IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: 2025-231389

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant
and	
THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

TRACEY LAUREL DAVIES

state under oath that:

1. I am the former executive director of the first applicant, Just Share NPC ("Just Share").

2. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct to the best of my knowledge and belief.

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3. I deposed to both the founding affidavit and replying affidavit in these proceedings on behalf of Just Share, and am authorised to depose to this affidavit.

4. The purpose of this supplementary affidavit is to briefly respond to the rejoinder affidavit filed by Thungela on 26 August 2026, and the purported grounds in support thereof.

5. I will use the same terms and abbreviations as defined in the founding affidavit.

APPLICANTS' OPPOSITION TO THE REJOINDER AFFIDAVIT

6. Following the filing of the applicants' heads of argument on 17 July 2026, Thungela seeks leave of this Court to file a rejoinder affidavit in response to the applicants' replying affidavit which was filed on 15 June 2026.

7. Thungela claims that this is warranted on the basis that the applicants made out a new case and/or raised new allegations for the first time in reply. The applicants deny that a new case is put up in the replying affidavit and that any of the rebuttal submissions in that affidavit unduly ventured beyond the material issues in dispute between parties.

8. The replying affidavit deals directly with the various averments raised by Thungela in its answering affidavit. I am advised that this is the function of a replying affidavit, and that the applicants are well within their rights to raise counter-arguments to defend their original case together with supporting evidence where appropriate.

9. I am also advised that in the ordinary course, the filing of the replying affidavit should have concluded the exchange of pleadings, and that the filing of a rejoinder affidavit is irregular in the circumstances, particularly given that Thungela only expressed its intention to file a further affidavit after the filing of the applicants' heads of argument.

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10. The applicants submit, with respect, that there are no justifiable grounds that compel this Court to consider the rejoinder affidavit. With regard to Thungela's assertion that it wishes to ensure the full ventilation of arguments and for all materials to be placed before this Court ahead of the hearing set down for 8 to 12 February 2027, it bears noting that Thungela was afforded repeated extensions of time beyond the deadline agreed to by its legal team, and which ultimately gave it over 4 months to prepare its answering papers. This was more than enough time to fully canvas its stance on the matter and ensure that all the allegations in its answering papers were supported by appropriate evidence. Thungela now seeks to use the rejoinder step as an opportunity to take a second bite at the cherry.

11. Furthermore, on a reading of the issues addressed in the rejoinder affidavit and with the understanding that this application turns on a crisp question of law – being the proper interpretation of shareholders' rights under sections 65(3) and 62(3)(c) of the Companies Act – Thungela's further submissions neither deal any further with the salient points in dispute nor advance the matter in any way.

12. Should this Court nevertheless admit the rejoinder affidavit to the record, I address its contents very briefly below. I will not address every allegation, including Thungela's incorrect assertions of law already addressed in the applicants' heads of argument for substantiation during the hearing. Any allegation which is not addressed here, or which is inconsistent with what is stated in the applicants' founding affidavit and replying affidavit must be taken as a standing denial.

RESPONSES TO INDIVIDUAL PARAGRAPHS IN THE REJOINDER AFFIDAVIT

Thungela's AGM (ad paras 7-16)

13. It is denied that the applicants' replying affidavit mischaracterised Thungela's AGM process.

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14. The point remains, as asserted in the replying affidavit, that the Q&A segment of an AGM fulfils a distinct function and cannot be viewed as a substitute for the formal and structured voting engagement associated with resolutions. The nature of the Q&A dynamic has inherent limitations, as it is a brief exchange between the board and shareholders and does not lead to any decision or resolution of the company. Even the most robust Q&A session cannot take the place of proposing, tabling, and voting on a resolution. Each has a legitimate and distinct role to play. That is why the Act provides for each of them: the raising of issues by shareholders in section 61(8)(d), and the proposal of resolutions by shareholders in section 65(3). These different forms of engagement, and direct meetings outside of AGMs between Thungela and its various stakeholders, are not mutually exclusive in the corporate arena.

15. In paragraph 11.3 of its rejoinder affidavit, Thungela references the Just Share AGM tracker for the company's 2023 AGM. It uses the fact that Just Share stated that there was *"[n]o need for engagement"* with CIPC on Thungela's AGM governance compliance as a basis to dispute the applicants' assertion that AGM engagement is not a substitute for the filing of shareholder-proposed resolutions.

16. This reference relates to CIPC's list of technical requirements for an AGM to be compliant with section 63(2) of the Act, which provides that "*a company may provide for a shareholders meeting to be conducted entirely by electronic communication*". The governance compliance contemplated here covers matters related to the hosting of an online AGM, such as the ease of accessibility of the electronic platform used, the visibility of board members, and the ability of shareholders to see who else is attending the meeting. It has nothing to do with the content or the quality of the engagement during the Q&A session and is therefore no support for Thungela's contention that Q&A sessions are an adequate substitute for the filing of shareholder-proposed resolutions.

17. I annex as "**TD61**" the CIPC's Guidance for Annual general Meetings Conducted Electronically, which set out the requirements.

The extent of shareholder engagement (ad paras 17-22)

18. The applicants did not allege that in 2023 Thungela's then-CEO said that he had met with fewer than 1% of shareholders on Thungela's roadshow. The replying affidavit makes it clear that the then-CEO said that Thungela had met with some 200 shareholders. Based on Thungela's assertion that it has more than 39 900 shareholders, 200 of these is less than 1%. It is noted that Thungela met with investors accounting for approximately 25% of its issued shares.

19. Thungela avers that "*Communication is (among other mediums) conducted through SENS and RNS announcements*", that "*All investors are also informed of the AGM, electronically or by way of physical notice*", and that "*Thungela has an address on record for each shareholder*". These may be efficient methods of communication for the <u>company</u> to use to engage with all its shareholders, but they are not efficient ways for shareholders to engage with each other. The mechanism provided by the Act for the shareholder body to communicate collectively and efficiently is that in section 65(3).

20. The fact that Thungela's share register is publicly accessible is irrelevant. Thungela raises this fact in order to, once again, shift the responsibility of facilitating shareholder engagement onto the applicants. However, the Act does not contemplate shareholders distributing proposed resolutions to fellow shareholders themselves – it is for the company to distribute all shareholder meeting documents. Even if the Act did place such a burden on shareholders, the applicants publishing "adverts or manifestos" as proposed by Thungela – including printing and posting 3 270 physical copies thereof to those who want only physical documents – is in no way equivalent to Thungela distributing a shareholder-proposed resolution for consideration, debate, and voting.

Calculation of dates (ad paras 23-33)

21. On each of the three occasions that the applicants filed shareholder-proposed resolutions, they complied fully with the requirements set out in the Act and in Thungela's MOI.

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22. The applicants were completely in the dark as to the timeframes within which Thungela prepared its notices of AGM and the dates on which it intended to distribute these to shareholders. These matters are entirely within the internal knowledge and governance controls of Thungela. If the legislated and MOI-stipulated timeframes were insufficient, and if Thungela wished to respect the rights of its shareholders, it was open to the board at any point during the three years in question to propose an amendment to Thungela's MOI so that the time periods could be altered to allow the board more time to consider shareholder-proposed resolutions. It did not do so, despite its understanding that it was likely to receive further such shareholder-proposed resolutions.

23. It was also open to Thungela to invite early submission of shareholder proposed resolutions and to inform shareholders of its internal deadlines for preparing and publishing AGM notices. It failed to do so.

Costs (ad paras 34-39)

24. Thungela did not mention the alleged cost implications of the shareholder-proposed resolutions as a reason for not tabling them during any of the three years of its engagements with Just Share. This alleged obstacle was raised with Just Share for the first time in Thungela's answering affidavit in this litigation.

25. As averred in the replying affidavit, even if the tabling of a shareholder-proposed resolution were to occasion some cost, this is a cost which a public company is required and able to absorb in the exercise of its compliance with unalterable provisions of the Companies Act, including section 65(3).

26. I point out again that it was open to the board to propose an amendment of Thungela's MOI so that shareholder-proposed resolutions would have to be filed within a period which would limit any logistical difficulties and/or additional cost implications. The company did not do so, despite its understanding that it was likely to receive further such shareholder-proposed resolutions. It is not open to Thungela to now attribute its inability to table the shareholder-proposed

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resolutions to logistical and cost implications which it did not even attempt to mitigate.

27. The applicants also note that Thungela appears to have misread the invoices annexed as "SA4" to its rejoinder affidavit. A reading of the invoices shows that, in respect of the printing costs for South Africa for the company's 2026 AGM:

27.1 only R386 985.00 was paid to Bastion, not R639 244.00 as alleged; and

27.2 no money was paid to Computershare, although Thungela claims R305 071.57 was paid to Computershare for printing costs.

Convening additional board meetings/considering shareholder-proposed resolutions (ad paras 40-45)

28. As set out in the applicants' heads of argument, the board's fiduciary duties in considering a shareholder-proposed resolution provide no basis for unlawful self-help that overrides shareholders' rights under section 65(3). The board does not have a unilateral power and discretion to screen and reject shareholder-proposed resolutions. It must approach a court. The board would best discharge its fiduciary duties by advising shareholders of the board's views on the proposed resolution, to allow shareholders to engage in an informed debate at the AGM.

29. The fact that the board's consideration of a shareholder-proposed resolution requires the application of "multi-committee governance processes", as Thungela avers, and that the annual board calendar for such processes is approved "around 12 to 24 months before the commencement of that year", does not alter the clear words of Thungela's MOI, which only requires shareholders to propose resolutions 15 business days before a shareholders meeting is to begin.

Overuse, misuse or abuse of the section 65(3) mechanism (ad paras 46-54)

30. I am advised that this section of Thungela's rejoinder affidavit clearly illustrates why it is apparent that this step is an attempt by Thungela to take a second bite

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at the cherry. Thungela makes speculative assertions based on hypothetical scenarios and adds nothing to its argument on this point as set out in its answering affidavit.

31. The applicants reiterate the assertion in the replying affidavit that is unnecessary to resort to speculation: if the applicants' interpretation of section 65(3) exposed companies to the type of abuse that Thungela alleges, some evidence of this would have materialised in the decade and a half since the provision was promulgated.

32. This Court should not be called upon to theorise on the application of section 65(3) in the context of artificial intelligence. There is no indication, and no allegation or evidence from Thungela, that artificial intelligence will lead to the abuse of section 65(3).

33. Thungela's conjecture on the risks of interpreting section 65(3) as it is written, as well as its desire for a "disciplining feature" to "dissuade shareholders" from utilising the provision, demonstrates that the company's problem is not with the applicants' resolutions in particular, but with the entire concept of shareholder-proposed resolutions (whether binding or not). It seeks to interpret the Act to mean that shareholders cannot propose resolutions unless clearly and explicitly permitted to do so by the Act. But that is not what the law says, and this Court should not affirm such a repressive interpretation.

Reliance on foreign resolutions (ad paras 55-57)

34. Section 5(2) of the Companies Act permits reference to foreign law in interpreting the Act's provisions, providing that "*[t]o the extent appropriate, a court interpreting or applying this Act may consider foreign company law.*" In addition, the Constitution provides that, when interpreting the Bill of Rights, a court may consider foreign law.

35. It is therefore not only the fact of shareholder-proposed resolutions being allowed in other jurisdictions that is relevant. The circumstances in which shareholder-

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proposed resolutions are allowed in foreign jurisdictions provides guidance as to how section 65(3) may be interpreted and applied in the Republic.

Thungela's non-binding resolutions and section 30 of the Act (ad paras 58-67)

36. The legitimate use and recognition of non-binding shareholder resolutions has been fully demonstrated in the replying affidavit. Thungela's further protestations on this issue are a bald attempt to convince the court of its far-fetched assertion that (even though Thungela itself labels these resolutions in its notice of AGM as "non-binding ordinary resolutions") they are in fact not non-binding ordinary resolutions.

37. With regard to the introduction of sections 30A and 30B of the Companies Act, the applicants maintain that the legislature's subsequent election to mandate a binding resolution scheme for a specific subject such as executive remuneration in no way diminishes the wider scope and function envisaged in the application of section 65(3). Neither does it mean that non-binding resolutions no longer exist in our law.

The accuracy of the impugned quotation (ad paras 68-75)

38. The applicants note that, at paragraph 56.4 of the answering affidavit, Thungela was quoting from a Service Issue of the JSE Listings Requirements which was not in effect at the time of the events relevant to this application.

39. As regards the provisions of the Financial Markets Act, Thungela's incomplete citation of section 81 mischaracterises the provision. Section 81 is explicitly meant to regulate statements made "in respect of securities traded on a regulated market, or in respect of past or future performance" of a company whose securities are listed. The content of the applicants' resolutions falls far beyond the scope of section 81 and the intended scope of the JSE Listings Requirements.

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40. Similarly, the JSE's Guidance Letter on Cautionary Announcements is aimed specifically at restraining issuers of securities from publishing announcements which cause unnecessary speculation in the market. The shareholder-proposed resolutions do not fall within this type of publication.

41. Thungela did not provide a copy of the Guidance Letter, but I annex it as "**TD62**".

Condonation (ad paras 76-78)

42. The applicants have agreed to multiple extensions of time beyond the dates originally agreed by Thungela's legal team for the filing of affidavits. These extensions have been requested for various reasons, including the unavailability of Thungela's representatives and its legal team. The applicants have agreed to these requests in good faith, but do not accept that this has come without prejudice to them as asserted by Thungela in both its answering and rejoinder affidavits.

43. On every occasion that Thungela has failed to deliver its affidavit by the agreed date, the timeframes planned by the applicants and their legal team for assessing and responding to Thungela's papers have had to be adjusted, disrupting their own planning. The filing of the rejoinder affidavit, which the applicants consider to be unnecessary, has required additional consultations between the applicants and their legal team as well as further time to consider the content of the rejoinder affidavit, decide whether to file a reply, and prepare it.

44. The applicants do not consider it would serve any purpose to oppose the condonation application in this instance. However, they record that the pattern of conduct giving rise to repeated condonation requests has not been without prejudice to them.

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I certify that this affidavit was signed and sworn to before me at **CAPE TOWN** on this the **9th** day of **SEPTEMBER 2026**, the deponent having acknowledged that they know and understand the content of this affidavit, with the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977, having been complied with.

COMMISSIONER OF OATHS

TEBATSO MADIKOLOSHE MAKOFANE
Commissioner of Oaths
Practising Attorney (SA)
at MH SETHOSA INC
Ground Floor, Brookside Office Park,
No 11 Imam Haron Road,
Claremont, Cape Town, 7708

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