

BIOPROSPECTING RULES RELAXED

It has now become a whole lot easier for researchers involved in bioprospecting projects to comply with the Biodiversity Act (the National Environmental Management: Biodiversity Act ("NEMBA")). From 1 April 2011, researchers no longer need to obtain a bioprospecting permit for projects that are not yet ready for commercialisation or for which a complete patent application has not yet been filed.

Prior to this date, it was necessary for researchers involved in a bioprospecting project to obtain a bioprospecting permit before commencing their research, even if any prospects of commercialisation were still a pipedream or several years away.

Bioprospecting projects are defined as "projects involving research on, or development of, indigenous biological resources."

Although the introduction of **Section 81A of the Biodiversity Act means that bioprospecting permits are not required for early-phase research projects ("the discovery phase")**, researchers nevertheless need to notify the **Minister of Environmental Affairs** of the existence of the project and need to agree to comply with the requirements of the Biodiversity Act should the project reach the commercialisation phase. This can be done by completing and submitting the attached form.

If and when the project reaches the commercialisation phase, the researchers will need to obtain a bioprospecting permit before continuing with the project. Apart from imminent commercialisation of a project, the commercialisation phase will also be deemed to have begun when an application for a complete patent, registered design or trade mark is filed.

As most projects are usually started several years before a complete patent application is filed or commercialisation commences, **this amendment to the Biodiversity Act provides researchers with significantly more time to establish whether there are any real commercialisation prospects for their project**, and if so, more time to conclude the Material Transfer Agreements and Benefit Sharing Agreements which are required in order to obtain a bioprospecting permit.

A permit is still required if indigenous biological resources are going to be exported from South Africa for bioprospecting purposes, irrespective of whether the research is in the discovery or commercialisation phase.

If you would like more information about the Biodiversity Act or its amendments, please feel free to contact us.