

The Director General: Department of Environmental Affairs
Attention: Ms Dineo Ngobeni
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To Climate@environment.gov.za

From sven.kolmetz@pd-forum.net

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Subject **Call for public comments on the draft South African Climate Change Bill**

Dear Ms Ngobeni

We commend South Africa's Department of Environmental Affairs and the government as whole on the development of the Climate Change Bill, 2018 and we thank you for the opportunity to comment in the context of the ongoing public consultation.

The Project Developer Forum (PD Forum) is a collaborative association and collective voice of companies and practitioners that are developing and financing greenhouse gas (GHG) emission reduction projects worldwide. Some of our members have substantial business activities in South Africa. Other members of our organisation work on a global scale and evaluate your country as an opportunity to deploy climate financing and carbon market instruments to accelerate investments for GHG mitigation and sustainable development.

The PD Forum has been accompanying South Africa's efforts to develop a comprehensive domestic climate policy since the development of the National Climate Change Response White Paper in 2011. In this respect, we would like to highlight our participation and submissions to previous public consultations:

- [PD-Forums submission from 29 June 2016](#) to the call for public comments on the Draft Regulations: Carbon Offsets, published by the National Treasury of the Republic of South Africa on 20 June 2016
- [PD-Forums submission from 15 December 2015](#) to the Call for public comments on the Draft Carbon Tax Bill launched by the National Treasury of the Republic of South Africa on 02 November 2015
- PD-Forums submission from 08 May 2015 to the Call for public comments on the proposed carbon tax launched by the Davis Tax committee of the Republic of South Africa on 07 April 2015

In our contribution to the discussion of the Carbon Tax & Offset provisions, we pointed to the opportunity of using broad and coherent carbon market mechanisms as an essential part of a successful low emission development strategy for South Africa. Moreover, we highlighted the opportunity to use them as a basis for the implementation and flexibilization of Sectoral Carbon Budgets. At the same time, we highlighted the importance that South Africa's domestic carbon pricing mechanisms envisage and foster the integration with international markets in order to promote carbon market and climate finance flows that can support the country in its sustainable development ambitions.

On the back of this previous work and our referenced submissions, we now would like to provide

our contribution to the call for Input on the draft South African Climate Change Bill.

General comments on the South African Climate Change Bill:

We commend the pertinent objectives and the concrete proposals for a sound national climate governance as proposed by the draft Climate Change Bill. Of special relevance for GHG mitigation is the conceptual definition of Sectoral Carbon Budgets with three subsequent five year terms that may be revised in line with the evolution of the international climate policy framework defined under the Paris Agreement. We believe that the effective implementation of the proposed governance, processes and responsibilities are important to establish the effective economic signals and transparent long term perspectives that investors need to finance and implement investments that align with the established climate change mitigation and adaptation objectives.

In order to further enhance these positive signals and ensure maximal benefits for the low carbon development of South Africa we would like to offer some additional comments. The key objectives of our contributions are to

- 1) ensure that South Africa's climate policy builds on past developments and investment efforts;
- 2) to position the country for opportunities in the field of international carbon markets and
- 3) to improve general enabling environment and minimize investment risks.

/1/ Building on past policy developments and investment efforts

Based on COP 17 and the National Climate Change Response White Paper in 2011, South Africa has mobilized significant efforts to discuss and develop the fundamentals for a comprehensive carbon pricing policy. The fundamentals of this policy is the proposed Carbon Tax Bill (latest version released in December 2017), as well as its Carbon Offset provision, for which a public consultation is still being expected.

As referenced above, the PD Forum has provided extensive input on the design and optimisation of these instruments. As the details of our inputs are referenced above, we would like to focus on some recommendations that are key for the discussion and improvement of the draft Climate Change Bill.

Continuation and coherence of the regulatory process:

Investors value a coherent process for the development of policies and a consistent regulatory process that leads to a sound enabling environment. While we commend the South African administration for its continuous use of public consultations and outreach, it is also important to ensure a consistent relation and logic that connects sequential regulatory steps and complementary policy instruments. In this respect, the draft Climate Change Bill would benefit from a better integration of the Carbon Tax Bill and its offset provision.

As we have highlighted in previous submissions, we believe that there is potential for good synergies and a smooth evolution from a Carbon Tax and its offset provision towards Sectoral Emission Targets and Carbon Budgets and many investors have positioned for such a gradual evolution.

On the other hand, in case the Climate Change Bill would not build on these previous policy development processes, investors might be puzzled about this lack of consistency and perceive this as an element of increased regulatory risk.

We therefore recommend to make explicit reference to the Carbon Tax and Offset provisions and to ensure that those processes continue in line with the established timelines. When it comes to the offset provision we would like to highlight that it is of vital importance to the environmental efficiency of South Africa's carbon pricing regime. For this reason, we encourage to undertake the specific public consultation that was announced for 2018.

/2/ Position the country for opportunities with international carbon markets:

As suggested by South Africa's iNDC, the negotiations under the Paris agreement are moving towards the definition of a "*multilateral rule-based infrastructure, mechanisms and tools to enhance international and regional cooperation on mitigation*". Since the publication of South Africa's iNDC in 2016, the parties of the Paris Agreement have made great progress in discussing and defining such mechanisms and it is clear that they will be essential to support countries such as South Africa in its efforts to realize GHG mitigation opportunities and to finance its sustainable low carbon development. With this in mind, we believe that the Climate Change Bill and the governance and process that it will define, should entail the objective of integrating South Africa in such an international carbon market regime. Key fundamentals for such a discussion is the development and use of domestic carbon market instruments that are compatible with those that are expected for international transaction, as well as provisions for the definition of rules for the accounting of international transfers.

/3/ Improving the general enabling environment and minimizing investment risk:

As mentioned above, clear and transparent rules and sound regulatory processes are key to build solid enabling environments that attract investors and ensure low capital costs. In order to foster such a positive investment climate we would like to forward four regulatory principles that we consider beneficial in the Climate Change Bill:

i) Ensure a smooth and gradual regulatory process:

To minimize cost and maximize benefits of GHG mitigation it is key to initiate action as soon as possible. At the same time, it is important that regulatory action is smooth and gradual in order to avoid ruptures and negative impacts on the economy and its actors.

ii) Ensure transparent processes and the engagement of private sector and civil society in the regulatory process:

While South Africa has a solid tradition in stakeholder engagement, it is important to consolidate the role of the private sector in the regulatory process. We therefore recommend that the role and the processes for climate sector engagement be clearly defined by the Climate Change Bill.

iii) Promote and recognize early action and mitigation :

Private sector has been aware for a long time that early action is important to anticipate the increasing need for GHG mitigation, as well as the opportunities of avoiding further build up in fossil fuel intensive infrastructure. For this reason, investors have been actively using carbon market mechanisms such as the CDM and voluntary mechanisms in order to demonstrate and certify the results of their investments, as well as to prepare for the effective implementation of GHG mitigation demand on the international and national level. In order to further promote such investments it is important that the South African government gives a clear signal that such investments and its GHG mitigation results will be recognized against future climate policies.

iv) Minimize undue policy risks:

The draft Climate Change Bill proposed to prescribe imprisonment (not exceeding 10 years) as the ultimate punitive measure for non-compliance with the Bill's requirements for monitoring, evaluation and assessment of national progress in relation to climate change matters (clause 15.c). The PD Forum supports punitive measures regarding non-compliance however we oppose criminalisation as this is unprecedented and extreme in scope. We believe it will unfairly compromise businesses operating in the South African sector, who are already subject to environmental legislation.

In conclusion, we would like to offer our support to the proposed Climate Change Bill and we hope that you find our comments to be useful and constructive. As we have highlighted by our previous submissions, we believe that South Africa has a great opportunity to establish a coherent domestic carbon pricing policy that can position the country favourably for attracting international carbon market finance and investments. To envisage, implement and manage this opportunity, we believe that the Climate Change Bill offers the opportunity to establish the appropriate strategy, governance and processes.

Given the importance of a coordinated progress by the international community, we encourage South Africa to continue its constructive way under close consultation with all stakeholders and in cooperation with other countries in order to ensure that the solutions that are being developed are comparable and allow as much international cooperation as possible.

We are looking forward to your kind response.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Dr. Kolmetz", with a stylized flourish extending from the end.

Dr. Sven Kolmetz
Chairman, Project Developer Forum