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ENVIRONMENTAL ALERT

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REVISED GHG EMISSION REPORTING REGULATIONS: ANOTHER STEP TOWARDS IMPLEMENTING THE PARIS AGREEMENT COMMITMENTS

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REVISED GHG EMISSION REPORTING REGULATIONS: ANOTHER STEP TOWARDS IMPLEMENTING THE PARIS AGREEMENT COMMITMENTS

The Minister of Environmental Affairs recently published revised Draft National Greenhouse Gas Emission Reporting Regulations (Revised Draft GHG Regulations) under the National Environmental Management: Air Quality Act, No 39 of 2004.

The Revised Draft GHG Regulations must be read with the Technical Guidelines for Monitoring, Reporting, Verification and Validation of Greenhouse Gas Emissions by Industry, published on the Department of Environmental Affairs website.



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The 2011 White Paper on Climate Change listed a web-based GHG emissions inventory as a potential mitigation response to climate change. At that stage, industries submitted GHG data to the Government on a voluntary basis, but Government committed to develop a mandatory reporting system.

Flowing from this, the Minister of Environmental Affairs recently published revised Draft National Greenhouse Gas Emission Reporting Regulations (Revised Draft GHG Regulations) under the National Environmental Management: Air Quality Act, No 39 of 2004, which introduces more onerous obligations relevant to reporting companies or data providers and clarifies certain obligations.

Aligned with the White Paper on Climate Change, the stated purpose behind the Revised Draft GHG Regulations is to introduce a single national reporting system for the transparent reporting of GHG emissions, which will be used to *inter alia* establish a National GHG Inventory and inform policy formulation, implementation and legislation. The latter is particularly relevant to recent developments in the carbon tax arena. The reporting duty will apply broadly to all entities that conduct activities above the thresholds specified in Annexure A to the Revised Draft GHG Regulations.

The first Draft National Greenhouse Gas Emission Reporting Regulations (First Draft GHG Regulations) was published in 2015, but never promulgated.

The Revised Draft GHG Regulations must be read with the Technical Guidelines for Monitoring, Reporting, Verification and Validation of Greenhouse Gas Emissions by Industry, published on the Department of Environmental Affairs website.

The notable changes in the Revised Draft GHG Regulations include:

- **Registration of facilities:** Data providers will be required to register their facilities on the internet-based National Atmospheric Emissions Inventory System (NAEIS), by providing information specified in Annexure 2 to the Revised Draft GHG Regulations. Registration at facility level was not necessary under the First Draft GHG Regulations. No guidance was previously given on the extent of information required upon registration and the changes have clarified the requirements.
- **Transfer of operational control or ownership of a facility:** Where there is a transfer of operational control or ownership of a facility, data providers are required to report such change within 30 days to a competent authority. Previously, this was only required upon transfer of ownership and is thus more onerous.

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Use of independent experts: *Should the competent authority request a data provider to verify and validate information, reporting companies are no longer obliged to appoint an independent expert to do so.*



- **Emission sources:** Data providers are obliged to ensure that their registration details are a complete and accurate reflection of the emission sources at each premises. Once submitted, data providers may be required to verify and validate the information if it is reasonably believed not to be complete, correct or, as introduced in the new Regulations, transparent. Aligned with this is the increasingly onerous record-keeping duty of reporting companies, who are now also required to archive all information used to estimate GHG emissions and, together with the information submitted to the NAEIS, keep it on record and available on request for a period of five years.
- **Use of independent experts:** Should the competent authority request a data provider to verify and validate information, reporting companies are no longer obliged to appoint an independent expert to do so.
- **Reporting requirements:** Data providers who are not public institutions are still required to report on the GHG emissions of activities listed in Annexure 1 of the Regulations. However, where Annexure A previously required reporting on the total GHG emissions for all facilities at company level, it now requires data for individual relevant GHGs and the Intergovernmental Panel on Climate Change emission sources. Annexure

A no longer makes blanket reference to listed activities. For each activity it now provides a reporting threshold, the tiered information gathering methodology to be used to determine GHG emissions, as well as the extent of details required for reporting (see Annexure 3 of the Regulations). Data providers are therefore given better guidance as to the method and form of reporting and only required to report should they conduct or control an activity above the given threshold capacity.

- **Review of emission factors:** Whilst the right of a data provider to submit an emission factor for review remains unchanged, the competent authority is now obliged to review such submission within 30 days. This will ensure reviews are expeditiously processed.
- **Confidentiality:** The confidentiality of information is better protected, as competent authorities are now obliged to not only ensure the non-disclosure of confidential information received from reporting companies but also to destroy it within five years of submission. Authorities are also no longer allowed to disclose confidential information on the basis that the disclosure is required to enable a person to perform a function in terms of the Regulations. Disclosure is now permissible only where required by law or an order of court.

A CAUTIONARY TALE FOR ALL FINANCIAL SERVICE PROVIDERS

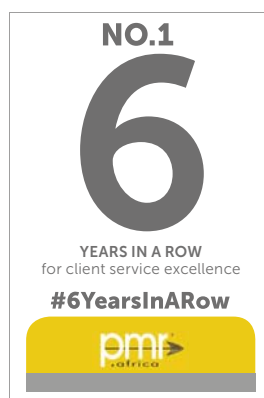
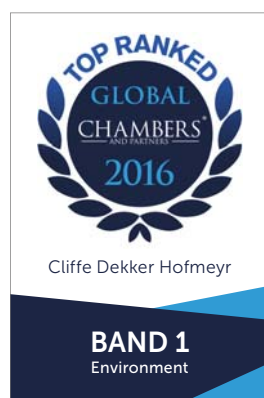
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Extended time periods:

Problematic time periods have also been addressed and data providers now have 30 days to report changes to their registration details and are allowed 60 days to verify and validate information once requested to do so by a competent authority.

- **Transitional arrangements:** Data providers may still apply to use lower-tiered methodologies to gather information during the transitional period. However, whilst the period has been extended from four to five years, Annexure 1 now limits the applicability of this arrangement to a number of specified activities.
- **Extended time periods:** Problematic time periods have also been addressed and data providers now have 30 days (instead of 14) to report changes to their registration details and are allowed 60 days (instead of 30) to verify and validate information once requested to do so by a competent authority.

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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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