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SA’s Climate Change Act: A new era of environmental legislation

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On 23 July 2024, President Cyril Ramaphosa signed the Climate Change Act into law. This landmark legislation aims to guide the country towards a low-carbon and climate-resilient future, aligning South Africa with global efforts to combat climate change. Although the Act has been officially promulgated, its implementation will only commence from a date announced by the President.

The Climate Change Laws of the World is a global database that tracks 196 countries and territories’ laws and policies on climate change, as well as laws and policies that facilitate and promote low-carbon transitions. From this database, it’s evident that ‘hotspots’ of Climate Change legislation, policy formulation and maturity are more evident in developed regions (figure A). However, with the Act being promulgated, South Africa aligns with these global peers in efforts to mitigate climate change through legislation.

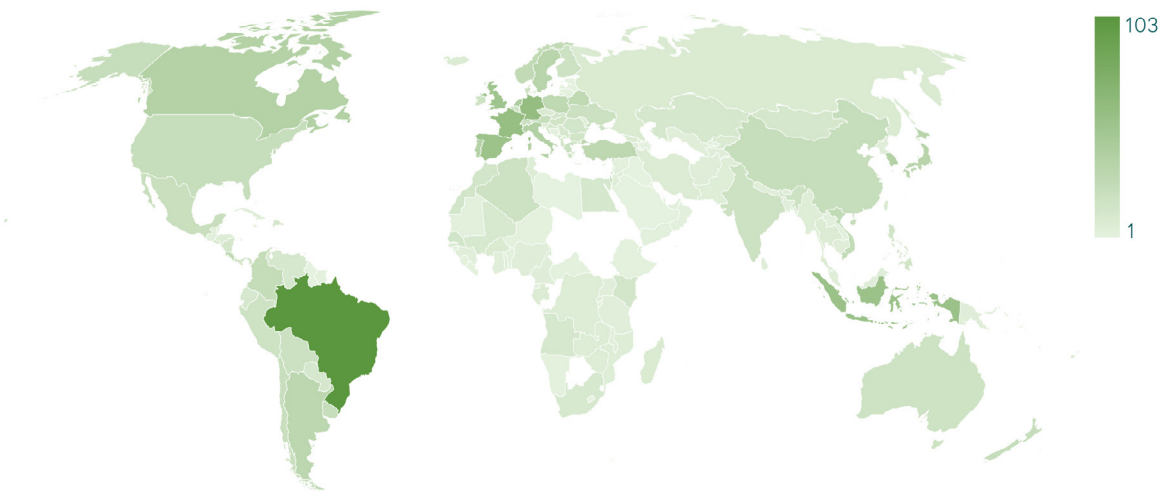


Figure A: A heat map of climate change legislation developments across the globe. Data sourced from Climate Change Laws of the World: <https://climate-laws.org/>

What is the Climate Change Act?

The Climate Change Act aims to enable “*the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa in the context of sustainable development*”¹. Yet news of this significant milestone has left some puzzled with press articles highlighting the lack of punitive measures to force companies to comply with some of the core aspects and aims of this legislation.

¹Climate Change Act No. 22 of 2024

Key highlights and scope of the Act

- **Adaption objectives and scenarios:** Within one year of the commencement of the Act, the Cabinet Minister of Environmental Affairs must develop adaption objectives and scenarios that will guide South Africa's climate change impact. These must be based on the latest scientific data and include indicators to measure progress.
- **National Adaption Strategy and Plan:** Within two years of the commencement of the Act, the Minister, in consultation with other relevant sector ministers listed in schedule 2 of the Act, must develop and publish a National Adaption Strategy and Plan, with the objective of strengthening economic, environmental and societal spheres of South Africa against the effects of climate change, while simultaneously reducing vulnerabilities and risks to climate change.
- **Sector Adaption Strategy and Plan:** Within one year of the National Adaption Strategy and Plan, the relevant sector Ministers (responsible for the functions listed in schedule 2 of the Act) must undertake assessments that identify the most at-risk communities and ecosystems, as well as develop and implement a Sector Adaption Strategy and Plan (within two years of publication of the National Plan) with measures and mechanisms to address these. This plan is to be reviewed every five years and reported on in terms of progress made in the implementation plan to the Minister of Environmental Affairs.
- **Greenhouse gas emissions trajectory:** The Minister must, in consultation with the cabinet, develop and determine a national greenhouse gas emissions trajectory for the country with a national reduction objective. This must be reviewed every five years and be informed by the most relevant and up-to-date information.
- **Sector and sub-sector targets:** Additionally, the Minister must list greenhouse gas emitting sectors and sub-sectors that will be subject to targets aligned with the national greenhouse trajectory and must consider the best available science and socio-economic impacts of introducing these targets.
- **Greenhouse gas activities:** The Minister must publish a list of greenhouse gas activities that are believed to cause or are likely to cause, contribute to, or compound the effects of climate change. This list must include existing greenhouse gas emitting activities as well as new activities and must include thresholds for each.
- **Carbon budgets:** Furthermore, this aforementioned list of greenhouse gas activities will be used to identify entities/persons who will be assigned a carbon budget that must align with the national greenhouse trajectory. These budgets are allocated over three consecutive five-year periods. Entities and persons assigned a budget must provide greenhouse mitigation plans with annual monitoring and progress reporting.
- **Synthetic greenhouse gas emissions:** The Minister, along with Ministers responsible for the emissions of specific emitting sectors, must declare and specify which greenhouse gas emissions are classified as synthetic. A plan and thresholds will be applied to these synthetic emissions to ensure a phase-out or phase-down of these takes place.

Responsibilities and implementation

As noted, the Minister and relevant sector Ministers are key facilitators of this Act. Members of the Executive Council (MECs) and mayors of metropolitans or district municipalities also have responsibilities to ensure these objectives enshrined in the Act are met.

MECs/mayors are required to publish climate change needs and response assessments for each province, metropolitan or district municipality. This is extended to broader state functions under Chapter 2 of the Act, stipulating that each organ of state must ensure the harmonisation of policies and measures of climate change are considered in accordance with the objectives set out in the Act: every district intergovernmental forum (serving as municipalities) and every Premier's intergovernmental forum (serving as Provincial forums) must undertake these. Lastly, the Presidential Climate Commission is responsible for advising the government on the mitigation of climate change impacts through monitoring and evaluating the country's progress in emission reduction to a low-carbon, climate-resilient economy and society.

Criticisms and limitations

Despite its groundbreaking nature, the Act has faced several criticisms:

- **Lack of penalties:** While the Act has been greatly welcomed, a shared critique by entities such as NGO Just Share and African Law and Business draws attention to the Act's lack of penalties for entities that exceed their allocated carbon budget. The Department of Forestry, Fisheries and the Environment has responded to stakeholder commentary that potential amendments could be implemented to the current Carbon Tax legislation to further penalise entities that do not comply with the scope of the carbon budgets, however, this has not yet been updated. It is worth noting that Carbon Tax has become a material consideration since its implementation for businesses and for company analysis for some of the listed entities M&G Investments has invested in.

The Act, under S30(1)b does, however, state that the Minister could introduce incentives and disincentives to alter greenhouse gas emissions behaviour, which could provide opportunity for future amendments to the Act. While a current lack of penalties could provide some ease for companies, it could also fail to reflect a cohesive piece of legislation that drives climate mitigation and effectively curbs entities that do not comply with the Act.

- **Infrastructure and transition challenges:** M&G Investments' engagements with companies that are, however, transitioning their operations to incorporate and become more reliant on renewables are still facing bottlenecks. Finalising Public Private Partnership (PPP) deals have demonstrated challenges for companies securing them within specific timeframes, which have become hindrances for some companies that have set specific emission reduction targets. Additionally, South Africa's slow grid infrastructure development and transition plans, as reflected in the latest 2023 Integrated Resource Plan (IRP), have made it exponentially difficult for companies to reduce their reliance on fossil-fuel based energy.

The path forward

While South Africa's Climate Change Act represents a significant step towards addressing climate change, its success will depend on the implementation of effective enforcement measures and the acceleration of renewable energy infrastructure development.

At M&G Investments, we are diligently tracking these developments and advocating for stronger measures to hold companies accountable while promoting climate-resilient practices. Until regulations around penalties or additional carbon taxes are established, ensuring accountability remains a crucial focus for investors dedicated to combatting climate change.

ESG considerations are integral to our investment approach, and we strive to make a tangible impact as active stewards and capital allocators. We believe it is essential to direct capital towards companies that support a just transition and assist high-carbon firms in shifting to sustainable business models through engagement and collective action. Although the journey will be complex with many challenges along the way, we are fully committed to navigating it.

M&G plc is a signatory to the UNPRI, the Net-Zero Asset Owner Alliance and Climate Action 100+, among many other global organisations related to ESG investing, and M&G Investments plays an active role in supporting the group in these initiatives.

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