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November Newsletter 2021

Gunn Attorneys



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Dear Readers,

We wish to thank all our clients and friends for their support and friendship during 2021. It was another year affected by Covid-19 but together we have made it through and we send a heartfelt thanks to everyone.

All the best for the festive season, Happy Christmas, travel safely and we look forward to seeing you again in the new year.

COP 26 – A SOUTH AFRICAN PERSPECTIVE – BACK TO THE FUTURE?

- **Adam Gunn**

Great things were expected from the 26th gathering of the Conference of the Parties (COP) taking place in Glasgow, Scotland and ending on 12 November 2021. The goals of the COP 26 were ambitious.

Goal 1: Secure global net zero by 2050 and keep 1.5 degrees within reach

To deliver this through 2030 emissions reductions targets, countries will need to:

Accelerate the phase out of coal

Curtail deforestation

Speed up the switch to electric vehicles

Encourage investment in renewables

Goal 2: Adapt and protect communities and natural habitats

Protect and restore ecosystems and build infrastructure to avoid damage.

Goal 3: Mobilise Finance

Developed countries must deliver on their promises to mobilise at least R100 billion in climate finance per year by 2020. Public and private financial institutions must co-operate to unleash trillions in funding.



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Goal 4: Work together to deliver

Finalise the Paris Rulebook, the rules to make the Paris Agreement functional and enhance co-operation between governments, business and civil society to tackle the climate crisis.

The usual political jostling and accusations have been taking place as well as some disappointing positions adopted (eg: China refusing to phase out thermal coal energy). However, during the week a 7 page “Draft Cover Decision” was formulated which provides a framework for the Parties to formulate a deal by the end of the conference. The Draft Cover Decision calls for, amongst other things, a just transition to net zero and a phased end to coal and fossil fuel subsidies.

What does this mean for South Africa?

There have been a few press statements and media articles which provide some more insight.

Outcome 1:

Large investments will flow to South Africa for investment to support the Nationally Determined Contribution. Partner countries Germany, France and the US have pledged R8.5 billion (R131 billion) for investments that will help support SA’s NDC’s. Areas flagged for investment are renewable energy, electric vehicles and green hydrogen and decommissioning of SA’s coal fired power stations. As Eskom is SA’s largest emitter and key to reducing GHG emissions, it is anticipated that much of this funding will flow to Eskom.

Outcome 2:

In what seems to contradict Outcome 1, SA has indicated that it will not sign a Pledge to end coal financing. Minister of Environment, Forestry and Fisheries, the Honourable Barbara Creecy indicated that SA did not sign the Pledge as any decisions need to be made through the formal convention. Minister Creecy mentioned that she was concerned about “stranded assets” and this is probably a reference to SA’s recently built and monstrously over budget and behind schedule Kusile and Medupi power stations.

Outcome 3:

However Minister Creecy acknowledged that transitional fuels will play an important role in the just transition and the shift away from coal, specifically referring to the role of gas.



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Outcome 4:

We have already seen private sector entities in SA grappling with the just transition and net zero by 2050. This is commendable and even mining companies in the coal sector are aiming at this audacious goal. Well done, true leadership.

What can you do as a small business / individual?

When answering a question about the ever-expanding human population and the energy/ climate change crisis, Sir David Attenborough famously remarked that to address the issue we have to move away from fossil fuels, use energy more efficiently and we have to get better at storing energy.

Reduce your reliance on Eskom

A solar geyser is the best value for money. Not only will you reap the rewards through your electricity bill savings but you will take a step to getting off SA's carbon intensive grid.

If you are implementing an electricity back-up, go for solar.

Your neighbours will appreciate it and although the capital cost is more, you will reap the benefits in the long run.

National Legislation:

Bills:

- Draft National Veld and Forest Fire Amendment Bill - GN 1489 in GG 45449 of 9 November
- Constitution Eighteenth Amendment Bill, 2021 [B18-2021]

Notices:

- National Forests Act 84 of 1998 - GN 1487 in GG 45435 of 8 November 2021 – Proposed amendments to the list of protected tree species published in GN 155 in GG 44204 of 1 March 2021 - for comment
- National Environmental Management: Air Quality Act 39 of 2004 - GN 1496 in GG 45452 of 12 November 2021 - Technical guidelines for the validation and verification of greenhouse gas emissions



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Provincial Legislation:

Limpopo:

- Spatial Planning and Land Use Management Act 16 of 2013 – Gen Notice 109 in PG 3211 of 5 November 2021 - Modimolle-Mookgophong - Final Municipal Spatial Development Framework (SDF)

Gauteng:

- Gauteng Spatial Planning and Land Use Management Act 16 of 2013 - LAN 1501 in PG 390 of 10 November 2021 - West Rand District Municipality - Establishment of the Municipal Planning Tribunal between the West Rand District, Merafong City, Mogale City and Rand West City Local Municipalities

Western Cape:

- Nature and Environmental Conservation Ordinance 19 of 1974 - PN 141 in PG 8518 of 12 November 2021 - Hunting seasons, daily bag limits and hunting by the use of prohibited hunting methods, 2022
- Spatial Planning and Land Use Management Act 16 of 2013 – LAN 21717 in PG 8518 of 12 November 2021 - Saldanha Bay Local Municipality - Integrated Zoning Scheme By-law

North West:

- Spatial Planning and Land Use Management Act 16 of 2013 - LAN 139 in PG 8287 of 9 November 2021 - Ditsobotla Local Municipality - Appointment of members to serve on the Municipal Planning Tribunal

Case Law:

Lotter N O and Others v Minister of Water and Sanitation and Others (725/2020) [2021] ZASCA 159 (8 November 2021)

This exciting case is certainly one that impacts the interpretation of legislation. The main legal question which the Court needed to address, was whether the provisions of Section 25 of the National Water Act 36 of 1998 “*can be used by a person already holding a water use entitlement under or in terms of the NWA for a transfer of that water use entitlement only to him- or herself but not to another person or a third party” (para 15). The Court held that Section 25 does in fact allow for the trading, selling, transferring or surrendering of a water use license to another third party and that the competent authority was empowered to grant applications for this.*



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Notable Topics following COP26:

- *COP26 Outcomes: Here's what you need to know* - <https://www.news24.com/fin24/economy/world/cop26-outcomes-heres-what-you-need-to-know-20211115>
- *COP26: South Africa hails 'successful' Coal 'Phase Down' Deal* - <https://ewn.co.za/2021/11/14/cop26-south-africa-hails-successful-coal-phase-down-deal>
- *China Doubles Down on a Slower Coal Exit after COP26 Spat* - <https://www.dailymaverick.co.za/article/2021-11-16-china-doubles-down-on-a-slower-coal-exit-after-cop26-spat/>
- *India's Need for Cheap Fuel Behind its Push for Compromise on Coal at COP26* - <https://www.france24.com/en/environment/20211115-india-s-need-for-cheap-fuel-behind-push-for-compromise-on-coal-at-cop26>

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