FRONTLINE AFRICA ADVISORY

# Legislative and Regulatory Highlights

## February 2024

## Introduction

- With 29 May now set as the election date, the 6th parliament will soon begin with the process of winding down its business.
- This month's report looks at various bills that are currently being processed by parliament.
- Key bills and regulatory developments that are covered include the Integrated Resource Plan (IRP) 2023, the Gas Amendment Bill, the Draft Second Amendment of the Immigration Regulation and the Railway Safety Bill amongst others.

# Integrated Resource Plan 2023

- On 04 January 2024, the Department of Mineral Resources and Energy (DMRE) published the IRP 2023 for public comments.
- In light of several concerns about the content of the plan, the DMRE Minister extended the deadline for comments to 23 March 2024.
- The Plan is to ensure security of electricity supply necessary by balancing supply with demand while taking the environment and total cost of supply into consideration.
- According to the draft IRP 2023, the government envisages an energy mix that includes coal.
- The DMRE aims to delay shutting down coal fired power plants to retain dispatchable capacity.
- The IRP 2023 also prioritises the following energy sources:
  - Nuclear – Eskom's Koeberg Power Station remains critical towards retaining the nuclear power in the energy mix. The lifespan of the power station has been extended to ensure Koeberg can continue to operate beyond its original life span.
  - Gas - Significant gas discoveries and resources in the region provide the country with an opportunity for a flexibility towards complementing renewable energy. In the IRP 2023, 7.2GW of gas-fired power is being proposed to be rolled out until 2030.
  - Renewables – In light of investments by the private sector there is an expected growth of renewable energy to complement the country's decarbonisation efforts. Wind and solar generation of 4.5GW and 3.6GW will both be added into the energy mix until 2030.

mineral resources
Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

### Possible implications

- The extension of the deadline for comments to March and the subsequent consideration of submissions by DMRE, means that the Plan will be implemented by the next govenment.
- Should the ANC not come back after the elections with a significant majority, the IRP might undergo a number of iterations based on the interests or views of parties that the ANC may go into a coalition with.
- Fossil fuels will still play a significant role in the country's energy mix and we expect a delay in the decommissioning old power plants.
- The implementation of the IRP 2023 is likely to generate more investments from oil and gas producers (although oil has not been included in the latest version of the IRP) for the country's energy mix, given the latest developments that include construction of gas terminals in Coega and Richards Bay. Private companies are also likely to sustain interest and investment in renewable resources.

# Gas Amendment Bill

- DMRE Minister Gwede Mantashe re-published the Gas Amendment Bill on 19 January for public comment.
- The bill will make changes to the Gas Act of 2001, with key changes being proposed such as:
  - Promoting sustainable development of the gas industry in the country;
  - Facilitate gas infrastructure development and investment;
  - Strengthen enforcement and improve compliance with the regulations;
  - Provide for the cooperation between the private and public sectors;
  - The bill also accords the National Energy Regulator of South Africa (Nersa) powers to regulate, facilitate and promote participation in the gas industry in accordance with Government policy and plans such as the IRP;
  - Consult with gas regulatory authorities of other countries to promote and facilitate the development of gas transmission, storage, distribution, liquefaction and regasification facilities and gas services in accordance with the government's plans;
  - The bill also specifically adds the promotion of skills development and employment equity in the gas industry as a whole. It also allows for licensees to apply for exclusivity in the construction and sale of gas in certain areas, with conditions set by the regulator and the ministry.

### Possible implications

- The proposed amendments represent the DMRE's intention to create integrated energy projects in the country that fulfil its energy mix aspirations.
- The bill will hope to attract new investors to the gas space, given the upscaling made in the latest draft of the IRP towards gas.
- DMRE will also be hoping to utilise the legislation to promote the loading of 7 200MW, gas-to-power capacity to meet the electricity shortfall.
- The government is likely to face serious opposition from environmental and other civil society groups, who remain firm that South Africa should transition away from all forms of fossil fuels on a scaled basis.
- It is still unlikely the bill can be passed in time before the current parliamentary term lapses.

# Immigration Regulations 2014

- On 08 February 2024, the Department of Home Affairs published the Draft Second Amendment of the Immigration Regulation to overhaul South Africa's immigration system for public comments.
- The draft proposes to:
  - introduce a point-based system for assessing work visas;
  - create a digital nomad visa;

- o formalise the rules surrounding visitor visas for the spouses, parents, and children of South African nationals or permanent residents;
- o modify guidance on certificates of registration; and
- o formalise police clearance documentation requirements.

**Possible Implications**

- The amendments to the regulation are all focused on improving the visa regime in the Department of Home Affairs, which has been criticised by the general public and business organisations.
- The new points-based system is expected to create a more transparent work visa adjudication process.
- The digital nomad visa would offer an immigration pathway to remote workers, which is currently unavailable in South Africa.
- The modified guidance on certificates of registration will offer Critical Skills Work Visa, Corporate Visa, Business Visa, or ‘permanent residence with a certificate of registration’ status applicants an additional pathway to obtain a visa or permit while waiting for the issuance of a certificate of registration.
- After reviewing the public comments, it is anticipated that the DHA will implement new regulations once they have been published in the government gazette. It is possible that this could take several months, though the authorities are cognizant of the talent shortages that exist in the country and this may impact the implementation timeframe.

# Employment Equity Act: Draft Regulations on Proposed Sectoral Numerical Targets

- On 01 February, the Department of Labour and Employment published the Draft Regulations on Sectoral Numerical Targets for public comment in preparation for the commencement of Section15A of the Employment Equity Amendment Act No 4 of 2022.
- Section15A of the Employment Equity Amendment Act No 4 2022 states that the Minister may identify national economic sectors having regard to any relevant code contained in the Standard Industrial Classification of all economic activities published by Statistics South Africa.
- The draft regulations state that designated employers will be required to set annual numerical goals and will be measured against these annual goals towards meeting the relevant five-year sectoral targets.
- Affirmative action shall be applied in a nuanced way and the economically active population statistics will only be one of the many factors that will be taken into account in the compliance analysis of affirmative action in any workplace.


**Possible Implications**

- Once the final version of the regulations is published, designated employers will be required to comply with the relevant sectoral targets in setting the numerical goals in their employment equity plans.
- Regardless of the four upper occupational levels set out in the regulations, designated employers will still be required to set numerical goals and annual targets for the semi-skilled and unskilled occupational levels in their employment equity plans.

# General Intelligence Laws Amendment Bill


- The Ad-hoc Committee on the General Intelligence Laws Amendment Bill has recently heard oral submissions from from a number of civil society formations, such as the FW de Klerk Foundation and COSATU and eminent individuals.
- These have expressed concerns about key definitions in the bill.
- The bill proposes for the extension of the definition of threats to national security to include anything that may threaten “equality and equitable access to opportunities’’ as well as “measures and activities that seek to advance and promote peace and harmony and freedom from fear and want”.
- The bill’s provisions would amend three existing laws relating to intelligence structures: the National Strategic Intelligence Act, the Intelligence Services Act, and the Intelligence Oversight Act.
- The new bill also proposes the split of SSA into two intelligence agencies once more: the South African Intelligence Service (focused on foreign intelligence) and the South African Intelligence Agency (focused on domestic intelligence).
- The bill will also expand the agencies’ security vetting powers to include mandatory vetting of any “person or institution of national security interest.

- The bill will also expand the entity's mass surveillance capabilities through the National Communications Centre (NCC). The surveillance system would have nominal oversight from a judge, with the judge being appointed by the President and advised by two 'interception experts.

**Possible implications**

- While the new bill is necessary to address many shortcomings in intelligence gathering, as found by both the 2018 High-Level Review Panel on the State Security Agency and the Zondo Commission into State Capture, there are well founded concerns about its possible overreach and abuse.
- There are concerns about risks to freedom of association and the risk of unfettered surveillance of civil society organisations, and communications platforms.
- The bill is also weak on provisions for improved oversight and accountability of the intelligence services, another issue revealed by the Zondo Commission.
- It should be expected that there will much push back on the bill from the public and other interested parties.
- Should the outcome of the upcoming general election result in a reduced majority for the governing ANC, the bill will undergo major iterations or stalled altogether.

# National Environment Management Waste Act: Draft Guideline and Toolkit for the Determination of EPR Fees

- On 02 February 2024, the Department of Forestry, Fisheries and Environment (DFFE) published the Draft Guideline and Toolkit for the Determination of Extended Producer Responsibility (EPR) Fees for public comment.
- The purpose of the draft guideline is to provide producers and Producer Responsibility Organisations (PROs) with a realistic way of determining EPR fees, utilising the criteria included in regulations 7(3) or 7A (3) of the EPR , 2020.
- The guideline includes four determination methods that include:
  - o Flat free approach
  - o Modulated fee approach
  - o Eco-modulated fee approach
  - o Product take – back scheme approach
- The calculation formulae will vary according to the fee determination methods and will take into account the criteria as specified in regulation 7 (financial arrangements)
- The guideline will include three conditions of adjustment, following international best practice, which are the:
  - o No adjustment
  - o Annual inflationary adjustment
  - o Three and/or five-year adjustments

## Possible Implications

- The EPR regulations are focused on making businesses commit towards sustainability practices.
- The DFFE is highly concerned by the great threat of filling landfills and, given the difficult mechanisms to combat waste management, is placing more responsibility on businesses to manage the entire lifecycle of their products.
- A number of manufacturers believe that the DFFE regime is not taking into consideration other factors contributing to waste management, such as municipalities' inability to collect waste and conduct basic services.
- The regulations further strengthen the importance of PROs in assist companies to comply with the DFFE regulations.
- PROs can also be able to foster economic integration of SMMEs and waste pickers, and contribute to a more inclusive collection and recycling ecosystem.
- Companies will now have to work towards fast-tracking their sustainability measures that can improve waste management, such as product end-of-life, reducing packaging-related pollution and optimising waste collection across communities/areas they operate in.

# Railway Safety Bill

- On 19 February 2024, the Select Committee Transport, Public Service and Administration, Public Works and Infrastructure invited the public to submit comments on the Railway Safety Bill.
- The bill looks to improve the regulatory framework regulating safety in the country in order to improve safety for passenger and freight.
- The bill further looks into promoting the harmonisation of the railway safety regime of the country with the objectives and requirements for safe railways operations of the SADC region.
- The Railway Safety Regulator will now be empowered to promote, regulate and report on safe railway and railway operations through the appropriate and timely application of support, monitoring and enforcement instruments provided by the bill.
- It will also be expected to advise the Minister of Transport on actions or conditions within the railway environment which pose or could potentially be a threat.
- The bill also requires the regulator to establish and maintain a national information and monitoring system regarding safe railway operations within the country.

## Possible implications

- The bill forms part of government's plan towards improving rail and freight transportation.
- The implementation of the bill will also assist towards generating new investments rail infrastructure improvements, primarily through existing Cape Town, eThekwini and Gauteng Cape-gauge metropolitan networks, to distinguish them from freight rail that will use the standard gauge high performance national network.
- The government is also working towards using policy such as the root out cable theft and vandalism of related railway infrastructure, that have contributed to deprecation of the railway system.
- In these efforts, security cluster coordination and cooperation will be key to effectively manage the criminality that continues to affect several state-owned entities such as Eskom and Transnet.

**END**