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ENVIRONMENTAL ALERT

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Final extended producer responsibility (EPR) regulations not so final

Since June 2020, when the Minister for Environment, Forestry and Fisheries (Minister) [first published](#) draft regulations seeking to introduce Extended Producer Responsibility (EPR) into South Africa's waste regulation regime (Draft EPR Regulations), the regulations have been subject to extensive public scrutiny and have undergone several iterations. In the latest development of the unfolding EPR chronicles, the Minister on 19 March 2021 published draft amendments (Draft Amendments) to the Final EPR Regulations and the associated notices catering for the implementation of EPR schemes in certain sectors (Notices), namely the paper, packaging and some single use products (Packaging Sector), electrical and electronic equipment, and lighting sectors (collectively, the Priority EPR Sectors).

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Final extended producer responsibility (EPR) regulations not so final

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Since June 2020, when the Minister for Environment, Forestry and Fisheries (Minister) **first published draft regulations seeking to introduce Extended Producer Responsibility (EPR) into South Africa's waste regulation regime (Draft EPR Regulations), the regulations have been subject to extensive public scrutiny and have undergone several iterations. Following an extension to the commenting period on the Draft EPR Regulations, the final regulations were published in November 2020 (Final EPR Regulations), and in January 2021, the Minister published a notice postponing the implementation of the Final EPR Regulations from their publication date to May 2021.**

In the latest development of the unfolding EPR chronicles, the Minister on 19 March 2021 published draft amendments (Draft Amendments) to the Final EPR Regulations and the associated notices catering for the implementation of EPR schemes in certain sectors (Notices), namely the paper, packaging and some single use products (Packaging Sector), electrical and electronic equipment, and lighting sectors (collectively, the Priority EPR Sectors). The Draft Amendments have been accompanied by an explanatory memorandum. Members of the public, including key industry stakeholders, have until 19 April to submit comments to the Department of Environment, Forestry and Fisheries (Department) on the Draft Amendments, some of which are highlighted below.

Notable changes proposed in the draft amendments

Notwithstanding the substantial feedback on the Draft EPR Regulations, the Final EPR Regulations remained unclear and impractical, making it difficult to determine who the Final EPR Regulations apply to, how they will be implemented, and how they will be enforced by the Department. Of particular issue to members of the Priority EPR Sectors was the vague and far-reaching definitions, as well as the conflation of the roles and responsibilities of a product responsibility organisation (PRO) and "Producers", as defined.

Some of the revised and new definitions that have been proposed include:

- the inclusion of a definition for "identified products" as the products which are gazetted by the Minister;
- the expanded definition of "Producer" to provide that a producer includes, where relevant, the definition of Producers in the Notices. In this regard, the definition of "Producer" in the Packaging Sector Notice has been amended to:
 - include a threshold of 10 tonnes per annum to ensure applicability to larger manufacturers,
 - make provision for licensed agents for branded products; and
 - include a retailer in circumstances where the importer or licensed agent is unknown;

Final extended producer responsibility (EPR) regulations not so final...*continued*

As comments on the Draft Amendments are due by 19 April 2021, affected players in the Priority EPR Sectors are encouraged to consider the proposed amendments in order to timeously seek legal assistance should they wish to submit comments.

- the introduction of "nett cost" and "full cost" to assist with the calculation of EPR fees and seek to prevent uncertainty or ambiguity; and
- a new definition for "collection" which specifically caters for the gathering of identified products "at the end of their lives", either at the place of its generation or storage, by waste pickers, collectors, reclaimers or service providers.

In an attempt to delineate the respective obligations of PROs and Producers in their establishment of EPR Schemes, the Draft Amendments remove a number of EPR measures listed in Regulation 5 which were initially imposed solely on Producers to implement and now separates the measures into two new regulations, namely 5A and 5B which apply to PROs and Producers respectively. While the wording of the measures is largely identical to the Final EPR Regulations, the inclusion of certain obligations that were previously questioned by Priority EPR Sectors such as the compensation of the informal waste sector, although slightly revised, remain.

With reference to timeframes that have been amended, the Draft Amendments afford more leniency and certainty towards Producers as the timing for

certain obligations have been extended. For example, the life cycle assessment of an identified product may be conducted within five years from implementation of the EPR Scheme instead of three years. The Draft Amendments also now propose a time period for the implementation of environmental labels for identified products in accordance with the appropriate South African National Standards of three years where no timeframe was previously stipulated.

Lastly, the Draft Amendments propose extending offences and penalties to PROs, therefore placing directors of PROs potentially liable for any non-compliances.

Conclusion

As comments on the Draft Amendments are due by 19 April 2021, affected players in the Priority EPR Sectors are encouraged to consider the proposed amendments in order to timeously seek legal assistance should they wish to submit comments.

Should you require our assistance with drafting comments for submission to the Department or offering general advice in relation to the Draft Amendments, our Team is well placed to assist you.

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CDH'S COVID-19 RESOURCE HUB

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OUR TEAM

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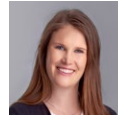
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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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.

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