



JUST SHARE

Investor power for a fairer South Africa

Code for Responsible Investment in South Africa (CRISA) Committee
c/o Corli le Roux
By email: corli@sixcapitals.co.za

29 January 2021

Dear Corli

Just Share comments
Code for Responsible Investment in South Africa (CRISA)
2020 Revision - Consultation Draft

INTRODUCTION

1. Just Share is a non-profit shareholder activism organisation. We believe that responsible investment is necessary to create a just, inclusive and sustainable economy. We use research, advocacy, engagement and activism to drive urgent action to combat climate change and reduce inequality.
2. Just Share commends and appreciates the CRISA Committee's commitment to reinvigorating the CRISA code, and the time and effort that you have spent consulting on and drafting the revised Code.

3. The introduction to the draft revised Code states that:

It is the proposition of the CRISA Committee that a reinvigorated CRISA Code, as part of a corporate governance ecosystem that drives best practice across the investment value chain, can spur much needed impetus in this regard through modelling positive outcomes of diligent stewardship and responsible investment.

4. Before responding to the specific consultation questions, we believe that it is critical to address the "elephant in the room".
5. When CRISA was first launched in 2011, its objectives were articulated in a very similar manner to the proposition quoted above:

The Code aims to put in place the checks and balances needed to make this voluntary framework successful. Together with the King Report, which is also not legislation but rather principles and practices that are adhered to on an 'apply or explain' basis, the new Code will seek to encourage best practice conduct by shareholders and companies.¹

6. When that statement was made, South Africa was considered a global leader in terms of corporate governance and responsible investing. In the decade since, while we have seen some progress at some institutional investors, it is undoubtedly the fact that the South African investment sector has fallen far behind global best practice in relation to tackling our key environmental, social and governance challenges. These include climate change, inequality,

¹ John Oliphant, statement at the launch of CRISA, July 2011 (<https://www.iodsa.co.za/page/CRISACode>)



excessive executive remuneration, racial and gender discrimination, tax evasion, and pay gap disclosure.

7. Despite the fact that many asset managers and asset owners claim to have adopted or endorsed the original CRISA Code, and are signatories to the Principles for Responsible Investment (PRI), and despite the publication of huge volumes of material advertising the ESG and “sustainability” credentials of investment managers, our financial sector has failed to tackle these issues in a courageous manner that translates into real world outcomes.
8. The key questions for the revised CRISA Code are, therefore, why will things be different this time? How will the revised Code spur the kind of action that the original CRISA Code was intended to spur? How will those who claim to have adopted the Code be held accountable for applying its principles and practices?
9. These comments are not intended to be a criticism of the drafters of the original CRISA Code, or of the CRISA Committee, or of the contents of the revised Code. The problem highlighted above is a perennial problem associated with voluntary codes of conduct and practice across the globe. We acknowledge and understand that the CRISA Committee does not have regulatory powers, and that it would require significant resources for it to be able to play any meaningful oversight role in the adoption and implementation of the revised Code.
10. If the investment sector and its organising bodies were to prioritise providing the resources for such a role, this would send a clear signal that it takes the principles in the revised Code, and the underlying objectives of the Code, seriously, and intends to implement them.
11. It is also important to highlight the growing trend internationally towards the simplification and alignment of company ESG disclosures, as well as a rapidly-growing willingness of governments to incorporate sustainability-related reporting into law. The CRISA Committee has an important role to play in bridging the gap between voluntary and mandatory practice and reporting on environmental, social and governance integration, and responsible investment more broadly.

CONSULTATION QUESTIONS

1. Objectives of the revised Code

- a) Do the objectives adequately frame what the CRISA Code should aim to achieve?
- b) Are there any objectives that should be removed or added?

In our view it is essential that the revised Code’s objectives acknowledge the shortcomings in application of the original Code, and explain how the revised Code seeks to address the risk of adoption-without-application. The objectives are admirable, but they are framed as if these are new concepts, rather than a revision and strengthening of key concepts which the investment community has been speaking about for many years.

2. Application of the revised Code

- a) Do you agree with the flexible and universal approach to application and adoption?

Yes.



- b) Should the Code contain targeted recommendations for different investment categories or types of investment organisations, or should these be dealt with in separate guidance?

No, this can be dealt with in separate guidance.

- c) Is the approach to application on a proportionate basis sufficiently clear?

Yes, although this approach is potentially susceptible to abuse if sufficient guidance (in separate guidance documents) is not provided at least as to expectations for large institutional investors.

The “apply and explain” basis should specify clearly that “apply and explain” refers not simply to disclosure about how principles and practices have been interpreted and implemented, but crucially must include how that interpretation and implementation has translated into **real world outcomes**.

3. Foundational Framework

- a) Is the process from applying principles and adopting practice recommendations to realise the benefits of the outcomes sufficiently clear?

Not in our view. The wording as currently phrased could still be interpreted to apply only to disclosure of interpretation and implementation of principles and practices *within the investment process*, rather than explaining how that implementation has translated into real world outcomes (e.g. decarbonisation plans for heavy emitters, improved diversity at board level of investee companies, pay gap disclosure at investee companies etc.).

- b) Do you agree with the outcomes and how they are outlined?

These outcomes are good, but the section on impact should, in our view, include a number of more specific examples, such as increased diversity at board level, fairer pay practices, reduction in carbon emissions, etc.

- c) Do you agree with the approach to define practice recommendations across implementation and reporting elements?

Yes.

4. Principle 1: Integrating sustainable finance

Do you have any comments on Principle 1 and the practice recommendations for implementation and reporting?

We recommend the following additions to Principle 1:

*Investment arrangements, ~~and~~ activities **and outcomes** reflect a systematic approach to integration of sustainable finance practices, including the identification and consideration of materially relevant ESG and broader sustainable development considerations, **and how this translates into real-world outcomes.***



The phrase “materially relevant” should be defined to avoid an interpretation which considers only financial materiality.

Line 174: In relation to **practice recommendation (PR) 1.5**, it is crucial that the investment philosophy and/or policy statements are made publicly available and easily accessible on the institution’s website.

5. Principle 2: Diligent stewardship

Do you have any comments on Principle 2 and the practice recommendations for implementation and reporting?

We recommend the following additions to Principle 2:

*Investment arrangements, **and activities, and outcomes** demonstrate the acceptance **and implementation** of ownership responsibilities (where applicable) and enable diligent discharge of stewardship duties through **transparent**, purposeful engagement and voting.*

Line 192: PR 2.1 should specify that “responsibly discharging ownership responsibilities and stewardship duties should be a **primary** consideration when identifying key ESG and broader sustainable development issues ...”.

Line 198: PR 2.2.1 etc., should include: “assessing the extent and quality of disclosure by investee organisations or issuers (as the case may be), including evaluating integrated reporting **to assess transparency, honesty, value creation, preservation or destruction, and real-world impacts**.”

Line 201: PR 2.2.2 should include “approaches to intervention and engagement when concerns have been identified, **and identification of outcomes**”.

Line 202: PR 2.2.3 should include “the means of escalation when concerns cannot be resolved, **and the envisaged outcomes of that escalation**”.

Line 203: PR 2.2.4 should include “criteria for voting decisions, participation in annual general meetings or use of proxies or voting instructions, public disclosure of voting records, **and consideration of public pre-announcement of voting intentions for key ESG-related votes**”.

The pre-announcement of voting intentions is considered best practice globally for key votes.

Line 205: PR 2.3 must specify that these policies should be publicly available.

Line 207: PR 2.4 – we do not understand why this practice recommendation has been included. It appears to be a warning to comply with the law, which is unnecessary, and may also, given its placing and wording, serve to discourage engagement.

We strongly support PR 2.6, and commend the drafters for including this crucial recommendation.



6. Principle 3: Capacity building and collaboration

Do you have any comments on Principle 3 and the practice recommendations for implementation and reporting?

We would recommend that the following be added to the wording of the principle – without these words collaboration appears to be confined to promoting acceptance of codes and supporting capacity building, and to exclude collaboration on engagement and active ownership:

*A collaborative approach is taken where appropriate to promote acceptance and implementation of the principles of CRISA and other relevant codes and standards, to support the building of capacity throughout the investment industry, to enhance sound governance practices, **and to encourage effective, impactful engagement and active ownership / diligent stewardship.***

Lines 241-242: PR 3.2 is unnecessary, and based on a presumption which has been shown to be inaccurate. The “acting in concert” excuse has been used for decades to avoid impactful active ownership and stewardship activities, and this practice recommendation would appear to perpetuate that narrative. The PRI’s recent legal opinion has finally put this excuse to bed, confirming that collaboration as envisaged in relation to responsible investment is not unlawful in South Africa. The Code should emphasise this, in order to encourage collaborative engagement, which has proven in a number of jurisdictions to be the most impactful strategy for driving behaviour change at investee companies.

7. Principle 4: Governance

Do you have any comments on Principle 4 and the practice recommendations for implementation and reporting?

The wording of this principle is a little confusing. We recommend an adjustment such as:

*Sound governance structures and processes are in place **at the highest levels of the organisation** to enable **embedding of and accountability for** investment arrangements and activities which **reflect and promote** diligent stewardship and responsible investment, including proactively managing conflicts of interest.”*

Line 270: PR 4.2.5 appears to undermine the purpose of the Code, by assigning responsibility for responsible investment to the asset owner. The purpose of adoption of the Code by investment managers is, surely, to encourage them to embed these principles and practices throughout their operations, regardless of whether or not a particular investment mandate specifies this, and to encourage asset owners who do not specify a responsible investment approach, to adopt one?

8. Principle 5: Transparency

Do you have any comments on Principle 5 and the practice recommendations for implementation and reporting?

We recommend the following addition to principle 5:



Meaningful disclosure is made at set time intervals in relation to investment arrangements and activities across asset classes that support the integration of sustainable finance practices, discharging of stewardship duties, collaborative initiatives **and the achievement of real-world outcomes**".

9. General comments

Disclosure of CRISA signatories

Currently the only list of known and disclosed signatories to CRISA is the original list of entities which endorsed the Code when it was first launched in 2011. It is very important that there be a publicly available, regularly updated database of signatories.

Monitoring mechanism

The CRISA Committee is well aware of the view that voluntary mechanisms cannot be effective unless there is some oversight of the claims and reporting of signatories. While we fully appreciate that this oversight requires resources, the objectives of the Code will be severely undermined without some form of monitoring mechanism, which at the very least has the courage to call out and "de-list" signatories who are manifestly not adhering to the principles of the Code.

Transition

The CRISA Committee should issue clear guidance dealing with the "transition" from adoption of the old Code to adoption of the new Code. There should be a "clean slate" for adoption of the new Code, rather than an automatic transitioning of previous signatories / endorsers of the old Code.

We also urge the CRISA Committee not to make the transition phase a long one. The vast majority of investment organisations already claim to be responsible investors, and so there is no reason why potential signatories cannot adopt the Code within a short period after its finalisation. Furthermore, as the introduction to the revised Code highlights, the crises that we face require urgent action: a significant part of the reason for that urgency is the failure of the financial sector to meaningfully implement ESG integration, active ownership and diligent stewardship to date.

Conclusion

Thank you for considering our comments. We strongly encourage the CRISA Committee to make all comments submitted during the course of this consultation publicly available.

Please do not hesitate to contact Greer Blizzard at gblizzard@justshare.org.za if you have any questions or require any clarification.

Yours faithfully

JUST SHARE

per:

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