# Comments on diversity, fair remuneration and climate change: Just Share's response to the JSE Consultation Paper

JUST SHARE

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Investor power for a fairer South Africa

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By email: consultation@jse.co.za

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Dear Mr Burke

**RESPONSE TO JSE CONSULTATION PAPER PUBLISHED 19 SEPTEMBER 2018**

1. Just Share NPC is a non-profit responsible investment and shareholder activism organisation, which aims to promote the use of investor power for a fairer South Africa. South Africa's corporate sector has an essential role to play in the achievement of a just and equal society, and in protecting our environment for the benefit of future generations. Just Share works with individual savers, civil society and institutional investors to drive good corporate citizenship through active ownership and responsible investment.

2. Thank you for the opportunity to engage with the JSE by responding to the "Consultation Paper on possible regulatory responses to recent events surrounding listed issuers and trading in their shares". This is an important initiative and we appreciate the openness of the JSE to public input.

3. Just Share's focus is on environmental, social and governance factors pertaining to listed companies. The JSE is in a unique position to drive and demand better disclosure and practice by listed entities in regard to these factors, and thereby to ensure that South African companies become better corporate citizens. This is in line with Principle 3 of King IV, which requires that "[t]he governing body should ensure that the organisation is and is seen to be a responsible corporate citizen".

4. Just Share's comments on the Consultation Paper are set out below, covering issues pertaining to diversity & transparency, fair remuneration, climate change, legal compliance and general comments.

**DIVERSITY & TRANSPARENCY**
**Item 3.5: Non-binding advisory vote on corporate governance**
**Item 5: Composition of the Board of directors**

5. Just Share strongly supports the introduction of a requirement for Boards to have and publish a mandatory policy on diversity at Board level, and to publish details of performance against that policy on an annual basis. Just Share also supports the introduction of a separate mandatory non-binding advisory vote on both the issuer's corporate governance report, and its Board diversity.

6. In order for shareholders to be able to engage meaningfully on these issues, it is essential that they have access to all relevant information. Currently, although the Listings Requirements do require the board of directors to **have** a policy on the promotion of gender and race diversity at board level[1], there is no requirement that this policy be made publicly available. Issuers must report in their annual reports on how the policies have been applied, and report on progress on agreed voluntary targets. In the absence of the requirement to share the policy itself, this information is not helpful to stakeholders.

7. When they do not have to disclose their policies, issuers can make very vague statements in their annual reports, to the effect that the board has adopted a policy, and has made progress against achieving the targets set out in that policy, without providing the information that enables stakeholders to verify those assertions.

8. Making such policies publicly available is clearly envisaged in Recommended Practice 30(b) of Principle 7 of King IV, which requires the disclosure of "the targets set for gender and race representation in the membership of the governing body, and the progress made against these targets".

9. The value of the public availability of diversity policies extends to all policies relating to environmental, social and governance issues: for example human rights policies, environmental policies and climate change policies. In South Africa many issuers who report that they have such policies do not make them publicly available. These policies are supposed to be designed and adopted in order to improve the issuer's corporate governance by making it more accountable to stakeholders; their value is greatly diminished if those stakeholders do not have access to the primary documents.

10. In relation to non-binding advisory votes in general, while having them does provide a useful mechanism for shareholders to express their views, in the absence of any escalation mechanism the power of such votes to improve governance is limited.

11. The JSE could consider building in escalation mechanisms on these votes. An example is the "two-strikes" law in the Australian Corporations Act. In terms of that law, if an issuer's remuneration report receives a "no" vote of 25% or more at two consecutive annual general meetings, the shareholders must vote at the second AGM to determine whether all the directors should stand for re-election. While the JSE might contend that this is a matter for legislation rather than the Listings Requirements, there may be other innovative ways to make non-binding advisory votes more effective.

[1] Listings Requirement 3.84(i) and (j)

## FAIR REMUNERATION

12. Listings Requirement 8.63k requires issuers to disclose individual directors' remuneration and benefits.

13. King IV emphasises 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". While the disclosure of executive remuneration is important, it only provides stakeholders with half of the picture.

14. In a country which is regularly touted as the most unequal in the world, stakeholders should be provided with information not just about the remuneration of the most senior executives, but also about the remuneration of the lowest paid workers in these companies. This information would provide valuable insights into inequality in South Africa, by showing the extent to which the profits made by listed companies are founded on unfair remuneration to the lowest paid workers, and whether the remuneration of those workers is a "real living wage" which allows them to maintain a satisfactory standard of living.

15. The gap between the remuneration of men and women should also be disclosed.

16. These proposals are already supported by South African business, represented by Business Unity South Africa, as agreed at the Jobs Summit in early October 2018[2].

## CLIMATE CHANGE & THE RECOMMENDATIONS OF THE TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES

### Item 3.4 Mandatory training for members of the Audit Committee and Company Secretaries

17. In financial markets around the world, climate change is increasingly recognised as a mainstream investment issue with serious potential implications for financial risk and return. This has resulted in numerous developments and initiatives around the world to guide companies in assessing, managing and disclosing climate risks and opportunities. South Africa is one of the world's largest carbon emitters, and also exists in a region of the world that will be most affected by climate change. As recent events like the drought in Cape Town show, our failure adequately to assess and manage climate risk is already having serious consequences.

18. The South African corporate sector is not showing leadership on this challenge. Disclosure of climate risk is extremely poor. Institutional investors do not have publicly available statements or commitments on climate change, and are not demanding comprehensive disclosure from issuers. Financial institutions are failing to disclose the risks posed to their lending portfolios by climate transition and liability risks. Engagement on climate risk, if it takes place at all, does so behind closed doors, and there is no realistic conversation taking place about carbon emission reduction targets, or about how we should be planning for a just transition to a low-carbon economy.

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[2] https://www.businesslive.co.za/bd/business-and-economy/2018-10-08-firms-agree-on-disclosure-of-wage-gaps/

19. The Intergovernmental Panel on Climate Change, in its *Special Report on Global Warming of 1.5ºC,* released on 8 October 2018[3], warns that “the next few years are probably the most important in our history for taking action to avoid catastrophic climate change”, and that “unprecedented changes” are required if we are to limit warming to 1.5ºC. The report emphasises that “every extra bit of warming matters, especially since warming of 1.5ºC or higher increases the risk associated with long-lasting or irreversible changes, such as the loss of some ecosystems”.

20. The JSE is in a powerful position to drive the rapid adoption of practices that can form an essential foundation for successfully managing climate risk. Disclosure and board level competence are key drivers of these practices.

21. The concepts of “climate-competent directors” and a “climate-competent board” are increasingly recognised as essential components of effective climate risk management. A 2017 report by the US-based sustainability nonprofit organisation Ceres, ‘Lead from the Top: Building Sustainability Competence on Corporate Boards”[4], identifies key steps that boards should take in order to be able to effectively assess, disclose and manage climate risks and opportunities. These include:

    a. Put board systems in place for climate change oversight;
    b. Include directors with expertise in climate change on boards;
    c. Train the full board on climate change;
    d. Consult stakeholders and shareholders to inform directors’ understanding of climate change;
    e. Be more transparent.

22. Just Share welcomes the proposal to require all members of the audit committee and the company secretary to undergo mandatory training on their responsibilities pursuant to the provisions of the Companies Act and the Listings Requirements. We think it is essential to extend such training to include climate risk training, at least for the audit and social and ethics committees.

23. In mid-2017, the Financial Services Boards’ Task Force on Climate-Related Financial Disclosures (TCFD) released its final Recommendations report[5]. The Recommendations are aimed at helping businesses disclose “clear, comparable and consistent information about the risks and opportunities presented by climate change”.

24. In his introduction to the Recommendations, Michael Bloomberg wrote that “widespread adoption [of the recommendations] will ensure that the effects of climate change become routinely considered in business and investment decisions” and “help companies better demonstrate responsibility and foresight in their consideration of climate issues”, leading to “smarter, more

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[3] http://www.ipcc.ch/report/sr15/
[4] https://www.ceres.org/resources/reports/lead-from-the-top
[5] https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf

efficient allocation of capital, and help smooth the transition to a more sustainable, low-carbon economy."

25. So far, only a small number of South African entities have publicly expressed support for the TCFD Recommendations[6].

26. The JSE has an opportunity to position itself at the forefront of climate risk disclosure globally, by:
    a. publicly supporting the TCFD Recommendations; and
    b. making reporting in terms of the TCFD Recommendations mandatory under the Listings Requirements; or
    c. at the very least, recommending that issuers report in terms of the TCFD Recommendations.

27. Training board members to ensure "climate competency", and supporting the adoption of the TCFD Recommendations, are aligned with King IV, which emphasises that "[t]he 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".

28. Taking these steps would strengthen risk governance (King IV Principle 11) and contribute to the "appropriate balance of knowledge, skills, experience, diversity and independence" required by Principle 7 of King IV.

**LEGAL COMPLIANCE**
**Item 3.3 Compliance with applicable laws**

29. Just Share supports the proposal by the JSE to require additional pre-listing disclosure in regard to compliance with applicable laws. This disclosure should also be required by issuers on an ongoing basis, and should not be subject to any "financial materiality" threshold. This is particularly important in the case of compliance with environmental laws. Civil society research has shown definitively that some issuers use the financial materiality threshold as a way of misrepresenting compliance with environmental laws and licence conditions (see the Centre for Environmental Rights' *Full Disclosure* series of reports at https://fulldisclosure.cer.org.za/2016/).

**GENERAL COMMENTS**

30. Just Share proposes that the following additional measures would contribute to more reliable disclosure and stronger corporate governance:

    a. Issuers should be required to make an announcement through SENS, within a prescribed timeframe, after receipt of a proposed resolution from shareholders in terms of section 65(3) of the Companies Act. At present there is no obligation on issuers to notify the market of receipt of a proposed resolution, and it is important for other shareholders to be made aware timeously of its submission.

[6] https://www.fsb-tcfd.org/tcfd-supporters/

b. All issuers should have a functioning website address and valid contact details (see for example https://www.eastplats.com/; http://stefanutti.co.za/; and http://www.labatafrica.co.za/);

c. At present, publication of any censure or fine by the JSE is in the discretion of the JSE. Just Share proposes that all censures and fines should be required to be made public, in the interests of transparency and certainty.

31. Just Share strongly supports the JSE's assertion that there are important steps that other "guardians of governance" should be taking in order to "strengthen governance, and, thereby, investor confidence and trust".

32. Finally, on a practical note, it would be very helpful if the Listings Requirements had a contents page, and if the contents were hyperlinked to the relevant sections of the document, which is long and difficult to navigate.

33. We look forward to hearing more about the outcomes of the consultation.

Yours faithfully
**JUST SHARE**

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