

South Africa

Authors

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| Contributed by: | Fairbridges Wertheim Becker: South Africa Bob Groeneveld Gaby Meintjes Tashreek Miller |
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| <p>What are the key statutory environmental, social, and governance disclosure obligations in your jurisdiction?</p> | <p>In South Africa, whilst there are regulations and standards, particularly that of the King IV Report on Corporate Governance in South Africa, 2016 ("King IV"), which provide principles of ESG considerations that companies should take into account when conducting business and when publishing annual reports, under the current disclosure regime, there is no express obligation (statutory or otherwise) on companies to provide disclosures on ESG matters. However, JSE-listed companies are subject to general disclosure obligations in terms of the JSE Listing Requirements, which apply to financially material ESG issues. JSE-listed companies are obligated in terms of the JSE Listing Requirements to report annually, on an "apply and explain" basis, the extent to which they have complied with the King IV principles. These ESG and/or sustainability reports are published annually.</p> |
| <p>Are there any important voluntary environmental, social, and governance disclosures in your jurisdiction, beyond those required by law or regulation?</p> | <p>There are a few voluntary ESG disclosures and reporting practices which companies are invited to comply with, that are recorded in various guidance documents, reports, and other guidelines.</p> <p>For example, in June 2022 the JSE published its Sustainability Disclosure Guidance and Climate Disclosure Guidance, which is voluntary guidance for JSE-listed companies on sustainability and climate-related disclosure. The recommendations for reporting provided by these guidance documents are in line with the principles and standards recorded in King IV. In terms of the Climate Disclosure Guidance, it is recommended for companies to report on various forms of carbon emissions in their integrated annual reports, whether or not there are climate-related impacts, risks, or opportunities material to their organisation, and what actions and oversight their boards intend to take in the proceeding year, etc. In terms of the Sustainability Disclosure Guidance, it is recommended for companies to describe, in their integrated annual reports, the performance metrics and targets used to measure and manage its sustainability impact, risks, and opportunities, etc.</p> |
| <p>What are the frequently used frameworks for ESG disclosures in your jurisdiction (e.g., GRI, SASB, TCFD recommendations, etc.)?</p> | <p>The most frequently used ESG disclosure frameworks in South Africa are the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD"), the Task Force</p> |

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| | on Nature-related Financial Disclosures ("TFND"), as well as the Global Reporting Initiative ("GRI"). |
| What are the key statutory environmental, social, and governance obligations requiring action other than disclosure in your jurisdiction? | <p>South Africa does not have a specific ESG general legal framework. However, several aspects of ESG are governed by statute and regulation, such as the Pension Fund Regulations and the Public Investment Corporation Amendment Act, etc.</p> <p>The Pension Fund Regulations require that all insurers prepare their investment policies in accordance with Prudential Standard GOI 3, as issued by the Prudential Authority. What this means is that an insurer's investment policy must set out the insurer's strategy for investing and how this will be managed, and further must consider any factor that may materially affect the sustainable long-term performance of assets, including ESG factors.</p> <p>The Public Investment Corporation Amendment Act requires state-owned companies responsible for managing public pension fund assets to consider the benefit of members or beneficiaries when making investments, and further, must seek to invest these funds in such a way to promote sustainable development.</p> |
| Do ESG rules in your jurisdiction have extraterritorial effect? | In principle, the South African ESG rules and standards only apply within South Africa, but the required and recommended transparent and detailed reporting of organisations will have an impact on foreign investment and support. |
| Are there any specific regulations in your jurisdiction regarding advertising with ESG claims? | There are general provisions which prohibit deceptive advertising in South Africa, especially with regard to consumer products (i.e., the Consumer Protection Act; the Foodstuffs, Cosmetics and Disinfectants Act, and its Food Labelling Regulations). For example, food products may not have labels or representations which imply that they are overly nutritious when they in fact are not. |
| Is it required in your jurisdiction to impose special ESG rights and/or obligations on suppliers (e.g., contractual clauses pursuant to UK Modern Slavery Act)? | South Africa does not have a specific ESG general legal framework or general obligations which must be imposed on suppliers, however several ESG aspects are governed by various statutes and regulations which need to be observed in contracts with suppliers. |
| Can shareholders/investors hold a company/entity or its corporate bodies/representatives liable when positive ESG efforts of such company (e.g., initiatives to achieve net zero) cause loss to the company and/or them? | Not at present. |
| Can shareholders/investors hold a company/entity or its corporate bodies/representatives liable when non-compliance with ESG rules causes loss to the company and/or them? | Yes, but this liability is not limited only to ESG rules and requirements. Liability will arise when actions/decisions which are prejudicial to the company are performed/made. Directors have fiduciary duties to act in the best interests of the company, with care, skill, and diligence. Hence, should there be non-compliance with any required statute or regulation (which may include those which have aspects of ESG) and if it is prejudicial to the company, liability may arise. |
| Can customers, creditors, or other affected parties hold a company/entity or its corporate bodies/representatives liable when non-compliance with ESG rules causes loss to them? | South Africa does not have a specific ESG general legal framework. However, several aspects of ESG are governed by statute and regulation. |
| If there are no ESG rules in your jurisdiction, is there any analogous regulation or regulatory initiative? | South Africa does not have a specific ESG general legal framework. However, several aspects of ESG are governed by statute and regulation. |

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| <p>Has your jurisdiction reviewed its statutory framework to identify any prohibitions or restrictions that would prevent a company/entity from pursuing ESG initiatives?</p> | <p>While ESG regulation is still largely in its infancy in South Africa, specific ESG laws and regulations have been promulgated – some of which are in respect of carbon tax, energy efficiency and a natural minimum wage.</p> |
| <p>What statutory sustainable finance and investment frameworks are followed in your jurisdiction regarding ESG indicators (i.e., how a company operates) and impact indicators (i.e., what a company achieves with its products and services)?</p> | <p>While ESG regulation is still largely in its infancy in South Africa, specific ESG laws and regulations have been promulgated – some of which are in respect of carbon tax, energy efficiency and a natural minimum wage.</p> |
| <p>What voluntary sustainable finance and investment frameworks are followed in your jurisdiction regarding ESG indicators (i.e., how a company operates) and impact indicators (i.e., what a company achieves with its products and services)?</p> | <p>It is increasingly common practice for companies to adopt and publish their own ESG policy which informs how they approach ESG matters in their investment processes/activities. Risk management is a central concept to these policies.</p> <p>A few ways in which companies integrate ESG into their daily operations are through training, adopting ESG strategies and fostering a corporate culture in line with those strategies.</p> |
| <p>Are financial institutions, investment advisors, and/or pension institutions in your jurisdiction required to consider ESG factors when making investment decisions or recommendations?</p> | <p>South Africa does not have a specific ESG general legal framework. However, several aspects of ESG are governed by statute and regulation, such as the Pension Fund Regulations and the Public Investment Corporation Amendment Act, etc.</p> <p>The Pension Fund Regulations require that all insurers prepare their investment policies in accordance with Prudential Standard GOI 3, as issued by the Prudential Authority. What this means is that an insurer's investment policy must set out the insurer's strategy for investing and how this will be managed, and further must consider any factor that may materially affect the sustainable long-term performance of assets, including ESG factors.</p> <p>The Public Investment Corporation Amendment Act requires state-owned companies responsible for managing public pension fund assets to consider the benefit of members or beneficiaries when making investments, and further, must seek to invest these funds in such a way to promote sustainable development.</p> |
| <p>Are there any tax or other benefits available in your jurisdiction to encourage financial institutions and/or pension institutions to integrate ESG factors into their investment decisions?</p> | <p>Yes. For example, in terms of the Income Tax Act and its Amendments, companies which undertake reportable ESG initiatives will enjoy a reduction in tax costs with regard to the costs they incur in constructing renewable energy infrastructure. Companies which construct energy infrastructure to be used as part of their trade and comply with ESG standards will be afforded a deduction of the full cost plus 25% of new renewable energy assets purchased/constructed against their annual income.</p> |
| <p>Have the regulators (including financial market supervisory authorities) in your jurisdiction adopted special measures against “greenwashing”? What are the consequences of non-compliance with such measures?</p> | <p>South Africa currently does not have any specific laws or regulations explicitly prohibiting or imposing sanctions/penalties on greenwashing. However, greenwashing may lead South African companies to face civil liability claims, criminal complaints, or various other regulatory complaints if their greenwashing is considered to, amongst others, amount to a breach of reporting standards in terms of the JSE Listing Requirements, constitute false advertising, violate consumer protection laws, amount to unfair competition, or constitute a breach of data privacy laws. It is further possible that directors of companies will be held liable in their personal capacities for failing to act in good faith or in the best interests of the company in question if the company faces liability claims for greenwashing.</p> <p>New regulations may soon be published explicitly prohibiting greenwashing in South Africa, as there has been a global shift to increased regulation and monitoring of greenwashing.</p> |

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| <p>Have there been any recent enforcement action or case law pertaining to “greenwashing” in the financial market in your jurisdiction?</p> | <p>There has been enforcement action and case law pertaining to greenwashing, where the greenwashing in question was considered to amount to either a violation of consumer protection laws or unfair competition. It is unknown if there have been recent cases specifically dealing with greenwashing in general.</p> |
| <p>What legislative and regulatory developments are likely to emerge in connection with ESG obligations in your jurisdiction?</p> | <p>Increased ESG obligations have become more common globally, and it is highly probable, with the JSE's guidance documents having recently been published, that South Africa will soon follow the global trend and that current statutes and regulations will be amended to include ESG- specific provisions, and new statutes and regulations will be promulgated requiring stricter ESG obligations and disclosures. In particular, consumer protection, and financial laws and regulations will likely be developed to deal with ESG factors and obligations in respect of sustainable finance (as already seen in the Pension Fund Regulations) and corporate mergers and acquisitions.</p> |
| <p>What legislative and regulatory developments are likely to emerge in connection with the consideration of ESG factors in sustainable finance in your jurisdiction?</p> | <p>Increased ESG obligations have become more common globally, and it is highly probable, with the JSE's guidance documents having recently been published, that South Africa will soon follow the global trend and that current statutes and regulations will be amended to include ESG- specific provisions, and new statutes and regulations will be promulgated requiring stricter ESG obligations and disclosures. In particular, consumer protection, and financial laws and regulations will likely be developed to deal with ESG factors and obligations in respect of sustainable finance (as already seen in the Pension Fund Regulations and corporate mergers and acquisitions.</p> |
| <p>What legislative and regulatory developments are likely to emerge in connection with the consideration of ESG factors in M&A in your jurisdiction?</p> | <p>Increased ESG obligations have become more common globally, and it is highly probable, with the JSE's guidance documents having recently been published, that South Africa will soon follow the global trend and that current statutes and regulations will be amended to include ESG- specific provisions, and new statutes and regulations will be promulgated requiring stricter ESG obligations and disclosures. In particular, consumer protection, and financial laws and regulations will likely be developed to deal with ESG factors and obligations in respect of sustainable finance (as already seen in the Pension Fund Regulations and corporate mergers and acquisitions.</p> |