JUST SHARE

Comments on the Companies Amendment Bill (published 21 September 2018)

November 2018

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Investor power for a fairer South Africa

Mr Desmond Ramabulana
Director, Commercial Law and Policy
Department of Trade and Industry
By email: DRamabulana@thedti.gov.za

26 November 2018

Dear Mr Ramabulana,

JUST SHARE'S COMMENTS ON THE COMPANIES AMENDMENT BILL (PUBLISHED 21 SEPTEMBER 2018)

1. Just Share NPC[1] is a non-profit responsible investment and shareholder activism organisation, which promotes 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 asset owners, regulators, asset managers, companies, individual savers and civil society to drive good corporate citizenship through active ownership and responsible investment.

2. We are aware that the deadline for submitting these comments was Friday 23 November 2018. We apologise for submitting them today instead (Monday 26 November), and hope that you will nevertheless consider them.

3. Just Share's focus is on environmental, social and governance (ESG) factors pertaining to listed South African companies. Our comments on the Companies Amendment Bill are set out below, covering issues pertaining to the disclosure of directors' remuneration.

Amendment of section 30: "Duty to prepare directors' remuneration report"

4. Just Share supports the inclusion in the Companies Act of a requirement to prepare a three part directors' remuneration report for each financial year, consisting of a background statement; an overview of the main provisions of the company's policy on remuneration; and an implementation report.[2]

5. This amendment reflects the requirements of the *King IV Report on Corporate Governance for South Africa* (*King IV*)[3]. However, King IV goes further, by recommending that more detail be

[1] www.justshare.org.za
[2] Insertion of Section 30A
[3] https://c.ymcdn.com/sites/iodsa.site-ym.com/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf

included in the report.[4] This guidance is important, and our submission is that at least some of this further detail should be included in the Companies Act.

6. 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**" (our emphasis). While disclosure of executive remuneration is important, in the absence of how directors' pay compares to that of the lowest-paid workers in a company, it is not possible to assess whether or not directors' remuneration is fair and responsible.

7. In a country which is regularly touted as the most unequal in the world, information about the lowest paid workers of public companies would provide valuable insights into inequality in South Africa, by showing the extent to which the profits made by these companies are founded on unfair and/or irresponsible remuneration to the lowest paid workers. It would enable stakeholders to determine whether the remuneration of these workers is a "real living wage", which allows them to maintain a satisfactory standard of living.

8. We submit that the Companies Act should provide further detail on what should be included in the background statement to the remuneration report, including:

    a. how the remuneration policy is deemed to be fair and responsible in the context of overall employee remuneration;

    b. any substantial changes relating to the director's remuneration;

    c. the reason why these changes were made; and

    d. views of the remuneration committee on whether, and how, the remuneration policy gives effect to the organisation's strategic objectives.

9. In terms of the overview of the remuneration policy, Just Share submits that the Companies Act should provide further details on what it should contain, including the following:

    a. an explanation of how the salary and the employment conditions of the company's employees other than the directors were considered when setting the policy, including whether, (and if so, how), the company consulted with employees, and whether any remuneration comparison measures were used;

    b. the difference in the company's policy on the remuneration of directors and that of other employees; and

    c. whether any views of the shareholders were taken into account in the formulation of the remuneration policy.

10. Just Share submits that the implementation report should disclose the remuneration of those employees in the bottom 10% of the company's salary range, and also disclose how many employees fall within this category.

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[4] Principle 14 Recommended Practice 32

11. The proposals made herein are supported by King IV, and also reflect some of the provisions of progressive legislation addressing the disclosure of directors' remuneration in countries such as the United Kingdom[5].

We look forward to hearing from you.

Yours faithfully
JUST SHARE

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[5] See for example: UK Companies Act, 2006 section 420(1) and 421(2A), read together with regulation 3(a)-(c) of the 2013 UK Companies Act Regulations