It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

To provide for the management and conservation of South Africa’s biodiversity within the framework of the National Environmental Management Act, 1998; the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources; the establishment and functions of a South African National Biodiversity Institute; and for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. (1) In this Act, unless the context indicates otherwise—
   “alien species” means—
   (a) a species that is not an indigenous species; or
   (b) an indigenous species translocated or intended to be translocated to a place
       outside its natural distribution range in nature, but not an indigenous species
       that has extended its natural distribution range by natural means of migration
       or dispersal without human intervention;
   “benefit”, in relation to bioprospecting involving indigenous biological resources,
   means any benefit, whether commercial or not, arising from bioprospecting
   involving such resources, and includes both monetary and non-monetary returns;
   “biological diversity” or “biodiversity” means the variability among living
   organisms from all sources including, terrestrial, marine and other aquatic
   ecosystems and the ecological complexes of which they are part and also includes
   diversity within species, between species, and of ecosystems;
   “bioprospecting”, in relation to indigenous biological resources, means any
   research on, or development or application of, indigenous biological resources for
   commercial or industrial exploitation, and includes—
   (a) the systematic search, collection or gathering of such resources or making
       extractions from such resources for purposes of such research, development or
       application;
   (b) the utilisation for purposes of such research or development of any
       information regarding any traditional uses of indigenous biological resources
       by indigenous communities; or
   (c) research on, or the application, development or modification of, any such
       traditional uses, for commercial or industrial exploitation;
   “bioregion” means a geographic region which has in terms of section 40(1) been
   determined as a bioregion for the purposes of this Act;
   “Board” means the board referred to in section 13;
   “competent authority”, in relation to the control of an alien or invasive species,
   means—
   (a) the Minister;
   (b) an organ of state in the national, provincial or local sphere of government
       designated by regulation as a competent authority for the control of an alien
       species or a listed invasive species in terms of this Act; or
   (c) any other organ of state;
   “components”, in relation to biodiversity, includes species, ecological communi-
   ties, genes, genomes, ecosystems, habitats and ecological processes;
   “control”, in relation to an alien or invasive species, means—
   (a) to combat or eradicate an alien or invasive species; or
   (b) where such eradication is not possible, to prevent, as far as may be practicable,
       the recurrence, re-establishment, re-growth, multiplication, propagation,
       regeneration or spreading of an alien or invasive species;
   “critically endangered ecosystem” means any ecosystem listed as a critically
   endangered ecosystem in terms of section 52(2).
"critically endangered species" means any indigenous species listed as a critically endangered species in terms of section 56;
"delegation", in relation to a duty, includes an instruction to perform the duty;
"Department" means the national Department of Environmental Affairs and Tourism;
"derivative", in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;
"Director-General" means the Director-General of the Department;
"ecological community" means an integrated group of species inhabiting a given area;
"ecosystem" means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;
"endangered ecosystem" means any ecosystem listed as an endangered ecosystem in terms of section 52(2);
"endangered species" means any indigenous species listed as an endangered species in terms of section 56;
"environmental management inspector" means a person authorised in terms of the National Environmental Management Act to enforce the provisions of this Act;
"export", in relation to the Republic, means to take out or transfer, or attempt to take out or transfer, from a place within the Republic to another country or to international waters;
" Gazette", when used—
(a) in relation to the Minister, means the Government Gazette; or
(b) in relation to the MEC for Environmental Affairs of a province, means the Provincial Gazette of that province;
"genetic material" means any material of animal, plant, microbial or other biological origin containing functional units of heredity;
"genetic resource" includes—
(a) any genetic material; or
(b) the genetic potential or characteristics of any species;
"habitat" means a place where a species or ecological community naturally occurs;
"import", in relation to the Republic—
(a) means to land on, bring into or introduce into the Republic, or attempt to land on, bring into or introduce into the Republic; and
(b) includes to bring into the Republic for re-export to a place outside the Republic;
"indigenous biological resource" —
(a) when used in relation to bioprospecting, means any indigenous biological resource as defined in section 80(2); or
(b) when used in relation to any other matter, means any resource consisting of—
(i) any living or dead animal, plant or other organism of an indigenous species;
(ii) any derivative of such animal, plant or other organism; or
(iii) any genetic material of such animal, plant or other organism;
"indigenous species" means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity;
"Institute" means the South African National Biodiversity Institute established in terms of section 10;
“introduction”, in relation to a species, means the introduction by humans, 5
whether deliberately or accidentally, of a species to a place outside the natural
range or natural dispersal potential of that species;
“introduction from the sea”, in relation to a specimen of any species, means the
transportation into the Republic of a specimen taken from a marine environment
not under the jurisdiction of any state;
“invasive species” means any species whose establishment and spread outside of
its natural distribution range—
(a) threaten ecosystems, habitats or other species or have demonstrable potential
to threaten ecosystems, habitats or other species; and
(b) may result in economic or environmental harm or harm to human health;

“issuing authority”, in relation to permits regulating the matters mentioned in
section 87, means—
(a) the Minister; or
(b) an organ of state in the national, provincial or local sphere of government
designated by regulation in terms of section 97 as an issuing authority for
permits of the kind in question;
“listed ecosystem” means any ecosystem listed in terms of section 52(1);
“listed invasive species” means any invasive species listed in terms of section
70(1);
“listed threatened or protected species” means any species listed in terms of
section 56(1);
“local community” means any community of people living or having rights or
interests in a distinct geographical area;
“management authority”, in relation to a protected area, means an authority to
whom the management of a protected area has been assigned;
“MEC for Environmental Affairs” means a member of the Executive Council of
a province who is responsible for the conservation of biodiversity in the province;
“migratory species” means the entire population or any geographically separate
part of the population of any species or lower taxon of wild animals, a significant
proportion of whose members cyclically and predictably cross one or more national
jurisdictional boundaries;
“Minister” means the Cabinet member responsible for national environmental
management;
“municipality” means a municipality established in terms of the Local Govern-
ment: Municipal Structures Act, 1998 (Act No. 117 of 1998);
“national botanical garden” means land declared or regarded as having been
declared as a national botanical garden in terms of section 33, and includes any land
declared in terms of section 33 as part of an existing botanical garden;
“National Environmental Management Act” means the National Environmen-
tal Management Act, 1998 (Act No. 107 of 1998);
“national environmental management principles” means the principles referred
to in section 7;
“non-detriment findings” means the determination of the non-detrimental impact
of an action on the survival of a species in the wild;
“organ of state” has the meaning assigned to it in section 239 of the Constitution;
“permit” means a permit issued in terms of Chapter 7;
“prescribe” means prescribe by regulation in terms of section 97;
“protected area” means a protected area defined in the Protected Areas Act;
“Protected Areas Act” means the National Environmental Management: Pro-
tected Areas Act, 2003;
“protected ecosystem” means any ecosystem listed as a protected ecosystem in terms of section 52(2);
“protected species” means any species listed as a protected species in terms of section 56;
“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
“re-export”, in relation to a specimen of a listed threatened or protected species, means the export from the Republic of a specimen of a listed threatened or protected species previously imported into the Republic;
“restricted activity”——
(a) in relation to a specimen of a listed threatened or protected species, means—
(i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;
(ii) gathering, collecting or plucking any specimen of a listed threatened or protected species;
(iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species; 
(iv) importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species;
(v) exporting from the Republic, including re-exporting from the Republic, any specimen of a listed threatened or protected species;
(vi) having in possession or exercising physical control over any specimen of a listed threatened or protected species;
(vii) growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply;
(viii) conveying, moving or otherwise translocating any specimen of a listed threatened or protected species; 
(ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or
(x) any other prescribed activity which involves a specimen of a listed threatened or protected species; and
(b) in relation to a specimen of an alien species or listed invasive species, means—
(i) importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species; 
(ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species;
(iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;
(iv) conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;
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(v) selling or otherwise trading in, buying, receiving, giving, donating or
accepting as a gift, or in any way acquiring or disposing of any specimen
of an alien or listed invasive species; or
(vi) any other prescribed activity which involves a specimen of an alien or
listed invasive species;

"species" means a kind of animal, plant or other organism that does not normally
interbreed with individuals of another kind, and includes any sub-species, cultivar,
variety, geographic race, strain, hybrid or geographically separate population;

"specimen" means—
(a) any living or dead animal, plant or other organism;
(b) a seed, egg, gamete or propagule or part of an animal, plant or other organism
capable of propagation or reproduction or in any way transferring genetic
traits;
(c) any derivative of any animal, plant or other organism; or
(d) any goods which—
(i) contain a derivative of an animal, plant or other organism; or
(ii) from an accompanying document, from the packaging or mark or label,
or from any other indications, appear to be or to contain a derivative of
an animal, plant or other organism;

"stakeholder" means—
(a) a person, an organ of state or a community contemplated in section 82(1)(a); or
(b) an indigenous community contemplated in section 82(1)(b);

"subordinate legislation", in relation to this Act, means—
(a) any regulation made in terms of section 97; or
(b) any notice published in terms of section 9, 33, 34, 40(1), 42(2), 43(3), 46(2),
52(1), 53(1), 55, 56(1), 57(2), 58, 66(1), 67(1), 68, 70(1), 72, 86(1) or 100(1)

"sustainable", in relation to the use of a biological resource, means the use of such
resource in a way and at a rate that—
(a) would not lead to its long-term decline;
(b) would not disrupt the ecological integrity of the ecosystem in which it occurs;
and
(c) would ensure its continued use to meet the needs and aspirations of present
and future generations of people;

"this Act" includes any subordinate legislation issued in terms of a provision of
this Act;

"threatening process" means a process which threatens, or may threaten—
(a) the survival, abundance or evolutionary development of an indigenous species
or ecological community; or
(b) the ecological integrity of an ecosystem,
and includes any process identified in terms of section 53 as a threatening process;

"vulnerable ecosystem" means any ecosystem listed as a vulnerable ecosystem in
terms of section 52(2);

"vulnerable species" means any indigenous species listed as a vulnerable species
in terms of section 56.

(2) In this Act, words or expressions derived from words or expressions defined in
subsection (1) have corresponding meanings unless the context indicates that another
meaning is intended.
Objectives of Act

2. The objectives of this Act are—
   (a) within the framework of the National Environmental Management Act, to provide for—
      (i) the management and conservation of biological diversity within the Republic and of the components of such biological diversity;
      (ii) the use of indigenous biological resources in a sustainable manner; and
      (iii) the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;
   (b) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic;
   (c) to provide for co-operative governance in biodiversity management and conservation; and
   (d) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act.

State’s trusteeship of biological diversity

3. In fulfilling the rights contained in section 24 of the Constitution, the state through its organs that implement legislation applicable to biodiversity, must—
   (a) manage, conserve and sustain South Africa’s biodiversity and its components and genetic resources; and
   (b) implement this Act to achieve the progressive realisation of those rights.

Application of Act

4. (1) This Act applies—
   (a) in the Republic, including—
      (i) its territorial waters, exclusive economic zone and continental shelf described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
      (ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and
   (b) to human activity affecting South Africa’s biological diversity and its components.
   (2) This Act binds all organs of state—
      (a) in the national and local spheres of government; and
      (b) in the provincial sphere of government, subject to section 146 of the Constitution.

Application of international agreements

5. This Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.

Application of other biodiversity legislation

6. (1) This Act must be read with any applicable provisions of the National Environmental Management Act.
   (2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

National environmental management principles

7. The application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.
Conflicts with other legislation

8. (1) In the event of any conflict between a section of this Act and—
   (a) other national legislation in force immediately prior to the date of commencement
       of this Act, the section of this Act prevails if the conflict specifically concerns the
       management of biodiversity or indigenous biological resources;  
   (b) provincial legislation, the conflict must be resolved in terms of section 146 of
       the Constitution; and
   (c) a municipal by-law, the section of this Act prevails.

(2) In the event of any conflict between subordinate legislation issued in terms of this
   Act and—
   (a) an Act of Parliament, the Act of Parliament prevails;
   (b) provincial legislation, the conflict must be resolved in terms of section 146 of
       the Constitution; and
   (c) a municipal by-law, the subordinate legislation issued in terms of this Act
       prevails.

(3) For the proper application of subsection (2)(b) the Minister must, in terms of
    section 146(6) of the Constitution, submit all subordinate legislation issued in terms of
    this Act which affects provinces to the National Council of Provinces for approval.

Norms and standards

9. (1) The Minister may, by notice in the Gazette—
    (a) issue norms and standards for the achievement of any of the objectives of this
        Act, including for the—
        (i) management and conservation of South Africa’s biological diversity and
            its components;
        (ii) restriction of activities which impact on biodiversity and its components;
        (b) set indicators to measure compliance with those norms and standards; and
        (c) amend any notice issued in terms of paragraph (a) or (b).

(2) (a) Before publishing a notice in terms of subsection (1), the Minister must follow
      a consultative process in accordance with sections 99 and 100.
      (b) A consultative process referred to in paragraph (a) need not apply to a non-substantial
          change to the notice.

(3) Norms and standards may apply—
    (a) nationwide;
    (b) in a specific area only; or
    (c) to a specific category of biodiversity only.

(4) Different norms and standards may be issued for—
    (a) different areas; or
    (b) different categories of biodiversity.

CHAPTER 2

SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE

Part 1

Establishment, powers and duties of Institute

Establishment

10. (1) The South African National Biodiversity Institute is established by this Act.
    (2) The Institute is a juristic person.

Functions

11. (1) The Institute—
    (a) must monitor and report regularly to the Minister on—
        (i) the status of the Republic’s biodiversity;
(ii) the conservation status of all listed threatened or protected species and listed ecosystems; and
(iii) the status of all listed invasive species;
(b) must monitor and report regularly to the Minister on the impacts of any genetically modified organism that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture;
(c) may act as an advisory and consultative body on matters relating to biodiversity to organs of state and other biodiversity stakeholders;
(d) must coordinate and promote the taxonomy of South Africa's biodiversity;
(e) must manage, control and maintain all national botanical gardens;
(f) may establish, manage, control and maintain—
   (i) herbaria; and
   (ii) collections of dead animals that may exist;
(g) must establish facilities for horticulture display, environmental education, visitor amenities and research;
(h) must establish, maintain, protect and preserve collections of plants in national botanical gardens and in herbaria;
(i) may establish, maintain, protect and preserve collections of animals and micro-organisms in appropriate enclosures;
(j) must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard;
(k) may allow, regulate or prohibit access by the public to national botanical gardens, herbaria and other places under the control of the Institute, and supply plants, information, meals or refreshments or render other services to visitors;
(l) may undertake and promote research on indigenous biodiversity and the sustainable use of indigenous biological resources;
(m) may coordinate and implement programmes for—
   (i) the rehabilitation of ecosystems; and
   (ii) the prevention, control or eradication of listed invasive species;
(n) may coordinate programmes to involve civil society in—
   (i) the conservation and sustainable use of indigenous biological resources; and
   (ii) the rehabilitation of ecosystems;
(o) on the Minister's request, must assist him or her in the performance of duties and the exercise of powers assigned to the Minister in terms of this Act;
(p) on the Minister's request, must advise him or her on any matter regulated in terms of this Act, including—
   (i) the implementation of this Act and any international agreements affecting biodiversity which are binding on the Republic;
   (ii) the identification of bioregions and the contents of any bioregional plans;
   (iii) other aspects of biodiversity planning;
   (iv) the management and conservation of biological diversity; and
   (v) the sustainable use of indigenous biological resources;
(q) on the Minister's request, must advise him or her on the declaration and management of, and development in, national protected areas; and
(r) must perform any other duties—
   (i) assigned to it in terms of this Act; or
   (ii) as may be prescribed.
(2) When the Institute in terms of subsection (1) gives advice on a scientific matter, it may consult any appropriate organ of state or other institution which has expertise in that matter.
General powers

12. The Institute may for the purpose of performing its duties—
   (a) appoint its own staff, subject to section 29;
   (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
   (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
   (d) open and operate its own bank accounts;
   (e) establish a company which has as its object the production and supply of goods or the rendering of services on behalf of the Institute, subject to the Public Finance Management Act;
   (f) invest any of its money, subject to section 32;
   (g) borrow money, subject to section 66 of the Public Finance Management Act;
   (h) charge fees—
      (i) for access to national botanical gardens, herbaria and other places under its control;
      (ii) for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 11(1)(m), (n) or (o); or
      (iii) for access to the results of, or to other information in connection with, any research performed by it;
   (i) collect royalties resulting from any discoveries, inventions or computer programmes;
   (j) insure itself against—
      (i) any loss, damage or risk; or
      (ii) any liability it may incur in the application of this Act;
   (k) perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and
   (l) institute or defend any legal action.

Part 2

Governing board, composition and membership

13. (1) The Institute is governed by a Board consisting of—
   (a) not fewer than seven and not more than nine members appointed in terms of section 15;
   (b) the Director-General or an official of the Department designated by the Director-General; and
   (c) the Chief Executive Officer of the Institute.

(2) The Minister—
   (a) must determine the number of members to be appointed in terms of subsection 1(1)(a); and
   (b) may alter the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.

(3) The Board takes all decisions in the performance of the duties and exercise of powers of the Institute, except—
   (a) those decisions taken in consequence of a delegation in terms of section 27; or
   (b) where the Public Finance Management Act provides otherwise.

Qualifications

14. (1) A member of the Board must—
   (a) be a fit and proper person to hold office as a member; and
   (b) have appropriate qualifications and experience in the field of biodiversity.
(2) The following persons are disqualified from becoming or remaining a member of the Board:
   (a) A person holding office as a member of Parliament, a provincial legislature or a municipal council; or
   (b) a person who has been removed from office in terms of section 21.

Appointment procedure

15. (1) Whenever it is necessary to appoint members of the Board referred to in section 13(1)(a), the Minister must—
   (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and
   (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by—
   (a) the personal details of the nominee;
   (b) nominee's qualifications or experience; and
   (c) any other information that may be prescribed.

(3) The Minister must, subject to subsection (4), appoint—
   (a) the required number of persons from the list compiled in terms of subsection (1)(b); and
   (b) if such list is inadequate, any suitable person.

(4) When making appointments the Minister must—
   (a) consult the MECs for Environmental Affairs; and
   (b) have regard to the need for appointing persons to promote representivity.

(5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise in the field of biodiversity.

Chairperson

16. (1) Whenever necessary the Minister must appoint a member of the Board as the Chairperson of the Board.
   (2) The Chairperson is appointed for a period which is determined by the Minister which may, in the case of a member referred to in section 13(1)(a), not extend beyond the period of his or her term as a member.
   (3) The Minister may appoint a member of the Board as acting chairperson of the Board if—
      (a) the Chairperson is absent for a substantial period; or
      (b) the appointment of a Chairperson is pending.

Term of office

17. Members of the Board referred to in section 13(1)(a)—
   (a) are appointed for a period of three years or, if section 22(2) applies, for a term determined in terms of that section;
   (b) on completion of that term, are eligible for reappointment for one additional term of three years; and
   (c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.

Conditions of appointment

18. (1) The Minister must determine the conditions of employment of members of the Board referred to in section 13(1)(a).
   (2) (a) The Minister may, with the concurrence of the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the Government.
      (b) Their remuneration and allowances are paid by the Institute.
   (3) (a) Members who are in the employ of the Government are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by the Institute.
      (b) Such members are appointed on a part-time basis.
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Conduct of members

19. (1) A member of the Board—
   (a) must perform the duties of office in good faith and without favour or prejudice;
   (b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that Board member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;
   (c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and
   (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Institute.

(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

20. (1) A member of the Board referred to in section 13(1)(a) ceases to be a member when that person—
   (a) is no longer eligible in terms of section 14 to be a member;
   (b) resigns; or
   (c) is removed from office in terms of section 21.

(2) A member may resign only by giving at least three months’ written notice to the Minister, but the Minister may accept a shorter period in a specific case.

Removal from office

21. (1) The Minister may remove a member of the Board referred to in section 13(1)(a) from office, but only on the ground of—
   (a) misconduct, incapacity or incompetence;
   (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on good cause shown;
   (c) insolvency; or
   (d) conviction of a criminal offence without the option of a fine.

(2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.

(3) The Minister may suspend a member under investigation in terms of this section.

Filling of vacancies

22. (1) A vacancy in the Board is filled—
   (a) in the case of a vacating Chairperson, by appointing another member in terms of section 16(1) as the Chairperson; and
   (b) in the case of a vacating member referred to in section 13(1)(a), by following the procedure set out in section 15.

(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating Chairperson or member.

Part 3

Operating procedures of Board

Meetings

23. (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a Board meeting at a time and place set out in the request.
(2) The Chairperson presides at meetings of the Board, but if the Chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.

Procedures

24. (1) The Board may determine its own procedures subject to the provisions of this Act.
   (2) The Board must keep records of its proceedings and of decisions taken.

Quorum and decisions

25. (1) A majority of the members of the Board serving at any relevant time constitutes a quorum for a meeting of the Board.
   (2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.
   (3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person’s vote as a member.

Committees

26. (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.
   (2) When appointing members to a committee, the Board is not restricted to members of the Board.
   (3) The Board—
      (a) must determine the duties of a committee;
      (b) must appoint a chairperson and other members of the committee;
      (c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
      (d) must determine a working procedure of a committee.
   (4) The Board may dissolve a committee at any time.
   (5) (a) Section 18 read with the necessary change as the context may require, applies to the terms and conditions of employment of committee members.
      (b) A staff member of the Institute appointed to a committee serves on the committee subject to the terms and conditions of that person’s employment.

Delegation of powers and duties

27. (1) When necessary for the proper performance of its duties, the Board may, subject to subsection (2), delegate any of its powers or duties to—
   (a) a member of the Board;
   (b) a committee referred to in section 26; or
   (c) a staff member of the Institute.
   (2) The following powers and duties may not be delegated by the Board:
      (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 28(1) or (2);
      (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 28(3);
      (c) the determination of an employment policy in terms of section 29(1); and
      (d) the setting of financial limits in terms of section 29(2)(a) or (3).
   (3) A delegation in terms of subsection (1)—
      (a) is subject to any limitations, conditions and directions that the Board may impose;
      (b) must be in writing;
      (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
      (d) does not prevent the exercise of the delegated power or the carrying out of the delegated duty by the Board.
   (4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.
Part 4

Administration of Institute

Appointment of Chief Executive Officer

28. (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Institute.

(2) The Chief Executive Officer—
   (a) is appointed for a term not exceeding five years; and
   (b) may be reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five years.

(3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.

(4) The Chief Executive Officer—
   (a) is responsible for the management of the Institute;
   (b) must perform such duties and may exercise such powers as the Board may delegate to him or her; and
   (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner, as the Board may determine.

(5) (a) The Chairperson of the Board may appoint another employee of the Institute as acting Chief Executive Officer for a period not exceeding six months, whenever—
   (i) the Chief Executive Officer if for any reason absent or unable to perform his or her duties; or
   (ii) there is a vacancy in the office of the Chief Executive Officer.

   (b) Whilst acting as Chief Executive Officer, such employee—
      (i) has the powers and duties of the Chief Executive Officer; and
      (ii) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).

Employment of staff

29. (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Institute.

(2) The Chief Executive Officer—
   (a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Institute; and
   (b) may appoint persons in posts on the staff establishment.

(3) An employee of the Institute is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of, and within the financial limits set by, the Board.

(4) (a) A person in the service of another organ of state may be seconded to the Institute by agreement between the Chief Executive Officer and such organ of state.

   (b) Persons seconded to the Institute perform their duties under the supervision of the Chief Executive Officer.

(5) A person in the service of the Institute may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

Part 5

Financial matters

Financial accountability

30. The Institute is a public entity for the purposes of the Public Finance Management Act, and must comply with the provisions of that Act.
Funding

31. The funds of the Institute consist of—
   (a) income derived by it from the performance of its duties and the exercise of its powers;
   (b) money appropriated by Parliament;
   (c) grants received from organs of state;
   (d) voluntary contributions, donations and bequests;
   (e) money borrowed in terms of section 12(g);
   (f) income derived from investments referred to in sections 32; and
   (g) money derived from any other source, subject to the Public Finance Management Act.

Investments

32. The Institute may invest any of its funds not immediately required—
   (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
   (b) in such a manner that the Minister may approve.

Part 6

National botanical gardens

Declaration

33. (1) The Minister, acting with the approval of the Cabinet member responsible for the administration of the land in question, may, by notice in the Gazette, declare any state land described in the notice as a—
   (a) national botanical garden; or
   (b) part of an existing national botanical garden.

(2) The Minister, acting in accordance with an agreement with the owner of the land described in that agreement, may, by notice in the Gazette declare that land as a—
   (a) national botanical garden; or
   (b) part of an existing national botanical garden.

(3) A notice in terms of subsection (1)(a) or (2)(a) must assign a name to the national botanical garden.

(4) The sites described in Schedule 1 to the Forest Act, 1984 (Act No. 122 of 1984), must be regarded as having been declared as national botanical gardens in terms of this section.

Amendment or withdrawal of declarations

34. (1) The Minister may, by notice in the Gazette—
   (a) amend or withdraw a notice referred to in section 33, subject to subsection (2); or
   (b) amend the name assigned to a national botanical garden.

(2) The declaration of state land as a national botanical garden, or part of an existing national botanical garden, may not be withdrawn and a part of a national botanical garden on state land may not be excluded from it except by resolution of each House of Parliament.

Part 7

General

Minister’s supervisory powers

35. (1) The Minister—
   (a) must monitor the exercise and performance by the Institute of its powers and duties;
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(b) may set norms and standards for the exercise and performance by the Institute of its powers and duties;
(c) may issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;
(d) must determine limits on fees charged by the Institute in the exercise and performance of its powers and duties; and
(e) may identify land for new botanical gardens and extensions to existing botanical gardens.

(2) The Institute must exercise its powers and perform its duties subject to any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

Absence of functional Board

36. In the event of absence of a functional Board, the powers and duties of the Board revert to the Minister who, in such a case, must exercise those powers and perform those duties until the Board is functional again.

CHAPTER 3

BIODIVERSITY PLANNING AND MONITORING

Purpose of Chapter

37. The purpose of this Chapter is to—
   (a) provide for integrated and co-ordinated biodiversity planning;
   (b) provide for monitoring the conservation status of various components of South Africa’s biodiversity; and
   (c) promote biodiversity research.

Part 1

Biodiversity planning

National biodiversity framework

38. (1) The Minister—
   (a) must prepare and adopt a national biodiversity framework within three years of the date on which this Act takes effect;
   (b) must monitor implementation of the framework;
   (c) must review the framework at least every five years; and
   (d) may, when necessary, amend the framework.

(2) The Minister must, by notice in the Gazette, publish the national biodiversity framework and each amendment of the framework.

Contents of national biodiversity framework

39. (1) The national biodiversity framework must—
   (a) provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, other stakeholders and the public;
   (b) be consistent with—
      (i) this Act;
      (ii) the national environmental management principles; and
      (iii) any relevant international agreements binding on the Republic;
   (c) identify priority areas for conservation action and the establishment of protected areas; and
   (d) reflect regional co-operation on issues concerning biodiversity management in Southern Africa.

(2) The national biodiversity framework may determine norms and standards for provincial and municipal environmental conservation plans.