



JUST SHARE

Investor power for a fairer South Africa

Mr Robert Rosenberg
Sustainable Investing Analyst
Fidelity International
By email: robert.rosenberg@fil.com

Ms Sara Rosner
Director of Environmental Research & Engagement
Alliance Bernstein
By email: sara.rosner@alliancebernstein.com

CC: Mr David Couldridge
Head of ESG Engagement
Ninety One Asset Management
By email:
david.couldridge@ninetyone.com

CC: Ms Kirshni Totaram
Global Head of Institutional
Business
Coronation Fund Managers
By email:
ktotaram@coronation.com

CC: Global Steering
Committee
Climate Action 100+

6 November 2020

Dear Mr Rosenberg and Ms Rosner

Sasol Limited: refusal to table climate risk-related shareholder resolutions

Just Share is a South African shareholder advocacy organisation, and a shareholder in Sasol Limited (“Sasol”). Supported by the four organisations listed at the end of this letter, all working on climate change and corporate accountability through shareholder engagement, we are writing to you to express our grave concerns regarding Sasol’s persistent and ongoing refusal to table climate-related shareholder resolutions for voting at its Annual General Meetings (AGMs).

We wish to explore strategies to work together with you, as the lead engagers with Sasol for the Climate Action 100+ (CA100+), to advance our mutual interest in ensuring that Sasol aligns its business model with the goals of the Paris Climate Agreement (“the Paris Agreement”).

Below we set out a brief background to this matter, including reference to Sasol’s most recent expression of its stated legal basis for refusing to table shareholder resolutions. We disagree with this position, and we explain why in detail below. Crucially, Sasol’s legal argument has already been entirely undermined by the fact that five other listed companies in South Africa – Standard Bank of South Africa Limited, FirstRand Limited, Absa Group Limited, Investec Limited and Nedbank Group Limited - have all, in the past 15 months, tabled climate risk-related shareholder resolutions at their respective AGMs, without adverse legal consequence.

We also point out our mutual interest in challenging Sasol’s claim, expressed for the first time in its most recent letter to us, that aligning its strategy with the goals of the Paris Agreement means



nothing more than aligning its strategy with South Africa's Nationally Determined Contributions (NDCs); the first of which has been rated by Carbon Tracker as "Highly Insufficient".¹

Background to the 2020 resolution

On 19 October 2020, Sasol shareholders Just Share NPC and the RAITH Foundation, co-filed a resolution for consideration by Sasol's shareholders at the company's AGM to be held on 20 November 2020.² The resolution was proposed in terms of section 65(3) of the South African Companies Act 71 of 2008 ("the Companies Act" or "the Act"), which provides that "*any two shareholders of a company— (a) may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and (b) when proposing a resolution, may require that the resolution be submitted to shareholders for consideration... (ii) at the next shareholders meeting...*". In order to be adopted, such ordinary resolution requires more than 50% (fifty percent) of the voting rights to be cast in its favour.

The resolution and cover letter sent to Sasol have been included in the email sent to you. The resolution relates to the alignment of Sasol's global strategy and greenhouse gas (GHG) emission reduction targets with the Paris Agreement, and requests that executive remuneration be linked to the achievement of this alignment.

Sasol has been identified in the "Carbon Majors" report as one of the 100 fossil fuel companies linked to 71% of global industrial GHG emissions since 1988.³ It remains a substantial contributor to GHG emissions, which, of course, is why it is a focus of the CA100+ initiative. Sasol's Secunda plant is the world's largest single point-source GHG emitter.⁴ The climate crisis will also have a significant impact on Sasol's operations, and presents both risks and opportunities for shareholders and other stakeholders.

Although Sasol's disclosure of these risks in its annual reports has improved, the Company's emission reduction target (a 10% reduction by 2030 off a 2017 baseline of 67.6Mt Scope 1 & 2 CO₂ equivalent) is not aligned with the Paris Goals, is only applicable to its South African operations, and does not include Scope 3 emissions. In addition, executive remuneration is not adequately linked to the achievement of the emission reduction target.

Sasol's refusal to table the resolution

On 30 October 2020, Sasol sent a letter to Just Share setting out its reasons for refusing to table the resolution co-filed on 19 October. A copy of this letter has also been included in the email sent to you.

In short, Sasol argues that:

- (a) the co-filers are not legally entitled to table shareholder resolutions relating to climate risk;
- (b) its emission reduction target and associated roadmap "*are aligned with the principles of the Paris Agreement that provide for such to be appropriate for the specific conditions of each of the countries as parties to the agreement*"; and
- (c) the co-filers submitted the resolution too late.

¹ <https://climateactiontracker.org/countries/south-africa/>

² <https://justshare.org.za/media/news/shareholders-call-on-sasol-to-set-paris-aligned-targets>

³ <https://www.cdp.net/en/articles/media/new-report-shows-just-100-companies-are-source-of-over-70-of-emissions>

⁴ Sasol Limited Sustainability Report, 30 June 2020 at page 8.



We dispute point (c), which is not supported by the law. We also point out that, in 2018, even when Sasol was provided with more than six months' notice of the filing of a climate risk-related shareholder resolution, the company still refused to table it. We do not deal further in this letter with this timing argument, as it is not relevant to the crucial issue at hand.

This is the third consecutive year in which Sasol has refused to table a shareholder-proposed climate risk-related resolution:

- In April 2018, the RAITH Foundation and shareholder activist Theo Botha filed a “two degree scenario” resolution at Sasol, asking the company to provide shareholders with a report assessing the effects on its operations of a scenario in which global average temperature rise is kept to below 2°C. Sasol refused to table the resolution on the basis of a legal opinion it had commissioned, which apparently found that *“the matters included within the draft resolution are within the authority of the board and management and do not constitute matters that shareholders are entitled to exercise voting rights on within the meaning of section 65(3)(a) of the Companies Act”*.
- In October 2019, Sasol shareholders the Old Mutual Investment Group, Sanlam Investment Managers, ABAX, Coronation Fund Managers (now a member of CA100+), AEON Investment Management, and Mergence Investment Managers, co-filed a resolution seeking to require Sasol to report on how its GHG emission reduction strategy aligns with the goals of the Paris Agreement. Sasol refused to table this resolution on the basis that the matters raised in it had already been addressed by Sasol’s 2019 Climate Change Report.⁵ This was not correct. Sasol’s 2019 report set out Sasol’s 10% emission reduction target by 2030. The company did not assert that this target was aligned with the goals of the Paris Agreement, but rather that it was *“based on the probability of success of potential reduction opportunities, associated risks, economic viability and balance sheet capability to finance these activities”*.⁶
- Sasol’s 2020 Climate Change Report reiterates this target to reduce its GHG emissions by 10% by 2030.⁷

Sasol’s legal argument

Sasol has, on numerous occasions, refused requests that it share the legal opinion on which its view of the law is based. As such, there is only a limited extent to which shareholders can engage with the legal basis for this opinion. However, Sasol’s interpretation elevates the board of the company to a position of dominance over shareholders which is contrary to the fundamentals of company law. In addition, this interpretation is contrary to a robust, transparent corporate democracy which facilitates dialogue between a company’s board and its shareholders .

In its 30 October letter, Sasol states:

“Under the common law, shareholders cannot usurp the authority of the directors or interfere in the management of a company. This principle has been confirmed in many

⁵ <https://justshare.org.za/media/news/just-share-commends-institutional-investors-for-first-of-its-kind-climate-collaboration-2>

⁶ Sasol Limited Climate Change Report, 30 June 2019 at page 12; available at: <https://justshare.org.za/media/news/just-shares-preliminary-comments-on-sasols-climate-change-report>

⁷ Sasol Limited Climate Change report, 30 June 2020 at page 4; available at: <https://justshare.org.za/media/news/just-shares-analysis-of-sasols-2020-climate-change-report>



cases in South Africa and has been strengthened by the provisions of section 66(1) of the Act, which unequivocally place the business and affairs of the company under direction of the directors, except to the extent that the Act or the company's [Memorandum of Incorporation] provides otherwise.

There are no cases in South Africa which have dealt with the filing of environmental, social or governance (ESG)-related shareholder resolutions at South African companies, as no such resolutions had been filed prior to the resolution tabled at Standard Bank in May 2019.⁸

Section 66(1) of the Companies Act⁹ does not exist to empower the board at the expense of shareholders. It places responsibility on the board for the management of the company's affairs, and empowers the board to act on the company's behalf, i.e. it is a statement of a fundamental of modern company law, that the exercise of power by the company as a legal person must be through the board, directly or through delegation, unless the memorandum of incorporation (MOI) or the Act says otherwise.

The provision is not intended to remove shareholder power in its entirety, as Sasol's view seems to indicate. If this view were correct, it would mean that shareholders could not even engage with management on ESG issues, as this would – on Sasol's interpretation - constitute an unacceptable interference in the management of the company.

Sasol goes on to say:

"GHG resolutions 1 and 2 take away the discretion of the Sasol board of directors (Board) to act in the best interests of the Company in relation to the commitment to the Paris Agreement and goals and the reduction of emissions now or in the future, hence cannot be proposed to shareholders in their current form. These resolutions seek to micro manage the Company by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by the directors."

This is simply incorrect. The resolutions ask Sasol to show how its global strategy and emission reduction target are aligned with the goals of the Paris Agreement. Given the company's frequent statements of support for the Paris Agreement in its Climate Change Reports and in public statements, the resolutions reasonably ask the company to show how its strategy is giving effect to this stated commitment. None of Sasol's disclosures provide shareholders with this information.

Sasol also says that:

*"Section 65(3) of the Act clearly states that shareholders may propose a resolution concerning any matter **in respect of which they are entitled to exercise voting rights**. Neither the Act, nor Sasol's MOI, nor the JSE Listings Requirements, nor the King IV Code entitle shareholders to vote on the specific subject matter of the GHG resolutions".*

⁸ <https://justshare.org.za/media/news/standard-bank-tables-first-sa-shareholder-resolution-on-climate-risk-but-board-recommends-shareholders-vote-against-it>; <https://justshare.org.za/media/news/standard-bank-agm-shareholders-challenge-board-favour-the-climate>

⁹ In terms of section 66(1), "the business and affairs of a company must be managed by or under the direction of its 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 this Act or the company's Memorandum of Incorporation provides otherwise".



This is an incorrect quoting of the Companies Act provision, which, in fact, provides that two or more shareholders may table resolutions “in respect of any matter on which they are **each** entitled to exercise voting rights” (our emphasis). This provision does not constitute a limitation on the **subject matter** of the resolutions. Rather, it means that where a shareholder is not entitled to vote on a resolution, then that shareholder cannot propose a resolution. For example, if the shareholder is a preference shareholder where the class of preference shares carries no vote on the matter concerned, then that shareholder cannot propose a resolution on that matter.

Sasol’s interpretation of South African company law is just that: an interpretation, and a flawed one which has been developed to support the company’s resistance to shareholder oversight of its climate strategy. Its position has already been entirely undermined by the fact that, as set out above, five other listed companies in South Africa have tabled climate risk-related shareholder resolutions at their respective AGMs.

Shareholder resolutions form a healthy part of corporate democracy in many jurisdictions. They give the board an insight into what shareholders think, in a formal, democratic fashion, and relative equality of shareholder rights around the world is an important corporate governance principle. As shareholders, we favour policies and practices that protect and enhance the value of our investments.

Climate risk poses material financial risk to investors, and if they are not permitted to vote on requests such as those posed by our resolution, this presents a serious barrier to their ability to comprehensively assess risk and opportunity in their investment decision-making.

Section 7(a) of the Companies Act sets out that its purpose is to “*promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law*”. A provision of the Companies Act which prevents shareholders from seeking information about an issue which is a fundamental threat to Constitutional rights, as well as a material risk to their financial interests, would not promote compliance with the Bill of Rights.

In addition, section 7(b)(iii) of the Companies Act provides that one of the purposes of the Act is to “*promote the development of the South African economy by ... encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation*”. This section also supports an interpretation of section 65(3) of the Act as empowering shareholders to propose ESG-related shareholder resolutions.

The actions of Sasol in refusing to tabling the resolution are not supported by the provisions of the Companies Act. In our view, Sasol’s refusal is contrary to the long-term interests of the company, the company’s Board, and all shareholders in the company. We strongly dispute that Sasol’s board has – or should have - unfettered “discretion” regarding its “*best interests... in relation to the commitments in the Paris Agreement*”.

Conclusion and request

Sasol’s 2020 Climate Change Report claims that Sasol is “keen to play a leadership role in South Africa’s energy transition”.¹⁰ This commitment is significantly undermined by the board’s refusal to table shareholder-proposed climate risk-related resolutions, its inadequate GHG emission reduction target, and its claim that alignment with South Africa’s weak NDC is all that is required of it.

¹⁰ Page 4.



If Sasol is serious about contributing to South Africa's just transition, it must be honest about the extent and speed of transformation required in its business, set emission reduction targets that are aligned with the Paris Agreement, and properly incentivise its executives to achieve them. The tabling of resolutions could be a vital tool in precipitating this conversation between shareholders and board, and in accelerating appropriate action.

On 21 October 2020, the CA100+ wrote to Sasol, as it has to all of its 161 focus companies, calling on the company to make renewed commitments towards aligning with the Paris Agreement Goals. The shareholder resolution that we filed with Sasol on 19 October is completely aligned with that call. Without the tool of shareholder resolutions, engagement strategies, whether run by civil society or by CA100+, will be undesirably constrained.

We would appreciate the opportunity to meet with you to discuss these matters, and look forward to hearing from you in this regard.

Yours faithfully

JUST SHARE

per: 

Tracey Davies

Executive Director

tdavies@justshare.org.za

SUPPORTING ORGANISATIONS

Australian Centre for Corporate Accountability (ACCR)

Contact: Brynn O'Brien, Executive Director

brynn@accr.org.au



Follow This

Contact: Mark van Baal, Founder-Director

markvanbaal@follow-this.org



Majority Action

Contact: Eli Kasargod-Staub, Executive Director

eli@majorityact.org



ShareAction

Contact: Helen Wiggs, Head of Climate

helen.wiggs@shareaction.org

