

# A business guide to access and benefit-sharing (ABS)



Compliance with South Africa's biotrade and bioprospecting legal framework

## Section 2 | Preparing for permit applications



forestry, fisheries  
& the environment

Department:  
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### **Adrie El Mohamadi**

Component Manager - South Africa

BioInnovation Africa (BIA)

GIZ Center for Cooperation with the Private Sector (CCPS)

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

[Adrie.elmohamadi@giz.de](mailto:Adrie.elmohamadi@giz.de)

[Bioinnovationafrica@giz.de](mailto:Bioinnovationafrica@giz.de)

[www.giz.de](http://www.giz.de)

[www.abs-biotrade.info](http://www.abs-biotrade.info)

# Introduction

This is **section two** of a six-part step-by-step guide for businesses working with biodiversity or engaging with bioprospecting and/or biotrade. It aims to ensure compliance with South African laws and regulations, in line with access and benefit-sharing principles and industry best practices.

**Section one** provided an overview of ABS principles and legislation, and how they apply to companies working with biodiversity. **Section two** guides companies as they prepare to engage with laws, regulations and permitting procedures on access and benefit-sharing.

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# Glossary

Term	Definition
ABS	Access and benefit-sharing
ABSCH	ABS Clearing House
BABS	Bioprospecting, access and benefit-sharing
BAC	Bioprospecting Advisory Committee
BSA	Benefit-Sharing Agreement
Bioprospecting	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; or (d) the trading in and exporting of indigenous biological/genetic resources in order to develop and produce, such as medicines, industrial enzymes, food flavours, fragrances, cosmetics, colours, extracts and essential oils
Biotrade	The buying and selling of milled, powdered, dried, sliced or extracts of indigenous genetic and biological resources for commercial exploitation
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DFFE	Department of Forestry, Fisheries and the Environment
DSI	Department of Science and Innovation
dtic	Department of Trade, Industry and Competition
IK	Indigenous knowledge means knowledge which has been developed within an indigenous community and has been assimilated into the cultural and social identity of that community, and includes (a) knowledge of a functional nature; (b) knowledge of natural resources; and (c) indigenous cultural expressions
IKS Act	Protection, Promotion, Development and Management of Indigenous Knowledge Act (Act 6 of 2019)
IRCC	Internationally-recognised certificates of compliance
MAT	Mutually agreed terms
MTA	Material Transfer Agreement
NEMBA	National Environmental Management: Biodiversity Act (Act 10 of 2004)
Organisations	An organised group of people with a particular and defined purpose, such as organisations representing traditional knowledge holders, organisations representing sectors, organisations who support sector development, etc.
Organised group of traditional knowledge holders	Group of traditional knowledge (TK) holders mandated to present a wider group of TK holders who are organised and recognised by other TK holders such as the National Khoi and San Council of SA or the SA San Council
PIC	Prior informed consent
SANBI	South African National Biodiversity Institute
TCE	Traditional cultural expressions are more tangible than the informal oral traditions relating to traditional knowledge, and include artefacts, folklore, myths, songs, poems, performances and handicrafts
TK	Traditional knowledge refers to the customary utilisation or knowledge of indigenous genetic and biological resources by an indigenous community or specific individual, in accordance with written or unwritten rules, usages, customs or practices traditionally observed, accepted and recognised by them, and include discoveries about the relevant indigenous genetic and biological resources by that community or individual
TOPS	Threatened or protected species

# How to prepare for ABS permit applications

South Africa's [NEMBA](#) legislation and [BABS Regulations](#) (see [section 1](#)) creates the legal framework for conservation and responsible use of indigenous biological resources.

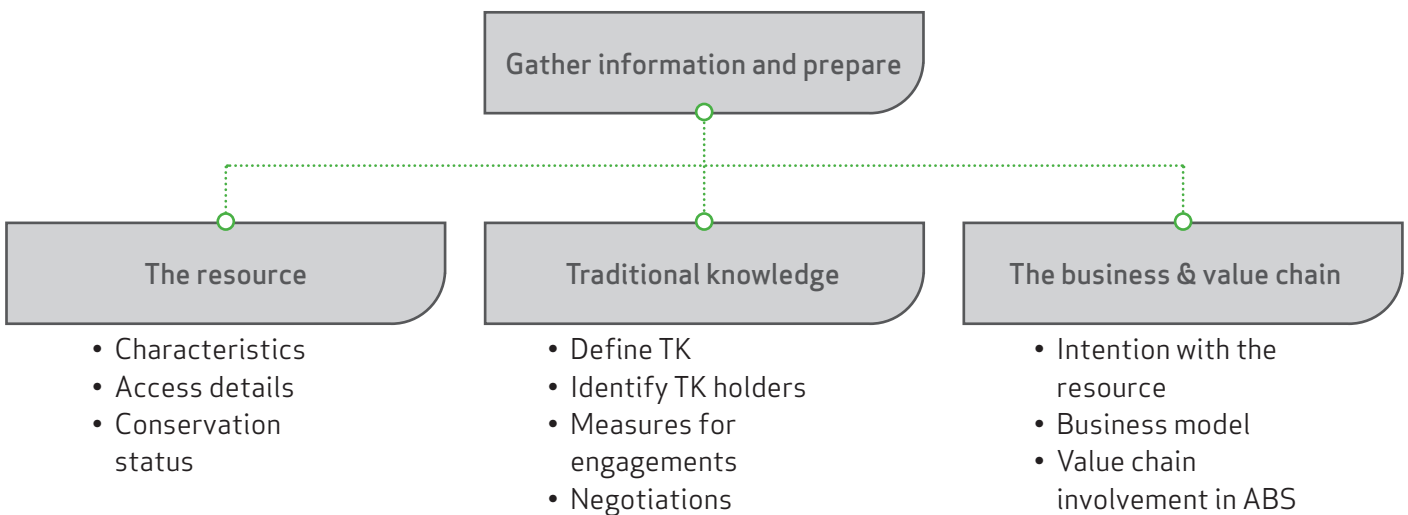
It requires companies working with indigenous resources to enter into access and benefit-sharing (ABS) agreements with local communities or holders of traditional or indigenous knowledge (TK/IK), and to apply for relevant permits.

Companies often begin this process without adequate preparation. Once they have started the process, they then realise they need to gather more information and engage with their value chain or trading partners. This can lead to applications missing some information required for evaluation, and can result in a long process between the applicant and the DFFE Bioprospecting Advisory Committee (BAC), which is responsible for the review of permit applications.



It is good practice to gather all required information *before* starting the permit application. This includes information on the biological resource, the TK/IK holders and the business and value chain partners.

The most crucial part of any application is the attachments and supporting information (see [section 6](#)). Failure to properly complete one's application will result in further requests for information from the DFFE, delaying the process significantly.

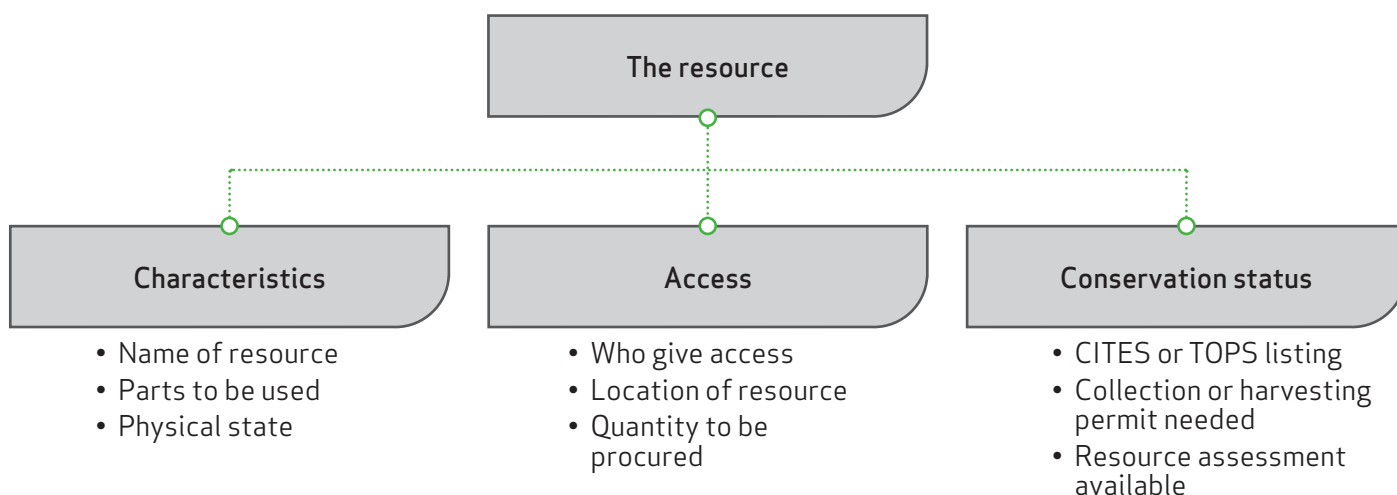


Information required for permitting and ABS

# How to prepare for ABS permit applications

## The resource

Three factors need to be considered when gathering and presenting information on the resource:



### Categories for information required about the resource

#### Characteristics of the resource

It is important that applicants consider specific details of the resource they want to access and use. The permit will be based on information in the application, so it must be accurate. This will ensure the permit covers the intended use of the resource. The following factors need to be specifically indicated in the permit application:

Name of the resource	Scientific and general or common names of the resource need to be indicated E.g. <i>Aspalathus linearis</i> and Rooibos
Part of the resource	This refers to the parts of the resource that will be used E.g. In the case of <i>Pelargonium sidoides</i> , the root may be used, and in the case of Buchu, the leaves may be used. This needs to be indicated in the application.
State of the resource	The state of the resource refers to the condition or form in which it will be utilised or sold E.g. The roots of <i>Pelargonium sidoides</i> are used to make an extract, so the state of the resource will be an extract. Buchu can be sold dried to be used in tea or distilled as an oil.

# How to prepare for ABS permit applications

## Access and volume



It is important that the DFFE as the regulating authority has a comprehensive view of the resource from point of origin to customer. The permit application form therefore requests information on the whole value chain.

The DFFE has responsibility for the protection of South Africa's biodiversity, so the origin of the resource needs to be indicated, including the name and address of the party that provides access to the resource, and its specific location with GPS coordinates.

The access provider is the person who gives access to the resource or to the land where the resource is collected or harvested. This can be a private individual, a community, an organ of state, a traditional authority, etc.

In the case of cultivated resources such as Rooibos or Buchu, it will be the farmer who cultivates the resource, and in the case of wild harvesting it will be the traditional authority, community or organ of state which owns the land.

The permit applicant will always enter into a Material Transfer Agreement (MTA) and Benefit-Sharing Agreement (BSA) with the access provider (see [section 5](#), 'Material Transfer Agreement with the provider of the resource').

It is also important to indicate the volume of the resource that will be procured from the access provider, including whether it is wet or dry. Accurate volumes need to be reflected on the permit. In cases where applicants access more of the resource than indicated on the original application, an updated application with increased volumes can be submitted to the DFFE prior to accessing the resource. An increased volume will require evaluation and approval.

## Conservation status

The status and sustainability of the resource, and the protection of the area where it grows, are key considerations for its continued utilisation as part of the biodiversity economy. This is true of both cultivated and wild-harvested indigenous genetic and biological resources.

It is important to establish whether the resource is listed by [CITES](#) or identified in the TOPS list, the [National Forest Act](#) (Act 84 of 1998) list, or related provincial legislation and [ordinances](#). If a resource is listed, special permits must be applied for and measures observed to protect it.

While it is not required by law, it is good practice to conduct a resource assessment to determine the abundance and sustainability of the resource, and the impact of its utilisation. The resource assessment is part of a business risk assessment, and if conducted, it should be an annex to the application.

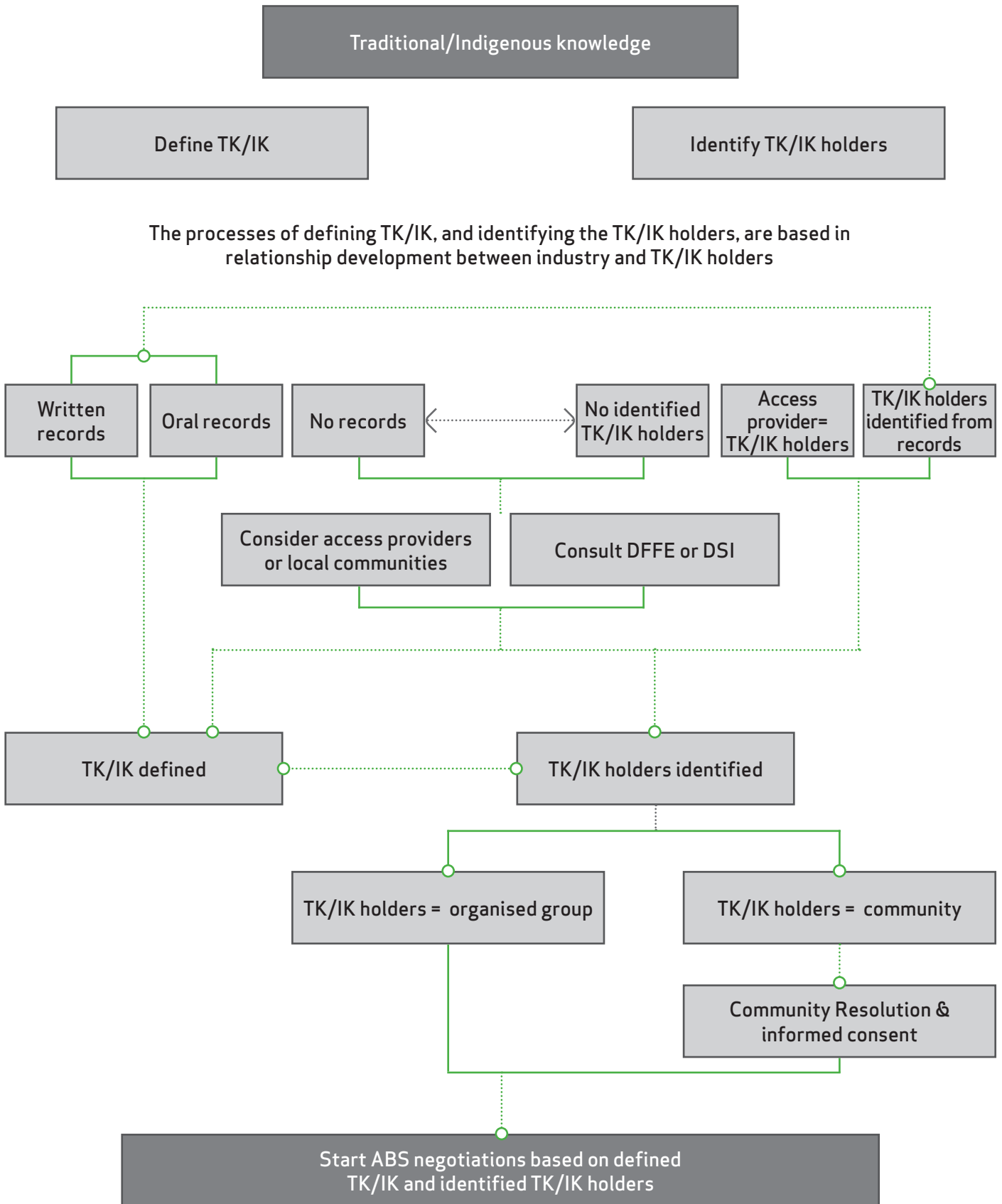
## Traditional and indigenous knowledge holders

One of the most challenging aspects of ABS in South Africa may be defining whether there is TK/IK relating to the resource, and then identifying the holders of this knowledge. For some species, such as Hoodia, Rooibos and Honeybush, TK/IK holders have already been identified. This information is available from the DFFE as the competent authority. The figure on page 8 will assist businesses in this regard.

The questions to be asked are:

- Is there TK/IK associated with the resource?
- Does this knowledge contribute to the project, either directly or indirectly?
- Have the holders of this knowledge been identified?

# How to prepare for ABS permit applications



Process flow for identification of TK/IK holders



# How to prepare for ABS permit applications

Defining the TK/IK and identifying its holders are often related processes. If the access provider is also the TK/IK holder, and they are willing to share their knowledge of the resource, the process may be straightforward.

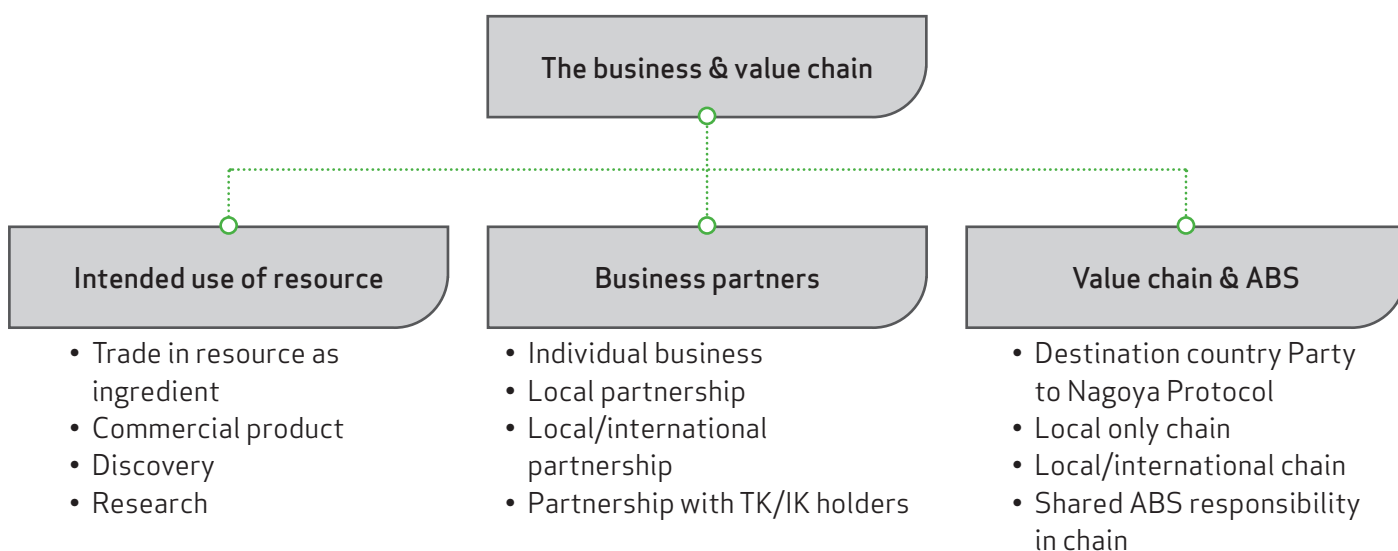
If this is not the case, the first step is to determine whether there is a record of traditional or indigenous use related to the resource, and if the knowledge holder has been previously identified. This can be done through the SANBI website or a review of journals such as [Pharmacopeia](#).

If no clear link is identified between the resource and TK or IK, the DFFE and Department of Science and Innovation should be consulted. They can also provide guidance on cases where multiple communities have been identified as TK or IK holders.

Once the TK or IK holders have been identified, it must be determined whether they are an organised grouping or a community, and this guides the negotiations.

## Business and value chain partners

The last issue that needs to be considered is the nature of the business applying for the permit, and their value chain.

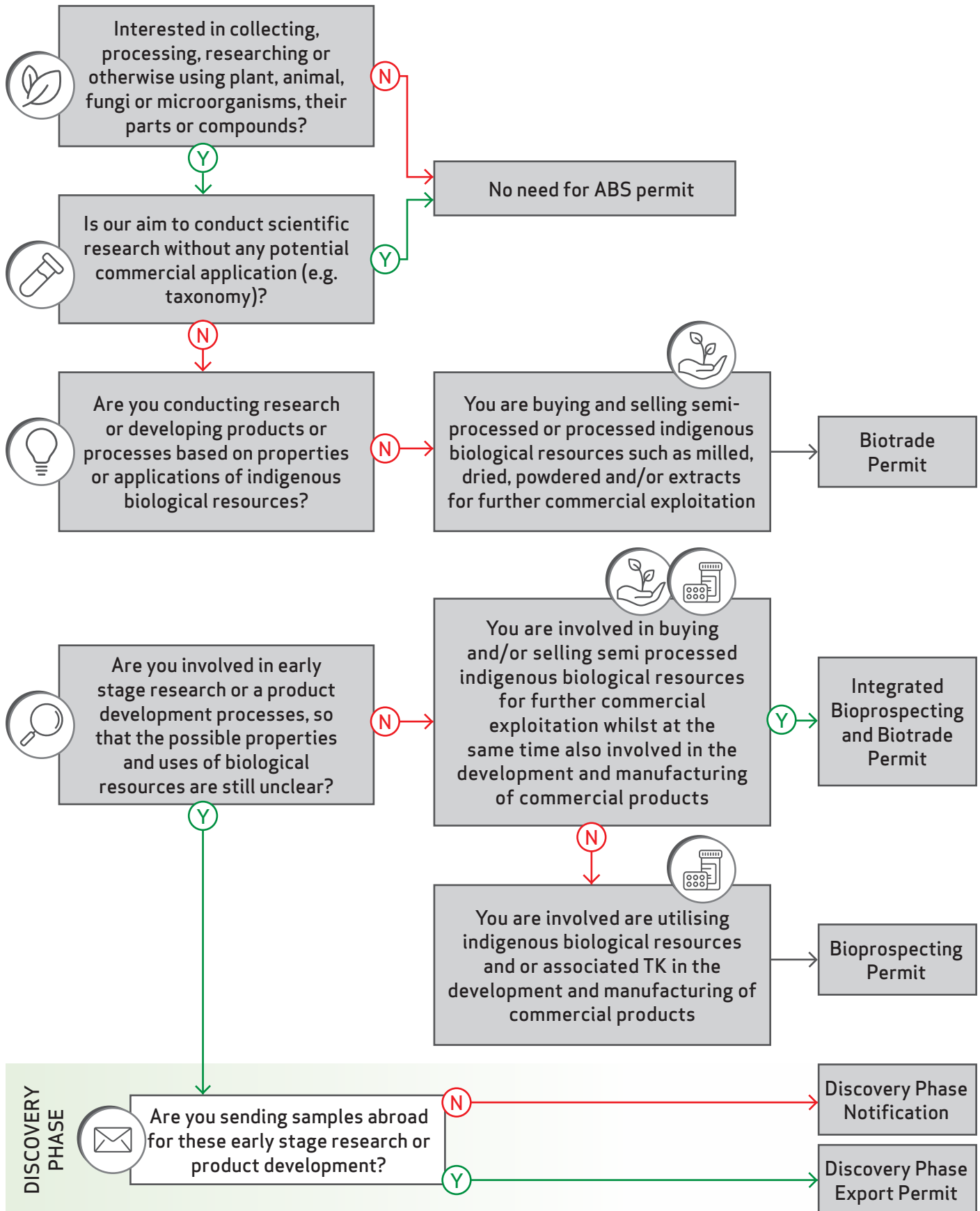


### *Categories for business partner and value chain information required*

#### *Intended use of the resource*

It is important to define exactly how the plant or other biological resource will be used, as this determines the ABS procedure to be applied. The following diagram helps companies to determine their obligations. More details can be found in sections 3-5.

# How to prepare for ABS permit applications



Decision tree to identify applicable procedures to be followed

# How to prepare for ABS permit applications

## *The business model and stakeholders*

It is good practice at an early stage to identify all parties involved in the business and its value chain. If the applicant is an individual business, it will be the applicant. In the case of a partnership or joint venture, with different legal entities from different countries, or with holders of TK/IK, the applicant for a permit must be identified and supporting documents submitted to illustrate the nature of the business.

In cases where other entities are involved and provide a core service in the supply chain, they are included in the application as collaborators. For example if you use a contract packer or distiller. For more information, see [section 4](#), 'Completing the 'Commercialisation Phase' of the Bioprospecting Permit Application form'.

## *Responsibility for ABS in the value chain*

Local companies may partner with international businesses during the discovery phase, or for development of a finished product. In these cases, the partners need to interrogate the nature of the value chain and agree on how ABS should be approached within the business relationship.

For example, if a South African company partners with a Dutch company and provides it with *Aloe ferox* gel for the joint development of a cosmetic cream in the Netherlands, the companies might apply jointly for a bioprospecting permit and have joint responsibility for benefit-sharing.

## Useful tips



Contact the DFFE directly once you are ready to submit your application, and talk them through the contents of your attachments. This will ensure that any gaps are identified early.



Capture the community engagement process for ABS compliance, and pave the way for community members to be ambassadors for your business. This will be especially beneficial for accessing the export market.



Include the above as part of your value proposition in your business plan.



Explain how your business handles waste in order to display sustainability.



Be aware that the BAC will review not only your original submitted attachments, but also any correspondence between your business and the DFFE relating to missing information in your application.