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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FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

ALTOVISE ALAXA ELLIS

do hereby make oath and state that:

1. I am an adult female of full legal capacity and the Company Secretary of Thungela Resources Limited ("**Thungela**").

2. I am authorised to depose to this affidavit on behalf of Thungela. The facts contained herein are within my personal knowledge and belief, unless the context indicates otherwise, and are both true and correct. To the extent that I lack personal knowledge of any facts in this affidavit, I refer this Honourable Court to the confirmatory affidavits of July Ndlovu and Duane-Jeffrey van Wyk, which will be filed herewith.

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3. Where Thungela makes legal submissions in this affidavit, it does so on the advice of Thungela's legal representatives, whose advice Thungela accepts and believes to be correct and over which Thungela does not waive privilege.

INTRODUCTION

4. The first and third applicants ("**Just Share**" and "**Fossil Free SA**") are minority shareholders in Thungela, each holding one (1) share (0.0000007%) of Thungela's issued share capital (more than 140 million shares).

5. The second applicant, "**Aeon**", is an investment manager and holds no shares in Thungela in its own right. It acts on behalf of the Aeon Balanced Prescient Fund, which holds 100 shares (0.00007%) in Thungela.

<u>Overview of Thungela's opposition</u>

6. The applicants seek relief to force Thungela (a coal producer and exporter) to conduct an opinion poll of its (currently) more than 39 900 shareholders, on proposals framed as "non-binding advisory resolutions". These proposals are framed in terms that reflect the applicants' climate change ideologies and are introduced on information as curated by the applicants.

7. The applicants filed these "non-binding advisory resolutions" on the following dates:

7.1 19 April 2023 ("**the 2023 resolution**"), a copy of which is attached marked "**AA1**";

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7.2 26 April 2024 ("**the 2024 resolution**"), a copy of which is attached marked "**AA2**"; and

7.3 25 April 2025 ("**the 2025 resolution**"), a copy of which is attached marked "**AA3**".

8. Thungela shall on occasion refer, colloquially, to the proposals that the applicants contend they have a right to place before shareholders as "resolutions". Thungela should make it clear, however, that what the applicants propose are not resolutions in law. A resolution is a proposal that, if adopted, constitutes a legally binding decision <u>of the company</u>. That is not the case here.

9. Once a resolution is passed by shareholders in a general meeting or the board of directors ("**Board**"), it is not merely the viewpoint of those shareholders or directors who supported it; it becomes the formally adopted position of the company itself. Such decisions of the company are taken by one of a company's two decision-making bodies, being the shareholders in general meetings (with decisions of this body being made by ordinary or special resolutions) and the Board (with decisions of this body being made by resolutions approved by the requisite majority of directors). Each decision-making body can only bind the company, and pass a valid resolution, in respect of the matters over which it has decision-making power in law, as conferred by the Companies Act, 71 of 2008 ("**the Act**") or the company's memorandum of incorporation ("**MOI**"). Any other act by that body is simply a legal nullity.

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10. The applicants allege that they have this right – i.e. to force other shareholders to consider their opinion poll and to force such shareholders to vote / abstain from voting thereon – in terms of section 65(3) of the Act.

11. A proper interpretation of this section does not, however, oblige Thungela to facilitate the conducting of such an opinion poll, nor does it entitle the applicants to force other shareholders to be subjected to such processes.

12. To bolster their arguments, the applicants position this matter as implicating environmental rights, as well as various other constitutional rights. This is not the case, however. Despite the applicants' efforts to dress the matter up as engaging constitutional rights, it does not engage any constitutional right – it is purely a matter of corporate law.

13. Since the applicants' specific focus is climate change, this happens to be the subject-matter of the particular proposals they seek to force other shareholders formally to vote on. In truth, however, the interpretation and rights that the applicants contend for would – if the applicants are correct – apply to any and every shareholder proposal, regardless of substance or topic, no matter whether it was noble or self-serving.

14. In short, what the applicants seek is a statutory mechanism to compel fellow shareholders in a company formally to vote on whatever topic any two shareholders wish to raise – even if (1) this topic has little or no material bearing on the company; (2) the topic is matter that the Act places in the exclusive domain of the Board (e.g. policy and political matters and decisions; strategic, financial or operational matters and decisions; employment, litigation, mergers, acquisitions and transaction-related

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matters and decisions; etc.); (3) the proposal, if acted on, would be contrary to the company's interests; and (4) other shareholders have no desire to engage with the viewpoint or subject matter being advanced by the initiators.

15. What the applicants seek is an ongoing, unchecked right to use the public platform of a public or private company as a megaphone for their viewpoints and as a staging platform for national and global publicity for those positions, coupled to an open-ended invitation to every shareholder to do the same on any matters they too wish to proselytise in a similar way.

16. Thungela is advised that our law does not afford the applicants the invasive rights they allege. Their interpretation would (among other things) allow shareholders to hamstring the Board of a company, with potentially disastrous results.

17. Our law affords the applicants many appropriate means by which to legitimately advance their causes. The applicants are free to engage with Thungela, its shareholders and the world at large regarding their causes.

18. The applicants (along with all other shareholders) have open and ongoing access to Thungela's share register, and could also have communicated directly with their fellow shareholders in writing, including by asking them to express an affirmative or contrary view to their position. In short, they could conduct the same opinion poll of shareholders, had they so wished. To date, as far as Thungela is aware, the applicants have not exercised this right.

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19. The applicants further have the right to raise matters <u>for discussion</u> at the annual general meeting ("**AGM**") of a public company (see section 61(8)(d) of the Act). While the applicants have attended each of the three shareholder meetings in issue here, and asked various environmentally related questions of the Board at those meetings, they have not once raised the subject matter of their proposed resolutions.

20. Section 65 of the Act affords shareholders the right to propose and vote on matters that fall within the competence of shareholders as a decision-making body, and only on those matters. It does not give shareholders a legal right to propose and vote on matters within the Board's powers, discretions and responsibilities, or for shareholders to conduct non-binding opinion polls of one another as and when they see fit.

<u>The structure of Thungela's affidavit</u>

21. This affidavit is structured as follows.

22. *First*, Thungela sets out what this case is – and is not – about. Flowing from this, Thungela considers the role of the Board of a company in relation to section 65 of the Act. As part of this analysis, Thungela also sets out the responsibilities – and powers – that are statutorily invested in the Board.

23. *Second*, Thungela considers the powers already afforded to shareholders – both majority and minority – to protect their rights and interests.

24. *Third*, Thungela deals with the alleged constitutional rights relied on by the applicants in this matter, to demonstrate that none of these rights are impacted upon, much less limited.

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25. *Fourth*, Thungela turns to the interpretation of section 65(3) of the Act, which is limited to "*resolutions*" in respect of which shareholders are "*entitled to exercise voting rights*". The proper interpretation of this section does not afford the applicants the rights they invoke.

WHAT THIS CASE IS NOT ABOUT

26. In this section, Thungela draws attention to what this case is <u>not</u> about.

<u>This case is not about Thungela's position on climate change</u>

27. The applicants do not, in their founding papers, allege that Thungela has breached any legal obligation pertaining to environmental rights or standards.

28. Thungela accepts, and acts on the basis that, being a responsible custodian of the environment is crucial to maintaining its legal and social licence to operate and ensuring a positive legacy. As the first pillar in its environmental, social and governance framework, environmental stewardship thus focuses on three priorities: climate risk management, land stewardship and biodiversity, and efficient use of resources.

29. To meet its commitment to net zero carbon emissions by 2050, Thungela has completed a full review of emission reduction opportunities and aims to reduce its scope 1 and 2 emissions by 30% by 2030 (relative to its 2021 emissions baseline).

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30. To achieve this, it has adopted a multi-pronged strategy, including:

30.1 the incorporation of a minimum of 19 MW of renewable electricity by 2026;

30.2 various mine closures (whilst rehabilitation activities will continue to take place after closure, once those have been completed, the energy consumption of those operations will be limited to that associated with ongoing maintenance and water treatment); and

30.3 energy and carbon savings across the business, identifying business improvement opportunities to enhance energy efficiency and energy intensity at each site. A focus is to reduce and optimise diesel and electricity consumption by large energy users.

31. This case, however, does not concern Thungela's climate change philosophy, strategy or actions. It also does not concern the applicants' engagements with Thungela on these aspects. Thungela has, on more than one occasion (and including in the time period immediately preceding the launch of this case), invited the applicants to meet – directly with its highest decision-makers – to discuss the climate change concerns the applicants may have regarding Thungela.

<u>This case is not about the environment</u>

32. The issue that lies at the heart of the dispute has far-reaching implications for all listed and other South African companies. It is not limited to climate change issues, to coal-mining companies or to Thungela.

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33. The position adopted by the applicants is that two shareholders, each holding but a single share in a company (public or private), have the unfettered legal right to:

33.1 formulate a position, policy or decision on <u>any</u> issue of their choosing, in terms crafted by the proposer;

33.2 compel the company at its own cost to distribute this policy or decision to all of its shareholders, together with the proposer's viewpoint and statements thereon;

33.3 force the company's shareholders formally to adopt a position in relation to the proposal placed before them, in the terms as framed by the proposer (shareholders would be compelled to vote either for or against that issue, or formally to abstain from voting); and

33.4 by simple majority vote of those shareholders that vote (no matter how few), attribute that policy or decision to the company as a whole and thus to the entire general body of shareholders, even those that voted against the policy or abstained.

34. The applicants attempt to soften the far-reaching effects of this construction of the Act by marrying their interpretation to a noble cause, being that of climate change. That happens to be subject matter in this particular case, but the interpretation they contend for is subject to no subject matter limitations.

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35. There is no limit as to what position, subject matter or cause can be proposed, canvassed or championed by way of the applicants' interpretation:

35.1 By way of example, two shareholders could compel shareholders to vote on Thungela supporting the position of trans-athletes in sports events or Thungela asserting confidence in the coach of the Springbok rugby team.

35.2 Two shareholders could also compel an opinion to be voted on regarding positions on complex geopolitical situations, such as voting for or against positions regarding Palestine/Israel and South Africa's case before the International Criminal Court, the United States' actions in relation to Venezuela, Russia's invasion of Ukraine, the war erupting in the Gulf, etc.

35.3 All of these matters could, as with climate change, be said to fall within the ambit of the company as a responsible corporate citizen as envisaged by King V.

36. All of this is to say that, on the applicants' interpretation, there is <u>no</u> limit on the matters which <u>must</u> be put to the shareholder body to compulsorily vote on (or be bound by), nor is there any limit on the material the applicants can require the company to put to shareholders accompanying those resolutions (provided that it meets the requirements of section 65(4) of the Act).

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<u>This case is not about accountability or compliance</u>

37. The applicants suggest that this case is about accountability and compliance, with shareholders being "the ultimate compliance officers".

38. That statement – ostensibly lifted from the King IV Report on Corporate Governance – has been misquoted and, as presented by the applicants, is inaccurate and misleading.

39. A proper reading of King IV (a copy of which is attached marked "**AA4**") and, now, King V (a copy of which is attached marked "**AA5**") will show that these codes <u>do not</u> promote shareholder activism generally, or specifically in the form the applicants propose it (i.e. as opinions, requests, statements, policy directives, and the like, by shareholders voting in general meeting (or otherwise, for that matter)). Nor do King IV or King V advocate for shareholders to be given the power to act in this way.

40. In contrast, King IV adopts the following position: it recognises, on the one hand, that shareholders have various powers in law to hold companies to account (notably, through the power to remove directors and the powers given to shareholders in Chapter 7 of the Act) and, through these powers, that shareholders with large shareholdings have the ability to exert significant influence on a company. It also recognises, on the other hand, that shareholders are not constrained by fiduciary duties to the company, or to their fellow shareholders, and may well exert their influence for selfish ends or ends that are not aligned to those of the best interests of the company as a whole, including as to its long-term viability.

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41. In the result, King IV recognises that unrestrained shareholder activism is destructive of, rather than beneficial to, balanced and effective corporate governance, functioning and decision-making. It also recognises that unrestrained shareholder activism is in direct conflict with a stakeholder centric approach by the Board. Under this approach, as supported by King IV and King V, it is the Board that must manage stakeholder engagements; no one stakeholder group gets a dominant voice, or the power to dictate when, where, how and on what matter this engagement occurs.

42. King IV's support for "activism" is further limited to institutional shareholders (who have fiduciary obligations in respect of their investments), and even then, King IV's support extends only to how they formulate investment policy *internally*. It does not extend to shareholders abusing their shareholder influence by directing companies how they should or should not act (whether or not such directives are given a veneer of being "non-binding").

43. The approach supported by King IV is contained in principle 17, which is summarised in King IV as follows:

> *"the governing body of institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests. The governing body of an institutional investor should assume responsibility for governing responsible investing by setting the direction for how it should be approached and conducted by the organisation."* [1]

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1 King IV, principle 17, page 73 (paras 20 – 25).

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44. King IV therefore does not adopt, or support, wider forms of shareholder "activism", and certainly not the untrammelled rights that the applicants seek here.

45. To the contrary, King IV instead squarely places the duty and the responsibility on the Board to manage the company and, as part of the Board's holistic approach to so managing the company, to address all aspects of its stakeholders, including its shareholders, and, in doing so, for the Board to manage the relationship and the engagement on their viewpoints.[2]

46. In doing so, King IV firmly rejects shareholder primacy, and instead adopts a stakeholder-centric approach of which shareholders are but one such stakeholder. On this approach, in its role as corporate citizen, it is the Board that drives stakeholder inclusivity, and which has the responsibility to balance the various, often competing, interests that arise from different stakeholders.

47. This theme runs throughout the King IV code. By way of but one example, King IV states on page 26[3] that:

> *"Adopting the stakeholder-inclusive approach means that the best interests of the company are not necessarily always equated to the best interests of shareholders. It also means that shareholders do not necessarily have a predetermined precedence over other stakeholders. Consequently, this is an inclusive, stakeholder-centric approach that stands in contrast to a shareholder-centric approach. Stakeholder inclusivity means that the board considers other stakeholders not merely as instruments to serve the interests of*

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2 King IV, principles 16, pages 71 to 73 (paras 1 – 19) and 110.

3 King IV, page 26.

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shareholders, but as having intrinsic value for decision-making in the best interests of the company over time."

48. The quote attributed by the applicants to King IV is inaccurate and misleading. An examination of the relevant sentence of King IV from which this quote is lifted confirms this. The sentence reads, in full, as follows:

"*When it comes to the quality of an organisation's application of voluntary codes of governance principles and practices, it is said that its stakeholders are the ultimate compliance officers*".

49. Thungela draws attention to the following aspects of this sentence:

49.1 *Firstly*, King IV does not say that <u>shareholders</u> are the ultimate compliance officers. It says that <u>stakeholders</u> are the ultimate compliance officers. The difference is significant.

49.2 *Secondly*, the role that "compliance" takes is narrow: it is in respect of "*the quality of an organisation's application of voluntary codes of governance principles and practices*". This speaks to the qualitative ways in which a company gives concrete effect to the governance principles of King IV, and to stakeholders having a role in that respect (and only that respect). It does not extend beyond this, and in particular it does not promote a position that shareholders (or, for that matter, other stakeholders) have a compliance role over the business decisions or actions of the Board, or a position where they have a compliance role to direct, guide, recommend or inform (or otherwise) the Board on what it should or should not do in respect of matters within its responsibilities.

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49.3 *Thirdly*, a proper reading of this portion of King IV shows that it is discursive and does not reflect a policy position adopted by the King IV code:

49.3.1 In this portion of the code, King IV covers different positions and perspectives, not all of which are views held by it. This sentence in particular is notably prefaced by "*[i]t is said that...*".

49.3.2 This section of King IV further goes on to address other countervailing considerations to this putative "compliance officer" role, particularly the twin facts that shareholders owe no fiduciary duties to the company (nor to their fellow shareholders), and that shareholders are inherently transient in their holdings. King IV thus observes in the same section that:

> "*Commensurate with the rights and influence that shareholders have, it should be considered that shareholders have no legal or fiduciary responsibilities to the companies in which they invest. Furthermore, shareholders are in many instances transient and have the right to vote on matters that may have a longer-term impact than what the period of their shareholding may be*".

49.3.3 In short, King IV clearly holds the view that shareholders' viewpoints and desires risk being directly at odds with the long-term oriented, stakeholder-inclusive approach that King IV promotes and adopts. The rights of shareholders to act as "compliance officers" is, in all but a very narrow respect, thus rejected by King IV.

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49.4 *Fourthly*, a full reading of this section of King IV will show that the discussion culminates in a single principle that King IV adopts in relation to "shareholder activism", namely principle 17. Principle 17 is narrow in scope and effect, and requires only that institutional investors internally adopt policies for responsible investing, in a way that promotes good governance and value creation in the companies they invest in. This (i) is policy-driven, (ii) is specific to institutional investors, (iii) indirectly promotes good governance and value-creation within the investee company (i.e. does not directly dictate these matters to investee companies), and (iv) does not take the form of shareholders interjecting themselves directly into the company's business decisions and affairs, whether by way of "non-binding" statements or otherwise. This principle, moreover, on any version does not afford shareholders rights as against fellow shareholders.

49.5 To put the point beyond any doubt, one need only have regard to King V, which was formally adopted on 31 October 2025. It will be noted that, in King V:

49.5.1 all references to "shareholder activism" have been removed, as well as any suggestion that shareholders in any way play, or ought to play, a role as "compliance officers" of the company; and

49.5.2 principle 17 of King IV, and the limited role accorded to institutional investors, has been removed from King V.

49.6 Principle 13 (the successor principle to principles 16 and 17 of King IV) puts it beyond doubt that the responsibility to adopt, and implement, a

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stakeholder-inclusive approach (which includes engaging with shareholder views) lies with the Board. It is the Board that manages relationships with stakeholders (and, in so doing, determines what issues it addresses, and how and when it does so); not stakeholders directing relationships with the Board or being afforded powers to direct inter-stakeholder relationships.

50. It is telling that the applicants make only the most cursory reference to King V and seek to minimise its relevance by stating that King IV has been updated "*but will only take effect on 1 January 2026*".

THE DISRUPTIVE IMPACT OF THE RESOLUTIONS

51. The applicants are silent as to the duties of the Board in relation to 'resolutions' tabled pursuant to the right they assert:

51.1 It appears that the applicants consider that the Board must simply act as a publishing agent under section 65(3) of the Act and can and should do no more than pass on each and every position proposed by two or more shareholders, no matter how inimical they may be to the company, or no matter how biased or selective the supporting material may be (with the sole exceptions being those rare instances where the material fails to meet the low bar set in section 65(4) of the Act and, even then, the company must first go to court to correct the matter).

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51.2 This is evident from the timing of their demands:

51.2.1 the first resolution was demanded on Wednesday, 19 April 2023, three business days before the company's notice of meeting was sent to shareholders (25 April 2023);

51.2.2 the second resolution was demanded even later than that: it was demanded on Friday, 26 April 2024, one business day before the meeting notice was dispatched on Tuesday, 30 April 2024; and

51.2.3 the third resolution was demanded on Friday, 25 April 2025, one business day before the company's notice of meeting was sent to shareholders on Wednesday, 30 April 2025 (Monday, 28 April 2025 was a public holiday).

52. The timing of the applicants' demands lays bare the sort of mischief that the Act foreclosed by confining demands under section 65(3) of the Act to decisions that shareholders have actual, determinative voting power over:

52.1 Even if Thungela had wished to put the matter before its shareholders, it would have been impossible to include it with the AGM notice and related materials. These are a complex, often voluminous set of documents and information that goes through multiple approval layers and processes, and which are in near final form weeks before actual publication, and – typographical matters aside – in final form a number of days before actual publication (typically, a week or more). Finalising these documents is an exacting process, which involves significant time and expertise of executive management, the nominations and

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governance committee, the social, ethics and transformation committee, the audit committee and, ultimately, the full Board for both a preliminary and a final approval.

52.2 Further, as addressed in more detail in paragraph 53.4, the two notices would have to be sent separately as each would have different record dates for receipt of the notice and its supporting documents.[4]

52.3 It is evident from this timing that the applicants had no intention of engaging with the company on the subject matter of the resolutions, or of affording it any opportunity, let alone a fair and reasonable one, to consider the resolutions or guide its shareholders on the matter.

53. To put concrete timelines to these points:

53.1 In 2023, since the company's AGM was held on Wednesday, 31 May 2023, the applicants' resolution and supporting materials would have had to be dispatched to shareholders on Wednesday, 3 May 2023 at the latest. This left management and the Board <u>three business days</u> within which to fully consider and address the applicants' resolution and supporting materials, and to convene a Board meeting to approve the notice and set the record date to receive the notice and participate at the meeting.

53.2 In 2024, since the AGM was held on Tuesday, 4 June 2024, the applicants' resolution and materials would have had to be dispatched to shareholders on Monday, 6 May 2024. This thus left management

[4] See paragraph 53.4 below.

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and the Board <u>two business days</u> within which to fully consider and address the applicants' resolution and supporting materials, and to convene a Board meeting to approve the notice and set the record date to receive the notice and participate at the meeting.

53.3 In 2025, since the AGM was held on Thursday, 5 June 2025, the applicants' resolution and materials would have had to be dispatched to shareholders on Thursday, 8 May 2025. This thus left management and the Board <u>three business days</u> within which to fully consider and address the applicants' resolution and supporting materials, and to convene a Board meeting to approve the notice and set the record date to receive the notice and participate at the meeting.

53.4 It would in any event have been impossible to dispatch the applicants' resolution and supporting materials with those of the AGM:

53.4.1 This is because the two notices would, of necessity, have had to have different record dates, and thus different shareholders who qualified to receive the notice.

53.4.2 The respective record dates for receipt of the AGM notice were Friday, 14 April 2023, Friday, 19 April 2024 and Thursday, 17 April 2025, respectively. All these dates preceded the dates on which the applicants made their demands to Thungela.

53.4.3 Section 59(2)(a) of the Act provides that a record date cannot be a date which is earlier than the date on which the Board's

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decision to set that record date is taken. In short, retrospective record dates are prohibited.

53.4.4 To have the same record date, the Board would effectively have to receive, and meet and approve, the issue of the supplemental notice <u>before</u> that record date – which would be impossible here on these facts.

53.4.5 Even were it to have been possible, no proper consideration could ever be given to matters of significance in these sorts of timeframes, nor would it ever reflect responsible governance for a Board to do so in such timelines where the subject matter is not a company-critical and time-sensitive crisis that needs to be addressed urgently.

53.4.6 If one adds a minimum of two (2) working days to obtain a shareholder register for the posting record date, and to print and post the materials, the timeline becomes even more constrained.

53.4.7 This time pressure is compounded by the volume of material to be printed, given that Thungela has more than 39 900 shareholders – even non-substantive aspects require significant lead time.

54. Further, on the applicants' approach:

54.1 the right to compel a shareholder vote can be exercised at any time, on demand; it is not restricted to the AGM;

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54.2 the proposer can force the company to have the matter circulated and voted on as a written resolution (i.e. without any meeting of shareholders or discussion between them). The company and other shareholders thus have no say in the matter, nor (outlier exceptions aside) in what supporting statements the proposer circulates in support of its proposition; and

54.3 no other person (including the company) has a right immediately to respond to that matter, or to contribute any contrary, supporting or modified view or opinion thereon.

55. The exercise described above regarding the Board's duties would have to be repeated for each and every proposal. This would, necessarily, be an onerous and time-consuming exercise in each and every instance.

56. Moreover, the applicants have no regard to the following considerations:

56.1 <u>Cost</u>:

56.1.1 Typically, a shareholder circular of a public, listed company will cost the company anywhere upwards of R500 000.00, and even more if the issue is complex or raises commercially, legally, politically or otherwise sensitive matters. These are simply the external "hard" costs: printing, posting, JSE fees, venue or electronic hosting fees, professional fees and directors' fees. This does not include additional costs incurred if a directors' meeting is required outside of the four provided for annually,

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which would result in further expenditure in excess of R100 000.00.

56.1.2 To put these costs in perspective: in contrast to the general body of shareholders that has billions of Rand invested at risk in the company, the applicants between them hazard less than twenty thousand Rand in share value. Nonetheless, they assert a right to compel the company to incur, and the general body of shareholders to bear, irrecoverable costs of hundreds of thousands of Rand, and a right to make the company incur such costs at their will, and that of any two other shareholders.

56.2 Disruption:

56.2.1 The right the applicants assert would compel management and the Board to engage with the matter almost immediately, irrespective of its (and Board members') other corporate priorities. This disruption is compounded by the fact that the majority of directors on JSE-listed company boards are non-executive directors, of whom the majority are independent, non-executive directors (i.e. people who do not have full-time roles at the company). In many instances, such as is the case for Thungela, the majority of the directors as a whole are independent, non-executive directors. The right asserted by the applicants cuts across all of this: compelling the company to deal with their demands on an urgent, and *ad hoc* basis, and to do so

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irrespective of the disruptive effect thereof, and the availability or unavailability of the directors and key members of management.

56.2.2 To put this into perspective: some of Thungela's Board members are based abroad, and many are also directors of other entities. It typically takes a few days to align diaries to identify and agree on Board meeting dates which have not been scheduled well in advance, and then those actual meeting dates are typically more than four weeks from the date the request to meet is circulated. Moreover, where additional Board meetings are required, directors are entitled to charge meeting-specific fees for such attendances. The requirement of immediate meetings is thus practically unrealistic, disrupts the natural cadence of the Board, causes the company to incur additional costs for each and every such additional meeting, and adds no strategic or other value to the company at all.

56.3 <u>The absence of any remedy against over-use, misuse or abuse</u>:

56.3.1 On the applicants' view, there is no substantive restriction on what matters a shareholder can force other shareholders to vote on. And, should the proponents' "resolution" pass, any two shareholders who opposed it could, in response, force the company to circulate a resolution to amend, clarify, nullify or replace the prior resolution. Similarly, if a proponent's "resolution" fails to win support to their satisfaction, they can – within mere days – compel the company immediately to

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recirculate the resolution (or an amended version thereof) for another vote (under the rubric of changed circumstances, for example). In every instance, the Board would be required to discharge its full suite of fiduciary duties.

56.3.2 This is one of the many reasons why the legislative scheme of the Act does not allow shareholders to table resolutions on matters outside their powers, but does allow them – at the AGM, and then only for public companies – a right to raise matters *for discussion* at the AGM. The impact of this right is thus limited to (i) public companies, (ii) a single meeting at a single time (the AGM), and (iii) a forum where the meeting chairperson has powers to prevent an abuse of the meeting and to ensure that the meeting proceedings are conducted in an orderly and timely fashion.

56.3.3 The applicants' position is that if the company feels aggrieved about the proposed opinion poll, it can bring an application to the High Court for relief under section 65(4) of the Act. This approach entirely disregards the company's business and the proper and efficient functioning thereof, and the interests of the company and its general body of shareholders. It has no regard for the fact that:

56.3.3.1 urgent litigation is costly, both as to third party (external) costs and as to the internal costs of the nature referred to above;

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56.3.3.2 urgent litigation is highly disruptive to management and to the Board.

56.4 The tabling of such "resolutions" also places a significant burden on the Board. In many situations, a Board will be duty bound to, amongst others, (i) provide shareholders with its views on the resolution; (ii) inform shareholders of the effect the resolution would have, if given effect to; and (iii) correct any materially false, misleading, one-sided, incomplete or inaccurate information. This duty may flow from the Board's wider fiduciary duty to act in the company's best interests, or, potentially, from the application of section 81(1) of the Financial Markets Act ("**FMA**") or paragraph 1.2 of Section 1 of the Listings Requirements, which stipulates that the general principles are to ensure:

> "*...that all parties involved in the dissemination of information observe the highest standards of care in doing so, which includes adherence to section 81 of the FMA. In this regard, any false, misleading or deceptive information or any material omission disseminated, must be remedied forthwith.*"

56.5 Such duty may also arise through giving effect to King V: in many instances, staying silent on a resolution that is harmful to the company, or not providing shareholders with material facts which have been omitted (or with the correct facts for those which have been misstated and/or falsely stated) by the proponents would not reflect good governance or appropriate stakeholder engagement (quite apart from potentially breaching fiduciary duties).

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56.6 At a minimum, a Board would need to apply its mind to all of these issues, and to consider what action is appropriate in the circumstances. Any suggestion by the applicants that the company is, and should be, a mere administrative conduit, and will not be materially impacted, ignores the complex, multi-faceted role of the Board of a public, listed company, and ignores the similarly complex, multi-faceted set of relationships it must manage, and competing interests it must balance. It also entirely disregards the fiduciary duties of the Board.

56.7 The resolutions proposed by the applicants illustrate this issue. In relation to the resolutions in 2024 and 2025, should a responsible Board simply have placed these resolutions before shareholders without comment even though the hidden substance of the resolutions is a demand that Thungela discourage its clients from using coal? And, for the 2023 resolution, should a responsible Board stay silent on what the impact might be of it publicising the matters that the applicants demand it publicise?

57. Thungela raises these aspects not to argue that the effort required to give effect to section 65(3) of the Act affords it grounds to refuse to table proposals. Rather, Thungela raises these aspects to support its interpretation that, outside the narrow confines of matters which shareholders can propose for decision by resolution (i.e. matters falling within the province of shareholders' powers and on which they are entitled

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to vote as opposed to the powers of the Board), this is not what the legislature requires of the Board or ever envisaged of a Board.

58. The interpretation contended for by the applicants has the potential to create confusion and to conflate distinct roles. It is the Board that is legally charged with the running of the company. It is the Board that is privy to the complete conspectus of information to make informed decisions regarding the direction of the company, the formulation of strategy and the identification and implementation of such strategies.

59. Shareholders are not privy to the information necessary to navigate this terrain and would invariably face conflict of interest scenarios where shareholders' individual interests – pertaining to value creation; investment timelines; self-interest; ideological causes etc – would detract from their ability independently to run a company for the benefit of the company itself or all shareholders.

60. Shareholders, as owners of the company, have the legal right to appoint a Board to oversee the company. Those directors, in turn, have a legal obligation to act in the company's best interests (not the interests of some select, or even the majority of, shareholders) and can be held personally liable if they do not do so. Their liability is, potentially, unlimited.

61. The Board's fiduciary duties cannot be diluted, ignored or replaced by shareholder views. Yet this is the endpoint seemingly contended for by the applicants – shareholders must be free to make entirely destructive proposals and to poll general shareholder opinion thereon. Even if

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"approved", that opinion carries no legal weight, cannot replace the legal duties owed by the Board and cannot even inform such duties.

62. The Board is not legally charged to give effect to shareholder wishes or preferences: it owes an absolute duty, in all instances, to act in the best interests of the company. The views of the shareholders – be it the views of all of the shareholders or a single shareholder – do not detract from or stand to alter this duty. And, unlike directors, shareholders have no legal duty towards the company and have only limited liability.

63. It is for these reasons that shareholders are not entitled to vote on all matters pertaining to a company: rather, as owners of shares, they are afforded various control rights, and a limited entitlement to vote on specific subject matters. It is those subject matters – where shareholders enjoy voting rights as their decision carries binding weight – that inform section 65(3) of the Act.

64. Shareholders may not usurp the powers vested in the Board, to manage the business and affairs of a company, except where the company's MOI or the Act provides otherwise. This separation of powers has long been recognised in company law. This position has been fortified in the Act where the power to manage the company is clearly vested in the Board in terms of section 66(1) of the Act. Section 66(1) of the Act provides that the business of the company must be managed by or under the direction of the Board which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that the Act or the company's MOI provides otherwise.

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65. If the proposed resolutions for advisory votes on climate change were permitted, they would usurp the directors' powers to manage the business and affairs of the company. Nothing in Thungela's MOI or the Act empowers shareholders to propose and pass these resolutions; and therefore, if the resolutions were passed, they would be *ultra vires* and invalid. The proposed resolutions are not matters in respect of which shareholders are "*entitled to exercise voting rights*", under section 65(3) of the Act, and the Board is entitled to refuse to circulate and table these resolutions.

RIGHTS THAT ARE FREELY AVAILABLE TO THE APPLICANTS

66. The applicants are free to engage with the public generally; with Thungela specifically; and with other shareholders of Thungela in relation to, *inter alia*, their climate change views. Thungela elaborates on this below.

67. *First*, the applicants are at large to publish manifestos, give interviews, publish content on their websites, place advertisements in newspapers, magazines etc to set out their views and (subject to defamation constraints) criticise entities which are not acting as the applicants wish. One need only consider the website of Just Share to appreciate that it has taken up its rights in this regard (including its publication of a report "scoring" investment / asset managers against its selected standards pertaining to investment activities regarding, *inter alia*, climate change). The relevant articles, impact reports and briefing reports can be found at https://justshare.org.za/.

68. *Second*, the applicants can – and have been afforded – the opportunity directly to engage with Thungela. This can be done through correspondence directed to the company, engagement at AGMs,

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addressing written queries to Thungela, seeking audience with Thungela etc. Thungela draws attention to some examples of this below:

68.1 Just Share has previously engaged with Thungela at AGMs in relation to, *inter alia*, its climate change views. The following instances are notable:

68.1.1 On 24 May 2022, Just Share attended Thungela's 2022 AGM and was afforded the opportunity to raise environmental-related questions during the course of the AGM. This included posing questions regarding environmental and health impacts from unrehabilitated mines. In response, Thungela stated, among other things, that the company's rehabilitation efforts had been stymied by illegal miners. Thungela attaches a copy of the 2022 AGM Roundup marked "**AA6**".

68.1.2 On 31 May 2023, Just Share attended Thungela's 2023 AGM and was afforded the opportunity to raise several climate-related questions during the course of the AGM. This included asking *inter alia* why Thungela had not set any short- or medium-term scope 3 emission reduction targets; what the timeframe for doing that was; and questions pertaining to Thungela's broader strategy for acquisition and growth of new coal mines. In response, *inter alia*, Thungela referred to the reduction of scope 3 emissions over the year and that Thungela would be diversifying its portfolio in relation to coal mines. Thungela attaches a copy of the 2023 AGM Roundup marked "**AA7**".

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68.1.3 On 4 June 2024, Just Share attended Thungela's 2024 AGM and was again afforded the opportunity to raise several climate-related questions during the course of the AGM. This included asking *inter alia* the same question in relation to the scope 3 emission reduction targets, inquiring into Thungela's carbon capture and storage, and inquiring into the inclusion of the Ensham mine in scope 1 and 2 emissions reporting, Thungela provided responses to these questions clarifying Thungela's approach to making climate change targets and stating its investments and support regarding carbon capture technologies. Thungela attaches a copy of the 2024 AGM Roundup marked **"AA8"**.

68.2 Thungela has afforded the applicants the opportunity and has invited them to engage directly with its most senior relevant executives (being the Chief Executive Officer and the head of Thungela's environmental strategy unit) to discuss the substance of their proposed resolutions. These opportunities afford the applicants a direct opportunity to understand, and potentially influence, Thungela's climate change policies and the actions it is taking in that regard. These actions are entirely in keeping with good corporate governance and stakeholder engagement at the appropriate level as contemplated in King IV and King V.[5] The following instances are notable:

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5 King IV, part 5.5, principle 16, pages 71-72 (paras 1, 3, 4(d) and (e) and 6 – recommended practices). See also King V, principle 13, pages 30-31 (paras 132, 135(c) and 139 – recommended practices).

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68.2.1 On 25 April 2023, in response to the 2023 resolution, Thungela sent an email to Just Share (representing the applicants) noting that Thungela's 2023 Climate Change Report, which would be released the following day, was expected to satisfy the concerns raised in the 2023 resolution. However, Thungela stated that it would welcome the opportunity to engage with the applicants should they feel that their concerns were not adequately addressed in the report.

68.2.2 The 25 April 2023 email further noted that Thungela--

> "*believe[s] that continued and meaningful engagement with our shareholders and other stakeholders on important matters affecting the business is crucial to long-term value creation" and "remain[s] committed to transparent disclosure and engagement with stakeholders on the subject of climate change and other ESG-related matters.*"

68.2.3 On 8 May 2023, in response to Just Share's email (dated 3 May 2023) requesting a legal basis for the refusal to table and circulate the resolution, Thungela extended a further invitation for engagement in order to unpack the views of Just Share and to communicate its perspective. The meeting was scheduled for, and took place on, 21 June 2023 during which the parties discussed aspects such as Thungela's policy engagement and its approach to decarbonisation.

68.2.4 On 2 May 2024, in response to the 2024 resolution, Thungela sent a letter stating that it is open to robust discussions between Thungela and Just Share. Instead of accepting this offer, Just

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Share sent a letter of demand on 9 May 2024 threatening to take legal action. Notwithstanding this threat, on 10 May 2024, Thungela responded by reaffirming the offer to meet for robust discussions.

68.2.5 On 19 May 2025, in response to the 2025 resolution, Thungela sent a letter to Just Share noting that, although its position is consistent with that taken in respect of the previous resolutions proposed in 2023 and 2024, there was a standing invitation to meet in order to discuss the concerns raised.

68.2.6 On 3 September 2025, Thungela sent a further letter to Just Share inviting it to meet with Thungela's most senior executives to address the substance of its issues and queries raised in the resolutions, rather than discussing general climate change issues. Just Share accepted this invitation on 15 September 2025, however, it then (on 16 October 2025) deferred the suggested engagement on the non-binding "advisory shareholder resolution".

A chronological bundle containing copies of these letters and emails is attached marked **"AA9"**.

69. These direct engagements with Just Share demonstrate how Thungela has been open to having discussions with Just Share regarding its climate change-related concerns, at a level where change may be effected.

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70. *Third*, Thungela's share register is a matter of public record and the applicants can access this and identify all of Thungela's shareholders. They are free to engage with these shareholders as they see fit. Those shareholders, of course, are not obliged to engage with the applicants.

THE ATTITUDE OF OTHER COMPANIES TO THE APPLICANTS' DEMANDS

71. The applicants do not take the Court into their confidence and provide the precise statistics as to how many corporate entities have refused to give effect to their demands made under section 65(3) of the Act, or how many entities – having acquiesced at some previous stage – no longer do so.

72. Based on public source materials, including Just Share's web site, Just Share has been unsuccessful in tabling "non-binding advisory resolutions" requesting expanded climate-related disclosures with the following public companies (in addition to Thungela):

72.1 Sasol Limited ("**Sasol**"), which rejected six "non-binding advisory resolutions" tabled by shareholders between 2017 and 2021, namely:

72.1.1 On 26 October 2017, shareholders (with support from Just Share) co-filed a shareholder resolution in advance of the 2017 Sasol AGM. Sasol declined to table the resolution on the basis that the resolution was filed late;

72.1.2 On 20 April 2018, shareholders (with support from Just Share) co-filed a shareholder resolution in advance of the 2018 Sasol AGM. Sasol declined to table the resolution on the basis that the matters raised in the resolution were within the powers of the

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Sasol Board and were not matters that fell within the voting rights of the shareholders in terms of section 65(3)(a) of the Act;

72.1.3 On 21 October 2019, shareholders (including Aeon and with support from Just Share) co-filed a shareholder resolution in advance of the 2019 Sasol AGM. Sasol declined to table the resolution on the same basis as in 2018 and stated that the issues were addressed in its 2019 Climate Change Report;

72.1.4 On 19 October 2020, shareholders (with support from Just Share) co-filed a shareholder resolution in advance of the 2020 Sasol AGM. Sasol declined to table the resolution on the basis that the shareholders are not entitled to vote on the subject matter of the resolution;

72.1.5 On 14 September 2021, Just Share and Aeon co-filed a shareholder resolution in advance of the publication of the 2021 Climate Change Report. Sasol declined to table the resolution on the basis that its 2021 Climate Change Report addressed the issues; and

72.1.6 On 7 October 2021, Just Share and Aeon co-filed a shareholder resolution in advance of the 2021 AGM. Sasol declined to table the resolution on the basis that the resolution addressed substantially the same concerns as the previous resolution which was rejected.

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72.1.7 A copy of Just Share's timeline regarding shareholder resolutions and climate plans for Sasol, dated 2 February 2024, is attached marked "**AA10**".

72.2 Exxaro Resources Limited ("**Exxaro**"), which rejected the applicants' co-filed "non-binding advisory resolution" filed on 19 April 2023 in advance of the 2023 AGM. This resolution was rejected on the basis that the resolution raised matters that were within the powers of the Exxaro Board;

72.3 A copy of Just Share's article, dated 8 May 2023, regarding Exxaro's refusal to table shareholder-proposed climate resolutions is attached marked "**AA11**".

72.4 With respect to public companies such as Nedbank Limited, Absa Bank Limited, Investec Group Limited and FirstRand Group Limited, the banks themselves tabled non-binding climate change-related shareholder resolutions in 2020 and 2021. Sasol also self-tabled climate change-related shareholder resolutions between 2022 and 2024.

72.5 The banks, and Sasol, spent the next years implementing the targets set out in the resolutions without any form of further intervention from the applicants or shareholders. In these cases, the resolutions were not tabled by shareholders, instead, they were tabled by the respective boards of the companies, in the exercise of their discretions and powers.

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72.6 Copies of Just Share's timelines regarding shareholder resolutions and climate plans for the aforementioned banks, dated 9 June, 12 June, 30 June and 19 September 2023 respectively, are attached marked "**AA12.1**", "**AA12.2**", "**AA12.3**", and "**AA12.4**".

72.7 With respect to the public company Standard Bank Limited ("**Standard Bank**"), Just Share has a mixed history with respect to the tabling of shareholder proposed "non-binding advisory resolutions". For example:

72.7.1 In 2019, Standard Bank tabled a resolution filed by shareholders, with support from Just Share, in relation to climate change-related aspects. The part of the resolution which dealt with climate risk exposure did not pass but the part of the resolution which dealt with coal policy did pass;

72.7.2 In 2020, Standard Bank refused to table a climate risk-related shareholder resolution co-filed by a shareholder and Just Share ahead of its AGM on 26 June 2020. Standard Bank's justification for not tabling the resolution was seemingly largely the same as that of Sasol and Thungela;

72.7.3 In 2021, shareholders – including Just Share and Aeon – co-filed a "non-binding advisory resolution" ahead of the 2021 AGM. On 6 May 2021, Standard Bank advised that it was unnecessary to table the resolution, as the bank was already committed to publishing a climate strategy. It also confirmed that it continued to dispute the legal position adopted by the co-filers. However,

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following a meeting between the co-filers and Standard Bank, it was agreed that Standard Bank would make public commitments regarding its climate strategy. The resolution was not tabled; and

72.7.4 In 2022, the aforementioned co-filers and Standard Bank agreed on a "non-binding advisory resolution" prior to the 2022 AGM, and this was published in the Notice of AGM with an explanatory note maintaining Standard Bank's view that shareholders cannot propose a shareholder resolution which binds the Board of a company, even if that resolution is passed. The resolution was ultimately passed by the shareholders;

72.7.5 A copy of Just Share's timeline regarding shareholder resolutions and climate plans for Standard Bank, dated 19 April 2023, is attached marked "**AA13**".

72.8 It should be noted that, to date, Just Share alleges that Standard Bank has failed to comply with the resolution approved in 2022. This lays bare the fiction that the resolutions are intended to be "non-binding" and thus entirely discretionary and innocuous. If shareholders look to hold the company to account, and levy public criticism if the company does not "comply" with their demands, then those demands are plainly made with the intention that an approved resolution on the matter should be given effect to by the Board, or an explanation as to why it was not given effect. The applicants here openly admit that they are proposing these resolutions to companies to prompt action on climate change, and further to "*promote good governance and accountability*".

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Axiomatically, these demands require a company (i.e. its Board) do so something that it is not already doing; otherwise, the proposed resolution would be entirely pointless. This usurps the Board's discretion or, at the very least, inserts shareholders between the Board and the business in that regard. This is not sanctioned by the separation of powers between the Board and shareholders, nor is it good governance, or conducive in any way to the proper and responsible running of the company. A copy of Just Share's article dated 2 June 2025, titled "*Standard Bank fails to comply with oil and gas resolution approved by 99.7% of its shareholders*", making the allegation of non-compliance, is attached marked "**AA14**".

THE APPLICANTS' RELIANCE ON CONSTITUTIONAL RIGHTS

73. In paragraph 39 of their founding affidavit, the applicants contend that three sets of constitutional rights are directly implicated and that section 65(3) of the Act falls to be interpreted so as to give effect to these rights. Thungela disputes their submissions for the reasons that follow.

<u>Freedom of expression</u>

74. The applicants rely on section 16 of the Constitution, and claim that it provides them with the opportunity to propose, circulate, table and vote on shareholder resolutions.

75. Thungela accepts that the applicants are of course permitted freely to express their views. There is no restriction on (1) the applicants' ability consensually to exchange information or ideas with their fellow

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shareholders in companies in which they have invested or (2) these entities' rights or abilities to receive and act on that information (should they so wish).

76. The right to freedom of expression does not, however, require that the exchange of information and ideas must be in the form of non-binding "resolutions", or that the exercise of the right requires voting on the ideas or information.

77. The fact that the applicants cannot force other shareholders to vote on or to adopt their desired cause does not represent any limitation or infringement of the applicants' constitutional right to freedom of expression, nor does it take the interpretation of section 65(3) of the Act any further.

Freedom of association

78. For similar reasons, the applicants' invocation of the right to freedom of association does not impact on the interpretation of section 65(3) of the Act in the manner contended by the applicants.

79. The act of "voting" is not required to give expression to the right of freedom of association. Shareholders are free to organise as they wish, without requiring the act of voting to do so.

80. It is unnecessary for an opinion poll to be presented by Thungela to all its shareholders for voting to allow them to "*organise around shared values and goals*" or for the debating or sharing of proposals. All of this can be achieved through existing channels of communication without Thungela's Board's involvement or any vote being required.

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81. Furthermore, the right contended for by the applicants would infringe on other shareholders' rights of association, which include the right not to associate with another person. Requiring a person to take an active, formal step to disassociate from a position conflicts with their right to associate.

Environmental rights

82. The applicants rely on the right in section 24 of the Constitution to an environment that is not harmful to health or well-being.

83. As set out above, climate change just happens to be the cause adopted by these particular applicants and informs the subject matter of the proposals they have put forward. There is no subject matter limitation, however, and the interpretation sought to be established in this litigation is not environment specific.

84. The applicants do not explain how Thungela's interpretation of section 65(3) of the Act limits this right. Plainly it does not.

85. Even if one looks at these resolutions as a means to redress an underlying breach by the directors of their fiduciary duties, or other matter, the interpretation proposed by the applicants would have no substantive legal effect, and would not legally oblige Thungela to do or refrain from doing anything; nor would it replace the fiduciary duties already owed by the Board, or displace the actions the Board is taking in the discharge of those duties. If the actions a Board was (or was not) already taking in relation to the subject matter already give effect to its fiduciary and statutory duties, then the resolution has no proper role in relation to good governance or

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accountability on that matter. And, if the actions a Board was (or was not) taking in relation to the subject matter do not discharge their fiduciary or statutory duties, then the directors would be in breach of those duties (regardless of any opinion poll or non-binding resolution). In such circumstances, a non-binding resolution would be (i) a meaningless redress and (ii) superfluous as the Act already accords shareholders robust, direct and substantive redress through section 76 and, depending on the nature and severity of the non-compliance, other sections of the Act.

86. The applicants imply that the right they assert is <u>capable</u> of being used in a benign fashion. But that is irrelevant. *First*, the applicants' own conduct betrays that they seek to use this alleged right to force action and change at company level: hardly benign actions. *Second*, there is no limit, conceptually, on the subject matter of the right which the applicants allege – the resolutions could notionally be styled as binding resolutions (albeit that they lack the legal underpinnings to qualify as such), which would then lead to inevitable legal conflict. *Thirdly*, even if the right was capable of benign use (which we submit it is not), nothing requires it to be used in this way. On the contrary, a right such as this is far more likely to be used to champion causes, pursue personal matters and interests, and generally to disrupt – rather than facilitate – the orderly management of companies.

87. The applicants' position is predicated on an assumption that an affirmative shareholder vote would support its climate change theory and that this support would further section 24 environmental rights. This is a self-serving circularity.

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88. In any event, the applicants can achieve a comparable result – having shareholders express a view in relation to their proposal – through direct engagement with the shareholders. No additional legitimacy or weight is afforded to the outcome of that exercise if it is through a vote. And that outcome is not environmental-law specific: as set out above, what is sought is a general shareholder right where any two shareholders can compel a vote <u>on any subject matter in any terms</u>. It is not confined to environmental matters, nor do the applicants put forward a position that it could be so confined.

<u>Summation</u>

89. The only difference between the rights already afforded to the applicants and the interpretation they contend for is that, on their version, they can legally force Thungela (at its own cost) to publish their opinions and can legally force the other shareholders to engage and vote on these opinions, on the terms they have crafted (and no others). The applicants' desire to force a vote, or formal engagement, is not a constitutional right, however, nor does it better give expression to the constitutional rights invoked by the applicants.

THE STATUS OF "NON-BINDING RESOLUTIONS"

90. Thungela is advised that, in company law, an adopted resolution of shareholders in general meeting is a legal decision by an organ of the company that is binding on the company. A resolution results in an act or decision of the company that has legal force and effect. The other organ of

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the company is the Board, which similarly binds the company to acts or decisions through resolutions taken by the directors.

91. The matters over which shareholders in general meeting have decision-making power (i.e. resolutions which they may lawfully table and, if deemed fit, pass) are those set out in the Act and, if any, matters specified in the company's memorandum of incorporation (provided, of course, that such matters deal with alterable provisions of the Act).

92. Thungela is advised that the concept of a "non-binding resolution" of shareholders has never existed, and still does not exist, in our law, and certainly not when section 65(3) of the Act was enacted (which section remains today in the exact same form it was adopted in 2008).

93. A "non-binding resolution" does not exist under common law, the 1926 Companies Act or the Companies Act 67 of 1973 ("**1973 Companies Act**"). It was also not part of company law introduced by the Act in 2008. As will be seen below, it still does not exist under the proposed amendments to the Act.

94. It is wholly incorrect to say that non-binding resolutions are recognised by King IV and the JSE Listings Requirements. The exact opposite is true:

94.1 Paragraph 37 of Principle 14 of King IV provides that "*[t]he remuneration policy and the implementation report should be tabled every year for separate non-binding advisory votes by shareholders at the AGM*".

94.2 Paragraph 3.84(i) of the JSE Listings Requirements (Service Issue 32) requires that "*the remuneration policy and the implementation report must be tabled every year for separate non-binding advisory votes by shareholders of the issuer at the annual general meeting*".

95. Both these paragraphs do not refer to these votes as being pursuant to resolutions. They are not. They are, instead, exactly as stated: advisory votes.

96. It also bears mention that, in corporate practice, the concept of a "non-binding" vote was first introduced in the King III Code as part of a recommended board practice in respect of a company's remuneration policy. King II had no such recommended practice, nor a non-binding vote on any matter.

97. The recommended practice in King III sought to promote two things: firstly, to require (in the sense of a recommended practice) <u>the Board</u> to consult shareholders on a very specific, single issue and, secondly, to set the recommended means by which <u>the Board</u> should do so (i.e. an advisory vote). An advisory vote is not recommended by King III on any other matter (nor, for that matter, by King IV or King V). This is not at all surprising. As already shown, the King Code does not support a model of shareholder primacy, nor a form of stakeholder engagement where shareholders dictate positions to the company, whether styled as binding or non-binding. It supports board-driven engagement, as part of the Board's wider responsibilities and the role of a company as a corporate citizen.

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98. In the context of this application, three further points stand out:

98.1 *First*, King III was first proposed for comment in February 2009 and adopted in September 2009; in both instances, thus, after the Act had been adopted. The recognition by King III (and, thereafter, King IV and King V) of "non-binding" advisory votes thus has no bearing on the proper interpretation of section 65(3) of the Act.

98.2 *Second*, none of King III, King IV or King V refer to these votes, nor to the advice given thereunder, as <u>resolutions</u>. Instead, each of King III, King IV and King V refer to these as being matters tabled (voluntarily by the Board) to shareholders for a "non-binding advisory vote". (See Principle 2.27, para 186 of King III;[6] Principle 13, para 37 of King IV;[7] and Principle 13, para 118 of King V).[8]

98.3 *Third*, it is clear that this advisory vote is not the exercise of a voting power vested in shareholders; it is the exercise by the Board of its power to engage with shareholders (be it for approval, support or opinion) on any matter, and in such manner as the Board considers appropriate in the circumstances. It is not a validation of shareholders polling one another's views on demand, or of shareholders directing

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6 Which reads: "Every year, the company's remuneration policy should be tabled to shareholders for a non-binding advisory vote at the annual general meeting. This vote enables shareholders to express their views on the remuneration policies adopted and on their implementation.".

7 Which reads: "*The remuneration policy and the implementation report should be tabled every year for separate non-binding advisory votes by shareholders at the AGM*".

8 Which reads: "*Subject to remuneration resolutions applicable under the Companies Act, the board of a company that falls within the category that is required in terms of the Act and its regulations to appoint a social and ethics committee, should consider submitting for separate non-binding advisory votes by shareholders both the executive remuneration policy and the statutory remuneration disclosure. The policy should be submitted for voting every three years or when substantively changed, and the statutory remuneration report should be submitted for voting annually*".

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the company's affairs in this manner (however they may style that direction).

99. Sections 30A and 30B of the Act, introduced by the Companies Amendment Act 16 of 2024 (effective from 30 July 2024), similarly contradict the applicants' contention that non-binding "resolutions" are recognised in law.

100. What these two provisions require is that, in section 30A(2)(a) of the Act, the "*remuneration policy – (a) must be presented to and approved by shareholders at the annual general meeting by an ordinary resolution…*" and, in section 30B(2) of the Act, that the company must "*prepare a remuneration report in respect of the previous financial year for presentation and approval at the annual general meeting [by ordinary resolution]*".

101. These sections vest in the shareholder body the power to approve, by ordinary resolution, the company's remuneration policy and remuneration report. These are **<u>not</u>** "non-binding resolutions"; on the contrary, they are binding decisions (resolutions) of shareholders exercising the statutory power granted to them to approve or disapprove the respective policy and report. They are matters on which shareholders are entitled to exercise voting rights. These resolutions have substantive legal consequences:

101.1 In respect of the remuneration policy, if the policy is not approved by the requisite majority, it must again be presented for approval at the next AGM (presumably, with such modifications as the company may have made), or at a separate meeting called for that purpose. If approved by shareholders, the company is authorised to implement the policy in that form (or with minor amendments); the Board may,

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however, not amend that policy in any material respect without that amendment first being approved by ordinary resolution of shareholders (an additional power vested in shareholders).

101.2 In respect of the remuneration report, if the report is not approved by the requisite majority, then the remuneration committee must, at the next AGM, present an explanation on the manner in which shareholders' concerns have been met. Further, the members of that committee (who are non-executives) must all stand for election to the committee at the AGM (an additional substantive power now statutorily vested in the shareholder body, comprising two parts: the power to exclude certain directors from the remuneration committee and the corollary power to permit their continued service in that role).

101.3 The introduction of Sections 30A and B of the Act embodies a recognition of the unsatisfactory nature of attempting to regulate remuneration policy and the remuneration report by way of non-binding advisory votes and the necessity of regulating the remuneration policy and remuneration report in accordance with the general principles concerning binding resolutions on matters falling within the powers of shareholders as delineated by the Act.

THE PROPER INTERPRETATION OF SECTION 65(3) OF THE ACT

102. Key to the interpretation and application of section 65(3) of the Act, are the requirements that:

102.1 there is a vote;

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102.2 the subject matter of that vote is a resolution; and

102.3 the resolution must be one in terms of which shareholders are entitled to exercise voting rights.

103. A jurisdictional prerequisite for the triggering of the power in section 65(3) of the Act is that shareholders must be <u>entitled to vote</u> on the resolution proposed. To have an entitlement to vote, a shareholder must be endowed with the legal right to cast a vote and – the corollary to this – a third party (the company and/or the remaining shareholders) must be obliged to afford the proposing shareholders a vote on the matter. Stated differently, if the company is not obliged to afford shareholders a vote on a matter, then shareholders have no <u>right</u> to vote thereon.

104. Shareholders are only afforded legal rights to vote on matters expressly identified in the Act or a company's MOI.

105. They thus cannot vote on matters that fall within the exclusive competence of the Board – for example, they are not entitled to second-guess or vote on the Board's choice of mining sub-contractors or the decision to open or close a specific mine. As set out above, this position has been fortified in the Act where the power to manage the company is clearly vested in the Board in terms of section 66(1) of the Act.

106. Section 66(1) of the Act provides that the business of the company must be managed by or under the direction of the Board which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that the Act or the company's MOI provides otherwise.

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The Act does not allow an express instruction that relates to specific operational and management decisions to come from shareholders to the Board. There are sound reasons for this. The Board is the body that is bestowed with the necessary operational knowledge and expertise relating to the business of the company, which shareholders may not be. It would create an absurd position if the Board were of the opinion that a resolution was not in the best interests of the company but was obliged to act on it because a shareholder had proposed it and such resolution was approved by the general body of shareholders.

107. Further, as explained above, shareholders may be motivated by self-interest particular to their investments; these interests may not be aligned with those of the company and may in fact be prejudicial thereto. It would, again, be absurd if the Board was then forced to implement resolutions prejudicial to (or even destructive of) the company to appease a shareholder or shareholder block.

108. Section 65(3) of the Act is not an enabling provision that creates voting rights in respect of matters which do not otherwise attract such rights (instead it references matters which <u>already</u> have voting rights attached to them).

109. Shareholders are afforded voting rights where the Act expressly provides for this (either directly, such as the voting rights entrenched in section 66(9) of the Act) or if Thungela's MOI removed this subject matter from the province of the Board and afforded shareholder's voting rights in relation

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thereto (either in addition to or in substitution of the Board's decision-making powers).

110. A shareholder has no absolute or enforceable entitlement to vote on an opinion or position paper of another shareholder, or on an issue that is reserved for the Board.

111. As such, these aspects cannot form the subject matter of section 65(3) of the Act.

112. When a resolution is proposed by shareholders the content of the resolution always needs to be considered. The Board needs to determine whether a shareholder's resolution purportedly proposed in terms of section 65(3) of the Act, as read with a company's MOI, could be an attempt by shareholders to usurp the powers of the Board. Although section 65(3) of the Act does not in express terms permit the Board to consider this and make this determination, it is clear that the Board not only has a right to make this determination but also has a fiduciary duty to make this determination. Shareholders may only propose resolutions on matters on which they are entitled to vote. The Board should not allow company funds to be wasted in putting futile resolutions to shareholders. Moreover, the Board should not permit shareholders to operate under the misapprehension that passing resolutions that fall outside the powers of shareholders and on which they are not entitled to vote would constitute a valid decision taken by shareholders.

113. The applicants' approach is that shareholders have a right to vote on any topic unless this right has been expressly limited or removed. But this has

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never been the case and runs entirely contrary to the separation of management and ownership which has, for over a century, informed the distinction in duties and powers between the different corporate role-players of the Board and shareholders. As already set out above, Section 66(1) of the Act provides that the business and affairs of a company are managed by or under the direction of the Board, except where the Act or the MOI clearly provides otherwise.

114. Ownership of a share has never conferred (and does not confer) on the holder an unrestricted right to vote on any matter a shareholder wishes to express a view on.

115. The Act identifies those subject matters where shareholders are statutorily afforded voting rights. The Act contains a number of sections that expressly require shareholder resolutions. For example, those sections of the Act that deal with the election and removal of directors and those sections where a shareholder approval by way of a resolution is required for certain transactions. The Act expressly does not extend the power of shareholders to exercise voting rights beyond the distinct express references to the stipulated shareholder resolutions in the Act. Similarly, the MOI may create contractual voting rights attaching to a share or class of shares. Absent this, no "general" voting power attaches to a share.

116. Shareholders' opinions or position papers – in respect of which shareholders are not afforded an entitlement to vote – do not constitute "resolutions" as envisaged in section 65(3) of the Act. The resolutions

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statutorily referenced are only those resolutions in respect of which shareholders have enforceable rights to vote.

117. This interpretation – quite apart from paying fidelity to the text of section 65(3) of the Act – gives effect to the foundational principles of our company law whereby management and ownership of companies is separated, and shareholders are not afforded rights to vote on the running of the entity in which they own shares.

118. Further, this interpretation guards against the chaos that would ensue if any two shareholders could propose any position or opinion and require all other shareholders to consider this – even if such position or proposal was entirely destructive of the company, or had nothing to do with the company at all (save, typically, a tenuous reliance on corporate citizenship, or matters relevant to society as a whole, such as climate change.)

THUNGELA OPPOSES THE RELIEF SOUGHT

119. Against the background set out above, Thungela turns now to summarise the basis on which Thungela opposes the relief sought in the notice of motion.

<u>The relief in prayer 1 is without merit</u>

120. In prayer 1 of the notice of motion, the applicants ask for a declaratory order that Thungela has breached "*its obligations and the applicants' rights under section 65(3) and 62(3)(c) of the Companies Act*".

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121. In any event, section 62(3)(c) of the Act could only be implicated in circumstances where a lawful resolution is presented that complies with the requirements of section 65(3) of the Act and triggers a company's obligation to present the resolution for voting. Since the "resolutions" that form the subject matter of this application do not meet these threshold requirements for the reasons addressed above, section 62(3)(c) of the Act is not triggered. Thungela reiterates that the subject matter of the "resolutions" are not matters in respect of which the shareholders are entitled to exercise voting rights.

122. Even if it were to be assumed for the sake of argument that shareholders somehow have, as a default position, a right to table non-binding "resolutions", these rights would have to arise from the rights attaching to the shares themselves, and would be subject to the terms of those shares. For such a right to exist, it would need to be set out in the MOI as part of the rights attaching to shares of that class. There is no such express right in Thungela's MOI. And even if such a right could, in the absence of any express term, be implied (which it cannot), it is plain that, in such instance, paragraph 30.4 of Thungela's MOI (which the applicants acknowledge in paragraph 64 of the founding affidavit) renders the tabling of such non-binding resolutions a matter for the Board's discretion. The applicants do not dispute that the Board exercised its discretion in respect of each of the three 'resolutions' they tabled, and declined to table them.

123. For all these reasons, there is no basis in law for the relief sought in prayer 1.

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<u>The relief in prayer 2.1 is without merit</u>

124. The relief sought in prayer 2.1 of the notice of motion is an order declaring that the applicants "*are entitled to propose and exercise voting rights on shareholder resolutions concerning environmental, social, and governance matters, including issues related to climate change*".

125. This relief is not limited to section 65(3) (or any sections) of the Act and goes well beyond the climate change subject matter of the resolutions proposed. The applicants request the court to afford them the right to propose any shareholder resolution pertaining to environmental, social or governance matters. The subject matters of these resolutions thus transcend the subject matter the applicants litigate on – climate change – and would be incredibly broad (any governance issue, for example, could include each and every Board decision). The right to propose such resolutions does not appear in either the Act or Thungela's MOI.

126. It is also unclear what status these "shareholder resolutions" are to be: whereas the applicants deal in their founding papers with non-binding resolutions, no such qualifier is sought in their relief – is it then that they believe they are to be afforded the power to pass binding shareholder resolutions? If so, that would be entirely destructive of the decision-making powers vested in the Board and the allocation of control within companies, as set out in this answering affidavit.

127. Further, the applicants request the Court to grant them voting rights which they currently do not enjoy. No basis is made out in the founding affidavit to *create* voting rights for the applicants, nor is it identified why they (as

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opposed to other shareholders) should be afforded these special voting rights or what these voting rights are.

128. The relief sought is thus entirely overbroad and untethered from the case before Court.

129. The founding affidavit makes out no case for the relief sought in prayer 2.1. For this reason alone, the relief should not be granted.

The relief in prayer 2.2 is without merit

130. The applicants, in their capacity as shareholders, have no entitlement to exercise voting rights on "non-binding shareholder resolutions". The reasons for this have been set out above in the body of Thungela's affidavit.

131. It is telling that the relief in prayer 2.2 pertains to non-binding shareholder resolutions, whereas the relief in prayer 2.1 does not – reinforcing the concern that the applicants want the court to create rights to propose and vote on binding shareholder resolutions on almost any topic.

132. The relief in prayer 2.2 should therefore not be granted.

The relief in prayer 2.3 is without merit

133. Prayer 2.3 seeks an order declaring that Thungela is obliged to comply with sections 65(3) and 62(3)(c) of the Act.

134. There is no live dispute regarding the relief sought in prayer 2.3. In effect, the applicants seek an order declaring that Thungela is obliged to comply with the law. Since there is no live dispute, Thungela respectfully submits

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that the Court should exercise its discretion against the grant of such relief. The grant of such relief is susceptible to being misinterpreted as it would beg the question and is likely to give rise to further disputes rather than resolving the current dispute.

135. For the purposes of completeness, Thungela denies that it has breached any sections of the Act as alleged in considering and dealing with the applicants' resolutions.

<u>Summation</u>

136. For all the reasons set out above, Thungela submits that the applicants have not made out a case for the relief sought in their notice of motion.

CONDONATION

137. In addition to serving as Thungela's answering affidavit, this affidavit also serves as Thungela's founding affidavit in seeking condonation for the late filing of its answering papers.

138. The applicants launched their application on or about 1 December 2025. As such, Thungela is advised that, were the Uniform Rules of Court strictly to be observed, the answering affidavit was due on 23 January 2026.

139. This affidavit will be filed approximately two and a half months thereafter. The parties had already agreed, however, to an amended filing date of 6 March 2026 – as such, these papers are merely a month later than envisaged (and only days after the date proposed by the applicants as being acceptable to them, being 20 March 2026).

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140. This is not due to any intention to delay by Thungela (and, as explained herein, there is no real delay), but is rather attributable to a combination of factors, including but not limited to the time of year the application was launched (two weeks before the festive season), existing commitments of the (entire) litigation team employed by Thungela who are seized with this matter (including urgent applications and an international arbitration which ran in December and in early 2026), leadership change within Thungela and the (essential) other commitments of the Thungela Board (which needed to consider various iterations of these papers, comment thereon, provide input etc, all of which necessarily required consideration by multiple individuals, as opposed to one decision-maker).

141. At the outset, this is not an urgent matter. The underlying dispute – being the interpretation of section 65(3) of the Act – crystallised years ago, in April / May 2023. The matter has taken years to be brought (1) before the Companies and Intellectual Property Commission ("**CIPC**") and (2) then before Court. Plainly this is not a legally urgent matter, nor has it ever been characterised or treated as such.

142. Moreover, Thungela's delay (in context) is minimal, considering the years-long passage of time between the first 2023 resolution (19 April 2023) and the launching of court proceedings (1 December 2025). A delay of slightly over two months (at most; the delay is mere weeks compared to the agreed timetable) to prepare papers is, it is respectfully submitted, minor.

143. This minor delay affords Thungela no strategic or procedural benefit and does not imperil any hearing date (as discussed below, no hearing date has

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as yet been assigned). It is submitted that this delay does not prejudice the applicants: indeed, their attorneys were prepared to agree to a filing date of 20 March 2026 (which unfortunately could not be agreed or met by Thungela but is indicative of the lack of urgency and prejudice). Moreover, to the extent that the applicants require additional time to consider the answer and reply, Thungela will not object thereto.

144. This matter is an important one which has ramifications far beyond the interests just of the litigating parties: it will interpret legislation which applies to every company with shareholders and would stand to affect the entirety of corporate South Africa going forward. This requires full ventilation of the issues. The issues are, moreover, plainly important to the parties.

145. As aforesaid, the delay has not been maliciously or lightly caused. The applicants have raised a number of issues which are required properly to be addressed, and have filed over 300 pages which require consideration.

146. The case was launched on 1 December 2025 – weeks before the traditional festive break, and during which time key members of Thungela and its legal team (both attorneys and counsel, Thungela is advised) were on leave or had familial commitments such that they could not make significant headway in preparing an answer or consulting in relation thereto.

147. The minor delay has further been contributed to by virtue of the fact that:

147.1 The litigation team at Webber Wentzel were <u>all</u> involved in an international arbitration which had interlocutory hearings / developments in December 2025 and January 2026, culminating in

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urgent court proceedings in March 2026. This was outside of their range of pre-existing engagements and commitments, as well as other urgent applications which arose in February and March 2026. Counsel was similarly constrained through pre-existing engagements.

147.2 Within Thungela, a phased transition commenced as Thungela's erstwhile Chief Executive Officer handed over to his successor. This necessarily added to the actions required of the Board to consider this case and discharge its other duties.

147.3 In addition to the Board's "standard" range of duties, which are significant, it was also required to devote time to preparing for Thungela's financial year end and board cycle results, as well roadshows related thereto. These necessarily required some time.

147.4 Further, as these papers were on the verge of finalisation, the Easter weekend and associated public holidays contributed to a further minor delay, as members of Thungela and its legal team were travelling and/or attending to familial commitments.

148. Thungela does not intend to traverse the entire chronology between the parties pertaining to the proposed timetable, but attach hereto, for completeness, the exchanges in this regard as **"AA15"**. Thungela prays that these exchanges be incorporated as if expressly referenced herein.

149. As seen therefrom:

149.1 The parties co-operated and submitted a joint approach to the Honourable Deputy Judge President Sutherland (as he then was) to

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have the matter allocated to the commercial court. His Lordship obliged in this regard, certifying the matter and allocating it to the Honourable Justice Dippenaar. In so doing, His Lordship did not order the timetable proposed by the parties.

149.2 In terms of the initial approach and in the *status quo* report filed before Justice Dippenaar, it was envisaged that Thungela would file its answering papers by 6 March 2026. The *status quo* report was – again – a joint submission settled by the parties.

149.3 The parties have been informed (on 15 January 2026) that "*Judge Dippenaar is presently unavailable due to her acting appointment in the Supreme Court of Appeal. Dates and meetings will be arranged upon her return, whereafter all parties will be duly notified*". To date, this has not yet taken place, no dates have been ordered, and no hearing date has been allocated.

149.4 On 5 March 2026, despite diligently advancing the answering papers, it became apparent to Thungela that it would not be in a position to meet the initially agreed filing date of 6 March 2026. It alerted the applicants' attorneys and requested an extension to file papers by 1 April 2026.

149.5 The applicants indicated that they did not agree to this, proposing instead that Thungela file its papers by 20 March 2026 (with the applicants noting that "*due to long-standing availability constraints during the month of April, including access to key client*

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representatives, we are instructed to communicate that our clients are unable to agree to the full extension requested.")

149.6 Thungela sought – internally – to meet the new deadline of 20 March 2026, but it was apparent that it could not: as such, it communicated, on 10 March 2026, that "*the dates which we proposed were based on a realistic assessment of the envisaged completion date of the answering affidavit. If the dates thereafter are problematic for the applicants' legal team, then we suggest that those dates be revisited. To this end, please propose dates which would accommodate the applicants*." No such dates were proposed.

149.7 Ultimately, Thungela's assessment of 1 April 2026 being the filing date was slightly incorrect – this affidavit is filed mere days later, however.

149.8 To the extent that the applicants require additional time to consider their reply, Thungela has no difficulty therewith and – for its part – would not take the point of delay or oppose any condonation sought by the applicants.

150. Given the above, it is submitted that the parties should be afforded the opportunity to ventilate all aspects of their arguments and the interests of justice militate in favour of granting condonation.

151. This is a non-urgent, complex and important matter with ramifications for all shareholders and companies with shareholders in South Africa; respectfully it is submitted that the parties should be permitted to place their entire cases before the Court, even if there is some minor delay in doing so.

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AD SERIATIM RESPONSE

152. Thungela now turns to address the allegations in the founding affidavit on a *seriatim* basis to the extent necessary. As much of the founding affidavit has been addressed thematically above, these arguments will not be repeated.

153. Any allegation that is not addressed, or that is inconsistent with what is set out above, must be taken to be denied.

154. To the extent that any allegation amounts to legal argument, Thungela is advised that this will be addressed further by Thungela's legal representatives in argument.

Ad paragraphs 1 to 7; 12; 14 – 18; 20; 60

155. Save to deny that the allegations in the founding affidavit are true and correct in all respects, these paragraphs are noted.

Ad paragraphs 8; 21

156. For the reasons set out above, the contents of these paragraphs are denied.

Ad paragraphs 11; 28 to 37

157. The contents of these paragraphs are admitted.

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Ad paragraph 10

158. Thungela admits that the dispute turns partly on a question of law, but Thungela disputes the correctness of the answers given by the applicants.

Ad paragraph 13

159. Thungela does not dispute that this Court has jurisdiction to determine this matter.

Ad paragraph 19

160. The contents hereof are admitted, save that (i) the applicants have misconstrued the meaning and import of King IV and (ii) as from 1 January 2026, Thungela is required to apply King V (not King IV).

Ad paragraphs 22 to 24

161. It is admitted that, as shareholders in Thungela, the applicants have own-interest standing to bring this application.

162. It is denied that the applicants have, or should be afforded, public interest standing. As they have themselves recorded, "*[t]he dispute between the parties turns on the crisp question of law: the proper interpretation of sections 65(3) and 62(3)(c) of the Companies Act*".

163. This question of law is not environmental or climate change related or specific, and they cannot leverage their chosen causes to be afforded public interest standing in this context.

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164. It is further denied that the case implicates constitutional rights, and that any standing is afforded to the applicants in terms of the Constitution.

165. It is denied that section 21(1)(c) of the Superior Courts Act is an enabling provision that independently creates standing for applicants.

166. It is noted that the applicants do not contend that the resolutions are in the company's best interests. They are not.

Ad paragraphs 25 to 26

167. It is denied that any reforms introduced in the Act, or commentary in King Code IV, afford the applicants the rights to compel a shareholder vote on any topic they see fit. As set out above, section 65(3) of the Act is expressly limited to subject matters where shareholders are afforded a determinate power (i.e. a voting entitlement on the matter).

168. It is further denied that explanatory memoranda or reports can alter the correct statutory interpretation.

169. Without detracting from the above, it is noted that the explanatory memorandum stresses that there "*should be clarification of board structures and director responsibilities*" (paragraph 1.2.3(b)), which speaks to the need to carve out the decision-making province, and control powers, of the Board (and avoid any blurring of margins by permitting shareholder votes on matters which lie exclusively within the remit of the Board). There are additional markers that speak to the need to keep director and shareholder roles separate – for example, in paragraph 1.2.4(a): "*Company law should ensure the proper recognition of director accountability, and appropriate*

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participation of other stakeholders" (noting that the participation of stakeholders is not untrammelled but must be "*appropriate*").

170. No mention is made, under the headers "accountability and transparency" and "company governance", of expanding voting rights afforded to shareholders.

171. There is no indication that section 65(3) of the Act is implicated in the objectives the applicants refer to beyond what is plainly stated in the section. Shareholder "activism" takes many forms and, undoubtedly, the Act extended shareholder rights in a number of specific ways. An open-ended right to demand an opinion poll and have the proponent's material circulated to shareholders was not one of them.

172. The actual enhancements included:

172.1 lowering the threshold for shareholders to table resolutions on which they have voting rights from 5%, to any two shareholders;

172.2 expressly permitting shareholders of a public company to raise any matter **for discussion** at an AGM (section 61(8)(d) of the Act) – a right that did not exist under the 1973 Companies Act;

172.3 permitting shareholders to pass resolutions by their ordinary majority by written consent, without convening a meeting (section 60 of the Act). Under the 1973 Companies Act, unless all shareholders consented, resolutions of shareholders could only be passed at a duly convened meeting of shareholders;

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172.4 expanding key shareholder remedies, including the right to seek relief from oppressive or unfairly prejudicial conduct or the abuse of corporate personality (section 163 of the Act), the right to bring a derivative action on behalf of the company (section 165 of the Act), and introducing the right to seek appraisal rights in respect of certain fundamental transactions (section 164 of the Act) – all of which afford shareholders remedies to hold a Board legally or commercially to account without requiring a shareholder vote on matters falling within a Board's exclusive domain;

172.5 introducing a right for shareholders to protect their rights and prevent harm arising from an act or omission in breach of the Act or the company's memorandum of association and/or rules (section 161 of the Act);

172.6 introducing a right to require the Board to address any alleged negligence or dereliction of duty by a director (section 71(3) of the Act); and

172.7 introducing a right for shareholders to apply to court for an order declaring a director delinquent or placing a director under probation (section 162 of the Act), which is a direct and effective mechanism for shareholders to hold directors accountable for specified breaches.

173. Section 65(3) of the Act is necessary to avoid an abuse of power by the Board in the context of matters on which shareholders are entitled to exercise votes. If shareholders have a right to exercise votes on a particular resolution, section 65(3) of the Act ensures that their right is not defeated

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by the fact that the Act, as read with the company's MOI, would not allow that resolution to be tabled before the shareholders to be voted on. Absent the provisions of section 65(3) of the Act (and section 61(3) for that matter) applying by default, the Board could for example preclude shareholders from proposing amendments to the MOI of a company and preclude shareholders from proposing resolutions to appoint or remove directors (matters expressly within the powers of shareholders in terms of the Act and on which they are entitled to exercise voting rights).

174. Section 65(3) of the Act is an essential section to avoid an abuse of power by the Board. This does not mean that the section extends voting rights to shareholders on matters on which they do not have voting rights, nor does it extend to allowing shareholders to vote on any matter whatsoever. Instead, it is a safeguard to ensure that where shareholders have voting rights, the Board cannot defeat them or refuse to give effect to those rights.

Ad paragraph 27

175. It is admitted that shareholders are afforded enhanced legal tools under the Act. It is denied that these include the right that the applicants allege.

Ad paragraph 33

176. This statement is a *non sequitur*, and takes the matter no further. The right of shareholders to table a resolution on matters that shareholders have a right to vote on, does not create or delineate what matters shareholders have a right to vote on, and thus table.

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177. The matters that shareholders have a right to vote on (and thus table) are set out in the Act and in the MOI, not in section 65(3) of the Act.

178. Thungela's MOI places the ability to table and vote on "non-binding" or advisory resolutions in the discretion of the Board (see paragraphs 65 and 122 above).

Ad paragraphs 36 and 37

179. The applicants do not give any reasons why the sections they cite are said to support their position. The extracts cited by the applicants either do not support their position, or are at best of indeterminate impact to the point in issue.

180. Thungela's interpretation of section 65(3) of the Act is entirely consistent with the division of powers and responsibilities between the Board and shareholders required by the Act, as well by other foundational principles and purposes of our company law, namely to:

> "*promote the development of the South African economy by — encouraging entrepreneurship and enterprise efficiency*"
>
> "*creat[e] flexibility and simplicity in the formation and maintenance of companies*"
>
> "*promote innovation and investment in the South African markets*"
>
> "*create optimum conditions for the aggregation of capital for productive purposes, and for the investment of that capital in enterprises and the spreading of economic risk*"

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181. Plainly shareholders have a right, and a legal interest, in the company's affairs and its business being managed by its Board, and in the valid business of its shareholder meetings being conducted in an efficient and effective way. Shareholders have a legitimate interest in the company being able to pursue the business objects for which its capital was aggregated, and for such business objects to be pursued efficiently and effectively.

Ad paragraphs 38 to 39

182. Thungela has already dealt with the constitutional rights that are allegedly directly implicated. Thungela denies that these rights are limited or support the interpretation contended for by the applicants.

Ad paragraph 40

183. The applicants have elected not to plead the foreign law they allege to be relevant (or distinguishable): Thungela reserves its right to address any arguments based on foreign law.

Ad paragraphs 41 to 54

184. It is denied that the steps taken by the applicants (or climate change activists in general) as described in these paragraphs have any relevance to the interpretation of section 65(3) of the Act, or that the conclusions reached in paragraph 54 are correct.

185. Dialogue can be facilitated between shareholders, management and the Board without resolutions needing to be tabled or voting made mandatory. Thungela has offered (repeatedly) to directly engage with Just Share, and

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has set out above the various avenues open to shareholders for engagement.

186. It is denied – and has not been demonstrated -- that shareholder-proposed resolutions advance responsible corporate citizenship or sustainable development. This is particularly so as the resulting vote is not binding, and cannot replace the Board's legal duties. Moreover, to the extent that there is some advancing of responsible corporate citizenship or sustainable development by receiving shareholder views, this can be achieved without any vote under section 65(3) of the Act.

187. As set out above, Thungela is not shirking its climate change commitments, nor is it avoiding direct engagement with activists such as the applicants. The applicants provide no evidence for the sweeping statements they make in paragraphs 41 and 42, save for a single year (2024) and a single country (the United States). The United States is not a comparable jurisdiction. Furthermore, the provision which activist shareholders abused to propose these resolutions has recently been repealed by the SEC. If anything, the example of the United States evidences that the right the applicants seek here is abused by activists and others, and is not supported by regulators, companies and the general investing public. It is also telling that the article relied on by the applicants states that "*ESG resolutions are down 34% from 2024*" and "*[a]verage support for pro-ESG proposals in 2024 was 19.6%, down from 21.5% in 2023 and well below the 33.3% average vote of 2021. In 2024 there were fewer majority votes than we had seen in previous years.*"

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188. Further, the applicants do not take the Court into their confidence and provide the facts relevant to the resolutions it references in paragraph 46. Simply by way of example, it is not disclosed whether the entities listed, in all or any instances, tabled the relevant resolution as a shareholder resolution in terms of section 65(3) of the Act, or whether the resolutions were presented as some form of commercial compromise, by the Board in its discretion, or subject to adjustment in their terms by the Board. In any event, the actions of some corporates are neither instructional nor dispositive in the legal interpretation of the Act, and – as set out above – it appears that many corporates have in fact adopted Thungela's position (including Standard Bank).

189. Save as aforesaid, Thungela denies the contents of these paragraphs.

Ad paragraph 54

190. The opportunity to debate these issues already exists at each AGM, where any shareholder can raise any matter for discussion. What the applicants seek is thus not a right to discuss and debate these matters, but the right to force shareholders to participate in, and be bound by, an opinion poll on the matter.

191. The applicants appear to have no genuine desire for this debate, or for engagement with shareholders or Thungela's management or Board. Thungela draws this inference because:

191.1 the applicants have not entered into any material debate on these resolutions at any of the Thungela AGMs they have attended;

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191.2 the applicants have not in any meaningful way taken Thungela up on its offers of dialogue on these matters;

191.3 having regard to the timing of the demand, the applicants had no intention of affording Thungela a reasonable opportunity to address their proposals.

192. Thungela has addressed the fact that King IV contradicts the applicants' position earlier in this affidavit (see paragraphs 39 to 49 above).

Ad paragraphs 55 to 59

193. The contents of these paragraphs are admitted, save that it is unclear what metric is used to characterise Thungela as a "major" producer and exporter of thermal coal. Simply by way of example, Thungela's 2025 thermal coal sales accounted for less than 1.5% of the 2025 global seaborne trade and less than 0.15% of global production.

Ad paragraphs 61 to 62

194. The applicants' resolutions do not amount to resolutions that fall within the scope of section 65(3) of the Act. The proposals are not matters that shareholders are entitled to vote on. It is thus denied that Thungela is in breach of any legal obligation to circulate these proposals as resolutions to shareholders, or that the matters set out therein should have been debated and voted on by shareholders.

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Ad paragraph 63

195. The contents hereof are admitted insofar as they relate to the tabling of resolutions and attendance at Thungela's AGMs. The applicants have not meaningfully sought to engage with Thungela in any other forum. To the contrary, Thungela has – repeatedly – sought to engage with the applicants, which opportunities they have not taken up, save in 2023 when representatives of Just Share met with Thungela's CEO. At that occasion, the applicants did not raise the subject matter of their resolution.

Ad paragraphs 64 and 65

196. It is admitted that Thungela's MOI affords shareholders a right to propose certain resolutions to Thungela's Board for consideration as to whether they should be included in the notice of shareholders' meeting.

197. As the applicants correctly acknowledge, the MOI renders the tabling of the applicants' resolutions a matter for the discretion of the Board – a discretion that it exercised on each occasion by declining to table the resolutions. For the reasons already dealt with, it would be a breach of the directors' fiduciary duties to table resolutions proposed by shareholders for a vote by shareholders where shareholders have no right to exercise votes on such resolutions.

198. The applicants thus had no right under section 65(3) of the Act or paragraph 30.4 of the MOI to table and vote on those resolutions.

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Ad paragraphs 66 to 87

199. The contents hereof are admitted. Thungela was entitled to refuse to table any resolution under section 65(3) of the Act and its MOI as the applicants' "resolutions" did not fall within such section of the Act, and as the Board validly exercised its discretion under the MOI.

Ad paragraphs 88 to 103

200. The contents hereof are admitted.

201. Thungela's responses to the CIPC are attached marked "**AA16**". Thungela asks that these be read as if incorporated herein. Respectfully, these responses do not appear to have been properly considered by the CIPC, resulting in the CIPC report which is completely devoid of any reasoning or engagement with Thungela's submissions.

Ad paragraphs 104 to 128

202. The contents of these paragraphs are denied inasmuch as the applicants contend that they satisfy the requirements imposed in terms of section 65(3) of the Act and that Thungela has breached this section. The reasons for this have been set out above and will be developed further in argument.

203. Thungela reiterates the following:

203.1 It is denied that section 37 of the Act affords shareholders voting rights on all subject matter save for those excluded by an MOI. This will be further developed in argument, but section 37 of the Act references limitations imposed by the Act itself, which – in context – limits voting

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rights only to those subject matters where shareholders are expressly afforded voting rights (and requires fidelity to section 66(1) of the Act).

203.2 Thungela's MOI limits shareholders' rights to table matters falling beyond those which they have determinative power over, and places such matters at the discretion of the Board.

203.3 Given that the "resolutions" proposed by the applicants did not satisfy the requirements of section 65(3) of the Act, Thungela could not have invoked section 65(5) of the Act (which requires, as a jurisdictional prerequisite, a resolution which shareholders are entitled to vote on).

Ad paragraphs 129 to 134

204. It is denied that the applicants are entitled to the relief sought. Their proposals do not qualify as resolutions as required by section 65(3) of the Act.

CONCLUSION

205. The applicants are, of course, entitled to their views. They are entitled to engage with Thungela, its shareholders and the general public directly to advance their views. They are not, however, entitled to assign themselves, and other shareholders, voting rights in relation to their opinions, and to demand meetings or shareholder votes in terms of section 65(3) of the Act.

206. Thungela accordingly contends that the applicants have misinterpreted the provisions of section 65 of the Act and do not have the broad legal right for which they contend. Section 65 of the Act gives shareholders the right to

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propose and vote on matters that fall within the powers of shareholders as a decision-making body, and only those matters. It does not give shareholders a legal right to propose and vote on matters within the Board's powers, discretions and responsibilities. Nor does it create such a right.

207. Thungela's refusal to table the applicants' "resolutions" relates to proposals that are *ultra vires* and are not resolutions (generally or as required by section 65(3) of the Act).

208. Quite apart from not comporting with the text or context of section 65(3) of the Act, the principle of the applicants' approach:

208.1 is inimical to the proper functioning of a company, especially a listed company, *inter alia* in that it (i) conflicts with the company's decision-making responsibilities and duties; (ii) directly undermines the primary business of shareholder meetings; and (iii) directly enables and gives prominence to self-interested agendas and intentions;

208.2 is onerous and highly disruptive;

208.3 frustrates, rather than facilitates, engagement on issues of genuine shareholder concern;

208.4 creates a compulsory shareholder engagement mechanism which does not exist in law; and

208.5 is wrong in law and would hinder, rather than promote, good corporate governance.

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209. Further, the applicants seek wide-ranging relief which (quite apart from being legally unsustainable) is overbroad, does not relate to their papers and includes entirely academic prayers.

210. In the circumstances, Thungela prays that the application be dismissed. Recognising the non-profit nature of the first and third applicants, Thungela does not seek costs against them. It also does not seek costs against the second applicant, given the nature of this application.

DEPONENT

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Sandton on 22 **April 2026**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

COMMISSIONER OF OATHS
Tyla Lee Coertzen
Practicing Attorney
Primerio Law Incorporated
135 Daisy Street
Sandton South Africa
Primerio

"AA1"

THUNGELA RESOURCES LIMITED
("Thungela" or "the Company")

NON-BINDING ADVISORY RESOLUTION FILED BY THUNGELA SHAREHOLDERS AEON INVESTMENT MANAGEMENT, FOSSIL FREE SOUTH AFRICA AND JUST SHARE NPC

Resolution wording

Shareholders of the Company request that, in accordance with the Global Standard on Responsible Climate Lobbying, the Board annually conduct an evaluation of and report to shareholders on the Company's lobbying and policy engagement activities including:

- *if, and how, its lobbying and policy engagement activities (both direct and indirect through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels;*
- *its framework for identifying and mitigating the risks presented by any misalignment; and*
- *the circumstances under which escalation strategies have been and will be used, including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliance.*

In evaluating the degree of alignment, the Company should consider not only its policy positions and those of organisations of which it is a member, but also the lobbying and engagement activities aimed at influencing policy for the year in review.

Explanatory note to the resolution

Keeping the global average temperature rise to 1.5°C is essential to limit the worst impacts of global heating. This is only possible with immediate, rapid, and large-scale reductions in greenhouse gas (GHG) emissions.[1] In South Africa, like all of sub-Saharan Africa, the impacts of climate change will be disproportionately felt by poor and marginalised communities, exacerbating the country's already extreme poverty, inequality and unemployment.

Corporate lobbying[2] that is inconsistent with global climate goals presents regulatory, reputational and legal risks to companies and investors. It also presents systemic risks to the South African economy, as delays in implementation of the Paris Agreement increase the physical risks of climate change, exacerbate energy instability, and hinder South Africa's

---

[1] The Intergovernmental Panel on Climate Change (IPCC's) Sixth Assessment Report (Working Group I – the Physical Science Basis and the Synthesis Report).

[2] "The term 'corporate climate lobbying' refers to those activities carried out by corporations or their agents to directly or indirectly influence climate-significant policy decision-making by political or bureaucratic actors. Climate-significant policy refers to any environmental or non-environmental public policy with non-trivial implications – positive or negative – for realising the temperature goals of the Paris Agreement. Such lobbying – also commonly known as advocacy – can have a significant impact on the stringency and effectiveness of public climate policy. It is not only a matter of societal concern, but also an issue of material, financial, significance for corporations and their investors" - The Global Standard on Responsible Climate Lobbying, p 5.

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standing in the global economic community, impairing the country's access to transition financing and introducing uncertainty and volatility into investment portfolios.

Institutional investors across the globe have, therefore, clarified their expectations in relation to investee companies' engagement on climate policy, emphasising the importance of transparency and reporting on direct and indirect climate-related lobbying. The *2022 Global Standard on Responsible Climate Lobbying* sets out the need for companies to publish a detailed analysis of their policy positions and advocacy on climate change, and that of their industry associations, to ensure alignment with the 1.5°C goal of the Paris Agreement.

Additionally, the JSE has provided guidance for corporate disclosure on climate change and sustainability. On lobbying activities, the guidance requires listed companies, among other things, to assess and report on the alignment of industry associations of which the company is a member with the objectives of the Paris Agreement and, more broadly, to identify the significant issues that are the focus of the company's participation in public policy development and lobbying, including within any of its industry associations.

InfluenceMap, an independent think tank producing analysis on how business and finance are impacting the climate crisis, reports that Thungela is "actively engaged in ... the maintenance of coal as a primary energy source in South Africa, contrary to IPCC science" and that Thungela "does not appear to explicitly support the need for government regulation on climate change or the need to reduce GHG emissions in line with the IPCC."[3]

Thungela has no dedicated comprehensive disclosure of its industry association memberships and has not completed an audit of its industry associations' positions and engagement on climate change policy.

Thungela's membership of the World Coal Association is of particular concern. According to InfluenceMap, the World Coal Association engages negatively on climate policies and "appears generally oppositional to ambitious global climate change policy".[4] Thungela is also a member of the Minerals Council South Africa, which "is actively and negatively lobbying climate change policy in South Africa, particularly on the issue of the carbon tax and the role of coal in the energy mix."[5]

In South Africa, obstructive corporate climate policy engagement is delaying ambitious climate policy and putting the country's climate goals in jeopardy,[6] presenting significant escalating risks to companies and investors. "Policy capture" (steering policymaking away from the public interest in favour of a specific interest group or individual)[7] is particularly acute when there is limited transparency in the policy-making process.

Investors need clear information, through transparent disclosure, on how companies' direct and indirect policy advocacy efforts align with their own climate targets and with global climate goals.

Filed on: 19 April 2023

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3 https://lobbymap.org/company/Thungela-Resources-d3bc13fd15b8a8c0f549e7999bff9a53

4 https://lobbymap.org/influencer/World-Coal-Association

5 https://lobbymap.org/influencer/South-African-Chamber-of-Mines-d9fecc0ed7db4a809c71f3fc6a2b0cd6

6 InfluenceMap, February 2023. Climate Policy Engagement in South Africa. Analysis of South African industry's advocacy on climate-related policy and the energy transition. https://influencemap.org/report/Climate-Policy-Engagement-in-South-Africa-20575

7 https://www.oecd.org/gov/preventing-policy-capture-9789264065239-en.htm

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"AA2"

THUNGELA RESOURCES LIMITED
("Thungela" or "the company")

NON-BINDING ADVISORY RESOLUTION FILED BY THUNGELA SHAREHOLDERS AEON INVESTMENT MANAGEMENT, FOSSIL FREE SOUTH AFRICA AND JUST SHARE NPC

Shareholders request that Thungela Resources Limited ("the company") adopt and publish in its 2025 suite of reports: short-, medium- and long-term greenhouse gas emission reduction targets across its full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050.

Supporting statement

The company has confirmed its support for the Paris Agreement,[1] as well as its commitment to "net zero by 2050",[2] which it has further confirmed includes the company's scope 3 emissions.[3]

However, the company has not set any interim targets that will meaningfully contribute towards achieving this long-term ambition. This means that shareholders are unable to assess the likelihood of the 2050 target being achieved.

Short- and medium-term emission reduction targets are particularly important in light of the findings in the Intergovernmental Panel on Climate Change's (IPCC's) Sixth Assessment Report[4] that coal use would need to fall to 75% below 2019 levels by 2030 and to 95% below 2019 levels by 2050, in order to limit global average temperature rise to 1.5°C.[5]

While the company has committed to incorporate at least 19 MW of renewable electricity into its operations by the end of 2026,[6] the company's target of a 30% emission reduction by 2030, off a 2021 baseline, applies only to its scope 1 and 2 emissions. It does not include scope 3 emissions.

In 2023, the company's scope 3 emissions were 32 033 kt CO_2e, compared to scope 1 and 2 emissions of 295 kt CO_2e and 433 kt CO_2e, respectively. The exclusion of scope 3 emissions therefore means that 98% of the company's value chain emissions are not covered by its 2030 target. The 2030 target also appears to apply only to the company's existing operations[7] and would therefore exclude new acquisitions.

Coal phase-out

The IPCC has repeatedly reported that immediate and significant emission reductions are required to stave off the worst consequences of climate change.[8]

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[1] P 31 Thungela 2023 climate change report.
[2] P 19 and 20 Thungela 2023 climate change report.
[3] Scope 3 emissions: all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions. "As Scope 3 emissions usually account for more than 70 percent of a business' carbon footprint, it is crucial that companies tackle Scope 3 emissions to meet the aims of the Paris Agreement and limit global warming to 1.5°C." Scope 3 Emissions - (unglobalcompact.org.uk)
[4] https://www.ipcc.ch/assessment-report/ar6/
[5] https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf p 24 and 71; https://www.carbonbrief.org/in-depth-qa-the-ipccs-sixth-assessment-on-how-to-tackle-climate-change/
[6] P 26 and 29 Thungela 2023 climate change report.
[7] P 15 Thungela 2022 climate change report.
[8] https://www.ipcc.ch/assessment-report/ar6/

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In the IPCC's median 1.5°C pathway, coal power drops globally by 87% by 2030 and by 96% by 2035, which would entail replacement of virtually the whole power fleet within a decade in coal-dependent developing countries.[9]

According to the International Energy Agency (IEA)'s report "*Net Zero by 2050. A Roadmap for the Global Energy Sector*", in a net zero by 2050 pathway, advanced economies would need to phase out unabated coal by 2030, and the rest of the world by 2040, to limit average global temperature rise to 1.5ºC.[10] In 1.5°C pathways assessed by the IPCC, coal power would have to be phased out in India, China and South Africa more than twice as fast as in any historical power transition.[11]

Aligning to Net Zero

In alignment with the Paris goal of limiting the rise in global temperature to 1.5°C, investors increasingly require companies committed to net zero to set interim emission reduction targets inclusive of all relevant scope 3 emissions.

In its 2022 report *Integrity Matters: Net Zero commitments by Businesses, Financial Institutions, Cities and Regions*,[13] the United Nations High-Level Expert Group (HLEG) set out "a roadmap to prevent net zero being undermined by false claims, ambiguity and greenwash". Using climate science and "best-in-class voluntary efforts", the HLEG report "creates a universal definition of net zero, based on five principles and ten recommendations."[14]

In summary, the report requires that a company set short-, medium- and long-term absolute emission reduction targets and, where appropriate, relative emission reduction targets across its value chain. These must at least be "consistent with the latest IPCC net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, and where global emissions decline at least 50% below 2020 levels by 2030, reaching net zero by 2050 or sooner".[15]

The HLEG report states that companies should set short-term targets of five years or less, with the first target set for 2025.[16] Targets must include emission reductions from a company's full value chain and activities, including scope 1, 2 and 3 emissions for businesses. Where data is missing for scope 3 emissions, businesses should explain how they are working to get the data or what estimates they are using.

Thungela remains substantially misaligned with global net zero goals and investor expectations. Failing to set targets that address the full range of its greenhouse gas emissions exposes the company to increasing physical, regulatory, and market risks. By setting short- and medium-term,1.5°C-aligned targets inclusive of its entire value chain, Thungela can mitigate its climate-related risks, and capitalise on the value-creating opportunity of the net zero economy.

Filed on: 26 April 2024

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9 https://www.carbonbrief.org/guest-post-how-quickly-does-the-world-need-to-phase-down-all-fossil-fuels/
10 https://www.iea.org/reports/net-zero-by-2050, p 20.
11 https://www.nature.com/articles/s41558-022-01576-2
12 https://www.climateaction100.org/wp-content/uploads/2023/10/CA100-Benchmark-2.0-Disclosure-Framework-Methodology-Confidential-October-2023.pdf, p 5; https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf, p 39-40.
13 https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf
14 P 12.
15 P 17 HLEG report.
16 P 17 HLEG report.
17 P 17 HLEG report.

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"AA3"

THUNGELA RESOURCES LIMITED
("Thungela" or "the company")

NON-BINDING ADVISORY RESOLUTION FILED BY THUNGELA SHAREHOLDERS AEON INVESTMENT MANAGEMENT, FOSSIL FREE SOUTH AFRICA AND JUST SHARE NPC

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However, the company has not set any interim targets that will meaningfully contribute towards achieving this long-term ambition. This means that shareholders are unable to assess the likelihood of the 2050 target being achieved.

Short- and medium-term emission reduction targets are particularly important in light of the findings in the Intergovernmental Panel on Climate Change's (IPCC's) Sixth Assessment Report[4] that coal use would need to fall to 75% below 2019 levels by 2030 and to 95% below 2019 levels by 2050, in order to limit global average temperature rise to 1.5°C.[5]

While the company has committed to incorporate at least 19 MW of renewable electricity into its operations by the end of 2026,[6] its target of a 30% emission reduction by 2030, off a 2021 baseline, applies only to its scope 1 and 2 emissions. It does not include scope 3 emissions.

In 2024, the company's scope 3 emissions were 46 877 kt CO_2e, compared to scope 1 and 2 emissions of 596 kt CO_2e and 470 kt CO_2e, respectively.[7] The exclusion of scope 3 emissions therefore means that 98% of the company's value chain emissions, constituting core business activities, are not currently covered by its 2030 target.

Coal phase-out

The IPCC has repeatedly reported that immediate and significant emission reductions are required to stave off the worst consequences of climate change.[8]

In the IPCC's median 1.5°C pathway, coal power drops globally by 87% by 2030 and by 96% by 2035, which would entail replacement of virtually the whole power fleet within a decade in coal-dependent developing countries.[9]

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[1] P 17, P 26, P 52 Thungela 2024 environmental, social and governance report.
[2] P 14, P 17, P 24, P 33, P 62, P 63, P 66, P 67, Thungela 2024 environmental, social and governance report.
[3] Scope 3 emissions: all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions. "As Scope 3 emissions usually account for more than 70 percent of a business' carbon footprint, it is crucial that companies tackle Scope 3 emissions to meet the aims of the Paris Agreement and limit global warming to 1.5°C." Scope 3 Emissions - (unglobalcompact.org.uk)
[4] https://www.ipcc.ch/assessment-report/ar6/
[5] https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf p 24 and 71; https://www.carbonbrief.org/in-depth-qa-the-ipccs-sixth-assessment-on-how-to-tackle-climate-change/
[6] P 26 and 29 Thungela 2023 climate change report; P 72 Thungela 2024 environmental, social and governance report.
[7] PP 69-70 Thungela 2024 environmental, social and governance report
[8] https://www.ipcc.ch/assessment-report/ar6/
[9] https://www.carbonbrief.org/guest-post-how-quickly-does-the-world-need-to-phase-down-all-fossil-fuels/

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According to the International Energy Agency (IEA),[10] in a net zero by 2050 pathway, advanced economies would need to phase out unabated coal plants by 2030, and the rest of the world by 2040, to limit average global temperature rise to 1.5ºC.[11] In 1.5°C pathways assessed by the IPCC, coal power would have to be phased out in India, China and South Africa more than twice as fast as in any historical power transition.[12]

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In summary, the report requires that a company set short-, medium- and long-term absolute emission reduction targets and, where appropriate, relative emission reduction targets across its value chain. These must at least be "consistent with the latest IPCC net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, and where global emissions decline at least 50% below 2020 levels by 2030, reaching net zero by 2050 or sooner".[16]

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Targets must include emission reductions from a company's full value chain and activities, including scope 1, 2 and 3 emissions for businesses. Where data is missing for scope 3 emissions, businesses should explain how they are working to get the data or what estimates they are using.[18]

Thungela remains substantially misaligned with global net zero goals and investor expectations. Failing to set targets that address the full range of its greenhouse gas emissions exposes the company to increasing physical, regulatory, and market risks that may threaten business continuity. By setting short- and medium-term,1.5°C-aligned targets inclusive of its entire value chain, Thungela can mitigate its climate-related risks, and capitalise on the value-creating opportunity of the net zero economy.

Filed on: 25 April 2025

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[10] South Africa is an associate member of the IEA.
[11] https://www.iea.org/reports/net-zero-by-2050, p 20; https://globalenergymonitor.org/projects/global-coal-plant-tracker/coal-phaseout-tracking-retirements-and-paris-aligned-goals/; https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach, p 92.
[12] https://www.nature.com/articles/s41558-022-01576-2
[13] https://www.climateaction100.org/wp-content/uploads/2024/10/Climate-Action-100-Net-Zero-Company-Benchmark-Disclosure-Framework-Methodology-copy.pdf, p 5; https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf, p 39-40; https://sciencebasedtargets.org/resources/files/Net-Zero-Standard-Criteria.pdf, pp7-11; p16.
[14] https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf
[15] P 12.
[16] P 17 HLEG report.
[17] P 17 HLEG report.
[18] P 17 HLEG report.

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INSTITUTE OF DIRECTORS
SOUTHERN AFRICA

KING IV

REPORT ON CORPORATE GOVERNANCE FOR SOUTH AFRICA 2016

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» ACKNOWLEDGEMENTS

The Institute of Directors in Southern Africa and the King Committee on Corporate Governance in South Africa acknowledge with appreciation those who support the King IV Report and corporate governance in South Africa through their sponsorship.

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Endorsements can be accessed at: http://www.iodsa.co.za/?page=KingIVEndorsers

The King IV Report is dedicated to all those from the King Committee and outside it, even beyond the borders of South Africa, who so generously gave of their time and knowledge to contribute to the development of its content.

Ansie Ramalho
King IV Project Lead, Institute of Directors in Southern Africa

1 November 2016

INSTITUTE OF DIRECTORS
SOUTHERN AFRICA

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FOREWORD

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» FOREWORD

INTRODUCTION

The 21st Century has been characterised by fundamental changes in both business and society. These fundamental changes provided the context within which the King Committee set out to draft King IV, and have influenced both its content and approach.

New global realities are testing the leadership of organisations on issues as diverse as inequality, globalised trade, social tensions, climate change, population growth, ecological overshoot, geopolitical tensions, radical transparency and rapid technological and scientific advancement.

The United Nations Sustainable Development Goals, which were agreed by all governments in 2015, the Africa 2063 Agenda and the (South African) National Development Plan 2030 (NDP) have a common theme of value creation that is accomplished in a sustainable manner. This is a fundamental concept of King IV.

THE CHANGED WORLD

Financial instability is one driver of these changes. Financial crises arising out of the capital crisis in the United States of America and the Sovereign Fund crisis in the European Union have still not been resolved. Brexit created further uncertainty for financial systems.

Another change driver is climate change. Even those who are skeptical about the scientific evidence for climate change, or who question whether climate change is attributable to human agency or simply part of a longer-term cycle, have to acknowledge that the world has experienced extreme weather conditions that pose new risks in the last several years.

It is a reality that organisations and individuals are using natural assets faster than nature is regenerating them. This ecological overshoot will be exacerbated by continued population growth on the African and Asian continents. The global population is currently at 7.5 billion, and could reach 9.3 billion by 2045 according to the United Nations. Consequently, the pressure on natural assets will increase, as they are finite; continuing business as usual is no longer an option.

Ubiquitous social media platforms are creating a world characterised by radical transparency. Corporations can no longer conceal their actions or secrets. Technological advances, including the emergence of the Internet of things, are generating huge amounts of data; more importantly, sophisticated analytics is converting that data into deep insight into the behaviour of humans and their organisations.

Technology's disruptions continue. At present, advances in robotics, artificial intelligence, 3D printing, nanotechnology and biotechnology are accelerating the transformation of production and supply chains – and forcing professions like law and accounting to reinvent themselves.

Indeed, so profound are the disruptions to industries and business models that many believe we are in the midst of the Fourth Industrial Revolution.

There are greater expectations from stakeholders than ever before. Activism by civil society and shareholders have rocked companies over the last few years. The Millennial Generation (Millennials), roughly those born since 1980, is now the most numerous age cohort. Their concerns are beginning to set the global agenda. Millennials have shown that they are concerned about the global environmental crunch much more than the global financial crises. They are consequently attracted to companies who have integrated the six capitals into their business models. (The six capitals, as set out in the International Integrated Reporting Council's (IIRC) Integrated Reporting <IR> Framework, are financial, manufactured, human, intellectual, natural and social and relationship capital.)

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FOREWORD CONTINUED

In a similar vein, it is now accepted that organisations operate in the triple context of the economy, society and the environment. How they make their money does have an impact on these three elements and, in turn, they impact on organisations.

In the context of all the above, governing bodies have the challenge of steering their organisations to create value in a sustainable manner, making more but with less to meet the needs of a growing population and the reality of dwindling natural resources.

One corollary is that the duty of care has become both more complex and more necessary. No governing body today can say it is not aware of the changed world in which it is directing an organisation. Consequently, a business judgement call that does not take account of the impacts of an organisation's business model on the triple context could lead to a decrease in the organisation's value.

Milton Friedman's epigram, "The social responsibility of business is to increase its profits", must now be interpreted in the light of the view that an organisation is a part of society in its own right. It can no longer be seen as existing in its own narrow universe (or "society") of internal stakeholders and the resources needed to create value – it also operates in, and forms part of, general society. In this view, the licensor of an organisation is not just those individuals and entities within its narrowly defined value chain, but society as a whole.

THE THREE SHIFTS IN THE CORPORATE WORLD

Certain concepts form the foundation stones of King IV. They are: ethical leadership, the organisation in society, corporate citizenship, sustainable development, stakeholder inclusivity, integrated thinking and integrated reporting. These concepts are relevant to three connected paradigm shifts in the corporate world.

From financial capitalism to inclusive capitalism

There is now general acceptance that the employment, transformation and provision of financial capital represent only a fraction of an organisation's activities. Instead, inclusive capitalism takes account of the employment, transformation and provision of all sources of capital – the six capitals – in order to reposition capitalism as the engine of shared prosperity. It gives parity to the sources of value creation.

Financial performance alone can no longer serve as proxy for holistic value creation. As stated by Jonathan Labrey from the IIRC: "Long-term financial performance depends on the efficient and productive management of resources not currently measured by traditional accounting methodologies – human, intellectual, social and relationship, and natural capitals. The financial capital market system is insufficient to guard against the multi-faceted and interconnected risks of the future and hence an inclusive market system should be adopted."[1]

This new way of thinking, known as inclusive capitalism, has the potential to trigger profound change. One is that, instead of simply providing aid to developing countries, developed country companies that are operating in more developing countries should focus on adopting the model of inclusive capitalism in the developing country, and thereby create value in a sustainable manner. The more an organisation's business model positively impacts on society and the environment, the more the quality of life in developing economies will improve. This improvement, in turn, will positively affect the prospects for those organisations.

From short-term capital markets to long-term, sustainable capital markets

The shift from short-term to long-term thinking arises from the need to create value in a sustainable manner. In essence, sustainable capitalism refers to an economic system in which value is created in a sustainable manner. The period indicated by long term or longer term would depend on the strategic objectives of the organisation and the risks and opportunities presented by its external environment, including its material stakeholders.

[1] Jonathan Labrey, Three shifts toward better decision-making (posted 26 May 2015, available at http://integratedreporting.org/news/three-shifts-towards-better-decision-making/)

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Another element of this trend is the growing sense that the financial crisis of 2008, and others, were to a large degree caused by a narrow focus on short-term objectives with little or no consideration of the long-term effects on either the organisations concerned, or the economy as a whole. This opinion is prompting renewed focus on the unintended consequences of performance incentives, but also on ways to encourage investors and finance providers to extend their investment horizons.

In short, then, performance in terms of all-inclusive value should be assessed over the longer term. The capital market system must reward long-term decision-making.

From siloed reporting to integrated reporting

We live in an era of radical transparency, which is prompting a rethink on corporate reporting. This is evidenced by the European Union's directive on environmental, social and governance (ESG) reporting, the United Kingdom's strategic report, the context of reports filed with the United States Securities and Exchange Commission, the Operating Financial Review in Australia and the listing requirements of several stock exchanges, including the Johannesburg Bourse.

The traditional financial reporting system was a revolutionary development when it was instituted. It has since had to respond to market regulators, standards boards, ever more complex legislation and the regulation of accounting and corporate reporting. It is accepted that, while fully compliant and duly audited financial statements are critical, they are insufficient to discharge the duty of accountability. Similarly, a sustainability report is critical but insufficient. The reality is that the resources or capitals used by organisations constantly interconnect and interrelate. The organisation's reporting should reflect this interconnectedness, and indicate how its activities affect, and are affected by, the six capitals it uses and the triple context in which it operates.

The move from siloed reporting to integrated reporting is consistent with the concept of an inclusive, sustainable capital market system. It has been given impetus by acceptance of the triple context in which organisations operate and the evolution of integrated thinking. The International Federation of Accountants has promoted integrated reporting to the G20 countries.

King IV takes cognisance of all three these shifts.

In response to these, leading organisations have begun to change the way they operate, stakeholder management, technology and strategy being three such areas:

Stakeholder management: In order to know and understand the legitimate and reasonable needs, interests and expectations of an organisation's major stakeholders, management needs an ongoing relationship with those stakeholders. Some organisations have appointed a corporate stakeholder relationship officer whose sole task is to communicate with stakeholders and inform management of their legitimate and reasonable needs, interests and expectations. This officer will also inform stakeholders what the organisation expects of them.

Understanding stakeholders' expectations will greatly assist the executive to develop better strategy. Stakeholder relationships should be a recurring item on the governing body's agenda so that the board can be kept apprised of the current state of the relationships between the organisation and its stakeholders.

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FOREWORD CONTINUED

Technology governance and security: Technology governance and security have become critical issues. Technology is no longer simply an enabler; the systems created by an organisation provide the platform on which it does business, and technology is now both the source of many of an organisation's future opportunities and of potential disruption – an excellent example of how risk and opportunity are increasingly two sides of the same coin.

Technology is now part of the corporate DNA. Thus, the security of information systems has become critical. Technology governance and security should become another recurring item on the governing body's agenda.

Strategy: As the world moves from siloed to integrated thinking, people are increasingly realising that organisations need to broaden the way they consider strategy. It is now apparent that strategy does not just involve a consideration of the inputs into the business models and the resulting outputs; the outcomes of the organisation's products or services must also be taken into account. In particular, organisations need to assess what impact they are having on critical aspects of society and the environment. Consequently, every meeting of the governing body should have an agenda item for the consideration of the full sequence from inputs to outcomes. This will enable the governing body to discuss what the outcomes of its products are, and if they are causing a positive or negative impact on value creation. It will be appreciated that an outcome which is contrary to that which society expects is inconsistent with good corporate citizenship, and will result in the diminution of an organisation's reputation, the trust in which it is held and the confidence society as a whole feels in it. Such a situation could well threaten the organisation's operational legitimacy. The end result would be a destruction in the value of the organisation.

UNIVERSAL APPLICABILITY

King I, II and III had as their foundation ethical and effective leadership. King IV is no different. Clearly, good leadership, which is underpinned by the principles of good governance, is equally valuable in all types of organisations, not just those in the private sector. Similarly, the principles of good governance are equally applicable, and equally essential, in both public and private entities.

This link is implicit in King I, II and III; King IV seeks to make it explicit. Specifically, the King Committee was requested by many entities outside the private sector to draft King IV in such a way as to make it more easily applicable to all organisations: public and private, large and small, for-profit and not-for-profit.

King IV has been drafted with this in mind. Thus, for example, it talks of organisations and governing bodies, rather than simply companies and boards of directors. Another innovation aimed at making it easier for all organisations to use the King IV Report as a guide for good governance is the inclusion of sector supplements.

THE GLOSSARY

To obtain maximum benefit from this Report, the Code and the supplements, the user should read Part 1: *Glossary of Terms* following this foreword so that the meanings given to technical terms are consistently understood.

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FROM "APPLY OR EXPLAIN" TO "APPLY AND EXPLAIN"

King IV has moved from "apply or explain" to "apply and explain", but has reduced the 75 principles in King III to 17 basic principles in King IV, one of which applies to institutional investors only. 16 of these principles can be applied by any organisation, and all are required to substantiate a claim that good governance is being practised. The required explanation allows stakeholders to make an informed decision as to whether or not the organisation is achieving the four good governance outcomes required by King IV. Explanation also helps to encourage organisations to see corporate governance not as an act of mindless compliance, but something that will yield results only if it is approached mindfully, with due consideration of the organisation's circumstances.

This outcomes-based approach for a corporate governance code, and the "apply and explain" regime are the original intellectual thinking of the King Committee.

APPRECIATION AND CONCLUSION

I record my thanks and appreciation to my committee and the task team, who jointly and severally devoted so much time and effort in the interests of corporate (in its broadest sense) South Africa, without remuneration or reimbursement of expenses. In particular, I thank Ansie Ramalho, who led the task team, convened meetings with commentators, collated the comments to the draft report, and convened the working sessions which comprised experts on each of the essential topics contained in this report. I must pay special tribute to her patience in dealing with all of my comments without complaint. My thanks and appreciation also are due to our editors, and to those who contributed to the layout of the report.

The King Committee believes that this fourth iteration will reinforce global recognition of the King Committee's reports on governance.

Mervyn King

Mervyn E King SC
Chair of the King Committee

1 November 2016

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PART 1

GLOSSARY OF TERMS

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GLOSSARY OF TERMS

The following words carry the meaning as indicated for purposes of interpreting and applying King IV.

Accountability	The obligation to answer for the execution of responsibilities. Accountability cannot be delegated, whereas responsibility can be delegated without abdicating accountability for that delegated responsibility.
Accounting authority	As defined in terms of section 1 of the PFMA, it "means a body or person mentioned in section 49 of the PFMA".
AGM	AGM is the abbreviation of annual general meeting as defined in the Companies Act or, for organisations other than companies, it means the meeting that serves a similar purpose as the AGM of a company.
Arrangement	The way that people and things are organised for a particular purpose, activity or function, including frameworks, structures, systems and methods.
Assurance	The diligent application of mind to evidence, resulting in a statement or declaration concerning an identified subject matter or subject matter information, and that is made for the purpose of enhancing confidence in that subject matter or subject matter information. Assurance includes, but is not limited to, assurance engagements performed by independent, external assurance service providers (such as the external auditor) in accordance with the International Auditing and Assurance Standards Board's International Engagement Standards. Such assurance "means an engagement in which a practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria"[1]. Assurance furthermore includes, but is not limited to, assurance provided in terms of the International Standards for the Professional Practice of Internal Auditing, namely, "an objective examination of evidence for the purpose of providing an independent assessment on governance, risk management and control processes for the organization"[2]. Assurance service providers and functions may include the following: a. The organisation's line functions that own and manage risks. b. The organisation's specialist functions that facilitate and oversee risk management and compliance. c. Internal auditors, internal forensic fraud examiners and auditors, safety and process assessors, and statutory actuaries. d. Independent external assurance service providers such as external auditors. e. Other external assurance providers such as sustainability and environmental auditors, external actuaries, and external forensic fraud examiners and auditors. f. Regulatory inspectors.

1 International Auditing and Assurance Standards Board, *The International Framework for Assurance Engagements*, (Effective for assurance reports issued on or after January 1, 2005)

2 The Institute of Internal Auditors, *International Standards for the Professional Practice of Internal Auditing*, (2012), p 19

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GLOSSARY OF TERMS CONTINUED

Audit firm tenure	The length of the audit firm-client relationship. It should be calculated as the number of uninterrupted financial years that an audit firm has acted as external auditor of an organisation, up to and including the organisation's last audited financial year.
Beneficiary	In the context of a retirement fund "means a nominee of a member or a dependant who is entitled to a benefit, as provided for in the rules of the relevant fund", as defined in section 1 of the Pension Funds Act.
Board	If it is used in the context of a company, "means the board of directors of a company", as defined in section 1 of the Companies Act. If it is used in the context of a retirement fund, "means a board of a fund as contemplated in terms of Section 7A of this Act", as defined in section 1 of the Pension Funds Act. Boards form a subset of the wider term "governing bodies".
Business model	"An organization's system of transforming inputs through its business activities into outputs and outcomes that aims to fulfil the organization's strategic purposes and create value over the short, medium and long term."[3]
CAE	Chief audit executive.
Capitals or six capitals	"The capitals are stocks of value on which all organizations depend for their success as inputs to their business model, and which are increased, decreased or transformed through the organization's business activities and outputs."[4] In accordance with the six capitals model, these capitals consist of financial, manufactured, intellectual, human, social and relationship, and natural capital. Each of these capitals are described in the International <IR> Reporting Framework[5].
CEO	Chief executive officer or the highest ranking employee in an organisation regardless of naming convention.
CFO	Chief finance officer.
Character	Character describes the attributes that make up and distinguish an individual or a group. It is a way of being rather than a way of doing.
Code	Part 5 of the King IV Report on Corporate Governance for South Africa, 2016.
Combined assurance model	A combined assurance model incorporates and optimises all assurance services and functions so that, taken as a whole, these enable an effective control environment; support the integrity of information used for internal decision-making by management, the governing body and its committees; and support the integrity of the organisation's external reports.
Companies Act	Companies Act, No 71 of 2008, as amended.

3 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33, available at http://integratedreporting.org/resource/international-ir-framework/

4 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013), p 33, available at http://integratedreporting.org/resource/international-ir-framework/

5 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 11-12, available at http://integratedreporting.org/resource/international-ir-framework/

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Company	A juristic person incorporated in terms of the Companies Act.
Competence	Possessing the skills and attributes, and exhibiting the conduct that are used to define and measure suitability for a certain role or function.
Conflict of interest	A conflict of interest, used in relation to members of the governing body and its committees, occurs when there is a direct or indirect conflict, in fact or in appearance, between the interests of such member and that of the organisation. It applies to financial, economic and other interests in any opportunity from which the organisation may benefit, as well as use of the property of the organisation, including information. It also applies to the member's related parties holding such interests. (See also "related party" and "independence".)
Constitution	Constitution of the Republic of South Africa, 1996.
Corporate citizenship	Corporate citizenship is the recognition that the organisation is an integral part of the broader society in which it operates, affording the organisation standing as a juristic person in that society with rights but also responsibilities and obligations. It is also the recognition that the broader society is the licensor of the organisation.
Corporate governance	For the purposes of King IV, is defined as the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes: • Ethical culture • Good performance • Effective control • Legitimacy. The use of "corporate" in the term "corporate governance" is used to differentiate it from other forms of governance, for example national or political governance. "Corporate" refers to organisations that are incorporated to form legal entities separate from their founders and therefore applies to all forms of incorporation whether as company, voluntary association, retirement fund, trust, legislated entity or others.
Council	"'Municipal council' or 'council' means the council of a municipality as referred to in section 18 of the Municipal Structures Act", as defined in section 1 of the MFMA.
Creation of value	The positive consequences of the organisation's business activities and outputs on the triple context in which the organisation operates, and the capitals it uses and affects.
CRISA	Code for Responsible Investing in South Africa, 2011.
Culture	In an organisational context, "the way in which members of an organisation relate to each other, their work and the outside world in comparison to other organisations"[6]. It is generally described as "the way we do things around here, even when no one is watching".

6 The Hofstede Centre, itim International, *The Hofstede Multi-Focus Model on Organisational Culture* (2016), available at https://geert-hofstede.com/organisational-culture.html

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GLOSSARY OF TERMS CONTINUED

Director	"Means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated", as defined in section 1 of the Companies Act.
Diversity	Diversity should be understood as the varied perspectives and approaches offered by members of different identity groups. For the purposes of King IV, it includes diversity in terms of fields of knowledge, skills and experience as well as age, culture, race and gender.
Effective or effectively	The adequate accomplishment of the desired objective or a pursuit with the minimum expenditure of time, resources, waste and effort.
Ensure	Ensure, where it is used in relation to the responsibilities of the governing body, means to direct and oversee in good faith and with best reasonable effort towards achieving the desired result.
ESG	Environmental, social and governance.
Ethics	Considering what is good and right for the self and the other, and can be expressed in terms of the golden rule, namely, to treat others as you would like to be treated yourself. In the context of organisations, ethics refers to ethical values applied to decision-making, conduct, and the relationship between the organisation, its stakeholders and the broader society.
Executive authority	"In relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls" and "in relation to a provincial public entity, means the member of the provincial Executive Council who is accountable to the provincial legislature for that public entity or in whose portfolio it falls", as defined in section 1(c) and (d) of the PFMA.
Fairness	Fairness refers to the equitable and reasonable treatment of the sources of value creation, including relationship capital as portrayed by the legitimate and reasonable needs, interests and expectations of material stakeholders of the organisation.
FSB Circular PF 130	Financial Services Board Circular PF 130.
Good performance	Good performance is an organisation achieving its strategic objectives, and positive outcomes in terms of its effects on the capitals it uses and affects and on the triple context in which it operates. (See also "performance".)
Governance outcomes	The positive effects or benefits of good corporate governance for the organisation. These positive effects include: ethical culture, good performance, effective control, and legitimacy.
Governing body	The governing body is the structure that has primary accountability for the governance and performance of the organisation. Depending on context, it includes, among others, the board of directors of a company, the board of a retirement fund, the accounting authority of a state-owned entity and a municipal council. "Members of the governing body" (also referred to as "those charged with governance duties") are those who are duly appointed to serve on the governing body and/or its committees.

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GRI	Global Reporting Initiative.
Group of companies	"Means a holding company and all of its subsidiaries", as defined in section 1 of the Companies Act.
Holding company	"Means in relation to a subsidiary, a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a)", as defined in terms of section 1 of the Companies Act.
Independence	Independence generally means the exercise of objective, unfettered judgement. When used as the measure by which to judge the appearance of independence, or to categorise a non-executive member of the governing body or its committees as independent, it means the absence of an interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making. (See also "conflict of interest".)
Information	Includes all data, records and knowledge in electronic or any other format, which form part of the intellectual capital used, transformed or produced by the organisation.
Inputs	"The capitals (resources and relationships) that the organization draws upon for its business activities."[7]
Integrated report	"A concise communication about how an organization's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long term."[8]
Integrated reporting	"A process founded on integrated thinking that results in a periodic integrated report by an organization about value creation over time. It includes related communications regarding aspects of value creation."[9]
Integrated thinking	"Integrated thinking is defined as the active consideration by an organization of the relationships between its various operating and functional units and the capitals that the organization uses or affects."[10]
Institutional investor	Any juristic person or institution referred to in the definition of financial institution in section 1 of the Financial Services Board Act, No 97 of 1990, to the extent that these juristic persons or institutions are the holders of beneficial interest in the securities of a company. It includes retirement funds and insurance companies as well as the custodians, nominees and service providers who act under mandate in respect of any investment decisions and investment activities exercised in relation to these securities.[11]

7 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/ – http://integratedreporting.org/resource/international-ir-framework/

8 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/ – http://integratedreporting.org/resource/international-ir-framework/

9 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/

10 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/ – http://integratedreporting.org/resource/international-ir-framework/

11 Adapted from the definition "institutional investor" used by the Committee for Responsible Investing South Africa, *The Code for Responsible Investing in South Africa* (Institute of Directors in Southern Africa 2011), p 9, available at www.iodsa.co.za

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GLOSSARY OF TERMS
CONTINUED

Integrity	In the context of governance and ethics, integrity is possessing the quality of being honest and having strong moral principles. It encompasses consistency between stated moral and ethical standards, and actual conduct. Integrity, in relation to the annual financial statements and other external reports issued by the organisation, refers to the reliability and usefulness of these reports. (In this context, "reliability" means validity, accuracy and completeness, while "usefulness" means consistency, relevance and measurability.)
International <IR> Framework	International Integrated Reporting Framework.
King Committee	King Committee on Corporate Governance in South Africa.
King III	King III Report on Governance for South Africa, 2009.
King IV	King IV Report on Corporate Governance for South Africa, 2016. It refers to the complete document that includes all of its parts.
King IV Code	Part 5 of the King IV Report.
King IV Report	King IV Report on Corporate Governance for South Africa, 2016. It refers to the complete document that includes all of its parts.
Management	Management includes senior management and executive management. "Senior management" is the level of management reporting to executive management. "Executive management" is, after the governing body, the highest decision-making authority in the organisation. "Executive managers" are the members of the executive management team and include executive members of the governing body and prescribed officers as defined in the Companies Act or, in respect of organisations other than companies, those who exercise general executive control over, and management of, the whole or significant portions of the business and activities of the organisation.
Material or materiality	As used generally in King IV, it is a "measure of the estimated effect that the presence or absence of an item of information [or identified subject matter] may have on the accuracy or validity of a statement [or decision]. Materiality is judged in terms of its inherent nature, impact (influence) value, use value, and the circumstances (context) in which it occurs"[12]. Materiality in relation to the inclusion of information in an integrated report refers to matters that "could substantively affect the organization's ability to create value over the short, medium and long term"[13].
May	In King IV, "may" is used to describe a recommendation that is permissible but not considered essential. (See also "should" and "must".)

12 The Business Directory, available at http://www.businessdictionary.com/definition/materiality.html

13 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 5, available at http://integratedreporting.org/resource/international-ir-framework/

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Member	When used in reference to a non-profit company, "means a person who holds membership in, and specified rights in respect of, that non-profit company, as contemplated in Schedule 1", as defined in section 1 of the Companies Act. When used in reference to a retirement fund "means a person who belongs or belonged to a class of persons for whose benefit that fund has been established, but does not include any person who has received all the benefits which may be due to that person from the fund and whose membership has thereafter been terminated in accordance with the rules of the fund", as defined in section 1 of the Pension Funds Act.
MFMA	Municipal Finance Management Act, No 56 of 2003, as amended.
Municipal entity or ME	"Means a) a company, co-operative trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities, and includes, in the case of a company under such ownership control, any subsidiary of that company; or b) a service utility", as defined in section 1 of the Municipal Systems Act.
Municipal Structures Act	Municipal Structures Act, No 117 of 1998, as amended.
Municipal Systems Act	Municipal Systems Act, No 32 of 2000, as amended.
Must	In King IV, "must" is used specifically to indicate a legal obligation. (See also "may" and "should".)
NGO	Non-governmental organisation.
NPO	Non-profit organisation.
Non-Profit Organisations Act	Non-Profit Organisations Act, No 71, of 1997, as amended.
Organisation	A company, retirement fund, non-profit organisation, state-owned entity, municipality, municipal entity, trust, voluntary association and any other juristic person regardless of its manner of incorporation.
Outcomes	Outcomes in the context of the outcomes of the activities and outputs of an organisation means "the internal and external consequences (positive and negative) for the capitals as a result of an organization's business activities and outputs"[14]. It also refers to the internal and external consequences of the business activities and outputs on the triple context in which the organisation operates.
Outputs	"The products, services, by-products and waste that are produced by an organization."[15]

14 Adapted from The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), available at http://integratedreporting.org/resource/international-ir-framework/

15 Adapted from The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), available at http://integratedreporting.org/resource/international-ir-framework/ and Reporting on Outcomes: An Information Paper, Integrated Reporting Committee South Africa, "*Reporting on Outcomes: An Information Paper*" 2015, available at www.integratedreportingsa.org

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GLOSSARY OF TERMS CONTINUED

PBO	Public Benefit Organisation.
Pension Funds Act	Pension Funds Act, No 24 of 1956, as amended.
Performance	"An organization's achievements relative to its strategic objectives, and its outcomes in terms of its effects on the capitals."[16] It includes the organisation's outcomes in terms of its effects on the triple context in which the organisation operates. Performance is therefore the result (positive and negative) of the value creation process. (See also "good performance".)
PFMA	Public Finance Management Act, No 1 of 1999, as amended.
Policy	Policy gives effect to strategy and strategic direction by defining the frameworks, standards and plans that establish the scope or spheres within which judgement is exercised, decisions are made and actions are taken.
PRI	United Nations supported Principles for Responsible Investment.
Principal officer	The principal executive officer to be appointed by every registered fund in terms of section 8 of the Pension Funds Act.
Providers of financial capital	Equity and debt holders and others who provide financial capital including, lenders and other creditors.
Related party	A related party is a person or entity as set out in section 2(1) of the Companies Act. It applies *mutatis mutandis* to organisations other than companies. (See also "conflict of interest".)
Responsibility	Taking ownership of a duty, obligation or liability.
Responsible investment	"An approach to investing that aims to incorporate environmental, social and governance factors into investment decision-making, to better manage risk and generate sustainable long-term returns."[17]
Risk	Risk is about the uncertainty of events; including the likelihood of such events occurring and their effect, both positive and negative, on the achievement of the organisation's objectives. Risk includes uncertain events with a potential positive effect on the organisation (i.e. opportunities) not being captured or not materialising.[18]
Sector supplements	Part 6 of the King IV Report.
Sensitive information	Information that is likely to compromise competitiveness, privilege or commercial advantage.
Shareholders	"Subject to section 57(1) of the Act, means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be" as defined in section 1 of the Companies Act. Depending on context, references to shareholders in King IV may also apply to the members of non-profit companies.

16 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33 available at – http://integratedreporting.org/resource/international-ir-framework/

17 Principles for Responsible Investing available https://www.unpri.org/about/what-is-responsible-investment

18 Broadly based of definition of risk by the International Organization for Standardization; ISO Guide 73:2009; available at https://www.iso.org/obp/ui/#iso:std:iso:guide:73:ed-1:v1:en

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Should	When used in King IV with reference to the principles, it indicates an aspiration or ideal state. When used with reference to the recommended practices in King IV, it indicates a recommended course of action that is particularly suitable, without mentioning or excluding other possibilities. "Should not" indicates that a certain course of action is not recommended but not prohibited either. (See also "may" and "must".)
SME	Small and medium enterprise.
Society	Refers principally to the broader society or community as part of the triple context in which the organisation operates, and the social and relationship capital that the organisation uses and affects. Society includes the organisation's internal and external stakeholders, which in turn form part of the broader society as a whole.
SOE	State-owned entity.
Stakeholder inclusivity	An approach in which the governing body takes into account the legitimate and reasonable needs, interests and expectations of all material stakeholders in the execution of its duties in the best interests of the organisation over time. By following this approach, instead of prioritising the interests of the providers of financial capital, the governing body gives parity to all sources of value creation, including, among others, social and relationship capital as embodied by stakeholders. Consequently, this is an inclusive, stakeholder-centric approach which stands in contrast with a shareholder-centric approach.
Stakeholders	"Those groups or individuals that can reasonably be expected to be significantly affected by an organization's business activities, outputs or outcomes, or whose actions can reasonably be expected to significantly affect the ability of the organization to create value over time."[19] "Internal stakeholders" are directly affiliated with the organisation and include its governing body, management, employees and shareholders. "External stakeholders" could include trade unions, civil society organisations, government, customers and consumers. Internal stakeholders are always material stakeholders, but external stakeholders may or may not be material.
Strategy	The setting of the organisation's short, medium and long-term direction towards realising its core purpose and values.
Subsidiary	As defined in terms of section 1 of the Companies Act "has the meaning determined accordance with section 3 of the Act".
Sustainability	Sustainability is the ultimate, long-term goal of sustainable development. (See also "sustainable development".)

19 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33 available at http://integratedreporting.org/resource/international-ir-framework/

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GLOSSARY OF TERMS CONTINUED

Sustainable development	In general, "development that meets the needs of the present without compromising the ability of future generations to meet their needs"[20]. At the level of organisations' participation in sustainable development, it means organisations intentionally interacting with, and responding to, the opportunities and challenges presented by the dynamic system of the triple context in which the organisation operates and the capitals that the organisation uses and affects, with the aim to achieve the creation of value over time. Sustainable development is not confined to individual matters, such as the economic viability of the organisation, the natural environment or corporate social responsibility. Rather, it refers to an integrated approach that includes these and other considerations as represented by the triple context (see also "triple context") and the capitals (see also "capitals").
Technology	Technology comprises the infrastructure, devices, systems and software that generate, use or carry information and enable transactions.
Transparency	The unambiguous and truthful exercise of accountability such that decision-making processes and business activities, outputs and outcomes (both positive and negative) are easily able to be discerned and compared with ethical standards.
Triple context	The combined context of the economy, society and environment in which the organisation operates.
Value creation or value creation process	"The process that results in increases, decreases or transformations of the capitals caused by the organization's business activities and outputs."[21] The value creation process therefore has neutral, positive and negative outcomes.
Values	Convictions and beliefs about how the organisation and those who represent it should conduct themselves; how resources and stakeholders should be treated; what the core purpose and objectives of the organisation should be; and how work duties should be performed.

20 United Nations, *"Report of the World Commission on Environment and Development: Our Common Future"*, (Oxford, Great Britain: Oxford University Press, 1987), p 8. Also known as the Brundtland Report after Gro Harlem Brundtland, Chairman of the Commission and available at http://www.un-documents.net/our-common-future.pdf

21 The definition of "value creation" as per: The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33 available at http://integratedreporting.org/resource/international-ir-framework/

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PART 2

FUNDAMENTAL CONCEPTS

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» FUNDAMENTAL CONCEPTS

INTRODUCTION

Since the publication of the first King report, South Africa has maintained a proud tradition of corporate governance. King IV is the fourth iteration of that report, and sets out the philosophy, principles, practices and outcomes which serve as the benchmark for corporate governance in South Africa.

Part 2 contains the fundamental concepts and philosophy on which King IV is based, the distinguishing features of King IV and how the various developments in corporate governance, locally and internationally, since King III came into effect in 2009, have influenced the principles and practices in the Code. A firm grasp of the content in this part is necessary for effective application of King IV.

DEFINITION OF CORPORATE GOVERNANCE

Corporate governance, for the purposes of King IV, is defined as the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes:

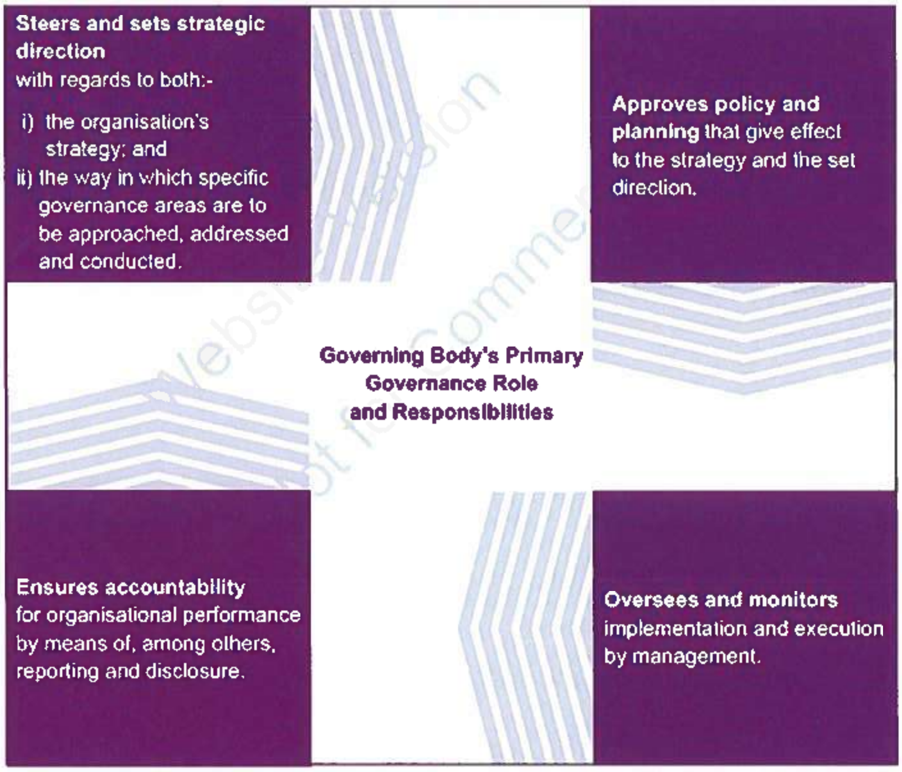
- Ethical culture
- Good performance
- Effective control
- Legitimacy.

Ethical and effective leadership should complement and reinforce each other.

Ethical leadership is exemplified by integrity, competence, responsibility, accountability, fairness and transparency. It involves the anticipation and prevention, or otherwise amelioration, of the negative consequences of the organisation's activities and outputs on the economy, society and the environment and the capitals that it uses and affects.	**Effective leadership** is results-driven. It is about achieving strategic objectives and positive outcomes. Effective leadership includes, but goes beyond, an internal focus on effective and efficient execution.

TC

The governing body's primary governance role and responsibilities are depicted below as part of the dynamic of the organisation's business cycle[1]. This role and responsibilities include to steer the organisation and set its strategic direction, on the basis of which management will develop the strategy which is to be approved by the governing body. To give effect to the organisation's strategy, management formulates policy and operational plans, also to be approved by the governing body. Management then, implements and executes strategy in accordance with policy and plans which are overseen and supervised by the governing body. The governing body finally ensures that there is accountability for organisational performance through, among others, reporting and disclosure. The latter in turn forms the basis for reviewing strategic direction which starts the business cycle anew.



The governing body's primary governance role and responsibilities, as described above, are replicated and incorporated as the structural basis for the recommended practices under each of the governance areas (for example ethics, risk, compliance, remuneration and stakeholder relationships) covered by the Code. Thus, the practices are organised in accordance with the following series of responsibilities: The governing body assumes responsibility for providing the direction for how each governance area should be approached, addressed and conducted. This is followed by formulation of policy in the form of frameworks, standards and plans by management to be approved by the governing body. The governing body oversees and monitors implementation and execution by management, and finally ensures that there is accountability for the performance in respect of each of these governance areas through reporting and disclosure.

1 Adapted from Bob Tricker, *Corporate Governance Principles, Policies and Practices*, Second edition, (Oxford University Press, 2012), p 174

TC

FUNDAMENTAL CONCEPTS CONTINUED

By organising the recommended practices in accordance with the governance role and responsibilities as explained above, King IV provides governing bodies with a model for the way in which any area that is subject to their governance should be approached.

OBJECTIVES OF KING IV

King IV's objectives are to:

- Promote corporate governance as integral to running an organisation and delivering governance outcomes such as an ethical culture, good performance, effective control and legitimacy.
- Broaden the acceptance of the King IV by making it accessible and fit for implementation across a variety of sectors and organisational types.
- Reinforce corporate governance as a holistic and interrelated set of arrangements to be understood and implemented in an integrated manner.
- Encourage transparent and meaningful reporting to stakeholders.
- Present corporate governance as concerned with not only structure and process, but also with an ethical consciousness and conduct.

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THE UNDERPINNING PHILOSOPHIES OF KING IV

Although King IV does not represent a significant departure from the philosophical underpinnings of King III, concepts have developed and been refined. The concepts used in King IV are depicted below.

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Integrated thinking

King IV advocates integrated thinking which takes account of the connectivity and interdependencies between the range of factors that affect an organisation's ability to create value over time. Integrated thinking underpins all of the following:

- seeing the organisation as an integral part of society and thus as a corporate citizen;
- the stakeholder-inclusive approach;
- sustainable development; and
- integrated reporting.

The organisation as an integral part of society

Organisations operate in a societal context which they affect and by which they are affected.

An organisation has a society specific to itself, which includes its internal and external stakeholders with a material stake in its activities. But the organisation is also a juristic person in the broader society in which it operates. Organisations are dependent on this broader society to, for instance, provide a conducive operating environment, a viable customer base and the skills that the organisation requires. In turn, organisations contribute to the broader society as creators of wealth; providers of goods, services and employment; contributors to the fiscus; and developers of human capital.

This idea of interdependency between organisations and society is supported by the African concept of *Ubuntu* or *Botho*, captured by the expressions *uMuntu ngumuntu ngabantu* and *Motho ke motho ka batho* – I am because you are; you are because we are. *Ubuntu* and *Botho* imply that there should be a common purpose to all human endeavours (including corporate endeavours) which is based on service to humanity.

As a logical consequence of this interdependency, one person benefits by serving another. This is also true for a juristic person, which benefits itself by serving its own society of internal and external stakeholders, as well as the broader society.

In line with this ethos, organisations should also take responsibility for the environmental outcomes of their activities and outputs, as those affect society as a whole.

TRIPLE CONTEXT AND THE SIX CAPITALS

King IV refers to the **'triple context'** or the combined context of the economy, society and environment in which the organisation operates. The reference in King IV to 'context' is in the singular as these three dimensions are intertwined and should be viewed as an integrated whole.

The triple context is portrayed in more granular fashion by the forms of capital that the organisation uses or affects. The **'six-capitals'** model, identifies financial, manufactured, intellectual, human, social and relationship, and natural capitals. The model proposes these six forms of capital, but it is at the discretion of each organisation to identify the important physical and intangible resources that it uses or affects.

The triple context and the six capitals are concepts which are used in King IV as alternative lenses. Both are pathways to integrated thinking and sustainable development.

In King IV, the choice to use either concept is dictated by its setting but generally, triple context is used to denote the combined external environment in which the organisation operates, while six capitals is used when a more detailed or nuanced perspective is recommended.

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Corporate citizenship

As the organisation is an integral part of society, it has corporate citizenship status. This status confers rights, obligations and responsibilities on the organisation towards society and the natural environment on which society depends. The notion of corporate citizenship recognises that the organisation is licensed to operate by its internal and external stakeholders, and by society in the broad sense.

The Companies Act also reflects the company having obligations to society. For example, it states in section 7 that the purposes of the act include to "promote compliance with the Bill of Rights as provided for in the Constitution" and it "reaffirms the concept of the company as a means of achieving economic and social benefits". Further support for the idea of corporate citizenship is offered by the obligation in the Companies Act for certain companies to establish a social and ethics committee.

Stakeholder-inclusive approach

There is an interdependent relationship between the organisation and its stakeholders, and the organisation's ability to create value for itself depends on its ability to create value for others.[2] An organisation becomes attuned to the opportunities and challenges posed by the triple context in which it operates by having regard to the needs, interests and expectations of material stakeholders. When using the six capitals model as an alternative lens, it is evident that each of the forms of capital has one or more stakeholders with an interest in it.[3]

King IV (like its predecessors) advocates a stakeholder-inclusive approach, in which the governing body takes account of the legitimate and reasonable needs, interests and expectations of all material stakeholders in the execution of its duties in the best interests of the organisation over time. By following this approach, instead of prioritising the interests of the providers of financial capital, the governing body gives parity to all sources of value creation, including among others, social and relationship capital as embodied by stakeholders.

Stakeholder inclusivity involves the balancing of interests over time by way of prioritising and, in some instances, trading off interests. A decision on how to achieve this balance is made on a case-by-case basis as current circumstances and exigencies require, but should always be done in the best interests of the organisation over the longer term. Balancing the needs, interests and expectations of stakeholders is a dynamic and ongoing process. The quality of stakeholder relationships indicates how effectively an organisation is able to strike this balance in making its decisions.

Part 5.5 in the King IV Code contains the principles and practices that deal with relationships in accordance with the stakeholder-inclusive approach.

2 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013), p 10, available at http://integratedreporting.org/resource/international-ir-framework/

3 Robert G. Eccles and Tim Youmans, "Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality", *Harvard Business School Working Paper 16 – 023*, September 3, 2015

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FUNDAMENTAL CONCEPTS CONTINUED

Shareholders, members and the stakeholder-inclusive approach

Adopting the stakeholder-inclusive approach means that the best interests of the company are not necessarily always equated to the best interests of shareholders. It also means that shareholders do not necessarily have a predetermined precedence over other stakeholders. Consequently, this is an inclusive, stakeholder-centric approach that stands in contrast to a shareholder-centric approach. Stakeholder inclusivity means that the board considers other stakeholders not merely as instruments to serve the interests of shareholders, but as having intrinsic value for decision-making in the best interests of the company over time.

The position taken in King IV is that, "directors owe their duties to the company and the company alone as the company is a separate legal entity from the moment it is registered until it is deregistered… The company is represented by several interests and these include the interests of shareholders, employees, consumers, the community and the environment. Thus requiring directors to act in good faith in the interest of 'the company' cannot nowadays mean anything other than a blend of all these interests, but first and foremost they must act in the best interest of the company as separate legal entity… An interest that may be primary at one particular point in time in the company's existence may well become secondary at a later stage"[4].

The interests of shareholders and stakeholders are interdependent; thus, following a stakeholder-inclusive approach maximises this symbiosis to promote the company's long-term sustainability.

The above position is put forward in respect of companies, but also applies to other organisations, including retirement funds and non-profit organisations. Those charged with governance duties in these organisations should similarly recognise the interdependent nature of the relationship between members and other stakeholders and its consequences for decision-making in the best interests of the organisation over time.

Sustainable development

Sustainable development, understood as "development that meets the needs of the present without compromising the ability of future generations to meet their needs"[5], is a primary ethical and economic imperative. It is a fitting response to the organisation being an integral part of society, its status as a corporate citizen and its stakeholders' needs interests and expectations.

The survival and success of organisations are intertwined with, and related to, three interdependent sub-systems: the triple context of the economy, society and the natural environment. In the South African setting, addressing inequality in society through economic transformation is a good example of a challenge that affects all three these sub-systems in which organisations operate.

Organisations and their leadership need to intentionally interact with, and respond to, the challenges and opportunities presented by the dynamic system of the triple context in which it operates and the capitals that the organisation uses and affects, with the aim to achieve the creation of value over time. Such an integrated approach is a hallmark of sustainable development and it is for this reason that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainability are presented in King IV as inseparable elements of the value creation process.

4 Esser I, Du Plessis JJ, "The Stakeholder Debate and Directors' Fiduciary Duties", SA Merc LJ 346-36, p360, 2007 (19) . See also Esser I, Delport PA "Shareholder protection philosophy in terms of the Companies Act 71 of 2008 THRHR 2016 (79), p 1–29 where the authors state: *"It is our view that the inclusive approach should be followed in interpreting section 76(3)(b). As mentioned above, in terms of the inclusive approach, directors must consider the interests of various stakeholders on a case-by-case basis. In the end the decision must be in the best interests of the company, even if it is to the detriment of the shareholders."*

5 United Nations, *"Report of the World Commission on Environment and Development: Our Common Future"*, (Oxford, Great Britain: Oxford University Press, 1987), p 8. Also known as the Brundtland Report after Gro Harlem Brundtland, Chairman of the Commission and available at http://www.un-documents.net/our-common-future.pdf

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DISTINGUISHING FEATURES OF KING IV

The following are the features of King IV that distinguish it from its predecessors:

- King IV advocates an outcomes-based approach. Achieving the principles, and therefore ultimately good governance, optimises the organisation to realise the intended governance outcomes: ethical culture, good performance, effective control and legitimacy. (Refer to Part 3: *King IV Application and Disclosure* for further explanation and to Part 4: *King IV on a Page*.)
- Clear differentiation is made between principles and practices. Principles are achieved by mindful consideration and application of the recommended practices. (Refer to Part 3: *King IV Application and Disclosure* for further explanation.)
- King IV has been designed and drafted to make it more accessible to users, and also to reinforce governance as a holistic and integrated set of arrangements. (Refer to Part 4: *King IV on a Page* as a demonstration of this point.)
- Broader forms of address are used in King IV, namely "organisations", "governing body" and "those charged with governance duties".
- Supplements are provided to help organisations across a variety sectors and organisational types to interpret and implement King IV as is suited to their particular circumstances. (Refer to Part 6: *Sector Supplements*.)
- King IV provides guidance on how to apply the recommended practices proportionally in line with the organisation's size and resources, and extent and complexity of the organisation's activities. (Refer to Part 3: *King IV Application and Disclosure* for more guidance on proportionality.)
- To balance the less prescriptive approach adopted in King IV, there is greater emphasis on transparency with regards to how judgement was exercised when considering the practice recommendations contained in King IV. To reinforce this qualitative application of its principles and practices, King IV proposes an "apply and explain" regime, in contrast to "apply or explain" in King III. (Refer to Part 3: *King IV Application and Disclosure* for more detail and guidance on the application regime of King IV.)

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HIGHLIGHTS OF THE KING IV CODE

The following is a summary of how emerging issues and corporate governance developments since the issue of King III in 2009 are addressed in the principles and practices contained in the Code. It also highlights specific areas of focus and some of the differences between King III and King IV.

Integrated reporting

The notion of integrated reporting was introduced in King III, but the understanding of it has significantly evolved since then. Integrated reporting is an outcome of integrated thinking and is presented as such in King IV. Reporting, including integrated reporting, is dealt with in Part 5.2 of the Code, where it is positioned as the culmination of a series of leadership responsibilities executed by the governing body. The governing body steers and sets the direction of the organisation, approves policy and planning, oversees and monitors management and then, finally, provides for accountability on organisational performance through, among others, reporting and disclosure.

In order to clarify the standing of the integrated report in relation to other reports, King IV deals with it as one of the many reports that may be issued by the organisation, as is necessary, to comply with legal requirements, and/or to meet the particular information needs of material stakeholders. These other reports include the financial statements, the sustainability report, the social and ethics committee report, or other online or printed information or reports.

An integrated report could be a standalone report which connects the more detailed information in other reports and which addresses, at a high level and in a complete, concise way, the matters that could significantly affect the organisation's ability to create value. It could also be a distinguishable, prominent and accessible part of another report which also includes the financial statements and other reports issued in compliance with legal requirements.[6]

When drafting King IV, reliance was placed on the International <IR> Framework as issued by the International Integrated Reporting Council[7]. The Integrated Reporting Committee of South Africa[8] has endorsed the International <IR> Framework as good practice on how to prepare an integrated report and the committee's further guidance on integrated reporting should be followed.

Balanced composition of governing bodies and independence

Having members of the governing body who are independent in appearance is an essential element in most governance codes. King IV seeks to contextualise the relevance of independence correctly, namely that:

- All members of the governing body, whether they are categorised as executive, non-executive or independent non-executive have, as a matter of law, a duty to act with independence of mind in the best interests of the organisation.
- Although important, independence in appearance is but one consideration in achieving balance in the composition of the governing body.

The overriding concern (as reflected by Principle 7 which deals with the composition of the governing body) is whether the governing body is knowledgeable, skilled, experienced, diverse and independent enough to discharge fully its governance role and responsibilities.

The need for the governing body to set and disclose progress towards targets for race and gender diversity has specifically been included in the Code.

6 Integrated Reporting SA available at http://www.integratedreportingsa.org/Home/Theoctopusmodel.aspx

7 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), available at http://integratedreporting.org/resource/international-ir-framework/

8 Integrated Reporting SA available at www.integratedreportingsa.org

Delegation to management

The King IV Code provides for the governing body to delegate the implementation and execution of approved strategy, through policy and operational plans, to management via the chief executive officer (CEO). Rather than dealing with the establishment of specific management positions for functional areas as was done in King III, the practices in the King IV Code contain recommendations for the governing body to oversee that key functional areas are headed by competent individuals and are adequately resourced.

Delegation to committees

King IV, like King III, deals with delegation by the governing body within its own structures. Principle 8 of King IV now clarifies the objectives for these delegation arrangements, which are to promote independent judgement; to assist with balance of power; and to assist with the effective discharge of its duties by the governing body.

In accordance with the drafting convention adopted for King IV, the recommended practices do not prescribe which committees should be established by the governing body – the governing body should judge what is appropriate for the organisation. The practices furthermore recommend that the allocation of roles and responsibilities, and the composition of committees, should be considered holistically. The aim here is to promote effective collaboration among committees with minimal overlap and fragmentation of duties, as well as a balanced distribution of power.

Corporate governance services to the governing body

Rather than dealing with the office of the company secretary in isolation, the premise of the King IV Code is that the governing body should ensure that it has access to professional and independent guidance on corporate governance. For most companies, this will be provided by the company secretary. The Code recommends that even those companies and other organisations not obliged to appoint a company secretary should, as a matter of leading practice, consider appointing a company secretary or other professional to provide such services to the governing body.

Performance evaluations of the governing body

King III recommended that an evaluation of the governing body, its committees and its individual members be conducted every year. To provide for sufficient time to appropriately respond to the results of such performance evaluations, the King IV Code recommends for a formal evaluation process to be conducted at least every two years. Every alternate year, the governing body should schedule an opportunity for consideration, reflection and discussion of its performance.

Social and ethics committees

Regulation 43 of the Companies Act was issued after King III and does not address the ethics role of the social and ethics committee beyond mentioning ethics in the name of the committee. King IV seeks to expand on this, and the role ascribed to the social and ethics committee is that of oversight and reporting on organisational ethics, responsible corporate citizenship, sustainable development and stakeholder relationships.

This role includes organisational ethics and cover the statutory duties, but the intent is to encourage leading practice by having the social and ethics committee progress beyond mere compliance to contribute to the creation of value. Accordingly, King IV urges organisations that are not legally required to establish a social and ethics committee, nevertheless to consider creating a structure that would achieve the aims of such a committee.

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FUNDAMENTAL CONCEPTS CONTINUED

Social and ethics committees (continued)

King IV also recommends a higher standard for the composition of this committee than what is provided for in the Companies Act. The recommended practices thus include that a majority of the members should be non-executive members of the governing body so as to ensure that independent judgement is brought to bear.

Risk and opportunity

The definition for risk used in King IV consists of three parts, namely *uncertainty* of events, the *likelihood* of such events occurring and their *effect*, both positive and negative.

King IV's understanding of risk thus balances the traditional, negative view of risk with one that recognises the potential opportunities inherent in some risks. Thus, an opportunity may present itself as the potential upside of a risk that could adversely affect the achievement of organisational objectives.

However, it is also recognised in King IV that opportunities do not always originate from the current risks of the organisation. This is particularly true of the strategic opportunities that should be considered when setting the organisation's strategic direction. Consideration of the risks associated with such strategic opportunities affect whether the opportunity will be captured by the organisation or not.

Due to the rising complexity of risk and hence the need to strengthen oversight, the King IV Code recommends that the risk committee comprises a majority of non-executive members of the governing body. This recommendation goes beyond what was required in King III.

Technology and information

In King IV, cognisance had to be taken of the advances in technology that are revolutionising businesses and societies, and transforming products, services and business models. So profound are these effects that many believe they herald the dawn of a Fourth Industrial Revolution.

These advances happen quickly and can cause significant disruption, opportunities and risks. Organisations should strengthen the processes that help them to anticipate change and to respond by capturing new opportunities and managing emerging risks. The practices under Principle 12 are designed to assist the governing body to do so.

Information, like technology, is a growing source of competitive advantage for the enhancement of the intellectual capital of an organisation.

In King IV, it is recognised that information and technology overlap but are also distinct sources of value creation which pose individual risks and opportunities. It is to reinforce this distinction that this section in the King IV Code now refers to technology and information instead of information technology.

Compliance

As in King III, the King IV Code recommends that those charged with governance should ensure that compliance is understood, not only as an obligation, but also as a source of rights and protection. A holistic view is needed on how applicable laws and non-binding rules, codes and standards relate to one another. This includes how corporate governance codes relate to applicable legislation.

The Code further recommends that governing bodies should ensure continual monitoring of the regulatory environment, and that developments are responded to as necessary.

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Remuneration

Many international regulators and institutional investors are paying additional attention to disclosure and voting on remuneration. King IV had to consider the appropriate means of dealing with these developments, taking into account that South Africa is a participant in the global investment market but with its own unique set of circumstances.

King IV aims to foster enhanced accountability on remuneration. One of the ways that it addresses this is by including more definitive disclosure requirements, among which, that remuneration should be disclosed in three parts, namely: a background statement; an overview of the remuneration policy; and an implementation report.

It also recommends that shareholders of companies be provided the opportunity to pass separate non-binding advisory votes on the policy and the implementation report. The remuneration policy should record the measures that the board commits to in the event that either the remuneration policy or the implementation report, or both have been voted against by 25% or more of the voting rights exercised by shareholders. The Code recommends that such measures should include engagement and addressing objections and concerns.

King IV furthermore recommends the use of performance measures that support positive outcomes across the triple context in which the organisation operates, and/or all the capitals that the organisation uses or affects. This is a departure from linking remuneration to financial performance only. In respect of executive remuneration, it is also recommended that an account be provided of the performance measures and targets used as a basis for awarding of variable remuneration.

An important introduction in King IV is that the remuneration of executive management should be fair and responsible in the context of overall employee remuneration. It should be disclosed how this has been addressed. This acknowledges the need to address the gap between the remuneration of executives and those at the lower end of the pay scale.

Assurance and internal audit

King III introduced the combined assurance model, but this concept needed to evolve to become more useful and effective.

In King IV, the model assumes an understanding of assurance that goes beyond the technical definitions of assurance. A combined assurance model incorporates and optimises all assurance services and functions so that, taken as a whole, these enable an effective control environment; support the integrity of information used for internal decision-making by management, the governing body and its committees; and support the integrity of the organisation's external reports.

The King IV Code's recommendations do not prescribe the design of the model, but allow for the governing body to exercise its judgement in this regard.

Internal audit, as one of the assurance service providers to the organisation, remains pivotal to corporate governance. Its role has further evolved in recent years. It has become a trusted advisor that adds value by contributing insight into the activities of the organisation and, as a further enhancement, foresight. This is the ideal positioning that is envisaged for internal audit in King IV.

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FUNDAMENTAL CONCEPTS CONTINUED

Auditor and audit requirements

Mandatory rotation of audit firms and mandatory tendering have been introduced in some jurisdictions in an attempt to reinforce auditor independence and audit quality. King IV leaves the consideration and decision on whether to implement either to the audit committee and governing body, subject to legal requirements. The Code, however, makes certain practice recommendations with regard to auditor independence, amongst them that the tenure of an audit firm needs to be disclosed.

Following the UK Corporate Governance Code[9] and in the interest of more informative reporting on the auditing process, King IV recommends that the audit committee discloses significant matters considered by it in relation to the annual financial statements and how these were addressed by the committee. This provides users of the financial statements with three different perspectives on the annual financial statements:

- The governing body's perspective in preparing the annual financial statements – particularly significant assumptions that the governing body had made.
- The perspective of the auditor on why certain areas were considered to be of most significance in the audit and how they were addressed in the audit.
- The audit committee's perspective on the matters it regarded as significant and how it discharged its responsibilities in relation to those.

In King IV it is also recommended that the audit committee discloses its views on audit quality with reference to audit quality indicators.

Tax

Tax has become a complex matter with various dimensions. The governing body should be responsible for a tax policy that is compliant with the applicable laws, but that is also congruent with responsible corporate citizenship, and that takes account of reputational repercussions. Hence, responsible and transparent tax policy is put forward as a corporate citizenship considerations in King IV.

Shareholder activism

When it comes to the quality of an organisation's application of voluntary codes of governance principles and practices, it is said that its stakeholders are the ultimate compliance officers. Shareholders, as a particular sub-set of stakeholders, have certain rights that are enshrined in company legislation and that strengthen their ability to hold boards of companies to account. By virtue of this ability, shareholders also have the power to serve as proxies for wider stakeholder interests.

Institutional investors (in turn a sub-set of shareholders), particularly, are extremely influential. The types of investment decisions they make and how they exercise their rights as shareholders, either reinforce or weaken good governance in the companies in which they invest.

Commensurate with the rights and influence that shareholders have, it should be considered that shareholders have no legal or fiduciary responsibilities to the companies in which they invest. Furthermore, shareholders are in many instances transient and have the right to vote on matters that may have a longer-term impact than what the period of their shareholding may be.

9 The Financial Reporting Council Limited, UK Code on Corporate Governance, (April 2016), p 19, available at www.frc.org.uk

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Institutional investors owe their fiduciary duty to members of retirement funds, their dependants and beneficiaries and this has certain consequences for how institutional investors should exercise their rights. The Freshfields Report[10] published in 2005 stated that "integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions". This is supported by regulation 28(2)(c)(ix) of the Pension Funds Act: "before making an investment in and while invested in an asset [the fund and its board must] consider any factor which may materially affect the sustainable long-term performance of the asset including, but not limited to, those of an environmental, social and governance character". This is also the position put forward by the Code for Responsible Investing in South Africa (CRISA)[11] which states in its first principle that institutional investors "should incorporate sustainability considerations, including ESG issues, into their investment process as part of the delivery of superior risk-adjusted returns to the ultimate beneficiaries".

In consideration of the rights, influence and legal duties that institutional investors have, as described above, King IV sets out in Principle 17 that the governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests. Responsible investing principles and practices are set out in the CRISA[12], which accord with the Principles on Responsible Investing[13] and the International Corporate Governance Network Global Stewardship Code[14].

Dispute resolution

Since alternative dispute resolution mechanisms were introduced formally in King III, resolving disputes effectively has gained increased importance in light of labour strike action becoming protracted and, in some cases, hostile. Relationships are a form of capital on which all organisations rely. A dispute resolution process should be regarded as an opportunity not only to resolve the dispute at hand, but also to maintain and enhance the social and relationship capital of an organisation.

As a result, King IV in Part 5.5 recommends that dispute-resolution mechanisms and associated processes be adopted and implemented as part of the overall management of stakeholder relationships.

10 Freshfields Bruckhaus Deringer, "A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment", *UNEP Finance Initiative*, 2005, p 13 available at www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf

11 Committee for Responsible Investment in South Africa, *Code for Responsible Investment in South Africa* (Institute of Directors in Southern Africa, 2011), available at: www.iodsa.co.za

12 Committee for Responsible Investment in South Africa, *Code for Responsible Investment in South Africa* (Institute of Directors in Southern Africa, 2011), available at: www.iodsa.co.za

13 Principles for Responsible Investing available at: https://www.unpri.org/about/the-six-principles

14 International Corporate Governance Network, *International Corporate Governance Network Global Stewardship Code*, (2016), available at: https://www.icgn.org/policy/stewardship-codes

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PART 3

KING IV APPLICATION AND DISCLOSURE

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» KING IV APPLICATION AND DISCLOSURE

LEGAL STATUS OF KING IV

The legal status of King IV, as with its predecessors, is that of a set of voluntary principles and leading practices. Corporate governance could apply on a statutory basis as rules, as a voluntary code of principles and practices, or as a combination of the two. In South Africa, as in many jurisdictions around the world, a hybrid system of corporate governance has developed as, over time, some practices of good governance have been legislated in parallel with the voluntary King codes of governance. If there is a conflict between legislation and King IV, now or in the future, the law prevails.

There is an important argument against the mandatory "comply or else" framework: A one-size-fits-all approach cannot logically be suitable, because the types of businesses and activities carried out by organisations are so varied. There is also a danger that the governing body may become focused on mindless compliance instead of applying its mind to the best governance practice for the particular issue before it.

Good governance does not exist separately from the law, and a corporate governance code that applies on a voluntary basis may also trigger legal consequences. A court considers all relevant circumstances in determining the appropriate standard of conduct for those charged with governance duties, including what the generally accepted practices for a particular setting and situation are. Voluntary governance codes such as King IV recommend leading practices for how governance duties should be discharged, and therefore influence and affect what practices are considered and eventually adopted and implemented by governing bodies. The more widely certain recommended practices in codes of governance are adopted, the more likely it is that a court would regard conduct that conforms to these practices as meeting the required standard of care. In this way the provisions of voluntary codes of governance find their way into jurisprudence to become part of the common law. Consequently, failure to meet an established corporate governance practice, albeit not legislated, may invoke liability.

For directors of companies, adopting good corporate governance practice will be especially important if they were to rely on the protection afforded by the business judgement rule as provided for in the Companies Act in the course of litigation. In the absence of robust and sound governance structures and processes, it will be difficult, if not impossible, for a director to show that reasonably diligent steps have been taken to become informed; that material financial interests were absent or dealt with appropriately; and that there was a rational basis for believing – and that the director did believe – that a decision was in the best interests of the company.

SCOPE OF APPLICATION OF KING IV

Codes of corporate governance are concerned with the role and responsibilities of the governing body and its interaction with management and other material stakeholders. The governing body is the focal point of corporate governance in an organisation, and hence the primary audience of King IV.

Furthermore, the King IV Report aspires to apply to all organisations, regardless of their form of incorporation. A main objective of the King IV Report is to broaden acceptance of corporate governance by making it accessible and fit for application across a variety of sectors and organisational types.

In pursuit of this goal, the King IV Report includes supplements for specific sectors. In addition, the Code itself has been drafted to be suitable for application by all organisations. This was done by phrasing principles and intended governance outcomes so that they embody the essence of the Code and can be applied with the necessary changes in terminology. The principles and intended outcomes being the essence, the practices can be then adapted and modified as suitable for the sector and in accordance with proportionality considerations as outlined below.

TC

PRACTICES, PRINCIPLES AND GOVERNANCE OUTCOMES

A major challenge in the implementation of codes of corporate governance is that recommended practices could be mindlessly implemented as if they were rules, resulting in corporate governance becoming a mere compliance burden. This inflexibility also leads to an inability to interpret and apply codes of corporate governance in a way that is appropriate for the organisation and the sector in which it operates. Mindful application, on the other hand, harnesses the benefits of corporate governance in the interests of the organisation and applying the governance code comes to be seen as a process of adding rather than subtracting value.

Understanding the relationship between governance outcomes, principles and practices as depicted below is key to mindful application of the King IV Code. It also supports one of the objectives of King IV, namely to reinforce corporate governance as a holistic and integrated set of arrangements.

Governance outcomes

Governance outcomes are the benefits that organisations could realise if the underlying principles - and therefore, ultimately, good governance - are achieved.
These governance outcomes are:

- Ethical culture
- Effective control
- Good performance
- Legitimacy

Principles

Principles embody the aspirations of the journey towards good corporate governance. They guide on what organisations should strive to achieve by the application of governance practices. Principles build on and reinforce one another; they are phrased so that they are fundamental to good corporate governance and hold true across all organisations.

Practices

Practices are recommended at the level of leading practice. The practices associated with a particular principle should be applied so that they support and give effect to the aspiration as expressed in that principle. Practices may be scaled in accordance with proportionality considerations.

TC

PROPORTIONALITY

Implementing King IV on a proportional basis means that the principles find application as they stand; they embody the aspirations of, and are fundamental to the journey towards good governance. The practices as recommended in the Code, however, are positioned at the level of leading practices, and may therefore not be suitable and appropriate for all organisations. Mindless compliance and a quantitative approach is not the aim. Instead, King IV strives to instil a qualitative approach in which recommended practices are implemented to achieve the principles and realise the intended governance outcomes.

Even where not expressly stated in the Code, practices are meant to be scaled in accordance with the following proportionality considerations particular to the organisation:

- Size of turnover and workforce.
- Resources.
- Extent and complexity of activities, including impact on the triple context in which it operates.

Application of practices on a proportional basis is subject to legal provisions and giving effect to the principle that the practices are associated with.

DISCLOSURE ON APPLICATION OF KING IV

King IV application regime

The application regime for King IV is "apply and explain":

Apply principles	**Explain** practices
All principles are phrased as aspirations and ideals that organisations should strive for in their journey towards good governance and realising the governance outcomes. The principles are basic and fundamental to good governance, and application thereof is therefore assumed.	Explanation should be provided in the form of a narrative account, with reference to practices that demonstrate application of the principle. The explanation should address which recommended or other practices have been implemented, and how these achieve or give effect to the principle.

What should be disclosed on the application of King IV?

Specific disclosure recommendations are included under each principle of the King IV Code. These recommendations are intended as guidance and a starting point for disclosure on the particular principle.

The detail of information to be provided in the narrative should be guided by materiality, and should enable stakeholders to make an informed assessment of the quality of the organisation's governance.

There is no need to disclose whether each practice has been implemented or not, as this is quantitative and does not necessarily add to the quality of disclosure. There is also no need to disclose against the outcomes, as it can be left to the user to draw inferences from the narrative provided.

TL

KING IV APPLICATION AND DISCLOSURE CONTINUED

Where should King IV disclosure be made?

The governing body has the discretion to determine where the King IV disclosures will be made; for example, in the integrated report, sustainability report, social and ethics committee report, or other online or printed information or reports.

The governing body may also choose to disclose its application of King IV in more than one of these reports. Duplication of King IV disclosures should be avoided by making use of cross-referencing. Group companies should also make use of cross-referencing to avoid duplicate disclosures.

King IV disclosure should be updated at least annually, formally approved by the governing body and be publicly accessible.

Roadmap to disclosure on the application of King IV

1. Start disclosure on King IV by referencing all of the principles in the Code.
2. In respect of each principle, as the point of departure, explain in narrative form the matters that the King IV Code recommends for specific disclosure under each principle.
3. Consider the recommended practices associated with the principle that are not already included in the narrative. Expand the explanation to these other practices only if necessary to further demonstrate how their implementation supports the achievement of the principle.
4. If applicable and necessary, explain what alternative practices (practices other that those the King IV Code recommends in respect of this principle) have been implemented, and how the implementation of these practices supports the achievement of the principle.
5. Assess the completed disclosure and make the necessary enhancements to ensure that it will enable the users of the report to make an informed assessment of the quality of governance in so far as the application of the particular principle (and ultimately all of the principles in King IV) is concerned.

EFFECTIVE DATE

Disclosure on the application of King IV is effective in respect of financial years starting on or after 1 April 2017, but immediate transition is encouraged. King IV replaces King III in its entirety.

PART 4

KING IV ON A PAGE

TL

» KING IV ON A PAGE

LEADERSHIP BY THE GOVERNING BODY

These are the governing body's primary governance role and responsibilities.

- Steers and sets strategic direction
- Approves policy and planning
- Oversees and monitors
- Ensures accountability

PRINCIPLES

Principles embody the aspirations of the journey towards good corporate governance.

Principle 1: The governing body should lead ethically and effectively.

Principle 2: The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

Principle 3: The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.

Principle 4: The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

Principle 5: The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance and its short, medium and long-term prospects.

Principle 6: The governing body should serve as the focal point and custodian of corporate governance in the organisation.

Principle 7: The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

Principle 8: The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

Principle 9: The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.

TC

PRINCIPLES

They guide on what organisations should strive to achieve by the application of governance practices.

Principle 10: The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

Principle 11: The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.

Principle 12: The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.

Principle 13: The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.

Principle 14: The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

Principle 15: The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation's external reports.

Principle 16: In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.

Principle 17: The governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests.

PRACTICES

Practices support and give effect to the principles.

GOVERNANCE OUTCOMES

These are the benefits that organisations could realise through good governance.

- Ethical culture
- Good performance
- Effective control
- Legitimacy

TC

PART 5

KING IV CODE ON CORPORATE GOVERNANCE

TC

» KING IV CODE ON CORPORATE GOVERNANCE

PART 5.1: LEADERSHIP, ETHICS AND CORPORATE CITIZENSHIP

Leadership

Principle 1: The governing body should lead ethically and effectively.

RECOMMENDED PRACTICES

1. Members of the governing body should individually and collectively cultivate the following characteristics and exhibit them in their conduct:

   a. Integrity:

   i. Members of the governing body must act in good faith and in the best interests of the organisation.

   ii. Members of the governing body should avoid conflicts of interest. In cases where a conflict cannot be avoided, it should be disclosed to the governing body in full at the earliest opportunity, and then proactively managed as determined by the governing body and subject to legal provisions.

   iii. Members of the governing body should act ethically beyond mere legal compliance.

   iv. Members of the governing body should set the tone for an ethical organisational culture.

   b. Competence:

   i. Members of the governing body should take steps to ensure that they have sufficient working knowledge of the organisation, its industry, the triple context in which it operates, the capitals it uses and affects as well as of the key laws, rules, codes and standards applicable to the organisation.

   ii. Members of the governing body must act with due care, skill and diligence, and take reasonably diligent steps to become informed about matters for decision.

   iii. Members of the governing body should continuously develop their competence to lead effectively.

   c. Responsibility:

   i. Members of the governing body should assume collective responsibility for steering and setting the direction of the organisation; approving policy and planning; overseeing and monitoring of implementation and execution by management; and ensuring accountability for organisational performance.

   ii. Members of the governing body should exercise courage in taking risks and capturing opportunities, but do so in a responsible manner and in the best interests of the organisation.

   iii. Members of the governing body should take responsibility for anticipating, preventing or otherwise ameliorating the negative outcomes of the organisation's activities and outputs on the triple context in which it operates, and the capitals that it uses and affects.

   iv. Members of the governing body should attend meetings of the governing body and its committees, and devote sufficient time and effort to prepare for those meetings.

   d. Accountability:

   Members of the governing body should be willing to answer for the execution of their responsibilities, even when these were delegated.

TC

e. ***Fairness:***
   i. Members of the governing body should adopt a stakeholder-inclusive approach in the execution of their governance role and responsibilities.
   ii. Members of the governing body should direct the organisation in such a way that it does not adversely affect the natural environment, society or future generations.

f. ***Transparency:***
   Members of the governing body should be transparent in the manner in which they exercise their governance role and responsibilities.

2. The governing body should embody the above ethical characteristics in order to offer effective leadership that results in achieving strategic objectives and positive outcomes over time.
3. The arrangements by which the members of the governing body are being held to account for ethical and effective leadership should be disclosed. These arrangements would include, but are not limited to, codes of conduct and performance evaluations of the governing body and its members.

Organisational ethics

Principle 2: The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

RECOMMENDED PRACTICES

4. The governing body should assume responsibility for the governance of ethics by setting the direction for how ethics should be approached and addressed by the organisation.
5. The governing body should approve codes of conduct and ethics policies that articulate and give effect to its direction on organisational ethics.
6. The governing body should ensure that codes of conduct and ethics policies:
   a. encompass the organisation's interaction with both internal and external stakeholders and the broader society; and
   b. address the key ethical risks of the organisation.
7. The governing body should ensure that the codes of conduct and ethics policies provide for arrangements that familiarise employees and other stakeholders with the organisation's ethical standards. These arrangements should include:
   a. publishing the organisation's codes of conduct and policies on the organisation's website, or on other platforms or through other media as is appropriate;
   b. the incorporation by reference, or otherwise, of the relevant codes of conduct and policies in supplier and employee contracts; and
   c. including the codes of conduct and ethics policies in employee induction and training programmes.
8. The governing body should delegate to management the responsibility for implementation and execution of the codes of conduct and ethics policies.

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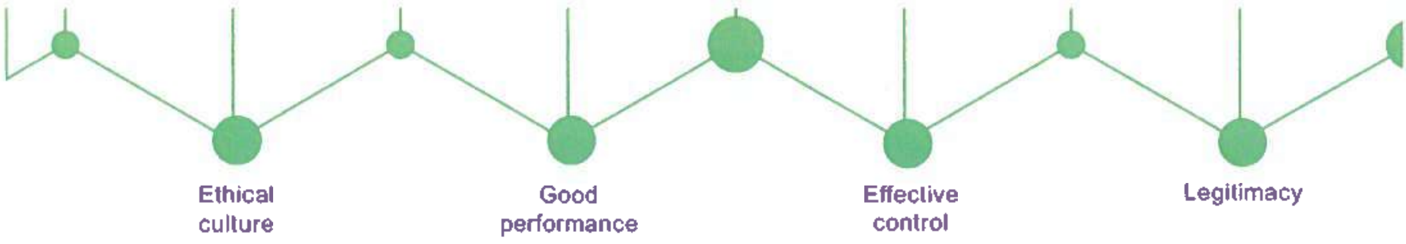

9. The governing body should exercise ongoing oversight of the management of ethics and, in particular, oversee that it results in the following:
    a. Application of the organisation's ethical standards to the processes for the recruitment, evaluation of performance and reward of employees, as well as the sourcing of suppliers.
    b. Having sanctions and remedies in place for when the organisation's ethical standards are breached.
    c. The use of protected disclosure or whistle-blowing mechanisms to detect breaches of ethical standards and dealing with such disclosures appropriately.
    d. The monitoring of adherence to the organisation's ethical standards by employees and other stakeholders through, among others, periodic independent assessments.
10. The following should be disclosed in relation to organisational ethics:
    a. An overview of the arrangements for governing and managing ethics.
    b. Key areas of focus during the reporting period.
    c. Measures taken to monitor organisational ethics and how the outcomes were addressed.
    d. Planned areas of future focus.

Responsible corporate citizenship

> Principle 3: The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.

RECOMMENDED PRACTICES

11. The governing body should assume responsibility for corporate citizenship by setting the direction for how it should be approached and addressed by the organisation.
12. The governing body should ensure that the organisation's responsible corporate citizenship efforts include compliance with the Constitution of South Africa (including the Bill of Rights), the law, leading standards, and adherence to its own codes of conduct and policies.
13. The governing body should oversee that the organisation's core purpose and values, strategy and conduct are congruent with it being a responsible corporate citizen.
14. The governing body should oversee and monitor, on an ongoing basis, how the consequences of the organisation's activities and outputs affect its status as a responsible corporate citizen. This oversight and monitoring should be performed against measures and targets agreed with management in all of the following areas:
    a. Workplace (including employment equity; fair remuneration; and the safety, health, dignity and development of employees).
    b. Economy (including economic transformation; prevention, detection and response to fraud and corruption; and responsible and transparent tax policy).
    c. Society (including public health and safety; consumer protection; community development; and protection of human rights).
    d. Environment (including responsibilities in respect of pollution and waste disposal; and protection of biodiversity).

TC

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

15. The following should be disclosed in relation to corporate citizenship:
    a. An overview of the arrangements for governing and managing responsible corporate citizenship.
    b. Key areas of focus during the reporting period.
    c. Measures taken to monitor corporate citizenship and how the outcomes were addressed.
    d. Planned areas of future focus.

TC

PART 5.2: STRATEGY, PERFORMANCE AND REPORTING

Strategy and performance

> Principle 4: The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

RECOMMENDED PRACTICES

1. The governing body should assume responsibility for organisational performance by steering and setting the direction for the realisation of the organisation's core purpose and values through its strategy.
2. The governing body should delegate to management the formulation and development of the organisation's short, medium and long-term strategy.
3. The organisation's short, medium and long-term strategy as formulated and developed by management should be approved by the governing body. When considering the proposed strategy for approval, the governing body should challenge it constructively with reference to, among others, the following:
   a. The timelines and parameters which determine the meaning of short, medium and long term respectively.
   b. The risks, opportunities and other significant matters connected to the triple context in which the organisation operates.
   c. The extent to which the proposed strategy depends on the resources and relationships connected to the various forms of capital.
   d. The legitimate and reasonable needs, interests and expectations of material stakeholders.
   e. The increase, decrease or transformation of the various forms of capitals that may result from the execution of the proposed strategy.
   f. The interconnectivity and inter-dependence of all of the above.
4. The governing body should ensure that it approves the policies and operational plans developed by management to give effect to the approved strategy. These should include the key performance measures and targets for assessing the achievement of strategic objectives and positive outcomes over the short, medium and long term.
5. The governing body should delegate to management the responsibility to implement and execute the approved policies and operational plans.
6. The governing body should exercise ongoing oversight of the implementation of strategy and operational plans by management against agreed performance measures and targets.
7. The governing body should oversee that the organisation continually assesses, and responsibly responds to, the negative consequences of its activities and outputs on the triple context in which it operates, and the capitals which it uses and affects.
8. As part of its oversight of performance, the governing body should be alert to the general viability of the organisation with regard to its reliance and effects on the capitals, its solvency and liquidity, and its status as a going concern.

TC

In respect of disclosure on strategy and performance, refer to Reporting below.

Reporting

Principle 5: The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance, and its short, medium and long-term prospects.

RECOMMENDED PRACTICES

9. The governing body should assume responsibility for the organisation's reporting by setting the direction for how it should be approached and conducted.
10. The governing body should approve management's determination of the reporting frameworks (including reporting standards) to be used, taking into account legal requirements and the intended audience and purpose of each report.
11. The governing body should oversee that reports such as the annual financial statements, sustainability reports, social and ethics committee reports, or other online or printed information or reports are issued, as is necessary, to comply with legal requirements, and/or to meet the legitimate and reasonable information needs of material stakeholders.
12. The governing body should oversee that the organisation issues an integrated report at least annually, which is either:
    a. a standalone report which connects the more detailed information in other reports and addresses, at a high level and in a complete, concise way, the matters that could significantly affect the organisation's ability to create value; or
    b. a distinguishable, prominent and accessible part of another report which also includes the annual financial statements and other reports that must be issued in compliance with legal provisions.
13. The governing body should approve management's bases for determining materiality for the purpose of deciding which information should be included in external reports.
14. The governing body should ensure the integrity of external reports as provided for in Part 5.4, Assurance of External Reports.
15. The governing body should oversee that the following information is published on the organisation's website, or on other platforms or through other media as is appropriate for access by stakeholders:
    a. Corporate governance disclosures required in terms of this Code (refer to Part 3: *King IV Application and Disclosure* for more detail).
    b. Integrated reports.
    c. Annual financial statements and other external reports.

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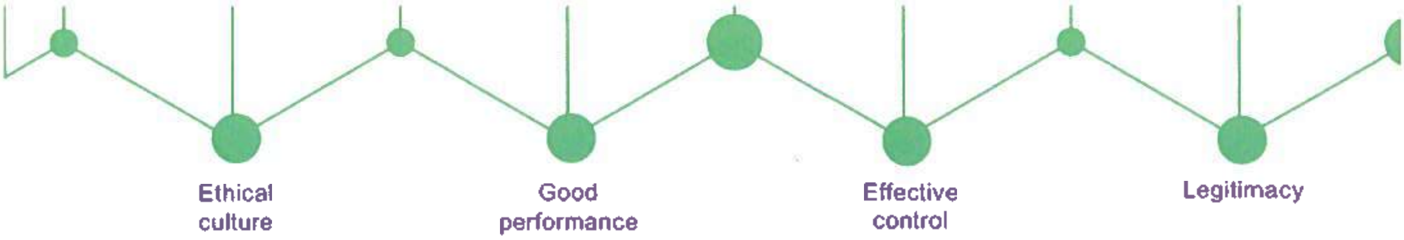

PART 5.3: GOVERNING STRUCTURES AND DELEGATION

Primary role and responsibilities of the governing body

Principle 6: The governing body should serve as the focal point and custodian of corporate governance in the organisation.

RECOMMENDED PRACTICES

1. The governing body should exercise its leadership role by:
   a. steering the organisation and setting its strategic direction;
   b. approving policy and planning that give effect to the direction provided;
   c. overseeing and monitoring of implementation and execution by management; and
   d. ensuring accountability for organisational performance by means of, among others, reporting and disclosure.
2. The governing body should ensure that its role, responsibilities, membership requirements and procedural conduct are documented in a charter which it regularly reviews to guide its effective functioning.
3. The governing body should approve the protocol to be followed in the event that it or any of its members or committees need to obtain independent, external professional advice at the cost of the organisation on matters within the scope of their duties.
4. The governing body should approve the protocol to be followed by its non-executive members for requisitioning documentation from, and setting up meetings with, management.
5. The following should be disclosed in relation to the primary role and responsibilities of the governing body:
   a. The number of meetings held during the reporting period, and attendance at those meetings.
   b. Whether the governing body is satisfied that it has fulfilled its responsibilities in accordance with its charter for the reporting period.

TC

Composition of the governing body

> Principle 7: The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

RECOMMENDED PRACTICES

Composition

6. The governing body should assume responsibility for its composition by setting the direction and approving the processes for it to attain the appropriate balance of knowledge, skills, experience, diversity and independence to objectively and effectively discharge its governance role and responsibilities.
7. When determining the requisite number of members of the governing body, the following factors should be considered:
   a. The appropriate mix of knowledge, skills and experience, including the business, commercial and industry experience, needed to govern the organisation.
   b. The appropriate mix of executive, non-executive and independent non-executive members.
   c. The need for a sufficient number of members that qualify to serve on the committees of the governing body.
   d. The need to secure a quorum at meetings.
   e. Regulatory requirements.
   f. Diversity targets relating to the composition of the governing body.
8. The governing body should comprise a majority of non-executive members, most of whom should be independent.
9. As a minimum, the chief executive officer (CEO) and at least one other executive should be appointed to the governing body to ensure that it has more than one point of direct interaction with management. The executive other than the CEO appointed to the governing body may be the chief finance officer (CFO) or another designated executive as is appropriate for the organisation.
10. The governing body should promote diversity in its membership across a variety of attributes relevant for promoting better decision-making and effective governance, including field of knowledge, skills and experience as well as age, culture, race and gender.
11. The governing body should set targets for race and gender representation in its membership.
12. The governing body should establish arrangements for periodic, staggered rotation of its members so as to invigorate its capabilities by introducing members with new expertise and perspectives while retaining valuable knowledge, skills and experience and maintaining continuity.
13. The governing body should establish a succession plan for its membership which should include the identification, mentorship and development of future candidates.

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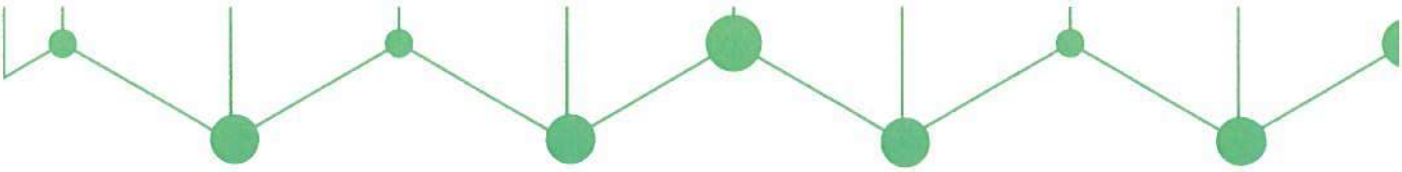

Nomination, election and appointment of members to the governing body

14. The nomination of candidates for election as members of the governing body should be approved by the governing body as a whole.

15. The processes for nomination, election and ultimately, the appointment of members to the governing body should be formal and transparent.

16. Before nominating a candidate for election, the governing body should consider the following:

    a. The collective knowledge, skills and experience required by the governing body.

    b. The diversity of the governing body.

    c. Whether the candidate meets the appropriate fit and proper criteria.

17. Nomination for re-election of an incumbent of the governing body should be considered by the governing body on the basis of that member's performance, including attendance at meetings of the governing body and its committees.

18. A candidate for election as a non-executive member of the governing body should be requested to provide the governing body with details of professional commitments and a statement that confirms that the candidate has sufficient time available to fulfil the responsibilities as member of the governing body.

19. Prior to their nomination for election, candidates' backgrounds should be independently investigated, and their qualifications should be independently verified.

20. A brief professional profile of each candidate standing for election at the annual general meeting (AGM), including details of existing professional commitments, should accompany the notice of the AGM, together with a statement from the governing body confirming whether it supports the candidate's election or re-election.

21. Upon election, the terms and conditions for serving as a member of the governing body should be formalised in a letter of appointment.

22. The governing body should ensure that incoming members are inducted to enable them to make the maximum contribution within the shortest time possible.

23. Members of the governing body with no or limited governance experience should be provided with mentorship and encouraged to undergo training.

24. A programme of professional development and regular briefings on legal and corporate governance developments, and risks and changes in the external environment of the organisation, should be provided for members of the governing body.

Independence and conflicts

25. Subject to legal provisions, each member of the governing body should submit to the governing body a declaration of all financial, economic and other interests held by the member and related parties at least annually, or whenever there are significant changes.

26. At the beginning of each meeting of the governing body or its committees, all members should be required to declare whether any of them has any conflict of interest in respect of a matter on the agenda. Any such conflicts should be proactively managed as determined by the governing body and subject to legal provisions.

27. Non-executive members of the governing body may be categorised by the governing body as independent if it concludes that there is no interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making in the best interests of the organisation.

TC

28. The governing body should consider the following and other indicators holistically, and on a substance-over-form basis, when assessing the independence of a member of the governing body for purposes of categorisation. The member of the governing body:
    a. is a significant provider of financial capital, or ongoing funding to the organisation; or is an officer, employee or a representative of such provider of financial capital or funding;
    b. if the organisation is a company, participates in a share-based incentive scheme offered by the company;
    c. if the organisation is a company, owns securities in the company, the value of which is material to the personal wealth of the director;
    d. has been in the employ of the organisation as an executive manager during the preceding three financial years, or is a related party to such executive manager;
    e. has been the designated external auditor responsible for performing the statutory audit for the organisation, or a key member of the audit team of the external audit firm, during the preceding three financial years;
    f. is a significant or ongoing professional adviser to the organisation, other than as a member of the governing body;
    g. is a member of the governing body or the executive management of a significant customer of, or supplier to, the organisation;
    h. is a member of the governing body or the executive management of another organisation which is a related party to the organisation; or
    i. is entitled to remuneration contingent on the performance of the organisation.
29. A non-executive member of the governing body may continue to serve, in an independent capacity, for longer than nine years if, upon an assessment by the governing body conducted every year after nine years, it is concluded that the member exercises objective judgement and there is no interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making.
30. The following should be disclosed with regards to the composition of the governing body:
    a. Whether the governing body is satisfied that its composition reflects the appropriate mix of knowledge, skills, experience, diversity and independence.
    b. The targets set for gender and race representation in the membership of the governing body, and progress made against these targets.
    c. The categorisation of each member as executive or non-executive.
    d. The categorisation of each non-executive member as independent or not and, when a non-executive member of the governing body has been serving for longer than nine years, a summary of the views of the governing body on the independence of the member.
    e. The qualifications and experience of members.
    f. Each member's period of service on the governing body.
    g. The age of each member.
    h. Other governing body and professional positions held by each member.
    i. The reasons why any members of the governing body have been removed, resigned or retired.

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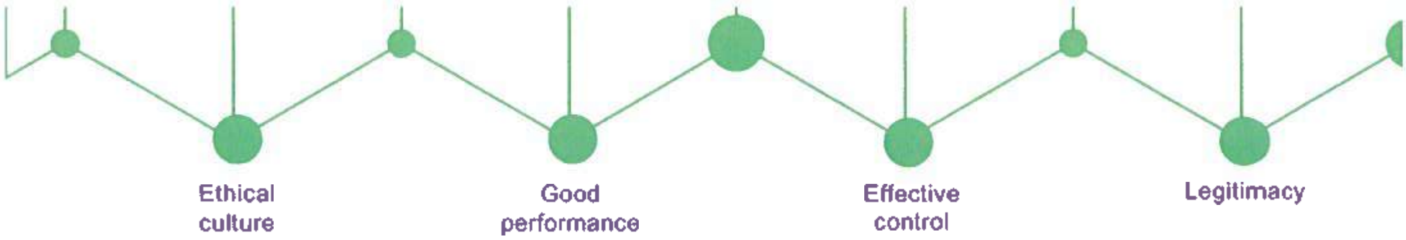

Chair of the governing body

31. The governing body should elect an independent non-executive member as chair to lead the governing body in the objective and effective discharge of its governance role and responsibilities.

32. The governing body should appoint an independent non-executive member as the lead independent to fulfil the following functions:

    a. To lead in the absence of the chair.

    b. To serve as a sounding board for the chair.

    c. To act as an intermediary between the chair and other members of the governing body, if necessary.

    d. To deal with shareholders' concerns where contact through the normal channels has failed to resolve concerns, or where such contact is inappropriate.

    e. To strengthen independence on the governing body if the chair is not an independent non-executive member of the governing body.

    f. To chair discussions and decision-making by the governing body on matters where the chair has a conflict of interest.

    g. To lead the performance appraisal of the chair.

33. The chair's role, responsibilities and term in office, as well as that of the lead independent, should be documented in the charter of the governing body or elsewhere.

34. The CEO of the organisation should not also chair the governing body, and the retired CEO should not become the chair of the governing body until three complete years have passed after the end of the CEO's tenure.

35. In order to determine whether the chair is able to perform the duties of this office effectively, the chair, together with the governing body, should determine the number of outside professional positions that the chair is allowed to hold, taking into account the relative size and complexity of the organisations involved.

36. When determining which of its committees the chair of the governing body should serve on, either as member or chair, the governing body should consider how this affects the overall concentration and balance of power on the governing body. Generally, the following should apply:

    a. The chair should not be a member of the audit committee.

    b. The chair may be a member of the committee responsible for remuneration but should not be its chair.

    c. The chair should be a member of the committee responsible for nominations of members of the governing body and may also be its chair.

    d. The chair may be a member of the committee responsible for risk governance and may also be its chair.

    e. The chair may be a member of the social and ethics committee but should not be its chair.

37. The governing body should ensure there is succession planning in place for the position of chair.

38. The following should be disclosed in relation to the chair:

    a. Whether the chair is considered to be independent.

    b. Whether or not an independent non-executive member of the governing body has been appointed as the lead independent, and the role and responsibilities assigned to the position.

TC

Committees of the governing body

Principle 8: The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

RECOMMENDED PRACTICES

General

39. The governing body should determine if and when to delegate particular roles and responsibilities to an individual member or members of the governing body, or to standing or *ad hoc*-committees. The exercise of judgement by the governing body in this regard, is subject to legal requirements and should be guided by what is appropriate for the organisation and achieving the objectives of the delegation.

40. In the event that the governing body determines not to delegate all or some of the responsibilities dealt with in this Code as part of the responsibilities of a specific committee, the governing body should ensure that it fulfils those responsibilities itself.

41. Delegation to an individual member or members of the governing body should be recorded in writing and approved by the governing body. The record should set out the nature and extent of the responsibilities delegated, decision-making authority, the duration of the delegation, and the delegates' reporting responsibilities.

42. Delegation to committees should be recorded by means of a formal terms of reference that should be approved and reviewed annually by the governing body.

43. The terms of reference should, at a minimum, deal with the following:

    a. The composition of the committee and, if applicable, the process and criteria for the appointment of any committee members who are not members of the governing body.

    b. The committee's overall role and associated responsibilities and functions.

    c. Delegated authority with respect to decision-making.

    d. The tenure of the committee.

    e. When and how the committee should report to the governing body and others.

    f. The committee's access to resources and information.

    g. The meeting procedures to be followed.

    h. The arrangements for evaluating the committee's performance.

44. The governing body should consider the allocation of roles and associated responsibilities and the composition of membership across committees holistically, so as to achieve the following:

    a. Effective collaboration through cross-membership between committees, where required; coordinated timing of meetings; and avoidance of duplication or fragmented functioning in so far as possible.

    b. Where more than one committee has jurisdiction to deal with a similar matter, the specific role and positioning of each committee in relation to such matter are defined to ensure complementary rather than competing approaches.

    c. A balanced distribution of power in respect of membership across committees, so that no individual has the ability to dominate decision-making, and no undue reliance is placed on any individual.

TC

45. The governing body should ensure that each committee, as a whole, has the necessary knowledge, skills, experience and capacity to execute its duties effectively.

46. Each committee should have a minimum of three members subject to legal provisions, where applicable.

47. Members of the executive and senior management should be invited to attend committee meetings either by standing invitation or on an *ad hoc*-basis to provide pertinent information and insights in their areas of responsibility.

48. Every member of the governing body is entitled to attend any committee meeting as an observer. However, unless that member is also a member of the committee, the member is not entitled to participate without the consent of the chair; does not have a vote; and is not entitled to fees for such attendance, unless payment of fees is agreed to by the governing body and shareholders.

49. Any delegation by the governing body of its responsibilities to a committee or a member of the governing body member will not by or of itself constitute a discharge of the governing body's accountability. The governing body should apply its collective mind to the information, opinions, recommendations, reports and statements presented by the committee or the member.

50. The following should be disclosed in relation to each committee of the governing body:

   a. Its overall role and associated responsibilities and functions.

   b. Its composition, including each member's qualifications and experience.

   c. Any external advisers or invitees who regularly attend committee meetings.

   d. Key areas of focus during the reporting period.

   e. The number of meetings held during the reporting period and attendance at those meetings.

   f. Whether the committee is satisfied that it has fulfilled its responsibilities in accordance with its terms of reference for the reporting period.

Audit committee

51. The establishment of an audit committee is a statutory requirement for some organisations. As a matter of leading practice, the governing body of any organisation that issues audited financial statements should consider establishing an audit committee, the role of which should be to provide independent oversight of, among others:

   a. the effectiveness of the organisation's assurance functions and services, with particular focus on combined assurance arrangements, including external assurance service providers, internal audit and the finance function; and

   b. the integrity of the annual financial statements and, to the extent delegated by the governing body, other external reports issued by the organisation.

52. A statutory audit committee has the power to make decisions regarding its statutory duties, and is accountable for its performance in this regard. In addition to its statutory duties, the governing body may delegate other responsibilities to the audit committee, such as the approval of the annual financial statements, but the governing body remains ultimately accountable for such delegated responsibilities.

53. If the governing body delegates risk governance to the audit committee, the audit committee should satisfy itself that it dedicates sufficient time to this responsibility.

54. Whether or not the governance of risk is delegated to the audit committee, the audit committee should oversee the management of financial and other risks that affect the integrity of external reports issued by the organisation.

TC

55. The members of the audit committee should, as a whole, have the necessary financial literacy, skills and experience to execute their duties effectively.

56. All members of the audit committee should be independent, non-executive members of the governing body.

57. The governing body should appoint an independent, non-executive member to chair the audit committee.

58. The audit committee should meet annually with the internal and external auditors respectively, without management being present, to facilitate an exchange of views and concerns that may not be appropriate for discussion in an open forum.

59. In addition to required statutory disclosure and the disclosures recommended in paragraph 50, the following should also be disclosed in relation to the audit committee:

   a. A statement as to whether the audit committee is satisfied that the external auditor is independent of the organisation. The statement should specifically address:

      i. the policy and controls that address the provision of non-audit services by the external auditor, and the nature and extent of such services rendered during the financial year;

      ii. the tenure of the external audit firm and, in the event of the firm having been involved in a merger or acquisition, including the tenure of the predecessor firm;

      iii. the rotation of the designated external audit partner; and

      iv. significant changes in the management of the organisation during the external audit firm's tenure which may mitigate the attendant risk of familiarity between the external auditor and management.

   b. Significant matters that the audit committee has considered in relation to the annual financial statements, and how these were addressed by the committee.

   c. The audit committee's views on the quality of the external audit, with reference to audit quality indicators such as those that may be included in inspection reports issued by external audit regulators.

   d. The audit committee's views on the effectiveness of the chief audit executive and the arrangements for internal audit.

   e. The audit committee's views on the effectiveness of the design and implementation of internal financial controls, and on the nature and extent of any significant weaknesses in the design, implementation or execution of internal financial controls that resulted in material financial loss, fraud, corruption or error.

   f. The audit committee's views on the effectiveness of the CFO and the finance function.

   g. The arrangements in place for combined assurance and the committee's views on its effectiveness.

Committee responsible for nominations of members of the governing body

60. The governing body should consider allocating the oversight of the following to a dedicated committee, or adding it to the responsibilities of another committee as is appropriate for the organisation:

   a. The process for nominating, electing and appointing members of the governing body.

   b. Succession planning in respect of governing body members.

   c. Evaluation of the performance of the governing body.

TL

61. All members of the committee for nominations should be non-executive members of the governing body, and the majority should be independent.

Refer to paragraph 50 for the recommended disclosures in relation to the committee responsible for nominations.

Committee responsible for risk governance

62. The governing body should consider allocating the oversight of risk governance to a dedicated committee, or adding it to the responsibilities of another committee as is appropriate for the organisation.

63. If the committees for audit and risk are separate, the governing body should consider for one or more members to have joint membership of both committees for more effective functioning.

64. The committee for risk governance should have executive and non-executive members, with a majority being non-executive members of the governing body.

Refer to paragraph 50 for the recommended disclosures in relation to the committee responsible for risk.

Committee responsible for remuneration

65. The governing body should consider allocating oversight of remuneration to a dedicated committee, or adding it to the responsibilities of another committee as is appropriate for the organisation.

66. All members of the committee for remuneration should be non-executive members of the governing body, with the majority being independent non-executive members of the governing body.

67. The committee for remuneration should be chaired by an independent non-executive member.

Refer to paragraph 50 for the recommended disclosures in relation to the committee responsible for remuneration.

Social and ethics committee

68. For some companies, the establishment of a social and ethics committee is a statutory requirement. The governing body of any organisation not so obliged should consider allocating oversight of, and reporting on, organisational ethics, responsible corporate citizenship, sustainable development and stakeholder relationships to a dedicated committee, or adding it to the responsibilities of another committee as is appropriate for the organisation.

69. The responsibilities of the social and ethics committee should include its statutory duties (if applicable) and any other responsibilities delegated to it by the governing body.

70. The social and ethics committee should, subject to legal provisions, have executive and non-executive members, with a majority being non-executive members of the governing body.

Refer to paragraph 50 for the recommended disclosures in relation to the social and ethics committee.

TL

Evaluations of the performance of the governing body

> Principle 9: The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.

RECOMMENDED PRACTICES

71. The governing body should assume responsibility for the evaluation of its own performance and that of its committees, its chair and its individual members by determining how it should be approached and conducted.
72. The governing body should appoint an independent non-executive member to lead the evaluation of the chair's performance if a lead independent is not in place.
73. A formal process, either externally facilitated or not in accordance with methodology approved by the governing body, should be followed for evaluating the performance of the governing body, its committees, its chair and its individual members at least every two years.
74. Every alternate year, the governing body should schedule in its yearly work plan an opportunity for consideration, reflection and discussion of its performance and that of its committees, its chair and its members as a whole.
75. The following should be disclosed in relation to the evaluation of the performance of the governing body:
    a. A description of the performance evaluations undertaken during the reporting period, including their scope, whether they were formal or informal, and whether they were externally facilitated or not.
    b. An overview of the evaluation results and remedial actions taken.
    c. Whether the governing body is satisfied that the evaluation process is improving its performance and effectiveness.

Appointment and delegation to management

> Principle 10: The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

RECOMMENDED PRACTICES

CEO appointment and role

76. The governing body should appoint the CEO.
77. The CEO should be responsible for leading the implementation and execution of approved strategy, policy and operational planning, and should serve as the chief link between management and the governing body.
78. The CEO should be accountable, and report to, the governing body.
79. The CEO should not be a member of the remuneration, audit or nomination committees, but should attend by invitation any meeting, or part thereof, if needed to contribute pertinent insights and information.

80. The CEO and the governing body should agree on whether the CEO takes up additional professional positions, including membership of other governing bodies outside the organisation. Time constraints and potential conflicts of interest should be considered and balanced against the opportunity for professional development.

81. The governing body should satisfy itself that there is succession planning for the CEO position in place to provide continuity of executive leadership. Succession planning should be reviewed periodically, and should provide for both succession in emergency situations and succession over the longer term.

82. The governing body should formally evaluate the performance of the CEO against agreed performance measures and targets at least annually.

83. The following should be disclosed in relation to the CEO:

    a. The notice period stipulated in the CEO's employment contract and the contractual conditions related to termination.

    b. Other professional commitments of the CEO, including membership of governing bodies outside the organisation.

    c. Whether succession planning is in place for the CEO position.

Delegation

84. The governing body should set the direction and parameters for the powers which are to be reserved for itself, and those that are to be delegated to management via the CEO.

85. The governing body should approve a delegation of authority framework that articulates its set direction on reservation and delegation of power.

86. The governing body should ensure that the delegation of authority framework addresses the authority to appoint executives who will serve as *ex officio*-executive members of the governing body and to make other executive appointments.

87. The governing body should oversee that key management functions are:

    a. headed by an individual with the necessary competence and authority, and

    b. adequately resourced.

88. The governing body should satisfy itself that there is succession planning in place for executive management and other key positions to provide continuity of leadership. Succession planning should be reviewed periodically, and provide for both succession in emergency situations and succession over the longer term.

89. A statement by the governing body on whether it is satisfied that the delegation of authority framework contributes to role clarity and the effective exercise of authority and responsibilities should be disclosed.

Professional corporate governance services to the governing body

90. The governing body should ensure that it has access to professional and independent guidance on corporate governance and its legal duties, and also that it has support to coordinate the functioning of the governing body and its committees.

91. For some companies, the appointment of a company secretary is a statutory requirement. In respect of those companies, the company secretary provides professional corporate governance services. The governing body of an organisation not so obliged should, as a matter of leading practice, consider appointing a company secretary or other professional, as is appropriate for the organisation, to provide professional corporate governance services to the governing body.

TC

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

92. The governing body should approve the arrangements for the provision of professional corporate governance services, including whether to outsource them to a juristic person, or to make a full-time or part-time appointment.

93. Regardless of the arrangements it has approved, the governing body should ensure that the office of the company secretary or other professional providing corporate governance services, is empowered and that the position carries the necessary authority.

94. The governing body should approve the appointment, including the employment contract and remuneration of the company secretary or other professional providing corporate governance services. The governing body should oversee that the person appointed has the necessary competence, gravitas and objectivity to provide independent guidance and support at the highest level of decision-making in the organisation.

95. The governing body should have primary responsibility for the removal of the company secretary or other professional providing corporate governance services.

96. The company secretary or other professional providing corporate governance services should have unfettered access to the governing body but, for reasons of independence, should maintain an arms-length relationship with it and its members; accordingly, the company secretary should not be a member of the governing body.

97. The company secretary or other professional providing corporate governance services should report to the governing body via the chair on all statutory duties and functions performed in connection with the governing body. Regarding other duties and administrative matters, the company secretary or other professional providing corporate governance services should report to the member of executive management designated for this purpose as is appropriate for the organisation.

98. The performance and independence of the company secretary or other professional providing corporate governance services should be evaluated at least annually by the governing body.

99. The arrangements in place for accessing professional corporate governance services and a statement on whether the governing body believes those arrangements are effective should be disclosed.

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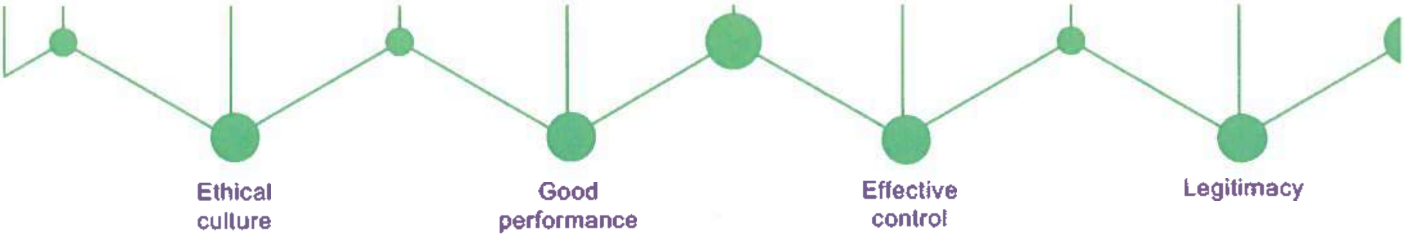


PART 5.4: GOVERNANCE FUNCTIONAL AREAS

Risk governance

Principle 11: The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.

RECOMMENDED PRACTICES

1. The governing body should assume responsibility for the governance of risk by setting the direction for how risk should be approached and addressed in the organisation. Risk governance should encompass both:
    a. the opportunities and associated risks to be considered when developing strategy; and
    b. the potential positive and negative effects of the same risks on the achievement of organisational objectives.
2. The governing body should treat risk as integral to the way it makes decisions and executes its duties.
3. The governing body should approve policy that articulates and gives effect to its set direction on risk.
4. The governing body should evaluate and agree the nature and extent of the risks that the organisation should be willing to take in pursuit of its strategic objectives. It should approve in particular:
    a. the organisation's risk appetite, namely its propensity to take appropriate levels of risk; and
    b. the limit of the potential loss that the organisation has the capacity to tolerate.
5. The governing body should delegate to management the responsibility to implement and execute effective risk management.
6. The governing body should exercise ongoing oversight of risk management and, in particular, oversee that it results in the following:
    a. An assessment of risks and opportunities emanating from the triple context in which the organisation operates and the capitals that the organisation uses and affects.
    b. An assessment of the potential upside, or opportunity, presented by risks with potentially negative effects on achieving organisational objectives.
    c. An assessment of the organisation's dependence on resources and relationships as represented by the various forms of capital.
    d. The design and implementation of appropriate risk responses.
    e. The establishment and implementation of business continuity arrangements that allow the organisation to operate under conditions of volatility, and to withstand and recover from acute shocks.
    f. The integration and embedding of risk management in the business activities and culture of the organisation.
7. The governing body should consider the need to receive periodic independent assurance on the effectiveness of risk management.
8. The nature and extent of the risks and opportunities the organisation is willing to take should be disclosed without compromising sensitive information.

TC

9. In addition, the following should be disclosed in relation to risk:
   a. An overview of the arrangements for governing and managing risk.
   b. Key areas of focus during the reporting period, including objectives, the key risks that the organisation faces, as well as undue, unexpected or unusual risks and risks taken outside of risk tolerance levels.
   c. Actions taken to monitor the effectiveness of risk management and how the outcomes were addressed.
   d. Planned areas of future focus.

Technology and information governance

Principle 12: The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.

RECOMMENDED PRACTICES

10. The governing body should assume responsibility for the governance of technology and information by setting the direction for how technology and information should be approached and addressed in the organisation.
11. The governing body should approve policy that articulates and gives effect to its set direction on the employment of technology and information.
12. The governing body should delegate to management the responsibility to implement and execute effective technology and information management.
13. The governing body should exercise ongoing oversight of technology and information management and, in particular, oversee that it results in the following:
    a. Integration of people, technologies, information and processes across the organisation.
    b. Integration of technology and information risks into organisation-wide risk management.
    c. Arrangements to provide for business resilience.
    d. Proactive monitoring of intelligence to identify and respond to incidents, including cyber attacks and adverse social media events.
    e. Management of the performance of, and the risks pertaining to, third-party and outsourced service providers.
    f. The assessment of value delivered to the organisation through significant investments in technology and information, including the evaluation of projects throughout their life cycles and of significant operational expenditure.
    g. The responsible disposal of obsolete technology and information in a way that has regard to environmental impact and information security.
    h. Ethical and responsible use of technology and information.
    i. Compliance with relevant laws.

TC

14. The governing body should exercise ongoing oversight of the management of information and, in particular, oversee that it results in the following:
    a. The leveraging of information to sustain and enhance the organisation's intellectual capital.
    b. An information architecture that supports confidentiality, integrity and availability of information.
    c. The protection of privacy of personal information.
    d. The continual monitoring of security of information.
15. The governing body should exercise ongoing oversight of the management of technology and, in particular, oversee that it results in the following:
    a. A technology architecture that enables the achievement of strategic and operational objectives.
    b. The management of the risks pertaining to the sourcing of technology.
    c. Monitoring and appropriate responses to developments in technology, including the capturing of potential opportunities and the management of disruptive effects on the organisation and its business model.
16. The governing body should consider the need to receive periodic independent assurance on the effectiveness of the organisation's technology and information arrangements, including outsourced services.
17. The following should be disclosed in relation to technology and information:
    a. An overview of the arrangements for governing and managing technology and information.
    b. Key areas of focus during the reporting period, including objectives, significant changes in policy, significant acquisitions and remedial actions taken as a result of major incidents.
    c. Actions taken to monitor the effectiveness of technology and information management and how the outcomes were addressed.
    d. Planned areas of future focus.

Compliance governance

> Principle 13: The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.

RECOMMENDED PRACTICES

18. The governing body should assume responsibility for the governance of compliance with applicable laws and adopted, non-binding rules, codes and standards by setting the direction for how compliance should be approached and addressed in the organisation.
19. The governing body should approve policy that articulates and gives effect to its direction on compliance, and that identifies which non-binding rules, codes and standards the organisation has adopted.

TC

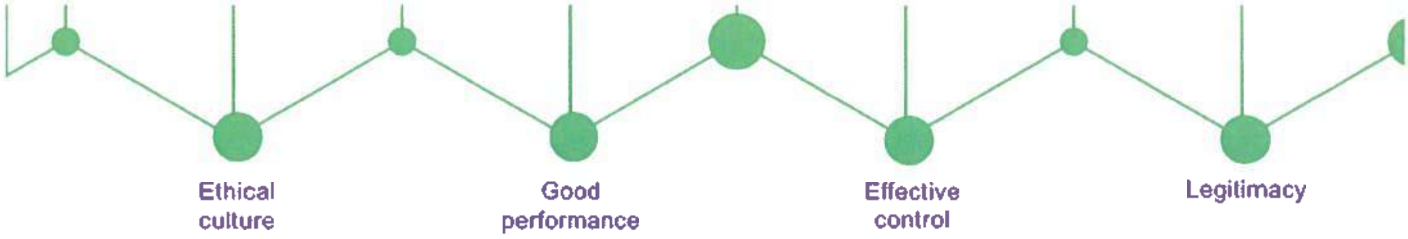
20. The governing body should delegate to management responsibility for implementation and execution of effective compliance management.
21. The governing body should exercise ongoing oversight of compliance and, in particular, oversee that it results in the following:
    a. Compliance being understood not only for the obligations it creates, but also for the rights and protections it affords.
    b. Compliance management taking a holistic view of how applicable laws and non-binding rules, codes and standards relate to one another.
    c. Continual monitoring of the regulatory environment and appropriate responses to changes and developments.
22. The governing body should consider the need to receive periodic independent assurance on the effectiveness of compliance management.
23. The following should be disclosed in relation to compliance:
    a. An overview of the arrangements for governing and managing compliance.
    b. Key areas of focus during the reporting period.
    c. Actions taken to monitor the effectiveness of compliance management and how the outcomes were addressed.
    d. Planned areas of future focus.
24. Material or repeated regulatory penalties, sanctions or fines for contraventions of, or non-compliance with, statutory obligations, whether imposed on the organisation or on members of the governing body or officers should be disclosed.
25. Details of monitoring and compliance inspections by environmental regulators, findings of non-compliance with environmental laws, or criminal sanctions and prosecutions for such non-compliance should be disclosed.

Remuneration governance

> Principle 14: The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

RECOMMENDED PRACTICES
Remuneration policy
26. The governing body should assume responsibility for the governance of remuneration by setting the direction for how remuneration should be approached and addressed on an organisation-wide basis.
27. The governing body should approve policy that articulates and gives effect to its direction on fair, responsible and transparent remuneration.

TC



28. The remuneration policy should be designed to achieve the following objectives:
    a. To attract, motivate, reward and retain human capital.
    b. To promote the achievement of strategic objectives within the organisation's risk appetite.
    c. To promote positive outcomes.
    d. To promote an ethical culture and responsible corporate citizenship.
29. The remuneration policy should address organisation-wide remuneration and include provision for the following specifically:
    a. Arrangements towards ensuring that the remuneration of executive management is fair and responsible in the context of overall employee remuneration in the organisation.
    b. The use of performance measures that support positive outcomes across the economic, social and environmental context in which the organisation operates; and/or all the capitals that the organisation uses or affects.
    c. If the organisation is a company, the voting by shareholders on the remuneration policy and implementation report, and for the implementation of related responding measures as outlined under Voting on Remuneration below.
30. All elements of remuneration that are offered in the organisation and the mix of these should be set out in the remuneration policy, including:
    a. base salary, including financial and non-financial benefits;
    b. variable remuneration, including short and long-term incentives and deferrals;
    c. payments on termination of employment or office;
    d. sign-on, retention and restraint payments;
    e. the provisions, if any, for pre-vesting forfeiture (*malus*) and post-vesting forfeiture (claw-back) of remuneration;
    f. any commissions and allowances; and
    g. the fees of non-executive members of the governing body.
31. The governing body should oversee that the implementation and execution of the remuneration policy achieves the objectives of the policy.

Remuneration report

32. The governing body should ensure that remuneration is disclosed by means of a remuneration report in three parts:
    a. A background statement.
    b. An overview of the main provisions of the remuneration policy.
    c. An implementation report which contains details of all remuneration awarded to individual members of the governing body and executive management during the reporting period.

TC

Background statement

33. The background statement should briefly provide context for remuneration considerations and decisions, with reference to:

    a. Internal and external factors that influenced remuneration;

    b. the most recent results of voting on the remuneration policy and the implementation report and the measures taken in response thereto;

    c. key areas of focus and key decisions taken by the remuneration committee during the reporting period, including any substantial changes to the remuneration policy;

    d. whether remuneration consultants have been used, and whether the remuneration committee is satisfied that they were independent and objective;

    e. the views of the remuneration committee on whether the remuneration policy achieved its stated objectives; and

    f. future areas of focus.

Overview of remuneration policy

34. The overview of the main provisions of the remuneration policy should address the objectives of the policy and the manner in which the policy seeks to accomplish these. The overview should include the following:

    a. The remuneration elements and design principles informing the remuneration arrangements for executive management and, at a high level, for other employees.

    b. Details of any obligations in executive employment contracts which could give rise to payments on termination of employment or office.

    c. A description of the framework and performance measures used to assess the achievement of strategic objectives and positive outcomes, including the relative weighting of each performance measure and the period of time over which it is measured.

    d. An illustration of the potential consequences on the total remuneration for executive management, on a single, total figure basis, of applying the remuneration policy under minimum, on-target and maximum performance outcomes.

    e. An explanation of how the policy addresses fair and responsible remuneration for executive management in the context of overall employee remuneration.

    f. The use and justification of remuneration benchmarks.

    g. The basis for the setting of fees for non-executive directors.

    h. A reference to an electronic link to the full remuneration policy for public access.

TC

Implementation report

35. The implementation report, which includes the remuneration disclosure in terms of the Companies Act, should reflect the following:

   a. The remuneration of each member of executive management, which should include in separate tables:

      i. a single, total figure of remuneration, received and receivable for the reporting period, and all the remuneration elements that it comprises, each disclosed at fair value;

      ii. the details of all awards made under variable remuneration incentive schemes in the current and prior years that have not yet vested, including the number of awards; the values at date of grant; their award, vesting and expiry dates (where applicable); and the fair value at the end of the reporting period; and

      iii. the cash value of all awards made under variable remuneration incentive schemes that were settled during the reporting period.

   b. An account of the performance measures used and the relative weighting of each, as a result of which awards under variable remuneration incentive schemes have been made, including: the targets set for the performance measures and the corresponding value of the award opportunity; and for each performance measure, how the organisation and executive managers, individually, performed against the set targets.

   c. Separate disclosure of, and reasons for, any payments made on termination of employment or office.

   d. A statement regarding compliance with, and any deviations from, the remuneration policy.

Voting on remuneration (only applicable to companies)

36. In terms of the Companies Act, fees for non-executive directors for their services as directors must be submitted for approval by special resolution by shareholders within the two years preceding payment.

37. The remuneration policy and the implementation report should be tabled every year for separate non-binding advisory votes by shareholders at the AGM.

38. The remuneration policy should record the measures that the board commits to take in the event that either the remuneration policy or the implementation report, or both have been voted against by 25% or more of the voting rights exercised. Such measures should provide for taking steps in good faith and with best reasonable effort towards the following at a minimum:

   a. An engagement process to ascertain the reasons for the dissenting votes.

   b. Appropriately addressing legitimate and reasonable objections and concerns raised, which may include amending the remuneration policy, or clarifying or adjusting remuneration governance and/or processes.

39. In the event that either the remuneration policy or the implementation report, or both were voted against by 25% or more of the voting rights exercised, the following should be disclosed in the background statement of the remuneration report succeeding the voting:

   a. with whom the company engaged, and the manner and form of engagement to ascertain the reasons for dissenting votes; and

   b. the nature of steps taken to address legitimate and reasonable objections and concerns.

TC

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

Assurance

Principle 15: The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation's external reports.

RECOMMENDED PRACTICES

Combined assurance

40. The governing body should assume responsibility for assurance by setting the direction concerning the arrangements for assurance services and functions. The governing body should delegate to the audit committee, if in place, the responsibility for overseeing that those arrangements are effective in achieving the following objectives:
    a. Enabling an effective internal control environment.
    b. Supporting the integrity of information used for internal decision-making by management, the governing body and its committees.
    c. Supporting the integrity of external reports.
41. The governing body should satisfy itself that a combined assurance model is applied which incorporates and optimises the various assurance services and functions so that, taken as a whole, these support the objectives for assurance.
42. The governing body should oversee that the combined assurance model is designed and implemented to cover effectively the organisation's significant risks and material matters through a combination of the following assurance service providers and functions as is appropriate for the organisation:
    a. The organisation's line functions that own and manage risks.
    b. The organisation's specialist functions that facilitate and oversee risk management and compliance.
    c. Internal auditors, internal forensic fraud examiners and auditors, safety and process assessors, and statutory actuaries.
    d. Independent external assurance service providers such as external auditors.
    e. Other external assurance providers such as sustainability and environmental auditors, external actuaries, and external forensic fraud examiners and auditors.
    f. Regulatory inspectors.
43. The governing body and its committees should assess the output of the organisation's combined assurance with objectivity and professional skepticism, and by applying an enquiring mind, form their own opinion on the integrity of information and reports, and the degree to which an effective control environment has been achieved.

TL

Assurance of external reports

44. The governing body should assume responsibility for the integrity of external reports issued by the organisation by setting the direction for how assurance of these should be approached and addressed.

45. The governing body's direction in this regard should take into account legal requirements in relation to assurance, with the following additional considerations:

    a. Whether assurance should be applied to the underlying data used to prepare a report, or to the process for preparing and presenting a report, or both.

    b. Whether the nature, scope and extent of assurance are suited to the intended audience and purpose of a report.

    c. The specification of applicable criteria for the measurement or evaluation of the underlying subject matter of the report.

46. The governing body should satisfy itself that the combined assurance model is effective and sufficiently robust for the governing body to be able to place reliance on the combined assurance underlying the statements that the governing body makes concerning the integrity of the organisation's external reports.

47. External reports should disclose information about the type of assurance process applied to each report, in addition to the independent, external audit opinions provided in terms of legal requirements. This information should include:

    a. a brief description of the nature, scope and extent of the assurance functions, services and processes underlying the preparation and presentation of the report; and

    b. a statement by the governing body on the integrity of the report and the basis for this statement, with reference to the assurance applied.

Refer to Part 5.3: *Audit committee* for recommended disclosures by the audit committee concerning the organisation's application of combined assurance.

Internal audit

48. The governing body should assume responsibility for internal audit by setting the direction for the internal audit arrangements needed to provide objective and relevant assurance that contributes to the effectiveness of governance, risk management and control processes. The governing body should delegate oversight of internal audit to the audit committee, if in place.

49. The governing body should approve an internal audit charter that defines the role and associated responsibilities and authority of internal audit, including addressing its role within combined assurance and the internal audit standards to be adopted.

50. The governing body should ensure that the arrangements for internal audit provide for the necessary skills and resources to address the complexity and volume of risk faced by the organisation, and that internal audit is supplemented as required by specialist services such as those provided by forensic fraud examiners and auditors, safety and process assessors, and statutory actuaries.

51. If a chief audit executive (CAE) position is provided for in the arrangements for internal audit, the governing body should ensure that the position is set up to function independently from management who designs and implements the controls that are in place, and that the position carries the necessary authority.

52. The governing body should approve the appointment of the CAE, including the employment contract and remuneration of the CAE, and ensure that the person who fills the position has the necessary competence, gravitas and objectivity.

TC

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

53. For reasons of independence, the CAE should have access to the chair of the audit committee.
54. For reasons of independence, the CAE should not be a member of executive management, but should be invited to attend executive meetings, as necessary, to be informed about strategy and policy decisions and their implementation.
55. Where internal audit services are co-sourced or outsourced, the governing body should ensure that there is clarity on who fulfils the role of CAE.
56. The CAE should report to the chair of the audit committee on the performance of duties and functions that relate to internal audit. On other duties and administrative matters, the CAE should report to the member of executive management designated for this purpose as appropriate for the organisation.
57. The governing body should have primary responsibility for the removal of the CAE.
58. The governing body should monitor on an ongoing basis that internal audit:
    a. follows an approved risk-based internal audit plan; and
    b. reviews the organisational risk profile regularly, and proposes adaptations to the internal audit plan accordingly.
59. The governing body should ensure that internal audit provides an overall statement annually as to the effectiveness of the organisation's governance, risk management and control processes.
60. The governing body should ensure that an external, independent quality review of the internal audit function is conducted at least once every five years.
61. The governing body should obtain confirmation annually from the CAE that internal audit conforms to a recognised industry code of ethics.

Refer to Part 5.3: *Audit committee* for recommended disclosures by the audit committee concerning internal audit arrangements and the internal control environment.

TC

PART 5.5: STAKEHOLDER RELATIONSHIPS

Stakeholders

> Principle 16: In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.

RECOMMENDED PRACTICES

Stakeholder relationships

1. The governing body should assume responsibility for the governance of stakeholder relationships by setting the direction for how stakeholder relationships should be approached and conducted in the organisation.
2. The governing body should approve policy that articulates and gives effect to its direction on stakeholder relationships.
3. The governing body should delegate to management the responsibility for implementation and execution of effective stakeholder relationship management.
4. The governing body should exercise ongoing oversight of stakeholder relationship management and, in particular, oversee that it results in the following:
    a. Methodologies for identifying individual stakeholders and stakeholder groupings.
    b. Determination of material stakeholders based on the extent to which they affect, or are affected by, the activities, outputs and outcomes of the organisation.
    c. Management of stakeholder risk as an integral part of organisation-wide risk management.
    d. Formal mechanisms for engagement and communication with stakeholders, including the use of dispute resolution mechanisms and associated processes.
    e. Measurement of the quality of material stakeholder relationships, and appropriate responses to the outcomes.
5. The following should be disclosed in relation to stakeholder relationships:
    a. An overview of the arrangements for governing and managing stakeholder relationships.
    b. Key areas of focus during the reporting period.
    c. Actions taken to monitor the effectiveness of stakeholder management and how the outcomes were addressed.
    d. Future areas of focus.

TC

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

***Shareholder relationships** (Applicable to companies only)*

6. The board should oversee that the company encourages proactive engagement with shareholders, including engagement at the annual general meeting (AGM) of the company.
7. All directors should be available at the AGM to respond to shareholders' queries on how the board executed its governance duties.
8. The board should ensure that the designated partner of the external audit firm attends the AGM.
9. The board should ensure that shareholders are equitably treated, and that the interests of minority shareholders are adequately protected.
10. The minutes of the AGMs of listed companies should be made publicly available.

***Relationships within a group of companies** (Applicable to companies within a group)*

11. The board of the holding company should assume responsibility for governance across the group by setting the direction for how the relationships and exercise of power within the group should be approached and conducted.
12. The board should approve a group governance framework that articulates and gives effect to its direction on relationships and the exercise of authority across the group.
13. The adoption and implementation of the policies, structures and procedures of the holding company is a matter for consideration and approval by the board of the subsidiary company as a separate legal entity. The board of the holding company should therefore ensure that the boards of its subsidiaries are included in the development of the group governance framework.
14. The board of the holding company should ensure that the group governance framework does not conflict with the memoranda of incorporation, delegations of authority, shareholder agreements, board charters, board committee terms of reference, and related policies and agreements within the group.
15. The board of the holding company should ensure that the group governance framework recognises each subsidiary within the group as a separate and independent juristic person to whom its directors owe fiduciary duties.
16. The board of the holding company should ensure that the group governance framework addresses governance matters as is appropriate for the group, including the following:
    a. Delineation of the rights and role of the holding company.
    b. If applicable, delegation of certain responsibilities by the board of a subsidiary to a board committee of the holding company, without abdicating accountability, and subject to agreed reporting and information-sharing arrangements.
    c. The extent to which governance and operational policies of the holding company have been adopted by subsidiary companies in the group.
    d. Engagement by the holding company with the board of a subsidiary company before the holding company exercises its rights to elect directors to the board of the subsidiary.
    e. Arrangements to address the risk of breaching legal duty in relation to the use of information obtained while acting as director of one company in the group for the purposes of another company in the group.

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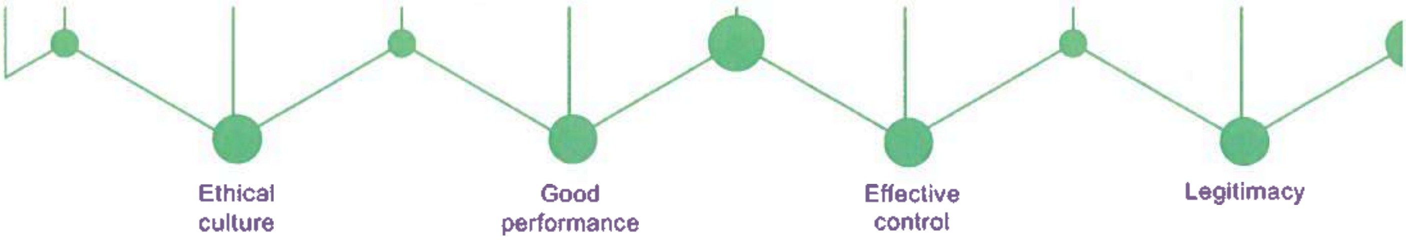


17. The board of the holding company should ensure that the agreed group governance framework is implemented across the group.

18. The holding company should disclose an overview of the group governance framework that is implemented across the group.

19. The subsidiary company should disclose what responsibilities it has delegated to board committees of the holding company and the extent to which it has adopted the policies and procedures of the holding company.

Responsibilities of institutional investors

Principle 17: The governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests.

RECOMMENDED PRACTICES

20. The governing body of an institutional investor should assume responsibility for governing responsible investing by setting the direction for how it should be approached and conducted by the organisation.

21. The governing body should approve policy that articulates its direction on responsible investment. This policy should provide for the adoption of a recognised responsible investment code, principles and practices.

22. The governing body should delegate to management, if in place, or alternatively, to the outsourced service provider if investment decisions and investment activities are outsourced, the responsibility to implement and execute its policy on responsible investment.

23. Where the institutional investor outsources investment decisions or investment activities to custodians, nominees, consultants or other service providers, the governing body should oversee that the outsourcing is regulated by formal mandate which reflects and gives effect to its responsible investment policy.

24. The governing body should ensure that service providers are held accountable for complying with the formal mandate.

25. The responsible investment code adopted by the institutional investor and the application of its principles and practices should be disclosed.

TC

PART 6

SECTOR SUPPLEMENTS

Part 6.1: Introduction to sector supplements
Part 6.2: Supplement for municipalities
Part 6.3: Supplement for non-profit organisations
Part 6.4: Supplement for retirement funds
Part 6.5: Supplement for small and medium enterprises
Part 6.6: Supplement for state-owned entities

TC

» SECTOR SUPPLEMENTS

PART 6.1: INTRODUCTION TO SECTOR SUPPLEMENTS

How to use the supplements

The supplements should be read together with the balance of the King IV Report, particularly Part 1: *Glossary of Terms*, Part 2: *Fundamental Concepts*, Part 3: *King IV Application and Disclosure* and Part 5: *King IV Code on Corporate Governance*. Exactly how this should be done is explained below, but the following is a quick guide:

All **governance outcomes** as per the Code apply.

All **principles** as per the Code apply, with the necessary adaptation of terminology as explained in each supplement.

The **recommended practices** in the Code should be considered together with the specific recommendations contained in each supplement and industry or sector codes and guidance issued by professional and industry bodies and regulators. Implementation of practices is subject to applicable legislation and scaling for proportional application as is appropriate for the organisation.

Reference should be made to the King IV Implementation Roadmap outlined below.

In keeping with the balance of the King IV Report, the supplements are primarily aimed at the governing body, it being the focal point of corporate governance within the organisation.

In these supplements, "corporate" refers to organisations that are incorporated to form legal entities separate from their founders. It therefore does not apply only to companies or for-profit enterprises, but all forms of incorporation whether as company, voluntary association, retirement fund, trust, legislated entity or others. The term "corporate governance" is used to differentiate it from other forms of governance, for example national or political governance.

Purpose of the supplements

The purpose of the supplements is to provide high-level guidance and direction on how the King IV Code should be interpreted and applied by a variety of sectors and organisational types.

SUPPLEMENTS FOR SPECIFIC SECTORS AND CATEGORIES OF ORGANISATION

The King IV Report does not include supplements for all sectors and categories of organisations. It was decided to issue supplements that were representative of a wide range of sectors and categories of organisations. Those sectors and categories of organisations for which specific supplements are not provided should consider the particular supplement which is most closely aligned to their organisational structure.

High-level guidance on interpretation and application of King IV

The supplements illustrate how the King IV Code should be interpreted and applied in various contexts, situations and legislative regimes. Due to the wide variety of such, and the numerous governance challenges that may present themselves as a result, it is not possible to cover all in the supplements. Furthermore, an attempt to do so would be contrary to the normative rather than prescriptive approach of King IV.

TC

SECTOR SUPPLEMENTS CONTINUED

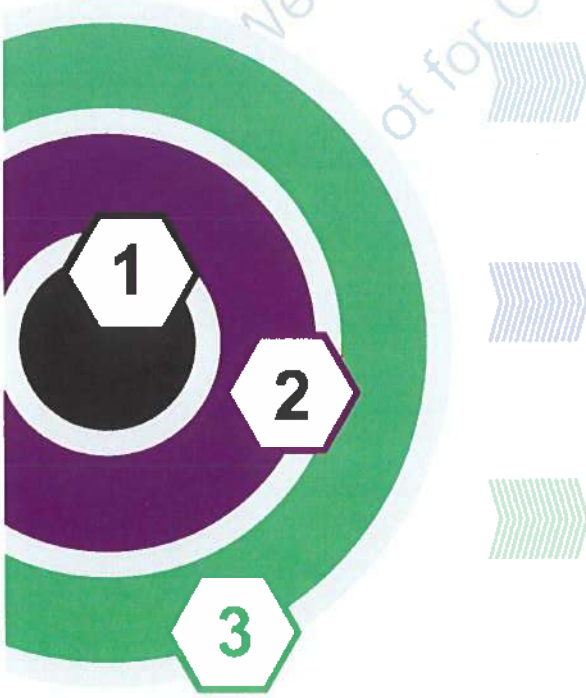
Instead of addressing all the potential variables, the supplements are intended to demonstrate how the Code should be interpreted and applied in a number of representative contexts, situations and legislative regimes. It is hoped that these demonstrations will enable those charged with governance duties to adapt the practices to their particular governance challenges – including those challenges not addressed in the supplements – while still giving effect to the aspirations expressed in the principles. The examples in the supplements are designed to demonstrate the manner in which governing bodies should apply their minds to King IV and do not replace the exercise of judgement by providing detailed solutions for all situations.

Certain aspects of King IV are emphasised in particular supplements for their relevance to a specific sector. It would be inaccurate to conclude that those aspects in the King IV Code that are not dealt with or not referred to specifically in the supplements, need not be considered.

Reconciling King IV to legislation

Applicable legislation sets the minimum governance standards to be complied with. If King IV sets the bar higher, organisations should strive to achieve the higher aspiration in the interest of sound governance. If there is a conflict between the legislation and King IV, the legislation prevails. However, the mere fact that King IV advocates a higher standard of governance than the legislation demands, does not, in itself, necessarily constitute a conflict. A conflict only arises when King IV and legislated provisions cannot be reconciled, not when they are merely different. Therefore, implementing a higher standard than that required by law will still be compliant with the minimum requirements of the law.

The diagram below depicts the framework for governance of organisations:



1. Applicable legislation sets the minimum standards to be complied with. If King IV sets the bar higher, organisations should strive to achieve the higher aspiration in the interest of sound governance. If there is a conflict between the legislation and King IV, the legislation prevails.

2. King IV principles are phrased so that they hold true across all organisations. The principles are the embodiment of the aspirations in the journey towards good corporate governance. They guide on what organisations should strive to achieve by the application of governance practices.

3. King IV practices should be adapted to meet the challenges of sectoral contexts, situations and legislative regimes. The King IV supplements together with industry or sector codes and guidance explain how this is to be done.

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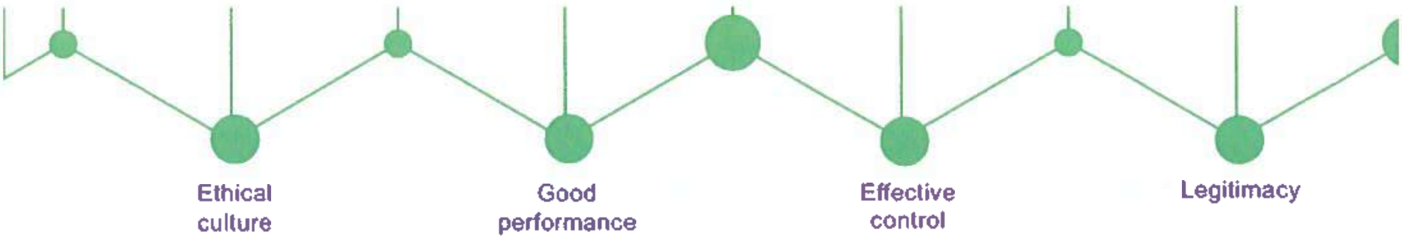

In certain instances, references to particular acts, sections of acts and regulations are included in the supplements to demonstrate the linkage and alignment between the principles and recommendations of King IV and legislation, albeit that different terminology or wording is used. King IV seeks to promote and give substance and effect to legislation, and it should be interpreted in this light.

Proportional application

Even within the same sector, organisations vary largely in size, resources, and extent and complexity of activities. Appreciating this is important when interpreting King IV in order to apply it.

The following examples illustrate how recommended practices could be scaled in accordance with proportionality considerations:

Where it is recommended in the Code that certain functions should be established – for example finance, risk, technology and information, compliance or internal audit functions – such functions could consist of a senior employee instead of a team of people. If proportionality considerations warrant it, further scaling could be achieved by allocating part-time responsibility for the function to such an employee. Outsourcing of functions is another alternative and so is sharing functions and resources with affiliated organisations.

A recommendation that a committee of the governing body should be formed could, if justified by proportionality considerations, be replaced by having the governing body carrying out the functions normally fulfilled by such committee. Alternatively, the governing body could formally delegate, without abdicating accountability, to one of its members to investigate, consider and prepare submissions for recommendation and consideration by the full governing body.

Where the Code recommends that a formal policy be established, it could be accomplished by formalising in writing a few guiding criteria and processes, and by continually developing the document as learning evolves. The benefits of being intentional and devoting the necessary consideration to putting policies and structures in place should not be underestimated. Doing so clarifies intention and ensures alignment among those affected by the policy on the nature and extent of responsibilities, functions and authority delegated.

Proportional application of the practices should still give effect to the principles. Refer to Part 3: *King IV Application and Disclosure* for more guidance on proportionality.

TL

SECTOR SUPPLEMENTS CONTINUED

King IV implementation roadmap

Map applicable legal provisions that pertain to the duties of those charged with governance to the relevant King IV principles and their associated practices.

Identify the legal provisions that cannot be reconciled with the specific King IV practices. Note these legal provisions as the point of departure for the development of the organisation's governance practices.

Consider the remaining King IV practices in conjunction with (i) the illustrations in the supplement, (ii) industry or sector codes and guidance, and (iii) proportionality considerations, to develop a set of organisation-specific governance practices. This consideration should set out to achieve the aspirations as expressed in the principles.

Implement and apply King IV in accordance with the organisation-specific governance practices as developed, and as ultimately approved by the governing body.

Assess the outcomes of the implementation of King IV on a qualitative basis by the measure of achievement of the aspirations as per the principles and the realisation of the governance outcomes. Take the necessary steps for enhancement of practices, if and where necessary.

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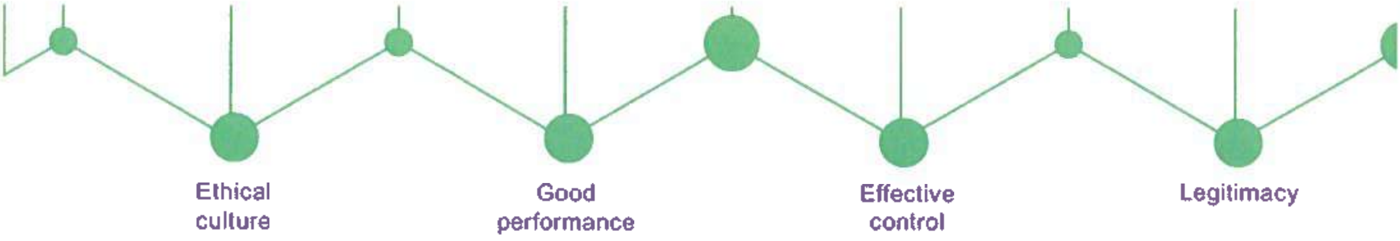

PART 6.2: SUPPLEMENT FOR MUNICIPALITIES

The supplements should be read together with the balance of the King IV Report, particularly Part 1: *Glossary of Terms*, Part 2: *Fundamental Concepts*, Part 3: *King IV Application and Disclosure* and Part 5: *King IV Code on Corporate Governance*.

Municipalities: the macro view and benefits of corporate governance

The structural and institutional arrangements are different for the different types of municipalities – metropolitan, district and local municipalities. The common feature is that they are accountable to the communities they serve.
In terms of section 152(1) of the Constitution, the objectives of local government (which consists of municipalities) are:

- *to provide democratic and accountable government for local communities;*
- *to ensure the provision of services to communities in a sustainable manner;*
- *to promote social and economic development;*
- *to promote a safe and healthy environment; and*
- *to encourage the involvement of communities and community organisations in the matters of local government.*

Section 153 of the Constitution furthermore refers to the developmental duties of municipalities. Thus, municipalities provide a foundation for our democracy; the efficiency with which they deliver services is the basis for economic and social cohesion in the context of a developmental state.

Good governance is essential to ensure the success of the municipality itself, and to protect and advance the interests of those whom it serves. Good corporate governance assists by enhancing the functioning of leadership structures, and by providing the arrangements which enable the council to govern the municipality in such a way that it is able to meet its objectives.

Scope

This supplement applies to category A, B and C municipalities as provided for in the Municipal Structures Act.

Even within the same sector, organisations vary largely in size, resources, and extent and complexity of activities. The scope of this supplement was, therefore, limited for the sake of clarity. An attempt to address too wide a range of variables may defeat the intent of the supplement, namely to demonstrate how the practices in the Code should be interpreted and applied in a number of representative contexts, situations and legislative regimes. Municipalities falling outside the scope of this supplement should still align with the principles and consider the practices while adapting them along the approach as demonstrated in this supplement. Refer to Part 6.1: *Introduction to Sector Supplements* for the King IV Implementation Roadmap to assist with this.

TC

SECTOR SUPPLEMENTS CONTINUED

King IV and municipalities

TERMINOLOGY

In order to apply the King IV Code to municipalities without having to repeat it in its entirety, it is necessary to explain how the terminology used in the Code could be substituted for terminology applicable to municipalities. Although leadership structures in municipalities are not directly comparable to those of other organisations, the following guidelines can be used when interpreting the terminology in the King IV Code in a municipal context:

Term used in the King IV Code	Relevant term for municipalities
Organisation	Municipality
Governing body	Municipal council
Management	Management of the municipality, including the municipal manager as accounting officer and senior management as defined in the Municipal Finance Management Act (MFMA).
Members of the governing body	Councillors
Chair of the governing body	Speaker
Chief executive officer	Municipal manager or accounting officer
External auditor	Auditor-General of South Africa (Auditor-General)
Shareholder	Municipalities do not have shareholders, but in many respects, community members can be regarded as such.

The office of mayor or executive mayor of a municipality does not have an equivalent in the King IV Code. However, this does not suggest that the mayor or executive mayor of a municipality does not fulfil a governance function in a municipality. In respect of these politically elected positions, the Municipal Structures Act, MFMA and other pertinent legislation must be followed.

BACKGROUND

Municipalities are autonomous, but operate within a system of cooperative governance in terms of the Constitution. Cooperative governance requires that the various spheres of government (national, provincial and local) cooperate in exercising their powers and performing their functions. The governance of municipalities should be viewed in the context of cooperative governance without detracting from municipal autonomy.

KING IV PRINCIPLES AND PRACTICES

The essence of the King IV Code, as represented by its governance outcomes and principles, applies to municipalities with the necessary adaptation in terminology. Principles are repeated below for ease of reference.

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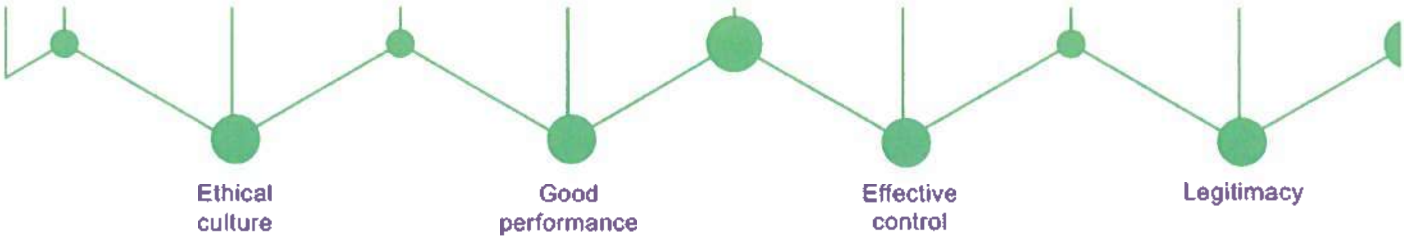

Principle 1: The council should lead ethically and effectively.

Ethical and effective leadership is exemplified by integrity, competence, responsibility, accountability, fairness and transparency. Members of the council should individually and collectively cultivate these characteristics and exhibit them in their conduct, as set out in the practices under Principle 1. This is congruent with section 195 of the Constitution, in terms of which public administration must be governed by the democratic values and principles enshrined in the Constitution, including that a high standard of professional ethics must be promoted and maintained. Section 50 of the Municipal Systems Act echoes this and a Code of Conduct for Councillors is included in Schedule 1 of that act. Schedule 5 of the Municipal Structures Act similarly includes a Code of Conduct for Councillors. The practices associated with Principle 1 should be considered to supplement and provide substance to these legal provisions.

Principle 2: The council should govern the ethics of the municipality in a way that supports the establishment of an ethical culture.

In addition to assuming responsibility for their own character and conduct, in accordance with Principle 2, municipal councils should govern the ethics of the municipality. Schedule 2 of the Municipal Systems Act contains a Code of Conduct for Municipal Staff Members. The recommended practices under Principle 2 provide useful guidance on how to ensure and oversee adherence to this code and the ethics of the municipality, generally.

Principle 3: The council should ensure that the municipality is and is seen to be a responsible corporate citizen.

Corporate citizenship is an alternative expression of the objectives of the municipality as set out in section 152(1) of the Constitution (see above). Therefore, the recommended practices under Principle 3 apply with the necessary adaptation to municipalities as a means to give effect to these objectives.

Principle 4: The council should appreciate that the municipality's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

The practices recommended under Principle 4 address the development and approval of the organisation's strategy, implementation thereof and organisational performance. For municipalities, strategy-development and performance-management processes are largely legislated and the practices in King IV should therefore be modified accordingly.

TC

Principle 5: The council should ensure that reports issued by the municipality enable stakeholders to make informed assessments of the municipality's performance and its short, medium and long-term prospects.

Reports issued by the municipality are a means of communicating with its community. Reports that are underpinned by integrated thinking and that present information about the resources and relationships on which the municipality relies, its activities, outputs and outcomes in an integrated manner, are an effective way of informing the community and other stakeholders about the municipality's performance. It also demonstrates accountability.

The role of the council with regards to reporting by the municipality is prescribed by legislation. The recommended practices under Principle 5 should be considered by the council, and adapted as is necessary to reconcile with legal provisions, so as to assist with executing its reporting duties.

Principle 6: The council should serve as the focal point and custodian of corporate governance in the municipality.

The council should serve as the focal point of corporate governance as provided for in Principle 6. In accordance with the Municipal Systems Act, a municipality is "an organ of state within the local sphere of government exercising legislative and executive authority within an area". In terms of section 151 of the Constitution, both legislative and executive authority vest in the council.

The legislative and executive authority that the council derives from the Constitution and other legislation, gives it dominium over the taxes and levies collected from those who reside within the borders of the municipality for the supply of electricity, water, sanitation, refuse removal and other services. Also, municipal elections are a means by which citizens nominate representatives, giving them the power to make decisions and execute them on their behalf. Therefore, even though the MFMA ascribes fiduciary duties to the municipal manager as accounting officer, the council shares in these fiduciary duties by virtue of its constitutional role.

Under Principle 6, the primary leadership role of any governing body is expressed as encompassing the following:

a. steering the organisation and setting its strategic direction;
b. approving policy and planning that give effect to the direction provided;
c. overseeing and monitoring of implementation and execution by management; and
d. ensuring accountability for organisational performance by means of, among others, reporting and disclosure.

It should be noted that the terminology used under this principle, namely strategy leading to policymaking, is usually used in the reverse in a government setting with policy directives leading to strategic initiatives and plans. Notwithstanding, and even though the Constitution, MFMA, Municipal Structures Act and Municipal Systems Act all allocate specific responsibilities to the council, the above is a useful framework for the council to attain an overarching understanding of its role. It should be used as a standing reference point by the council when discharging its responsibilities in any area of governance.

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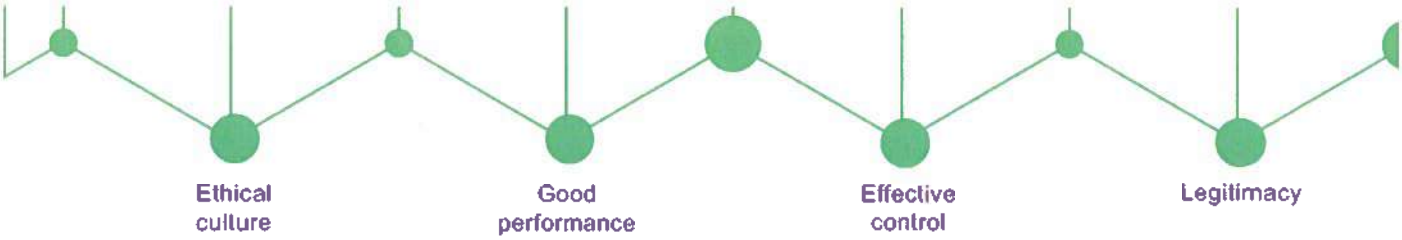

Principle 7: The council should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

Knowledge, skills, experience and diversity of councillors
Principle 7 deals with the criteria for the composition of the governing body. In a municipality, a mixed electoral system is followed for the election of councillors in terms of which, depending on the category of municipality, about half of the councillors are elected through a proportional representation ballot where voters vote for a party. The other half are elected as ward councillors by the residents in each ward. The composition of councils can therefore, not be proactively planned by means of a nomination process on the basis of the knowledge, skills, experience, diversity and independence required, as dealt with in the recommended practices under Principle 7.

Even though the legislated provisions pertaining to election of council members prevail over the King IV recommended practices for nomination, election and appointment, the council should still strive towards the aspiration expressed in this principle, as its composition is a key factor driving the performance of a municipality. Political parties can assist with the achievement of this aspiration by deploying councillors with the necessary knowledge, skills, experience and diversity.

There should also be a strong emphasis on in-depth induction for newly elected councillors at the start of a new political term in the interest of bolstering knowledge on the council. The council should furthermore ensure that a continued and robust professional education programme for councillors is established, which runs for the full term of office to ensure the building of competence.

Employing external expertise as recommended in the practices under Principle 7 will further assist the council with its oversight duties in the event that objective input on specific matters outside the knowledge, skills and experience of councillors is required.

Summary of recommended practices for the council's access to the appropriate balance of knowledge, skills, experience, diversity and independence:

- Political parties should deploy councillors with the necessary skills and competency.
- Council should ensure in-depth induction for councillors.
- Council should ensure the establishement of professional education programmes.
- Council should make use of external expertise on specific matters outside the knowledge, skills and experience of councillors, when required.

Independence of councillors
Independence of the members of the governing body is dealt with under Principle 7. Municipal councillors are elected to represent local communities on the council, but they may have party political affiliations which result in them not being independent in appearance. However, as a matter of law, all councillors must exercise objective judgement when executing their legal duties in the best interests of the municipality and its community.

This is reinforced in the Code of Conduct for Councillors in Schedule 1 of the Municipal Systems Act. The constitutional integrity of the council as a collective body acting at all times in the best interests of the municipality and the community it serves, enjoys priority over the interests of individual councillors.

Speaker
There is no independent chair of council as provided for in the Code. The role of chair is fulfilled by the speaker. It is recommended that the practices under Principle 7 in relation to the chair be considered for how they could supplement the legislated role of the speaker.

TC

SECTOR SUPPLEMENTS CONTINUED

Principle 8: The council should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

The Municipal Systems Act provides in section 59 that the council must "develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances". The Municipal Systems Act prescribes a wide range of powers and functions that may or may not be delegated. Councils may only delegate authority if they are expressly or by implication authorised to do so by law. The recommended practices under Principles 8 and 10 should be considered subject to these legal provisions.

In terms of section 79 of the Municipal Structures Act, the council is entitled to set up committees such as Municipal Public Accounts Committees[1] to assist with general oversight of the municipality's performance. This aligns with the practices recommended under Principle 8 of the Code, which address delegation by the council within its own structures.

The audit committee's duties as regards to the appointment and independence of the auditor, as set out in the recommended practices under this principle, apply differently in municipalities as the Auditor-General serves as the external auditor for a municipality. Furthermore, the structure and functions of the municipal audit committee are prescribed by legislation and prevail over the recommended practices in the Code. However, in so far as the legislation allows, the Code's recommended practices in respect of the execution of the duties of the audit committee should be considered to supplement the minimum standard set by law.

Principle 9: The council should ensure that the evaluation of its own performance and that of its committees, its speaker and its individual councillors, support continued improvement in its performance and effectiveness.

The evaluation of the performance of the governing body, its members and committees as addressed by Principle 9 and its associated practices, applies to municipalities. In respect of council members who are deployed by political parties, it is recommended that the council and political parties collaborate on the manner and form in which the performance of the council and councillors should be assessed. The results of the performance evaluations should be responded to by the council so as to achieve continued improvement in its performance and effectiveness as per the principle.

1 Municipal Public Accounts Committee, "Enhancing Oversight in the Municipality Practical Guide", *SALGA and National Treasury*, March 2012. Also refer to section 129(4) of the MFMA

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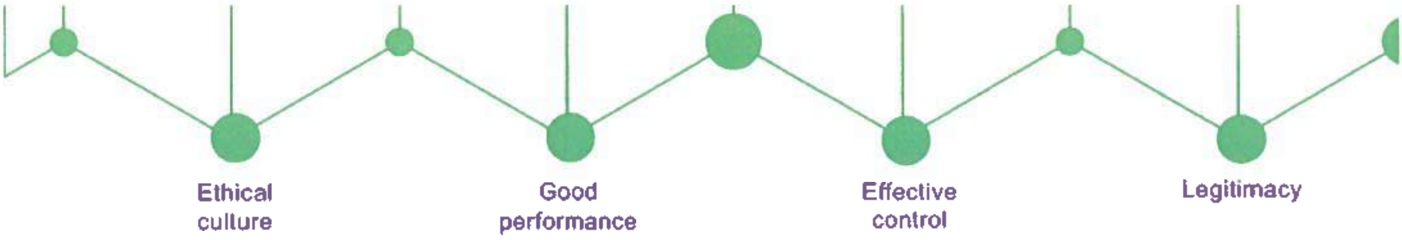

Principle 10: The council should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

In accordance with Principle 10 and also section 82 of the Municipal Structures Act, the council should appoint the municipal manager. The regulations for performance management and minimum competency levels of municipal managers should be taken into account in this regard. It is in the interest of the council to ensure that it appoints competent municipal management, so that it is able to place reasonable reliance for its decision-making on any information, opinions, recommendations, reports or statements presented by management.

Under Principle 10, it is furthermore recommended that the council should ensure that it has access to professional and independent guidance on corporate governance and its legal duties, and also that it has support to coordinate the functioning of the council and its committees. For companies, this role is fulfilled by the company secretary. As a matter of leading practice, it is recommended that municipal councils appoint a suitably experienced professional to provide these services.

Principle 11: The council should govern risk in a way that supports the municipality in setting and achieving its strategic objectives.

Principle 12: The council should govern technology and information in a way that supports the municipality setting and achieving its strategic objectives.

Principle 13: The council should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the municipality being ethical and a good corporate citizen.

Principle 14: The council should ensure that the municipality remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

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Principle 15: The council should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the municipality's external reports.

The recommended practices under Principles 11 to 15, which deal with specific governance functional areas, should be interpreted and applied in conjunction with industry or sector codes and guidance, applicable legislation and proportionality considerations.

Principle 16: In the execution of its governance role and responsibilities, the council should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the municipality over time.

Stakeholders
The primary stakeholder of a municipality is its community. In terms of section 2 of the Municipal Systems Act, a municipality consists of a community, a council and an administration. Therefore, communities must be involved, and community engagement should go beyond one-way communication from the municipality to its community. Other stakeholders include community organisations, political parties active in the municipality, national and provincial departments and industry and sector bodies. The practice recommendations under Principle 16 are applicable to give effect to the duties of the council in relation to governing stakeholder relationships.

In alignment with government initiatives already under way, it is recommended that municipal councils proactively set up reviews of municipal service delivery by the citizenry, as a way of monitoring and evaluating municipal performance.

Municipal entities as stakeholders of municipalities
In keeping with Principle 16, the council is legally obliged to oversee the performance of administration and executive organs of the municipality, including the municipal entities (MEs). MEs should be managed as a material stakeholder grouping. The council should ensure that the business plan of the ME, developed in terms of section 87 of the MFMA, the municipal mandate and the Integrated Development Plan are all aligned. Integrating the strategy plan and execution thereof between the municipality and the MEs, ensures that the MEs operate within the mandate, powers and functions assigned and agreed with the municipality. A governance framework, broadly based on the recommended practices for group companies under Principle 16, is useful and should be considered by municipal councils to govern their relationship with the MEs.

(Note that Principle 17 does not apply to municipalities.)

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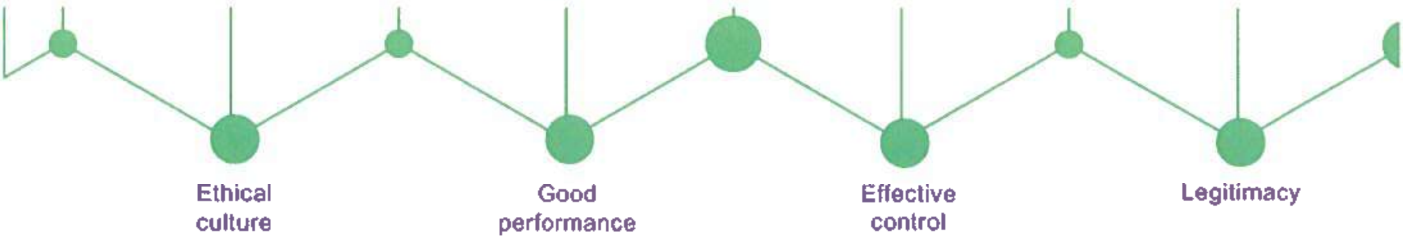

PART 6.3: SUPPLEMENT FOR NON-PROFIT ORGANISATIONS

The supplements should be read together with the balance of the King IV Report, particularly Part 1: *Glossary of Terms*, Part 2: *Fundamental Concepts*, Part 3: *King IV Application and Disclosure* and Part 5: *King IV Code on Corporate Governance*.

NPOs: the macro view and benefits of corporate governance

Taking into account the critical role non-profit organisations (NPOs) fulfil, it is in the interest of the whole of society that this sector should thrive. This role is articulated as follows by the World Bank:

- *providing goods and services – especially meeting needs which have not hitherto been met by either the state or by the private sector;*
- *assisting the government to achieve its development objectives – in particular through contributing skills for which NPOs have comparative advantage, such as public information, education and communications campaigns, or providing information about the situations and needs of particularly vulnerable groups;*
- *helping citizens to voice their aspirations, concerns and alternatives for consideration by policy makers, thereby giving substance to governments' policies regarding freedoms of association and speech;*
- *helping to enhance the accountability and transparency of government and local government programmes and of officials.*[1]

Good corporate governance contributes to the success of an NPO as it enhances the functioning of its leadership structures and provides the arrangements by which the governing body should govern the NPO so that it is able to meet its strategic objectives. The particular benefits that could be derived from the good governance of an NPO include the following:

- Added credibility and enhanced reputation.
- Increased impact of activities and advocacy through stronger stakeholder relationships and more effective operational processes.
- Access to funding, grants and loans on better terms.
- The ability to leverage a wider pool of expertise for employment and volunteer work.
- Better fraud prevention due to improved controls.
- Business continuity arrangements that permit the NPO to operate under conditions of volatility, and to withstand and recover from acute shocks.
- Leadership continuity through succession planning.

1 World Bank, "The Role of Non-profit organizations in Development: The experience of the World Bank", *The World Bank*, available at http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20507529~menuPK:1278313~pagePK:148956~piPK:216618~theSitePK:410306,00.html

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SECTOR SUPPLEMENTS CONTINUED

Scope

An NPO can be incorporated in various forms, including as a non-profit company, charitable trust, voluntary association, club or fund. NPOs may also be referred to as non-governmental organisations (NGOs) or as Public Benefit Organisations (PBOs) – the latter refers to the tax exempt status of certain activities of organisations granted by the South African Revenue Service and not their form of incorporation, although for-profit organisations do not qualify for this status. The term "social enterprises" describes organisations that fulfil social or environmental needs. They could be set up as for-profit entities that operate as private companies, sole proprietorships, business trusts or partnerships.[2]

This supplement addresses non-profit legal forms, but is not limited to organisations that have been granted NPO status in terms of the Non-Profit Organisations Act. It thus applies to NGOs, PBOs and other NPOs, but would exclude social enterprises that follow a for-profit business model.

King IV and NPOs

TERMINOLOGY

In order to apply the King IV Code to NPOs without having to repeat it in its entirety, it is necessary to explain how the terminology used in the Code could be interchanged for terminology applicable to NPOs.

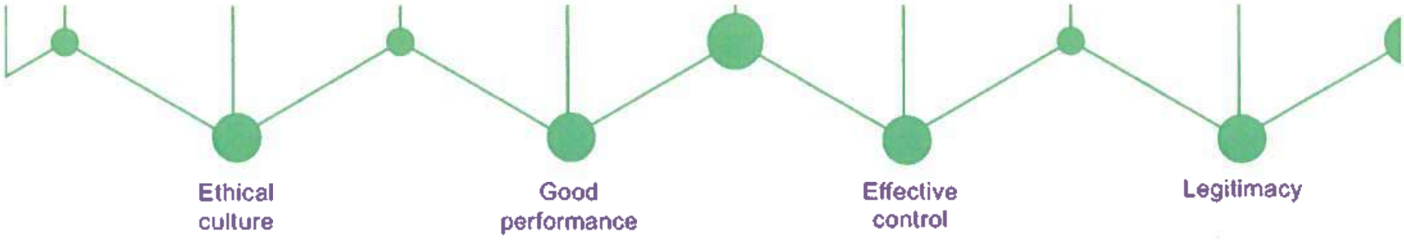
Term used in the King IV Code	Relevant term for NPOs
Organisation	A board, commission, company, corporation, fund, trust, voluntary association, or other term that would be applicable.
Governing body	Board or other term that would be applicable.
Shareholder	Member of an NPO incorporated as a non-profit company with members, or member of a voluntary association and also a donor as the provider of financial capital to the NPO. If donor funding is provided once-off, *ad hoc* or anonymously and no continuing relationship exists, references to shareholders do not apply to this category of funders.

In this supplement, the collective nouns "NPO" or "organisation" are used interchangeably. The supplement also refers generically to "governing body" and "member of the governing body".

KING IV PRINCIPLES AND PRACTICES

The essence of King IV, as represented by its governance outcomes and principles, applies to NPOs with the necessary adaptation in terminology. Principles are repeated below for ease of reference.

2 Bertha Institute of Social Innovation and Entrepreneurship, *A Guide to Legal Forms for Social Enterprises in South Africa* (2015), p 5, available at http://www.gsb.uct.ac.za/files/BerthaCentreGuideLegalFormsSocialEnterprisesSouthAfrica.pdf



Principle 1: The governing body should lead ethically and effectively.

Ethical and effective leadership is exemplified by integrity, competence, responsibility, accountability, fairness and transparency. Members of the governing body should individually and collectively cultivate these characteristics and exhibit them in their conduct as set out in the practices under Principle 1.

Included in the ethical duties of the governing body are its legal duties. The fiduciary duties of the members of the governing body of an NPO are, as a matter of law, owed to the organisation itself and not the party or constituency by which the member is appointed. These legal duties stand regardless of whether members of the governing body of an NPO act *pro bono* or for a minimum fee.

A governing body whose members are appointed as representatives of constituents, donors or other stakeholders of the NPO should be especially proactive in managing potential and actual conflicts. These conflicts usually manifest in the entanglement of the private and professional interests of an individual. Examples of typical conflicts in an NPO environment include community members, being the beneficiaries of the outputs of the organisation's efforts, also serving on the NPO's executive or governance structures; and the appointment of relatives and friends as employees or paid consultants or suppliers. The following practice under Principle 1 should be implemented in this regard: "Members of the governing body should avoid conflicts of interest. In cases where a conflict cannot be avoided it, should be disclosed to the governing body in full at the earliest opportunity, and then proactively managed as determined by the governing body and subject to legal provisions."

Principle 2: The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

In addition to assuming responsibility for its own character and conduct, in accordance with Principle 2, the governing body should govern the ethics of the NPO. The practices associated with this principle guide on how the governing body should discharge this responsibility.

Principle 3: The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.

By virtue of advocating for and fulfilling social and environmental needs, acting as a collective voice and holding others responsible, NPOs are an integral part of the societal dynamic. NPOs are thus corporate citizens and should apply the recommended practices pertaining to responsible corporate citizenship under Principle 3.

TC

SECTOR SUPPLEMENTS CONTINUED

Principle 4: The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

The practices recommended under Principle 4 address the development and approval of the organisation's strategy, implementation thereof and organisational performance.

The governing body of an NPO should balance its priorities so as to both remain financially viable and deliver on environmental or social objectives as per its constitution. This accords with King IV's assertion that performance encompasses the triple context of the economy, society and the environment in which the organisation operates. To accomplish this, it is important that an NPO clearly understands its strategy and business model as part of the value creation process. The Codes of Good Practice for South African Non-Profit Organisations issued by the Department of Social Development (Codes of Good Practice for South African NPOs) specifically highlight three major responsibilities of the leaders of an emerging NPO to ensure survival and growth:

- Ensuring that its service programme is meeting community needs or problems effectively and efficiently.
- Ensuring it establishes a reliable and sustainable support base in order to fulfil its work.
- Putting procedures in place to ensure the careful and accountable handling of all the organisation's resources and programmes.[3]

This guidance together with the recommended practices under Principle 4 will assist the governing bodies of NPOs with the processes for strategy development and oversight of implementation and execution.

Principle 5: The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance and its short, medium and long-term prospects.

Reports are a powerful means for an NPO to communicate meaningfully with its stakeholders, among others, beneficiaries, donors and regulators. Reports that are underpinned by integrated thinking and that present information about the resources and relationships on which the NPO relies, its activities, outputs and outcomes in an integrated manner, are an effective way of informing stakeholders about the NPO's performance. It also demonstrates accountability.

3 Adapted from: Department of Social Development, *Codes of Good Practice for South African Non-profit Organisations* (2001), p 7; available at http://www.dsd.gov.za/npo/index.php?option=com_docman&task=cat_view&gid=20&Itemid=116

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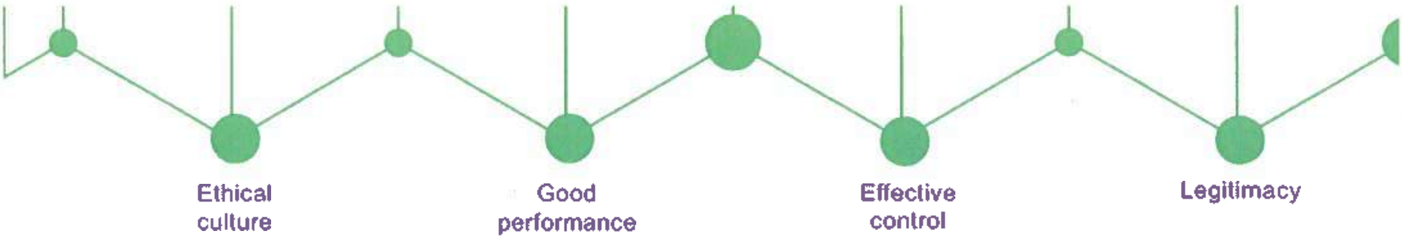

The G4 Global Reporting Initiative's Sector Disclosures for NGOs highlights why reporting is important to NPOs:

- It enables NPOs to report on the extent to which they act as sustainable organisations in society.
- It provides NPOs with the opportunity to demonstrably meet the same standards of transparency and disclosure of positive and negative aspects of performance that are asked of other sectors.
- It provides opportunities for the organisation itself and its stakeholders to assess its policies and programmes and effectiveness, and the economic, social and environmental impacts of its activities.
- Through the process of reporting, an NPO can critically examine its own activities, benchmark itself with other organisations, learn from experience and make improvements over time to better serve the causes it pursues.[4]

The practices under Principle 5 should be considered by the governing body to assist with its reporting responsibilities.

Principle 6: The governing body should serve as the focal point and custodian of corporate governance in the organisation.

The governing body's status as the focal point and custodian of corporate governance, as set out in Principle 6, is a natural consequence of its fiduciary duties towards the organisation. This common law duty originates from the fact that the governing body is entrusted with assets and interests, other than its own.

Under Principle 6, the primary leadership role of any governing body is expressed as encompassing the following:

a. steering the organisation and setting its strategic direction;

b. approving policy and planning that give effect to the direction provided;

c. overseeing and monitoring of implementation and execution by management; and

d. ensuring accountability for organisational performance by means of, among others, reporting and disclosure.

The above is a useful framework for the governing body of an NPO to attain an overarching understanding of its role. It should be used as a standing reference point by the governing body when discharging its responsibilities in any area of governance.

As stated in the Codes of Good Practice for South African NPOs[5], the role of an NPO's governing body tends to emerge from the circumstances that gave birth to the organisation. As the organisation evolves and grows, so the governing body finds itself faced with evolving challenges. At any stage of the organisational life cycle, it is important for a governing body to be clear on how best to lead and provide direction.

4 Adapted from: Global Reporting Initiatives, *G4 Sustainability Reporting Guidelines – Sector Disclosures for NGOs*, (2013): p 8

5 Department of Social Development, *Codes of Good Practice for South African Non-profit Organisations* (2001), p 13, available at http://www.dsd.gov.za/npo/index.php?option=com_docman&task=cat_view&gid=20&Itemid=116

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SECTOR SUPPLEMENTS CONTINUED

Principle 7: The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

Principle 7 provides for the governing body to be composed so it is able to discharge its governance role and responsibilities objectively and effectively. Where members of the governing body of an NPO are appointed as representatives of constituents, donors or other stakeholders, it is challenging to achieve the balance of knowledge, skills, experience, diversity and independence needed.

A formal process for the nomination, election and ultimately appointment of members of the governing body will help to ensure that the knowledge, skills, experience, diversity and independence requirements of the governing body are identified, that the requirements are communicated to those who are responsible for nomination and election, and that candidates are properly vetted. The practices recommended in support of Principle 7 should be considered to accomplish this.

In order to overcome resource constraints and an inability to pay market-related fees for the services of professional members of its governing body, an NPO should collaborate with professional bodies in its search for governing body members. Many experienced professionals are prepared to serve their communities through serving on the governing bodies of NPOs for no or minimal fees.

There is no optimum size and composition for the governing body of an NPO. There may be statutory requirements and other considerations to be taken into account, such as where the NPO is in its growth cycle.

The governing body of an NPO and its chair should guard against members of the governing body sending representatives to the governing body meetings, instead of attending themselves. Legally, this practice puts both the member of the governing body and his or her representative at risk.

Principle 8: The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

The establishment and delegation to committees of the governing body as addressed in the practices under Principle 8 should be considered in conjunction with industry or sector codes and guidance, applicable legislation and proportionality considerations.

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Principle 9: The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.

The evaluation of the performance of the governing body, its members and committees as addressed by Principle 9 and its associated practices, applies to NPOs. The results of the performance evaluations should be responded to by the governing body so as to achieve continued improvement in its performance and effectiveness as per the principle.

Principle 10: The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

An NPO may be said to be maturing when members of the governing body are not involved in the day-to-day running of the operations, management of staff, or other functions of the chief executive officer.[6] The practices under Principle 10 are pertinent in this regard. Due to resource constraints, delegation to members of the governing body may be necessary under certain circumstances, but should only be considered and implemented with the necessary governance processes and controls in place, particularly as they relate to conflicts of interest.

Under Principle 10, King IV furthermore recommends that the governing body should ensure that it has access to professional and independent guidance on corporate governance and the legal duties of the governing body, and also that it has support to coordinate the functioning of the governing body and its committees. For companies, this role is fulfilled by the company secretary. As a matter of leading practice, it is recommended that the governing bodies of NPOs appoint a suitably experienced professional to provide these services. Consult the guidance on proportional application provided in Part 6.1: *Introduction to Sector Supplements* for how this could be implemented by NPOs.

Principle 11: The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.

6 Department of Social Development; Codes of Good Practice for South African Non-profit Organisations (2001); p 13, available at http://www.dsd.gov.za/npo/index.php?option=com_docman&task=cat_view&gid=20&Itemid=116

TC

SECTOR SUPPLEMENTS CONTINUED

Principle 12: The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.

Principle 13: The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.

Principle 14: The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

Principle 15: The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation's external reports.

The recommended practices under Principles 11 to 15, which deal with specific governance functional areas, should be interpreted and applied in conjunction with industry or sector codes and guidance, applicable legislation and proportionality considerations.

Principle 16: In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.

Principle 16 addresses stakeholder relationships. Some NPOs have shareholders or members, and others have donors or funders who are the primary providers of financial capital to the NPO. Other stakeholders include employees, regulators, media, partners, beneficiaries, communities, suppliers and creditors. The recommended practices under this principle assist with establishing stakeholder relationships that result in legitimacy, something that is critical to the long-term viability and sustainability of the NPO.

Additional guidance is to be found in Section 4 of the G4 Global Reporting Initiative's Sector Disclosures for NGOs[7], which is instructive on executing accountability to stakeholders.

(Note that Principle 17 does not apply to NPOs.)

7 Global Reporting Initiatives, *G4 Sustainability Reporting Guidelines – Sector Disclosures for NGOs*, (2013), p 31, available at https://www.globalreporting.org/standards/sector-guidance/sectorguidanceG4/Pages/default.aspx

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PART 6.4: SUPPLEMENT FOR RETIREMENT FUNDS

The supplements should be read together with the balance of the King IV Report, particularly Part 1: *Glossary of Terms*, Part 2: *Fundamental Concepts*, Part 3: *King IV Application and Disclosure* and Part 5: *King IV Code on Corporate Governance*.

Retirement funds: the macro view and benefits of corporate governance

Retirement funds are an important part of the institutional investor industry, which consists of retirement funds, insurance companies as well as custodians, nominees and service providers who act under mandate in respect of any investment decisions and activities.

Retirement funds play an important role in the overall system of governance. They make investment decisions and have rights as shareholders, and the way in which these decisions are made and rights are exercised either reinforce or weaken the corporate governance of the companies that they invest in. Also, these funds owe fiduciary duties to their members. They therefore need to be well-governed and apply the principles of responsible investing in the quest for long-term, sustainable returns.

Retirement funds that follow and mandate responsible investing wield significant power for the enhancement of the checks and balances that are essential for an overall effective ecosystem of corporate governance and the creation of value. In King IV following responsible investing principles and practices is put forward as part and parcel of the good governance of retirement funds.

Scope

This supplement applies to all retirement funds, including the following types of funds in accordance with their definitions in the Income Tax Act, No 58 of 1962, as amended:

- Pension funds
- Provident funds
- Preservation funds
- Retirement annuity funds.

Even within the same sector, organisations vary largely in size, resources, and extent and complexity of activities. The scope of the supplement was, therefore, limited for the sake of clarity. An attempt to address too wide a range of variables may defeat the intent of the supplement, namely to demonstrate how the practices in the Code should be interpreted and applied in a number of representative contexts, situations and legislative regimes. Retirement funds falling outside the scope of this supplement should still align with the principles and consider the practices while adapting them along the approach as demonstrated in the supplement. Refer to Part 6.1: *Introduction to Sector Supplements* for the King IV Implementation Roadmap to assist with this.

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SECTOR SUPPLEMENTS CONTINUED

King IV and retirement funds

BACKGROUND

In addition to legislation and King IV, the Code for Responsible Investing in South Africa[1] (CRISA) is a voluntary code applicable to institutional investors, the definition of which includes retirement funds. CRISA and King IV are complementary codes that reinforce and complement each other. Other industry or sector codes and guidance, such as Financial Services Board Circular PF 130[2] (FSB Circular PF 130) should be considered in conjunction with this supplement. (Refer to the governance framework included in Part 6.1: *Introduction to Sector Supplements*.)

TERMINOLOGY

In order to apply the King IV Code to retirement funds without having to repeat it in its entirety, it is necessary to explain how the terminology used in the Code could be interchanged for terminology applicable to retirement funds.

Term used in the King IV Code	Relevant term for retirement funds
Organisation	Retirement fund, including pension fund, provident fund, preservation fund or retirement annuity fund.
Governing body	Board of the fund as defined in the Pension Funds Act.
Chief executive officer	Similar but not identical to Principal Officer.
Shareholder	Member of the retirement fund and, depending on the context, could include the sponsoring employee.

In this supplement, the collective nouns "retirement fund" or "fund" are used interchangeably, as are "board" and "governing body".

KING IV PRINCIPLES AND PRACTICES

The essence of King IV as represented by its governance outcomes and principles apply to retirement funds with the necessary adaptation in terminology. Principles are repeated below for ease of reference.

Principle 1: The board should lead ethically and effectively.

Ethical and effective leadership is exemplified by integrity, competence, responsibility, accountability, fairness and transparency. Members of the board of the fund should individually and collectively cultivate these characteristics and exhibit them in their conduct as set out in the practices under Principle 1.

Principle 2: The board should govern the ethics of the fund in a way that supports the establishment of an ethical culture.

In addition to setting an example through its own character and behaviour, the board should also ensure that the ethics of the fund is governed effectively. Principle 2 and its supporting practices apply to both a retirement fund with its own staff complement to carry out the administration, and to a fund that outsources those services. When outsourced, the board should satisfy itself that the fund's service providers manage their ethics effectively through codes of conduct, ethics policies and supporting processes.

1 Committee for Responsible Investment in South Africa, *Code for Responsible Investment in South Africa* (Institute of Directors in Southern Africa, 2011), available at: www.iodsa.co.za

2 Financial Services Board, *Good Governance for Retirement Funds – Circular 130*, 2007 available at https://www.fsb.co.za/

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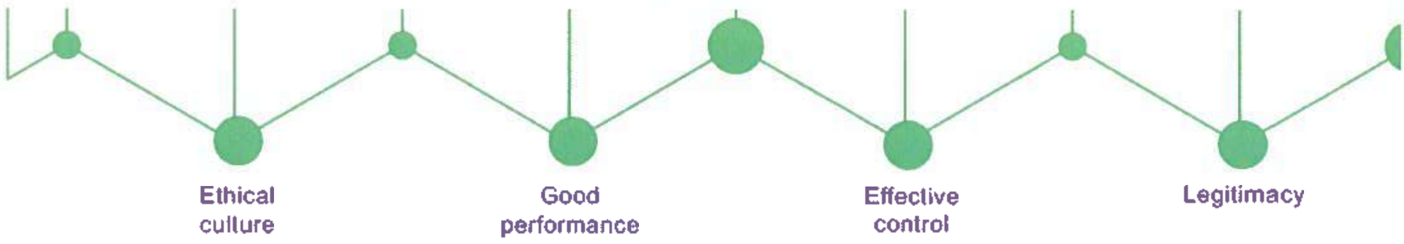

Principle 3: The board should ensure that the fund is and is seen to be a responsible corporate citizen.

Compliance with Regulation 28 of the Pension Funds Act and, in particular, the preamble stating that prudent investing "should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of the fund's assets, including factors of an environmental, social and governance character", should be seen as an integral part of the fiduciary duties of the board of a fund.

Principle 3 conveys the same intent, albeit using different terminology. A retirement fund gives substance to its duty to be a responsible corporate citizen by ensuring that its investment analyses and practices, whether executed by the fund itself or an asset or fund manager or other service provider, take account of sustainability including environmental, social and governance (ESG) considerations, as provided for in Principle 1 of CRISA. Principle 3 of King IV includes that the fund should accept ownership responsibility for its investment arrangements and investment activities as provided for in Principle 2 of CRISA.

Principle 4: The board should appreciate that the fund's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

The practices recommended under Principle 4 address the development and approval of the organisation's strategy, implementation thereof and organisational performance. These practices should be considered and adapted by the board of the fund, being mindful of the fact that, unlike a commercial enterprise, the purpose of a retirement fund is more narrowly defined to provide the benefits to its members, their beneficiaries and dependants as set out by its rules. The performance of a retirement fund consists of delivering targeted investment returns in terms of its investment strategy without irresponsible risk-taking, and managing expenses to maximise value for money.[3] For a retirement fund, it is especially critical that a long-term view is taken of the fund's performance in the interests of its members.

Principle 5: The board should ensure that reports issued by the fund enable stakeholders to make informed assessments of the fund's performance and its short, medium and long-term prospects.

Reports are a powerful means for a retirement fund to communicate meaningfully with its stakeholders, among others, members and regulators. Reports that are underpinned by integrated thinking and that present information about the resources and relationships on which the fund relies, its activities, outputs and outcomes in an integrated manner, are an effective way of informing stakeholders about the retirement fund's performance. It also demonstrates accountability. The practices under Principle 5 should be considered by the board to assist with its reporting responsibilities.

In addition, it is recommended that retirement funds apply the disclosure practices as recommended under Principle 5 of CRISA as these pertain specifically to demonstrating accountability on investment decisions and activities.

3 Stewart, F. and J. Yermo, "Pension Fund Governance: Challenges and Potential Solutions", *OECD Working Papers on Insurance and Private Pensions, No. 18, OECD publishing*, © OECD. doi: 10.1787/241402256531, 2008

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Principle 6: The board should serve as the focal point and custodian of corporate governance in the fund.

The board's status as the focal point and custodian of corporate governance, as set out in Principle 6, is a natural consequence of its fiduciary duties towards the members of the fund. This common law duty originates from the fact that the board is entrusted with assets and interests, other than its own.

Under Principle 6, the primary leadership role of any governing body is expressed as encompassing the following:

a. steering the organisation and setting its strategic direction;
b. approving policy and planning that give effect to the direction provided;
c. overseeing and monitoring of implementation and execution by management; and
d. ensuring accountability for organisational performance by means of, among others, reporting and disclosure.

The above is a useful framework for the board of a retirement fund to attain an overarching understanding of its role. It should be used as a standing reference point by the board when discharging its responsibilities in any area of governance.

Principle 6 and its associated recommended practices should be read together with section 7C of the Pension Funds Act.

Principle 7: The board should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

Election and appointment of board members

Even though the election and appointment mechanisms of members of retirement fund boards are prescribed in legislation, the boards of retirement funds should still strive towards the aspiration expressed in Principle 7. One of the ways in which this can be achieved is by using external expertise as recommended in the practices under Principle 7, to assist the board with its oversight duties in the event that objective input on specific matters outside its knowledge, skills and experience is required.

Another manner in which balanced board composition can be accomplished is for employers or sponsors to use their powers of appointment to ensure that the board has members with the necessary expertise and experience. Those board members appointed by the employer should not be involved in the employer's decisions as regards the fund, and employers should not use their power of appointment of board members to ensure some sort of control over funds.[4] Also, a process of engagement with the employees who elect retirement fund board members should be initiated to convey the nature of board members' duties and the competencies required, so that informed elections take place.

As is the case with all organisations, professional development and learning are of critical importance in ensuring that those charged with the governance of retirement funds are able to execute their duties effectively. Ongoing development programmes should include responsible investment and ESG matters.

4 Rosemary Hunter, "The Governance Of Pension Funds", April 2002
(Paper presented by Rosemary Hunter to the annual convention of the Financial Planning Institute Durban)

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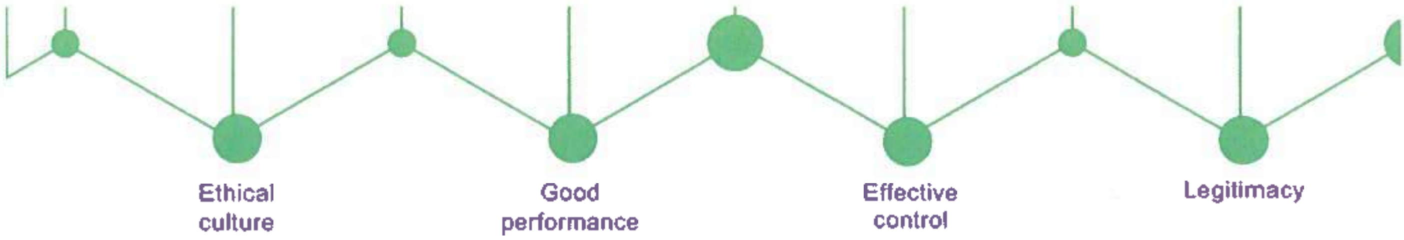

Independence of board members and conflicts of interest

Members of the board should act with independence of mind, regardless of who elected or appointed them. Members of the board should not act as representatives of their constituencies, and meetings of the board should not be understood as forums for collective bargaining. Doing so results in board members facing conflicts between the interests of those who appointed or elected them and the interests of the fund itself.[5]

Funds benefit from board members who are independent in appearance as this supports balanced, objective decision-making in the best interests of the fund and its members. It is recommended that at least half of the members of the board are independent and appointed from a pool of professional board members. Such independent board members should be free from any relationships that could, in the opinion of a reasonable and informed outside party, affect their objectivity. Smaller funds should consider appointing at least one independent, professional board member.

Independent board members could add objective judgement in dealing with the conflicts of interest that those board members who are also members of the fund may have. Conflicts may arise in both expense and investment allocations and in the context of valuations. Valuations can be especially complex when dealing with portfolio companies and assets that are difficult to assess. The board should ensure that a policy exists which provides for how these conflicts of interest should be managed.

All members of the board are bound to treat as confidential any information that comes to their attention during the course of performing their duties as such. Such information cannot be disclosed to outside parties, including to those who elected the members of the board and to fund members, without the express permission of the board on behalf of the fund.

Summary of recommended practices for the board's access to the appropriate balance of knowledge, skills, experience, diversity and independence:

- The board should make use of external expertise on specific matters outside the knowledge, skills and experience of the board when required.
- Employers or sponsors should use their powers of appointment to ensure that the board has members with the necessary expertise and experience.
- The board should ensure engagement with those who elect board members.
- The board should ensure ongoing development programmes for its members.

Principle 8: The board should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

Principle 8 deals with the establishment of board committees. The boards of all funds that undergo a statutory audit should consider having an audit committee to ensure proper oversight of the quality of the audit and the independence of the auditor. Retirement funds should also consider investment committees to set investment strategy and monitor the performance of asset and fund managers against the strategy. Death and disability committees may be appropriate for larger funds.

Regardless of the actual board committees that are established, the practices that address board committees under this principle are generally applicable to retirement funds and should be considered in conjunction with industry or sector codes and guidance, applicable legislation and proportionality considerations.

5 Rosemary Hunter, "The Governance Of Pension Funds", April 2002
(Paper presented by Rosemary Hunter to the annual convention of the Financial Planning Institute Durban)

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Principle 9: The board should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.

The evaluation of the performance of the governing body, its members and committees as addressed by Principle 9 and its associated practices, applies to retirement funds. The results of the performance evaluations should be responded to by the board so as to achieve continued improvement in its performance and effectiveness as per the principle.

Principle 10: The board should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

Outsourcing

Many retirement funds outsource all or part of the fund's administrative functions and investment activities. Delegation of responsibilities to a third party does not absolve the board from accountability. Oversight of service providers to whom the administration of the fund or investment decisions or investment activities are outsourced, is an integral part of the board's governance role, as the board can be held liable for their actions. The practices as recommended in the Code under Principle 10 are helpful guidance on oversight of management and should be applied by the board with the necessary adaptation in relation to fund administrators and other service providers.

When administrative and investment functions are outsourced, mechanisms and processes should be introduced for adequate and effective oversight in the same way as the board would have done if all these functions were conducted by the management of the fund. The board should ensure that a clear mandate is in place between the retirement fund and the fund administrator and other service providers. The mandate should provide for performance measures and targets and the application of responsible investing principles and practices. Execution of such mandates by outsourced service providers should be supervised by the board.

The board must be especially proactive in overseeing how service providers manage conflicts of interest. This challenge is particularly acute when various funds' investments are pooled and managed by the same investment manager, and the board should ensure that the interests of the retirement fund are treated fairly in relation to the potential competing interests of the co-investment vehicles and parallel funds.

Appointment of principal officer

Another matter that falls under Principle 10 is the appointment of the principal officer. In terms of the Pension Funds Act, the board appoints the principal officer. Hence, the principal officer is accountable to the board and the board, in turn, is accountable to the members of the fund. (The board also has a secondary line of accountability to the sponsoring employer of the fund, as the retirement fund is fulfilling an obligation on behalf of the employer.)

The principal officer may also be a board member but may, in terms of FSB Circular PF 130, not act as the chair of the board.

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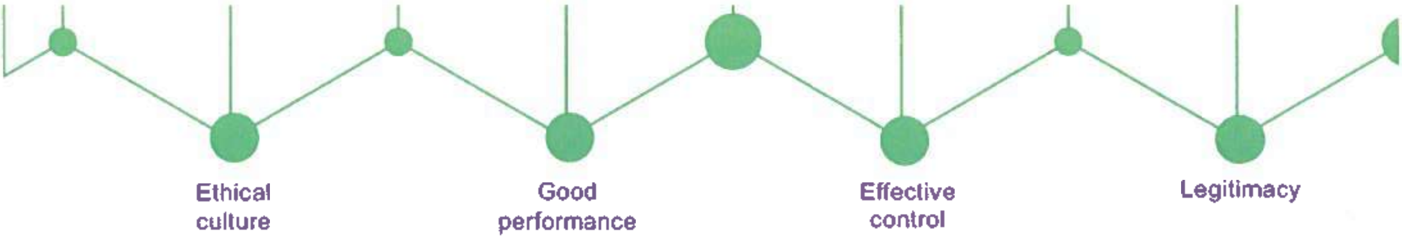

Professional corporate governance services to the governing body

Under Principle 10, it is furthermore recommended that the board should ensure that it has access to professional and independent guidance on corporate governance and its legal duties, and also that it has support to coordinate the functioning of the board and its committees. For companies, this role is fulfilled by the company secretary. As a matter of leading practice, it is recommended that boards of retirement funds appoint a suitably experienced professional to provide these services.

Principle 11: The board should govern risk in a way that supports the fund in setting and achieving its strategic objectives.

Principle 12: The board should govern technology and information in a way that supports the fund setting and achieving its strategic objectives.

Principle 13: The board should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the fund being ethical and a good corporate citizen.

Principle 14: The board should ensure that the fund remunerates fairly, responsibly and transparently so as to promote the achievement of stategic objectives and positive outcomes in the short, medium and long term.

Principle 15: The board should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the fund's external reports.

The recommended practices under Principles 11 to 15, which deal with specific governance functional areas, should be interpreted and applied in conjunction with industry or sector codes and guidance, applicable legislation and proportionality considerations.

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Principle 16: In the execution of its governance role and responsibilities, the board should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the fund over time.

Principle 16 addresses stakeholder relationships. The stakeholders of a retirement fund include, among others, the members of the fund, their dependents and nominees, the participating employer, the sponsor (if different from the participating employer), the Registrar of Pension Funds and the respective service providers. The recommended practices under this principle assist in establishing stakeholder relationships that contribute to the sustainability of the fund.

Principle 17: The board should ensure that responsible investment is practiced by the fund to promote the good governance and the creation of value by the companies in which it invests.

Principle 17 invokes the application of the principles and practices of responsible investing as advocated in CRISA, and which should be applied by all retirement funds as a matter of good governance.

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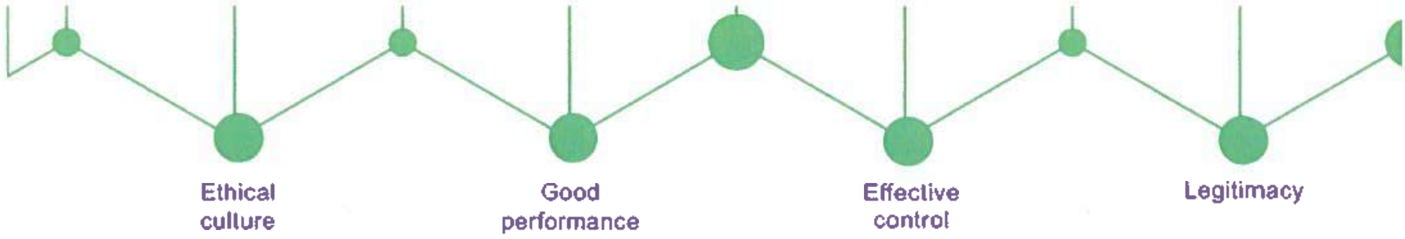

PART 6.5: SUPPLEMENT FOR SMALL AND MEDIUM ENTERPRISES

The supplements should be read together with the balance of the King IV Report, particularly Part 1: *Glossary of Terms*, Part 2: *Fundamental Concepts*, Part 3: *King IV Application and Disclosure* and Part 5: *King IV Code on Corporate Governance*.

SMEs: the macro view and benefits of corporate governance

Small and medium enterprises (SMEs) are the drivers of a growing and inclusive economy, and of societal transformation. In order to survive, SMEs need to be innovative and entrepreneurial, and open to technological change and productivity growth. They are therefore an integral part of the renewal process that defines a market economy. SMEs play a particularly important role as job creators, thus providing a way for people to enter the formal economy and join the mainstream of society.[1]

Good corporate governance contributes to the success of an SME, as it enhances the functioning of its leadership structures and helps the governing body to govern in such a way that the SME meets its strategic objectives. Some of the further benefits SMEs can derive from good corporate governance include the following:

- Added credibility and enhanced reputation.
- Access to capital and loans on better terms.
- The ability to attract talent for employment.
- Improved access to customers and market participants.
- Better positioning to capture business opportunities.
- Better fraud prevention due to improved controls.
- Business continuity arrangements that permit the SME to operate under conditions of volatility, and to withstand and recover from acute shocks.
- Leadership continuity through succession planning.
- Better management of the risk of conflict in family businesses.

Scope

For the purposes of this supplement an SME is defined as a private, for-profit company which has a public interest score of at least 350 calculated in terms of regulation 26(2) of the Companies Act.

Even within the same sector, organisations vary largely in size, resources, and extent and complexity of activities. The scope of this supplement was, therefore, limited for the sake of clarity. An attempt to address too wide a range of variables may defeat the intent of the supplement, namely to demonstrate how the practices in the Code should be interpreted and applied in a number of representative contexts, situations and legislative regimes. SMEs falling outside the scope of this supplement should still align with the principles and consider the practices while adapting them along the approach as demonstrated in the supplement. Refer to Part 6.1: *Introduction to Sector Supplements* for the King IV Implementation Roadmap to assist with this.

1 Adapted from: François Groepe, "The role of the small business in the economy", October 2015 (address given by him while he was the Deputy Governor of the South African Reserve Bank at the AHI conference, George, 9 October 2015).

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SECTOR SUPPLEMENTS CONTINUED

King IV and SMEs

TERMINOLOGY

In order to apply the King IV Code to SMEs without having to repeat it in its entirety, it is necessary to explain how the terminology used in the Code could be interchanged for terminology applicable to SMEs.

Term used in the King IV Code	Relevant term for SMEs (within the scope of this supplement)
Organisation	Company or SME
Governing body	Board
Members of the governing body	Directors

BACKGROUND

SMEs typically grow from the investment of energy, passion and resources by founding members over time, sometimes over decades and generations. Such SMEs eventually become a family partnership, consortium, syndicate or even company owned by a number of outside shareholders. The risk is for the governance structures and processes not to evolve and mature as the company does. Corporate governance facilitates stable and sustainable development and the ability to leverage opportunities. It is therefore important for SMEs to ensure that a foundation of good governance is established from the beginning, so that it is entrenched in the way the business is conducted.

A key consideration in developing corporate governance in tandem with the growth of the company is the transition of ownership and management. Business growth ultimately requires an evolution from an entrepreneurial to a professionally managed organisational system[2].

KING IV PRINCIPLES AND PRACTICES

The essence of King IV, as represented by its governance outcomes and principles, applies to SMEs with the necessary adaptation in terminology. Principles are repeated below for ease of reference.

Principle 1: The board should lead ethically and effectively.

Ethical and effective leadership is exemplified by integrity, competence, responsibility, accountability, fairness and transparency. Directors should individually and collectively cultivate these characteristics and exhibit them in their conduct as set out in the practices under Principle 1.

Principle 2: The board should govern the ethics of the company in a way that supports the establishment of an ethical culture.

In addition to setting an example through its own character and behaviour, the board should also ensure that the SME's ethics is governed effectively in accordance with Principle 2. The practices associated with this principle guide on how the board should discharge this responsibility.

2 Tony Balshaw, *Thrive! Making Family Business Work* (Human & Rousseau (Pty) Ltd, 2003), p116

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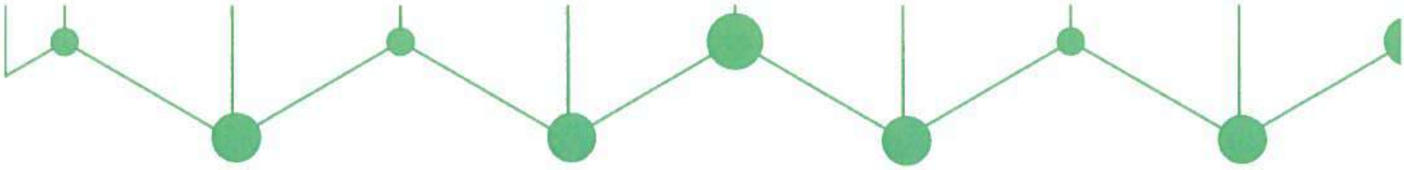

Principle 3: The board should ensure that the company is and is seen to be a responsible corporate citizen.

Due to the critical role of SMEs in an inclusive, growing economy and societal transformation, they are integral to society. SMEs also form part of the supply chain of other organisations, and are held accountable by their customers for responsible corporate citizenship and ethical practices. In short, SMEs are corporate citizens and should apply the recommended practices pertaining to responsible corporate citizenship under Principle 3 as is appropriate to their particular circumstances.

Principle 4: The board should appreciate that the company's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

The practices recommended under Principle 4 address the development and approval of the organisation's strategy, implementation thereof and organisational performance.

King IV asserts that organisations contribute to the creation of value and perform well by enhancing the triple context of the economy, society and the environment and the capitals that they use or affect. By understanding the connection between sustainability and the business, an SME can measure its business performance, identify areas for improvement and manage change effectively. This will drive performance and innovation within the SME.[3] The practices recommended under Principle 4 are helpful guidance for accomplishing this.

Principle 5: The board should ensure that reports issued by the company enable stakeholders to make informed assessments of the company's performance and its short, medium and long term prospects.

Reports are a powerful means for SMEs to communicate meaningfully with stakeholders, among others, shareholders, customers and potential providers of financial capital. Reports that are underpinned by integrated thinking and that present information about the resources and relationships on which the SME relies, its activities, outputs and outcomes in an integrated manner, are an effective way of informing stakeholders about the SME's performance. It also demonstrates accountability. The practices under Principle 5 should be considered by the board to assist with its reporting responsibilities.

3 Adapted from: Global Reporting Initiative, *GRI Ready to Report? Introducing sustainability reporting for SMEs booklet* (2014) available at https://www.globalreporting.org/resourcelibrary/Ready-to-Report-SME-booklet-online.pdf

Principle 6: The board should serve as the focal point and custodian of corporate governance in the company.

The board's status as the focal point and custodian of corporate governance, as set out in Principle 6, is a natural consequence of its fiduciary duties towards the company. This common law duty originates from the fact that the board is entrusted with assets and interests, other than its own.

Even though SMEs are often more informal in conducting their business activities, there is a need to put their corporate governance on a formal footing. A key element of this is recognition of the board's overarching leadership and governance role as provided for in Principle 6, and its supporting practices. Under this principle, the primary leadership role of any governing body is expressed as encompassing the following:

a. steering the organisation and setting its strategic direction;

b. approving policy and planning that give effect to the direction provided;

c. overseeing and monitoring of implementation and execution by management; and

d. ensuring accountability for organisational performance by means of, among others, reporting and disclosure.

The above is a useful framework for the board of an SME to attain an overarching understanding of its role. It should be used as a standing reference point by the board when discharging its responsibilities in any area of governance.

In an SME, a director is often also a shareholder and manager. In the interest of role clarity, it is recommended that formal processes be put in place to differentiate between a single individual's roles as director, manager and shareholder. For example, board meetings should be scheduled separately from management meetings even though the same persons may be involved in both. As the founder's role changes from shareholder-director-manager to shareholder-director and finally to just shareholder, the degree of involvement and governance structures will also need to change. Transition will be easier if roles have been defined and kept separate from the start.

Formalising a description of each of these roles in writing will further assist individuals to identify in which capacity they should be acting, especially when specific authorities are exercised. It is recommended that an SME's shareholders sign an agreement with the board (even if they are related or consisting of the same individuals), and incorporate in this agreement a board charter, a management charter and a delegation of authority.

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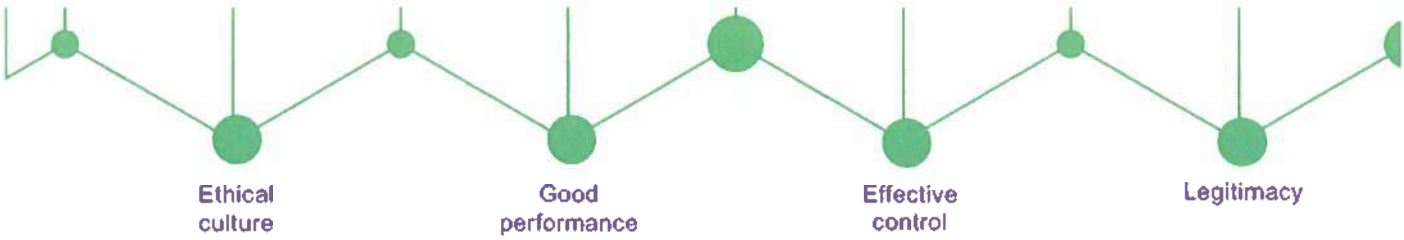

Principle 7: The board should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

Principle 7 and its related practices are applicable to SMEs, but the following points should specifically be considered:

Enhancing board independence
All directors should, as a matter of law, exercise independent judgement in the best interests of the company. Having directors who are also independent in appearance in that there is no interest, position, association or relationship which is likely to affect, or may appear to unduly influence or cause bias, could pose a challenge to SMEs due to capacity and resource constraints.

Nevertheless, input free from perceived and actual bias adds value to board deliberations, and serves as an added control. Therefore, SMEs should strongly consider inviting an experienced and competent person to serve as a non-executive and, ideally, independent director. If this is not possible, such a person may be consulted on an *ad hoc*-basis, and invited to attend board meetings, as and when necessary, to obtain objective input until such time as the SME is in a position to appoint a full-time, independent, non-executive director. As the company grows in capacity, resources and consequently impact, steps should be taken to include a number of non-executive directors and at least one independent non-executive director who serves as chair.

Having a mix of executive and non-executive and one or more independent directors on the board also mitigates the risk that emotive issues drive decision-making, especially in family-owned companies or where the authority of the founding member is entrenched.

Encouraging professional development
Directors of SMEs who are not experienced non-executive directors should undergo corporate governance training so that they are adequately equipped to fulfil their fiduciary duties.

Nomination, election and appointment of non-executive directors
Many SMEs do not have a separate nominations committee to deal with the selection and nomination of new directors. It is thus recommended that the board charter clearly outlines the nomination, election and appointment process, the knowledge, skills and experience required from directors, and any other specific eligibility criteria. Once a number of non-executive directors are serving on the board, the formation of a nominations committee should be considered.

Non-executive directors should be formally appointed and fees and obligations agreed upfront. Creating a professional relationship with board members will help to establish a sound governance structure that is progressively less affected by emotive issues that may be connected to family dynamics or a more informal working environment.

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SECTOR SUPPLEMENTS CONTINUED

Rotation and succession of directors

In order to ensure that there is a balance of power as envisaged in Principle 7, the board needs to ensure that non-executive directors are rotated on a regular basis so as to maintain objectivity, which is one of the non-executive director's primary contributions. At the same time, care must be taken to protect the required institutional knowledge. For an SME, too-regular rotation may not be practical or feasible (especially if the SME only has one or two non-executive directors) and thus non-executive directors of SMEs may serve for longer periods than in larger companies.

Because a single individual often fulfils the roles of director, manager and shareholder, SMEs face the risk of increased dependence on key individuals. Succession planning for directors and managers should be put in place to ensure that key positions can be filled temporarily on an emergency basis and over the longer term. This is often a challenge in SMEs, and can affect business growth and continuity from one generation to the next if not dealt with appropriately.

An effective succession plan requires deliberate and well-thought-out processes that are tested and considered over time. The succession plan should describe how the successor will be chosen, what kind of knowledge, skills and experience will be required, what training and grooming will be necessary and how all of this should be accomplished.[4]

Principle 8: The board should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

Principle 8 deals with delegation by the board to board committees. Due to capacity and resource constraints, it may not be possible for an SME to have all the board committees as recommended in the Code. With this being the case, the board is responsible for ensuring that it addresses those matters which a board committee would otherwise have addressed. Agendas should be appropriately structured or, if necessary, separate meetings should be set up to ensure sufficient focus on one particular topic or area (such as audit, risk and ethics).

Principle 9: The board should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.

The evaluation of the performance of the governing body, its members and committees as addressed by Principle 9 and its associated practices, applies to SMEs. The results of the performance evaluations should be responded to by the board of the SME so as to achieve continued improvement in its performance and effectiveness as per the principle.

4 Tony Balshaw, *Thrive! Making Family Business Work*, (Human & Rousseau (Pty) Ltd, 2003), p114

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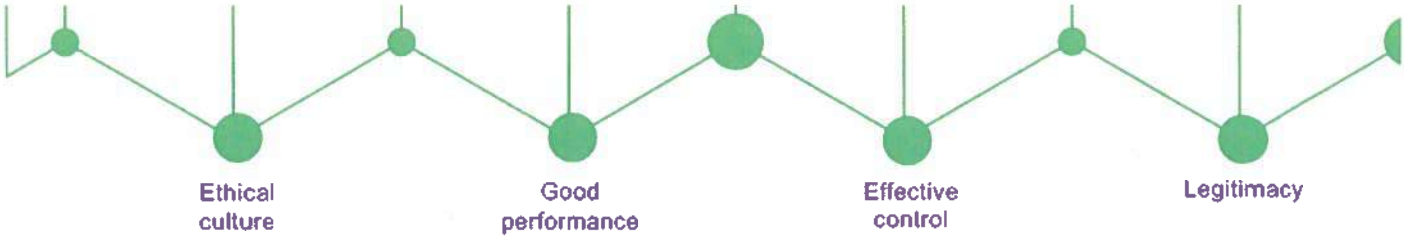

Principle 10: The board should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

The practices under Principle 10 are pertinent in helping SMEs to attain clarity on the respective roles of the board and management. The boards of SMEs should apply these practices to achieve this aim.

Under Principle 10, it is furthermore recommended that the board should ensure that it has access to professional and independent guidance on corporate governance and its legal duties, and also that it has support to coordinate the functioning of the board and its committees. For companies, this role is fulfilled by the company secretary. As a matter of leading practice, it is recommended that boards of SMEs appoint a company secretary to provide these services. Consult the guidance on proportional application provided in Part 6.1: *Introduction to Sector Supplements* for how this could be implemented by SMEs.

Principle 11: The board should govern risk in a way that supports the company in setting and achieving its strategic objectives.

Principle 12: The board should govern technology and information in a way that supports the company setting and achieving its strategic objectives.

Principle 13: The board should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the company being ethical and a good corporate citizen.

Principle 14: The board should ensure that the company remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

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Principle 15: The board should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the company's external reports.

The recommended practices under Principles 11 to 15, which deal with specific governance functional areas, should be interpreted and applied in conjunction with industry or sector codes and guidance, applicable legislation and proportionality considerations.

Principle 16: In the execution of its governance role and responsibilities, the board should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the company over time.

Principle 16 addresses stakeholder relationships. Due to the sometimes informal nature of relationships at an SME, shareholders may be more involved than is the case with bigger companies. With family businesses, shareholders also have personal ties with managers and directors which necessitate communication structures that create a bridge between family and business matters. Consideration should be given to establishing a formal forum in which shareholders of an SME may raise broad questions. Issues typically addressed in such a forum could include, among others, succession planning, growth and return on investment, dividend policy, acquisitions and/or disposals, going public, shareholder sacrifices and management performance.[5]

The company and its shareholders should also agree on policies for future equity ownership. Such policies should deal, for example, with the transfer, acquisition and disposal of shares in the SME, including the method of valuing shares equitably.[6]

The recommended practices under Principle 16 should be applied by the SME in respect of all its stakeholders.

(Note that Principle 17 does not apply to SMEs.)

5 See Tony Balshaw, *Thrive! Making Family Business Work*, (Human & Rousseau (Pty) Ltd, 2003). p96-97 for more information on the role of the family shareholders' committee.

6 Tony Balshaw, *Thrive! Making Family Business Work*, (Human & Rousseau (Pty) Ltd, 2003), p123

TC

Ethical culture | Good performance | Effective control | Legitimacy

PART 6.6: SUPPLEMENT FOR STATE-OWNED ENTITIES

The supplements should be read together with the balance of the King IV Report, particularly Part 1: *Glossary of Terms*, Part 2: *Fundamental Concepts*, Part 3: *King IV Application and Disclosure* and Part 5: *King IV Code on Corporate Governance*.

SOEs: the macro view and benefits of corporate governance

As the Presidential Review Committee on State-owned Enterprises[1] makes clear, state-owned enterprises (which include state-owned entities (SOEs)), create the foundation that underpins economic growth and transformation, and thus have an important part in addressing the economic and social challenges facing the country. "South Africa aspires to be a Developmental State … [and] SOEs need to be aligned to this agenda. If the country is to attain improved quality of life underpinned by a robust democracy and a just society, along with other initiatives, the State must preside over viable, efficient, effective and competitive SOEs".

Good corporate governance is paramount to the success of the SOE itself, and to protect and advance the interests of the country and its citizenry. Governance helps enhance the functioning of leadership structures of an SOE, and provides the arrangements by which the SOE should be governed so that it is able to meet its strategic objectives.

Scope

This supplement applies to all public entities listed in Schedules 2 and 3 of the Public Finance Management Act (PFMA).

Even within the same sector, organisations vary largely in size, resources, and extent and complexity of activities. The scope of this supplement was, therefore, limited for the sake of clarity. An attempt to address too wide a range of variables may defeat the intent of the supplement, namely to demonstrate how the practices in the Code should be interpreted and applied in a number of representative contexts, situations and legislative regimes. SOEs falling outside the scope of this supplement should still align with the principles and consider the practices while adapting them along the approach as demonstrated in the supplement. Refer to Part 6.1: *Introduction to Sector Supplements* for a King IV Implementation Roadmap to assist with this.

1 Presidential Review Committee on State-owned Enterprises, *Executive summary of the final report, Volume 1*, p 7, available at www.thepresidency.gov.za/electronicreport/...1/volume_1.pdf

King IV and SOEs

TERMINOLOGY

In order to apply the King IV Code to SOEs without having to repeat it in its entirety, it is necessary to explain how the terminology used in the Code could be interchanged for terminology applicable to SOEs. Although structures in SOEs are not necessarily directly comparable to those of other organisations, the following can be used as a guideline when interpreting the terminology in the King IV Code in an SOE context:

Term used in the King IV Code	Relevant term for SOEs
Organisation	Business enterprise, board, commission, company, corporation, or other type of entity as provided for in the enabling legislation.
Governing body	"Accounting authority" as defined in the PFMA or board or other terminology as provided for in the enabling legislation.
Members of the governing body	Members of the accounting authority or board
External auditor	Auditor General of South Africa
Shareholder	"Executive authority" as defined in the PFMA.

In this supplement, "SOE" and "entity" are used interchangeably, as are, "governing body" and "accounting authority", and "shareholder "and "executive authority".

KING IV PRINCIPLES AND PRACTICES

The essence of King IV, as represented by its governance outcomes and principles, applies to SOEs with the necessary adaptation in terminology. Principles are repeated below for ease of reference.

Principle 1: The accounting authority should lead ethically and effectively.

Ethical and effective leadership is exemplified by integrity, competence, responsibility, accountability, fairness and transparency. Members of the accounting authority should individually and collectively cultivate these characteristics and exhibit them in their conduct as set out in the practices under Principle 1. This is congruent with section 195 of the Constitution in terms of which public administration must be governed by the democratic values and principles enshrined in the Constitution, including that a high standard of professional ethics must be promoted and maintained.

Principle 2: The accounting authority should govern the ethics of the SOE in a way that supports the establishment of an ethical culture.

In addition to setting the example through its own character and conduct, the accounting authority should also ensure that the ethics of the SOE is governed effectively in accordance with Principle 2. The practices associated with this principle guide on how the accounting authority should discharge this responsibility.

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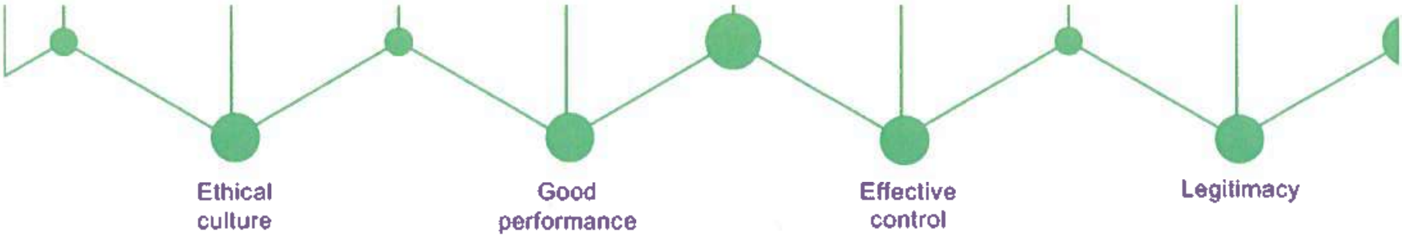

Principle 3: The accounting authority should ensure that the SOE is and is seen to be a responsible corporate citizen.

By virtue of their public-interest mandates, corporate citizenship is core to the purpose of an SOE. Also, taxpayers contribute to the funding of SOEs. SOEs are thus accountable to these citizens, and the state organs that are representative of these citizens, for discharging their responsibilities in accordance with their mandates. Therefore, Principle 3 and the practices recommended under it should be applied by SOEs as a means by which to give expression to their public-interest mandates.

Principle 4: The accounting authority should appreciate that the SOE's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

The practices recommended under Principle 4 address the development and approval of the organisation's strategy, implementation thereof and organisational performance. These practices should be considered by SOEs and modified, keeping the following in mind:

The strategic priorities of government, as decided by Cabinet, are devolved to the appropriate ministers and departments. Where in respect of an SOE, its executive authority is different from the minister responsible for policy, the policy ministry sets industry or sector policy on a country-wide basis and the role of the executive authority is then to set policy parameters for a specific SOE within this framework. The accounting authority of an SOE should actively seek common understanding between the entity and the executive authority on how to reconcile competing objectives so that a strategic plan for the SOE can be developed within these confines.

As far as performance is concerned, SOEs have to balance their priorities so as to both, fulfil their mandate and remain financially sustainable. This is congruent with King IV's assertion that performance encompasses both an organisation's achievements relative to its strategic objectives, and positive outcomes in terms of its effects on the capitals and the triple context in which it operates.

In order to obtain clarity and alignment on strategic objectives, key performance measures and targets and potential trade-offs to be made, it is recommended that these be agreed in writing between the entity, as represented by its accounting authority, and the shareholder, even where such an agreement is not required in terms of legislation.

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Principle 5: The accounting authority should ensure that reports issued by the SOE enable stakeholders to make informed assessments of the SOE's performance and its short, medium and long-term prospects.

Reports are a powerful means for an SOE to communicate meaningfully with its stakeholders, among others, the executive authority and taxpayers. Reports that are underpinned by integrated thinking and that present information about the resources and relationships that the entity relies on, its activities, outputs and outcomes in an integrated manner, are an effective way of informing stakeholders about the SOE's performance. It also demonstrates accountability. The practices under Principle 5 should be considered by the accounting authority to assist with its reporting responsibilities.

Principle 6: The accounting authority should serve as the focal point and custodian of corporate governance in the SOE.

The accounting authority is the governing body of an SOE, and thus bears fiduciary responsibilities in terms of section 50 of the PFMA and, where the SOE is a company, also section 75 of the Companies Act. The governing body's status as the focal point and custodian of corporate governance, as set out in Principle 6, is a natural consequence of its fiduciary duties which originate from the fact that the accounting authority is entrusted with assets and interests, other than its own.

Under Principle 6, the primary leadership role of any governing body is expressed as encompassing the following:

a. steering the organisation and setting its strategic direction;
b. approving policy and planning that give effect to the direction provided;
c. overseeing and monitoring of implementation and execution by management; and
d. ensuring accountability for organisational performance by means of, among others, reporting and disclosure.

It should be noted that the terminology used under this principle, namely strategy leading to policymaking, is usually used in the reverse in a government setting with policy directives leading to strategic initiatives and plans. Notwithstanding, the supporting practices are helpful in giving effect to the duties of the accounting authority as set out in the PFMA and other legislation. The above is also a useful framework for the accounting authority to attain an overarching understanding of its role. It should be used as a standing reference point by the accounting authority when discharging its responsibilities in any area of governance.

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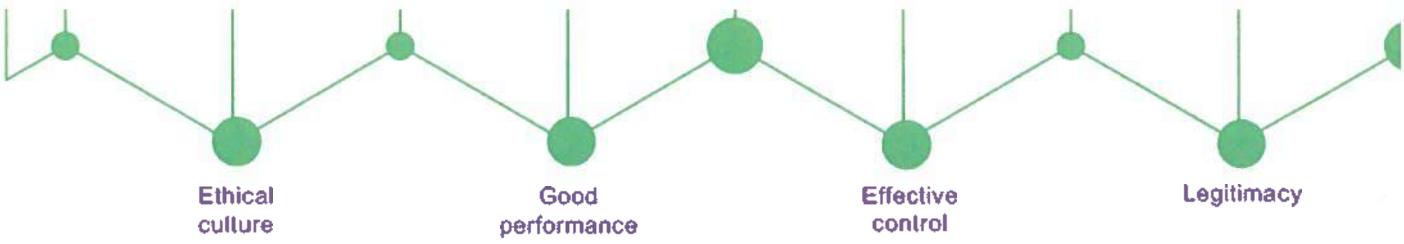

Principle 7: The accounting authority should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

The composition of its accounting authority is a key factor driving the performance of an SOE. Like the governing bodies of all organisations, an SOE's accounting authority must have the right balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively. The practices recommended under Principle 7, with regards to the appointment of members of the governing body, and the role of a nominations committee in this process, are relevant to SOEs. Even when accounting authorities do not have the power to nominate or elect members, they should actively seek to collaborate with the shareholder on this critical issue.

The SOE and the executive authority should be transparent regarding the processes followed for the nomination, election and appointment of governing body members. The accounting authority and executive authority should also, subject to legal provisions, agree to put in place arrangements for the staggered rotation of members of the accounting authority. This should be done in order to introduce members with new expertise and perspectives whilst retaining valuable knowledge, skills and experience and maintaining continuity.

Principle 8: The accounting authority should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

The practices recommended in support of Principle 8, which deal with the delegation of responsibilities by the governing body to its committees, are applicable to SOEs, subject to legal provisions. In particular, it should be noted that the duties of the audit committee in relation to the appointment and independence of the external auditor apply differently as the Auditor-General (who can agree to the appointment of a third party to fulfil this role) generally serves as the external auditor of SOEs. Furthermore, the composition of an SOE's audit committee is prescribed by legislation, which prevails over the recommended practices in the Code. However, the practices with regards to objective oversight by the audit committee over all assurance service providers and functions and the quality of their output still apply as provided for under Principle 8.

Principle 9: The accounting authority should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.

The evaluation of the performance of the governing body, its members and committees as addressed by Principle 9 and its associated practices, applies to SOEs. The results of the performance evaluations should be responded to by the accounting authority so as to achieve continued improvement in its performance and effectiveness as per the principle.

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SECTOR SUPPLEMENTS CONTINUED

Principle 10: The accounting authority should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

Principle 10 provides for the appointment of, and delegation of responsibilities to, competent executive management. In SOEs, the executive authority (as opposed to the accounting authority) often has the power, in terms of enabling legislation or the SOE's founding documents, to appoint the chief executive officer (CEO). As a matter of good practice, the appointment of the CEO of an SOE should be a robust and transparent process that involves the accounting authority to the greatest extent possible, even if the shareholder has the right to make the final appointment.

It should furthermore be agreed between the accounting authority and the shareholder that the CEO reports to the governing body. The governing body and shareholder should ensure that the CEO's letter of appointment and the delegation of authority to the CEO clearly set out that:

- The CEO is accountable to the accounting authority,
- The accounting authority agrees performance measures and targets with the CEO and assesses the performance of the CEO accordingly, and
- The accounting authority has primary responsibility for the removal of the CEO.

Under Principle 10, it is also recommended that the accounting authority should ensure that it has access to professional and independent guidance on corporate governance and its legal duties, and also that it has support to coordinate the functioning of the accounting authority and its committees. For companies, this role is fulfilled by the company secretary. As a matter of leading practice, it is recommended that the accounting authority of an SOE appoint a company secretary or suitably experienced professional to provide these services.

Principle 11: The accounting authority should govern risk in a way that supports the SOE in setting and achieving its strategic objectives.

Principle 12: The accounting authority should govern technology and information in a way that supports the SOE setting and achieving its strategic objectives.

Principle 13: The accounting authority should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the SOE being ethical and a good corporate citizen.

Principle 14: The accounting authority should ensure that the SOE remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

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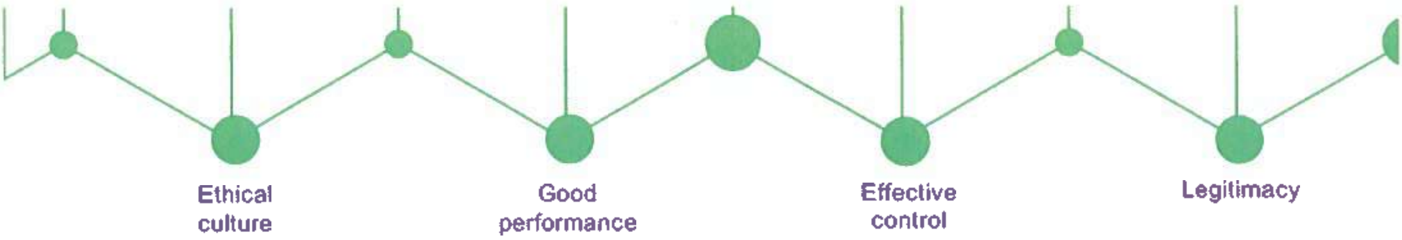

Principle 15: The accounting authority should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the SOE's external reports.

The recommended practices under Principles 11 to 15, which deal with specific governance functional areas, should be interpreted and applied in conjunction with industry or sector codes and guidance, applicable legislation and proportionality considerations.

Principle 16: In the execution of its governance role and responsibilities, the accounting authority should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the SOE over time.

Government is a primary stakeholder of SOEs in various capacities: Firstly, it is the shareholder concerned with financial viability, the consequences of the SOE's activities and outputs on the triple context and the capitals, and the SOE's delivery against its mandate. Secondly, government is the industry policymaker overseeing implementation of service delivery. Thirdly, it is the regulator concerned with the industry practices of SOEs, their pricing structures and the interests of consumers.[2] These various roles may overlap, and may even conflict with each other.

In addition, the SOE, together with Cabinet and the executive authority, is accountable to the National Assembly, and particularly the Standing Committee on Public Accounts, on the basis of the annual financial statements and the audit reports of the Auditor-General, and to the Portfolio Committees for service-delivery performance by the SOE.[3]

The accounting authority of an SOE should, therefore, ensure that it proactively engages with government, in all its various stakeholder capacities, to foster a working relationship and develop a mutual understanding of how these various expectations and accountabilities are to be reconciled.

As far as its relationship with government as shareholder is concerned, the accounting authority of an SOE should ensure that the shareholder compact or similar agreement defines the role of the accounting authority and the executive authority respectively. Generally, the executive authority should provide direction on policy to the SOE, and the accounting authority should oversee its effective implementation by the entity in accordance with strategic, corporate and business plans. The shareholder compact or such other agreement should provide for an alternative dispute resolution procedure if there is a dispute about the interpretation of the compact or agreement.

The recommended practices under Principle 16 should be applied by the SOE in respect of all its stakeholders.

(Note that Principle 17 does not apply to SOEs.)

2 Higgo du Toit, "Governance Oversight Role Over State Owned Entities", *National Treasury*, 25 November 2005, p 5, available at http://www.treasury.gov.za/publications/other/soe/governance%20oversight%20Role.pdf

3 Higgo du Toit, "Governance Oversight Role Over State Owned Entities", *National Treasury* 25 November 2005, p 2, available at http://www.treasury.gov.za/publications/other/soe/governance%20oversight%20Role.pdf

PART 7

CONTENT DEVELOPMENT AND KING COMMITTEE

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» CONTENT DEVELOPMENT AND KING COMMITTEE

CONTENT DEVELOPMENT PROCESS

The process for developing King IV was designed to build on the strengths of King III. The King Committee also strived to involve as many as possible of those who would be affected by King IV in its development. To this end, the King IV process was widely consultative, with a participative and inclusive approach to the development of its content.

The drafting of King IV was led by the King IV Project Lead, who was assisted by a task team (see below) appointed by the King Committee from its membership to oversee the drafting process. The King Committee itself provided final approval.

The philosophy, principles and practices in King III were the starting point for content development. The input gained from extensive face-to-face consultative meetings with individual stakeholders, and the matters that had to be addressed as a result of local and international corporate governance developments, were also considered. Together, these formed the basis for the development of the King IV content.

There were no standing working groups or sub-committees established for drafting of content. A combination of technical corporate governance experts and representatives from interest groups or sectors volunteered to participate in a series of facilitated working sessions. Particular governance topics and the governance of organisations in the non-profit, SME, retirement fund and public sectors were explored through these sessions. An appreciative inquiry methodology was used by professional facilitators as the model for the working sessions which brought about a focus on what currently works and what the possibilities are, rather than the deficiencies of the *status quo*. These facilitated working sessions were then supplemented by a number of *ad hoc*-focus group sessions, convened to address specific governance topics and the various sectors in more depth.

The draft King IV Report was subjected to a formal public comment process which resulted in further engagement and consultation before finalisation.

King IV is a culmination of all of the efforts and processes as set out above. It is the sincere hope of the King Committee that it will be embraced by corporate South Africa, in its wider sense, and that it will contribute to a healthy economy, society and environment.

MEMBERS OF KING COMMITTEE

KING IV TASK TEAM MEMBERS:

Ms Ansie Ramalho (King IV Project Lead)
Mr Mohamed Adam
Ms Linda de Beer
Ms Lindie Engelbrecht
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Dr Suresh Kana
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Ms Annamarie van der Merwe

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CONTENT DEVELOPMENT AND KING COMMITTEE CONTINUED

KING COMMITTEE MEMBERS

(Unless otherwise indicated the members below served from August 2014, when the content development process started, until the launch of King IV on 1 November 2016.)

Prof Mervyn King	Independent
Mr Mohamed Adam	Independent
Mr Bernard Agulhas	Independent Regulatory Board for Auditors
Mr Roy Andersen	Independent
Mr Suleman Badat	Auditor General of South Africa
Ms Linda de Beer	Independent
Mr John Burke	Johannesburg Stock Exchange
Mr Chose Choeu	The South African Chamber of Commerce and Industry
Dr Gert Cruywagen	The Institute of Risk Management South Africa
Ms Friede Dowie	Business Leadership South Africa
Mr Shahied Daniels	South African Institute of Professional Accountants (until July 2015)
Ms Lindie Engelbrecht	South African Institute of Chartered Accountants
Mr Richard Foster	Independent
Mr Jaco de Jager	Association of Certified Fraud Examiners: SA Chapter
Mr Michael Judin	Independent
Dr Suresh Kana	Independent
Dr Reuel Khoza	Independent
Dr Len Konar	Independent
Ms Khanyisile Kweyama	Business Unity South Africa (from February 2016)
Mr Mabulenyana Marweshe	Financial Services Board (until April 2016)
Ms Justine Mazzocco	The Institute of Internal Auditors South Africa (from February 2015)
Ms Julie Methven	Compliance Institute Southern Africa
Mr Ewald Müller	Independent
Mr Jayce Nair	National Treasury
Ms Parmi Natesan	Institute of Directors in Southern Africa
Mr Madimetja Lucky Phakeng	Takeover Regulation Panel
Ms Ansie Ramalho	Institute of Directors in Southern Africa
Prof Deon Rossouw	The Ethics Institute (from February 2015)
Ms Matsietsi Mokholo	Department of Public Enterprises (from September 2016)
Mr Stephen Sadie	Chartered Secretaries Southern Africa
Mr Marius van den Berg	Independent
Ms Annamarie van der Merwe	Independent
Mr Anton van Wyk	Independent
Mr Andre Visser	Johannesburg Stock Exchange
Adv Rory Voller	Companies and Intellectual Property Commission
Vacant	Association for the Advancement of Black Accountants of Southern Africa
Vacant	Law Society of South Africa

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CONTENTS

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CONCEPTUAL FOUNDATIONS OF THE CODE

The concepts highlighted in this section establish the foundation for interpreting and applying the principles and recommended practices in the Code. For a more complete understanding of King V and its implications, it is highly advisable to review the **King V Foundational Concepts** document where the concepts referenced below are addressed in more detail. In addition, the terminology used in the Code is defined in the **King V Glossary**.

Definition of corporate governance

The exercise of ethical and effective leadership by the governing body towards the realisation of the following governance outcomes for the organisation within its economic, social and environmental context: Ethical Culture; Performance and Value Creation; Conformance and Prudent Control; Legitimacy.

Building blocks of the Code

Governance outcomes

The governance outcomes set the ultimate criteria against which the governing body and the stakeholders of an organisation should assess the quality of governance in that organisation. Thus, King V is outcomes-based, meaning that the governance of an organisation is judged primarily on its consequences and that an organisation cannot claim to have sound governance simply based on the implementation of the recommended practices. Implementation should result in the realisation of the governance outcomes before such a claim can be made.

Principles

Each of the principles in King V relates to a domain or subject area of corporate governance. A principle is the articulation of the ongoing objective that an organisation should aim to attain with respect to that domain area of governance. Upholding the objectives that the principles represent in the domain areas of corporate governance is essential and foundational to sound governance. Consequently, King V asserts that the principles are universally applicable across all types and sizes of organisations in various sectors.

Recommended practices

The practices offer concrete actions and processes to be carried out in support of the principles. The recommended practices in the Code are not intended to be implemented as if they were rules. This inflexibility leads to an inability to interpret and apply codes of corporate governance in a way that is appropriate for the type and size of organisation and the sector in which it operates. Mindful application, on the other hand, presupposes a thorough understanding of how the implemented practices support the objectives of the principles and ultimately the realisation of the governance outcomes.

Even where not expressly stated, adapting and scaling of practices to suit the organisational setting and conditions are permissible and advisable in accordance with proportionality considerations, which include factors such as:

- Size of operations of the organisation, including turnover and workforce.
- Nature and complexity of the business model of the organisation.
- Ownership structure of the organisation.
- Organisation's actual and reasonably expected economic, social and environmental impact.

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Disclosure on King V

The application and disclosure regime for King V is "apply and explain" which can be depicted as follows:

Apply principles universally.	**Explain** non-adoption or modification of **recommended practices**.
	Provide a concluding statement on the governance outcomes, specifically on whether the application of the King V principles and the implementation of its recommended practices, in the opinion of the governing body, are considered to have realised value for the organisation within its economic, social and environmental context in accordance with the stated governance outcomes: Ethical Culture; Performance and Value Creation; Conformance and Prudent Control; Legitimacy.

The **King V Disclosure Framework** is an inextricable part of giving effect to the King V Code and, therefore, a requirement for any organisation that wishes to claim application of King V.

The underpinning philosophies of King V

Sustainable development and value creation

King V asserts that all organisations should contribute to sustainable development. Organisations should recognise that their long-term success relies on the vitality and resilience of the socio-ecological systems around them. It is on this premise that organisations should create systems value in the economic, social and environmental context within which they operate.

To help organisations and their leaders apply the concept of systems value creation, King V advocates integrated thinking.

Integrated thinking and related concepts

Integrated thinking suggests that organisations actively consider the connectivity and interdependencies between the range of factors that may affect an organisation's ability to create value for itself and within its systems context over time. These factors include:

- The risks and opportunities emanating from the economic, social and environmental systems within which the organisation operates and the tailoring of the organisation's purpose, business model and strategy to respond thereto.
- The availability, quality and affordability of the resources and relationships the organisation uses and affects and the critical interdependencies among them, including the trade-offs required.
- The capacity of the organisation to respond to stakeholders' significant interests.
- The organisation's activities and outputs as well as impacts and outcomes over time with respect to the capitals and the broader economic, social and environmental systems within which the organisation operates.

The Ubuntu-Botho philosophy, corporate citizenship and stakeholder inclusivity are adopted approaches in King V that further elucidate systems value creation and support integrated thinking.

If integrated thinking is applied by the governing body and management of an organisation, it should be mirrored in the way that the organisation reports and discloses on its performance and operations. Consequently, integrated *reporting* is a process founded on integrated thinking which results in the periodic issuing of an integrated *report* by the organisation.

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PRINCIPLES AND RECOMMENDED PRACTICES

Leadership

PRINCIPLE 1: The governing body leads ethically and effectively as the focal point of corporate governance in the organisation.

RECOMMENDED PRACTICES

Characteristics and values

Steering and setting direction

1. Members of the governing body should individually and collectively cultivate and exemplify the characteristics as outlined below.
   a. Integrity, which entails:
      i. Acting in good faith and in the best interests of the organisation.
      ii. Avoidance of conflict of interests by refraining from situations where personal interests may conflict with the interests of the organisation; when despite best efforts avoidance is not possible, the diligent disclosure of conflicts and management thereof in accordance with legal duties.
      iii. Acting ethically beyond mere legal compliance.
      iv. Exemplifying ethical conduct and setting the tone for an ethical organisational culture.

   b. Competence, which entails:
      i. Acquiring sufficient working knowledge of the organisation itself; its industry; the risks and opportunities associated with the organisation's economic, social and environmental context; applicable laws; and policies, non-binding rules, codes and standards as adopted by the organisation.
      ii. Acting with due care, skill and diligence and taking reasonable steps to become informed about matters for decision making by the governing body.
      iii. Continually developing the skills to lead ethically and effectively, including corporate governance knowledge and competencies.

   c. Responsibility, which entails:
      i. Acknowledgement of the collective power and authority of the governing body to act on behalf of the organisation along with the responsibility of individual members to exercise independence of mind and have the courage to speak up when necessary.
      ii. The exercise of courage in capturing opportunities and doing so in a responsible manner and in the long-term best interests of the organisation.
      iii. Anticipating, preventing or otherwise mitigating the negative impacts and outcomes of the organisation's activities and outputs on the resources and relationships it uses and affects, and on its economic, social and environmental context.
      iv. Committing sufficient time and effort to prepare for meetings of the governing body and its committees.

   d. Accountability, which entails accepting the obligation to explain or answer for the consequences and outcomes of the execution of responsibilities, even those that have been delegated.

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e. Fairness, which entails:
   i. Adopting a stakeholder-inclusive approach in the execution of governance obligations.
   ii. Taking responsibility for the organisation's actual and reasonably expected impact and outcomes on the natural environment, society and future generations.

f. Transparency, which entails disclosure that accounts for the governance of the organisation and its creation, preservation and erosion of value within its economic, social and environmental context.

Policy and planning – not applicable.

Oversight and monitoring

2. The governing body should ensure that the evaluation of its performance includes measurement criteria for assessing members' individual and collective cultivation and exemplification of the characteristics of integrity, competence, responsibility, accountability, fairness and transparency.

Accountability – see the disclosure requirements for Principle 1 in relation to the characteristics and values of the governing body in the **King V Disclosure Framework**.

Overarching governance role and functions

Steering and setting direction

3. The governing body should cover all dimensions of its governance role, namely, focusing *inwards* on the organisation and *outwards* on the economic, social and environmental context within which it operates and, furthermore, by orientating towards the *future* whilst also monitoring and accounting for the *past* and *present*. This involves undertaking the following cyclical functions:
   a. Steering the organisation and setting its strategic direction.
   b. Considering and approving policies and planning that give effect to the direction provided.
   c. Overseeing and monitoring of implementation and execution by management.
   d. Ensuring accountability for organisational performance by means of, among others, reporting and disclosure to stakeholders.

Policy and planning

4. The role and responsibilities, membership and procedural requirements for the governing body as well as the standards for its conduct should be documented in a charter which the governing body should consider, approve and review periodically.

Oversight and monitoring

5. The governing body should ensure that the evaluation of its performance includes measurement criteria for assessing the execution by the governing body on all dimensions of its governance role and the fulfilling of its responsibilities in accordance with its charter.

Accountability – see the disclosure requirements for Principle 1 in relation to overarching governance role and functions in the **King V Disclosure Framework**.

TC

Performance evaluation of the governing body

Steering and setting direction

6. The governing body should be accountable for the evaluation of its performance (including its committees, chairperson and individual members) promoting accountability for the fulfilment of legal duties and governance obligations.
7. The governing body may, at its discretion, delegate its responsibilities for its performance evaluation as outlined below to the committee responsible for nomination governance, if in place, or another committee as may be appropriate for the organisation.

Policy and planning

8. The governing body should consider and approve a formal process for the evaluation of the performance of the governing body (including its committees, chairperson and individual members) to be conducted at least every two years. Its considerations should include the methodology to be employed and whether the evaluation is to be externally facilitated or not.

Oversight and monitoring

9. The governing body should ensure that its performance evaluations result in identifying strengths and areas for development, enabling targeted development programmes or changes in composition and governance arrangements that continually improve the performance of the governing body.

Accountability – see disclosure requirements for Principle 1 in relation to the performance evaluation of the governing body in the **King V Disclosure Framework**.

TC

Ethics

PRINCIPLE 2: The governing body governs the ethics of the organisation in a way that enables an ethical culture and responsible corporate citizenship.

RECOMMENDED PRACTICES

Organisational ethics

Steering and setting direction

10. The governing body should provide the strategic direction and be accountable for the organisation's management of ethics creating an ethical culture.
11. The governing body may, at its discretion, delegate its ethics-related responsibilities as outlined below to the social and ethics committee, if in place, and in addition to any statutory duties that the committee may have.

Policy and planning

12. The governing body should consider and approve the policies, programmes and codes that give effect to its strategic direction on organisational ethics. These should:
    a. Set standards for the organisation's interaction with both internal and external stakeholders, the broader society and the organisation's actual and reasonably expected impact and outcomes on the environment and future generations.
    b. Include the establishment of an ethics programme which comprises assessing and effectively responding to the significant ethics risks and opportunities of the organisation.
    c. Include the establishment of programmes for the prevention and detection of corruption, fraud and money laundering.

Oversight and monitoring

13. The governing body should exercise ongoing oversight and monitoring of the implementation and execution of policies, programmes and codes to ensure that these result in an ethical organisational culture. In particular, the following should be ensured:
    a. Access by employees, suppliers and other business partners to applicable ethics codes and policies, and the embedding of these through induction, ongoing training and awareness campaigns.
    b. Application of the organisation's ethics standards to the recruitment, performance evaluation and reward of employees as well as the sourcing of suppliers and general engagement with external stakeholders.
    c. Acknowledgement of exemplary ethical conduct and addressing violations of the organisation's ethics standards through suitable sanctions and remedies.
    d. Provision of protected reporting or anonymous whistleblowing mechanisms for the detection of violations of ethics standards whilst safeguarding that reporting does not lead to occupational or personal detriment, directly or in directly, against persons who report in good faith.

TC

14. The governing body should consider periodic assurance on the effectiveness of the organisation's management of ethics in creating an ethical culture.

Accountability – see the disclosure requirements for Principle 2 in relation to organisational ethics in the **King V Disclosure Framework**.

Responsible corporate citizenship

Steering and setting direction

15. The governing body should provide the strategic direction and be accountable for the organisation's purpose, values as well as for the impacts and outcomes of its activities and outputs being congruent with responsible corporate citizenship.
16. The governing body may, at its discretion, delegate its corporate citizenship-related responsibilities as outlined below to the social and ethics committee, if in place, and in addition to any statutory duties that the committee may have.

Policy and planning

17. The governing body should consider and approve the policies and planning that give effect to its strategic direction on responsible corporate citizenship. These should:
    a. Adhere to the spirit of the Ubuntu-Botho philosophy.
    b. Affirm compliance by the organisation with the Constitution of South Africa (including the Bill of Rights), other laws, regulations and adopted policies, non-binding rules, codes and standards.

Oversight and monitoring

18. The governing body should exercise ongoing oversight and monitoring of how the direct and indirect consequences of the organisation's activities and outputs affect its standing as a responsible corporate citizen over time. This should include ensuring measures and targets in all of the following areas:
    a. Workplace (including employment equity; fair remuneration; safety, health, dignity and development of employees; and diversity, equity and inclusion in the workplace).
    b. Economy (including economic transformation; the prevention, detection and response to fraud and corruption; and responsible and transparent tax policies).
    c. Society (including public health and safety; consumer protection; community development; safeguarding of human rights; and external stakeholders' interests).
    d. Environment (including climate and energy resilience; water stewardship; waste management and circularity; consequences to nature with respect to biodiversity and ecosystem services, land and soil health, and animal rights and welfare).

Accountability – see the disclosure requirements for Principle 2 in relation to responsible corporate citizenship in the **King V Disclosure Framework**.

TC

Strategy, performance and sustainable value creation

PRINCIPLE 3: The governing body ensures that the organisation's purpose, strategy and business model support performance that creates sustainable value within the organisation's economic, social and environmental context.

RECOMMENDED PRACTICES

Steering and setting direction

19. The governing body should set the direction and be accountable for the organisation having established its purpose and the consequent realisation thereof through its strategy, business model and performance.
20. The governing body should consider and approve organisational strategy that is representative of integrated thinking and takes account of the factors which significantly affect, or reasonably may be expected to affect, the organisation's ability to create value over time. This should encompass appraising the proposed strategy and business model with respect to the following:
    a. Alignment with the organisation's purpose and its expressed value creation proposition within its economic, social and environmental context.
    b. The availability, quality and affordability of the resources and relationships the organisation uses and affects along with how these pose risks and opportunities to be considered for strategy formulation.
    c. The positive, neutral and negative impacts and outcomes that can reasonably be expected over time on the resources and relationships that the organisation uses and affects from the implementation of the proposed strategy, and how such negative impacts and outcomes could proactively be avoided or mitigated.

Policy and planning

21. The governing body should consider and approve the operational planning that gives effect to the approved strategy. Operational planning should include budgets as well as key performance measures and targets relating to the achievement of strategic objectives, outputs, impacts and outcomes over the short, medium and long term.

Oversight and monitoring

22. The governing body should exercise ongoing oversight and monitoring of the implementation and execution of strategy and operational planning. This should include ensuring that:
    a. The organisation continually assesses, and responsibly responds to, the negative impacts and outcomes of its activities and outputs on the resources and relationships which it uses and affects, and on its economic, social and environmental context.
    b. There is ongoing monitoring of the longer-term viability of the organisation with respect to its reliance on the resources and relationships that it uses and affects, its solvency and liquidity, and its status as a going concern.

Accountability – see the disclosure requirements for Principle 3 in relation to strategy, performance and sustainable value creation in the **King V Disclosure Framework**.

TC

Reporting

PRINCIPLE 4: The governing body ensures that external reports issued by the organisation enable stakeholders to make informed assessments of how the organisation creates, preserves and erodes value within its economic, social and environmental context over the short, medium and long term.

RECOMMENDED PRACTICES

Steering and setting direction

23. The governing body should provide the strategic direction and be accountable for the integrity of external reports issued by the organisation.
24. The governing body may, at its discretion, delegate its reporting-related responsibilities as outlined below to the audit committee, if in place, and in addition to any statutory duties that the committee may have. Such delegation does not detract from the responsibility of other committees for the oversight of the content of external reports that pertain to their role and functions.

Policy and planning

25. The governing body should consider and approve the following to give effect to its strategic direction on external reporting:
    a. The reporting standards, frameworks and guidelines to be used for each external report, taking into account legal requirements as well as the purpose and audience of the report.
    b. The suite of reports to be issued by the organisation to meet legal requirements and address the legitimate and reasonable information needs of the organisation's stakeholders which may, in addition to the annual financial statements, include an integrated report; sustainability report; the audit committee, social and ethics committee and remuneration committee reports; and the King V Disclosure Framework.
26. The governing body should proactively ensure that sustainability information – whether provided holistically in an integrated report or across multiple reports, or both – encompass both the matters that:
    a. Generate risks and opportunities which significantly affect, or reasonably could be expected to affect, the organisation's financial position, financial performance, cash flows, access to finance or cost of capital over the short, medium or long term.
    b. Pertain to the organisation's significant actual, or reasonably expected, positive or negative impacts over the short, medium or long term on its stakeholders, and on the economic, social and environmental context within which the organisation operates.

Oversight and monitoring

27. The governing body should exercise ongoing oversight and monitoring of external reporting, including:
    a. Ensuring that the organisation issues an integrated report at least annually.
    b. Approving all formal, external reports by the organisation prior to public issuing.
    c. Ensuring the publication on the organisation's website of all the external reports issued by the organisation, including its corporate governance disclosures in accordance with the requirements of the King V Disclosure Framework accompanying this Code.

Accountability – see the disclosure requirements for Principle 4 in relation to reporting in the **King V Disclosure Framework**.

TC

Composition of the governing body

PRINCIPLE 5: The governing body ensures that its composition is balanced with respect to the mix of competencies, diversity and independence that enables it to discharge its obligations objectively and effectively.

RECOMMENDED PRACTICES

Composition

Steering and setting direction

28. The governing body should be accountable for its balanced composition, enabling the objective and effective discharge of its governance obligations. It may, at its discretion, delegate its responsibilities related to its composition to a committee responsible for nomination governance.

Policy and planning

29. The governing body should comprise a majority of non-executive members, most of whom should be independent.
30. As a minimum, the CEO and at least one other member of executive management should be appointed to the governing body to ensure that it has more than one point of direct interaction with management.
31. The governing body should promote diversity in its membership across a variety of attributes relevant for promoting better decision making and effective governance, including a diverse mix of competencies as well as diversity in age, culture, race and gender.
32. Arrangements for staggered rotation of its members should be in place to introduce members with relevant, new expertise and perspectives while retaining valuable institutional knowledge, skills and experience for continuity.
33. A succession plan should be developed for the membership of the governing body and that of its committees as well as for critical roles such as the chairpersons of the governing body and its committees and the lead independent member.

Oversight and monitoring – refer to Recommended Practice 37.

Accountability – see the disclosure requirements for Principle 5 in relation to the composition of the governing body in the **King V Disclosure Framework**.

Nomination, election and development of governing body members

Steering and setting direction

34. The governing body should be accountable for the nomination of suitable candidates to serve as its members and the support of members' ongoing development. Where the governing body is not expected to nominate, it should proactively engage on its composition requirements with those who have the power to elect or appoint its members.

TL

35. The governing body, as a whole, should approve the candidates to be put forward for election but it may, at its discretion, delegate its other nomination-related responsibilities as outlined below to a committee responsible for nomination governance.

Policy and planning

36. The governing body should approve a formal and transparent process for the nomination and election of its members as well as for the continual development of governing body members.

Oversight and monitoring

37. The governing body should oversee and monitor that:
    a. The nomination process ensures the collective competencies, diversity and independence necessary in the membership of the governing body to enable it to navigate the complexities and risks arising from its economic, social and environmental context.
    b. Nomination for re-election of an incumbent of the governing body involves consideration of that member's performance, including attendance of and contributions at meetings of the governing body and its committees.
    c. Prior to candidates' nomination for election, thorough background checks are conducted, with qualifications and designations independently verified.
    d. A brief professional profile of each candidate standing for election at the AGM, including details of existing professional commitments, accompanies the notice of the AGM.
    e. Incoming governing body members undergo a comprehensive and timely induction process to facilitate their optimal participation within a short timeframe.
    f. Members of the governing body with no or limited governance experience are provided with mentorship and development opportunities.
    g. A programme for professional development, that includes regular briefings on legal, regulatory and corporate governance developments as well as on emerging risks and opportunities, is offered to members of the governing body.

Accountability – see the disclosure requirements for Principle 5 in relation to the nomination and continual development of members of the governing body in the **King V Disclosure Framework**.

Independence and conflicts

Steering and setting direction

38. Members of the governing body, collectively and individually, must be accountable for upholding independence in decision making in the best interests of the organisation.

Policy and planning

39. The governing body should ensure that each member submits a declaration of all personal financial and other professional and business interests held by the member at least annually, or whenever there are significant changes.

40. In addition, at the beginning of each meeting of the governing body and its committees, members should be required to declare any interests they may have, or that they know a related party has, with respect to a matter on the agenda. All such interest declarations should be proactively managed according to legal requirements and further directives that the governing body or committee may have.

41. The governing body may categorise its non-executive members as independent if it concludes that there is no interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to unduly influence or cause bias in decision making in the best interests of the organisation.

TC

42. Any single or a combination of factors may indicate that a member cannot be categorised as independent. These factors include that a member of the governing body or a party related to that member:
    a. Is a significant provider of financial capital, or ongoing funding to the organisation, or is an officer, employee or a representative of such provider of financial capital or funding.
    b. Owns securities in the company, the value of which is considered significant to the personal wealth of that director.
    c. Has been in the employ of the organisation as an executive manager during the preceding three financial years.
    d. Had been in the employ of the organisation as an executive manager prior to the preceding three financial years without having served a cooling-off period of at least three years during which there had been no significant involvement in any capacity with the organisation.
    e. Has been the designated external auditor responsible for performing the statutory audit for the organisation, or a critical member of the audit team of the external audit firm, during the preceding three financial years.
    f. Is a significant and ongoing customer or supplier of goods or services to the organisation, or is a member of the governing body or the executive management of a significant supplier or customer to the organisation.
    g. Is a member of the governing body or executive management of, or otherwise stands in a significant relationship to, another organisation which is a related party to the organisation.
    h. Has served as member of the governing body for longer than nine years.
    i. Is entitled to remuneration contingent on the performance of the organisation.

43. When determining whether a non-executive member can be categorised as independent or not, the governing body should evaluate all pertinent factors and circumstances holistically and within the substantive meaning of independence. Should the governing body conclude that a member is independent despite the presence of one or more factors that may indicate otherwise, it should provide a rationale for its conclusion.

Oversight and monitoring

44. The governing body should ensure that the evaluation of its performance includes measurement criteria for assessing the ethical and effective management by it and its committees of conflicts of interests and the consideration of independence of members.

Accountability – see the disclosure requirements for Principle 5 in relation to the independence of members of the governing body as provided for under the disclosures on the composition of the governing body in the **King V Disclosure Framework**.

TC

Chairperson and lead independent member of the governing body

Steering and setting direction

45. The governing body should appoint an independent non-executive member as its chairperson. If the appointed chairperson is not an independent, non-executive member, the governing body should institute a lead independent position for at least as long as the situation persists to strengthen the independent functioning of the governing body.
46. The chairperson should lead the governing body in the objective, ethical and effective discharge of its governance role and responsibilities.
47. The lead independent position may, at the discretion of the governing body, be a permanent position for providing ongoing support to the chairperson, whether the chairperson is independent or not. A lead independent should be appointed at a minimum when required to lead the governing body in the absence of the chairperson, in situations where the chairperson has a conflict of interests or to facilitate the performance evaluation of the chairperson.

Policy and planning

48. The CEO of the organisation should not also chair the governing body, and a retired CEO should not become the chairperson of the governing body until three complete years have passed after the end of the CEO's tenure. The categorisation of the chairperson as independent, or not, remains subject to an evaluation by the governing body of all pertinent factors and circumstances.
49. When determining on which of its committees the chairperson of the governing body should serve, either as member or chairperson, the governing body should consider how this affects the concentration and balance of power across the governing body and its committees. The following should apply:
    a. The chairperson should not be a member of the audit committee.
    b. The chairperson may be a member of the committee responsible for remuneration governance but should not be its chairperson.
    c. The chairperson should be a member and the chairperson of the committee responsible for nomination governance.
    d. The chairperson may be a member and the chairperson of the committee responsible for risk governance.
    e. The chairperson may be a member of the social and ethics committee but should not be its chairperson.

Oversight and monitoring

50. The governing body should ensure that the evaluation of its performance includes measurement criteria that assess the ethical and effective leadership of its chairperson and lead independent member.

Accountability – see the disclosure requirements for Principle 5 in relation to the chairperson and lead independent member of the governing body in the **King V Disclosure Framework**.

TC

Committees of the governing body

PRINCIPLE 6: The governing body ensures that arrangements for delegation to committees and individuals within its own structures promote the objective and effective discharge of its obligations.

RECOMMENDED PRACTICES

General

Steering and setting direction

51. The governing body should be accountable for delegation within its own structures by determining if and to what extent to delegate particular responsibilities and decision-making powers to individual members of the governing body or to standing or *ad hoc* committees. The exercise of judgement by the governing body in this regard should be guided by legal requirements and what is considered necessary for achieving the objective and effective discharge of its governance obligations.

Policy and planning

52. Committees should have written terms of reference that are approved and reviewed by the governing body periodically or when circumstances or requirements change. The terms of reference should set out each committee's role, responsibilities, membership and meeting procedures.
53. Each committee should have a minimum of three members and collectively the members should possess the necessary competencies to execute effectively on the responsibilities and functions of the committee.
54. The governing body should ensure:
    a. Effective collaboration and information exchange among committees through cross-membership, where necessary, and coordinated scheduling of meetings.
    b. Balanced membership allocation across committees to prevent dominance and excessive dependence on individual members.

Oversight and monitoring

55. Delegation by the governing body of responsibilities to a committee or an individual member of the governing body will not, by or of itself, constitute a discharge of the governing body's accountability. The governing body should apply its collective mind to the information, opinions, recommendations, reports and statements presented by the committee or the member.
56. The governing body should ensure that the evaluation of its performance includes measurement criteria for assessing the effectiveness of its oversight as well as the functioning of its various committees.

Accountability – see the disclosure requirements for Principle 6 in relation to governing body's delegation to individuals and committees in the **King V Disclosure Framework**.

TC

Audit committee

Steering and setting direction

57. The establishment of an audit committee is a statutory requirement for some organisations. As a matter of leading practice, the governing body of any organisation that issues audited financial statements should consider establishing an audit committee.
58. A statutory audit committee is empowered to make decisions regarding its statutory duties and is accountable for these. The governing body may delegate responsibilities to the audit committee in addition to its statutory duties. In such instances, the governing body is ultimately accountable for the delegated responsibilities.

Policy and planning

59. The terms of reference of the audit committee must include reference to its statutory duties, if applicable. Generally, its delegated role should comprise oversight of the following:
    a. Assurance functions and services, including combined assurance arrangements.
    b. The design and implementation of internal financial and reporting controls.
    c. The CFO and the finance function.
    d. Assurance of the financial statements and other external reports issued by the organisation.
60. All members of the audit committee should be independent, non-executive members of the governing body.
61. The governing body should appoint as chairperson of the audit committee an independent, non-executive member who is not also the chairperson of the governing body.
62. The audit committee should meet at least annually with the internal and external auditors respectively, without management being present, to facilitate an exchange of views and concerns that may not be appropriate for discussion in an open forum.

Oversight and monitoring – see Recommended Practices 55-56.

Accountability – see the disclosure requirements for Principle 6 in relation to each committee of the governing body as well as the audit committee in the **King V Disclosure Framework**.

Committee responsible for nomination governance

Steering and setting direction

63. The governing body should delegate the oversight of nomination-related responsibilities to a dedicated committee or add it to the responsibilities of another committee, as is appropriate for the organisation.

Policy and planning

64. The delegated role of the committee responsible for nomination governance should comprise oversight of the following:
    a. The composition of the governing body and its committees.
    b. The process for nominating, electing and appointing members of the governing body and its committees.
    c. Succession planning for the members of the governing body, its committees as well as for the CEO position, other members of executive management and other critical positions in the organisation.
    d. The evaluation of the performance of the governing body (including its committees, its chairperson and individual members).

TC

65. All members of the committee responsible for nomination governance should be non-executive members of the governing body, and the majority should be independent.

Oversight and monitoring – see Recommended Practices 55-56.

Accountability – see the disclosure requirements for Principle 6 in relation to each committee of the governing body in the **King V Disclosure Framework**.

Committee responsible for risk governance

Steering and setting direction

66. The governing body should delegate the oversight of the system of organisation-wide risk management to a dedicated committee or add it to the responsibilities of another committee, as is appropriate for the organisation. The governing body may delegate further responsibilities to it including oversight of compliance, as well as of data, information and technology.

Policy and planning

67. If the committees for audit and risk are separate, the governing body should consider having one or more members serve on both committees to facilitate the exchange of relevant information and concerns.
68. The committee responsible for risk governance, if separate, should comprise executive and non-executive members, with a majority being non-executive and at least one independent member.

Oversight and monitoring – see Recommended Practices 55-56.

Accountability – see the disclosure requirements for Principle 6 in relation to each committee of the governing body in the **King V Disclosure Framework**.

Committee responsible for remuneration governance

Steering and setting direction

69. The governing body should delegate oversight of remuneration at all levels in the organisation to a dedicated committee or add it to the responsibilities of another committee, as is appropriate for the organisation.

Policy and planning

70. The terms of reference of the committee responsible for remuneration governance must include reference to its statutory duties, if applicable.
71. All members of the committee for remuneration should be non-executive members of the governing body, and the majority should be independent.
72. The committee for remuneration should be chaired by an independent, non-executive member of the governing body.

Oversight and monitoring – see Recommended Practices 55-56.

Accountability – see the disclosure requirements for Principle 6 in relation to each committee of the governing body as well as the remuneration committee in the **King V Disclosure Framework**.

TC

Social and ethics committee

Steering and setting direction

73. For some companies, the establishment of a social and ethics committee is a statutory requirement. The governing body of any organisation not so obliged should consider delegating the oversight of organisational ethics together with the workplace, social and environmental responsibilities of the organisation to a dedicated committee or adding it to the responsibilities of another committee, as is appropriate for the organisation.

Policy and planning

74. The terms of reference of the social and ethics committee must include reference to its statutory duties, if applicable. Generally, its delegated role should comprise oversight of the following:
    a. Organisational ethics and responsible corporate citizenship.
    b. The impact and outcomes of the organisation's activities and outputs on the resources and relationships that it uses and affects, as well as on its economic, social and environmental context.
    c. Management of stakeholder relationships.

75. The social and ethics committee should comprise executive and non-executive members, with a majority being non-executive and at least one independent member.

Oversight and monitoring – see Recommended Practices 55-56.

Accountability – see the disclosure requirements for Principle 6 in relation to each committee of the governing body as well as the social and ethics committee in the **King V Disclosure Framework**.

Appointment and delegation to management

PRINCIPLE 7: The governing body ensures that the appointment and delegation to management promote operational effectiveness and that the respective roles and decision-making powers of the governing body and management are clearly defined.

RECOMMENDED PRACTICES

CEO appointment and role

Steering and setting direction

76. The governing body should be accountable for the appointment of the CEO who should report to it. Where the governing body does not have the authority to appoint the CEO, it should proactively engage on the profile, the general requirements for the position and the appointment process with the party who has the power to make the appointment.

Policy and planning

77. The CEO should be responsible for leading the implementation and execution of the approved strategy, policies and operational planning, and should serve as the primary link between management and the governing body.

78. The CEO should not be a member of the audit committee or the committees responsible for remuneration or nomination but should attend these meetings, or part thereof, by invitation to contribute information and pertinent insights as needed.

79. The governing body should oversee that succession planning is in place for the CEO position which adequately safeguards leadership continuity and the stability of the organisation.

Oversight and monitoring

80. The chairperson of the governing body should lead the formal evaluation of the performance of the CEO against agreed performance measures and targets.

Accountability – see the disclosure requirements for Principle 7 in relation to the CEO in the **King V Disclosure Framework**.

Delegation to management

Steering and setting direction

81. The governing body should be accountable for delegating the implementation and execution of the day-to-day operations to management, ensuring clear definition of the respective roles and decision-making powers of the governing body and management.

Policy and planning

82. The governing body should approve a delegation of authority framework that sets out the decision-making powers to be reserved for itself, and those that are delegated to management.

TC

Oversight and monitoring

83. The governing body should exercise ongoing oversight and monitoring of delegation to management. In particular it should be ensured that:
    a. Critical management functions are led by individuals with the necessary competence and authority and that those functions are adequately resourced.
    b. The CEO has implemented succession planning for executive management and other critical positions that ensures depth and continuity of leadership.

Accountability – see the disclosure requirements for Principle 7 in relation to delegation to management in the **King V Disclosure Framework**.

Professional corporate governance services to the governing body

Steering and setting direction

84. The governing body should be accountable for establishing arrangements that provide it with access to professional and independent guidance on its legal and corporate governance duties as well as support for its effective functioning.

Policy and planning

85. Regardless of whether a company secretary or other professional is providing ongoing corporate governance services and functional support to the governing body and its committees, the governing body should ensure that the position is empowered and carries the necessary authority to function with independence.
86. The position of the company secretary should be established to have unfettered access to the governing body but, for reasons of independence, should maintain an arms-length relationship with it and its members; accordingly, the company secretary should not be a member of the governing body.
87. The position of the company secretary should be established to report to the governing body, through the chairperson, on all statutory duties and support in connection with the functioning of the governing body and its committees. Regarding other roles, responsibilities and administrative matters, the company secretary should report to the member of executive management designated for this purpose, as is appropriate for the organisation.

Oversight and monitoring

88. The governing body should approve the appointment, including the employment contract and remuneration, and if necessary, the removal of the company secretary.
89. The governing body should ensure that the individual who occupies the position of company secretary has the necessary competence, gravitas and objectivity to provide independent guidance and support at the highest level of decision making in the organisation.
90. The chairperson of the governing body should lead the formal evaluation of the performance of the company secretary with respect to the provision of ongoing corporate governance services and functional support to the governing body and its committees.

Accountability – see the disclosure requirements for Principle 7 in relation to professional corporate governance services to the governing body in the **King V Disclosure Framework.**

Risk

PRINCIPLE 8: The governing body governs risk in a way that enables the organisation to sustain and optimise its strategy and objectives.

RECOMMENDED PRACTICES

Steering and setting direction

91. The governing body should provide the strategic direction and be accountable for an effective organisation-wide risk management system. It may, at its discretion, delegate its risk-related responsibilities outlined below to a committee responsible for risk governance.

Policy and planning

92. The governing body should consider and approve the policies, frameworks and standards that give effect to its direction on risk management.

Oversight and monitoring

93. The governing body should exercise ongoing oversight and monitoring of the implementation and execution of risk policies, frameworks and standards. In particular, the following should be ensured:
    a. Risk assessments that include the consideration of risks and opportunities arising from the economic, social and environmental context within which the organisation operates.
    b. An evaluation and determination of the nature and extent of the risks that the organisation is willing to take in pursuit of its strategic objectives.
    c. The design and implementation of effective risk responses to ensure the alignment of risk exposures with established risk appetite and tolerance levels.
    d. The establishment and implementation of business continuity arrangements that allow for organisational resilience, including the ability to operate under conditions of volatility, and to withstand and recover from acute shocks.
    e. The integration and embedding of risk management into day-to-day operations and decision-making processes as part of the organisational culture.
    f. The adoption of an iterative approach to risk which is responsive to changing conditions and emerging risks.

94. The governing body should consider periodic assurance on the effectiveness of the risk function and the organisation's risk management system and internal control framework, covering (in collaboration with the audit committee) all significant controls, including financial, operational, reporting and compliance controls.

Accountability – see the disclosure requirements for Principle 8 in relation to risk in the **King V Disclosure Framework**.

TC

Compliance

PRINCIPLE 9: The governing body governs compliance with applicable laws and adopted policies, non-binding rules, codes and standards in a way that promotes ethics and responsible corporate citizenship.

RECOMMENDED PRACTICES

Steering and setting direction

95. The governing body should provide the strategic direction and be accountable for an effective organisation-wide system of compliance.
96. The governing body may, at its discretion, delegate its compliance-related responsibilities as outlined below to a committee responsible for risk governance or to another committee, as is appropriate for the organisation.

Policy and planning

97. The governing body should consider and approve the policies, frameworks and standards that give effect to its strategic direction on compliance. This should include specifying which non-binding rules, codes and standards the organisation adopts.

Oversight and monitoring

98. The governing body should exercise ongoing oversight and monitoring of the implementation and execution of compliance policies, frameworks and standards. In particular, the following should be ensured:
    a. The integration of compliance into the broader organisation-wide risk management system.
    b. Compliance being understood not only for the obligations it creates, but also for the rights and protections it affords.
    c. Taking a holistic perspective on the interrelation between applicable laws and regulations and adopted non-binding rules, codes and standards.
    d. Monitoring of the regulatory environment and appropriately responding to indicators of change or development in regulatory policy.
99. The governing body should consider periodic assurance on the effectiveness of the compliance function and the organisation's system of compliance.

Accountability – see the disclosure requirements for Principle 9 in relation to compliance in the **King V Disclosure Framework**.

TC

Data, information and technology

PRINCIPLE 10: The governing body governs data, information and technology in a way that enables the organisation to sustain and optimise its strategy and objectives.

RECOMMENDED PRACTICES

Data and information

Steering and setting direction

100. The governing body should provide the strategic direction and be accountable for the effective, compliant and ethical management and control (including acquisition, creation, use, dissemination and disposal) of data and information.

101. The governing body may, at its discretion, delegate its information-related responsibilities as outlined below to the committee responsible for risk governance or to another committee, as is appropriate for the organisation.

Policy and planning

102. The governing body should consider and approve the policies, standards and frameworks that give effect to its direction on the management and control (including acquisition, creation, use, dissemination and disposal) of data and information governance.

Oversight and monitoring

103. The governing body should oversee and monitor that the implementation and execution of policies, standards and frameworks result in the realisation of the envisaged benefits from the organisation's data and information management strategies, investments and assets. In particular, the following should be ensured:
    a. The structuring of the organisation's data resources and information assets to optimise the management and control (including acquisition, creation, use, dissemination and disposal) of data and information throughout their lifecycle.
    b. Ethical and responsible management and control (including acquisition, creation, use, dissemination and disposal) of data resources and information assets.
    c. Compliance with laws and regulations.
    d. As regards sensitive data and information, identification and classification of the organisation's data resources and information assets to enable effective management and control (including acquisition, creation, use, dissemination and disposal) thereof.
    e. Information security and data protection which safeguard the confidentiality, integrity and availability of data and information.
    f. The protection of privacy of personal data and information.
    g. Adherence to quality requirements for data and information.
    h. Effective management of the risks associated with the management and control (including acquisition, creation, use, dissemination and disposal) of data and information when using outsourced services, suppliers and third parties, including across jurisdictions.

TC

104. The governing body should consider periodic assurance on the effectiveness, compliance and ethics of the organisation's management and control (including acquisition, creation, use, dissemination and disposal) of data and information.

Accountability – see the disclosure requirements for Principle 10 in relation to data and information in the **King V Disclosure Framework**.

Technology

Steering and setting direction

105. The governing body should provide the strategic direction and be accountable for the effective, compliant and ethical acquisition, development, use and distribution of technology within and by the organisation.
106. The governing body may, at its discretion, delegate its technology-related responsibilities as outlined below to the committee responsible for risk governance or to another committee, as is appropriate for the organisation.

Policy and planning

107. The governing body should consider and approve the policies, standards and frameworks that give effect to its direction on the acquisition, development, use and distribution of technology products and services within and by the organisation.

Oversight and monitoring

108. The governing body should oversee and monitor that the implementation and execution of policies, standards, and frameworks result in the realisation of the envisaged benefits from the organisation's technology strategies, investments, assets, resources, products and services. In particular, the following should be ensured:
    a. Compliance with laws and regulations.
    b. Arrangements for organisational resilience and disaster recovery planning and testing.
    c. Benefit to the organisation that is commensurate with significant investments in technology assets, resources, products and services.
    d. Responsible disposal of obsolete technology, including physical assets such as servers and computers, having regard to environmental impact as well as data and information security.
    e. Effective cyber security strategies and practices to protect technology assets, resources, products and services.
    f. Effective management of the risks associated with the acquisition and utilisation of outsourced technologies and services, including having minimum requirements for assurance to be provided by the service provider with respect to the effectiveness of the controls over significant risks.
109. The governing body should oversee that the organisation's acquisition, development, use and distribution of emerging, innovative and disruptive technologies result in:
    a. Investment and deployment that create sustainable value for the organisation within its economic, social and environmental context.
    b. Assessment, evaluation and responses to the risks and opportunities associated with emerging, innovative and disruptive technologies to ensure the alignment of current risk exposures with established risk appetite and tolerance levels.
    c. With respect to artificial intelligence:
        i. Adherence to the values of ethics, human centricity, accountability, transparency, explainability, security, privacy, fairness and trustworthiness.
        ii. Clear accountability for decisions, actions, outputs and outcomes – which includes subjecting the processes, data, models, algorithms, resources and tools used in the development, implementation, monitoring and management of automated technologies to human oversight and override mechanisms that are commensurate with the level of risk to the organisation and its stakeholders.
110. The governing body should consider periodic assurance on the effectiveness, compliance and ethics of the organisation's acquisition, development, use and distribution of technology.

Accountability – see the disclosure requirements for Principle 10 in relation to technology in the **King V Disclosure Framework**.

TC

Remuneration

PRINCIPLE 11: The governing body ensures that the organisation remunerates fairly, responsibly and transparently to promote sustainable value creation by the organisation within its economic, social and environmental context.

RECOMMENDED PRACTICES

Steering and setting direction

111. The governing body should provide the strategic direction and be accountable for fair, responsible and transparent remuneration at all levels in the organisation.
112. The governing body may, at its discretion, delegate its remuneration-related responsibilities as outlined below to the committee responsible for remuneration governance, if in place, and in addition to any statutory duties that the committee may have.

Policy and planning

113. The governing body should consider and approve the policies and planning that give effect to its strategic direction on remuneration. These should be designed to achieve the following objectives:
    a. Attract, motivate, reward and retain human capital.
    b. Promote the achievement of strategic objectives within the organisation's risk appetite.
    c. Promote fair and responsible remuneration of executive management in relation to overall employee remuneration in the organisation.
    d. Support positive and minimise negative impacts and outcomes over the short, medium and long term on the resources and relationships that the organisation uses and affects, and on its economic, social and environmental context.
114. The governing body should ensure that the remuneration policy addresses:
    a. The setting of remuneration principles for all levels in the organisation including, where applicable, an appropriate mix of fixed and variable elements.
    b. Arrangements towards ensuring that the remuneration of executives is fair and responsible in relation to other levels of employee remuneration in the organisation.
    c. The use of performance measures and targets that support positive and minimise negative impacts and outcomes on the resources and relationships that the organisation uses and affects, and on its economic, social and environmental context.
    d. The way in which responsible and transparent discretion is to be applied by the governing body in its decision making on variable remuneration in instances where the formulaic application of the policy may result in unintended consequences, such as unanticipated windfall gains or being unfairly punitive.
    e. Events that may trigger pre-vesting forfeiture (malus) or post-vesting forfeiture (clawback), and how it is ensured that discretion by the governing body is exercised in a way that is substantively and procedurally fair.
    f. The approaches for sign-on, buy-out, retention, termination, change of control and restraint payments or awards.
    g. Whether there are provisions for minimum shareholding by executives and, if so, the targets and periods over which the holding should be accumulated.

TC

115. For companies, the criteria to be applied to determine the fees of the non-executive directors of the board should be outlined in a non-executive director fee policy suitable for submission to shareholders for their consideration when voting on the fees for directors' services in accordance with Companies Act.

Oversight and monitoring

116. To ensure that its policy formulation and decision making on remuneration are informed, the governing body should ensure ongoing engagement with shareholders and other relevant stakeholders.
117. The governing body should ensure that the implementation of the remuneration policy achieves its set objectives and that there is transparent and meaningful disclosure on remuneration decisions and outcomes arising from the implementation of the policy.
118. Subject to remuneration resolutions applicable under the Companies Act, the board of a company that falls within the category that is required in terms of the Act and its regulations to appoint a social and ethics committee, should consider submitting for separate non-binding advisory votes by shareholders both the executive remuneration policy and the statutory remuneration disclosure. The policy should be submitted for voting every three years or when substantively changed, and the statutory remuneration report should be submitted for voting annually.

Accountability – see the disclosure requirements for Principle 11 in relation to remuneration in the **King V Disclosure Framework**.

TC

Assurance

PRINCIPLE 12: The governing body ensures that assurance functions and services promote an effective internal control environment and safeguard the integrity of external reports issued by the organisation.

RECOMMENDED PRACTICES

Combined assurance

Steering and setting direction

119. The governing body should provide the strategic direction and be accountable for effective combined assurance arrangements subject thereto that the statutory audit committee, if in place, must assume accountability for its statutory duties.

120. The governing body may, at its discretion, delegate its assurance-related responsibilities as outlined below to the audit committee, if in place, and in addition to any statutory duties that the committee may have.

Policy and planning

121. The governing body should satisfy itself that a combined assurance model is developed that incorporates and optimises the assurance-related activities of line management, specialist functions and assurance service providers so that, taken as a whole, these promote an effective internal control environment and safeguard the integrity of external reports issued by the organisation.

122. The governing body should oversee that the combined assurance model is designed to effectively cover the organisation's significant risks through a combination of the following assurance-related activities, as is appropriate for the organisation:
    a. Line management of the organisation responsible for the design and implementation of management controls.
    b. Specialist risk and compliance functions of the organisation.
    c. Internal auditors.
    d. External auditors.
    e. Specialist service providers such as sustainability and environmental assurance providers, actuaries, safety and process assessors, as well as forensic fraud examiners and auditors.
    f. Regulatory inspectors.

Oversight and monitoring

123. The governing body should exercise ongoing oversight and monitoring of the implementation of the combined assurance model. In particular, it should be ensured that:
    a. The combined assurance activities of line management, specialist functions and assurance services providers are effectively covering the organisation's significant risks.
    b. Assurance service providers are held accountable for delivering assurance quality that is free from any actual or perceived bias and interference.

Accountability – see the disclosure requirements for Principle 12 in relation to assurance in the **King V Disclosure Framework**.

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Assurance over external organisational reports

Steering and setting direction

124. The governing body should be accountable for the independent oversight of the assurance of external reports and may, at its discretion, delegate its responsibilities as outlined below to an audit committee. This is subject thereto that if a statutory audit committee is in place, it is accountable for the independent oversight of assurance of financial statements as a statutory duty.

Policy and planning

125. The governing body should consider and approve the nature, objective and scope of the non-regulated assurance required for each external report, considering the intended audience and purpose of the report.

Oversight and monitoring

126. The governing body should ensure that all external reports issued by the organisation disclose:
    a. The level of assurance obtained.
    b. The subject matter information and criteria against which the subject matter information is measured.
    c. Other factors relevant to the assurance provided.

Accountability – see the disclosure requirements for Principle 12 in relation to assurance in the **King V Disclosure Framework**.

Internal audit

Steering and setting direction

127. The governing body should provide the strategic direction and be accountable for internal audit arrangements that promote an effective internal control environment.

128. The governing body may, at its discretion, delegate its internal audit-related responsibilities as outlined below to the audit committee, if in place, and in addition to any statutory duties that the committee may have.

Policy and planning

129. The governing body should consider and approve an internal audit charter that defines the role and associated responsibilities of internal audit, including its function within combined assurance. The internal audit charter should provide for:
    a. The adoption of an authoritative internal audit standard.
    b. Designating a CAE to lead the internal audit function and providing that this position:
        i. Is established to function independently from management.
        ii. Carries the necessary authority within the organisation.
        iii. For reasons of independence, is not included in the membership of executive management but may be invited to attend executive meetings, as necessary, to be informed about strategy and policy decisions and their implementation.
        iv. Reports to the chairperson of the audit committee on the performance of responsibilities and functions that relate to internal audit. On other duties and administrative matters, the CAE should report to the member of executive management designated for this purpose as is appropriate for the organisation.

130. The governing body should consider and approve a risk-based internal audit plan.

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Oversight and monitoring

131. The governing body should exercise ongoing oversight and monitoring of the implementation and execution of the internal audit charter and plan. In particular, it should be ensured that:
    a. The internal audit function is adequately resourced and sufficiently skilled to deal with the organisation's complexities and risks, including having access to specialist assurance services by forensic fraud examiners and auditors, safety and process assessors, statutory actuaries and other as required.
    b. The individual who occupies the CAE position has the necessary competence, gravitas and objectivity to execute responsibilities effectively.
    c. Where internal audit services are co-sourced or outsourced, there is clarity on who is accountable for fulfilling the role and responsibilities of the CAE position.
    d. The internal audit plan is regularly reviewed and adapted when necessary to respond to changes in the organisation's business model or the economic, social and environmental context within which the organisation operates.
    e. Internal audit provides an overall statement annually as to the effectiveness of the organisation's governance, risk management and control processes.
    f. An external, independent quality review of the internal audit function is conducted at least once every five years.
    g. Confirmation is obtained annually from the CAE that internal audit conforms to a recognised industry code of ethics.

Accountability – see the disclosure requirements for Principle 12 in relation to assurance in the **King V Disclosure Framework**.

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Stakeholders

PRINCIPLE 13: The governing body adopts a stakeholder-inclusive approach in the execution of its duties in the long-term best interests of the organisation within its economic, social and environmental context.

RECOMMENDED PRACTICES

Stakeholder relationships

Steering and setting direction

132. The governing body should provide the strategic direction and be accountable for the organisation-wide system of stakeholder relationship management upholding the philosophy of Ubuntu-Botho, responsible corporate citizenship and stakeholder inclusivity.

133. The governing body may, at its discretion, delegate its stakeholder-related responsibilities outlined below to the social and ethics committee, if in place, and in addition to any statutory duties that the committee may have.

Policy and planning

134. The governing body should consider and approve policies and planning that give effect to its strategic direction on stakeholder relationships.

Oversight and monitoring

135. The governing body should exercise ongoing oversight and monitoring of the implementation and execution of stakeholder policies and planning. In particular, the following should be ensured:
   a. Methodologies for the identification of the interests of stakeholder groupings that:
      i. Have, or reasonably could be expected to have, significant effects on the organisation due to its reliance on social and relationship capital.
      ii. Are, or reasonably could be expected to be, significantly affected by the organisation due to the direct and indirect consequences of its operational activities and outputs on the resources and relationships that it uses and affects.
   b. The analysis and evaluation of the risks and opportunities to the organisation arising from the significant interests of the various stakeholder groupings as well as the implementation of effective risk responses to ensure the alignment of current risk exposures with established risk appetite and tolerance levels.
   c. The use of dispute resolution mechanisms and associated processes to preserve relationships where possible.

136. The governing body should consider periodic assurance on the effectiveness of the organisation's stakeholder management system and the quality of its relationships with stakeholders.

Accountability – see the disclosure requirements for Principle 13 in relation to stakeholder relationships in the **King V Disclosure Framework**.

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Shareholder engagement (Applicable to companies only)

Steering and setting direction

137. The board should provide the strategic direction and be accountable for the quality of the company's relationship with its shareholders.
138. The board should recognise the rights afforded to shareholders in law whilst also appreciating that the company constitutes a nexus for the interests of a variety of stakeholders.

Policy and planning

139. The board should ensure that the company encourages proactive and constructive engagement with shareholders, including at the AGM and other shareholder meetings of the company. This includes that meetings should be set up to be accessible to shareholders and promote effective communication and participation, regardless of whether the meeting is held virtually, in person or as a hybrid of both.
140. The chairperson or another representative of each board committee should be available at the AGM to respond to shareholders' questions on how the board and its respective committees executed their governance duties.
141. The board should ensure that the designated partner of the external audit firm attends the AGM.
142. The board should ensure that shareholders are treated equitably, and that the interests of minority shareholders are adequately protected.
143. The minutes of the AGM should be an accurate record of meeting proceedings and capture the essence of engagement on issues; AGM minutes of publicly listed companies should be made publicly available within a reasonable time after the meeting.

Oversight and monitoring

144. The board should ensure that the evaluation of its performance includes measurement criteria for assessing its engagement with shareholders.

Accountability – see the disclosure requirements for Principle 13 in relation to shareholder engagement in the **King V Disclosure Framework**.

Relationships within groups of organisations

Steering and setting direction

145. The governing body of the organisation that owns a controlling interest in other organisation(s) ("controlling organisation") should provide the strategic direction and be accountable for the arrangements that formalise the relationships and exercise of authority within the group.

Policy and planning

146. The governing body of the controlling organisation should consider and approve a group governance framework that gives effect to its strategic direction on the governance of the group.
147. To ensure that each subsidiary organisation within the group is recognised as a separate juristic entity to whom its governing body members owe fiduciary duties, the adoption of the group governance framework should also be considered and approved by the governing bodies of the subsidiary organisations.
148. The governing bodies of the controlling organisation and each of the subsidiaries should ensure that the group governance framework is in harmony with jurisdictional legal requirements, the memoranda of incorporation, delegations of authority, shareholder or member agreements, governing body charters, committee terms of references, and related policies and agreements within the group.

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149. The governing body of the controlling organisation should ensure that the group governance framework addresses governance matters, as is appropriate for the group, including:
    a. Definition of the role and authority of the controlling organisation with respect to the group.
    b. Consideration of the delegation of certain responsibilities by the governing body of a subsidiary to a committee of the controlling organisation without abdicating accountability.
    c. The extent to which governance arrangements and operational policies of the controlling organisation are to be adopted by subsidiary organisations within the group.
    d. Engagement by the controlling organisation with the governing bodies of subsidiary organisations before the controlling organisation exercises its rights to elect members to the governing bodies of subsidiaries.
    e. Where individuals serve on more than one governing body within the group, arrangements to address the risk of breach of legal duties due to conflict of interests, as well as in relation to the use of information obtained while serving on the governing body of one organisation for the benefit of another.

Oversight and monitoring

150. The governing body of the controlling organisation should ensure that the agreed group governance framework is implemented and adhered to across the group.

Accountability – see the disclosure requirements for Principle 13 in relation to group governance in the **King V Disclosure Framework**.

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JUST SHARE

Investor power for a fairer South Africa

2022 AGM Roundup 1 (15 February - 3 June)

In this roundup:

- *Overwhelming shareholder support for climate risk resolution filed by Just Share & Aeon Investment Management at **Standard Bank**.*
- *Coal miners **Thungela & Exxaro** challenged on climate change disclosure and transition plans.*
- ***Absa** unable to back up its claims that coal provides "reliable, safe, and affordable energy", and that oil and gas development is important for economic development and aligned with the Paris Agreement.*
- ***Nedbank & Old Mutual's** responses to questions about investments in Petmin raise concerns about their ESG leadership.*
- ***Old Mutual** backtracks on commitment to disclose wage gap.*
- ***JSE** relies on delisting fears in response to call for gender pay gap disclosure.*
- ***The Spar Group** commits to disclose wages of lowest-paid workers.*
- *Time for some changes to **virtual AGM** practices: preventing shareholders from asking questions verbally may breach the Companies Act.*

Just Share has attended, and asked questions at, the following annual general meetings (AGMs), during the first half of this year:

1. The SPAR Group Limited, 15 February 2022
2. JSE Limited, 3 May 2022
3. Thungela Resources Limited, 24 May 2022
4. Exxaro Resources Limited, 25 May 2022
5. Nedbank Group Limited, 27 May 2022
6. Old Mutual Limited, 27 May 2022
7. Standard Bank Group Limited, 31 May 2022
8. Absa Group Limited, 3 June 2022

At these AGMs, we asked a total of **37 questions** relating to **inequality** (wage / gender pay gaps and income inequality), **diversity and transformation, climate change**, and **related governance issues.**

99.7% shareholder support for climate risk resolution at Standard Bank

For the third year in a row, Standard Bank's AGM was dominated by questions about its fossil fuel financing, and its role as a lead financial arranger in the East African Crude Oil Pipeline (EACOP) project.

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There was overwhelming support from shareholders for the non-binding climate risk-related resolution co-filed by Aeon Investment Management and Just Share. The resolution requires the bank to calculate and disclose the financed greenhouse gas (GHG) emissions from its exposure to oil and gas, and set targets for reducing that exposure in line with the goals of the Paris Agreement.

The voting result sends a clear message that shareholders require the setting of Paris-aligned targets to reduce the bank's substantial exposure to oil and gas, in order to mitigate climate risk and support Africa's just transition. Just Share will continue to engage with the bank to ensure that it is on track to achieve the targets set out in the resolution.

No decarbonisation strategy or emission reduction targets for Thungela

Prior to Thungela's AGM, Just Share released a briefing based on our analysis of the company's annual reports. The briefing highlights that Thungela's maiden suite of annual reports contains a multitude of misleading claims relating to climate science, energy security and poverty alleviation, the viability and affordability of so-called "clean coal" and carbon capture and storage, and the company's impacts on people and the environment.

Our analysis also highlighted that **Thungela has no Paris-aligned emission reduction strategy, nor has the company reported in alignment with the recommendations of the Task Force on Climate-Related Financial Disclosures**.

During Thungela's AGM, we raised governance, climate risk, and environmental concerns. Just Share asked Thungela, *inter alia*, about serious environmental and health impacts from unrehabilitated mines, including more than one toxic acid mine drainage spill, and toxic air pollution from fires at Khwezela colliery. We also asked about its failure to disclose the directive issued to it by the Department of Water and Sanitation in relation to the Kromdraai toxic water spill, or the resulting criminal investigation.

In response, CEO July Ndlovu said that the company's rehabilitation efforts had been stymied by illegal miners, that it had made all efforts to remedy the toxic spill, and that it had heard about the criminal investigation through the media and had not yet been charged.

Just Share will monitor developments on this issue, and continue to engage with Thungela's shareholders, who have self-evidently failed in their engagements with the company in relation to its climate impacts and transition plans.

Exxaro's Paris Agreement support undermined by plans to continue mining coal indefinitely

Just Share published a briefing ahead of Exxaro's AGM, based on our analysis of the company's annual reports. Exxaro emphasises its support for the goals of the Paris Agreement and acknowledges climate change as a material risk to its operations. Although it recognises the need to transform its coal and heavy minerals mining business into one that supports the low-carbon transition, **Exxaro has neither a Paris-aligned decarbonisation strategy nor science-based emission reduction targets.**

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Exxaro acknowledges that "the largest contributor to our emissions profile is from our scope 3 emissions" (i.e., the burning of the coal it sells), but it has no plans or targets to reduce these emissions. As a result, Exxaro's commitments to climate action ring hollow.

Absa claims that coal provides "reliable, safe, and affordable energy" in Africa, and that gas is an essential transition fuel

Although Just Share had prepared a draft shareholder resolution for negotiation with the bank, we elected not to file it. During our engagement with Absa, it became clear that the bank would most likely not be in a position, by 2023, to set Paris-aligned targets for reducing its financed GHG emissions from its fossil fuel exposure, as it does not appear to have commenced the work required to calculate these emissions.

Shortly before the AGM, the bank published its oil and gas standard, its mining standard, and an updated coal standard. These standards fail to include appropriate financing exclusions and climate science-based targets to reduce the bank's exposure to fossil fuels. Just Share will soon release its analysis of these standards.

At the AGM, Absa was not able to provide satisfactory responses to Just Share's questions about the evidentiary bases for the bank's claims - notwithstanding a wealth of contrary evidence - that coal provides "reliable, safe, and affordable energy", and that oil and gas development is important for economic development and aligned with the Paris Agreement.

Just Share will engage with Absa in relation to tabling a climate risk-related shareholder resolution in 2023.

In response to Just Share's question about board diversity, Absa read out a comment from the Public Investment Corporation (PIC), one of its largest shareholders. The PIC noted that it had been engaging with Absa's chairperson and CEO regarding the advancement of female and racial diversity at board and executive levels, and that it looked forward to receiving "transformation targets and timelines which must be integrated into the remuneration policy, with dedicated weightings for transparent monitoring".

Petmin: ethical and governance concerns raised at Nedbank and Old Mutual AGMs

Just Share raised governance and ethical concerns at both Nedbank's and Old Mutual's AGM, over their continued involvement in the controversial Somkhele coal mine in KZN, operated by Tendele Coal Mining (a subsidiary of Petmin).

In a recent judgment handed down by the Pretoria High Court, Judge Bam declared that the Department of Mineral Resources and Energy's decision to grant Tendele a right to expand its operations was unlawful and invalid.

Judge Bam cited, amongst other things, that in its application for the right, Tendele's project description was "wholly inadequate"; that it had "fundamentally breached the law" in relation

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to public participation; and that the company displayed an "offensive attitude" in its interactions with affected communities.

Just Share asked Nedbank whether, in light of this judgment, it still considers Petmin to be a client that conforms with its robust ESG policies and principles (as the bank has previously said); and, if not, what it intends to do about this.

CEO Mike Brown's response was meaningless, and offensive to the thousands of people who continue to be negatively impacted by the operations of this company. He stated that the bank had "formally responded to all the legal allegations in respect of Tendele, through engagements with attorneys. Unfortunately, we can't comment on specific clients and our strategies in respect of them, but we do have robust SEMS [social & environmental management systems] processes and we do always monitor new information as and when it becomes available".

At Old Mutual's AGM, Just Share pointed out that, in response to our question at last year's AGM about Old Mutual's investment, via Capitalworks, in Petmin's Somkhele coal mine in KZN, Old Mutual stated that it could do no more than "engage" with Capitalworks, and that it was confident that its ESG management system was robust. In light of the judgment against Tendele, Just Share asked whether the Old Mutual Investment Group remained confident in Capitalworks' ability to adequately detect and manage ESG risks.

In response, Khaya Gobodo, Managing Director at Old Mutual Investments, stated that "in general Capitalworks, has done a pretty good job at being custodians of client assets. This particular asset has been kind of a blemish and an unfortunate one at that".

He indicated that Old Mutual's "ability to effect change in the underlying investment is limited by the fact that number one, the underlying investment is unlisted, which means your ability to liquidate is challenged. In the second instance, in this case, we've invested via a fund so our engagement with Capitalworks is the most effective way to try and drive change".

In other words, Old Mutual confirmed that its approach was to "continue to engage with them in an attempt to continue to improve the outcomes that our clients would likely expect in this situation".

Activists have been raising concerns about Petmin for years. Many of these concerns have now been confirmed to be valid by a court of law. It is extraordinary that financial institutions such as these, which claim to be leaders in the integration of ESG factors into their investment and lending decision-making processes, appear to have no robust plans to address the severe ESG impacts that are so clearly evident in this case.

The responses provided by Nedbank and Old Mutual are an extremely discouraging illustration of the growing recognition that claims about ESG competency do not necessarily translate into real-world improvements and accountability, even when there is blatant misconduct and breaches of the law by the investee company. If these institutions cannot act in a case such as this, it seems unlikely that there are any circumstances that would prompt them to do so.

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Old Mutual backtracks on commitments regarding wage gap disclosure

Just Share asked Old Mutual why it had backtracked on its commitment at last year's AGM to making two crucial disclosures:

- the total remuneration of the lowest-paid permanent employee and temporary worker; and
- the remuneration multiple between the top and bottom decile of its employees.

In response, independent non-executive director Itumeleng Kgaboesele acknowledged that these commitments had been made and indicated that Old Mutual had conducted "extensive research and engagement" and disclosed its "fair and responsible pay philosophy and principles". He said that "in the coming year, or in this financial year, FY2022, "we intend to continue doing that work, and specifically to develop appropriate metrics, and pay ratios to track the progress that we're making against the fair and responsible pay principles, that we have disclosed. We will continue to monitor developments on the legislation front and certainly do intend to comply with the relevant legislation".

In other words, the company failed to explain why it had not made these promised disclosures and failed to commit to doing so in future.

It is disappointing that Old Mutual has distanced itself from its previously industry-leading position in relation to the crucial issue of wage gap disclosure, and now prefers to defer to future legislation which is already the subject of significant corporate push-back.

JSE relies on delisting fears in response to call for gender pay gap disclosure

Some questions at the JSE's AGM were met by responses that, if further disclosures – such as the gender pay gap – were required of listed companies, they might be inclined to delist. It is difficult for us to understand why this would be the case. This is information already known to companies and readily available – it is not at all burdensome to disclose it.

Confusingly, in response to Just Share's question about how the JSE is using its position and influence on gender equality practices to further advance gender diversity at leadership level in listed companies, outgoing chairperson Nonkululeko Nyembezi said that the JSE's role is to ensure public disclosure, and that it was up to investors to "hold the companies in which they invest to a standard that they expect as investors… there is no way that the JSE is going to be able to go around telling the Top 40 companies what to do, if investors are not pushing that".

This hands-off approach is concerning, given the JSE's position as market regulator. These responses are also contrary to the principles espoused in the JSE's very own recently-released Sustainability Disclosure Guidance.

Commitments made in response to Just Share questions

- **Graham O'Connor, Chairperson, The SPAR Group**, in response to a question as to whether the group would, like Woolworths, disclose the hourly base pay and hourly target base pay of its lowest-paid workers: committed to make these disclosures in the next financial

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reporting cycle; and also committed to disclose The SPAR Group's AGM minutes on its website.

- **Raymond Berelowitz, customer solutions director, Old Mutual**, in response to a question about a deadline to phase out existing thermal coal: "by Q1 next year, we'll be in a position to indicate the targets that we're going to be committing to, along with any phasing out timelines, with respect to potentially stranded assets".
- **Sello Moloko, chairperson, Absa**, in response to a question about the names and expertise of the five directors the bank states have "climate change and environmental expertise": committed to providing better disclosure with regard to the assessment of directors' expertise in the next set of annual reports.

Some reflections

Time for hybrid AGMs and voice integration

It has been over two years since the Covid-19 pandemic triggered various social distancing restrictions, which saw listed companies quickly transition to the virtual world of electronic-only AGMs. In South Africa, AGM service providers: Computershare, LUMI and The Meeting Specialist (TMS), have had to innovate to keep up with the demand for electronic AGMs, and now all offer voice integration. This enables shareholders to ask questions verbally at a virtual AGM. Despite the availability of this option, most corporates continue to force shareholders to interact by submitting written questions, which poses a significant barrier to effective participation in the AGM.

Written questions are limited to a certain number of characters. They require an intermediary, usually the company secretary, to read them out. Since company secretaries have never seen the questions before, there are quite often mistakes when they read the questions out aloud, and a failure to apply the correct emphasis. Questions are regularly read in the wrong order, which is hugely frustrating for shareholders who have spent time carefully framing questions which must be asked in a particular chronology.

Even more problematically, some company secretaries choose to group questions together and/or to summarise them, rather than reading each question out in full. As a result, the meaning and import of the questions are compromised. It is also much more challenging to engage with a response to an AGM question, when the follow-up has to be typed into a chat-box.

It is arguable that the reading-out of questions by the company secretary is a violation of the Companies Act, which provides that electronic AGMs are permitted:

> *As long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.*

Now that social distancing restrictions have eased and safety protocols can be implemented, there is no reason why companies should not host hybrid AGMs, with verbal integration, which would allow shareholders the choice to attend either in person, or electronically (with verbal questions).

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Of the eight AGMs Just Share attended during the first half of this year, only two hosted hybrid AGMs (The SPAR Group and Exxaro). The JSE and Old Mutual allowed verbal questions, while the remaining four (Thungela, Nedbank, Standard Bank and Absa), all limited shareholders to engagement via written questions only.

AGM minutes must be made publicly available on company websites

Making AGM minutes publicly available is a recommended practice of the King Report on Corporate Governance (King IV), Principle 16: Stakeholder relationships. The disclosure of detailed AGM minutes gives stakeholders access to previous AGM proceedings, including questions asked, concerns raised by other shareholders, and commitments made by the company. Over the last two years, Just Share has been monitoring the implementation of this governance practice, and many corporates are not compliant with it.

Some companies, when asked why they do not publicly disclose their AGM minutes, have stated that they will make them available on request, or that shareholders can instead watch a video recording of the AGM.

Neither of these approaches is stakeholder-friendly nor demonstrates the appropriate level of transparency. Nedbank and Woolworths provide two best practice examples. Both companies' websites contain easy-to-find AGM minutes of their most recent and previous AGMs, which also include questions asked by shareholders.

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Briefing

July 2023

2023 AGM Roundup 1: 14 February – 12 June

Just Share

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1. Introduction

In this roundup:

- *Companies and Intellectual Property Commission (CIPC) confirms that shareholders attending an electronic AGM must be able to ask questions verbally in real-time and without an intermediary.*
- *SPAR falls short on legal requirement to facilitate reasonably effective participation in its AGM, by limiting shareholders participating electronically to written questions.*
- *Thungela Resources Limited and Exxaro Resources Limited's refusals to table shareholder-proposed climate lobbying resolutions calls into question the coal companies' claimed commitments to transparency.*
- *Claims of sustainability / ESG / climate competence at board level require substantiation.*
- *SPAR fails to fulfil commitment to disclose hourly base pay and hourly target base pay of its lowest-paid workers.*
- *Protestors at Standard Bank AGM demand that the bank end its involvement with the East African Crude Oil Pipeline (EACOP).*

At the following AGMs, Just Share asked **34** questions relating to inequality (wage / gender pay gaps and income inequality), diversity and transformation, climate change, and related governance issues:

- SPAR Group Limited, 14 February 2023
- JSE Group Limited, 9 May 2023
- Exxaro Resources Limited, 18 May 2023
- Old Mutual Limited, 26 May 2023
- Thungela Resources Limited, 31 May 2023
- Nedbank Group Limited, 2 June 2023
- Absa Group Limited, 2 June 2023
- Standard Bank Group Limited, 12 June 2023

This first AGM roundup for 2023 summarises key issues addressed at these eight AGMs, offers insights into how these AGMs were conducted (with all companies opting to host hybrid AGMs), and highlights commitments made by the companies in response to questions asked.

In the lead-up to and just after these AGMs, Just Share published five investor briefings:

1. Briefing: Standard Bank's 2022 climate-related financial disclosures report, published 18 April 2023;
2. Briefing: Nedbank Group's 2022 Climate Report, published 4 June 2023;
3. Briefing: Absa Group Limited's 2022 climate-related financial disclosures, published 13 June 2023;
4. Vertical pay gaps at JSE-listed companies, published 22 June 2023; and

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5. Exxaro Resources Limited & Thungela Resources Limited 2022 climate-related disclosures, published 28 June 2023.

2. Hybrid AGMs: improvements made, but some companies still contravene the Companies Act

This AGM season marked the return to in-person AGMs, with all eight companies opting to host hybrid AGMs. Just Share welcomes this step, which allows shareholders to choose whether to attend in person or virtually.

Just Share representatives attended all but one AGM (SPAR) in person and virtually. After almost three years of electronic-only attendance, we were reminded of the immense value of in-person attendance, which enables far more constructive engagement than virtual attendance.

Reasonably effective participation

In all three Roundups for 2022 (Roundup 1, Roundup 2 and Roundup 3), Just Share raised concerns about companies' compliance with section 63(2) of the Companies Act, 2008. This section allows for an AGM to be conducted by electronic communication:

> *"...as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting."*

At the AGMs we have attended so far in 2023, Just Share has monitored whether the option to ask questions verbally, without an intermediary, has been granted to shareholders attending electronically and that they have not been restricted to written questions only, prohibiting reasonably effective participation.

Overall, the Q&A sessions were conducted well, in particular at the JSE, Exxaro and Old Mutual. Only **SPAR** limited shareholders participating electronically to written questions. There were some issues at Standard Bank and Thungela's AGMs, where the technology used during the AGM required shareholders to dial-in to ask their questions. In our (and other shareholders') experience, this is a cumbersome and inefficient method which can easily escalate shareholder frustrations.

CIPC provides clarity on section 63(2) of the Companies Act

On 5 April 2023, the Companies and Intellectual Property Commission (CIPC) published a legal opinion[1] on the interpretation of section 63(2) of the Companies Act. According to the opinion, a company holding an AGM with shareholders attending online, must allow those shareholders to ask questions verbally, in real-time and without an intermediary. If this is not done, the meeting will not constitute an AGM for purposes of the Companies Act.

[1] https://justshare.org.za/wp-content/uploads/2023/06/CIPC_Non-binding-legal-opinion_AGMs-by-listed-companies-via-electronic-means.pdf.

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Referring to Just Share's Best Practices for South African Virtual Annual General Meetings, CIPC's opinion provides as follows:

> *AGM's provide essential opportunities for shareholders to interrogate company decision-making and hold boards to account. While virtual AGM's are a viable alternative to having face to face meetings in a global economy, the virtual format increases the risk of infringement of shareholder rights.*
>
> *Infringement of shareholder rights as a particular concern in virtual AGM's, was raised in relation to the ability of shareholders to ask questions of the board of directors and to engage "real-time" with the board and with each other. Decisions cannot be made and consensus cannot be reached if shareholders cannot interact effectively and efficiently.*
>
> *Should a company hold virtual-only AGM's and these meetings do not allow shareholders to ask questions in "real-time", without an intermediary, or requires all questions to be submitted in advance, that meeting will not constitute an AGM for the purposes of the Companies Act, 71 of 2008.*

On 11 May 2023, the Institute of Directors in South Africa (IoDSA) welcomed the CIPC's opinion in a public statement.[2] Parmi Natesan, chief executive officer (CEO) of the IoDSA, concluded:

> *"In summary, shareholders now have confirmation of their right to be heard at virtual AGMs and are encouraged to use their voice effectively in exercising their voting rights and holding the directors accountable."*

Just Share also welcomes the legal opinion from the CIPC and trusts that this provides clarity on listed companies' legal obligations regarding electronic AGMs.

3. Refusal to table shareholder-proposed climate lobbying resolutions calls into question Exxaro and Thungela's claimed commitments to transparency

On 19 April 2023, Just Share, together with Aeon Investment Management,[3] and Fossil Free South Africa,[4] co-filed climate lobbying resolutions at Exxaro (18 May) and Thungela (31 May), ahead of their AGMs.

The resolutions asked both companies to report to shareholders, in accordance with the Global Standard on Responsible Climate Lobbying,[5] on the alignment of their own lobbying and policy engagement activities - and those of the industry associations to which they belong - with the goals of the Paris Agreement.

[2] https://www.iodsa.co.za/news/news.asp?id=639987.
[3] https://www.aeonim.co.za.
[4] https://fossilfreesa.org.za.
[5] https://climate-lobbying.com/.

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Fossil fuel companies have significant influence over government climate policy – directly and through industry associations like Business Unity South Africa (BUSA),[6] the Minerals Council of South Africa,[7] and the Energy Council of South Africa.[8]

Since there is no legal requirement in South Africa to disclose lobbying activities, disclosure of the kind the co-filers requested is the only way for investors to ascertain whether investee companies are using their influence to align the country's climate policy with the Paris goals.

Both Exxaro and Thungela refused, without valid legal justification, to table the non-binding, advisory shareholder resolutions. This failure to table the resolutions calls into question the companies' self-stated commitments to transparency.

At Exxaro's AGM, Just Share pointed out that allowing shareholders an opportunity to have a say, in a purely advisory capacity, on crucial issues such as the company's lobbying activities, is an integral aspect of good corporate governance. Exxaro chair, Mvuleni Qhena, committed to an engagement between Exxaro's CEO and Just Share to discuss "these issues". He would not commit to Exxaro reporting in its 2024 reports on the company's lobbying activities according to the Global Standard on Responsible Climate Lobbying. He commented that the company has to balance various views, and not only take certain stakeholders into account.

This is a response Just Share regularly encounters, particularly in relation to shareholder-filed resolutions. However, a non-binding resolution presents a perfect opportunity for companies to hear all of its shareholders' views on a particular issue, and Exxaro failed to take up this opportunity.

4. Claims of sustainability / ESG / climate competence at board level require substantiation

The complexities that arise from managing systemic and material sustainability risks, including climate change, require very specific skills, qualifications and experience that cannot be obtained through, for example, a few courses or presentations on sustainability- or climate change- related issues.

Just Share has again noted[9] that some companies are failing to provide shareholders with enough information to support the claims that companies make with regard to the sustainability, ESG and/or climate change competence of their board members.

Some companies state that a specified number of board members have sustainability, ESG and/or climate change skills and expertise, but an analysis of the biographies of the directors (in both the company annual reports and on the company website), does not provide evidence of this. This

[6] https://www.busa.org.za/.
[7] https://www.mineralscouncil.org.za./
[8] https://www.energycouncil.org.za/.
[9] Also noted in our 2022 AGM roundups: https://justshare.org.za/wp-content/uploads/2022/06/220615-2022-AGM-Roundup-1.pdf; https://justshare.org.za/wp-content/uploads/2022/11/220906-2022-AGM-Roundup-2.pdf and https://justshare.org.za/wp-content/uploads/2022/12/2022-AGM-Roundup-3_14-November-2-December-2022_final-1.pdf.

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calls into question the integrity of such claims. Shareholders need to be able to easily ascertain whether the information provided justifies the claims.

For example, **Old Mutual** describes eight of its board members as having "recognised executive industry expertise" in the area of "responsible business". In 2021, the company claimed that nine of its then 16 directors, had "sustainability-related" expertise, which it defined as "essential expertise required to effectively govern and guide the Group in future-proofing the business and complying with Environmental, Social and Governance (ESG) requirements".[10]

Reading the biographies of all 14 board members in this reporting cycle, it is impossible to determine which directors Old Mutual considers to have "sustainability-related" or "responsible business" skills, expertise or career experience – the word or related words are not included in any of the biographies. It is concerning that not even the biography of the chair of the responsible business committee - Sizeka Magwentshu-Rensburg - provides evidence of relevant expertise.[11] At the AGM, the response from Dr Magwentshu-Rensburg to Just Share's question about this description did not provide adequate clarity.

We were also unable to substantiate claims of "ESG-related" skills on the **SPAR** board by reading the limited biographies of its members. For example, SPAR's annual integrated report states that Jane Canny, chair of the social, ethics and sustainability committee (responsible for board oversight of sustainability-related risks and opportunities) "contributes... ESG skills to the board".[12] No such claims are made in her biography on the company website.

In the company's CDP Report for 2022, SPAR references board "sustainability" competence through Kevin O'Brien, the company's chief sustainability officer, and, at the time, also company secretary. However, Mr O'Brien only has a "permanent invitation to the social, ethics and sustainability committee", and is not a board member. In response to our question at the AGM, SPAR's executive chair, Mike Bosman, undertook to improve SPAR's reporting in this regard.

This is an area which needs more considered disclosure by companies. King IV, Principles 1, 7 and 9 all provide guidance for how governing bodies need to consider the appropriate balance of knowledge, skills, experience and diversity when appointing board members.

The JSE's Sustainability and Climate Change Disclosure Guidance[13] reiterates King IV's recommended practices, and provides clearer recommendations for specific board competence disclosure. For example, the Sustainability Guidance states that, in describing the board's oversight of sustainability issues, the organisation should disclose, *inter alia*, "*how the board ensures that the appropriate skills and competencies are available to oversee strategies designed*

[10] Old Mutual Limited 2021 Integrated Annual Report, p. 10.
[11] https://www.oldmutual.com/about/our-leadership/board-of-directors/sizeka-magwentshu-rensburg/.
[12] The SPAR Group Integrated Annual Report 2022, p. 84.
[13] https://www.jse.co.za/our-business/sustainability/jses-sustainability-and-climate-disclosure-guidance.

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to respond to sustainability-related impacts, risks and opportunities".[14] It recommends the "*description of the specific skills, competencies, and experience on the Board to address the organisation's significant sustainability-related impacts, risks, and opportunities.*"[15]

The names of the directors with the stated skills should be disclosed, as well as some indication as to how those skills have been acquired. Leaving shareholders to surmise which directors are the ones with the claimed skills and why, is frustrating, runs contrary to King IV and the JSE's Sustainability and Climate Change Disclosure Guidance, and leads stakeholders to question the veracity of the claims made.

5. SPAR AGM

The SPAR AGM was the only AGM attended by Just Share at which shareholders were limited to written questions only, which contravenes the Companies Act. This was also a change in approach to the Q&A session for the 2022 AGM, where verbal questions had been allowed. Just Share asked why the company had changed its position. No adequate response was given, other than to suggest that there were technological limitations from the AGM service provider, which Just Share knows not to be the case.

At SPAR's 2022 AGM, Just Share and another shareholder asked the board if it would commit to disclosing the wages of lowest-paid employees. Although this commitment was made, SPAR did not disclose the wages of its lowest-paid workers in its latest reports. At the 2023 AGM, Just Share raised concerns regarding the lack of wage gap disclosure and the exclusion of "front-end, customer-facing store employees" as "material stakeholders" according to the company's assessment. Mike Bosman, executive chair, stated that SPAR pays its corporate and distribution centre employees at least 37% above the prescribed national minimum wage.

However, Mr Bosman confirmed that due to SPAR's business model, the stores operate as a "network of independent retailers", and that the company does not keep track of the headcount of full-time, part-time, and fixed-term customer-facing employees working for the 'independent retailers', operating under the SPAR retail brand. The chair stated that he was confident that the information could be collected through the SPAR Guilds and indicated that SPAR would aim to provide better wage gap disclosure in the next reporting cycle.

In response to our question about transformation targets, Phumla Mnganga, chair of the social and ethics committee, also committed to providing Just Share with details about the company's race and gender transformation targets. Just Share has since requested this information, but it has not yet been provided.

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[14] Section 3.1 Sustainability Narrative Disclosures, Governance, p31, available at https://www.jse.co.za/sites/default/files/media/documents/JSE%20Sustainability%20Disclosure%20Guidance%20June%202022.pdf.
[15] Section 3.2 Standardised Sustainability Disclosures (Core and Leadership), Governance Metrics, G1.2, Board competence, p 37, available at: https://www.jse.co.za/sites/default/files/media/documents//JSE%20Sustainability%20Disclosure%20Guidance%20June%202022.pdf.

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6. JSE AGM

The JSE's 2023 AGM was an excellent example of a well-run and inclusive hybrid AGM.[16] JSE chair, Phuthuma Nhleko, welcomed shareholders and provided an extensive introduction, including introducing all directors and executive management in attendance. The JSE also provided a detailed agenda which was visible to both in-person and electronic attendees. The agenda provided an overview of the expected proceedings, including how the Q&A session would be conducted and when shareholders would vote on the resolutions. Many companies do not provide an agenda at the start of the AGM, leaving shareholders in the dark as to how the AGM will be conducted and when the Q&A session will be held.

During the JSE's Q&A sessions, shareholders attending in-person and electronically were granted seamless access to ask verbal questions. Demonstrating an openness to shareholder engagement, the chair also asked shareholders whether the responses received were satisfactory.

General remarks

During the AGM, Just Share asked what oversight the JSE would provide to ensure that reporting by issuers aligns with its Sustainability and Climate Disclosure Guidance[17] published in June 2022, and whether the JSE would report on the adoption of these guidelines by its issuers. This progressive Guidance is specifically tailored to the South African context, and according to the JSE, "is intended to assist companies navigate the areas of sustainability thinking and disclosure more confidently and meaningfully." No specific response was received to Just Share's question, with various JSE representatives emphasising that the Guidance is not mandatory.

In Just Share's view, and irrespective of the voluntary nature of the Guidance, the JSE should report on its uptake by listed companies and provide continued education and oversight on these guidelines, rather than leaving their interpretation to the market.

In response to Just Share's question as to whether the JSE would include the disclosure of gender pay gaps in the next review of the JSE's Listings Requirements, Leila Fourie, CEO, stated that it had "paused" this consultation process, as it is waiting for clarity on the proposed amendments to the Companies Act.

However, the Companies Amendment Bill does not propose any disclosure of gender pay gaps. Just Share pointed out this crucial omission in our comments on the Bill, and called for the inclusion of the disclosure of gender pay gaps. However, there has been no further public information about the status of the Bill since the call for public comments in 2021.

The JSE is a founding partner of the Sustainable Stock Exchanges (SSE) initiative and prides itself on its role in promoting strong governance and sustainability disclosures. The SSE initiative states that equity markets have the potential to drive companies towards taking action on gender issues by modifying their listing requirements, and in addition to mandating disclosure of gender metrics,

[16] Video recording of the JSE AGM: https://www.youtube.com/watch?v=-DqI_kfOIPk.
[17] https://www.jse.co.za/our-business/sustainability/jses-sustainability-and-climate-disclosure-guidance.

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stock exchanges can consider implementing a "comply or explain" listing requirement that focuses on corporate gender performance as a whole.[18] There is no reason to await clarity on Companies Act amendments.

7. Old Mutual AGM

Old Mutual hosted its first hybrid AGM since the Covid pandemic. The hybrid meeting was well conducted, although there was no engagement between shareholders and board or the executive management team before the meeting started.

Just Share asked whether the company will consider disclosing gender pay gaps (now that it has disclosed vertical pay gaps). The chair of the remuneration committee, Itumeleng Kgaboesele, stated that gender pay gaps would be a 2023 focus area and that Old Mutual would make "appropriate disclosure at the appropriate time in and in compliance with the legislation that's in place". As set out above, proposed amendments to the Companies Act do not include the disclosure of gender pay gaps.

In response to a question from Just Share about stretching female representation targets at board level, the chair of the responsible business committee, Sizeka Magwentshu-Rensburg, stated that the company is in the process of considering candidates for board positions post the retirement of Nosipho Molope.

In response to our question about Old Mutual's stance on investee companies disclosing the alignment of their climate-related lobbying activities (and those of the industry associations to which they belong) with the goals of the Paris Agreement, Old Mutual Investment Group's Managing Director, Khaya Gobodo, stated that this is an area in relation to which the company will be more vocal, and that it will "support more stringent disclosure" around this issue.

8. Exxaro AGM

Exxaro hosted its first hybrid AGM since the Covid pandemic. Exxaro representatives introduced themselves and engaged in a friendly manner with shareholders attending the meeting. The meeting was well conducted and allowed shareholders attending electronically to ask verbal questions.

Exxaro appears to be suffering from strategy ambiguity and incoherence: its Market-to-Resource Strategy (which, with its Early Value Strategy, is about maximising opportunities from coal) falls under the company's Sustainable Growth and Impact Strategy. In response to Just Share's question about this, Geraldine Fraser-Moleketi, chair of the social and ethics committee, explained this as being about finding markets for its "clean coal" and relying "on the revenue of the coal business to create impact in the communities where we operate…that is also linked to what we call really preparing these communities for the just energy transition".

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[18] P 24 SSE., 2022. *How exchanges can advance gender equality: Updated guidance and best practice*. Available here: https://sseinitiative.org/wp-content/uploads/2022/03/How-exchanges-can-advance-gender-equality-Updated-guidance-and-best-practice.pdf.

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Exxaro's strategies are also not necessarily consistent year-on-year. It appears to be slowing down its decarbonisation strategy. This "repacing" includes a much less ambitious renewable energy procurement target (almost halved from its previous target). Exxaro's financial director, Pieter Koppeschaar, did not explain on what basis the company regards its previous renewable energy target as "unrealistic", especially given the increasingly permissive regulatory environment and the many opportunities in South Africa.

The company also excludes scope 3 emissions – which form by far the bulk of its emissions - from all of its emission reduction targets. In short, Exxaro does not have a credible decarbonisation strategy nor science-based emission reduction targets.

In response to Just Share's question during its AGM as to whether Exxaro will be investing in new coal, the chair, Mvuleni Qhena, said that it is "not something that we are looking at now", and that "at this stage no new Greenfield coal [projects]" are being considered.

In relation to wage gaps, Exxaro reported that, during the 2023 financial year, one of its key focus areas will be to "address the wage gaps across vertical levels and implement measures to narrow the wage gap".[19] Just Share asked Exxaro about its plans to address and disclose gender pay gaps. In response, Phumla Mnganga, chair of the remuneration committee, confirmed that Exxaro does intend to disclose its gender pay gaps, but did not say when it would do so. She also stated that Exxaro will provide more detail about wage gap disclosure "at the end of the cycle".

Dr Fraser-Moleketi indicated that both the social and ethics committee and remuneration committee engage with this topic. She also stated that one of the reasons that this is complex is that "men tend to project their potential more than women when applying for a similar position".

9. Thungela AGM

Thungela hosted a hybrid AGM. The in-person event was professional and ran smoothly, and Thungela representatives introduced themselves and engaged in a friendly manner with shareholders attending the meeting. The dial-in facility for questions from shareholders attending virtually caused some issues with access, but it was unclear whether the problem arose from the AGM service provider.

Like Exxaro, Thungela does not have a credible decarbonisation strategy nor science-based emission reduction targets.

Although, unlike Exxaro, Thungela does include scope 3 emissions - which comprise 98% of its total GHG emissions – in its 2050 net zero target, it has no current plan to reduce these emissions. At present, the company's disclosures indicate that its 2050 net zero plan relies on abated coal, carbon capture and storage and/or high-efficiency coal-fired power plants.[20]

[19] Exxaro Resources Limited 2022 ESG Report, p. 129.
[20] Thungela Resources Limited Climate Change Report 2022, p.6, p.20, p.28.

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Thungela's AGM responses to questions from Just Share did not provide any further comfort. CEO July Ndlovu referred to the reduction in scope 3 emissions over the past year (although this was due to lower production volumes), and to "pulling the right levers" and "doing what we can". Mr Ndlovu stated that Thungela does "take science into account" and that it will continue to "evolve and improve our response strategy, we will look at scope 3 and what we can do, in time." Chair Sango Ntsaluba said that Thungela was "not going to shy away from putting together systems and processes for the journey for scope 3."

In response to Just Share's question about whether Thungela has a broader strategy for acquisition and growth of new coal mines (in light of the recent purchase of Australian coal mine Ensham), Mr Ndlovu stated that the company is "going to consider diversification of our portfolio for a number of reasons. We said we are a single country, single commodity, over-reliant on a very risky piece of infrastructure and that is why we are diversifying. We are executing that strategy."

10. Nedbank AGM

Nedbank hosted a hybrid AGM which was well conducted. Shareholders were provided with a visual agenda at the beginning of the meeting. As set above, this helps to inform shareholders how the meeting will be run, when the Q&A session will be held and when shareholders will vote on the resolutions.

Like Standard Bank and Absa, Nedbank has increased its exposure to fossil fuels significantly over the past financial year. While Nedbank's Energy Policy makes commendable long-term commitments, it leaves significant room for financing which does not support climate action in the short- to medium- term. This makes no sense from a bank which purports to be fully appraised of the urgency of reducing carbon emissions.

Just Share asked about this increased fossil fuel exposure, and how it aligns with Nedbank's clear commitments on climate action. Brian Dames, chair, group climate resilience committee, argued that gas is being treated differently – as a transition fuel, stating that, "we certainly believe that gas is hugely important, as a transition – a transition for technology to catch up."

Just Share asked the bank to consider being more specific in future disclosures and policies about what exactly it means when it states that it will fund gas as a 'transition fuel". At present the term is used so broadly that it could justify investment in *any* gas-related project. There is a need for clarity to avoid this being used as a justification for extensive fossil fuel investment. Chief financial officer Mike Davis committed to investigating this issue for future disclosures.

11. Absa AGM

Although Absa conducted a hybrid AGM, the in-person experience for shareholders was awkward and not at all conducive to effective engagement. There was no interaction between shareholders and board members before the meeting - shareholders who attended in-person were directed to sit together in a separate room before the AGM started. The AGM was held in a boardroom in Absa's

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offices, with the board and managers seated around the boardroom table, and attending shareholders seated in a row to the side of the room. This meant that several board members had their backs to shareholders throughout the meeting (and many of these board members did not turn around to listen to shareholders when they were speaking).

Absa's exposure to fossil fuels increased significantly in the past financial year. It provides no targets or strategies for the reduction of this exposure, taking the view that addressing energy poverty "should be an immediate priority with a transition to cleaner energy" seen as "a complementary priority".[21] The bank misunderstands that fossil fuel-based energy systems have entrenched poverty and inequality, and that rapidly developing least-cost renewable energy is precisely the vehicle through which energy access will be achieved.

In response to a question from Just Share as to why the bank had lumped together the fossil fuel exposure of "electricity, gas and water supply" - which makes it more difficult to understand and compare, for example, the bank's exposure to renewable energy versus fossil fuel-based energy - chair Sello Moloko assured shareholders that there was nothing untoward about combining these discloses and said that, going forward, the bank would improve its disclosures.

Of the bank's 14 executive committee (exco) members, only three are female.[22] Just Share asked why, of the six new exco appointments, the bank had only appointed one new female executive, instead of using these appointments as an opportunity to increase female representation at exco level.

In response, Mr Moloko stated that Absa would like to have more female representation at exco level. The chair indicated that the company had tried its best to appoint more females for the roles. He said that increasing female representation was "work in progress".

12. Standard Bank AGM

Standard Bank held a hybrid AGM, with the in-person event taking place at the bank's head office in Rosebank. The bank used a dial-in facility for shareholders attending virtually to ask questions, which caused some frustrations amongst shareholders who were unable to ask questions due to problems with the system.

Before the AGM, hundreds of protestors gathered outside the Rosebank building, behind a barricade erected by the bank and under the watchful eye of private security guards and a few members of the South African Police Service (SAPS). Community members and activists were calling on the bank to redirect its funding towards renewable energy initiatives that prioritise low-income communities rather than catering solely to wealthy clients. Protestors were also standing in solidarity with the many fence-line communities in Uganda and Tanzania impacted by the controversial East African Crude Oil Pipeline project (EACOP), and other fossil fuel projects like the Cabo Delgado gas project in Mozambique, funded by Standard Bank.

[21] Absa Group Limited 2022 Integrated Annual Report, p.38.
[22] Absa Group Limited 2022 Integrated Annual Report, p.86.

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Social and climate justice activist Kumi Naidoo and Extinction Rebellion climate activist Malik Dasoo were forcibly removed from the Standard Bank building, following an Extinction Rebellion South Africa demonstration in the lobby of the building against the bank's involvement in EACOP.[23]

While all this was going on, the board and senior management were seated in the AGM room, completely disconnected from the protests outside. There was not even an acknowledgment by the bank's chair, Ms Nonkululeko Nyembezi, of the protests, despite these being audible from within the room in which the AGM was held.

At one point during the AGM, while activist shareholders were questioning the bank on its approach to climate change, a shareholder "congratulated" Ms Nyembezi, for the way Standard Bank was taking such a "mature view" in response to the "environmental lobbyists" outside and the challenges on the bank's fossil fuel funding - by ignoring the disruption and challenges from activists. The chair responded, "well said, I can say no more. I don't support, or not support – I am just saying, well said".

The bank's exposure to fossil fuels increased significantly in the past financial year, and it was clear from the AGM that the bank remains firm in its intention to continue to finance oil and gas, relying on the false "conflict" between development and the just transition. At the AGM, Ms Nyembezi commented that the bank "would not privilege sustainability at the expense of developing a poor country".

Just Share asked Standard Bank whether it had made a final decision about its investment in EACOP. Ms Nyembezi still insisted that no final decision had been made and that this was subject to conditions in the credit approval process and that outstanding due diligence questions are still being considered. Furthermore, she confirmed that TotalEnergies still had to respond on some matters.

Standard Bank has reported that it had conducted an analysis of gender pay gaps, and found no evidence of systemic pay discrimination between men and women at the Group and country level.[24] At the AGM, Just Share pointed out that this outcome was intriguing, considering that South Africa's gender wage gap is estimated to range between 23% and 35%. We inquired whether the bank would commit to disclosing the actual gender pay ratios for all employment equity levels. In response, Standard Bank did not commit to full disclosure. The company contended that its gender pay ratios favour women, although Ms Sharon Taylor, Chief People & Culture Officer, acknowledged that the data the bank has used is "murky".

[23] https://www.dailymaverick.co.za/article/2023-06-12-kumi-naidoo-forcibly-removed-from-standard-bank-hq-after-protest-over-crude-oil-pipeline-project/.
[24] Standard Bank Group Limited Environmental, social and governance report 2022, p.52.

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13. Commitments made in response to Just Share's questions

SPAR:

- **Mike Bosman, executive chair**: stated that SPAR aims to provide better disclosure of the "sustainability/climate" competence of directors in future reporting.
- **Mike Bosman, executive chair**: stated that SPAR aims to improve disclosure of its lowest-paid workers in the next reporting cycle.
- **Phumla Mnganga, chair, social and ethics committee**: noted that SPAR would provide Just Share with details about the company's race and gender transformation targets for top, senior, middle and junior management. Just Share has followed up and awaits a response.

Old Mutual:

- **Elsabe Kirsten, group company secretary:** committed to making the minutes of its AGM publicly available on the company website in future.
- **Khaya Gobodo, managing director:** indicated that Old Mutual would be more vocal regarding disclosure by investee companies of climate lobbying.

Exxaro:

- **Phumla Mnganga, chair, remuneration committee:** "at the end of the cycle, you will be able to see more in terms of what that disclosure [wage gap] would look like."

Nedbank:

- **Brian Dames, chair, group climate resilience committee:** confirmed that "glidepaths" to be published in 2024, setting out plans and targets, would "definitely be science based and informed from that perspective."
- **Mike Davis, chief financial officer:** committed to investigating the disclosure of more detail on what Nedbank intends to fund when it describes gas as a "transition fuel".

Absa:

- **Sello Moloko, chair**: in response to the question about lumping together the fossil fuel exposure of electricity, gas and water supply, assured shareholders that the bank would aim to improve its disclosure.

End

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Briefing

June 2024

AGM round-up
Thungela Resources Limited

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1. Introduction

Date of AGM: 4 June 2024

Chair of the board: Sango Ntsaluba

Type of AGM: **Hybrid AGM** (with attendance online and in-person permitted) conducted by ComputerShare.

Useful links:

- Notice of AGM
- Results of 2024 AGM

2. Key takeaways: climate targets, climate resolutions and authority to issue shares

- *Thungela has still not set any targets to reduce its scope 3 emissions before 2050, and CEO July Ndlovu refused to provide a timeline for setting such targets, stating that the company would not want to set targets which it would not be able to meet. However, the effect of this is that the company does not have a credible decarbonisation plan: the Science Based Target Initiative, for example, requires companies to set at least one near-term, science-based scope 3 target when scope 3 emissions make up 40% or more of its total emissions, in order to have a credible climate strategy.*
- *Despite refusing for the second year in a row to table a shareholder-proposed resolution filed earlier this year by Just Share, Aeon Investment Management and Fossil Free South Africa, Thungela would not commit to tabling its own "say on climate" resolution, which would give its shareholders an opportunity to vote on the credibility of its decarbonisation strategy. This type of resolution is increasingly becoming standard practice at fossil fuel companies around the world.*
- *The resolution requesting general authority for directors to allot and issue ordinary shares received only 48% support.*

3. AGM governance

Thungela's hybrid AGM was hosted by ComputerShare,[1] and those attending in-person did so at the Johannesburg Stock Exchange, Sandown. The chair welcomed shareholders, set out a clear agenda for the meeting, and explained how the Q&A session would be conducted and when voting on the resolutions would take place.

The AGM was conducted effectively with no issues that might raise concerns about compliance with section 63(2)(b) of the Companies Act, 2008, which permits electronic AGMs:

> *"as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting."*

[1] www.computershare.com/za

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Thungela also provided online access to its AGM, via the ComputerShare platform, to stakeholders other than shareholders.

4. Q&A sessions

During the Q&A session, shareholders attending electronically were given the opportunity to either submit written questions or to ask their questions verbally, although no shareholders opted to use this facility. Written questions were read out clearly and in full. Just Share attended the AGM in person.

5. Opening address

In his opening address, the chair made the following ESG-related points:

- *Ntsaluba recognised Thungela's responsibility for its environmental stewardship, underpinned by climate risk management, efficient use of resources, land stewardship, and biodiversity. He spoke about the steps the company is taking to replenish the fish in the Wilge and Oilifants rivers after the 2022 collapse of an old mine shaft at Khwezela Colliery's Kromdraai site resulted in the release of toxic mine water.*
- *Thungela has made progress in its diversification strategy through the acquisition of a controlling interest in Ensham mine in Australia.*
- *Ntsaluba also referred to maximising value from existing assets, stating that progress on the Elders production replacement project and Zibulo North Shaft Project were on track and on budget, and that the first coal was delivered at Elders in March 2024.*
- *In 2023, Thungela published emission reduction targets [which are only applicable to scope 1 and 2 emissions]. Ntsaluba stated that Thungela's commitment to net zero will be upheld, "notwithstanding our pursuit of geographical expansion through acquisitions such as Ensham".*

6. Just Share's questions

6.1. Scope 3 emission reduction targets

Just Share began by saying that, although Thungela has improved its scope 3 reporting, it has still not set any short- or medium-term scope 3 targets, despite these constituting 98% of Thungela's emissions. The Science Based Target Initiative requires companies to set at least one near-term, science-based scope 3 target when scope 3 emissions make up 40% or more of its total emissions, in order to have a credible climate strategy.[2]

We pointed out that this means that until Thungela has set such a scope 3 target, it does not have a credible emission reduction strategy aligned with science and global best practice. We asked what Thungela's envisaged timeframe is within which it will set scope 3 targets aligned with the goals of

[2] https://sciencebasedtargets.org/blog/scope-3-stepping-up-science-based-action

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the Paris Agreement, and a strategy to achieve these targets. We had also asked Thungela this question at its 2023 AGM.[3]

Besides saying that some of scope 3 emissions reduction "is going to be related to mine closures where we will not be replacing those tonnages" neither the chair nor the CEO responded to this question, both focussing instead on Thungela's commitments on its scope 1 and 2 emissions. Ndlovu did end by saying that, "What we would like to avoid doing is committing to society, targets, for the sake of committing to targets that we will not be able to meet, and that is where we are being very deliberate and rigorous in terms of our thought process, both in terms of timing and quantum of what we can impact."

6.2. Use of carbon capture and storage

Just Share noted that throughout its reporting, Thungela refers to carbon capture, utilisation and storage (CCUS) as key to its decarbonisation strategy. We pointed out that, despite decades of experimentation and huge financial expenditure, none of the many CCUS "pilot projects" anywhere in the world has been successful in the development of commercially viable CCUS, at scale.

While Thungela reports that the "capture capacity of CCUS projects in development, in construction or operating has increased", the reality is that commercial CCUS projects running today still only capture about 0.1% of fossil fuel emissions globally. We therefore asked what Thungela's expected CAPEX investment for CCUS technology is and how it compares to CAPEX allocated to other elements of its decarbonisation plan.

Ndlovu responded by saying that it is the nature of technological development that it "at the beginning, quite often, doesn't look economic. But you have to invest in it if you have belief, and commitment, just like the renewable technologies. If you go 50, 40 years ago, turbines and solar panels were not economic. They had to be subsidised to come down the commercial scale, and equally, CCUS is one of those technologies that is going to require continued investment and support among other technologies such as, high efficient, low emission technologies."

This is a common argument of fossil fuel companies. The problem with it is that we are not at the "beginning" of the development of CCS technology. It has, in fact, been deployed since the early 1970s, but more than 50 years later is still not commercially viable at scale. Renewable energy technology, on the other hand, is now the cheapest, cleanest and fastest means of providing electricity. Furthermore, given the urgency of the climate crisis, the world does not have 40 or 50 more years to wait and see if CCS becomes feasible. The reference to CCS is nothing more than a fossil fuel industry delay tactic.

Ndlovu also mentioned the increased investment in CCUS in China, in combination with "alternative uses of coal". However, he ended by saying that although Thungela is monitoring these

[3] https://justshare.org.za/wp-content/uploads/2023/09/2023-AGM-Roundup-1_14-February-12-June-2023_July-2023_final.pdf

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developments, the board does "not believe that we've got the wherewithal nor means to begin to allocate capital to CCUS ourselves, because we're not consumers of coal necessarily."

6.3. Scope 1 and 2 emissions and the inclusion of Ensham

Last year Thungela indicated that its target to reduce scope 1 and 2 emissions by 2030 applied to "existing operations", and said that it would update its "baseline and include initiatives to decarbonise the Ensham operations" in this current reporting cycle, once the Ensham Mine transaction had been closed. That acquisition was completed in September last year, but the current annual reports still exclude Ensham. Just Share asked why Thungela was not able to include Ensham in this year's reports. This, we were told, was due to the fact that the deal on Ensham closed in September and, given the complexity of the data and legal requirements in Australia, it was unable to standardise the data in time to include in these reports.

Just Share also asked for clarification as to whether Thungela still intends to amend its 2021 target baseline to one that reflects its ownership of Ensham – as it has promised to do in the past. We asked whether this is the same approach that will be taken to other new projects, such as the Lephalale coal-bed methane project for which a feasibility study commenced last year. Ndlovu's response was difficult to interpret, but we understand it to mean that he acknowledged that this would not be a sensible approach.[4]

6.4. "Say on Climate" resolution

Finally, Just Share asked whether, given Thungela's ongoing refusal to table any climate-related shareholder resolutions proposed by shareholders, it would commit to tabling a "say on climate" resolution at next year's AGM, to give shareholders an opportunity to vote on its climate strategy. This type of resolution is increasingly standard practice at fossil fuel companies around the world.

The background to this question is that, earlier this year, Just Share, Aeon Investment Management and Fossil Free SA filed a climate-related shareholder resolution at Thungela which the company once again (as last year) declined to table,[5] indicating that the tabling of any such resolution for a vote falls "exclusively within the power and discretion of the board of directors".

Thungela was clearly anticipating a question about this refusal, as company secretary Francois Klem responded by reading out a statement reiterating the company's interpretation of section 65(3) of the Companies Act, of which we are well aware. However, our question was about whether Thungela

[4] Full transcript of the CEO's response to this part of Just Share's question: "it's quite an interesting… It's pointless to keep going to 2021. Let's take Lephalale for instance: we might build the gas project say in 2030. What will be the point of going back to amend 2021? I think what you want to do is, when you've got a project, is to say how do we then mitigate the climate-related risks associated with this particular project?. And you do what is right for that project. I think what you'd recall we said, because that's an important consideration here - other than the gas project, which might be in a slightly different context - we said, as we evaluate our investments, we're going to primarily focus on existing carbon limits, rather than create new carbon limits. And the reason for that was so that actually, if we wanted to amend the baseline, actually it's pretty straightforward because it already existed in that instance, we can actually do that; but if it didn't exist, I mean, that will look kind of an oxymoron to then say theoretically, in 2021, this would have been this. So we would have to do what is right for that particular circumstance, I think."

[5] https://justshare.org.za/media/news/coal-companies-thungela-and-exxaro-refuse-to-table-shareholder-proposed-climate-lobbying-resolutions/

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itself would table a resolution – not about whether it would commit to tabling a *shareholder*-proposed resolution.

To this, Ntsaluba merely said that "I guess it might be a little bit unfair for the company secretary to say 'well, the matter will be on the agenda' now. I guess the question is always, the company secretary submits these matters to the board, and the board then would apply the mind as it does all the time." In reply, Just Share noted that Thungela would not comment on whether or not it would table its own resolution in future.

7. Questions asked by other shareholders

There were some questions from shareholders attending the AGM electronically:

- An asset manager shareholder asked why Thungela does not publish its pay ratio and gender pay gap by major geographic element, noting that "inequality is a growing local and global risk." Ndlovu said that up until this year Thungela has only been a single geographic, single-country company and so did not have to segregate its remuneration disclosure. However, he also would not commit to doing so in future disclosures, saying that "it's important that, as we consider these comparisons, that we don't assume that we have got a single pay structure across all geographies because economic conditions in different geographies are different", and that it "is something that we're going to spend time understanding in what the appropriate comparisons are on a go-forward basis."

- A shareholder from ESG Insight SA asked about Thungela's remuneration policy, pointing out that the short-term incentives for the business and individual segments are difficult to assess as the policy does not disclose any targets. The response was to say that the company runs "a very robust process as a board in terms of translating the output of our strategic process into clear and measurable objective business KPIs that we associate monitor on a quarterly basis. It's weighted, it's very clear and clearly becomes the basis of the payout that we apply in the business."

- Other questions related to the softening of the coal market, potential recourse against Transnet for loss caused to the company, and several questions relating to Thungela's share buy-back scheme.

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8. Relevant resources

8.1. Just Share

8.1.1. Climate-related resources

- **Briefing:** Five things to know about Thungela and Exxaro's climate-related disclosures (June 2023)
- **News post:** Coal companies Thungela and Exxaro refuse to table shareholder-proposed climate lobbying resolutions (May 2023)

8.1.2. Governance-related resources

- **2023 AGM Roundup 1:** includes a summary of Just Share's 2023 Thungela's AGM attendance
- **Guide:** Best practices for South African virtual annual general meetings (May 2020).

8.2. Other resources

- **News**: Thungela looks to mine closures, renewables to tackle greenhouse gas emissions (June 2024), Business Live

End

TC

"AA9"

From: Klem, Francois (Thungela) <francois.klem@thungela.com>
Sent: Monday, May 8, 2023 12:42 PM
To: Robyn Hugo <rhugo@justshare.org.za>
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>; Genis, Tarryn Rae (Thungela) <tarryn.genis@thungela.com>; Mphahlele, Ntombi (Thungela) <ntombi.mphahlele@thungela.com>
Subject: RE: Shareholders' resolution for filing at Thungela's 31 May AGM

[OFFICIAL]

Dear Robyn,

Thank you for your mail.

We have considered the substance of your request and believe that it would be most appropriate and productive to meet with you in order to have an open discussion to unpack your views, and to put across our perspective on the matter raised in your letter. Accordingly, we once again extend the invitation for an engagement on this matter and would welcome the opportunity to meet with you.

In accordance with your request, I also include below the legal basis for the decision not to table the resolution.

We are advised by our attorneys that, as a matter of company law, while styled a "resolution", the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters

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which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so.

We respect and appreciate the area of concern raised in your letter and assure you that it is one of the many and multi-dimensional aspects of running a coal-mining business that is part of the board's mandate to manage the business for the interests of the shareholders as a whole. We would also like to emphasise that this is not intended to discourage you from holding or expressing your viewpoint, or from engaging with others on it. It is simply that a shareholder resolution is not the appropriate approach to doing so.

I also reiterate that we would welcome the opportunity to engage with you on this matter.

Kind regards

Francois Klem
Company Secretary

thungela

E francois.klem@thungela.com
M +27(0) 82 603 1660

Thungela Resources Limited
25 Bath Avenue, Rosebank, Johannesburg, 2196, South Africa
PO Box 1521, Saxonwold, 2132, South Africa
www.thungela.com
A member of the Thungela Group

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Wednesday, May 3, 2023 9:42 AM
To: Klem, Francois (Thungela) <francois.klem@thungela.com>
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>
Subject: RE: Shareholders' resolution for filing at Thungela's 31 May AGM

Dear Francois

We note that your response below stated your expectation that Thungela's Climate Change Report would satisfy the request of the co-fillers, and offered engagement should the co-filers "feel that the disclosure in the Climate Change Report does not address [our] concerns". However, as you are aware, this disclosure does not meet a single aspect of the resolution requested by the co-filers.

Thungela discloses its membership of 6 industry associations, but does **not** (as requested by the resolution) report on:

- if and how its lobbying and policy engagement activities (both direct and through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels;
- Thungela's framework for identifying and mitigating the risks presented by any misalignment with the Paris goals; and
- the circumstances under which escalation strategies have been and will be used; including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliance.

In these circumstances, the co-filers again require, in terms of s65(3)(b) of the Companies Act, that the resolution be submitted to shareholders for consideration at the 31 May 2023. If Thungela persists with its refusal to table the resolution, kindly provide us with the legal basis for this refusal by the close of business on Friday, 5 May.

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Whilst we would be happy to engage with Thungela, we would appreciate your response to this correspondence first.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Aintree Business Park, Block C, Unit FB, Doncaster Rd & Loch Rd, Kenilworth, Cape Town, 7708
A non-profit company with registration no: 2017/347856/08
PBO no: 930064608; NPO no: 206-406; VAT no. 4850287998

Just Share | Investor power for a fairer South Africa

From: Klem, Francois (Thungela) <francois.klem@thungela.com>
Sent: Tuesday, April 25, 2023 3:28 PM
To: Robyn Hugo <rhugo@justshare.org.za>
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>
Subject: RE: Shareholders' resolution for filing at Thungela's 31 May AGM

[OFFICIAL]

Dear Robyn,

Thank you for your letter dated 19 April 2023.

We believe that continued and meaningful engagement with our shareholders and other stakeholders on important matters affecting the business is crucial to long-term value creation.

Thungela will release its Integrated Annual Report, ESG Report and maiden Climate Change Report on the 26th of April – this suite of documents will be available on the Thungela website from tomorrow afternoon. The Climate Change Report is aligned to the recommendations of the TCFD. In the report we disclose our membership of industry associations and I expect that this will satisfy the request for the information you seek. The matter has been raised with the CEO and the Board, and the CEO (together with other relevant executives) would welcome the opportunity to engage with you should you feel that the disclosure in the Climate Change Report does not address your concerns.

We remain committed to transparent disclosure and engagement with stakeholders on the subject of climate change and other ESG-related matters.

Kind regards,

Francois Klem
Company Secretary

thungela

E francois.klem@thungela.com
M +27(0) 82 603 1660

Thungela Resources Limited
25 Bath Avenue, Rosebank, Johannesburg, 2196, South Africa
PO Box 1521, Saxonwold, 2132, South Africa
www.thungela.com
A member of the Thungela Group

TC

From:	Company Secretary <coseccoalsa@thungela.com>
Sent:	02 May 2024 12:01
To:	Robyn Hugo; Tracey Davies; David Le Page; Asief Mohamed
Cc:	Shreshini Singh; Emma Schuster; Francois Klem; Hugo Nunes; Company Secretary; Hulisani Rasivhaga
Subject:	RE: Shareholders' resolution for filing at Thungela 4 June AGM
Attachments:	Response to Just Share correspondence.pdf

Good day Robyn

I trust my email finds you well.

Please find attached response letter for your attention.

Kind regards,

thungela

Ntombi Mphahlele
Assistant Company Secretary

+27 (0)72 643 0927

Ntombi.Mphahlele@thungela.com

25 on Bath Avenue, Rosebank

From: Company Secretary <coseccoalsa@thungela.com>
Sent: Tuesday, April 30, 2024 9:04 AM
To: Robyn Hugo <rhugo@justshare.org.za>; Tracey Davies <tdavies@justshare.org.za>; David Le Page <david@fossilfreesa.org.za>; Asief Mohamed <asief.mohamed@aeonim.co.za>
Cc: Shreshini Singh <Shreshini.Singh@thungela.com>; Emma Schuster <eschuster@justshare.org.za>; Francois Klem <francois.klem@thungela.com>; Hugo Nunes <hugo.nunes@thungela.com>; Company Secretary <coseccoalsa@thungela.com>
Subject: RE: Shareholders' resolution for filing at Thungela 4 June AGM

Good day Robyn

I trust my email finds you well.

We acknowledge receipt of your email.

Kind regards,

thungela

Ntombi Mphahlele
Assistant Company Secretary

TL

Ntombi.Mphahlele@thungela.com

25 on Bath Avenue, Rosebank

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Friday, April 26, 2024 10:59 AM
To: Francois Klem <francois.klem@thungela.com>; Company Secretary <coseccoalsa@thungela.com>
Cc: Ryan Africa <ryan.africa@thungela.com>; Shreshini Singh <Shreshini.Singh@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>
Subject: Shareholders' resolution for filing at Thungela 4 June AGM

Warning: This email is from an external sender. Please exercise caution when opening links or downloading attachments.

Dear Francois

Please find attached hereto a cover letter and a shareholder resolution proposed by Thungela Resources Limited shareholders Just Share NPC, Fossil Free South Africa and Aeon Investment Management, for consideration by Thungela's shareholders at the company's 4 June AGM.

The resolution, proposed in terms of section 65(3) of the Companies Act, is related to the publication in Thungela's next reporting suite of Paris-aligned emission reduction targets for its full-range of value chain emissions, and for its global operations.

Should you wish to discuss any aspect of this resolution before it is submitted to shareholders for consideration, let us know.

Please confirm your receipt of this correspondence.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Unit B01, Plum Park, 25 Gabriel Road, Plumstead, Cape Town 7800
A non-profit company with registration no: 2017/347856/08
PBO no: 930064608; NPO no: 206-406; VAT no: 4850287998

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TC

[OFFICIAL]

thungela

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

PRIVATE

2 May 2024

Dear Robyn,

Thank you for your mail. We have considered the substance of your request and welcome the opportunity to engage on this in a productive manner. We are supportive of a direct discussion with Just Share where we can each share our views on this matter.

After consultation with our attorneys, the decision was taken not to table the requested resolution. In line with company law, the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so.

We respect and appreciate the area of concern raised in your letter. Thungela is committed to responsible environmental practices. Good governance principles are important in running a coal-mining business and aligns with the board's responsibility to manage the company in the best interest of all shareholders. Our response is not intended to discourage you from your viewpoint but to share the legal standing that shareholders may only require the company to place resolutions before shareholders on matters that have binding effect. As indicated earlier, we are open to and invite robust discussions between Just Share and Thungela.

Yours sincerely

Ntombi Mphahlele
Assistant Company Secretary
T: 072 643 0927
E: ntombi.mphahlele@thungela.com
www.thungela.com

TC

From:	Robyn Hugo <rhugo@justshare.org.za>
Sent:	09 May 2024 18:21
To:	ntombimphahlele@thungela.com
Cc:	Shreshini Singh; Francois Klem; Hugo Nunes; Company Secretary; ryan.africa@thungela.com; Tracey Davies; David Le Page; Asief Mohamed; Emma Schuster
Subject:	Re: Shareholders' resolution for filing at Thungela 4 June AGM
Attachments:	240509 Thungela_shareholder rights.pdf
Importance:	High

Good afternoon Ntombi

In the attached letter, we call for the 26 April resolution to be tabled by next Tuesday, 14 May; failing which, we will take legal action.

We look forward to your urgent response.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Unit B01, Plum Park, 25 Gabriel Road, Plumstead, Cape Town 7800
A non-profit company with registration no. 2017/347656/08
PBO no. 930064608, NPO no. 206-406; VAT no: 4850287995

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From: Company Secretary <coseccoalsa@thungela.com>
Date: Tuesday, 30 April 2024 at 09:04
To: Robyn Hugo <rhugo@justshare.org.za>, Tracey Davies <tdavies@justshare.org.za>, David Le Page <david@fossilfreesa.org.za>, Asief Mohamed <asief.mohamed@aeonim.co.za>
Cc: Shreshini Singh <Shreshini.Singh@thungela.com>, Emma Schuster <eschuster@justshare.org.za>, Francois Klem <francois.klem@thungela.com>, Hugo Nunes <hugo.nunes@thungela.com>, Company Secretary <coseccoalsa@thungela.com>
Subject: RE: Shareholders' resolution for filing at Thungela 4 June AGM

Good day Robyn

I trust my email finds you well.

We acknowledge receipt of your email.

Kind regards,

TC

thungela

Ntombi Mphahlele

Assistant Company Secretary

Ntombi.Mphahlele@thungela.com

25 on Bath Avenue, Rosebank

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Friday, April 26, 2024 10:59 AM
To: Francois Klem <francois.klem@thungela.com>; Company Secretary <coseccoalsa@thungela.com>
Cc: Ryan Africa <ryan.africa@thungela.com>; Shreshini Singh <Shreshini.Singh@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>
Subject: Shareholders' resolution for filing at Thungela 4 June AGM

Warning: This email is from an external sender. Please exercise caution when opening links or downloading attachments.

Dear Francois

Please find attached hereto a cover letter and a shareholder resolution proposed by Thungela Resources Limited shareholders Just Share NPC, Fossil Free South Africa and Aeon Investment Management, for consideration by Thungela's shareholders at the company's 4 June AGM.

The resolution, proposed in terms of section 65(3) of the Companies Act, is related to the publication in Thungela's next reporting suite of Paris-aligned emission reduction targets for its full-range of value chain emissions, and for its global operations.

Should you wish to discuss any aspect of this resolution before it is submitted to shareholders for consideration, let us know.

Please confirm your receipt of this correspondence.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

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Just Share

9 May 2024

Ntombi Mphahlele

Assistant Company Secretary

Thungela Resources Limited

By email: ntombimphahlele@thungela.com

Copied to: francois.klem@thungela.com; coseccoalsa@thungela.com; ryan.africa@thungela.com; shreshini.singh@thungela.com; hugo.nunes@thungela.com

Dear Ms Mphahlele

URGENT: Shareholder resolution co-filed by Just Share, Fossil Free South Africa & Aeon Investment Management for co-filing at Thungela's 4 June 2024 AGM

1. We refer to Thungela's 2 May 2024 correspondence refusing to table the resolution co-filed on 26 April 2024 by Just Share, Fossil Free South Africa & Aeon Investment Management for co-filing at Thungela's 4 June 2024 AGM ("the resolution").

2. We note Thungela's opinion:

    2.1. that section 65(3) of the Companies Act, 2008 only entitles shareholders to file resolutions on "matters which they have a legal right to determine by a vote", irrespective of whether such resolution "is expressed to be binding";

    2.2. in relation to resolutions addressing any other subject matter, that the "tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors"; and

    2.3. that "shareholders may only require the company to place resolutions before shareholders on matters that have binding effect".

3. We have been advised that Thungela's position is legally incorrect. Thungela's interpretation of section 65(3) is not only inconsistent with the Companies Act, but also with constitutional rights, including those to freedom of association and expression, as set out below.

4. The purpose of this correspondence is to demand that Thungela **table the resolution filed on 26 April 2024 by no later than Tuesday, 14 May 2024** in order to afford shareholders the required minimum notice period prior to the 4 June 2024 AGM.

5. Whilst Just Share is willing to engage with Thungela to share our views, Thungela's ongoing breach of its duties under the Companies Act is not an issue that can be resolved through "robust discussion".

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6. Below we summarise the basis for our demand:

6.1. There is nothing in the Companies Act that supports Thungela's interpretation that the board has unilateral power to block this proposed shareholder resolution.

6.2. The language of section 65(3) casts shareholders' rights in the broadest terms. Any two (or more) shareholders may propose a resolution 'concerning *any matter* in respect of which they are each entitled to exercise voting rights' (our emphasis).

6.3. Section 62(3) further prescribes that any notice of a shareholders meeting "*must include*", among other items, "a copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting". This is a mandatory duty.

6.4. Section 65 imposes no substantive restrictions on the content or subject-matter of shareholder proposals. Instead, section 65(4) merely regulates the format of resolutions, requiring that they be "expressed with sufficient clarity and specificity" and be "accompanied by sufficient information or explanatory material" that will "enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution".

6.5. Moreover, section 65 does not afford a board of directors the power to block procedurally-compliant shareholder proposals from being circulated and tabled for a vote at a meeting of shareholders merely because the board disagrees with the content of the proposal. Such unilateral power would be directly at odds with the dispute resolution procedure in sections 65(4)-(5). Even if a director objects to a resolution on the grounds of formal defects, the director is required to apply to court – he cannot unilaterally decide to prevent resolutions from being tabled. Directors also have no power to override clear statutory shareholder rights.

6.6. Section 65(3)'s reference to "each" of the co-filing shareholders being "entitled to exercise voting rights" is an eligibility requirement, determining which classes of shareholders may propose and vote on resolutions at shareholders' meetings, rather than a restriction on the content of the resolutions that may be proposed.

6.7. Tabling the proposed non-binding, advisory resolution for a vote at the AGM will not in any way undermine "the board's responsibility to manage the company in the best interest of all shareholders". There is equally no basis for the suggestion that non-binding, advisory resolutions are impermissible:

6.7.1. JSE-listed companies, including Thungela, annually table non-binding resolutions on executive pay.

6.7.2. Several JSE-listed companies have tabled non-binding resolutions on climate change and related environmental, social, and governance (ESG) issues.

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6.7.3. In other common law countries, shareholders' rights to file and vote on non-binding advisory resolutions are recognised and protected, despite having company law regimes that are less progressive than our own.

6.8. The mistaken interpretation of section 65(3) now advanced by Thungela runs contrary to the aims of the Companies Act and the constitutional rights that underpin it.

6.9. Shareholders' rights to table proposals for a vote involve the exercise of their constitutional rights to freedom of expression and association within the company structure, allowing shareholders to impart and receive information and ideas and to organise around shared goals.

6.10. Thungela's refusal is an ongoing violation of these statutory and constitutional rights.

7. In summary, two or more shareholders may propose resolutions on climate- and other ESG-related issues – such as the resolution in issue. Company boards have no unilateral discretion to refuse to circulate and table resolutions that comply with all the necessary procedural requirements. If boards wish to object to the resolutions, they must go to court in terms of sections 65(4) and (5) to seek permission to block the resolutions from going to a vote. The board may also advise shareholders of its objections to inform their vote.

8. In the circumstances, we demand that Thungela **circulate the proposed resolution by no later than Tuesday, 14 May 2024** to afford shareholders the required minimum notice period prior to the AGM.

9. Should Thungela continue to refuse to do so, we will take legal action, including but not limited to filing **a written complaint to the Companies and Intellectual Property Commission (CIPC)** in terms of section 168(1) of the Companies Act.

10. We look forward to your urgent response.

Yours faithfully
JUST SHARE

Per:

Robyn Hugo
Director: climate change engagement
rhugo@justshare.org.za

TL

[OFFICIAL]

thungela

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

PRIVATE

10 May 2024

Dear Robyn,

Thank you for sharing your views on the interpretation of section 65(3) of the Companies Act, which view (and supporting reasoning) are the same as those you put forward last year.

As advised in our response of 8 May 2023 and on 2 May 2024, respectfully, and based on legal advice, we do not agree with the interpretation you put forward. Our ethos is to engage, not litigate, and our offer both last year and now to engage with us on the issue remains open to you.
If, notwithstanding this, regrettably, you prefer to pursue legal action, please serve the relevant papers at Thungela Resources Limited offices, at 25 Bath Avenue, Rosebank, for the attention the Company Secretary, with an e-mail notification to our Internal Legal Counsel, Masechaba Makgolane at masechaba.makgolane@thungela.com, and to our External Legal Counsel, Colin du Toit at colin.dutoit@webberwentzel.com.

Yours sincerely

Ntombi Mphahlele
Assistant Company Secretary
T: 072 643 0927
E: ntombi.mphahlele@thungela.com
www.thungela.com

TC

From:	Ntombi Mphahlele <ntombi.mphahlele@thungela.com>
Sent:	10 May 2024 14:23
To:	Robyn Hugo
Cc:	Tracey Davies; David Le Page; Asief Mohamed; Emma Schuster; Shreshini Singh; Hugo Nunes; Francois Klem; Hulisani Rasivhaga; Masechaba Makgolane; Company Secretary
Subject:	Recall: Shareholders' resolution for filing at Thungela 4 June AGM

Ntombi Mphahlele would like to recall the message, "Shareholders' resolution for filing at Thungela 4 June AGM".

Disclaimer

TC

[OFFICIAL]

thungela

PRIVATE

Attention: Robyn Hugo

Just Share NPC
Director: climate change engagement
By email: rhugo@justshare.org.za

19 May 2025

Dear Ms Hugo

Shareholder resolution proposed by Just Share NPC, Aeon Investment Management and Fossil Free South Africa for tabling at Thungela's 2025 annual general meeting

Thank you for your recent letter.

We have carefully considered the views expressed in your recent correspondence, as well as those submitted in 2023 and 2024. Thungela's position on this matter remains consistent with what has been communicated over the past two years. As such, the company will not include the proposed shareholder resolution in the upcoming AGM notice.

We acknowledge and appreciate the concerns raised, particularly in relation to environmental responsibility. Thungela remains firmly committed to responsible environmental practices. We also recognise the importance of sound corporate governance in managing a coal mining business and reaffirm our duty to act in the best interests of all shareholders.

Please do keep in mind our standing invitation to meet and discuss your perspectives and areas of concern.

Yours sincerely

Tovi Ellis
Company Secretary
E tovi.ellis@thungela.com
M +27(0) 82 054 8350

TC

WEBBER WENTZEL

in alliance with > Linklaters

POWER & ASSOCIATES INC.
20 Baker Street, Rosebank
Johannesburg, South Africa

By email: tim.lloyd@powerlaw.africa

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

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Your reference	Our reference	Date
Tribunal: G89 / 2024 Power Law: PLJS-202426	C du Toit / P Dela / D Cron / DJ van Wyk 4012933	3 September 2025

Dear Tim

NOTICE OF REFERRAL TO THE COMPANIES TRIBUNAL | THUNGELA RESOURCES LIMITED AND JUST SHARE NPC | FILE NO.: G89 (2024)

1. As you are aware, we act on behalf of Thungela Resources Limited ("**our client**" / "**Thungela**").

2. We refer to your client's proposed shareholder resolution of 26 April 2024 ("**the resolution**").

3. At the outset, we appreciate that our clients have different positions regarding the relevant legal landscape when it comes to tabling the resolution. This letter is addressed not to resolve or compromise that dispute, and without prejudice to our respective clients' positions in that regard.

4. This letter instead aims to address the substantive issue raised in the resolution itself.

5. To this end, our client invites your client to meet with its most senior relevant executives (being the Chief Executive Officer and the head of our client's environmental strategy unit) to discuss that substance. This will afford your client a direct opportunity to understand, and potentially influence, Thungela's climate change policies and the actions it is taking in that regard.

6. One aspect to raise: on the previous occasion where your client did take up an invitation to meet on the substance of a resolution – the meeting did not focus on that aspect but rather

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traversed general climate change issues. Whilst our client will engage on this generic basis, if that is your client's continued preference, we suggest that a more meaningful engagement will instead focus on the specific proposal set out in the resolution.

7. To make the meeting maximally productive, the meeting will not be attended by legal representatives and the information regarding the company shared with your client at the meeting will be on a confidential basis.

8. We re-emphasise that this invitation to engage is self-standing and separate from the dispute between the parties, and is not conditional on your client waiving any rights or ceasing to assert them in any appropriate forum.

9. Should Just Share be amenable to the above, please let us know, by no later than Friday, 12 September 2025, whether your client wishes to meet with Thungela and the parties can then liaise directly in this regard.

10. Our client's rights are reserved.

Yours sincerely

WEBBER WENTZEL
Colin du Toit | Pooja Dela | Dylan Cron
Partners
Direct tel: +27 11 530 5331 / 5422 / 5128
Email: colin.dutoit@webberwentzel.com
pooja.dela@webberwentzel.com
dylan.cron@webberwentzel.com

Letter sent electronically. A signed copy will be provided on request.

TC

DJ van Wyk

From:	Tim Lloyd <tim.lloyd@powerlaw.africa>
Sent:	15 September 2025 09:29
To:	DJ van Wyk
Cc:	Dylan Cron; Pooja Dela; Claire Dehosse; Colin du Toit
Subject:	RE: Just Share NPC // Thungela Resources Limited

Good day DJ,

With reference to the correspondence below, we are instructed to communicate that our client is amenable to a meeting on the proposed terms.

Representatives of Just Share will approach Thungela to confirm the arrangement.

Kind regards,

TIM LLOYD | Senior Associate - JHB
Power & Associates Inc., South Africa

POWERLAW /AFRICA
tim.lloyd@powerlaw.africa
+2710 822 7860
powerlaw.africa

20 Baker Street, Rosebank, **Johannesburg**, South Africa 2196 | 5th Floor, Merchant Square, Riverside Drive, **Nairobi**, Kenya

From: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Sent: Wednesday, September 3, 2025 9:32 AM
To: Tim Lloyd <tim.lloyd@powerlaw.africa>
Cc: Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>
Subject: Just Share NPC // Thungela Resources Limited

Dear Tim

We refer to the above matter.

Please find attached correspondence for your attention.

Kind regards

DJ van Wyk
Associate | Webber Wentzel
T: +27115305688 | **M:** +27732094051 | **E:** dj.vanwyk@webberwentzel.com

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POWER LAW
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Incorporated and registered in South Africa as **Power & Associates Inc.**, a Founding Member of the **Power Law Africa Alliance**

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w. powerlaw.africa
a. 20 Baker Street, Rosebank, Johannesburg, South Africa, 2196

Date: 16 October 2025

Your ref: C du Toit / P Dela / D Cron 4012933

Our ref: PLJS-202516

TO: WEBBER WENTZEL
90 Rivonia Road
Sandton
Johannesburg
2196
By email: colin.dutoit@webberwentzel.com

Dear Colin,

COMPLAINT REFERRAL TO THE COMPANIES TRIBUNAL | THUNGELA RESOURCES LIMITED AND JUST SHARE NPC | CASE NO: CT02298ADR2025

1. We write on behalf of Just Share NPC (our "client").

2. We refer to the previous correspondence in the above matter, including your letter of 3 September 2025, in which a meeting was proposed between senior representatives of the respective parties to engage on your client's climate change policies and related actions. This was tendered on the basis that information disclosed would be considered confidential, and that the engagement would be separate from the legal dispute between the parties and that our client reserved its right to approach any appropriate forum in that regard.

3. Upon consideration of the meeting invitation at the time, we were instructed to indicate that our client was amenable to the interim engagement as outlined in your letter on the proposed terms. We did so by email correspondence on 15 September 2025.

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4. Kindly note that following receipt of the Certificate of Failed Alternative Dispute Resolution issued by the Companies Tribunal, our client has taken advice on the recourse available to it in order to assert its rights.

5. Whilst our client considers its options, we are instructed to communicate its preference at this point to defer the suggested engagement on the shareholder-proposed resolution of 26 April 2024. We request that you kindly relay this to your client.

6. Our client's rights remain reserved.

Kind regards,

POWER & ASSOCIATES

Per: Timothy Lloyd | *Senior Associate*
E-mail: tim.lloyd@powerlaw.africa

(*Transmitted electronically without signature. A signed version will be provided on request.*)

ENDS.

TC

"AA10"

January 2024

Timeline: shareholder resolutions & climate plans

Sasol Limited

Just Share

TC

Timeline: shareholder resolutions & climate plans – Sasol Limited

The NZ company benchmark

Climate Action 100+ (CA100+) is an investor-led initiative to ensure the world's largest corporate greenhouse gas (GHG) emitters (including Sasol) take necessary action on climate change. In March 2021, CA100+ launched the Net Zero Company Benchmark to assess the performance of these emitters on their net zero transition, and against CA100+'s three high-level goals (in brief: a strong governance framework; action to reduce GHG emissions in line with the Paris temperature goals; and enhanced disclosure and transition plans).

In the Benchmark's latest iteration, dated October 2023, CA100+ identified that Sasol has: complied with some indicators; not complied with some indicators; and had only partially responded to other indicators. For example, CA100+ finds that:

- Sasol's short-term scope 3 emission reduction target fails to cover at least the most relevant scope 3 emissions categories for its sector and Sasol has not published the methodology used to establish its scope 3 target (where applicable);
- it has failed to align both its short– and long– term emission reduction targets with the goal of limiting global warming to 1.5°C;
- Sasol has failed to quantify the contribution of individual decarbonisation levers to achieving its medium- and long-term GHG reduction targets, including scope 3 GHG reduction targets (where applicable); and
- it has failed to disclose relevant information regarding offsets.

Sasol's climate resolution

Sasol's original 2023 Notice of AGM contained the following self-tabled, non-binding advisory resolution, which asked its shareholders:

To endorse, on a non-binding advisory basis, Sasol's commitment to, and progress on its decarbonisation pathway which supports the Company's ability to generate long-term value, and the 2023 Climate Change Report's consistency with the Task Force on Climate-related Financial Disclosure (TCFD) requirements, including disclosure on (i) the risk management approach for the identification, assessment and management of climate-related risks and opportunities; (ii) the governance around climate-related risks and opportunities; (iii) the strategy on the actual and potential impact of these risks and opportunities on Sasol's business; and (iv) metrics and targets used to assess and manage scope 1, 2 and 3 greenhouse gas emissions.

Motivation for advisory endorsement

In 2021 and 2022 the Board sought to confirm and re-confirm respectively Shareholders' support for the Company's climate change ambition and strategy along its journey towards achieving the

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targets announced in 2021. This year, given there have been no material changes to Sasol's ambition and strategy, the Board is seeking to confirm Shareholders' support of the Company's commitment to, and progress on a decarbonisation pathway that balances a long-term sustainable transition and the ability to create value. Further, the Company seeks to confirm Sasol's reporting consistency with the Task Force on Climate-related Financial Disclosure (TCFD) requirements as a basis to report on progress and challenges faced along the Company's decarbonisation and just transition journey towards achieving the targets and strategy announced in 2021.

Since 2019, the Company has been reporting in line with TCFD recommendations. Going forward, the Company will be subject to mandatory reporting requirements and is preparing for such disclosures. In 2023, the Company started incorporating, to the extent possible, disclosure requirements from the recommended International Sustainability Standards Board (ISSB).

It is for this reason that the Company is requesting endorsement of its reporting consistency with TCFD, being the basis for future mandatory reporting on material climate change issues, and as a mechanism for reporting progress on its targets and net zero ambition.

This is Sasol's third consecutive tabled climate change-related resolution.

On 1 September 2023, Sasol released its annual suite of reports.

In an investor briefing published on 2 November 2023, Just Share points out that Sasol concedes in its 2023 reports that its ability to meet its 2030 targets is uncertain. Sasol states that "factors over which we have minimal or no control threaten to hinder the delivery we are aiming to achieve by 2030". Sasol takes no responsibility for this potential failure, instead blaming various external "vagaries and variables", and "headwinds" which are "resulting in an emerging gap to targets and needs to be managed to achieve competitive returns".

The briefing provides a detailed analysis of Sasol's latest climate-related disclosures. It notes that that Sasol's so called "Say on Climate" vote contained a subtle but notable change in the wording from the resolution tabled at its 2022 AGM. The original 2023 resolution contained no reference to Sasol's progress against targets, instead focussing on whether Sasol's "decarbonisation pathway" supported its "ability to generate long-term value".

Just Share noted that the change in the wording from 2022 appeared to be an indication from Sasol that it considers value creation and short- to medium- term decarbonisation to be incompatible with each other, and as such, to signal to shareholders that if they want value creation, they should endorse Sasol's lack of progress in achieving its 2030 targets.

Just Share recommended that shareholders vote against:

- Sasol's "Say on Climate" resolution. Instead of continuing to endorse Sasol's inadequate approach, responsible shareholders should demand clearer short- and medium- term targets

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and milestones, detailed action plans, and meaningful accountability mechanisms for executives and board members. This is essential to enable them to regularly assess: whether Sasol's ambition is feasible, whether it is making adequate progress, and the likelihood of Sasol meeting its longer-term emission reduction objectives; and

- the re-election of non-executive director Muriel Dube. Sasol does not have a board committee dedicated to overseeing the company's management of climate risk, but it reports that the Safety, Social and Ethics Committee (SSEC) "is appointed to provide integrated strategic direction on sustainability, safety, social and ethics matters, including Sasol's climate change response". Considering Sasol's multiple failures on this front, Ms Dube, as chair of the SSEC, should not be reappointed.

On the same day as Just Share's briefing, Sasol published a media release in which it claimed that it was "misdirected to view [its] disclosure of ... risk factors as Sasol conceding to not meeting targets. It is consequently also misleading to report it as such. We remain committed to our reduction targets and are progressing all reasonable available avenues to unlock related barriers in this regard. Lastly, we reiterate that Sasol has not changed its emission reduction target, associated levers or strategy."

On 10 November, Old Mutual Investment Group (OMIG) took the decision to pre-declare that it would vote against Sasol's non-binding, advisory climate resolution. Shortly thereafter, it was reported that Ninety One Asset Management would also vote against the resolution. These pre-declarations were also published on PRI's website.

Sasol also publicly criticised OMIG, one of its biggest shareholders, for its pre-declaration. On 13 November, Sasol published a further media release, in which it indicated that it was "perplexed" by OMIG's pre-declaration, commenting that OMIG "appears to have placed significant reliance on the Just Share report without proper consideration and/or recognition of any of Sasol's recent disclosures and assertions made in response, which point to factual inaccuracies contained in Just Share's report. The willingness of Old Mutual to take such a decision premised on inaccurate and, to some extent, misleading information that could have been verified, is most concerning".

Although Ninety One's concerns are similar to those of Just Share and OMIG, Sasol has not alleged that Ninety One placed improper reliance on Just Share's briefing in making its decision not to support Sasol's climate plans.

Even though Sasol's climate vote is non-binding, the pre-declarations are progressive moves in the South African institutional investor context. The pre-declarations were reported in the business media as placing "pressure on other [Sasol] shareholders to closely look at the [climate change] report and whether it is in keeping with SA's energy transition objectives." Both OMIG and Ninety One were praised as deserving "credit for reminding us that institutions are capable of some vigour in their engagements".

Also on 13 November, it was reported that Sipho Nkosi, who has chaired Sasol's board since 2019, had resigned with immediate effect. The only explanation given was that he was "concerned that

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some of his business interests may be perceived to place him in conflict with the interests of Sasol." It was reported the next day that this potential conflict related to his position as chairman of investment company Talent10, from which Perth-based gas explorer Kinetiko Energy Ltd has apparently secured A$6.5 million ($4.1 million) in funding. A discovery by Kinetiko could potentially provide gas to Sasol.

On 29 November, Sasol paid to publish a letter in several local media outlets. The letter, from Sasol's CEO Fleetwood Grobler, is addressed to "stakeholders" and titled "Balancing People, Planet, Profit on our pathway to Net Zero".

The letter states that: "Some views about Sasol's approach have, regrettably, been inaccurate. It is therefore important that we set the record straight". Although Sasol has stated that Just Share's analysis of its climate disclosures is "inaccurate" and "misleading", its sponsored letter does not deal with the concerns raised by Just Share, including:

- Sasol's admission in its 2023 climate disclosures that "external factors ... threaten to hinder the delivery we are aiming to achieve by 2030";
- The unexplained removal from its 2023 disclosures of a target to procure 40% renewable energy for its Energy Business by 2026; and
- The fact that achieving its 2030 targets requires a significant acceleration in the pace of GHG emission reductions compared to what Sasol has been able to achieve over the last 19 years, and this in circumstances where emissions increased in 2023, and are set to further increase in 2024.

In fact, in none of Sasol's public statements has it demonstrated why Just Share's briefing is "misleading and inaccurate", nor has it "corrected" any of the facts set out in our briefing. The briefing is based entirely on Sasol's own disclosures, and is an accurate reflection of what Sasol has reported, bolstered where appropriate by reasonable conclusions based on Sasol's disclosures.

In response to Sasol's public letter, on 11 December Just Share published a statement, in which we address the aspects of our briefing which appear, based on Sasol's responses, to have caused it the most concern, and demonstrate Sasol's failure to provide evidence that these are not accurate.

For the reasons set out in this statement and in our briefing, and in the absence of any credible basis for Sasol's accusation that our briefing is either inaccurate or misleading, Just Share reiterated its voting recommendations for Sasol's then yet-to-be rescheduled AGM.

17 November AGM

It has been known for some time that a search was underway to replace outgoing President and CEO Fleetwood Grobler. This announcement was expected to be made early next year. However, on the morning of 17 November – the day of its AGM - Sasol announced that Simon Baloyi, Executive Vice President, Energy Operations and Technology, would take over as CEO on 1 April 2024.

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Before the voting took place at Sasol's November 2023 AGM, however, activists protesting the environmental and social impacts of Sasol's operations disrupted the meeting. Sasol took the highly unusual decision to cancel the AGM. Although protests such as this are happening with increasingly regularity in Europe, the UK, and the US, we are not aware of a single other AGM that has been cancelled as a result.

Further reading:

- Old Mutual Asks Peers to Reject Sasol Climate Resolutions, Bloomberg, 10 November 2023
- TRACEY DAVIES: Restated, reviewed, missed: a 20-year timeline of Sasol's climate
- commitments, Financial Mail, 16 November 2023
- Sasol AGM cancelled after climate activists protest, Daily Maverick, 17 November 2023
- Sasol cancels shareholder meeting after climate activists storm stage, Financial Times, 17 November 2023
- Climate protesters disrupt Sasol shareholders' meeting, Reuters, 17 November 2023
- Turmoil at Sasol as AGM cancelled, new CEO appointed, Energy Voice, 17 November 2023
- 'Chickens coming home to roost.' Sasol's AGM collapses amid tension over green targets, News24, 18 November 2023
- Productive or disruptive? Climate activists at AGMs, Responsible Investor,24 November 2023
- Inside the battle to decarbonise the world's dirtiest refinery, Financial Times, 10 December 2023

New AGM notice and institutional investor meeting

In a SENS announcement on 17 December, Sasol published a new Notice of AGM, giving shareholders notice that the rescheduled AGM "will be reconvened and held only by electronic communication", on Friday 19 January 2024, 14h00.

Among other changes, Sasol updated the self-tabled, non-binding climate change resolution. The updated resolution asks shareholders:

> *To endorse Sasol's climate change management approach and its commitment to, and progress on, its decarbonisation pathway towards achieving the 2030 target and 2050 net zero ambition, that balances a long-term sustainable transition and the ability to create value as described in the Company's 2023 Climate Change Report.*
>
> *To further endorse the 2023 Climate Change Report's consistency with the Task Force on Climate-related Financial Disclosure (TCFD) requirements, including disclosure on (i) the risk management approach for the identification, assessment and management of climate-related risks and opportunities; (ii) the governance around climate-related risks and opportunities; (iii) the management of the actual and potential impact of these risks and opportunities on Sasol's business; and (iv) metrics and targets used to assess and manage scope 1, 2 and 3 greenhouse gas emissions.*

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Sasol also changed the motivation for endorsement of this resolution, to read as follows:

> *There has been no change to Sasol's greenhouse gas (GHG) emissions reduction targets, net zero ambition and strategy. The Company is prioritising the sourcing of additional gas and sustainable sources of carbon to restore production volumes. However, such additional gas and sustainable sources of carbon are not needed to achieve the 30% GHG reduction target. In light of this, the Board is seeking to confirm Shareholders' support of the Company's commitment to, and progress on, a decarbonisation pathway towards achieving the 2030 target and 2050 net zero ambition, that balances a long-term sustainable transition and the ability to create value. Further, the Company seeks to confirm Sasol's reporting consistency with the Task Force on Climate-related Financial Disclosure (TCFD) requirements as a basis to report on progress and challenges faced along the Company's decarbonisation and just transition journey towards achieving the targets and strategy announced in 2021. Since 2019, the Company has been reporting in line with TCFD recommendations. Going forward, the Company will be subject to mandatory reporting requirements and is preparing for such disclosures. In 2023, the Company started incorporating, to the extent possible, disclosure requirements from the recommended International Sustainability Standards Board (ISSB). It is for this reason that the Company is requesting endorsement of its reporting consistency with TCFD, being the basis for future mandatory reporting on material climate change issues, and as a mechanism for reporting progress on its targets and net zero ambition.*

Certain institutional investors were invited by Sasol to a "virtual Q&A session" hosted by the Sasol Management Team, to "address any questions on our 2023 AGM resolutions, ahead of the AGM on Friday 19 January 2024". This meeting was held on 16 January 2024. Treating shareholders differently and/or providing them with different information potentially violates the Companies Act and the Financial Markets Act.

<u>Reconvened 19 January 2024 AGM</u>

Just Share, together with other civil society organisations attended Sasol's rescheduled electronic-only, 19 January 2024, AGM.

Although Sasol's 2023 climate resolution passed, once abstentions are taken into account, Sasol only got 71% support for its climate vote this year. Whereas in 2022, the percentage of shares represented that voted for Sasol's climate plan, excluding the abstentions, was about 92,5%; and in 2021 (the first year Sasol offered a non-binding advisory vote on its climate change approach), this was 95%. This demonstrates that support from Sasol's shareholders for its climate change management approach has dropped more than 24% since Sasol launched its updated strategy and targets.

This indicates that, as the timeframe nears for Sasol to achieve a 30% reduction in its GHG emissions, shareholders are increasingly unconvinced that it has a credible plan to do so. The lack of confidence in Sasol's strategy is supported by the fact that Sasol's emissions increased over the

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past year, and its reporting confirms that these will increase again in "coming years". This means it will have to achieve ever greater emission reductions in a rapidly diminishing period of time.

Read more about this:

- Tech shields Sasol from shareholders' ire at second AGM attempt, News24, 19 January 2024
- Sasol is running out of road, News24, 22 January 2024
- Sasol expects feedback on pollution measure appeal by April, Business Day, 21 January 2024
- Former Sasol employees challenge petrochemical giant on environmental compliance at AGM, Daily Maverick, 21 January 2024
- Sasol avoids climate protestors with virtual AGM as share price continues to tumble, Green Building Africa, 21 January 2024
- Shareholders show 'discontent' over Sasol's climate plans at AGM, Business Day, 21 January 2024
- Can Sasol, South Africa's dirtiest private company, save itself?, Financial Mail, 25 January 2024

2022

Net Zero Company Benchmark

In March 2022, CA100+ released the second round of its Net Zero Company Benchmark assessment of its focus companies. On 23 October, CA100+ released an interim set of Net Zero Company Benchmark assessments of its focus companies. In both assessments, as in 2021, Sasol failed to meet expectations.

Sasol's climate resolution

Sasol's 2022 Notice of AGM contains a self-tabled non-binding, advisory resolution which asks shareholders to vote on "Sasol's climate change management approach, including its climate change ambition, strategy and progress towards achieving the 2030 target and 2050 net zero ambition". This is Sasol's second tabled climate change-related resolution.

On 31 August 2022, Sasol released its annual suite of reports. Just Share analysed Sasol's progress in relation to its climate change plans, and, together with the Centre for Environmental Rights (CER), prepared two briefings – one focused largely on climate change and the other on air quality. Having analysed Sasol's climate-related commitments, strategies progress and plans, Just Share recommended that shareholders do not vote in favour of Sasol's climate resolution.

As the climate briefing reveals, Sasol's decarbonisation commitments and strategy still fail to provide adequate details, accountability measures and incentives for these to be considered a feasible, measurable plan for Sasol to achieve its emission reduction targets. As a result, Just Share recommended that, rather than endorsing Sasol's approach, responsible shareholders should

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demand clearer short- and medium- term targets and milestones, and detailed action plans. This is essential to enable them to regularly assess: whether Sasol's ambition is feasible, whether it is making adequate progress, and the likelihood of Sasol meeting its longer-term emission reduction objectives. This is critical, particularly given that Sasol's current management will not be running the company by the time the longer-term targets are due to be achieved, and so cannot be held accountable if these targets are not reached.

Similar to the 2021 annual reporting suite, this year's reporting once again failed to provide certainty that Sasol has a clear and feasible plan to reach its emission reduction targets as there are still insufficient details provided to support the company's 2030 and 2050 plans.

The climate change investor briefing also highlights how Sasol, together with other "organised business" continue to lobby against carbon tax, putting South Africa in a precarious position in terms of its ability to comply with the goals of the Paris Agreement. Sasol is not only a member of the six associations that put out a problematic statement titled "Organised business joint position on carbon tax", but holds a leadership position in each of them.

Read more about this.

Sasol also enhanced its disclosures on lobbying in the 2022 Climate Change Report by including third-party assessments by InfluenceMap, an "independent think tank producing data-driven analysis on how business and finance are impacting the climate crisis". It "maintains a global system for tracking, assessing and benchmarks, currently covering around 300 companies along with 150 of their key industry associations", and is a research partner to CA100+. However, and despite InfluenceMap's extensive expertise in assessing climate lobbying, in every single instance where there is a discrepancy between InfluenceMap's assessment and Sasol's internal assessment, it reports that "Sasol's review remained unchanged".

At the very least, such discrepancies between Sasol's self-assessment and those of credible lobbying experts should result in further investigation or an enhanced review process which is disclosed to stakeholders. Sasol's approach is illustrative of the extent to which self-assessment of such crucial issues is in fact meaningless when it comes to assisting stakeholders in acquiring an accurate view of a company's involvement in anti-climate lobbying.

Read about this in more detail here and here.

AGM

Just Share, together with other civil society organisations attended Sasol's 2022 AGM both in-person and online.

Although Sasol's 2022 climate resolution passed, the percentage of shares represented that voted against the resolution almost doubled since last year from (from 3.37% in 2021 to 5.95% in 2022),

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indicating the growing dissatisfaction from shareholders with Sasol's handling of its decarbonisation strategy and commitments. The board of directors faced four hours of questions from shareholders at the AGM on a host of topics; including: Sasol's decarbonisation targets and disclosures; its position on the carbon tax and lobbying activities through its role in the Energy Council of SA; methane leaks at its operations, its treatment of communities in Mozambique; and its position on having its targets approved by the Science Based Target initiative (SBTi). Questions came not only from the civil society organisations which have, for several years, been relentless in their pursuit of corporate accountability and demands for better environmental and social stewardship, but also from individual shareholders who used their positions as active and passionate part-owners in the chemical giant to challenge it on a range of important ethical questions. As in previous years, responses from Sasol were largely unsatisfactory.

Read about this in more detail.

2021

Net Zero Company Benchmark

On 22 March 2021, CA100+, issued its first "net zero company benchmark" of the world's biggest corporate emitters, including Sasol. The benchmark finds that Sasol's then current GHG emission reduction target (to reduce its GHG emissions by 10% (from a 2017 target) by 2030), was not aligned with the goals of the Paris Agreement – contrary to Sasol's claims that it is. The assessment found that Sasol did not fully comply with a single one of the 9 benchmark indicators. It was found not to meet any of the requirements for four of the nine indicators, and only meets some of the criteria in the other five indicators.

Read about this in more detail.

InfluenceMap – which "maintains a global system for tracking, assessing and scoring companies on their engagement with climate change policy against Paris-aligned benchmarks", and is a research partner to CA100+ – ranks CA100+ companies by the quality of their industry association review processes. When it was assessed in April 2021, Sasol received a score of zero, meaning that it had not met investor expectations for any of the assessment criteria related to the review process. At the time, it was placed in the D+ performance band, considering both the degree to which Sasol influences climate policy and legislation (its organisation score was 56%), and its links with influencers like trade associations (its relationship score was 41%). This has subsequently been updated due to Sasol's increased lobbying disclosures in 2021.

Sasol, which had previously disclosed its intention to reduce its GHG emissions by 10% by 2030, promised its 2050 emission reduction roadmap on its Capital Markets Day in the second half of 2021. It indicated that this would be the subject of Sasol's self-tabled own non-binding advisory vote at its November 2021 AGM. Sasol indicated that, if at least 25% of shareholders voted against the non-binding resolution, it would engage with those shareholders.

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At its 22 September Capital Markets Day, Sasol published its 2021 Climate Change Report (CCR 2021) which sets out the "Future Sasol strategy". In these reports, Sasol has set itself short-, medium- and long-term targets.

Sasol aims to meet its scope 1 and 2 medium-term targets largely through **significantly increased use of fossil gas** and through the **use of renewable energy to replace electricity currently supplied by Eskom.** It will also focus on "asset optimisation" and scale down coal exports. Sasol also hopes, in the long-term, to transition to the production of sustainable fuels. Scope 3 reductions will require "product-type changes and curtailment of existing production volumes".

Sasol's "preferred pathway" to reach its 2050 net zero ambition is large-scale green hydrogen production and renewables, relying on the view that its Fischer-Tropsch technology will "play an important role in delivering a sustainable future", and in the "green hydrogen economy".

There is a **concerning lack of detail in the CCR 2021** about several crucial elements of Sasol's ambitions and actions, which makes it extremely difficult to assess their feasibility and credibility. This is exacerbated by the fact that Sasol's technology is proprietary, and its agreements with various key partners and suppliers confidential. It is also worth noting that Sasol's emissions have increased in both the years since it set its first emission reduction target in 2019.

Read about this in more detail.
The CCR 2021 includes more disclosure of Sasol's climate lobbying than its 2020 Climate Change Report. This is addressed below.

A key reason for government climate inaction has been the unprecedented lobbying activity, by the fossil fuel industry and associated industry associations, to weaken, delay and oppose climate-related regulation. In many instances, this manifests itself in high-level public positions of support for the Paris goals, but "closed-door undermining of climate action".

It is crucial that South Africa urgently achieve policy alignment to support a just transition to a low-carbon, climate-resilient economy, and shareholders and other stakeholders should be made aware of any activities that interfere with climate-aligned national policy-making.

On 14 September 2021 (8 days before the CCR 2021 was published), Just Share and Aeon Investment Management (Aeon) co-filed a non-binding, advisory shareholder resolution at Sasol Limited, for tabling at its 19 November AGM. The resolution asked Sasol to improve and expand its disclosure of its direct and indirect climate lobbying, including disclosing the annual membership fees paid to industry associations which are involved in climate lobbying activities.

Climate lobbying shareholder resolutions have been filed annually at fossil fuel companies in other jurisdictions for a number of years, but this was the first time such a resolution had been filed in South Africa. Unlike many other jurisdictions, **South Africa has no legal requirements for disclosure of lobbying activities.**

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Globally, investors are waking up to the role that industry associations have played in frustrating progressive climate policy and slowing down climate action. Increasingly, investors are demanding to know how investee companies address misalignment between their publicly-stated climate commitments – and the Paris goals – and the lobbying activities of their industry associations.

The resolution pointed out that Sasol's 2020 assessment of its alignment with industry associations does not provide enough information for its stakeholders to form an independent view of Sasol's review process, or its findings. Sasol will continue to have significant influence over climate policy in South Africa – directly and through its industry associations. Its stakeholders must have confidence that the company is using its influence to align South Africa's climate policy with the Paris goals. As things stand, the information required to make this assessment is not publicly available.

It is also important that investors be able to better appraise Sasol's long-term investment proposition, and its stated commitment to Paris alignment and to a just transition. This resolution requested that Sasol provide its shareholders with information that will help them determine not only whether Sasol's own climate lobbying positions and activities, and those of its industry associations, are aligned with the Paris goals, but, importantly, the circumstances in which it would discontinue membership of an association on the basis of misalignment with the Paris goals.

Read about this in more detail.

On 22 September (the same day as its CCR 2021 was published), Sasol notified Just Share and Aeon that it had declined to table the 14 September climate lobbying resolution. Sasol said:

> *"The disclosure contained in our Climate Change Report for the year ended 30 June 2021 (CCR 2021), published on our website earlier today, already complies substantially with the requirements spelt out in your resolution and, as set out in our CCR 2021, we have committed to further enhance our disclosures taking into account, amongst others, the matters raised in your proposed non-binding advisory vote. There is therefore no need for shareholders to be Climate risk shareholder resolutions timeline: Sasol Limited 6 required to vote on the resolution as its objectives have, by and large, been met in our CCR 2021."*

Sasol continues to take the approach that it can unilaterally "decline" to table shareholder resolutions, which is not supported by our law. In the legal opinion received by Just Share in 2021, advocates Tembeka Ngcukaitobi SC and Chris McConnachie concluded that **directors do not have a unilateral discretion to refuse to table shareholder-proposed resolutions on content-based grounds.**

The correct approach would have been for Sasol to engage with the co-filers, explaining that some of what the resolution asks for would be covered by its forthcoming disclosure, and asking the co-filers to decide whether to withdraw the resolution as a result, or to submit a revised resolution.

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On 7 October, following Sasol's refusal to table South Africa's first climate lobbying shareholder resolution, Sasol shareholders Just Share and Aeon co-filed a second non-binding, advisory resolution ahead of Sasol's 19 November AGM.

The resolution asked Sasol to improve and expand its disclosure of its direct and indirect climate lobbying, with a focus on: the climate lobbying activities of its industry associations; how it assesses whether these activities are aligned with the Paris Agreement; and the circumstances in which Sasol will terminate its membership of a relevant association on the basis of misalignment with the Paris Agreement's goals.

Sasol's CCR 2021 does include more thorough climate lobbying disclosure than its 2020 Climate Change Report. There are indications that this disclosure was updated or adjusted after Sasol had received the resolution co-filed by Just Share and Aeon.

However, Sasol's 2021 disclosure omits key elements of the request in the 14 September resolution. The review is incomplete, and a number of its conclusions are not supported by independent assessments of Sasol's climate lobbying and that of its industry associations. In concluding that all of the industry associations assessed are "aligned with Sasol's principles", Sasol focused on its industry associations' public **positions** on climate action, rather than their climate lobbying **activities**.

Following careful analysis of the disclosure on "engaging on climate policy: positions and industry associations" in the CCR 2021, the second resolution sought disclosure by Sasol of those key elements that had not been addressed – either adequately or at all – in the CCR 2021. This resolution was reinforced by an independent briefing prepared by InfluenceMap. Following its assessment of Sasol's CCR 2021 disclosure, InfluenceMap concluded that **"the quality of Sasol's industry association review process still falls considerably short of investor expectations"**

InfluenceMap stated:

> *"InfluenceMap analysis indicates that Sasol likely **holds three memberships** to industry associations with misaligned climate policy engagement (ranked as a D or below by InfluenceMap's system). These are Minerals Council South Africa (MINCOSA), the Japan Chemical Industry Association (JCIA), and Verband der Chemischen Industrie (VCI).*
>
> *InfluenceMap analysis indicates a further **four memberships to industry associations potentially misaligned with the Paris Agreement** (ranked as B- or below by InfluenceMap's system) including European Chemical Industry Council (Cefic), Business Unity South Africa (BUSA), and Industry Task Team on Climate Change (ITTCC). Also, Sasol's senior executives hold influential executive and committee positions at MINCOSA, BUSA, and ITTCC, all of which have engaged negatively on climate policy in South Africa."*

Read about this in more detail.

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Despite this, on 12 October 2021, Sasol refused to table the **sixth shareholder-proposed resolution** filed with the company in five consecutive years. **Sasol's refusals are not grounded in a consistent application of the law, nor in sound principles of good corporate governance.** Rather, the company appears to have set out, in every instance, to find reasons to prevent its shareholders from having an opportunity to vote on any resolutions other than those tabled by Sasol itself. This is not only contrary to South African law, but also contrary to the position of hundreds of other listed companies across the globe, including dozens of fossil fuel companies, which every year put shareholder-proposed resolutions on their ballots.

It is difficult to understand why Sasol continues to resist tabling shareholder-proposed resolutions that would allow shareholders to vote on improved disclosure, particularly when such resolutions are not only non-binding, but make requests for information that Sasol says it is already planning to provide. This approach is also at odds with the company's claim, in its updated emission reduction plan as released at its 22 September Capital Markets Day, that Sasol recognises that *"sound partnerships with [its] stakeholders are critical to the success of Sasol's decarbonisation drive, which is central to the strategy and future of the* Company*"*.

At a time of increasing global awareness of the unprecedented scale and speed of change required to prevent the worst impacts of climate change, and of the dangerous effects of corporate lobbying against climate action, transparency and good governance from the world's biggest polluters are crucial if they are to maintain credibility. This is especially true in Sasol's case, where the company is asking shareholders to trust in its intentions to decarbonise, even though its earliest decarbonisation "milestone" is only in 2026, and its emission reduction plans are reliant on factors which are highly uncertain, such as the availability and appropriateness of fossil gas, and the commercial viability of green hydrogen.

Sasol's 18 October 2021 Notice of AGM asked shareholders to endorse, on a non-binding, advisory basis, Sasol's climate change ambition, strategy and actions as set out in the CCR 2021 Climate Change Report.

On 9 November 2021, Just Share published an investor briefing which analysed the main elements of the CCR 2021, from the perspective of whether or not Sasol's emission reduction commitments and strategy provided the necessary detail and adequate accountability mechanisms to convince shareholders that the company has a feasible, measurable plan to achieve its 2030 emission reduction targets. The briefing focused on the 2030 plans as there is insufficient detail provided in relation to its 2050 targets to allow for meaningful analysis.

The briefing recommended that, in deciding whether or not to support Sasol's non-binding advisory vote, investors should seek clear, detailed answers to at least the 15 questions set out in the briefing. **Just Share recommended that shareholders do not endorse Sasol's plans via the November vote.**

Ultimately, and this is confirmed in Sasol's Form 20-F filed with the United States Securities and

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Exchange Commission, the company's climate ambitions and emission reduction plans are reliant on external factors which are highly uncertain, including the availability, affordability and acceptability of fossil gas, and the commercial viability of green hydrogen. In addition, the delivery of even Sasol's short-term plans has been scheduled in such a way that there is little prospect of accountability for Sasol's current management team, should the targets not be met.

Even if all of Sasol's ambitions are feasible and adequately resourced within a reasonable timeframe, shareholders and other stakeholders should consider whether it is cost-effective and socially just, to focus a huge proportion of South Africa's climate action efforts and resources on ensuring that a single company, which is currently and historically one of the world's biggest polluters, maintains profitability throughout the transition.

Read about this in more detail.

Despite these significant shortcomings in Sasol's emission reduction ambitions and strategy, investors voted overwhelmingly in favour of Sasol's plans.

As in previous years, at the AGM, shareholders representing civil society organisations and some of the many communities affected by the company's operations, asked probing questions of the board about Sasol's environmental, social and governance (ESG) impacts. A number of questions focused on Sasol's vast GHG emissions, and the risks posed to its operations, and to shareholders, by the company's significant contribution to climate change, and by the impacts that climate change stands to have on the company's operations and profitability. For the most part, satisfactory answers to these questions were not received.

2020

On 24 August 2020, Sasol published its 2020 Climate Change Report. Although this report improved on the 2019 Climate Change Report, Sasol's plans remained unambitious. It repeated its 2019 target of achieving only a 10% reduction in GHG emissions (off a 2017 baseline) by 2030. This target is not aligned with the Paris Agreement, only applies to Sasol's South African operations, and does not include Scope 3 emissions.

The Report also includes a page on "climate change policy and advocacy", and the results of Sasol's "assessment of alignment with industry associations". The assessment evaluated eleven of the industry associations of which Sasol is a member, and concluded that "all were aligned with Sasol's principles".

However, in its 2020 review of Sasol's assessment, InfluenceMap found: "*this audit did not fully disclose its own climate policy positions or those of its industry associations, nor did it disclose its governance of industry association memberships. As such,* ***Sasol failed to identify and take action on a number of industry associations which appear to engage negatively on climate policy*** *such as the American Chemistry Council and the European Chemical Industry Council*

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(CEFIC). *In addition, Sasol sits on the board of the* Minerals Council South Africa, *which appears to be lobbying negatively on South African climate policy"*

In the US, where Sasol is legally required to disclose funds spent on lobbying-related activities, OpenSecrets calculates, based on data from the US Senate Office of Public Records, that Sasol spent over $2 million on lobbying from 2016-2019.

On 19 October 2020, Sasol shareholders Just Share and the RAITH Foundation co-filed a resolution for tabling at Sasol's 20 November AGM, which would have required Sasol to include, in its annual reports from 2021 onwards:

- Its strategy to align its global operations with the goals set out in the Paris Agreement ("the Paris Goals"); in particular, transition plans which are consistent with the Paris Goal of "holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels";
- Short, medium and long-term Scope 1, 2 and 3 greenhouse gas (GHG) emission reduction targets for Sasol's global operations, and how these targets are aligned with the Paris Goals; and
- How executive remuneration will incentivise achievement of the company's Paris-aligned transition strategy and GHG emission reduction targets.

At set out below, in 2018 and 2019, Sasol had refused to table climate-related shareholder resolutions, claiming that shareholders had no right to vote on such resolutions, as their subject matter falls within the full management control of the board. However, shareholders were hopeful that Sasol might take a different approach under the then new CEO, Fleetwood Grobler.

Read about this in more detail.

Sasol's preliminary response to the resolution, was to comment that the Notice of AGM was already at "an advanced stage of printing to enable it to be delivered to shareholders on 22 October 2020", and that requests to table resolutions "had to be received timeously to be taken to the Sasol Board for consideration". When the Notice of AGM was published on 22 October, the proposed resolution was not included. The JSE Listing Requirements provide that an ordinary resolution is to be subject to a minimum notice period of 15 business days. Both the Companies Act and Sasol's memorandum of incorporation provide for a minimum of 15 business days' notice to be given of the AGM. This resolution was filed well within the timeframe provided for by law – 23 full business days before the AGM.

On 30 October, Sasol advised Just Share, that the resolution would not be proposed to shareholders, arguing that shareholders are not entitled to vote on the subject matter of the resolution. According to Sasol: *shareholders cannot "usurp the authority of the directors or interfere in the management of a company";* the resolution would *"take away the discretion of the Sasol board of directors to act in the best interests of the Company in relation to the commitment to the*

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Paris Agreement and goals and the reduction of emissions now or in the future"; and the resolution "removes the Board's power to determine how the appropriate remuneration for executives should Climate risk shareholder resolutions timeline: Sasol Limited 10 be determined, subject to the non-binding advisory votes on the remuneration policy and the implementation thereof".

Sasol also stated that it, in any event, requires 6 weeks' notice of a resolution to allow for the board to consider the resolution, and for *"typesetting, printing and deemed delivery"*. As a result, Sasol, as in previous years, refused to table the 2020 shareholder resolution. Just Share disputes all of Sasol's arguments, which are also not legally supported.

In a 6 November 2020 letter, Just Share, supported by shareholder activist organisations ShareAction (UK), Majority Action (USA), Follow This (Netherlands) and the Australasian Centre for Corporate Responsibility (ACCR) (Australia), drew CA100+'s attention to Sasol's ongoing refusal to table climate risk-related shareholder resolutions.

Read about this in more detail.

In a November 2020 press conference, shortly before its AGM, Sasol it would table a non-binding advisory vote on its climate plans at its November 2021 AGM. It committed to consultation with shareholders if at least 25% of its shareholders vote against Sasol's climate plans.

At its November 2020 AGM, shareholders concerned about and affected by Sasol's operations, asked its board a number of questions about its ESG impacts. By and large, satisfactory responses were not received from the board.

2019

Sasol Limited's long-awaited Climate Change Report was released on 28 October 2019. *The report, titled "Positioning for resilience in a low-carbon future"*, was dated 30 June 2019 and was the company's *"first report aligning with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)"*.

The Report was a much more comprehensive acknowledgment of the risks posed by climate change to the company's long-term sustainability, than it had provided before. Sasol unequivocally acknowledged and accepted the scientific basis for human-caused climate change, and admitted that its operations, particularly Secunda, face major transition risks. The report was a significant step towards meaningful climate risk disclosure, but it was only the start of a "journey": given the scale of the issue, Sasol's significant GHG emissions, and the pace and magnitude of the reductions required to achieve the Paris Goals and avoid the most severe impacts of climate change.

Read about this in more detail.

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On 21 October 2019, a group of six South African institutional investors filed another climate risk shareholder resolution with the Sasol board, which sought to compel Sasol to report on how its GHG emission reduction strategy align with the goals of the Paris Climate Agreement. The six investors – Old Mutual Investment Group, Sanlam Investment Managers, Abax, Coronation, Aeon, and Mergence Investment Managers – were supported by Just Share in the early stages of this process.

The co-filers, which consider these matters a material risk to the organisation, co-filed their resolution to Sasol's board for voting on at the company's AGM on 27 November 2019, but the tabling of this resolution was, as in previous years, rejected by the board. Sasol claimed that the matters raised in it "have been addressed" in the 2019 Climate Change Report. However, a review of the Report quickly revealed that this was not the case.

Read about this in more detail here and here.

2018

On 20 April 2018, Sasol shareholders the RAITH Foundation and shareholder activist Theo Botha, with support from Just Share – co-filed a resolution for tabling at Sasol's 2018 AGM. The resolution sought that Sasol's annual reports detail how it is assessing and ensuring long-term corporate resilience in a future low-carbon economy; including the medium and long-term impacts on the Company's operations and sustainability of: technological advances, global climate change policies, domestic climate change laws, and the actual impacts of climate change. The resolution sought that the report analyse the impacts on the Company's operations under a scenario consistent with the globally-agreed upon target to limit global temperature increases to well below 2-degrees Celsius.

In June 2018, Sasol informed the shareholders that it would not be tabling the resolution. At the time, Sasol's refusal was based on a legal opinion it had commissioned, but refused to disclose, which apparently advised Sasol that climate change was not a matter in relation to which shareholders are entitled to vote: it fell solely within the board's purview Sasol also claimed that it would, in any event, be addressing all the matters raised in the 2018 resolution in its 2019 Climate Change Report. However, a review of the Report revealed that this was not the case.

Read about this in more detail here.

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8 MAY 2023

Coal companies Thungela and Exxaro refuse to table shareholder-proposed climate lobbying resolutions

Exxaro Resources Limited and Thungela Resources Limited have refused to table non-binding, advisory shareholder resolutions filed on 19 April by Just Share, Aeon Investment Management, and Fossil Free South Africa, ahead of Exxaro's 18 May (https://justshare.org.za/wp-content/uploads/2023/04/230419-Non-binding-advisory-resolution_Exxaro.pdf) and Thungela's 31 May (https://justshare.org.za/wp-content/uploads/2023/04/230419_Non-binding-advisory-resolution_Thungela.pdf) AGMs.

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The resolutions filed at Thungela and Exxaro ask the companies to report to shareholders, in accordance with the Global Standard on Responsible Climate Lobbying (https://climate-lobbying.com/), on the alignment of their own lobbying and policy engagement activities, and those of the industry associations to which they belong, with the goals of the Paris Agreement.

The co-filers dispute, supported by a legal opinion (https://justshare.org.za/wp-content/uploads/2022/11/210326-Summary-of-legal-opinion-on-shareholders-right-to-file-climate-change-related-shareholder-resolutions.pdf), that directors of JSE-listed companies have discretion to refuse to table shareholder-proposed resolutions that comply with the procedural requirements of the Companies Act. They cannot refuse to table them simply because they do not like the substance of the resolution. This is particularly the case in relation to advisory resolutions which are not binding on the company even if shareholders vote in favour of them.

The filing and tabling of shareholder resolutions requesting disclosure on corporate climate lobbying is common in the USA, Canada, Europe, and Australia.

Climate lobbying disclosure is particularly important for coal mining companies with a clear vested interest in delaying government climate action. Thungela for example is a member of the World Coal Association (WCA). According to InfluenceMap, an independent think tank which produces data-driven analysis on how business and finance are impacting the climate crisis, the WCA engages negatively on climate policies and "appears generally oppositional to ambitious global climate change policy (https://lobbymap.org/influencer/World-Coal-Association)".

Neither company has provided a justifiable reason for refusing to table the resolutions.

Thungela stated in its response to the co-filers that its disclosure of industry association memberships in its Climate Change Report would satisfy the request of the resolution. This is disingenuous. The resolution makes clear that the disclosure required is much more detailed than simply providing names of industry associations, which is all that Thungela's report does. As such, it does not align with the Global Standard on Corporate Lobbying, nor does it even comply with the JSE's guidance on climate change and sustainability disclosure in relation to lobbying activities.

The Companies Act and JSE Listings Requirements provide that shareholders must be notified of a resolution at least 15 business days before the AGM. Exxaro failed to respond to the co-filers until after this deadline had passed (and then only on prompting from the co-filers), calling into question the company's purported adherence to high standards of corporate governance.

Exxaro states: "we firmly believe that the Proposed Resolution is within the purview of the directors of the Company and hence should be addressed accordingly". A "firm belief" does not constitute a justifiable ground for refusing to table a non-binding, advisory resolution.

Why did we file climate lobbying resolutions?

Fossil fuel companies have significant influence over government climate policy – directly and through industry associations (https://justshare.org.za/media/news/busa-blsa-joint-position-on-delaying-carbon-tax-compromises-corporate-sas-climate-credibility/) like Business Unity South Africa (BUSA), the Minerals Council of South Africa, and the Energy Council of South Africa.

Since there is no legal requirement in South Africa to disclose lobbying activities, disclosure of the kind the co-filers request is the only way for investors to ascertain whether investee companies are using their influence to align the country's climate policy with the Paris goals.

Major investors in both companies include **Old Mutual Investment Group, Sanlam Investment Management, Ninety One, M&G Investments**, and **Coronation Fund Managers**, all of which state that they engage with investee companies in relation to climate risk. Understanding the impact of corporate lobbying on national climate commitments and just transition investment plans should be high on these investors' list o priorities.

Read Just Share's briefing on corporate climate lobbying (https://justshare.org.za/wp-content/uploads/2022/11/221121_Corporate-climate-lobbying-in-South-Africa-Introduction_November-2022.pdf)

Context on Thungela and Exxaro's anti-climate lobbying activities

InfluenceMap's corporate climate lobbying platform finds that Thungela is "actively engaged in ... the maintenance of coal as a primary energy source in South Africa, contrary to IPCC science (https://lobbymap.org/company/Thungela-Resources-d3bc13fd15b8a8c0f549e7999bff9a53)" and that Thungela "does not appear to explicitly support the need for government regulation on climate change or the need to reduce [greenhouse gas (GHG)] emissions in line with the IPCC."

Thungela's membership of the WCA is of particular concern. According to InfluenceMap, the WCA engages negatively on climate policies and "appears generally oppositional to ambitious global climate change policy (https://lobbymap.org/influencer/World-Coal-Association)". In its Climate Change Report, Thungela describes the WCA as representing "industry leaders committed to building a sustainable future for global coal".

InfluenceMap reports that Exxaro, despite consistently expressing positive positions on climate policy and the energy transition, has limited transparent engagement on climate-related policies (https://lobbymap.org/company/Exxaro-Resources-Ltd-3640e5c52a001a9cae3df82227144860).

Exxaro discloses some of its industry associations in its 2022 ESG report, but provides no detail of the nature of its membership, or the alignment of the associations' climate-related engagement with the Paris goals.

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Exxaro is a member of the Minerals Council, the Industry Task Team on Climate Change, BUSA, the Energy Intensive Users Group, and Business Leadership South Africa, and a founding member of the Energy Council.

Organised business has successfully lobbied to weaken and delay the implementation of key climate-related regulation and policies, including against the introduction of an effective carbon tax in South Africa (putting a price on carbon is widely seen (https://blogs.imf.org/2019/05/03/getting-real-on-meeting-paris-climate-change-commitments/) as the most cost-effective and flexible way (https://unfccc.int/about-us/regional-collaboration-centres/the-ciaca/about-carbon-pricing#eq-3)) to achieve GHG emission reductions). National Treasury has called corporate South Africa out (https://www.businesslive.co.za/bd/national/2022-09-21-treasury-says-businesss-carbon-tax-call-shows-a-lack-of-vision/) for its "lack of vision" and "lack of leadership" in relation to its position on the carbon tax.

InfluenceMap finds that the Minerals Council is "actively and negatively lobbying climate change policy in South Africa, particularly on the issue of the carbon tax and the role of coal in the energy mix (https://lobbymap.org/influencer/South-African-Chamber-of-Mines-d9fecc0ed7db4a809c71f3fc6a2b0cd6)." It also appears to lead an initiative called "Coal Mining Matters (http://www.coalminingmatters.co.za/)", which aggressively advocates in favour of "clean coal technologies", even though all evidence makes clear (https://cer.org.za/news/new-report-exposes-myth-of-clean-coal) that there are no solutions to neutralise all – or even most – of the dire environmental, health, and climate change impacts (https://lifeaftercoal.org.za/media/news/new-report-why-there-is-no-such-thing-as-clean-coal) caused by the mining, production, supply and disposal of coal.

IMAGE: 123rf.com/ parilovv (https://www.123rf.com/profile_parilovv)

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12 DECEMBER 2025

Transforming annual general meetings in South Africa

Just Share (https://justshare.org.za)

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8 DECEMBER 2025

Shareholders approach High Court for declaratory order on Thungela's refusal to table resolutions

4 DECEMBER 2025

Big business should look to itself before blaming online gambling for social ills

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27 NOVEMBER 2025

Retirements at risk: when "responsible" investing isn't

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12 NOVEMBER 2025

Gender parity in leadership remains elusive in JSE Top 40 companies

media@justshare.org.za

(mailto:media@justshare.org.za)

"A unified front of denial and defence": Business & Human Rights Resource Centre asks South African fossil fuel industry to respond to Just Share's report on corporate anti-climate lobbying

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June 2023

Timeline: climate risk shareholder resolutions & fossil fuel policies

Nedbank Group Limited

Just Share

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Timeline: climate risk shareholder resolutions & fossil fuel policies - Nedbank Group Limited

2023

Nedbank published its third report aligned with the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) in April 2023. It also released, for the first time, its sustainable development financial inclusion criteria (SDFIC) which set out the bank's "categorisation of sustainable-development financing (SDF) and investments, which create positive societal and environmental outcomes and support a just transition and are therefore considered SDF."

Nedbank has, for the first time, quantified and disclosed the financed emissions of its corporate & investment banking fossil fuel portfolios. This is an important step, although the calculation currently excludes the bank's off-balance sheet exposure.

The bank has also started to develop short and medium-term targets – what it calls "net zero aligned decarbonisation glidepaths" – for fossil fuels and power generation, which it has committed to disclosing in 2024. This information is crucial: until it has been disclosed, there is no indication of what Nedbank's fossil fuel financing reduction strategy will be between 2035 and 2045, at which point the bank has committed that it will have zero fossil fuel exposure.

The TCFD report indicates that Nedbank's **exposure to upstream oil increased by R6 billion (44,5%) in limits and R1,97 billion (21,6%) in drawn exposure over the year; and to upstream gas by R1,2 billion (262,8%) in limits and R956 million (225,5%) in drawn exposure**.

This substantial increase in fossil fuel financing demonstrates, disappointingly, that while Nedbank's Energy Policy makes commendable long-term commitments, it leaves significant room for financing which does not support climate action in the short- to medium-term. This makes no sense from a bank which purports to be fully appraised of the urgency of reducing carbon emissions.

Read about this in more detail.

2022

Nedbank published its second report aligned with the recommendations of the TCFD on 21 April 2022. The report indicates that Nedbank's drawn exposure to fossil fuels has decreased by 35%, while the bank's drawn exposure
to renewables has also decreased, by 8%.

In the TCFD report, Nedbank sets out its short-, medium -, and long-term targets for phasing out fossil-fuels exposure in its business. These targets are:

- No financing for new thermal-coal mines from 2025

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- Funding of thermal-coal to be less than 0.5% of the bank's gross loans and advances from 2030
- No funding for oil production from 2035.

In terms of natural gas, the bank will not "directly finance new gas exploration projects". However, the bank still maintains that it will continue funding natural gas production as the bank believes it will play an "essential" role in the transition to a zero-carbon energy system by 2050.

2021

On 22 April 2021, Nedbank published its first report aligned with the recommendations of the TCFD. This report indicates that Nedbank's 2020 drawn exposure to fossil fuels was R26,5 bn.

On the same date, Nedbank released its Energy Policy and its updated Climate Change Position Statement. The Energy Policy is by far the most ambitious fossil fuel financing policy of any South African bank, and also appears to set a global leadership standard among large commercial banks, by avoiding the adoption of the standard "net zero by 2050" target, and instead aiming for zero fossil fuel exposure by 2045.

As the Climate Statement points out, "immediate, rapid and profound" changes are required in the energy sector. The Energy Policy recognises the need for a "zero carbon energy system by 2050" and, importantly, that an "orderly exit" from fossil fuel financing is necessary "well before 2050".

The Energy Policy clearly articulates the urgent need to decarbonise Nedbank's financing, includes specific short-, medium-, and long-term deadlines for doing so, and expands on Nedbank's fossil fuel financing exclusions. For instance, Nedbank:

- will not finance thermal coal mines outside of South Africa;
- will not provide direct finance to new oil or gas exploration projects;
- will not fund new utility scale/embedded oil-fired generation unless this is integrated as backup supply to renewable power;
- from 1 January 2025, will not provide project financing to any new thermal coal mines;
- from 1 January 2030, will only finance new utility-scale or embedded gas-fired generation in
- specified circumstances; and
- from 1 January 2035, will not provide new finance for oil production.

Read about this in more detail.

2020

Nedbank was the first South African company to **table its own shareholder resolution on assessment and disclosure of climate risk.** It did so following extensive engagement with stakeholders, including Just Share. This move sent a clear message to the financial sector,

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shareholders and regulators that climate risk is real, important and urgent.

The following ordinary resolutions, which required 50% of shareholder votes to pass, were proposed by Nedbank's board:

Ordinary resolution 6.1 – To adopt and publicly disclose an energy policy

Resolved that the company will adopt and publicly disclose on its website, by no later than April 2021, an energy policy aimed at playing our part in enabling the transformation over time of the energy system by making finance flows consistent with low-emission and climate-resilient development, in a manner that supports the stability of the energy systems of the countries in which we operate. The policy will include a framework on the financing of fossil-fuel-related activities (including thermal coal, oil, and gas) and will also include commitments to intensify our financing of alternative energy solutions such as renewable energy and other technologies as they emerge.

Ordinary resolution 6.2 – To report on the company's approach to measuring, disclosing and assessing its exposure to climate-related risks

Resolved that the company will report to shareholders, at a reasonable cost and omitting confidential and proprietary information, on its approach to measuring, assessing and disclosing its financial exposure to climate-related risks (transition and physical) by no later than April 2021. This will inform shareholders of the group's journey in assessing its lending activities, investment practices and own operations to climate-related risks and opportunities over time as standards, guidelines and principles on climate risk mature, including appropriate alignment to global best practices including, inter alia, the Taskforce on Climate-related Financial Disclosure (TCFD).

In relation to measuring and disclosing its financial exposure to climate-related risks, Nedbank resolves to disclose its exposure to oil- and gas-related activities as a percentage of total advances, as part of the 2020 year-end reporting cycle to stakeholders by no later than April 2021. This builds on the group's existing disclosure of its exposure to thermal-coal-related activities that is available in the Nedbank Group 2019 Integrated Report published on 22 April 2020

Read the resolutions in full in the Notice of AGM (page 30-31).

Read about this in more detail.

On 22 May at the AGM, both resolutions received the support of 100% of the shareholders voting at the AGM. The resolutions required more than 50% of shareholder votes in order to pass.

Nedbank was therefore the first South African company required by shareholders to report on its approach to measuring, disclosing and assessing its exposure to climate-related risks. However,

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Investec was the first South African bank to release a separate report aligned with the recommendations of the Task Force on Climate-Related Financial Disclosures.

Read about this in more detail.

Nedbank was also the first South African bank to make clear, in its Financing Policy on thermal-coal-related activities, that it will **not** fund new coal-fired power stations, regardless of technology or jurisdiction. It did so in its 2017, with effect from 2018

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"AA12.2"

June 2023

Timeline: climate risk shareholder resolutions & fossil fuel policies

Absa Group Limited

Just Share

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Timeline: climate risk shareholder resolutions & fossil fuel policies - Absa Group Limited

2023

On 30 April 2023, Absa Group Limited (Absa) released its third report aligned with the recommendations of the Task Force on Climate-related Financial Disclosures.

This report demonstrates that Absa's total exposure limit to coal, oil and gas, has increased from R18.8 billion in 2021 to R23.2 billion in 2022, largely as a result of an increase in its exposure to oil, which the bank explains as being due to (1) increased usage of existing facilities and (2) the depreciation of the Rand.

Its exposure to fossil-fuel based electricity, gas and water supply (which it inexplicably groups together) nearly doubled from R7 billion in 2021 to R13 billion in 2022. The bank provides no targets or strategies for the reduction of this exposure.

Absa has included what it calls "sensitive sector financing limit caps" (SSFLC) for coal, oil and gas. However, the SSFLCs, which comprise the short-, medium- and long-term targets (excluding trading loan book exposure) for fossil fuel financing to 2050, are not aligned with climate science, and there is no explanation of how these sector caps will ensure that the bank achieves its net-zero target.

The caps for coal and gas are set significantly higher than Absa's current exposure, allowing it to increase financing to these sectors while remaining within its targets. It is hard to understand how the bank can claim that this approach "contributes to a sustainable and low-carbon future".

Absa attempts to justify its continued financial support of fossil fuels by stating that "we need to calibrate the pace of just transition", alleging that a move away from carbon-intensive industries will deepen unemployment issues in developing economies and that addressing energy poverty "should be an immediate priority with a transition to cleaner energy" seen as "a complementary priority".

This approach demonstrates Absa's misunderstanding of the meaning and purpose of a just transition, which recognises that fossil fuel-based energy systems have entrenched poverty and inequality, and that rapidly developing least-cost renewable energy is precisely the vehicle through which energy access will be achieved.

Read about this in more detail.

2022

In March 2022, Just Share sent Absa a draft non-binding resolution for discussion. The resolution asked that the group disclose, in 2023, its plans to set and publish a strategy and short-term, medium-term, and long-term absolute contraction targets for its financed greenhouse gas (GHG) emissions from its exposure to coal, oil and gas, on a timeline aligned with the goals of the Paris Agreement.

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In conversations during early April, Absa set out its envisaged timing for future disclosures:

- The group committed to publishing its oil and gas standard in May 2022, along with an updated coal standard.
- The mining standard is being taken through the required governance processes ahead of publication scheduled for May.
- Absa's next TCFD report will be published in mid-May.

Although Absa was prepared to table the resolution proposed by Just Share, it became clear during engagement with the group that it would most likely not be in a position, by the first quarter of 2023, to set short-, medium-, and long-term absolute contraction targets aligned with the Paris goals for its financed GHG emissions from its fossil fuel exposure. In line with its peers, the group indicated that it requires more time to calculate its financed emissions before setting such targets, due to the complexity of this process.

As a result, Just Share indicated to Absa that it would not formally file its draft resolution, but would instead analyse the group's disclosures when these are published, and engage with it thereafter in relation to tabling a shareholder resolution in 2023.

Read about this in more detail.

2021

On 1 April 2021, Absa released its first standalone report on climate risk aligned with the recommendations of the Financial Stability Board's TCFD. In this TCFD report, Absa indicates that it has loaned R9 bn to fossil fuel projects, and, in addition, had approved two facilities in the gas sector with limits of almost R7 bn.

This R7 bn was not included in the R9 bn exposure as it had not been drawn down by 31 December 2020.

Absa was expected to release an oil and gas standard before its 4 June 2021 AGM, and a mining standard by the end of the year. It subsequently indicated that both standards would be published before the end of 2021. To date, neither has been published and Absa remains the only of the big five banks that does not have an energy or fossil fuel financing policy.

2020

Absa's coal financing standard was published in April 2020. Absa does not exclude funding for coal mining or coal-fired power generation.

In its Notice of AGM released on 31 March 2020, Absa voluntarily included a *"non-binding advisory vote on climate change risk and opportunity disclosure"*:

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Resolved that the Company*, in its integrated report next year, provide shareholders with an assessment of its exposure to climate change risk in its lending and financing portfolios, and of the opportunities to finance climate change mitigation and adaption, including:*

- *the quantum of its loans to carbon-related assets and the percentage to total loans;*
- *a description of any significant credit concentration to carbon-related assets and how it manages the associated risks; and*
- *its financing of climate-related opportunities.*

Absa indicated that "*the Board values shareholders" views and will review the voting.... This disclosure represents the first step in a multi-year journey to integrate sustainability into our strategy and operations, while being transparent about, and accountable for, creating shared prosperity for current and future generations, in line with the [Principles for Responsible Banking]*".

At the 4 June AGM, the bank's Chairperson committed to abiding by the results of the vote, even though it was tabled as a non-binding advisory resolution. The resolution received **99% of shareholder votes.**

ENDS

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"AA12.3"

June 2023

Timeline: climate risk shareholder resolutions & fossil fuel policies

Investec Group Limited

Just Share

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Timeline: climate risk shareholder resolutions & fossil fuel policies – Investec Group Limited

2023

On 30 June 2023, Investec published its fourth standalone climate-related financial disclosures report.

It also updated its Fossil Fuel Policy in June 2023. The most notable update is Investec's commitment to decrease all thermal coal exposure to zero by 31 March 2030. This is the most ambitious target for reducing overall exposure to thermal coal of all the major South African commercial banks assessed by Just Share (Standard Bank, Nedbank, Absa, and FirstRand).

Investec has also adjusted and improved its methodology for reporting on scope 3 emissions as it now discloses its financed emissions for six key asset classes covering 77% of its total financed emissions.

Although, in compliance with the shareholder resolution passed in 2021, Investec's net-zero climate impact roadmap sets out short, medium and long-term targets for the decarbonisation of its financing portfolio, it lacks sufficiently detailed targets and strategies for the period 2035 to 2050, particularly relating to reducing its exposure to oil and gas from 2035.

The bank's overall exposure to fossil fuels decreased by 32,77% in 2022, however, its exposure to gas has increased by 9%, in keeping with its position on continuing to finance gas as a "transition fuel".

Investec recognises the significant risk posed by climate change to its business, and the impact of continued financing of fossil fuels on the climate. However, if Investec's lending activities are to match its understanding of climate risk, the bank must review its commitment to ongoing financing of oil and gas, and particularly its view of gas as a "transition fuel".

Continuing to finance oil and gas up until 2035 means that Investec can increase its exposure to fossil fuels for more than a decade and retain oil and gas financing within its portfolio up until 2050. This is at odds with climate science and undermines the bank's otherwise progressive understanding of the increasingly urgent action required to prevent catastrophic climate change.

Read more about this in detail.

2022

On 30 June 2022, Investec published its third standalone Task Force on Climate-related Financial Disclosures (TCFD) report. Investec reports that its fossil fuels exposure has increased by 7% from

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the 2021 financial year to the 2022 financial year, while its renewables exposure has increased by 18% over the same time period.

In accordance with the resolution tabled by Investec in 2021, Investec has made progress in disclosing its baseline scope 3 financed emissions. However, it has not set adequate short-, medium- and long-term Paris-aligned targets or strategies to reach net-zero emissions by 2050.

In its 2022 TCFD Report, Investec has set targets only in respect of phasing out its exposure to coal. For Investec Plc, there is a strong target of phasing out coal in the next 3-5 years. However, for Investec Ltd, the bank adopts South Africa's currently high dependency on coal as an excuse for not setting a clear stance on phasing out this fossil fuel, committing only to zero export thermal coal.

2021

In June 2021, Investec published its 2021 TCFD report. It reports its exposure to fossil fuels at R5,4 bn.

With support from Just Share, and ahead of its 5 August AGM, Investec tabled the most significant climate change shareholder resolution for a JSE-listed company to date.

Rather than asking shareholders to vote on the bank's climate risk-related disclosure, Investec's resolution explicitly requires the company to take action to address its "financed emissions", or the GHG emissions associated with its lending and investment portfolio.

Investec's resolution asked shareholders to "*authorise and direct the Investec Group and its directors to commit to disclose:*

- *A baseline of the Investec Group's scope 3 financed emissions;*
- *Its strategy to reduce scope 3 emissions; and*
- *Its short, medium and long term targets to reach net-zero emissions and align with the Paris goals, based on a geographic approach that is guided by (but not limited to) the net-zero trajectories of our two core jurisdictions, being South Africa and the UK*"

The resolution is the first in South Africa explicitly to require alignment with the goals of the Paris Agreement. While the resolution took the form of a non-binding advisory vote, the fact that it received 99.97% of shareholder support demonstrates how important this information is for shareholders.

The emissions, strategy and targets will be reported for the financial year ending 31 March 2022. Nedbank is the only major South African bank so far to have set short-, medium-, and long-term targets for reducing its exposure to fossil fuels. Nedbank's energy policy commits to the bank having "zero exposure to all activities related to fossil fuels [except when required to back up renewable power] by 2045".

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Read about this in more detail.

2020

In April 2020, Investec became the first South African bank to publicly disclose a group fossil fuel policy, covering coal-fired power generation, coal mining, and oil and gas. This policy does not exclude financing for coal-fired power or coal mining, but does contain other exclusions; including for projects:

- that exploit high conservation value areas and UNESCO world heritage sites;
- in environmentally high-risk areas;
- that are in non-compliance with human rights (especially regarding the rights of local communities and indigenous peoples);
- that are in non-compliance with minimum standards for occupational health and safety and relevant local legislation;
- that use child labour, forced labour, modern slavery or human trafficking;
- that do not include a site rehabilitation plan to restore land to a usable state; and
- where environmental and social risks are not being managed.

At the same time, the bank committed to disclosing its fossil fuel exposures when it released its annual reports, and to publishing its first separate report aligned with the recommendations of the TCFD.

In June 2020, Investec was the first South African bank to release a separate report aligned with the TCFD Recommendations. Investec reports its exposure to fossil fuels at just under R8,1 bn.

Read about this in more detail.

Investec was the fifth South African bank to table a climate risk-related shareholder resolution. Investec voluntarily tabled a resolution in its 2020 Notice of AGM which required Investec to:

"…continue the Group's commitment to carbon neutrality with respect to the Scope 1 and 2 emissions of our direct operations"; and "report annually on progress made on the Investec Group's climate-related exposures. This includes full disclosure of our group's own-risk exposure to fossil fuels and to high risk industries from a climate perspective."

The resolution, which needed more than 50% of shareholder votes to pass, **received 99% support**.

Read about this in more detail.

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"AA12.4"

September 2023

Timeline: climate risk shareholder resolutions & fossil fuel policies

FirstRand Group Limited

Just Share

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Timeline: climate risk shareholder resolutions & fossil fuel policies - FirstRand Group Limited

2023

In September 2023, FirstRand published its annual climate-related disclosures across the following reports: climate change strategies report 2023 (climate report), Basel Pillar III disclosure 2023 (Basel III), governance report 2023, and remuneration report 2023. These are read with the bank's climate change policy 2022 and its policy on energy and fossil fuel financing.

FirstRand has not set any climate science-aligned emission reduction targets, nor updated its 2021 climate policy. **However, the bank has said that it will disclose a "high-level climate alignment pathway strategy for FirstRand and 2030 interim pathway for oil and gas" in the 2024/2025 financial year.**

FirstRand has updated the group's principal and supporting risks and has now classified climate risk as a principal risk. However, what it refers to as its fossil fuel financing "limits" allow it to increase its financing to thermal coal by at least three times, and to upstream oil and gas by five times.

FirstRand recognises that gas will not play a long-term role in the transition to a low-carbon economy, and the potential for stranded gas assets, yet it intends to continue to increase its financing of gas in the short- and medium- term. Its exposure to upstream oil and gas increased more than two-and-a-half times (from R2,9 billion to R7,76 billion) over the reporting period. Its total reported financed emissions from fossil fuels decreased by 37%.

FirstRand's approach to climate risk lacks urgency, contradicting climate science and its own recognition of climate change as a primary risk. The publication of FirstRand's high-level climate alignment pathway strategy and 2030 interim pathway for oil and gas in 2024/2025 will be a crucial indicator of the bank's real commitment to supporting South Africa's transition to a low-carbon, inclusive, and sustainable economy.

Read more about this in detail.

2022

FirstRand published its second standalone Task Force on Climate-related Financial Disclosures (TCFD) report during November 2022. FirstRand's TCFD report showed that its "*drawn exposure to sectors that face high and elevated levels of transition risk*" has increased by 10.21% (when considering absolute financing amounts) from the 2021 financial year to the 2022 financial year. FirstRand, through Rand Merchant Bank (RMB), increased its drawn exposure in renewables by 3.34% (when considering absolute financing amounts) from the 2021 financial year to the 2022 financial year. However, FirstRand is silent on what the change in limits was for either sectors that

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face high and elevated levels of transition risk, or renewables, between the financial years 2021 and 2022.

In 2022, FirstRand made additions to both its Energy and Fossil Fuels Policy and its Climate Change Policy. It the latest Energy and Fossil Fuels Policy, FirstRand has *"**introduced a new limit pertaining to upstream oil and gas advances and underwriting exposures of 2.5% of total group loans and advances**"*. The bank describes the reason for this limit to enable it to *"complete its financing of the current and future pipeline of projects in markets where it is active"*. The bank's latest Climate Change Policy contains the same additional commitment.

2021

On 15 September, FirstRand published an updated Policy on Energy and Fossil Fuels Financing ("the energy policy") and, for the first time, a Climate Change Policy.

The energy policy represents a significant improvement on the bank's previous energy-related policies – including confirmation that it will "no longer finance new coal-fired power stations with immediate effect", and the acknowledgment of the material risk posed to the South African economy by "long term gas lock-in". FirstRand's position regarding new coal-fired power plants is long overdue, but FirstRand is only the second of South Africa's big five banks (after Nedbank), to make such a commitment. FirstRand has also indicated that, as from 2026, it will no longer provide direct project financing for new coal mines. This is a year later than Nedbank, which has also completely excluded financing of thermal coal mines outside of South Africa.

Also from 2026, the bank will reduce the cap on its coal financing drawn advances from 2% to 1.5% of advances; and to 1% from 2030. Expressing these caps as percentages could result in a misleading impression of the bank's exposure to coal; particularly given its intention to increase its financing of low-carbon technologies. **The caps should be based on real-world emissions, rather than percentages of the bank's exposure.**

FirstRand has added two circumstances in which it will not finance oil and gas projects, and has, without explanation, removed one exclusion ("unmitigated or unrestricted gas flaring"). The new exclusions refer to "unacceptably carbon intensive production"; and "high cost" developments that would have a "high carbon intensity and would be incompatible with the country's Paris Accord obligations". Without more detail and definitions, these vague exclusions are not useful.

FirstRand's long-term ambition to "be net zero by 2050 for scope 1, 2 and 3 emissions" is laudable in its inclusion of scope 3 – its financed emissions. But this broad ambition falls short of a firm commitment and puts the bank behind many of its peers who are already making more ambitious commitments. Nedbank's energy policy, for example, commits to the bank having "zero exposure to all activities related to fossil fuels [except when required to back up renewable power] by 2045".

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In addition, it is essential that long-term ambition be accompanied by short-, and medium–term targets for reducing the bank's financed emissions (including, as climate science demands, a 50% reduction by 2030), and meaningful exclusions for financing. Despite FirstRand's indication that it will "regularly articulate updated decarbonisation commitments for its operational and financed emissions", and that it will "incrementally publish more detailed financed emissions data and assumed transition pathways in its TCFD reports each year", the bank's new policies make no specific commitments or targets in relation to the reduction of its scope 3 or financed emissions.

FirstRand indicated that its forthcoming TCFD report would provide "a more comprehensive view of FirstRand's climate change strategy and initiatives, including its business commitments to the facilitation of sustainable finance flows, as well as granular information on the group's climate risk profile and underlying operational and financed emissions". This TCFD report will be an opportunity for FirstRand to address some of the gaps in its policies.

FirstRand published its TCFD report on 28 October 2021. The report discloses that the bank has R10,65 bn exposure to thermal coal mines, and upstream, mid and downstream oil and gas; R933 m exposure to fossil gas; R3 bn to coal-fired power and R2,28 bn to gas-fired power. The report comments that FirstRand has "materially improved its ability to measure its scope 3 financed emissions across product classes and sectors and will incrementally publish more detailed financed emissions data and assumed transition pathways in its TCFD reports each year".

Read about this in more detail.

2020

On 9 October 2020, FirstRand released its Integrated Report 2020, which included its climate change programme roadmap (page 36-39), "aligned" with the Task Force on Climate-Related Financial Disclosures (TCFD) Recommendations. In this *Supplementary Climate Change Disclosure*, FirstRand disclosed that its "drawn exposure" was some R19,7 bn in fossil fuels, plus R8,7 bn in electric utilities. FirstRand indicated that this section would, in 2021, be replaced by more comprehensive disclosure aligned to the formal TCFD reporting framework.

FirstRand also released its Energy Financing Policy. This fulfilled the bank's obligation pursuant to overwhelming shareholder support for Just Share's proposed shareholder resolution tabled at FirstRand's 2019 AGM (see below). The Bank's policy contains some exclusions, several of which have no relevance to Africa. It does, however, exclude financing for: unmitigated or unrestricted flaring of gas; shale oil and shale gas fracking in a water-scarce area; projects with a critical impact on a protected area or on wetlands of international importance and/or that result in the destruction of High Conservation Value areas; and any associated infrastructure projects mainly dedicated to these projects (like pipelines).

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2019

FirstRand's Notice of AGM (page 280-283), released on 8 October 2019, included two climate risk shareholder resolutions proposed by the RAITH Foundation and Just Share. FirstRand was the second South African company to table climate risk-related shareholder resolutions. The first was Standard Bank in April 2019. Like the Standard Bank resolutions, the FirstRand resolutions called for improved disclosure on FirstRand's exposure to climate-related risks, and for it to adopt and publicly disclose a policy on lending to fossil fuel-related projects. Both resolutions required more than 50% of shareholder votes to pass.

Ordinary resolution 5 required the bank to prepare a consolidated report to shareholders, by no later than end October 2020, on its assessment of its exposure to climate-related risks (transition and physical) in its lending, investing and financing activities, including:

- *The amount and percentage of fossil fuel-related assets relative to total assets;*
- *A description of any significant concentrations of credit exposure to fossil fuel-related assets; and*
- *The amount of lending and other financing connected with climate-related opportunities.*

FirstRand's board "*fully agreed with the need for a consolidated report on the group's assessment of its exposure to climate-related risks*" but stated that "*the requisite deadline of October 2020 presented an unattainable time frame for the group*".

The resolution received a **high level of shareholder support (33%)**. FirstRand indicated that it "*does not disagree with RAITH and Just Share on the principle of increased disclosure, only on the timeframe*", and that it would publish a "*full roadmap for FirstRand's climate risk disclosure*" in 2020.

Ordinary resolution 6 required the bank to:

> *adopt and publicly disclose on its website, by no later than end October 2020, a policy on lending to fossil fuel-related projects, including coal-fired power plants, coal mining operations and oil and gas exploration and production projects.*

Unlike the Standard Bank board, the FirstRand board endorsed the resolution relating to the policy. At the AGM, **99.9% of shareholders voted in favour** of ordinary resolution 6 (that required the bank to adopt and disclose a policy on fossil fuel lending by end October 2020).

In 2019, FirstRand released a Thermal Coal Financing Policy, which does not exclude the funding of coal.

Read about this in more detail here, here, and here.

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April 2023

Timeline: climate risk shareholder resolutions & fossil fuel policies

Standard Bank Group Limited

Just Share

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Timeline: climate risk shareholder resolutions & fossil fuel policies – Standard Bank Group Limited

2023

On 31 March 2023, Standard Bank released its full suite of integrated reports, including a standalone Climate-related financial disclosures report 2022 (TCFD 2022), "informed by the recommendations of the Task Force on Climate-Related Financial Disclosures".

Just Share analysed Standard Bank's TCFD 2022 report and published a briefing.

As set out below, in April 2022, Just Share analysed Standard Bank's Climate Policy, which allowed the bank to increase its financing of fossil fuels until at least 2040. The bank's 2022 climate report evidences this increase over the past year.

Standard Bank's justification of its increased investment in fossil fuels as being "in line with" its climate policy demonstrates the weakness and lack of ambition of the bank's policy, as identified in Just Share's 2022 analysis: adopting targets that are not aligned with climate science allows Standard Bank to increase its exposure to fossil fuels, while claiming that this increase is aligned with a purported commitment to taking climate action.

A climate policy that fails to set science-based absolute emission contraction targets and incorporate meaningful exclusions will never support capital allocation which is informed by a robust understanding of climate risks and opportunities.

Other key messages from Just Share's analysis of the 2022 climate report

- On- and off-balance sheet **exposure to fossil fuels increased by 22%** from 2021 to 2022. Total exposure to fossil fuel power generation, coal mining and oil and gas (integrated, trading & retail, exploration and production, and midstream) in 2022 was R119.4 billion, compared to R97.6bn for the previous year.
- On- and off-balance sheet **exposure to renewable power generation increased by 84%** from 2021 to 2022, to R26.3 billion. **This is a significant increase, but** it is crucial to look at this number in comparison to Standard Bank's **exposure to fossil fuels**, which **is approximately 4.5 times higher.**
- Standard Bank maintains its position that Africa requires new fossil fuels to address energy poverty and developmental needs. The bank ignores the multiple studies and analyses by globally-respected institutions, including the Organisation for Economic Cooperation and Development, the United Nations Economic Commission for Africa, and the International Institute for Sustainable Development, that demonstrate that sustainable energy, and in particular decentralised renewable energy, represents the fastest, most cost-effective option for addressing energy poverty across the African continent.
- **Fossil fuel investment in Africa will not bring the benefits touted by its proponents.** Shareholders in SBG should be interrogating why the bank consistently ignores all of the

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evidence that contradicts its claims about the necessity of fossil fuel investments for Africa's growth and development.

- Standard Bank shareholders should be concerned about the financial risks inherent in significant investment in new fossil fuels. The global decarbonisation imperative means that fossil fuel markets are rapidly shrinking. This also places new fossil fuel infrastructure at significant stranded asset risk. As the executive director of the International Energy Agency, Fatih Birol, wrote in a 14 April 2023 Financial Times article on the rapid pace of growth in clean energy across the globe:

  "*…the push by some companies and governments to build new large-scale fossil fuel projects is not only a bet against the world reaching its climate goals – it is also a risky proposition for investors who want reasonable returns on their capital*".

Africa has a unique opportunity to direct capital flows towards the development of sustainable, equitable energy generation which prioritises energy access for all. There is no justifiable basis to argue that significant and extended new fossil fuel investment is required for Africa's development. On the contrary, there is significant evidence that increasing Africa's exposure to fossil fuels would have severely negative impacts.

Financial institutions have a crucial role to play in tackling the climate crisis and enabling a shift to a just and clean energy economy. If Standard Bank is as committed to Africa's sustainable development as it claims to be, it should set credible 1.5°C-aligned targets to reduce its exposure to existing fossil fuels and other high-emitting sectors, stop financing new fossil fuels, and dramatically increase financing to sectors that will directly contribute to the transition to a low-carbon world in which all Africans have access to sustainable energy.

Download the full briefing

2022

On 16 March 2022, Standard Bank released its Climate Change Policy. In addition to setting out some circumstances in which it will not provide funding, the Climate Policy only commits Standard Bank to seeking to reduce emissions intensity, while managing its exposure to oil and gas, and to reducing the percentage of total group advances to particular projects.
Standard Bank will not fund:

- companies with unrestricted flaring;
- "the extraction of tar sands or construction of associated export facilities, exploration and production of tight oil resources, and pipelines transporting a significant volume of tight oil and export terminals supplied by a significant volume of tight oil";
- new coal-fired power plants or "the expansion in generating capacity of existing coal-fired plants"; and
- mountain-top removal.

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The Climate Policy does not contain any short-term or medium-term targets for a reduction in Standard Bank's exposure to oil and gas. In relation to long-term targets, the Climate Policy does not envisage any reduction in absolute financed emissions from oil and gas until 2040 at the earliest.

Instead, the Climate Policy allows Standard Bank to increase its financing of fossil fuels until at least 2040.

Just Share's full analysis of Standard Bank's 2022 Climate Policy

Engagement on the resolution

In March, Just Share and Aeon shared a draft resolution with the bank, asking that it update the 2022 Climate Policy, by March 2023, to set short-term and medium-term absolute contraction targets for the bank's GHG emissions from its exposure to oil and gas, i.e., targets which reduce the physical amount of GHG emitted into the atmosphere over time, as required by climate science.

Following further engagement, which included the bank's views regarding feasible timeframes for obtaining financed GHG emissions data from its clients, the co-filers and the bank agreed on the wording for a resolution, which was formally filed on 29 March.

31 March 2022 Notice of AGM

The non-binding advisory resolution, as agreed by the co-filers and Standard Bank, was published in the bank's 31 March 2022 Notice of AGM. However, the explanatory note to the resolution was not agreed between the parties and had not been seen by the co-filers prior to publication of the Notice of AGM.

The bank's explanatory note confirms that it has agreed the wording of the resolution with the co-filers, but goes on to state that "[i]n terms of South African law, shareholders cannot propose a shareholder resolution which binds the board of the company even if the resolution is passed by shareholders, nor are there any requirements of South African law, as there are in certain other jurisdictions, for a company to put a non-binding advisory opinion to its shareholders on request or demand. Despite this, the Board has, in the interests of shareholder engagement and exploring shareholder views, resolved to put the above resolutions to the company's shareholders, as requested by the Requesting Shareholders".

This view was erroneously expressed by Standard Bank in a manner designed to convey the impression that this is a definitive statement of the law. In fact, the Companies Act, 2008 states, in section 65(3), that:

> *"Any two shareholders of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights".*

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Just Share and Aeon's position in relation to shareholder rights to propose resolutions is well known to Standard Bank. This includes, in accordance with a legal opinion received by Just Share, that directors do not have a unilateral discretion to refuse to table shareholder-proposed resolutions on content-based grounds.

The co-filers expressed their disappointment in the contents of the explanatory note and asked Standard Bank to republish the Notice of AGM without this explanatory note, and instead to provide context for the filing of the resolution, as included in the formally filed resolution.

Following further discussion, the parties agreed instead to publish a stock exchange news service (SENS) announcement, which was released on 13 April 2022, and which set out the context of the non-binding advisory resolution, as well as providing clarity on the parties' differing views on shareholder rights to file resolutions.

Read about this in more detail.

At the AGM, the non-binding, advisory resolution received overwhelming support of 99,74%. This result demonstrates clearly that shareholders are interested in the risks posed to the bank by climate change and seek increased disclosure and transparency from the bank about its strategy to reduce GHG emissions.

2021

In March 2021, in its Environmental, Social and Governance Report 2020, Standard Bank reports that, for 2020, its exposure to fossil fuels was R63,5 bn.

On 23 April 2021, three asset manager shareholders in Standard Bank – Aeon Investment Management, Abax Investments, and Visio Fund Management – together with Just Share, co-filed a non-binding advisory shareholder resolution ahead of the bank's AGM on 27 May 2021.

The resolution made the following recommendation and request:

> *"In order to promote the long-term success and sustainability of the Company, taking into account the significant risks and opportunities associated with climate change, and in accordance with the Company's stated support for the goals of the Paris Agreement, shareholders recommend and request that the Company and its Directors include, in its reporting to shareholders for the year ending 31 December 2021, the Company's plans, if any, to set and publish a strategy, and short-, medium-, and long-term targets, to reduce its exposure to fossil fuel assets on a timeline aligned with the goals of the Paris Agreement (the "Paris goals")."*

Read the full non-binding resolution, including explanatory notes.
On 6 May 2021, Standard Bank advised the co-filers that it was unnecessary to table the resolution, as the bank was already committed to publishing a climate strategy as requested in the

TL

resolution. It also confirmed that it continued to dispute the legal position set out in the letter from the co-filers, regarding shareholders' rights to file resolutions.

However, following a meeting on 20 May 2021, between the co-filers and Standard Bank:

- Standard Bank publicly committed to publishing a climate strategy and short-, medium-, and long-term targets to reduce its exposure to fossil fuel assets, on a timeline aligned with the Paris Goals. The strategy will be published as part of its 2021 reporting to shareholders.
- Standard Bank confirmed that it is not opposed to shareholders proposing non-binding advisory resolutions, and that the Board will give due consideration to any such resolutions.

Read the full joint statement published after the meeting.

2020

On 5 March 2020, Standard Bank became the first South African bank to publish a Thermal Coal Mining Policy, discharging the bank's obligations in relation to the 2019 shareholder vote (see below). The policy does not exclude the funding of coal mines or coal-fired power generation, nor provide a deadline to do so.

Read about this in more detail.

In October 2020, Standard Bank released its first Task Force on Climate-related Financial Disclosures (TCFD) report, revealing that its 2019 on and off-balance sheet commitments in relation to fossil fuels were just under R67,4 bn.

In December 2020, Standard Bank released its Fossil Fuels Financing Policy. The only financial exclusions Standard Bank incorporates are for: *"extraction of tar sands or construction of associated export facilities; exploration and production of tight oil resources; and pipelines transporting a significant volume of tight oil and export terminals supplied by a significant volume of tight oil".*

Read about this in more detail.

Standard Bank refused to table a climate risk-related shareholder resolution co-filed by the RAITH Foundation and Just Share ahead of its AGM on 26 June 2020. This move marked a perplexing about-turn: in 2019, Standard Bank became the first South African company to table a climate risk-related shareholder resolution. Standard Bank's justification for not tabling the resolutions mirrored Sasol's previous refusals to do so, i.e. its reliance on a legal opinion that climate change issues fall within management prerogative, and shareholders have no right to weigh in on issues related to climate change.

The proposed resolution recognised that the bank had taken steps to acknowledge the material financial risks posed by climate change, and to improve its disclosure and management of those

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risks. However, it also sought to address the significant gaps in disclosure, in particular in relation to oil and gas (Standard Bank is one of Africa's biggest lenders to the oil and gas industry), and the lack of alignment between Standard Bank's recognition of climate risks and its actions to mitigate these risks.

In addition to requesting an assessment of the bank's exposure to climate-related risks in its lending, investing and other financial intermediary activities, the resolution sought the adoption and public disclosure of a policy covering the financing of onshore and offshore oil and gas exploration and production; oil and gas pipeline projects; liquefied natural gas (LNG) terminals; and coal-to-liquids projects.

Fossil fuel-tied (conflicted) directors

When it became apparent that seven of Standard Bank's 18 board members were conflicted on climate change-related matters by virtue of their ties to the fossil fuel industry, 14 climate justice NGOs from around the world, led by Just Share, called on Standard Bank's shareholders to vote against the election / re-election of five climate-conflicted directors at the upcoming AGM.

Although all of the directors were (re)elected at the AGM, significant pressure was brought to bear on the board, and three weeks later, Priscillah Mabelane (who, in June 2020, was appointed executive vice-president of Sasol's energy business and a member of Sasol's group executive committee, effective from 1 September) resigned from Standard Bank's board *"owing to the change in her executive management responsibilities"*.

In an April 2021 analysis of climate-conflicted directors of the world's biggest banks, UK investigative media outlet DeSmog found that 82% of Standard Bank's board members had past and/or present connections to industries that could render them climate-conflicted.

Read more about that here, here, and here.

In addition, Standard Bank committed to releasing a comprehensive fossil fuel policy by the end of 2020, and to release its first TCFD-aligned report. Before this campaign, the bank was insisting that it needed five years to make this kind of disclosure, stating that a *"multi-year process needs to be followed to develop credible metrics and targets for financial-related climate risks"*.

Read about this in more detail here, here, here, and here.

2019

In April 2019, Standard Bank tabled a resolution filed by two shareholders, the RAITH Foundation and Theo Botha, with support from Just Share. This was the first climate-related resolution to be tabled at a JSE-listed company. The resolution was in two parts: the first required the bank to prepare a report on its exposure to climate risk in its lending, financing and investment activities, and the second part required the bank to adopt and publicly disclose its policy on lending to coal-

TC

fired power projects and coal mining operations. Both resolutions needed more than 50% vote to pass.

Read about this in more detail.

While the first part of the resolution (regarding climate risk exposure) did not pass, it received significant support with **38% of shareholders voting in favour**, indicating strong shareholder demand for climate risk-related disclosure. The second part of the resolution (regarding a coal policy) was passed with **55% of shareholders voting in favour**, and was therefore binding on the company.

Read about this in more detail.

After engaging with the bank as to when it would publicly disclose its policy on lending to coal-fired power projects and coal mining operations, as a date had not been stipulated in the resolution, Standard Bank announced the release of its Coal-Fired Power Finance Policy on 31 July 2019. This partly discharged the obligation imposed on Standard Bank by the 55% of shareholders who voted in favour.

Read about this in more detail here and here.

ENDS

TC

"AA14"

2 JUNE 2025

Standard Bank fails to comply with oil and gas resolution approved by 99.7% of its shareholders

At its 2022 annual general meeting (AGM), 99.7% of Standard Bank's shareholders voted in favour of a resolution co-filed by shareholders Just Share and Aeon Investment Management (https://justshare.org.za/wp-content/uploads/2022/11/220329_-Advisory-resolution_Climate-Risk_March-2022_Just-Share-and-Aeon_final.pdf), for staggered disclosure relating to the bank's oil and gas exposure over a period of three years.

TC

The bank has failed, in its 2024 integrated reporting suite, to comply with the terms of this resolution, although its content and timeframes were negotiated and agreed with the bank. In its latest disclosures, Standard Bank does not acknowledge that it has not met the terms of the resolution which it had agreed were feasible, and provides no explanation for this failure.

Following an extensive engagement with the co-filers (https://justshare.org.za/media/news/standard-bank-climate-change-shareholder-resolution-2022-climate-policy-analysis/), the bank had agreed to table a non-binding advisory resolution at its 31 May 2022 AGM, which required it, by 31 March 2025, to update its March 2022 Climate Policy to include short-, medium-, and long-term targets for its financed greenhouse gas emissions from oil and gas. These targets were to be aligned with the Paris Agreement goal of limiting the global temperature increase to 1.5 degrees Celsius above pre-industrial levels (the Paris 1.5 degree goal).

In other words, the bank was required to disclose:

1. short-term,
2. medium-term, and
3. long-term

emission reduction targets:

4. for its financed emissions;
5. from its oil and gas exposure;
6. that are aligned with the Paris 1.5 degree goal.

The resolution was overwhelmingly endorsed by shareholders at the bank's 2022 AGM, making it clear that investors expect greater disclosure from the bank.

The bank has **failed, in material respects, to comply with this resolution,** as is set out below.

- Standard Bank has not disclosed its most material oil and gas exposure:
  - The bank has focused on disclosure of its **upstream** oil and gas assets (which it has also not comprehensively disclosed). It has not provided a timeline for setting targets for mid and downstream exposure.
  - This is an incomplete picture of Standard Bank's oil and gas exposure. It allows the bank to downplay the significant impact that its involvement in midstream projects such as the **East African Crude Oil Pipeline** will have on its oil and gas exposure and financed emissions.
- The 2025 Climate Policy only provides a **short-term 2030 oil and gas** target (consisting of an average physical intensity target "combined with" a target to limit exposure).

TL

- No medium-term target or interim milestones are disclosed to achieve the bank's target [illegible] by 2050, nor does the bank give any indication of its timeframe for doing so.
- The bank's targets are not aligned with the Paris 1.5 degree goal.
- The targets are weaker than those contained in the bank's 2022 Climate Policy and allow the bank to significantly increase its exposure to oil and gas.

In addition, the bank's disclosures do not allow for clear analysis of its exposure to oil and gas, nor for its progress in reducing this exposure. It has conflated exposure metrics, used ambiguous targets, and shifted the goalposts.

Investors should call on Standard Bank to explain this non-compliance and to commit to an urgent timeframe within which it will update its 2025 Climate Policy to include:

1. Short-, medium-, and long-term absolute emission reduction targets aligned with the Paris 1.5 degree goal.
2. Strategies to achieve all its targets.
3. Midstream and downstream oil and gas exposure targets.

To demonstrate climate leadership, banks must hold firm to their existing commitments to climate action and prioritise the strengthening of these commitments. Investors need to hold banks accountable, not only to their own commitments, but to the level of ambition that is increasingly required to prevent and limit and worst impacts of the climate crisis.

Download the full briefing (https://justshare.org.za/wp-content/uploads/2025/06/250602-SBG-Climate-Change-Resolution-Update.pdf)

2026 () 2025 () 2024 () 2023 () 2022 () 2021 () 2020 () 2019 ()

2018 () 2017 ()

TC

12 DECEMBER 2025

Transforming annual general meetings in South Africa

TL

8 DECEMBER 2025

Shareholders approach High Court for declaratory order on Thungela's refusal to table resolutions

4 DECEMBER 2025

Big business should look to itself before blaming online gambling for social ills

TL

27 NOVEMBER 2025

Retirements at risk: when "responsible" investing isn't

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12 NOVEMBER 2025

Just Share (https://justshare.org.za)

Gender parity in leadership remains elusive in JSE Top 40 companies

Contact us

General enquiries

info@justshare.org.za

(m[illegible]@justshare.org.za)

About

10 NOVEMBER 2025

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"AA15"

DJ van Wyk

From:	Tim Lloyd <tim.lloyd@powerlaw.africa>
Sent:	07 April 2026 11:07
To:	DJ van Wyk
Cc:	Claire Dehosse; Colin du Toit; Dylan Cron; Pooja Dela; Phenyo Sekati
Subject:	Re: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)
Attachments:	260407 - PLJS-202516 - Letter to Webber Wentzel.pdf

Dear DJ,

Please find the attached correspondence for your attention and response.

Kind regards,

TIM LLOYD | Associate Director - JHB (he/him)
Power & Associates Inc., South Africa

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tim.lloyd@powerlaw.africa
+2710 822 7860
powerlaw.africa

20 Baker Street, Rosebank, Johannesburg, South Africa 2196 | 5th Floor, Merchant Square, Riverside Drive, Nairobi, Kenya

Upcoming leave:

From: Tim Lloyd <tim.lloyd@powerlaw.africa>
Sent: Monday, March 23, 2026 2:55 PM
To: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: Re: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Dear DJ,

We refer to the correspondence below.

As the extended filing date of 20 March 2026 has passed, kindly provide us with a status update on the first respondent's answering affidavit.

Thank you.

Kind regards,

TIM LLOYD | Associate Director - JHB (he/him)
Power & Associates Inc., South Africa

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tim.lloyd@powerlaw.africa
+2710 822 7860
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20 Baker Street, Rosebank, Johannesburg, South Africa 2196 | 5th Floor, Merchant Square, Riverside Drive, Nairobi, Kenya

Upcoming leave:

From: Tim Lloyd <tim.lloyd@powerlaw.africa>
Sent: Tuesday, 10 March 2026 15:44
To: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: Re: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Dear DJ,

Thank you for the response.

1. We note that you are currently taking instructions and that you will revert thereafter.

2. With respect to the suggestion to revisit the filing dates for the replying affidavit, we are further instructed by our clients to note that following the institution of this matter, your client has had three months to prepare its answering affidavit. For this reason and upcoming constraints during the month of April, our clients are agreeable to the further indulgence to 20 March 2026, but no longer. The revised filing dates proposed in response to your client's extension request reflect what is feasible for the applicants.

Kind regards,

TIM LLOYD | Associate Director - JHB
Power & Associates Inc., South Africa

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Upcoming leave:

From: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Sent: Tuesday, March 10, 2026 11:03 AM
To: Tim Lloyd <tim.lloyd@powerlaw.africa>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: RE: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Dear Tim

We are taking instruction regarding the proposal and will revert as soon as possible.

We note, however, that the dates which we proposed were based on a realistic assessment of the envisaged completion date of the answering affidavit. If the dates thereafter are problematic for the applicants' legal team, then we suggest that those dates be revisited. To this end, please propose dates which would accommodate the applicants.

Best regards
WW

From: Tim Lloyd <tim.lloyd@powerlaw.africa>
Sent: 10 March 2026 10:12
To: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: Re: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Good day DJ,

Please could you kindly confirm receipt of the communication below.

Thank you.

Kind regards,

TC

TIM LLOYD | Associate Director - JHB
Power & Associates Inc., South Africa

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20 Baker Street, Rosebank, Johannesburg, South Africa 2196 | 5th Floor, Merchant Square, Riverside Drive, Nairobi, Kenya

Upcoming leave:

From: Tim Lloyd <tim.lloyd@powerlaw.africa>
Sent: Friday, March 6, 2026 2:49 PM
To: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: Re: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Dear DJ,

1. We refer to your email below and your client's request for extension to file its answering affidavit by Wednesday, 1 April 2026.

2. We have considered this extension request and the proposed adjustments to the agreed upon filing timetable, in consultation with the legal team and our clients. Kindly note that due to long-standing availability constraints during the month of April, including access to key client representatives, we are instructed to communicate that our clients are unable to agree to the full extension requested. However, our clients have expressed that they are amendable to the following revised timetable in the circumstances:

   2.1 First Respondent's answering affidavit to be filed by 20 March 2026;
   2.2 Applicants' replying affidavit to be filed by 24 April 2026;
   2.3 Applicants' heads of argument to be filed by 13 May 2026;
   2.4 First Respondent's heads of argument to be filed by 29 May 2026; and
   2.5 Joint practice note, chronology and combined list of authorities to be filed by 12 June 2026.

3. We await your response.

Kind regards,

TC

TIM LLOYD | Associate Director · JHB
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Upcoming leave:

From: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Sent: Thursday, March 5, 2026 1:46 PM
To: Tim Lloyd <tim.lloyd@powerlaw.africa>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: RE: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Dear Tim

We refer to the above matter and trailing emails.

As a result of unforeseen urgent proceedings in ongoing matters and the need for us to properly consult with our client regarding the papers, our client will unfortunately not be in a position to deliver its answering affidavit by Friday, 6 March 2026. Our client hereby requests an extension in this regard until 1 April 2026.

Given that no hearing date has been assigned, we suggest the following revised timetable:

- First Respondent's answering affidavit to be filed by 1 April 2026;
- Applicants' replying affidavit to be filed by 29 April 2026;
- Applicants' heads of argument to be filed by 21 May 2026;
- First Respondent's heads of argument to be filed by 11 June 2026;
- Joint practice note, chronology and combined list of authorities to be filed by 30 June 2026.

We look forward to hearing from you.

Kind regards

DJ van Wyk | Associate | Webber Wentzel

T:+27115305688 | M:+27732094051 | dj.vanwyk@webberwentzel.com **| www.webberwentzel.com**

From: DJ van Wyk
Sent: 27 January 2026 14:41
To: 'Tim Lloyd' <tim.lloyd@powerlaw.africa>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: RE: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Dear Tim

We refer to your letter dated 23 January 2026.

At present, we continue to work according to the agreed upon timetable. However, should there be any change, we shall let know you.

Kind regards

WW

From: Tim Lloyd <tim.lloyd@powerlaw.africa>
Sent: 23 January 2026 09:34
To: DJ van Wyk <DJ.vanwyk@webberwentzel.com>
Cc: Claire Dehosse <claire.dehosse@powerlaw.africa>; Colin du Toit <Colin.duToit@webberwentzel.com>; Dylan Cron <dylan.cron@webberwentzel.com>; Pooja Dela <pooja.dela@webberwentzel.com>; Phenyo Sekati <phenyo.sekati@powerlaw.africa>
Subject: Re: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

Dear DJ,

TL

1. Please see the attached correspondence for your attention regarding the progression of the above matter.

2. We await your response.

Thank you.

Kind regards,

TIM LLOYD | Senior Associate · JHB

Power & Associates Inc., South Africa

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Upcoming leave:

TL

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Johannesburg, South Africa, 2196

Date: 23 January 2026 Your ref: Our ref: PLJS-202516

TO: WEBBER WENTZEL
90 Rivonia Road
Sandton
Johannesburg
2196
By email: DJ.vanwyk@webberwentzel.com | Colin.duToit@webberwentzel.com | dylan.cron@webberwentzel.com | pooja.dela@webberwentzel.com

---

Dear DJ,

RE: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

1. We refer to the above matter and the Joint Status Report submitted to the Honourable Justice Dippenaar on 8 January 2026.

2. We note the correspondence from Judge Dippenaar's Secretary received on 15 January 2026, in which it was communicated that Judge Dippenaar is presently unavailable due to her acting appointment at the Supreme Court of Appeal, and that the parties will be notified upon her return.

3. Per our response by email on 19 January 2026, we await confirmation of the duration of Judge Dippenaar's acting term.

4. Pending any further communication with Judge Dippenaar's office for the time being, and in the interests of progressing this matter in the interim for the reasons set out in the certification application, please confirm whether your client is amenable to proceeding in accordance with the filing timetable proposed in paragraph 12 of the Joint Status Report.

TC

5. We await your response.

With kind regards,

POWER LAW AFRICA
Per: Timothy Lloyd | *Senior Associate*
E-mail: tim.lloyd@powerlaw.africa

(Transmitted electronically without signature. A signed version will be provided on request.)

ENDS.

TC

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a. 20 Baker Street, Rosebank, Johannesburg, South Africa, 2196

Date: 7 April 2026 Your ref: Our ref: PLJS-202516

TO: WEBBER WENTZEL
90 Rivonia Road
Sandton
Johannesburg
2196
By email: DJ.vanwyk@webberwentzel.com | Colin.duToit@webberwentzel.com | dylan.cron@webberwentzel.com | pooja.dela@webberwentzel.com

Dear DJ,

RE: JUST SHARE NPC AND OTHERS // THUNGELA RESOURCES LIMITED AND ANOTHER (CASE NO.: 2025-231389)

1. We refer to the above matter and our previous correspondence with respect to the delayed filing of the First Respondent's answering affidavit.

2. We note that per the previously agreed upon filing timetable, your client's answering affidavit was due to be filed on 6 March 2026. In response to your client's request on 5 March 2026 for a filing extension to 1 April 2026, we communicated that our clients were in a position to only grant an indulgence to 20 March 2026, based on long-standing availability constraints during the month of April, including access to key client representatives, as well as the three-months available to the First Respondent to prepare and file its answering papers following the institution of this matter.

3. Notwithstanding this communication, the answering affidavit remains outstanding. A further month has now passed since the initial filing deadline, amounting to a four-month period for the First Respondent's answering affidavit to be filed.

TC

4. In the absence of any firm communication in this regard, our clients are unable to anticipate receipt of the answering affidavit and plan accordingly. We note that our clients' accessibility constraints during the month of April, and now extending to May, continue to pose a difficulty in relation to preparing and commissioning the replying affidavit in order for this matter to progress to a hearing date. Understandably, this uncertainty is a cause of frustration for our clients.

5. In the circumstances, we are instructed to convey the following:

   5.1. We ask that you kindly notify us of the revised filing date for an answering affidavit and undertake to meet this deadline.

   5.2. In the interim, please note that we will address email correspondence to Judge Dippenaar's secretary to request a case management meeting to determine the filing timetable for further submissions, and any other related matters.

6. We await your imminent response.

With kind regards,

POWER LAW AFRICA
Per: Timothy Lloyd | *Associate Director*
E-mail: tim.lloyd@powerlaw.africa

(Transmitted electronically without signature. A signed version will be provided on request.)

ENDS.

TC

"AA16"

thungela

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

To: **Ms P Maodi**

Companies and Intellectual Property Commission

14 July 2024

By e-mail: pmavuma@cipc.co.za

Private and confidential initial reply

Dear Ms Maodi

Complaint G89/2024: Thungela Resources Limited / Just Share NPC

1. We refer to your letter of 3 July 2024 to the board of directors of Thungela Resources Limited (**Thungela**) in respect of a complaint against Thungela which was lodged with the Companies and Intellectual Property Commission (**CIPC**) by Just Share NPC (**Just Share**) on 7 June 2024 (**complaint**).

2. For context:

2.1 the aim of this brief initial response is to clarify to CIPC what the heart of the dispute is, and to provide CIPC an indication of why Just Share's position was rejected, and on why it is fundamentally wrong in law and in policy;

2.2 to keep the response brief, we have not canvassed all of the relevant issues, or comprehensively addressed the law.[1] We have also not called out, and addressed, every deficiency in what is stated in the complaint. Given the nature of the complaint, and at this stage of the process, this doesn't appear to be required or necessary;

2.3 we hope that it will be sufficiently clear from this initial response that Just Share's interpretation of section 65(3) is untenable or, at best for Just Share, and in fairness to Thungela, is not one that should be addressed under cover of a complaint of non-compliance. If Just Share genuinely believes that its interpretation has legal merit, it should approach the court for a declaratory order. It has had more than 6 years to do so.

3. Turning now to our initial response.

<u>Overview of the issues in dispute</u>

4. By way of background to the parties and the complaint:

4.1 Just Share is a South African non-profit shareholder activism organisation which, using shareholder rights and collaborative activism, seeks to drive the urgent adoption of strategies and targets which deliver climate outcomes aligned with the goals of the Paris Agreement, and

[1] The core principles are reflected in the responses provided by Thungela to Just Share in the correspondence it annexes to the complaint.

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to advocate for change in the private sector to reduce inequality which uses research, engagement, advocacy and activism to drive urgent action to combat climate change;[2]

4.2 Thungela is a South African holding company for the Thungela group, the shares of which are listed on the Johannesburg Stock Exchange (**JSE**) and the London Stock Exchange (**LSE**). Thungela was formed in 2021 when it, and Anglo American's core South African coal mining companies, were demerged from the Anglo American group and listed on the JSE;

4.3 since its establishment in 2017, Just Share has attended AGM's of some of the JSE's leading companies,[3] where it has raised various climate- and equality-related questions with the boards of these companies. Engagement in this form is valuable and healthy, and is supported by the provisions of the Companies Act, 2008 (**Companies Act**);[4]

4.4 however, of late, and since 2023 in respect of Thungela, Just Share has demanded that listed companies table resolutions reflecting its viewpoints and its (Just Share's) proposed decisions or actions on these matters; and

4.5 while certain companies, initially,[5] accommodated this, many, including Thungela, rightly[6] did not.[7]

Genesis of the dispute and the complaint

5. The genesis of this dispute is a contrived interpretation of section 65(3) of the Companies Act advanced by Just Share.

6. Its interpretation is not supported in our law. The terms of the Companies Act themselves, an historical review of the equivalent provisions, and reference to comparative legislation in other countries, including those jurisdictions Just Share points to in the complaint, all refute Just Share's interpretation.

7. Just Share's interpretation is also not new, nor is it confined to Thungela. Just Share's claims date from at least 2018, and have been made by it many times between then and now prior to it taking the same stance with Thungela. Just Share's interpretation has ultimately been rejected by almost every company it has approached, and for the same reasons in law as Thungela did when Just Share first made similar demands of it in 2023.[8]

8. Before we look at the interpretation itself, we should in clear terms dispel the impression Just Share seeks to create that Thungela's position, and the issue in dispute is:

8.1 a rejection by Thungela of Just Share's role and contribution in advocating for climate change action, and of the importance of the issues it champions;

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2 https://justshare.org.za/, "About' tab.

3 Including Standard Bank, Sasol, Exxaro, the JSE itself, Nedbank, Pick 'n Pay, Investec, FNB, Shoprite and Woolworths.

4 As enabled by section 61(8)(d) of the Companies Act.

5 For example, Standard Bank filed the demanded resolution in April 2019, but refused to do so in June 2020, and again in April 2021. See https://justshare.org.za/wp-content/uploads/2023/04/Timeline_climate-risk-shareholder-resolutions-fossil-fuel-policies-Standard-Bank-Group-Limited.pdf.

6 The Companies Act does not give shareholders the power to compel a company's shareholders to vote on its viewpoint, whether expressed as a non-binding resolution or not.

7 As confirmed in paragraph 46 of the complaint, of the companies listed there, Standard Bank and FNB appear to have tabled the resolution in the form set by Just Share, while Nedbank, ABSA, Investec and Sasol did not. Just Share has not disclosed the other companies it has approached with similar demands, and which likewise were unwilling to abdicate matters of policy or business judgement to a vote, nor to try to set such policies via resolutions, whether or not expressed to be "non-binding", and certainly not in a form set by a shareholder that has no knowledge of the business, and who has no material financial investment in it. (As noted in paragraph 21.5, Just Share (and its co-complainants), hold a total of 4 shares out of c. 140 million shares.)

8 See page 2 of https://justshare.org.za/wp-content/uploads/2022/11/210326-Summary-of-legal-opinion-on-shareholders-right-to-file-climate-change-related-shareholder-resolutions.pdf

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8.2 a rejection by Thungela of issue activism;

8.3 a refusal by Thungela to table resolutions validly required by it under section 65(3);[9]

8.4 an effort by Thungela to prevent discussions between it and shareholders,[10] or between shareholders themselves, on these and other issues pertinent to the business; or

8.5 about Thungela's objections to the specific content of the resolutions and the accompanying statements presented by Just Share, or of any agreement or disagreement between it and Just Share regarding such content and statements, or about whether the resolutions and accompanying statements do, or do not, comply with section 65(4).[11]

9. None of these points reflects Thungela's position or the issue in dispute.

10. The issue in dispute is, instead, simply and solely, a disagreement on the legal position contended for by Just Share. Just Share admits as much in the complaint.[12]

11. We reject the interpretation that Just Share contends for, not because of the contents of the demands it has presently made, but because, amongst others:

11.1 it is inimical to the proper functioning of a company, especially a listed company, *inter alia* in that it (i) conflicts with the company's decision-making responsibilities and duties; (ii) directly undermines the primary business of shareholder meetings; and (iii) directly enables and gives prominence to self-interested agendas and intentions;

11.2 it is financially onerous and highly disruptive;

11.3 it is commercially and legally irresponsible;

11.4 it frustrates, rather than facilitates, engagement on issues of genuine shareholder concern; and

11.5 it is wrong in law.

12. We expand on these aspects further below in the reply.

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9 Thungela will most certainly table any resolution requested of it under section 65(3) where the resolution falls within the determinative powers of shareholders, e.g. the appointment or removal of directors, director remuneration, amendments to the constitutional documents, etc.

10 The exact opposite is true: Thungela engages with its investors actively and on an ongoing basis throughout the year. It does so through regular investor communications through, amongst others, its website, announcements on the JSE Stock Exchange News Service and LSE Regulatory News Service, and the annual reports) as well as in-person engagements through, amongst others, its annual and interim results presentations, investor roadshows, investor and analyst meetings, the AGM and investor conferences, as well as by having an open door for direct engagement with shareholders on key matters they wish to engage on. We thus invited Just Share to meet with us for a meaningful, even robust, discussion on its issue. (For 2023, see annexures JS3 to JS7 and paragraphs 57 to 63 of the complaint; and for 2024, see annexures JS10a and 12a, and paragraphs 68 and 73 of the complaint.).

11 While each of these aspects is problematical in its own right, addressing them is presently not required. These matters only become relevant where the underlying resolution at issue is legally competent, which these are not.

12 See paragraph 68 thereof in which Just Share acknowledged this as follows: "*However, Thungela's refusal to table the resolution was not discussed. Given the parties' firmly-held, contrary legal interpretations of the relevant provisions of the Companies Act, this would not have been resolved at a meeting. Instead, the discussion focused on aspects such as Thungela's policy engagement, and its approach to decarbonisation*" (our underlining).

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Just Share's interpretation of section 65(3)

13. The interpretation Just Share adopts[13] is that holding a share in a company (public or private) gives it (and each and every other shareholder) the unfettered legal right to:

13.1 formulate company policy on any issue and to propose any decision or action of the company, of its choosing;

13.2 compel the company to distribute to its shareholders the policies and decisions it proposes, together with its viewpoint and statements on these matters; and

13.3 require the company's shareholders to vote on those proposed policies and decisions in the form put before them.

14. This right is not restricted to the AGM, and can be exercised at any time, on demand, with the shareholder having the right to require that the matter be distributed (by the company) and voted on as a written resolution, or at the next shareholders meeting.

15. Seen in this clear light, it should be plain that Just Share's contention is untenable, both as a matter of law but also just plain, common business sense.[14,15]

Justification advanced by Just Share

16. Just Share advocates for a position on what it wishes the law to be, not on what the law actually is. It thus contrives an interpretation of section 65(3), divorced from its proper context, prior history, practice and comparative precedent, and then seeks to justify it through a selective jumble of disparate points, ranging from alleged violations of constitutional rights to the provisions of the regulations under the Pension Funds Act, 1962 (**Pension Funds Act Regulations**). None of these justifications holds up to proper scrutiny.

17. In doing so, what it states in the complaint does not present a proper analysis of the law. Amongst others, it:

17.1 ignores the preceding provisions of the Companies Act, 1973. A review of those provisions contradicts its interpretation;

17.2 refers to comparative foreign law, but presents no analysis of those laws, nor does it provide any detail of what those laws actually say on the point. An analysis of these laws contradicts its interpretation;

17.3 claims that constitutional rights relating to the environment, freedom of association and freedom of speech are infringed, but provides no indication or legal analysis of how and in what way they are infringed, or of how <u>its rights</u> in such matters are allegedly infringed. None of these constitutional rights supports its interpretation in this context, nor are any such constitutional rights breached here;

17.4 selectively addresses provisions of the Companies Act (including sections 5(1) and (2) and 7) which, when properly assessed, do not support the interpretation it puts forward. Just Share's reference to the Pension Funds Act Regulations similarly contradicts its view, as it is plain from

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13 There is a risk here of being misdirected by the emotionally evocative nature of the topic raised (climate change), and by the 'limited' specific requests Just Share makes around this. While its complaint focusses only on climate change matters, there is no basis in the position it puts forward to differentiate this issue from any other issue.

14 It is telling that Just Share cannot identify a single legal system in the world where shareholders are given such unqualified rights, and that none of the laws of the countries it points to for comparative reference (see para 32 of the complaint) actually support its position. On the contrary, where shareholders in those countries are given rights to table matters or non-binding resolutions, these rights are highly qualified. Just Share, unfortunately, failed to address that fact in its complaint.

15 While Just Share equivocates on whether these resolutions can be binding in some instances, or are non-binding, it matters not.

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even a basic reading of the provision that the law places the duty on the trustees to assess these matters (i.e. the equivalent of the board of directors), not the beneficiaries (i.e. the equivalent of shareholders).

18. The interpretation advocated by Just Share is not reflective of established company law practice, a fact Just Share itself admits, albeit tacitly.[16]

19. The interpretation advocated by Just Share is plainly detrimental to the proper functioning of a company, especially a listed company, and disregards the significant disruption and mischief a provision of this nature would enable.[17]

19.1 Just Share presents the issue through the narrow lens of a resolution on climate change, with its emotive social connotations. But this ignores the fact that the interpretation it presents cannot be, and is not, limited to such matters.

19.2 Just Share's interpretation permits any shareholder to raise any (non-binding) matter,[18] and requires that the statements such shareholder makes on that matter be published and disseminated to all shareholders.

19.3 Such demands are also not confined to the AGM. Section 65(3) (if applied in the way Just Share proposes) would give shareholders a right to have the matter placed at the AGM, or the next shareholders meeting, or to have it circulated to shareholders to be voted on by way of a written resolution; in each case, as the shareholder directs.

19.4 There is no limit on who can require the company to circulate these non-binding resolutions, or when and how often they can make such demands:

19.4.1 As is the case in point here,[19] any two shareholders holding but a single share each can make such demand.

19.4.2 They can also do so as often as, and in any form, they like. Just because Just Share may, for now, have tempered its activism, doesn't mean it will do so in future, or that others will be similarly minded. Activist trends suggest the exact opposite occurs, with an increasing emphasis on sustained, often forceful, protests, no matter how disruptive they are to those on the receiving end.

19.4.3 Anyone looking to promote a commercial interest, social cause, interventionist agenda, personal commercial interest, or who simply wishes to ventilate a grudge or personal issue, or to otherwise embarrass and obstruct the company, is free to do so.[20]

19.5 There is also no meaningful limit to what subject matter or cause can be canvassed or championed though these "non-binding" resolutions:

19.5.1 positions on (for or against) Palestine/Israel; positions on (for or against) Russia's invasion of the Ukraine; positions on (for or against) other social topics, including abortion, equality

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[16] See, amongst others, paragraph 98 of the complaint.

[17] These being among the reasons why, in other jurisdictions where a right of this nature is provided for, it is also tempered in various ways that limit its abuse.

[18] Just Share, in fact, goes further and states that certain of these resolutions may be put on a binding basis, notwithstanding that these are not within shareholder powers under the Companies Act. For present purposes, other than to note that such a position is also clearly wrong, nothing turns on this.

[19] Just Share, Aeon Investment Management and Fossil Free South Africa hold between them a total of 4 shares out of some 140 492 585 shares.

[20] Every single such matter can, with no real effort, be turned into a non-binding recommendation of one form or another. For instance, a shareholder wishing to embarrass person X, need only table a resolution that recommends that the board investigate alleged misconduct of X, and so forth. Similarly, a person wishing to propagate a view on the Palestinian-Israeli conflict, might table a non-binding recommendation by shareholders that the company publicly decare support for one side and commit to ending any business with the other.

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of pay or gender identity; positions on (for or against) a particular political party; positions on (for or against) proposed legislation; policies in respect of (whether for or against) affirmative action; positions on (for or against) sport sponsorships by the company; positions on (for or against) executive pay; recommendations on the disposal or closure of one of the company's business divisions; recommendations on a takeover; recommendations on strategy; and so on, are all permissible, according to Just Share;

19.5.2 for all practical purposes, the list is limitless, and covers every aspect of a company's actual or prospective business, and any social or political issue that may impact it, and there is no logical basis whatsoever to differentiate the social cause Just Share happens to champion over those of others;

19.5.3 nor is there any special proximity Just Share can point to here as a limiting factor of general application. As evidenced by Just Share's efforts to compel the banks to defund coal, and oil and gas, and their upstream and downstream activities through similar resolutions as those proposed here, there is no genuine limit as to how far a social issue can be made to stretch.[21]

19.6 Saying that companies can address misuse of the provision through section 65(5) is disingenuous, both as a matter of practical reality, but also as a matter of law.

19.6.1 Practically. As Just Share knows, to obtain relief under section 65(5), the company must first go to court. This will often be on an urgent basis, and comes with significant disruption to the company's business and cost.

19.6.2 This is all the more so for an AGM, where a significant amount of work is undertaken in this period to prepare and finalise the annual financial statements and the integrated report, including the accompanying directors' confirmation statements required by the accounting standards as well as paragraph 4.84(k) of the JSE Listings Requirements, the remuneration policy and implementation report, board appointments, the appointment of the auditor (if rotating), and the audit committee and social and ethics committee reports.

19.6.3 Just Share's demands reveal exactly the sort of disruptive opportunism that it is looking to enable, and just how ineffective section 65(5) is in such circumstances:

(a) despite the date for Thungela's AGM being known to Just Share for more than a year prior the date thereof,[22] on both occasions in 2023 and 2024 Just Share chose to demand the tabling of its proposed resolutions and statements (and that these be sent to shareholders) mere days before the notice of the meeting was due to be posted: 5 days prior in respect of the 2023 demand, and 4 days prior in respect of the 2024 demand;[23]

(b) neither Thungela, nor any other company in this situation, could ever sensibly address the subject matter tabled, or practically approach the court for redress, within these timelines. Nor could it do so without rescheduling the entire AGM, and

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[21] Just Share similarly attempts to put pressure on pension fund trustees to alter their investment decisions: see https://justshare.org.za/wp-content/uploads/2022/11/2019-Pension-funds-and-climate-risk_Fasken-legal-opinion.pdf.

[22] Listed companies AGM dates invariably follow a specific annual cadence, and occur at roughly the same time each year. Typically, an approximate date for the AGM is also provided a year in advance through the shareholder diary. While the exact date will vary (e.g. to accommodate venue availability, unforeseen delays in the accounts, and the like), it is highly unusual that it differs to any material extent (and almost certainly not to an earlier date). Various reasons drive this predictable cadence, including the strict publication timelines listed companies are required to adhere to when publishing their annual financial statements.

[23] For Thungela with a JSE and LSE listing it would also have been factually impossible to adhere to the demands. To comply with the LSE listings rules and JSE LRs, Thungela must distribute hard copies of the Notice of the AGM to all shareholders who have not elected electronic communication. The LSE additionally requires that stand-alone proxy forms be printed for each shareholder, which are then manually placed into envelopes and posted. To comply with these provisions, the Notice of AGM must be in final form c. 14 days prior to the distribution date. There is no ability to change the notice to include a new resolution after this date.

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the related investor roadshows and other shareholder engagement processes that follow on from it (which have also been scheduled for more than a year in advance);

(c) it is no coincidence that Just Share chose dates so close to the issue of the notice convening the AGM. These dates are selected so as to minimise the time a company has available to it to respond, while still being able to allege fault on the part of the company for not including the resolution and its accompanying material in the notice.

19.6.4 Legally. Even if the company targeted by the demand did have sufficient time and resources to approach the courts under section 65(5), it would need to establish that the resolution isn't clear or specific enough, or that its explanatory material is insufficient. The non-binding nature of the resolutions, and their open-ended subject matter, renders it far from evident how and when these aspects would be said to be insufficient: clear fodder for protracted litigation and its resulting ongoing disruption to the company. Sustained disruption is a well-recognised activist 'weapon', and is specifically promoted by activists as such.[24]

20. The interpretation advanced by Just Share is prejudicial to every other shareholder who would prefer that the board conduct and focus on the company's business, where it can and will address the issues relevant to the company (including social issues) holistically, and in the orderly and proper course of its decision making processes, and not via *ad hoc*, public, on-demand responses dictated by a particular shareholder's personally preferred approach and time.

21. The interpretation advocated by Just Share is commercially and legally irresponsible.

21.1 Legally. There is a significant difference between a resolution proposed by the board and those of the type Just Share advocates for:

21.1.1 When the board proposes a resolution to shareholders, it is under a legal duty to act in the best interest of the company as a whole, and will thus propose a resolution only where it is satisfied that passing the resolution is in the company's best interests. When proposing a resolution, the board does so with a detailed understanding of the impact it will have on the business, informed though its specialist, skilled executive team and, in many cases, expert external insights and advice. It will weigh many, often competing, factors as part of its decision framework, including implications for employees, customers, suppliers, investors and others, and its business strategy and impact.

21.1.2 A shareholder owes neither the company nor its fellow shareholders any such duty, nor does it bear any responsibility should its proposal be ill-advised, prejudicial or cause them financial harm or loss. Nor does the shareholder proponent necessarily care about such loss or prejudice. In most instances, its singular objective is to advocate for a specific outcome that is aligned to its own cause or special interest, well knowing that this comes with a cost to the company and its shareholders.[25]

21.2 Putting a resolution in these circumstances is irresponsible, and it is no answer to say that the resolution is non-binding; that it doesn't have any legal force; and that the board remains both free and obligated to discharge its fiduciary duties in respect thereof. All this does is concurrently allow shareholders to direct the board to do something, while simultaneously

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[24] See https://www.nature.com/articles/s41599-023-02507-y, "*What the climate movement's debate about disruption gets wrong*", the summary extract of which states "*We argue that disruption is necessary, but that not all "disruptive" strategies are equally effective. In particular, we advocate a strategy that can impose sustained and escalating costs on the elite sectors that can force politicians to confront the climate emergency. Priority targets include financial institutions that fund and underwrite fossil fuels as well as corporations, universities, pension funds, and other institutions that consume and invest in fossil fuels*" (our underlining), and its Thesis 2 that "*Disruption must be sustained*".

[25] If it didn't have a material cost, and was beneficial, there would be little need to advocate so vigorously for it. The company would simply give effect to the proposal.

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abdicating responsibility for the consequences if the board actually does what they directed it to do.

21.3 Nor does it help the matter if the resolution achieves a significantly favourable vote.[26] On the contrary, this only compounds the issue.

21.3.1 Firstly, this affirmative vote is only by shareholders who attended and voted on the resolution, and cannot be held against any other shareholders.

21.3.2 Secondly, it is also a vote of only the shareholders of the company at that specific time. Unlike binding resolutions which apply prospectively, these non-binding resolutions have no standing in law and cannot reflect the views of future shareholders, nor can they be held to them.[27]

21.3.3 Thirdly, these resolutions do not prevent even those who voted in favour thereof from suing the board for breach of its fiduciary duty when it implements the proposal. This is because that vote is neither a waiver of their rights, nor a negation of the fiduciary obligation that remains with the board. On the contrary, the Just Share response of 'it isn't legally binding' expressly <u>requires</u> that the board must continue to discharge its fiduciary duties if it implements the resolution (and thus carry liability therefor).

21.4 Quite simply, the board is thus legally damned if it does, and damned if it doesn't.

21.5 <u>Commercially</u>, the shareholder proposing the resolution doesn't even need to have any meaningful sum of invested capital at risk, and typically doesn't where the approach is activism driven. The facts here are a case in point: between all three of the proponents they hold a total of 4 out of some 140 492 585 shares, being less than 0.00000000028%. In share value terms, the proponents' investment is worth R450 against the investment of its co-shareholders of R15,78 billion.

21.6 As is evidenced here, the commercial asymmetry between action demanded by positional advocacy and one properly informed by fiduciary responsibility is not a theoretical one:

21.6.1 As an NGO, Just Share merits recognition. Its people are passionate and committed, and pursue their cause determinedly, and with high levels of professionalism. Action on climate change is unquestionably a highly relevant social issue, both abroad and here in South Africa, and merits being championed.

21.6.2 However, the flipside is that, as an NGO, Just Share can - and by its nature must - focus single-mindedly on its cause. It can therefore, for example,[28] put pressure on banks to defund coal, and then oil and gas, and all of their related upstream and downstream activities, notwithstanding the dire social and commercial consequences such actions would immediately have for any number of people, including the bank, its shareholders, its customers, employees (both its and those of its affected customers), and many others.

21.6.3 Thungela, as a responsible business, however, cannot take a single-minded approach. For any business, and particularly a coal-mining business, climate change action is not one-dimensional; it is multi-faceted and nuanced, with implications for Africa as a whole, South Africa specifically and, of course, the company itself and its business, including its many stakeholders.

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26 A point Just Share alludes to in paragraph 47 of the complaint.

27 Unlike a binding resolution that has enduring effect, a non-binding resolution is at best of an expression of views at a very specific point in time.

28 See https://justshare.org.za/resource-categories/shareholder-resolutions/ and the documents filed there on these matters, amongst others.

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21.6.4 Coal mining is vital to our country's energy production, which is itself essential to growth and employment. Such issues also impact directly on jobs (we have around 7500 employees),[29] inward investment, responsible environmental rehabilitation, and others. For the Thungela board, climate change is but one of many inter-dependent issues that it must balance.

21.7 As stated earlier, none of this can reductively be confined to a resolution, and especially not one imposed from the outside.

21.8 Over and above the adverse financial/commercial impact that implementing resolution may have on the company, the direct cost to a company of having to deal with each such demand is significant in its own right, and will arise on each and every such demand. These include:

21.8.1 the time cost to the company of its executive management in addressing the matter, including in formulating any guidance to shareholders on it;

21.8.2 the cost of the board meeting/s called to consider the matter, and to approve the contents of the notice;

21.8.3 sponsor and other professional costs to review and approve the notice;[30] and

21.8.4 the printing and posting costs of circulating the notice.

21.9 The costs envisaged in paragraph 21.8.1 cannot be mitigated. The costs in paragraphs 21.8.2, 21.8.3 and 21.8.4 will be mitigated where the matter is raised well in advance of the AGM or other shareholder meeting (and can thus be included as part of the normal drafting and approval cycles). However, the company has no control over this as the demand can be made at any time of the shareholder's choosing. Further, none of these costs will be mitigated where the demand is for the resolution to be circulated in writing and passed under section 60 of the Companies Act.[31]

22. Just Share contends that its approach provides shareholders with "*an important forum for engaging on these critical issues*", which shareholders are otherwise "*deprived of*".[32]

22.1 This is plainly wrong in law, as section 61(8)(d) of the Companies Act provides a clear right to the shareholders <u>of a public company</u> to raise any pertinent matter for discussion <u>at an AGM</u>, with or without notice.[33]

22.2 Further, Just Share's interpretation doesn't create or promote a forum for engagement. By its very nature and design, it does the exact opposite:

22.2.1 On Just Share's approach, any shareholder can at any time demand that a resolution be put before shareholders, and can require that it be voted on in writing, thus absolutely precluding any form of discussion or debate.

22.2.2 Even where the shareholder elects for the matter to be tabled at a meeting, it is on its terms and in the form it proposes. No other shareholder is permitted to table any written

29 Roughly 4500 permanent employees, and 3000 contracting staff.

30 These costs cannot be avoided, as such actions are required by the applicable listings' rules.

31 These costs are not trivial. The printing and posting costs alone will be around R500 000. Ad hoc board fees will vary from company to company, but are likely to be R150 000, at a minimum, for a 6+ member board.

32 Paragraph 88 of the complaint.

33 Just Share knows this, as evident from the opinion piece on its website: https://justshare.org.za/op-eds/agms-should-also-be-free-and-fair/: "*The Companies Act specifically provides that the business to be transacted at an AGM must include "any matters raised by shareholders, with or without advance notice to the company"*.

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views or perspectives on it, and none gets to consider the matter beyond the notice period for the meeting (being the time when the resolution is first circulated).

22.2.3 Even if another shareholder wished to present written views, they could not do so timeously (or frankly at all).

22.2.4 The company's board is in an even more invidious position. As the timing of when the demand is made, and the subject matter of the demand, are entirely set by the shareholder making the demand, the board has no clear opportunity to advise its shareholders fully or properly on the proposal.

22.2.5 And even where the board does have the necessary time to do so, requiring it to address such matters through statements contained in a notice of meeting would be neither reasonable nor appropriate:

(a) resolutions are not a sensible form through which to conduct a discussion or debate, let alone one on matters of policy, or on issues of any other nuance or significance. The subject matter of the dispute here is a perfect example of that: the nuances of climate change action, and its interplay with coal mining, can hardly be reductively addressed through a 170-word resolution (as drafted by Just Share), or its explanatory statement of little over a page 'long';

(b) a resolution, even if non-binding, is materially different from a matter for discussion. It is a specific statement, committed to by shareholders, recommending or directing a specific policy change or action by the company, and in specific terms. The choice a resolution presents to shareholders is entirely binary: vote in favour or against (or abstain). There is no room for debate or discussion beyond this, and any outcome of any discussion or debate that arises on the resolution can have no other outcome;[34]

(c) depending on the subject matter, a proper response may require the company to disclose commercially sensitive information, or be otherwise prejudicial to it, in content or timing. And to say that the company may, in such circumstances, withhold that information is no answer: how would shareholders then properly consider the resolution, or be put in a position to do so?

(d) requiring a company to address each such matter, on demand, is highly disruptive and burdensome. It is also legally onerous. As Just Share will be aware, a public company is required, under pain of a material fine or criminal sanction, to ensure that the public statements it makes are true, accurate and not misleading.

22.2.6 For a shareholder to dictate to the board (who is entrusted with these duties and responsibilities) the matters it must addresses publicly, when it must do, and in what terms, fundamentally conflicts with its duties and the policy principles relating to its roles and responsibilities in our law, and directly undermines these.

22.2.7 Further, to allow such shareholders to compel all other shareholders to address the matter by way of a binary yes/no vote (or abstain, and risk its passing), again at a time and on terms of that shareholder's choosing, is similarly unreasonable and inappropriate.

22.2.8 All of this is thus the antithesis of discussion and debate. It is, instead, issue-advocacy by ambush. It is coercive, and reductive, and aims to proselytize a view, and not to debate, alter or moderate it.

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[34] It is established law that a resolution, once tabled, cannot be withdrawn (unless this is approved by more than 50% of the shareholders at the meeting), and it cannot be amended it in any substantive way (irrespective of how many shareholders at the meeting agree to that change).

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22.2.9 This is true in general, as well as here. It is evident from the facts that Just Share's primary motive is not to foster discussion or debate amongst shareholders:

(a) had it wished to achieve this, Just Share could have held discussions with shareholders in any number of readily available ways,[35] including (i) by inviting shareholders to discussions, be they in person at a particular venue and time, or virtually though MS Teams or other readily available electronic platform; (ii) by engaging directly with them in person; (iii) by corresponding in writing (the share register is open to it, and all of the large investors are well known and easily contactable); or (iv) through documents published on its website;

(b) even simpler, Just Share could have had such discussions at the AGM. It was present at both the 2023 and the 2024 AGMs, and made no such effort to engage Thungela shareholders on the subject matter of its resolution, or any other matter.

22.2.10 What Just Share aims for is thus not for a genuine debate or engagement to occur, but rather to use the public platform of a resolution, and its accompanying materials (as drafted by it), as a device to publish and drive <u>its</u> specific climate change agenda, and to pressure companies to fall in line with <u>its</u> agenda.

22.2.11 In fairness to Just Share, it acknowledges its intentions openly.[36]

<u>Concluding remarks</u>

23. As noted in the introduction, we trust that it is sufficiently evident from this initial response that Just Share's interpretation of section 65(3) is untenable or, at best for Just Share, and in fairness to Thungela, is not one that should be addressed under cover of a complaint of non-compliance.

24. We therefore request that CIPC dismiss the complaint. Should Just Share wish to seek a declaratory order from the High Court, joining us and others who have an interest in the matter, we would have no objection.

25. Should CIPC wish to have sight of a legal opinion addressing in detail, amongst others, the matters referred to in paragraph 17, we would be happy to make this available to it.[37]

26. Should the complaint progress for any reason, we will then, as necessary, address it fully, and reserve the right to do so.

Yours sincerely

July Ndlovu

July Ndlovu
Chief Executive Officer
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35 And was encouraged by Thungela to do so in its response of 5 May 2023: "*We would also like to emphasise that this is not intended to discourage you from holding or expressing your viewpoint, <u>or from engaging with others on it</u>. It is simply that a shareholder resolution is not the appropriate approach to doing so*" (our underlining).

36 See, for instance, paragraphs 4 and 18 of the complaint.

37 Maintaining privilege in the document.

TC

thungela

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

To: **Ms P Maodi**

Companies and Intellectual Property Commission

20 September 2024

By e-mail: pmavuma@cipc.co.za

Confidential and privileged

Dear Ms Maodi

Complaint G89/2024: Thungela Resources Limited / Just Share NPC

1. We refer to your letter dated 12 September 2024 ("**your letter**") and specifically paragraph 4 thereof, which states that "*there is no indication in [our letter] to the inspector dated 14 July 2024 to suggest that the proposed resolution by the complainant did not satisfy the requirements of section 65(4) of the Act*".

2. With respect, this misconstrues the position and the issue in dispute.

3. As noted in your letter, "*the resolution was proposed by the complainant together with the co-filers in terms of Section 65(3) of the Act to be tabled at the company's next AGM*". While proposed in purported reliance on section 65(3) of the Companies Act, 2008 ("**the Act**"), the "resolution" did not meet the legal requirements under that section. The mere filing of a demand to table a matter, citing this provision, does not, as your office will appreciate, mean that the matter demanded actually meets the requirements of that provision. This is a separate and distinct enquiry.

4. Section 65(4) and its associated provision, section 65(5), only apply to validly proposed resolutions: i.e. resolutions on matters within the powers of the general meeting. As such, any enquiry into compliance with section 65(4) is moot where what is tabled as a "resolution" fails to comply with section 65(3).

5. The 14 July 2024 letter sets out the (respectfully) correct interpretation of s65(3) and demonstrates why the "resolution" proposed by the complainant was invalid, and thus did not meet the statutory prerequisites under that section. We re-iterate what is said there. In brief, and without in any way derogating from the detailed submissions made in the 14 July 2024 letter:

5.1 it is a trite principle of company law that the powers of the company vest exclusively in the board of directors (**board**) and in the general meeting, with each body exercising exclusive decision-making power in respect of the matters which fall with its remit.[1] As such:

5.1.1 the general meeting is a body of the company through which shareholders (by voting) exercise decision-making powers on the matters that this body is entitled to decide. Consistent with the statutory division of powers, the general meeting is not a body which can

[1] Shareholder may, in certain circumstances, be vested with decision-making on matters otherwise falling within the powers of the board, but only where the law entrusts that decision to them (e.g. where the board is unable to act).

TC

decide or vote on every matter – rather, the matters which this body can consider and vote on are limited and specifically circumscribed in law;

5.1.2 a meeting of the board of directors is the body of the company through which the directors (by voting) exercise decision-making powers on matters that this company body is entitled to decide. The board's decision-making powers are extensive and encompass all matters other than those reserved for decision by shareholders in general meeting. In particular, the board has the sole power to determine matters of policy as well as – statutory requirements aside – to determine matters relating to access to, and use of, the company's confidential information;

5.2 a resolution is a decision taken by a company body on a matter falling within its decision-making powers. It is a jural act performed in terms of the Act and the relevant entity's constitutional documents;

5.3 a decision in general meeting (or by the board), once taken, binds the general body of shareholders (or board) to that decision, both at the time that the decision is taken and thereafter, irrespective of any subsequent changes in shareholders or their shareholdings (or change in the composition of the board);

5.4 voting is the legal means by which these decisions are taken. A right to vote, and the exercise of that right, by a shareholder or director thus arises only in respect of, and is with reference solely to, a decision to be taken by the relevant company body, i.e. the adoption or rejection by it of a resolution;

5.5 taking a vote has no other legal function within company law, and it cannot validly be invoked or employed for any other purpose or to any other effect. In particular, the decision-making power of a company body, and its determination of such decisions through a vote, cannot be invoked by a shareholder to poll opinions, or to canvas for, or provoke, views on any matter; nor can it be used as a platform through which such shareholder can, by resolution, disseminate, express or champion its personal issues, interests, opinions, positions, and the like, on matters which are outside of the decision-making powers vested in shareholders. This is so, irrespective of how well supported these views may, or may not, be;[2]

5.6 the matters falling within the decision-making powers of shareholders in general meeting comprise <u>exclusively</u> (i) those matters entrusted to it for determination under the Act and (ii) any additional matters (if any) entrusted to it for determination under the company's memorandum of incorporation (and, arguably, a shareholders' agreement, if any);

5.7 it is indisputable in law that shareholders in general meeting have no authority or power to act as a body of the company beyond these matters;

5.8 no provision of the Act or of Thungela's memorandum of incorporation gives its shareholders a legal entitlement to:[3]

5.8.1 use the decision-making powers of the general meeting to, by resolution: (i) poll opinions; (ii) canvas for, or provoke, views on any issue; (iii) issue requests; (iv) disseminate, express or

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2 As an aside, we note that - were resolutions of this nature to be allowed - shareholders who choose to keep their views on the matter private are nonetheless forced to cede the outcome to those who do not and vote on the matter, as the "resolution" - and thus the formal position of the body of shareholders on that matter - will be determined by those votes alone. In addition to being bad in law, this would infringe on shareholders' rights to privacy and on their rights of association and free speech, which include the right not to speak, or to be spoken for, and the right to disassociate from the views, policies, positions, biases, prejudices and the like, of others.

3 This list is, of course, not exhaustive of all of the matters which fall outside the power of shareholders. Sufice it to note that any matter which falls within the board's powers falls outside those of the general meeting.

TC

champion issues, interests, opinions, positions, and the like, on matters which are outside of the decision-making powers vested in shareholders in general meeting; or

5.8.2 act as a recommendatory body of the company, or of its shareholders; and/or

5.8.3 bind their fellow shareholders to statements of opinion, policy or position, or to make recommendations on their behalf;

and the complainant, rightly, is unable to present any authority or statutory provision which gives shareholders these rights or entitlements;[4]

5.9 shareholders in general meeting thus do not have the power to decide or express statements of opinion, policy or position, or to make requests or recommendations, by and on behalf of the general body of shareholders. Nor do they have the power to bind other shareholders to those statements of opinion, policy or position and/or requests and recommendations, or other matters referred to in paragraph 5.8. The complainant has no valid legal basis to contend otherwise;

5.10 further, as a matter of general principle and established law:

5.10.1 a general meeting cannot be convened (whether pursuant to section 65(3) or otherwise) to vote on a 'resolution' which is *ultra vires* the powers of that meeting (whether pursuant to section 65(3) or otherwise);[5]

5.10.2 shareholders do not have a legal right to vote on (nor can they be required to vote on) *ultra vires* resolutions; and

5.10.3 any *ultra vires* resolution which is tabled is a legal nullity, and any 'votes' purportedly cast on such resolution have no legal or constitutive effect;

5.11 the "resolution" proposed by the complainant plainly falls squarely within the matters identified in paragraph 5.8 and, if tabled, would be *ultra vires* the powers of the general meeting. (For ease of reference, what the complainant seeks is a decision of the general body of shareholders to request the board of directors:

5.11.1 to annually conduct an evaluation of and report to shareholders on the company's lobbying and policy engagement activities;

5.11.2 to include in this report:

- "*if, and how, its lobbying and policy engagement activities (both direct and indirect through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels*"
- "*its framework for identifying and mitigating the risks presented by any misalignment*"; and
- "*the circumstances under which escalation strategies have been and will be used, including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliances*"; and

5.11.3 to evaluate the company's alignment by considering "... *not only its policy positions and those of organisations of which it is a member, but also the lobbying and engagement activities aimed at influencing policy for the year in review*";

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4 The sole exceptions are the relatively recent inclusions in the Act of shareholder vote endorsing, or disapproving of, the company's remuneration policy and its implementation thereof.

5 It is technically more accurate to refer to an *ultra vires* 'resolution' as a proposal, as is not a resolution in the proper sense of that word as envisaged in the Act. For convenience and ease of reading, we have continued to use the term '*ultra vires* resolution' in this letter, but with the meaning of a matter proposed which is *ultra vires*.

TC

5.12 it is moreover irrelevant whether or not what results from a (purported) exercise of a decision-making power is expressed to have operative effect (i.e. to be "binding") on the company (i.e. its board of directors) or is expressed not to have such effect (i.e. is "non-binding"):

5.12.1 as set out earlier, voting at a general meeting is a legal act of a company body, resulting in a formal decision of that body;

5.12.2 such decision (passed with the requisite majority) binds the general body of shareholders to that position, both at the time of the vote and prospectively, irrespective of any subsequent changes in shareholders or their shareholdings;

5.12.3 the complainant seeks a decision of the general body of shareholders that such body request the board of directors to take specific actions and to publish specific information otherwise confidential to it,[6] with such request further being an advisory position of the general body of shareholders;[7]

5.12.4 the legal effect of that decision on the board is irrelevant to determining whether or not shareholders in general meeting, as a body of the company, have the power to take that decision.[8] That the resulting request and advisory position are not matters the board is legally obligated to follow, is of no consequence:

(a) firstly, all requests and recommendations are, by their very nature, not binding on the recipient. Styling them as binding or non-binding is thus moot;

(b) further, a request or recommendation (whether legally binding on the recipient or not) is itself a specific juristic act, namely the making of a request and the expression of a recommendation;

5.12.5 as we have seen, shareholders in general meeting do not have a power to make requests of the board (or, for that matter, of any person) or to make recommendations to it on how it should conduct its affairs. Shareholders cannot create that power, or validate its exercise, by simply qualifying the requested action or recommendation as being "non-binding";

5.12.6 simply put, a person cannot create a power not afforded to it by law simply by purporting to exercise it, nor can a person validate a purported use of that (non-existent) power by qualifying it;

5.13 section 65(3) is consistent with, and affirms, all of these principles:

5.13.1 it thus provides that "*any two shareholders of a company—may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights*" (emphasis added);

5.13.2 the phrase "*entitled to exercise voting rights*" is explicit and intentional and must be given meaning. Having regard to what is stated above, this meaning is plain: namely that shareholders can compel the board to table for decision at a general meeting those matters (resolutions) which shareholders in general meeting have the legal right to decide through exercising voting rights. Such matters are those which are *intra vires* (i.e. within their powers);

5.13.3 shareholders do not have a legal right or entitlement to decide, or to vote on, an *ultra vires* proposal (i.e. one outside their powers);

5.13.4 a proposal of this nature is not a valid resolution;

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6 As detailed in paragraph 5.11 above.

7 That the resolution is advisory is expressly so stated in the resolution's heading: "*Non-binding advisory resolution ...*".

8 Taking such decision, of course, also unlawfully usurps the board's power to determine the company's stance on these matters. This is, though, a separate (yet equally fundamental) basis why a resolution of this nature is unlawful and beyond the powers of the general meeting.

TC

5.13.5 it follows of necessity that shareholders cannot compel the board to table an *ultra vires* resolution through reliance on s65(3) (or otherwise for that matter); and

5.13.6 the complainant's attempt to rely on s65(3) as the basis on which it has a right to table an *ultra vires* resolution is thus negated by the express provisions of this section. Furthermore, even were the provision to have been open to a different interpretation (which it is not), the interpretation relied on by the complainant is entirely unsupportable on policy grounds and has no constitutional basis.

6. Given the above, read with the 14 July 2024 letter, there was thus no breach of s65(4) of the Act, nor any non-compliance under the Act in respect thereof. There were thus also no further actions required of the board in relation to the complainant's demand to table the resolution.

7. Shareholders are, of course, entitled to engage with the board (and other shareholders) in relation to their opinions through various other avenues, and the complainant has been invited to do that.

While we trust this brings the matter to a close, we nonetheless remain available to address the matter further should this be required. As before, we should formally note that all of our rights are reserved.

Yours sincerely

Francois Klem
Company Secretary
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E: francois.klem@thungela.com
www.thungela.com

thungela

THUNGELA RESOURCES LIMITED
Registration number: 2021/303811/06
(the Company)

EXTRACT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE COMPANY HELD ON 31 MARCH 2021

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5. **MATTERS FOR APPROVAL**

1.31.2 the constitution of the Social and Ethics Committee and the appointment, each by way of a separate vote, of the following persons as members of the Social and Ethics Committee: (i) Thero Setiloane, as chairperson of the Social and Ethics Committee and each of (ii) July Ndlovu, Sango Ntsaluba and Seamus French (subject to Seamus French's appointment as Director becoming effective), as members of the Social and Ethics Committee;

the constitution of the Social and Ethics Committee and the appointment, each by way of a separate vote, of the following persons as members of the Social and Ethics Committee: (i) Thero Setiloane, as chairperson of the Social and Ethics Committee and each of (ii) July Ndlovu, Sango Ntsaluba and Seamus French (subject to Seamus French's appointment as Director becoming effective), as members of the Social and Ethics Committee;

SIGNED AS A TRUE EXTRACT

____

Tovi Ellis

Company Secretary

7 March 2025

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

Confidential and privileged

7 March 2025

Dear Ms Maodi

1. We refer to your letter dated 18 February 2024 (**"your letter"**) which references the complaint against Thungela Resources Limited under your file reference G89(2024).

2. In answer to your queries:

2.1 Thungela (**"we"**, **"us"**) was incorporated on 5 January 2021 as a public company;

2.2 pursuant to regulation 43(3)(b) of the Companies Regulations, 2011, Thungela was accordingly required to establish a social and ethics committee by 5 January 2022;

2.3 the social and ethics committee was constituted at a meeting of the board on **31 March 2021.** An extract of the minutes certified by the company secretary is included with the e-mail under cover of which this reply is sent;

2.4 Just Share raised its request with us on 19 April 2023 which we promptly replied to, guiding it to the Climate Change Report contained in our annual report. Just Share was dissatisfied with this, re-iterating on 3 May 2023 its demand that Thungela report on:

"- *if and how its lobbying and policy engagement activities (both direct and through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels;*

- *Thungela's framework for identifying and mitigating the risks presented by any misalignment with the Paris goals; and*

- *the circumstances under which escalation strategies have been and will be used; including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliance.*";

2.5 Just Share's response went on to say that the non-binding resolution must be tabled at the upcoming AGM scheduled for 31 May 2023; alternatively, that if we still 'refused' to table the resolution, that we provide Just Share with the legal basis for this refusal;

2.6 as requested by Just Share, on 8 May 2023 we responded, setting out the legal basis for our view. We understand that the same response was also given to them by other companies to which they had made similar demands, also unsuccessfully;

2.7 it is important to emphasise that our position on this issue was (and remains) one driven by principles of good governance, where the board has the legal duty and responsibility of setting and implementing the company policy on these matters. For the many reasons set out in our letter of 20 September 2024, tabling a shareholders' resolution (whether or not 'binding') which directs the board on these matters conflicts with its legal duties and responsibilities, and - in the circumstances here – was not in the company's best interests;

TC

2.8 it is also important to re-iterate that we were, and remain, open to engaging with shareholders on these issues, including at the AGM in the usual way;

2.9 we conveyed this to Just Share, and invited them to meet with us to discuss their concerns:

> *"We respect and appreciate the area of concern raised in your letter and assure you that it is one of the many and multi-dimensional aspects of running a coal-mining business that is part of the board's mandate to manage the business for the interests of the shareholders as a whole. We would also like to emphasise that this is not intended to discourage you from holding or expressing your viewpoint, or from engaging with others on it. It is simply that a shareholder resolution is not the appropriate approach to doing so.*
>
> *[We] also reiterate that we would welcome the opportunity to engage with you on this matter.";*

2.10 Just Share took up the opportunity to meet with us, and we met on 21 June 2024, a few weeks after the AGM;

2.11 Just Share attended the AGM, but did not raise an issue regarding the fact that their resolution had not been tabled. Just Share also did not raise the issue when we met with them later on 21 June 2024;

2.12 the next development was roughly a year later when, shortly before our 2024 AGM, Just Share wrote to us to again insist that we table a 'non-binding' resolution at the AGM. The terms of this resolution were different from that demanded in 2023. (Nothing substantive turns on the difference in content between the 2023 and the 2024 resolutions insisted on by Just Share. They do, however, serve as an example of why addressing complex issues such as climate change by way of resolutions is unworkable and as an example of how subjective the content of such resolutions would be, were they to have been permitted in law (which they are not).

We trust this provides the information you requested.

It wasn't clear to us though what bearing this had on the complaint which Just Share made to the CIPC, as referenced in your letter. If there is a legal or other aspect relevant to the complaint that we should address, we would be grateful if you could clarify this for us.

Also, if there is any legal aspect of our submission of 20 September 2024 that the CIPC disagrees with, we would be grateful if you could also clarify this for us.

We look forward to the matter being brought to a close and remain available to assist in this regard. As before, we should formally note that all of our rights are reserved.

Yours sincerely

July Ndlovu

July Ndlovu
Chief Executive Officer
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TC