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ENVIRONMENTAL ALERT

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GREENHOUSE GAS REPORTING - ANOTHER BUILDING BLOCK TO CARBON TAX

The National Greenhouse Gas Emission Reporting Regulations (Final Regulations) took effect on 3 April 2017, introducing the first single national reporting system for the transparent reporting of greenhouse gas (GHG) emissions.

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Since the publication of the 2013 Carbon Tax Policy Paper, numerous industries have been anticipating the implementation of the GHG reporting system as part of the movement towards a carbon tax regime.

The Carbon Policy reiterated the sentiments of the 2011 White Paper on Climate Change, which listed a web-based GHG emissions inventory as a potential mitigation response to climate change.



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As provided in the 2015 draft Carbon Tax Bill, any person who conducts an activity listed in Annexure 1 to GHG emission reporting regulations will be a taxpayer for purposes of the proposed Carbon Tax Act and liable to pay carbon tax on the associated emissions.

Draft GHG reporting regulations were first published in 2015, but never promulgated. The Final Regulations follow on the Draft National Greenhouse Gas Emission Reporting Regulations (Draft Regulations) that were published in June 2016.

Key Features

Application: The duty to report GHG emissions applies broadly to all entities controlling or conducting IPCC emission source activities (IPCC Activities) above the thresholds specified in Annexure 1 (Thresholds), which entities are classified as Category A data providers (Data

Providers). Although a similar duty rests on public entities, namely Category B data providers, the summary below pertains only to Category A Data Providers.

Registration: Data Providers are required to register all facilities on the internet-based National Atmospheric Emission Inventory System (NAEIS) by 3 May 2017, in so far as their activities exceed the prescribed Thresholds.

Reporting: By 31 March of each year, Data Providers must submit data on every "relevant GHG" (taking into account all process, fugitive and combustion emissions from all GHG sources and source streams) and IPCC Activity for all facilities on the NAEIS in accordance with the Technical Guidelines for Monitoring, Reporting and Verification of Greenhouse Gas Emissions by Industry (Technical Guidelines).

Emission determination: Different tiered information gathering methodologies for the determination of GHG emissions are prescribed for each IPCC Activity. Whilst Annexure 1 identifies the tier(s) applicable to each IPCC Activity, the Technical Guidelines expound on the technicalities of the different tiers or methodologies. Briefly, a Tier 1 methodology uses readily available statistical data on the intensity of processes and IPCC emissions factors that are specified in the Technical Guidelines. Tier 2 is similar to a Tier 1 methodology, but uses technology or country specific emission factors. Tier 3 includes any methodology that is more detailed than Tier 2 and might include process

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models and direct measurements. The Technical Guidelines differentiate between the Tiers based on the uncertainty of the information provided, with Tier 3 methodology having the lowest level of uncertainty. The Final Regulations do however make provision for a transitional arrangement which allows Data Providers to apply a Tier 1 methodology to certain activities for a period up to five years until 3 April 2022 where Tier 2 or 3 methodologies are otherwise prescribed (Transitional Arrangement).

A Data Provider may submit a request to DEA's National Inventory Unit to review any emission factor in the Technical Guidelines in so far as it reasonably believes the factor to be inappropriate under the specific GHG emission, which submission must be approved or rejected within 60 days. Once approved, the submission is to be incorporated into the Technical Guidelines.

Scope: A Data Provider must report on all companies or subsidiaries over which it exercises operational control, or differently put, over which it has the full authority to introduce and implement operating policies. Reporting must also include GHG emissions from normal operating conditions and "upset conditions" including start-up, shut-down and emergency situations.

Liability: Where a Data Provider provides false or misleading information, or fails to register, report or keep records as required in terms of the Final Regulations, it is an offence for which a fine of up to R5 million

may be imposed upon first conviction, and R10 million for second and subsequent convictions.

Alignment with INDC Commitments

As noted, the Final Regulations were preceded by the Draft Regulations. Although the two sets of regulations are substantially similar, the definition of a "relevant GHG" has been amended to align with the INDC commitments and further draft legislation. Whilst a GHG previously included any gaseous constituents of the atmosphere, for purposes of the Final Regulations and the Technical Guidelines, GHG refers only to the following gases:

- i) carbon dioxide;
- ii) methane;
- iii) nitrous oxide;
- iv) sulphur hexafluoride;
- v) perfluorocarbons; and
- vi) hydrofluorocarbons (Regulated Gases).

This aligns with South Africa's mitigation INDC which commits to increased disaggregation over time through domestic, economy-wide mandatory GHG reporting on six GHGs, with a material focus on carbon dioxide, methane and nitrous oxide.

Reporting Sectors

The primary sectors required to register and report under the Final Regulations include energy; industrial process and

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All Data Providers who are engaging in any of the listed IPCC Activities will have to register all relevant facilities by 3 May 2017.



product use; agriculture, forestry and other land use; and waste. Although this is widely couched, the Technical Guidelines detail the subsectors and/or activities under each sector, which essentially constitute the IPCC Activities.

Reporting requirements are less onerous under the Transitional Arrangements with the majority of the IPCC Activities requiring either:

- no reporting;
- reporting in terms of Tier 1;
- reporting with the option of using either Tier 1 or 2 emission determination methodologies (EMDs);
- reporting with the option of using Tier 1, 2 or 3 EMDs; or
- reporting using Tier 2 or 3, but subject to the Transitional Arrangement.

The only activities for which Tier 2 and 3 EMDs are prescribed and that are not subject to the Transitional Arrangement include processes undertaken by manufacturing and construction industries

involving food processing, beverages and tobacco, transport equipment, machinery, wood and wood products, construction, textile and leather and brick manufacturing.

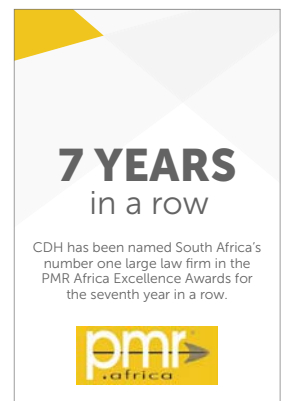
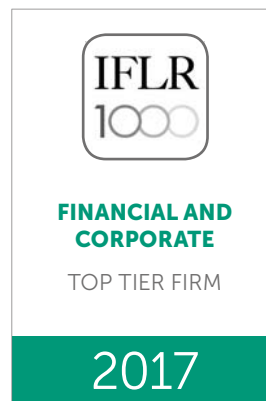
Important Consideration

All Data Providers who are engaging in any of the listed IPCC Activities will have to register all relevant facilities by 3 May 2017. We note however that this deadline may be extended.

Registration on NEAIS is currently not available. Data Providers are therefore required to submit registration information directly to the Chief Director of Climate Change Monitoring and Evaluation at DEA's National Inventory Unit.

Although the first GHG emission reports will only be due end March 2018, industry should consult a suitably qualified specialist to timeously assist with its reporting obligations.

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