitable sharing of the benefits arising out of the use of biological resources”.

After considering all these factors, the Court was of the view that the fair and equitable sharing of benefits with the indigenous and local communities is one of the basic pillars of the BD Act and that the State Biodiversity Board (SBB) has the power to impose a FEBS contribution on all persons, whether they have a foreign element attached to them or not – as otherwise the underlying intent of the CBD and Nagoya Protocol and the domestic BD Act would be undermined or rendered meaningless. In this context, the Court elaborated on the importance of relying on “purposive interpretation”, particularly when it relates to socially or economically beneficial legislation, in this case benefiting local and indigenous communities.

As a result, no Indian person, including all traders, manufactures, body incorporate, legal person, who uses or intends to use any biological resources for commercial utilization will be exempted from the FEBS contribution/fee payment obligation, except local communities, *Vaids* and *Hakims* themselves. The sharing obligation on the applicants can either be paid on purchase price or on the gross profits (excluding government taxes). The same ranges between 1.0-5.0% on purchase price and 0.1-0.5% on gross profits.

A copy of the full Judgment can be viewed here: <https://barandbench.com/baba-ramdev-divya-pharmacy-biodiversity-uttarakhand-hc-profit-sharing/divya-pharmacy-v-uo-uttarakhand-hc/>

2. Union Cabinet approves Coastal Regulation Zone (CRZ) Notification, 2018

The Union Cabinet approved the new Coastal Regulation (CRZ) Notification, 2018, on 28.12.2018. Most significantly, the new CRZ Notification de-freezes the Floor Space Index (FSI) – which had been frozen as per 1991 Development Control Regulation (DCR) levels, for CRZ-II areas, i.e. urban areas. The real estate sector, particularly in densely populated coastal cities such as Mumbai, will welcome this development as this will allow the redevelopment of areas, otherwise limited by the earlier FSI limits. However, it remains to be seen whether NGOs will spring into action and seek to challenge this far-reaching CRZ Notification, 2018.

Even the category pertaining to rural areas (CRZ-III) relaxes the rules for densely populated areas and has now been sub-divided in a CRZ-IIIA and a CRZ-IIIB category. The CRZ-IIIA category pertains to densely populated rural areas, defined as a having a population density above 2161 per sq.km (per the 2011 Census), where the No Development Zone (NDZ) has been reduced from the earlier 200 meters from the High Tide Line (HTL) to 50 meters from the HTL, if the State has framed a Coastal Zone Management Plan (CZMP) in line with the new CRZ Notification. The ratio being that such areas share similar characteristics to urban areas.

From a governance perspective, there has been a devolution of powers, with the central Ministry of Environment, Forests & Climate Change (MoEFCC) henceforth only handling projects located in CRZ-I (Ecologically Sensitive Areas) and CRZ-IV (areas covered by the Low Tide Line and 12 nautical miles seaward); whereas the powers for clearances for projects falling in CRZ-II (urban areas) and CRZ-III (rural areas) delegated to State level authorities for recommendations. However, the final approval is only given by the MoEFCC. Special attention is given to the CRZ areas falling within the municipal limits of Greater Mumbai.

Other new aspects include: pollution abatement technologies / treatment facilities have been now allowed in CRZ-I B areas to better address pollution in coastal areas; ecologically sensitive areas have been accorded special importance; and defense and strategic projects have been exempted.

A copy of the CRZ Notification, 2018, can be viewed here:
<http://egazette.nic.in/WriteReadData/2019/195679.pdf>