



DLA CLIFFE DEKKER  
HOFMEYR

# ENVIRONMENTAL

# ALERT

SEPTEMBER 2014

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UNDER SOUTH AFRICAN  
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## DIRECTORS BEWARE: INCREASED SCOPE FOR DIRECTOR LIABILITY UNDER SOUTH AFRICAN ENVIRONMENTAL LAW

The fundamental principle of company law that the directors of a company are not personally liable for the entity's debts and liabilities is curtailed by provisions of South African environmental law. Amendments introduced by the National Environmental Management Laws Amendment Act, No. 25 of 2014 (the 'NEMLAA'), effective from 2 September 2014, will make further inroads into this principle and will result in the net of potential liability being cast even wider.

In its current form, the National Environmental Management Act, No. 107 of 1998 ('NEMA') provides for the imputation of strict liability to a director, member of an entity or partner, where "...the offence in question resulted from the failure of the director member or partner to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence.

"This means that criminal and/or civil proceedings may be instituted against a director of a company or member of a close corporation or partner for the recovery of costs and/or damages incurred for the rehabilitation of the environment or for failing to prevent environmental degradation caused by his/her firm.



*continued*

NEMA is soon to be amended by the NEMLAA by the addition of a new provision which provides that notwithstanding, the Companies Act, No. 71 of 2008 or the Close Corporations Act, No. 69 of 1984, the directors of a company or members of a close corporation are "...jointly and severally liable for any negative impact on the environment, whether advertently or inadvertently caused by the company or close corporation which they represent, including damage, degradation or pollution."

Fines of up to R10 million and/or imprisonment of up to 10 years may be imposed. There is also an increased willingness on the part of the South African courts to hold company directors or members of close corporations personally liable, exemplified by the

recent sentencing of a director to imprisonment for environmental crimes. These changes will broaden the scope for potential liability considerably.

Not only will companies who conduct their operations in South Africa continue to have to take reasonable measures to prevent pollution or environmental degradation from occurring, and be capable of demonstrating that such measures were taken, but the amendments introduced by the NEMLAA will soon result in a much more onerous duty of care being placed upon directors of companies and members of close corporations to ensure compliance with environmental law.

*Helen Dagut and Gareth Howard*



**2013**  
1st in M&A Deal Flow,  
 1st in M&A Deal Value,  
 1st in Unlisted Deals - Deal Flow.

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**2012**  
1st in M&A Deal Flow,  
 1st in General Corporate Finance Deal Flow,  
 1st in General Corporate Finance Deal Value,  
 1st in Unlisted Deals - Deal Flow.

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**2011**  
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