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South Africa

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

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This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in South Africa.

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SOUTH AFRICA
ENVIRONMENTAL, SOCIAL AND GOVERNANCE

1. Climate – the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

a.

No, there is no overarching statutory duty. However, there are several laws that directly or indirectly promote net zero strategies.

At the highest level, there is an obligation at international law by reason of South Africa's ratification of the Paris Agreement and its submission of its Nationally Determined Contribution ("**NDC**").

On October 24, 2023, a significant milestone was achieved in South Africa's environmental policy when the National Assembly approved the Climate Change Bill ("**CC Bill**"). The CC Bill is expected to catalyse South Africa's transition towards a to a low-carbon and climate-resilient economy and to align South Africa's position with ongoing global efforts to reduce greenhouse gas ("**GHG**") emissions and to adapt the economy to the impacts of climate change.

As of 2024, the CC Bill is nearing the completion of its parliamentary processes and has been resubmitted to the South African Parliament following its review by the National Council of Provinces. Its journey through legislative channels has been closely watched by environmental groups, industries, and the public as it sets out to revolutionise how South Africa responds to the climate crisis through the introduction of carbon budgets and greenhouse gas mitigation plans. The CC Bill also criminalises the failure to prepare and submit a greenhouse gas mitigation plan.

Finally, there are specific laws that regulate certain activities in promoting GHG reductions, such as the National Environmental Management: Air Quality Act 39 of 2004 ("**Air Quality Act**"), which provides for the protection and enhancement of the quality of air in South Africa and the prevention of air pollution and ecological degradation. In respect of meeting these objectives, the Air Quality Act, regulates the measuring and reporting of GHGs in accordance with the IPCC reporting guidelines and standards for GHG emissions.

b.

Yes. The area is regulated by the Carbon Tax Act No 15 of 2019 ("**CT Act**"). The CT Act, and the regulations thereunder, regulate both the rates of taxation of GHG emissions, as well as the types and value of offset activities that entities may engage in or procure from third party activities in order to benefit from the carbon offset allowance. The carbon tax gives effect to the polluter-pays-principle and helps to ensure that firms and consumers take the negative adverse costs (externalities) of climate change into account in their future production, consumption and investment decisions. The carbon tax rate increased by 19.49% from ZAR159 (around USD8.20) to ZAR190 (around USD10.28) per tonne of CO2e for the 2024 calendar year.

South Africa is in the development and implementation stages of a carbon offset programme, the South African Carbon Offsets Programme, that will allow industries who contribute to carbon emissions to take advantage of carbon tax allowances if they finance projects that help the country meet its international climate commitments through mitigation. South Africa is also engaging with

various countries in recognising the ongoing implementation of carbon border adjustment mechanisms.

c.

There have been no test cases brought against companies for undeliverable net zero strategies. This stems in part from the absence of overarching, mandatory targets as explained earlier.

There is, nevertheless, a growing trend of climate-related litigation and activism in South Africa. A number of noteworthy climate change disputes have been brought before the courts of South Africa. The majority of these cases concern environmental impact assessments ("**EIA**"). In Earthlife Africa Johannesburg v. Minister of Environmental Affairs, the claimant argued that the EIA failed to adequately consider the climate change-related consequences of the project under the National Environmental Management Act 107 of 1998 ("**NEMA**"). Although NEMA does not expressly contemplate climate change, the High Court held that such considerations are relevant and their absence from the project's EIA made its approval unlawful. The High Court cited several reasons, especially South Africa's commitments under the Paris Agreement.

The Ministry of Forestry, Fisheries, and Environment has also proposed amendments to the EIA Regulations which include a requirement for compliance with environmental management programmes approved under the Mineral and Petroleum Resources Development Act, 2002 ("**MPRDA**"). The proposed amendments introduce new definitions and listed activities related to mining in the listing notices and signify a growing integration of ESG aspects into the MPRDA.

In African Climate Alliance and Others v Minister of Mineral Resources and Energy and Others, commonly referred to as the #CancelCoalCase, three civil society organizations, including the African Climate Alliance (Applicants), instituted legal proceedings in the High Court of South Africa against the South African Government. This case concerns a constitutional challenge to South Africa's decision to procure 1500 MW of new coal-fired power stations.

In 2014, in an application brought against the Minister of Mineral Resources, a South African court upheld a ban imposed on the energy giant Shell from using seismic waves to explore for oil and gas off the Indian Ocean coast.

Note that South Africa no longer has a moratorium on the exploration of shale gas and the Department of Mineral Resources and Energy has received applications for licences for such exploration. The Cabinet has approved the lifting of the 14-month moratorium on exploration of shale gas. Five companies have applied for licences with legal requirements for licencing anyone who has applied in terms of the Mineral and Petroleum Resources Act. Government acknowledges the possible impacts of these explorations on the environment and has made it clear that exploration would be stopped immediately if the fracking had certain adverse effects. While regulations regarding the exploration of shale gas are in the process of being drafted, existing applications are dealt with according to the provisions of the Mineral and Petroleum Resources Development Act.

More recently, Green Connection had approached the High Court against awarding Total Energies EP South Africa with environmental authorisation for exploratory drilling in blocks 5,6 and 7 between Cape Town and Cape Agulhas. The action is based on support that the proposed exploration contradicts the international climate obligations of South Africa. The High Court is yet to provide a judgment on the matter.

d.

There have been cases against companies, although more generally for their GHG contributions and impact on communities and affected persons, than for their proportionate contribution to global levels of GHG's.

The #DeadlyAir case, filed in the court in 2019 by groundWork, an environmental-rights organization, and the Vukani Environmental Justice Movement in Action was seen as a key test of the country's resolve to deal with significant air pollution. A South African court ordered the government to take measures to improve the air quality in a key industrial zone, because it had breached section 24 constitutional right to a clean and healthy environment by failing to limit and mitigate pollution emitted by power plants operated by Eskom Holdings SOC Ltd. and refineries owned by Sasol Ltd. Recently, the Minister of Forestry, Fisheries and the Environment granted Sasol with a concession to the measurement method of sulphur dioxide emissions for its 17 coal-fired boilers in Secunda. Sasol applied for permission to measure the emissions of sulphur dioxide from its 17 coal-fired boilers in a manner which it prefers, subject to certain conditions. The claim in support of this approach is that their integrated emission reduction solution will be better encouraged through its application of a unique measuring system. The NECA Forum expressed its doubts as to Sasol's ability to fulfil these obligations and achieve the benefits claimed in the integrated emission reduction solution.

2. Biodiversity – are new projects required to demonstrate biodiversity net gain to receive development consent?

No, there are no explicit requirements to demonstrate biodiversity net gain in order to receive project development consents.

South Africa is the third most biodiverse country in the world and homes the Cape Floristic Region. The National Environmental Management: Biodiversity Act 10 of 1998 ("**NEMBA**") provides for the integrated and coordinated planning and monitoring of biodiversity, its management and conservation of South Africa's biodiversity within the framework of NEMA. While risk to biodiversity is certainly a relevant consideration in the EIA, planning and development processes, there are no requirements or incentives for companies to demonstrate biodiversity net gain.

3. Water – are companies required to report on water usage?

There is no general requirement for companies to report on water usage.

In terms of the National Water Act 36 of 1998 ("**NWA**"), there is a requirement for certain water users to report on water usage, being those who are required to register with the Department of Water Affairs for the use of water not received from a service provider, local authority, water board, irrigation board, government water scheme or other bulk supplier and is in use for irrigation; mining purposes; industrial use; feedlots; and in terms of a General Authorisation.

The purpose of NWA is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors: promoting equitable access to water; redressing the results of past racial and gender discrimination; promoting the efficient, sustainable and beneficial use of water in the public interest; facilitating social and economic development; protecting aquatic and associated ecosystems and their biological diversity; meeting international obligations. Consequently, the NWA is highly adaptable to a changing legal environment that emphasises the importance of ESG.

4. Forever chemicals – have there been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)?

There have not been any test cases against local companies for product liability or pollution of the environment relating to forever chemicals like PFAS.

The extent to which there will be enhanced control and mitigation of the risks they present will largely depend on South Africa's implementation and observance of the Stockholm Convention. The Department of Environment, Forestry and Fisheries' five-year target is only that 14 industrial persistent organic pollutant products are phased out by 2024. In September 2019, the Minister made regulations in terms of NEMA to phase -out the use, production, distribution, sale, import and export of persistent organic pollutants. Shortly thereafter, the Department published further regulations to prohibit the production, distribution, import, export, sale and use of persistent organic pollutants that are listed by the Stockholm Convention on POPs. The general consensus however is that it may not be enough to mitigate the risks to people and the environment posed by the thousands of "forever chemicals" already circulating in our ecosystems.

5. Circularity – the law governing the waste hierarchy is addressed by the Environment international guide, in respect of ESG are any duties placed on producers, distributers or retailers of products to ensure levels of recycling and / or incorporate a proportionate amount of recycled materials in product construction?

The National Environmental Management: Waste Act 59 OF 2008 ("**NEMWA**") is the umbrella legislation for the management of waste in the environment.

NEMWA provides for national norms and standards for the regulation of the management of waste by all spheres of government, as well as specific waste management measures.

NEMWA also aims to increase recycling and reduce the amount of waste that enters landfill sites. This includes new targets for recycled content in everything from plastic packaging to glass bottles. Producers and importers must also make sure that used products are returned and recycled.

In terms of section 18 of NEMWA, the Extended Producer Responsibility ("**EPR**") regulation makes EPR mandatory for all producers and importers of packaging. It changes

how producers, brand owners, retailers and importers design, make, sell and keep their products in the recycling loop as far as is practicably possible. Any company or brand that makes or imports any form of plastic packaging for distribution is required to pay an EPR fee per tonne.

6. Plastics – what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on certain plastic uses)?

There are no specific laws targeting plastic pollution. The South African Minister of Finance has, however, directed that the plastic bag levy (intended to discourage the use of plastic bags) will increase from 28c per bag to 32c per bag as from the 1st of April 2024.

However, as noted in the previous answer, the NEMWA is the umbrella legislation for the management of "waste" in the environment, which is defined to include:

- any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be reused, recycled or recovered and includes all wastes as defined in schedule 3 to this NEMA;

or

- subject to exceptions, any other substance, material or object that may be defined as a waste by the Minister responsible for environmental affairs by notice in the Gazette.

The broad definition of waste thus includes a range of plastic materials, not least of which is packaging and single- use items.

The EPR Scheme, as described in 5 above, expands the materials that were previously regulated in the various environmental and waste management legislations and its scope will include single-use plastics.

The EPR Scheme is intends:

to require producers of products or class of various products to set up procedures, processes and invest resources to implement the extended producer responsibility measures linked to the collection of their products in the post-consumer stage, reuse, recycling, recovery and disposal of their products in the post-consumer stage;

applies to waste, which arises from the use by a consumer or an end-user of paper and paper packaging material, plastic packaging, biodegradable and compostable plastic packaging, single-use plastic products, single-use compostable plastic products, single-use biodegradable plastic products, glass packaging and metal packaging containers; and require producers, inter alia, to develop and submit extended producer responsibility schemes to the responsible Minister or establish a producer responsibility organisation, which must prepare and submit an extended producer-responsibility scheme to the responsible Minister.

Collection targets for these schemes are also applicable to a whole host of items ranging from office paper to PET plastic beverage bottles. Companies will be allowed to collaborate with waste management companies, as well as informal waste collectors including non-profit organisations or producer-responsibility organisations, which will assist them and oversee their compliance with the applicable legislative framework.

Finally, it is worth mentioning that the National Waste Management Strategy (NWMS), being a legislative requirement of the NEMWA aims to deliver the objectives of the Act by setting out in more detail government policy and strategic interventions for the waste sector as well as South Africa's alignment to the Sustainable Development Goals of Agenda 2030 adopted by UN member states and South Africa's own National Development Plan Vision 2030.

7. Equality Diversity and Inclusion (EDI) – what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the workplace?

The Employment Equity Act No. 55 of 1998 is the law that promotes equity in the workplace, ensuring that all employees receive equal opportunities and that employees are treated fairly by their employers. The law protects employees from unfair treatment, including discrimination.

The Basic Conditions of Employment Act No. 75 of 1997 gives effect to the right to fair labour practices referred to in section 23(1) of the Constitution by making provision for the regulation of basic conditions of employment for those employees who are within the scope of the Act; and thereby seeking to comply with the obligations of South Africa as a member state of the International Labour Organisation.

Finally, there is the Broad-Based Black Economic

Empowerment (B-BBEE) Act No. 53 of 2003, which codifies government policy to advance economic transformation and enhance the economic participation of Black people (African, Coloured and Indian people who are South African citizens) in the South African economy. It is a form of institutionalised affirmative action seeking to remediate the imbalances of Apartheid.

8. Workplace welfare – the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

The Occupational Health and Safety Act No. 85 of 1993, requires the employer to bring about and maintain, as far as reasonably practicable, a work environment that is safe and without risk to the health of the workers.

The Employment Equity Act No. 55 of 1998 is the law that promotes equity in the workplace, ensures that all employees receive equal opportunities and that employees are treated fairly by their employers. The law protects employees from unfair treatment, including discrimination.

The Labour Relations Act No. 66 of 1995 regulates the organisational rights of trade unions and promotes and facilitates collective bargaining at the workplace and at sectoral level. It also deals with strikes and lockouts, workplace forums and alternative dispute resolution.

The Basic Conditions of Employment Act 75 of 1997 gives effect to the right to fair labour practices referred to in section 23(1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment; and thereby to comply with the obligations of South Africa as a member state of the International Labour Organisation.

9. Living wage – the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

South Africa has a government-mandated minimum wage. These regulations are set out in the Basic Conditions of Employment Act No. 75 of 1997. No worker falling in scope of Act and the operative provisions regulating minimum wage may be paid less than the prescribed wage. While South Africa recently increased the minimum wage threshold, it is not to be confused with a living wage sufficient to address the needs of the lowest income earners in all cases.

The minimum wage has been revised in South Africa with effect from 01 March 2024 from ZAR 25.42 to ZAR 27.58 per each ordinary hour worked. Employers in South Africa who fail to pay the minimum wage may be subject to criminal and civil action.

10. Human rights in the supply chain – in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a.

There are no explicit South African statutory duties to perform due diligence. This creates an increased risk of human rights contraventions in South Africa and elsewhere in Africa, especially following elevated domestic supply chain pressures as global supply chain bottlenecks persist after Covid and with relatively cheap labour and high unemployment rates.

That is not to say that there are no laws that are of relevance or enforceable. German companies operating in South Africa are, for example, regulated by the longarm provisions of the German Supply Chain Act, as are other European Union companies in terms of the EU Supply Chain Act, and the potential national counterpart. South Africa is a material supplier to German companies and a market for some of its goods and services, especially in the automotive and raw materials sectors. It is thus important for German companies to comply with the due diligence requirements of the Supply, as with other countries including France, the United Kingdom and Canada.

b.

No test cases have been brought against any companies in South Africa.

11. Responsibility for host communities, environment and indigenous populations – in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory

duties to perform due diligence; b. Have there been any test cases brought against companies?

a.

There are limited statutory due diligence requirements found in the environmental due diligence requirements referred to earlier. The include assurances that the subject entity has complied with the environmental requirements in respect of NEMA and associated environmental management Acts.

b.

In Baleni and Others v Minister of Mineral Resources and Others (2018) the court ruled that companies must first seek permission from local communities if they plan to mine on their ancestral land. Members of the local community advanced a case for the right to consultation and consent in respect of projects on ancestral land. The Judge asserted that; “Without free, prior and informed consent, they are at real risk of losing not only rights in their land, but their very way of being. That is why international law obliges South Africa to grant mining rights only if the community grant their consent.”

In another matter involving the construction of the new Africa headquarters of Amazon, the High Court temporarily halted the construction after some descendants of the country’s earliest inhabitants, the Khoisan, alleged that the land in question was sacred. An interdict was granted, however, on appeal it was set aside as the court found that the Khoisan had failed to demonstrate that the right to heritage is at risk of suffering any harm, let alone irreparable harm.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

We are not aware of any instances where the Advertising authorities have required the removal of any adverts for unsubstantiated sustainability claims.

There are at present also no laws directly defining or regulating sustainability or greenwashing in South Africa. However, the area is guided and influenced in many other ways.

First, in the regulation of product advertising standards in the Consumer Protection Act 68 of 2008 (“**CPA**”) and the provisions dealing with labelling and marketing. These are relevant given the many express and implied claims made regarding sustainability and environmental friendliness.

Related to that, the Advertising Regulatory Board of South Africa (ARB) and its Code of Advertising Practice also play a material role in the regulation of advertising in South Africa. The ARB is a self-regulating, voluntary organisation of member companies in the marketing and communications sector seeking to protect consumers from misconduct in advertising. Similarly, in cases where inaccurate or misleading advertising amounts to unfair competition, contractual breach or founds delictual liability, the civil courts of the land could be approached to interdict the advertising party or claim damages or other compensation allowed by law.

Voluntary disclosures, particularly climate-related disclosures, are becoming increasingly popular in South Africa and is being strongly encouraged by the South African government and local and foreign investors. In this regard, guidance has been taken from a number of internationally leading ESG disclosure directives. The European Commission (EC), together with the European Financial Reporting Advisory Group (EFRAG) reviewed the Non-Financial Reporting Directive (2014/95/EU) (NFRD) . Following its adoption in November 2022, the Corporate Sustainability Reporting Directive (CSDR) came into force on 18 December 2022. The CSDR and NFDR complement each other in ensuring broad reporting requirements and specified formats for disclosure and standards for companies to be met in their reports. The principle of double materiality is particularly important, requiring companies to report on their impacts on both the environment and the climate-related risks faced by them. The CSDR requires companies to include dedicated sections within their management report setting out the impacts of the company on sustainability matters as well as how sustainability matters affect the development, performance and position of the company. This requirement is a reflection of the double materiality principle. The ESRS was adopted in July 2023 requiring companies to assess its applicability through the perspectives of value creation for the company as well as the wider impact of the company as it relates to the economy, environment, nature and communities. This standard is considered material where either of these considerations are satisfied. Determined non-materiality of a standard should further be explained by companies as recommended by the EFRAG.

Finally there is policy, like that of the Johannesburg Stock Exchange in the form of its Sustainability and Disclosure Guidance document released in 2022, which is intended to direct how and when listed companies should make ESG disclosures. Please see item 17 below for further information hereon.

13. Have the Competition and Markets authorities taken action, fined or prosecuted any businesses for unsubstantiated sustainability claims relating to products or services?

That has not happened in South Africa. The South African equivalent of the UK Competition and Markets authority is the Competition Commission of South Africa (CCSA). The CCSA mainly concerns itself with anti-trust complaints and matters and has not fined or prosecuted business for unsubstantiated claims. The latter is typically the domain of the Consumer Protection Act, which provides for a right to fair and responsible marketing and identifies examples of undesirable marketing which would be equally applicable to sustainability claims relating to products and services.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

No such test cases have been brought before the South African courts as yet.

15. Is there a statutory duty on directors to oversee environmental and social impacts?

No specific statutory duty is currently imposed on directors to oversee environmental and social impact in South Africa. However, as noted earlier, there are many statutes that require compliance with environmental and social obligations. Directors correspondingly bear fiduciary and in some cases direct legal responsibilities for compliance with those obligations.

Under the Companies Act No. 71 of 2008, directors are also required to act in the best interests of the company, which includes managing environmental and social risk and impacts that may affect the company. It so doing they are required to take into account the views of different stakeholders such as shareholders and the customers served by the company in their decision making. The position is further substantiated by the Kind reports chiefly because the reports developed South Africa's corporate social responsibility environment, which includes sustainable governance. The King Committee on Corporate Governance in South Africa, which is the body that created the King codes, suggests that there are three fundamental consequences from the King reports which have reorientated South African corporate thinking. Firstly, the King reports reinforce a drive towards shareholder orientated, inclusive capitalism, which focuses on "holistic value creation. Secondly, the reports promote integrated reporting and collective value creation, a concept founded in ESG reporting. Thirdly, and in support of the first two outcomes, the reports mandated a change of direction towards the creation of long-term sustainable value in capital markets.

The position is further substantiated by The King Committee on Corporate Governance in South Africa, the body that created the King Codes on Corporate Governance which propose, amongst many things, a change of direction towards the creation of long-term sustainable value in capital markets, a position not dissimilar to that adopted by The Institute of Directors of Southern Africa ("**IoDSA**"), a well-respected voluntary organisation for directors of companies and associated professional, who in 2021 published a guidance paper on the responsibilities of governing bodies in responding to climate change and taking the necessary action ("**Guidance Paper**"). The Guidance Paper states that governing bodies must ensure that business strategy and decision-making include a broader integrated consideration of social, economic and environmental performance and impacts. The Guidance Paper further states that insofar as environmental and climate change reporting and performance is concerned, governing bodies should consider the principle of externalities. The Guidance Paper defines externalities as societal costs not included in the costs of production resulting in costs which do not reflect the true impact on the society or the environment. We note that the IOSA has been responsible for the various King reports on corporate governance ("**King Reports**") which have set out certain principles and recommended certain practices for South African companies. Even though the King Reports and Guidance Paper are not law, many South African companies have applied the principles and recommended practices to improve their corporate governance. The Code for Responsible Investing in South Africa ("**CRISA**") followed shortly after King III and provides practical guidance on ESG factors and disclosure.

In strengthening governance and accountability in South Africa, the General Laws Amendment Act, 22 of 2022 was passed to identify and collect beneficial ownership information of legal entities registered on the Companies and Intellectual Property Commission ("**CIPC**") and, thereby, aim to prevent the abuse of South African legal entities in facilitating money laundering and terrorist financing.

Three pieces of legislation have also been approved by the South African Parliament and are awaiting

presidential signature and publication which further strengthen South Africa's corporate governance. Firstly, the accountability of political parties has been strengthened as the recent amendment to the Political Party Funding Act of 2018 (which is yet to be signed into law by the President of the Republic of South Africa) now regulates donations to political parties, which includes a donation limit and an obligation on all donors to disclose to the Electoral Commission any donations exceeding R100 000. Secondly, the Companies Amendment Act of 2023 ("**CAA**") now legislates the formation and composition of Social and Ethics Committees which are, among others, required to monitor a company's performance related to environmental matters. The CAA also mandates Remuneration Committee reports to be presented at Annual General Meetings, or Shareholders Meetings of companies, disclosing executive remuneration and pay disparities. Finally, the Companies Second Amendment Act of 2023 ("**CSAA**") intends to extend the period in which a shareholder, director, or others may approach a court to have a director declared a delinquent from 24 months to 60 months.

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

While there have been several cases in recent years dealing with misleading information on environmental and social impact, there have been no test cases brought against directors themselves for providing misleading information on environmental and social impact.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

Financial institutions and larger listed companies are currently not required to report against sustainable investment criteria. The South African government has however in April 2022, launched a new green finance taxonomy ("**Taxonomy**"). The taxonomy is designed for investors, issuers, lenders, and other financial sector participants to track, monitor, and demonstrate the credentials of their green activities. The taxonomy serves as an official classification of a minimum set of assets, projects, and sectors eligible to be defined as "green" or environmentally friendly. The Johannesburg Stock Exchange ("**JSE**") in which many large companies are listed has developed and published a sustainability disclosure guidance note as well as a climate change disclosure guidance piece taking into account the South African landscape and serving as a voluntary guidance tool in navigating the global sustainability and ESG landscape. This, according to the JSE is intended to assist companies in sustainability thinking and disclosure more confidently and meaningfully and assist companies to voluntarily disclose high-quality ESG data, driving better disclosures and practices, which in turn helps create investor certainty. Similarly, the Prudential Authority of the South African Reserve Bank has published proposed guidance notes for inputs and comments by stakeholders regarding climate-related disclosures and the identification of climate related risks as part of their portfolios.

Please also see item 12 above regarding the CSDR and the NFDR.

18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?

There is currently no statutory duty for companies to report on managing climate related financial risks. Please however see our answer to question 15 above regarding the responsibilities of governing bodies pertaining to climate change reporting and performance as set out in the Guidance Paper.

19. Is there a statutory responsibility on businesses to report on energy consumption?

In terms of regulations promulgated under the National Energy Act 2008, certain non-residential buildings are required to display on their entrance an energy performance certificate ("**EPC**"). The EPC will indicate how much energy the building consumes. This is applicable if:

- The building is more than two years old; and
- The building has a net floor area of over 1000m2 for government buildings and 2000m2 for privately owned buildings. The calculations exclude garages, car parks, and storage areas.

We note that this is not applicable to factories and manufacturing plants.

20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?

There is no statutory duty on businesses to report on gender wage gaps.

However, the Employment Equity Act 1998 requires designated employers to have and to implement an employment equity plan and submit a report annually on the progress made in achieving the targets set out in the employment equity plan. The purpose of the Employment Equity Act is to achieve employment equity in the workplace by:

- Promoting equal opportunities and fair treatment through the elimination of unfair discrimination; and
- Implementation of affirmative action measures to redress the disadvantages experienced by designated groups in the past to ensure their equitable representation in all occupational levels in the workplace.

The term designated groups as used in the Employment Equity Act refers to black people, persons with disabilities and women.

21. Is there a statutory responsibility to report on modern day slavery in the supply chain?

There is no statutory responsibility to report on modern day slavery in the supply chain. There are, however, provisions in the South African Constitution and the Labour Relations Act intended to prevent servitude, forced labour or other unfair labour practices. As noted previously, there are also laws of other jurisdictions which will find application in South Africa because through their extraterritorial jurisdiction, notable examples being the Modern Slavery Act 2015 of the United Kingdom and the German Supply Chain Act.

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