

**COMPLAINT LODGED WITH THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION IN TERMS OF SECTION 168 OF THE COMPANIES ACT 71 OF 2008,
AS AMENDED**

SUPPORTING STATEMENT

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A. Overview of the complaint

1. Ninety One Limited (“Ninety One”) failed to ensure compliance with its obligations in terms of sections 61(8)(d), 61(10) and 63(2) of the Companies Act 71 of 2008 (“the Companies Act”) at its 25 July 2024 annual general meeting (AGM). At this AGM, Ninety One:
 - a. failed to ensure that all matters raised by shareholders could be addressed, as required by s61(8);
 - b. failed to ensure that the AGM was reasonably accessible for electronic participation by shareholders, as required by s61(10); and
 - c. failed to ensure that the electronic communication employed enabled all persons participating in the AGM to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, as required by s63(2).
2. Ninety One’s AGM was rushed, and questions from shareholders attending online (i.e., using “electronic communication”) were not addressed. This non-compliance with the Companies Act by Ninety One resulted in a violation of shareholder rights.
3. Ninety One has failed to acknowledge that it did not comply with its clear obligations as set out above. Ninety One has also failed to acknowledge that its failure to ensure that all matters raised by shareholders could be addressed at the 25 July 2024 AGM means that it has not met the minimum legal requirements for a valid AGM.
4. As a non-profit shareholder activism organisation, the Complainant has extensive experience of attending listed company AGMs over several years, including Ninety One’s AGMs in 2021 and 2022, which were similarly rushed - although questions from shareholders were addressed. Ninety One’s conduct at its 25 July 2024 AGM, and its failure to acknowledge that it has not complied with its obligations in terms of the Companies Act, mean that there is an ongoing violation of the Companies Act and a breach of shareholder rights that is likely to reoccur the next time that Ninety One holds an AGM.
5. The Complainant respectfully submits that Ninety One’s actions warrant an investigation by the Companies and Intellectual Property Commission (the “Commission”) in terms of sections 169 and 170 of the Companies Act.
6. Furthermore, reasonable grounds exist to issue a compliance notice to Ninety One, in terms of section 171 of the Companies Act, directing it to comply with its obligations under sections 61(8)(d), 61(10) and 63(2) of the Companies Act at all future AGMs.

B. Parties and standing

7. As contemplated in section 168 of the Companies Act, the Complainant lodges this complaint with the Commission in respect of Ninety One’s contravention of sections 61(8)(d), 61(10) and 63(2) of the Companies Act and of the infringement of the shareholders’ rights flowing from those provisions, in the conduct of its AGM on 25 July 2024.
8. The Complainant holds shares in Ninety One Limited. The Complainant is a non-profit shareholder activism organisation that exercises the rights and powers of shareholders, using

research, advocacy and activism, to advance social and environmental justice in South Africa. Its principal address is Unit B01, Plum Park, 25 Gabriel Road, Plumstead, Cape Town, 7800.¹

9. Ninety One is a global asset manager and a dual-listed company. Ninety One plc has its primary listing on the London Stock Exchange (LSE) and its secondary listing on the Johannesburg Stock Exchange (JSE). Ninety One Limited is listed on the JSE, with its principal address at 36 Hans Strijdom Avenue, Cape Town, 8001.² This complaint is in relation to Ninety One Limited.
10. The Complainant acts in its own right as a Ninety One Limited shareholder.

C. Legal framework and relevant context

The Companies Act and applicable constitutional provisions

11. The reforms introduced in the Companies Act 2008 included among their objectives to “*protect shareholder rights, advance shareholder activism, and provide enhanced protections for minority shareholders*”.³
12. In this context, shareholder activism should be understood as constructive efforts taken by shareholders to influence corporate behaviour, both in their own interest and for the social good. As the King IV Report on Corporate Governance for South Africa (“King IV”) emphasises, shareholder activism can play an important role in promoting good governance and accountability, as shareholders are “*the ultimate compliance officers*” and have the “*power to serve as proxies for wider stakeholder interests*”.⁴
13. In keeping with the common law and statutory principle of equality between shareholders, the King IV Report on Corporate Governance for South Africa (“King IV”) also recommends that the board should ensure that shareholders are equitably treated, and that the interests of minority shareholders are adequately protected.⁵
14. Shareholders now enjoy a range of new or enhanced legal tools to engage in shareholder activism in a responsible manner, that enhances corporate governance and accountability.⁶
15. This complaint deals with the protection of shareholder rights. As King IV points out, shareholders have “*certain rights that are enshrined in company legislation and that strengthen their ability to hold boards of companies to account*”.⁷ The shareholder rights enshrined in company legislation include the rights: to attend company AGMs, to vote on resolutions, to propose shareholder resolutions, to engage with and ask questions of company management at AGMs, and to hear the concerns raised by other shareholders in their engagement with the company.

¹ Non-profit company registration no. 2017/347856/08 (<https://justshare.org.za/>).

² Company registration no. 2019/526481/06 (<https://ninetyone.com>) and Ninety One Notice of AGM 2024, p. 30.

³ Explanatory Memorandum to the Companies Bill [B 61D-2008] para 1.2.4(c).

⁴ Institute of Directors in South Africa *King IV Report on Corporate Governance in South Africa* (2016)

⁵ King IV Report on Corporate Governance for South Africa, 2016, Principle 16, recommended practice 9, p. 72. “*The board should ensure that shareholders are equitably treated, and that the interests of minority shareholders are adequately protected*”.

⁶ King IV Report on Corporate Governance for South Africa, 2016, Shareholder Activism, p. 32.

⁷ King IV Report on Corporate Governance for South Africa, 2016, Shareholder Activism, p. 32.

16. The most relevant Companies Act provisions relating to AGMs are addressed below.

17. Section 61(7) provides that:

“A public company must convene an annual general meeting of its shareholders:

- (a) initially, no more than 18 months after the company’s date of incorporation; and*
- (b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown”.*

18. Section 61(8) provides that (Complainant’s emphasis):

*“A meeting convened in terms of subsection (7) **must, at a minimum**, provide for the following business to be transacted:*

...

*(d) **any matters raised by shareholders**, with or without advance notice to the company.”*

19. Section 61(10) provides that (Complainant’s emphasis):

*“Every shareholders meeting of a public company must be **reasonably accessible** within the Republic **for electronic participation by shareholders in the manner contemplated in section 63(2)**, irrespective of whether the meeting is held in the Republic or elsewhere”.*

20. Section 63(2) provides that (Complainant’s emphasis):

“Unless prohibited by its Memorandum of Incorporation, a company may provide for—

- (a) a shareholders meeting to be conducted entirely by electronic communication; or*
- (b) one or more shareholders, or proxies for shareholders, to participate by electronic communication in all or part of a shareholders meeting that is being held in person,*

*as long as the electronic communication employed ordinarily **enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting”.***

21. Section 61(14) states that a failure to hold a meeting as required by section 61 “*does not affect the existence of a company, or the validity of any action by the company*”. As is addressed below, this section does not provide a defence to any failure to uphold shareholder rights during an AGM.

22. **As is also addressed below, the rights conferred on shareholders under sections 61(8)(d) and 61(10) (read with 63(2)) are unalterable provisions.**

23. The Companies Act also imposes clear directions on how its provisions should be interpreted.

24. Sections 5(1) and 7 of the Companies Act require an interpretation that, firstly, “*promote[s] compliance with the Bill of Rights as provided for in the Constitution, in the application of company law*” and, secondly, gives effect to the further purposes of the Act listed in section 7, including:
- a. “*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*”;⁸
 - b. “*balanc[ing] the rights and obligations of shareholders and directors within companies*”;⁹ and
 - c. “*encourag[ing] the efficient and responsible management of companies*”.¹⁰
25. Furthermore, section 39(2) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) requires that legislation must be interpreted in a manner that promotes the spirit, purport and object of the Bill of Rights. This means that where two or more interpretations of a statutory provision are reasonably possible, the interpretation that best promotes constitutional rights and values must be preferred.¹¹
26. Two sets of constitutional rights are directly implicated in the context of this complaint:
- a. the section 16 right to freedom of expression, including the right to receive and impart information and ideas; and
 - b. the section 18 right to freedom of association.
27. These rights impose corresponding obligations on private actors, such as Ninety One, in terms of section 8(2) of the Constitution.¹²

The rights to freedom of expression and association

28. The ability of shareholders to raise any matters at an AGM and to engage and communicate with the board and each other at an AGM, serves to advance the section 16 and section 18 constitutional rights to freedom of expression and association, which provide, in relevant part:

“16 Freedom of expression

(1) Everyone has the right to freedom of expression, which includes–

...

(a) freedom to receive or impart information or ideas”

...

⁸ Section 7(b)(iii).

⁹ Section 7(i).

¹⁰ Section 7(j).

¹¹ *Makate v Vodacom Ltd* 2016 (4) SA 121 (CC) at paras 88 – 89, quoting *Fraser v Absa Bank Ltd (National Director of Public Prosecutions as Amicus Curiae)* 2007 (3) SA 484 (CC) at para 43.

¹² Section 8(2) provides: “A provision of the Bill of Rights binds a natural or juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.”

18 Freedom of association

Everyone has the right to freedom of association.”

29. The right to raise issues at the AGM, and to ask questions of and engage with company management and other shareholders, allows shareholders to exchange information and ideas and to organise around shared goals, including through voting. In this way, this mechanism fulfils a balancing role between shareholders and directors’ rights, promoting robust debate, compliance with the Bill of Rights in accordance with section 7 of the Companies Act, and a culture of corporate democracy that is ultimately in the best interests of a company.

D. The relevant facts

25 July 2024 AGM

30. The following section sets out in detail the grounds of the Complainant’s allegation that Ninety One has violated its obligations under the Companies Act, including to protect shareholder rights.

31. Ninety One Limited shareholders were notified on 5 June 2024 that the company’s Integrated Annual Report and Notices of Annual General Meetings had been made available.¹³ The Notice of AGM 2024 for Limited shareholders announced that the AGM would be held electronically on Thursday 25 July 2024 at 12h00.¹⁴ A copy of this Notice of AGM is attached hereto, marked **JS1**.

32. A hybrid AGM (i.e., both in-person and electronic attendance permitted) was conducted for plc shareholders and an electronic-only AGM for Limited shareholders. The Notice of AGM explained that the AGMs of Ninety One plc and Ninety One Limited would be held in parallel, *“and the shareholders of both companies will have the opportunity to vote on each of the resolutions, with the votes aggregated to determine the result”*.

33. Also, in the Notice of AGM 2024 Ninety One announced that the Limited AGM would be electronically accessible via the Lumi platform.¹⁵ It set out instructions on how the question and answer (Q&A) session during the AGM would be conducted:¹⁶

“4. Questions

Shareholders attending electronically may ask questions via the website by typing and submitting their question in writing or by phoning in using the number displayed on the website.

To ask a written question, select the messaging icon from within the navigation bar and type your question at the top of the screen, once finished, press the “send” icon to the right of the message box the submit your question.

If you would like to ask your question verbally, press the “Request to Speak” button at the bottom of the broadcast window. If you are watching the broadcast in full screen mode, this

¹³ <https://tools.eurolandir.com/tools/Pressreleases/GetPressRelease/?ID=4546055&lang=en-GB&companycode=uk-n91&v=>

¹⁴ Ninety One, Notice of AGM 2024, p. 15.

¹⁵ <http://web.lumiagm.com>.

¹⁶ Ninety One, Notice of AGM 2024, p. 29.

button is found at the top of the window. Then follow the on-screen instructions to join the queue.

If you would prefer to dial a telephone number to ask your verbal question, the dial in details will be available within the Home tab of the platform.

When called to speak by the Chair, your microphone will be unmuted and you will be free to ask your question.”¹⁷

34. On 25 July 2024, the electronic broadcast of the AGM started after the AGM had commenced. As a result, shareholders attending electronically missed the start of the brief opening address by the chair, Gareth Penny, which was followed by another brief address by CEO Hendrik du Toit. After this, Penny announced that the proceedings would move to a combined Q&A session for both plc and Limited shareholders. Penny noted that “*all questions should be raised only while we have a single forum of all shareholders*”, and that the meeting would be split thereafter for voting.
35. Company secretary Amina Rasool provided shareholders with instructions on how the Q&A would run: “*in-room questions first (for those attending in London), telephone (dial-in) questions second, and electronic questions last*”.
36. The Q&A session commenced with Rasool asking whether there were any questions in the room from any shareholders attending in person in London. She waited a few seconds, then indicated that there were none and asked whether there were any telephone questions. A few seconds later, she indicated that she had received no telephone questions, and then asked if there were any electronic questions (through the Lumi platform). After a further few seconds, Rasool stated that there were also no electronic questions received, and then said that she would wait a moment longer. Du Toit then stated that if shareholders wanted to ask other questions later, they would be welcome to email the company secretary. Rasool then handed back to Penny on the basis that there were no questions, and he started the voting procedure. This whole process lasted less than two minutes.
37. However, within seconds of questions being invited from shareholders attending electronically, representatives of the Complainant attending the AGM, having followed the instructions, had indicated their intention to ask verbal questions via the “request to speak” button on the Lumi platform, which placed them in a queue. When it became apparent that the Complainant’s requests to ask verbal questions had not been acknowledged by Ninety One, the Complainant’s representatives had to scramble to use the written messaging option to flag that there were problems with the Q&A process, and that they had indicated their intention to ask verbal questions. Screenshots of some of these messages are attached marked **JS2**. The Complainant’s representatives also then hastily typed all their questions via the written message functionality on the Lumi platform.
38. These written questions were also not acknowledged. Although Ninety One had indicated that the meeting would close after voting, and although plc shareholders were no longer in the same meeting as Limited shareholders once the voting commenced, the Complainant’s

¹⁷ Ninety One, Notice of AGM 2024, p. 29.

representatives hoped that the board would realise that there had been an issue and that their questions would be addressed after voting had taken place, even if this meant re-opening the joint meeting. Twenty minutes were provided for voting, during which time an onscreen clock counted down the voting period. However, no questions were addressed when voting closed: instead, the meeting ended immediately.

39. Excluding the voting period (during which online shareholders could only hear a “holding” tune playing), the entire AGM only lasted some 11 minutes.
40. In the Complainant’s experience of the multiple AGMs in which it has participated, it is highly unusual for an AGM’s Q&A session to last less than two minutes. As explained in this complaint, the speed at which Ninety One conducted the AGM and the Q&A session, and its failure to ensure that there were, in fact, no shareholder questions, violate the Companies Act.
41. Had the company secretary provided more time for questions, and communicated with Lumi to ensure that there were no problems that might be delaying or preventing questions from being seen by the company secretary (a relatively common occurrence with online AGM participation), there would have been an opportunity to rectify the situation and allow for shareholder questions to be asked. It is also not clear why, when the company realised that there had been a problem with shareholder questions, it did not reconvene the meeting to allow this to be rectified.

Correspondence after the AGM

42. At 17h00 on 25 July 2024, the Complainant received an email from Christine Bevan, Ninety One’s Group Assistant Company Secretary as appears from **JS3**. She stated:

“We have been notified by Lumi, our online AGM portal service provider, that they had a technical issue during the Ninety One plc/Ltd AGM today which resulted in the participants of the Ninety One Limited AGM being unable to ask questions during the meeting.

Firstly, we would like to apologise to you as our shareholder for this issue and the fact you were unable to ask your questions during the AGM.

Unfortunately, Lumi only made us aware of this issue once the AGM had concluded and as such we were unable to address the matter during the meeting.

Lumi have subsequently sent a record of all shareholder questions submitted online through to us and we are reaching out to each shareholder on this matter.

We note you and your colleagues at Just Share did ask a number of questions. We would like to engage with you on these questions and provide answers to your questions in a manner that is most suitable and convenient for you. We would be happy to arrange a call with Just Share to discuss and respond to your questions or, if preferred, we can provide written responses. Please do let us know your preferred method”.

43. At 19h28 on 25 July 2024, as appears in **JS4**, Bevan sent another email to the Complainants, stating:

“... I am extending Ninety One’s apologies to you all as our shareholders for the fact that you were unable to ask your questions directly to the Board at today’s AGM.

Lumi, our online AGM portal service provider, notified us post meeting that they had had a technical issue during the AGM today which resulted in the participants of the Ninety One Limited AGM being unable to ask questions during the meeting. Unfortunately, as we were only made aware of this issue once the AGM had concluded, we were unable to address the matter during the meeting...”.

The email included responses to three of the six questions the Complainant had tried to ask during the AGM.

44. Lumi also addressed email correspondence to the Complainant, copies of which are attached as **JS5** and **JS6**, respectively. Unlike Ninety One, Lumi attributed the inability of shareholders to ask questions to “human error”, taking responsibility for the problem.

45. In **JS5**, at 13h02 on 26 July 2024, Andrej Vladar, Managing Director, Africa at Lumi stated (our emphasis):

*“With reference to the AGM of Ninety One Limited and Ninety One Plc, the issues experienced by shareholders during the Q&A was due to **human error** on the part of Lumi not managing to inform the Board of Ninety One of any inbound questions from the Ninety One Limited Shareholders in a timely manner. This was not a technical glitch or platform related issue, but a human error that caused the problems experienced during the AGM”.*

46. In **JS6**, Lumi’s chief operating officer, Peter Fowler stated, at 14h03 on 26 July 2024:

“I am writing to inform you that due to an error on our part, South African shareholders were unable to ask questions during Ninety One’s Annual General Meeting (AGM) on 25 July. Furthermore, we also acknowledge that there was a delay in connecting South African shareholders to the call, which meant that they missed some of the Chairman’s introduction. Unfortunately, Ninety One only became aware of these issues after the AGM had concluded, so they were unable to address them during the meeting.

We take full responsibility for the errors and sincerely apologise for any inconvenience or frustration they may have caused. We understand the importance of shareholder participation in AGMs and recognise the human error on the part of Lumi on this occasion that has undermined this crucial aspect of corporate governance for Ninety One.

Once again, please accept our sincere apologies”.

47. The discrepancy in Ninety One’s description of the problem as a “technical issue” and Lumi’s insistence that it was a “human error” is perplexing. The Complainant has attended many AGMs run on the Lumi platform and it is hard to understand how human error could prevent the person running the Lumi platform from conducting the main task assigned to them during the AGM, i.e., ensuring that shareholder questions are conveyed to the company. Irrespective of whether there was a technical glitch with the Lumi system or any “human error”, for which Lumi attempted to take responsibility, Ninety One’s AGM was conducted **extremely quickly**, with no opportunity given for any problems to be rectified. As a result, no matters could be raised by shareholders, which is a minimum legal requirement of the business of an AGM.

48. Ninety One should have been aware that there might well be questions from Limited shareholders, including the Complainant,¹⁸ but did not pause to ensure that the electronic platform was functioning properly when it appeared that no shareholders had questions. As set out above, the entire Q&A session lasted less than two minutes - the whole meeting lasted about 11 minutes before it was split for voting.
49. When an AGM is being conducted electronically, there are multiple opportunities for technical and other problems to interfere with the smooth running of the AGM and the ability of shareholders to interact meaningfully with the board. This is in addition to the fact that participating in an electronic AGM is already frustrating and difficult for shareholders, including for the following reasons:
- (a) There are a handful of AGM service providers from which a company can choose to conduct an electronic AGM. Some of these platforms offer more advanced functionalities than others. In all cases, it is up to the company to decide which of the available functionalities it wishes to “enable” during the AGM. For example, the company decides whether it will allow only written questions, or written and verbal questions, or telephonic questions, or video questions, or a combination of these.
 - (b) Shareholders are therefore at the mercy of the electronic “platform” and the functionalities that the platform provides and that the company has chosen to enable.
 - (c) The order in which each AGM is conducted differs from company to company. But there is often no agenda provided at the start of the start of the AGM, so shareholders do not know when they will be called upon to ask questions.
 - (d) In the case of written questions, these are read out by the company secretary or another company representative, who has never seen the questions before, and often reads them incorrectly or with the wrong emphasis.
 - (e) If a shareholder has several questions, these are often read out in the wrong order, or summarised inaccurately.
 - (f) If the company secretary sees that several questions relate to the same topic, these will often be grouped and answered “as one”, which ignores the nuance of individual questions, and deprives each shareholder asking a question of the right to engage directly with the board and management.
 - (g) Once a question has been answered, the shareholder must re-request to speak if they have a response, follow-up question, or concern. This cannot always be done directly after the response as it would be in a normal, in-person scenario because the shareholder has usually been muted and/or removed from the electronic queue. Often the shareholder’s follow-up to the board’s response is only dealt with at the end of the Q&A session, by which time its relevance or impact has been diluted by the intervening discussion. This is particularly frustrating when only written questions are allowed, as

¹⁸ By reviewing the attendance register provided by ComputerShare (www.computershare.co.za)

the response must be typed into the question box and enter the queue to be addressed in whatever order the company secretary chooses.

- (h) Even though it is technically possible for shareholders to see who else is attending the meeting online, the Complainant has never attended an AGM where this functionality has been enabled by the company. This means that it is impossible to know how many other people are attending the meeting, or to interact with them in any way. In our view, this violates the clear provision in the Companies Act that *the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently **with each other without an intermediary*** (our emphasis).
- (i) At many hybrid and electronic-only AGMs, even though it is easy to ensure that all of the participating board and executive members are visible to shareholders this option is not enabled by the company. Sometimes only the chair is visible for the whole meeting, regardless of who is speaking. In the case of Ninety One's 25 July 2024 AGM, **not one** of the company representatives was visible to shareholders attending online at any time - instead, the screen contained a static image of the board taken from the company's annual report. At other points, other images were displayed, but never any live images from the AGM.

50. None of the above frustrations are an inevitable consequence of electronic AGM participation. Each of them happens because a choice has been made by the company to host the AGM in a particular way. It should be incumbent on the issuer holding the AGM to go to extra lengths to ensure that shareholder participation is not impacted by the fact that the AGM is taking place electronically.

51. The obligation to ensure compliance with the provisions of the Companies Act lies with Ninety One, not with its electronic AGM service provider – in this case, Lumi. If it opts to host an electronic AGM, it must ensure that the AGM is paced in such a manner that permits the resolution of any technical issues or other delays - which are entirely foreseeable. It is a simple matter to implement best practices which ensure that the AGM is conducted in a way that protects rather than infringes shareholder rights and promotes shareholder engagement.¹⁹

52. Instead, Ninety One's intent appeared to be to get through the AGM as quickly as possible, with a narrow focus on the voting as being the only important element of the meeting: the chair stated that the Q&A session would be "*followed by the **formal part of the meeting** during which time you will have an opportunity to vote on the resolutions as set out in the notices of the meetings*" (our emphasis).

53. However, the Companies Act specifies that matters raised by shareholders **are part and parcel of the formal business of the meeting** - not an aside to be dispensed with as quickly as possible. A failure to ensure that shareholders can raise matters at the AGM has the result that the minimum requirements of the business of an AGM have not been met.

¹⁹ See, for example: <https://www.cipc.co.za/wp-content/uploads/2023/04/NON-BINDING-LEGAL-OPINION-AGMs.pdf>; <https://justshare.org.za/media/news/sa-companies-virtual-agm-arrangements-risk-non-compliance-with-companies-act/>

54. On 26 July at 14h34 Ninety One provided written responses to the remaining three questions submitted by the Complainant's representatives during the AGM, as appears from **JS7**. However, the purpose of asking questions at an AGM is to do so in a public forum, and to allow shareholders the opportunity to engage with the board **and its responses and to engage with each other**. This is a legal obligation with which Ninety One is required to comply. It is not an adequate substitute for the company to provide written responses to shareholders after the fact.
55. Although Ninety One apologised, it did not acknowledge that its failure to ensure that shareholders could raise issues of concern and ask questions at the AGM amounted to a breach of the Companies Act and non-compliance with the minimum requirements of an AGM. Nor did Ninety One give any assurances that this situation would not be repeated.
56. In the circumstances, and given the failure by Ninety One to acknowledge that it has violated the Companies Act and shareholder rights, the Complainant is left with no alternative but to lodge this complaint seeking an investigation and action by the Commission based on the powers conferred under Part D of the Companies Act.
57. In the Complainant's experience of attending more than 85 AGMs since 2018, shareholders are increasingly being prevented from exercising their rights at AGMs because of "technical issues" that arise during the use of electronic AGM platforms - including because AGMs are conducted too quickly.
58. Guidance from the CIPC on the consequences of conducting an AGM which is non-compliant with the Companies Act due to "technical issues" would be very valuable for the market given the number of companies opting to host electronic-only or hybrid AGMs.

E. Ninety One's breach of its obligations and shareholders' rights

59. As set out above, sections 61(8)(d), 61(10) and 63(2) of the Companies Act provide respectively (Complainant's emphasis):
- That an annual general meeting convened in terms of section 61(7) of the Companies Act **must, at a minimum**, provide for "**any matters raised by shareholders**, with or without advance notice to the company", **to be one of the items of business** to be transacted;
 - That "Every shareholders meeting of a public company **must be reasonably accessible** within the Republic for electronic participation by shareholders in the manner contemplated in section 63(2), irrespective of whether the meeting is held in the Republic or elsewhere"; and
 - That a company may provide for "a shareholders meeting to be conducted entirely by electronic communication"; or "for one or more shareholders ... to participate by electronic communication in all or part of a shareholders meeting that is being held in person, as long as the electronic communication employed ordinarily **enables all persons participating in that meeting to communicate concurrently with each other without an intermediary**."
60. Ninety One's AGM clearly did not allow for any matters to be raised by shareholders; it was not reasonably accessible to shareholders in South Africa; and the electronic communication did not enable shareholders to participate.

61. Ninety One is legally obliged to ensure compliance with these provisions, and to ensure that shareholders can exercise their rights. Ninety One Limited shareholders were not able to communicate with Ninety One nor with any other participants in the meeting. They were also not able to raise any matters of concern. The AGM did not meet the legally-prescribed minimum requirements.
62. These Companies Act provisions are unalterable provisions. The rights conferred on shareholders under sections 61(8)(d) and 61(10) (read with 63(2)) may not be negated or restricted by Ninety One's Memorandum of Incorporation (Mol), its rules, or its conduct. In other words, no provisions in Ninety One's Mol or its rules, nor any action taken by Ninety One, can negate the shareholder rights conferred by these legal requirements.
63. Nor does section 61(14) of the Companies Act mean that a violation of shareholder rights – when an AGM *is* conducted - is condoned. It provides that a failure to conduct a meeting in terms of section 61 does not affect the existence of a company, nor invalidate any action it has taken. When a company does comply with its legal obligation to **conduct** an AGM - as Ninety One did - it is obliged to ensure that it complies with the legal requirements of that meeting as prescribed by the Companies Act. Section 61(14) does not provide a defence to an argument that a company has failed to uphold shareholder rights in an AGM.
64. This is supported by the Companies Act purposes set out above.
65. It is also in keeping with the constitutional rights and values outlined above, including freedom of expression, and freedom of association. The ability of shareholders to raise matters at an AGM and to communicate concurrently with all participants are an important means for shareholders to impart and receive information on issues and risks facing businesses and to collectively organise around the shared goal of addressing these risks, both in the companies' interests and in furtherance of constitutional rights.
66. By contrast, Ninety One's actions have deprived shareholders of these rights and of an important forum for engaging on these critical issues.
67. In addition, the Complainant reiterates that the failure to allow shareholders to raise matters at the AGM means that the minimum requirements for a valid AGM have not been met.

F. Request for investigation and compliance notice

68. In the circumstances, there is an ongoing violation of the Companies Act and a breach of shareholder rights that is likely to reoccur the next time that Ninety One holds an AGM.
69. In terms of sections 169, 170, and 171 of the Companies Act, the Complainant understands that the Commission is empowered to exercise several different options, at its discretion, in its handling of this complaint.
70. The Complainant does not seek to direct the exercise of this discretion; however, based on the facts and primary legal grounds set out in this supporting statement, it is respectfully submitted

that these allegations warrant an investigation in accordance with section 169 of the Companies Act and, on completion of the investigation, the issuing of a compliance notice.

71. Should the Commission find that there are “reasonable grounds” to issue a compliance notice in terms of sections 170(1)(g)(i) and 171(1) of the Companies Act, the Complainant proposes the following directions:

1. *Ninety One Limited is found to have breached its obligations under sections 61(8)(d), 61(10) and 63(2) of the Companies Act by failing, at its July 2024 AGM, to ensure that: shareholders participating in the meeting through electronic communication were able:*

1.1. to raise matters for consideration as an item of business of the AGM;

1.2. to participate reasonably effectively in the meeting; and

1.3. to communicate concurrently with all participants in the meeting.

2. *Ninety One is directed to comply with its obligations under sections 61(8)(d), 61(10) and 63(2) of the Companies Act by ensuring that, at all future AGMs, shareholders participating in the meeting through electronic communication are able:*

2.1. to raise matters for consideration as an item of business of the AGM;

2.2. to participate reasonably effectively in the meeting; and

2.3. to communicate concurrently with all participants in the meeting.

72. The Complainant is available to provide any further information or documents that may assist the Commission in its deliberations and investigation.
