

Amendments to the Biodiversity Act - information you need to know

Researchers involved in the discovery phase of a project involving indigenous biological resources or traditional knowledge, no longer need to obtain a bioprospecting permit.

The Biodiversity Act (National Environment Management: Biodiversity Act 10 of 2004; "the Act") was amended in May 2009 to specify that bioprospecting permits are only required for the commercialisation phase of bioprospecting projects and/or for export. However, the Minister (of the Department of Water and Environmental Affairs) must be given notice of a bioprospecting project before the discovery phase begins. An undertaking by the project leaders to comply with the requirements of the Act if the project enters the commercial phase also needs to be given.

Researchers should note that a bioprospecting project will be regarded as having entered the commercialisation phase once a complete patent application has been filed, irrespective of the actual commercial prospects of the project at that stage. Thus, a bioprospecting permit will need to have been obtained by the time a complete patent application (such as a PCT application) is filed.

From a bioprospecting perspective, other relevant amendments of the Act are:

a) Definitions of "commercialisation" and "commercial phase of a bioprospecting project" have been inserted. These definitions are the same as those in the Regulations and they therefore do not change the requirements for obtaining bioprospecting permits;

- b) The interests of specific individuals who possess traditional knowledge have now also been protected. Anyone who carries on the commercialisation phase of a bioprospecting project based on the traditional knowledge of a specific individual, must now enter into a benefit sharing agreement with the individual. Prior to this amendment, the Act only applied to traditional knowledge which belonged to indigenous communities; and
- c) The penalties for contravening the Act have been increased to a fine of up to R5 million for a first offence and up to R10 million for a subsequent offence, and/or imprisonment for up to 10 years.

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