HERBERT SMITH FREEHILLS

ESG TRACKER (SADC EDITION)

November 2022 | **Johannesburg**

Herbert Smith Freehills ESG Tracker (SADC Edition)

There are so many ESG-related publications and developments that it is hard to keep abreast of them all. For this reason, HSF publishes a monthly tracker of ESG-related publications and developments, with a primary focus on developments that may be of most interest to or impact our clients in the Southern African Development Community, be they corporates, asset managers or asset owners.

If you have any ESG-related questions, please get in touch with your usual contact at HSF who will be able to direct you as appropriate.

This issue covers developments during the period 1 to 30 November 2022.

We will be taking a break during December and will not circulate a tracker in early January 2023. Please keep an eye out for the tracker which we will publish at the start of February 2023 which will cover developments which took place during December 2022 / January 2023 tracker in February 2023.

AFRICA

29 November 2022

The African Development Bank has launched the African Green Bank Initiative (**Initiative**), a model for deploying green financing across the continent with the aim of promoting resilient, green and sustainable growth.

The Green Bank Initiative is a tool for reducing financing costs and mobilising private sector investments in climate action in Africa. The initiative will be endowed with a trust fund of US $1.5 billion.

The initiative is based on an assessment by the African Development Bank and the Climate Investment Funds on the potential of Green Banks in six African countries, namely Benin, Ghana, Mozambique, Tunisia, Uganda and Zambia. The assessment revealed that green banks have significant potential for attracting new sources of catalytic funds when supporting low carbon, climate-resilient development through blending capital and mobilising local private investment for green investments in Africa.

ANGOLA

14 November 2022

It was reported that the Angolan Government approved the Presidential Decree which updates the list of jobs prohibited or conditioned to minors, particularly due to the increase in children working in the agricultural and civil construction sectors.

The Secretary of State for Labour and Social Security, Pedro Filipe, stressed that the list of prohibited or conditioned work is extremely extensive and includes work in the mines, crushers, gravedigger activities and some industries which manufacture toxic materials. This decree also regulates working hours up to a maximum of 4 hours a day.

DEMOCRATIC REPUBLIC OF CONGO

14 November 2022

It was reported that rainforest giants including Brazil, Indonesia and the Democratic Republic of Congo formally launched a climate pact at the Egyptian COP27. The parties signed a joint statement focused on compensation for the reduction of deforestation, joint issues such as climate finance and the price of a tonne of carbon in the market. At present, the agreement does not have financial backing thus is a call to action to achieving the aforesaid goals and not a strategy. For example, the agreement draws from the United Nations' flagship pay-out program that rewards countries for keeping forests intact however does not specify who or what will make such payments.

MAURITIUS

3 November 2022

It has been reported that a medical waste treatment unit will be operational in Mauritius by 2027. The project, called the Mauritius Health Care Waste Treatment Project, was announced following the signing of a Memorandum of Understanding between the United Nations Development Programme (**UNDP**) and the Mauritian Ministry of Environment, Waste Management and Climate Change. The initiative also includes the development of policies and regulations to ensure the long-term sustainability of the medical waste treatment plant, as well as the training of health care facility staff in improved waste management practices. This will include identifying different types of waste, sorting and storage methods. The Global Environment Facility (**GEF**) will fund the work through a US$4.05 million grant.

28 November 2022

The Organisation of Economic Cooperation and Development (**OECD**) released its Peer Review of the Automatic Exchange of Financial Account Information 2022 (**AEOI**). The AEOI comprises effectiveness ratings of 160 jurisdictions that are committed to starting the automatic exchange of information as per the OECD Reporting Standard, Mauritius included. The 2022 report confirmed that Mauritius has been compliant since 2018. Mauritius was rated as 'on track' with one recommendation regarding working with its exchange partners made.

MOZAMBIQUE

3 November 2022

Mozambique has reportedly proposed a law that would require public and private companies to donate 1 percent of their payrolls to finance vocational education in the country.

Mozambican entities have been struggling to recruit qualified Mozambicans to work on major projects in oil and gas, etc They usually have to hire expatriates. The government has therefore proposed amending Law No: 6/2016 on professional technical education. The proposed 1 percent levy is also currently being reviewed by parliament.

NAMIBIA

29 November 2022

Angola's Ministry of Mineral Resources, Petroleum and Gas and Namibia's Ministry of Mines and Energy signed a memorandum of understanding (**MoU**) at this year's Angola Oil & Gas (**AOG**) 2022 Conference & Exhibition in Luanda which will enhance bilateral cooperation in the petroleum and natural gas sector and improve the mutual social, economic and environmental interests between the two countries. The MoU is poised to promote and strengthen cooperation between Angola and Namibia within the fields of petroleum and natural gas by establishing an institutional framework that facilitates the exchange of information, the management of data management and geological studies, and the development of joint projects. Additionally, the MoU will address the challenges of the energy transition within the African context and encourage local capacity building between the neighbouring countries through technological cooperation and the transfer of skills.

NIGER

28 November 2022

The Board of Directors of the African Development Fund (**ADF**), the concessional lending arm of the African Development Bank (**AfDB**) Group, has approved US $16-million in loan and grant financing to Niger to implement the Financial Sector Deepening and Inclusion Project. The project will strengthen mobilisation of long-term resources for financial service providers and improve financial inclusion of vulnerable populations, particularly women, youth, rural dwellers and micro, small and medium-sized enterprises (**MSMEs**). Specifically, the project will contribute to the establishment of a financing mechanism that is conducive to the needs of MSMEs through the capitalisation of the Financial Inclusion Development Fund and the strengthening of the technical and operational capacities of financial service providers, particularly the decentralised financial systems. This will enable them to develop financial products and services adapted to the needs of the population.

SOUTH AFRICA

1 November 2022

The Department of Forestry, Fisheries and Environment invited public comment on the Draft White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity (**Draft White Paper**). The revised Draft White Paper contains a number of significant changes to the original draft which was published in July 2022 for public consultation. The revised Draft White Paper now includes a preamble and has reduced the goals of the Act from eight to four. It also revises the Vision, Definition, Mission, Problem Statement, Guiding Principles and Theory of Changer, as well as the output and outcomes of the Draft White Paper. The Minister of Forestry, Fisheries and the Environment has emphasised the importance of the public participation process in order to gain the necessary input from a broad range of interested and affected stakeholders. The public was afforded 14 days to comment.

4 November 2022

The Minister of Forestry, Fisheries and the Environment published a notice requesting consultation on the intention to amend the Procedures for Assessment and Minimum Criteria for Reporting on Identified Environmental Themes in terms of sections 24(5)(a) and (h) of the National Environmental Management Act, 1998. The amendment would allow the procedure to apply to both aquatic and terrestrial plant species.

The public had until 4 December to submit comments on the proposal.

4 November 2022

The Minister of Forestry, Fisheries and the Environment published an amendment to the Identification in terms of section 24(5)(a) and (b) of the National Environmental Management Act, 1998 (**NEMA**) of the Procedure to be followed in applying for environmental authorisation for large scale electricity transmission and distribution development activities identified in terms of section 24(2)(a) of NEMA when occurring in geographical areas of strategic importance (originally published under GN113 in GG41445 on 16 February 2018).

The amendment clarified that applications which include activities that trigger listed activity 11 under Environmental Impact Assessment Regulations Listing Notice 1 of 2014 and listed activity 9 of the Environmental Impact Assessment Regulations Listing Notice 2 of 2014 must be considered in terms of this procedure.

11 November 2022

After postponing the finalisation of the General Laws (Anti-Money Laundering and Combatting Terrorism Financing) Amendment Bill [B18-2022] (**the Bill**) on 1 November 2011, the Finance Standing Committee (**Committee**) adopted the Bill on 11 November 2022. The legislation is an omnibus Bill aimed at amending various pieces of legislation to address deficiencies related to combatting money laundering and terrorism financing and bring South Africa into compliance with the global standards set by the Financial Action Task Force the global regulator of anti-money laundering and counter terrorism financing.

The Bill will be tabled before the National Assembly for consideration.

14 November 2022

The Constitutional Court handed down two landmark judgements recognising, for the first time, strategic litigation against public participation (**SLAPP suits**) as an abuse of the court process. The judgements also carve out a limitation on a corporate entity's ability to claim damages for reputational harm.

The judgements were handed down following a five year court battle arising from a series of defamation claims (amounting to ZAR14.5 million) laid by Minerals Commodities Limited (**MRC**) and its South African subsidiary, Mineral Sands Resources (**MSR**) against six activists and public interest lawyers in South Africa.

The court held that "*A trading corporation has no hurt "human" feelings to assuage, to provide solace by way of an amount for general damages. In this regard, it does not have a right to dignity and cannot lay claim to the rights in section 10 of the Constitution. Instead, it has a common law right to its good name and reputation, protected by the Constitution's equality provisions, and can enforce that right by a claim for general damages under the qualification outlined, namely, excluding, in a court's discretion, in cases of public discourse in public interest debates.*"

See the full judgements here:

- Mineral Sands Resources (Pty) Ltd and another v Christine Reddell and Others CCT66/21
- Reddell and others v Mineral Sands Resources (Pty) Ltd and others CCT67/21

15 November 2022

The Western Cape Biodiversity Act was signed into law. The Act will come into law in a phased manner, with some sections of the Act having become operational from 15 November. The MEC is of the belief that the Act will modernise government's strategy with respect to biodiversity, by creating a framework which is centred on partnerships between key sectors and communities. A public participation process is soon to be initiated whereby interested parties will be consulted to formulate several regulations within the Act.

18 November 2022

The Minister of Forestry, Fisheries and Environment published the Revised National List of Ecosystems that are threatened and in need of protection under section 52(1)(a) the National Environmental Management Act, 1998 (**NEMA**).

This list is linked to Environmental Impact Assessment Listing Notice 3, 2014 published under NEMA. Any person who commences an activity listed in the listing notice within a listed protected ecosystem will require an environmental authorisation issued under NEMA.

18 November 2022

The Minister of Forestry, Fisheries and the Environment (Acting) published a notice extending the suspension of the notice on the implementation of the Regulations to Domesticate the Requirements of the Rotterdam Convention on the Prior Informed Consent Procedure for certain Hazardous Chemicals and Pesticides in International Trade (**Rotterdam Regulations**) by a further 120 days.

The extension is necessary to allow the Department of Forestry, Fisheries and Environment the time to table the final regulations that will repeal and replace the Rotterdam Regulations in Parliament.

18 November 2022

The Minister of Mineral Resources and Energy (the **Minister**) has published an Invitation for proposals to conduct seismic acquisition, seismic processing and/or acquisition and processing of any other geophysical, geological or geochemical data offshore South Africa (GG47530 GN 2755).

The invitation forms part of the Department of Mineral Resources and Energy's (**Department's**) plan to release open acreage onshore under a licence round to be scheduled following the enactment of the Upstream Petroleum Resources Development Bill (currently before the National Assembly).

The invitation indicates that "While committed to achieve carbon neutrality by 2050, it remains the Government of South Africa's stated policy and desire to develop the country's indigenous natural gas and oil resources to ensure national energy security, stability, and economic development".

https://www.gov.za/sites/default/files/gcis_document/202211/47530gon2756.pdf

Proposals are invited until 30 January 2023.

18 November 2022

The Minister of Mineral Resources and Energy (the **Minister**) has published an Invitation for proposals to conduct seismic acquisition, seismic processing and/or acquisition and processing of any other geophysical, geological or geochemical data onshore South Africa (GG47530 GN 2756).

The invitation forms part of the Department of Mineral Resources and Energy's (**Department's**) plan to release open acreage onshore under a licence round to be scheduled following the enactment of the Upstream Petroleum Resources Development Bill (currently before the National Assembly).

The invitation indicates that "While committed to achieve carbon neutrality by 2050, it remains the Government of South Africa's stated policy and desire to develop the country's indigenous natural gas and oil resources to ensure national energy security, stability, and economic development".

Proposals are invited until 30 January 2023.

22 November 2022

The Minister of Water and Sanitation published the draft Water and Sanitation Services Policy on Privately Owned Land (**the draft Policy**) for public comment.

The draft Policy sets out to define the Department of Water and Sanitation's responsibility in regulating and supporting the provision of water services to residents living on privately owned land currently falling outside of the municipal distribution network.

The public has 60 days (until 21 January) to submit comments on the draft Policy.

25 November 2022

The Portfolio Committee on Mineral Resources and Energy, Police and Home Affairs (**Committee**) adopted a report on illegal mining bringing to an end their assignment of visiting illegal mining hotspots in five provinces namely, Limpopo, Gauteng, Mpumalanga, Free State and North West.

The committees conducted joint oversight visits where they discovered how illegal mining activities affect communities with social crimes. The Committee acknowledged that the existing legislative gaps have an impact on the effectiveness of the efforts to fight illegal mining. According to the Committee, the Mineral and Petroleum Resources Development Act, 2008 presents a substantial shortcoming and limits policing operations severely.

The reports makes a number of recommendations to respond to the challenge of illegal mining, including, amongst others, an urgent amendment of some legislation that include Immigration Act, 2002, the Mineral and Petroleum Resources, 2022, the Diamonds Act, 1986, the Precious Metal Act, 2005, the Hazardous Substances Act, 1975 and the Customs and Excise Act, 1964.

The report will be published in Parliament's Announcements, Tablings and Committee Reports publication before it is debated and adopted by the National Assembly.

25 November 2022

The Minister of Mineral Resources and Energy published the draft Regulations on Mandatory Display and Submission of Energy Performance Certificates for Buildings (**Draft Regulations**) for public comment.

Once enacted, the Draft Regulations will require that the accounting officer of an organ of state or the owner of a building other than those owned, operated or occupied by an organ of state must register the type and size of a building and its energy performance on the National Building Energy Performance Register maintained by the South Africa National Energy Development Institute within 12 months of the promulgation of the Regulations.

The public has until 25 December 2022 to submit comments on the Draft Regulations.

ZIMBABWE

24 November 2022

In the 2023 National Budget Statement, the Zimbabwean Finance Minister states that miners are required to prioritise ESG issues as an emerging issue to ensure that communities fully benefit from mining activities in their areas.

Global

1 November 2022

In partnership with activist and industry organisation, the Ocean Plastics Leadership Network and the UK Government have commenced talks with businesses and environmental groups on shaping a legally-binding global treaty that aims to end plastic pollution by 2040.

The international treaty will set obligations on countries to reduce pollution across the whole plastics lifecycle – from production and consumption to disposal and waste management. The first formal negotiations will take place between 28 November and 2 December 2022 in Uruguay and will be facilitated by the UN Environment Programme.

1 November 2022

The Glasgow Financial Alliance for Net Zero (**GFANZ**) has published the following resources to support financial institutions in converting net-zero ambitions into actions:

- *Financial Institution Net-zero Transition Plans Fundamentals, Recommendations, and Guidance* (with an accompanying executive summary and appendix);
- *Measuring Portfolio Alignment: Driving Enhancement, Convergence, and Adoption*;
- *Actions to Mobilize Capital to Emerging Markets & Developing Economies*; and
- *Towards a Global Baseline for Net-zero Transition Planning* (updated publication).

In addition, GFANZ has issued a call to action to G20 governments to close the gap between their climate commitments and policies through transition planning and reform of the international financial architecture.

2 November 2022

The European Central Bank (ECB) has published the results of its thematic review on climate-related and environmental risks. The ECB has found that banks are not meeting expectations with respect to management of climate and environmental risks. The ECB is therefore setting staggered deadlines to enable banks to progressively meet all expectations laid out by the ECB in its 2020 guide on climate-related and environmental risks.

The ECB has also published a report titled "*Good practices for climate-related and environmental risk management*", which sets out observations from the 2022 thematic review.

3 November 2022

The European Commission (**EC**) has launched the 2022 call for large-scale projects under the EU Innovation Fund. The call will fund €3 billion worth of projects covering general decarbonisation, innovative electrification in industry and hydrogen, and clean tech manufacturing. The call will boost the deployment of industrial solutions to decarbonise Europe and will provide additional support towards ending the EU's dependence on Russian fossil fuels following the REPowerEU Plan. The call is open until 16 March 2023 and for projects located in EU Member States, Iceland and Norway.

7 November 2022

In a statement at the COP27 UN Climate Change Conference, the UK's Prime Minister, Rishi Sunak, has confirmed the Government's funding commitments to spending £11.6 billion on international climate finance. As part of that budget, the Government has further committed to triple funding for climate

adaptation, from £500 billion in 2019 to £1.5 billion in 2025.

Rishi Sunak announced new support including a £65.5 million package for green tech innovation and significant clean energy investments with Kenya and Egypt and the first steps of the new Forests and Climate Leaders' Partnership for protecting rainforests and natural habitats, including the Congo Basin and Amazon.

7 November 2022

The International Organisation of Securities Commissions (IOSCO) has published a call for action in relation to good sustainable finance practices and the risk of greenwashing. As part of the call for action, IOSCO will engage with voluntary standard setting bodies and industry associations to promote the adoption and implementation of the good practices stemming from the IOSCO recommendations amongst their members, as a baseline to address greenwashing and related investor protection concerns within the context of their domestic regulatory frameworks.

7 November 2022

In the annual report focused on climate change, the World Trade Organisation (**WTO**) has urged its member countries to adopt a standardized system for regulating carbon emissions to avoid international trade disputes. The WTO has called for more in-depth cooperation between countries in measuring and verifying carbon emissions. According to the WTO, the use of different approaches to quantify the amount of carbon emissions in products and economic activities creates unpredictability for producers and impose burdensome costs and ultimately reduce the effectiveness of efforts to reduce carbon emissions. WTO has suggested that carbon measurement methodologies should be backed by a robust system of verification.

8 November 2022

A group of asset managers and industry bodies in the private and broadly syndicated credit markets have launched the ESG Integrated Disclosure Project template, which seeks to enhance transparency and consistency for private companies and credit investors by providing a standard format for ESG-related disclosures.

29 November 2022

The U.S Department of the Treasury revealed initial guidance on the labour requirements that must be met to unlock bonus tax benefits for clean projects under the Democrat's climate law.

The guidance covers two labour requirements namely providing prevailing wages and employing a certain number of registered apprentices. These requirements must be met by owners for clean energy developments to qualify for the bonus rate of 30% for the investment tax credit or 1.5 cents per kilowatt-hour for the production tax credit. The requirements also apply to other tax incentives such as the advanced energy project credit and alternative fuel refuelling property credit.

A project can qualify for tax incentives if construction begins on or after 29 January 2023. The guidance adopts two methods to help project owners determine the construction date: the start of significant physical work and the payment of at least 5% of the total cost of the facility.

The guidance is among the first that Treasury has issued since the Inflation Reduction Act become law in August.

Recent and upcoming HSF ESG-related publications, webinars and events

- Unlocking ESG investment in Australia
- Dutch legislators propose human rights and environmental due diligence law
- 2022 SOAS Arbitration Survey reveals a thriving market for arbitration on the continent
- ESG Tracker SADC Region October 2022
- See our Africa Notes page for summaries of the Sharm El-Sheikh COP 27
- The New Mozambican Electricity Law
- Chambers Environmental Law 2022

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