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Parliament of the Republic of South Africa

National Assembly

Parliament Street

PO Box 15

Cape Town

8000

Dear Mr M Rayi,

Submission: Companies Act Amendment Bill

Companies' Remuneration Disclosure

The amendments to the Bill seek to address ease of doing business and the achievement of equity between directors and senior management on the one hand, and shareholders and workers on the other, as well as addressing public concerns regarding high levels of inequalities in society.

1. **The Disclosure of Five-Year Historical Gender Pay Ratio and Pay Gaps in Remuneration Policy**

Aeon Investment Management advocates for the inclusion of a provision mandating companies to disclose their five-year historical pay ratios and gender pay gaps. This recommendation aims to offer insight into the performance of companies in this area, providing stakeholders with a comprehensive understanding of remuneration trends within the organisation. It serves to inform stakeholders about prevailing remuneration dynamics and highlights the strides made by companies in promoting gender pay equality and overall employment equity.

Public disclosure of such data is advantageous for companies, contributing to their ability to attract and retain top-tier talent. The availability of this information empowers employees and potential recruits to make informed decisions, fostering a preference for organisations that exhibit competitive remuneration practices. This, in turn, positively impacts talent retention for companies.

The proposed disclosure aligns with global best practices, demonstrating a commitment to transparency and corporate responsibility. This not only meets international standards but also enhances investor and shareholder confidence. The growing interest among shareholders in companies with robust corporate governance and social responsibility practices positions this recommendation as a valuable step towards aligning with global best practices.

2. **The Inclusion of Independent Contractors in Remuneration Disclosure.**



Aeon Investment Management commends the inclusion of section 30A(3)(e) in the Bill, which mandates the disclosure of the remuneration of the employee with the lowest total remuneration in the company. The Bill adopts the definition of an employee from Section 213 of the Labour Relations Act that is: *“any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and “employed” and “employment” have meanings corresponding to that of “employee”.* However, the current definition poses a challenge as it excludes sub-contracted workers. We propose the inclusion of sub-contracted workers in the disclosure of the lowest total remuneration in the company.

The exclusion of sub-contracted employees in the disclosure raises significant concerns due to the prevalence of outsourcing and casualisation in South Africa’s labour market. Corporate South Africa has expressed apprehensions that pay ratio disclosure might incentivise increased outsourcing to enhance metrics. To address this concern, the inclusion of subcontractors or outsourcing solutions is recommended. Another issue arising from the exclusion of subcontractors is the distortion of ratios, complicating comparisons. To ensure data comparability, it is crucial to encompass subcontracted employees, accurately capturing data for accountability and employment equity perspectives. The omission of subcontracted workers may lead to a misrepresentation of the actual composition of the workforce, potentially affecting stakeholders’ perception of the company’s workforce.

3. Job Description of lowest paid employees.

We also submit that it is imperative for companies to explicitly specify the job position that represents the lowest grade eligible for the minimum remuneration. If they do not do so, it is impossible for stakeholders to verify the numbers provided, and also makes it impossible to ascertain the extent to which low-paid roles in the company are being performed by outsourced workers.

4. Commentary on disclosed gender pay ratio and pay gap disclosure.

For the sake of accountability, companies should supplement their ratio disclosure with a detailed commentary or 'narrative.' This narrative serves to offer valuable context on the company's perspective regarding its remuneration practices. Such a practice not only enhances accountability but also fosters transparency, affording stakeholders, particularly shareholders, the opportunity to make informed decisions when casting their votes on the remuneration and implementation policies.

The provided commentary becomes instrumental in shedding light on the details of the company's pay structure, which may not be evident from the raw data alone. Additionally, this guidance should extend to insights on potential future pay ratio sizes, included in the remuneration report. This forward-looking approach empowers stakeholders to evaluate the company's ongoing efforts in mitigating pay disparities and ultimately contributing to the reduction of prevailing inequalities within the country. The overarching objective should be to enhance the remuneration and working conditions for low and middle-income workers.



Gender Pay Gap disclosure is essential for the fair treatment of our mothers, sisters, and daughters. South Africa can with mandatory disclosure be regarded as a global best practice leader in gender Pay gap disclosure.

Social and Ethics Committee

Aeon Investment Management welcomes the incorporation of a mandatory Social and Ethics Committee for companies, a pivotal inclusion in the Companies Amendment Bill. The committee's function is to draw specific matters to the attention of the board and subsequently report to the shareholders. These matters encompass a broad spectrum, including social and economic development, good corporate citizenship, environmental concerns, health and public safety, consumer relationships, and labour and employment issues.

However, we have identified certain shortcomings within the proposed framework:

1. Standardisation of Social and Ethics Reports:

While the Bill mandates the Social and Ethics Committee to prepare a report for shareholders, there is an absence of guidance on the prescribed manner and content of this report. The current lack of standardised reporting renders the report less effective, as comparability is a crucial factor in informed decision-making for shareholders. Aeon Investment Management recommends that the Act provide clear guidance on how these reports should be compiled to ensure consistency and comparability.

2. Definition of Prescribed Officer:

The Bill suggests that the committee must consist of not less than three directors or **prescribed officers** without providing a clear definition of the latter. Aeon Investment Management proposes the inclusion of a precise definition for 'prescribed officer' to offer clarity and coherence throughout the Act. Our suggested definition is as follows:

"Prescribed Officer *"means a person who exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or regularly participates to a 'material' degree in the exercise of general executive control over and management of the whole, or a significant portion of the business and activities of the company and is part of the top ten highest remunerated employee of the company."*

This definition should be consistently applied throughout the Act, extending beyond the sections related to the Social and Ethics Committee.

By addressing these concerns, the Companies Amendment Bill can enhance the effectiveness and clarity of the Social and Ethics Committee provisions, ensuring that they align with best practices and facilitate informed decision-making by shareholders."