

Environmental Law Regulation

October 2025



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Introduction

This Guide is developed in partnership between Dentons and Wesgro, the official tourism, trade and investment promotion agency for Cape Town and the Western Cape. Dentons is a global law firm with a strong presence in South Africa, providing comprehensive legal services across multiple practice areas, including environmental law, regulatory compliance and climate change advisory. The firm brings extensive expertise in environmental impact assessments, licensing requirements and navigating South Africa's evolving environmental regulatory framework. Wesgro works to promote sustainable investment and trade in the Western Cape, supporting businesses in achieving compliance while fostering environmentally responsible economic growth in the region.

1.1 South Africa has developed a strong and evolving environmental legal framework that prioritizes climate resilience, sustainability, and accountability. As a signatory to the Paris Agreement and a supporter of the Global Biodiversity Framework, the country is aligning its environmental policies with international standards.

National strategies such as the Low Emission Development Strategy and the Climate Change Adaptation Plan set a clear path toward achieving net-zero emissions by 2050. At the provincial level, the Western Cape Government's Vision 2050 reinforces these goals by promoting a climate-resilient, net-zero province through a just transition, biodiversity conservation, and green economic growth, supported by initiatives like the Biodiversity Spatial Plan and Protected Areas Expansion Strategy. For investors, aligning with these frameworks not only ensures regulatory compliance but also strengthens long-term sustainability performance and enhances Environmental, Social and Governance ("ESG") value.

2. The National Environmental Management Act

2.1 The National Environmental Management Act 107 of 1998 ("NEMA") serves as the umbrella



legislation establishing principles of sustainable development and cooperative governance. It provides the overarching structure within which sector-specific legislation such as the National Water Act, the Waste Act, the Air Quality Act, and the Climate Change Act operate in a coordinated manner. Together, these instruments aim to balance socio-economic development with the protection of natural resources, promote public participation, and ensure accountability and compliance through regulatory, administrative, and criminal enforcement mechanisms.

2.2 The National Environmental Management Act (**“NEMA”**) prohibits commencing any listed activity without prior environmental authorisation, and non-compliance constitutes an offence. NEMA classifies activities into four categories: those requiring no authorisation but adherence to norms, those needing a basic assessment for lower-risk projects, and those requiring a scoping exercise and an Environmental Impact Report (**“EIR”**) for large-scale or high-impact activities. Public participation is a critical component of the authorisation process, involving stakeholder identification, notification, engagement, and documentation. If operations begin without authorisation, Section 24G of NEMA allows for a rectification application, where authorities may require cessation of activities, environmental impact assessments, remediation of harm, and elimination of pollution sources. Approval or refusal of such applications is contingent on compliance and payment of an administrative fine of up to ZAR 10 million.

3. Water

3.1 South Africa's water scarcity makes water governance a critical investment consideration. The National Water Act (**“NWA”**) and Water Services Act (**“WSA”**) regulate water use and service provision. All other uses require licensing from the Department of Water Affairs or Catchment Management Agencies. The NWA also imposes strict duties to prevent pollution, mandates emergency measures, and enables cost recovery for remediation. Decentralized governance through catchment agencies and the Water Tribunal strengthens oversight, while provisions for transferring water use rights ensure continuity during land transactions. For investors, early licensing, compliance planning, and water efficiency strategies are essential to mitigate operational and regulatory risks.

4. Waste

4.1 Waste management in South Africa is governed by the Waste Act, which requires licences for listed activities such as storage, recycling, treatment, and disposal. The Act sets national norms for remediation, landfill standards, and waste minimisation, while introducing Extended Producer Responsibility (**“EPR”**), placing lifecycle obligations on producers to manage post-consumer waste. Compliance is critical as public participation and sector-specific rules can affect timelines and costs, and rehabilitation expenses must be factored into project feasibility. For investors, this framework highlights

opportunities in recycling, waste-to-energy solutions, and circular economy initiatives, alongside the need for early licensing and sustainable waste strategies. The Western Cape Government, through its Provincial Integrated Waste Management Plan, set waste diversion targets to reduce reliance on landfills and promote a circular economy. For organic waste, the province aimed for 50% diversion by 2022 and 100% diversion by 2027. Broader waste reduction goals include diverting 40% of all waste from landfills by end of 2025, 55% by 2030, and over 70% by 2035.

5. Air

5.1. South Africa's air quality laws are highly regulated under the Air Quality Act ("AQA"), requiring atmospheric emission licences for certain activities and compliance with strict emission standards. Unauthorized operations can apply retrospectively, but only after paying fines of up to ZAR 10 million, creating significant compliance risk. For investors, early licensing and investment in emission-reduction technologies are essential to avoid costly delays and align with the country's transition to cleaner air standards.

6. Contaminated Land

6.1. Land contamination in South Africa carries significant liability risks under NEMA, the Waste Act, and the National Water Act, including statutory obligations for remediation, criminal penalties for water pollution, and civil

claims if contamination spreads to neighbouring properties. Regulators can compel clean-up or recover costs from responsible parties, landowners, or successors in title. Remediation is a listed activity requiring a waste management licence, and contaminated sites are tracked in a national register with classifications and restrictions. For investors, this underscores the importance of thorough due diligence, proactive compliance, and budgeting for potential remediation costs to avoid financial exposure and project delays.

7. Marine Pollution

7.1. South Africa enforces strict marine pollution controls under international and domestic law. As a signatory to the International Convention on Civil Liability for Oil Pollution Damage, shipowners carrying over 2,000 tons of oil face strict liability for spills and must maintain insurance coverage. The Marine Pollution Control and Civil Liability Act implements these obligations, while the Marine Spatial Planning Act 16 of 2018 promotes sustainable ocean use and conservation aligned with global standards. For investors in shipping, energy, or marine sectors, compliance with liability, insurance, and spatial planning requirements is essential to mitigate risk and support long-term sustainability.

8. Carbon Markets

8.1. **The Carbon Tax Act 15 of 2019 ("Carbon Tax Act")**

8.1.1. The Carbon Tax Act came into effect on 1 June 2019 and imposes a carbon pricing mechanism for large emitters.

- 8.1.2. In terms of the Carbon Tax Act, carbon tax is administered and collected by the South African Revenue Service and is enforced as an environmental levy under the Customs and Excise Act, 1964, read with the relevant provisions of the Carbon Tax Act. The tax covers about 90 percent of South Africa's total GHG emissions, with only agriculture, forestry, land use, and waste excluded.
- 8.1.3. The tax is implemented in two phases:
 - 8.1.3.1. **Phase I**, which spanned from 1 June 2019 to December 2022 (and was extended to 2026). Phase I applies exclusively to Scope 1 emitters and allows for tax-free emission allowances, ranging from a threshold of 60% to 95% in certain sectors detailed below. This results in a net tax rate ranging from ZAR 6 to ZAR 48.
 - 8.1.3.2. **Phase II** is scheduled from 2026 to 2030. The basic 60% threshold will be discontinued, although additional tax-free allowances will be maintained at 35%.
- 8.1.4. Regulations on carbon offsets under section 19 of the Carbon Tax Act detail the eligibility of carbon credit projects or activities, limitations, processes and institutional responsibilities for use of the Carbon Tax Act's carbon "offset" allowance. The regulations provide that carbon tax can be offset by retiring domestic carbon offsets only.

9. Climate Change Regulation

- 9.1. The Climate Change Act 22 of 2024 (**"Climate Change Act"**) is a new legislative framework that marks a major shift in South Africa's climate

governance. It introduces carbon budgets, sectoral emission targets, and mandatory mitigation plans for high-emitting entities. Importantly, the Act is being phased in over multiple compliance cycles, allowing businesses time to adapt while progressively tightening obligations to align with South Africa's net-zero trajectory. For investors, this phased approach provides both predictability and an opportunity to plan capital allocation toward low-carbon technologies and resilience strategies.

- 9.1.1. **Scope and Application**
- 9.1.2. The Climate Change Act aims to facilitate a coordinated and integrated response to climate change impacts, enhance adaptive capacity, and ensure a just transition to a low-carbon economy. The Act is guided by principles such as cooperative governance, the precautionary principle, and the need for integrated management. It applies to the entire Republic, including its internal and territorial waters, exclusive economic zone, and binds all organs of state.
- 9.3. **Key definitions introduced by the Climate Change Act**
 - 9.3.1. The newly phased in key definitions under the Climate Change Act include "climate change," which refers to changes in climate attributed to human activity, and "just transition," which denotes a shift towards a low-carbon, climate-resilient economy that promotes social inclusion and poverty eradication. The Climate Change Act also introduces the concept of a "carbon budget," which is an assigned amount of greenhouse gas emissions allocated to a person

or entity over a defined period, for specific high-emitting activities and sectors. It requires the development of greenhouse gas mitigation plans and adaptation strategies to address climate change impacts effectively for designated sectors and activities.

9.4. Governance Structures

8.4.1. The Climate Change Act also mandates planning for adaptation, thereby requiring the Minister to determine national adaptation objectives, develop adaptation strategies and create a National Adaptation Strategy and Plan. These measures aim to guide the country's adaptation to climate change impacts and enhance resilience. The Climate Change Act also obligates provinces and municipalities to conduct climate change needs assessments and develop response implementation plans within specified timeframes.

9.5. Mitigation Measures

9.5.1. The Climate Change Act further requires that every organ of state review and, if necessary, revise their policies, laws, and measures to ensure alignment with the Act's principles and objectives. It also provides for the establishment of Provincial and Municipal Forums on Climate Change to coordinate climate change responses at provincial and municipal levels. Furthermore, the President is empowered to establish a Presidential Climate Commission to advise on climate change mitigation and adaptation and to monitor progress in achieving emissions reduction and adaptation goals.

10. Biodiversity Regulation

- 10.1. The National Environmental Management: Biodiversity Act 10 of 2004 (“**NEMBA**”) provides the framework for conserving biodiversity and regulating activities that may impact ecosystems. It requires that land use planning and development decisions integrate biodiversity considerations, ensuring alignment with national biodiversity strategies and spatial planning norms. This is supported in the Western Cape through frameworks such as the Western Cape Biodiversity Act, the Biodiversity Spatial Plan and the Protected Areas Expansion Strategy.
- 10.2. Under NEMBA, any restricted activity involving listed threatened or protected species, ecosystems, or alien and invasive species requires a permit. This includes activities such as possession, transport, breeding, trade, or introduction of such species. The Threatened or Protected Species (“**TOPS**”) Regulations and Alien and Invasive Species Regulations set out detailed permitting requirements, including biodiversity impact assessments and compliance with norms and standards. Risk assessments are often mandated for activities that could affect threatened or protected ecosystems, species, or involve restricted biological resources.
- 10.3. For investors, this means that land development projects, agricultural expansion, or bioprospecting activities

must incorporate biodiversity risk assessments early in the planning process. Failure to obtain the necessary permits can result in significant delays, penalties, or project suspension. Strategic engagement with environmental authorities and integration of biodiversity offsets into project design can mitigate these risks and enhance ESG strategies.

10.4. Corporate Sustainability Reporting

Corporate sustainability reporting in South Africa is guided primarily by the King IV Report on Corporate Governance and the Johannesburg Stock Exchange (“JSE”) Listings Requirements, which

encourage companies to integrate ESG considerations into their reporting. South African entities are expected to adopt an integrated reporting approach, demonstrating how sustainability practices contribute to long-term value creation.

11. How to get assistance

- 11.1. Investors seeking further information or support regarding climate and environment regulations in South Africa can obtain guidance from Wesgro, or Dentons, or your trusted legal advisor.

About the Partners

Wesgro

Wesgro is the official tourism, trade and investment promotion agency for Cape Town and the Western Cape. The investment team assists Western Cape companies seeking expansion, South African companies investing in the region and foreign companies entering the market for the first time. Wesgro offers a comprehensive range of services to investors, including providing market intelligence, navigating South Africa's policy and regulatory landscape, assisting with site location identification, addressing regulatory challenges and facilitating referrals to specialist advisory services such as legal firms, recruitment agencies and property professionals.

Dentons

Dentons is the world's largest global law firm, connecting talent to opportunity across more than 80 countries. As a trusted legal partner to investors, Dentons South Africa combines local insight with global reach to help clients navigate complex legal and regulatory environments. The firm advises across key sectors such as finance, energy, infrastructure, real estate, technology and private equity, offering expertise in corporate and commercial law, mergers and acquisitions, employment, competition and regulatory compliance. With a strong track record in supporting businesses entering or expanding in Africa, Dentons helps investors establish operations, secure project financing and achieve sustainable growth.



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