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Contents

Gazette Page No. No.

No.

Government notices • GoewermentskennisGewinGs

Environmental Affairs, Department of/ Omgewingsake, Departement van

1155 National Environmental Management: Biodiversity Act (10/2004): Proposed period of amnesty to facilitate compliance with the provisions of Chapter 6 of the Act and the Bioprospecting, Access and Benefit Sharing Regulations, 2015 .....

NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO. 10 OF 2004)

PROPOSED PERIOD OF AMNESTY TO FACILITATE COMPLIANCE WITH THE PROVISIONS OF CHAPTER 6 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 AND THE BIOPROSPECTING, ACCESS AND BENEFIT SHARING REGULATIONS, 2015

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to declare a period of amnesty to facilitate compliance with the provisions of Chapter 6 of the National Environmental Management: Biodiversity Act, 2004 and the Bioprospecting Access and Benefit Sharing Regulations, 2015, under section 105B(2) read with sections 105B(1)(b), and 100 of the National Environmental Management Act: Biodiversity Act, 2004.

The proposed scope of the amnesty is as follows:

1. The person or category of persons to whom the amnesty applies is any natural or juristic person (Bioprospectors and Biotraders), engaging in the commercialisation phase of bioprospecting or biotrading involving indigenous genetic and biological resources, without a permit issued in terms of Chapter 7 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (the Act), since 1 April 2008, the date of coming into effect of the Bioprospecting, Access and Benefit Sharing Regulations, 2008.

2. The restricted activity to which the amnesty applies is the commercialisation phase of bioprospecting or biotrading, subject to the following conditions:

2.1 The applicant must, simultaneously with the permit application, submit a sworn affidavit containing the description of the benefits (that is, monetary or non-monetary benefits or both) from the revenue generated, reserved for and committed for sharing with the identified holder of traditional knowledge upon the expiry of amnesty, subject to the negotiation and conclusion of a benefit sharing agreement during amnesty period. The Minister may refuse to issue amnesty letter to the applicant, if the applicant fails to submit the required sworn affidavit.

2.2 The applicant must submit material transfer agreement and benefit sharing agreement concluded with the provider of access to indigenous genetic and biological resources.

2.3 Upon receipt of the fully completed permit application, the department will assess the documentation within 10 working days and on the basis of the accuracy of the information submitted and taking into consideration sustainability and conservation elements of the indigenous genetic and biological resources involved, issue an Amnesty Letter, permitting the applicant to engage in the commercialisation phase of bioprospecting or biotrading involving indigenous genetic and biological resources, without a permit issued in terms of Chapter 7 of the Act, while the department is assisting the applicant, on request for intervention, to comply with the provisions of the Act.

2.4 The amnesty does not indemnify the applicant, against prosecution for offences under other legislations, such as Provincial Ordinances, Threatened or Protected Species Regulations and Convention on International Trade in Endangered Species of Wild Flora and Fauna Regulations (CITES Regulations).

2.5 The applicant who has already submitted a permit application which is still pending a final decision from the Minister due to the identification of holders of traditional knowledge is automatically covered by the Amnesty and will receive an Amnesty Letter within 20 working days, after the date of declaration of amnesty by the Minister.

2.6 The permit applicant must, with regard to indigenous genetic and biological resources, where holders of traditional knowledge have been identified, submit together with a permit application, a plan of engagement, and a commitment to negotiate with the identified holders of traditional knowledge, within the period of amnesty. The holders of traditional knowledge with regard to the following indigenous genetic and biological resources have been identified: *Aspalatus linearis* (Rooibos), *Agathosma betulina* (Buchu), *Agathosma* crenulata (Buchu), *Cyclopia* species (Honeybush), *Sceletium tortuosum* (Kanna), *Galenia africana* (Kraalbos). The contact details of the holders of traditional knowledge will be made available to the applicant by the department, upon request. The Minister may refuse to issue amnesty letter to the applicant, if the applicant fails to submit the required plan of engagement, and a commitment to negotiate with the identified holders of traditional knowledge, with the application of a permit.

3. The period during which a person must apply for a permit is structured in the following manner:

3.1 The person or category of persons contemplated in paragraph 1, must within six months from the date of declaration of amnesty in the *Gazette*, by the Minister, complete the permit application documentation and submit to the Minister. The permit application documentations are available on the Departmental website; www.environment.gov.za or send a request to BABS@environment.gov.za.

3.2 The person or category of person contemplated in paragraph 1 must utilise the remaining one year six months, to facilitate identification of the holders of traditional knowledge associated with indigenous genetic and biological resources referred to in the permit application, and negotiation of the required benefit sharing agreement. The Department of Environmental Affairs in collaboration with the Department of Science and Technology will facilitate the process following receipt of request for intervention by the applicant.

4. Where a benefit sharing agreement is likely to be negotiated in principle with a significant majority of the applicants who subscribed to an association, the department will accept an industry or sector-wide benefit sharing agreement.

5. In seeking the benefit sharing model to enable the simplification of the process, the department may consider proposals that seek to bind the applicants, to share benefits in a fair and equitable manner in the best interest of the affected communities.

6. The period of amnesty is a period of 24 months from the date of declaration of the amnesty by the Minister, by notice in the *Gazette*. A person or category of person contemplated in paragraph 1 must submit a permit application within six months from the date of declaration of amnesty.

6.1 All affected persons or category of persons contemplated in paragraph 1 are encouraged to comply with the provisions of the Act and the associated BABS Regulations, by submitting fully completed permit application documentation, without fear of being prosecuted for not having applied earlier.

6.2 Failure to take advantage of this limited opportunity to facilitate compliance with Chapter 6 of the Act, and the BABS Regulations, will result in enforcement of Chapter 9 of the Act and Chapter 5 of the BABS Regulations by the department against any person or category of person who contravenes or fails to comply with the Act.

Members of the public are invited to submit to the Minister, within 30 days after publication of the notice in the *Gazette*, written comments or in puts to the following addresses:

By Post to: The Director-General
Department of Environmental Affairs
Attention: Mrs Lactitia Tshitwamulomoni
Private Bag X447
PRETORIA
0001

Hand-delivery: Environment House, 473 Steve Biko Road, Arcadia, Pretoria.

By e-mail: BABS@environment.gov.za.

Any enquiries in connection with the published Notice can be directed to Mrs Lactitia Tshitwamulomoni at Tel: 012 399 9611 or Email: lmabadahane@environment.gov.za or Mr Ntambudzeni Nepfumembe at Tel: 012 399 9612 or Email: nnepfumembe@environment.gov.za.

Comments received after the closing date may not be considered.

BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

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Anna-Marie du Toit (012) 748-6292 (Anna-Marie.DuToit@gpw.gov.za) and

Siraj Rizvi (012) 748-6380 (Siraj.Rizvi@gpw.gov.za)