

THE 2010 EIA REGULATIONS IN A NUTSHELL

The long-awaited new Environmental Impact Assessment Regulations (“EIA Regulations”) promulgated under section 24 of the National Environmental Management Act (Act No. 107 of 1998) came into force on 2 August 2010 (by virtue of GN R660-665 in *Government Gazette* 33411) after an extensive consultation process which commenced in May 2007. That process saw the publication of several iterations of draft Regulations for public comment (three sets of draft Regulations were published for public comment) and ultimately culminated in the promulgation of the 2010 EIA Regulations, which replace the 2006 EIA Regulations (GN R385-387 in *GG* 28753 of 21 April 2006, as amended).

The 2010 EIA Regulations comprise the following:

- GN R543: the EIA Regulations;
- GN R544: *Listing Notice 1*, which lists activities subject to basic assessment;
- GN R545: *Listing Notice 2*, which lists activities subject to the more extensive process of scoping and EIA;
- GN R546 *Listing Notice 3*, which identifies geographical areas based on environmental attributes, in which specified activities may not commence without environmental authorisations; and
- GN R547 Regulations pertaining to environmental management frameworks and sections 24(5) and 44 of NEMA.

While the 2010 EIA Regulations maintain the fundamental approach followed historically (i.e. in the 2006 EIA Regulations as well as EIA Regulations under the Environment Conservation Act (Act No.73 of 1989)) of identifying and listing (or specifying) activities which are subject to an assessment of their social, economic and environmental impacts, the 2010 EIA Regulations seek to improve the efficiency and efficacy of the EIA regime in South Africa in a number of ways.

For example, some activities previously subject to scoping and EIA are now incorporated in *Listing Notice 1* and are therefore subject to the less onerous basic assessment process. With regard to other activities, threshold requirements have been amended and yet others no longer require environmental authorisation at all, while other activities have been added to the lists of activities requiring environmental authorisation. Furthermore, an attempt has been made to define the jurisdictional requirements of several activities with more precision, in order to exclude activities not likely to have adverse impacts on the environment, from the EIA regime. For example, *Listing Notice 1* contains several activities dedicated to the expansion of certain facilities or infrastructure, which were under the previous regime collapsed within the activities dealing with construction of certain facilities or infrastructure.

The 2010 EIA Regulations also introduce a more nuanced approach to EIA which takes the account of the sensitivity of certain receiving environments within each province. To

this end *Listing Notice 3* contains so-called specified activities which are subject to basic assessment within certain geographical areas in each province.

Lastly, mention must be made of the fact that the process associated with EIA and related matters, although it has largely remained the same when compared with the 2006 EIA Regulations, has undergone some subtle yet significant changes. For example, some changes have been made with regard to time periods applicable to decision-making. Practitioners are therefore well advised to consider the EIA Regulations carefully.

Ultimately, the questions of whether or not the 2010 EIA Regulations live up to the expectation of improving South Africa's EIA regime remains to be seen in the context of the implementation of those Regulations. An area of specific interest will be the degree of consistency in the interpretation and application of the 2010 EIA Regulations by the national and provincial authorities, respectively. The next 12 to 18 months should provide practitioners with a clearer indication regarding the efficiency and efficacy of the new EIA Regulations.

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