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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2025-231389**

In the matter between:

Just Share NPC,Aeon Investment Management (Pty) Ltd,Fossil Free South Africa	Plaintiff / Applicant / Appellant

and

Thungela Resources Limited,Companies and Intellectual Property Commission	Defendant / Respondent

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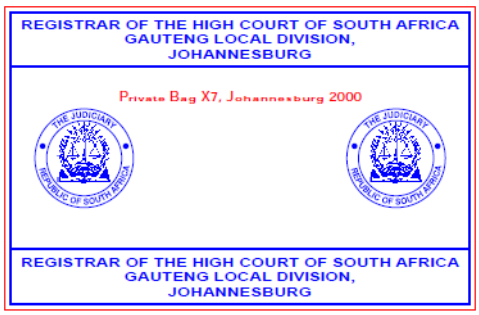
Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 27/11/2025 at 11:24:43 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:

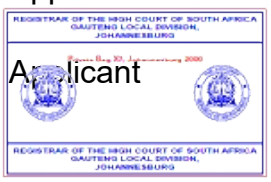
Registrar of High Court , Gauteng Local Division,Johannesburg

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: _____

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant



and

THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicants will make application on a date to be determined by the Registrar for an order in the following terms:

1 It is declared that the First Respondent, Thungela Resources Limited ("Thungela"), breached its obligations and the Applicants' rights under sections 65(3) and 62(3)(c) of the Companies Act 71 of 2008 (Act) by refusing to circulate and table the following shareholder-proposed resolutions:

1.1 The proposed resolution dated 19 April 2023, filed by the Applicants for consideration by Thungela's shareholders at the company's AGM held on 31 May 2023; and

1.2 The proposed resolution dated 26 April 2024, filed by the Applicants for consideration by Thungela's shareholders at the company's AGM held on 4 June 2024.

1.3 The proposed resolution dated 25 April 2025, filed by the Applicants for consideration by Thungela's shareholders at the company's AGM held on 5 June 2025.

2 It is declared that:

2.1 The Applicants, in their capacity as Thungela shareholders, are entitled to propose and exercise voting rights on shareholder resolutions concerning environmental, social, and governance matters, including issues related to climate change.

2.2 The Applicants, in their capacity as Thungela shareholders, are entitled to propose and exercise voting rights on non-binding shareholder resolutions.

2.3 Thungela is obliged to comply with sections 65(3) and 62(3)(c) of the Act by circulating and tabling shareholder-proposed resolutions that satisfy the formal and procedural requirements prescribed in section 65(3) and section 65(4) of the Act and its memorandum of incorporation, unless it is subject to a court order obtained under section 65(5) of the Act or other applicable law restraining it from doing so.

3 Thungela, together with any parties opposing this application, are directed to pay the Applicants' costs, jointly and severally.

4 Further and/or alternative relief.

TAKE FURTHER NOTICE that the Founding Affidavit of **TRACEY LAUREL DAVIES,** together with supporting affidavits and annexures, will be used in support of this application.

KINDLY TAKE NOTICE FURTHER that the Applicants will accept notice and service of all documents in these proceedings at the address of their attorneys of record mentioned below. The Applicants will also accept electronic service at the following e-mail address: tim.lloyd@powerlaw.africa, claire.dehosse@powerlaw.africa and legal@powerlaw.africa.

TAKE NOTICE FURTHER that if you intend opposing this application, you are required to:

(a) within 10 days of receipt of this notice of motion, deliver a notice to the Applicants' attorneys that you intend to oppose this application;

(b) appoint an address within 15 kilometres of the office of the Registrar at which you will accept notice and service of all process in these proceedings; and

(c) within 15 days of notifying the applicant of your intention to oppose this application, deliver an answering affidavit.

TAKE NOTICE FURTHER that if no notice of intention to oppose is delivered, the application will be placed on the unopposed roll on a date determined by the Registrar or so soon thereafter as counsel may be heard.

DATED at **JOHANNESBURG** on the **27th** day of **NOVEMBER 2025**.

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Ref: PLJS-202516

TO: **THE REGISTRAR OF THE COURT**
JOHANNESBURG

AND TO: **THUNGELA RESOURCES LIMITED**
First Respondent
25 Bath Avenue,
Rosebank
JOHANNESBURG, 2196
E-mail: tovi.ellis@thungela.com

AND TO: **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**
Second Respondent
77 Meintjies Street,
Sunnyside
PRETORIA, 0002
E-mail: LSteenkamp@cipc.co.za

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO.: _____

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant
and	
THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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FOUNDING AFFIDAVIT

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I, the undersigned,

TRACEY LAUREL DAVIES

state under oath that:

1. I am the executive director of the First Applicant, Just Share NPC (Just Share).

2. I am duly authorised to bring this application and depose to this affidavit on behalf of Just Share. A signed resolution by the board of Just Share to this effect is attached as annexure "**TD1**".

3. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct to the best of my knowledge and belief.

4. Where I make legal submissions, I do so on the advice of the Applicants' legal representatives, whose advice I accept and believe to be correct.

A. INTRODUCTION AND OVERVIEW

5. This application concerns Thungela Resources Limited (Thungela)'s refusal to circulate and table shareholder resolutions proposed by the Applicants, in breach of the Applicants' rights under sections 65(3) and 62(3)(c) of the Companies Act 71 of 2008.

6. The Applicants proposed three non-binding shareholder resolutions in advance of Thungela's 2023, 2024 and 2025 annual general meetings (AGMs). These resolutions each concerned climate change and related environmental, social and governance (ESG) issues.

TLD

7. In doing so, the Applicants exercised their rights as shareholders under section 65(3) of the Companies Act, which provides that:

> *"Any two shareholders of a company -*
>
> *(a) may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and*
>
> *(b) when proposing a resolution, may require that the resolution be submitted to shareholders for consideration—*
>
> *(i) at a meeting demanded in terms of section 61 (3);*
>
> *(ii) at the next shareholders meeting; or*
>
> *(iii) by written vote in terms of section 60."*

8. Section 62(3)(c) of the Companies Act imposes a corresponding obligation on Thungela to include proposed shareholder resolutions in the notice of its AGM.

9. Thungela refused to circulate these resolutions, as it contends that the Applicants do not have any legal right to propose such resolutions. As a consequence, the resolutions were not tabled, discussed, or put to a vote at its AGMs.

10. The dispute between the parties turns on a crisp question of law: the proper interpretation of sections 65(3) and 62(3)(c) of the Companies Act.

11. This dispute was the subject of an investigation by the Companies and Intellectual Property Commission (CIPC), which referred the matter to alternative dispute resolution before the Companies Tribunal. The Companies Tribunal has issued a certificate confirming that the mediation process failed and CIPC has advised the Applicants to approach the High Court.

12. As a result, there remains a live dispute between Thungela and the Applicants that requires resolution in this court. The Applicants accordingly seek declaratory relief in two parts:

    12.1 First, declaring that Thungela breached its obligations and the Applicants' rights under sections 65(3) and 62(3)(c) of the Companies Act by refusing to circulate and table the 2023, 2024 and 2025 shareholder-proposed resolutions; and

    12.2 Second, declaring the Applicants' rights and Thungela's corresponding obligations under section 65(3) and 62(3)(c) of the Companies Act, to ensure that Thungela complies with its obligations in future.

13. This Court has jurisdiction to grant this relief in terms of sections 156(c), 158 and 161 of the Companies Act, read with sections 38 of the Constitution of the Republic of South Africa, 1996, and section 21(1)(c) of the Superior Courts Act 10 of 2013.

14. In what follows, I will address the following topics in turn:

    14.1 The parties;

    14.2 The Applicants' standing to seek this relief;

    14.3 The relevant legal framework governing shareholder resolutions;

    14.4 The role of shareholder activism on ESG issues including climate change;

    14.5 Thungela's public commitments and acknowledgments of climate change risks;

14.6 Thungela's persistent refusal to table the Applicants' proposed resolutions;

14.7 The Applicants' satisfaction of the requirements under section 65(3) of the Companies Act;

14.8 Thungela's breach of its legal obligations and the Applicants' rights to table the resolutions; and

14.9 The proposed declaratory relief.

B. PARTIES

Applicants

15. The First Applicant, **Just Share**, is a registered non-profit company with registration number 2017/347856/08. Its registered address is Unit B01, Plum Park, 25 Gabriel Road, Plumstead, Cape Town, 7800.

15.1 Just Share is a non-profit organisation which drives corporate accountability through strategic shareholder activism and responsible investment advocacy. The aim of its research, advocacy and activism activities is to catalyse corporate behaviour change that drives urgent climate action and supports a more inclusive, resilient economy.

15.2 Just Share collaborates with other shareholders through the filing of shareholder-proposed resolutions to address current and emergent governance issues with a bearing on sound corporate governance, corporate sustainability, and the public interest.

16. The Second Applicant, **Aeon Investment Management (Pty) Ltd (Aeon)**, is a private company, duly incorporated under the company laws of South Africa with registration number 2005/013315/07. Its registered business address is 4th Floor, The Citadel, 15 Cavendish Street, Cape Town, 7708.

16.1 Aeon is a South African investment management company and registered financial services provider which invests primarily in public equities, offering multi-asset balanced portfolios to retail and institutional clients.

16.2 It blends growth orientated stock selection with fixed income exposure, and environmental, social and governance-integrated strategies to deliver long term, risk adjusted returns.

16.3 Through these investments, Aeon is committed to advancing sound corporate governance and environmental sustainability.

17. The Third Applicant, **Fossil Free South Africa (FFSA)**, is a voluntary association registered as a non-profit organisation in terms of the Non-Profit Organisation Act 71 of 1997 under registration number NPO 149-064, with the capacity to sue and be sued in its own name. Its principal place of business is 3 Tiverton Road, Plumstead, Cape Town, 7800.

17.1 FFSA campaigns to accelerate a just and democratic, human rights-based energy transition in South Africa, via public campaigns, research, and advocacy to counter the fossil fuel industry and slow climate change.

17.2 FFSA advocacy for fossil fuel divestment by leading institutions includes shareholder action to encourage socially and environmentally responsible corporate and investment practices.

18. Confirmatory affidavits in the name of duly authorised representatives of Aeon and FFSA will be filed in support of this application.

Respondents

19. The First Respondent, **Thungela**, is a public company incorporated in accordance with the company laws of South Africa, with its principal place of business at 25 Bath Avenue, Rosebank, Johannesburg, 2196. A copy of Thungela's Memorandum of Incorporation (MOI) is attached as annexure "**TD2**".

    19.1 Thungela is a producer and exporter of thermal coal, with operations in South Africa and Australia.

    19.2 Thungela is listed on the Johannesburg Stock Exchange (JSE) and on the London Stock Exchange (LSE).

    19.3 As a JSE-listed company, Thungela is required to apply and explain its adherence to the principles and recommended practices in the King IV Report on Corporate Governance (King IV).

20. The Second Respondent is **CIPC**, with its principal place of business at 77 Meintjies Street, Sunnyside, Pretoria, 0002.

    20.1 CIPC is cited for such interest as it may have in the matter, as the entity established in terms of section 185 of the Companies Act to enforce compliance with the Act and other applicable legislation.

    20.2 No relief is sought against CIPC, except for costs in the event of opposition.

C. STANDING

21. Each of the Applicants is a shareholder in Thungela, as defined under sections 1 and 57(1) of the Companies Act:

21.1 Just Share has been a registered Thungela shareholder since 15 July 2019. Its proof of shareholding is attached as annexure "**TD3**".

21.2 FFSA has been a registered Thungela shareholder since 19 April 2023. Its proof of shareholding is attached as annexure "**TD4**".

21.3 Aeon is the designated investment manager for the Aeon Balanced Prescient Fund (Fund). Aeon is authorised to attend, speak at and/or exercise all voting rights at meetings that may, directly or indirectly, effect securities held in the Fund's portfolio, including its Thungela shares.

22. Accordingly, the Applicants have standing to bring this application in the following capacities:

22.1 In their own interest, in terms of section 157(1)(a) of the Companies Act, as Thungela shareholders who are entitled to apply to this court in terms of section 161 of the Companies Act for an order determining their rights and seeking appropriate relief necessary to protect those rights;

22.2 As members of a group of co-filers of proposed shareholder resolutions who are affected by Thungela's refusals, in terms of section 157(1)(c) of the Companies Act; and

22.3 The Applicants further seek the court's leave in terms of section 157(1)(d) of the Companies Act to bring this application in the public interest on the following grounds, which will be expanded upon in the sections below:

22.3.1 The Applicants act in the public interest, as organisations committed to sound corporate governance and environmental sustainability.

22.3.2 There is a live dispute between the parties that requires resolution, which will provide guidance for future disputes of this nature.

22.3.3 Our courts have not yet had the opportunity to consider the meaning and effect of sections 65(3) and 62(3)(c) of the Companies Act. The resolution of this dispute will therefore provide guidance to the wider shareholding public.

22.3.4 The rights of shareholders to propose and vote on shareholder resolutions concerning ESG issues, including climate change, is a matter of broader public significance, implicating the spirit, purport and objects of the Companies Act.

22.3.5 This dispute further implicates constitutional rights, including the rights to freedom of expression (section 16), association (section 18), and a safe and healthy environment (section 24).

23. For the same reasons, the Applicants have standing in terms of sections 38(a), (c) and (d) of the Constitution to vindicate and protect the implicated constitutional rights.

24. Further and / or alternatively, the Applicants have standing to seek declaratory relief under section 21(1)(c) of the Superior Courts Act and the common law, as parties with an interest in an existing, future, or contingent right or obligation to propose and vote on shareholder resolutions at meetings of Thungela shareholders.

D. LEGAL FRAMEWORK ON SHAREHOLDER-PROPOSED RESOLUTIONS

25. Shareholder activism involves lawful efforts by shareholders to influence corporate behaviour. The reforms introduced in the new Companies Act in 2008 included, among their objectives, to "*protect shareholder rights*" and to "*advance shareholder activism*". I attach the Explanatory Memorandum to the Companies Bill [B 61D-2008], including relevant paragraph 1.2.4(c), as annexure "**TD5**".

26. These objects are aligned with the King IV Report on Corporate Governance (King IV), a corporate governance code aimed at providing a practical, principled approach to good corporate governance. King IV has recently been updated, but King V will only take effect on 1 January 2026.

    26.1 King IV requires "*responsible corporate citizenship*", as reflected in Principle 3, which reflects that companies have obligations to the wider society and the natural environment. The acronym "ESG" – environmental, social and governance – is short-hand for these values.

    26.2 King IV emphasises that shareholder activism can play an important role in promoting responsible corporate citizenship and accountability. This is because shareholders are "*the ultimate compliance officers*" and have the

"*power to serve as proxies for wider stakeholder interests*". Relevant extracts from King IV are attached as annexure "**TD6**".

27. Under the 2008 Companies Act, shareholders now enjoy enhanced legal tools to engage in shareholder activism. These tools include expanded rights to propose and vote on shareholder resolutions at shareholder meetings.

28. Chapter 2, Part F of the Companies Act, headed "Governance of companies" regulates shareholders meetings and resolutions.

29. Section 62(1)(a) requires that a public company must deliver a notice of each shareholder meeting in the prescribed manner and form to all of the shareholders of the company, at least 15 business days before the meeting is to begin.[1] The company's MOI may provide for a different notice period, in terms of section 62(2).

30. Section 62(3)(c) further requires that a notice of a shareholders meeting must be in writing, and "*must include … a copy of <u>any proposed</u> resolution of which the company has received notice, and which is to be considered at the meeting…*". (Emphasis added)

31. Section 65 regulates shareholder resolutions, including ordinary and special resolutions.

32. As outlined above, section 65(3) entitles two or more shareholders to propose a resolution on "*any matter in respect of which they are each entitled to exercise*

[1] The JSE Listings Requirements provide (10.11(b)) that shareholders must be notified of a resolution at least 15 business days before the AGM.

voting rights". When proposing a resolution, the shareholders may require that the resolution be submitted at the next shareholders meeting.

33. Section 65(3) is an unalterable provision, meaning that the rights it confers may not be negated or restricted by a company's MOI, rules, or conduct.

34. Section 65(4) of the Companies Act requires that a proposed shareholder resolution must be:

> *"(a) expressed with sufficient clarity and specificity; and*
>
> *(b) accompanied by sufficient information or explanatory material,*
>
> *to enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution."*

35. Section 65(5) of the Companies Act provides a dispute-resolution mechanism through which directors or shareholders may object to any non-compliance with section 65(4) before a meeting of shareholders. It provides that:

> *"At any time before the start of the meeting at which a resolution will be considered, a shareholder or director who believes that the form of the resolution does not satisfy the requirements of subsection (4) may seek leave to apply to a court for an order—*
>
> *(a) restraining the company from putting the proposed resolution to a vote until the requirements of subsection (4) are satisfied; and*
>
> *(b) requiring the company, or the shareholders who proposed the resolution, as the case may be, to—*
>
> *(i) take appropriate steps to alter the resolution so that it satisfies the requirements of subsection (4); and*
>
> *(ii) compensate the applicant for costs of the proceedings, if successful."*

36. Section 5(1) of the Companies Act requires that the Act be interpreted and applied in a manner that gives effect to the purposes set out in section 7. These purposes include:

36.1 "*promot[ing] compliance with the Bill of Rights … in the application of company law*";

36.2 *"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";*

36.3 *"balanc[ing] the rights and obligations of shareholders and directors within companies";* and

36.4 *"encourag[ing] the efficient and responsible management of companies*".

37. Section 158 of the Act further provides that when determining a matter brought before it in terms of this Act:

> "*(a) a court must develop the common law as necessary to improve the realisation and enjoyment of rights established by this Act; and*
>
> *(b) … a court-*
>
> *(i) must promote the spirit, purpose and objects of this Act;*
>
> *and*
>
> *(ii) if any provision of this Act, or other document in terms of this Act, read in its context, can be reasonably construed to have more than one meaning, must prefer the meaning that best promotes the spirit and purpose of this Act, and will best improve the realisation and enjoyment of rights.*"

38. Sections 65(3) and 62(3)(c) of the Companies Act must therefore be interpreted in a manner that best promotes the above objects and the Bill of Rights. This echoes the broader interpretative obligations under section 39(2) of the Constitution, which are mandatory in nature and always apply to the interpretation of legislation.

39. Three sets of constitutional rights are directly implicated in the context of this dispute:

    39.1 The section 16 right to freedom of expression, as the opportunity to propose, circulate, table and vote on shareholder resolutions allows shareholders to exchange information and ideas both before and during shareholder meetings;

    39.2 The section 18 right to freedom of association, as this process allows shareholders to organise around shared values and goals through the sharing of proposals, debate, and voting; and

    39.3 The section 24 environmental rights to an environment that is not harmful to health or well-being and to the protection of the environment for the benefit of present and future generations, as shareholder-proposed resolutions on ESG issues, including climate change, can promote good corporate governance and accountability on environmental issues.

40. Section 5(2) of the Companies Act further permits reference to foreign law in interpreting the Act's provisions. It is notable that the rights afforded to shareholders under section 65(3) are considerably more generous and expansive than the rights conferred on shareholders in comparable common law

countries, including the United States, the United Kingdom, Canada, Australia and New Zealand. The relevant comparative law will be addressed further in argument.

E. THE ROLE OF SHAREHOLDER ACTIVISM ON ESG ISSUES INCLUDING CLIMATE CHANGE

41. Globally, shareholders have increasingly used shareholder-proposed resolutions to express their views on ESG issues, with a particular focus on climate change.

42. In 2024, shareholders in the United States filed more than 600 ESG-related resolutions, nearly 120 of which focused on climate change – the largest single category. I attach relevant extracts of a 2025 report by the shareholder activism organisation, *As You Sow*, as annexure "**TD7**". Similar trends have been seen in other jurisdictions where statistics are readily available, including the United Kingdom, the European Union, and Canada.

43. Since 2017, shareholders in South Africa have filed resolutions on climate change and other ESG issues at multiple JSE-listed companies.

44. To date, the Applicants are aware of at least 17 shareholder-proposed resolutions on climate change and ESG-related matters that have been co-filed at JSE-listed companies, including Thungela. The Applicants have, to different degrees, been involved in filing proposed resolutions at Sasol Limited, FirstRand Group Limited, Standard Bank Group Limited, and Exxaro Resources Limited.

45. Notably, company boards have also proposed their own resolutions on climate change. These include binding and non-binding resolutions proposed by

companies including Nedbank Group Limited, Investec Group Limited, Absa Group Limited, and Sasol Limited.

46. Just Share has actively tracked these climate resolutions. Where they have gone to a vote, they have generally passed with sizeable shareholder support, far exceeding the international average. Just Share supported the co-filing of the first successful climate resolution in South Africa, which was tabled at Standard Bank Group's AGM in 2019. The resolution, calling on the bank to adopt and disclose a policy on lending to coal-related projects, passed with 55% of the votes. Following that success, four of the other major banks – FirstRand, Absa, Nedbank, and Investec – tabled shareholder resolutions on climate change, all of which passed by an overwhelming margin.[2] This indicates substantial investor desire to express their views on these issues, and to see action on climate change from the companies in which they are invested.

47. This rise in shareholder activism reflects the urgency of the climate crisis, an existential threat which President Ramaphosa has described as "*the most pressing issue of our time*". A copy of this speech is attached as annexure "**TD8**".

48. The United Nations Intergovernmental Panel on Climate Change (IPCC), the foremost authority on climate science, confirms that climate change is happening at a rapid pace and that it is caused by human activities that release greenhouse gases (GHGs), primarily through the burning of fossil fuels including coal, oil and gas. This has resulted in the increasing frequency and intensity of natural disasters, including storms, droughts, floods and other extreme weather events.

[2] Just Share was a co-filer of a resolution (resolution 6) tabled at the FirstRand Group AGM in 2019, which passed with 99.9% of the vote. Absa, Nedbank and Investec each tabled board-proposed climate resolutions at their 2020 AGMs, which also passed with 99% support (100% for Nedbank).

I attach relevant extracts from the IPCC's Sixth Assessment Report as annexure "**TD9**".

49. South Africa's Climate Change Act 22 of 2024 recognises in its preamble that "*anthropogenic climate change represents an urgent threat to human societies and the planet and requires an effective, progressive and incremental response*". It further acknowledges that South Africa is particularly vulnerable to these threats.

50. As a party to the legally-binding 2015 Paris Climate Agreement, South Africa is committed to international efforts to limit global warming to "well below 2°C above pre-industrial levels", and to aim for 1.5°C.

51. Achieving this 1.5°C target requires GHG emissions to be cut by almost half by 2030, and for the world to achieve net zero emissions by 2050.

52. This requires urgent action by not only by states but also by private actors, particularly companies involved in the extraction and processing of fossil fuels.

53. Reducing GHG emissions to limit the worst effects of climate change is not only an environmental and human rights imperative, but also a business and economic imperative. Climate change poses severe financial and business risks to companies and their shareholders. In 2015, the former Governor of the Bank of England (now Prime Minister of Canada), Mark Carney, summarised these risks in an influential speech attached as annexure "**TD10**". They include:

    53.1 *Physical risks*, as the increasing frequency and intensity of natural disasters poses a risk to all businesses, their employees, and their assets;

53.2 *Liability risks*, as companies and directors face increasing exposure to legal claims and penalties arising from their contribution to climate change; and

53.3 *Transition risks*, as increased taxation, regulatory pressure, divestment, and the shift away from fossil fuels will leave companies and their shareholders financially exposed.

54. In this light, shareholder-proposed resolutions on climate change and related ESG issues have played and will continue to play an important role in the corporate response to these risks:

54.1 The tabling of these resolutions can facilitate dialogue between shareholders, management and the board.

54.2 The opportunity to debate and vote on these resolutions ensures greater transparency and accountability where companies fall short of their stated commitments.

54.3 Shareholder-proposed resolutions play an important educative role, informing shareholders of the risks and affording them the opportunity to consider arguments for and against the proposals.

54.4 They also provide important guidance to the board, signalling their shareholders' preferences for actions in response to climate change risks.

54.5 In this way, shareholder-proposed resolutions can advance responsible corporate citizenship and sustainable development, which are pillars of King IV.

F. THUNGELA'S PUBLIC COMMITMENTS AND ACKNOWLEDGEMENT OF CLIMATE CHANGE RISKS

55. Thungela is a major producer and exporter of thermal coal, a fossil fuel that is burned for electricity generation and heat production in industrial processes.

56. The International Energy Agency has identified coal as the single largest contributor to global climate change, contributing a quarter of global GHG emissions. This is because coal is the most emissions-intensive fuel source. I attach relevant extracts of this report as annexure "**TD11**".

57. Thungela and its shareholders therefore face significant climate change risks. Thungela's own 2023 Climate Change Report acknowledges these risks:

> *"Climate change is a material issue that can affect our business through regulations to reduce emissions, carbon pricing mechanisms, extreme weather events or chronic changes to the climate, access to capital and permitting risks. Importantly, it can also affect our employees, host communities and suppliers. The strategic, effective and appropriate management of these risks is critical, both to our business and to the lives of the people that depend on us."* (Emphasis added)

58. To that end, Thungela has publicly committed to achieving net zero emissions by 2050. I attach the summary of its approach to climate change published on Thungela's website, as annexure "**TD12**".

59. Thungela is also publicly committed to ESG principles, stating that this *"is rooted in our purpose to responsibly create value together for a shared future*." The company has stated three key priorities: "*environmental stewardship, shared value for our stakeholders, responsible decision-making and leadership.*" I attach the relevant page from Thungela's website as annexure "**TD13**".

60. The Applicants do not ask this Court to determine the sufficiency of these public commitments or whether Thungela is taking appropriate and necessary action to address the climate risks that it admits it faces.

61. The Applicants also do not ask this Court to adjudicate the merits of their proposed resolutions on climate change. That function ought to have been left to Thungela's shareholders through debate and voting at the shareholders meetings.

62. Instead, the narrow legal question is whether the Applicants, as shareholders, have a legal right under sections 65(3) and 62(3)(c) of the Companies Act to propose and table shareholder resolutions on climate change and related ESG issues. The stark position adopted by Thungela is that they have no such legal right and that it has a unilateral discretion to refuse to circulate such resolutions to its shareholders for voting.

G. THUNGELA'S PERSISTENT REFUSAL TO TABLE THE APPLICANTS' PROPOSED RESOLUTIONS

63. The Applicants have repeatedly sought to engage Thungela on its climate risks through various forums, including the filing of the three proposed shareholder resolutions in 2023, 2024 to 2025.

64. Clause 30.4 of Thungela's MOI addresses shareholder-proposed resolutions in the following terms:

> *"Should the Board receive requests from Shareholders for the inclusion of certain resolutions in the notice prior to the dispatch of such notices, or after dispatch of such notices, but at least 15 Business Days before the Shareholders Meeting is to begin, the Board shall in good faith*

consider such requests and determine whether the resolution should be included in the notice of the Shareholders Meeting. Any such requests should provide the specific purpose for which the resolution is proposed, must be delivered to the Company in writing and be otherwise in compliance with the Companies Act."

65. The Applicants timeously submitted their proposed written resolutions, but Thungela refused to circulate and table these resolutions, blocking any discussion or debate of these resolutions at its AGMs.

Proposed resolution ahead of the 2023 AGM

66. On 19 April 2023, the Applicants co-filed their first proposed non-binding resolution for consideration by Thungela's shareholders at its AGM scheduled for 31 May 2023. The resolution was therefore filed 28 business days before the AGM. A copy of Just Share's filing letter and the proposed resolution, including the explanatory statement, submitted on behalf of all three Applicants, is attached as annexure "**TD14**".

67. The proposed non-binding advisory resolution was worded as follows:

"Shareholders of the Company request that, in accordance with the Global Standard on Responsible Climate Lobbying, the Board annually conduct an evaluation of and report to shareholders on the Company's lobbying and policy engagement activities including:

- *if, and how, its lobbying and policy engagement activities (both direct and indirect through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels;*
- *its framework for identifying and mitigating the risks presented by any misalignment; and*

- *the circumstances under which escalation strategies have been and will be used, including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliance.*

In evaluating the degree of alignment, the Company should consider not only its policy positions and those of organisations of which it is a member, but also the lobbying and engagement activities aimed at influencing policy for the year in review."

68. Thungela's former company secretary acknowledged receipt in an email on the same day, attached as annexure "**TD15**".

69. On 25 April 2023, Thungela's company secretary sent further email correspondence to Just Share, attached as annexure "**TD16"**, indicating that Thungela would be releasing its annual reporting suite the next day and that its Climate Change Report would *"disclose [Thungela's] membership of industry associations*". The Company Secretary suggested that this would *"satisfy the request for the information you seek."*

70. Just Share responded in an email dated 3 May 2023, attached as annexure "**TD17**", pointing out that the reporting suite did not address the specific requests in the resolution. Just Share again requested that the resolution be circulated and tabled at the AGM. Just Share confirmed that the Applicants remained open to engagement with Thungela, subject to receipt of the legal basis for the refusal to table the resolution.

71. In an email dated 8 May 2023, attached as annexure "**TD18**", Thungela refused the proposed resolution for the following reasons:

> *"We are advised by our attorneys that, as a matter of company law, while styled a "resolution", the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so."*

72. In an email dated 9 May 2023, Just Share on behalf of the Applicants, disputed this interpretation of the Companies Act. This email is attached as annexure "**TD19**".

73. Thungela's AGM proceeded on 31 May 2023. The Applicants' non-binding advisory resolution was not circulated in the AGM pack and was not considered at the meeting.

Proposed resolution ahead of the 2024 AGM

74. On 26 April 2024, Just Share, on behalf of the Applicants, again filed a cover letter and shareholder-proposed non-binding advisory resolution in preparation for Thungela's AGM, scheduled for 4 June 2024. The resolution was therefore filed 25 business days before the AGM.

75. The cover letter and the non-binding advisory resolution, including the accompanying explanatory statement, are attached as annexure "**TD20**". The proposed resolution provided as follows:

> *"Shareholders request that Thungela Resources Limited ("the company") adopt and publish in its 2025 suite of reports: short-, medium- and long-term greenhouse gas emission reduction targets across its full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050."*

76. Thungela's assistant company secretary acknowledged receipt of these documents on 30 April 2024, in an email attached as annexure "**TD21**".

77. In a subsequent email, dated 2 May 2024, Thungela again refused to circulate and table this resolution. A copy of this email is attached as annexure "**TD22**". Thungela reaffirmed its grounds for refusal, as expressed in May 2023.

78. Just Share's letter in response, dated 9 May 2024, is attached as annexure "**TD23**". The letter demanded that Thungela table the proposed resolution by no later than Tuesday, 14 May 2024, to afford shareholders the required minimum notice period prior to the 4 June 2024 AGM. This letter reiterated the Applicants' rights to file the proposed resolution under section 65(3) of the Companies Act and Thungela's corresponding obligations to circulate and table this resolution.

79. In an email response on 10 May 2024, attached as annexure "**TD24**", Thungela communicated that, *"As advised in our response of 8 May 2023 and on 2 May 2024, respectfully, and based on legal advice, we do not agree with the interpretation you put forward*."

80. Thungela did not circulate the proposed resolution by 14 May 2024 for consideration at the AGM and, once again, it was not discussed or put to a vote.

Proposed resolution ahead of the 2025 AGM

81. The Applicants co-filed a third shareholder-proposed non-binding resolution on 25 April 2025, together with a cover letter, attached as annexure "**TD25**". Thungela had not yet circulated the notice of AGM stipulating the date of its 2025 AGM. The proposed resolution was worded as follows:

> *"Shareholders request that Thungela Resources Limited ("the company") adopt and publish in its 2026 suite of reports: short-, medium- and long-term greenhouse gas emission reduction targets across its full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050".*

82. On 30 April 2025, Thungela's company secretary acknowledged receipt of the shareholder-proposed resolution and cover letter and indicated that Thungela would revert shortly. This correspondence is attached as annexure "**TD26**". On the same day, Thungela circulated its notice to shareholders that the AGM would be convened on 5 June 2025, attached as annexure "**TD27**". The resolution was therefore filed 27 business days before Thungela's AGM.

83. On 19 May 2025, Thungela communicated its refusal to table the resolution, in a letter attached as annexure "**TD28**". It stated that:

> "*... its position remains consistent with what has been communicated over the past two years. As such, the company will not include the proposed shareholder resolution in the upcoming AGM notice"; and repeats its standing offer to meet and discuss*".

84. Thungela's AGM was held on 5 June 2025. The Applicants' proposed resolution was again left off the agenda.

The CIPC complaint and investigation

85. Following the refusal of its 2024 proposed shareholder resolution, Just Share lodged a complaint with CIPC on 7 June 2024, in terms of section 168(1)(b) of the Companies Act. The complaint form and supporting statement are attached as annexure "**TD29**". To avoid overburdening these papers, all duplicate annexures and correspondence will be omitted from this attachment.

86. On 12 June 2024, Just Share received confirmation that the matter had been allocated to an investigator to establish whether it falls within CIPC's jurisdiction in terms of the Companies Act. This email is attached as annexure "**TD30**".

87. On 25 July 2024, Just Share received an email from the designated investigator, which confirmed their appointment to investigate the complaint in terms of section 169(1)(c) of the Companies Act, as well as a CIPC notice to investigate the complaint attached as annexure "**TD31**".

88. On 12 September 2024, the CIPC investigator issued a letter of notification to Thungela, which communicated that "*the company appears to have contravened Section 65(4) of the Act and [is] thereby required to comply with the provisions unless it can provide evidence that any director or shareholder has exercised the right to restrain that resolution from being tabled as it provided for in Section 65(5) of the Act*". This letter of notification is attached as annexure "**TD32**".

89. Following months of correspondence and engagement between the parties and the CIPC investigator, on 18 February 2025, the CIPC investigator addressed

correspondence to Just Share requesting additional information. Just Share responded on 27 February 2025. This letter and the response are attached as annexures "**TD33**" and "**TD34**".

90. Just Share's legal representative addressed a further letter to the CIPC investigator on 1 April 2025, emphasising the need to resolve the dispute before Thungela's 2025 AGM. This letter is attached as annexure "**TD35**".

91. On 5 June 2025, the day of Thungela's AGM, CIPC issued the Inspector's Report into the complaint lodged against Thungela (the "Report"), together with a notice of referral to the Companies Tribunal and four supporting annexures. The Inspector's Report and the Notice of Referral are attached as annexures "**TD36**" and "**TD37**". Three of the supporting annexures to the Inspector's Report are already attached to this affidavit as annexures **TD2**, **TD31**, and **TD32**. The fourth supporting annexure to the Investigator's Report is Thungela's letter of response to the complaint, dated 20 September 2024, attached to this affidavit as "**TD38**".

92. Paragraph 5.1.2 of the Report confirmed that the proposed resolutions were submitted timeously. Paragraph 5.2 further confirmed that:

> *"There is no dispute between the complainant and the company that the co-filers are shareholders of the company and therefore met the criteria to propose a resolution on any matter in respect of which they are entitled to exercise voting rights as required in Section 65(3) of the Act".*

93. The Report further acknowledged, at paragraph 5.2.5, that Thungela had subsequently refused to circulate and table the 2025 resolution and that its reasons for doing so were the same as for the two previous resolutions.

94. The Report concluded at paragraph 5.2.8 that there is a legal dispute between the parties and recommended that it be referred to the Companies Tribunal for alternative dispute resolution:

> *"Based on the information before the inspector, it can be concluded that there is a dispute between the complainants, co-filers and the company. It is considered that the Companies Tribunal will be better suited to engage with the parties through an Alternative Dispute Resolution ("ADR") process."*

95. In Thungela's letter of 20 September 2024 in response to the complaint, attached as annexure **TD38**, it again outlined the purported legal basis for its refusal of the resolutions. Thungela repeated the same grounds of objection, but went further to suggest that shareholders may only propose resolutions on matters that are expressly provided for in the Act and the MOI:

> *"[T]he matters falling within the decision-making powers of shareholders in general meeting comprise exclusively (i) those matters entrusted to it for determination under the Act and (ii) any additional matters (if any) entrusted to it for determination under the company's memorandum of incorporation (and, arguably, a shareholders' agreement, if any)."*

The referral to the Companies Tribunal

96. CIPC subsequently referred the matter to the Companies Tribunal, in terms of section 170(1)(b) of the Companies Act, as reflected in the Notice of Referral.

97. The Registrar of the Companies Tribunal issued an initial notice of hearing on 4 July 2025, which is attached as annexure "**TD39**". Subsequent correspondence confirmed that this was to be a pre-hearing conference.

98. The pre-hearing conference was held on 22 July 2025 before a designated member of the Companies Tribunal. During this pre-hearing conference, Just Share, on behalf of the Applicants, raised queries over the nature of the referral and whether this was to be a referral for adjudication or alternative dispute resolution.

99. The parties subsequently agreed to the proposal of alternative dispute resolution, in the form of mediation, to be facilitated by the Companies Tribunal. Just Share accepted the invitation to mediation on the terms reflected in its letter, attached as annexure "**TD40**", and with full reservation of its rights.

100. The mediation was held virtually on 28 August 2025, and it was determined that the dispute could not be resolved. Accordingly, the Companies Tribunal issued a certificate of failed alternative dispute resolution in terms of section 166 of the Companies Act, attached as annexure "**TD41**". The certificate is dated 1 September 2025, and it was circulated to the parties on 15 September 2025.

101. Following the failure of alternative dispute resolution, Just Share's legal representative addressed a further letter to CIPC on 1 September 2025, attached as annexure "**TD42**". The letter set out the Applicants' understanding of the referral process and specifically requested CIPC to confirm whether it intended to proceed with the referral of this dispute to the Companies Tribunal for final adjudication. In terms of section 170(1)(b) of the Companies Act and the applicable regulations, CIPC is the initiating party in such referrals to adjudication, and the Applicants have no independent right to initiate proceedings before the Tribunal.

102. CIPC responded in a letter dated 9 September 2025, attached as annexure "**TD43**". CIPC declined to progress the matter further and advised the parties to seek relief in the High Court:

> *"It is the Commission's contention that the complaint relates to a dispute between the relevant parties, and that failing the dispute resolution process, the avenue open for the complainants in this matter, would be an application to the High Court. Once the requisite certificate has been issued by the Companies Tribunal, the matter can be referred to court for applicable adjudication".*

103. In light of this response and the failure of alternative dispute resolution, the Applicants have taken all reasonable steps to exhaust alternative remedies and are left with no option but to approach this Court for appropriate relief.

H. THE APPLICANTS SATISFIED THE REQUIREMENTS UNDER SECTION 65(3)

104. As outlined above, shareholders must satisfy four requirements in proposing resolutions under section 65(3) of the Companies Act:

104.1 First, the threshold requirement: the proposed resolution must be proposed by "*two or more shareholders*" (section 65(3));

104.2 Second, the eligibility requirement: the proposed resolution may concern "*any matter*" on which the proposing shareholders "*are each entitled to exercise voting rights*" (section 65(3));

104.3 Third, the informational requirement: it must be "*expressed with sufficient clarity and specificity*" and "*must be accompanied by sufficient information*

or explanatory material" so as "*to enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution.*" (section 65(4)).

104.4 Fourth, the timing requirement: it must be submitted to the company at least 15 business days prior to the meeting, or as otherwise specified in the company's MOI, to comply with the notice requirements for shareholders meetings (section 62(1) and (2)). Clause 30.4 of Thungela's MOI specifies that shareholder-proposed resolutions must be submitted "*in writing*" and at least 15 business days before a shareholders meeting.

105. The Applicants' 2023, 2024 and 2025 proposed resolutions satisfied these requirements.

106. First, the threshold requirement was satisfied, as the resolutions were each co-filed by three shareholders, as defined under section 1 and 57(1) of the Companies Act.

107. Second, the eligibility requirement was satisfied, as the Applicants were each entitled to exercise voting rights on any matter presented at the AGM:

107.1 Section 37 of the Companies Act provides that any restrictions on the voting rights attached to a class of shares must be set out in the company's MOI.

107.2 Thungela's MOI does not impose any restriction on the Applicants' voting rights, let alone restrictions on voting rights related to ESG and climate change related matters.

107.3 In the absence of lawful restrictions on their voting rights under section 37, the Applicants were each entitled to vote on and propose resolutions on "*any matter*" under section 65(3).

107.4 The Applicants were therefore fully entitled to propose and vote on shareholder resolutions on the climate change and related ESG matters addressed in the resolutions.

107.5 As King IV specifically recognises, shareholders "*have the right to vote on matters that may have a longer-term impact than what the period of their shareholding may be*".

108. Third, the three resolutions complied with the informational requirements under section 65(4). No Thungela director or shareholder-initiated court proceedings under section 65(5) of the Companies Act to dispute compliance with these requirements.

109. Fourth, the three resolutions were each submitted in writing, more than 15 business days before Thungela's AGMs, complying with the timing requirements under section 62 and Thungela's MOI.

110. It follows that the Applicants were entitled to require that the resolutions be submitted to shareholders for consideration at the AGMs, in terms of section 65(3)(b) of the Act.

111. Thungela was under a corresponding obligation to comply with its obligations under sections 65(3) and 62(3)(c) of the Companies Act, by circulating a copy of the proposed resolutions with the notices of the AGMs, and thereafter ensuring that the proposed resolutions were properly tabled and put to a vote at the AGM.

112. The Thungela board had no unilateral power to block the Applicants' proposed resolutions. On the contrary, section 65(5) is explicit that if the board wishes to object to a proposed shareholder resolution, it is required to seek the leave of a court to bar that resolution from being considered at a shareholders meeting. The board was not empowered to take the law into its own hands as it did.

113. This interpretation of the Act, as supporting the Applicants' right to file such resolutions, best promotes the purposes of the Act to "*encourage transparency and high standards of corporate governance as appropriate",* recognising the *"significant role of enterprises within the social and economic life of the nation*";[3] to "*balance the rights and obligations of shareholders and directors within companies*";[4] and to "*encourage the efficient and responsible management of companies".*[5]

114. This interpretation also best promotes the constitutional rights and values outlined above, including environmental rights, freedom of expression, and freedom of association. Shareholder-proposed resolutions on climate change and related ESG issues are an important means for shareholders to impart and receive information on pressing climate change risks facing businesses and to collectively organise around the shared goal of addressing these risks, both in the companies' interests and in furtherance of the section 24 environmental rights.

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[3] Section 7(b)(iii).
[4] Section 7(i).
[5] Section 7(j)).

I. THUNGELA'S BREACH OF ITS LEGAL OBLIGATIONS AND THE APPLICANTS' RIGHTS TO TABLE THE RESOLUTIONS

115. In light of the above, I submit that Thungela breached its obligations and the Applicants' rights under the Companies Act by refusing to circulate and table the Applicants' resolutions.

116. Thungela has consistently denied that the Applicants have any legal right to propose the resolutions and has indicated that it will refuse all future resolutions of this kind. It has advanced three different justifications for doing so, contending that:

116.1 Non-binding shareholder resolutions are somehow impermissible;

116.2 The Applicants had no right to vote on the proposed shareholder resolutions under section 65(3)(a) and therefore had no right to propose the resolutions; and

116.3 The Thungela board has a unilateral discretion to determine what resolutions are circulated and tabled at its AGM.

117. These defences are incorrect in law, for reasons that will be addressed fully in argument. In what follows, I will briefly outline the Applicants' response.

Alleged prohibition on non-binding resolutions

118. Thungela appears to object to the framing of the resolutions as non-binding advisory resolutions, suggesting that this would have "*no standing in law or binding force or effect on the Company or its shareholders*".

119. The election to frame the proposed resolutions as non-binding advisory resolutions was deliberate, to avoid any accusation that the Applicants were impermissibly attempting to usurp the board's management powers.

120. Such non-binding advisory votes are now a common feature of South African company law and are legally permissible. For example:

120.1 The JSE Listings Requirements introduced non-binding "say on pay" resolutions, allowing shareholders to express their views on the proposed executive pay for all JSE-listed companies. While companies are not bound by the outcome of these votes, they provide boards with appropriate guidance on the shareholders' views.

120.2 Other public companies have tabled non-binding resolutions on climate change, as referenced above.

120.3 The purpose of these non-binding resolutions is to allow shareholders to express their views, to organise around shared goals, and to provide the board with an indication of the shareholders' preferences to guide future decisions.

120.4 They also have the effect of focusing the mind of those governing the company on issues of pressing national and global importance which also bear on the economic interests of the company and its shareholders.

121. Non-binding shareholder-proposed resolutions are accepted as legally valid in other comparable jurisdictions, including Canada, the United States, and New Zealand. These jurisdictions require that shareholder resolutions must be framed in advisory, non-binding terms. In each of these jurisdictions, shareholders have

used these powers to raise climate change and other ESG issues at shareholders meetings. The relevant comparative law will be addressed in argument.

122. The value of non-binding resolutions is perhaps best illustrated by their use in the anti-apartheid movement in the United States. During the 1980s, shareholders filed and tabled non-binding shareholder proposals calling on US-listed companies to divest from apartheid South Africa or to refrain from supporting human rights abuses in this country. I attach, as annexure "**TD44**", a journal article documenting the history of this anti-apartheid shareholder movement.

123. It is inconceivable that our Companies Act, with its express commitments to constitutional values and the promotion of shareholder activism, would bar South African shareholders from engaging in similar efforts to table non-binding resolutions in response to the climate crisis and related ESG issues.

Alleged restriction on voting rights

124. Thungela claims that the proposed resolutions on climate change are not matters which shareholders have a legal right to determine by a vote under section 65(3)(a). It has gone as far as to suggest that shareholders may only vote on matters that are expressly provided for in the Companies Act and its MOI.

125. This claim has no basis in law for the following reasons:

125.1 First, as emphasised above, there is nothing in the Companies Act or Thungela's MOI that restricts shareholders from voting on resolutions

concerning climate change and ESG-related issues. CIPC's investigation Report confirmed that there is no such restriction.

125.2 Second, section 65(3) provides that eligible shareholders are entitled to propose resolutions on "*any matter*", without placing any restrictions on the subject matter of those resolutions.

125.3 Third, JSE-listed companies have frequently tabled resolutions on climate and ESG-related matters for a vote at shareholder meetings. If it is permissible for shareholders to vote on such resolutions when they are proposed by the company board, then it is equally permissible for shareholders to vote on those resolutions when they are proposed by fellow shareholders – particularly when the resolutions are expressly non-binding and would not interfere with or infringe on the powers of the board.

125.4 Fourth, the far-reaching content-based restriction contended by Thungela would not best promote the purpose and objects of the Companies Act and the constitutional rights addressed above. It would also put South African company law out of step with comparable common law jurisdictions, including the United States, the United Kingdom, Canada, and New Zealand, where shareholders routinely file resolutions on such matters.

Alleged unilateral discretion

126. Thungela asserts that its board has a unilateral power and discretion to screen and reject shareholder-proposed resolutions on climate change and ESG issues. It has previously claimed that *"[t]he tabling of any such proposal for a vote (and*

the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors".

127. This is also incorrect, for the following reasons:

127.1 First, there is no basis in the Act for this claimed unilateral power, which is inconsistent with the text of sections 65(3) and 62(3)(c). These provisions allow shareholders to "require" the resolutions to be submitted for consideration, and mandate that notice of the shareholders' meeting include a copy of the proposed resolutions.

127.2 Second, such a far-reaching power would be directly at odds with the dispute-resolution procedure prescribed in section 65(5) of the Act. Where directors object to the proposed resolution, they may do so only on formal grounds, and are required to apply to court for leave to block that resolution. Directors are not empowered to take the law into their own hands merely because they disagree with the merits of the proposed resolution.

127.3 Third, if the board takes issue with the merits of the proposed resolutions, its disagreements ought to have been aired at the AGM. Shareholders are entitled to hear the board's views and to exercise their own judgment when voting on the proposal.

127.4 Fourth, vesting a unilateral veto in the discretion of the board constitutes an unjustified breach of shareholders' right to freedom of expression (and the rights associates with this right) guaranteed in section 16 of the

Constitution. Indeed, such a power constitutes an unconstitutional prior restraint on expression.

128. In sum, the Applicants will argue that Thungela's interpretation of the relevant provisions of the Companies Act does not best protect and promote the purposes of the Act and the implicated constitutional rights, and ought to be rejected.

J. DECLARATORY RELIEF

129. Given Thungela's persistent refusal to acknowledge the Applicants' rights, and its multiple errors of law, appropriate declaratory relief is necessary to provide proper guidance. As reflected in the notice of motion, the Applicants seek declaratory relief in two parts:

129.1 First, a declaration that Thungela breached its obligations and the Applicants' rights under sections 65(3) and 62(3)(c) of the Companies Act in refusing to circulate and table the Applicants' 2023, 2024 and 2025 proposed resolutions.

129.2 Second, declarations of the Applicants' rights and Thungela's obligations in respect of shareholder-proposed resolutions, to ensure that Thungela complies with its obligation in future, and to address Thungela's mistaken understanding of the law.

130. The Applicants, as Thungela shareholders, have an interest in an existing and future right to propose and vote on shareholder-proposed resolutions concerning climate change and related ESG matters at meetings of Thungela shareholders.

131. The Applicants confirm that we intend to submit future resolutions on these matters to Thungela, which will inevitably be met with the same response as has occurred on three successive occasions.

132. In terms of sections 158 and 161 of the Companies Act, this declaratory relief is appropriate and necessary to:

132.1 Protect the Applicants' rights under sections 65(3) and 62(3)(c) of the Companies Act and the company's MOI, as well as their constitutional rights of expression, association, and relevant environmental rights.

132.2 Rectify the harm caused by Thungela's repeated contravention of its obligations under the Companies Act and its MOI; and

132.3 Promote the spirit, purpose and objects of the Act and best improve the realisation and enjoyment of rights, as contemplated in section 158 of the Companies Act and section 39(2) of the Constitution.

133. It is further in the interests of justice to grant declaratory relief for the following reasons:

133.1 There is a live dispute between the parties over the Applicants' rights and Thungela's obligations under sections 65(3) and 62(3)(c) of the Companies Act;

133.2 If not resolved, this dispute will continue to arise each time that the Applicants propose shareholder resolutions, including non-binding resolutions on ESG issues including climate change.

133.3 The Applicants have taken reasonable steps to exhaust alternative legal remedies, having initiated a complaint with CIPC and having attempted alternative dispute resolution in the Companies Tribunal.

133.4 Declaratory relief will have utility in preventing future reoccurrences of this dispute and ensuring adequate protection of the Applicants' rights.

133.5 This is a crisp legal question of broader public importance, that will provide guidance for similar disputes arising between shareholders and companies.

133.6 Such guidance will also be of assistance to the Second Respondent, CIPC, in its investigations of future contraventions of this nature.

133.7 Declaratory relief is therefore appropriate to protect and advance the implicated constitutional rights, including the rights to freedom of expression, association, and the environment.

K. CONCLUSION

134. In the circumstances, the Applicants pray for relief as set out in the notice of motion.

TRACEY LAUREL DAVIES

I certify that this affidavit was signed and sworn to before me at Cape Town on this the 26th day of **NOVEMBER 2025**, the deponent having acknowledged that they know and understand the content of this affidavit, with the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977 (as amended), having been complied with.

COMMISSIONER OF OATHS

KELSEY ALEXA FORTUIN
STBB ATTORNEYS
Practising Attorney
2nd Floor, Buchanan's Chambers,
Cnr Warwick Street & Pearce Road, Claremont, 7708
Attorney, Notary Public, Conveyancer
Commissioner of Oaths, South Africa

Resolution

21 November 2025

Just Share NPC ("the Company")

Registration No: 2017/347856/08

PBO No: 930064608, NPO No: 206-406, VAT No: 4850287998

Resolutions passed by directors of the company in writing in terms of section 74(1) of the Companies Act No 71 of 2008

RESOLUTION 9/2025

We, the undersigned board members of the Company, hereby authorise: Tracey Davies, in her capacity as executive director of the Company; Robyn Hugo, in her capacity as director: climate change engagement at the Company; and to the extent necessary, any successor in either of the above capacities at the Company, to:

9.1. Initiate legal proceedings, depose to affidavits and take all steps necessary in litigation against Thungela Resources Limited, the Companies and Intellectual Property Commission, and the Companies Tribunal, where the following will be sought:

9.1.1. Appropriate declaratory relief to protect and enforce shareholder rights under sections 65(3) and 62(3)(c) of the Companies Act No. 71 of 2008; and

9.1.2. Further and/or alternative relief.

9.2. We further resolve that Power & Associates Inc. will be appointed to be the Company's attorneys of record in the above proceedings.

Tracey Davies	Lauren A. Burnhill	Xolisa Dhlamini
T Davies - Executive Director	**L Burnhill** - Non-Executive Director	**X Dhlamini** – Non-Executive Director

D Fraser - Non-Executive Director	**W Nkutha** - Non-Executive Director	**L Pretorius** - Non-Executive Director
E Webster - Chair		

TD2 50

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

REPUBLIC OF SOUTH AFRICA

MEMORANDUM OF INCORPORATION

of

Thungela Resources Limited

(Registration number: 2021/303811/06)

being a profit company which is classified as a public company

(the "**Company**")

The Company has adopted this unique form of memorandum of incorporation and, accordingly, the standard form of memorandum of incorporation for profit companies as contained in the Regulations shall not apply to the Company.

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PART A – THE MOI AND RULES

1. **INTERPRETATION**

In this MOI, article headings are used for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:

1.1 an expression that denotes:

1.1.1 any gender, includes the other genders;

1.1.2 a natural Person, includes an artificial or juristic Person and *vice versa*; and

1.1.3 the singular, includes the plural and *vice versa*;

1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:

1.2.1 "**Board**" means the board of Directors of the Company from time to time;

1.2.2 "**Business Day**" means any day other than a Saturday, Sunday or gazetted, national public holiday in South Africa;

1.2.3 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;

1.2.4 "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended, including all schedules to such act and all regulations promulgated thereunder and for the time being in force (including, as at the date of adoption of this MOI, the Regulations);

1.2.5 "**Company**" means Thungela Resources Limited (formerly known as K2021303811 (South Africa) Proprietary Limited) with registration number2021/303811/06 as defined on the front page of this MOI;

1.2.6 "**CSD**" means the Central Securities Depository as defined in section 1 of the Financial Markets Act;

1.2.7 "**CSDP**" means a depository institution accepted by a CSD as a "**participant**" in terms of section 31 of the Financial Markets Act;

1.2.8 "**Director**" means a director of the Company, from time to time;

1.2.9 "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012, as amended, including all schedules to such act and all regulations and standards promulgated thereunder and for the time being in force;

1.2.10 "**JSE**" means the JSE Limited, registration number 2005/022939/06, a public company incorporated in accordance with the laws of South Africa and licensed as an exchange under the Financial Markets Act;

1.2.11 "**Legal Representative**" means any Person who has submitted proof (which is satisfactory to the Board) of his/her appointment (and, to the extent required by the Board, the continuation of that appointment) as:

1.2.11.1 an executor of the estate of a deceased Security Holder, or a curator, guardian or trustee of a Security Holder whose estate has been sequestrated or who is otherwise under any disability;

1.2.11.2 the liquidator of any Security Holder that is a body corporate in the course of being wound up; or

1.2.11.3 the business rescue practitioner of any Security Holder which is a company undergoing business rescue proceedings;

1.2.12 "**Listings Requirements**" means the Listings Requirements of the JSE and any other securities exchange on which any of the Securities may be listed or become listed, all other applicable rules, regulations, requirements and rulings of the JSE or such other exchange, as amended;

1.2.13 "**the / this MOI**" means this memorandum of incorporation of the Company, being this document (and including any Schedules hereto), as amended or replaced from time to time;

1.2.14 "**MPRDA**" means the Minerals and Petroleum Resources Development Act, No. 29 of 2002, as amended;

1.2.15 "**Person**" or "**Entity**" includes any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate, and any similar entity;

1.2.16 "**Register**" means the register of issued Securities of the Company required to be established in terms of section 50(1);

1.2.17 "**Regulations**" means the Companies Regulations, 2011, as amended and any other regulations made from time to time in terms of the Companies Act for so long as they remain of force and effect;

1.2.18 "**Security Holder**" means a holder of a Security who is entered as such in the Register of the Company, including a Legal Representative;

1.2.19 "**Securities**" means, collectively:

1.2.19.1 shares (including the Shares), debentures, notes, bonds, units or other instruments, irrespective of their form or title (including any options thereon and rights thereto) issued or authorised to be issued by the Company; and

1.2.19.2 anything falling within the meaning of the definition of "**securities**" as defined in section 1 of the Financial Markets Act issued or authorised to be issued by the Company;

1.2.20 "**SENS**" means the Stock Exchange News Service established and operated by the JSE;

1.2.21 "**Share**" means an ordinary share in the capital of the Company, having the preferences, rights, limitations and other terms contemplated in article 11;

1.2.22 "**Shareholder**" means a holder of a Share who is entered as such in the Register of the Company, including a Legal Representative;

1.2.23 "**Sign**" includes the reproduction of a signature by lithography, printing, or any kind of stamp or any other mechanical or electronic process, and "**Signature**" has a corresponding meaning;

1.2.24 "**South Africa**" means the Republic of South Africa;

1.2.25 "**Strate**" means Strate Proprietary Limited, registration number 1998/022242/07, a private company incorporated in accordance with the laws of South Africa, and

registered as a CSD responsible for the electronic clearing and settlement of trades on the JSE; and

1.2.26 "**Uncertificated Securities**" means any Securities which are "**uncertificated securities**" defined as such in section 1 of the Financial Markets Act;

1.3 references to any law, statute, regulation or other legislation include any regulations and subordinate legislation made from time to time thereunder;

1.4 any reference to "**law**" means law, legislation, statutes, subordinate legislation, regulations, ordinances, treaties, protocols, codes, standards, rules, by-laws, directives, orders, guidelines, notices, promulgations, requirements, orders, judgments, decisions, instructions, injunctions, awards and other decrees of any governmental authority and all codes of practice, statutory guidance and policy notes, which have force of law or which it would be an offence not to obey, and the common law, as amended, supplemented, replaced, re-enacted, restated or re-interpreted from time to time;

1.5 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;

1.6 the use of the words "**including**", "**includes**" or "**include**", followed by a specific example/s, shall not be construed (notwithstanding that in some instances this may have been specifically provided for, but not in others) as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s;

1.7 where any term is defined within a particular article other than this article 1, that term shall bear the meaning ascribed to it in that article wherever it is used in this MOI;

1.8 any capitalised word or expression that is not otherwise defined in this MOI shall be construed in accordance with the Companies Act. For the avoidance of doubt, it is recorded that any reference to "**Present at such Meeting**" or "**Present at the Meeting**" shall be construed in accordance with the definition of "*Present at a Meeting*" in the Companies Act;

1.9 a reference to a "**section**" refers to the corresponding section of the Companies Act;

1.10 when any number of days is prescribed in this MOI, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or gazetted, national public holiday, in which case the last day shall be the next Business Day;

1.11 this MOI shall be deemed to authorise the Company to do anything which the Companies Act empowers a company to do if so authorised by its MOI, unless that authority is expressly excluded;

1.12 the headings of articles in this MOI are for information purposes only and shall not be used in the interpretation of this MOI;

1.13 the expiration or termination of this MOI shall not affect such of the provisions of this MOI as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the articles themselves do not expressly provide for this;

1.14 if any provision of this MOI imposes any obligation or requirement pursuant only to:

1.14.1 the Listings Requirements of the JSE, then: (i) unless the Company is a "*listed company*", as such term is defined in the Listings Requirements of the JSE, any such provision shall be deemed not to apply to the Company; and (ii) insofar as the

JSE exempts or no longer requires compliance with such obligations or requirements, the obligations or requirements shall be deemed to have been complied with; or

1.14.2 the Listings Requirements of any other securities exchange (not being the JSE), on which any of the Securities are listed then: (i) unless any of the Securities are listed on such other securities exchange, any such provision shall be deemed not to apply to the Company; and (ii) insofar as such other securities exchange exempts or no longer requires compliance with such obligations or requirements, the obligations or requirements shall be deemed to have been complied with;

1.15 if any provision of this MOI limits, restricts or prohibits any power or authority of the Company or the Board pursuant only to:

1.15.1 the Listings Requirements of the JSE, then insofar as such limitation, restriction or prohibition is waived, relaxed, repealed or amended by the JSE, the power or authority shall be deemed not to be subject to such limitation, restriction or prohibition to the extent of such waiver, relaxation, repeal or amendment without anything further being required; or

1.15.2 the Listings Requirements of any other securities exchange (not being the JSE) on which any of the Securities are listed, then insofar as such limitation, restriction or prohibition is waived, relaxed, repealed or amended by such other securities exchange, the power or authority shall be deemed not to be subject to such limitation, restriction or prohibition to the extent of such waiver, relaxation, repeal or amendment without anything further being required;

1.16 to the extent that any provisions of this MOI are based on any Unalterable Provisions of the Companies Act and any of these provisions are amended, the Directors are authorised to amend this MOI to align with such amended Unalterable Provisions, subject to the approval thereof by the JSE and to the extent relevant, applicable or required, any other securities exchange on which any of the Securities are listed, to reflect such amendments (which amendments will apply to the Company by operation of law); and

1.17 if any provision of this MOI has been inserted to comply with (or require compliance with) a then applicable provision of the Listings Requirements:

1.17.1 which is subsequently removed or modified, the provision in question shall no longer apply if the relevant provision has been removed or shall apply as modified in the Listings Requirements. The Directors are authorised to amend this MOI to reflect such amendments, subject to the approval thereof by the JSE and to the extent relevant, applicable or required, any other securities exchange on which any of the Securities are listed; and

1.17.2 shall only apply for as long as the Securities are listed on the JSE or any other securities exchange on which any of the Securities are listed.

2. CONFLICTS WITH THE MOI

In accordance with the Companies Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI and:

2.1 an Alterable Provision or elective provision of the Companies Act, the provision of this MOI shall prevail to the extent of the conflict; and

2.2 an Unalterable Provision or non-elective provision of the Companies Act, the Unalterable Provision or non-elective provision of the Companies Act shall prevail to the extent of the conflict.

3. **AMENDMENT OF THE MOI**

3.1 Every provision of this MOI is capable of amendment in accordance with sections 16(1)(a), 16(1)(c), 16(4), 17 and 152(6)(b), read together with the Listings Requirements and the MPRDA (and, to the extent applicable, any licencing conditions imposed on the Company) and, accordingly, there is no provision of this MOI which may not be amended as contemplated in sections 15(2)(b) or 15(2)(c).

3.2 This MOI may only be altered or amended:

3.2.1 in compliance with a court order on the basis set out in sections 16(1)(a) and 16(4) and any other applicable provisions of the Companies Act; or

3.2.2 by way of a Special Resolution of the Shareholders passed in accordance with section 16(1)(c), read in conjunction with the remaining provisions of the Companies Act and this MOI; or

3.2.3 as contemplated in sections 17 and 152(6)(b).

3.3 While the Shares of the Company remain listed on the JSE, the Board must, prior to proposing any amendments for approval by the Company's Shareholders, submit any such proposed amendments to the MOI to the JSE for approval in accordance with the Listings Requirements.

3.4 Save as specifically provided for in article 3.2, this MOI is not capable of amendment by any other method. Accordingly, the provisions of section 16(1)(b) shall not apply, nor shall any other Alterable Provisions of the Companies Act that allows for a method for the alteration or amendment of the MOI other than those methods contemplated in article 3.2 apply.

3.5 Any change to the name of the Company, and any variation of the Share capital of the Company referred to in article 12.3 shall be effected by an amendment to this MOI as referred to in articles 3.1 and 3.2.

4. **RULES**

The Board is prohibited from making, amending or appealing any Rules as contemplated in section 15(3) and the authority of the Board in this regard is hereby excluded.

5. **OTHER LISTINGS**

5.1 The Company's Securities (or some of them) or beneficial interests in relation to them may, from time to time, be listed and traded on securities exchanges and/or over-the-counter markets (each a "**Regulated Market**") in various jurisdictions. In this regard, notwithstanding anything in this MOI to the contrary, the Board shall be entitled to do, or cause to be done, all things necessary or desirable to ensure:

5.1.1 compliance with applicable law in such jurisdictions, as well as the listings requirements or rules of the applicable Regulated Market; and

5.1.2 that efficient and effective trading, movement between Regulated Markets and settlement mechanisms are in place and operating in the jurisdiction of such Regulated Market and/or between Regulated Markets (including the JSE).

5.2 Subject to applicable law and the provisions of this MOI:

5.2.1 if it is necessary, expedient or desirable to take any action because of legal impediments or compliance with the laws or the requirements of any regulatory body

of any jurisdiction outside South Africa that may be applicable to the any relevant Security Holder; or

5.2.2 any other difficulty arises in connection with corporate actions to be undertaken by the Company in such jurisdiction,

the Company shall be entitled to take such action or resolve such matter as the Directors in their discretion may deem fit; provided that in taking such action, the Directors shall do so in an orderly manner.

PART B – STATUS AND POWERS OF THE COMPANY

6. **STATUS AS A PUBLIC COMPANY**

6.1 The Securities issued by the Company are fully paid up and freely transferable, subject to compliance with the procedural requirements for transfer contained in article 18.

6.2 The Company is entitled to offer its Securities to the public, subject to compliance with this MOI and the Companies Act.

6.3 The Company is, accordingly, classified as a public company in terms of section 8(2).

7. **POWERS OF THE COMPANY**

7.1 The Company is governed by the:

7.1.1 Unalterable Provisions of the Companies Act;

7.1.2 Alterable Provisions of the Companies Act, subject to the extensions, limitations, substitutions or variations set out in this MOI; and

7.1.3 other provisions of this MOI.

7.2 The Company has, subject to section 19(1)(b)(i), all of the legal powers and capacity of an individual, and the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications as contemplated in section 19(1)(b)(ii).

7.3 There is no provision of this MOI which constitutes a restrictive condition as contemplated in section 15(2)(b).

7.4 To the extent that the Companies Act or the Listings Requirements require a company to be expressly authorised by its memorandum of incorporation to do anything, the Company is, by this provision, conferred with the requisite authority to do so, subject to any express limitations set out in this MOI.

7.5 No Special Resolution contemplated in sections 20(2) or 20(6) to ratify any action which is contrary to the Listings Requirements shall be proposed to the Shareholders unless otherwise agreed to by the JSE or, to the extent required, relevant or applicable, any other securities exchange on which any of the Securities are listed.

8. **LIMITATION OF LIABILITY**

No Person shall, solely by reason of being an incorporator, Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company.

9. **EXTENDED ACCOUNTABILITY REQUIREMENTS IN CHAPTER 3 OF THE COMPANIES ACT**

9.1 **application of chapter 3 of the Companies Act to the Company**

9.1.1 The Company, being a public company, is required in terms of section 34(1) to comply with the extended accountability requirements set out in chapter 3 (*Enhanced Accountability and Transparency*) of the Companies Act.

9.1.2 The Company must:

9.1.2.1 appoint a Person to serve as company secretary in the manner and for the purposes set out in article 9.3;

9.1.2.2 appoint a Person to serve as an auditor, in the manner and for the purposes set out in article 9.4; and

9.1.2.3 establish a statutory audit committee, in the manner and for the purposes set out in article 9.5,

provided that no Person who is ineligible (other than by virtue of being a juristic Person) or disqualified from serving as a Director of the Company in terms of section 69(7) or (8) (as relevant) or articles 36.6 and 36.7 shall be appointed as the company secretary, auditor or a member of the statutory audit committee.

9.1.3 In terms of section 72(4) read with regulation 43, the Company must, unless exempted, appoint a social and ethics committee which complies with the Companies Act.

9.2 **register of company secretary and auditor**

9.2.1 The Company shall, in accordance with section 85, establish or cause to be established, and maintain, a record of its company secretary and auditor.

9.2.2 Within 10 Business Days of appointing a company secretary or auditor, or of termination of such an appointment, the Company must file with the Companies and Intellectual Property Commission a notice of the appointment or termination, as the case may be.

9.3 **company secretary**

9.3.1 The Company must appoint a Person to serve as company secretary.

9.3.2 The Person appointed as company secretary shall be appointed on such terms and subject to such conditions and for such period/s as the Board in its discretion deems fit, provided that such Person:

9.3.2.1 has the requisite knowledge of, or is experienced with, relevant laws; and

9.3.2.2 is a permanent resident of South Africa, and remains so while serving in that capacity.

9.3.3 Without in any way limiting or excluding any other grounds for removing a Person as the company secretary, any Person who is the company secretary for the time being who:

9.3.3.1 does not, in the reasonable opinion of the Board, have the requisite knowledge of, or experience with, relevant laws; or

9.3.3.2 ceases to be a permanent resident of South Africa; or

9.3.3.3 ceases to be a Person eligible or qualified to serve as a Director of the Company as contemplated in articles 36.6 or 36.7 (as relevant),

shall cease to be the company secretary on delivery to him/her of a notice by the Board terminating such appointment.

9.3.4 A Juristic Person or partnership complying with the requirements set out in section 87 may be appointed by the Board to hold the office of company secretary.

9.3.5 The company secretary shall be accountable to the Board.

9.3.6 The duties of the company secretary shall be the duties as specified in writing by the Board from time to time, and shall include as a minimum the statutory duties set out in section 88(2).

9.3.7 If the office of company secretary becomes vacant for any reason, the Board must fill that vacancy by appointing a Person whom the Directors consider to have the requisite knowledge of or experience in, relevant laws and is a permanent resident of South Africa within 60 Business Days after the vacancy arises.

9.4 **auditors**

9.4.1 Each year at its Annual General Meeting, the Company must appoint an auditor.

9.4.2 The auditor shall be appointed subject to and in compliance with the requirements and criteria as to auditors set out in sections 90 and 92 and any applicable Listings Requirements.

9.4.3 If the Annual General Meeting of the Company does not appoint or reappoint an auditor, the Board must fill the vacancy in the office in terms of the procedure set out in article 9.4.5 within 40 Business Days after the date of the Annual General Meeting.

9.4.4 If a vacancy arises in the office of the auditor of the Company at any time, the Board:

9.4.4.1 must appoint a new auditor within 40 Business Days, if there was only one incumbent auditor of the Company; and

9.4.4.2 may appoint a new auditor at any time, if there was more than one incumbent auditor, but while any such vacancy continues, the surviving or continuing auditor may act as auditor of the Company.

9.4.5 Before making an appointment in terms of articles 9.4.3 or 9.4.4:

9.4.5.1 the Board must propose to the Company's audit committee, within 15 Business Days after the vacancy occurs, the name of at least one registered auditor to be considered for appointment as the new auditor; and

9.4.5.2 may proceed to make an appointment of a Person proposed in terms of article 9.4.5.1 if, within five Business Days after delivering the proposal, the audit committee does not give notice in writing to the Board rejecting the proposed auditor.

9.4.6 If the Company appoints a firm as its auditor, a change in more than one half of the composition of the members of that firm will constitute the resignation of the firm as auditor of the Company, giving rise to a vacancy.

9.4.7 Any auditors of the Company for the time being shall have the rights and restricted functions set out in section 93.

9.5 **audit committee**

9.5.1 The Company must establish an audit committee comprising at least three members. All members of the audit committee must be non-executive, with the majority of the members being independent, as envisaged in the Companies Act and the Listings Requirements.

9.5.2 The members of the audit committee must be elected at each Annual General Meeting of the Company, in accordance with, and subject to, the requirements and criteria as to the members and composition of such a committee as set out in section 94.

9.5.3 If a vacancy arises on the audit committee, the Board must fill such vacancy within 40 Business Days, and the appointment must be ratified at the next Annual General Meeting.

9.5.4 Neither the appointment nor the duties of the audit committee of the Company reduce the functions and duties of the Board, except with respect to the appointment, fees and terms of engagement of the auditor.

9.5.5 The Company shall pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto having regard to, amongst other financial constraints, the Solvency and Liquidity Test as applied to the Company.

9.5.6 At least one third of the members of the Company's audit committee at any particular time must have academic qualifications, or experience, in corporate law, corporate governance, finance, accounting, audit processes, integrated reporting, commerce and industry.

PART C –SECURITIES OF THE COMPANY AND CAPITALISATION ISSUES

10. AUTHORISED SECURITIES

The numbers and classes of Securities which the Company is authorised to issue are set out in Schedule 1 to this MOI.

11. RIGHTS OF THE SHARES

Each Share in the issued capital of the Company ranks *pari passu* with, and is identical in all respects to, every other Share in respect of all rights, and entitles its holder to:

11.1 the right to be entered into the Register as the registered Shareholder;

11.2 exercise one vote on any matter to be decided by Shareholders of the Company (other than matters which are, in terms of this MOI or the Companies Act, to be decided solely by the holders of any other class/es of Share/s);

11.3 subject to article 49, participate equally with every other Share in any Distribution to Shareholders, whether during the existence of the Company or upon its dissolution;

11.4 if the Company is to be wound-up or liquidated, the assets remaining after payment of the debts and liabilities of the Company and the costs of the winding-up or liquidation shall be distributed among the Shareholders in proportion to the number of Shares held by each of them, provided that the provisions of this article 11.4 shall be subject to the rights of the holders of Securities issued upon special conditions;

11.5 in a winding-up or liquidation of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a Special Resolution of the Shareholders, be paid to the Shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such Shareholders, and the winding-up or liquidation of the Company may be closed and the Company dissolved; and

11.6 all other rights attaching to the Shares in terms of this MOI, the Companies Act, the Listings Requirements, or any other law.

12. VARIATION OF SHARE CAPITAL

12.1 Notwithstanding the provisions of section 36(3), the Board shall not have the power to:

12.1.1 increase or decrease the number of authorised Securities of any class;

12.1.2 reclassify any classified Securities that have been authorised but not issued;

12.1.3 classify any unclassified Securities that have been authorised but not issued; or

12.1.4 determine the preferences, rights, limitations or other terms of any Securities,

which powers shall only be capable of being exercised by the Shareholders, as contemplated in article 12.3.

12.2 Subject to article 34.3, each Security issued by the Company shall entitle its holder to vote on any proposal to amend the preferences, rights, limitations or other terms associated with that Security.

12.3 The Shareholders may, by amendment to the MOI by way of a Special Resolution and in accordance with the Listings Requirements:

12.3.1 increase or decrease the number of authorised Securities of any class;

12.3.2 reclassify any classified Securities that have been authorised but not issued;

12.3.3 classify any unclassified Securities that have been authorised but not issued;

12.3.4 determine or vary the preferences, rights, limitations or other terms of any Securities;

12.3.5 create any class of Securities;

12.3.6 convert one class of Securities into one or more other classes of Securities, including the conversion of par value shares into no par value shares;

12.3.7 consolidate or subdivide any class of Securities; and

12.3.8 vary any preferences rights, limitations or other terms of any class of Securities already in issue, but no such variation shall be implemented unless:

12.3.8.1 it has been approved by a Special Resolution adopted by Security Holders at a separate meeting;

12.3.8.2 if those Securities are not Shares, it has been approved by a Special Resolution of the Shareholders; and

12.3.8.3 if there is/are any other class/es of Securities in issue, it has also been approved by a Special Resolution of all of the Security Holders of the Company entitled to vote thereon, which Special Resolution shall only be

proposed after the Special Resolution referred to in article 12.3.8.1 has been passed.

12.4 The preferences, rights, limitations or any other terms of any class of Securities must not be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) and the powers of the Board are limited accordingly.

13. ISSUE OF SECURITIES

13.1 The Company may, subject to the Listings Requirements and the further provisions of this article 13, only issue Securities which are fully paid up and freely transferable and only within the classes and to the extent that those Securities have been authorised by or in terms of this MOI.

13.2 Notwithstanding the provisions of section 40(5), all Securities of the Company for which a listing is sought on the JSE or any other securities exchange must, unless otherwise required by any law, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities.

13.3 The Board may only authorise the issue of any Securities to any Person/s:

13.3.1 in accordance with the Companies Act and, in particular, with the approval of a Special Resolution if required by section 41;

13.3.2 in accordance with the Listings Requirements, particularly for any issue of shares, options or convertible securities for cash;

13.3.3 in accordance with this MOI and, in particular, any rights specifically conferred on any class of issued Securities;

13.3.4 if the Company has complied with the pre-emptive rights required by the Listings Requirements by first offering such Securities to all existing Security Holders of that class of Securities (or, if there are no Securities of that class in issue, to the Shareholders) ("**Offerees**") in proportion to their existing holdings of Securities at a subscription price which (ignoring any commission referred to in article 14 or any discount not exceeding 10% which may be granted instead of such commission) is not higher than the subscription price at which they will be issued to that/those Person/s. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the Offeree that they decline to accept the Security offered, the Directors may, subject to the provisions of this article 13, issue such Security in such manner as they consider most beneficial to the Company. The Directors may exclude any Security Holders or category of Security Holders from an offer contemplated in this article 13.3.4 if, and to the extent, that they consider it necessary or expedient to do so because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of South Africa, that may be applicable to the offer. The pre-emptive right stipulated in this article 13.3.4 shall not apply to:

13.3.4.1 any issue of Shares in terms of options or conversion rights, provided that such options or conversion rights have been previously approved, to the extent necessary;

13.3.4.2 any issue of Shares in terms of a rights offer to be undertaken by the Company;

13.3.4.3 Shares to be held under an employee share scheme in terms of section 97, a share incentive scheme which complies with the provisions of schedule 14 of the Listings Requirements, or any other employee share option or incentive scheme, provided that such issue of Shares was previously approved, to the extent required;

13.3.4.4 capitalisation shares contemplated in section 47;

13.3.4.5 Shares issued pursuant to a scrip dividend, as contemplated by the Listings Requirements;

13.3.4.6 any issue of Shares in consideration for the acquisition by the Company or any of its subsidiaries of any assets (corporeal or incorporeal), including any securities in another company; and

13.3.4.7 any issue of Shares in terms of any vendor consideration placing directly or indirectly related to an acquisition of assets, for the purposes of an amalgamation or merger, or any other arrangement in respect of which the Listings Requirements do not require the Company to make such an offer;

13.3.4.8 Shares or equity Securities issued for cash pursuant to a general or specific approval given by the Shareholders in general meeting;

13.3.4.9 any issue of Shares which otherwise falls within a category in respect of which it is not, in terms of the Listings Requirements, a requirement for the relevant Shares to be so offered to existing Shareholders; or

13.3.4.10 to the extent that an Ordinary Resolution of the Offerees determines that it shall not apply,

and save as provided for in this article 13.3.4 or specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued, no Security Holder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Securities issued by the Company; or

13.3.5 subject to the remaining provisions of this article 13, with the approval of an Ordinary Resolution of the Shareholders. Any such Ordinary Resolution or Special Resolution required by any other provision of this article 13 may authorise the Board to issue Securities of the Company at any time and/or grant options to subscribe for Securities as the Directors in their discretion think fit, provided that such transaction/s has/have been approved by the JSE and comply/ies with the Listings Requirements.

13.4 The provisions of article 13.3 will apply *mutatis mutandis* to an issue of a class of authorised Securities which have not been issued, based on the percentage Voting Rights which that Shareholder has in relation to the aggregate general Voting Rights, calculated at the time the offer was made.

13.5 Notwithstanding anything in this article 13 to the contrary, Shareholder approval (by Ordinary or Special Resolution of the Shareholders, as the case may be) for the Board to issue Securities to any Person will only be required under this article 13 to the extent required under the Companies Act or Listings Requirements.

13.6 At all times whilst any of the Company's Securities are listed on the JSE or any other securities exchange, the Company shall not issue any Shares in terms of sections 40(5) to 40(7).

13.7 Should there be any listed preference shares in the share capital of the Company, the issue of further shares ranking in priority to, or *pari passu* with, those preference shares, shall be deemed to be a variation of the rights attached to those preference shares, which will adversely affect those rights and no further shares of any class ranking in priority to, or *pari passu* with, existing preference shares, shall be created without a Special Resolution passed at a separate general meeting of the holders of such existing preference shares.

14. **COMMISSION**

14.1 The Company may pay to any Person:

14.1.1 a commission for subscribing or agreeing to subscribe (whether absolutely or conditionally); or

14.1.2 a brokerage for procuring or agreeing to procure subscriptions (whether absolutely or conditionally),

for any Securities issued or to be issued by the Company, provided that, for so long as any Securities of the Company are listed on the JSE, any such commission or brokerage shall not exceed 10% of the consideration payable for such subscription.

15. **RIGHTS OFFER (EXCLUSION OF NON-RESIDENTS)**

15.1 The Company may apply to the Companies and Intellectual Property Commission to exclude from any rights offer any category of the Company's Security Holders who are not resident within South Africa, in terms of section 99(7).

15.2 Notwithstanding article 15.1 above, any *pro rata* offer of any Securities to any Person shall be subject to the possible exclusion of any Persons who are prohibited by any law of any country to whose jurisdiction they are subject, from participation in that offer, or where the Directors determine that it is necessary or expedient to exclude such Persons from the offer because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of South Africa, that may be applicable to the offer.

16. **REGISTER AND CERTIFICATES**

16.1 Shares and other Securities which are of a class listed on the JSE or any other securities exchange shall, subject to the relevant Listings Requirements and article 17 below, be issued in the form of "*uncertificated*" Shares or other Securities; provided that the Directors shall, subject to applicable law be entitled to resolve that Shares or other Securities be issued in certificated form.

16.2 The Company shall establish or cause to be established, and shall maintain, a Register in accordance with the Companies Act and, to the extent that the form of and the manner of maintaining the Register is not prescribed, the Board shall determine the form and manner thereof.

16.3 The Company shall enter into its Register the transfer of any Certificated Securities and shall include in such entry the information required by section 51(5).

16.4 The certificates evidencing any Certificated Securities of the Company shall comply with the requirements set out in section 51(1) and shall otherwise be in such form as may be determined by the Board.

16.5 If any certificate is defaced, lost or destroyed, it may be replaced on payment of such fee, if any, and on such terms as the Board may determine.

16.6 The conversion of Certificated Securities to Uncertificated Securities or of Uncertificated Securities to Certificated Securities shall occur in accordance with the Regulations, any applicable provisions of the Financial Markets Act and any applicable requirements or rules of the JSE, Strate and the relevant CSDP or CSD or similar rules and requirements for any other securities exchange on which any of the Securities may be listed.

17. UNCERTIFICATED SECURITIES

17.1 In terms of and in accordance with the provisions of section 52(4), the CSDP or CSD, and not the Company, must provide a regular statement to each Person for whom any Uncertificated Securities are held in the Uncertificated Securities Register of the Company. The Company shall not issue certificates or statements evidencing or purporting to evidence title to Uncertificated Securities of the Company.

17.2 A Person who is entitled to and wishes to inspect the Uncertificated Securities Register may do so only through the Company and in accordance with the rules of the CSD in terms of section 52(2) read with section 26.

18. TRANSFER OF SECURITIES

18.1 Save in the case of a transfer which is effected by operation of law and overrides the requirements of this MOI, no Person may transfer any Securities in the Company to any other Person without first complying with the requirements for transfer as set out in this MOI.

18.2 Transfer of ownership in any Uncertificated Securities shall be effected in accordance with the provisions of section 53, any applicable provisions of the Financial Markets Act and any applicable requirements or rules of the JSE, Strate and the relevant CSDP or CSD or similar rules and requirements for any other securities exchange on which any of the Securities may be listed.

18.3 All authority to Sign transfer deeds granted by Security Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall, as between the Company and the transferor of such Securities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the Company shall be entitled to give effect to any instruments signed under the authority to Sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.

18.4 Fully paid Securities shall not be subject to any lien in favour of the Company and shall be freely transferable.

19. DEBT INSTRUMENTS

19.1 The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2); provided that the Board shall not be entitled to issue any debt instruments that grants the holder thereof any rights regarding:

19.1.1 attending and voting at general meetings and the appointment of Directors; or

19.1.2 the receipt by the holder thereof of anything other than repayment of the capital amount thereof and payment of interest thereon, all in cash, without the approval of the Shareholders by way of a Special Resolution. Without limiting the foregoing, it is recorded that a debt instrument may not confer on its holder any right to receive any Shares or other Securities of the Company or any other Entity or any other property (whether on conversion or redemption or repurchase of the debt instrument or otherwise) without the approval of a Special Resolution of the Shareholders.

19.2 The authority of the Board to authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2), is accordingly limited or restricted by this MOI.

20. BENEFICIAL INTERESTS

Securities issued by the Company may be held by, and registered in the name of, one Person for the beneficial interest of another Person, as set out in section 56(1), but no Person other than the registered Security Holder shall (save to the extent expressly provided for otherwise in this MOI) be entitled to exercise any of the rights associated with that Security and the Company shall not recognise any Person other than the registered Security Holder as the holder (whether beneficial or otherwise) of that Security. The holding of the Company's Securities by a registered holder for the beneficial interest of another Person is accordingly limited and restricted by this MOI.

21. JOINT HOLDERS OF SECURITIES

Where two or more Persons are registered as the holders of any Security, they shall be deemed to hold that Security jointly, and:

21.1 notwithstanding anything to the contrary contained anywhere else in this MOI, on the death, sequestration, liquidation, winding-up, dissolution or legal disability of any one of those joint holders who is not represented by a Legal Representative as referred to in article 22, the remaining joint holders may be recognised, at the discretion of the Board, as the only Persons having title to that Security;

21.2 any one of those joint holders may give effective receipts for any Distributions or other payments or accruals payable to those joint holders;

21.3 only the joint holder whose name stands first in the Register shall be entitled to delivery of a certificate relating to that Security if required in terms of article 16.6, or to receive notices or payments from the Company (and any notice or payment given to that joint holder shall be deemed to be notice or payment, as the case may be to all of the joint holders);

21.4 any one of the joint holders of any Security conferring a right to vote on any matter may vote either personally or by proxy at any meeting in respect of that Security as if he were solely entitled to exercise that vote, and, if more than one of those joint holders is present at any meeting of Security Holders, either personally or by proxy, the joint holder who tenders a vote (including an abstention) and whose name stands in the Register before the other joint holders who are present, in person or by proxy, shall be the joint holder who is entitled to vote in respect of that Security; and

21.5 the Company shall be entitled to refuse to register more than five Persons as the joint holders of a Security.

22. LEGAL REPRESENTATIVES

A Security Holder shall be the only Person recognised by the Company as having any rights in respect of or title to a Security registered in the name of the Shareholder whom he/she represents; provided that:

22.1 if a Shareholder or his/her Legal Representative is a joint holder of that Security, then this article 22 shall not detract from article 21 and this article 22 shall be read together with article 21; and

22.2 if so required by that Legal Representative or by the Board, be entered into the Register of the Company *nomine officio* in the place and on behalf of that Security Holder,

provided that: (i) if the Legal Representative so entered into the Register ceases to be the Legal Representative of that Security Holder, the Board shall, pending transfer of that Security Holder or another Legal Representative of that Security Holder or any other Person who is entitled to become the holder of that Security, be entitled to suspend the rights of the Shareholder to vote and shall be entitled to withhold (and retain until such transfer has occurred) all Distributions payable to the Security Holder; and (ii) that Security Holder shall not, merely by virtue of the

appointment, or entry into the Register of the Legal Representative, be released from any obligation arising out of or in connection with the holding of that Security.

23. CORPORATE ACTIONS REQUIRED TO COMPLY WITH THE LISTINGS REQUIREMENTS

Notwithstanding anything to the contrary in this MOI, the Company shall, for so long as any of the Company's Securities are listed on the JSE or any other securities exchange, ensure that all of the Company's corporate actions comply with the Listings Requirements to the extent applicable. In particular, the Company shall ensure that when it undertakes the following corporate actions, such actions are done in compliance with the Listings Requirements:

23.1 the issue of Shares for cash and options and convertible Securities granted/issued for cash;

23.2 the repurchase of Securities by the Company; and

23.3 the alteration of the Company's Share capital, authorised Shares and rights attaching to a class/es of Shares.

24. CAPITALISATION SHARES

24.1 The Board shall:

24.1.1 have the power and the authority to approve the issuing of any authorised Shares as capitalisation shares for purposes of section 47;

24.1.2 have the power and authority to approve the issue shares of one class as a capitalisation share in respect of shares of another class; and

24.1.3 subject to article 24.2, have the power and the authority to resolve to permit the Security Holders to elect to receive scrip dividends *in lieu* of cash dividends or a cash payment *in lieu* of a capitalisation share.

24.2 The Board may not resolve to offer a cash payment *in lieu* of awarding a capitalisation share, as contemplated in article 24.1.3, unless the Board:

24.2.1 has considered the Solvency and Liquidity Test as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and

24.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the Distribution.

24.3 If, on any capitalisation issue, Security Holders would, but for the provisions of this article 24, become entitled to fractions of Securities, the Board shall, subject to the Listing Requirements and any contrary provisions in the resolution authorising the capitalisation issue, be entitled to round down the number of capitalisation shares to be received to the nearest whole number or to sell the shares resulting from the aggregation of those fractions, on such terms and conditions as it deems fit, for the benefit of the relevant holders of Securities, and any Director shall be empowered to Sign any instrument of transfer or other instrument necessary to give effect to that sale.

25. ACQUISITION BY THE COMPANY OF ITS SECURITIES ISSUED

Subject to the provisions of the Companies Act and the Listings Requirements applicable at that time, the Company may acquire any Securities issued by the Company on the basis that:

25.1 all or a portion of the price payable on such acquisition may be paid out of the funds of or available to the Company, including whether or not such payment results in a reduction of

the share capital, stated capital, reserves, any capital redemption reserve fund and/or any other account of the Company; and

25.2 the Securities so acquired shall be restored to the status of unissued Securities and the authorised capital of the Company shall remain unaltered.

26. ODD-LOT OFFERS

For purposes hereof:

26.1 "**Odd-lot**" means (i) in relation to Shares, any total holding by a Shareholder (which for the purposes of this article 26 shall include a dematerialised Shareholder without "*own-name registration*" that holds the Shares through a nominee in accordance with the rules and procedures of Strate) of less than 100 Shares (or such other number as may be permitted by the JSE or any other securities exchange on which any of the Shares are listed), or (ii) in relation to other Securities, any total holding by a Security Holder of less than 100 Securities of any class of Securities (or such other number as may be permitted by the JSE or any other securities exchange on which any of the Securities are listed) or a minimum number of Securities with an aggregate nominal value of less than R100.00 (or such other rand amount as may be permitted by the JSE or any other securities exchange on which any of the Securities are listed); and

26.2 "**Odd-lot Offer**" means an offer by the Company, or its nominee (which for the avoidance of doubt shall include any of the Company's subsidiaries from time to time), to the holders of Odd-lots in terms of which the holders of the Odd-lots may elect to retain their holdings or sell their Odd-lots, subject to the Listings Requirements to the extent applicable.

26.3 The Company, or its nominee may make and implement Odd-lot Offers on such terms and conditions as the Board may determine, in accordance with and subject to the Listings Requirements (which shall for the avoidance of doubt include any Shareholder approval required in terms of the Listings Requirements, it being recorded that it will be competent for the Company to procure any Shareholder approval required for an Odd-lot Offer by written resolution of Shareholders as envisaged in article 29.5) or as otherwise permitted by the JSE or any other securities exchange on which any of the Securities are listed); and if it does so and any Shareholder or Security Holder who qualifies to participate in that Odd-lot Offer does not elect any of the election alternatives (namely to retain their Odd-lots or to sell their Odd-lots) in accordance with the terms of the Odd-lot Offer, such Shareholder or Securities Holder (as the case may be) (and any Person with a beneficial interest in such Odd-lots) shall be deemed to have agreed to sell the Odd-lots, and the Company, or its nominee shall be entitled (on implementation of the Odd-lot Offer) to cause the Odd-lots to be sold on behalf of such Persons to any party (including the Company) on such terms and conditions as the Board may determine; provided that the Company shall account to the Shareholders and Security Holders, after deducting the costs of the sales, if any, for the remaining proceeds attributable to them pursuant to the sale of such Odd-lots.

26.4 All unclaimed proceeds of Odd-lot sales shall be held by the Company in trust for the benefit of the Shareholders and Security Holders (as relevant), subject to article 49.3.12 and to the laws of prescription.

PART D – SHAREHOLDERS RIGHTS AND PROCEEDINGS

27. PROXY REPRESENTATION

27.1 A Shareholder may, at any time by written proxy appointment ("**Proxy Instrument**") which complies with this MOI, the Companies Act and the relevant Listings Requirements, appoint any individual, including an individual who is not a Shareholder of the Company, as a proxy to:

27.1.1 participate in, and speak and vote at, a Shareholders Meeting on behalf of that Shareholder; or

27.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in article 29.5,

and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for use as a Proxy Instrument) shall be governed by section 58 and this article 27.

27.2 The Board may determine a standard form of Proxy Instrument and make it available to Shareholders on request.

27.3 Subject to the provisions of the Companies Act, a Proxy Instrument may be an instrument created or transmitted by electronic or other means, including electronic mail or facsimile.

27.4 Unless the contrary is stated therein, a Proxy Instrument which complies with the Companies Act and this MOI shall, if any meeting to which it relates is adjourned or postponed be valid at that meeting when it resumes after such adjournment or commences after such postponement, even if it had not been lodged timeously for use at the meeting as originally scheduled (prior to the adjournment or postponement).

27.5 A Shareholder may not appoint more than one Person concurrently as proxies, and may not appoint more than one proxy to exercise Voting Rights attached to different Securities held by the Shareholder.

27.6 A proxy may not delegate the proxy's authority to act on behalf of the Shareholder to another Person, unless the right to delegate is specifically contained in the Proxy Instrument and the delegation occurs by way of a further Proxy Instrument which itself complies with the requirements of the Companies Act and this MOI.

27.7 A proxy shall not be entitled to exercise any rights of the Shareholder who appointed that proxy after midnight on the day on which the instrument revoking the appointment (if revocable) of that proxy was delivered to the Registered Office of the Company (marked urgent and for the attention of the company secretary, chairperson or managing director of the Company and accompanied by such proof of the identity and authority of the signatory as may reasonably be required by the Board or the chairperson of the relevant meeting) or to any other Person entitled to accept the Proxy Instrument or revocation on behalf of the Company and shall not permit the proxy to exercise such rights after the chairperson becomes aware of that revocation.

27.8 A proxy shall, as contemplated in section 58(7), be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any Voting Right of the Shareholder; provided that if the Proxy Instrument specifically provides otherwise then the specific provisions of the Proxy Instrument shall prevail.

28. RECORD DATES

The Board may, in accordance with section 59 and the Regulations, determine and publish a Record Date for the purposes of determining which Shareholders are entitled to:

28.1 receive a notice of a Shareholders Meeting;

28.2 participate in and vote at a Shareholders Meeting;

28.3 decide any matter by written consent or by Electronic Communication;

28.4 receive a Distribution; or

28.5 be allotted or exercise any other rights,

provided that:

28.5.1 if the Board does not determine a Record Date for any action or event, as contemplated in this article 28, the Record Date shall, subject to article 28.5.2, be as determined in accordance with section 59(3); and

28.5.2 whilst the Shares of the Company are listed on the JSE or any other securities exchange, the Record Date shall be determined in accordance with the relevant Listings Requirements.

29. SHAREHOLDERS MEETINGS

29.1 The Company shall not be required to hold any Shareholders Meeting other than those required by the Companies Act and/or the Listings Requirements.

29.2 Without limiting the foregoing, the Company shall hold a Shareholders Meeting in the circumstances contemplated in section 61(2).

29.3 The Board (or any Prescribed Officer of the Company authorised by the Board) is entitled to call a Shareholders Meeting at any time.

29.4 All Shareholders Meetings that are called for in terms of the Listings Requirements must be convened by the Board (and such Shareholders Meetings shall be held in person or by Electronic Communication as contemplated in article 31 and subject to article 29.5 below may not be held by means of a written resolution as is contemplated in section 60) for purposes of the Shareholders considering and, if deemed fit, approving the Shareholders resolutions required to be passed by the Shareholders in terms of the Listings Requirements.

29.5 The Company shall be entitled to propose, as written resolutions in terms of section 60, all such matters as may be permitted in terms of the Listings Requirements to be proposed in terms of section 60 and if such resolution/s is supported by Persons entitled to exercise sufficient Voting Rights for the resolution to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, such resolutions will be deemed to have been passed at a properly constituted Shareholders Meeting.

29.6 The Board shall determine the location for any Shareholders Meeting of the Company and the Company may hold any such meeting in South Africa or any foreign country it deems fit and, accordingly, the authority of the Board, as contemplated in section 61(9), is not limited or restricted by this MOI.

29.7 The Company is not restricted from calling any meeting of the Shareholders for purposes of adhering to the Listings Requirements.

30. NOTICE OF SHAREHOLDERS MEETINGS

30.1 The Company must:

30.1.1 subject to section 62(2A), deliver a notice of each Shareholders Meeting to:

30.1.1.1 all Shareholders as of the Record Date entitled to vote or otherwise entitled to receive notice in accordance with, and subject to, the provisions of the Companies Act; and

30.1.1.2 the JSE and any other securities exchange on which any of the Securities are listed,

at least 15 Business Days before that Shareholders Meeting is to begin; and

30.1.2 simultaneously with delivery of any notice in terms of article 30.1.1, announce such notice through SENS or the relevant news service of any other securities exchange on which any of the Securities are listed.

30.2 The notice of a Shareholders Meeting shall be in writing and shall include the items set out in section 62(3).

30.3 The notice of a Shareholders Meeting must be delivered in accordance with the provisions of article 55.

30.4 Should the Board receive requests from Shareholders for the inclusion of certain resolutions in the notice prior to the dispatch of such notices, or after dispatch of such notices, but at least 15 Business Days before the Shareholders Meeting is to begin, the Board shall in good faith consider such requests and determine whether the resolution should be included in the notice of the Shareholders Meeting. Any such requests should provide the specific purpose for which the resolution is proposed, must be delivered to the Company in writing and be otherwise in compliance with the Companies Act. Requests for the inclusion of resolutions at a Shareholders Meeting receive by the Company within a period of 15 Business Days of the Shareholders Meeting shall not be considered at the Shareholders' Meeting.

31. CONDUCT OF MEETINGS

31.1 The chairperson of a Shareholders Meeting can take any action he/she considers appropriate for the proper and orderly conduct of the business to be carried out at the meeting. The chairperson's decision on points of order, matters of procedure or matters that arise incidentally from the business of the meeting (including whether or not a matter falls in these categories) shall be final.

31.2 The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to provide for participation in a Shareholders Meeting by Electronic Communication in the manner contemplated in section 63(2) is not limited or restricted in any way by this MOI.

31.3 Subject to article 31.1, the responsibility for, and any expense of gaining access to the medium or means of Electronic Communication employed for any Shareholders Meeting shall be that of the Shareholder or proxy.

31.4 A resolution passed at any meeting that employs Electronic Communication shall, notwithstanding that the Shareholders are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the day on which, and at the time at which, the meeting was so held. For the avoidance of doubt, it is recorded that all of the provisions of articles 29.5 and 31 to 34 shall apply to these meetings.

31.5 At a Shareholders Meeting a resolution put to the vote shall be decided by a show of hands unless a poll is demanded (or on before the declaration of the result of a show of hands) by:

31.5.1 the chairperson of the meeting; or

31.5.2 not less than five Shareholders Present at the Meeting having the right to vote on that resolution; or

31.5.3 a Shareholder or Shareholders Present at the Meeting having the right to exercise at least 10% of the total Voting Rights of All Shareholders having the right to vote on that resolution.

31.6 No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting (contemplated in article 32 below) at which the vote objected to is or may be given or tendered and evert vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and conclusive.

32. SHAREHOLDERS MEETING QUORUM AND ADJOURNMENT

32.1 The quorum requirements for Shareholders Meetings shall, subject to article 32.5, be that:

32.1.1 such a meeting shall not begin unless sufficient Persons (being not less than three in number who are entitled to vote on the matters before the Shareholders Meeting) are Present at such Meeting who are entitled to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

32.1.2 the consideration of a matter to be decided at the meeting shall not begin or continue unless sufficient Persons (being not less than three in number who are entitled to vote on the particular matter) are Present at such Meeting who are entitled to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised on that matter.

32.2 Notwithstanding the provisions of section 64(4) and article 32.1, if, within 30 minutes after the appointed time for a Shareholders Meeting:

32.2.1 the quorum requirements for the Shareholders Meeting to begin have not been satisfied, the Shareholders Meeting shall automatically be postponed without motion or vote to the same day (or if that day is not a Business Day, the next Business Day) in the next week;

32.2.2 the quorum requirements for consideration of a particular matter to begin or continue have not been satisfied, then:

32.2.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the Shareholders Meeting without motion or vote; or

32.2.2.2 if there is no other business on the agenda of the Shareholders Meeting, the Shareholders Meeting is adjourned, without motion or vote, to the same day (or if that day is a public holiday, the next Business Day) in the next week.

32.3 The adjourned or postponed Shareholders Meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.

32.4 The chairperson of the Shareholders Meeting shall be entitled to extend the 30 minute limit referred to in article 32.2 in the circumstances contemplated in section 64(5).

32.5 If, at the time appointed in terms of this article 32 for an adjourned Shareholders Meeting to resume, or for a postponed Shareholders Meeting to begin, the quorum requirements have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

32.6 A Shareholders Meeting, or the consideration of any matter being debated at a Shareholders Meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12), it being recorded that the periods of adjournment set out in section 64(12) shall apply without variation.

32.7 The Board may, at any time after notice of a Shareholders Meeting (other than a Shareholders Meeting required to be held in terms of article 29.3) has been given but prior

to the commencement of that meeting, postpone that meeting to such later date as may be determined by the Board at the time of determining to postpone the meeting, or may be postponed to an unspecified date to be decided by the Board at a later stage; provided that the Board may not so postpone the date of any such meeting beyond that date (if any) by which that meeting is required by the Companies Act or this MOI to be held.

32.8 If a Shareholders Meeting is postponed or adjourned, whether in terms of article 32.2 or otherwise, the Company must, by announcement on SENS or the news service of any other securities exchange on which any of the Securities are listed, give notice to all Shareholders who were entitled to receive notice of the meeting of the postponement or adjournment and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and any other information which the Board may decide to include therein.

32.9 Even if he/she is not a Shareholder:

32.9.1 any Director; or

32.9.2 the Company's attorney (or where the Company's attorneys are a firm, any partner, director or employee thereof) or any other Person admitted by the chairperson of the meeting,

may attend and speak at any Shareholders Meeting, but may not vote, unless he/she is a Shareholder or the proxy or representative of a Shareholder.

33. CHAIRPERSON OF SHAREHOLDERS MEETINGS

33.1 The chairperson of the Board or, failing him/her, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each Shareholders Meeting; provided that, if no chairperson or deputy chairperson is present and willing to act, the Shareholders present shall elect one of the Directors or, if no Director is present and willing to act, a Shareholder, to be the chairperson of that Shareholders Meeting.

33.2 The chairperson of a Shareholders Meeting shall, subject to the Companies Act and this MOI, determine the procedure to be followed at that meeting but shall not have a second or casting vote at any Shareholders Meeting.

34. SHAREHOLDERS RESOLUTION

34.1 At any Shareholders Meeting, any Person who is Present at the Meeting, whether as a Shareholder or as a proxy for a Shareholder, shall be entitled:

34.1.1 on a show of hands, to one vote, irrespective of the number of Voting Rights that Shareholder would otherwise be entitled to exercise; and

34.1.2 on a poll, to exercise the number of Voting Rights associated with the Shares held by such Shareholder, which Voting Rights shall be determined in accordance with the preferences, rights, limitations and other terms of the Shares, as set out in this MOI.

34.2 Any holder of Securities other than Shares ("**Other Security Holder**") shall not be entitled to vote on any resolution at a Shareholders Meeting, except:

34.2.1 during any period provided for in article 34.2.3, during which any dividend, any part of any dividend on preference shares or any redemption payment thereon remain in arrears and unpaid; and/or

34.2.2 in regard to any resolution proposed for the winding-up or liquidation of the Company;

34.2.3 the period referred to in article 34.2.1 shall be the period commencing on the due date of the dividend or redemption payment in question or, where no due date is specified, the expiry of the sixth month after the end of the financial year of the Company in respect of which such dividend accrued or such redemption payment became due.

34.3 If the Other Security Holders are entitled to vote at the Shareholders Meeting as contemplated in article 34.2, then the Other Security Holders shall be entitled to one vote for every Other Security held; provided that the total Voting Rights of the Other Security Holders in respect of the Other Securities shall not exceed 24.99% of the total votes (including the votes of the Shareholders) exercisable at that meeting (and the votes of the Other Security Holders shall be reduced if necessary to give effect to this proviso with any cumulative fraction of a vote in respect of any Other Securities held by Other Security Holders rounded down to the nearest whole number).

34.4 In order for:

34.4.1 an Ordinary Resolution to be approved, it must be supported by more than 50% of the Voting Rights exercised on the Ordinary Resolution, as contemplated in section 65(7); or

34.4.2 a Special Resolution to be approved, it must be supported by at least 75% of the Voting Rights exercised on the Special Resolution, as contemplated in section 65(9),

at a quorate Shareholders Meeting which is quorate in relation to that resolution; provided that this article 34.4 shall not detract from the Shareholders' ability to adopt resolutions by written vote as referred to in article 29.5.

34.5 If any Shareholder abstains from voting in respect of any resolution, that Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.

34.6 Except for those matters which require the approval or authority of a Special Resolution in terms of section 65(11), any other provision of the Companies Act, this MOI or the Listings Requirements, no other matters which the Company may undertake require the approval or authority of a Special Resolution of the Shareholders.

PART E – DIRECTORS POWERS AND PROCEEDINGS

35. AUTHORITY OF THE BOARD OF DIRECTORS

35.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.

35.2 The Board may delegate to any one or more Persons any of its powers, authority and functions (including the power to sub-delegate).

35.3 If none of the Securities of the Company are no longer listed on the JSE or any other securities exchange and the Company has been converted to a private company and has only one Director:

35.3.1 that Director may exercise any power or perform any function of the Board at any time, without notice or compliance with any other internal formalities;

35.3.2 sections 71(3) to (7) shall not apply to the governance of the Company; and

35.3.3 the provisions of articles 40 and 41 shall not apply to the governance of the Company.

36. APPOINTMENT OF DIRECTORS

36.1 The Board shall comprise not less than four Directors.

36.2 Save as provided in article 36.3, all of the Directors and any Alternate Directors shall be elected by a separate Ordinary Resolution of the Shareholders with respect to each such Director and each Alternate Director, at a general meeting of the Company, provided that if the Shareholders do not elect an Alternate Director, the Board shall be entitled to appoint such Alternate Director(s) unless such Alternate Director is a person previously proposed to the Shareholders as an Alternate Director or as a Director and was not elected by the Shareholders when put to the vote.[1] The provisions of section 68(2) shall apply to the election of Directors, provided that a Director may not be elected by written vote in accordance with articles 29.5. There shall be no *ex officio* directors, as contemplated in section 66(4)(a)(ii), and no Person shall have the right to effect the direct appointment or removal of one or more Directors as contemplated in section 66(4)(a)(i).

36.3 Notwithstanding anything in this MOI to the contrary, the Board may appoint a Person who satisfies the requirements for election as a Director to fill any vacancy or to serve as a Director of the Company or as an additional Director on a temporary basis until the earlier of the date of the next Annual General Meeting of the Company and the date on which the vacancy has been filled by election in terms of article 36.2. During that period any Person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company. The authority of the Board in this regard is not limited or restricted by this MOI.

36.4 The Directors shall rotate in accordance with the following provisions of this article 36.4:

36.4.1 at the first Annual General Meeting of the Company, all the elected Directors shall retire from office (including the chief executive officer, financial director or any other Director who has been appointed as an executive director), and at each subsequent Annual General Meeting (or other general meeting held on an annual basis) Directors comprising one third of the aggregate number of Directors (excluding the chief executive officer, financial director and any other Director who has been appointed as an executive director referred to in article 42) or, if their number is not three or a multiple thereof, then the number nearest to but not less than one third of the aggregate number of Directors (excluding the chief executive officer, the financial director and any other Director who has been appointed as an executive director referred to in article 42) shall retire from office and accordingly life directorships and directorships for an indefinite period are not permissible;

36.4.2 the Directors to retire in terms of article 36.4.1 shall exclude any chief executive officer, the financial director and any other Director who has been appointed as an executive director as referred to in article 42, in addition if a Director is appointed as an employee of the Company in any other capacity, the contract under which he/she is appointed may provide that he/she shall not, while he/she continues to hold that position or office, be subject to retirement by rotation and he/she shall not, in such case, be taken into account in determining the rotation or retirement of Directors;

36.4.3 the Directors to retire in terms of article 36.4.1 shall be those who have been longest in office since their last election, provided that if more than one of them were elected Directors on the same day, those to retire shall be determined by lot unless those Directors agree otherwise between themselves;

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[1] LR Schedule 10 para 10.16(b); section 66(4)(b) and 66(4)(a)(iii)

36.4.4 any Director appointed as such by the Directors after the conclusion of the Company's preceding Annual General Meeting shall, in addition to the Directors retiring in terms of article 36.4.1, retire from office at the conclusion of the Annual General Meeting held immediately after his/her appointment;

36.4.5 a retiring Director may, if eligible, be re-elected and, if re-elected, shall be deemed for all purposes other than articles 36.4.1 to 36.4.4 not to have vacated his/her office;

36.4.6 no Person other than a retiring Director shall be eligible for election as a Director at any Annual General Meeting unless the Directors recommend such other Person for election;

36.4.7 a retiring Director shall continue to act as Director throughout the general meeting at which he retires and his/her retirement shall become effective only at the end of such meeting; and

36.4.8 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this MOI, including article 32, will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

36.5 The Board may in the notice of the meeting at which the re-election of a retiring Director is proposed, provide the Shareholders with a recommendation as to which retiring Directors should be re-elected, taking into account that Director's past performance and contribution.

36.6 The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of the Companies Act.

36.7 In addition to the grounds of ineligibility and disqualification of Directors as contained in section 69, a Director shall cease to be eligible to continue to act as a Director if he absents himself/herself from all meetings of the Board occurring within a period of six consecutive months without the leave of the Board, and the Board resolves that his/her office shall be vacated; provided that this article 36.7 shall not apply to a Director who is represented by an Alternate Director who does not so absent himself/herself.

36.8 This MOI does not impose any minimum shareholding or other qualifications to be met by the Directors of the Company in addition to the ineligibility and disqualification provisions of the Companies Act and article 36.7.

36.9 Section 70 shall apply to any vacancy on the Board which may arise from time to time. For purposes of this article 36.9, a vacancy shall arise when, notwithstanding that the minimum number of Directors required in terms of article 36.1 are in office, one or more Directors, resign, become indisposed or unable to fulfil their duties, so that the number of Directors fall below the number elected to office by the Shareholders at the previous Annual General Meeting or Shareholders Meeting.

36.10 If the number of Directors falls below the minimum number fixed in accordance with this MOI, the remaining Directors must, as soon as possible and in any event not later than three months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with article 36.3 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said three month period does not limit or negate the authority of the Board or invalidate anything done by the Board while their number is below the minimum number fixed in accordance with this MOI.

36.11 The Directors in office may act notwithstanding any vacancy in their body, but if their number remains reduced below the minimum number fixed in accordance with this MOI

after the expiry of the three month period contemplated in article 36.10, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.

37. ALTERNATE DIRECTORS

37.1 The appointment of an Alternate Director shall terminate:

37.1.1 when the Director to whom he/she is an Alternate Director ceases to be a Director; or

37.1.2 upon the removal of that Alternate Director from his/her office as such.

37.2 An Alternate Director shall, subject to this MOI:

37.2.1 in the place and stead of the Director to whom he/she is an Alternate Director, act as a Director and generally exercise all the rights of a Director, but only:

37.2.1.1 at any meeting of the Board during the absence of that Director from such meeting; or

37.2.1.2 otherwise than at a meeting of the Board, during the incapacity of that Director or to the extent authorised by that Director in writing,

and if more than one Alternate Director to a Director is present at a meeting or able to act in the place of that Director and that Director has not indicated in writing who should act in his/her place, then those Alternate Directors may agree as to which of them should act in the place of that Director and in the absence of such agreement between them, the most senior of them in age shall act in the place of that Director; and

37.2.2 in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the Director to whom he/she is an Alternate Director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.

38. BOARD COMMITTEES

38.1 The Board shall appoint such committees, with such powers and duties, as may be required by the Listing Requirements and the Companies Act, and may in addition:

38.1.1 appoint any number of committees of Directors; and

38.1.2 delegate to any committee any of the authority of the Board (including the authority to sub-delegate);

38.1.3 include any Person who is not a Director of the Company in such committees,

and, accordingly, the authority of the Board in this regard is not limited or restricted by this MOI.

38.2 The authority and power of any committees established by the Board is not limited or restricted by this MOI, but may, subject to the requirements of the Listing Requirements and the Companies Act in respect of committees required to be established by the Listing Requirements and the Companies Act, be restricted by the Board when establishing any committee or by subsequent resolution.

38.3 No Person shall be appointed as a member of a Board committee if that person is ineligible or disqualified to act as Director for purposes of section 69 and any such appointment shall be a nullity. A Person who is ineligible or disqualified for purposes of section 69 must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

38.4 A member of a Board committee shall cease to hold office as such immediately upon becoming ineligible or disqualified to act as Director for purposes of the Companies Act.

39. CHAIRPERSON OF THE BOARD

39.1 The Board shall be entitled, from time to time, to appoint:

39.1.1 a Director to act as the chairperson of the Board; and

39.1.2 to appoint one or more Directors to act as deputy chairperson/s of the Board,

for such period as may be determined by the Board or for an indefinite period and, even though that period has not yet expired, to remove that chairperson or deputy chairperson from his/her post, with or without nominating a replacement.

39.2 The chairperson of the Board or, failing him/her, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each meeting of the Board; provided that, if no chairperson or deputy chairperson is present and willing to act, the Board present shall elect one of the Directors to be the chairperson of that meeting of the Board.

39.3 The chairperson of a meeting of the Board referred to in article 39.2 shall, subject to the Companies Act and this MOI and any decision of the Board, determine the procedure to be followed at that meeting.

39.4 Notwithstanding the provisions of section 73(5)(e), the chairperson of the Board or any meeting of the Board shall not have a second or casting vote in addition to his/her deliberative vote on any matter referred to the Board.

40. DIRECTORS MEETINGS

40.1 The Board may:

40.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that, in accordance with section 73(2), any Director shall be entitled to convene or direct the Person so authorised by the Board to convene a meeting of the Board; and

40.1.2 from time to time determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4); provided that, subject to article 40.2, no meeting may be convened without notice to all of the Directors, which notice must allow a reasonable period of time taking into account the travelling distances of the Directors. The authority of the Board in this regard is not limited or restricted by this MOI.

40.2 If all of the Directors of the Company:

40.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;

40.2.2 are present at a meeting; or

40.2.3 waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

40.3 A meeting of the Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication in accordance with section 73(3) of the Companies Act.

40.4 The quorum for meetings of the Board shall be a majority in number of the Directors then in office (of which two shall be independent non-executive Directors) present; provided that unless the Board decides otherwise:

40.4.1 if a quorum is not present within 30 minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or if that day is not a Business Day, the next Business Day), at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed; and

40.4.2 if at any such postponed meeting a quorum is not present within 30 minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b), the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.

40.5 If a meeting of the Board is postponed or adjourned, whether in terms of article 40.4 or otherwise, the Company must, within 48 hours thereafter, send notice of the postponement or adjournment to all Directors who are entitled to receive notice of the meeting (excluding those of the Directors who have agreed not to receive such notice of postponement or adjournment or agreed that the meeting may proceed without them) and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and the business to be dealt with thereat. If written notice is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh notice has been given in accordance with this MOI.

40.6 At any meeting of the Board:

40.6.1 each Director has one vote on every matter to be decided by the Board; and

40.6.2 a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in article 40.6.1 at a quorate meeting of the Board and there is no casting vote, so in the case of a tied vote on a resolution, that resolution is not adopted. This article 40.6.2 shall not detract from the Board's ability to adopt resolutions as set out in article 41.

40.7 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes:

40.7.1 any declaration given by notice or made by a Director, as required by section 75; and

40.7.2 every resolution adopted by the Board.

40.8 Resolutions adopted by the Board:

40.8.1 must be dated and sequentially numbered; and

40.8.2 are effective as of the date of the resolution, unless the resolution states otherwise.

40.9 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

41. **WRITTEN RESOLUTIONS BY DIRECTORS**

41.1 A decision that could be voted on at a meeting of the Board (other than a Board resolution resolving that the Company voluntarily begins business rescue proceedings and places the Company under supervision as contemplated in section 129(1)) may instead be:

41.1.1 submitted for consideration to each Director; and

41.1.2 voted on in writing by Directors (or their Alternate Directors) entitled to exercise voting rights on that matter within 10 Business Days after the resolution was submitted to them, or such other period as may be specified in the notice.

41.2 A resolution contemplated in article 41.1 will have been adopted as a Board resolution if, at any time while open to voting, the number of votes exercised in favour of the resolution by Directors (or their Alternate Directors) who are entitled to exercise voting rights on the proposed resolution ("**Eligible Directors**") exceeds the sum of (i) the number of votes exercised against the resolution by Eligible Directors plus (ii) the number of votes by Eligible Directors who do not (or at such time have not) exercise their vote; provided that in determining whether a vote has been exercised, any election by an Eligible Director to abstain from voting which abstention is recorded in writing on the resolution shall be counted as the exercise of a vote, but shall be disregarded for purposes of calculating whether the required majority has been reached.

41.3 A resolution contemplated in article 41.1 shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution (provided that effective date is not a date earlier than the date on which the resolution was submitted to Directors for their consideration and, if deemed fit, adoption) or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the Directors (or their Alternate Directors) entitled to do so voting in favour of the resolution within the 10 Business Days (or other applicable period) referred to in article 41.1, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed.

41.4 Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors and shall be inserted in the Company's minute book for meetings and resolutions of Directors.

41.5 The resolution may consist of one or more counterpart documents, each signed by one or more Directors (or their Alternate Directors).

41.6 An Alternate Director shall only be entitled to Sign such a written resolution if the Director to whom he is an Alternate Director is, at the time of the Alternate Director's Signature, absent from South Africa, or is incapacitated.

41.7 In relation to any such resolution:

41.7.1 a fax or other electronic form of copy (eg PDF format or electronically scanned) of a Director's Signed resolution shall be acceptable evidence that such resolution has been Signed by the Director (or their Alternate Director);

41.7.2 if a Director (or his/her Alternate Director) is ineligible to vote on, or participate in any discussion on, a resolution (or relevant part thereof), the signature by that Director (or his/her Alternate Director) of the written resolution will not invalidate the written resolution and that Director's (or his/her Alternate Director's) signature shall be counted as the exercise of a vote, but shall be disregarded for purposes of calculating whether the required majority has been reached; and

41.7.3 any failure by any Director (or his/her Alternate Director) to sign any resolution within the period stipulated in the notice to the Director shall not affect the validity of such resolution.

42. EXECUTIVE DIRECTORS

42.1 Subject to compliance with the Listing Requirements with regard to corporate governance and the composition of the Board, the Board may appoint, from time to time, one of their number as a chief executive officer, financial director, or to any other executive office of the Company, who shall be employees of the Company and/or any subsidiary of the Company, on such terms and conditions of employment as to remuneration and otherwise as may be determined from time to time by a disinterested quorum of the Board.

42.2 Subject to the provisions of any contract between such executive officer and the Company, the executive officer shall be a Director and shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

42.3 The Directors may from time to time entrust to, and confer upon, the chief executive officer appointed in terms of article 42.1 such powers exercisable in terms of this MOI by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that respect, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

43. PAYMENTS TO DIRECTORS

43.1 The Company may pay remuneration to its Directors for their services as such and, without detracting from the foregoing, may pay any additional remuneration as referred to in article 43.3; provided that such remuneration must have been approved by a Special Resolution passed by the Shareholders within the two previous years and the authority of the Board in this regard is not restricted or limited by this MOI.

43.2 Each Director shall be paid all travelling, subsistence and other expenses properly incurred by him/her in the execution of his/her duties as a Director (including attending meetings of the Board or of the Board committees); provided that such expenses shall first have been authorised or subsequently ratified by a disinterested quorum of the Board of the Directors.

43.3 Any Director who is required to:

43.3.1 devote special attention to the business of the Company; or

43.3.2 travel or reside outside South Africa for the purpose of the Company; or

43.3.3 otherwise perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,

may be paid such extra remuneration or allowances (either in addition to or in substitution for any other remuneration to which they may be entitled as a Director), as a disinterested quorum of the Board may from time to time determine.

43.4 For the avoidance of doubt it is recorded that this article 43 does not apply to remuneration or reimbursement for expenses paid to executive Directors for or in connection with their services as employees of the Company which is governed by article 42.1.

44. PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES

44.1 For the purposes of this article 44,a reference to "Director" includes and Alternate Director, a Prescribed Officer, and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.

44.2 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, or Security Holders (if the circumstances contemplated in section 75(3) prevail), a notice in writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further written notice from that Director.

44.3 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

44.4 Subject to any limitation in the Companies Act and to compliance therewith in relation to the approval of the contract, a Director may have a Personal Financial Interest, or other interest, in any contract between the Company and himself, or any other Person.

45. INDEMNIFICATION AND INSURANCE FOR DIRECTORS

45.1 For the purposes of this article 45, a Director includes:

45.1.1 a former Director and an Alternate Director;

45.1.2 a Prescribed Officer; and

45.1.3 a Person who is a member of a committee of the Board,

irrespective of whether or not the Person is also a member of the Board.

45.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7):

45.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company;

45.2.2 directly or indirectly indemnify a Director for expenses contemplated in article 45.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings:

45.2.2.1 are abandoned or exculpate that Director; or

45.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of article 45.2.3;

45.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6);

45.2.4 purchase or pay for insurance to protect:

45.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with article 45.2.3;

45.2.4.2 the Company against any contingency, including:

45.2.4.2.1 any expenses:

45.2.4.2.1.1 that the Company is permitted to advance in accordance with article 45.2.1; or

45.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with article 45.2.2; or

45.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with article 45.2.3,

and the authority of the Board in this regard is not limited or restricted by this MOI.

45.3 The Company shall and is hereby obliged to indemnify each Director against (and pay to each Director, on demand by that Director, the amount of) any Loss, liability, damage, cost (including all legal costs reasonably incurred by the Director in dealing with or defending any claim) or expense ("**Loss**") which that Director may suffer as a result of any act or omission of that Director in his/her capacity as a Director; provided that:

45.3.1 this indemnity shall not extend to any Loss:

45.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6);

45.3.1.2 arising from any gross negligence or recklessness on the part of that Director;

45.3.1.3 arising from any loss of or damage to reputation; or

45.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise),

and Directors shall not be entitled to recover the losses referred to in this article 45.3.1 from the Company. All losses other than those referred to in this 45.3.1 are referred to herein as "**Indemnified Losses**";

45.3.2 each Director's right to be indemnified by the Company in terms of this article 45 shall exist automatically upon his/her becoming a Director and shall endure even after he/she ceases to be a Director until he/she can no longer suffer or incur any Indemnified Loss;

45.3.3 if any claim is made against a Director in respect of any Indemnified Loss, then:

45.3.3.1 the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim within a reasonable time after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this article 45.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this article 45.3.3, save in the event and to the extent that the Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this article 45.3.3;

45.3.3.2 the Company shall, at its own expense and with the assistance of its own legal advisors, be entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be

made (or which may review any decision or judgement made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto; provided that:

45.3.3.2.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisors) render to the Company such assistance as the Company may reasonably require of the Director in order to contest such claim;

45.3.3.2.2 the Company shall regularly, and in any event on demand by the Director, inform the Director fully of the status of the contested claim and furnish the Director with all documents and information relating thereto which may reasonably be requested by the Director;

45.3.3.2.3 the Company shall consult with the Director prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim; and

45.3.3.2.4 the Company shall not make any admission of wrongdoing on behalf of the Director without the Directors' express consent therefor;

45.3.4 to the extent that any Indemnified Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;

45.3.5 if this article 45 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this article in respect of any period prior to the date on which the required resolution effecting such amendment is adopted by the Shareholders;

45.3.6 all provisions of this article 45.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this article 45.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this MOI shall remain of full force and effect; and

45.3.7 this indemnity shall not detract from any separate indemnity that the Company may Sign in favour of the Director.

PART F – GENERAL PROVISIONS

46. FINANCIAL STATEMENTS

46.1 The Company shall prepare Annual Financial Statements in accordance with the Companies Act and shall have those Annual Financial Statements audited.

46.2 The audited Annual Financial Statements must be submitted to the Audit Committee for consideration and onward recommendation to the Board for approval.

46.3 A copy of the audited Annual Financial Statements of the Company shall be distributed to all Shareholders in accordance with article 55 as soon as reasonably practicable after those Annual Financial Statements have been approved by the Board, but in any event no later than required by the Companies Act and at least 15 Business Days before the date of the Annual General Meeting of the Company at which such annual Financial Statements will be presented to Shareholders.

47. ACCESS TO COMPANY INFORMATION

Directors shall have access to all accounting and other records of the Company as is necessary for such Director to comply with his/her fiduciary, and other duties, imposed on him/her in terms of the Companies Act, the Listing Requirements or the applicable law.

48. FINANCIAL ASSISTANCE

The Board's powers to provide direct or indirect financial assistance as contemplated in section 44(2) and/or section 45(2), or otherwise, are not limited in any manner.

49. DISTRIBUTIONS

49.1 Subject to the provisions of the Companies Act and this MOI, the Board may declare any Distribution.

49.2 In respect of Distributions to Shareholders holding Shares listed on the JSE, payments to such Shareholders must be provided for in accordance with the Listings Requirements to the extent applicable and must not provide that capital shall be repaid on the basis that it may be called up again.

49.3 **Distributions to Shareholders**

49.3.1 This article 49.3 shall apply to Distributions (including dividends) made to holders on a class of Shares as envisaged in paragraph (a) of the definition of 'distributions' in the Companies Act, and references in this article 49.3 to "**Distributions**" shall be read accordingly.

49.3.2 Subject to the further provisions of this MOI and save as otherwise authorised by law or the regulations of a securities exchange on which the relevant shares are listed, distributions to holders of a class of Shares shall be declared in proportion to the number of shares of the relevant class held by such Shareholders.

49.3.3 Distributions (including a dividend) may be paid out of any lawful source (including from capital, reserves, realised or unrealised profits).

49.3.4 Distributions shall be declared payable to the relevant Shareholders registered as such on the Record Date with respect to such Distribution, determined in terms of article 28, provided that such Record Date in the case of the payment of any Distribution shall be a date subsequent to the date of sanctioning of the Distribution or declaring the Distribution by the Board, whichever is the later.

49.3.5 Distributions payable in cash shall be declared in the currency of South Africa. The Board may, in its discretion and on such terms and conditions as it may determine, authorise the payment of any Distribution to a non-resident Shareholder in any foreign currency requested by the non-resident shareholder, at the cost, expense and risk of the non-resident Shareholder in question.

49.3.6 In the case where several persons are registered as the joint holders of any shares, any one of such persons may give to the company effective receipts for all or any distributions and payments on account of distributions in respect of such Shares.

49.3.7 Subject to article 49.3.9 below, all cash Distributions, interest or other sums payable in cash to Shareholders shall be paid by electronic funds transfer or other electronic means, or as otherwise specified by the Board from time to time. Payment by any means into the bank account recorded in the Company's bank account register nominated by the Shareholder, or in the case of joint shareholders into the bank account nominated by the Shareholder whose name stands first in the Securities Register in respect of the Share, shall discharge the Company of any further liability in respect of the amount concerned.

49.3.8 Every payment of a Distribution, interest or other sums made by electronic funds transfer shall be made at the risk of the Shareholders or joint Shareholders. The Company shall not be responsible for the loss or misdirection of any electronic funds transfer.

49.3.9 In respect of Distributions to Shareholders holding Shares listed on the JSE or any securities exchange, payments to such Shareholders must be provided for in accordance with the Listings Requirements to the extent applicable and must not provide that capital shall be repaid on the basis that it may be called up again.

49.3.10 A Distribution may also be made and/or paid in any other way determined by the Directors and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.

49.3.11 No Distribution shall bear interest against the Company, except as otherwise provided under the conditions of the issue of the Shares in respect of which such Distribution is payable.

49.3.12 Distributions unclaimed for a period of not less than four years from the date on which such Distributions became payable by the Company may, at the discretion of the Board, be declared forfeit by the Board for the benefit of the Company. For the avoidance of doubt, all Distributions in the form of monies shall be held by the Company in trust for the benefit of the Shareholders, until lawfully claimed by the relevant Shareholders, but subject to the provisions of this article 49.3.12 and the laws of prescription from time to time, or until the Company is wound up.

49.3.13 Subject only to the provisions of any law to the contrary, Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.

49.3.14 The Directors may from time to time declare and pay to the Shareholders such interim Distributions as the Directors consider appropriate.

49.3.15 Without detracting from the ability of the Company to issue capitalisation shares, any Distribution may be effected and/or paid wholly or in part:

49.3.15.1 by the distribution of specific assets; or

49.3.15.2 by the issue of Shares, debentures or Securities of the Company or of any other company; or

49.3.15.3 in cash; or

49.3.15.4 in any other way which the Directors or Company in general meeting may at the time of declaring the Distribution determine, including granting to the Company's Shareholders a right of election between receiving any Distribution in cash or in the form of the distribution of specific assets.

49.3.16 Where any difficulty arises in regard to any Distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on Distribution.

49.3.17 The Directors may:

49.3.17.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of Distribution; and

49.3.17.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the Distribution as the Directors deem expedient.

49.4 **Other Distributions**

Distributions made by the Company as envisaged in paragraphs (b) and/or (c) of the definition of 'distributions' in the Companies Act, and/or Distributions made to persons other than Shareholders, shall be effected in such manner and subject to such terms as the Directors or the Company in general meeting may at the time of declaring the Distribution determine.

50. RESERVE FUND

Subject to section 56:

50.1 the Directors may, before declaring or recommending any Distribution, set aside out of the amount available for Distribution such sum as they think proper as a reserve fund or as an addition thereto. The Directors may divide the reserve fund into such special funds as they think fit, with full power to employ the assets constitution such fund or funds in the business of the Company, or may invest the same upon such investments (other than Shares) as they may select, without being liable for any depreciation of or loss in consequence of such investments whether the same be usual or authorised investments for trust funds or not;

50.2 the reserve fund shall, at the discretion of the Directors be available for the equalisation of dividends or for making provision for exceptional losses, expenses or contingencies, or for the extension or development of the Company's business, or for writing down the value of any of the assets of the Company, or for repairing, improving and maintaining any buildings, plant, machinery or works connected with the business of the Company, or to cover the loss in wear and tear or other depreciation in value of any property of the Company, or for any other purpose to which the profits of the Company may be properly applied; and

50.3 the Directors may at any time divide among Security Holders by way of a bonus, or special distribution, any part of the reserve funds which they, in their discretion, may determine not to be required for the aforesaid purposes.

51. CAPITALISATION

Subject to section 46:

51.1 the Company at an Annual General Meeting, or the Directors, may at any time and from time to time pass a resolution to capitalise any sum forming part of the undivided profits standing to the credit of the Company's reserve fund, or any sum in the hands of the Company and available for dividend, or any sum carried to reserve as a result of a sale or revaluation of the assets of the Company or any part thereof, or any sum received by way of premium on the issue of any Shares or other Securities. Such resolution may provide that any such sum or sums shall be set free for Distribution and be appropriated to and amongst the Security Holders either with or without deduction for income tax, rateably according to their rights and holdings in Securities in such manner as the resolution may direct; and

51.2 where any difficulty arises in respect of such Distribution, the Directors may settle the Distribution as they deem expedient, fix the value for distribution of any fully paid Securities, make cash payments to any Security Holders on the footing of the value so fixed in order to adjust rights, and vest any Securities or assets in trustees upon such trusts for the persons entitled in the appropriation or Distribution, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to provide that fractions shall be ignored altogether, or by payment in cash or otherwise, in all such instances as may seem just and expedient to the Directors. When deemed requisite, a contract shall be entered into and filed in accordance with the Companies Act, and the Directors may appoint any person to sign such contract on behalf of the Persons entitled in the appropriation or Distribution, and such appointments shall be effective, and the

contract may provide for the acceptance by Security Holders to be allotted to them respectively in satisfaction of their claims in respect of the sum so capitalised.

52. REGISTER OF DISCLOSURES

The Company must establish and maintain a register of the disclosures made in terms of section 56(7).

53. BRANCH REGISTER

53.1 The Company, or the Board on behalf of the Company, may cause to be kept in any foreign country a branch register or Securities Register of Security Holders resident in such foreign country and the Board may, subject to the provisions of the Companies Act, make and vary such regulations as it may think fit respecting the keeping of any such branch register or Securities Register.

53.2 Subject to and to the extent permitted by applicable law and regulation, and to the rules applicable to such a system, the Company may determine that any Securities or class of Securities held on any such branch register or Securities Register may be held in uncertificated form in accordance with any system outside South Africa, which enables title to such Securities to be evidenced and transferred without a written instrument, and which is an electronic settlement environment for transactions to be settled and transfer of ownership in Securities to be recorded electronically.

53.3 Notwithstanding anything in this MOI to the contrary and subject to applicable law, the Directors, in their discretion, shall be entitled to put into place any mechanism and/or system in any jurisdictions and within or across numerous markets, whether involving third parties or otherwise, in relation to the recording, transfer, custody, clearing and settlement of Shares and/or title and/or interests in respect of same, whether or not in conjunction with or separate of any such branch registers or Securities Registers in place.

54. LOSS OF DOCUMENTS

The Company shall not be responsible for the loss in transmission of any document, including cheques, warrants and share certificates, sent through the post either to the registered address of any Security Holder or to any other address requested by the Security Holder.

55. NOTICES

55.1 Any notice that is required to be given and any document required to be delivered or distributed to Security Holders or Directors:

55.1.1 may be given, delivered or distributed in any manner prescribed in the Table CR3 to the Regulations and that notice or document shall be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery; and

55.1.2 shall, simultaneously with being distributed to Security Holders, be announced through SENS and given by the Company to the JSE in writing in any manner prescribed in Table CR 3 to the Regulations and the manner authorised by the Listings Requirements.

55.2 Each Security Holder and Director shall:

55.2.1 notify the Company in writing of a postal address, which address shall be his/her registered address for the purposes of receiving written notices from the Company by post; and

55.2.2 be entitled to, notify in writing to the Company an e-mail address and facsimile number, which address shall be his/her address for the purposes of receiving notices by way of Electronic Communication,

and, if he/she has not notified to the Company any such postal or email address, then he/she shall not be entitled to receive notices from the Company until such a postal or e-mail address is provided.

55.2.3 The postal address notified by any Security Holder to the Company in terms of article 55.2.1 may be a postal address within or outside South Africa.

SCHEDULE 1

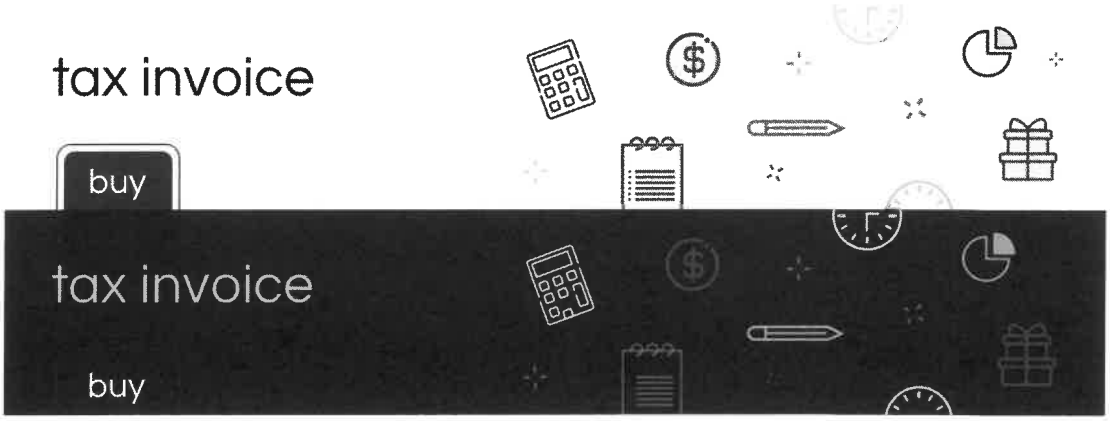
AUTHORISED SHARES

The Company is authorised to issue 10,000,000,000 Shares, having no par value and having the rights and limitations set out in the MOI to which this Schedule is attached.

Subject: FW: Confirmation of your transaction
Date: Thursday, 29 July 2021 at 09:17:32 South Africa Standard Time
From: Tracey Davies
To: Shanét Le Grange

From: EasyEquities <info@easyequities.co.za>
Sent: Thursday, 29 July 2021 09:14
To: Tracey Davies <tdavies@justshare.org.za>
Subject: Confirmation of your transaction

EasyEquities
www.easyequities.co.za



thungela

Thungela Resources Limited
TRADED [1]

SHARES	FSRs	TRADE PRICE:
1	.1515	R 42.7000

Just Share
Account: **EasyEquities ZAR**
Acc. number: **EE274098-936674**
Trader: Just Share

First World Trader t/a EasyEquities
16th Floor, 25 Owl Street,
Auckland Park, 2092
Reg No. 1999/021265/07
VAT No. 445 0255 759

INVOICE NUMBER:	#30216731
SUBMISSION DATE:	2021-07-29 07:10:43.297
SETTLEMENT DATE:[2]	2021-08-11

DETAIL	ZAR

BROKER COMMISSION	0.12
SETTLEMENT AND ADMINISTRATION [3]	0.04
INVESTOR PROTECTION LEVY AND ADMINISTRATION (IPL) [4]	0.01
SECURITIES TRANSFER TAX AND ADMINISTRATION [5]	0.12
VALUE-ADDED TAX ON COSTS (VAT)	0.03
EASYMONEY CREDIT (How do I earn credit?)	**(EM 0.00)**
TOTAL TRANSACTION COST	**0.32**
TRADE VALUE	**49.17**
TOTAL COST	**49.49**

Refer your friends to us, and they'll each get a **R50 voucher**. On top of that, we'll give you a **R50 EasyMoney gift*** for each friend that completes their first trade.

EasyMoney is a currency specific to EasyEquities. You can use this to offset commissions.

YOUR EASYMONEY BALANCE

EM 0.00

SHARE YOUR UNIQUE REFERRAL CODE

EE274098

Earn EasyMoney Now

*Referral rewards may change from time to time but will never be worth less than R50.

1 **VALUE OF SHARES**
The EasyEquities platform enables users to invest in securities which includes whole shares and fractional share rights. EasyEquities acts as an agent for the issue of whole shares, where the investor is the registered owner of these shares, giving the investor entitlement to dividends, corporate actions and all the economic benefits and risks associated with share ownership. In respect of the fractional share rights, EasyEquities acts as a principal where the investor will have a contractual claim against EasyEquities to the economic benefits and risks associated with share ownership (price movements and dividends) without having ownership rights in the underlying share. Fractional share rights are issued through a contract for difference, which is an over the counter derivative. Unlike whole shares, fractional share rights do not carry any voting rights. As you make further purchases and ultimately end up with a whole share, the contract for difference is closed out and the ownership is delivered to the investor through a whole share.

2 **SETTLEMENT**
All proceeds from the sale of Whole Equities(Shares) or the close out of CFD transactions will be paid by EasyEquities into your Account, only upon settlement of the Trade i.e. T+5.

3 **SETTLEMENT AND ADMINISTRATION: UNFORTUNATELY WE ARE NOT RESPONSIBLE FOR THIS FEE**
This fee is charged at flat rate of 0.075% of the value traded, ensuring the lowest possible cost to the investor.
This fee includes the electronic settlement of your transactions through the electronic settlement authority for whole shares and the administration fee represents an upfront recovery on the fractional share rights (FSRs) portion.

4 **INVESTOR PROTECTION LEVY AND ADMINISTRATION (IPL): UNFORTUNATELY WE ARE NOT RESPONSIBLE FOR THIS FEE**
The investor protection levy is a mandatory charge levied by the regulator at 0.0002% on the value of whole shares traded for the regulation of the securities market and in dealing with issues such as insider trading and market manipulation which is ultimately for the benefit of investors. The administration fee represents an upfront recovery on the fractional share rights (FSRs) portion.

5 **SECURITIES TRANSFER TAX AND ADMINISTRATION: UNFORTUNATELY WE ARE NOT RESPONSIBLE FOR THIS FEE**
Security Transfer tax is levied by SARS at 0.25% and applies to the purchase and transfers of listed (whole shares) and unlisted securities (FSRs).

Thank you and kind regards,
The EasyEquities Team

For any queries please go to our **Help Centre** – the quickest and best way to get any issues resolved.

First World Trader t/a EasyEquities, 16th Floor, 25 Owl Street, Auckland Park, 2092
Reg No. 1999/021265/07, VAT No. 445 0255 759

FOSSIL FREE SA

David Le Page <david@fossilfreesa.org.za>

Confirmation of your transaction

EasyEquities <info@easyequities.co.za>
To: david@fossilfreesa.org.za

19 April 2023 at 09:13

EasyEquities
www.easyequities.co.za

tax invoice

buy

Thungela Resources Limited

TRADED [1]:

SHARES	FSRs	TRADE PRICE:
1	.2504	R 163.2400

Fossil Free South Africa
Account: **EasyEquities ZAR**
Acc. number: **EE2169198-10168624**
Trader: Fossil Free South Africa

First World Trader t/a EasyEquities
16th Floor, 25 Owl Street,
Auckland Park, 2092
Reg No. 1999/021265/07
VAT No. 445 0255 759

INVOICE NUMBER:	#57441302
SUBMISSION DATE:	2023-04-19 07:11:02
SETTLEMENT DATE:[2]	2023-05-03

DETAIL	ZAR
BROKER COMMISSION	0.51
SETTLEMENT AND ADMINISTRATION [3]	0.15
INVESTOR PROTECTION LEVY AND ADMINISTRATION (IPL) [4]	0.01
SECURITIES TRANSFER TAX AND ADMINISTRATION [5]	0.51
VALUE-ADDED TAX ON COSTS (VAT)	0.10
EASYMONEY CREDIT (How do I earn credit?)	**(EM 0.00)**
TOTAL TRANSACTION COST	**1.28**

MEMORANDUM ON THE OBJECTS OF THE COMPANIES BILL, 2008

1. BACKGROUND

1.1. In 2004, the Department of Trade and Industry ("the dti") published a policy paper, Company law for the 21st century, which promised the development of a "clear, facilitating, predictable and consistently enforced law" to provide "a protective and fertile environment for economic activity".

The policy paper proposed "that company law should promote the competitiveness and development of the South African economy" by—

1.1.1 Encouraging entrepreneurship and enterprise development, and consequently, employment opportunities by—

(a) simplifying the procedures for forming companies; and

(b) reducing the costs associated with the formalities of forming a company and maintaining its existence.

1.1.2 Promoting innovation and investment in the South African markets and companies by providing for—

(a) flexibility in the design and organisation of companies; and

(b) a predictable and effective regulatory environment.

1.1.3 Promoting the efficiency of companies and their management.

1.1.4 Encouraging transparency and high standards of corporate governance.

1.1.5 Making company law compatible and harmonious with best practice jurisdictions internationally.

The policy paper promised an "overall review of company law" to develop a "legal framework based on the principles reflected in the Companies Act, 1973 (Act No. 61 of 1973), the Close Corporations Act, 1984 (Act No. 69 of 1884), and the common law". The review "would be broadly consultative", drawing on the experience of existing company law institutions, professional expertise within the Republic, and advisers on "best practice internationally and the possibilities for their adaptation to the South African context".

Over the ensuing three years, the dti convened and engaged with a reference group of South African practitioners, academics and other experts, consulted with NEDLAC, and sought the advice of a small panel of international experts drawn from South Africa's major trading and investment partners, as well as commonwealth jurisdictions, which share many of our company law traditions, before publishing a draft bill for public comment in February 2007.

1.2 At every stage, the consultation process endorsed the five-point statement of economic growth objectives, as set out above. In addition, the process generated specific goal statements related to each of those five objectives, best reflected in the following summary of points set out in the report of the NEDLAC consultations:

1.2.1. Simplification

(a) The law should provide for a company structure that reflects the characteristics of close corporations, as one of the available options.

(b) The law should establish a simple and easily maintained regime for non—profit companies.

(c) Co-operatives and partnerships should not be addressed in the reformed company law.

1.2.2 Flexibility

(a) Company law should provide for "an appropriate diversity of corporate structures".

(b) The distinction between listed and unlisted companies should be retained.

1.2.3 Corporate efficiency

(a) Company law should shift from a capital maintenance regime based on par value, to one based on solvency and liquidity.

(b) There should be clarification of board structures and director responsibilities, duties and liabilities.

(c) There should be a remedy to avoid locking in minority shareholders in inefficient companies.
(d) The mergers and takeovers regime should be reformed so that the law facilitates the creation of business combinations.
(e) The judicial management system for dealing with failing companies should be replaced by a more effective business rescue system.

1.2.4 Transparency

(a) Company law should ensure the proper recognition of director accountability, and appropriate participation of other stakeholders.
(b) Public announcements, information and prospectuses should be subject to similar standards for truth and accuracy.
(c) The law should protect shareholder rights, advance shareholder activism, and provide enhanced protections for minority shareholders.
(d) Minimum accounting standards should be required for annual reports.

1.2.5 Predictable regulation

(a) Company law sanctions should be decriminalised where possible.
(b) Company law should remove or reduce opportunities for regulatory arbitrage.
(c) Company law should be enforced through appropriate bodies and mechanisms, either existing or newly introduced.
(d) Company law should strike a careful balance between adequate disclosure, in the interests of transparency and over-regulation.

With those objectives and goals in mind, and drawing on the expertise offered through its consultations, the dti prepared a discussion draft of a proposed new Companies Act for South Africa, which was published for public comment after receiving cabinet approval in early 2007. As promised in the policy document in 2004—

> "*It is not the aim of the dti simply to write a new Act by unreasonably jettisoning the body of jurisprudence built up over more than a century. The objective of the review is to ensure that the new legislation is appropriate to the legal, economic and social context of South Africa as a constitutional democracy and open economy. Where current law meets these objectives, it should remain as part of company law.*"

The published draft elicited well over 100 written submissions from stakeholders, interest groups, and individuals, many of which offered extensive detailed motivations and proposals for reconsideration, reformulation and revision of the draft. In addition, the dti conducted meetings, workshops, discussions and conferences across the country to receive comments in a more informal manner.

All of the submissions received were tabulated and every issue raised or motivation or proposal for revision was noted, and each was systematically considered against the background of the relevant provision of the published draft, and in the context of the project's policies and principles.

In general, the public comments supported the core principles and policies of the reform project, but questioned and challenged many of the legal instruments and provisions that had been proposed to give effect to those policies and principles. Responding to those challenges, the dti instructed the drafting team to reconsider and revise the bill as previously published in a manner that would continue to give effect to the policies directing the project, but address and accommodate the issues and concerns raised, in so far as practicable.

2. Overall plan for company legislation

The reform strategy set out in this Bill proposes the wholesale repeal and replacement of the Companies Act, 1973, with a new Companies Act. However, in accordance with the undertaking set out above from the policy document, the new Act will retain many of the provisions of the current law, which, on analysis, proved to meet the goal of being

> "appropriate to the legal, economic and social context of South Africa as a constitutional democracy and open economy".

In addition, the Bill provides for the co-existence of the new Companies Act, 1973 and the Close Corporations Act, 1984 with amendments to the latter to harmonise the laws as far as practicable to avoid regulatory arbitrage. The dti believes that the regime in the new Companies Act for forming and maintaining small companies, which has drawn on the characteristics of the Close Corporations Act, is sufficiently streamlined and simplified as to render it unnecessary to retain the application of that Act for the formation of new corporations.

However, it is recognised that existing close corporations should be free to retain their current status until such time as their members may determine that it is in their interest to convert to a company. Therefore, the Bill provides for the indefinite continued existence of the Close Corporations Act, but provides for the closing of that Act as an avenue for incorporation of new entities, or for the conversion of companies into close corporations, as of the effective date of this Bill.

During the consultation process, the dti was made aware of proposals within the Department of Justice and Constitutional Development to develop uniform insolvency legislation which, if brought to fruition, would overlap and may conflict with the regime set out in the current Companies Act, 1973 for dealing with and winding-up insolvent companies. In order to avoid any future conflict, the Bill provides for transitional arrangements that will retain the current regime, as set out in Chapter 14 of the Companies Act, 1973 without alteration, on an interim basis until such time as any new uniform insolvency law may be enacted and brought into operation.

Finally, the draft incorporates the principles of the recent amendments made to the Companies Act, 1973, and introduces new provisions, as necessary, to ensure harmonisation with other legislation, notably, the Securities Services Act, 2004 (Act No. 36 of 2004) and the Auditing Profession Act, 2005 (Act No. 26 of 2005).

3. Institutional reform in Bill

The Bill proposes the establishment of one new institution, and the transformation of three existing company law entities, which together will provide for a more predictable and de-politicised regulatory and enforcement system.

Under the Companies Act, 1973 regulatory responsibility is variously assigned to the Minister, the Registrar, the Securities Regulation Panel (SRP), and most recently, the Financial Reporting Standards Council (FRSC). In practice, many of the functions of the Minister and the Registrar have long since been exercised by the Companies and Intellectual Property Registration Office (CIPRO), within the dti.

Chapter 8 of this Bill provides for the migration of CIPRO into a newly established organ of state, with significantly expanded functions and powers, to be known as the Companies and Intellectual Property Commission ("the Commission"). In particular, most of the administrative functions currently assigned to the Minister under the Companies Act, 1973, apart from the appointment of members of the institutions, and the making of regulations, are depoliticised and placed within the jurisdiction of the Commission, although the Minister retains the authority to issue policy directives to the Commission, and to require the Commission to conduct an investigation as set out in the Bill.

The Bill further proposes the transformation of the existing SRP into an independent organ of state, the Takeover Regulation Panel ("the Panel"), with powers similar to those currently vested in the SRP, although its current authority to prescribe rules are now be exercised in consultation with the Minister, who alone would have final authority to make regulations under the proposed Act.

The FRSC is re-established as an advisory committee to the Minister, with responsibilities to advise on regulations establishing financial reporting standards, which will govern the form, content and maintenance of companies' financial records and statements.

Finally, the Bill provides for one new body, a Companies Tribunal ("the Tribunal"), which will be an independent organ of state, with a dual mandate—

(a) first, to serve as a forum for voluntary alternative dispute resolution in any matter arising under the Act; and

(b) second, to carry out reviews of administrative decisions made by the Commission on an optional basis. Those decisions of the Tribunal will be binding on the Commission, but not on the other party, which has a constitutional right of access to a court for further review.

As is the case under the Companies Act, 1973, the High Court remains the primary forum for resolution of disputes, interpretation and enforcement of the proposed Companies Act.

4. Scope and categorisation of companies

The Bill provides for two categories of companies, as follows:

(a) Non-profit companies, which are the successor to the current section 21 companies, and which are subject to—

(i) a varied application of the Act, as set out in section 10; and

(ii) a special set of fundamental rules, set out in Schedule 1, retaining the current principles concerning the objects of such companies, and restricting the distribution of any residual assets on dissolution, in addition to other matters unique to non-profit companies.

(b) For profit companies, which are recognised as being of one of the following types:

(i) Private companies, which are comparable to companies of the same status under the Companies Act, 1973;

(ii) personal liability companies, which are comparable to companies contemplated in section 53(b) of the Companies Act, 1973;

(iii) public companies, which are comparable to companies of the same status under the Companies Act, 1973; and

(iv) state-owned companies, which were often incorporated or registered under the Companies Act, 1973, but were not recognised in that Act as requiring separate legislative treatment in respect to certain matters to avoid conflict or overlap with other legislation specifically applicable to them, and not to companies in general.

In a further effort to create an appropriately flexible regime, a few provisions of the Bill make exceptions for companies that operate under the exceptional circumstances that—

(a) all of their shares are owned by related persons, which results in diminished need to protect minority shareholders; or

(b) all of the shareholders are directors, which results in a diminished need to seek shareholder approval for certain board actions.

The Bill retains the requirements of the Companies Act, 1973, for registration of external companies operating within the Republic, which are also required to have a registered office. In addition, the provisions regulating the public offering of securities within the Republic will apply with respect to the securities of any foreign company, whether or not it carries on activities within the Republic.

The transitional provisions set out in Schedule 5 provide for—

(a) the continuation of existing companies incorporated and registered in terms of the current Act, and provides for them to be governed henceforth in terms of the new proposed Act. Allowances are made for time for them to amend their Articles to conform to the requirements of the new Act; and

(b) the conversion of existing close corporations into companies under the proposed new Act.

5. Company formation, naming and dissolution

The Bill gives effect to the essential core principle that formation of a company is an action by persons in the exercise of their constitutional right to freedom of association combined with their common law right to freedom of contract. That being the case, the Bill reflects, in both its language and its substance, the principle that incorporation of a company is a right, rather than a privilege bestowed by the State. As such, it provides for incorporation as of right, places minimal requirements on the act of incorporation,

allows for maximum flexibility in the design and structure of the company, and significantly restricts the ambit of regulatory oversight on matters relating to company formation and design.

Chapter 2 of the Bill sets out the basic regulatory scheme generally applicable to all companies from incorporation to dissolution. Part B of that Chapter provides for a company to be incorporated by the adoption of a Memorandum of Incorporation, which is the sole governing document of the company. The Bill imposes certain specific requirements on the content of a Memorandum of Incorporation, as necessary to protect the interests of shareholders in the company, and provides a number of default rules, which companies may accept or alter as they wish to meet their needs and serve their interests. In addition, the Bill allows for companies to add to the required or default provision to address matters not addressed in the Bill itself, but every provision of every Memorandum of Incorporation must be consistent with the Bill, except to the extent that it expressly contemplates otherwise. In other words, a company cannot fundamentally "contract out" of the proposed Companies Act. This principle is re-enforced by clause 6(1), which introduces a general "anti-avoidance" regime to company law.

For companies wishing to, the Bill provides for the simplest possible form of incorporation by use of a standard form of Memorandum of Incorporation, which permit the incorporators to accept the required provisions, and the default provisions with or without alteration.

This Bill retains the broad outlines of the existing regime for company names, in particular continuing the practice of name reservation and registration, with some significant alterations. In particular, name reservation will be available to protect one or more names, but it is no longer required. In addition, the Bill proposes reforming the criteria for acceptable names in a manner that seeks to give maximum effect to the constitutional right to freedom of expression. Specifically, the Bill restricts a company name only as far as necessary to—

(a) protect the public from misleading names which falsely imply an association that does not in fact exist;

(b) protect the interests of the owners of names and other forms of intellectual property from other persons passing themselves off, or coat-tailing, on the first person's reputation and standing; and

(c) protect the society as a whole from names that would fall within the ambit of expression that does not enjoy constitutional protection because of its hateful or other negative nature.

Beyond those purposes, there will be no further administrative discretion to reject names, as is found in the Companies Act, 1973.

Transitional provisions allow for names registered or reserved under the current regime to continue to be so registered or reserved under the new Act.

As noted above, the winding-up of insolvent companies will remain as currently governed by Chapter 14 of the Companies Act, 1973 on an interim basis. Apart from that, Chapter 2 retains a number of the existing grounds for dissolving a company, adds additional grounds not found in the Companies Act, 1973, and more narrowly restricts the grounds on which the regulators may seek to have a company dissolved.

6. Accountability and transparency

In order to provide a flexible scheme that balances accountability and transparency, with a lightened regulatory burden, the Bill provides for certain common requirements of all companies, together with a more demanding disclosure and transparency regime, as set out in Chapter 3, to apply to—

(a) public companies, which always have a greater responsibility to a wider public; and

(b) certain private companies, which may have a greater responsibility to a wider public as a consequence of their significant social or economic impact.

In particular, all companies are required to—

(a) have a registered office, and maintain their records at that office, or at another location, notice of which has been given to the Commission;

(b) maintain certain categories of records for a standard minimum of seven years, or longer, if so required by another law;

(c) make specified records available to shareholders, in a manner that is harmonised with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

(d) have a fixed financial year, which may be modified only within restrictions set out in clause 27;

(e) maintain accurate financial records, which must be kept in accordance with any prescribed standards, but those standards may vary for different categories of companies, and falsification of those records is an offence;

(f) produce any financial statements, or summary of such a statement, in a manner and form that satisfies prescribed financial reporting standards, which may vary for different categories of companies, but in any case must be consistent with International Financial Reporting Standards of the International Accounting Standards Board;

(g) stipulate on any financial statements or summary of any financial statements whether the statements have been audited, independently reviewed, or are unaudited, and the date of the statements, and the period to which they apply, as well identifying the name and professional designation, if any, of the person responsible for preparation of the statements;

(h) produce annual financial statements each year.

The annual financial statements of a public company must be audited, while the annual financial statements of other companies must either be audited, or subjected to an independent review, as contemplated in clause 30(2).

In addition, if a company's annual financial statements are required to be audited, they must also be approved by the directors of the company, and must include a directors' report, and detailed disclosure of information concerning the compensation, and other amounts of money paid to directors, as set out in clause 30(3) to (5).

Every company, and every external company conducting activities within the Republic must file an annual report, in the prescribed form, with the Commission, including with it a copy of the company's annual financial statement, if it is required to have a financial statement audited.

Chapter 3 imposes additional accountability and transparency requirements on public companies, largely retaining the existing law with respect to the appointment of company secretaries, auditors, and audit committees.

Finally, the Bill significantly alters the current regime respecting use of the company's name and inclusion of specified information on all of its publications. The Bill abolishes the highly prescriptive and largely unenforceable scheme of the Companies Act, 1973, and substitutes it with clause 32 which—

(a) requires that a company discloses its full name and registration to any person on demand;

(b) prohibits a company misstating its name or registration number in a manner that would be misleading or likely to deceive;

(c) prohibits any unauthorised person using the name of a company to convey the impression that the person is acting on behalf of the company; and

(d) prohibits any person using a form of name to create a false impression that the name is the name of a company.

In terms of the Bill a contravention of clause 32 is an offence.

7. Company finance

Chapter 2 Part D addresses the core issues of company finance, giving effect to the goals outlined above by creating a capital maintenance regime based on solvency and liquidity and abolishing the concept of par value shares and nominal value (although the transitional provisions continue any existing par value shares as such for so long as they are extant, and provide for promulgation of regulations to govern the transition of such shares to the new regime).

In addition, the interests of minority shareholders continue to be protected by requiring shareholder approval for share and option issues to directors and other specified persons, or financial assistance for share purchase, or any financial assistance to a director or related person.

Clause 43 replaces the existing, archaic provisions relating to specific forms of debenture, with proposals for a general scheme designed to protect the interests of holders of securities other than shares, without making unnecessary distinctions based on artificial categorisation of the debt instrument they hold.

Part E of Chapter 2 retains the existing scheme for registration and transfer of uncertificated securities as found in section 91A of the Companies Act, 1973.

Similarly, Chapter 4 presents a simplified and modernised scheme with respect to the primary and secondary offering of securities to the public, based on the principles of the Companies Act, 1973.

8. Company governance

Part F of Chapter 2 addresses all matters relating to company governance, introducing changes to enhance flexibility, while retaining much of the existing regime designed to promote transparency and accountability.

In particular, the Bill—

(a) introduces flexibility in the manner and form of shareholder meetings, the exercise of proxy rights, and the standards for adoption of ordinary and special resolutions;

(b) retains existing qualifications and disqualifications for directors, with some enhanced flexibility, particularly for very small companies where the sole shareholder may be the only director;

(c) explicitly recognises and provides for the use of alternate directors, directors who may be appointed by persons designated in a company's Memorandum of Incorporation, and for ex officio directors, while requiring that a minimum of at least half of all directors of a company must be elected by the shareholders of the company; and

(d) in clause 71, provides a more certain and nuanced scheme for the removal of directors from office.

A major innovation of the draft is the introduction of a regime allowing for a court, on application, to declare a director either delinquent (and thus prohibited from being a director) or under probation (and restricted to serving as a director within the conditions of that probation). The core of the regime is set out in clause 162, as one of the remedies available to shareholders and other stakeholders to hold directors accountable.

Clause 76 introduces new law in the form of a codified regime of directors' duties, which includes a fiduciary duty, and a duty of reasonable care. The provisions governing directors' duties are supplemented by new provisions addressing conflict of interest (in clause 75, and directors' liability (clause 77), and indemnities and insurance (clause 78).

9. Takeovers and fundamental transactions

Under Chapter 5, the transformed the Panel (currently the SRP) retains its status as the regulator of affected transactions and it is intended that the current Takeover Code will be re-enacted as a regulation, subject to any changes the Panel may advise.

The Chapter makes significant changes to the existing law governing the required notification of share purchases, and introduces a remedy for compulsory acquisition of minority shareholding in a takeover scenario, fulfilling one of the reform goals.

The regime for approval of transactions that fundamentally alter a company; the disposal of substantially all of its assets or undertaking, a scheme of arrangement, or a merger or amalgamation, is also significantly reformed, and is supported by a remedy of appraisal rights for dissenting minority shareholders.

In particular, such fundamental transactions will require court approval only if there was a significant minority (at least 15%) opposed to the transaction, or the court grants leave to a single shareholder on the grounds of procedural irregularity or a manifestly unfair result.

Finally, as implied above, the Bill introduces the concept of amalgamation of companies to provide flexibility and enhance efficiency in the economy.

10. Business rescue

In accordance with the reform objectives and specific goals, Chapter 6 replaces the existing regime of judicial administration of failing companies with a modern business rescue regime, largely self-administered by the company, under independent supervision within constraints set out in the Chapter, and subject to court intervention at any time on application by any of the stakeholders.

To ensure the integrity and effectiveness of supervisors contemplated in this Chapter, provision has been made for the Minister to designate a suitable association to regulate the functions of persons seeking to be appointed, or acting as supervisors. The Chapter

recognises the interests of shareholders, creditors and employees, and provides for their respective participation in the development and approval of a business rescue plan. Notably, the Chapter protects the interests of workers by—

(a) recognising them as creditors of the company with a voting interest to the extent of any unpaid remuneration before the commencement of the rescue process,

(b) requiring consultation with them in the development of the business rescue plan,

(c) permitting them an opportunity to address creditors before a vote on the plan, and

(d) according them, as a group, the right to buy out any dissenting creditor or shareholder who has voted against approving a rescue plan.

11. Remedies

As noted above, the High Court remains the principal forum for remedies in terms of the Bill. Chapter 7 establishes certain new general principles, including an extended right of standing to commence an action on behalf of an aggrieved person, and a regime to protect "whistle blowers" who disclose irregularities or contraventions of the Act, which has been formulated to harmonise with the protections already afforded employees under the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

As well as retaining certain existing remedies, the Chapter introduces:

(a) A new general right to seek a declaratory order as to a shareholder's rights, and seek an appropriate remedy;

(b) a right to apply to have a director declared delinquent or under probation, as noted above;

(c) a right for dissenting shareholders in a fundamental transaction to have their shares appraised and to be compensated for the fair value of those shares; and

(d) a codification and streamlining of the right to commence or pursue legal action in the name of the company, which replaces any common law derivative action.

12. Enforcement

In accordance with the objectives and goals, the proposed Act decriminalises company law. There are very few remaining offences, those arising out of falsification of records or documents, publishing of untrue or misleading information, or refusal to respond to a summons, give evidence, perjury, and similar matters relating to the administration of justice in terms of the Act. Any such offences must be referred by the Commission to the National Public Prosecutor for trial in the Magistrate's Court.

Generally, the Act uses a system of administrative enforcement in place of criminal sanctions to ensure compliance with the Act. The Commission or Panel, may receive complaints from any stakeholder, or may initiate a complaint itself, or act on a matter as directed by the Minister. Following an investigation into a complaint, the Commission or Panel may—

(a) end the matter;

(b) urge the parties to attempt voluntary alternative resolution of their dispute;

(c) advise the complainant of any right they may have to seek a remedy in court;

(d) commence proceeding in a court on behalf of a complainant, if the complainant so requests;

(e) refer the matter to another regulator, if there is a possibility that the matter falls with their jurisdiction; or

(f) issue a compliance notice, but only in respect of a matter for which the complainant does not otherwise have a remedy in a court.

A compliance order may be issued against a company or against an individual if the individual was implicated in the contravention of the Act.

A person who has been issued a compliance notice may of course challenge it before the Companies Tribunal, and in court, but failing that, is obliged to satisfy the conditions of the notice. If they fail to do so, the Commission may either apply to a court for an administrative fine, or refer the failure to the National Prosecuting Authority as an offence.

In the case of a recidivist company that has failed to comply, been fined, and continues to contravene the Act, the Commission or Panel may apply to a court for an order dissolving the company.

Finally, to improve corporate accountability, the draft proposes that it will be an offence, punishable by a fine or up to 10 years imprisonment, for a person to sign or agree to a false or misleading financial statements or prospectus, or to be reckless in the conduct of a company's business.

13. OTHER DEPARTMENTS AND BODIES CONSULTED

The following Regulatory authorities, government departments and agencies were consulted in the preparation of the Bill:

13.1 Regulatory Authorities:

- Companies & Intellectual Property Registration Office (CIPRO);
- Financial Services Board (FSB);
- Independent Regulatory Board for Auditors (IRBA);
- Johannesburg Securities Exchange (JSE) Ltd;
- South African Reserve Bank (SARB);
- South African Revenue Services (SARS);
- Securities Regulation Panel (SRP);
- Share Transactions Totally Electronic (STRATE);
- The Standing Advisory Committee on Company Law in South Africa (SACCL); and
- South African Law Reform Commission.

13.2 Government Departments & Agencies:

- Department of Justice & Constitutional Development;
- Minister of Finance in the Republic of South Africa and the National Treasury Department;
- Department of Public Enterprises;
- Portfolio Committee on Trade & Industry of the National Parliament of South Africa;
- The Select Committee on Economic and Foreign Affairs of the National Council of Provinces of Parliament of South Africa;
- The National Economic Development and Labour Council (NEDLAC) of South Africa;
- Department of Public Service & Administration of the Republic of South Africa; and
- The Department of Communications of the Republic of South Africa.

14. FINANCIAL IMPLICATIONS FOR STATE

For the Companies Tribunal, an estimated budget of R17 million will have to be provided for in the first year and approximately R18 million in the following financial year. However, with regard to the reorganisation of CIPRO and the establishment of the Commission there are no financial implications envisaged for the fiscus since CIPRO has sufficient reserves to accommodate any financial requirements for the establishment of the Commission.

15. PARLIAMENTARY PROCEDURE

15.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

15.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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INSTITUTE OF DIRECTORS
SOUTHERN AFRICA

KING IV

REPORT ON CORPORATE GOVERNANCE FOR SOUTH AFRICA 2016

» FOREWORD

INTRODUCTION

The 21st Century has been characterised by fundamental changes in both business and society. These fundamental changes provided the context within which the King Committee set out to draft King IV, and have influenced both its content and approach.

New global realities are testing the leadership of organisations on issues as diverse as inequality, globalised trade, social tensions, climate change, population growth, ecological overshoot, geopolitical tensions, radical transparency and rapid technological and scientific advancement.

The United Nations Sustainable Development Goals, which were agreed by all governments in 2015, the Africa 2063 Agenda and the (South African) National Development Plan 2030 (NDP) have a common theme of value creation that is accomplished in a sustainable manner. This is a fundamental concept of King IV.

THE CHANGED WORLD

Financial instability is one driver of these changes. Financial crises arising out of the capital crisis in the United States of America and the Sovereign Fund crisis in the European Union have still not been resolved. Brexit created further uncertainty for financial systems.

Another change driver is climate change. Even those who are skeptical about the scientific evidence for climate change, or who question whether climate change is attributable to human agency or simply part of a longer-term cycle, have to acknowledge that the world has experienced extreme weather conditions that pose new risks in the last several years.

It is a reality that organisations and individuals are using natural assets faster than nature is regenerating them. This ecological overshoot will be exacerbated by continued population growth on the African and Asian continents. The global population is currently at 7.5 billion, and could reach 9.3 billion by 2045 according to the United Nations. Consequently, the pressure on natural assets will increase, as they are finite; continuing business as usual is no longer an option.

Ubiquitous social media platforms are creating a world characterised by radical transparency. Corporations can no longer conceal their actions or secrets. Technological advances, including the emergence of the Internet of things, are generating huge amounts of data; more importantly, sophisticated analytics is converting that data into deep insight into the behaviour of humans and their organisations.

Technology's disruptions continue. At present, advances in robotics, artificial intelligence, 3D printing, nanotechnology and biotechnology are accelerating the transformation of production and supply chains – and forcing professions like law and accounting to reinvent themselves.

Indeed, so profound are the disruptions to industries and business models that many believe we are in the midst of the Fourth Industrial Revolution.

There are greater expectations from stakeholders than ever before. Activism by civil society and shareholders have rocked companies over the last few years. The Millennial Generation (Millennials), roughly those born since 1980, is now the most numerous age cohort. Their concerns are beginning to set the global agenda. Millennials have shown that they are concerned about the global environmental crunch much more than the global financial crises. They are consequently attracted to companies who have integrated the six capitals into their business models. (The six capitals, as set out in the International Integrated Reporting Council's (IIRC) Integrated Reporting <IR> Framework, are financial, manufactured, human, intellectual, natural and social and relationship capital.)

FOREWORD CONTINUED

In a similar vein, it is now accepted that organisations operate in the triple context of the economy, society and the environment. How they make their money does have an impact on these three elements and, in turn, they impact on organisations.

In the context of all the above, governing bodies have the challenge of steering their organisations to create value in a sustainable manner, making more but with less to meet the needs of a growing population and the reality of dwindling natural resources.

One corollary is that the duty of care has become both more complex and more necessary. No governing body today can say it is not aware of the changed world in which it is directing an organisation. Consequently, a business judgement call that does not take account of the impacts of an organisation's business model on the triple context could lead to a decrease in the organisation's value.

Milton Friedman's epigram, "The social responsibility of business is to increase its profits", must now be interpreted in the light of the view that an organisation is a part of society in its own right. It can no longer be seen as existing in its own narrow universe (or "society") of internal stakeholders and the resources needed to create value – it also operates in, and forms part of, general society. In this view, the licensor of an organisation is not just those individuals and entities within its narrowly defined value chain, but society as a whole.

THE THREE SHIFTS IN THE CORPORATE WORLD

Certain concepts form the foundation stones of King IV. They are: ethical leadership, the organisation in society, corporate citizenship, sustainable development, stakeholder inclusivity, integrated thinking and integrated reporting. These concepts are relevant to three connected paradigm shifts in the corporate world.

From financial capitalism to inclusive capitalism

There is now general acceptance that the employment, transformation and provision of financial capital represent only a fraction of an organisation's activities. Instead, inclusive capitalism takes account of the employment, transformation and provision of all sources of capital – the six capitals – in order to reposition capitalism as the engine of shared prosperity. It gives parity to the sources of value creation.

Financial performance alone can no longer serve as proxy for holistic value creation. As stated by Jonathan Labrey from the IIRC: "Long-term financial performance depends on the efficient and productive management of resources not currently measured by traditional accounting methodologies – human, intellectual, social and relationship, and natural capitals. The financial capital market system is insufficient to guard against the multi-faceted and interconnected risks of the future and hence an inclusive market system should be adopted."[1]

This new way of thinking, known as inclusive capitalism, has the potential to trigger profound change. One is that, instead of simply providing aid to developing countries, developed country companies that are operating in more developing countries should focus on adopting the model of inclusive capitalism in the developing country, and thereby create value in a sustainable manner. The more an organisation's business model positively impacts on society and the environment, the more the quality of life in developing economies will improve. This improvement, in turn, will positively affect the prospects for those organisations.

From short-term capital markets to long-term, sustainable capital markets

The shift from short-term to long-term thinking arises from the need to create value in a sustainable manner. In essence, sustainable capitalism refers to an economic system in which value is created in a sustainable manner. The period indicated by long term or longer term would depend on the strategic objectives of the organisation and the risks and opportunities presented by its external environment, including its material stakeholders.

[1] Jonathan Labrey, Three shifts toward better decision-making (posted 26 May 2015, available at http://integratedreporting.org/news/three-shifts-towards-better-decision-making/)

Another element of this trend is the growing sense that the financial crisis of 2008, and others, were to a large degree caused by a narrow focus on short-term objectives with little or no consideration of the long-term effects on either the organisations concerned, or the economy as a whole. This opinion is prompting renewed focus on the unintended consequences of performance incentives, but also on ways to encourage investors and finance providers to extend their investment horizons.

In short, then, performance in terms of all-inclusive value should be assessed over the longer term. The capital market system must reward long-term decision-making.

From siloed reporting to integrated reporting

We live in an era of radical transparency, which is prompting a rethink on corporate reporting. This is evidenced by the European Union's directive on environmental, social and governance (ESG) reporting, the United Kingdom's strategic report, the context of reports filed with the United States Securities and Exchange Commission, the Operating Financial Review in Australia and the listing requirements of several stock exchanges, including the Johannesburg Bourse.

The traditional financial reporting system was a revolutionary development when it was instituted. It has since had to respond to market regulators, standards boards, ever more complex legislation and the regulation of accounting and corporate reporting. It is accepted that, while fully compliant and duly audited financial statements are critical, they are insufficient to discharge the duty of accountability. Similarly, a sustainability report is critical but insufficient. The reality is that the resources or capitals used by organisations constantly interconnect and interrelate. The organisation's reporting should reflect this interconnectedness, and indicate how its activities affect, and are affected by, the six capitals it uses and the triple context in which it operates.

The move from siloed reporting to integrated reporting is consistent with the concept of an inclusive, sustainable capital market system. It has been given impetus by acceptance of the triple context in which organisations operate and the evolution of integrated thinking. The International Federation of Accountants has promoted integrated reporting to the G20 countries.

King IV takes cognisance of all three these shifts.

In response to these, leading organisations have begun to change the way they operate, stakeholder management, technology and strategy being three such areas:

Stakeholder management: In order to know and understand the legitimate and reasonable needs, interests and expectations of an organisation's major stakeholders, management needs an ongoing relationship with those stakeholders. Some organisations have appointed a corporate stakeholder relationship officer whose sole task is to communicate with stakeholders and inform management of their legitimate and reasonable needs, interests and expectations. This officer will also inform stakeholders what the organisation expects of them.

Understanding stakeholders' expectations will greatly assist the executive to develop better strategy. Stakeholder relationships should be a recurring item on the governing body's agenda so that the board can be kept apprised of the current state of the relationships between the organisation and its stakeholders.

FOREWORD CONTINUED

Technology governance and security: Technology governance and security have become critical issues. Technology is no longer simply an enabler; the systems created by an organisation provide the platform on which it does business, and technology is now both the source of many of an organisation's future opportunities and of potential disruption – an excellent example of how risk and opportunity are increasingly two sides of the same coin.

Technology is now part of the corporate DNA. Thus, the security of information systems has become critical. Technology governance and security should become another recurring item on the governing body's agenda.

Strategy: As the world moves from siloed to integrated thinking, people are increasingly realising that organisations need to broaden the way they consider strategy. It is now apparent that strategy does not just involve a consideration of the inputs into the business models and the resulting outputs; the outcomes of the organisation's products or services must also be taken into account. In particular, organisations need to assess what impact they are having on critical aspects of society and the environment. Consequently, every meeting of the governing body should have an agenda item for the consideration of the full sequence from inputs to outcomes. This will enable the governing body to discuss what the outcomes of its products are, and if they are causing a positive or negative impact on value creation. It will be appreciated that an outcome which is contrary to that which society expects is inconsistent with good corporate citizenship, and will result in the diminution of an organisation's reputation, the trust in which it is held and the confidence society as a whole feels in it. Such a situation could well threaten the organisation's operational legitimacy. The end result would be a destruction in the value of the organisation.

UNIVERSAL APPLICABILITY

King I, II and III had as their foundation ethical and effective leadership. King IV is no different. Clearly, good leadership, which is underpinned by the principles of good governance, is equally valuable in all types of organisations, not just those in the private sector. Similarly, the principles of good governance are equally applicable, and equally essential, in both public and private entities.

This link is implicit in King I, II and III; King IV seeks to make it explicit. Specifically, the King Committee was requested by many entities outside the private sector to draft King IV in such a way as to make it more easily applicable to all organisations: public and private, large and small, for-profit and not-for-profit.

King IV has been drafted with this in mind. Thus, for example, it talks of organisations and governing bodies, rather than simply companies and boards of directors. Another innovation aimed at making it easier for all organisations to use the King IV Report as a guide for good governance is the inclusion of sector supplements.

THE GLOSSARY

To obtain maximum benefit from this Report, the Code and the supplements, the user should read Part 1: *Glossary of Terms* following this foreword so that the meanings given to technical terms are consistently understood.

FROM "APPLY OR EXPLAIN" TO "APPLY AND EXPLAIN"

King IV has moved from "apply or explain" to "apply and explain", but has reduced the 75 principles in King III to 17 basic principles in King IV, one of which applies to institutional investors only. 16 of these principles can be applied by any organisation, and all are required to substantiate a claim that good governance is being practised. The required explanation allows stakeholders to make an informed decision as to whether or not the organisation is achieving the four good governance outcomes required by King IV. Explanation also helps to encourage organisations to see corporate governance not as an act of mindless compliance, but something that will yield results only if it is approached mindfully, with due consideration of the organisation's circumstances.

This outcomes-based approach for a corporate governance code, and the "apply and explain" regime are the original intellectual thinking of the King Committee.

APPRECIATION AND CONCLUSION

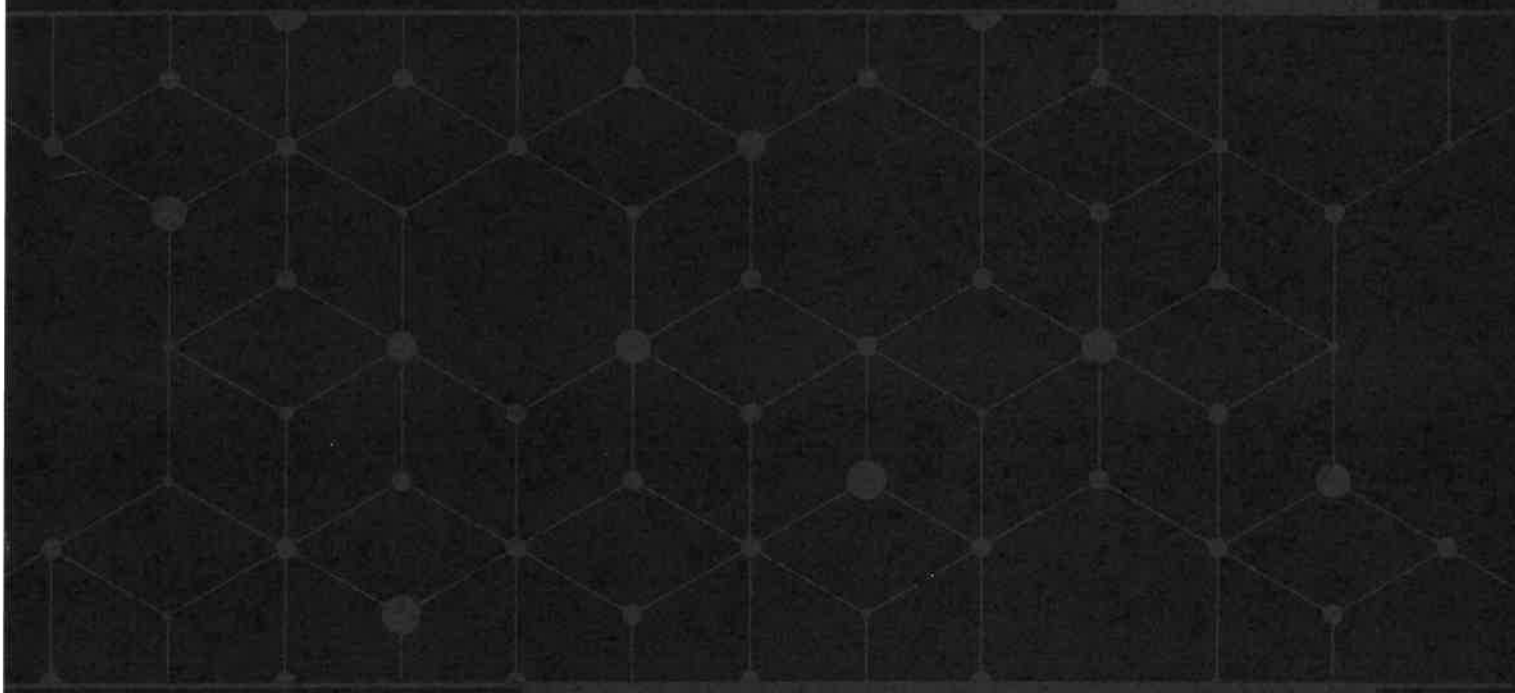
I record my thanks and appreciation to my committee and the task team, who jointly and severally devoted so much time and effort in the interests of corporate (in its broadest sense) South Africa, without remuneration or reimbursement of expenses. In particular, I thank Ansie Ramalho, who led the task team, convened meetings with commentators, collated the comments to the draft report, and convened the working sessions which comprised experts on each of the essential topics contained in this report. I must pay special tribute to her patience in dealing with all of my comments without complaint. My thanks and appreciation also are due to our editors, and to those who contributed to the layout of the report.

The King Committee believes that this fourth iteration will reinforce global recognition of the King Committee's reports on governance.

Mervyn E King SC
Chair of the King Committee

1 November 2016

PART 1



GLOSSARY OF TERMS

The following words carry the meaning as indicated for purposes of interpreting and applying King IV.

GLOSSARY OF TERMS

Accountability	The obligation to answer for the execution of responsibilities. Accountability cannot be delegated, whereas responsibility can be delegated without abdicating accountability for that delegated responsibility.
Accounting authority	As defined in terms of section 1 of the PFMA, it "means a body or person mentioned in section 49 of the PFMA".
AGM	AGM is the abbreviation of annual general meeting as defined in the Companies Act or, for organisations other than companies, it means the meeting that serves a similar purpose as the AGM of a company.
Arrangement	The way that people and things are organised for a particular purpose, activity or function, including frameworks, structures, systems and methods.
Assurance	The diligent application of mind to evidence, resulting in a statement or declaration concerning an identified subject matter or subject matter information, and that is made for the purpose of enhancing confidence in that subject matter or subject matter information. Assurance includes, but is not limited to, assurance engagements performed by independent, external assurance service providers (such as the external auditor) in accordance with the International Auditing and Assurance Standards Board's International Engagement Standards. Such assurance "means an engagement in which a practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria"[1]. Assurance furthermore includes, but is not limited to, assurance provided in terms of the International Standards for the Professional Practice of Internal Auditing, namely, "an objective examination of evidence for the purpose of providing an independent assessment on governance, risk management and control processes for the organization"[2]. Assurance service providers and functions may include the following: a. The organisation's line functions that own and manage risks. b. The organisation's specialist functions that facilitate and oversee risk management and compliance. c. Internal auditors, internal forensic fraud examiners and auditors, safety and process assessors, and statutory actuaries. d. Independent external assurance service providers such as external auditors. e. Other external assurance providers such as sustainability and environmental auditors, external actuaries, and external forensic fraud examiners and auditors. f. Regulatory inspectors.

1 International Auditing and Assurance Standards Board, *The International Framework for Assurance Engagements*, (Effective for assurance reports issued on or after January 1, 2005)

2 The Institute of Internal Auditors, *International Standards for the Professional Practice of Internal Auditing*, (2012), p 19

GLOSSARY OF TERMS CONTINUED

Audit firm tenure	The length of the audit firm-client relationship. It should be calculated as the number of uninterrupted financial years that an audit firm has acted as external auditor of an organisation, up to and including the organisation's last audited financial year.
Beneficiary	In the context of a retirement fund "means a nominee of a member or a dependant who is entitled to a benefit, as provided for in the rules of the relevant fund", as defined in section 1 of the Pension Funds Act.
Board	If it is used in the context of a company, "means the board of directors of a company", as defined in section 1 of the Companies Act. If it is used in the context of a retirement fund, "means a board of a fund as contemplated in terms of Section 7A of this Act", as defined in section 1 of the Pension Funds Act. Boards form a subset of the wider term "governing bodies".
Business model	"An organization's system of transforming inputs through its business activities into outputs and outcomes that aims to fulfil the organization's strategic purposes and create value over the short, medium and long term."[3]
CAE	Chief audit executive.
Capitals or six capitals	"The capitals are stocks of value on which all organizations depend for their success as inputs to their business model, and which are increased, decreased or transformed through the organization's business activities and outputs."[4] In accordance with the six capitals model, these capitals consist of financial, manufactured, intellectual, human, social and relationship, and natural capital. Each of these capitals are described in the International <IR> Reporting Framework[5].
CEO	Chief executive officer or the highest ranking employee in an organisation regardless of naming convention.
CFO	Chief finance officer.
Character	Character describes the attributes that make up and distinguish an individual or a group. It is a way of being rather than a way of doing.
Code	Part 5 of the King IV Report on Corporate Governance for South Africa, 2016.
Combined assurance model	A combined assurance model incorporates and optimises all assurance services and functions so that, taken as a whole, these enable an effective control environment; support the integrity of information used for internal decision-making by management, the governing body and its committees; and support the integrity of the organisation's external reports.
Companies Act	Companies Act, No 71 of 2008, as amended.

3 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33, available at http://integratedreporting.org/resource/international-ir-framework/

4 The International Integrated Reporting Council; *The International <IR> Framework*, (13 December 2013), p 33, available at http://integratedreporting.org/resource/international-ir-framework/

5 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 11-12, available at http://integratedreporting.org/resource/international-ir-framework/

Company	A juristic person incorporated in terms of the Companies Act.
Competence	Possessing the skills and attributes, and exhibiting the conduct that are used to define and measure suitability for a certain role or function.
Conflict of interest	A conflict of interest, used in relation to members of the governing body and its committees, occurs when there is a direct or indirect conflict, in fact or in appearance, between the interests of such member and that of the organisation. It applies to financial, economic and other interests in any opportunity from which the organisation may benefit, as well as use of the property of the organisation, including information. It also applies to the member's related parties holding such interests. (See also "related party" and "independence".)
Constitution	Constitution of the Republic of South Africa, 1996.
Corporate citizenship	Corporate citizenship is the recognition that the organisation is an integral part of the broader society in which it operates, affording the organisation standing as a juristic person in that society with rights but also responsibilities and obligations. It is also the recognition that the broader society is the licensor of the organisation.
Corporate governance	For the purposes of King IV, is defined as the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes: • Ethical culture • Good performance • Effective control • Legitimacy. The use of "corporate" in the term "corporate governance" is used to differentiate it from other forms of governance, for example national or political governance. "Corporate" refers to organisations that are incorporated to form legal entities separate from their founders and therefore applies to all forms of incorporation whether as company, voluntary association, retirement fund, trust, legislated entity or others.
Council	"'Municipal council' or 'council' means the council of a municipality as referred to in section 18 of the Municipal Structures Act", as defined in section 1 of the MFMA.
Creation of value	The positive consequences of the organisation's business activities and outputs on the triple context in which the organisation operates, and the capitals it uses and affects.
CRISA	Code for Responsible Investing in South Africa, 2011.
Culture	In an organisational context, "the way in which members of an organisation relate to each other, their work and the outside world in comparison to other organisations"[6]. It is generally described as "the way we do things around here, even when no one is watching".

6 The Hofstede Centre, itim International, *The Hofstede Multi-Focus Model on Organisational Culture* (2016), available at https://geert-hofstede.com/organisational-culture.html

GLOSSARY OF TERMS CONTINUED

Director	"Means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated", as defined in section 1 of the Companies Act.
Diversity	Diversity should be understood as the varied perspectives and approaches offered by members of different identity groups. For the purposes of King IV, it includes diversity in terms of fields of knowledge, skills and experience as well as age, culture, race and gender.
Effective or effectively	The adequate accomplishment of the desired objective or a pursuit with the minimum expenditure of time, resources, waste and effort.
Ensure	Ensure, where it is used in relation to the responsibilities of the governing body, means to direct and oversee in good faith and with best reasonable effort towards achieving the desired result.
ESG	Environmental, social and governance.
Ethics	Considering what is good and right for the self and the other, and can be expressed in terms of the golden rule, namely, to treat others as you would like to be treated yourself. In the context of organisations, ethics refers to ethical values applied to decision-making, conduct, and the relationship between the organisation, its stakeholders and the broader society.
Executive authority	"In relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls" and "in relation to a provincial public entity, means the member of the provincial Executive Council who is accountable to the provincial legislature for that public entity or in whose portfolio it falls", as defined in section 1(c) and (d) of the PFMA.
Fairness	Fairness refers to the equitable and reasonable treatment of the sources of value creation, including relationship capital as portrayed by the legitimate and reasonable needs, interests and expectations of material stakeholders of the organisation.
FSB Circular PF 130	Financial Services Board Circular PF 130.
Good performance	Good performance is an organisation achieving its strategic objectives, and positive outcomes in terms of its effects on the capitals it uses and affects and on the triple context in which it operates. (See also "performance".)
Governance outcomes	The positive effects or benefits of good corporate governance for the organisation. These positive effects include: ethical culture, good performance, effective control, and legitimacy.
Governing body	The governing body is the structure that has primary accountability for the governance and performance of the organisation. Depending on context, it includes, among others, the board of directors of a company, the board of a retirement fund, the accounting authority of a state-owned entity and a municipal council. "Members of the governing body" (also referred to as "those charged with governance duties") are those who are duly appointed to serve on the governing body and/or its committees.

GRI	Global Reporting Initiative.
Group of companies	"Means a holding company and all of its subsidiaries", as defined in section 1 of the Companies Act.
Holding company	"Means in relation to a subsidiary, a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a)", as defined in terms of section 1 of the Companies Act.
Independence	Independence generally means the exercise of objective, unfettered judgement. When used as the measure by which to judge the appearance of independence, or to categorise a non-executive member of the governing body or its committees as independent, it means the absence of an interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making. (See also "conflict of interest".)
Information	Includes all data, records and knowledge in electronic or any other format, which form part of the intellectual capital used, transformed or produced by the organisation.
Inputs	"The capitals (resources and relationships) that the organization draws upon for its business activities."[7]
Integrated report	"A concise communication about how an organization's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long term."[8]
Integrated reporting	"A process founded on integrated thinking that results in a periodic integrated report by an organization about value creation over time. It includes related communications regarding aspects of value creation."[9]
Integrated thinking	"Integrated thinking is defined as the active consideration by an organization of the relationships between its various operating and functional units and the capitals that the organization uses or affects."[10]
Institutional investor	Any juristic person or institution referred to in the definition of financial institution in section 1 of the Financial Services Board Act, No 97 of 1990, to the extent that these juristic persons or institutions are the holders of beneficial interest in the securities of a company. It includes retirement funds and insurance companies as well as the custodians, nominees and service providers who act under mandate in respect of any investment decisions and investment activities exercised in relation to these securities.[11]

7 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/ – http://integratedreporting.org/resource/international-ir-framework/

8 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/ – http://integratedreporting.org/resource/international-ir-framework/

9 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/

10 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013) available at http://integratedreporting.org/resource/international-ir-framework/ – http://integratedreporting.org/resource/international-ir-framework/

11 Adapted from the definition "institutional investor" used by the Committee for Responsible Investing South Africa, *The Code for Responsible Investing in South Africa* (Institute of Directors in Southern Africa 2011), p 9, available at www.iodsa.co.za

GLOSSARY OF TERMS CONTINUED

Integrity	In the context of governance and ethics, integrity is possessing the quality of being honest and having strong moral principles. It encompasses consistency between stated moral and ethical standards, and actual conduct. Integrity, in relation to the annual financial statements and other external reports issued by the organisation, refers to the reliability and usefulness of these reports. (In this context, "reliability" means validity, accuracy and completeness, while "usefulness" means consistency, relevance and measurability.)
International <IR> Framework	International Integrated Reporting Framework.
King Committee	King Committee on Corporate Governance in South Africa.
King III	King III Report on Governance for South Africa, 2009.
King IV	King IV Report on Corporate Governance for South Africa, 2016. It refers to the complete document that includes all of its parts.
King IV Code	Part 5 of the King IV Report.
King IV Report	King IV Report on Corporate Governance for South Africa, 2016. It refers to the complete document that includes all of its parts.
Management	Management includes senior management and executive management. "Senior management" is the level of management reporting to executive management. "Executive management" is, after the governing body, the highest decision-making authority in the organisation. "Executive managers" are the members of the executive management team and include executive members of the governing body and prescribed officers as defined in the Companies Act or, in respect of organisations other than companies, those who exercise general executive control over, and management of, the whole or significant portions of the business and activities of the organisation.
Material or materiality	As used generally in King IV, it is a "measure of the estimated effect that the presence or absence of an item of information [or identified subject matter] may have on the accuracy or validity of a statement [or decision]. Materiality is judged in terms of its inherent nature, impact (influence) value, use value, and the circumstances (context) in which it occurs"[12]. Materiality in relation to the inclusion of information in an integrated report refers to matters that "could substantively affect the organization's ability to create value over the short, medium and long term"[13].
May	In King IV, "may" is used to describe a recommendation that is permissible but not considered essential. (See also "should" and "must".)

12 The Business Directory, available at http://www.businessdictionary.com/definition/materiality.html

13 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 5, available at http://integratedreporting.org/resource/international-ir-framework/

Member	When used in reference to a non-profit company, "means a person who holds membership in, and specified rights in respect of, that non-profit company, as contemplated in Schedule 1", as defined in section 1 of the Companies Act. When used in reference to a retirement fund "means a person who belongs or belonged to a class of persons for whose benefit that fund has been established, but does not include any person who has received all the benefits which may be due to that person from the fund and whose membership has thereafter been terminated in accordance with the rules of the fund", as defined in section 1 of the Pension Funds Act.
MFMA	Municipal Finance Management Act, No 56 of 2003, as amended.
Municipal entity or ME	"Means a) a company, co-operative trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities, and includes, in the case of a company under such ownership control, any subsidiary of that company; or b) a service utility", as defined in section 1 of the Municipal Systems Act.
Municipal Structures Act	Municipal Structures Act, No 117 of 1998, as amended.
Municipal Systems Act	Municipal Systems Act, No 32 of 2000, as amended.
Must	In King IV, "must" is used specifically to indicate a legal obligation. (See also "may" and "should".)
NGO	Non-governmental organisation.
NPO	Non-profit organisation.
Non-Profit Organisations Act	Non-Profit Organisations Act, No 71, of 1997, as amended.
Organisation	A company, retirement fund, non-profit organisation, state-owned entity, municipality, municipal entity, trust, voluntary association and any other juristic person regardless of its manner of incorporation.
Outcomes	Outcomes in the context of the outcomes of the activities and outputs of an organisation means "the internal and external consequences (positive and negative) for the capitals as a result of an organization's business activities and outputs"[14]. It also refers to the internal and external consequences of the business activities and outputs on the triple context in which the organisation operates.
Outputs	"The products, services, by-products and waste that are produced by an organization."[15]

14 Adapted from The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), available at http://integratedreporting.org/resource/international-ir-framework/

15 Adapted from The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), available at http://integratedreporting.org/resource/international-ir-framework/ and Reporting on Outcomes: An Information Paper, Integrated Reporting Committee South Africa, *"Reporting on Outcomes: An Information Paper"* 2015, available at www.integratedreportingsa.org

GLOSSARY OF TERMS CONTINUED

PBO	Public Benefit Organisation.
Pension Funds Act	Pension Funds Act, No 24 of 1956, as amended.
Performance	"An organization's achievements relative to its strategic objectives, and its outcomes in terms of its effects on the capitals."[16] It includes the organisation's outcomes in terms of its effects on the triple context in which the organisation operates. Performance is therefore the result (positive and negative) of the value creation process. (See also "good performance".)
PFMA	Public Finance Management Act, No 1 of 1999, as amended.
Policy	Policy gives effect to strategy and strategic direction by defining the frameworks, standards and plans that establish the scope or spheres within which judgement is exercised, decisions are made and actions are taken.
PRI	United Nations supported Principles for Responsible Investment.
Principal officer	The principal executive officer to be appointed by every registered fund in terms of section 8 of the Pension Funds Act.
Providers of financial capital	Equity and debt holders and others who provide financial capital including, lenders and other creditors.
Related party	A related party is a person or entity as set out in section 2(1) of the Companies Act. It applies *mutatis mutandis* to organisations other than companies. (See also "conflict of interest".)
Responsibility	Taking ownership of a duty, obligation or liability.
Responsible investment	"An approach to investing that aims to incorporate environmental, social and governance factors into investment decision-making, to better manage risk and generate sustainable long-term returns."[17]
Risk	Risk is about the uncertainty of events; including the likelihood of such events occurring and their effect, both positive and negative, on the achievement of the organisation's objectives. Risk includes uncertain events with a potential positive effect on the organisation (i.e. opportunities) not being captured or not materialising.[18]
Sector supplements	Part 6 of the King IV Report.
Sensitive information	Information that is likely to compromise competitiveness, privilege or commercial advantage.
Shareholders	"Subject to section 57(1) of the Act, means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be" as defined in section 1 of the Companies Act. Depending on context, references to shareholders in King IV may also apply to the members of non-profit companies.

16 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33 available at – http://integratedreporting.org/resource/international-ir-framework/

17 Principles for Responsible Investing available https://www.unpri.org/about/what-is-responsible-investment

18 Broadly based of definition of risk by the International Organization for Standardization; ISO Guide 73:2009; available at https://www.iso.org/obp/ui/#iso:std:iso:guide:73:ed-1:v1:en

Should	When used in King IV with reference to the principles, it indicates an aspiration or ideal state. When used with reference to the recommended practices in King IV, it indicates a recommended course of action that is particularly suitable, without mentioning or excluding other possibilities. "Should not" indicates that a certain course of action is not recommended but not prohibited either. (See also "may" and "must".)
SME	Small and medium enterprise.
Society	Refers principally to the broader society or community as part of the triple context in which the organisation operates, and the social and relationship capital that the organisation uses and affects. Society includes the organisation's internal and external stakeholders, which in turn form part of the broader society as a whole.
SOE	State-owned entity.
Stakeholder inclusivity	An approach in which the governing body takes into account the legitimate and reasonable needs, interests and expectations of all material stakeholders in the execution of its duties in the best interests of the organisation over time. By following this approach, instead of prioritising the interests of the providers of financial capital, the governing body gives parity to all sources of value creation, including, among others, social and relationship capital as embodied by stakeholders. Consequently, this is an inclusive, stakeholder-centric approach which stands in contrast with a shareholder-centric approach.
Stakeholders	"Those groups or individuals that can reasonably be expected to be significantly affected by an organization's business activities, outputs or outcomes, or whose actions can reasonably be expected to significantly affect the ability of the organization to create value over time."[19] "Internal stakeholders" are directly affiliated with the organisation and include its governing body, management, employees and shareholders. "External stakeholders" could include trade unions, civil society organisations, government, customers and consumers. Internal stakeholders are always material stakeholders, but external stakeholders may or may not be material.
Strategy	The setting of the organisation's short, medium and long-term direction towards realising its core purpose and values.
Subsidiary	As defined in terms of section 1 of the Companies Act "has the meaning determined accordance with section 3 of the Act".
Sustainability	Sustainability is the ultimate, long-term goal of sustainable development. (See also "sustainable development".)

19 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33 available at http://integratedreporting.org/resource/international-ir-framework/

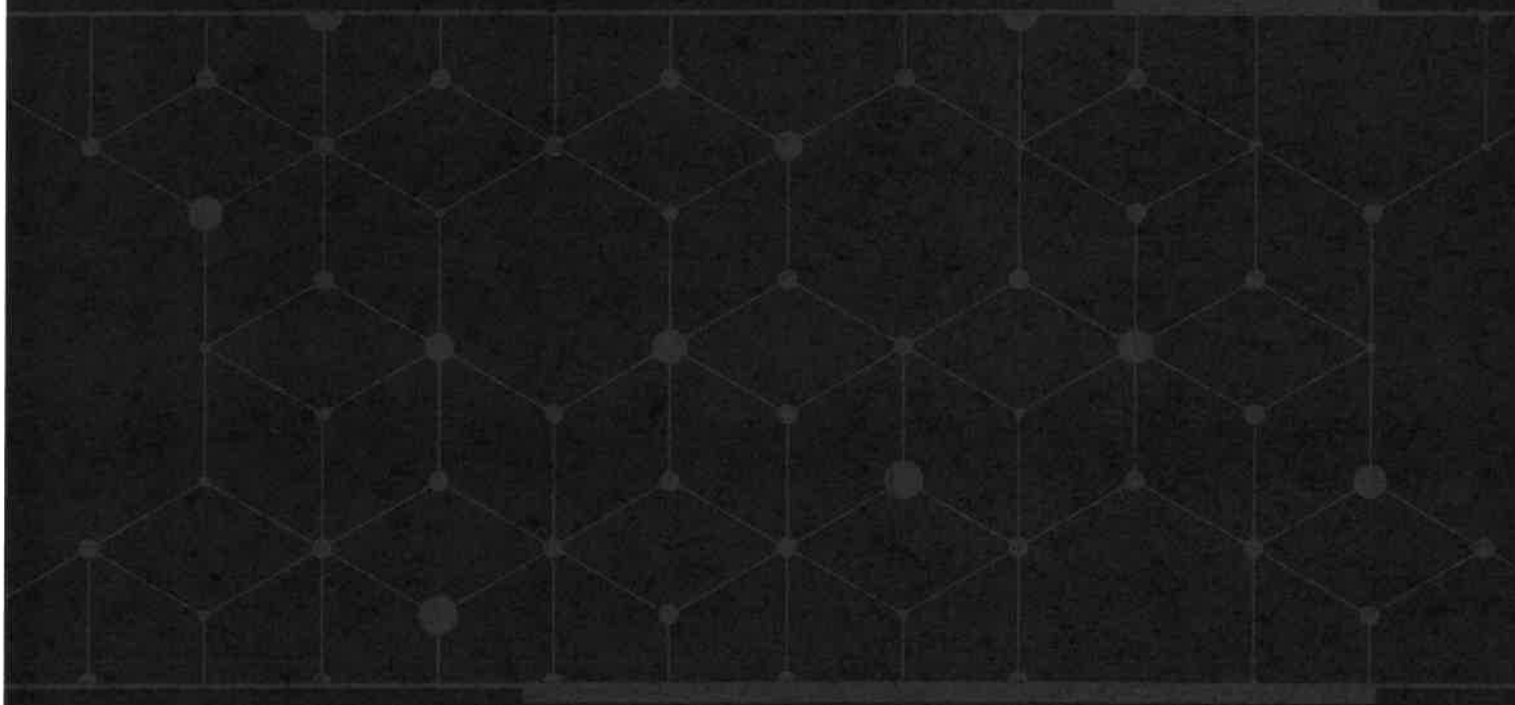
GLOSSARY OF TERMS CONTINUED

Sustainable development	In general, "development that meets the needs of the present without compromising the ability of future generations to meet their needs"[20]. At the level of organisations' participation in sustainable development, it means organisations intentionally interacting with, and responding to, the opportunities and challenges presented by the dynamic system of the triple context in which the organisation operates and the capitals that the organisation uses and affects, with the aim to achieve the creation of value over time. Sustainable development is not confined to individual matters, such as the economic viability of the organisation, the natural environment or corporate social responsibility. Rather, it refers to an integrated approach that includes these and other considerations as represented by the triple context (see also "triple context") and the capitals (see also "capitals").
Technology	Technology comprises the infrastructure, devices, systems and software that generate, use or carry information and enable transactions.
Transparency	The unambiguous and truthful exercise of accountability such that decision-making processes and business activities, outputs and outcomes (both positive and negative) are easily able to be discerned and compared with ethical standards.
Triple context	The combined context of the economy, society and environment in which the organisation operates.
Value creation or value creation process	"The process that results in increases, decreases or transformations of the capitals caused by the organization's business activities and outputs."[21] The value creation process therefore has neutral, positive and negative outcomes.
Values	Convictions and beliefs about how the organisation and those who represent it should conduct themselves; how resources and stakeholders should be treated; what the core purpose and objectives of the organisation should be; and how work duties should be performed.

20 United Nations, *"Report of the World Commission on Environment and Development: Our Common Future"*, (Oxford, Great Britain: Oxford University Press, 1987), p 8. Also known as the Brundtland Report after Gro Harlem Brundtland, Chairman of the Commission and available at http://www.un-documents.net/our-common-future.pdf

21 The definition of "value creation" as per: The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), p 33 available at http://integratedreporting.org/resource/international-ir-framework/

PART 2



FUNDAMENTAL CONCEPTS

» FUNDAMENTAL CONCEPTS

INTRODUCTION

Since the publication of the first King report, South Africa has maintained a proud tradition of corporate governance. King IV is the fourth iteration of that report, and sets out the philosophy, principles, practices and outcomes which serve as the benchmark for corporate governance in South Africa.

Part 2 contains the fundamental concepts and philosophy on which King IV is based, the distinguishing features of King IV and how the various developments in corporate governance, locally and internationally, since King III came into effect in 2009, have influenced the principles and practices in the Code. A firm grasp of the content in this part is necessary for effective application of King IV.

DEFINITION OF CORPORATE GOVERNANCE

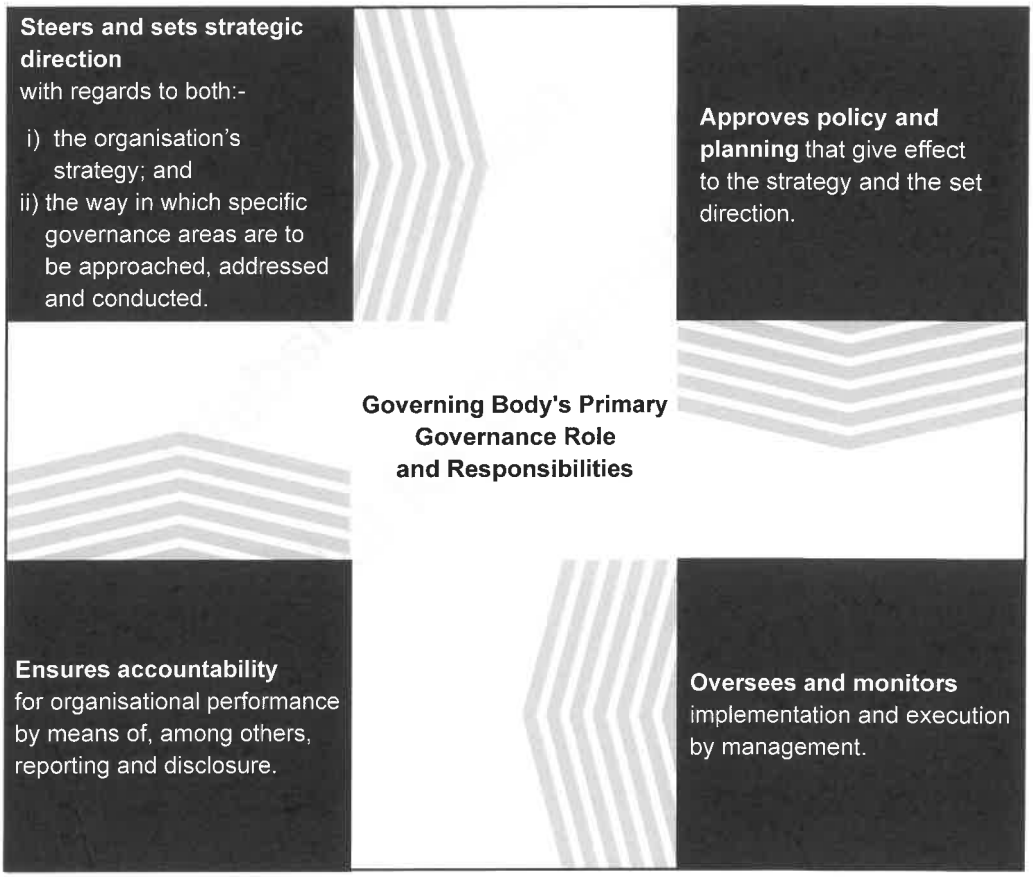
Corporate governance, for the purposes of King IV, is defined as the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes:

- Ethical culture
- Good performance
- Effective control
- Legitimacy.

Ethical and effective leadership should complement and reinforce each other.

Ethical leadership is exemplified by integrity, competence, responsibility, accountability, fairness and transparency. It involves the anticipation and prevention, or otherwise amelioration, of the negative consequences of the organisation's activities and outputs on the economy, society and the environment and the capitals that it uses and affects.	**Effective leadership** is results-driven. It is about achieving strategic objectives and positive outcomes. Effective leadership includes, but goes beyond, an internal focus on effective and efficient execution.

The governing body's primary governance role and responsibilities are depicted below as part of the dynamic of the organisation's business cycle[1]. This role and responsibilities include to steer the organisation and set its strategic direction, on the basis of which management will develop the strategy which is to be approved by the governing body. To give effect to the organisation's strategy, management formulates policy and operational plans, also to be approved by the governing body. Management then, implements and executes strategy in accordance with policy and plans which are overseen and supervised by the governing body. The governing body finally ensures that there is accountability for organisational performance through, among others, reporting and disclosure. The latter in turn forms the basis for reviewing strategic direction which starts the business cycle anew.



The governing body's primary governance role and responsibilities, as described above, are replicated and incorporated as the structural basis for the recommended practices under each of the governance areas (for example ethics, risk, compliance, remuneration and stakeholder relationships) covered by the Code. Thus, the practices are organised in accordance with the following series of responsibilities: The governing body assumes responsibility for providing the direction for how each governance area should be approached, addressed and conducted. This is followed by formulation of policy in the form of frameworks, standards and plans by management to be approved by the governing body. The governing body oversees and monitors implementation and execution by management, and finally ensures that there is accountability for the performance in respect of each of these governance areas through reporting and disclosure.

1 Adapted from Bob Tricker, *Corporate Governance Principles, Policies and Practices*; Second edition, (Oxford University Press, 2012), p 174

FUNDAMENTAL CONCEPTS CONTINUED

By organising the recommended practices in accordance with the governance role and responsibilities as explained above, King IV provides governing bodies with a model for the way in which any area that is subject to their governance should be approached.

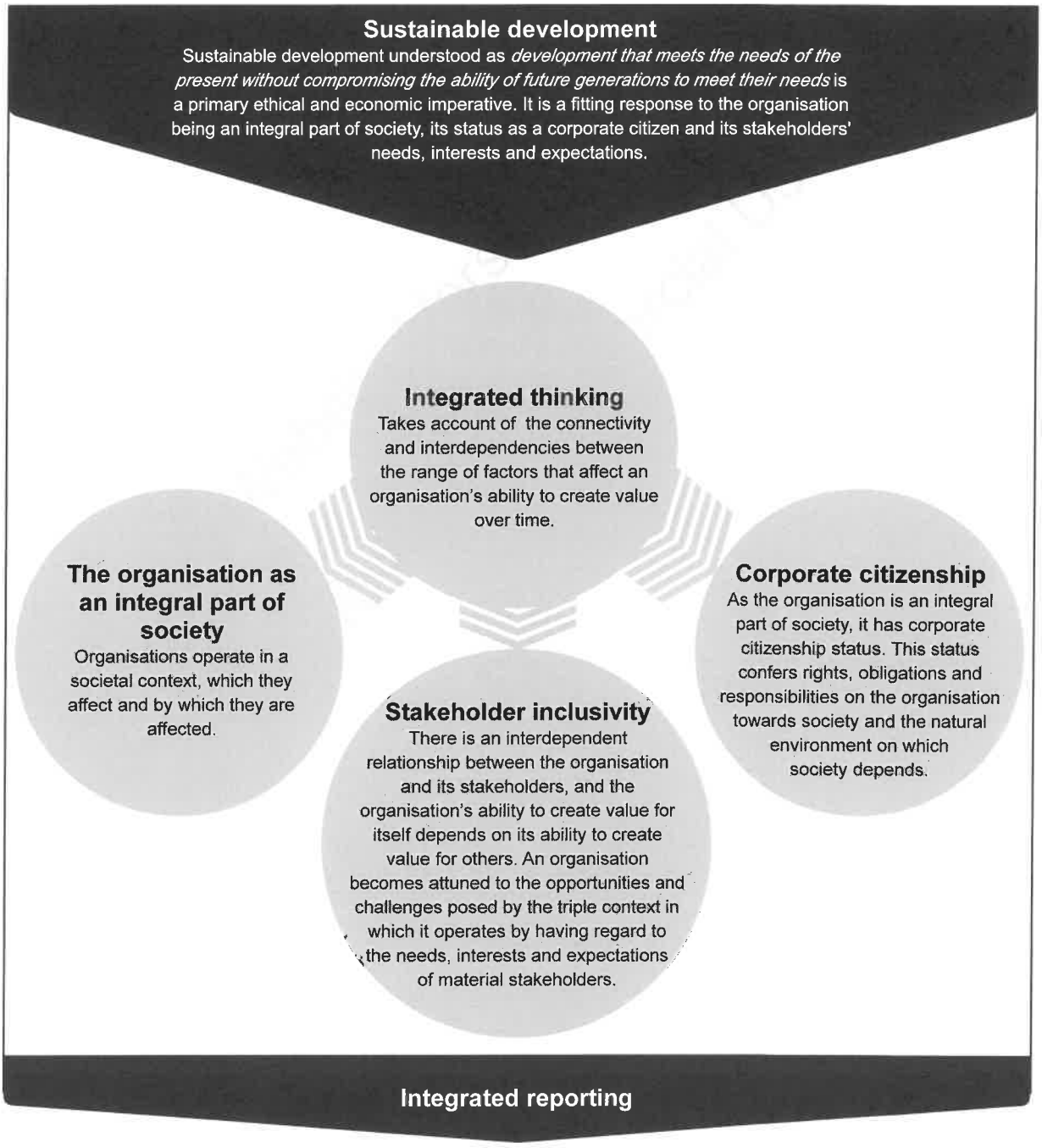
OBJECTIVES OF KING IV

King IV's objectives are to:

- Promote corporate governance as integral to running an organisation and delivering governance outcomes such as an ethical culture, good performance, effective control and legitimacy.
- Broaden the acceptance of the King IV by making it accessible and fit for implementation across a variety of sectors and organisational types.
- Reinforce corporate governance as a holistic and interrelated set of arrangements to be understood and implemented in an integrated manner.
- Encourage transparent and meaningful reporting to stakeholders.
- Present corporate governance as concerned with not only structure and process, but also with an ethical consciousness and conduct.

THE UNDERPINNING PHILOSOPHIES OF KING IV

Although King IV does not represent a significant departure from the philosophical underpinnings of King III, concepts have developed and been refined. The concepts used in King IV are depicted below.



FUNDAMENTAL CONCEPTS CONTINUED

Integrated thinking

King IV advocates integrated thinking which takes account of the connectivity and interdependencies between the range of factors that affect an organisation's ability to create value over time. Integrated thinking underpins all of the following:

- seeing the organisation as an integral part of society and thus as a corporate citizen;
- the stakeholder-inclusive approach;
- sustainable development; and
- integrated reporting.

The organisation as an integral part of society

Organisations operate in a societal context which they affect and by which they are affected.

An organisation has a society specific to itself, which includes its internal and external stakeholders with a material stake in its activities. But the organisation is also a juristic person in the broader society in which it operates. Organisations are dependent on this broader society to, for instance, provide a conducive operating environment, a viable customer base and the skills that the organisation requires. In turn, organisations contribute to the broader society as creators of wealth; providers of goods, services and employment; contributors to the fiscus; and developers of human capital.

This idea of interdependency between organisations and society is supported by the African concept of *Ubuntu* or *Botho*, captured by the expressions *uMuntu ngumuntu ngabantu* and *Motho ke motho ka batho* – I am because you are; you are because we are. *Ubuntu* and *Botho* imply that there should be a common purpose to all human endeavours (including corporate endeavours) which is based on service to humanity.

As a logical consequence of this interdependency, one person benefits by serving another. This is also true for a juristic person, which benefits itself by serving its own society of internal and external stakeholders, as well as the broader society.

In line with this ethos, organisations should also take responsibility for the environmental outcomes of their activities and outputs, as those affect society as a whole.

TRIPLE CONTEXT AND THE SIX CAPITALS

King IV refers to the **'triple context'** or the combined context of the economy, society and environment in which the organisation operates. The reference in King IV to 'context' is in the singular as these three dimensions are intertwined and should be viewed as an integrated whole.

The triple context is portrayed in more granular fashion by the forms of capital that the organisation uses or affects. The **'six-capitals'** model, identifies financial, manufactured, intellectual, human, social and relationship, and natural capitals. The model proposes these six forms of capital, but it is at the discretion of each organisation to identify the important physical and intangible resources that it uses or affects.

The triple context and the six capitals are concepts which are used in King IV as alternative lenses. Both are pathways to integrated thinking and sustainable development.

In King IV, the choice to use either concept is dictated by its setting but generally, triple context is used to denote the combined external environment in which the organisation operates, while six capitals is used when a more detailed or nuanced perspective is recommended.

Corporate citizenship

As the organisation is an integral part of society, it has corporate citizenship status. This status confers rights, obligations and responsibilities on the organisation towards society and the natural environment on which society depends. The notion of corporate citizenship recognises that the organisation is licensed to operate by its internal and external stakeholders, and by society in the broad sense.

The Companies Act also reflects the company having obligations to society. For example, it states in section 7 that the purposes of the act include to "promote compliance with the Bill of Rights as provided for in the Constitution" and it "reaffirms the concept of the company as a means of achieving economic and social benefits". Further support for the idea of corporate citizenship is offered by the obligation in the Companies Act for certain companies to establish a social and ethics committee.

Stakeholder-inclusive approach

There is an interdependent relationship between the organisation and its stakeholders, and the organisation's ability to create value for itself depends on its ability to create value for others.[2] An organisation becomes attuned to the opportunities and challenges posed by the triple context in which it operates by having regard to the needs, interests and expectations of material stakeholders. When using the six capitals model as an alternative lens, it is evident that each of the forms of capital has one or more stakeholders with an interest in it.[3]

King IV (like its predecessors) advocates a stakeholder-inclusive approach, in which the governing body takes account of the legitimate and reasonable needs, interests and expectations of all material stakeholders in the execution of its duties in the best interests of the organisation over time. By following this approach, instead of prioritising the interests of the providers of financial capital, the governing body gives parity to all sources of value creation, including among others, social and relationship capital as embodied by stakeholders.

Stakeholder inclusivity involves the balancing of interests over time by way of prioritising and, in some instances, trading off interests. A decision on how to achieve this balance is made on a case-by-case basis as current circumstances and exigencies require, but should always be done in the best interests of the organisation over the longer term. Balancing the needs, interests and expectations of stakeholders is a dynamic and ongoing process. The quality of stakeholder relationships indicates how effectively an organisation is able to strike this balance in making its decisions.

Part 5.5 in the King IV Code contains the principles and practices that deal with relationships in accordance with the stakeholder-inclusive approach.

2 The International Integrated Reporting Council, *The International <IR> Framework*, (13 December 2013), p 10, available at http://integratedreporting.org/resource/international-ir-framework/

3 Robert G. Eccles and Tim Youmans, "Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality", *Harvard Business School, Working Paper 16 – 023*, September 3, 2015

FUNDAMENTAL CONCEPTS CONTINUED

Shareholders, members and the stakeholder-inclusive approach

Adopting the stakeholder-inclusive approach means that the best interests of the company are not necessarily always equated to the best interests of shareholders. It also means that shareholders do not necessarily have a predetermined precedence over other stakeholders. Consequently, this is an inclusive, stakeholder-centric approach that stands in contrast to a shareholder-centric approach. Stakeholder inclusivity means that the board considers other stakeholders not merely as instruments to serve the interests of shareholders, but as having intrinsic value for decision-making in the best interests of the company over time.

The position taken in King IV is that, "directors owe their duties to the company and the company alone as the company is a separate legal entity from the moment it is registered until it is deregistered… The company is represented by several interests and these include the interests of shareholders, employees, consumers, the community and the environment. Thus requiring directors to act in good faith in the interest of 'the company' cannot nowadays mean anything other than a blend of all these interests, but first and foremost they must act in the best interest of the company as separate legal entity… An interest that may be primary at one particular point in time in the company's existence may well become secondary at a later stage"[4].

The interests of shareholders and stakeholders are interdependent; thus, following a stakeholder-inclusive approach maximises this symbiosis to promote the company's long-term sustainability.

The above position is put forward in respect of companies, but also applies to other organisations, including retirement funds and non-profit organisations. Those charged with governance duties in these organisations should similarly recognise the interdependent nature of the relationship between members and other stakeholders and its consequences for decision-making in the best interests of the organisation over time.

Sustainable development

Sustainable development, understood as "development that meets the needs of the present without compromising the ability of future generations to meet their needs"[5], is a primary ethical and economic imperative. It is a fitting response to the organisation being an integral part of society, its status as a corporate citizen and its stakeholders' needs interests and expectations.

The 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. In the South African setting, addressing inequality in society through economic transformation is a good example of a challenge that affects all three these sub-systems in which organisations operate.

Organisations and their leadership need to intentionally interact with, and respond to, the challenges and opportunities presented by the dynamic system of the triple context in which it operates and the capitals that the organisation uses and affects, with the aim to achieve the creation of value over time. Such an integrated approach is a hallmark of sustainable development and it is for this reason that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainability are presented in King IV as inseparable elements of the value creation process.

4 Esser I, Du Plessis JJ, "The Stakeholder Debate and Directors' Fiduciary Duties", SA Merc LJ 346-36, p360, 2007 (19) . See also Esser I, Delport PA "Shareholder protection philosophy in terms of the Companies Act 71 of 2008 THRHR 2016 (79), p 1–29 where the authors state: *"It is our view that the inclusive approach should be followed in interpreting section 76(3)(b). As mentioned above, in terms of the inclusive approach, directors must consider the interests of various stakeholders on a case-by-case basis. In the end the decision must be in the best interests of the company, even if it is to the detriment of the shareholders."*

5 United Nations, *"Report of the World Commission on Environment and Development: Our Common Future"*, (Oxford, Great Britain: Oxford University Press, 1987), p8. Also known as the Brundtland Report after Gro Harlem Brundtland, Chairman of the Commission and available at http://www.un-documents.net/our-common-future.pdf

DISTINGUISHING FEATURES OF KING IV

The following are the features of King IV that distinguish it from its predecessors:

- King IV advocates an outcomes-based approach. Achieving the principles, and therefore ultimately good governance, optimises the organisation to realise the intended governance outcomes: ethical culture, good performance, effective control and legitimacy. (Refer to Part 3: *King IV Application and Disclosure* for further explanation and to Part 4: *King IV on a Page*.)
- Clear differentiation is made between principles and practices. Principles are achieved by mindful consideration and application of the recommended practices. (Refer to Part 3: *King IV Application and Disclosure* for further explanation.)
- King IV has been designed and drafted to make it more accessible to users, and also to reinforce governance as a holistic and integrated set of arrangements. (Refer to Part 4: *King IV on a Page* as a demonstration of this point.)
- Broader forms of address are used in King IV, namely "organisations", "governing body" and "those charged with governance duties".
- Supplements are provided to help organisations across a variety sectors and organisational types to interpret and implement King IV as is suited to their particular circumstances. (Refer to Part 6: *Sector Supplements*.)
- King IV provides guidance on how to apply the recommended practices proportionally in line with the organisation's size and resources, and extent and complexity of the organisation's activities. (Refer to Part 3: *King IV Application and Disclosure* for more guidance on proportionality.)
- To balance the less prescriptive approach adopted in King IV, there is greater emphasis on transparency with regards to how judgement was exercised when considering the practice recommendations contained in King IV. To reinforce this qualitative application of its principles and practices, King IV proposes an "apply and explain" regime, in contrast to "apply or explain" in King III. (Refer to Part 3: *King IV Application and Disclosure* for more detail and guidance on the application regime of King IV.)

FUNDAMENTAL CONCEPTS CONTINUED

HIGHLIGHTS OF THE KING IV CODE

The following is a summary of how emerging issues and corporate governance developments since the issue of King III in 2009 are addressed in the principles and practices contained in the Code. It also highlights specific areas of focus and some of the differences between King III and King IV.

Integrated reporting

The notion of integrated reporting was introduced in King III, but the understanding of it has significantly evolved since then. Integrated reporting is an outcome of integrated thinking and is presented as such in King IV. Reporting, including integrated reporting, is dealt with in Part 5.2 of the Code, where it is positioned as the culmination of a series of leadership responsibilities executed by the governing body. The governing body steers and sets the direction of the organisation, approves policy and planning, oversees and monitors management and then, finally, provides for accountability on organisational performance through, among others, reporting and disclosure.

In order to clarify the standing of the integrated report in relation to other reports, King IV deals with it as one of the many reports that may be issued by the organisation, as is necessary, to comply with legal requirements, and/or to meet the particular information needs of material stakeholders. These other reports include the financial statements, the sustainability report, the social and ethics committee report, or other online or printed information or reports.

An integrated report could be a standalone report which connects the more detailed information in other reports and which addresses, at a high level and in a complete, concise way, the matters that could significantly affect the organisation's ability to create value. It could also be a distinguishable, prominent and accessible part of another report which also includes the financial statements and other reports issued in compliance with legal requirements.[6]

When drafting King IV, reliance was placed on the International <IR> Framework as issued by the International Integrated Reporting Council[7]. The Integrated Reporting Committee of South Africa[8] has endorsed the International <IR> Framework as good practice on how to prepare an integrated report and the committee's further guidance on integrated reporting should be followed.

Balanced composition of governing bodies and independence

Having members of the governing body who are independent in appearance is an essential element in most governance codes. King IV seeks to contextualise the relevance of independence correctly, namely that:

- All members of the governing body, whether they are categorised as executive, non-executive or independent non-executive have, as a matter of law, a duty to act with independence of mind in the best interests of the organisation.
- Although important, independence in appearance is but one consideration in achieving balance in the composition of the governing body.

The overriding concern (as reflected by Principle 7 which deals with the composition of the governing body) is whether the governing body is knowledgeable, skilled, experienced, diverse and independent enough to discharge fully its governance role and responsibilities.

The need for the governing body to set and disclose progress towards targets for race and gender diversity has specifically been included in the Code.

6 Integrated Reporting SA available at http://www.integratedreportingsa.org/Home/Theoctopusmodel.aspx

7 The International Integrated Reporting Council, *The International <IR> Framework* (13 December 2013), available at http://integratedreporting.org/resource/international-ir-framework/

8 Integrated Reporting SA available at www.integratedreportingsa.org

Delegation to management

The King IV Code provides for the governing body to delegate the implementation and execution of approved strategy, through policy and operational plans, to management via the chief executive officer (CEO). Rather than dealing with the establishment of specific management positions for functional areas as was done in King III, the practices in the King IV Code contain recommendations for the governing body to oversee that key functional areas are headed by competent individuals and are adequately resourced.

Delegation to committees

King IV, like King III, deals with delegation by the governing body within its own structures. Principle 8 of King IV now clarifies the objectives for these delegation arrangements, which are to promote independent judgement; to assist with balance of power; and to assist with the effective discharge of its duties by the governing body.

In accordance with the drafting convention adopted for King IV, the recommended practices do not prescribe which committees should be established by the governing body – the governing body should judge what is appropriate for the organisation. The practices furthermore recommend that the allocation of roles and responsibilities, and the composition of committees, should be considered holistically. The aim here is to promote effective collaboration among committees with minimal overlap and fragmentation of duties, as well as a balanced distribution of power.

Corporate governance services to the governing body

Rather than dealing with the office of the company secretary in isolation, the premise of the King IV Code is that the governing body should ensure that it has access to professional and independent guidance on corporate governance. For most companies, this will be provided by the company secretary. The Code recommends that even those companies and other organisations not obliged to appoint a company secretary should, as a matter of leading practice, consider appointing a company secretary or other professional to provide such services to the governing body.

Performance evaluations of the governing body

King III recommended that an evaluation of the governing body, its committees and its individual members be conducted every year. To provide for sufficient time to appropriately respond to the results of such performance evaluations, the King IV Code recommends for a formal evaluation process to be conducted at least every two years. Every alternate year, the governing body should schedule an opportunity for consideration, reflection and discussion of its performance.

Social and ethics committees

Regulation 43 of the Companies Act was issued after King III and does not address the ethics role of the social and ethics committee beyond mentioning ethics in the name of the committee. King IV seeks to expand on this, and the role ascribed to the social and ethics committee is that of oversight and reporting on organisational ethics, responsible corporate citizenship, sustainable development and stakeholder relationships.

This role includes organisational ethics and cover the statutory duties, but the intent is to encourage leading practice by having the social and ethics committee progress beyond mere compliance to contribute to the creation of value. Accordingly, King IV urges organisations that are not legally required to establish a social and ethics committee, nevertheless to consider creating a structure that would achieve the aims of such a committee.

FUNDAMENTAL CONCEPTS CONTINUED

Social and ethics committees (continued)

King IV also recommends a higher standard for the composition of this committee than what is provided for in the Companies Act. The recommended practices thus include that a majority of the members should be non-executive members of the governing body so as to ensure that independent judgement is brought to bear.

Risk and opportunity

The definition for risk used in King IV consists of three parts, namely *uncertainty* of events, the *likelihood* of such events occurring and their *effect*, both positive and negative.

King IV's understanding of risk thus balances the traditional, negative view of risk with one that recognises the potential opportunities inherent in some risks. Thus, an opportunity may present itself as the potential upside of a risk that could adversely affect the achievement of organisational objectives.

However, it is also recognised in King IV that opportunities do not always originate from the current risks of the organisation. This is particularly true of the strategic opportunities that should be considered when setting the organisation's strategic direction. Consideration of the risks associated with such strategic opportunities affect whether the opportunity will be captured by the organisation or not.

Due to the rising complexity of risk and hence the need to strengthen oversight, the King IV Code recommends that the risk committee comprises a majority of non-executive members of the governing body. This recommendation goes beyond what was required in King III.

Technology and information

In King IV, cognisance had to be taken of the advances in technology that are revolutionising businesses and societies, and transforming products, services and business models. So profound are these effects that many believe they herald the dawn of a Fourth Industrial Revolution.

These advances happen quickly and can cause significant disruption, opportunities and risks. Organisations should strengthen the processes that help them to anticipate change and to respond by capturing new opportunities and managing emerging risks. The practices under Principle 12 are designed to assist the governing body to do so.

Information, like technology, is a growing source of competitive advantage for the enhancement of the intellectual capital of an organisation.

In King IV, it is recognised that information and technology overlap but are also distinct sources of value creation which pose individual risks and opportunities. It is to reinforce this distinction that this section in the King IV Code now refers to technology and information instead of information technology.

Compliance

As in King III, the King IV Code recommends that those charged with governance should ensure that compliance is understood, not only as an obligation, but also as a source of rights and protection. A holistic view is needed on how applicable laws and non-binding rules, codes and standards relate to one another. This includes how corporate governance codes relate to applicable legislation.

The Code further recommends that governing bodies should ensure continual monitoring of the regulatory environment, and that developments are responded to as necessary.

Remuneration

Many international regulators and institutional investors are paying additional attention to disclosure and voting on remuneration. King IV had to consider the appropriate means of dealing with these developments, taking into account that South Africa is a participant in the global investment market but with its own unique set of circumstances.

King IV aims to foster enhanced accountability on remuneration. One of the ways that it addresses this is by including more definitive disclosure requirements, among which, that remuneration should be disclosed in three parts, namely: a background statement; an overview of the remuneration policy; and an implementation report.

It also recommends that shareholders of companies be provided the opportunity to pass separate non-binding advisory votes on the policy and the implementation report. The remuneration policy should record the measures that the board commits to in the event that either the remuneration policy or the implementation report, or both have been voted against by 25% or more of the voting rights exercised by shareholders. The Code recommends that such measures should include engagement and addressing objections and concerns.

King IV furthermore recommends the use of performance measures that support positive outcomes across the triple context in which the organisation operates, and/or all the capitals that the organisation uses or affects. This is a departure from linking remuneration to financial performance only. In respect of executive remuneration, it is also recommended that an account be provided of the performance measures and targets used as a basis for awarding of variable remuneration.

An important introduction in King IV is 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.

Assurance and internal audit

King III introduced the combined assurance model, but this concept needed to evolve to become more useful and effective.

In King IV, the model assumes an understanding of assurance that goes beyond the technical definitions of assurance. A combined assurance model incorporates and optimises all assurance services and functions so that, taken as a whole, these enable an effective control environment; support the integrity of information used for internal decision-making by management, the governing body and its committees; and support the integrity of the organisation's external reports.

The King IV Code's recommendations do not prescribe the design of the model, but allow for the governing body to exercise its judgement in this regard.

Internal audit, as one of the assurance service providers to the organisation, remains pivotal to corporate governance. Its role has further evolved in recent years. It has become a trusted advisor that adds value by contributing insight into the activities of the organisation and, as a further enhancement, foresight. This is the ideal positioning that is envisaged for internal audit in King IV.

FUNDAMENTAL CONCEPTS CONTINUED

Auditor and audit requirements

Mandatory rotation of audit firms and mandatory tendering have been introduced in some jurisdictions in an attempt to reinforce auditor independence and audit quality. King IV leaves the consideration and decision on whether to implement either to the audit committee and governing body, subject to legal requirements. The Code, however, makes certain practice recommendations with regard to auditor independence, amongst them that the tenure of an audit firm needs to be disclosed.

Following the UK Corporate Governance Code[9] and in the interest of more informative reporting on the auditing process, King IV recommends that the audit committee discloses significant matters considered by it in relation to the annual financial statements and how these were addressed by the committee. This provides users of the financial statements with three different perspectives on the annual financial statements:

- The governing body's perspective in preparing the annual financial statements – particularly significant assumptions that the governing body had made.
- The perspective of the auditor on why certain areas were considered to be of most significance in the audit and how they were addressed in the audit.
- The audit committee's perspective on the matters it regarded as significant and how it discharged its responsibilities in relation to those.

In King IV it is also recommended that the audit committee discloses its views on audit quality with reference to audit quality indicators.

Tax

Tax has become a complex matter with various dimensions. The governing body should be responsible for a tax policy that is compliant with the applicable laws, but that is also congruent with responsible corporate citizenship, and that takes account of reputational repercussions. Hence, responsible and transparent tax policy is put forward as a corporate citizenship considerations in King IV.

Shareholder activism

When it comes to the quality of an organisation's application of voluntary codes of governance principles and practices, it is said that its stakeholders are the ultimate compliance officers. Shareholders, as a particular sub-set of stakeholders, have certain rights that are enshrined in company legislation and that strengthen their ability to hold boards of companies to account. By virtue of this ability, shareholders also have the power to serve as proxies for wider stakeholder interests.

Institutional investors (in turn a sub-set of shareholders), particularly, are extremely influential. The types of investment decisions they make and how they exercise their rights as shareholders, either reinforce or weaken good governance in the companies in which they invest.

Commensurate with the rights and influence that shareholders have, it should be considered that shareholders have no legal or fiduciary responsibilities to the companies in which they invest. Furthermore, shareholders are in many instances transient and have the right to vote on matters that may have a longer-term impact than what the period of their shareholding may be.

9 The Financial Reporting Council Limited; UK Code on Corporate Governance, (April 2016), p 19, available at www.frc.org.uk

Institutional investors owe their fiduciary duty to members of retirement funds, their dependants and beneficiaries and this has certain consequences for how institutional investors should exercise their rights. The Freshfields Report[10] published in 2005 stated that "integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions". This is supported by regulation 28(2)(c)(ix) of the Pension Funds Act: "before making an investment in and while invested in an asset [the fund and its board must] consider any factor which may materially affect the sustainable long-term performance of the asset including, but not limited to, those of an environmental, social and governance character". This is also the position put forward by the Code for Responsible Investing in South Africa (CRISA)[11] which states in its first principle that institutional investors "should incorporate sustainability considerations, including ESG issues, into their investment process as part of the delivery of superior risk-adjusted returns to the ultimate beneficiaries".

In consideration of the rights, influence and legal duties that institutional investors have, as described above, King IV sets out in Principle 17 that the governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests. Responsible investing principles and practices are set out in the CRISA[12], which accord with the Principles on Responsible Investing[13] and the International Corporate Governance Network Global Stewardship Code[14].

Dispute resolution

Since alternative dispute resolution mechanisms were introduced formally in King III, resolving disputes effectively has gained increased importance in light of labour strike action becoming protracted and, in some cases, hostile. Relationships are a form of capital on which all organisations rely. A dispute resolution process should be regarded as an opportunity not only to resolve the dispute at hand, but also to maintain and enhance the social and relationship capital of an organisation.

As a result, King IV in Part 5.5 recommends that dispute-resolution mechanisms and associated processes be adopted and implemented as part of the overall management of stakeholder relationships.

10 Freshfields Bruckhaus Deringer; "A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment", *UNEP Finance Initiative*, 2005, p 13 available at www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf

11 Committee for Responsible Investment in South Africa, *Code for Responsible Investment in South Africa* (Institute of Directors in Southern Africa, 2011), available at: www.iodsa.co.za

12 Committee for Responsible Investment in South Africa, *Code for Responsible Investment in South Africa* (Institute of Directors in Southern Africa, 2011), available at: www.iodsa.co.za

13 Principles for Responsible Investing available at: https://www.unpri.org/about/the-six-principles

14 International Corporate Governance Network, *International Corporate Governance Network Global Stewardship Code*, (2016), available at: https://www.icgn.org/policy/stewardship-codes

» KING IV CODE ON CORPORATE GOVERNANCE

PART 5.1: LEADERSHIP, ETHICS AND CORPORATE CITIZENSHIP

Leadership

Principle 1: The governing body should lead ethically and effectively.

RECOMMENDED PRACTICES

1. Members of the governing body should individually and collectively cultivate the following characteristics and exhibit them in their conduct:

   a. Integrity:

   i. Members of the governing body must act in good faith and in the best interests of the organisation.

   ii. Members of the governing body should avoid conflicts of interest. In cases where a conflict cannot be avoided, it should be disclosed to the governing body in full at the earliest opportunity, and then proactively managed as determined by the governing body and subject to legal provisions.

   iii. Members of the governing body should act ethically beyond mere legal compliance.

   iv. Members of the governing body should set the tone for an ethical organisational culture.

   b. Competence:

   i. Members of the governing body should take steps to ensure that they have sufficient working knowledge of the organisation, its industry, the triple context in which it operates, the capitals it uses and affects as well as of the key laws, rules, codes and standards applicable to the organisation.

   ii. Members of the governing body must act with due care, skill and diligence, and take reasonably diligent steps to become informed about matters for decision.

   iii. Members of the governing body should continuously develop their competence to lead effectively.

   c. Responsibility:

   i. Members of the governing body should assume collective responsibility for steering and setting the direction of the organisation; approving policy and planning; overseeing and monitoring of implementation and execution by management; and ensuring accountability for organisational performance.

   ii. Members of the governing body should exercise courage in taking risks and capturing opportunities, but do so in a responsible manner and in the best interests of the organisation.

   iii. Members of the governing body should take responsibility for anticipating, preventing or otherwise ameliorating the negative outcomes of the organisation's activities and outputs on the triple context in which it operates, and the capitals that it uses and affects.

   iv. Members of the governing body should attend meetings of the governing body and its committees, and devote sufficient time and effort to prepare for those meetings.

   d. Accountability:

   Members of the governing body should be willing to answer for the execution of their responsibilities, even when these were delegated.

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

e. ***Fairness:***
   i. Members of the governing body should adopt a stakeholder-inclusive approach in the execution of their governance role and responsibilities.
   ii. Members of the governing body should direct the organisation in such a way that it does not adversely affect the natural environment, society or future generations.

f. ***Transparency:***
   Members of the governing body should be transparent in the manner in which they exercise their governance role and responsibilities.

2. The governing body should embody the above ethical characteristics in order to offer effective leadership that results in achieving strategic objectives and positive outcomes over time.
3. The arrangements by which the members of the governing body are being held to account for ethical and effective leadership should be disclosed. These arrangements would include, but are not limited to, codes of conduct and performance evaluations of the governing body and its members.

Organisational ethics

Principle 2: The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

RECOMMENDED PRACTICES

4. The governing body should assume responsibility for the governance of ethics by setting the direction for how ethics should be approached and addressed by the organisation.
5. The governing body should approve codes of conduct and ethics policies that articulate and give effect to its direction on organisational ethics.
6. The governing body should ensure that codes of conduct and ethics policies:
   a. encompass the organisation's interaction with both internal and external stakeholders and the broader society; and
   b. address the key ethical risks of the organisation.
7. The governing body should ensure that the codes of conduct and ethics policies provide for arrangements that familiarise employees and other stakeholders with the organisation's ethical standards. These arrangements should include:
   a. publishing the organisation's codes of conduct and policies on the organisation's website, or on other platforms or through other media as is appropriate;
   b. the incorporation by reference, or otherwise, of the relevant codes of conduct and policies in supplier and employee contracts; and
   c. including the codes of conduct and ethics policies in employee induction and training programmes.
8. The governing body should delegate to management the responsibility for implementation and execution of the codes of conduct and ethics policies.

9. The governing body should exercise ongoing oversight of the management of ethics and, in particular, oversee that it results in the following:
   a. Application of the organisation's ethical standards to the processes for the recruitment, evaluation of performance and reward of employees, as well as the sourcing of suppliers.
   b. Having sanctions and remedies in place for when the organisation's ethical standards are breached.
   c. The use of protected disclosure or whistle-blowing mechanisms to detect breaches of ethical standards and dealing with such disclosures appropriately.
   d. The monitoring of adherence to the organisation's ethical standards by employees and other stakeholders through, among others, periodic independent assessments.
10. The following should be disclosed in relation to organisational ethics:
   a. An overview of the arrangements for governing and managing ethics.
   b. Key areas of focus during the reporting period.
   c. Measures taken to monitor organisational ethics and how the outcomes were addressed.
   d. Planned areas of future focus.

Responsible corporate citizenship

Principle 3: The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.

RECOMMENDED PRACTICES

11. The governing body should assume responsibility for corporate citizenship by setting the direction for how it should be approached and addressed by the organisation.
12. The governing body should ensure that the organisation's responsible corporate citizenship efforts include compliance with the Constitution of South Africa (including the Bill of Rights), the law, leading standards, and adherence to its own codes of conduct and policies.
13. The governing body should oversee that the organisation's core purpose and values, strategy and conduct are congruent with it being a responsible corporate citizen.
14. The governing body should oversee and monitor, on an ongoing basis, how the consequences of the organisation's activities and outputs affect its status as a responsible corporate citizen. This oversight and monitoring should be performed against measures and targets agreed with management in all of the following areas:
   a. Workplace (including employment equity; fair remuneration; and the safety, health, dignity and development of employees).
   b. Economy (including economic transformation; prevention, detection and response to fraud and corruption; and responsible and transparent tax policy).
   c. Society (including public health and safety; consumer protection; community development; and protection of human rights).
   d. Environment (including responsibilities in respect of pollution and waste disposal; and protection of biodiversity).

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

15. The following should be disclosed in relation to corporate citizenship:
    a. An overview of the arrangements for governing and managing responsible corporate citizenship.
    b. Key areas of focus during the reporting period.
    c. Measures taken to monitor corporate citizenship and how the outcomes were addressed.
    d. Planned areas of future focus.

PART 5.2: STRATEGY, PERFORMANCE AND REPORTING

Strategy and performance

Principle 4: The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

RECOMMENDED PRACTICES

1. The governing body should assume responsibility for organisational performance by steering and setting the direction for the realisation of the organisation's core purpose and values through its strategy.
2. The governing body should delegate to management the formulation and development of the organisation's short, medium and long-term strategy.
3. The organisation's short, medium and long-term strategy as formulated and developed by management should be approved by the governing body. When considering the proposed strategy for approval, the governing body should challenge it constructively with reference to, among others, the following:
   a. The timelines and parameters which determine the meaning of short, medium and long term respectively.
   b. The risks, opportunities and other significant matters connected to the triple context in which the organisation operates.
   c. The extent to which the proposed strategy depends on the resources and relationships connected to the various forms of capital.
   d. The legitimate and reasonable needs, interests and expectations of material stakeholders.
   e. The increase, decrease or transformation of the various forms of capitals that may result from the execution of the proposed strategy.
   f. The interconnectivity and inter-dependence of all of the above.
4. The governing body should ensure that it approves the policies and operational plans developed by management to give effect to the approved strategy. These should include the key performance measures and targets for assessing the achievement of strategic objectives and positive outcomes over the short, medium and long term.
5. The governing body should delegate to management the responsibility to implement and execute the approved policies and operational plans.
6. The governing body should exercise ongoing oversight of the implementation of strategy and operational plans by management against agreed performance measures and targets.
7. The governing body should oversee that the organisation continually assesses, and responsibly responds to, the negative consequences of its activities and outputs on the triple context in which it operates, and the capitals which it uses and affects.
8. As part of its oversight of performance, the governing body should be alert to the general viability of the organisation with regard to its reliance and effects on the capitals, its solvency and liquidity, and its status as a going concern.

KING IV CODE ON CORPORATE GOVERNANCE CONTINUED

In respect of disclosure on strategy and performance, refer to Reporting below.

Reporting

Principle 5: The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance, and its short, medium and long-term prospects.

RECOMMENDED PRACTICES

9. The governing body should assume responsibility for the organisation's reporting by setting the direction for how it should be approached and conducted.
10. The governing body should approve management's determination of the reporting frameworks (including reporting standards) to be used, taking into account legal requirements and the intended audience and purpose of each report.
11. The governing body should oversee that reports such as the annual financial statements, sustainability reports, social and ethics committee reports, or other online or printed information or reports are issued, as is necessary, to comply with legal requirements, and/or to meet the legitimate and reasonable information needs of material stakeholders.
12. The governing body should oversee that the organisation issues an integrated report at least annually, which is either:
    a. a standalone report which connects the more detailed information in other reports and addresses, at a high level and in a complete, concise way, the matters that could significantly affect the organisation's ability to create value; or
    b. a distinguishable, prominent and accessible part of another report which also includes the annual financial statements and other reports that must be issued in compliance with legal provisions.
13. The governing body should approve management's bases for determining materiality for the purpose of deciding which information should be included in external reports.
14. The governing body should ensure the integrity of external reports as provided for in Part 5.4, Assurance of External Reports.
15. The governing body should oversee that the following information is published on the organisation's website, or on other platforms or through other media as is appropriate for access by stakeholders:
    a. Corporate governance disclosures required in terms of this Code (refer to Part 3: *King IV Application and Disclosure* for more detail).
    b. Integrated reports.
    c. Annual financial statements and other external reports.

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2025

EXECUTIVE SUMMARY

This year, shareholders filed 355 environmental, social, and sustainable governance (ESG) proposals as of February 21, 2025. Additional proposals will be filed as the year progresses, but the shape of the 2025 spring annual meeting season is now clear.

The 2025 proxy season has seen a sharp drop in proposals filed from 2024, primarily due to the change in the presidential administration and what many expected to be a dramatic policy shift at the Securities and Exchange Commission (SEC).

Proponents have largely taken a "wait-and-see" approach, electing not to file resolutions until they were able to assess the direction of the new SEC. This approach was validated as it quickly became clear that some proposals that had been allowed by the SEC for decades, began to be omitted. And in a move that clearly undermined proponents—after the majority of the 2025 resolutions were filed, the SEC formally changed the rules of what could be excluded and extended the timeframe for companies to submit or amend their no-action filings without allowing shareholders the same opportunity to amend their resolutions.

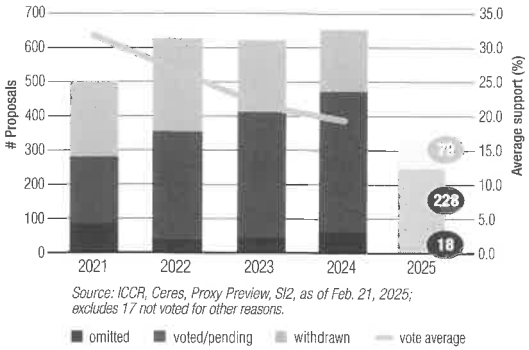
Another factor in the drop in filings is that more companies engaged in dialogue with shareholders in order to avoid both the need for proposals and the related publicity that could draw attention to them given the current political attacks on DEI and climate.

Next year, shareholders will, of course, revise their proposals to meet the new rules and it is anticipated that the number of filings will go up. Yet the larger political and legal attacks on sustainable investing, institutional investors, and proxy analysts does raises concerns that the SEC will take further actions to curtail shareholder rights and hinder shareholder proposals.

The total number of 2025 ESG resolutions are down 34% from 2024 when 536 such proposals were filed by this point. Average support for pro-ESG proposals in 2024 was 19.6%, down from 21.5% in 2023 and well below the 33.3% average vote of 2021. In 2024 there were fewer majority votes than we had seen in previous years. Again, much of the decline in votes is attributable to the large asset managers no longer supporting ESG proposals and the attacks on taking material ESG risks into account.

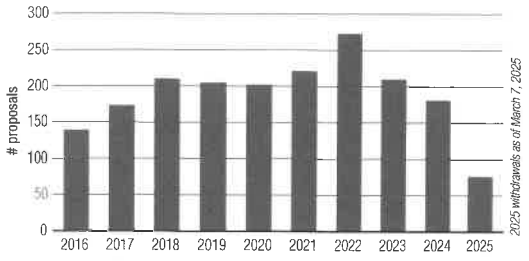
Thus far, 78 proposals in the 2025 proxy season – 22% of the total filed – were withdrawn. At a similar time in 2024, only 7.7% of proposals had been withdrawn. March and April often see a flurry of withdrawals before proxy statements are sent out, so it will be interesting to see if more companies elect to privately come to an agreement with or engage their shareholders in this incendiary political climate to avoid the public spotlight and how many resolutions are withdrawn to avoid being omitted under the new rules. On March 7, 2025, the SEC reported 221 proposals had received no-action requests. In 2024 there were 7 omissions and 94 no-action requests pending at a similar date.

Environmental, Social & Related Governance Outcomes



Source: ICCR, Ceres, Proxy Preview, SI2, as of Feb. 21, 2025; excludes 17 not voted for other reasons.

Annual Withdrawals



Source: ICCR, Ceres, Proxy Preview, SI2

2025 Outlook

In 2025, there were 85 proposals addressing climate change and 77 addressing corporate political influence. The next largest categories were environmental management with 52 proposals, human rights with 37, and diversity at work with 36.

The majority of climate change proposals focus on asking companies to report on climate transition plans and greenhouse gas (GHG) reductions. Shareholders want to know if and how their investments are preparing for climate-related impacts. Banks, investment firms and insurance companies also get attention from shareholders given the role of the financial community in funding climate change and the exponential growth in costs from climate-related natural disasters.

Corporate political spending proposals are a key story this year, primarily due to the fact that the SEC has allowed the omission of a lobbying disclosure resolution. Shareholders have filed over 600 of these resolutions over the last 15 years, with more than 400 votes including 14 majority votes, that resulted in hundreds of companies improving their lobbying disclosure. The fact that such a well-established resolution is now getting omitted was pivotal to many proponents taking a more cautious approach to filing this year.

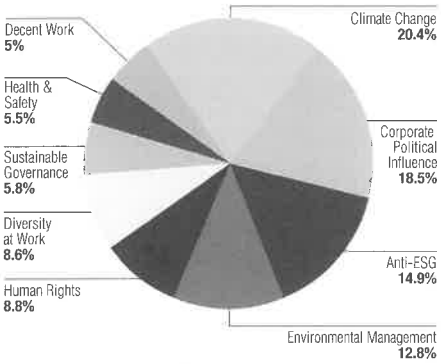
Environmental management proposals were dominated by attention to the management of biodiversity, plastics, and food waste. New this year were proposals asking companies to report on deforestation in the avocado supply chain and to adopt targets to reduce toxic particulates released due to tire shedding.

This year, human rights proposals are distributed evenly among those asking companies for disclosure on policies related to artificial intelligence and child safety; report on the impact of their operations on Indigenous peoples and environmental justice; and standards regarding forced labor, human rights, and tax transparency. There are three new proposals regarding child safety — one new resolution that is going to a vote is on child safety lobbying at Alphabet.

There are 31% fewer proposals addressing health impacts in 2025 than 2024. New this year are proposals asking companies to assess their processes around protecting general health and medication data.

In 2025, investors are focusing more on the efficacy of their DEI efforts and diversity policies. They also are asking about how their companies respect freedom of association, address race and gender pay gaps, and a safe workplace. The majority of governance proposals this year request that company boards have independent committees for AI and DEI and for diverse board candidates and skill sets. Investors also are asking companies to report on their management of environmental, social, and governance risks and to link compensation to sustainability benchmarks. Related to proxy voting, investors are filing proposals on shareholder rights including disclosure of votes by share class.

Environmental, Social & Related Governance Shareholder Proposals Filed 2025



Source: ICCR, Ceres, Proxy Preview, SI2, as of Feb. 21, 2025

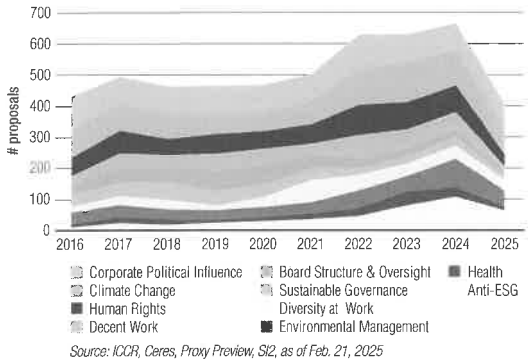
The number of anti-ESG proposals continues to grow. ISS found that anti-ESG proposals account for 14.7% of all proposals filed thus far, and there are likely more that are not yet public. Most of these proposals are on social issues, targeting diversity, equity, and inclusion (DEI); political involvement; and corporate political influence. New in 2025 is the debut of State Treasurers filing anti-ESG proposals. In February, the State Treasurer of Oklahoma, Todd Russ, stated that he is filing proposals against companies who have supported racial justice, digital safety, and reproductive rights in order to depoliticize Oklahoma's dollars.

Votes for anti-ESG proposals continue to be low. That is particularly true for anti-DEI proposals which are overwhelmingly defeated by about 98% of the vote, putting investors at odds with the current anti-ESG political campaign and the executive orders issued by the White House that moved many companies to pull back on their DEI commitments and disclosure.

INTRODUCTION

The 2025 proxy season feels like a bellwether moment where shareholders are on the brink of losing rights for which investors fought and to which they have grown accustomed. Amid the political backdrop, investors continue to bring concerns that impact materiality to companies this proxy season. The following chart illustrates long-term trends for proposal filings.

Topic Trends



Source: ICCR, Ceres, Proxy Preview, SI2, as of Feb. 21, 2025

The percentage of environmental proposals filed in 2025 is consistent with 2024 filings. There are 22% more proposals on corporate political influence, and 33% fewer proposals filed on both human rights and sustainable governance issues. This year, notable new proposals ask insurance companies to disclose the impact of climate risk on their customer base, technology companies to report on a climate transition plan for their data centers, and for retail healthcare service providers to assess processes around protecting general health and medication data.

It is unfortunate, but perhaps inevitable, that shareholder proposals, proponents and companies have become part of the culture wars. In lieu of that, there are more proposals mentioned in aggregate or withheld from publication than in previous years. For instance, we no longer name the companies where proposals have already been withdrawn. Additionally, there are proponents who do not want their proposal or name mentioned until the proxy is actually released.

This year we continue to provide expert insight on the political, legal, and legislative landscape and litigation and legislation attacking ESG issues including DEI policies and climate disclosures. We also provide a look at the new SEC Staff Bulletin.

Given this context, we are also broadening our coverage on proposals that address governance issues and shareholder rights.

THE 2025 PROXY SEASON

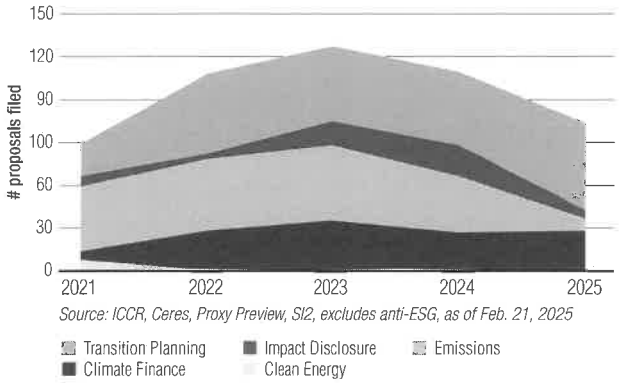
Environment

CLIMATE CHANGE

Introduction

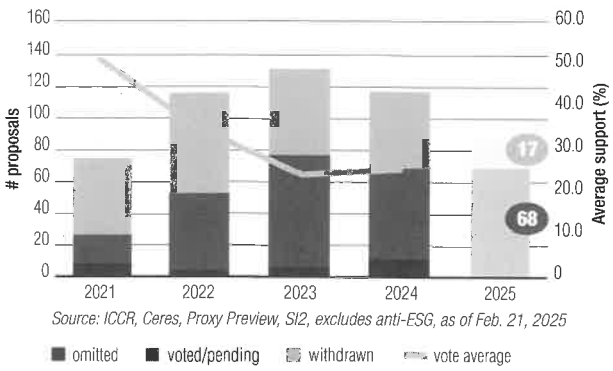
2024 was the first year where global average temperatures were 1.5°C above pre-industrial levels and is the warmest year on record. The United Nations Environment Program estimates that temperature rise could be more than 3°C before the end of this century. This will create compounding climate events beyond the already increasing number of fires, floods, droughts, storms, and changing weather patterns. The ten worst climate disasters of 2024 cost $228 billion, an amount that will only rise in 2025 as the costs for the fires in Los Angeles alone are estimated at more than $250 billion.[1]

Climate Change Proposal Types



Source: ICCR, Ceres, Proxy Preview, SI2, excludes anti-ESG, as of Feb. 21, 2025

Climate Change Outcomes



Source: ICCR, Ceres, Proxy Preview, SI2, excludes anti-ESG, as of Feb. 21, 2025

The majority of climate proposals ask companies to disclose their climate transition plans. The next largest set of proposals ask banks, financial institutions, and insurance companies to disclose their policies related to financing the energy transition, followed by proposals that focus on the reduction of greenhouse gas (GHG) emissions. Shareholders are asking companies not only to pledge to reduce emissions in line with a net-zero pathway, but also to disclose their progress toward those goals and the impacts of their operations on communities and their labor force. New in 2025 are proposals asking insurance companies to report on the impact of climate risk on their customer base, and asking technology companies to disclose their climate transition plans for their data centers.

Emissions

Targets and disclosure

The goal of setting emissions targets is to decrease systemic climate risk to each company and, therefore, to the overall global economy. Asking every company to disclose the maximum quantity of emissions it can release each year enables stakeholders to map the change in global emissions and calculate deviations from a decline in line with science-based targets for maintaining 1.5°C global temperature rise. These targets would move companies toward a net-zero point, where they have reduced greenhouse gas emissions by over 90% and then use technologies such as carbon capture and storage and others that have still not advanced to scale, to remove the balance of emissions from the atmosphere, thereby achieving "net zero" emissions.

Over the years, investors have not only requested that companies establish science-based emissions targets and disclose their plans to achieve them, but also that those targets include operational emissions (Scope 1) those from their supply chain (Scope 2) and emissions from the use of their products (Scope 3). Increasingly, investors are asking companies to adjust their emissions reduction targets so that they reach "real zero" – zero emissions without relying on carbon offsets (investments in activities that try to compensate for emissions by offsetting them elsewhere, such as planting trees) or avoided emissions (emissions that won't occur by the use of a product such as a conference call instead of flying to a meeting). In 2025, investors request that companies adopt targets for reducing their greenhouse gas emissions and report on their plan to reduce emissions.

1 Models of impact under different temperature scenarios are available at https://www.iccc.ch/sr15/ and https://climate.nasa.gov/news/3278/nasa-study-reveals-compounding-climate-risks-at-two-degrees-of-warming/.

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President Cyril Ramaphosa: Virtual Leaders' Summit on Climate Change

TD8

22 Apr 2021

Your Excellency, President Joe Biden,
Excellencies,
Ladies and Gentlemen,

I would like to start off by thanking President Biden for convening this Leaders Summit on Climate.

We are also all delighted to have the United States back working with all of us to tackle the global challenges of climate change.

Climate change is the most pressing issue of our time.

It is a global phenomenon from which developing economies are particularly vulnerable.

Without effective adaptation, climate change has the potential to reverse the developmental gains in our countries, and push millions of people further into poverty.

In doing so we have to adhere to the principle of common but differentiated responsibilities and respective capabilities.

Poor countries have historically contributed least to emissions.

Developing countries often suffer the most from the devastating effects of climate change in the form of drought, extreme storms and rising sea levels.

Consequently, developed economies have a responsibility to support developing economies to enable them to mitigate and adapt to climate change.

Significant progress can be made when we all honour our mutual commitments.

We therefore need to emphasise the primacy of multilateralism in ensuring the full implementation of the UN Framework Convention on Climate Change.

South Africa is fully committed to enhancing its ambition and accelerating its climate actions.

Last year we finalised our National Climate Change Adaptation Strategy, coordinating adaptation actions at all levels of government.

We have also adopted a Low Emissions Development Strategy in pursuit of a just transition to a low-carbon, sustainable and climate resilient development pathway.

We are currently in the process of updating South Africa's Nationally Determined Contribution. Our new NDC target ranges have been released for public consultation.

The new target ranges we are proposing are much more ambitious in two respects.

First, the top of the 2030 range has been reduced by 28%, or 174 million metric tons, a very significant reduction.

Second, according to our previous Nationally Determined Contribution, South Africa's emissions would peak and plateau in 2025, and decline only from 2035.

South Africa's emissions will begin to decline from 2025, effectively shifting our emissions decline 10 years earlier.

With regard to our energy resources, we plan to build capacity to generate over 17 gigawatts of renewable energy by 2030.

We remain committed to contributing our fair share to reduce global emissions, and to do so in the context of overcoming poverty, inequality and underdevelopment.

The move towards a low-carbon, climate resilient society cannot happen overnight.

We need to work together to create a climate resilient society and amongst other things we should, firstly, ensure that as we transit to a more climate resilient future it must be based on a just transition that ensures that those who are most vulnerable in society do not get left behind.

Secondly, it is therefore critical that all three of the goals of the Paris Agreement – mitigation, adaptation and finance – be advanced with equal determination and ambition.

Thirdly, we must massively scale up support in the form of financing, technology and capacity building, so that developing economies, including those in Africa, are able to enhance ambition on adaptation and mitigation.

Fourthly, it is important that aid on climate change should be provided separately, and should not be part of conventional development assistance. When it is given in the form of loan financing the debt burden of developing countries is worsened.

We call on developed economies, which historically bear the greatest responsibility for emissions, to meet their responsibilities to developing economies.

This will be vital to restoring the bonds of trust between developed and developing economies.

As we have done since the time of Nelson Mandela, South Africa stands ready to work with other nations to build bridges to find solutions that secure humanity's future.

I thank you.

Issued by: The Presidency
More from: The Presidency
More on: Climate change

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INTERGOVERNMENTAL PANEL ON climate change

TD9

CLIMATE CHANGE 2023
Synthesis Report

Summary for Policymakers

A Report of the Intergovernmental Panel on Climate Change

Introduction

This Synthesis Report (SYR) of the IPCC Sixth Assessment Report (AR6) summarises the state of knowledge of climate change, its widespread impacts and risks, and climate change mitigation and adaptation. It integrates the main findings of the Sixth Assessment Report (AR6) based on contributions from the three Working Groups[1], and the three Special Reports[2]. The summary for Policymakers (SPM) is structured in three parts: SPM.A Current Status and Trends, SPM.B Future Climate Change, Risks, and Long-Term Responses, and SPM.C Responses in the Near Term[3].

This report recognizes the interdependence of climate, ecosystems and biodiversity, and human societies; the value of diverse forms of knowledge; and the close linkages between climate change adaptation, mitigation, ecosystem health, human well-being and sustainable development, and reflects the increasing diversity of actors involved in climate action.

Based on scientific understanding, key findings can be formulated as statements of fact or associated with an assessed level of confidence using the IPCC calibrated language[4].

1 The three Working Group contributions to AR6 are: AR6 Climate Change 2021: The Physical Science Basis; AR6 Climate Change 2022: Impacts, Adaptation and Vulnerability; and AR6 Climate Change 2022: Mitigation of Climate Change. Their assessments cover scientific literature accepted for publication respectively by 31 January 2021, 1 September 2021 and 11 October 2021.

2 The three Special Reports are: Global Warming of 1.5°C (2018): an IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (SR1.5); Climate Change and Land (2019): an IPCC Special Report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems (SRCCL); and The Ocean and Cryosphere in a Changing Climate (2019) (SROCC). The Special Reports cover scientific literature accepted for publication respectively by 15 May 2018, 7 April 2019 and 15 May 2019.

3 In this report, the near term is defined as the period until 2040. The long term is defined as the period beyond 2040.

4 Each finding is grounded in an evaluation of underlying evidence and agreement. The IPCC calibrated language uses five qualifiers to express a level of confidence: very low, low, medium, high and very high, and typeset in italics, for example, *medium confidence*. The following terms are used to indicate the assessed likelihood of an outcome or a result: virtually certain 99–100% probability, very likely 90–100%, likely 66–100%, more likely than not >50–100%, about as likely as not 33–66%, unlikely 0–33%, very unlikely 0–10%, exceptionally unlikely 0–1%. Additional terms (extremely likely 95–100%; and extremely unlikely 0–5%) are also used when appropriate. Assessed likelihood is typeset in italics, e.g., *very likely*. This is consistent with AR5 and the other AR6 Reports.

A. Current Status and Trends

Observed Warming and its Causes

A.1 Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals (*high confidence*). {*2.1, Figure 2.1, Figure 2.2*}

A.1.1 Global surface temperature was 1.09 [0.95 to 1.20]°C[5] higher in 2011–2020 than 1850–1900[6], with larger increases over land (1.59 [1.34 to 1.83]°C) than over the ocean (0.88 [0.68 to 1.01]°C). Global surface temperature in the first two decades of the 21st century (2001–2020) was 0.99 [0.84 to 1.10]°C higher than 1850–1900. Global surface temperature has increased faster since 1970 than in any other 50-year period over at least the last 2000 years (*high confidence*). {*2.1.1, Figure 2.1*}

A.1.2 The *likely* range of total human-caused global surface temperature increase from 1850–1900 to 2010–2019[7] is 0.8°C to 1.3°C, with a best estimate of 1.07°C. Over this period, it is *likely* that well-mixed greenhouse gases (GHGs) contributed a warming of 1.0°C to 2.0°C[8], and other human drivers (principally aerosols) contributed a cooling of 0.0°C to 0.8°C, natural (solar and volcanic) drivers changed global surface temperature by –0.1°C to +0.1°C, and internal variability changed it by –0.2°C to +0.2°C. {*2.1.1, Figure 2.1*}

A.1.3 Observed increases in well-mixed GHG concentrations since around 1750 are unequivocally caused by GHG emissions from human activities over this period. Historical cumulative net CO_2 emissions from 1850 to 2019 were 2400 ± 240 $GtCO_2$ of which more than half (58%) occurred between 1850 and 1989, and about 42% occurred between 1990 and 2019 (*high confidence*). In 2019, atmospheric CO_2 concentrations (410 parts per million) were higher than at any time in at least 2 million years (*high confidence*), and concentrations of methane (1866 parts per billion) and nitrous oxide (332 parts per billion) were higher than at any time in at least 800,000 years (*very high confidence*). {*2.1.1, Figure 2.1*}

A.1.4 Global net anthropogenic GHG emissions have been estimated to be 59 ± 6.6 $GtCO_2$-eq[9] in 2019, about 12% (6.5 $GtCO_2$-eq) higher than in 2010 and 54% (21 $GtCO_2$-eq) higher than in 1990, with the largest share and growth in gross GHG emissions occurring in CO_2 from fossil fuels combustion and industrial processes (CO_2-FFI) followed by methane, whereas the highest relative growth occurred in fluorinated gases (F-gases), starting from low levels in 1990. Average annual GHG emissions during 2010–2019 were higher than in any previous decade on record, while the rate of growth between 2010 and 2019 (1.3% yr^{-1}) was lower than that between 2000 and 2009 (2.1% yr^{-1}). In 2019, approximately 79% of global GHG

5 Ranges given throughout the SPM represent *very likely* ranges (5–95% range) unless otherwise stated.

6 The estimated increase in global surface temperature since AR5 is principally due to further warming since 2003–2012 (0.19 [0.16 to 0.22] °C). Additionally, methodological advances and new datasets have provided a more complete spatial representation of changes in surface temperature, including in the Arctic. These and other improvements have also increased the estimate of global surface temperature change by approximately 0.1°C, but this increase does not represent additional physical warming since AR5.

7 The period distinction with A.1.1 arises because the attribution studies consider this slightly earlier period. The observed warming to 2010–2019 is 1.06 [0.88 to 1.21]°C.

8 Contributions from emissions to the 2010–2019 warming relative to 1850–1900 assessed from radiative forcing studies are: CO_2 0.8 [0.5 to 1.2]°C; methane 0.5 [0.3 to 0.8]°C; nitrous oxide 0.1 [0.0 to 0.2]°C and fluorinated gases 0.1 [0.0 to 0.2]°C. {*2.1.1*}

9 GHG emission metrics are used to express emissions of different greenhouse gases in a common unit. Aggregated GHG emissions in this report are stated in CO_2-equivalents (CO_2-eq) using the Global Warming Potential with a time horizon of 100 years (GWP100) with values based on the contribution of Working Group I to the AR6. The AR6 WGI and WGIII reports contain updated emission metric values, evaluations of different metrics with regard to mitigation objectives, and assess new approaches to aggregating gases. The choice of metric depends on the purpose of the analysis and all GHG emission metrics have limitations and uncertainties, given that they simplify the complexity of the physical climate system and its response to past and future GHG emissions. {*2.1.1*}

emissions came from the sectors of energy, industry, transport, and buildings together and 22%[10] from agriculture, forestry and other land use (AFOLU). Emissions reductions in CO_2-FFI due to improvements in energy intensity of GDP and carbon intensity of energy, have been less than emissions increases from rising global activity levels in industry, energy supply, transport, agriculture and buildings. (*high confidence*) {*2.1.1*}

A.1.5 Historical contributions of CO_2 emissions vary substantially across regions in terms of total magnitude, but also in terms of contributions to CO_2-FFI and net CO_2 emissions from land use, land-use change and forestry (CO_2-LULUCF). In 2019, around 35% of the global population live in countries emitting more than 9 tCO_2-eq per capita[11] (excluding CO_2-LULUCF) while 41% live in countries emitting less than 3 tCO_2-eq per capita; of the latter a substantial share lacks access to modern energy services. Least Developed Countries (LDCs) and Small Island Developing States (SIDS) have much lower per capita emissions (1.7 tCO_2-eq and 4.6 tCO_2-eq, respectively) than the global average (6.9 tCO_2-eq), excluding CO_2-LULUCF. The 10% of households with the highest per capita emissions contribute 34–45% of global consumption-based household GHG emissions, while the bottom 50% contribute 13–15%. (*high confidence*) {*2.1.1, Figure 2.2*}

Observed Changes and Impacts

A.2 Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (*high confidence*). Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (*high confidence*). {*2.1, Table 2.1, Figure 2.2, Figure 2.3*} (*Figure SPM.1*)

A.2.1 It is unequivocal that human influence has warmed the atmosphere, ocean and land. Global mean sea level increased by 0.20 [0.15 to 0.25] m between 1901 and 2018. The average rate of sea level rise was 1.3 [0.6 to 2.1] mm yr^{-1} between 1901 and 1971, increasing to 1.9 [0.8 to 2.9] mm yr^{-1} between 1971 and 2006, and further increasing to 3.7 [3.2 to 4.2] mm yr^{-1} between 2006 and 2018 (*high confidence*). Human influence was *very likely* the main driver of these increases since at least 1971. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has further strengthened since AR5. Human influence has *likely* increased the chance of compound extreme events since the 1950s, including increases in the frequency of concurrent heatwaves and droughts (*high confidence*). {*2.1.2, Table 2.1, Figure 2.3, Figure 3.4*} (*Figure SPM.1*)

A.2.2 Approximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change. Human and ecosystem vulnerability are interdependent. Regions and people with considerable development constraints have high vulnerability to climatic hazards. Increasing weather and climate extreme events have exposed millions of people to acute food insecurity[12] and reduced water security, with the largest adverse impacts observed in many locations and/or communities in Africa, Asia, Central and South America, LDCs, Small Islands and the Arctic, and globally for Indigenous Peoples, small-scale food producers and low-income households. Between 2010 and 2020, human mortality from floods, droughts and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability. (*high confidence*) {*2.1.2, 4.4*} (*Figure SPM.1*)

A.2.3 Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (*high confidence*). Hundreds of local losses of species have been driven by increases in the magnitude of heat extremes (*high confidence*) with mass mortality events recorded on land and in the ocean (*very high confidence*). Impacts on some ecosystems are approaching irreversibility such as the impacts of hydrological changes resulting from the retreat of glaciers, or the changes in some mountain (*medium confidence*) and Arctic ecosystems driven by permafrost thaw (*high confidence*). {*2.1.2, Figure 2.3*} (*Figure SPM.1*)

[10] GHG emission levels are rounded to two significant digits; as a consequence, small differences in sums due to rounding may occur. {*2.1.1*}

[11] Territorial emissions.

[12] Acute food insecurity can occur at any time with a severity that threatens lives, livelihoods or both, regardless of the causes, context or duration, as a result of shocks risking determinants of food security and nutrition, and is used to assess the need for humanitarian action. {*2.1*}

A.2.4 Climate change has reduced food security and affected water security, hindering efforts to meet Sustainable Development Goals (*high confidence*). Although overall agricultural productivity has increased, climate change has slowed this growth over the past 50 years globally (*medium confidence*), with related negative impacts mainly in mid- and low latitude regions but positive impacts in some high latitude regions (*high confidence*). Ocean warming and ocean acidification have adversely affected food production from fisheries and shellfish aquaculture in some oceanic regions *(high confidence)*. Roughly half of the world's population currently experience severe water scarcity for at least part of the year due to a combination of climatic and non-climatic drivers (*medium confidence*). {*2.1.2, Figure 2.3*} (*Figure SPM.1*)

A.2.5 In all regions increases in extreme heat events have resulted in human mortality and morbidity (*very high confidence*). The occurrence of climate-related food-borne and water-borne diseases (*very high confidence*) and the incidence of vector-borne diseases (*high confidence*) have increased. In assessed regions, some mental health challenges are associated with increasing temperatures (*high confidence*), trauma from extreme events (*very high confidence*), and loss of livelihoods and culture (*high confidence*). Climate and weather extremes are increasingly driving displacement in Africa, Asia, North America (*high confidence*), and Central and South America (*medium confidence*), with small island states in the Caribbean and South Pacific being disproportionately affected relative to their small population size (*high confidence*). {*2.1.2, Figure 2.3*} (*Figure SPM.1*)

A.2.6 Climate change has caused widespread adverse impacts and related losses and damages[13] to nature and people that are unequally distributed across systems, regions and sectors. Economic damages from climate change have been detected in climate-exposed sectors, such as agriculture, forestry, fishery, energy, and tourism. Individual livelihoods have been affected through, for example, destruction of homes and infrastructure, and loss of property and income, human health and food security, with adverse effects on gender and social equity. (*high confidence*) {*2.1.2*} (*Figure SPM.1*)

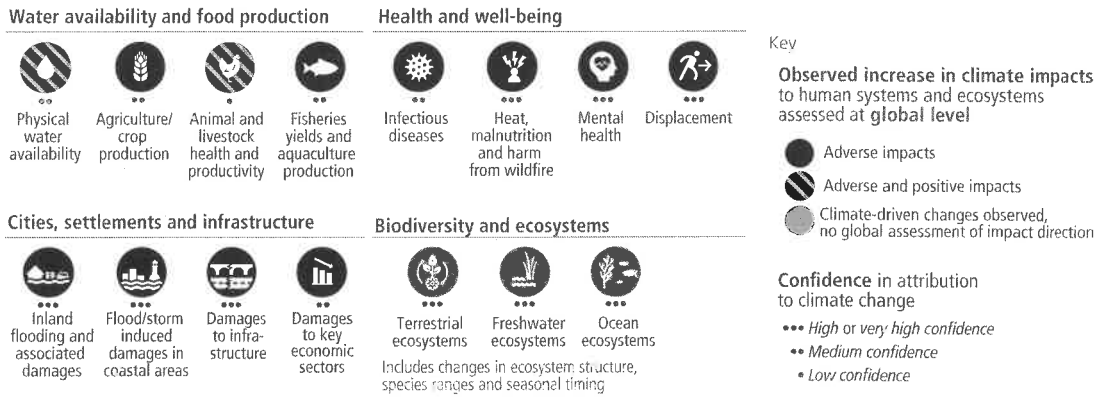
A.2.7 In urban areas, observed climate change has caused adverse impacts on human health, livelihoods and key infrastructure. Hot extremes have intensified in cities. Urban infrastructure, including transportation, water, sanitation and energy systems have been compromised by extreme and slow-onset events[14], with resulting economic losses, disruptions of services and negative impacts to well-being. Observed adverse impacts are concentrated amongst economically and socially marginalised urban residents. (*high confidence*) {*2.1.2*}

[13] In this report, the term 'losses and damages' refers to adverse observed impacts and/or projected risks and can be economic and/or non-economic (see Annex I: Glossary).

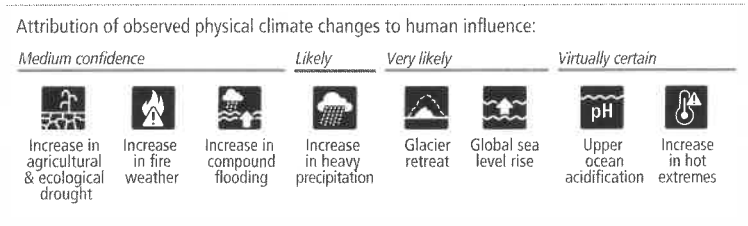
[14] Slow-onset events are described among the climatic-impact drivers of the AR6 WGI and refer to the risks and impacts associated with e.g., increasing temperature means, desertification, decreasing precipitation, loss of biodiversity, land and forest degradation, glacial retreat and related impacts, ocean acidification, sea level rise and salinization. {*2.1.2*}

Adverse impacts from human-caused climate change will continue to intensify

a) Observed widespread and substantial impacts and related losses and damages attributed to climate change



b) Impacts are driven by changes in multiple physical climate conditions, which are increasingly attributed to human influence



c) The extent to which current and future generations will experience a hotter and different world depends on choices now and in the near term

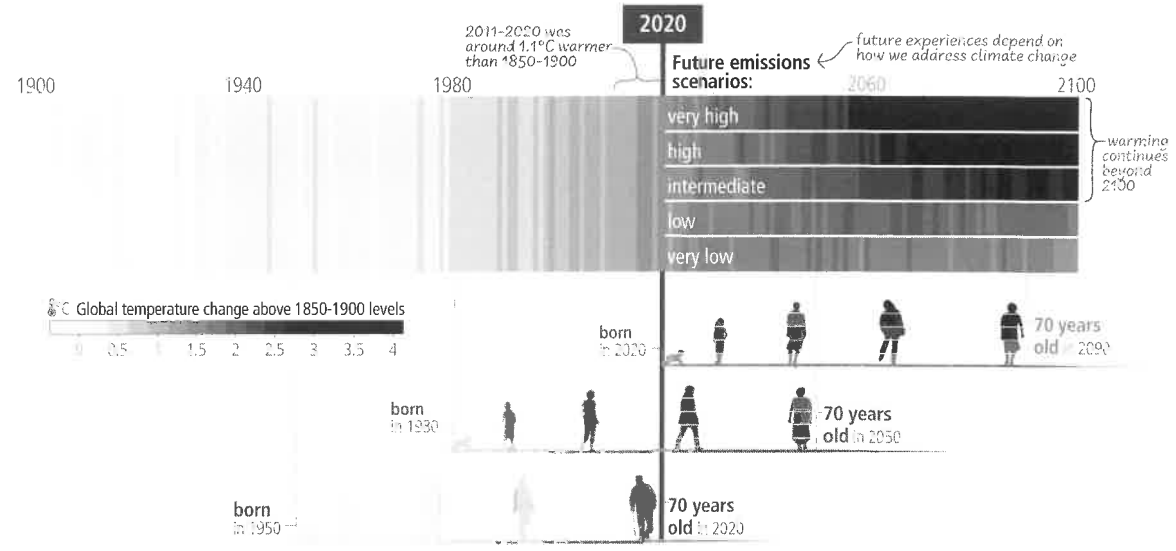


Figure SPM.1: (a) Climate change has already caused widespread impacts and related losses and damages on human systems and altered terrestrial, freshwater and ocean ecosystems worldwide. Physical water availability includes balance of water available from various sources including ground water, water quality and demand for water. Global mental health and displacement assessments reflect only assessed regions. Confidence levels reflect the assessment of attribution of the observed impact to climate change. **(b)** Observed impacts are connected to physical climate changes including many that have been attributed to human influence such as the selected climatic impact-drivers shown. Confidence and likelihood levels reflect the assessment of attribution of the observed climatic impact-driver to human influence. **(c)** Observed (1900–2020) and projected (2021–2100) changes in global surface temperature (relative to 1850-1900), which are linked to changes in climate conditions and impacts, illustrate how the climate has already changed and will change along the lifespan of three

Box SPM.1, Table 1: Description and relationship of scenarios and modelled pathways considered across AR6 Working Group reports. {*Cross-Section Box.2 Figure 1*}

Category in WGIII	Category description	GHG emissions scenarios (SSPx-y*) in WGI & WGII	RCPy** in WGI & WGII
C1	limit warming to 1.5°C (>50%) with no or limited overshoot***	Very low (SSP1-1.9)	
C2	return warming to 1.5°C (>50%) after a high overshoot***		
C3	limit warming to 2°C (>67%)	Low (SSP1-2.6)	RCP2.6
C4	limit warming to 2°C (>50%)		
C5	limit warming to 2.5°C (>50%)		
C6	limit warming to 3°C (>50%)	Intermediate (SSP2-4.5)	RCP 4.5
C7	limit warming to 4°C (>50%)	High (SSP3-7.0)	
C8	exceed warming of 4°C (>50%)	Very high (SSP5-8.5)	RCP 8.5

* See footnote 21 for the SSPx-y terminology.

** See footnote 23 for the RCPy terminology.

*** Limited overshoot refers to exceeding 1.5°C global warming by up to about 0.1°C, high overshoot by 0.1°C-0.3°C, in both cases for up to several decades.

Current Mitigation Progress, Gaps and Challenges

A.4 Policies and laws addressing mitigation have consistently expanded since AR5. Global GHG emissions in 2030 implied by nationally determined contributions (NDCs) announced by October 2021 make it *likely* that warming will exceed 1.5°C during the 21st century and make it harder to limit warming below 2°C. There are gaps between projected emissions from implemented policies and those from NDCs and finance flows fall short of the levels needed to meet climate goals across all sectors and regions. (*high confidence*) {*2.2, 2.3, Figure 2.5, Table 2.2*}

A.4.1 The UNFCCC, Kyoto Protocol, and the Paris Agreement are supporting rising levels of national ambition. The Paris Agreement, adopted under the UNFCCC, with near universal participation, has led to policy development and target-setting at national and sub-national levels, in particular in relation to mitigation, as well as enhanced transparency of climate action and support (*medium confidence*). Many regulatory and economic instruments have already been deployed successfully (*high confidence*). In many countries, policies have enhanced energy efficiency, reduced rates of deforestation and accelerated technology deployment, leading to avoided and in some cases reduced or removed emissions (*high confidence*). Multiple lines of evidence suggest that mitigation policies have led to several[24] Gt CO_2-eq yr^{-1} of avoided global emissions (*medium confidence*). At least 18 countries have sustained absolute production-based GHG and consumption-based CO_2 reductions[25] for longer than 10 years. These reductions have only partly offset global emissions growth (*high confidence*). {*2.2.1, 2.2.2*}

A.4.2 Several mitigation options, notably solar energy, wind energy, electrification of urban systems, urban green infrastructure, energy efficiency, demand-side management, improved forest and crop/grassland management, and reduced food waste and loss, are technically viable, are becoming increasingly cost effective and are generally supported by the

[24] At least 1.8 $GtCO_2$-eq yr^{-1} can be accounted for by aggregating separate estimates for the effects of economic and regulatory instruments. Growing numbers of laws and executive orders have impacted global emissions and were estimated to result in 5.9 $GtCO_2$-eq yr^{-1} less emissions in 2016 than they otherwise would have been. (*medium confidence*) {*2.2.2*}

[25] Reductions were linked to energy supply decarbonisation, energy efficiency gains, and energy demand reduction, which resulted from both policies and changes in economic structure (*high confidence*). {*2.2.2*}

public. From 2010 to 2019 there have been sustained decreases in the unit costs of solar energy (85%), wind energy (55%), and lithium-ion batteries (85%), and large increases in their deployment, e.g., >10× for solar and >100× for electric vehicles (EVs), varying widely across regions. The mix of policy instruments that reduced costs and stimulated adoption includes public R&D, funding for demonstration and pilot projects, and demand-pull instruments such as deployment subsidies to attain scale. Maintaining emission-intensive systems may, in some regions and sectors, be more expensive than transitioning to low emission systems. (*high confidence*) {*2.2.2, Figure 2.4*}

A.4.3 A substantial 'emissions gap' exists between global GHG emissions in 2030 associated with the implementation of NDCs announced prior to COP26[26] and those associated with modelled mitigation pathways that limit warming to 1.5°C (>50%) with no or limited overshoot or limit warming to 2°C (>67%) assuming immediate action (*high confidence*). This would make it *likely* that warming will exceed 1.5°C during the 21st century (*high confidence*). Global modelled mitigation pathways that limit warming to 1.5°C (>50%) with no or limited overshoot or limit warming to 2°C (>67%) assuming immediate action imply deep global GHG emissions reductions this decade (*high confidence*) (see SPM Box 1, Table 1, B.6)[27]. Modelled pathways that are consistent with NDCs announced prior to COP26 until 2030 and assume no increase in ambition thereafter have higher emissions, leading to a median global warming of 2.8 [2.1 to 3.4] °C by 2100 (*medium confidence*). Many countries have signalled an intention to achieve net zero GHG or net zero CO_2 by around mid-century but pledges differ across countries in terms of scope and specificity, and limited policies are to date in place to deliver on them. {*2.3.1, Table 2.2, Figure 2.5, Table 3.1, 4.1*}

A.4.4 Policy coverage is uneven across sectors (*high confidence*). Policies implemented by the end of 2020 are projected to result in higher global GHG emissions in 2030 than emissions implied by NDCs, indicating an 'implementation gap' (*high confidence*). Without a strengthening of policies, global warming of 3.2 [2.2 to 3.5] °C is projected by 2100 (*medium confidence*). {*2.2.2, 2.3.1, 3.1.1, Figure 2.5*} (*Box SPM.1, Figure SPM.5*)

A.4.5 The adoption of low-emission technologies lags in most developing countries, particularly least developed ones, due in part to limited finance, technology development and transfer, and capacity (*medium confidence*). The magnitude of climate finance flows has increased over the last decade and financing channels have broadened but growth has slowed since 2018 (*high confidence*). Financial flows have developed heterogeneously across regions and sectors (*high confidence*). Public and private finance flows for fossil fuels are still greater than those for climate adaptation and mitigation (*high confidence*). The overwhelming majority of tracked climate finance is directed towards mitigation, but nevertheless falls short of the levels needed to limit warming to below 2°C or to 1.5°C across all sectors and regions (see C7.2) (*very high confidence*). In 2018, public and publicly mobilised private climate finance flows from developed to developing countries were below the collective goal under the UNFCCC and Paris Agreement to mobilise USD 100 billion per year by 2020 in the context of meaningful mitigation action and transparency on implementation (*medium confidence*). {*2.2.2, 2.3.1, 2.3.3*}

[26] Due to the literature cutoff date of WGIII, the additional NDCs submitted after 11 October 2021 are not assessed here. {*Footnote 32 in the Longer Report*}

[27] Projected 2030 GHG emissions are 50 (47–55) $GtCO_2$-eq if all conditional NDC elements are taken into account. Without conditional elements, the global emissions are projected to be approximately similar to modelled 2019 levels at 53 (50–57) $GtCO_2$-eq. {*2.3.1, Table 2.2*}

B. Future Climate Change, Risks, and Long-Term Responses

Future Climate Change

B.1 Continued greenhouse gas emissions will lead to increasing global warming, with the best estimate of reaching 1.5°C in the near term in considered scenarios and modelled pathways. Every increment of global warming will intensify multiple and concurrent hazards (*high confidence*). Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years (*high confidence*). {*Cross-Section Boxes 1 and 2, 3.1, 3.3, Table 3.1, Figure 3.1, 4.3*} (*Figure SPM.2, Box SPM.1*)

B.1.1 Global warming[28] will continue to increase in the near term (2021–2040) mainly due to increased cumulative CO_2 emissions in nearly all considered scenarios and modelled pathways. In the near term, global warming *is more likely than not* to reach 1.5°C even under the very low GHG emission scenario (SSP1-1.9) and *likely* or *very likely* to exceed 1.5°C under higher emissions scenarios. In the considered scenarios and modelled pathways, the best estimates of the time when the level of global warming of 1.5°C is reached lie in the near term[29]. Global warming declines back to below 1.5°C by the end of the 21st century in some scenarios and modelled pathways (see B.7). The assessed climate response to GHG emissions scenarios results in a best estimate of warming for 2081–2100 that spans a range from 1.4°C for a very low GHG emissions scenario (SSP1-1.9) to 2.7°C for an intermediate GHG emissions scenario (SSP2-4.5) and 4.4°C for a very high GHG emissions scenario (SSP5-8.5)[30], with narrower uncertainty ranges[31] than for corresponding scenarios in AR5. {*Cross-Section Boxes 1 and 2, 3.1.1, 3.3.4, Table 3.1, 4.3*} (*Box SPM.1*)

B.1.2 Discernible differences in trends of global surface temperature between contrasting GHG emissions scenarios (SSP1-1.9 and SSP1-2.6 vs. SSP3-7.0 and SSP5-8.5) would begin to emerge from natural variability[32] within around 20 years. Under these contrasting scenarios, discernible effects would emerge within years for GHG concentrations, and sooner for air quality improvements, due to the combined targeted air pollution controls and strong and sustained methane emissions reductions. Targeted reductions of air pollutant emissions lead to more rapid improvements in air quality within years compared to reductions in GHG emissions only, but in the long term, further improvements are projected in scenarios that combine efforts to reduce air pollutants as well as GHG emissions[33]. (*high confidence*) {*3.1.1*} (*Box SPM.1*)

B.1.3 Continued emissions will further affect all major climate system components. With every additional increment of global warming, changes in extremes continue to become larger. Continued global warming is projected to further intensify the global water cycle, including its variability, global monsoon precipitation, and very wet and very dry weather and

[28] Global warming (see Annex I: Glossary) is here reported as running 20-year averages, unless stated otherwise, relative to 1850–1900. Global surface temperature in any single year can vary above or below the long-term human-caused trend, due to natural variability. The internal variability of global surface temperature in a single year is estimated to be about ±0.25°C (5–95% range, *high confidence*). The occurrence of individual years with global surface temperature change above a certain level does not imply that this global warming level has been reached. {*4.3, Cross-Section Box.2*}

[29] Median five-year interval at which a 1.5°C global warming level is reached (50% probability) in categories of modelled pathways considered in WGIII is 2030–2035. By 2030, global surface temperature in any individual year could exceed 1.5°C relative to 1850–1900 with a probability between 40% and 60%, across the five scenarios assessed in WGI (*medium confidence*). In all scenarios considered in WGI except the very high emissions scenario (SSP5-8.5), the midpoint of the first 20-year running average period during which the assessed average global surface temperature change reaches 1.5°C lies in the first half of the 2030s. In the very high GHG emissions scenario, the midpoint is in the late 2020s. {*3.1.1, 3.3.1, 4.3*} (*Box SPM.1*)

[30] The best estimates [and *very likely* ranges] for the different scenarios are: 1.4 [1.0 to 1.8]°C (SSP1-1.9); 1.8 [1.3 to 2.4]°C (SSP1-2.6); 2.7 [2.1 to 3.5]°C (SSP2-4.5); 3.6 [2.8 to 4.6]°C (SSP3-7.0); and 4.4 [3.3 to 5.7]°C (SSP5-8.5). {*3.1.1*} (*Box SPM.1*)

[31] Assessed future changes in global surface temperature have been constructed, for the first time, by combining multi-model projections with observational constraints and the assessed equilibrium climate sensitivity and transient climate response. The uncertainty range is narrower than in the AR5 thanks to improved knowledge of climate processes, paleoclimate evidence and model-based emergent constraints. {*3.1.1*}

[32] See Annex I: Glossary. Natural variability includes natural drivers and internal variability. The main internal variability phenomena include El Niño-Southern Oscillation, Pacific Decadal Variability and Atlantic Multi-decadal Variability. {*4.3*}

[33] Based on additional scenarios.

climate events and seasons (*high confidence*). In scenarios with increasing CO_2 emissions, natural land and ocean carbon sinks are projected to take up a decreasing proportion of these emissions (*high confidence*). Other projected changes include further reduced extents and/or volumes of almost all cryospheric elements[34] (*high confidence*), further global mean sea level rise (*virtually certain*), and increased ocean acidification (*virtually certain*) and deoxygenation (*high confidence*). {*3.1.1, 3.3.1, Figure 3.4*} (*Figure SPM.2*)

B.1.4 With further warming, every region is projected to increasingly experience concurrent and multiple changes in climatic impact-drivers. Compound heatwaves and droughts are projected to become more frequent, including concurrent events across multiple locations (*high confidence*). Due to relative sea level rise, current 1-in-100 year extreme sea level events are projected to occur at least annually in more than half of all tide gauge locations by 2100 under all considered scenarios (*high confidence*). Other projected regional changes include intensification of tropical cyclones and/or extratropical storms (*medium confidence*), and increases in aridity and fire weather (*medium* to *high confidence*). {*3.1.1, 3.1.3*}

B.1.5 Natural variability will continue to modulate human-caused climate changes, either attenuating or amplifying projected changes, with little effect on centennial-scale global warming (*high confidence*). These modulations are important to consider in adaptation planning, especially at the regional scale and in the near term. If a large explosive volcanic eruption were to occur[35], it would temporarily and partially mask human-caused climate change by reducing global surface temperature and precipitation for one to three years (*medium confidence*). {*4.3*}

[34] Permafrost, seasonal snow cover, glaciers, the Greenland and Antarctic Ice Sheets, and Arctic sea ice.

[35] Based on 2500-year reconstructions, eruptions with a radiative forcing more negative than –1 W m^{-2}, related to the radiative effect of volcanic stratospheric aerosols in the literature assessed in this report, occur on average twice per century. {*4.3*}

With every increment of global warming, regional changes in mean climate and extremes become more widespread and pronounced

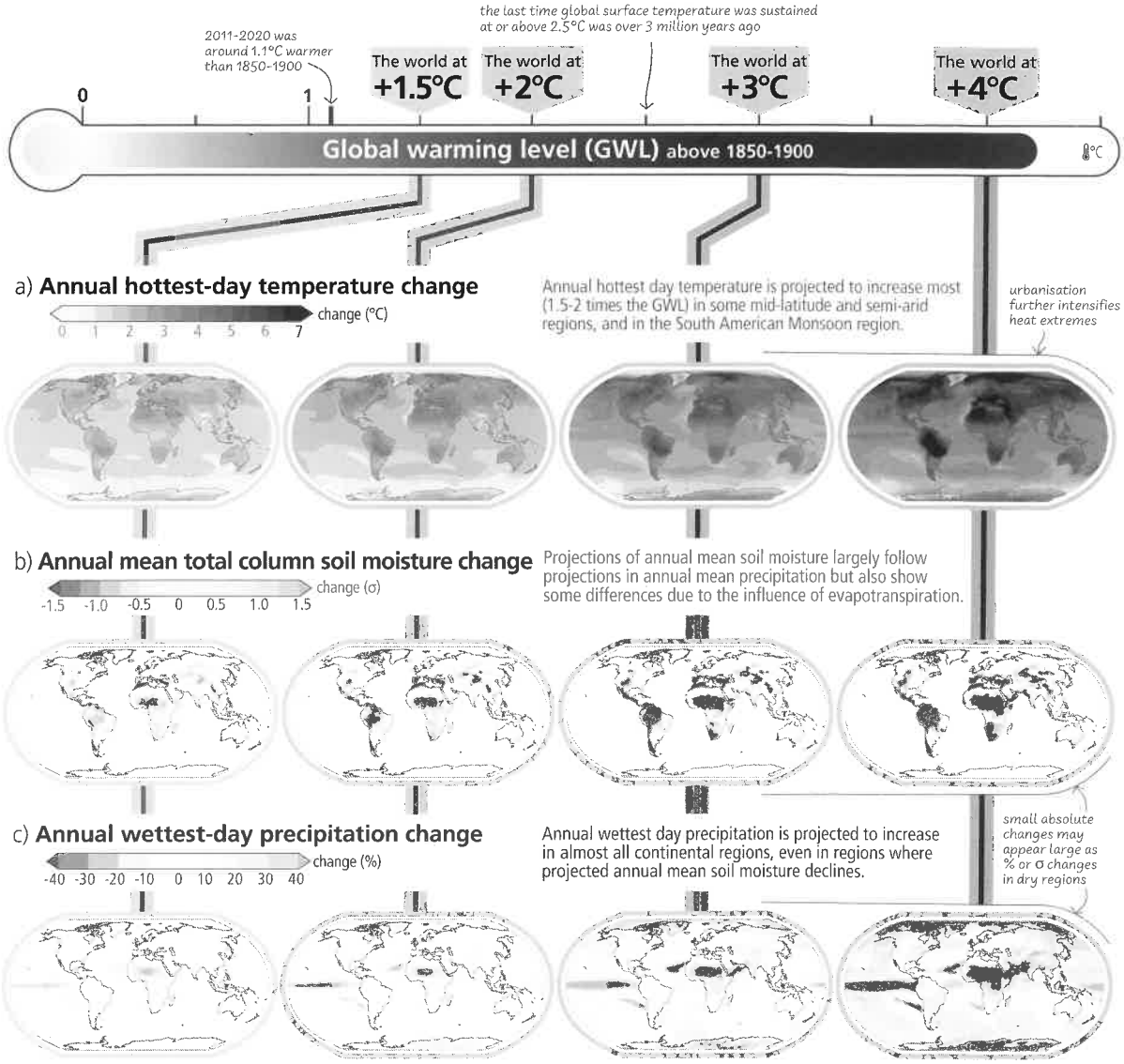


Figure SPM.2: Projected changes of annual maximum daily maximum temperature, annual mean total column soil moisture and annual maximum 1-day precipitation at global warming levels of 1.5°C, 2°C, 3°C, and 4°C relative to 1850–1900. Projected **(a)** annual maximum daily temperature change (°C), **(b)** annual mean total column soil moisture change (standard deviation), **(c)** annual maximum 1-day precipitation change (%). The panels show CMIP6 multi-model median changes. In panels (b) and (c), large positive relative changes in dry regions may correspond to small absolute changes. In panel (b), the unit is the standard deviation of interannual variability in soil moisture during 1850–1900. Standard deviation is a widely used metric in characterising drought severity. A projected reduction in mean soil moisture by one standard deviation corresponds to soil moisture conditions typical of droughts that occurred about once every six years during 1850–1900. The WGI Interactive Atlas (https://interactive-atlas.ipcc.ch/) can be used to explore additional changes in the climate system across the range of global warming levels presented in this figure. {*Figure 3.1, Cross-Section Box.2*}

Climate Change Impacts and Climate-Related Risks

B.2 For any given future warming level, many climate-related risks are higher than assessed in AR5, and projected long-term impacts are up to multiple times higher than currently observed (*high confidence*). Risks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming (*very high confidence*). Climatic and non-climatic risks will increasingly interact, creating compound and cascading risks that are more complex and difficult to manage (*high confidence*). {*Cross-Section Box.2, 3.1, 4.3, Figure 3.3, Figure 4.3*} (*Figure SPM.3, Figure SPM.4*)

B.2.1 In the near term, every region in the world is projected to face further increases in climate hazards (*medium* to *high confidence*, depending on region and hazard), increasing multiple risks to ecosystems and humans (*very high confidence*). Hazards and associated risks expected in the near term include an increase in heat-related human mortality and morbidity (*high confidence*), food-borne, water-borne, and vector-borne diseases (*high confidence*), and mental health challenges[36] (*very high confidence*), flooding in coastal and other low-lying cities and regions (*high confidence*), biodiversity loss in land, freshwater and ocean ecosystems (*medium* to *very high confidence*, depending on ecosystem), and a decrease in food production in some regions (*high confidence*). Cryosphere-related changes in floods, landslides, and water availability have the potential to lead to severe consequences for people, infrastructure and the economy in most mountain regions (*high confidence*). The projected increase in frequency and intensity of heavy precipitation (*high confidence*) will increase rain-generated local flooding (*medium confidence*). {*Figure 3.2, Figure 3.3, 4.3, Figure 4.3*} (*Figure SPM.3, Figure SPM.4*)

B.2.2 Risks and projected adverse impacts and related losses and damages from climate change will escalate with every increment of global warming (*very high confidence*). They are higher for global warming of 1.5°C than at present, and even higher at 2°C (*high confidence*). Compared to the AR5, global aggregated risk levels[37] (Reasons for Concern[38]) are assessed to become high to very high at lower levels of global warming due to recent evidence of observed impacts, improved process understanding, and new knowledge on exposure and vulnerability of human and natural systems, including limits to adaptation (*high confidence*). Due to unavoidable sea level rise (see also B.3), risks for coastal ecosystems, people and infrastructure will continue to increase beyond 2100 (*high confidence*). {*3.1.2, 3.1.3, Figure 3.4, Figure 4.3*} (*Figure SPM.3, Figure SPM.4*)

B.2.3 With further warming, climate change risks will become increasingly complex and more difficult to manage. Multiple climatic and non-climatic risk drivers will interact, resulting in compounding overall risk and risks cascading across sectors and regions. Climate-driven food insecurity and supply instability, for example, are projected to increase with increasing global warming, interacting with non-climatic risk drivers such as competition for land between urban expansion and food production, pandemics and conflict. (*high confidence*) {*3.1.2, 4.3, Figure 4.3*}

B.2.4 For any given warming level, the level of risk will also depend on trends in vulnerability and exposure of humans and ecosystems. Future exposure to climatic hazards is increasing globally due to socio-economic development trends including migration, growing inequality and urbanisation. Human vulnerability will concentrate in informal settlements and rapidly growing smaller settlements. In rural areas vulnerability will be heightened by high reliance on climate-sensitive livelihoods. Vulnerability of ecosystems will be strongly influenced by past, present, and future patterns of unsustainable consumption and production, increasing demographic pressures, and persistent unsustainable use and management of land, ocean, and water. Loss of ecosystems and their services has cascading and long-term impacts on people globally, especially for Indigenous Peoples and local communities who are directly dependent on ecosystems to meet basic needs. (*high confidence*) {*Cross-Section Box.2 Figure 1c, 3.1.2, 4.3*}

[36] In all assessed regions.

[37] Undetectable risk level indicates no associated impacts are detectable and attributable to climate change; moderate risk indicates associated impacts are both detectable and attributable to climate change with at least *medium confidence*, also accounting for the other specific criteria for key risks; high risk indicates severe and widespread impacts that are judged to be high on one or more criteria for assessing key risks; and very high risk level indicates very high risk of severe impacts and the presence of significant irreversibility or the persistence of climate-related hazards, combined with limited ability to adapt due to the nature of the hazard or impacts/risks. {*3.1.2*}

[38] The Reasons for Concern (RFC) framework communicates scientific understanding about accrual of risk for five broad categories. RFC1: Unique and threatened systems: ecological and human systems that have restricted geographic ranges constrained by climate-related conditions and have high endemism or other distinctive properties. RFC2: Extreme weather events: risks/impacts to human health, livelihoods, assets and ecosystems from extreme weather events. RFC3: Distribution of impacts: risks/impacts that disproportionately affect particular groups due to uneven distribution of physical climate change hazards, exposure or vulnerability. RFC4: Global aggregate impacts: impacts to socio-ecological systems that can be aggregated globally into a single metric. RFC5: Large-scale singular events: relatively large, abrupt and sometimes irreversible changes in systems caused by global warming. See also Annex I: Glossary. {*3.1.2, Cross-Section Box.2*}

Future climate change is projected to increase the severity of impacts across natural and human systems and will increase regional differences

Examples of impacts without additional adaptation

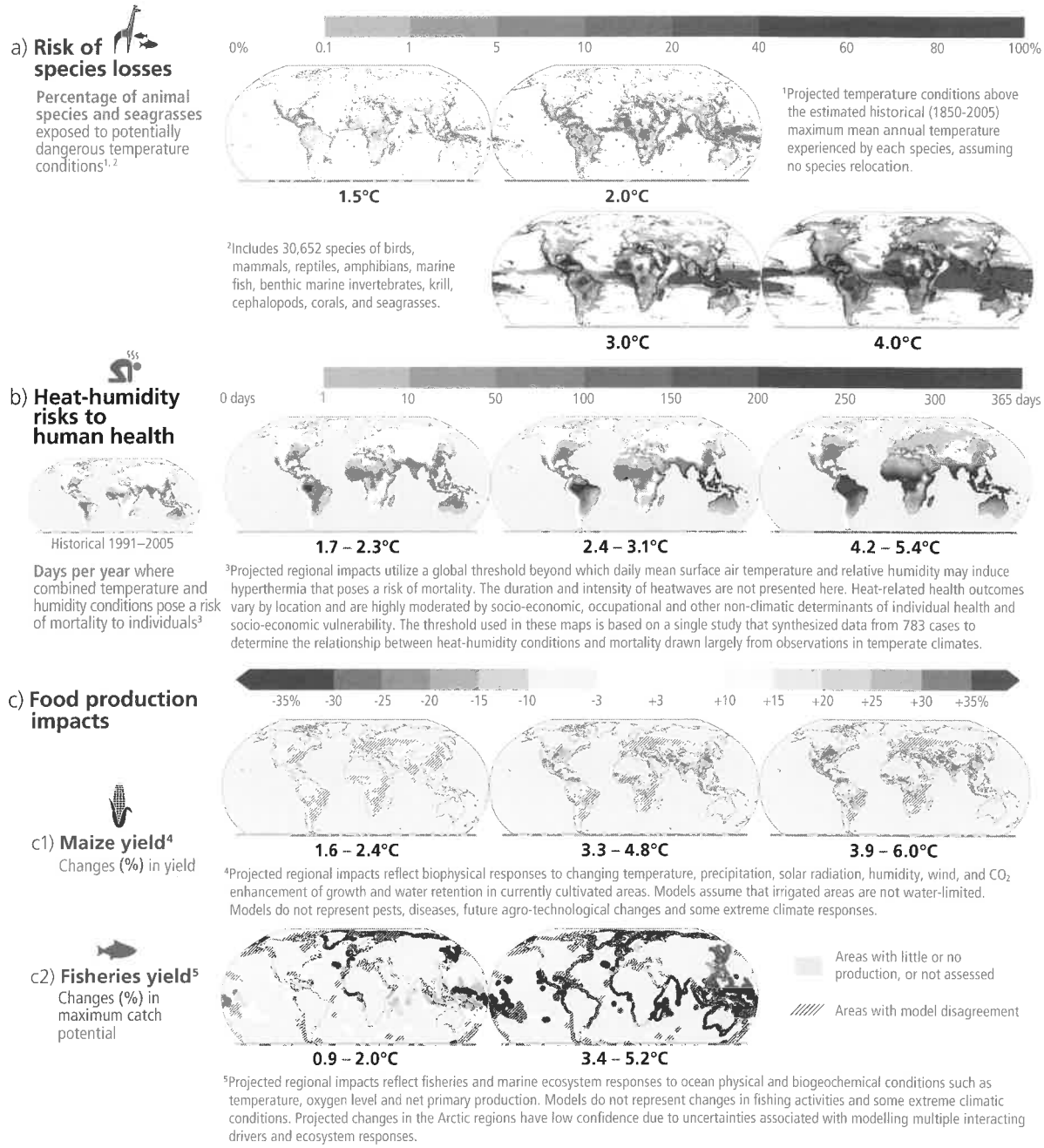
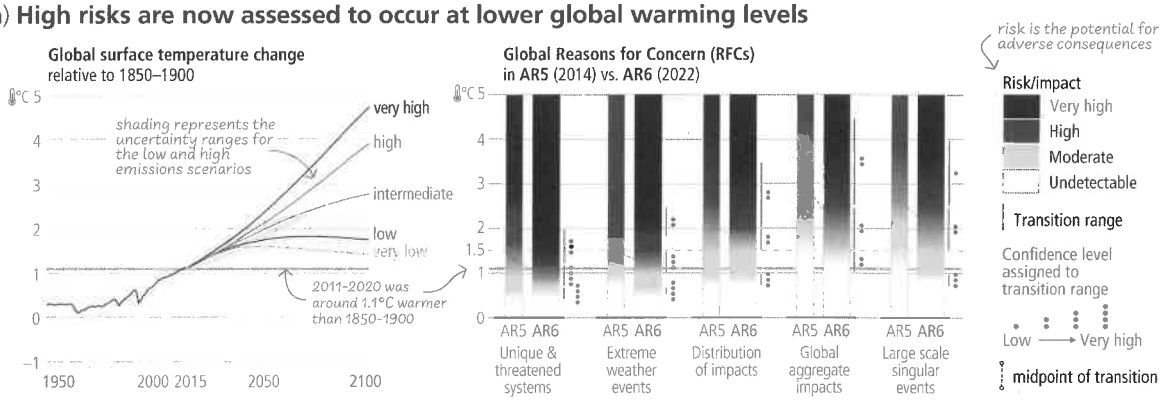


Figure SPM.3: Projected risks and impacts of climate change on natural and human systems at different global warming levels (GWLs) relative to 1850-1900 levels. Projected risks and impacts shown on the maps are based on outputs from different subsets of Earth system and impact models that were used to project each impact indicator without additional adaptation. WGII provides further assessment of the impacts on human and natural systems using these projections and additional lines of evidence. **(a)** Risks of species losses as indicated by the percentage of assessed species exposed to potentially dangerous temperature conditions, as defined by conditions beyond the estimated historical (1850–2005) maximum mean annual temperature experienced by each species, at GWLs of 1.5°C, 2°C, 3°C and 4°C. Underpinning projections of temperature are from 21 Earth system models and do not consider extreme events impacting ecosystems such as the Arctic. **(b)** Risks to human health as indicated by the days per year of population exposure to hyperthermic conditions that pose a risk of mortality from surface air temperature and humidity conditions for historical period (1991–2005) and at GWLs of 1.7°C–2.3°C (mean = 1.9°C; 13 climate models), 2.4°C–3.1°C (2.7°C; 16 climate models) and 4.2°C–5.4°C (4.7°C; 15 climate models). Interquartile ranges of GWLs by 2081–2100 under RCP2.6, RCP4.5 and RCP8.5. The presented index is consistent with common features found in many indices included within WGI and WGII assessments. **(c)** Impacts on food production: (c1) Changes in maize yield by 2080–2099 relative to 1986–2005 at projected GWLs of 1.6°C–2.4°C (2.0°C), 3.3°C–4.8°C (4.1°C) and 3.9°C–6.0°C (4.9°C). Median yield changes from an ensemble of 12 crop models, each driven by bias-adjusted outputs from 5 Earth system models, from the Agricultural Model Intercomparison and Improvement Project (AgMIP) and the Inter-Sectoral Impact Model Intercomparison Project (ISIMIP). Maps depict

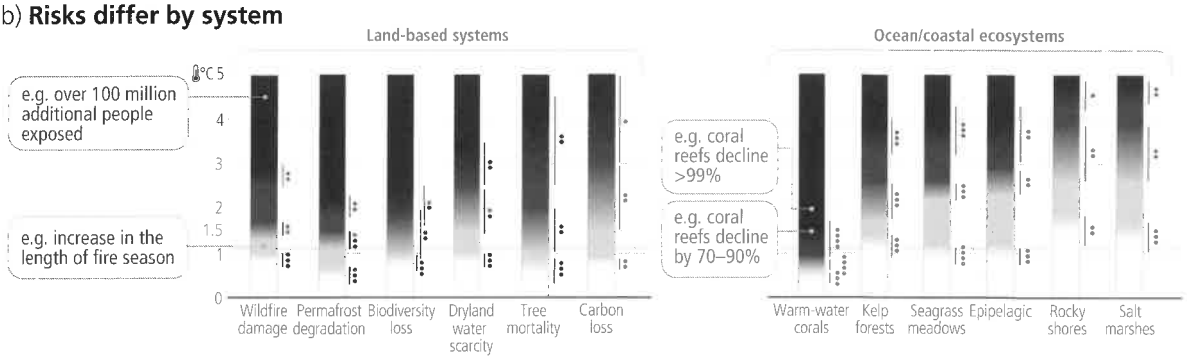
2080–2099 compared to 1986–2005 for current growing regions (>10 ha), with the corresponding range of future global warming levels shown under SSP1-2.6, SSP3-7.0 and SSP5-8.5, respectively. Hatching indicates areas where <70% of the climate-crop model combinations agree on the sign of impact. (c2) Change in maximum fisheries catch potential by 2081–2099 relative to 1986–2005 at projected GWLs of 0.9°C–2.0°C (1.5°C) and 3.4°C–5.2°C (4.3°C). GWLs by 2081–2100 under RCP2.6 and RCP8.5. Hatching indicates where the two climate-fisheries models disagree in the direction of change. Large relative changes in low yielding regions may correspond to small absolute changes. Biodiversity and fisheries in Antarctica were not analysed due to data limitations. Food security is also affected by crop and fishery failures not presented here. {*3.1.2, Figure 3.2, Cross-Section Box.2*} (*Box SPM.1*)

Risks are increasing with every increment of warming

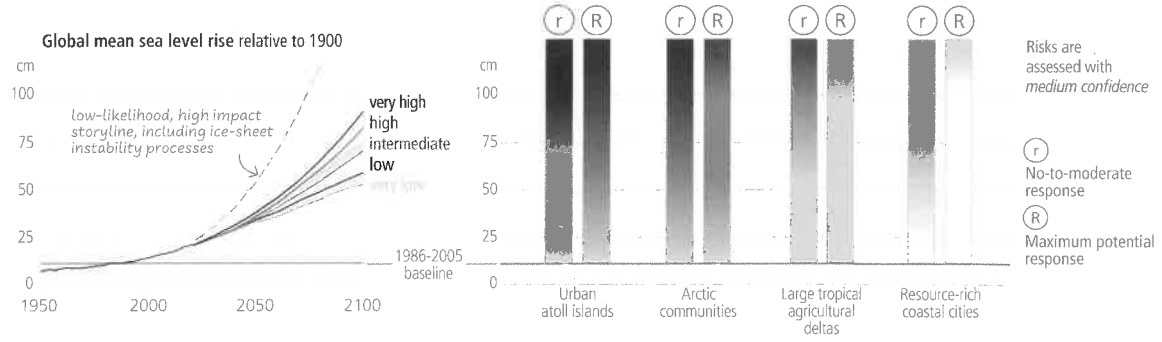
a) High risks are now assessed to occur at lower global warming levels



b) Risks differ by system

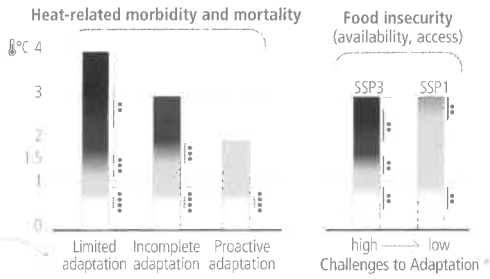


c) Risks to coastal geographies increase with sea level rise and depend on responses



d) Adaptation and socio-economic pathways affect levels of climate related risks

Limited adaptation (failure to proactively adapt; low investment in health systems); incomplete adaptation (incomplete adaptation planning; moderate investment in health systems); proactive adaptation (proactive adaptation management; higher investment in health systems)



The SSP1 pathway illustrates a world with low population growth, high income, and reduced inequalities, food produced in low GHG emission systems, effective land use regulation and high adaptive capacity (i.e., low challenges to adaptation). The SSP3 pathway has the opposite trends.

Figure SPM.4: Subset of assessed climate outcomes and associated global and regional climate risks. The burning embers result from a literature based expert elicitation. **Panel (a): Left** – Global surface temperature changes in °C relative to 1850–1900. These changes were obtained by combining CMIP6 model simulations with observational constraints based on past simulated warming, as well as an updated assessment of equilibrium climate sensitivity. *Very likely* ranges are shown for the low and high GHG emissions scenarios (SSP1-2.6 and SSP3-7.0) (Cross-Section Box.2). **Right** – Global Reasons for Concern (RFC), comparing AR6 (thick embers) and AR5 (thin embers) assessments. Risk transitions have generally shifted towards lower temperatures with updated scientific understanding. Diagrams are shown for each RFC, assuming low to no adaptation. Lines connect the midpoints of the transitions from moderate to high risk across AR5 and AR6. **Panel (b)**: Selected global risks for land and ocean ecosystems, illustrating general increase of risk with global warming levels with low to no adaptation. **Panel (c): Left** - Global mean sea level change in centimetres, relative to 1900. The historical changes (black) are observed by tide gauges before 1992 and altimeters afterwards. The future changes to 2100 (coloured lines and shading) are assessed consistently with observational constraints based on emulation of CMIP, ice-sheet, and glacier models, and *likely* ranges are shown for SSP1-2.6 and SSP3-7.0. **Right** - Assessment of the combined risk of coastal flooding, erosion and salinization for four illustrative coastal geographies in 2100, due to changing mean and extreme sea levels, under two response scenarios, with respect to the SROCC baseline period (1986–2005). The assessment does not account for changes in extreme sea level beyond those directly induced by mean sea level rise; risk levels could increase if other changes in extreme sea levels were considered (e.g., due to changes in cyclone intensity). "No-to-moderate response" describes efforts as of today (i.e., no further significant action or new types of actions). "Maximum potential response" represent a combination of responses implemented to their full extent and thus significant additional efforts compared to today, assuming minimal financial, social and political barriers. (In this context, 'today' refers to 2019.) The assessment criteria include exposure and vulnerability, coastal hazards, in-situ responses and planned relocation. Planned relocation refers to managed retreat or resettlements. The term response is used here instead of adaptation because some responses, such as retreat, may or may not be considered to be adaptation. **Panel (d)**: Selected risks under different socio-economic pathways, illustrating how development strategies and challenges to adaptation influence risk. **Left** - Heat-sensitive human health outcomes under three scenarios of adaptation effectiveness. The diagrams are truncated at the nearest whole °C within the range of temperature change in 2100 under three SSP scenarios. **Right** - Risks associated with food security due to climate change and patterns of socio-economic development. Risks to food security include availability and access to food, including population at risk of hunger, food price increases and increases in disability adjusted life years attributable to childhood underweight. Risks are assessed for two contrasted socio-economic pathways (SSP1 and SSP3) excluding the effects of targeted mitigation and adaptation policies. {*Figure 3.3*} (*Box SPM.1*)

Likelihood and Risks of Unavoidable, Irreversible or Abrupt Changes

B.3 Some future changes are unavoidable and/or irreversible but can be limited by deep, rapid, and sustained global greenhouse gas emissions reduction. The likelihood of abrupt and/or irreversible changes increases with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increases with higher global warming levels. (*high confidence*) {*3.1*}

B.3.1 Limiting global surface temperature does not prevent continued changes in climate system components that have multi-decadal or longer timescales of response (*high confidence*). Sea level rise is unavoidable for centuries to millennia due to continuing deep ocean warming and ice sheet melt, and sea levels will remain elevated for thousands of years (*high confidence*). However, deep, rapid, and sustained GHG emissions reductions would limit further sea level rise acceleration and projected long-term sea level rise commitment. Relative to 1995–2014, the *likely* global mean sea level rise under the SSP1-1.9 GHG emissions scenario is 0.15–0.23 m by 2050 and 0.28–0.55 m by 2100; while for the SSP5-8.5 GHG emissions scenario it is 0.20–0.29 m by 2050 and 0.63–1.01 m by 2100 (*medium confidence*). Over the next 2000 years, global mean sea level will rise by about 2–3 m if warming is limited to 1.5°C and 2–6 m if limited to 2°C (*low confidence*). {*3.1.3, Figure 3.4*} (*Box SPM.1*)

B.3.2 The likelihood and impacts of abrupt and/or irreversible changes in the climate system, including changes triggered when tipping points are reached, increase with further global warming (*high confidence*). As warming levels increase, so do the risks of species extinction or irreversible loss of biodiversity in ecosystems including forests (*medium confidence*), coral reefs (*very high confidence*) and in Arctic regions (*high confidence*). At sustained warming levels between 2°C and 3°C, the Greenland and West Antarctic ice sheets will be lost almost completely and irreversibly over multiple millennia, causing several metres of sea level rise *(limited evidence)*. The probability and rate of ice mass loss increase with higher global surface temperatures (*high confidence*). {*3.1.2, 3.1.3*}

B.3.3 The probability of low-likelihood outcomes associated with potentially very large impacts increases with higher global warming levels (*high confidence*). Due to deep uncertainty linked to ice-sheet processes, global mean sea level rise above the *likely* range – approaching 2 m by 2100 and in excess of 15 m by 2300 under the very high GHG emissions scenario (SSP5-8.5) (*low confidence*) – cannot be excluded. There is *medium confidence* that the Atlantic Meridional Overturning Circulation will not collapse abruptly before 2100, but if it were to occur, it would *very likely* cause abrupt shifts in regional weather patterns, and large impacts on ecosystems and human activities. {*3.1.3*} (*Box SPM.1*)

Adaptation Options and their Limits in a Warmer World

B.4 Adaptation options that are feasible and effective today will become constrained and less effective with increasing global warming. With increasing global warming, losses and damages will increase and additional human and natural systems will reach adaptation limits. Maladaptation can be avoided by flexible, multi-sectoral, inclusive, long-term planning and implementation of adaptation actions, with co-benefits to many sectors and systems. (*high confidence*) {*3.2, 4.1, 4.2, 4.3*}

B.4.1 The effectiveness of adaptation, including ecosystem-based and most water-related options, will decrease with increasing warming. The feasibility and effectiveness of options increase with integrated, multi-sectoral solutions that differentiate responses based on climate risk, cut across systems and address social inequities. As adaptation options often have long implementation times, long-term planning increases their efficiency. (*high confidence*) {*3.2, Figure 3.4, 4.1, 4.2*}

B.4.2 With additional global warming, limits to adaptation and losses and damages, strongly concentrated among vulnerable populations, will become increasingly difficult to avoid (*high confidence*). Above 1.5°C of global warming, limited freshwater resources pose potential hard adaptation limits for small islands and for regions dependent on glacier and snow melt (*medium confidence*). Above that level, ecosystems such as some warm-water coral reefs, coastal wetlands, rainforests, and polar and mountain ecosystems will have reached or surpassed hard adaptation limits and as a consequence, some Ecosystem-based Adaptation measures will also lose their effectiveness (*high confidence*). {*2.3.2, 3.2, 4.3*}

B.4.3 Actions that focus on sectors and risks in isolation and on short-term gains often lead to maladaptation over the long term, creating lock-ins of vulnerability, exposure and risks that are difficult to change. For example, seawalls effectively reduce impacts to people and assets in the short term but can also result in lock-ins and increase exposure to climate risks in the long term unless they are integrated into a long-term adaptive plan. Maladaptive responses can worsen existing inequities especially for Indigenous Peoples and marginalised groups and decrease ecosystem and biodiversity resilience. Maladaptation can be avoided by flexible, multi-sectoral, inclusive, long-term planning and implementation of adaptation actions, with co-benefits to many sectors and systems. (*high confidence*) {*2.3.2, 3.2*}

Carbon Budgets and Net Zero Emissions

B.5 Limiting human-caused global warming requires net zero CO_2 emissions. Cumulative carbon emissions until the time of reaching net zero CO_2 emissions and the level of greenhouse gas emission reductions this decade largely determine whether warming can be limited to 1.5°C or 2°C (*high confidence*). Projected CO_2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C (50%) (*high confidence*). {*2.3, 3.1, 3.3, Table 3.1*}

B.5.1 From a physical science perspective, limiting human-caused global warming to a specific level requires limiting cumulative CO_2 emissions, reaching at least net zero CO_2 emissions, along with strong reductions in other greenhouse gas emissions. Reaching net zero GHG emissions primarily requires deep reductions in CO_2, methane, and other GHG emissions, and implies net negative CO_2 emissions[39]. Carbon dioxide removal (CDR) will be necessary to achieve net negative CO_2 emissions (see B.6). Net zero GHG emissions, if sustained, are projected to result in a gradual decline in global surface temperatures after an earlier peak. (*high confidence*) {*3.1.1, 3.3.1, 3.3.2, 3.3.3, Table 3.1, Cross-Section Box.1*}

B.5.2 For every 1000 $GtCO_2$ emitted by human activity, global surface temperature rises by 0.45°C (best estimate, with a *likely* range from 0.27°C to 0.63°C). The best estimates of the remaining carbon budgets from the beginning of 2020 are 500 $GtCO_2$ for a 50% likelihood of limiting global warming to 1.5°C and 1150 $GtCO_2$ for a 67% likelihood of limiting warming to 2°C[40]. The stronger the reductions in non-CO_2 emissions, the lower the resulting temperatures are for a given remaining carbon budget or the larger remaining carbon budget for the same level of temperature change[41]. {*3.3.1*}

[39] Net zero GHG emissions defined by the 100-year global warming potential. See footnote 9.

[40] Global databases make different choices about which emissions and removals occurring on land are considered anthropogenic. Most countries report their anthropogenic land CO_2 fluxes including fluxes due to human-caused environmental change (e.g., CO_2 fertilisation) on 'managed' land in their national GHG inventories. Using emissions estimates based on these inventories, the remaining carbon budgets must be correspondingly reduced. {*3.3.1*}

[41] For example, remaining carbon budgets could be 300 or 600 $GtCO_2$ for 1.5°C (50%), respectively for high and low non-CO_2 emissions, compared to 500 $GtCO_2$ in the central case. {*3.3.1*}

B.5.3 If the annual CO_2 emissions between 2020–2030 stayed, on average, at the same level as 2019, the resulting cumulative emissions would almost exhaust the remaining carbon budget for 1.5°C (50%), and deplete more than a third of the remaining carbon budget for 2°C (67%). Estimates of future CO_2 emissions from existing fossil fuel infrastructures without additional abatement[42] already exceed the remaining carbon budget for limiting warming to 1.5°C (50%) (*high confidence*). Projected cumulative future CO_2 emissions over the lifetime of existing and planned fossil fuel infrastructure, if historical operating patterns are maintained and without additional abatement[43], are approximately equal to the remaining carbon budget for limiting warming to 2°C with a likelihood of 83%[44] (*high confidence*). {*2.3.1, 3.3.1, Figure 3.5*}

B.5.4 Based on central estimates only, historical cumulative net CO_2 emissions between 1850 and 2019 amount to about four fifths[45] of the total carbon budget for a 50% probability of limiting global warming to 1.5°C (central estimate about 2900 $GtCO_2$), and to about two thirds[46] of the total carbon budget for a 67% probability to limit global warming to 2°C (central estimate about 3550 $GtCO_2$). {*3.3.1, Figure 3.5*}

Mitigation Pathways

B.6 All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade. Global net zero CO_2 emissions are reached for these pathway categories, in the early 2050s and around the early 2070s, respectively. (*high confidence*) {*3.3, 3.4, 4.1, 4.5, Table 3.1*} (*Figure SPM.5, Box SPM.1*)

B.6.1 Global modelled pathways provide information on limiting warming to different levels; these pathways, particularly their sectoral and regional aspects, depend on the assumptions described in Box SPM.1. Global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot or limit warming to 2°C (>67%) are characterized by deep, rapid, and, in most cases, immediate GHG emissions reductions. Pathways that limit warming to 1.5 °C (>50%) with no or limited overshoot reach net zero CO_2 in the early 2050s, followed by net negative CO_2 emissions. Those pathways that reach net zero GHG emissions do so around the 2070s. Pathways that limit warming to 2 °C (>67%) reach net zero CO_2 emissions in the early 2070s. Global GHG emissions are projected to peak between 2020 and at the latest before 2025 in global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot and in those that limit warming to 2°C (>67%) and assume immediate action. (*high confidence*) {*3.3.2, 3.3.4, 4.1, Table 3.1, Figure 3.6*} (*Table SPM.1*)

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42 Abatement here refers to human interventions that reduce the amount of greenhouse gases that are released from fossil fuel infrastructure to the atmosphere.

43 Ibid.

44 WGI provides carbon budgets that are in line with limiting global warming to temperature limits with different likelihoods, such as 50%, 67% or 83%. {*3.3.1*}

45 Uncertainties for total carbon budgets have not been assessed and could affect the specific calculated fractions.

46 Ibid.

Table SPM.1: Greenhouse gas and CO_2 emission reductions from 2019, median and 5-95 percentiles. {*3.3.1, 4.1, Table 3.1, Figure 2.5, Box SPM.1*}

		Reductions from 2019 emission levels (%)			
		2030	2035	2040	2050
Limit warming to1.5°C (>50%) with no or limited overshoot	GHG	43 [34-60]	60 [49-77]	69 [58-90]	84 [73-98]
	CO_2	48 [36-69]	65 [50-96]	80 [61-109]	99 [79-119]
Limit warming to 2°C (>67%)	GHG	21 [1-42]	35 [22-55]	46 [34-63]	64 [53-77]
	CO_2	22 [1-44]	37 [21-59]	51 [36-70]	73 [55-90]

B.6.2 Reaching net zero CO_2 or GHG emissions primarily requires deep and rapid reductions in gross emissions of CO_2, as well as substantial reductions of non-CO_2 GHG emissions (*high confidence*). For example, in modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, global methane emissions are reduced by 34 [21–57] % by 2030 relative to 2019. However, some hard-to-abate residual GHG emissions (e.g., some emissions from agriculture, aviation, shipping, and industrial processes) remain and would need to be counterbalanced by deployment of CDR methods to achieve net zero CO_2 or GHG emissions (*high confidence*). As a result, net zero CO_2 is reached earlier than net zero GHGs (*high confidence*). {*3.3.2, 3.3.3, Table 3.1, Figure 3.5*} (*Figure SPM.5*)

B.6.3 Global modelled mitigation pathways reaching net zero CO_2 and GHG emissions include transitioning from fossil fuels without carbon capture and storage (CCS) to very low- or zero-carbon energy sources, such as renewables or fossil fuels with CCS, demand-side measures and improving efficiency, reducing non-CO_2 GHG emissions, and CDR[47]. In most global modelled pathways, land-use change and forestry (via reforestation and reduced deforestation) and the energy supply sector reach net zero CO_2 emissions earlier than the buildings, industry and transport sectors. (*high confidence*) {*3.3.3, 4.1, 4.5, Figure 4.1*} (*Figure SPM.5, Box SPM.1*)

B.6.4 Mitigation options often have synergies with other aspects of sustainable development, but some options can also have trade-offs. There are potential synergies between sustainable development and, for instance, energy efficiency and renewable energy. Similarly, depending on the context[48], biological CDR methods like reforestation, improved forest management, soil carbon sequestration, peatland restoration and coastal blue carbon management can enhance biodiversity and ecosystem functions, employment and local livelihoods. However, afforestation or production of biomass crops can have adverse socio-economic and environmental impacts, including on biodiversity, food and water security, local livelihoods and the rights of Indigenous Peoples, especially if implemented at large scales and where land tenure is insecure. Modelled pathways that assume using resources more efficiently or that shift global development towards sustainability include fewer challenges, such as less dependence on CDR and pressure on land and biodiversity. (*high confidence*) {*3.4.1*}

[47] CCS is an option to reduce emissions from large-scale fossil-based energy and industry sources provided geological storage is available. When CO_2 is captured directly from the atmosphere (DACCS), or from biomass (BECCS), CCS provides the storage component of these CDR methods. CO_2 capture and subsurface injection is a mature technology for gas processing and enhanced oil recovery. In contrast to the oil and gas sector, CCS is less mature in the power sector, as well as in cement and chemicals production, where it is a critical mitigation option. The technical geological storage capacity is estimated to be on the order of 1000 $GtCO_2$, which is more than the CO_2 storage requirements through 2100 to limit global warming to 1.5°C, although the regional availability of geological storage could be a limiting factor. If the geological storage site is appropriately selected and managed, it is estimated that the CO_2 can be permanently isolated from the atmosphere. Implementation of CCS currently faces technological, economic, institutional, ecological-environmental and socio-cultural barriers. Currently, global rates of CCS deployment are far below those in modelled pathways limiting global warming to 1.5°C to 2°C. Enabling conditions such as policy instruments, greater public support and technological innovation could reduce these barriers. (*high confidence*) {*3.3.3*}

[48] The impacts, risks, and co-benefits of CDR deployment for ecosystems, biodiversity and people will be highly variable depending on the method, site-specific context, implementation and scale (*high confidence*).

Limiting warming to 1.5°C and 2°C involves rapid, deep and in most cases immediate greenhouse gas emission reductions

Net zero CO_2 and net zero GHG emissions can be achieved through strong reductions across all sectors

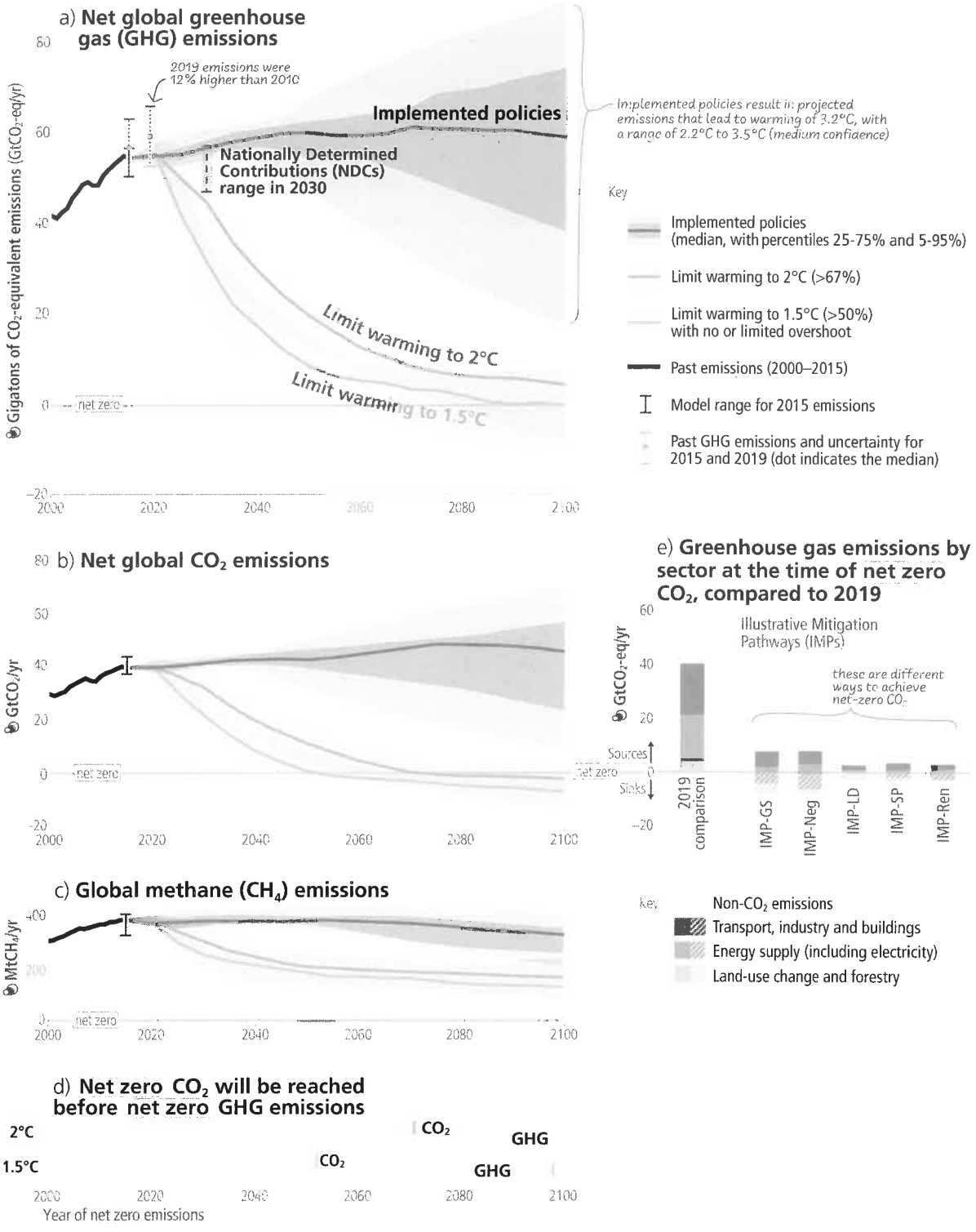

Figure SPM.5: Global emissions pathways consistent with implemented policies and mitigation strategies. Panels (a), (b) and **(c)** show the development of global GHG, CO_2 and methane emissions in modelled pathways, while **panel (d)** shows the associated timing of when GHG and CO_2 emissions reach net zero. Coloured ranges denote the 5th to 95th percentile across the global modelled pathways falling within a given category as described in Box SPM.1. The red ranges depict emissions pathways assuming policies that were implemented by the end of 2020. Ranges of modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot are shown in light blue (category C1) and pathways that limit warming to 2°C (>67%) are shown in green (category C3). Global emission pathways that would limit warming to 1.5°C (>50%) with no or limited overshoot and also reach net zero GHG in the second half of the century do so between 2070–2075. **Panel (e)** shows the sectoral contributions of CO_2 and non-CO_2 emissions sources and sinks at the time when net zero CO_2 emissions are reached in illustrative mitigation pathways (IMPs) consistent with limiting warming to 1.5°C with a high reliance on net negative emissions (IMP-Neg) ("high overshoot"), high resource efficiency (IMP-LD), a focus on sustainable development (IMP-SP), renewables (IMP-Ren) and limiting warming to 2°C with less rapid mitigation initially followed by a gradual strengthening (IMP-GS). Positive and negative emissions for different IMPs are compared to GHG emissions from the year 2019. Energy supply (including electricity) includes bioenergy with carbon dioxide capture and storage and direct air carbon dioxide capture and storage. CO_2 emissions from land-use change and forestry can only be shown as a net number as many models do not report emissions and sinks of this category separately. {*Figure 3.6, 4.1*} (*Box SPM.1*)

Overshoot: Exceeding a Warming Level and Returning

B.7 If warming exceeds a specified level such as 1.5°C, it could gradually be reduced again by achieving and sustaining net negative global CO_2 emissions. This would require additional deployment of carbon dioxide removal, compared to pathways without overshoot, leading to greater feasibility and sustainability concerns. Overshoot entails adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot. (*high confidence*) {*3.1, 3.3, 3.4, Table 3.1, Figure 3.6*}

B.7.1 Only a small number of the most ambitious global modelled pathways limit global warming to 1.5°C (>50%) by 2100 without exceeding this level temporarily. Achieving and sustaining net negative global CO_2 emissions, with annual rates of CDR greater than residual CO_2 emissions, would gradually reduce the warming level again (*high confidence*). Adverse impacts that occur during this period of overshoot and cause additional warming via feedback mechanisms, such as increased wildfires, mass mortality of trees, drying of peatlands, and permafrost thawing, weakening natural land carbon sinks and increasing releases of GHGs would make the return more challenging (*medium confidence*). {*3.3.2, 3.3.4, Table 3.1, Figure 3.6*} (*Box SPM.1*)

B.7.2 The higher the magnitude and the longer the duration of overshoot, the more ecosystems and societies are exposed to greater and more widespread changes in climatic impact-drivers, increasing risks for many natural and human systems. Compared to pathways without overshoot, societies would face higher risks to infrastructure, low-lying coastal settlements, and associated livelihoods. Overshooting 1.5°C will result in irreversible adverse impacts on certain ecosystems with low resilience, such as polar, mountain, and coastal ecosystems, impacted by ice-sheet melt, glacier melt, or by accelerating and higher committed sea level rise. (*high confidence*) {*3.1.2, 3.3.4*}

B.7.3 The larger the overshoot, the more net negative CO_2 emissions would be needed to return to 1.5°C by 2100. Transitioning towards net zero CO_2 emissions faster and reducing non-CO_2 emissions such as methane more rapidly would limit peak warming levels and reduce the requirement for net negative CO_2 emissions, thereby reducing feasibility and sustainability concerns, and social and environmental risks associated with CDR deployment at large scales. (*high confidence*) {*3.3.3, 3.3.4, 3.4.1, Table 3.1*}

C. Responses in the Near Term

Urgency of Near-Term Integrated Climate Action

C.1 Climate change is a threat to human well-being and planetary health (*very high confidence*). There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*). Climate resilient development integrates adaptation and mitigation to advance sustainable development for all, and is enabled by increased international cooperation including improved access to adequate financial resources, particularly for vulnerable regions, sectors and groups, and inclusive governance and coordinated policies (*high confidence*). The choices and actions implemented in this decade will have impacts now and for thousands of years (*high confidence*). {*3.1, 3.3, 4.1, 4.2, 4.3, 4.4, 4.7, 4.8, 4.9, Figure 3.1, Figure 3.3, Figure 4.2*} (*Figure SPM.1, Figure SPM.6*)

C.1.1 Evidence of observed adverse impacts and related losses and damages, projected risks, levels and trends in vulnerability and adaptation limits, demonstrate that worldwide climate resilient development action is more urgent than previously assessed in AR5. Climate resilient development integrates adaptation and GHG mitigation to advance sustainable development for all. Climate resilient development pathways have been constrained by past development, emissions and climate change and are progressively constrained by every increment of warming, in particular beyond 1.5°C. (*very high confidence*) {*3.4, 3.4.2, 4.1*}

C.1.2 Government actions at sub-national, national and international levels, with civil society and the private sector, play a crucial role in enabling and accelerating shifts in development pathways towards sustainability and climate resilient development (*very high confidence*). Climate resilient development is enabled when governments, civil society and the private sector make inclusive development choices that prioritize risk reduction, equity and justice, and when decision-making processes, finance and actions are integrated across governance levels, sectors, and timeframes (*very high confidence*). Enabling conditions are differentiated by national, regional and local circumstances and geographies, according to capabilities, and include: political commitment and follow-through, coordinated policies, social and international cooperation, ecosystem stewardship, inclusive governance, knowledge diversity, technological innovation, monitoring and evaluation, and improved access to adequate financial resources, especially for vulnerable regions, sectors and communities (*high confidence*). {*3.4, 4.2, 4.4, 4.5, 4.7, 4.8*} (*Figure SPM.6*)

C.1.3 Continued emissions will further affect all major climate system components, and many changes will be irreversible on centennial to millennial time scales and become larger with increasing global warming. Without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and well-being of current and future generations. (*high confidence*) {*3.1.3, 3.3.3, 3.4.1, Figure 3.4, 4.1, 4.2, 4.3, 4.4*} (*Figure SPM.1, Figure SPM.6*)

There is a rapidly narrowing window of opportunity to enable climate resilient development

Multiple interacting choices and actions can shift development pathways towards sustainability

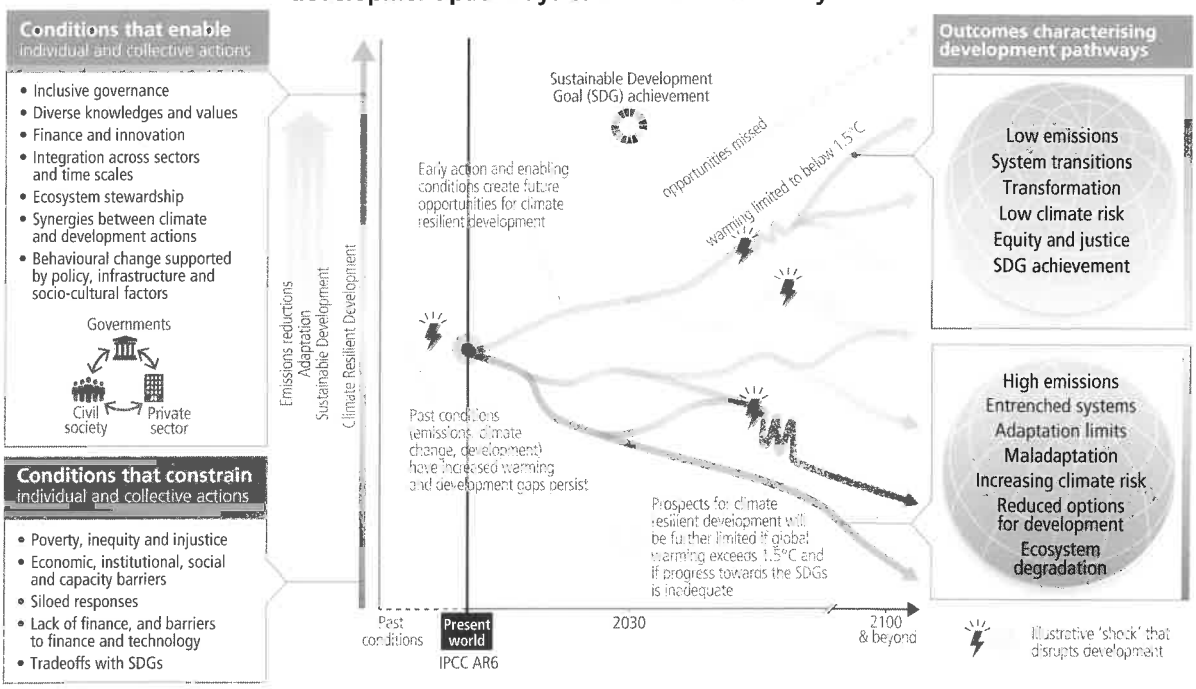

Figure SPM.6: The illustrative development pathways (red to green) and associated outcomes (right panel) show that there is a rapidly narrowing window of opportunity to secure a liveable and sustainable future for all. Climate resilient development is the process of implementing greenhouse gas mitigation and adaptation measures to support sustainable development. Diverging pathways illustrate that interacting choices and actions made by diverse government, private sector and civil society actors can advance climate resilient development, shift pathways towards sustainability, and enable lower emissions and adaptation. Diverse knowledge and values include cultural values, Indigenous Knowledge, local knowledge, and scientific knowledge. Climatic and non-climatic events, such as droughts, floods or pandemics, pose more severe shocks to pathways with lower climate resilient development (red to yellow) than to pathways with higher climate resilient development (green). There are limits to adaptation and adaptive capacity for some human and natural systems at global warming of 1.5°C, and with every increment of warming, losses and damages will increase. The development pathways taken by countries at all stages of economic development impact GHG emissions and mitigation challenges and opportunities, which vary across countries and regions. Pathways and opportunities for action are shaped by previous actions (or inactions and opportunities missed; dashed pathway) and enabling and constraining conditions (left panel), and take place in the context of climate risks, adaptation limits and development gaps. The longer emissions reductions are delayed, the fewer effective adaptation options. {*Figure 4.2, 3.1, 3.2, 3.4, 4.2, 4.4, 4.5, 4.6, 4.9*}

The Benefits of Near-Term Action

C.2 Deep, rapid, and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems (*very high confidence*), and deliver many co-benefits, especially for air quality and health (*high confidence*). Delayed mitigation and adaptation action would lock in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages (*high confidence*). Near-term actions involve high up-front investments and potentially disruptive changes that can be lessened by a range of enabling policies (*high confidence*). {*2.1, 2.2, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8*}

C.2.1 Deep, rapid, and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce future losses and damages related to climate change for humans and ecosystems (*very high confidence*). As adaptation options often have long implementation times, accelerated implementation of adaptation in this decade is important to close adaptation gaps (*high confidence*). Comprehensive, effective, and innovative responses integrating adaptation and mitigation can harness synergies and reduce trade-offs between adaptation and mitigation (*high confidence*). {*4.1, 4.2, 4.3*}

BANK OF ENGLAND

Speech

Breaking the Tragedy of the Horizon – climate change and financial stability

Speech given by

Mark Carney

Governor of the Bank of England

Chairman of the Financial Stability Board

Lloyd's of London

29 September 2015

I am grateful to Rhys Phillips and Iain de Weymarn for their assistance in preparing these remarks, and to Michael Sheren, Clare Ashton, Matthew Scott and Professor Myles Allen for their comments.

I'm grateful to Lloyd's for the invitation to speak tonight on the occasion of the first City Dinner held in this magnificent, eponymous "Room".

Lloyd's is the bedrock of the UK insurance industry.

An industry whose direct contribution to the UK economy is impressive: 300,000 high-paying jobs and £25bn in annual GDP.

Its economic contribution goes much deeper.

Insurance supports households, companies and investors, safeguarding them from perils they could not otherwise shoulder.

It matches long-term savings and investment, financing the infrastructure essential to productivity. With its unique perspective and skill set, insurance diversifies the financial system and reinforces its resilience.

Since 1688 Lloyd's has, in the great tradition of the City, served both the UK and the world, providing protection against the perils of the age; helping enterprise and trade to thrive.

From its origins in marine insurance, the Lloyd's market has evolved constantly to meet the needs of a rapidly changing world.

The first excess of loss reinsurance was created here.

Modern catastrophe cover was born with your decision to stand by policyholders after the San Francisco earthquake.

And Lloyd's pioneered aviation insurance.[1]

With eyes constantly on the horizon, Lloyd's has remained at the forefront of global insurance.

Today, you are insuring new classes of risk in new parts of the world – from cyber to climate, from space to specie, from Curitiba to Chengdu.

And you are doing so in market conditions as challenging as any in the last 20 years.

[1] The first aviation policy was written in 1911, followed in 1919 by the founding of the British Aviation Insurance Association. That venture closed in 1921, with underwriters concluding that *'there seems to be no immediate future in aviation insurance…'* 'www.lloyds.com/lloyds/about-us/history/innovation-and-unusual-risks/pioneers-of-travel.

The need to manage emerging, mega risks is as important as ever.

Alongside major technological, demographic and political shifts, our very world is changing. Shifts in our climate bring potentially profound implications for insurers, financial stability and the economy.

I will focus on those risks from climate change this evening.

The tragedy of the horizon

There is a growing international consensus that climate change is unequivocal.[2]

Many of the changes in our world since the 1950s are without precedent: not merely over decades but over millennia.

Research tells us with a high degree of confidence that:

- In the Northern Hemisphere the last 30 years have been the warmest since Anglo-Saxon times; indeed, eight of the ten warmest years on record in the UK have occurred since 2002;[3]
- Atmospheric concentrations of greenhouse gases are at levels not seen in 800,000 years; and
- The rate of sea level rise is quicker now than at any time over the last 2 millennia.[4]

Evidence is mounting of man's role in climate change. Human drivers are judged extremely likely to have been the dominant cause of global warming since the mid-20th century.[5] While natural fluctuations may mask it temporarily, the underlying human-induced warming trend of two-tenths of a degree per decade has continued unabated since the 1970s.[6]

While there is always room for scientific disagreement about climate change (as there is with any scientific issue) I have found that insurers are amongst the most determined advocates for tackling it sooner rather than later. And little wonder. While others have been debating the theory, you have been dealing with the reality:

- Since the 1980s the number of registered weather-related loss events has tripled; and

[2] For instance, the IPCC has stated "*Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia*". See IPCC - Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014).
[3] See www.metoffice.gov.uk/news/releases/archive/2015/Record-UK-temps-2014.
[4] See IPCC (2014).
[5] See IPCC (2014) which notes that the effects of anthropogenic greenhouse gas emissions, together with other anthropogenic drivers are "*extremely likely to have been the dominant cause of observed [global] warming since the mid-20th Century*".
[6] See, for example, Otto et al (2015).

- Inflation-adjusted insurance losses from these events have increased from an annual average of around $10bn in the 1980s to around $50bn over the past decade.[7]

The challenges currently posed by climate change pale in significance compared with what might come. The far-sighted amongst you are anticipating broader global impacts on property, migration and political stability, as well as food and water security.[8]

So why isn't more being done to address it?

A classic problem in environmental economics is the tragedy of the commons. The solution to it lies in property rights and supply management.

Climate change is the Tragedy of the *Horizon*.

We don't need an army of actuaries to tell us that the catastrophic impacts of climate change will be felt beyond the traditional horizons of most actors – imposing a cost on future generations that the current generation has no direct incentive to fix.

That means beyond:

- the **business cycle;**[9]

- the **political cycle**; and

- the **horizon of technocratic authorities**, like central banks, who are bound by their mandates.

The horizon for monetary policy extends out to 2-3 years. For financial stability it is a bit longer, but typically only to the outer boundaries of the credit cycle – about a decade.[10]

In other words, once climate change becomes a defining issue for financial stability, it may already be too late.

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[7] See Munich Re, NatCatSERVICE (2015).
[8] The report *'Risky Business – the economic risks of climate change in the United States'* (2014) suggests that in the USA $238-507bn worth of coastal property could be below sea level by 2100. Research by Lloyd's identifies climate change as an important supply-side issue for food security. See www.lloyds.com/~/media/lloyds/reports/emerging%20risk%20reports/food%20report.pdf. This is consistent with the views expressed by Lloyd's market participants surveyed by the PRA for its report to Defra.
[9] Few business leaders list climate change as a near-term pressing risk. See, for instance, PWC's annual survey of CEOs (www.pwc.com/gx/en/ceo-agenda/ceo-survey.html) and the Bank of England's Systemic Risk Survey (www.bankofengland.co.uk/publications/Documents/other/srs/srs2015h1.pdf).
[10] Even credit ratings typically only look out to 3-5 years.

This paradox is deeper, as Lord Stern and others have amply demonstrated. As risks are a function of cumulative emissions, earlier action will mean less costly adjustment.[11]

The desirability of restricting climate change to 2 degrees above pre-industrial levels[12] leads to the notion of a carbon 'budget', an assessment of the amount of emissions the world can 'afford'.

Such a budget - like the one produced by the IPCC[13] - highlights the consequences of inaction today for the scale of reaction required tomorrow.

These actions will be influenced by policy choices that are rightly the responsibility of elected governments, advised by scientific experts. In ten weeks representatives of 196 countries will gather in Paris at the COP21 summit to consider the world's response to climate change. It is governments who must choose whether, and how, to pursue that 2 degree world.

And the role of finance? Earlier this year, G20 Finance Ministers asked the Financial Stability Board to consider how the financial sector could take account of the risks climate change poses to our financial system.

As Chair of the FSB I hosted a meeting last week where the private and public sectors discussed the current and prospective financial stability risks from climate change and what might be done to mitigate them.
I want to share some thoughts on the way forward after providing some context beginning with lessons from the insurance sector.

Climate change and financial stability

There are three broad channels through which climate change can affect financial stability:

- First, **physical risks**: the impacts today on insurance liabilities and the value of financial assets that arise from climate- and weather-related events, such as floods and storms that damage property or disrupt trade;

[11] For instance, IPCC (2014) Conclusion SPM 2.1 notes that "*cumulative emissions of CO2 largely determine global mean surface warming by the late 21st century and beyond*". The Stern review observes that "*many greenhouse gases, including carbon dioxide, stay in the atmosphere for more than a century*" (See The Stern Review of the Economic Effects of Climate Change (2006)).
[12] The Cancun Agreement in 2010 committed governments to "*hold the increase in global average temperature below two degrees*". Discussion of this level has been attributed to Nordhaus (1975). Others, including the UNEP Advisory Group on Greenhouse Gasses (1990) have suggested that two degrees could be a point beyond which the damage caused by climate change may become non-linear.
[13] See IPCC (2014).

- Second, **liability risks**: the impacts that could arise tomorrow if parties who have suffered loss or damage from the effects of climate change seek compensation from those they hold responsible. Such claims could come decades in the future, but have the potential to hit carbon extractors and emitters – and, if they have liability cover, their insurers – the hardest;

- Finally, **transition risks**: the financial risks which could result from the process of adjustment towards a lower-carbon economy. Changes in policy, technology and physical risks could prompt a reassessment of the value of a large range of assets as costs and opportunities become apparent.

The speed at which such re-pricing occurs is uncertain and could be decisive for financial stability. There have already been a few high profile examples of jump-to-distress pricing because of shifts in environmental policy or performance.

Risks to financial stability will be minimised if the transition begins early and follows a predictable path, thereby helping the market anticipate the transition to a 2 degree world.

To draw out these crucial points consider the Bank of England's current approach to the insurance sector.

As regulator of the world's third largest insurance industry, the PRA is responsible for protecting policyholders and ensuring the safety and soundness of insurers.

Our supervision is forward-looking and judgement-based. It is risk-based and proportionate – tailored to different business models around the sector – and considers both business-as-usual and whether a firm can fail safely – recognising that "zero failure" is neither desirable nor realistic.

Our supervisors take a view of your business plans, risk management, governance, and capital models. Where the PRA judges that it is necessary to intervene it does so sooner rather than later.

While our mandate is to protect policyholders – many of whom are local – we are conscious that international competition needs robust and internationally-consistent regulatory standards.

Solvency II is a good example. It is a prudent but proportionate Directive, that embodies the core principles of our domestic standards and embeds them more consistently across Europe while replacing a patchwork of local regimes.

Another example of how best practice is converging globally is the FSB agreement last week on HLA for global systemic insurers, as well as its support for the IASB completing its new insurance contracts standard. The UK insurance industry is well-prepared for such developments.

Forward-looking regulators consider not just the here and now, but emerging vulnerabilities and their impact on business models.

That is why the PRA has worked with regulated firms, many of them represented here tonight, to produce for the Department for Environment, Food and Rural Affairs a review – published today – into the impact of climate change on British insurers.

The Report concludes that insurers stand exposed to each of the three types of risk climate change poses to finance; and while the sector is well-placed to respond in the near-term you should not assume your ability to manage risks today means the future is secure. Longer term risks could have severe impacts on you and your policyholders.

The insurance response to climate change

It stands to reason that general insurers are the most directly exposed to such losses.

Potential increases in the frequency or severity of extreme weather events driven by climate change could mean longer and stronger heat waves; the intensification of droughts; and a greater number of severe storms.

Despite winter 2014 being England's wettest since the time of King George III; forecasts suggest we can expect at least a further 10% increase in rainfall during future winters.[14]

A prospect guaranteed to dampen the spirits and shoes of those who equate climate change with global warming.

While the attribution of increases in claims to specific factors is complex, the **direct costs** of climate change are already affecting insurers' underwriting strategies and accounts.

For example, work done here at Lloyd's of London estimated that the 20cm rise in sea-level at the tip of Manhattan since the 1950s, when all other factors are held constant, increased insured losses from Superstorm Sandy by 30% in New York alone.[15]

Beyond these direct costs, there is an upward trend in losses that arise indirectly through second-order events like the disruption of global supply chains.

[14] See Met Office research into climate observations, projections and impacts - http://www.metoffice.gov.uk/media/pdf/t/r/UK.pdf.
[15] A Lloyd's report ("*Catastrophe Modelling and Climate Change*" - 2014) looks at factors that influence the impact of hurricanes. It notes the importance of sea-level changes – in addition to wind speed and tides – in the impact of Sandy on New York. See www.lloyds.com/~/media/Lloyds/Reports/Emerging%20Risk%20Reports/CC%20and%20modelling%20template%20V6.pdf.

Insurers are therefore amongst those with the greatest incentives to understand and tackle climate change in the short term. Your motives are sharpened by commercial concern as capitalists and by moral considerations as global citizens. And your response is at the cutting edge of the understanding and management of risks arising from climate change.

Lloyd's underwriters were the first to use storm records to mesh natural science with finance in order to analyse changing weather patterns. Events like Hurricanes Andrew, Katrina and Ike have helped advance catastrophe risk modelling and provisioning.[16] Today Lloyd's underwriters are required to consider climate change explicitly in their business plans and underwriting models.

Your genius has been to recognise that past is not prologue and that the catastrophic norms of the future can be seen in the tail risks of today.

For example, by holding capital at a one in 200 year risk appetite, UK insurers withstood the events of 2011, one of the worst years on record for insurance losses. Your models were validated, claims were paid, and solvency was maintained.

The combination of your forecasting models, a forward-looking capital regime and business models built around short-term policies means general insurers are well-placed to manage physical risks in the near term.

But further ahead, increasing levels of physical risk due to climate change could present significant challenges to general insurance business models.

Improvements in risk modelling must be unrelenting as loss frequency and severity shifts with:

- Insurance extending into new markets not covered by existing models;
- Previously unanticipated risks coming to the fore; and
- Increasingly volatile weather trends and hydrological cycles making the future ever-harder to predict.

For example, the extent to which European windstorms occur in clusters[17] could increase the frequency of catastrophes and reduce diversification benefits.

[16] As the PRA's report to Defra notes, major catastrophe events have often driven innovations in risk management. For example, following Hurricane Andrew (1992, $15.5 billion uninflated insured losses) and the associated insolvency of eight insurance companies, the industry developed a more sophisticated approach to assessing catastrophe risk, and became more resilient to similar events.
[17] Discussions on correlation are not new. For example, a current issue is the extent to which European windstorms occur in clusters, such as windstorms Daria, Vivian, Wiebke and Herta in 1990 and Lothar, Martin, and Anatol in 1999.

Indeed, there are some estimates that currently modelled losses could be undervalued by as much as 50% if recent weather trends were to prove representative of the new normal.[18] In addition, climate change could prompt increased morbidity and mortality from disease or pandemics.

Such developments have the potential to shift the balance between premiums and claims significantly, and render currently lucrative business non-viable.

Absent actions to mitigate climate change, policyholders will also feel the impact as pricing adjusts and cover is withdrawn.[19]

Insurers' rational responses to physical risks can have very real consequences and pose acute public policy problems.

In some extreme cases, householders in the Caribbean have found storm patterns render them unable to get private cover, prompting mortgage lending to dry up, values to collapse and neighbourhoods to become abandoned.

Thankfully these cases are rare. But the recognition of the potential impact of such risks has prompted a publicly-backed scheme in the UK – Flood Re – to ensure access to affordable flood insurance for half a million homes now considered to be at the highest risk of devastating flooding.

This example underlines a wider point. While the insurance industry is well placed to adapt to a changing climate in the short-term, their response could pose wider issues for society, including whether to nationalise risk.

The passage of time may also reveal risks that even the most advanced models are not able to predict, such as third party liability risks.

Participants in the Lloyd's market know all too well that what appear to be low probability risks can evolve into large and unforeseen costs over a longer timescale.

Claims on third-party liability insurance – in classes like public liability, directors' and officers' and professional indemnity - could be brought if those who have suffered losses show that insured parties have failed to mitigate risks to the climate; failed to account for the damage they cause to the environment; or failed to comply with regulations.

[18] See Standard and Poor's – '*Climate Change Could Sting Reinsurers That Underestimate Its Impact*' (2014).
[19] In 1992 after Hurricanes Andrew and Iniki hit the US, the price of reinsuring weather risks spiked and several carriers left the market, leading to a rise of up to 40% in premiums in some parts of Florida. A series of hurricanes affecting the Bahamas has prompted several insurers to withdraw flood cover for low-lying areas.

Asbestos alone is expected to cost insurers $85bn on a net ultimate claims basis in the United States – equivalent to almost three Superstorm Sandy-sized loss events.[20]

It would be premature to draw too close an analogy with climate risks, and it is true that court cases have, so far, largely been unsuccessful.

Cases like Arch Coal and Peabody Energy – where it is alleged that the directors of corporate pension schemes failed in their fiduciary duties by not considering financial risks driven at least in part by climate change[21] – illustrate the potential for long-tail risks to be significant, uncertain and non-linear.

And 'Loss and Damage' from climate change – and what to do about it – is now formally on the agenda of the United Nations Framework Convention on Climate Change, with some talking openly about the case for compensation.[22]

These risks will only increase as the science and evidence of climate change hardens.

Physical risks from climate change will also become increasingly relevant to the **asset side** of insurer's balance sheets.[23]

While the ability to re-price or withdraw cover mitigates some risk to an insurer, as climate change progresses, insurers need to be wary of cognitive dissonance within their organisations whereby prudent decisions by underwriters lead to falls in the value of properties held by the firm's asset managers. This highlights the transition risk from climate change.

Transition risks

The UK insurance sector manages almost £2tn in assets to match liabilities that often span decades. While a given physical manifestation of climate change – a flood or storm – may not directly affect a corporate bond's value, policy action to promote the transition towards a low-carbon economy could spark a fundamental reassessment.

Take, for example, the IPCC's estimate of a carbon budget that would likely limit global temperature rises to 2 degrees above pre-industrial levels.

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[20] See AM Best – *Special Report: Asbestos Losses Fueled by Rising Number of Lung Cancer Cases* (2013) www.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=0&refnum=20451.

[21] See *Roe v Arch Coal Inc et al*, Case: 4:15-cv-00910-NAB, United States District Court, Eastern District of Missouri, 9 June 2015 and *Lynn v Peabody Energy Corporation et al*, Case: 4:15-cv-00916-AGF, United States District Court, Eastern District of Missouri, 11 June 2015. Note that as at 1 September 2015 the defences to these claims were yet to be filed.

[22] Loss and damage refers to impact of climate change not mitigated by reductions in emissions. The UNFCCC Warsaw agreement in 2013 discussed support for measures to address loss and damage. See http://unfccc.int/resource/docs/2013/cop19/eng/10a01.pdf.

[23] The largest UK insurers hold or manage in excess of £40bn of CRE and infrastructure assets, and have committed to further such investments in future. For instance, six major insurers pledged to invest £25bn into UK domestic infrastructure in 2013 as part of the Government's national infrastructure plan (see http://www.ft.com/cms/s/0/1f74e176-5c41-11e3-b4f3-00144feabdc0.html).

That budget amounts to between 1/5th and 1/3rd world's proven reserves of oil, gas and coal. [24]

If that estimate is even approximately correct it would render the vast majority of reserves "stranded" – oil, gas and coal that will be literally unburnable without expensive carbon capture technology, which itself alters fossil fuel economics.[25]

The exposure of UK investors, including insurance companies, to these shifts is potentially huge.

19% of FTSE 100 companies are in natural resource and extraction sectors; and a further 11% by value are in power utilities, chemicals, construction and industrial goods sectors. Globally, these two tiers of companies between them account for around one third of equity and fixed income assets.

On the other hand, financing the de-carbonisation of our economy is a major opportunity for insurers as long-term investors. It implies a sweeping reallocation of resources and a technological revolution, with investment in long-term infrastructure assets at roughly quadruple the present rate.[26]

For this to happen, "green" finance cannot conceivably remain a niche interest over the medium term.

There are a number of factors which could influence the speed of transition to a low carbon economy including public policy, technology, investor preferences and physical events.

From a regulator's perspective the point is not that a reassessment of values is inherently unwelcome. It is not. Capital should be allocated to reflect fundamentals, including externalities.

But a wholesale reassessment of prospects, especially if it were to occur suddenly, could potentially destabilise markets, spark a pro-cyclical crystallisation of losses and a persistent tightening of financial conditions.

In other words, an abrupt resolution of the tragedy of horizons is in itself a financial stability risk.

The more we invest with foresight; the less we will regret in hindsight.

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[24] The IPCC gives a range of budgets for future emissions which depends on assumptions about other climate drivers and the level of risk of temperatures going >2 degrees that society is willing to accept. It sets these in the context of existing fossil fuel reserves. See table 2.2 in IPCC (2014).

[25] The IPCC makes clear that, without this critical technology, the cost of meeting the two degree goal more than doubles – if it can be achieved at all. Canada is home to the world's first *commercial*-scale CCS plant at Boundary Dam. Other projects rely on government subsidies which can prove unreliable. If companies are relying on CCS to achieve net zero carbon emissions, investors will want to assess how they plan to get there – and who they expect to pay for it.

[26] The IPCC estimates that additional investment of US$ 190-900bn is required annually in the energy sector alone if the rise in average global temperature is to be capped at 2C. www.ipcc.ch/report/ar5/ Mercer estimates that additional cumulative investment in efficiency improvements, renewable energy, biofuels and nuclear, and carbon capture and storage could be in the range of US$3-5trn by 2030. www.mercer.com/insights/point/2014/climate-change-scenarios-implications-for-strategic-asset-allocation.html

And there are ways to make that more likely.

Financial policy implications

Financial policymakers will not drive the transition to a low-carbon economy. It is not for a central banker to advocate for one policy response over another. That is for governments to decide.

But the risks that I have outlined mean financial policymakers do, however, have a clear interest in ensuring the financial system is resilient to any transition hastened by those decisions, and that it can finance the transition efficiently.

Some have suggested we ought to accelerate the financing of a low carbon economy by adjusting the capital regime for banks and insurers. That is flawed. History shows the danger of attempting to use such changes in prudential rules – designed to protect financial stability – for other ends.

More properly our role can be in developing the frameworks that help the market itself to adjust efficiently.

Any efficient market reaction to climate change risks as well as the technologies and policies to address them must be founded on transparency of information.

A 'market' in the transition to a 2 degree world can be built. It has the potential to pull forward adjustment – but only if information is available and *crucially* if the policy responses of governments and the technological breakthroughs of the private sector are credible.

That is why, following our discussions at the FSB last week, we are considering recommending to the G20 summit that more be done to develop consistent, comparable, reliable and clear disclosure around the carbon intensity of different assets.

Better information to allow investors to take a view

An old adage is that which is measured can be managed.

Information about the carbon intensity of investments allows investors to assess risks to companies' business models and to express their views in the market.

A well-known dictum of macroeconomics is Say's Law: that supply creates demand.

This means that the act of producing new products creates income and profits that ultimately finance the demand for them.

By analogy, a framework for firms to publish information about their climate change footprint, and how they manage their risks and prepare (or not) for a 2 degree world, could encourage a virtuous circle of analyst demand and greater use by investors in their decision making. It would also improve policymaker understanding of the sources of CO2 and corporate preparedness.

A carbon budget – like the one produced by the IPCC – is hugely valuable, but can only really be brought to life by disclosure, giving policymakers the context they need to make choices, and firms and investors the ability to anticipate and respond to those choices.

Given the uncertainties around climate, not everyone will agree. Some might dispute the IPCC's calculations. Others might despair that there will never be financial consequences of burning fossil fuels. Still others could take a view that the stakes make political action inevitable.

The right information allows sceptics and evangelists alike to back their convictions with their capital.

It will reveal how the valuations of companies that produce and use fossil fuels might change over time.

It will expose the likely future cost of doing business, paying for emissions, changing processes to avoid those charges, and tighter regulation.

It will help smooth price adjustments as opinions change, rather than concentrating them at a single climate "Minsky moment".

Crucially, it would also allow feedback between the market and policymaking, making climate policy a bit more like monetary policy.

Policymakers could learn from markets' reactions and refine their stance, with better information allowing more informed reactions, and supporting better policy decisions including on targets and instruments.

A climate disclosure task force

That better information – about the costs, opportunities and risks created by climate change – can promote timely responses is not a new idea.

Much the opposite: there are already nearly 400 initiatives to provide such information.

Existing schemes vary in their status (from laws to voluntary guidance); scope (from greenhouse gas emissions to broader environmental risks); and ambition (from simple disclosure to full explanations of mitigation and divestment strategies).[27]

In aggregate over 90% of FTSE 100 firms and 80% of Fortune Global 500 firms participate in these various initiatives. For instance, the Carbon Disclosure Project makes available disclosure from 5,000 companies to investment managers responsible for over $90 trillion of assets.

The existing surfeit of existing schemes and fragmented disclosures means a risk of getting "lost in the right direction".

In any field, financial, scientific or other, the most effective disclosures are:

- **Consistent** - in scope and objective across the relevant industries and sectors;
- **Comparable** - to allow investors to assess peers and aggregate risks;
- **Reliable** - to ensure users can trust data;
- **Clear** - presented in a way that makes complex information understandable; and
- **Efficient** - minimising costs and burdens while maximising benefits.

Meeting these standards requires coordination, something the G20 and FSB are uniquely placed to provide.

The logical starting point is a co-ordinated assessment of what constitutes effective disclosure, by those who understand what is valuable and feasible.

One idea is to establish an industry-led group, a **Climate Disclosure Task Force**, to design and deliver a voluntary standard for disclosure by those companies that produce or emit carbon.

Companies would disclose not only what they are emitting today, but how they plan their transition to the net-zero world of the future. The G20 – whose member states account for around 85% of global emissions[28] – has a unique ability to make this possible.

[27] A non-exhaustive list of some of the more prominent initiatives in this space includes the Carbon Standards Disclosure Board, Integrated Reporting, the Carbon Disclosure Project, and the UN Principles for Responsible Investment.
[28] See www.pwc.co.uk/assets/pdf/low-carbon-economy-index-2014.pdf

This kind of proposal takes its lead from the FSB's successful catalysing of improved disclosure by the world's largest banks following the financial crisis, via the Enhanced Disclosure Task Force.

The EDTF's recommendations, published in October 2012, were the product of collaboration between banks, analysts and investors. This has given the providers of capital the disclosures they need – specifically how banks manage risks and make profits – in a format that the banks can readily supply.

That shows that private industry can improve disclosure and build market discipline without the need for detailed or costly regulatory interventions.

Like the EDTF, a CDTF could be comprised of private providers of capital, major issuers, accounting firms and rating agencies.

Complementing static disclosures

Static disclosure is a necessary first step. There are two ways its impact could be amplified.

First, governments, potentially sparked by COP21, could complement disclosure by giving guidance on possible carbon price paths.

Such a carbon price *corridor* involves an indicative minimum and maximum price for carbon, calibrated to reflect both price and non-price policy actions, and increasing over time until the price converges towards the level required to offset fully the externality. [29]

Even if the initial indicative price is set far below the "true" cost of carbon, the price signal itself holds great power. It would link climate exposures to a monetary value and provide a perspective on the potential impacts of future policy changes on asset values and business models.

Second, stress testing could be used to profile the size of the skews from climate change to the returns of various businesses.[30]

This is another area where insurers are at the cutting edge.

Your capital requirements are based on evaluating the impact of severe but plausible scenarios. You peer into the future, building your defences against a world where extreme events become the norm.

[29] For instance, the report of the Canfin-Grandjean Commission (2015) discusses the merits of an indicative price corridor with a maximum and minimum price that can be increased over time. See www.elysee.fr/assets/Report-Commission-Canfin-Grandjean-ENG.pdf

[30] These skews could be upside or downside, depending on business model and the point in the transition path.

This stress-testing technology is well-suited to analysing tail risks likely to grow fatter with time, casting light on the future implications of environmental exposures embedded in a wide range of firms and investments.

Stress testing, built off better disclosure and a price corridor, could act as a time machine, shining a light not just on today's risks, but on those that may otherwise lurk in the darkness for years to come.

Conclusion

Our societies face a series of profound environmental and social challenges.

The combination of the weight of scientific evidence and the dynamics of the financial system suggest that, in the fullness of time, climate change will threaten financial resilience and longer-term prosperity.

While there is still time to act, the window of opportunity is finite and shrinking.[31]

Others will need to learn from Lloyd's example in combining data, technology and expert judgment to measure and manage risks.

The December meetings in Paris will work towards plans to curb carbon emissions and encourage the funding of new technologies.

We will need the market to work alongside in order to maximise their impact.

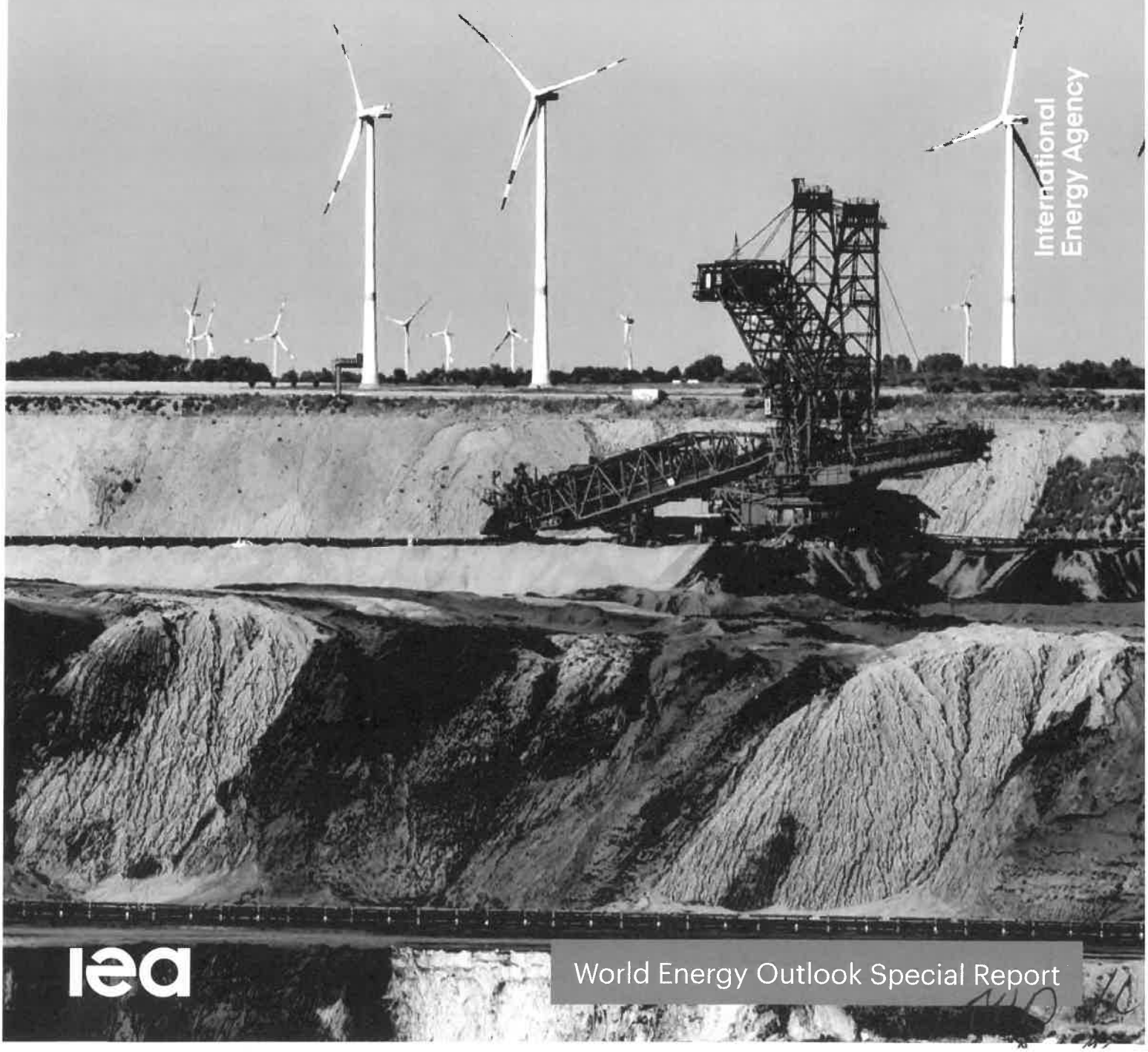
With better information as a foundation, we can build a virtuous circle of better understanding of tomorrow's risks, better pricing for investors, better decisions by policymakers, and a smoother transition to a lower-carbon economy.

By managing what gets measured, we can break the Tragedy of the Horizon.

[31] Already our failure to act since 2010 has increased the task – since emissions persist – and the pace of de-carbonisation required – for instance see http://site.thomsonreuters.com/corporate/pdf/global-500-greenhouse-gases-performance-trends-2010-2013.pdf

Coal in Net Zero Transitions

Strategies for rapid, secure and people-centred change



International Energy Agency

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World Energy Outlook Special Report

Coal in clean energy transitions

A new context for coal in net zero emissions energy systems

SUMMARY

- Today's global energy crisis puts a premium on finding ways to enhance energy security that are consistent with the need to reduce global greenhouse gas (GHG) emissions. Coal is inevitably central to this effort. Unabated coal accounts for one-quarter of global GHG emissions, which is more than any other source of energy. Despite recurrent narratives of imminent decline or renaissance, global coal demand has been broadly stable for the last decade at its highest ever level – on average around 5 500 million tonnes of coal equivalent (Mtce) per year.
- Emerging market and developing economies account for 80% of global coal use today, with the People's Republic of China (hereinafter China) alone responsible for more than half of global coal use. Globally, around 65% of coal is consumed in the power sector and 30% is used in industry. Coal is the least traded of all fossil fuels, with international trade accounting for 20% of consumption (40% for oil). Coal produced domestically meets more than half of total energy demand in China, 20% in other emerging market and developing economies, and 15% in advanced economies.
- Reducing emissions from coal is central to reducing CO_2 emissions, although parallel actions to reduce oil and natural gas emissions are needed to achieve climate goals. There are a number of low-emissions alternatives to the use of coal in the power sector. Carbon capture, utilisation and storage (CCUS) has a potentially important part to play, but the existing pipeline of projects is limited: if all 23 projects being developed are combined with operating CCUS projects they would capture around 35 million tonnes (Mt) CO_2 per year by 2030.
- Recent energy market turmoil and heighted energy security concerns look set to lead to a near-term increase in coal use. But each of our scenarios project a decline in coal demand in this decade, largely as a result of rising shares of renewables in the electricity generation mix, increasing electrification of end-uses and efficiency gains. The speed of the decline depends on the stringency of climate and other energy policies and the efficacy of their implementation. By 2050, coal use drops by 30% in the Stated Policies Scenario (STEPS), by 70% in the Announced Pledges Scenario, and by 90% in the Net Zero Emissions by 2050 (NZE) Scenario. Almost 90% of coal used in the NZE Scenario in 2050 is consumed in plants equipped with CCUS.
- Some countries face particular difficulties in moving away from the use of coal because mining provides around 2-8% of total employment and up to 20-35% of GDP in areas where coal mining is an important part of the economy. We have developed a new index – the Coal Transition Exposure Index – to assess countries exposure to coal transitions. The Index shows that Indonesia, Mongolia, China, Viet Nam, India and South Africa are particularly exposed to a shift away from coal.

1.1 Why focus on coal emissions?

Reaching net zero emissions requires reductions in emissions from all fuels, including from oil and gas. However, a rapid decline in unabated coal use is inevitably a central feature of all pathways to a more sustainable energy system.[1] Coal is the most carbon-intensive fossil fuel and is responsible for a larger share of global GHG emissions than any other source of energy – 15 gigatonnes (Gt) CO_2 in 2021. At the same time, its role is increasingly under threat: it faces strong competition from cleaner alternatives for power generation, and nearly 75 countries – representing 95% of current global coal consumption – have made net zero emissions pledges.

Despite these challenges, in 2021 global coal demand rebound strongly to 5 650 million tonnes of coal equivalent (Mtce) as economies recovered from the Covid pandemic and coal-fired power generation reached a historic high. Moreover, the global energy crisis in 2022 has reinforced the focus on energy security, with several countries announcing plans to extend the use of coal in response to concerns about the availability and price of natural gas in the wake of the Russian Federation's (hereinafter Russia) invasion of Ukraine. A transition away from coal has to be grounded in an understanding of the factors underpinning the current high levels of coal consumption. In this context, it makes sense to consider what lessons can be learned from countries that have successfully reduced reliance on coal. It is vital to find ways to align near-term energy security imperatives with longer term energy transition goals.

Although its price in global markets recently has risen sharply, for a long time coal has been viewed as a relatively cheap fuel in many markets, and its position in the electricity sector is often shielded from market competition by long-term power purchase agreements. Its past price advantage is one of the reasons that the global fleet of coal power plants has expanded so rapidly in the last two decades. A number of emerging market and developing economies now have very young fleets of coal-fired power generation, and large amounts of capital investment have yet to be recovered from their operations. For example, the average coal plant in China is only 13 years old, in Indonesia it is 13 years, and in Viet Nam it is 8 years. An estimated 8.4 million people are now employed in coal production, processing, transport and power generation around the world. Many of these jobs are very localised with the coal sector deeply embedded in the local economies.

The persistence of coal in the global energy mix is driven by a complex array of structural factors. Achieving a transition away from coal at the scale and speed required by climate goals requires a comprehensive policy approach which takes account of these structural factors, and that means addressing the energy, economic, financial and social implications of

[1] Unabated coal is coal used in a facility that is not equipped with CCUS. Co-firing coal with biomass or ammonia reduces emissions by substituting for unabated coal, but the remaining coal that is combusted is considered to be unabated.

Climate change

Climate change is a material issue that can affect our business through regulations to reduce emissions, carbon pricing mechanisms, extreme weather events or chronic changes to the climate, access to capital and permitting risks. Importantly, it can also affect our employees, host communities and suppliers. The strategic, effective and appropriate management of these risks is critical, both to our business and to the lives of the people that depend on us.

Our strategic response to climate change

Our commitments

To meet our commitment to net zero by 2050, we have completed a full review of emission reduction opportunities and aim to reduce our scope 1 and 2 emissions by 30% by 2030 (relative to our 2021 emissions baseline).

The first milestone on our journey to net zero will be to reduce our scope 1 and 2 emissions by a minimum of 30% by 2030. This target will be achieved by:

Renewable energy strategy

Central to our net zero pathway will be the incorporation of a minimum of 19 MW of renewable electricity by 2026.

Mine closures

Several operations are projected to close prior to 2030, namely Isibonelo, Goedehoop, Greenside and Khwezela. This will result in a reduction in GHG emissions associated with those operations. While rehabilitation activities will continue to take place after closure, once those have been completed, the energy consumption of those operations will be limited to that associated with ongoing maintenance and water treatment.

Energy efficiency opportunities

Thungela's standard and related guideline on energy and carbon emissions' management sets out the requirements to drive energy and carbon savings across the business. We have undertaken an extensive review of each operation's energy and GHG profiles and identified business improvement opportunities to enhance energy efficiency and therefore energy intensity at each site. A focus is to reduce and optimise diesel and electricity consumption by large energy users.

More details on our tracking against these targets can be found in the climate change report (https://www.thungela.com/sites/default/files/2024-10/clvdemrbf0pfgolufy3ezzrix-thungela-climate-change-report-2023.pdf#page=29)

Pathway to net zero

A scenario-based approach to net zero by 2050

We have adopted a scenario-based approach to chart our path to net zero, using the IEA World Energy Outlook 2022 scenarios. It is important to remember that scenarios are not forecasts or predictions and that accurately predicting the future is challenging, even in the short term.

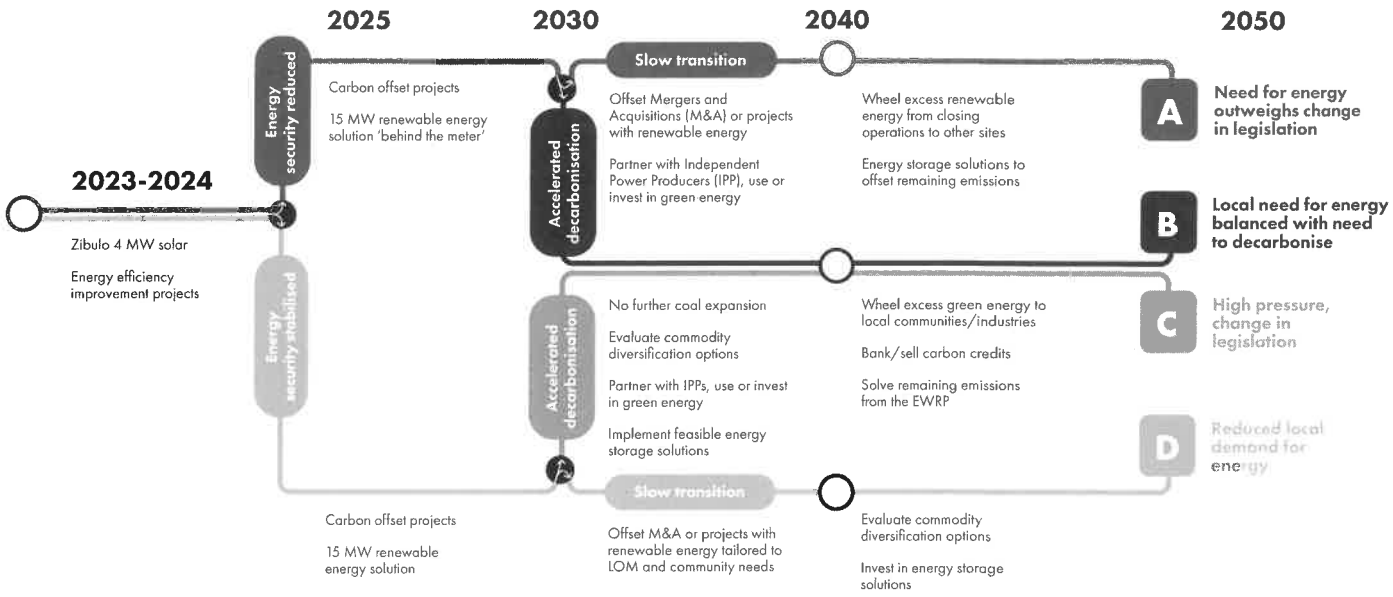
Scenario analysis assists us in identifying key drivers of change and enables us to inform decision-making and evaluate business resilience against a set of divergent but plausible futures.

It also highlights the potential risks and opportunities associated with these.

To meet our 2050 net zero target, four distinct pathways are available, and are informed through climate scenarios. Given uncertainty over the future, these pathways provide us with a framework for decision-making based on triggers that may occur. Global trends and dynamics are reviewed annually to ascertain which plausible pathway we may be on so that we can be agile and adaptive in our decision-making.

The route we take relies on two critical inflection points: the security of the energy system in South Africa and the pace of decarbonisation globally.

The STEPS and APS both see coal demand declining more moderately than the net zero pathway and have been combined in our pathways as 'slow transition'. The 'accelerated decarbonisation' pathways are aligned with the NZE.



Our climate-related risks and opportunities

A third-party performed scenario analysis using clim models to understand future potential climatic change and identify adaptation requirements to build climate resilience. It also provided insight into what the future demand for our products may be to guide future decision-making.A physical and transitional climate r assessment was performed across our operations, critical infrastructure and export destinations. This quantitative assessment included an examination of relevant acute and chronic physical climate risks as w as market and regulatory risks, and changes in

exposure under various climate scenarios. In addition determined high-level climate impacts and vulnerabilities on our operations, employees, communities and customers. The assessment covered two time horizons to inform nearterm (2030) and lon term (2050) decision-making.

Physical risks identified are sea level rise, increased average rainfall, droughts, storms and extreme weat events. Transitional risks identified are policy and leg , market drivers and reputation.

For more information on the risks identified and our mitigation measures please refer to the climate chang report (https://www.thungela.com/sites/default/files/20 10/clvdemrbf0pfgolufy3ezzrix-thungela-climate-change-report-2023.pdf#page=19)

PO Box 1521,
Saxonwold
Johannesburg,
2132,
South Africa

Stay in touch

For any other information, please contact us or stay in touch on social media.

Environmental, social & governance

Creating value and sharing futures.

At Thungela, our commitment to Environmental (https://www.thungela.com/esg/environmental), Social (https://www.thungela.com/esg/social), and Governance (https://www.thungela.com/esg/governance) (ESG) principles is rooted in our purpose to responsibly create value together for a shared future.

Discover how we make a difference by exploring our ESG Report (https://www.thungela.com/sites/default/files/2025-04/Thungela%20ESG%20Report%202024_Interactive_FA_1.pdf) for comprehensive statistics, compelling stories, and impactful case studies.

Our ESG approach

Our ESG approach is purpose-driven, bringing our mission to life through three key strategic priorities: environmental stewardship, shared value for our stakeholders, responsible decision-making and leadership. Read our ESG Report (https://www.thungela.com/sites/default/files/2025-04/Thungela%20ESG%20Report%202024_Interactive_FA_1.pdf) (/)to see how we uphold these commitments every day.

Environmental

Social

At the heart of our ESG framework lies a deep commitment to shared value. ...

Governance

Our board of directors sets the strategic direction and performance expectations for Thungela and its...

(https://www.thungela.com/esg/social)

19 April 2023

Francois Klem
Company Secretary
Thungela Resources Limited
By email: francois.klem@thungela.com

Copied to:
Ryan Africa
Investor Relations
By email: ryan.africa@thungela.com

Dear Mr Klem

Shareholder resolution proposed by Just Share NPC, Aeon Investment Management and Fossil Free South Africa for tabling at Thungela's 31 May 2023 annual general meeting

Please find attached a shareholder resolution proposed by Thungela Resources Limited shareholders Just Share NPC, Aeon Investment Management and Fossil Free South Africa, for consideration by Thungela's shareholders at the company's annual general meeting to be held on 31 May 2023.

The resolution is related to the alignment of the climate-related lobbying and policy engagement activities of Thungela, and its industry associations, with the goals of the Paris Agreement. The resolution is proposed in terms of section 65(3) of the Companies Act 71 of 2008.

Please confirm receipt of this letter and of the shareholders' resolution. Should you wish to discuss any aspect of this resolution before it is submitted to shareholders for consideration, let us know.

Yours faithfully
JUST SHARE

Per:
Robyn Hugo
Director: Climate Change Engagement
rhugo@justshare.org.za

THUNGELA RESOURCES LIMITED
("Thungela" or "the Company")

NON-BINDING ADVISORY RESOLUTION FILED BY THUNGELA SHAREHOLDERS AEON INVESTMENT MANAGEMENT, FOSSIL FREE SOUTH AFRICA AND JUST SHARE NPC

Resolution wording

Shareholders of the Company request that, in accordance with the Global Standard on Responsible Climate Lobbying, the Board annually conduct an evaluation of and report to shareholders on the Company's lobbying and policy engagement activities including:

- *if, and how, its lobbying and policy engagement activities (both direct and indirect through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels;*
- *its framework for identifying and mitigating the risks presented by any misalignment; and*
- *the circumstances under which escalation strategies have been and will be used, including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliance.*

In evaluating the degree of alignment, the Company should consider not only its policy positions and those of organisations of which it is a member, but also the lobbying and engagement activities aimed at influencing policy for the year in review.

Explanatory note to the resolution

Keeping the global average temperature rise to 1.5°C is essential to limit the worst impacts of global heating. This is only possible with immediate, rapid, and large-scale reductions in greenhouse gas (GHG) emissions.[1] In South Africa, like all of sub-Saharan Africa, the impacts of climate change will be disproportionately felt by poor and marginalised communities, exacerbating the country's already extreme poverty, inequality and unemployment.

Corporate lobbying[2] that is inconsistent with global climate goals presents regulatory, reputational and legal risks to companies and investors. It also presents systemic risks to the South African economy, as delays in implementation of the Paris Agreement increase the physical risks of climate change, exacerbate energy instability, and hinder South Africa's

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[1] The Intergovernmental Panel on Climate Change (IPCC's) Sixth Assessment Report (Working Group I – the Physical Science Basis and the Synthesis Report).

[2] "The term 'corporate climate lobbying' refers to those activities carried out by corporations or their agents to directly or indirectly influence climate-significant policy decision-making by political or bureaucratic actors. Climate-significant policy refers to any environmental or non-environmental public policy with non-trivial implications – positive or negative – for realising the temperature goals of the Paris Agreement. Such lobbying – also commonly known as advocacy – can have a significant impact on the stringency and effectiveness of public climate policy. It is not only a matter of societal concern, but also an issue of material, financial, significance for corporations and their investors" - The Global Standard on Responsible Climate Lobbying, p 5.

standing in the global economic community, impairing the country's access to transition financing and introducing uncertainty and volatility into investment portfolios.

Institutional investors across the globe have, therefore, clarified their expectations in relation to investee companies' engagement on climate policy, emphasising the importance of transparency and reporting on direct and indirect climate-related lobbying. The *2022 Global Standard on Responsible Climate Lobbying* sets out the need for companies to publish a detailed analysis of their policy positions and advocacy on climate change, and that of their industry associations, to ensure alignment with the 1.5°C goal of the Paris Agreement.

Additionally, the JSE has provided guidance for corporate disclosure on climate change and sustainability. On lobbying activities, the guidance requires listed companies, among other things, to assess and report on the alignment of industry associations of which the company is a member with the objectives of the Paris Agreement and, more broadly, to identify the significant issues that are the focus of the company's participation in public policy development and lobbying, including within any of its industry associations.

InfluenceMap, an independent think tank producing analysis on how business and finance are impacting the climate crisis, reports that Thungela is "actively engaged in … the maintenance of coal as a primary energy source in South Africa, contrary to IPCC science" and that Thungela "does not appear to explicitly support the need for government regulation on climate change or the need to reduce GHG emissions in line with the IPCC."[3]

Thungela has no dedicated comprehensive disclosure of its industry association memberships and has not completed an audit of its industry associations' positions and engagement on climate change policy.

Thungela's membership of the World Coal Association is of particular concern. According to InfluenceMap, the World Coal Association engages negatively on climate policies and "appears generally oppositional to ambitious global climate change policy".[4] Thungela is also a member of the Minerals Council South Africa, which "is actively and negatively lobbying climate change policy in South Africa, particularly on the issue of the carbon tax and the role of coal in the energy mix."[5]

In South Africa, obstructive corporate climate policy engagement is delaying ambitious climate policy and putting the country's climate goals in jeopardy,[6] presenting significant escalating risks to companies and investors. "Policy capture" (steering policymaking away from the public interest in favour of a specific interest group or individual)[7] is particularly acute when there is limited transparency in the policy-making process.

Investors need clear information, through transparent disclosure, on how companies' direct and indirect policy advocacy efforts align with their own climate targets and with global climate goals.

Filed on: 19 April 2023

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[3] https://lobbymap.org/company/Thungela-Resources-d3bc13fd15b8a8c0f549e7999bff9a53

[4] https://lobbymap.org/influencer/World-Coal-Association

[5] https://lobbymap.org/influencer/South-African-Chamber-of-Mines-d9fecc0ed7db4a809c71f3fc6a2b0cd6

[6] InfluenceMap, February 2023. Climate Policy Engagement in South Africa. Analysis of South African industry's advocacy on climate-related policy and the energy transition. https://influencemap.org/report/Climate-Policy-Engagement-in-South-Africa-20575

[7] https://www.oecd.org/gov/preventing-policy-capture-9789264065239-en.htm

Outlook

TD15 202

RE: Shareholders' resolution for filing at Thungela's 31 May AGM

From Klem, Francois (Thungela) <francois.klem@thungela.com>
Date Wed 4/19/2023 10:36 AM
To Robyn Hugo <rhugo@justshare.org.za>
Cc ryan.africa@thungela.com <ryan.africa@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>

[OFFICIAL]

Dear Ms Hugo

Thank you for your correspondence below and the attachments.

Please note that we will draft a formal response in due course.

Regards

Francois Klem
Company Secretary

thungela

E francois.klem@thungela.com
M +27(0) 82 603 1660

Thungela Resources Limited
25 Bath Avenue, Rosebank, Johannesburg, 2196, South Africa
PO Box 1521, Saxonwold, 2132, South Africa
www.thungela.com
A member of the Thungela Group

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Wednesday, April 19, 2023 10:17 AM
To: francois.klem@thungela.com
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>
Subject: Shareholders' resolution for filing at Thungela's 31 May AGM

Dear Mr Klem

Please find attached hereto a cover letter and a shareholder resolution proposed by Thungela Resources Limited shareholders Just Share NPC, Fossil Free South Africa and Aeon Investment Management, for consideration by Thungela's shareholders at the company's 31 May AGM.

The resolution, proposed in terms of section 65(3) of the Companies Act, is related to the alignment of the climate-related lobbying and policy engagement activities of Thungela and its industry associations, with the goals of the Paris Agreement.

Should you wish to discuss any aspect of this resolution before it is submitted to shareholders for consideration, let us know. Please confirm your receipt of this correspondence.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Aintree Business Park, Block C, Unit FB, Doncaster Rd & Loch Rd, Kenilworth, Cape Town, 7708
A non-profit company with registration no: 2017/347856/08
PBO no: 930064608; NPO no: 206-406; VAT no: 4850287998

Just Share

Investor power for a fairer South Africa

Outlook

TD16[205]

RE: Shareholders' resolution for filing at Thungela's 31 May AGM

From Klem, Francois (Thungela) <francois.klem@thungela.com>
Date Tue 4/25/2023 3:28 PM
To Robyn Hugo <rhugo@justshare.org.za>
Cc ryan.africa@thungela.com <ryan.africa@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>

[OFFICIAL]

Dear Robyn,

Thank you for your letter dated 19 April 2023.

We believe that continued and meaningful engagement with our shareholders and other stakeholders on important matters affecting the business is crucial to long-term value creation.

Thungela will release its Integrated Annual Report, ESG Report and maiden Climate Change Report on the 26th of April – this suite of documents will be available on the Thungela website from tomorrow afternoon. The Climate Change Report is aligned to the recommendations of the TCFD. In the report we disclose our membership of industry associations and I expect that this will satisfy the request for the information you seek. The matter has been raised with the CEO and the Board, and the CEO (together with other relevant executives) would welcome the opportunity to engage with you should you feel that the disclosure in the Climate Change Report does not address your concerns.

We remain committed to transparent disclosure and engagement with stakeholders on the subject of climate change and other ESG-related matters.

Kind regards,

Francois Klem
Company Secretary

thungela

E francois.klem@thungela.com
M +27(0) 82 603 1660

Thungela Resources Limited
25 Bath Avenue, Rosebank, Johannesburg, 2196, South Africa
PO Box 1521, Saxonwold, 2132, South Africa
www.thungela.com
A member of the Thungela Group

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Wednesday, April 19, 2023 10:17 AM
To: francois.klem@thungela.com
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>
Subject: Shareholders' resolution for filing at Thungela's 31 May AGM

Outlook

TD17[207]

RE: Shareholders' resolution for filing at Thungela's 31 May AGM

From Robyn Hugo <rhugo@justshare.org.za>

Date Wed 5/3/2023 9:42 AM

To Klem, Francois (Thungela) <francois.klem@thungela.com>

Cc ryan.africa@thungela.com <ryan.africa@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>

Dear Francois

We note that your response below stated your expectation that Thungela's Climate Change Report would satisfy the request of the co-fillers, and offered engagement should the co-filers "feel that the disclosure in the Climate Change Report does not address [our] concerns". However, as you are aware, this disclosure does not meet a single aspect of the resolution requested by the co-filers.

Thungela discloses its membership of 6 industry associations, but does **not** (as requested by the resolution) report on:

- if and how its lobbying and policy engagement activities (both direct and through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels;
- Thungela's framework for identifying and mitigating the risks presented by any misalignment with the Paris goals; and
- the circumstances under which escalation strategies have been and will be used; including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliance.

In these circumstances, the co-filers again require, in terms of s65(3)(b) of the Companies Act, that the resolution be submitted to shareholders for consideration at the 31 May 2023. If Thungela persists with its refusal to table the resolution, kindly provide us with the legal basis for this refusal by the close of business on Friday, 5 May.

Whilst we would be happy to engage with Thungela, we would appreciate your response to this correspondence first.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Aintree Business Park, Block C, Unit FB, Doncaster Rd & Loch Rd, Kenilworth, Cape Town, 7708
A non-profit company with registration no: 2017/347856/08
PBO no: 930064608; NPO no: 206-406; VAT no: 4850287998

Just Share | Investor power for a fairer South Africa

From: Klem, Francois (Thungela) <francois.klem@thungela.com>
Sent: Tuesday, April 25, 2023 3:28 PM
To: Robyn Hugo <rhugo@justshare.org.za>
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le

Outlook

TD18[209]

RE: Shareholders' resolution for filing at Thungela's 31 May AGM

From Klem, Francois (Thungela) <francois.klem@thungela.com>

Date Mon 5/8/2023 12:41 PM

To Robyn Hugo <rhugo@justshare.org.za>

Cc ryan.africa@thungela.com <ryan.africa@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>; Genis, Tarryn Rae (Thungela) <tarryn.genis@thungela.com>; Mphahlele, Ntombi (Thungela) <ntombi.mphahlele@thungela.com>

[OFFICIAL]

Dear Robyn,

Thank you for your mail.

We have considered the substance of your request and believe that it would be most appropriate and productive to meet with you in order to have an open discussion to unpack your views, and to put across our perspective on the matter raised in your letter. Accordingly, we once again extend the invitation for an engagement on this matter and would welcome the opportunity to meet with you.

In accordance with your request, I also include below the legal basis for the decision not to table the resolution.

We are advised by our attorneys that, as a matter of company law, while styled a "resolution", the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so.

We respect and appreciate the area of concern raised in your letter and assure you that it is one of the many and multi-dimensional aspects of running a coal-mining business that is part of the board's mandate to manage the business for the interests of the shareholders as a whole. We would also like to emphasise that this is not intended to discourage you from holding or expressing your viewpoint, or from engaging with others on it. It is simply that a shareholder resolution is not the appropriate approach to doing so.

I also reiterate that we would welcome the opportunity to engage with you on this matter.

Kind regards

Francois Klem
Company Secretary

thungela

E francois.klem@thungela.com
M +27(0) 82 603 1660

Outlook

TD19 211

RE: Shareholders' resolution for filing at Thungela's 31 May AGM

From Robyn Hugo <rhugo@justshare.org.za>

Date Tue 5/9/2023 11:16 AM

To Klem, Francois (Thungela) <francois.klem@thungela.com>

Cc ryan.africa@thungela.com <ryan.africa@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>; Genis, Tarryn Rae (Thungela) <tarryn.genis@thungela.com>; Mphahlele, Ntombi (Thungela) <ntombi.mphahlele@thungela.com>

Dear Francois

Thank you for your response. As you may know, we dispute this interpretation, and have publicised a summary of a legal opinion Just Share has received which states the contrary.

Please propose some dates for a meeting between Thungela and the co-filers.

Thanks and regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Aintree Business Park, Block C, Unit FB, Doncaster Rd & Loch Rd, Kenilworth, Cape Town, 7708
A non-profit company with registration no: 2017/347856/08
PBO no: 930064608; NPO no: 206-406; VAT no: 4850287998

Just Share Investor power for a fairer South Africa

From: Klem, Francois (Thungela) <francois.klem@thungela.com>
Sent: Monday, May 8, 2023 12:42 PM
To: Robyn Hugo <rhugo@justshare.org.za>
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>; Genis, Tarryn Rae (Thungela) <tarryn.genis@thungela.com>; Mphahlele, Ntombi (Thungela) <ntombi.mphahlele@thungela.com>
Subject: RE: Shareholders' resolution for filing at Thungela's 31 May AGM

[OFFICIAL]

Dear Robyn,

Thank you for your mail.

We have considered the substance of your request and believe that it would be most appropriate and productive to meet with you in order to have an open discussion to unpack your views, and to put across our perspective on the matter raised in your letter. Accordingly, we once again extend the invitation for an engagement on this matter and would welcome the opportunity to meet with you.

In accordance with your request, I also include below the legal basis for the decision not to table the resolution.

We are advised by our attorneys that, as a matter of company law, while styled a "resolution", the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding

force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so.

We respect and appreciate the area of concern raised in your letter and assure you that it is one of the many and multi-dimensional aspects of running a coal-mining business that is part of the board's mandate to manage the business for the interests of the shareholders as a whole. We would also like to emphasise that this is not intended to discourage you from holding or expressing your viewpoint, or from engaging with others on it. It is simply that a shareholder resolution is not the appropriate approach to doing so.

I also reiterate that we would welcome the opportunity to engage with you on this matter.

Kind regards

Francois Klem
Company Secretary

thungela

E francois.klem@thungela.com
M +27(0) 82 603 1660

Thungela Resources Limited
25 Bath Avenue, Rosebank, Johannesburg, 2196, South Africa
PO Box 1521, Saxonwold, 2132, South Africa
www.thungela.com
A member of the Thungela Group

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Wednesday, May 3, 2023 9:42 AM
To: Klem, Francois (Thungela) <francois.klem@thungela.com>
Cc: ryan.africa@thungela.com; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>
Subject: RE: Shareholders' resolution for filing at Thungela's 31 May AGM

Dear Francois

26 April 2024

Francois Klem

Company Secretary

Thungela Resources Limited

By email: francois.klem@thungela.com; coseccoalsa@thungela.com

Copied to:

Ryan Africa and Shreshini Singh

Investor Relations

By email: ryan.africa@thungela.com; shreshini.singh@thungela.com

Dear Mr Klem

Shareholder resolution proposed by Just Share NPC, Aeon Investment Management and Fossil Free South Africa for tabling at Thungela's 4 June 2024 annual general meeting

Please find attached a shareholder resolution proposed by Thungela Resources Limited shareholders Just Share NPC, Aeon Investment Management and Fossil Free South Africa, for consideration by Thungela's shareholders at the company's annual general meeting to be held on 4 June 2024.

The resolution calls for the adoption and publication of short-, medium- and long-term greenhouse gas emission reduction targets across Thungela's full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050. The resolution is proposed in terms of section 65(3) of the Companies Act 71 of 2008.

Please confirm receipt of this letter and of the shareholders' resolution. Should you wish to discuss any aspect of this resolution before it is submitted to shareholders for consideration, let us know.

Yours faithfully
JUST SHARE

Per:

Robyn Hugo
Director: climate change engagement
rhugo@justshare.org.za

THUNGELA RESOURCES LIMITED
("Thungela" or "the company")

NON-BINDING ADVISORY RESOLUTION FILED BY THUNGELA SHAREHOLDERS AEON INVESTMENT MANAGEMENT, FOSSIL FREE SOUTH AFRICA AND JUST SHARE NPC

Shareholders request that Thungela Resources Limited ("the company") adopt and publish in its 2025 suite of reports: short-, medium- and long-term greenhouse gas emission reduction targets across its full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050.

Supporting statement

The company has confirmed its support for the Paris Agreement,[1] as well as its commitment to "net zero by 2050",[2] which it has further confirmed includes the company's scope 3 emissions.[3]

However, the company has not set any interim targets that will meaningfully contribute towards achieving this long-term ambition. This means that shareholders are unable to assess the likelihood of the 2050 target being achieved.

Short- and medium-term emission reduction targets are particularly important in light of the findings in the Intergovernmental Panel on Climate Change's (IPCC's) Sixth Assessment Report[4] that coal use would need to fall to 75% below 2019 levels by 2030 and to 95% below 2019 levels by 2050, in order to limit global average temperature rise to 1.5°C.[5]

While the company has committed to incorporate at least 19 MW of renewable electricity into its operations by the end of 2026,[6] the company's target of a 30% emission reduction by 2030, off a 2021 baseline, applies only to its scope 1 and 2 emissions. It does not include scope 3 emissions.

In 2023, the company's scope 3 emissions were 32 033 kt CO_2e, compared to scope 1 and 2 emissions of 295 kt CO_2e and 433 kt CO_2e, respectively. The exclusion of scope 3 emissions therefore means that 98% of the company's value chain emissions are not covered by its 2030 target. The 2030 target also appears to apply only to the company's existing operations[7] and would therefore exclude new acquisitions.

Coal phase-out

The IPCC has repeatedly reported that immediate and significant emission reductions are required to stave off the worst consequences of climate change.[8]

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[1] P 31 Thungela 2023 climate change report.
[2] P 19 and 20 Thungela 2023 climate change report.
[3] Scope 3 emissions: all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions. "As Scope 3 emissions usually account for more than 70 percent of a business' carbon footprint, it is crucial that companies tackle Scope 3 emissions to meet the aims of the Paris Agreement and limit global warming to 1.5°C." Scope 3 Emissions - (unglobalcompact.org.uk)
[4] https://www.ipcc.ch/assessment-report/ar6/
[5] https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf p 24 and 71; https://www.carbonbrief.org/in-depth-qa-the-ipccs-sixth-assessment-on-how-to-tackle-climate-change/
[6] P 26 and 29 Thungela 2023 climate change report.
[7] P 15 Thungela 2022 climate change report.
[8] https://www.ipcc.ch/assessment-report/ar6/

In the IPCC's median 1.5°C pathway, coal power drops globally by 87% by 2030 and by 96% by 2035, which would entail replacement of virtually the whole power fleet within a decade in coal-dependent developing countries.[9]

According to the International Energy Agency (IEA)'s report "*Net Zero by 2050. A Roadmap for the Global Energy Sector*", in a net zero by 2050 pathway, advanced economies would need to phase out unabated coal by 2030, and the rest of the world by 2040, to limit average global temperature rise to 1.5ºC.[10] In 1.5°C pathways assessed by the IPCC, coal power would have to be phased out in India, China and South Africa more than twice as fast as in any historical power transition.[11]

Aligning to Net Zero

In alignment with the Paris goal of limiting the rise in global temperature to 1.5°C, investors increasingly require companies committed to net zero to set interim emission reduction targets inclusive of all relevant scope 3 emissions.[12]

In its 2022 report *Integrity Matters: Net Zero commitments by Businesses, Financial Institutions, Cities and Regions*,[13] the United Nations High-Level Expert Group (HLEG) set out "a roadmap to prevent net zero being undermined by false claims, ambiguity and greenwash". Using climate science and "best-in-class voluntary efforts", the HLEG report "creates a universal definition of net zero, based on five principles and ten recommendations."[14]

In summary, the report requires that a company set short-, medium- and long-term absolute emission reduction targets and, where appropriate, relative emission reduction targets across its value chain. These must at least be "consistent with the latest IPCC net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, and where global emissions decline at least 50% below 2020 levels by 2030, reaching net zero by 2050 or sooner".[15]

The HLEG report states that companies should set short-term targets of five years or less, with the first target set for 2025.[16] Targets must include emission reductions from a company's full value chain and activities, including scope 1, 2 and 3 emissions for businesses. Where data is missing for scope 3 emissions, businesses should explain how they are working to get the data or what estimates they are using.[17]

Thungela remains substantially misaligned with global net zero goals and investor expectations. Failing to set targets that address the full range of its greenhouse gas emissions exposes the company to increasing physical, regulatory, and market risks. By setting short- and medium-term,1.5°C-aligned targets inclusive of its entire value chain, Thungela can mitigate its climate-related risks, and capitalise on the value-creating opportunity of the net zero economy.

Filed on: 26 April 2024

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[9] https://www.carbonbrief.org/guest-post-how-quickly-does-the-world-need-to-phase-down-all-fossil-fuels/
[10] https://www.iea.org/reports/net-zero-by-2050, p 20.
[11] https://www.nature.com/articles/s41558-022-01576-2
[12] https://www.climateaction100.org/wp-content/uploads/2023/10/CA100-Benchmark-2.0-Disclosure-Framework-Methodology-Confidential-October-2023.pdf, p 5; https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf, p 39-40.
[13] https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf
[14] P 12.
[15] P 17 HLEG report.
[16] P 17 HLEG report.
[17] P 17 HLEG report.

TD21[217]

Outlook

RE: Shareholders' resolution for filing at Thungela 4 June AGM

From Company Secretary <coseccoalsa@thungela.com>

Date Tue 4/30/2024 9:03 AM

To Robyn Hugo <rhugo@justshare.org.za>; Tracey Davies <tdavies@justshare.org.za>; David Le Page <david@fossilfreesa.org.za>; Asief Mohamed <asief.mohamed@aeonim.co.za>

Cc Shreshini Singh <Shreshini.Singh@thungela.com>; Emma Schuster <eschuster@justshare.org.za>; Francois Klem <francois.klem@thungela.com>; Hugo Nunes <hugo.nunes@thungela.com>; Company Secretary <coseccoalsa@thungela.com>

Good day Robyn

I trust my email finds you well.

We acknowledge receipt of your email.

Kind regards,

thungela

Ntombi Mphahlele
Assistant Company Secretary

Ntombi.Mphahlele@thungela.com

25 on Bath Avenue, Rosebank

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Friday, April 26, 2024 10:59 AM
To: Francois Klem <francois.klem@thungela.com>; Company Secretary <coseccoalsa@thungela.com>
Cc: Ryan Africa <ryan.africa@thungela.com>; Shreshini Singh <Shreshini.Singh@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Emma Schuster <eschuster@justshare.org.za>
Subject: Shareholders' resolution for filing at Thungela 4 June AGM

Dear Francois

Please find attached hereto a cover letter and a shareholder resolution proposed by Thungela Resources Limited shareholders Just Share NPC, Fossil Free South Africa and Aeon Investment Management, for consideration by Thungela's shareholders at the company's 4 June AGM.

The resolution, proposed in terms of section 65(3) of the Companies Act, is related to the publication in Thungela's next reporting suite of Paris-aligned emission reduction targets for its full-range of value chain emissions, and for its global operations.

Should you wish to discuss any aspect of this resolution before it is submitted to shareholders for consideration, let us know.

Please confirm your receipt of this correspondence.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Unit B01, Plum Park, 25 Gabriel Road, Plumstead, Cape Town 7800
A non-profit company with registration no: 2017/347856/08
PBO no: 930064608; NPO no: 206-406; VAT no: 4850287998

Just Share

Investor power for a fairer South Africa

Sign up to Just Share's mailing list to receive our briefings, op-eds, and reports.

TD22 220

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

PRIVATE

2 May 2024

Dear Robyn,

Thank you for your mail. We have considered the substance of your request and welcome the opportunity to engage on this in a productive manner. We are supportive of a direct discussion with Just Share where we can each share our views on this matter.

After consultation with our attorneys, the decision was taken not to table the requested resolution. In line with company law, the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so.

We respect and appreciate the area of concern raised in your letter. Thungela is committed to responsible environmental practices. Good governance principles are important in running a coal-mining business and aligns with the board's responsibility to manage the company in the best interest of all shareholders. Our response is not intended to discourage you from your viewpoint but to share the legal standing that shareholders may only require the company to place resolutions before shareholders on matters that have binding effect. As indicated earlier, we are open to and invite robust discussions between Just Share and Thungela.

Yours sincerely

Ntombi Mphahlele
Assistant Company Secretary
T: 072 643 0927
E: ntombi.mphahlele@thungela.com
www.thungela.com

Just Share

TD23 221

9 May 2024

Ntombi Mphahlele

Assistant Company Secretary

Thungela Resources Limited

By email: ntombimphahlele@thungela.com

Copied to: francois.klem@thungela.com; coseccoalsa@thungela.com; ryan.africa@thungela.com; shreshini.singh@thungela.com; hugo.nunes@thungela.com

Dear Ms Mphahlele

URGENT: Shareholder resolution co-filed by Just Share, Fossil Free South Africa & Aeon Investment Management for co-filing at Thungela's 4 June 2024 AGM

1. We refer to Thungela's 2 May 2024 correspondence refusing to table the resolution co-filed on 26 April 2024 by Just Share, Fossil Free South Africa & Aeon Investment Management for co-filing at Thungela's 4 June 2024 AGM ("the resolution").

2. We note Thungela's opinion:

   2.1. that section 65(3) of the Companies Act, 2008 only entitles shareholders to file resolutions on "matters which they have a legal right to determine by a vote", irrespective of whether such resolution "is expressed to be binding";

   2.2. in relation to resolutions addressing any other subject matter, that the "tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors"; and

   2.3. that "shareholders may only require the company to place resolutions before shareholders on matters that have binding effect".

3. We have been advised that Thungela's position is legally incorrect. Thungela's interpretation of section 65(3) is not only inconsistent with the Companies Act, but also with constitutional rights, including those to freedom of association and expression, as set out below.

4. The purpose of this correspondence is to demand that Thungela **table the resolution filed on 26 April 2024 by no later than Tuesday, 14 May 2024** in order to afford shareholders the required minimum notice period prior to the 4 June 2024 AGM.

5. Whilst Just Share is willing to engage with Thungela to share our views, Thungela's ongoing breach of its duties under the Companies Act is not an issue that can be resolved through "robust discussion".

6. Below we summarise the basis for our demand:

6.1. There is nothing in the Companies Act that supports Thungela's interpretation that the board has unilateral power to block this proposed shareholder resolution.

6.2. The language of section 65(3) casts shareholders' rights in the broadest terms. Any two (or more) shareholders may propose a resolution 'concerning *any matter* in respect of which they are each entitled to exercise voting rights' (our emphasis).

6.3. Section 62(3) further prescribes that any notice of a shareholders meeting "*must include*", among other items, "a copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting". This is a mandatory duty.

6.4. Section 65 imposes no substantive restrictions on the content or subject-matter of shareholder proposals. Instead, section 65(4) merely regulates the format of resolutions, requiring that they be "expressed with sufficient clarity and specificity" and be "accompanied by sufficient information or explanatory material" that will "enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution".

6.5. Moreover, section 65 does not afford a board of directors the power to block procedurally-compliant shareholder proposals from being circulated and tabled for a vote at a meeting of shareholders merely because the board disagrees with the content of the proposal. Such unilateral power would be directly at odds with the dispute resolution procedure in sections 65(4)-(5). Even if a director objects to a resolution on the grounds of formal defects, the director is required to apply to court – he cannot unilaterally decide to prevent resolutions from being tabled. Directors also have no power to override clear statutory shareholder rights.

6.6. Section 65(3)'s reference to "each" of the co-filing shareholders being "entitled to exercise voting rights" is an eligibility requirement, determining which classes of shareholders may propose and vote on resolutions at shareholders' meetings, rather than a restriction on the content of the resolutions that may be proposed.

6.7. Tabling the proposed non-binding, advisory resolution for a vote at the AGM will not in any way undermine "the board's responsibility to manage the company in the best interest of all shareholders". There is equally no basis for the suggestion that non-binding, advisory resolutions are impermissible:

6.7.1. JSE-listed companies, including Thungela, annually table non-binding resolutions on executive pay.

6.7.2. Several JSE-listed companies have tabled non-binding resolutions on climate change and related environmental, social, and governance (ESG) issues.

6.7.3. In other common law countries, shareholders' rights to file and vote on non-binding advisory resolutions are recognised and protected, despite having company law regimes that are less progressive than our own.

6.8. The mistaken interpretation of section 65(3) now advanced by Thungela runs contrary to the aims of the Companies Act and the constitutional rights that underpin it.

6.9. Shareholders' rights to table proposals for a vote involve the exercise of their constitutional rights to freedom of expression and association within the company structure, allowing shareholders to impart and receive information and ideas and to organise around shared goals.

6.10. Thungela's refusal is an ongoing violation of these statutory and constitutional rights.

7. In summary, two or more shareholders may propose resolutions on climate- and other ESG-related issues – such as the resolution in issue. Company boards have no unilateral discretion to refuse to circulate and table resolutions that comply with all the necessary procedural requirements. If boards wish to object to the resolutions, they must go to court in terms of sections 65(4) and (5) to seek permission to block the resolutions from going to a vote. The board may also advise shareholders of its objections to inform their vote.

8. In the circumstances, we demand that Thungela **circulate the proposed resolution by no later than Tuesday, 14 May 2024** to afford shareholders the required minimum notice period prior to the AGM.

9. Should Thungela continue to refuse to do so, we will take legal action, including but not limited to filing **a written complaint to the Companies and Intellectual Property Commission (CIPC)** in terms of section 168(1) of the Companies Act.

10. We look forward to your urgent response.

Yours faithfully
JUST SHARE

Per:

Robyn Hugo
Director: climate change engagement
rhugo@justshare.org.za

TD24 224

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

PRIVATE

10 May 2024

Dear Robyn,

Thank you for sharing your views on the interpretation of section 65(3) of the Companies Act, which view (and supporting reasoning) are the same as those you put forward last year.

As advised in our response of 8 May 2023 and on 2 May 2024, respectfully, and based on legal advice, we do not agree with the interpretation you put forward. Our ethos is to engage, not litigate, and our offer both last year and now to engage with us on the issue remains open to you.
If, notwithstanding this, regrettably, you prefer to pursue legal action, please serve the relevant papers at Thungela Resources Limited offices, at 25 Bath Avenue, Rosebank, for the attention the Company Secretary, with an e-mail notification to our Internal Legal Counsel, Masechaba Makgolane at masechaba.makgolane@thungela.com, and to our External Legal Counsel, Colin du Toit at colin.dutoit@webberwentzel.com.

Yours sincerely

Ntombi Mphahlele
Assistant Company Secretary
T: 072 643 0927
E: ntombi.mphahlele@thungela.com
www.thungela.com

Just Share

TD25 225

25 April 2025

Tovi Ellis

Company Secretary

Thungela Resources Ltd

By email: tovi.ellis@thungela.com; coseccoalsa@thungela.com

Copied to:

Shreshini Singh and Hugo Nunes

Investor Relations

By email: shreshini.singh@thungela.com; hugo.nunes@thungela.com

Dear Ms Ellis

Shareholder resolution proposed by Just Share NPC, Aeon Investment Management and Fossil Free South Africa for tabling at Thungela's 2025 annual general meeting

Please find attached a shareholder resolution proposed by Just Share NPC, Aeon Investment Management, and Fossil Free South Africa for consideration by shareholders at Thungela Resources Limited's ("Thungela") annual general meeting ("AGM") likely to be held in June 2025.

The resolution calls for the adoption and publication of short-, medium- and long-term greenhouse gas emission reduction targets across Thungela's full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050.

This proposed resolution is submitted in the exercise of the abovenamed shareholders' rights under section 65(3) of the Companies Act 71 of 2008. Each of the shareholders has the right to vote on any resolutions proposed ahead of an AGM, without any restrictions on the content of those resolutions, and we accordingly have the right to propose the attached resolution.

In terms of section 62(3)(c) of the Companies Act, Thungela is under a corresponding obligation to circulate this proposed resolution to all shareholders for consideration. Should Thungela again refuse to circulate and table the proposed shareholder resolution, this ongoing non-compliance with the Companies Act will be communicated to CIPC as part of the existing complaint against Thungela.

Please confirm receipt of this letter and of the shareholders' resolution. In support of your various functions as set out in section 88 of the Companies Act, should you wish to discuss any aspect of this proposed resolution before it is submitted to shareholders for consideration, kindly let us know.

Yours faithfully
JUST SHARE

Per: 

Robyn Hugo
Director: climate change engagement
rhugo@justshare.org.za

THUNGELA RESOURCES LIMITED
("Thungela" or "the company")

NON-BINDING ADVISORY RESOLUTION FILED BY THUNGELA SHAREHOLDERS AEON INVESTMENT MANAGEMENT, FOSSIL FREE SOUTH AFRICA AND JUST SHARE NPC

Shareholders request that Thungela Resources Limited ("the company") adopt and publish in its 2026 suite of reports: short-, medium- and long-term greenhouse gas emission reduction targets across its full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050.

Supporting statement

The company has confirmed its support for the Paris Agreement,[1] and its commitment to "net zero by 2050",[2] which it has further confirmed includes the company's scope 3 emissions.[3]

However, the company has not set any interim targets that will meaningfully contribute towards achieving this long-term ambition. This means that shareholders are unable to assess the likelihood of the 2050 target being achieved.

Short- and medium-term emission reduction targets are particularly important in light of the findings in the Intergovernmental Panel on Climate Change's (IPCC's) Sixth Assessment Report[4] that coal use would need to fall to 75% below 2019 levels by 2030 and to 95% below 2019 levels by 2050, in order to limit global average temperature rise to 1.5°C.[5]

While the company has committed to incorporate at least 19 MW of renewable electricity into its operations by the end of 2026,[6] its target of a 30% emission reduction by 2030, off a 2021 baseline, applies only to its scope 1 and 2 emissions. It does not include scope 3 emissions.

In 2024, the company's scope 3 emissions were 46 877 kt CO_2e, compared to scope 1 and 2 emissions of 596 kt CO_2e and 470 kt CO_2e, respectively.[7] The exclusion of scope 3 emissions therefore means that 98% of the company's value chain emissions, constituting core business activities, are not currently covered by its 2030 target.

Coal phase-out

The IPCC has repeatedly reported that immediate and significant emission reductions are required to stave off the worst consequences of climate change.[8]

In the IPCC's median 1.5°C pathway, coal power drops globally by 87% by 2030 and by 96% by 2035, which would entail replacement of virtually the whole power fleet within a decade in coal-dependent developing countries.[9]

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[1] P 17, P 26, P 52 Thungela 2024 environmental, social and governance report.
[2] P 14, P 17, P 24, P 33, P 62, P 63, P 66, P 67, Thungela 2024 environmental, social and governance report.
[3] Scope 3 emissions: all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions. "As Scope 3 emissions usually account for more than 70 percent of a business' carbon footprint, it is crucial that companies tackle Scope 3 emissions to meet the aims of the Paris Agreement and limit global warming to 1.5°C." Scope 3 Emissions - (unglobalcompact.org.uk)
[4] https://www.ipcc.ch/assessment-report/ar6/
[5] https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf p 24 and 71; https://www.carbonbrief.org/in-depth-qa-the-ipccs-sixth-assessment-on-how-to-tackle-climate-change/
[6] P 26 and 29 Thungela 2023 climate change report; P 72 Thungela 2024 environmental, social and governance report.
[7] PP 69-70 Thungela 2024 environmental, social and governance report
[8] https://www.ipcc.ch/assessment-report/ar6/
[9] https://www.carbonbrief.org/guest-post-how-quickly-does-the-world-need-to-phase-down-all-fossil-fuels/

According to the International Energy Agency (IEA),[10] in a net zero by 2050 pathway, advanced economies would need to phase out unabated coal plants by 2030, and the rest of the world by 2040, to limit average global temperature rise to 1.5°C.[11] In 1.5°C pathways assessed by the IPCC, coal power would have to be phased out in India, China and South Africa more than twice as fast as in any historical power transition.[12]

Aligning to Net Zero

In alignment with the Paris goal of limiting the rise in global temperature to 1.5°C, investors increasingly require companies committed to net zero to set interim emission reduction targets inclusive of all relevant scope 3 emissions.[13]

In its 2022 report *Integrity Matters: Net Zero commitments by Businesses, Financial Institutions, Cities and Regions*,[14] the United Nations High-Level Expert Group (HLEG) set out "a roadmap to prevent net zero being undermined by false claims, ambiguity and greenwash". Using climate science and "best-in-class voluntary efforts", the HLEG report "creates a universal definition of net zero, based on five principles and ten recommendations."[15]

In summary, the report requires that a company set short-, medium- and long-term absolute emission reduction targets and, where appropriate, relative emission reduction targets across its value chain. These must at least be "consistent with the latest IPCC net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, and where global emissions decline at least 50% below 2020 levels by 2030, reaching net zero by 2050 or sooner".[16]

The HLEG report states that companies should set short-term targets of five years or less, with the first target set for 2025.[17]

Targets must include emission reductions from a company's full value chain and activities, including scope 1, 2 and 3 emissions for businesses. Where data is missing for scope 3 emissions, businesses should explain how they are working to get the data or what estimates they are using.[18]

Thungela remains substantially misaligned with global net zero goals and investor expectations. Failing to set targets that address the full range of its greenhouse gas emissions exposes the company to increasing physical, regulatory, and market risks that may threaten business continuity. By setting short- and medium-term,1.5°C-aligned targets inclusive of its entire value chain, Thungela can mitigate its climate-related risks, and capitalise on the value-creating opportunity of the net zero economy.

Filed on: 25 April 2025

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[10] South Africa is an associate member of the IEA.
[11] https://www.iea.org/reports/net-zero-by-2050, p 20; https://globalenergymonitor.org/projects/global-coal-plant-tracker/coal-phaseout-tracking-retirements-and-paris-aligned-goals/; https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach, p 92.
[12] https://www.nature.com/articles/s41558-022-01576-2
[13] https://www.climateaction100.org/wp-content/uploads/2024/10/Climate-Action-100-Net-Zero-Company-Benchmark-Disclosure-Framework-Methodology-copy.pdf, p 5;
https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf, p 39-40;
https://sciencebasedtargets.org/resources/files/Net-Zero-Standard-Criteria.pdf, pp7-11; p16.
[14] https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf
[15] P 12.
[16] P 17 HLEG report.
[17] P 17 HLEG report.
[18] P 17 HLEG report.

TD26 229

Outlook

RE: Resolution co-filed ahead of Thungela's 2025 AGM

From Tovi Ellis <tovi.ellis@thungela.com>

Date Wed 4/30/2025 9:35 AM

To Robyn Hugo <rhugo@justshare.org.za>; Thungela Company Secretary <coseccoalsa@thungela.com>

Cc Shreshini Singh Purdilwa <Shreshini.Singh@thungela.com>; Hugo Nunes <hugo.nunes@Thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Déna Jansen <djansen@justshare.org.za>

Dear Robyn

Thank you for your email.
The contents have been noted, and I will revert shortly.

Regards,

Tovi Ellis
Company Secretary

thungela

E tovi.ellis@thungela.com
M +27(0) 82 054 8350

Thungela Resources Limited
25 Bath Avenue, Rosebank, Johannesburg, 2196, South Africa
PO Box 1521, Saxonwold, 2132, South Africa
www.thungela.com
A member of the Thungela Group

From: Robyn Hugo <rhugo@justshare.org.za>
Sent: Friday, April 25, 2025 2:51 PM
To: Tovi Ellis <tovi.ellis@thungela.com>; Thungela Company Secretary <coseccoalsa@thungela.com>
Cc: Shreshini Singh Purdilwa <shreshini.singh@thungela.com>; Hugo Nunes <hugo.nunes@thungela.com>; Asief Mohamed <asief.mohamed@aeonim.co.za>; David Le Page <david@fossilfreesa.org.za>; Tracey Davies <tdavies@justshare.org.za>; Déna Jansen <djansen@justshare.org.za>
Subject: Resolution co-filed ahead of Thungela's 2025 AGM

Dear Ms Ellis

Attached please find a letter from Just Share and a resolution co-filed by Just Share, Aeon Investment Management and Fossil Free South Africa for tabling at your upcoming AGM.

Please confirm receipt of this correspondence.

Regards

Robyn Hugo
Director: Climate Change Engagement | +27 82 389 4357 | www.justshare.org.za

Unit B01, Plum Park, 25 Gabriel Road, Plumstead, Cape Town 7800
A non-profit company with registration no: 2017/347856/08
PBO no: 930064608; NPO no: 206-406; VAT no: 4850287998

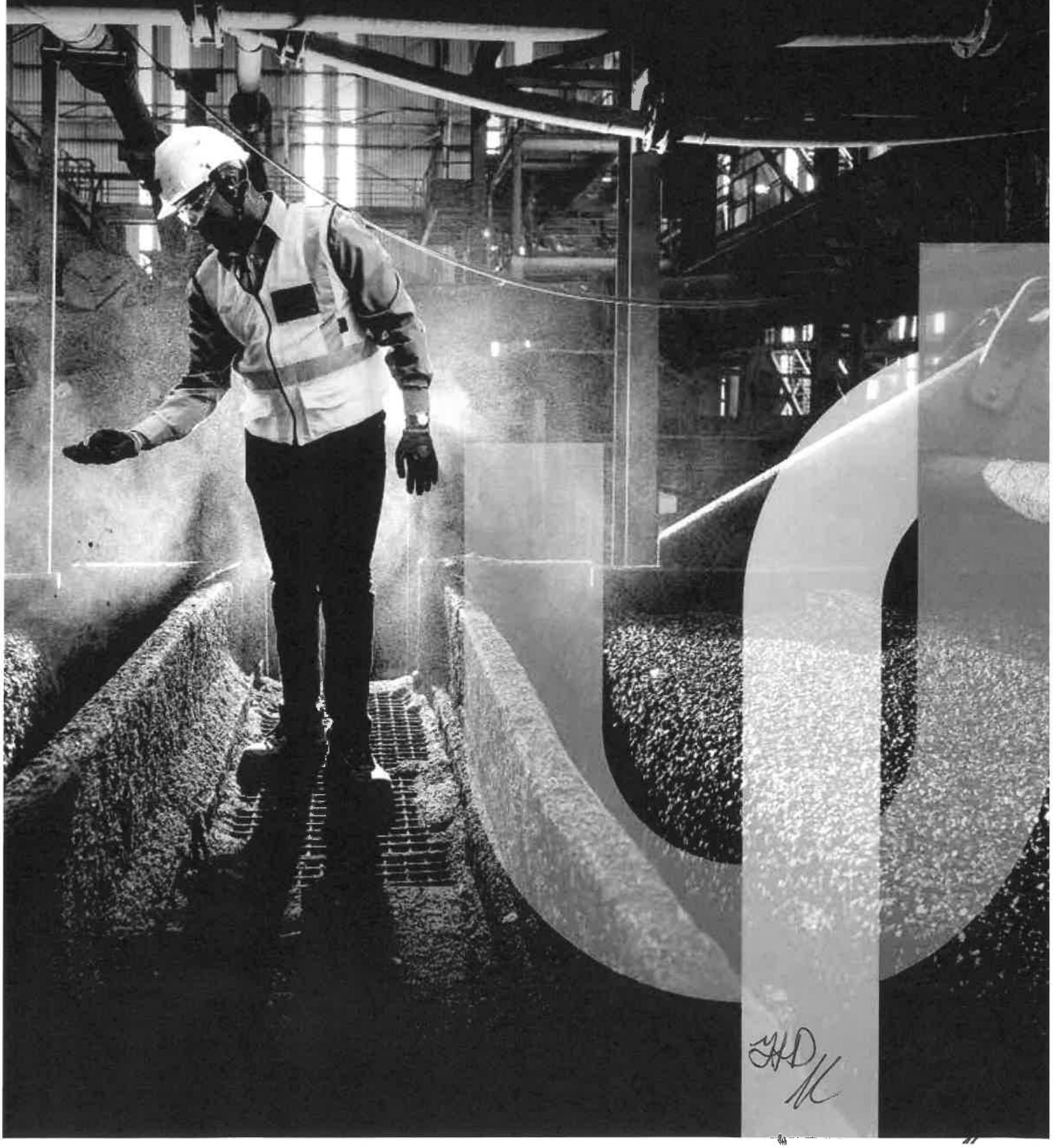
Just Share | Investor power for a fairer South Africa

Sign up to Just Share's mailing list to receive our briefings, op-eds, and reports.

TD27

thungela

Notice of Annual General Meeting 2025



DIRECTORS' RESPONSIBILITY AND APPROVAL OF THE NOTICE OF ANNUAL GENERAL MEETING

The directors are responsible for the preparation, fair presentation and integrity of the notice of the annual general meeting (AGM) (the notice) and related financial information of Thungela Resources Limited (Thungela or the Company, and together with its affiliates, the Group).

The summarised consolidated financial statements are based on appropriate accounting policies that have been consistently applied, and which are supported by reasonable judgements and estimates made by management.

The information included in this notice has been extracted from other reports as issued by the Group, including:

- The Annual Financial Statements for the year ended 31 December 2024.
- The Integrated Annual Report for the year ended 31 December 2024.

Shareholders are encouraged to access these documents for full details related to the contents of this notice, and the related approvals thereof. Copies of these documents are available on the Thungela website at www.thungela.com.

APPROVAL OF THE NOTICE OF ANNUAL GENERAL MEETING

The notice on pages 3 to 125 was approved by the board of directors and is signed on the directors' behalf by:

Sango Ntsaluba

Sango Ntsaluba
Chairman

July Ndlovu

July Ndlovu
Chief executive officer

30 April 2025

thungela

Responsibly creating value
together for a shared future

CONTENTS

ABOUT THUNGELA

Thungela, which means 'to ignite' in isiZulu, is a global pure-play producer and exporter of high-quality, low-cost thermal coal, with operations in South Africa and Australia. Our quality coal reserves and marketable production, position us as a key player in the global energy market as we deliver coal through world-class ports, powering nations.

The Group owns interests in and produces its thermal coal from six mining operations located in Mpumalanga, South Africa, which consist of both underground and opencast mines, namely Goedehoop, Greenside, Isibonelo, Khwezela, Zibulo and Mafube. Thungela disposed of its controlling interest in the Rietvlei Colliery on 30 November 2024.

In 2023, Thungela acquired 85% of the Ensham Mine in Queensland, Australia, marking a significant move towards executing one of the Group's strategic pillars of geographic diversification. On 28 February 2025, a further 15% interest in the Ensham Mine was acquired.

The establishment of Thungela Marketing International in Dubai underscores the Group's commitment to capturing the full margin on its products and engaging with the international commodities market as a global coal producer.

In other parts of the value chain, Thungela holds a 50% interest in Phola Coal Processing Plant, and a 23.56% direct interest in Richard's Bay Coal Terminal (RBCT). The terminal is one of the world's leading coal export terminals, with an advanced 24-hour operation and a design capacity of 91Mtpa.

Thungela is committed to operating in a responsible way to ignite value for a shared future. We want to ensure that our mining activities positively impact our employees, shareholders and the communities where we operate.

DIRECTORS' DECLARATION

The Thungela board of directors is ultimately responsible for the preparation, fair presentation and integrity of the summarised consolidated financial statements and related financial information of the Group for the year ended 31 December 2024. The board of directors confirm that they have collectively reviewed the contents of the notice of annual general meeting and related annexures.

ALTERNATIVE PERFORMANCE MEASURES

The directors consider additional financial and operational measures to assess the results of the operations of the Group, referred to as alternative performance measures (APMs). These APMs can be identified throughout this document using the Δ symbol, and are fully described in Annexure 1 of the Annual Financial Statements for the year ended 31 December 2024.

NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given of the third AGM of shareholders of Thungela, to be convened as a hybrid meeting, which can be attended virtually, or in person at the **Johannesburg Stock Exchange, Main Auditorium, Gwen Lane, Sandown, Johannesburg, South Africa, on Thursday 5 June 2025 at 12:00 CAT/11:00 UKT**, or any adjournment or postponement, to:

- consider, and if deemed fit to pass the following ordinary and special resolutions with or without modification/s
- deal with such other business as may be dealt with at the AGM

The AGM will be held partly by way of electronic communication and participation in accordance with section 63(2)(a) of the Companies Act 71 of 2008, as amended (the Companies Act of South Africa) and clause 30 of the Company's memorandum of incorporation (MOI), and as permitted by both the JSE and LSE.

This notice sets out the procedures that shareholders should follow in order to participate in the AGM in person or by electronic communication.

Included in this document are the following:

- The notice of AGM sets out the ordinary and special resolutions to be proposed at the AGM, with explanatory notes. There are also guidance notes if shareholders wish to attend the meeting or to vote by proxy.
- A form of proxy (FOP) for South African shareholders, for completion, signature and submission to Computershare Investor Services Proprietary Limited (the South African transfer secretaries) by shareholders holding Thungela ordinary shares in certificated form or recorded in sub-registered electronic form in "own name".
- A FOP and a Form of Instruction (FOI) for United Kingdom shareholders, for completion, signature and submission to Computershare Investor Services plc (the United Kingdom transfer secretaries). These will be distributed as additions to the notice of AGM.
- Annexure 1 – summarised consolidated financial statements for the year ended 31 December 2024.
- Annexure 2 – brief curricula vitae of the directors proposed for re-election, audit committee and the social, ethics and transformation committee members proposed for election.
- Annexure 3 – social, ethics and transformation committee report.
- Annexure 4 – remuneration report.
- Annexure 5 – shareholder information.

The salient dates in relation to participation at the AGM are as follows:

Record date to determine shareholders entitled to receive the notice	Thursday, 17 April 2025
Date for posting of the notice	Wednesday, 30 April 2025
Last day to trade to be eligible to attend and vote at the AGM	Tuesday, 27 May 2025
Record date to be eligible to participate in and vote at the AGM	Friday, 30 May 2025
Last date to lodge proxy forms with United Kingdom and South African transfer secretaries	Tuesday, 3 June 2025 by no later than 12:00 CAT/11:00 UKT

NOTICE OF ANNUAL GENERAL MEETING
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ELECTRONIC PARTICIPATION PROCESS

South African shareholders

The Company has appointed Computershare Investor Services Proprietary Limited to host the AGM on an interactive platform and facilitate electronic participation and voting by shareholders. The process to be followed by South African shareholders is set out below:

	Certificated shareholders and "own name" dematerialised shareholders	Dematerialised shareholders (excluding "own name" dematerialised shareholders)
Shareholders who wish to vote at, but not attend the AGM by electronic participation	Complete the FOP attached to this notice and email same, together with proof of identification (i.e. certified copy of South African identity document, South African driver's licence or passport) and authority to do so (where acting in a representative capacity), to the South African transfer secretaries, at proxy@computershare.co.za to be received by the South African transfer secretaries by no later than Tuesday, 3 June 2025 at 12:00 CAT, for administrative purposes. Any FOP not delivered to the South African transfer secretaries by this time and date may be emailed to them (who will provide same to the chairman of the AGM) at any time prior to the AGM, provided that such FOP and identification is verified and registered before the commencement of the AGM.	Shareholders should provide the Central Securities Depository Participant (CSDP) or broker with voting instructions in terms of the custody agreement entered into between them and their CSDP or broker. Shareholders should contact their CSDP or broker regarding the cut-off time for submitting voting instructions to them. If the CSDP or broker does not receive voting instructions from shareholders, they will be obliged to vote in accordance with the instructions as per the custody agreement.

	Certificated shareholders and "own name" dematerialised shareholders	Dematerialised shareholders (excluding "own name" dematerialised shareholders)
Shareholders who wish to vote at and attend the AGM by electronic participation or in person	Register online at https://meetnow.global/za by no later than 12:00 CAT on Tuesday, 3 June 2025. Shareholders may still register online to participate in and/or vote electronically at the AGM after this date and time, however, for those shareholders to participate and/or vote electronically at the AGM, they must be verified and registered before the commencement of the AGM. As part of the registration process, shareholders will be requested to upload proof of identification (i.e. certified copy of South African identity document, South African driver's licence or passport) and authority to do so (where acting in a representative capacity), as well as to provide details, such as name, surname, email address and contact number. Following successful registration, the South African transfer secretaries will provide shareholders with a link and invitation code in order to connect electronically to the AGM.	Shareholders should request their CSDP or broker to provide them or their proxy with the necessary authority (i.e. letter of representation) in terms of the custody agreement entered into with the CSDP or broker. Register online at https://meetnow.global/za by no later than 12:00 CAT on Tuesday, 3 June 2025. Shareholders may still register online to participate in and/or vote electronically at the AGM after this date and time, however, for those shareholders to participate and/or vote electronically at the AGM, they must be verified and registered before the commencement of the AGM. As part of the registration process shareholders will be requested to upload their letter of representation and proof of identification (i.e. certified copy of South African identity document, South African driver's licence or passport), as well as to provide details, such as name, surname, email address and contact number. Following successful registration, the South African transfer secretaries will provide shareholders with a link and invitation code to connect electronically to the AGM.

Explanatory notes for South African shareholders

- Each shareholder is entitled to appoint one or more proxy(ies) (who need not be a shareholder(s) of the Company) to participate, speak and vote in their stead at the AGM.
- Voting will take place by way of a poll and accordingly every holder of ordinary shares will have one vote in respect of each ordinary share held.
- The cost (e.g. for mobile data consumption or internet connectivity) of electronic participation in the AGM meeting will be carried by the participant.
- The participant acknowledges that the electronic communication services are provided by third parties and indemnifies the Company and its directors/employees/company secretary/the South African transfer secretaries/service providers against any loss, injury, damage, penalty or claim arising in any way from the use or possession of the electronic services, whether or not the problem is caused by any act or omission on the part of the participant or anyone else. In particular, but not exclusively, the participant acknowledges that he/she will have no claim against the Company or its directors/employees/company secretary/South African transfer secretaries/service providers, whether for consequential damages or otherwise, arising from the use of the electronic services or any defect in it or from total or partial failure of the electronic services and connections linking the participant via the electronic services to the AGM.
- Due to the format of the AGM, shareholders are requested to submit the questions that they wish to raise at the AGM in advance of the AGM by sending them by email to the company secretary at coseccoalsa@thungela.com by no later than 12:00 CAT on Friday, 23 May 2025. These questions will be addressed at the AGM, as well as responded to through email.

NOTICE OF ANNUAL GENERAL MEETING
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United Kingdom shareholders

United Kingdom shareholders and depositary interest holders are required to vote by proxy using the FOP or FOI, respectively, provided by the United Kingdom transfer secretaries and included as additional documents to this notice. Shareholders can cast their instruction online at www.investorcentre.co.uk/eproxy. To be effective, all forms of instruction must be lodged with the United Kingdom transfer secretaries at: Computershare Investor Services plc, The Pavilions, Bridgwater Road, Bristol BS99 6ZY by 3 June 2025 at 12.00 UKT.

Explanatory notes for United Kingdom shareholders – form of instruction

- Shareholders should indicate, by placing 'X' in the appropriate space on the FOI, how they wish their votes to be cast in respect of each of the resolutions. If the FOI is duly signed and returned, but without specific direction as to votes should be cast, the FOI will be rejected.
- The 'Vote Withheld' option on the FOI is provided to enable shareholders to abstain on any particular resolution. However, it should be noted that a 'Vote Withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes 'For' and 'Against' a resolution.
- To give an instruction via the CREST system, CREST messages must be received by the issuer's agent (ID number 3RA50) not later than 72 hours before the time appointed for holding the AGM. For this purpose, the time of receipt will be taken to be the time (as determined by the timestamp generated by the CREST system) from which the issuer's agent can retrieve the message. The Company may treat as invalid an appointment sent by CREST in the circumstances set out in Regulation 35(5)(a) of the Uncertificated Securities Regulations 2001.

Explanatory notes for United Kingdom shareholders – FOP

- Every holder has the right to appoint some other person(s) of their choice, who need not be a shareholder, as their proxy to exercise all or any of their rights, to attend, speak and vote on their behalf at the AGM.
  If shareholders wish to appoint a person other than the chairman, please insert the name of the chosen proxy holder in the space provided on the FOP. If the proxy is being appointed in relation to less than a shareholder's full voting entitlement, please enter in the box next to the proxy holder's name the number of shares in relation to which they are authorised to act as proxy. If returned without an indication as to how the proxy shall vote on any particular matter, the proxy will exercise their discretion as to whether, and if so how, they vote (or if the FOP has been issued in respect of a designated account for a shareholder, the proxy will exercise their discretion as to whether, and if so how, they vote).
- To appoint more than one proxy, additional FOPs may be obtained by contacting the United Kingdom transfer secretaries helpline on 0370 702 4040 or shareholders may photocopy the form. Please indicate in the box next to the proxy holder's name on the FOP the number of shares in relation to which they are authorised to act as proxy. Please also indicate by marking the box provided if the proxy instruction is one of multiple instructions being given. All forms must be signed and should be returned together in the same envelope.
- Entitlement to participate at the AGM will be determined by reference to the register of members of the Company at 18:00 UKT on Friday, 30 May 2025. Changes to entries on the register of members after that time shall be disregarded in determining the rights of any person to participate at the AGM.

Explanatory notes to United Kingdom shareholders

- Any alterations made in the FOP and FOI forms should be initialled.
- The completion and return of these forms will not preclude a member from attending the AGM in person. Depositary interest holders or shareholders wishing to attend the AGM should send a request to attend the AGM to proxy@computershare.co.za by no later than 12:00 CAT/ 11:00 UKT on Friday 23 May 2025. As part of the request, shareholders should provide the name and designation of their holding, a contact name, email address, and contact number. Following successful registration, the United Kingdom transfer secretaries will provide shareholders with a link and invitation code in order to connect electronically to the AGM as a guest. Please ensure votes have been submitted using either the FOP or FOI prior to the deadline.

Voting procedures for shareholders who intend to attend the AGM in person:

Shareholders attending and wishing to vote at the AGM in person must ensure that they bring along an internet-enabled smartphone, tablet or computer in order to be able to vote at the venue. Please ensure that the compatible device's browser has the latest version of Chrome, Safari, Edge, or Firefox. Shareholders are also referred to the "Electronic Participation Meeting Guide" attached to this notice for instructions on electronic voting.

Shareholders who attend the meeting in person will follow the same steps to vote at the meeting as shareholders that attend the meeting via electronic communication.

DOCUMENTS PRESENTED TO SHAREHOLDERS

Presentation of the Annual Financial Statements

The Annual Financial Statements of the Company and the Group for the year ended 31 December 2024 (as approved by the board of directors of the Company), incorporating the independent external auditor's, audit committee's and directors' reports, are presented to shareholders in terms of section 30(3) of the Companies Act of South Africa.

A summary of the Annual Financial Statements is attached to this document as Annexure 1. The complete Annual Financial Statements can be accessed at www.thungela.com/investors/results.

Presentation of the report of the social, ethics and transformation committee

The Company's social, ethics and transformation committee report, read with the detailed Integrated Annual Report, which can be accessed at www.thungela.com/investors/integrated report, will serve as the social and ethics committee's report to the Company's shareholders on the matters within its mandate at the AGM. Any specific questions to the committee may be sent to the company secretary prior to the AGM.

ORDINARY RESOLUTIONS

Percentage of voting rights – ordinary resolutions

Ordinary resolutions numbers 1 to 7 contained in this notice, require the approval of a minimum of 50% (fifty percent) plus one vote of the votes exercised on the resolutions by the shareholders present or represented by proxy at the AGM in order for the resolutions to be adopted.

Ordinary resolution number 1

Re-appointment of independent external auditor

To re-appoint PricewaterhouseCoopers Incorporated (PwC), upon recommendation of the board of directors and the audit committee, as the independent external auditor of the Company, and Ms Vuyiswa Khutlang as the individual designated auditor for the ensuing financial year ending 31 December 2025 until the conclusion of the next AGM and in accordance with section 90(1) of the Companies Act.

The Group audit committee has assessed the independence and experience of both the firm and the individual designated auditor and has concluded that both PwC and Ms Vuyiswa Khutlang are independent of the Company in accordance with section 94(8) of the Companies Act. In compliance with the JSE Listings Requirements (paragraph 3.84(g)(iii)) the audit committee obtained and considered all information listed therein in its suitability assessment and nominated PwC as well as Ms Vuyiswa Khutlang for re-appointment as independent external auditor and individual designated auditor of the Group, for the ensuing year ending 31 December 2025, and to hold office until the conclusion of the next AGM.

RESOLVED that PricewaterhouseCoopers Incorporated (PwC) be and is hereby re-appointed as independent external auditor and Ms Vuyiswa Khutlang be hereby appointed as the individual designated auditor of the Company, to hold office until the conclusion of the next AGM in terms of section 90(1) of the Companies Act of South Africa.

Ordinary resolution number 2

Appointment and re-election of retiring directors

(Comprising separate ordinary resolutions numbered 2.1 to 2.3)

Resolved to individually appoint and re-elect each of the following directors (ordinary resolutions 2.1 to 2.3 to be voted on and adopted as separate resolutions). The board recommends the appointment and re-election of these directors:

Ms KW Mzondeki and Mr SG French are retiring due to the requirement in the MOI for one-third of the non-executive directors to retire and be eligible for re-election by rotation at every AGM.

Mr TD McKeith is retiring due to the requirement in the MOI for all newly appointed directors to retire and be eligible for election at the first AGM of the Company following their appointment.

A brief curriculum vitae of each director is attached in Annexure 2 on pages 78 and 79 of this document.

Ordinary resolution number 2.1

RESOLVED that Ms KW Mzondeki be and is hereby re-elected as a director of the Company with effect from 5 June 2025.

Ordinary resolution number 2.2

RESOLVED that Mr SG French be and is hereby re-elected as a director of the Company with effect from 5 June 2025.

Ordinary resolution number 2.3

RESOLVED that Mr TD McKeith be and is hereby elected as a director of the Company with effect from 5 June 2025.

NOTICE OF ANNUAL GENERAL MEETING
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Ordinary resolution number 3

Election of audit committee members

(Comprising separate ordinary resolutions numbered 3.1 to 3.3)

To elect, by way of separate ordinary resolutions, the audit committee consisting of independent non-executive directors in terms of section 94(4) of the Companies Act of South Africa and appointed in terms of section 94(2) to perform the duties and responsibilities stipulated in section 94(7) of the Companies Act of South Africa. The independent non-executive directors, each being eligible, offer themselves for re-election. A brief curriculum vitae for each member is attached as Annexure 2 on pages 78 and 79 of this document.

Ordinary resolution number 3.1

RESOLVED that Ms KW Mzondeki, be and is hereby re-elected, subject to the passing of ordinary resolution 2.1 with effect from 5 June 2025, as a member of the audit committee.

Ordinary resolution number 3.2

RESOLVED that Mr TD McKeith, subject to the passing of ordinary resolution 2.3, be and is hereby elected, with effect from 5 June 2025, as a member of the audit committee.

Ordinary resolution number 3.3

RESOLVED that Mr BM Kodisang, be and is hereby re-elected, with effect from 5 June 2025, as a member of the audit committee.

Ordinary resolution number 4

Election of social, ethics and transformation members

(Comprising separate ordinary resolutions numbered 4.1 to 4.3)

To elect by separate resolutions the social, ethics, and transformation committee, as provided for in section 72(4) of the Companies Act and regulation 43 of the Regulations

In terms of the most recent amendments made to the Companies Act with effect from 27 December 2024, the following key amendments apply with regard to the social and ethics committees of public companies.

The members of the said committee must now be elected by shareholders at every AGM, as opposed to being appointed by the board (section 72(9A)(a)). Furthermore, the majority of the members of the committee must be non-executive directors and must not have been involved in the day-to-day management of the Company in the past three financial years (section 72(7A)(a)). The majority of the nominated directors of the social, ethics, and transformation committee for 2025 are independent non-executive directors.

Ordinary resolution number 4.1

RESOLVED that Mr TD McKeith, subject to the passing of ordinary resolution 2.3, be and is hereby elected, with effect from 5 June 2025, as a member of the social, ethics and transformation committee.

Ordinary resolution number 4.2

RESOLVED that Ms YN Jekwa, be and is hereby elected, with effect from 5 June 2025, as a member of the social, ethics and transformation committee

Ordinary resolution number 4.3

RESOLVED that Mr July Ndlovu, be and is hereby elected, with effect from 5 June 2025, as a member of the social, ethics and transformation committee.

Non-binding ordinary resolution number 5

Approval of the remuneration policy

Shareholder approval is sought for the Company's remuneration policy and implementation thereof by way of separate non-binding advisory votes. The detailed remuneration policy, for which approval is being sought, is included as Annexure 4 on pages 83 to 114 of this document.

Non-binding advisory resolution number 1

RESOLVED that the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by the King IV Report on Corporate Governance™ for South Africa, 2016* (King IV).

* Copyright and trademarks are owned by the Institute of Directors in South Africa NPC and all of its rights are reserved.

Non-binding advisory resolution number 2

RESOLVED that the implementation of the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by King IV.

Ordinary resolution number 6

General authority for directors to allot and issue ordinary shares

RESOLVED that the unissued shares in the Company, limited to 5% of the shares in issue at the date of this notice, being 140,492,585 shares, be and are hereby placed under the control of the directors until the next AGM. The directors be and are hereby authorised to issue any such shares, including options in respect thereof or convertible securities that are convertible into an existing class of equity securities, where applicable as they may deem fit, subject to the requirements of the Companies Act of South Africa, the MOI, the provisions of the JSE Listings Requirements, and the United Kingdom Listing Rules.

Ordinary resolution number 7

Authorisation to sign documents to give effect to resolutions

RESOLVED that any one director or the company secretary be and are hereby authorised to do all such things and sign all such documents and take all such actions as they consider necessary to give effect to the resolutions set out in this notice of AGM.

SPECIAL RESOLUTIONS

Percentage of voting rights – special resolutions

Special resolutions numbers 1 to 3, contained in this notice, require approval of a minimum of 75% (seventy-five percent) of the votes exercised on the resolutions by the shareholders present or represented by proxy at the AGM in order for the resolutions to be adopted.

Special resolution number 1

General authority to acquire the Company's own ordinary shares

RESOLVED that the Company and its subsidiaries be granted an authority under the Companies Act of South Africa and a general authority in terms of the JSE Listings Requirements to repurchase or purchase, as the case may be (collectively, 'repurchase') the ordinary shares issued by the Company (but not exceeding 10% of the Company's total issued ordinary shares in any one financial year), from any person, upon such terms and conditions and in such amounts as the directors of the Company or directors of the subsidiary (as the case may be) may from time to time determine, subject to compliance with the applicable provisions of the Companies Act of South Africa, the MOI and the JSE Listings Requirements (as regards repurchases effected on the JSE) or the listing rules applicable on any other exchange on which the Company's ordinary shares are listed (as regards repurchases effected on such exchanges, and only to the extent applicable) (each as presently constituted and as amended from time to time).

As regards any repurchase of the Company's ordinary shares to be effected on the JSE, it is noted that the JSE Listings Requirements presently provide that:

- Such repurchases may only be implemented through the order book operated by the JSE trading system and done without any prior understanding or arrangement between the Company and the counterparty (reported trades being prohibited).
- Such general authority for the repurchases has been given by the MOI.
- Such general authority for the repurchases shall be valid for a period of 15 months from the date of passing of this resolution.
- An announcement must be published as soon as the Company and/or its subsidiaries have repurchased shares constituting, on a cumulative basis, 3% of the initial number of ordinary shares of the Company (being the number of ordinary shares in issue as at the time that this general authority is granted), containing the details required in terms of the JSE Listings Requirements in respect of such repurchases, as well as for each 3% in aggregate of the initial number of ordinary shares repurchased thereafter.
- A resolution has been passed by the board of directors that it has authorised the repurchase, that the Company and its subsidiary/ies have passed the solvency and liquidity test as defined in the Companies Act of South Africa, and that since the solvency and liquidity test was performed, there have been no material changes to the financial position of the Group.
- Such repurchases may not be made at a price greater than 10% above the weighted average of the market value of the listed ordinary shares of the Company on the JSE for the five business days immediately preceding the date on which the acquisition is effected. The JSE should be consulted for a ruling if the Company's securities have not traded in such five business-day period.
- The Company may, at any point in time, only appoint one agent to effect any repurchases on its behalf.
- Such repurchases are subject to exchange control regulations and any required approvals at the relevant time.
- No general repurchase of ordinary shares of the Company shall be effected during any prohibited period as contemplated in the JSE Listings Requirements unless the Company or its subsidiaries have in place a repurchase programme, where the dates and quantities of securities to be traded during the relevant period are fixed (not subject to any variation), and full details of the programme have been submitted to the JSE in writing as required, prior to the commencement of the prohibited period. The Company must instruct an independent third party, which makes its investment decisions in relation to the Company's securities independently of, and uninfluenced by, the Company, prior to the commencement of the prohibited period to execute the repurchase programme submitted to the JSE.

NOTICE OF ANNUAL GENERAL MEETING
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Reason and effect

The reason for and effect of special resolution number 1 is to grant an authority under the Companies Act of South Africa and a general authority in terms of the JSE Listings Requirements, up to the expiry of a period of 15 months from the date of passing of special resolution number 1 to authorise the Company and any of its subsidiary companies to repurchase or purchase, as the case may be (collectively, 'repurchase') the Company's issued ordinary shares (but not exceeding 10% of the Company's total issued ordinary shares in any one financial year) on such terms and conditions and in such amounts as determined from time to time by the directors of the Company or the directors of the subsidiary (as the case may be) subject to the limitations set out above. In terms of article 25 of the MOI, the repurchase of securities must be undertaken in accordance with the Companies Act of South Africa and the JSE Listings Requirements.

For the purpose of considering special resolution number 1 and in compliance with paragraph 11.26 of the JSE Listings Requirements, the following information has been included in this notice, at the places indicated:

- major shareholders – refer to page 115
- share capital of the Company – refer to pages 70 and 71
- material changes – refer below
- directors' responsibility statement – refer below

Disclosures/information required in terms of the JSE Listings Requirements

For the purposes of considering special resolution number 1 and in compliance with the JSE Listings Requirements, the following information is provided:

Directors' statement after considering the effect of a repurchase pursuant to a general authority

The directors of the Company confirm that the method by which the Company and any of its subsidiaries intend to repurchase its securities, and the date on which such repurchase will take place, has not yet been determined.

As per the JSE Listings Requirements, the Company's directors undertake that they will not implement a repurchase in terms of the proposed repurchase authority unless the directors, after considering the effect of the maximum repurchase, are of the opinion that:

- The Company and the Group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the repurchase.
- The assets of the Company and the Group will be in excess of the liabilities of the Company and the Group for a period of 12 months after the date of the repurchase. For this purpose, the assets and liabilities are recognised and measured in accordance with the accounting policies used in the latest Annual Financial Statements.
- The share capital and reserves of the Company and the Group will be adequate for ordinary business purposes for a period of 12 months after the date of the repurchase.
- The working capital of the Company and the Group will be adequate for ordinary business purposes for a period of 12 months after the date of the repurchase.

Material changes

There have been no material changes in the financial or the trading position of the Company and its subsidiaries since the end of the financial period for which the Annual Financial Statements have been published to the date of this notice.

Directors' responsibility statement

The directors of the Company, collectively and individually accept full responsibility for the accuracy of the information pertaining to special resolution number 1 and certify that to the best of their knowledge and belief there are no facts that have been omitted which would make any statement false or misleading, and that all reasonable enquiries to ascertain such facts have been made and that this resolution contains all information required by the JSE Listings Requirements.

Special resolution number 2

Remuneration payable to non-executive directors

RESOLVED that, in terms of section 66(9) of the Companies Act of South Africa and on the recommendation of the remuneration and human resources committee, the Company be and is hereby authorised to remunerate its non-executive directors for their services as directors and/or pay any fees related thereto until the next AGM.

Reason and effect

In terms of sections 66(8) and 66(9) of the Companies Act of South Africa, remuneration may only be paid to members of the board for their services as directors in accordance with a special resolution approved by the shareholders within the previous two years and if not prohibited in terms of the MOI. Therefore, the reason for and effect of special resolution number 2 is to obtain the approval of shareholders by way of a special resolution for the payment of remuneration to its non-executive directors for services rendered as directors of the Company.

The proposed fees for the non-executive directors, as approved by the board, are as follows:

Position[1]	Proposed fees for the year ending 31 December 2025	Fees for the year ended 31 December 2024
Board		
Chairperson[2]	1,840,582	1,752,935
Lead independent director[3]	1,315,121	1,252,496
Member	613,527	584,312
Audit committee		
Chairperson	368,116	350,587
Member	221,180	200,163
Remuneration and human resources committee		
Chairperson	269,952	257,097
Member	191,031	181,935
Social, ethics and transformation committee		
Chairperson	269,952	257,097
Member	191,031	181,935
Health, safety, environment and risk committee		
Chairperson[2]	269,952	257,097
Member	191,031	181,935
Nomination and governance committee		
Chairperson	269,952	257,097
Member	191,031	181,935
Investment committee		
Chairperson	296,210	268,063
Member	191,031	181,935
Ad hoc meeting fees[4]		
Per meeting	26,586	25,320

Amounts shown are in rand.

1 Executive directors do not receive directors' fees.
2 The chairperson of the board also chairs the nomination and governance committee, and is also a member of the health, safety, environmental and risk committee, and investment committee, and attends the remuneration and human resources committee, the social, ethics and transformation committee, and the audit committee by invitation. He does not receive any additional remuneration in this regard.
3 Provision is made for the appointment of a lead independent non-executive director.
4 Provision is made for ad hoc board meetings or other additional services rendered to the Company in the capacity of non-executive directors to deal with time-critical matters limited to four additional meetings per annum. The amount shown is the per meeting fee, which shall be reduced for meetings or services which require substantially less time to prepare for, attend or undertake than a regular meeting.

NOTICE OF ANNUAL GENERAL MEETING
CONTINUED

Special resolution number 3
Approval for the granting of financial assistance in terms of sections 44 and 45 of the Companies Act of South Africa

RESOLVED that, to the extent required, the board of directors of the Company may, subject to compliance with the requirements of the MOI and the Companies Act of South Africa, as presently constituted and as amended from time to time, authorise the Company to provide direct or indirect financial assistance as contemplated in section 44 and/or 45 of the Companies Act of South Africa, by way of the provision of security or otherwise, to:

- Any of its present or future subsidiaries and/or any other company or corporation that is or becomes related or interrelated to the Company, for any purpose or in connection with any matter, including, but not limited to, the subscription of any option, or any securities issued or to be issued by the Company or a related or interrelated company, or for the purchase of any securities of the Company or a related or interrelated company as contemplated under section 44 of the Companies Act of South Africa.
- Any person who is a participant in any of the share or other employee incentive schemes of the Group, for the purpose of, or in connection with, the subscription of any option, or any securities, issued or to be issued by the Company or a related or interrelated company, or for the purchase of any securities of the Company or a related or interrelated company, where such financial assistance is provided in terms of any such scheme that does not constitute an employee share scheme that satisfies the requirements of section 97 of the Companies Act of South Africa.

Reason and effect

The reason for special resolution number 3 is that Thungela from time to time, as an essential part of conducting its business, may be required to provide direct or indirect financial assistance in the form of loans, guarantees, the provision of security or in connection with the subscription for securities to be issued by the Company or related and interrelated companies or for the purchase of securities of the Company or related and interrelated companies, as contemplated in sections 44 and 45 of the Companies Act of South Africa.

In terms of the Companies Act of South Africa, companies are required to obtain the approval of their shareholders by way of special resolution to provide financial assistance. The financial assistance will be provided as part of the day-to-day operations of the Company and in accordance with its MOI and provisions of the Companies Act of South Africa.

Approval is not sought for loans to directors and no such financial assistance will be provided under this authority.

Special resolution number 3 will grant the directors of Thungela the authority to authorise the provision by the Company of financial assistance as contemplated in sections 44 and 45 of the Companies Act of South Africa until the next AGM.

NO MATERIAL CHANGES

There have been no material changes in the financial position of the Company and its subsidiaries since the date of signature of the independent auditor's report and the date of this notice.

Equity securities held by a share trust or scheme will not have their votes taken into account at the AGM for the purposes of resolutions proposed in terms of the JSE Listings Requirements.

By order of the board

Tovi Ellis

Tovi Ellis
Company secretary

30 April 2025

thungela

PRIVATE

Attention: Robyn Hugo

Just Share NPC
Director: climate change engagement
By email: rhugo@justshare.org.za

19 May 2025

Dear Ms Hugo

Shareholder resolution proposed by Just Share NPC, Aeon Investment Management and Fossil Free South Africa for tabling at Thungela's 2025 annual general meeting

Thank you for your recent letter.

We have carefully considered the views expressed in your recent correspondence, as well as those submitted in 2023 and 2024. Thungela's position on this matter remains consistent with what has been communicated over the past two years. As such, the company will not include the proposed shareholder resolution in the upcoming AGM notice.

We acknowledge and appreciate the concerns raised, particularly in relation to environmental responsibility. Thungela remains firmly committed to responsible environmental practices. We also recognise the importance of sound corporate governance in managing a coal mining business and reaffirm our duty to act in the best interests of all shareholders.

Please do keep in mind our standing invitation to meet and discuss your perspectives and areas of concern.

Yours sincerely

Tovi Ellis
Company Secretary
E tovi.ellis@thungela.com
M +27(0) 82 054 8350

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 135.1

About this Form

- This form is issued in terms of Section 168 of the Companies Act, 2008 and Regulation 135 of the Companies Regulations, 2011.
- This Form must be completed to the best of your ability, and submitted to the Companies Commission for consideration of your complaint.
- If this complaint is lodged by a company, please provide contact details of the person authorised to discuss the complaint.
- Generally, information relating to this complaint is not part of the public record unless the Commission refers the complaint to the Companies Tribunal. You have a right to identify information that you believe is confidential by appending a list to this Form.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address:PO Box 429
Pretoria 0001
Republic of South Africa
tel: 0861 843 384
www.cipc.co.za

Complaint

Date: 7 June 2023

From: Just Share NPC [reg no 2017/347856/08)] *(insert name of complainant)*

To: ☒ The Commission ☐ The Takeover Regulation Panel

Concerning:

(Name and Registration Number of Company whose conduct is the subject of the complaint)
Name: Thungela Resources Limited Registration No.: 2021/303811/06

The nature of the complaint:

(Provide a concise statement of the conduct that is the subject of the complaint)
Request for an investigation and compliance notice in respect of Thungela Resources Limited's breach of its obligations and shareholder rights in terms of sections 65(3) and 62(3)(c) of the Companies Act, 2008.

Is the conduct still continuing? Yes ☒ No ☐

If not, when did the conduct end? _____

In terms of section 157 (2), do you wish the Commission or the Panel, as the case may be, to commence court proceedings in this matter in your name? Yes ☐ No ☒

Please attach to this form a typed document setting out a description of the conduct that is the subject of this complaint. See attached supporting statement & 20 annexures

(Please include the names of each party involved the conduct, dates on which the conduct occurred, when and how you became aware of the conduct, and any other information you consider relevant. Include copies of documents if possible.)

The complainant may be contacted at:

(Insert contact details)
Telephone No.: 076 756 7507 (Emma); 082 389 4357 (Robyn)
Email: eshuster@justshare.org.za; rhugo@justshare.org.za
Postal Address: Unit B01, Plum Park, 25 Gabriel Road, Plumstead, Cape Town 7800

Signed: As below for Just Share

If the complainant is a juristic person

Name and Title of person signing on behalf of the Complainant:

Robyn Hugo, Director of Climate Change Engagement

Authorised Signature:

RCH

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008)

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

CONTENTS

A. OVERVIEW OF THE COMPLAINT

1. Thungela Resources Limited ("Thungela") has twice refused to table shareholder-proposed resolutions at its annual general meeting (AGM): on 8 May 2023, and 2 May 2024 – a decision it confirmed on 10 May 2024.

2. Both shareholder resolutions were co-filed by Aeon Investment Management, Fossil Free South Africa and Just Share NPC (the "co-filers"), in terms of section 65(3) of the Companies Act 71 of 2008 (the "Companies Act"), which provides that:

> *"any two shareholders of a company:*
>
> *(a) may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and*
> *(b) when proposing a resolution, may require that the resolution be submitted to shareholders for consideration—*
> ...
> *(ii) at the next shareholders meeting…".*

3. The resolutions filed by the co-filers concerned climate change and Thungela's responsibility, as a major coal mining company and significant emitter of greenhouse gases (GHGs), to take effective and transparent action to reduce its GHG emissions in line with the goals of the Paris Agreement.[1] Both proposed resolutions were framed in non-binding, advisory terms.

4. The proposed resolutions complied with all procedural and formal requirements under the Companies Act and Thungela's memorandum of incorporation (MOI).

5. Even though the proposed resolutions complied with all procedural and formal requirements, Thungela refused to circulate and table these shareholder-proposed resolutions, in breach of its obligations under the Companies Act and in breach of the rights of the co-filing shareholders.

6. As a result of this ongoing refusal – confirmed by Thungela in writing in May 2024 ahead of its latest AGM held on 4 June 2024 – Just Share (the "Complainant") is left with no alternative but to lodge this complaint in terms of section 168(1)(b) of the Companies Act. Thungela has acted in a manner inconsistent with the Companies Act, and shareholders' rights have consequently been infringed.

7. In terms of the Companies Act, the Complainant lodges this complaint in its own right, and in the interests of its fellow co-filers.

[1] https://unfccc.int/process-and-meetings/the-paris-agreement

8. The Complainant submits that the Thungela board of directors ("the Thungela board") had no right to refuse to circulate and table the proposed resolutions, which complied with the procedural and formal requirements under section 65(3). If the Thungela board wished to prevent those resolutions from being tabled, its remedy was to apply to court in terms of the procedures in sections 65(4) and (5) of the Companies Act to seek permission to prevent the resolutions from going to a vote.

9. Thungela holds a divergent position and asserts that it has a unilateral right to block shareholder-proposed resolutions on climate change and related environmental, social and governance (ESG) issues from being circulated and tabled at shareholder meetings.

10. Given Thungela's confirmed stance, there is an ongoing violation of the Companies Act and a breach of shareholders' rights that will reoccur each time that the Complainant and other shareholders propose resolutions of this nature.

11. The Complainant respectfully submits that Thungela'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.

12. Furthermore, reasonable grounds exist to issue a compliance notice to Thungela, in terms of section 171 of the Companies Act, directing it to comply with its obligations under sections 65(3) and 62(3)(c) of the Companies Act by circulating and tabling future shareholder-proposed resolutions that satisfy applicable formal and procedural requirements.

B. PARTIES AND STANDING

13. As contemplated in section 168 of the Companies Act, the Complainant lodges this complaint with the Commission in respect of Thungela's contravention of sections 65(3) and 62(3)(c) of the Companies Act and shareholders' rights flowing from those provisions.

14. The Complainant holds shares in Thungela. 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.[2]

15. Thungela is a major producer and exporter of thermal coal, the burning of which is the single largest contributor to climate change. It is listed on the Johannesburg Stock Exchange (JSE), with its principal address at 25 Bath Avenue, Rosebank, Johannesburg, 2196.[3]

[2] Non-profit company registration no. 2017/347856/08 (https://justshare.org.za/)
[3] Company registration no. 2021/303811/06 (https://www.thungela.com/)

16. The Complainant acts in its own right as a Thungela shareholder and as one of the co-filers of the shareholder-proposed resolutions at the centre of this complaint. It also acts in the interests of the other two co-filers of the proposed resolutions, Aeon Investment Management and Fossil Free South Africa, as a group of affected persons, in terms of the extended standing provision in section 157(1)(c) of the Companies Act.

17. Aeon Investment Management and Fossil Free South Africa have each authorised the Complainant to lodge this complaint on behalf of the co-filers.

C. LEGAL FRAMEWORK AND RELEVANT CONTEXT

The Companies Act and applicable constitutional provisions

18. The reforms introduced in the Companies Act 2008 included among their objectives to "*advance shareholder activism*".[4] 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*".[5]

19. 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] These include more expansive powers to put forward shareholder-proposed resolutions.

20. Under Part F – Governance of companies – section 65 of the Companies Act regulates shareholder resolutions, including ordinary and special resolutions.

21. Section 65(2) provides that the board of directors may propose any resolution to be considered by shareholders.

22. Section 65(3) entitles two or more shareholders to propose a resolution on any matter, provided that they are each entitled to exercise voting rights in respect of that matter:

> "*any two shareholders of a company:*
>
> *(a) may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and*

[4] Explanatory Memorandum to the Companies Bill [B 61D-2008] para 1.2.4(c).
[5] Institute of Directors in South Africa *King IV Report on Corporate Governance in South Africa* (2016).
[6] See, generally, Rehana Cassim 'An Analysis of Trends in Shareholder Activism in South Africa' (2022) 30 *African Journal of International and Comparative Law* 157 - 170.

(b) when proposing a resolution, may require that the resolution be submitted to shareholders for consideration—

...

(ii) at the next shareholders meeting...". (emphasis added).

23. In terms of section 65(4) of the Companies Act, a shareholder proposed resolution must be:

"(a) expressed with sufficient clarity and specificity; and

(b) accompanied by sufficient information or explanatory material

to enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution."

24. This should be read together with the notice requirements in section 62. Section 62(1) requires that, unless a company's MOI provides for a different notice period, a company must deliver a notice of each shareholders meeting in the prescribed manner and form to all of the shareholders of the company as of the record date for the meeting, at least 15 business days before the meeting is to begin, in the case of a public company.[7]

25. In terms of section 62(3)(c), a notice of a shareholders meeting must be in writing, and must include:

"(c) a copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted".

26. Section 65(5) provides for a dispute resolution mechanism, where directors or shareholders wish to object to a proposed resolution. It provides that:

"At any time before the start of the meeting at which a resolution will be considered, a shareholder or director who believes that the form of the resolution does not satisfy the requirements of subsection (4) may seek leave to apply to a court for an order—

(a) restraining the company from putting the proposed resolution to a vote until the requirements of subsection (4) are satisfied; and

(b) requiring the company, or the shareholders who proposed the resolution, as the case may be, to—

[7] The Johannesburg Stock Exchange (JSE) Listings Requirements provide (paragraph 10.11(b)) that shareholders must be notified of a resolution at least 15 business days before the AGM.

(i) *take appropriate steps to alter the resolution so that it satisfies the requirements of subsection (4); and*

(ii) *compensate the applicant for costs of the proceedings, if successful."*

27. These are unalterable provisions, meaning that the rights conferred on shareholders under section 65(3) may not be negated or restricted by a company's MOI, its rules, or its conduct.

28. Section 66(1) provides for the powers of boards of directors, including the consideration and management of proposed shareholder resolutions:

> "*(1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.*" (emphasis added).

29. In terms of the explicit qualification "*except to the extent that this Act . . . provides otherwise*", section 66(1) does not give company boards the power to override the rights conferred by sections 65(3) and 62(3)(c).

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

31. 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:

31.1 "*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]

31.2 "*balanc[ing] the rights and obligations of shareholders and directors within companies*";[9] and

31.3 "*encourag[ing] the efficient and responsible management of companies*".[10]

32. Section 5(2) of the Companies Act further permits reference to foreign law in interpreting the Act's provisions, providing that "*[t]o the extent appropriate, a court interpreting or applying this Act may consider foreign company law.*" It is notable that the rights afforded

[8] Section 7(b)(iii).
[9] Section 7(i).
[10] Section 7(j)).

to shareholders under section 65(3) are considerably more generous and expansive than the rights conferred on shareholders in comparable common law countries, including the United States (US), the United Kingdom (UK), Canada, Australia and New Zealand.

33. 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]

34. Three sets of constitutional rights are directly implicated in the context of this complaint:

34.1 The section 24 environmental rights;

34.2 The section 16 right to freedom of expression, including the right to receive and impart information and ideas; and

34.3 The section 18 right to freedom of association.

35. These rights impose corresponding obligations on private actors, such as Thungela, in terms of section 8(2) of the Constitution.[12]

The environmental right

36. Section 24 of the Constitution provides that:

"Everyone has the right –

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –

(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

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[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.*"

37. The High Court has already acknowledged that climate change poses a direct threat to fundamental rights, including the section 24 environmental rights.[13] The National Climate Change Adaptation Strategy, 2020, affirms that South Africa is already experiencing significant effects of climate change, particularly physical impacts as a consequence of increased temperatures and rainfall variability.[14]

38. The mining sector is identified as one of the priority sectors addressed in the National Climate Change Adaptation Strategy, due to its contribution to climate change and exposure to its impacts.[15] The International Energy Agency has further identified coal as the single largest contributor to climate change.[16]

39. From a corporate and investor perspective, climate change poses severe financial and business risks. These include *physical risks*, as the increasing frequency and intensity of natural disasters poses a risk to all businesses, their employees, and their assets; *liability risks*, as companies and directors face increasing exposure to legal claims arising from their contribution to climate change; and *transition risks*, as increased taxation, regulatory pressure, divestment, and the shift to a low-carbon economy will leave fossil fuel-exposed companies and their shareholders financially vulnerable.[17] It is notable that Thungela's 2022 and 2023 Climate Change Reports reflect and acknowledge these multifaceted risks.[18]

40. Shareholder-proposed resolutions relating to climate change seek to provide all shareholders in with an opportunity to provide input into the climate change-related strategies of investee companies. This is particularly important in the context of the fiduciary obligations of institutional investors, specifically those investing the savings of pension fund beneficiaries which must generate long-term, sustainable returns.

41. Pension fund trustees are legally obliged to consider ESG factors when making investment decisions. These include climate-related risks and opportunities.[19] The preamble to regulation 28 of the Pension Funds Act Regulations, 1962 provides that:

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[13] *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others* (65662/16) [2017] ZAGPPHC 58; [2017] 2 All SA 519 (GP) at paras 82 - 83.
[14] Department of Forestry, Fisheries, and the Environment, *National Climate Change Adaptation Strategy*, November 2019 at pages 9 and 13.
[15] Ibid at page 10.
[16] See for example: IEA Coal in Net Zero Energy Transitions (2022) available at https://www.iea.org/reports/coal-in-net-zero-transitions.
[17] Mark Carney 'Breaking the Tragedy of the Horizon' 29 September 2015 available at https://www.bankofengland.co.uk/speech/2015/breaking-the-tragedy-of-the-horizon-climate-change-and-financial-stability
[18] See for example: Climate Change Report 2022 at pages 12-15, 19-29; and Climate Change Report 2023 at pages 15-22.
[19] https://justshare.org.za/media/news/pension-fund-boards-must-take-climate-change-into-account-or-risk-legal-action/

"A fund has a fiduciary duty to act in the best interest of its members whose benefits depend on the responsible management of fund assets. This duty supports the adoption of a responsible investment approach to deploying capital into markets that will earn adequate risk adjusted returns suitable for the fund's specific member profile, liquidity needs and liabilities. Prudent investing should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund's assets, including factors of an environmental, social and governance character. This concept applies across all assets and categories of assets and should promote the interests of a fund in a stable and transparent environment".

42. Regulation 28(2)(c)(ix) states:

"A fund and its board must at all times apply the following principles: before making an investment in and while invested in an asset consider any factor which may materially affect the sustainable long term performance of the asset including, but not limited to, those of an environmental, social and governance character."

The rights to freedom of expression and association

43. Shareholder-proposed resolutions also serve 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"*

...

18 Freedom of association

Everyone has the right to freedom of association."

44. The right to table shareholder-proposed resolutions, with explanatory statements, allows shareholders to exchange information and ideas before and during shareholder meetings and to organise around shared goals through voting. In this way, this mechanism fulfills 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.

Shareholder activism and climate change governance

45. Globally, shareholder-proposed resolutions on ESG-related issues are common. According to the Sustainable Investment Institute's Proxy Preview, at least 527 ESG-related resolutions were filed in 2024, with the potential to reach 630 resolutions, similar to the 2023 and 2022 proxy seasons. In relation to the environment, climate change is the most common subject matter of these proposals, with 106 focused directly on corporate strategy and disclosure, and 12 more on corporate political influence about climate policy. Among the 106 proposals directly related to climate change strategy and disclosure, focal issues include GHG emission targets and reporting, climate transition planning and reporting, climate change impacts, and carbon financing.[20]

46. Since at least 2019, shareholders in South Africa have successfully filed resolutions on climate change and broader ESG issues at several JSE-listed companies. Company boards have also proposed their own resolutions on climate change and related ESG matters. As listed below, resolutions to date have entailed a combination of binding and non-binding proposals:

    46.1 1 binding resolution proposed by shareholders and tabled by Standard Bank (2019)
    46.2 2 binding resolutions proposed by shareholders and tabled by FirstRand (2019);
    46.3 2 binding resolutions tabled by Nedbank (2020);
    46.4 1 non-binding resolution tabled by Absa (2020);
    46.5 1 binding resolution tabled by Investec (2020);
    46.6 1 non-binding resolution tabled by Investec (2021);
    46.7 3 non-binding resolutions tabled by Sasol (2021, 2022, and 2023); and
    46.8 1 non-binding resolution proposed by shareholders and tabled by Standard Bank (2022).

47. These resolutions have achieved a substantial degree of success in South Africa. Where they have gone to a vote, shareholder-proposed resolutions on climate change have achieved an average favourable vote of over 70%, far above the global average for shareholder-proposed resolutions. Board-proposed resolutions on climate change have received favourable votes in the high 90%. This indicates substantial investor appetite for and interest in having input into climate change strategies, and the risks posed to investee companies by the failure to adequately manage, disclose and report on climate-related risks and opportunities.

48. Thungela and its shareholders face clear climate risks. As a major producer of thermal coal, Thungela is a direct and significant contributor to the global GHG emissions which cause climate change. The company and its shareholders also face severe financial risks,

[20] As You Sow, Sustainable Investments Institute, Proxy Impact *The Proxy Review 2024* (2024).

as the world transitions away from coal and as global pressure mounts to hold major fossil fuel companies financially liable for the harms of climate change.

49. Given these clear risks, the Complainant, together with its co-filers, Aeon Investment Management and Fossil Free South Africa, filed shareholder-proposed resolutions with Thungela's board during the preparation for both its 2023 and 2024 AGMs.

50. Notwithstanding the extensive correspondence between the Complainant and Thungela, as set out below, on both occasions, the Thungela board ultimately refused to circulate and table the proposed resolutions, disregarding its obligations under section 65(3) read with section 62(3)(c) of the Act.

D. THE RELEVANT FACTS

51. The following section details the chronology leading up to the 2023 and 2024 Thungela AGMs and the company's repeated breach of its obligations under the Companies Act.

2023 shareholder-proposed resolution filed with Thungela

52. Thungela's MOI provides that at least 15 business days' notice of an AGM should be provided to shareholders (30.1.1).[21] Clause 30.4 of the MOI also states that:

> *"Should the Board receive requests from Shareholders for the inclusion of certain resolutions in the notice prior to the dispatch of such notices, or after dispatch of such notices, but at least 15 Business Days before the Shareholders Meeting is to begin, the Board shall in good faith consider such requests and determine whether the resolution should be included in the notice of the Shareholders Meeting. Any such requests should provide the specific purpose for which the resolution is proposed, must be delivered to the Company in writing and be otherwise in compliance with the Companies Act. Requests for the inclusion of resolutions at a Shareholders Meeting receive by the Company within a period of 15 Business Days of the Shareholders Meeting shall not be considered at the Shareholders' Meeting."*

53. On 19 April 2023, the co-filers filed a shareholder resolution for consideration by Thungela's shareholders at the company's AGM to be held on 31 May 2023, in accordance with Thungela's MOI and section 62(1) of the Companies Act. The resolution was filed in terms of section 65(3) of the Companies Act. It concerned the alignment of the climate-related lobbying and policy engagement activities of Thungela, and its industry associations, with the goals of the Paris Agreement. The proposed resolution provided, in relevant part, as follows:

[21] Available here https://thungela.s3.eu-west-1.amazonaws.com/downloads/investors/Thungela-Memorandum-of-Incorporation.pdf.

"Shareholders of the Company request that, in accordance with the Global Standard on Responsible Climate Lobbying, the Board annually conduct an evaluation of and report to shareholders on the Company's lobbying and policy engagement activities including:

- *if, and how, its lobbying and policy engagement activities (both direct and indirect through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels;*
- *its framework for identifying and mitigating the risks presented by any misalignment; and*
- *the circumstances under which escalation strategies have been and will be used, including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliance.*

In evaluating the degree of alignment, the Company should consider not only its policy positions and those of organisations of which it is a member, but also the lobbying and engagement activities aimed at influencing policy for the year in review."

54. A copy of the email from the Complainant's Director of Climate Change Engagement, Robyn Hugo, which included the cover letter from Just Share and the proposed resolution, is attached as **JS1**. The cover letter is marked **JS1a** and the resolution **JS1b**.

55. Receipt of the resolution was acknowledged by Thungela's company secretary, Francois Klem, in an email response on the same day to Ms. Hugo. Mr. Klem indicated that a formal response would be sent "in due course". A copy of this email is attached as **JS2**.

56. On 25 April 2023, Thungela sent further email correspondence to the Complainant. On behalf of Thungela, Mr. Klem stated that the company would, *inter alia*, release its annual reporting suite the next day and that its Climate Change Report would:

"*disclose our membership of industry associations and I expect that this will satisfy the request for the information you seek. The matter has been raised with the CEO and the Board, and the CEO (together with other relevant executives) would welcome the opportunity to engage with you should you feel that the disclosure in the Climate Change Report does not address your concerns*".

57. It was also stated in the email that Thungela "*believe[s] that continued and meaningful engagement with our shareholders and other stakeholders on important matters affecting the business is crucial to long-term value creation*" and that it "*remain[s] committed to transparent disclosure and engagement with stakeholders on the subject of climate change and other ESG-related matters*". This email is attached as **JS3**.

58. In an email reply to Thungela on 3 May 2023, Ms. Hugo set out why the reporting suite did "*not meet a single aspect of the resolution requested by the co-filers*". The correspondence goes on to that state that:

> "*In these circumstances, the co-filers again require, in terms of s65(3)(b) of the Companies Act, that the resolution be submitted to shareholders for consideration at the 31 May 2023. If Thungela persists with its refusal to table the resolution, kindly provide us with the legal basis for this refusal by the close of business on Friday, 5 May*".

59. It was also confirmed that both the Complainant and the co-filers would be happy to engage with Thungela, but first requested a response to this correspondence. This email is attached as **JS4**.

60. On 8 May 2023, Thungela responded to this request by email attached as **JS5.** Mr. Klem stated that Thungela:

> "*believe[s] that it would be most appropriate and productive to meet with you in order to have an open discussion to unpack your views, and to put across our perspective on the matter raised in your letter. Accordingly, we once again extend the invitation for an engagement on this matter and would welcome the opportunity to meet with you*".

61. In relation to the legal basis for the decision not to table the resolution, Thungela responded as follows:

> *"We are advised by our attorneys that, as a matter of company law, while styled a "resolution", the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so.*
>
> *We respect and appreciate the area of concern raised in your letter and assure you that it is one of the many and multi-dimensional aspects of running a coal-mining business that is part of the board's mandate to manage the business for the interests of the shareholders as a whole. We would also like to emphasise that this is not intended to discourage you from holding or expressing your viewpoint, or from*

engaging with others on it. It is simply that a shareholder resolution is not the appropriate approach to doing so.

62. On 9 May 2023, the Complainant responded by email confirming that the co-filers disputed this interpretation, which has no basis in the Act. Notwithstanding these divergent views, the Complainant also requested potential meeting dates. This appears from **JS6**.

63. Mr Klem proposed some meeting dates on 10 May. The meeting was subsequently scheduled for 21 June 2023. This appears from **JS7**.

64. Thungela's AGM took place on 31 May 2023. The co-filers' shareholder-proposed resolution was not circulated by Thungela in the AGM pack and was not considered at the meeting.

65. Thereafter, representatives of the three co-filers met with representatives of Thungela on 21 June 2023, as agreed. However, Thungela's refusal to table the resolution was not discussed. Given the parties' firmly-held, contrary legal interpretations of the relevant provisions of the Companies Act, this would not have been resolved at a meeting. Instead, the discussion focused on aspects such as Thungela's policy engagement, and its approach to decarbonisation.

2024 shareholder-proposed resolution filed with Thungela

66. Ahead of Thungela's AGM scheduled for 4 June 2024, the Complainant emailed Thungela on 26 April 2024. This correspondence includes a cover letter and a resolution co-filed by the co-filers, for consideration by Thungela's shareholders during the AGM. The resolution, proposed in terms of section 65(3) of the Companies Act, is related to the publication in Thungela's next reporting suite of Paris-aligned emission reduction targets for its full-range of value chain emissions, and for its global operations. The proposed non-binding resolution provided, in relevant part, as follows:

"Shareholders request that Thungela Resources Limited ("the company") adopt and publish in its 2025 suite of reports: short-, medium- and long-term greenhouse gas emission reduction targets across its full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050."

67. This email from Ms Hugo, containing the covering letter and the resolution, is attached as **JS8**. The cover letter is marked **JS8a** and the resolution **JS8b**.

68. On 30 April 2024, as appears from **JS9,** Thungela's assistant company secretary, Ntombi Mphahlele, acknowledged receipt of these documents. On 2 May 2024, Ms Mphahlele responded in an email attached as **JS10**. In the letter attached to the email (**JS10a**), Thungela reiterated its legal position as expressed in May 2023:

"Thank you for your mail. We have considered the substance of your request and welcome the opportunity to engage on this in a productive manner. We are supportive of a direct discussion with Just Share where we can each share our views on this matter.

After consultation with our attorneys, the decision was taken not to table the requested resolution. In line with company law, the statement you propose be put to a vote of shareholders falls outside the determinative powers of shareholders and has (and, if tabled, would have) no standing in law or binding force or effect on the Company or its shareholders. Under section 65(3), 'any two shareholders' of a company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights. This empowers shareholders to table for resolution any matters which they have a legal right to determine by a vote. For obviously sound policy reasons, it does not confer a right on shareholders to place other subject matter for a vote, whether or not such matter is expressed to be binding. The tabling of any such proposal for a vote (and the terms and timing thereof) thus falls exclusively within the power and discretion of the board of directors. The board is not supportive of the request to table the proposal and as previously advised, will accordingly not do so.

We respect and appreciate the area of concern raised in your letter. Thungela is committed to responsible environmental practices. Good governance principles are important in running a coal-mining business and aligns with the board's responsibility to manage the company in the best interest of all shareholders. Our response is not intended to discourage you from your viewpoint but to share the legal standing that shareholders may only require the company to place resolutions before shareholders on matters that have binding effect. As indicated earlier, we are open to and invite robust discussions between Just Share and Thungela." (emphasis added)

69. On 9 May 2024, Ms. Hugo responded by email on behalf of the Complainant, accompanied by a letter. The email is attached as **JS11** and the letter is **JS11a**. As communicated in the cover email at the time, the primary purpose of the letter was to "demand that Thungela table the resolution filed on 26 April 2024 by no later than Tuesday, 14 May 2024 in order to afford shareholders the required minimum notice period prior to the 4 June 2024 AGM". The Complainant indicated that it had been advised that Thungela's "interpretation of section 65(3) is not only inconsistent with the Companies Act, but also with constitutional rights, including those to freedom of association and expression". It states further that, "Whilst Just Share is willing to engage with Thungela to share our views, Thungela's ongoing breach of its duties under the Companies Act is not an issue that can be resolved through 'robust discussion'".

70. This letter proceeded to reaffirm the legal basis for the demand to merely table the proposed resolution for shareholder consideration in accordance relevant provisions in the Companies Act:

"6.1 There is nothing in the Companies Act that supports Thungela's interpretation that the board has unilateral power to block this proposed shareholder resolution.

6.2 The language of section 65(3) casts shareholders' rights in the broadest terms. Any two (or more) shareholders may propose a resolution 'concerning any matter in respect of which they are each entitled to exercise voting rights' (our emphasis).

6.3 Section 62(3) further prescribes that any notice of a shareholders meeting "must include", among other items, "a copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting". This is a mandatory duty.

6.4 Section 65 imposes no substantive restrictions on the content or subject-matter of shareholder proposals. Instead, section 65(4) merely regulates the format of resolutions, requiring that they be "expressed with sufficient clarity and specificity" and be "accompanied by sufficient information or explanatory material" that will "enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution".

6.5 Moreover, section 65 does not afford a board of directors the power to block procedurally-compliant shareholder proposals from being circulated and tabled for a vote at a meeting of shareholders merely because the board disagrees with the content of the proposal. Such unilateral power would be directly at odds with the dispute resolution procedure in sections 65(4)-(5). Even if a director objects to a resolution on the grounds of formal defects, the director is required to apply to court – he cannot unilaterally decide to prevent resolutions from being tabled. Directors also have no power to override clear statutory shareholder rights.

6.6 Section 65(3)'s reference to "each" of the co-filing shareholders being "entitled to exercise voting rights" is an eligibility requirement, determining which classes of shareholders may propose and vote on resolutions at shareholders' meetings, rather than a restriction on the content of the resolutions that may be proposed.

6.7 Tabling the proposed non-binding, advisory resolution for a vote at the AGM will not in any way undermine "the board's responsibility to manage the company in the best interest of all shareholders". There is equally no basis for the suggestion that non-binding, advisory resolutions are impermissible:

> *6.7.1 JSE-listed companies, including Thungela, annually table non-binding resolutions on executive pay.*
>
> *6.7.2 Several JSE-listed companies have tabled non-binding resolutions on climate change and related environmental, social, and governance (ESG) issues.*

6.7.3 In other common law countries, shareholders' rights to file and vote on non-binding advisory resolutions are recognised and protected, despite having company law regimes that are less progressive than our own.

6.8 The mistaken interpretation of section 65(3) now advanced by Thungela runs contrary to the aims of the Companies Act and the constitutional rights that underpin it.

6.9 Shareholders' rights to table proposals for a vote involve the exercise of their constitutional rights to freedom of expression and association within the company structure, allowing shareholders to impart and receive information and ideas and to organise around shared goals.

6.10 Thungela's refusal is an ongoing violation of these statutory and constitutional rights".

71. Thus, this letter summarised the Complainant's position as follows:

"In summary, two or more shareholders may propose resolutions on climate- and other ESG-related issues – such as the resolution in issue. Company boards have no unilateral discretion to refuse to circulate and table resolutions that comply with all the necessary procedural requirements. If boards wish to object to the resolutions, they must go to court in terms of sections 65(4) and (5) to seek permission to block the resolutions from going to a vote. The board may also advise shareholders of its objections to inform their vote."

72. The letter concluded that, should Thungela not circulate the proposed resolution by 14 May 2024, legal action would be taken - including but not limited to filing a written complaint to the Commission in terms of section 168(1) of the Companies Act.

73. On 10 May 2024, at 12h31, Ms. Mphahlele delivered a letter of response on behalf of Thungela by email. This email is attached as **JS12**, and letter (**JS12a)**, confirmed the following:

Thank you for sharing your views on the interpretation of section 65(3) of the Companies Act, which view (and supporting reasoning) are the same as those you put forward last year.

As advised in our response of 8 May 2023 and on 2 May 2024, respectfully, and based on legal advice, we do not agree with the interpretation you put forward. Our ethos is to engage, not litigate, and our offer both last year and now to engage with us on the issue remains open to you.

If, notwithstanding this, regrettably, you prefer to pursue legal action, please serve the relevant papers at Thungela Resources Limited offices, at 25 Bath Avenue, Rosebank,

for the attention the Company Secretary, with an e-mail notification to our Internal Legal Counsel, Masechaba Makgolane at masechaba.makgolane@thungela.com, and to our External Legal Counsel, Colin du Toit at colin.dutoit@webberwentzel.com.

74. On the same day, at 14h24, Ms. Mphahlele attempted to recall the above correspondence. This appears from **JS13**. To the extent that the Complainant is aware, no subsequent communication was issued by Thungela, in this regard, and it did not circulate the proposed resolution by 14 May 2024.

75. Thungela's AGM proceeded on 4 June 2024. The proposed resolution was not tabled, nor put to a vote. At the AGM, Just Share asked Thungela's board whether it would commit to *itself* tabling a resolution at its next AGM, since it continued to decline to table *shareholder*-proposed resolutions. In response, the chair indicated that the board could not make such a commitment at this stage.

76. In the circumstances, 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.

E. THUNGELA'S BREACH OF ITS OBLIGATIONS AND SHAREHOLDERS' RIGHTS

77. The Complainant stands by the legal position set out in the above letter of 9 May 2024. In order to assist the Commission in its investigation and deliberations, the following subsections briefly substantiate the Complainant's primary legal grounds in support of this complaint.

The proper interpretation of sections 65(3) and 62(3)(c)

78. As outlined above, section 65(3) casts shareholders' rights in the broadest terms. Any two (or more) shareholders may propose a resolution concerning "*any matter*" in respect of which they are each entitled to exercise voting rights.

79. Section 62(3)(c) further imposes a mandatory duty on companies, requiring that any notice of a shareholders meeting "*must include*", among other items, "*a copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting*".

80. Aside from the formal requirements in section 65(4) of the Companies Act – requiring that a resolution is expressed with sufficient clarity and specificity and is accompanied by sufficient information or explanatory material – section 65 of the Companies Act does not impose any limitation on the subject-matter of resolutions that may be proposed by shareholders.

81. To the contrary, section 65(3) explicitly empowers any two (or more) shareholders of a company to propose a resolution concerning "any matter". The words "*any matter*" are broad and unqualified. And, as the Supreme Court of Appeal (SCA) held in *Nova Property Group*, unqualified language in the Companies Act generally leads to unqualified results.[22]

82. The only restriction in section 65(3) is that "*each*" of the shareholders proposing the resolution should be "*entitled to exercise voting rights*" on the matter. This is an eligibility requirement, determining **which classes of shareholders** may propose resolutions. It is not a restriction on the **content** of resolutions. This reflects the fact that companies' MOIs may place restrictions on the voting rights of certain *classes* of shareholders, as provided for in section 37 of the Act. For example, preference shareholders are typically excluded from exercising voting rights at a company's AGM, meaning that an ordinary shareholder and a preference shareholder could not jointly propose a resolution at an AGM.

83. Thungela has never claimed that the resolutions proposed by the Complainant and its co-filers breached the formal requirements of section 65(4) or that they were otherwise procedurally non-compliant.

84. In these circumstances, the Thungela board had no unilateral power to block the procedurally and formally compliant resolutions filed by the co-filers. On the contrary, section 65(5) requires that if a board objects to a proposed shareholder resolution, it is required to seek the leave of a court to bar that resolution from being considered at a shareholders meeting.

85. If the Thungela board disagreed with the merits of a shareholder-proposed resolution, those disagreements ought to have been aired at the shareholders meeting and put to a vote. Shareholders are entitled to hear the board's views and to exercise their own judgment when voting on the proposal.

86. This interpretation of the Companies Act, as supporting shareholder-proposed resolutions on climate change and ESG issues, is most consistent with its purposes to "*encourage transparency and high standards of corporate governance as appropriate*" recognising the "*significant role of enterprises within the social and economic life of the nation*";[23] to "*balance the rights and obligations of shareholders and directors within companies*";[24] and to "*encourage the efficient and responsible management of companies*".[25]

87. This interpretation also best promotes the constitutional rights and values outlined above, including the environmental right, freedom of expression, and freedom of association. Shareholder-proposed resolutions on climate change and related ESG issues are an important means for shareholders to impart and receive information on pressing climate

[22] *Nova Property Group Holdings v Cobbett* 2016 (4) SA 317 (SCA) paras 27 and 32.
[23] Section 7(b)(iii).
[24] Section 7(i).
[25] Section 7(j)).

change risks facing businesses and to collectively organise around the shared goal of addressing these risks, both in the companies' interests and in furtherance of the section 24 environmental rights.

88. By contrast, Thungela's actions have deprived shareholders of these rights and of an important forum for engaging on these critical issues. Thungela's stance also has the undesirable result that, despite South Africa's more progressive company law regime, its shareholders have fewer rights to propose resolutions on climate change and ESG issues than shareholders in comparable jurisdictions with far more restrictive legal provisions on the tabling of shareholder resolutions.

Thungela's grounds for refusing to table the shareholder-proposed resolution

89. In its letters dated 8 May 2023 (**JS5**) and 2 May 2024 (**JS10a**), Thungela raised three grounds for refusing to table the shareholder-proposed resolution. We address each of these grounds in turn to demonstrate why they are unfounded.

The alleged unilateral discretion

90. Thungela asserts that its board has a unilateral discretion to screen and reject proposed resolutions on climate change and ESG issues, stating that "*[t]he tabling of any such proposal for a vote (and the terms and timing thereof) … falls exclusively within the power and discretion of the board of directors*." This is incorrect.

91. First, there is no basis in the Act for this claimed unilateral power, which is directly inconsistent with the text of sections 65(3) and 62(3)(c) of the Companies Act.

92. Second, such a unilateral power would be directly at odds with the dispute-resolution procedure prescribed in section 65(5) of the Act.

92.1 Under that provision, where directors object to the proposed resolution on purely formal grounds under section 65(4), they are required to apply to court for leave to block that resolution.

92.2 The clear effect of section 65(5) is that directors are not permitted to take the law into their own hands merely because they disagree with the merits or content of the proposed resolution.[26]

92.3 It would be a startling result that the Thungela board could unilaterally block a shareholder-proposed resolution because it disagrees with its content, in

[26] There may be extreme cases – such as hate speech, defamation, or other unlawful abuses of individuals' rights – where boards may be entitled to decline to circulate proposals without going to court, but this is clearly not such a case.

circumstances where section 65(5) would require the board to go to court to block a resolution with purely formal defects.

The alleged content restriction

93. Thungela further claims that the proposed resolutions on climate change are not matters "*which [shareholders] have a legal right to determine by a vote*". This argument is also legally incorrect.

94. First, there is nothing in the Act or Thungela's MOI that purports to prohibit its shareholders from voting on resolutions concerning climate change and ESG-related issues. Unless a company has, in terms of section 37 of the Act, placed restrictions on the voting rights of certain classes of its shareholders in its MOI, shareholders are ordinarily free to vote on all resolutions placed before them at a meeting of shareholders.

95. Second, JSE-listed companies including Thungela have frequently tabled resolutions on ESG-related matters for a vote at shareholder meetings. If it is permissible for shareholders to vote on such resolutions when they are proposed by the company board, then it is equally permissible for shareholders to vote on those resolutions when they are proposed by fellow shareholders.

96. Third, such a far-reaching content-based restriction would be inconsistent with the Act and the rights addressed above. It would also put South African company law out of step with comparable common law jurisdictions, including the US, the UK, Canada, and New Zealand, where shareholders are entitled to file resolutions on these matters.

The alleged prohibition on non-binding resolutions

97. Thungela appears to object to the framing of the resolutions as non-binding, advisory resolutions, suggesting that this would have "*no standing in law or binding force or effect on the Company or its shareholders*". This is also mistaken.

98. The choice to frame the resolutions in this way was deliberate, to avoid any accusation that the Complainant and its co-filers were unlawfully usurping management powers (an allegation which has been leveled at the Complainant by JSE-listed companies Sasol Limited and Standard Bank Group Limited, which have also refused to table shareholder-proposed resolutions relating to climate change).

99. Such non-binding advisory votes are now a common feature of South African company law and are plainly permissible. For example:

99.1 The JSE Listing Requirements introduced "say on pay" votes on executive pay for all JSE-listed companies. While companies are not bound by the outcome of the

vote, boards are required to table their remuneration policy and a report on its implementation at each AGM and to put these documents to a vote.

99.2 JSE-listed companies have also regularly tabled non-binding resolutions on climate change and related ESG issues, as addressed above.

100. Non-binding shareholder proposed resolutions are also a consistent feature in other jurisdictions, including Canada, the US, and New Zealand, which expressly require that shareholder resolutions may only be framed in advisory terms. In each of these jurisdictions, shareholders have used these powers to raise climate change and ESG issues at shareholders meetings.

101. The effectiveness of non-binding resolutions is perhaps best illustrated by their use in the anti-apartheid movement in the US. During the 1980s, shareholders flooded US-listed companies with non-binding shareholder proposals calling for divestment from apartheid South Africa and improved human rights practices for businesses still operating in the country. The awareness and pressure they generated contributed to the broader anti-apartheid movement and divestment campaign.[27]

102. It is inconceivable that our Companies Act, with its express commitments to constitutional values and the promotion of shareholder activism, would bar South African shareholders from engaging in similar efforts.

F. REQUEST FOR INVESTIGATION AND COMPLIANCE NOTICE

103. 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.

104. 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.

105. 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:

[27] See Philip Broyles and Arfa Aflatooni 'Opposition to South African Apartheid: The Impact of Shareholder Activism on US Corporations (1980 – 1988)' (1999) 31 *Peace Research* 13; Philip Broyles 'The Impact of Shareholder Activism on Corporate Involvement in South Africa during the Reagan Era' (1998) 28 *International Review of Modern Sociology* 1.

1. *Thungela Resources Limited (Thungela) is found to have breached its obligations under sections 65(3) and 62(3)(c) of the Companies Act by refusing to circulate and table the following shareholder-proposed resolutions:*

    i. *The proposed resolution dated 19 April 2023, filed by shareholders Aeon Investment Management, Fossil Free South Africa, and Just Share NPC for consideration by Thungela's shareholders at the company's AGM held on 31 May 2023; and*

    ii. *The proposed resolution dated 26 April 2024, filed by shareholders Aeon Investment Management, Fossil Free South Africa, and Just Share NPC for consideration by Thungela's shareholders at the company's AGM held on 4 June 2024.*

2. *Thungela is directed to comply with its obligations under sections 65(3) and 62(3)(c) of the Companies Act by circulating and tabling all shareholder-proposed resolutions that satisfy the formal and procedural requirements in section 65(3) read with section 65(4) of the Act.*

3. *Should the Thungela board object to a proposed resolution, it is directed to apply to court for leave to exclude the shareholder-proposed resolution in terms of the dispute resolution procedure prescribed in section 65(5) of the Act.*

106. The Complainant and its co-filers are available to provide any further information or documents that may assist the Commission in its deliberations and investigation.

TD30 271

Outlook

RE :THUNGELA RESOURCES LIMITED ref G89/2024

From Pumla Mavuma <PMavuma@cipc.co.za>
Date Wed 6/12/2024 6:23 PM
To rhugo@justshare.org.za <rhugo@justshare.org.za>

Good day

I confirm receipt of your email. The matter has been allocated to Pumla Maodi read under File Number [G89/2024].

My contact details are:

Email: pmavuma@cipc.co.za

Please be advised that your matter will be evaluated in order to establish if it falls within the mandate of this office in terms of the Companies Act No. 71 of 2008 (as amended) and a decision on the way forward will be communicated to you within **30 business days** from the date of receipt of your matter by the CIPC.

Pumla Maodi
Investigator : Corporate Governance,Surveillance and Enforcement
Companies and Intellectual Property Commission
Contact details : pmavuma@cipc.co.za
087 601 1744

Disclaimer

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 137.1

About this Notice

- This notice is issued in terms of section 169 of the Companies Act, 2008, and Regulation 135 of the Companies Regulations, 2011.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Notice to Investigate Complaint

Date: JULY 2024

To : Pumla Maodi

From: [X] **The Commission** [ ] **The Takeover Regulation Panel**

Concerning

(Name and Registration Number of Company whose conduct is the subject of the complaint)

Name : **THUNGELA RESOURCES LIMITED**

Registration No: **2021/303 811/06**

On **7 June 2024** the complainant **Just Share NPC** filed a complaint against the company named above.

The Companies Commission, or the Takeover Regulation Panel, as the case may be, directs you, in terms of section 169(1)(c) to investigate the complaint as quickly as practicable.

Name and Title of person signing on behalf of the Commission or Panel:

ADV. RORY VOLLER: COMMISSIONER

Authorised Signatur

Rory Voller

Signed by Rory Voller, RVoller@cipc.co.za
22/07/2024 15:53:57(UTC+02:00)

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).

TD32 275

Companies and Intellectual Property Commission

a member of the dtic group

Ref No: G89 (2024) Enq: Pumla Maodi **Tel No** :087 601 1744 Email: pmavuma@cipc.co.za

12 September 2024

Per email: francois.klem@thungela.com
Ntombi.Mphahlele@thungela.com

Dear Sir/Madam

RE: COMPLAINT AGAINST THUNGELA RESOURCES LIMITED 2021/303 811/06

1. On 19 April 2023 , Just Share NPC **("the complainant")** together with Aeon Investment Management and Fossil Free South Africa **("the co-filers")** filed a shareholder resolution for consideration by the company's shareholders at the company's next Annual General Meeting **("AGM")** which was to be held on 31 May 2023. A subsequent resolution was filed on 19 April 2024 for a shareholder's consideration during an AGM which was to be held on 4 June 2024.The resolution was proposed by the complainant together with the co-filers in terms of Section 65(3) of the Act to be tabled at the company's next AGM.

2. The filing of the proposed resolution complied with the requirements of Section 62 (1) of the Companies Act 71 of 2008 'as amended' **("the Act"**),also with Section 62(2) in that it was provided 15 business days before the meeting and it was in accordance with the company's Memorandum of Incorporation **("MOI").**

3. The company failed to include a copy of the proposed resolution in which it had received a notice, the resolution was to be considered at the meeting and not that the company had to make a consideration as to whether or not the resolution should be accepted to be tabled for consideration.

4. There is no indication in your to the inspector dated 14 July 2024 to suggest that the proposed resolution by the complainant did not satisfy the requirements of Section 65 (4) of the Act and thereby the company sough leave to apply to court for an order restraining the company from putting the proposed resolution to vote until the requirements of subsection 4 are satisfied.

5. The company failed to table the resolution in the AGM ,citing reasons other than those provided for and allowed in terms of the Act .

6. The company appears to have contravened Section 65 (4) of the Act and thereby required to comply with the provisions unless it can provide evidence that any director or shareholder has exercised the right to restrain that resolution from being tabled as it provided for in Section 65(5) of the Act.

You are required to provide the information not later than 19 September 2024.

Yours faithfully

Pumla Maodi
Inspector :Corporate Governance Surveillance and Enforcement

Companies and Intellectual Property Commission
a member of the dti group

Ref No: G89/2024 **Enq :** Pumla Maodi **Tel No** : Email: pmavuma@cipc.co.za

18 February 2025

Per e-mail : tim.lloyd@powerlaw.africa

Dear Sirs/ Madam

COMPLAINT AGAINST: THUNGELA RESOURCES LIMITED 2021/303 811/06

1. With reference to the complaint you filed with Companies and against Thungela Resources Limited 2021/303 811/06 **("the company")**;

2. In the complaint ,you allege that on 19 April 2023 , Just Share NPC ("the complainant") together with Aeon Investment Management and Fossil Free South Africa ("the co-filers") filed a shareholder resolution for consideration by the company's shareholders at the company's next Annual General Meeting ("AGM") which was to be held on 31 May 2023. A subsequent resolution was filed on 19 April 2024 for a shareholder's consideration during an AGM which was to be held on 4 June 2024.The resolution was proposed by the complainant together with the co-filers in terms of Section 65(3) of the Act to be tabled at the company's next AGM.The complainant and the co-filers are shareholders in the company .

3. The resolutions filed by the co-filers concerned climate change and Thungela's responsibility, as a major coal mining company and significant emitter of greenhouse gases (GHGs), to take effective and transparent action to reduce its GHG emissions in line with the goals of the Paris Agreement.

4. The resolution, proposed in terms of section 65(3) of the Companies Act, is related to the alignment of the climate-related lobbying and policy engagement activities of Thungela and its industry associations, with the goals of the Paris Agreement.

5. The directors allegedly refused to table the resolutions proposed by the complainant and co-filers, in contravention of Section 62(3) and 65(3) of the Companies Act 71 of 2008 'as amended' **("the Act")**.

Companies and Intellectual Property Commission

a member of **the dti** group

6. The company was informed of the complaint and the allegations against it were outlined in the letter where their response was requested.

7. In response the company stated that as much as the complainant's proposed resolution complied with the requirements of Section 60 of the Act but the complainants do not have a right in law to propose such a resolution to be tabled at a shareholder meeting as they do not have voting rights on a matter of climate change.

8. The company contends that the complainant do not have a right to vote on matters of climate change and the statement which they refer to as a "resolution" is in fact a climate change agenda that the complainant is trying to drive.

9. You are requested to provide answers to the following ;

1. Indicate and provide proof that the complainants tabled the matter with the company's Social and Ethics Committee to draw the matter to the attention of the board and report thereon to the shareholders through an Annual General Meeting **("AGM")**.

2. Provide the provisions in the company's Memorandum of Incorporation **("MOI")** which provides on which matters may the complainants as shareholders exercise voting.

You are required to provide the requested information by no later than 27 February 2025

Yours faithfully

Pumla Maodi
Investigator :Corporate Governance, Surveillance and Enforcement

POWER AND ASSOCIATES
PUBLIC INTEREST LAW | AFRICA

e. legal@powerlaw.africa
t. +2710 822 7860
w. powerlaw.africa
a. 20 Baker Street, Rosebank, Johannesburg, South Africa, 2196

Date: 27 February 2025 Your ref: G89 / 2024 Our ref: PLJS-202426

TO: COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
C/o Pumla Maodi
77 Meintjies Street, Sunnyside, Pretoria, 0002
Tel: 087 601 1744
E-mail: pmavuma@cipc.co.za

Dear Ms Maodi,

SECTION 169 INVESTIGATION – THUNGELA RESOURCES LIMITED

1. We represent Just Share NPC (our "client").

2. We refer to our previous communication in the course of this ongoing investigation conducted by the Companies and Intellectual Property Commission (CIPC), including your letter of 18 February 2025, which followed our virtual meeting held on 13 February 2025.

3. In consultation with our client, we have duly considered the content of your letter. It is our understanding that further correspondence has also been addressed to Thungela Resources Limited ("Thungela") following the company's written submissions and your previous exchange with its representatives. It is also our understanding that upon a response from the respective parties to your correspondence, and in addition to the complaint assessment received from CIPC's legal unit, you will be in a position to complete this investigation and proceed in accordance with section 170 of the Companies Act 71 of 2008, as amended (the "Companies Act").

4. In response to your letter of 18 February 2025, we are instructed to address the following points in turn:

4.1. Our client's response to the request for further information under paragraph 9 of your letter;

4.2. The standing request for a copy of Thungela's written submissions;

4.3. The protracted investigation period and status of the dispute between the parties; and

4.4. The relief sought by our client as the complainant.

Responses to the request for further information

5. We refer to the inquiries in paragraph 9 of your letter. Our client responds as follows:

5.1. Resolution filing:

5.1.1 As set out in the relevant facts section of our client's supporting statement that accompanied the complaint form, the "2023 shareholder-proposed resolution" and "2024 shareholder-proposed resolution" were both duly filed with Thungela in accordance with Thungela's Memorandum of Incorporation (MOI), and with section 62 and section 65 of the Companies Act, and received by its company secretary. We refer you to annexures "JS1", "JS1a", "JS1b", "JS2", "JS8", "JS8a", "JS8b", and "JS9" attached to the supporting statement, respectively.

5.1.2 Procedural compliance in terms of the filing of both proposals is also confirmed in paragraph 7 of your letter.

5.1.3 We understand, from your letter, that Thungela does not dispute that our clients complied with all relevant procedural requirements for tabling a resolution at the AGM.

5.1.4 Further to this point, the Thungela board expressly refused to table the proposed resolutions properly filed with the company secretary in both instances, as communicated by email on 8 May 2023 and by letter on 2 May 2024, both attached to the supporting statement as annexures "JS5" and "JS10a", respectively.

5.1.5 There is no additional duty imposed on our client either in the Companies Act or in Thungela's MOI to table a shareholder proposed resolution with Thungela's Social and Ethics Committee, nor were our clients ever invited to engage with that Committee. Instead, Thungela communicated its outright refusal to table the resolutions.

5.2. Shareholders' voting rights:

5.2.1 Our client repeats its submission in paragraph 27 in its supporting statement: the rights conferred on shareholders under section 65(3) of the Companies Act, including our client and its co-filers, are unalterable provisions and may not be negated or restricted by Thungela's MOI, its rules, or its conduct.

5.2.2 The default position is that shareholders are entitled to vote on any resolution that is presented during an AGM, unless the company's MOI imposes express restrictions on the voting rights of certain classes of shareholders in terms of sections 36 and 37 of the Companies Act.

5.2.3 The publicly-available version of Thungela's MOI does not contain any restriction or exclusion precluding shareholders from voting on climate change matters or other environmental, social or governance (ESG) issues, nor would such a content-based restriction be lawful.

6. In short, our client reiterates that any two (or more) shareholders are permitted to propose a resolution concerning "any matter" in respect of which they are "each entitled to exercise voting rights". This is an eligibility requirement, determining which classes of shareholders may propose resolutions. It is not a restriction on the content of resolutions, especially where the content or subject-matter poses a known and material risk to a company's sustainability.

7. Thungela's board of directors had no right to refuse to circulate and table the proposed resolutions, which complied with the procedural and formal requirements under section 65(3). With respect, this is the nub of the contention that is before the CIPC for investigation and a decision in terms sections 169 and 170 of the Companies Act.

Access to Thungela's written submissions

8. Based on your letter and the requests for further information in paragraph 9, our client has the reasonable apprehension that Thungela has potentially misrepresented the law and the facts in its submissions to you.

9. Our client has previously requested a copy of Thungela's written submissions to allow us to respond meaningfully and to assist your investigation.

10. We note that your office refused this request, relying on regulation 176 as grounds for non-disclosure.[1]

[1] Companies Regulations, 2011, GNR.351 of 26 April 2011, *GG* No. 34239 (the "Regulations").

11. We again repeat the request for a copy of Thungela's written submissions to allow our client to have sight of Thungela's counter-arguments and to properly engage from an informed position. To the extent that any confidential information may be contained in Thungela's response, our client would be prepared to consider a justifiable confidentiality regime or the redaction of confidential portions of the response.

Duration of the investigation

12. As set out in our letter of 24 October 2025, this complaint was lodged on 7 June 2024 and shared in its entirety by the complainant with Thungela's company secretary. On 25 July 2024, our client was notified that your office was mandated by the Commission to investigate the complaint as quickly as practicable in terms of section 169(1)(c) of the Companies Act. We note that seven (7) months have passed since the initiation of this investigation. Eight-and-a half (8.5) months have passed since our client lodged its complaint.

13. Although our client appreciates that there may be capacity challenges due to other investigation processes, our client nevertheless holds the view that the current pace of this investigation is prejudicial to our client's rights, the interests of its co-filers, and the public interest. Not only does this remain a live dispute between the present parties, but there are broader implications attached to the outcome of this complaint in respect of shareholder rights and corresponding director obligations at annual general meetings (AGMs) to be scheduled in the first half of 2025. This includes Thungela's upcoming AGM in May 2025.

Relief sought by the complainant

14. Our client stands by the contents of the complaint lodged in June 2024. Reasonable grounds exist to issue a compliance notice to Thungela, in terms of section 171 of the Companies Act, directing it to comply with its obligations under sections 65(3) and 62(3)(c) of the Companies Act by circulating and tabling future shareholder-proposed resolutions that satisfy applicable formal and procedural requirements.

15. As an alternative, we submit that there is, at the very least, a compelling basis for the Commission to refer this complaint to the Companies Tribunal for adjudication in terms of the relevant provisions of the Companies Act. Thungela's breach of sections 65(3) and 62(3)(c) of the Companies Act raises novel questions of law of broader public importance which would benefit from the Companies Tribunal's interpretation and guidance.

16. Kindly contact us should you require any further information to conclude this investigation. We look forward to the speedy resolution of this phase of the process.

Kind regards,

POWER & ASSOCIATES

Per: Timothy Lloyd | *Senior Associate*
E-mail: tim.lloyd@powerlaw.africa

(*Transmitted electronically without signature.*)

ENDS.

POWER AND ASSOCIATES
PUBLIC INTEREST LAW | AFRICA

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t. +2710 822 7860
w. powerlaw.africa
a. 20 Baker Street, Rosebank, Johannesburg, South Africa, 2196

Date: 1 April 2025 Your ref: G89 / 2024 Our ref: PLJS-202426

TO: COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
C/o Pumla Maodi
77 Meintjies Street, Sunnyside, Pretoria, 0002
Tel: 087 601 1744
E-mail: pmavuma@cipc.co.za

Dear Ms Maodi,

SECTION 169 INVESTIGATION – THUNGELA RESOURCES LIMITED

1. We refer to our previous communication in the above matter, including your letter dated 18 February 2025, requesting further information, and our letter of reply on behalf of our client, Just Share NPC ("our client"), dated 27 February 2025.

2. Following further written submissions from both our client and Thungela Resources Limited ("Thungela"), we are instructed to repeat our previous request for swift action on this matter and to draw your attention to the pressing timeline on the horizon for both parties.

3. We refer to paragraphs 12 and 13 in our letter of reply in which we highlight the duration of this investigation at the date of that letter, as well as Thungela's upcoming annual general meeting ("AGM"). Although Thungela has not yet published its notice confirming the date of its upcoming AGM, our client reasonably expects that it will be scheduled for early June 2025, based on previous years.

4. Our client intends to exercise its rights as a shareholder and to participate in Thungela's AGM. This will likely include the preparation and submission of at least one shareholder-proposed resolution, together with co-filers. In this regard, our client maintains its position

that any two (or more) shareholders are permitted to propose a resolution concerning "any matter" in respect of which they are "each entitled to exercise voting rights" – as substantiated in the complaint. However, as the Company and Intellectual Property Commission's (the "CIPC") investigation and findings in response to this complaint are still pending, our client is currently unable to prepare for the AGM with any certainty.

5. The timely determination of this complaint in terms of the Companies Act 71 of 2008, as amended (the "Companies Act"), is in the interests of all parties and in the public interest, given the forthcoming AGM season for other companies. In the event that the CIPC takes the position that the merits of this compliant warrant consideration by the Companies Tribunal, it is respectfully requested that this matter be referred without delay, so that the novel questions of law of broader public importance raised by this complaint can be determined.

6. If our client and its co-filers elect to proceed with the filing of a shareholder-proposed resolution/s, they will adhere to the filing requirements in terms of the Companies Act and Thungela's Memorandum of Incorporation ("MOI"), as they have done in the past. Clause 30.4 of Thungela's MOI stipulates that shareholder-proposed resolutions must be filed at least 15-business days before the date of the AGM, for the board's consideration in good faith and determination as to whether the resolution should be included in the notice ahead of the AGM.

7. Section 62(1) of the Companies Act requires that companies deliver a notice of each AGM at least 15 business days before the AGM and, in terms of section 62(3)(c), that notice must include a copy of any proposed resolution to be considered at the AGM. As a result, in practice, a shareholder-proposed resolution should ideally be filed with the board as early as possible to enable it to comply with the notice requirements in the Companies Act.

8. With the understanding that Thungela's AGM is likely to be scheduled on or around 4 June 2025, we ask you to kindly note that this means that our client would need to file any shareholder-proposed resolutions by 14 May 2025, at the very latest. This timeline provides a month-and-half for this complaint process to run its course in terms of the Companies Act.

9. Kindly note further that upon receipt of the AGM notice confirming the date of Thungela's AGM, we will immediately inform your office.

10. Please advise if our client can be of any further assistance toward the finalisation of this investigation. Otherwise, we await receipt of the outcome and thank you for your endeavours to this end.

Kind regards,

POWER & ASSOCIATES

Per: Timothy Lloyd | *Senior Associate*
E-mail: tim.lloyd@powerlaw.africa

(*Transmitted electronically without signature.*)

ENDS.

Companies and Intellectual Property Commission

INSPECTOR'S REPORT ON

THUNGELA RESOURCES LIMITED

REG No: 2021/303 811/06

INSPECTOR : PUMLA MAODI

DATE : 30 MAY 2025

Contents Page

Definitions

The Commission	: Companies and Intellectual Property Commission ("CIPC")
The Act	: Companies Act 71 of 2008 (as amended)
Inspector	: Appointed in terms of Sections 209 of the Companies Act 71 of 2008
The company	: Thungela Resources Limited 2021/303 811/06
The complainants	: Just Share NPC
Co-filers	: Aeon Investment Management and Fossil Free South Africa
Shareholders	: Shareholders of Thungela Resources Limited
AGM	: Annual General Meeting
MoI	: Memorandum of Incorporation
S&E Committee	: Social and Ethics Committee established in terms of Section 72 of the Act

Annexures

Annexure A : Appointment certificate
Annexure B : Letter to the company
Annexure C : Letter to CIPC
Annexure D : Memorandum of Incorporation

Introduction of the complaint

A complaint was filed with Companies and Intellectual Property Commission **("CIPC")** by Just Share NPC registration number 2017/347 856/08 **("the complainant")**.The complainant is a shareholder in Thungela Resources Limited registration number 2021/303 811/06 **("the company")** .

1. Background

1.1 On 19 April 2023,the complainant together with Aeon Investment Management and Fossil Free South Africa who are also shareholders of the company **("the co-filers")** filed a resolution to be tabled at the company's Annual General Meeting **("AGM")** which was scheduled to take place on 8 May 2023 and again on 4 June 2024.

1.2 The co-filers filed the resolution in terms of Section 65 (3) of the Companies Act 71 of 2008 'as amended' **("the Act")**. Section 65(3) of the Act provides that "*any two shareholders of a company may propose a resolution concerning any matter in respect of which the shareholders are entitled to exercise voting rights and when proposing a resolution , may require that the resolution be submitted to shareholders for consideration in the next shareholder's meeting".*

1.3 The resolutions filed by the co-filers concerned climate change and the company's responsibility, as a major coal mining company and significant emitter of greenhouse gases (GHGs), to take effective and transparent action to reduce its GHG emissions in line with the goals of the Paris Agreement. The resolution calls for the adoption and publication of short-, medium- and long-term greenhouse gas emission reduction targets across the company's full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050.

1.4 The co-filers filed a resolution on 19 April 2023 for consideration by the company's shareholders at the company's Annual General Meeting which was scheduled to be held on 31 May 2023. In response to the request by the co-filers ,the company's company secretary committed that the company would release an integrated report, Environmental Social and Governance ("ESG") and Climate Change Report on 26 April 2023 .The company further committed that the Climate Change Report would address the information sought by the complainants in the proposed resolution.

1.5 The complainants were still of the view that the disclosure made by the company in the Climate Change Report did not meet a single aspect of the resolution requested by the co-filers and therefore the company should circulate the resolution and table it for consideration during the AGM as requested.

1.6 The company refused to circulate and table the co-filer's proposed resolution during the company's Annual General Meeting scheduled to be held on 31 May 2023.

1.7 On 26 April 2024 ,the co filers filed another resolution to be tabled for consideration by shareholder during the company's AGM scheduled for 4 June 2024.
The resolution related to the publication in company's next reporting suite of Paris-aligned emission reduction targets for its full-range of value chain emissions, and for its global operations.
The proposed resolution provided that the company adopts and publish in its 2025 suite of reports: short-, medium and long-term greenhouse gas emission reduction targets across its full range of value chain emissions, and for its global operations, which are in alignment with the Paris Agreement's 1.5°C goal requiring net zero emissions by 2050."

Once again, the company refused to table the proposed resolution for consideration during an AGM scheduled to be held on 4 June 2024 citing the same reasons as per the previous refusal.

The complainant filed a complaint against the company for contravening Section 65(3)of the Act.

2. Mandate

In terms of Section 168(1) (b) of the Companies Act, No 71 of 2008 ("the Act") as amended, any person may file a complaint in writing with the Commission in respect of any provision of this Act.

3. Legislative Framework

65. Shareholder resolutions.—

(1) Every resolution of shareholders is either an ordinary resolution or a special resolution.

(3) Any two shareholders of a company—
(a) may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and

(5) At any time before the start of the meeting at which a resolution will be considered, a shareholder or director who believes that the form of the resolution does not satisfy the requirements of subsection (4) may seek leave to apply to a court for an order—
(a) restraining the company from putting the proposed resolution to a vote until the requirements of subsection (4) are satisfied; and
(b) requiring the company, or the shareholders who proposed the resolution, as the case may be, to—

(i) take appropriate steps to alter the resolution so that it satisfies the requirements of subsection (4); and
(ii) compensate the applicant for costs of the proceedings, if successful.

4. The investigation

4.1 After receiving and assessing the matter the inspector realised there was a need for investigation and therefore made a request for appointment to the Commissioner. The inspector was appointed to investigate the complaint on 22 July 2024.

To effectively deal with the complaint, on 22 July 2024 Mrs. Pumla Maodi was per Form CoR 137.1 **(Annexure "A")** directed to investigate the complaint against the Thungela Resources Limited registration number 2021/303 811/06 .

4.2.1 The directors of the company were engaged and informed of the allegations against the company **(Annexure "B")**, in the letter,the company was also requested to provide evidence that that the company has sought leave to apply to court for an order restraining the complainant from tabling the proposed resolution for vote until the requirements of Section 65 (4) had been satisfied.

4.2.2 The company submitted their response to the letter from the inspector **(Annexure "C").** As part of the response, the company stated that the complainants do not have a right in law to put forward a resolution on matters relating to climate change as they do not voting rights on such matters as required in Section 65 (3)(a) of the Act.

Section 65(3)(a) of the Act states that shareholders who propose a resolution to any matter, it must be a matter in which they are entitled to exercise voting rights. Accordingly the company argued that the co-filers do not have voting rights on the matter proposed in the filed resolution and that the Annual General Meeting **("AGM")** would not be an appropriate forum to decide on such a matter as it concerns policy formulation and that specific function sorely lies with the board of directors and therefore tabling it in an AGM would be irregular.

4.2.3 The AGM was held and the complainant attended. The company and the complainant met on 21 June 2023 a few weeks after the AGM to discuss the matters proposed in the resolution.

4.2.4 The co-filers on again on 24 April 2024 put forward a resolution proposing it to be tabled during the company's AGM which was scheduled to take place on 4 June 2024 in terms of Section 65(3) of the Act.

4.2.5 The company refused to table the resolution for consideration during the company's AGM and the reasons advanced for the refusal were the same as those for refusal in the first.

5. **Findings**

5.1 The co-filers filed the in accordance with Section 62 (1) of the Act and in line with the provisions of company's Memorandum of Incorporation **("MOI") ("Annexure D")**.

5.1.2 The Act in Section 62(1) requires that a notice of the meeting must be in writing and contain a copy of proposed resolution of which the company received notice which is to be considered at the meeting and provide the percentage of voting rights that will be required for that resolution to be adopted.
Both the proposed resolutions were submitted timeously by the co-filers for it to be included in the notice of the company's AGMs,therefore complied with the requirements of Section 62(1) of the Act.

5.1.3 The company's MoI , in paragraph 30(4) requires that if the board receives requests from shareholders for the inclusion of certain resolutions in the notice prior to the dispatch of such notices, or after dispatch of such notices, but at least 15 business days before the shareholders meeting is to begin, the board shall in good faith consider such requests and determine whether the resolution should be included in the notice of the shareholders meeting.

5.1.4 The complainant together with the co-filers are shareholders in the company and filed a resolution to be tabled at an AGM as per Section 65 (3) of the Act which states that *" Any two shareholders of a company— may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and* (b) *when proposing a resolution, may require that the resolution be submitted to shareholders for consideration—*

(i) at a meeting demanded in terms of section 61 (3);
(ii) at the next shareholders meeting; or
(iii) *by written vote in terms of section 60.*

5.2 There is no dispute between the complainant and the company that the co-filers are shareholders of the company and therefore met the criteria to propose a resolution on any matter in respect of which they are entitled to exercise voting rights as required in Section 65(3) of the Act.

5.2.1 The refusal by the company to table the proposed resolution is based on the company's contention that the co-filers do not have a right in law to propose a resolution on matters of climate change as they are not entitled to exercise voting rights concerning such matters.

The company could not provide sufficient evidence to support that the co-filers are not entitled to exercise voting rights on matters concerning climate change. The company's MoI is not specific as to which matters may shareholders of different classes exercise voting rights on.

5.2.3 The complainants places their reliance on Section 65(3) of the Act , but are unable to substantiate and or qualify whether they are entitled to exercise voting rights on the matters as proposed in the resolution to be tabled for consideration in the company's AGMs.

5.2.4 The company's MoI provides that the board shall in good faith consider and determine whether a proposed resolution should be included in the notice of the shareholders meeting. There is no indication in the MoI that the discretion by the board to include or not to include a proposed resolution in the notice of shareholder's meeting is subjective to the two shareholders being entitled to exercise voting rights on the matter concerned.

5.2.5 It is evident that the company has previously invited the complainants to discussions regarding the initial proposed resolution as on 21 June 2023 a meeting was held between the company and the complainant.

It can be concluded that there was no consensus reached between the parties as the proposed resolution was still not tabled for consideration at the company's AGM of 4 June 2024 and another resolution of similar nature was proposed by the complainants.

The company welcomed an opportunity to engage with the complainants should the complainants be of the view that the disclosure in the Climate Report did not address their concerns as per the filed resolution.

Subsequently, the complainant's filed a resolution to be tabled at the company's upcoming AGM scheduled to take place on 5 June 2025 in terms of Section 65 (3) of the Act . The company has once again refused to table the resolution for condideration during the company's upcoming AGM. The company placed its reliance on the reasons advanced in the two previously proposed resolutions as they are of the view that the complainant do not have a right to propose a resolution on matters where they are not entitled to exercise voting rights on.

5.2.6 The company is a public company and is therefore in terms of Section 72 of the Act required to have a Social and Ethics Committee **("S&E Committee")**.The functions of the S&E Committee as set out in Regulation 43 (5) of the Act includes monitoring the company's activities related to the environment,health and public safety, including the impact of the company's activities and of its products and services. The company has established a S&E Committee. The complainant did not exercise an option to table the matter with the company's S&E Committee whose responsibility is to draw matters within its mandate to the attention of the board and report thereon to the shareholders at an AGM.

5.2.7 The company committed to release its Integrated Annual Report ,ESG Report and the Climate Change Report , stating that the Climate Change Report is aligned to the recommendations of the TFGD.The company was to disclose their membership of industry associations.

The complainants acknowledged that the company's Climate Change Report discloses its membership to six(6) industry associations, but it did not report on the issues as requested by the resolution and they still required that in terms of Section 65(3)(b) of the Act the resolution should be submitted to the shareholders for consideration.

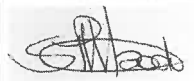
5.2.8 Based on the information before the inspector, it can be concluded that there is a dispute between the complainants, co-filers and the company. It is considered that the Companies Tribunal will be better suited to engage with the parties through an Alternative Dispute Resolution **("ADR")** process.

6 Recommendations

6.1 It is recommended that the matter be referred to the Companies Tribunal terms of Section 170 (1) (b) of the Act.

6.2 It is recommended that the Commission as per Section 170 (2) of the Act provides the complainant and all the directors of Thungela Resources Limited registration number 2021/303 811/06 with a copy of the inspector's report.

SYLVIA PUMLA NDILEKA MAODI



Signed by SYLVIA PUMLA NDILEKA MAODI,
pmavuma@cipc.co.za
02/06/2025 13:23:22(UTC+02:00)

Date: 29 May 2025

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 140.1

About this Form

- This form is issued in terms of section 170 of the Companies Act, 2008, and Regulation 140 (1) of the Companies Regulations, 2011.

Referral of Complaint to Alternative Authority

Date: _____

From: [x] **The Commission** [ ] **The Takeover Regulation Panel**

To: JUST SHARE NPC
(Name of complainant)

And To:
(Name registration number and address of respondent(s). Use additional sheet if required).

Name: **THUNGELA RESOURCES LIMITED**

Reg No: **2021/303 811/06**

Address: **25 Bath Avenue ,Rosebank South Africa 2196 South Africa**

And To: THE COMPANIES TRIBUNAL
(Name of regulatory authority to which the matter is being referred)

Concerning:
(Name and File Number of the complaint)

Name: **JUST SHARE NPC 2017/347856/08**

File No.: **G89 (2024)**

The Issuing Authority, having investigated the complaint, believes that if falls within the jurisdiction assigned to **THE COMPANIES TRIBUNAL** , and accordingly refer it to that entity for its consideration.

Name and Title of person signing on behalf of the Commission or Panel

Authorised Sig

Rory Voller

Signed by Rory Voller, RVoller@cipc.co.za
03/06/2025 16:55:23(UTC+07:00)

Contacting the Tribunal
The Companies Tribunal of South Africa

Street Address
Pretoria
Republic of South Africa
Tel:
Fax :
email
Tel: 086 10

www.cipc.co.za

thungela

CORPORATE OFFICE
25 Bath Avenue
Rosebank
2196
South Africa

To: **Ms P Maodi**

Companies and Intellectual Property Commission

20 September 2024

By e-mail: pmavuma@cipc.co.za

Confidential and privileged

Dear Ms Maodi

Complaint G89/2024: Thungela Resources Limited / Just Share NPC

1. We refer to your letter dated 12 September 2024 ("**your letter**") and specifically paragraph 4 thereof, which states that "*there is no indication in [our letter] to the inspector dated 14 July 2024 to suggest that the proposed resolution by the complainant did not satisfy the requirements of section 65(4) of the Act*".

2. With respect, this misconstrues the position and the issue in dispute.

3. As noted in your letter, "*the resolution was proposed by the complainant together with the co-filers in terms of Section 65(3) of the Act to be tabled at the company's next AGM*". While proposed in purported reliance on section 65(3) of the Companies Act, 2008 ("**the Act**"), the "resolution" did not meet the legal requirements under that section. The mere filing of a demand to table a matter, citing this provision, does not, as your office will appreciate, mean that the matter demanded actually meets the requirements of that provision. This is a separate and distinct enquiry.

4. Section 65(4) and its associated provision, section 65(5), only apply to validly proposed resolutions: i.e. resolutions on matters within the powers of the general meeting. As such, any enquiry into compliance with section 65(4) is moot where what is tabled as a "resolution" fails to comply with section 65(3).

5. The 14 July 2024 letter sets out the (respectfully) correct interpretation of s65(3) and demonstrates why the "resolution" proposed by the complainant was invalid, and thus did not meet the statutory prerequisites under that section. We re-iterate what is said there. In brief, and without in any way derogating from the detailed submissions made in the 14 July 2024 letter:

5.1 it is a trite principle of company law that the powers of the company vest exclusively in the board of directors (**board**) and in the general meeting, with each body exercising exclusive decision-making power in respect of the matters which fall with its remit.[1] As such:

5.1.1 the general meeting is a body of the company through which shareholders (by voting) exercise decision-making powers on the matters that this body is entitled to decide. Consistent with the statutory division of powers, the general meeting is not a body which can

[1] Shareholder may, in certain circumstances, be vested with decision-making on matters otherwise falling within the powers of the board, but only where the law entrusts that decision to them (e.g. where the board is unable to act).

decide or vote on every matter – rather, the matters which this body can consider and vote on are limited and specifically circumscribed in law;

5.1.2 a meeting of the board of directors is the body of the company through which the directors (by voting) exercise decision-making powers on matters that this company body is entitled to decide. The board's decision-making powers are extensive and encompass all matters other than those reserved for decision by shareholders in general meeting. In particular, the board has the sole power to determine matters of policy as well as – statutory requirements aside – to determine matters relating to access to, and use of, the company's confidential information;

5.2 a resolution is a decision taken by a company body on a matter falling within its decision-making powers. It is a jural act performed in terms of the Act and the relevant entity's constitutional documents;

5.3 a decision in general meeting (or by the board), once taken, binds the general body of shareholders (or board) to that decision, both at the time that the decision is taken and thereafter, irrespective of any subsequent changes in shareholders or their shareholdings (or change in the composition of the board);

5.4 voting is the legal means by which these decisions are taken. A right to vote, and the exercise of that right, by a shareholder or director thus arises only in respect of, and is with reference solely to, a decision to be taken by the relevant company body, i.e. the adoption or rejection by it of a resolution;

5.5 taking a vote has no other legal function within company law, and it cannot validly be invoked or employed for any other purpose or to any other effect. In particular, the decision-making power of a company body, and its determination of such decisions through a vote, cannot be invoked by a shareholder to poll opinions, or to canvas for, or provoke, views on any matter; nor can it be used as a platform through which such shareholder can, by resolution, disseminate, express or champion its personal issues, interests, opinions, positions, and the like, on matters which are outside of the decision-making powers vested in shareholders. This is so, irrespective of how well supported these views may, or may not, be;[2]

5.6 the matters falling within the decision-making powers of shareholders in general meeting comprise exclusively (i) those matters entrusted to it for determination under the Act and (ii) any additional matters (if any) entrusted to it for determination under the company's memorandum of incorporation (and, arguably, a shareholders' agreement, if any);

5.7 it is indisputable in law that shareholders in general meeting have no authority or power to act as a body of the company beyond these matters;

5.8 no provision of the Act or of Thungela's memorandum of incorporation gives its shareholders a legal entitlement to:[3]

5.8.1 use the decision-making powers of the general meeting to, by resolution: (i) poll opinions; (ii) canvas for, or provoke, views on any issue; (iii) issue requests; (iv) disseminate, express or

---

2 As an aside, we note that - were resolutions of this nature to be allowed - shareholders who choose to keep their views on the matter private are nonetheless forced to cede the outcome to those who do not and vote on the matter, as the "resolution" - and thus the formal position of the body of shareholders on that matter - will be determined by those votes alone. In addition to being bad in law, this would infringe on shareholders' rights to privacy and on their rights of association and free speech, which include the right not to speak, or to be spoken for, and the right to disassociate from the views, policies, positions, biases, prejudices and the like, of others.

3 This list is, of course, not exhaustive of all of the matters which fall outside the power of shareholders. Sufice it to note that any matter which falls within the board's powers falls outside those of the general meeting.

champion issues, interests, opinions, positions, and the like, on matters which are outside of the decision-making powers vested in shareholders in general meeting; or

5.8.2 act as a recommendatory body of the company, or of its shareholders; and/or

5.8.3 bind their fellow shareholders to statements of opinion, policy or position, or to make recommendations on their behalf;

and the complainant, rightly, is unable to present any authority or statutory provision which gives shareholders these rights or entitlements;[4]

5.9 shareholders in general meeting thus do not have the power to decide or express statements of opinion, policy or position, or to make requests or recommendations, by and on behalf of the general body of shareholders. Nor do they have the power to bind other shareholders to those statements of opinion, policy or position and/or requests and recommendations, or other matters referred to in paragraph 5.8. The complainant has no valid legal basis to contend otherwise;

5.10 further, as a matter of general principle and established law:

5.10.1 a general meeting cannot be convened (whether pursuant to section 65(3) or otherwise) to vote on a 'resolution' which is *ultra vires* the powers of that meeting (whether pursuant to section 65(3) or otherwise);[5]

5.10.2 shareholders do not have a legal right to vote on (nor can they be required to vote on) *ultra vires* resolutions; and

5.10.3 any *ultra vires* resolution which is tabled is a legal nullity, and any 'votes' purportedly cast on such resolution have no legal or constitutive effect;

5.11 the "resolution" proposed by the complainant plainly falls squarely within the matters identified in paragraph 5.8 and, if tabled, would be *ultra vires* the powers of the general meeting. (For ease of reference, what the complainant seeks is a decision of the general body of shareholders to request the board of directors:

5.11.1 to annually conduct an evaluation of and report to shareholders on the company's lobbying and policy engagement activities;

5.11.2 to include in this report:

- "*if, and how, its lobbying and policy engagement activities (both direct and indirect through industry associations, coalitions, alliances, and other organisations) align with the goals of the Paris Agreement to limit the rise of global temperatures to 1.5°C above pre-industrial levels*"
- "*its framework for identifying and mitigating the risks presented by any misalignment*"; and
- "*the circumstances under which escalation strategies have been and will be used, including, but not limited to, making public statements challenging industry associations and other alliances, withdrawing funding, and suspending or ending membership of the industry association or alliances*"; and

5.11.3 to evaluate the company's alignment by considering "*... not only its policy positions and those of organisations of which it is a member, but also the lobbying and engagement activities aimed at influencing policy for the year in review*";

---

4 The sole exceptions are the relatively recent inclusions in the Act of shareholder vote endorsing, or disapproving of, the company's remuneration policy and its implementation thereof.

5 It is technically more accurate to refer to an *ultra vires* 'resolution' as a proposal, as is not a resolution in the proper sense of that word as envisaged in the Act. For convenience and ease of reading, we have continued to use the term '*ultra vires* resolution' in this letter, but with the meaning of a matter proposed which is *ultra vires*.

5.12 it is moreover irrelevant whether or not what results from a (purported) exercise of a decision-making power is expressed to have operative effect (i.e. to be "binding") on the company (i.e. its board of directors) or is expressed not to have such effect (i.e. is "non-binding"):

5.12.1 as set out earlier, voting at a general meeting is a legal act of a company body, resulting in a formal decision of that body;

5.12.2 such decision (passed with the requisite majority) binds the general body of shareholders to that position, both at the time of the vote and prospectively, irrespective of any subsequent changes in shareholders or their shareholdings;

5.12.3 the complainant seeks a decision of the general body of shareholders that such body request the board of directors to take specific actions and to publish specific information otherwise confidential to it,[6] with such request further being an advisory position of the general body of shareholders;[7]

5.12.4 the legal effect of that decision on the board is irrelevant to determining whether or not shareholders in general meeting, as a body of the company, have the power to take that decision.[8] That the resulting request and advisory position are not matters the board is legally obligated to follow, is of no consequence:

(a) firstly, all requests and recommendations are, by their very nature, not binding on the recipient. Styling them as binding or non-binding is thus moot;

(b) further, a request or recommendation (whether legally binding on the recipient or not) is itself a specific juristic act, namely the making of a request and the expression of a recommendation;

5.12.5 as we have seen, shareholders in general meeting do not have a power to make requests of the board (or, for that matter, of any person) or to make recommendations to it on how it should conduct its affairs. Shareholders cannot create that power, or validate its exercise, by simply qualifying the requested action or recommendation as being "non-binding";

5.12.6 simply put, a person cannot create a power not afforded to it by law simply by purporting to exercise it, nor can a person validate a purported use of that (non-existent) power by qualifying it;

5.13 section 65(3) is consistent with, and affirms, all of these principles:

5.13.1 it thus provides that "*any two shareholders of a company—may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights*" (emphasis added);

5.13.2 the phrase "*entitled to exercise voting rights*" is explicit and intentional and must be given meaning. Having regard to what is stated above, this meaning is plain: namely that shareholders can compel the board to table for decision at a general meeting those matters (resolutions) which shareholders in general meeting have the legal right to decide through exercising voting rights. Such matters are those which are *intra vires* (i.e. within their powers);

5.13.3 shareholders do not have a legal right or entitlement to decide, or to vote on, an *ultra vires* proposal (i.e. one outside their powers);

5.13.4 a proposal of this nature is not a valid resolution;

---

6 As detailed in paragraph 5.11 above.

7 That the resolution is advisory is expressly so stated in the resolution's heading: "*Non-binding advisory resolution ...*".

8 Taking such decision, of course, also unlawfully usurps the board's power to determine the company's stance on these matters. This is, though, a separate (yet equally fundamental) basis why a resolution of this nature is unlawful and beyond the powers of the general meeting.

5.13.5 it follows of necessity that shareholders cannot compel the board to table an *ultra vires* resolution through reliance on s65(3) (or otherwise for that matter); and

5.13.6 the complainant's attempt to rely on s65(3) as the basis on which it has a right to table an *ultra vires* resolution is thus negated by the express provisions of this section. Furthermore, even were the provision to have been open to a different interpretation (which it is not), the interpretation relied on by the complainant is entirely unsupportable on policy grounds and has no constitutional basis.

6. Given the above, read with the 14 July 2024 letter, there was thus no breach of s65(4) of the Act, nor any non-compliance under the Act in respect thereof. There were thus also no further actions required of the board in relation to the complainant's demand to table the resolution.

7. Shareholders are, of course, entitled to engage with the board (and other shareholders) in relation to their opinions through various other avenues, and the complainant has been invited to do that.

While we trust this brings the matter to a close, we nonetheless remain available to address the matter further should this be required. As before, we should formally note that all of our rights are reserved.

Yours sincerely

Francois Klem
Company Secretary
T: +27 (0)826031660
E: francois.klem@thungela.com
www.thungela.com

Form CTR 151

About this Notice

- This form is issued in terms of section 180 to 184 of the Companies Act, 2008, and Regulation 151 of the Companies Regulations, 2011.
- Hearings of the Companies Tribunal are governed by sections 180 to 184 of the Companies Act, and Chapter 7 Part D of the Companies Regulations.
- It is an offense in terms of section 215 of the Companies Act to refuse to attend when summoned, or when attending, to refuse to answer any question or produce any document, or to knowingly provide false information to the Tribunal.

Contacts

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0002

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Website:
www.companiestribunal.org.za

Notice of hearing before Companies Tribunal

Date: 04 July 2025

From: The Companies Tribunal

Concerning:

(Name and file number of matter being considered by the Companies Tribunal)

Name: **THUNGELA RESOURCES LIMITED AND JUST SHARE NPC**

Case No: **CT02298ADR2025**

The Companies Tribunal is conducting a hearing in the above matter, in terms of the Companies Act, 2008.

You are advised that this matter has been set down for a hearing beginning on the date and at the time and place set out below.

Date: 22 July 2025

Time: 10h00

Place: Virtual

Name and Title of person signing on behalf of the Tribunal:

Mr Mandla Zibi, Office of the registrar.

Authorised Signature:

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).

POWERLAW /AFRICA

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a. 20 Baker Street, Rosebank, Johannesburg, South Africa, 2196

Date: 24 July 2025 Your ref: CT02298 Our ref: PLJS-202426

TO: THE COMPANIES TRIBUNAL
The Registrar
77 Meintjies Street, Sunnyside, Pretoria, 0002
Tel: +27 (0)12 394 9973
E-mail: SMagwasha@companiestribunal.org.za

Dear Mr Magwasha,

COMPLAINT REFERRAL TO THE COMPANIES TRIBUNAL | THUNGELA RESOURCES LIMITED AND JUST SHARE NPC | CASE NO: CT02298ADR2025

1. We refer to the above matter and the content of the pre-hearing conference held on 22 July 2025.

2. We are grateful to Dr. Chicktay for his time and deliberation in conducting the initial engagement between the parties' respective legal representatives.

3. As indicated in our earlier communication, we confirm that our client, Just Share NPC, accepts the invitation to attempt a mediation process facilitated by the Companies Tribunal (the "Tribunal") in terms of the Companies Act 71 of 2008 (the "Companies Act"), the Companies Regulations, and the Tribunal's Practice Guidelines.

4. At this juncture, subject to further directions from the Tribunal and mutually agreed terms and conditions for the proposed mediation process, we are also instructed to record the following:

    4.1. Although our client undertakes to participate in the facilitated mediation process in good faith, it is reiterated that the dispute between the parties revolves around a crisp point of law – the proper interpretation of sections 65(3) and 62(3)(c) of the Companies Act

– and that the parties have held directly opposing positions on this issue for the past three years. It is anticipated that this point of law will remain the determining issue for any meaningful resolution between the parties through the course of mediation.

4.2. The Companies and Intellectual Properties Commission ("CIPC") referred the complaint to the Tribunal under section 170(1)(b) of the Companies Act, which contemplates adjudication of the complaint. There has been no referral to ADR under sections 166 or 169 of the Act.

4.3. Our client respectfully maintains its position that the Tribunal is empowered with the jurisdiction to adjudicate this referral and to issue an appropriate order, if it subsequently finds that there is no reasonable probability of the parties resolving this dispute through a facilitated meditation process.

4.4. We accordingly propose that one of the issues for mediation is the further procedural steps to be taken to ensure the adjudication of the referral, should mediation on the substantive issues fail.

5. Further to what is stated above, in the event that the proposed mediation process culminates in the Tribunal issuing a Certificate of Failed Alternative Dispute Resolution, despite the parties' endeavours to resolve the matter, we reserve our client's rights to consider available recourse. This includes approaching the High Court for appropriate relief.

6. We respectfully request further directions from the Tribunal in order to commence the facilitated mediation process.

7. We are available to meet virtually if a further meeting would be of assistance.

Kind regards,

POWER & ASSOCIATES

Per: Timothy Lloyd | *Senior Associate*
E-mail: tim.lloyd@powerlaw.africa

(*Transmitted electronically without signature. A signed version will be provided on request.*)

COPIED TO: **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**
Advocate Rory Voller
Commissioner
E-mail: RVoller@cipc.co.za | corporatelegalservices@cipc.co.za

COPIED TO: **WEBBER WENTZEL**
Attorneys for the Respondent
E-mail: Colin.duToit@webberwentzel.com | DJ.vanwyk@webberwentzel.com | dylan.cron@webberwentzel.com | pooja.dela@webberwentzel.com

ENDS.

Companies Tribunal
a member of the dti group

Companies Tribunal
Republic of South Africa

TD41307

Certificate of Failed Alternative Dispute Resolution

Date: 01 September 2025

From: [X] **The Companies Tribunal** [ ] **Accredited Agency**

To: [ ] **The Commission** [ ] **The Takeover Regulation Panel**

And To: LEHLOGONOLO MOSIME *(Insert name of complainant)*

THUNGELA RESOURCES LIMITED ,2021/303811/06
(Name, registration number and address of respondent(s). Use additional sheet if required)

Concerning:

(Name and file number of complainant)

Name: **JUST SHARE NPC and THUNGELA RESOURCES LIMITED**

File No.: **CT02298ADR2025**

The parties have attempted, but failed, to resolve this dispute by Alternative Dispute Resolution in terms of section 166. There does not appear to be any reasonable prospect of resolving the matter through this process.

Name and Title of person signing:

Authorised Signature:

THE COMPANIES TRIBUNAL
2025 -09- 01
Received by: MANDLA
Time: 10:00
SOUTH AFRICA

Form CTR 132.3

About this Form

- This form is issued in terms of section 166 of the Companies Act, 2008, and Regulation 132 of the Companies Regulations, 2011.
- This Application must be filed and served on each respondent within 5 business days after it is filed.

Contacts

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the dti Campus Block E - 3rd Floor
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Website:
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POWERLAW
/AFRICA

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a. 20 Baker Street, Rosebank,
Johannesburg, South Africa, 2196

Date: 1 September 2025 Your ref: G89 / 2024 Our ref: PLJS-202516

TO: COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
C/o Lucinda Steenkamp
77 Meintjies Street, Sunnyside, Pretoria, 0002
Tel: +27 (0)12 394 9973
E-mail: LSteenkamp@cipc.co.za

Dear Lucinda,

COMPLAINT REFERRAL TO THE COMPANIES TRIBUNAL | THUNGELA RESOURCES LIMITED AND JUST SHARE NPC | CASE NO: CT02298ADR2025

1. We write on behalf of Just Share NPC (our "client").

2. We refer to the above matter and the mediation hearing held on 28 August 2025, facilitated by the Companies Tribunal (the "Tribunal").

3. This alternative dispute resolution process followed a Referral of Complaint to an Alternative Authority notice issued by the Companies and Intellectual Property Commission ("CIPC"), dated 3 June 2025, in terms of section 170 (1)(b) of the Companies Act 71 of 2008, as amended (the "Companies Act"), read together with regulation 140 of the Companies Regulations of 2011 (the "Regulations").

4. This referral notice – set out in Form CoR 140.1 – can be located on page 132 of the complaint bundle submitted to the Tribunal Registrar on 27 August 2025, with all parties in copy.

5. We note that all three parties were duly represented during the facilitated mediation hearing, namely, Just Share as the Complainant, Thungela Resources Limited as the Respondent, and

CIPC as the Issuing Authority. The Tribunal Member and designated Mediator, Dr Chicktay, held separate engagements with the respective parties. It became apparent that the matter could not be settled by means of alternative dispute resolution and the legal dispute remains unresolved.

6. In light of the failure of the ADR process, we request urgent confirmation whether the CIPC will proceed with the referral of this matter to adjudication before the Tribunal in terms of section 170(1)(b) of the Companies Act, read with regulation 140.

7. In the event that the CIPC will be proceeding with the referral to adjudication, we note that, in terms of regulation 140(3), the CIPC ought to have used Form CTR 140 supported by an affidavit setting out a concise statement of the particulars of the complaint, and the relevant points of law and/or material facts.

8. In order to take this matter forward, regulation 149 allows for the convening of a pre-hearing conference before the Tribunal and regulation 149(5)(c) explicitly empowers the designated Tribunal member to issue directions with respective to technical or formal amendments to correct errors in any documents filed in the matter, among other aspects.

9. In the circumstances, we urgently request the CIPC to confirm:

   9.1. Whether it intends to proceed with the referral of this dispute to adjudication before the Tribunal, following the failure of the ADR process; and

   9.2. If the CIPC confirms its intention to proceed with the referral to adjudication, that it is amenable to making a joint approach to the Tribunal for a further pre-hearing conference in terms of regulation 149(1), for the specific purpose of seeking directions in accordance with regulation 149(5) to ensure that the complaint referral is properly before the Tribunal for its adjudication.

10. We await your response as soon as reasonably possible, but no later than **8 September 2025**.

Kind regards,

POWER & ASSOCIATES

Per: Timothy Lloyd | *Senior Associate*
E-mail: tim.lloyd@powerlaw.africa

(*Transmitted electronically without signature. A signed version will be provided on request.*)

COPIED TO: **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**
C/o Pumla Moadi
E-mail: pmavuma@cipc.co.za

ENDS.

Companies and Intellectual Property Commission
a member of the dtic group

Mr Timothy Lloyd
POWERLAW AFRICA

Your Ref: PLJS-202516

Per e-mail: tim.lloyd@powerlaw.africa

Dear Sirs

RE: COMPLAINT REFERRAL TO THE COMPANIES TRIBUNAL – THUNGELA RESOURCES LIMITED // JUST SHARE NPC

We refer to the abovementioned matter and in particular your letter dated 1 September 2025, the content of which was noted. What became clear during the ADR-hearing facilitated by the Companies Tribunal and subsequent discussions, is that there seems to be a misalignment with regards to the interpretation of section 170(1)(b), read with regulation 140 of the Companies Act, 71 of 2008 (hereinafter referred to as "the Act").

It seems necessary to reiterate the legislative requirements in terms of complaints and elaborate on the CIPC's role and mandate and its interpretation of the relevant and applicable legislation.

Section 170(1)(b) of the Act provides for the Commission to refer the complaint to the Companies Tribunal, ***"if the matter falls within their respective jurisdictions in terms of this Act".*** Regulation 140 – Procedures following investigations – provides as follows: -

"(1) A Notice of Referral by the Commission or the Panel of a complaint to another regulatory agency, as contemplated in section 170(1)(b), must be in form CoR 140.1 and delivered to the complainant, the respondent, and the other relevant regulatory agency."

It is important to note that the CIPC did not refer the matter to the Companies Tribunal incorrectly. The Form CoR140.1 in the body of the form indicate unambiguously that the referral is issued in terms of section 170 of the Act and **Regulation 140 (1)** of the Companies Regulations. The referral was not done in terms of Regulation 140(3), which requires a Form CTR 140 and an affidavit.

Form CoR 140.1
About this Form

This form is issued in terms of section 170 of the Companies Act, 2008, and **Regulation 140 (1)** of the Companies Regulations, 2011.

In paragraph 5.2.8 of the Inspector's Report (a copy of which all parties in this dispute have record of) it was indicated that the Companies Tribunal would be better suited to engage the parties and seek a resolution to the internal dispute. No finding or submission was made by the appointed inspector or the CIPC regarding the existence of any non-compliance with the Act, because the dispute relates to matters (specific voting rights and interests) about which the CIPC has no knowledge.

A referral made in terms of a Form CTR 140 (which the complainants feel should have been the avenue followed), in terms of section 170 and regulation 140(3) of the Act and its Regulations, require the Commission to find for the complainant (and against the Respondent) in terms of the initial complaint, and request thus an order against the Respondent.

"***The issuing authority, having investigated the complaint, seeks the following order(s) against the respondent***"

It is imperative to confirm at this juncture that the Commission made no such finding for or against either party to the initial complaint, and therefore, the **referral in terms of the Form CTR 140 is not applicable.**

The CIPC is of the opinion that the complaint was correctly referred to the Companies Tribunal, and that the subsequent alternative dispute resolution process (which unfortunately failed) administered by the Companies Tribunal, allows for the matter to be taken further (to the High Court) for adjudication. Your attention in this regard is drawn to section 166(2) of the Act, which states as follows: -

"(2) If the Companies Tribunal, ... to whom a matter is referred concludes ... that there is no reasonable probability of the parties resolving the dispute through that process, the Companies Tribunal ... may issue a certificate in the prescribed form stating that the process has failed."

(omissions and underlining is my own emphasis)

It is the Commission's contention that the complaint relates to a dispute between the relevant parties, and that failing the dispute resolution process, the avenue open for the complainants in this matter, would be an application to the High Court. Once the requisite certificate has been issued by the Companies Tribunal, the matter can be referred to court for applicable adjudication.

We trust that the CIPC's role in terms of the Act and the actions taken herein, is now clear and that you are in agreement with our submission.

Yours' sincerely

L Steenkamp

Ms Lucinda Steenkamp
Senior Legal Advisor: Corporate Legal
Deputy Information Officer: CIPC
8 September 2025

THE IMPACT OF SHAREHOLDER ACTIVISM ON CORPORATE INVOLVEMENT IN SOUTH AFRICA DURING THE REAGAN ERA

Author(s): PHILIP A. BROYLES

Source: *International Review of Modern Sociology*, Spring 1998, Vol. 28, No. 1 (Spring 1998), pp. 1-19

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THE IMPACT OF SHAREHOLDER ACTIVISM ON CORPORATE INVOLVEMENT IN SOUTH AFRICA DURING THE REAGAN ERA

PHILIP A. BROYLES
Shippensburg University, USA

International Review of Modern Sociology 1998, Vol. 28 (Spring): No. 1; 1-19

One of the emerging issues of social justice in the 1980s was the involvement of U.S. Corporations in South Africa, which among other activities included sales to the South African military and police, loans to South African firms, and direct investment in South Africa. During this time, one of the anti-apartheid strategies used to influence corporate involvement in South Africa was shareholder activism. Led by institutional investors from religious and public institutions, anti-apartheid activists used shareholder resolutions to pressure U.S. firms to change or curtail their activities in South Africa. This research examines the efficacy of anti-apartheid shareholder activism during the Reagan era, the crucial years of the movement. I argue that the anti-apartheid shareholder activism was effective in charging corporate policy on South Africa. However, the efficacy of this activism ultimately reflected the state's level of support for the anti-apartheid movement.

Anti-Apartheid activism began in the United States during the 1950s and developed into an organized social movement over the following two decades. In its early years, the anti-apartheid movement relied on protests and boycotts to influence corporate and government policy on South Africa. At the center of this movement was the American Committee on Africa (ACOA), founded by Methodist Minister Goerge Houser in 1953. One of ACOS's most celebrated events was a "World-Wide Protest Day" against apartheid in 1957 that drew together anti-apartheid activists from around the world. Mrs. Eleanor Roosevelt served as the

A preliminary version of this paper was presented at the joint annual meeting of the Law and Society Association and the Research Committee on Sociology of Law of the International Sociology Association in Glasgow, Scotland, July 1996.

Chairwomen of the International Sponsoring Committee and Martin Luther King Jr. served as Vice-Chairman (De Villiers, 1955). ACOA united anti-apartheid activists and established a voice for the movement.

During the 1960s, ACOA, with a loose coalition of civil rights, labor and student activists, turned to divestment campaigns as a strategy for protesting U.S. corporate involvement in South Africa. In 1966, ACOA led a successful national campaign to pressure institutional investors to divest from U.S. banks conducting business in South Africa (De Villiers, 1955; Hull 1990). Within two years, divestment campaigns spread to college and university campuses around the nation. Students at Princeton University were among the first to demand that university trustees divest from companies conducting business with South Africa (Hull, 1990). Despite the failure at Princeton, divestment activism became a major strategy of the anti-apartheid movement, especially among college and university activists.

A crucial turning point for the movement came in 1970, when the Securities and Exchange Commission (SEC) ruled that shareholder resolutions concerning corporate social responsibility qualified for inclusion in company proxy statements. In 1970, The Project on Corporate Responsibility (PCR), a coalition of public interest lawyers, submitted nine proposals on corporate responsibility to GM's management for inclusion in the company's 1970 proxy materials. GM's management responded by petitioning the SE to exclude all of PCR's proposals from its proxy statement on the grounds that the resolutions concerning matters other than corporate governance. Under public and political pressure, the SEC ruled that two of PCR's nine proposals—a resolution to expand the board of Directors to make room for public representatives and the resolution to establish a shareholder committee on corporate responsibility—qualified for inclusion in GM's proxy statement. The two proposals received only three percent of the vote, but many of campaign GM's demands were met in the subsequent months by GM—most notably a public representative, Rev. Leon Sullivan, was appointed as the first black Director at GM (Talner, 1983).

Anti-apartheid activists were quick to seize the new opportunity to challenge corporations on their involvement in South Africa. In the very same year as the SEC decision, the Episcopal Church filed the first shareholder resolution concerning South Africa, calling upon General Motors to cease its manufacturing operations there (Hull, 1990). Although the resolution received only one percent of the vote, it forced the anti-apartheid debate onto the corporate floor. To further organize and coordinate shareholder proxies, Protestant and Catholic clergy formed the Interfaith Committee on Corporate Responsibility and the Investment and the Corporate Information Center, respectively, in 1971. Three years later these two organizations merged to form the Interfaith Center on Corporate Responsibility (ICCR) under the leadership of Dr. Timothy Smith, a colleague of George Houser (De Villiers, 1995; Hull, 1990).

The level of anti-apartheid shareholder activism grew slowly in the early 1970s. However, by mid-decade violence fueled a resurgence of support for the anti-apartheid movement. Within a year of the brutality in Soweto, Reverend Sullivan established the Sullivan Principles, which provided guidelines for conducting socially responsibile business in South Africa. By establishing standards for U.S. companies operating in South Africa, the Sullivan Code provided direction for shareholder activists (Schmidt, 1980). Consequently, shareholder activism became a major strategy of the anti-apartheid movement. While there were only eight South Africa-related shareholder resolutions in 1976, by the end of the decade there were over two dozen (Investor Responsibility Research Center, 1980).

Shareholder activism reflected a divergence from the dominant philosophy of the anti-apartheid movement. Generally, anti-apartheid activists called for complete disengagement of the U.S. from South Africa (De Villiers, 1996; Love, 1985). They argued that all corporate involvement in South Africa served to buttress racial domination by whites. Shareholder activists, however, tended to view socially responsible corporate investment in South Africa as a complimentary goal to corporate disinvestment. While they supported campaigns for corporate withdrawal from South Africa, they also believed that pressuring firms into acting responsibly in South Africa could promote reform of Apartheid. How effective was this strategy? Were shareholder activists successful in their attempts to influence corporate involvement in South Africa?

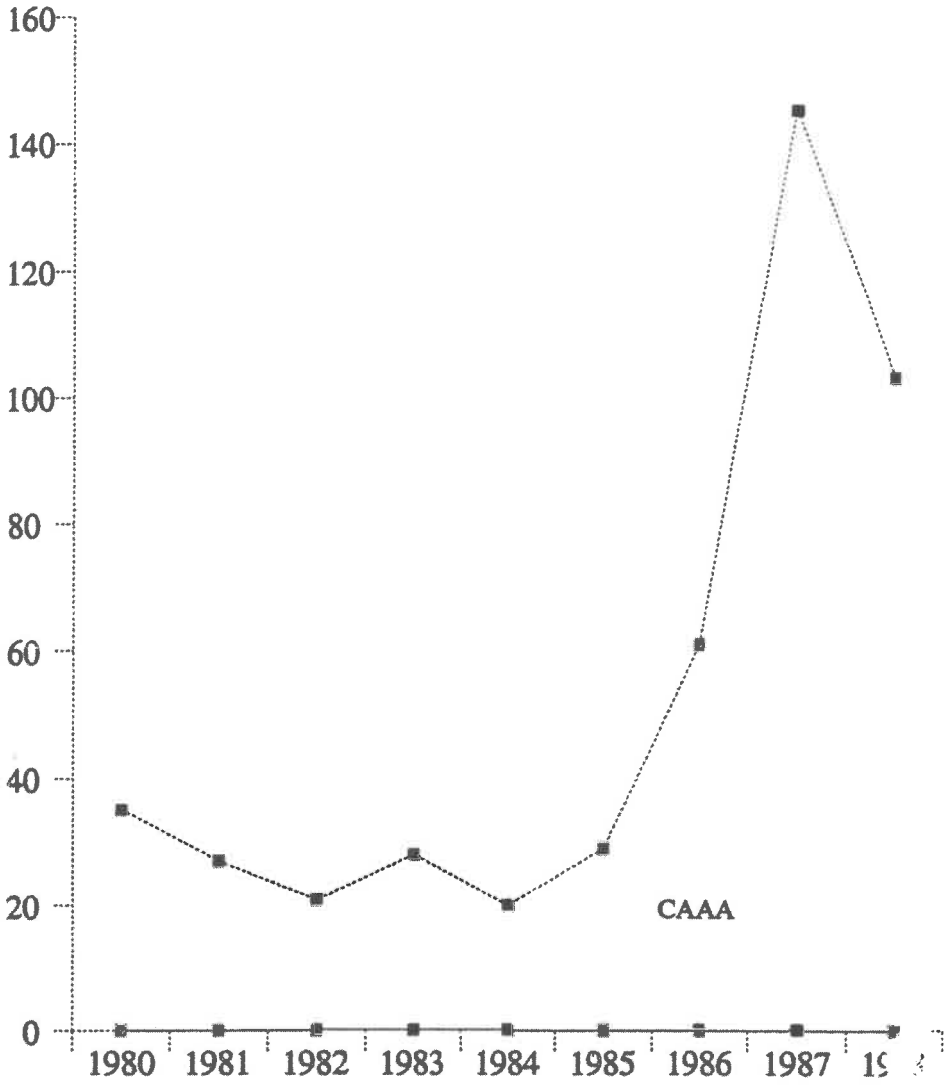
The success of social protest is rarely examined by social research. As Amenta et. al. (1994) recently note, the outcomes of social movement activities are so seldom studies that reviews of research on outcomes have been summarized in just two pages. This research examines the success of shareholder activism during the Reagan Era (1980-1988). These were the crucial years of the movement where activism reached an all time high and anti-apartheid legislation was passed by Congress. As Graph 1 illustrates, the number of anti-apartheid shareholder resolutions increased form 35 resolutions in 1980 to a high of 144 in 1987.

Information on corporate investment in South Africa and shareholder activism was collected from company reports and data compiled and published by the Investor Responsibility Research Center.

Social Movement Success

Gamson (1975, 1990) suggests that social movement success has two general dimensions; a social movements organization (SMO) may achieve "acceptance" (recognition by the opposition or the state as a legitimate part of the policy) or an SMO may win "new advantages" for its constituency (Gamson 1975, 1990). SMOs that achieve both goals are successful and become members of the polity, while SMOs that achieve neither of these goals are destined to "collapse". Partial success is achieved when an SMO fulfills only one of these goals.

GRAPH 1. NUMBER OF ANTI-APARTHEID SHAREHOLDER RESOLUTIONS



Recently, scholars have challenged Gamson's conceptualization of success (Amenta et al., 1994; Ragin 1989). Amenta et. al. (1992, 1994) argue that an SMO cannot be considered successful unless it actually achieves some "collective benefits" for its beneficiary group (Amenta et al., 1994). Social movements that are recognized by the opposition but do not win new advantages achieve nothing more than a symbolic victory. Political recognition is relevant to success only in that it may increase chances that an SMO wins new advantages. Following Amenta et. al. (1994), I argue that an SMO is at least partially successful if it wins concessions from the opposition, or the state, that further its interests or objectives.

The primary objective of the anti-apartheid movement was complete disengagement of the United States from South Africa. This included the severing of political relationships between the United States government and the South African government, and the imposition of U.S. economic sanctions against South Africa, and the prohibition of U.S. corporate investment in South Africa. While these goals were generally shared by the various factions of the anti-apartheid movement, shareholder activists focused on affecting more modest changes in corporate involvement in South Africa. For this faction of the movement, the primary objective was getting corporations to adopt fair labor practices and to stop supporting the South African military and police. Shareholder activists can be considered successful, then, if they were able to promote these interests through shareholder resolutions.

Resource Mobilization and Anti-apartheid Activism

Resource mobilization theory stresses the importance of resources, organization, and political opportunities in the formation and success of social movements (Tilly, 1968; Oberschall, 1973; McCarthy and Zald, 1973, 1977; Jenkins and Perrow, 1977; McAdam, 1982). According to this perspective, the successful mobilization of social movement organizations (SMOs) depends partly on conditions it can control—its resources and organization—and partly on the political environment. One variation of this theory, McAdam's (1982) "political process" model emphasizes the role of polity members in the success of social movements. Because social movements pose a threat to the existing social arrangements, members of the polity generally do not aggressively support challengers. However, when polity groups are divided, one polity group may support a challenger in order to gain advantage over another polity group (Jenkins and Perrow, 1977; McAdam, 1982). Division among political elites provides discontented groups with an opportunity for coalition formation. An SMO may win "new advantages" when a favourable regime is in control of the polity or when key bureaucrats are sympathetic to the movement (Amenta et al. 1992, 1994).

We argued that shareholder activists experienced some success during the eighties, but their effectiveness was dependent on the political milieu. Early in the decade the Reagan Administration reversed many of the gains achieved by the anti-apartheid movement during the Carter Administration. Consequently, shareholder activists experienced modest success. As the decade progressed, however, a bipartisan coalition in Congress emerge to challenge the Reagan Administration policy in South Africa. At first Reagan was able to turn back the opposition, but by 1986, on the eve of the elections, he was finally rebuked by Congress. The resulting legislation, the Comprehensive Anti-Apartheid Act of 1986 (CAAA), legitimated the anti-apartheid movement and fueled shareholder activism, which experienced its greatest success during this time.

Shareholder Activism During the Reagan Era

During the 1980s, over 350 U.S. Companies had direct investment in South Africa. 176 of these firms, received at least one shareholder resolution concerning its involvement in South Africa during this time (see Appendix). In most cases, shareholder activists confronted a company throughout the entire decade or until it withdrew from South Africa.

At the beginning of the decade, sponsorship of resolutions concerning South Africa primarily came from religious institutions, which were organized and coordinated by the Interfaith Center for Cooperate Responsibility. The religious community collectively had over 25 million dollars of corporate stock to use as leverage against companies doing business in South Africa (De Villiers, 1995). As Table 1 illustrates, until 1985, 80-100 percent of South Africa-related resolution

TABLE 1. INSTITUIONAL SPONSOR OF ANTI-APARTHEID RESOLUTIONS

Type of Sponsor	Proportion by Year								
	1980	1981	1982	1983	1984	1985	1986	1987	1988
Church	.80	.96	.88	.87	1.0	.53	.55	.10	.19
Pension						.40	.40	.48	.33
University	.08								
Individual	.08	.04	.06	.09					
Chruch/Pension			.06			.07	.05	.32	.48
Pension/Univ.								.07	
Chruch/Univ.	.04			.04				.03	

were introduced by religious organizations. A few Colleges and Universities (Oberlin, Bryn Mawr, Vassar and Wesleyan) also sponsored resolutions early in the decade. For the most part, though, universities were preoccupied with divestment challenges. Many colleges faced dual pressures, one from student and faculty activists who wanted universities to divest from companies conducting business in South Africa and another from shareholder activists who wanted their vote on shareholder resolutions.

Early in the decade shareholder activists advocated socially responsible corporate behaviour rather than disinvestment. Most resolutions called for U.S. Companies to discontinue loans or sale to the South African military and police or to sign the Sullivan Principles. As Table 2 shows, from 1980 to 1986 over 80 percent of the resolutions fell short of calling for corporate withdrawal from South Africa. Despite their emphasis on more limited measures, shareholder activists were supportive of the campaign for anti-apartheid legislation.

TABLE 2. TYPE OF ANTI-APARTHEID SHAREHOLDER RESOLUTION

Type of Resolution	Proportion by Year*								
	1980	1981	1982	1983	1984	1985	1986	1987	1988
Sullivan Principles	.24	.09	0	.13	.43	.60	.21	.1	.08
No Expansion	.16	.22	0	.13	.14	.07	0	0	0
No Sales	.08	.17	.13	.17	.07	.13	.26	.13	.13
Bank Loans	.16	.17	.38	.35	.07	.07	.12	.05	0
Kruger Sales	.08	.09	.13	.04	0	0	0	0	0
Withdraw	.2	.09	.06	.04	0	0	.33	.68	.78
Other**	.08	.17	.31	.13	.29	.13	.07	.03	.01

* proportions may not add to exactly 1.00 because of rounding error

** includes review of company policy on South Africa and monitoring operations in South Africa

The inital response of the state to the anti-apartheid movement generally varied along partly lines: the Republican administration endorsed a policy of "Constructive Engagement," while Democrats in Congress favoured anti-apartheid legislation. Reagan's policy of "Constructive engagement" offered a sharp contrast to Carter's outspoken anti-apartheid sentiment. Carter was a natural ally of shareholder activists, since he too believed that American MNCs could function as an instrument to force political change in the apartheid system (De Villiers, 1995; Hull, 1990). His commitment to human and civil rights led him to supporting anti-apartheid

policies while limited or prohibited business dealings in South Africa. Following the murder of black consciousness leader Steve Bilko in 1977, Carter banned American sales to South Africa of any non-military products that might have strategic importance during times of national emergency (McClellan, 1979). He also supported the United Nations madatory arms embargo, which prohibited exports of military products. The unprecedented political support of the Carter Administration, had helped to legitimize shareholder activism in the late 1970s.

One of the first visible expressions of the shift in policy under the Reagan administration was in 1981 when the United States Ambassador to the United Nations cast a veto in the Security Council to defeat an arms and oil embargo against South Africa. Just a year later, in a sharp reversal of Carter's policy, the Reagan Administration announced a realaxation of export controls over sales of nonmilitary goods to the South African military and police, which had been imposed in 1977 in the wake of Biko's death. Ironically, Reagan's official policy was very similar to the philosophy of the Carter administration. Both administrations suggested that apartheid could be weakened by enlightened practices of American businesses in South Africa. The Carter administration, however, was willing to impose restrictions on U.S. businesses operating in South Africa in order to achieve these ends.

Reagan's repudiation of the anti-apartheid position was bolstered by sympathetic bureaucrats at the SEC. In 1983, the SEC acted to curb shareholder activism, which was perceived by the business world as increasingly out of control, by changing the minimum votes required for resubmission from three percent to six percent in the first year of submission and from five to eight percent in the second year of submission (Love, 1985). Although this policy change was not solely directed at anti-apartheid resolutions, it had a significant impact on anti-apartheid activism. As a consequence of these changes, the number of submissions declined in 1984 before increasing again in 1985, after a federal court overturned the SEC's 1983 ruling (See Graph 1).

During the decade a coalition of instituional investors from state/city pension funds gradually joined religious leaders in sponsoring shareholder resolutions. Although investors from state and city pension funds were supportive of the church sponsored proposals on corporate involvement in South Africa, they were reluctant to sponsor resolutions themselves until later in the decade. With the exception of two public employee pension systems from California, which co-sponsored resolutions asking Xerox not to sell to South African military or police in 1982, public employee pension systems didn't sponsor any resolutions until 1985. In 1985, the New York City Employees Retirement System (NYCERS) introduced 20 South Africa-related resolutions. NYCERS' eight billion dollar portfolio provided a substantial bargaining chip for activists, far exceeding the multi-million

dollar church portfolios (Investor Responsibility Research Center, 1985). A year later, other large pension funds such as TIA-CREF began sponsoring resolutions. By the mid 1980s, 50 percent of shareholder resolutions were sponsored by public employee retirements systems. With large pension funds on board, shareholder activists had more clout and a broader reach into the corporate community.

By late 1984 the momentum began to swing in favour of the anti-apartheid movement as turmoil in South Africa received extension and unprecedented coverage in the American media. On thanks giving day, The Free South Africa Movement, a Trans Africa-initiated coalition of labor unions, religious organizations, campus groups, a mainline anti-apartheid lobbies opposed to constructive engagement, began demonstrating at the South African Embassy in Washington, D.C. During weeks of protest political dignitaries including Rev. Jesse Jackson, Senator Edward Kennedy, Harry Belafonte and Noble Peace Prize Winner Bishop Desmond Tutu visited the protesters. Mass arrests of demonstrators outside the embassy, including more than 20 members of Congress, heightened media attention of the protest (Felton, 1986).

Signs of bi-partisan congressional support for anti-apartheid legislation began to emerge in December 1984, following the visit of Bishop Tutu. Early that month, 35 Republican Congressmen, under the leadership of Newt Gingrich and Bob Walker, sent a letter to the South African Ambassador demanding an end to apartheid or they would support economic sanctions against South Africa (Felton, 1985). The Democratic-controlled House of Representatives capitalized on the new Republican support by passing an anti-apartheid bill, which was narrowly defeated in the Republican-controlled Senate (Hull, 1990). After two decades of protests, racial discrimination in South Africa had finally become a major domestic issue.

The campaign for sanctions resurfaced in early 1985 after the Congressional Black Congress stepped up pressure for a comprehensive anti-apartheid bill by framing support for sanctions against South Africa as an issue of commitment to racial equality in America (De Villiers, 1985; World Council of Churches, 1989). Facing re-election in 1986, many Republican Congress persons, especially those with sizeable black constituencies, defected from the President's camp and joined Democrats in calling for sanctions in 1985 (Felton, 1986). Although the resulting conference bill, the Anti-Apartheid Act of 1985, fell short of calling for corporate disinvestment in South Africa, it did call for restrictions on new corporate investment.

As the compromise legislation was being ironed out in the House-Senate conference, it became increasingly clear to the Reagan administration that anti-apartheid legislation had bipartisan support in Congress. With Congress on recess and a major foreign policy defeat imminent, Reagan preempted this Congressional legislation by issuing an executive order imposing some of the sanctions contained

in the legislation. The new sanctions prohibited federal assistance to any U.S. firm operating in South Africa, with 25 employees or more, not adhering to the Sullivan Code and prohibited sales of computers, nuclear technology, and weapons to the South African government. His executive order did not, however, impose any restrictions on new corporate investment in South Africa (Felton, 1985). To make sure that Reagan was credited for the sanctions against apartheid, Majority Leader Robert Dole supported a Senate filibuster of the conference bill and later removed the official copy from the Senate chamber and locked it in the Foreign Relations Committee safe—without the official copy of the bill being physically present in Senate chamber, the Senate couldn't legally take any action on the bill (Felton, 1986).

Within the year, new anti-apartheid legislation, which among other sanctions proposed a ban on new business investment in South Africa, was under consideration in Congress. This time there was nothing Reagan could do but defiantly veto the legislation after it was overwhelmingly passed by both houses of Congress. With only a month until Congressional elections, the President's veto was overridden by Congress and the Comprehensive Anti-Apartheid Act of 1986 became law (CAAA). While this legislation was a major victory for the anti-apartheid movement, it fell short of calling for complete disinvestment of U.S. corporations from South Africa. Following the passage of the CAAA, the number of anti-apartheid resolutions rose dramatically and peaked at 145 in 1987.

As 1987 unfolded, unrest and oppression worsened in South Africa. Shareholder activists increasingly questioned whether the CAAA or the Sullivan Code were bringing about the desired effect. Facing pressures from the African American community and anti-apartheid groups, Reverend Sullivan renounced the principles he had established a decade earlier and called for complete disengagement of U.S. firms from South Africa (Hull, 1990).

Shareholder activists responded by pressuring for corporate disinvestment in the following years. Between 1987 and '88 over 80 percent of shareholder resolutions called for corporate withdrawal from South Africa.

The Efficacy of Anti-Apartheid Shareholder Activism

If the success of anti-apartheid shareholder activism was judged solely on whether a resolutions received a majority of the votes, then it would be a dismal failure. Only a few anti-apartheid resolutions received more than 20 percent of the vote and most resolutions received less than 10 percent of the vote. Nonetheless support for anti-apartheid resolutions increased throughout the decade. The average percentage of favourable votes cast for anti-apartheid resolutions increased from 5 percent in 1980 to nearly 15 percent in 1986. IRRC surveys of anti-apartheid resolutions suggest an even greater level of support among institutional investors.

In 1980, the average support for anti-apartheid resolutions by Institutional Investors was around 20 percent, but by 1986 support of Institutional Investors topped 85 percent (Investor Responsibility Research Center, 1986).

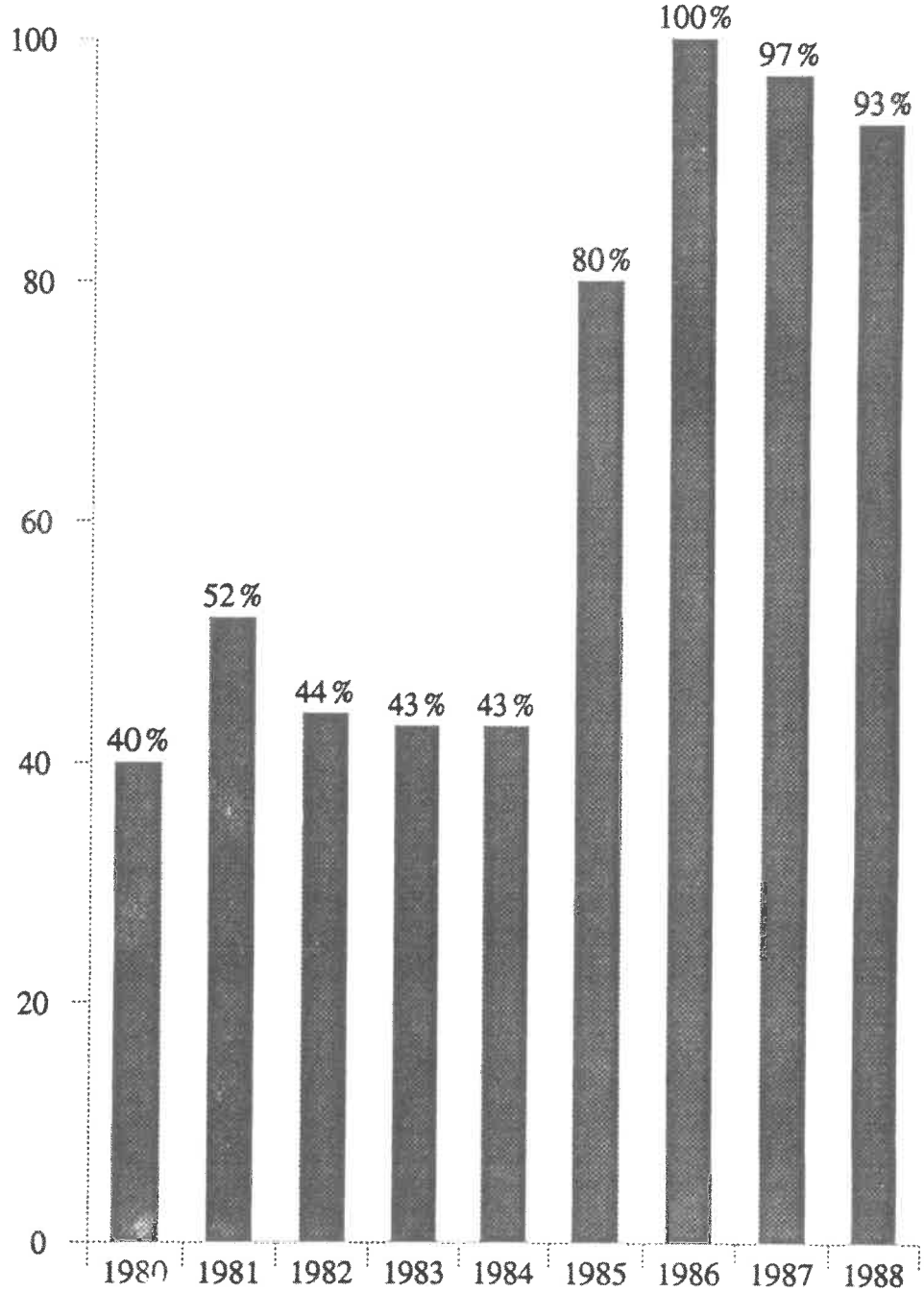
The success of shareholder activism, however, cannot be measured in such a narrow terms. Success was indicated by the concessions shareholders negotiated, or won from management. In such circumstances, shareholder activists withdrew their resolutions before the vote. When activists did not win concessions from management, which happened much of the time, partial success was indicated by shareholders' ability to get garner enough votes for resumbission of their resolution the following year, thus ensuring their access to the floor at annual shareholder meetings so they could promote further debate on apartheid.

Prior to 1985, shareholder activists experienced modest success. Considering SEC actions and opposition from the Reagan Administration, the resumbission rate remained surprisingly high in the early eighties. As Graph 2 shows, resubmission rates hovered around 40 percent during this time. However, with the resurgence of political support beginning in 1984, the resumbission rate rose dramatically and peaked at 100 percent in 1986. High resumbission rates allowed activists to consistently put management on the offensive; through constant pressure shareholders forced management to consider seriously whether their investment in South Africa was worthwhile. Among business leaders, the ability of anti-apartheid activists to tie-up management time with South African protest issues was not so affectionately referred to as the "hassle factor" (Anzovin, 1987). Many corporations spent a significant amount of time dealing with anti-apartheid issues during these years (Love, 1985). Corporate executives in charge of operations in South Africa report spending as much as 30 percent of their time on South Africa-related protest issues (De Villiers, 1995).

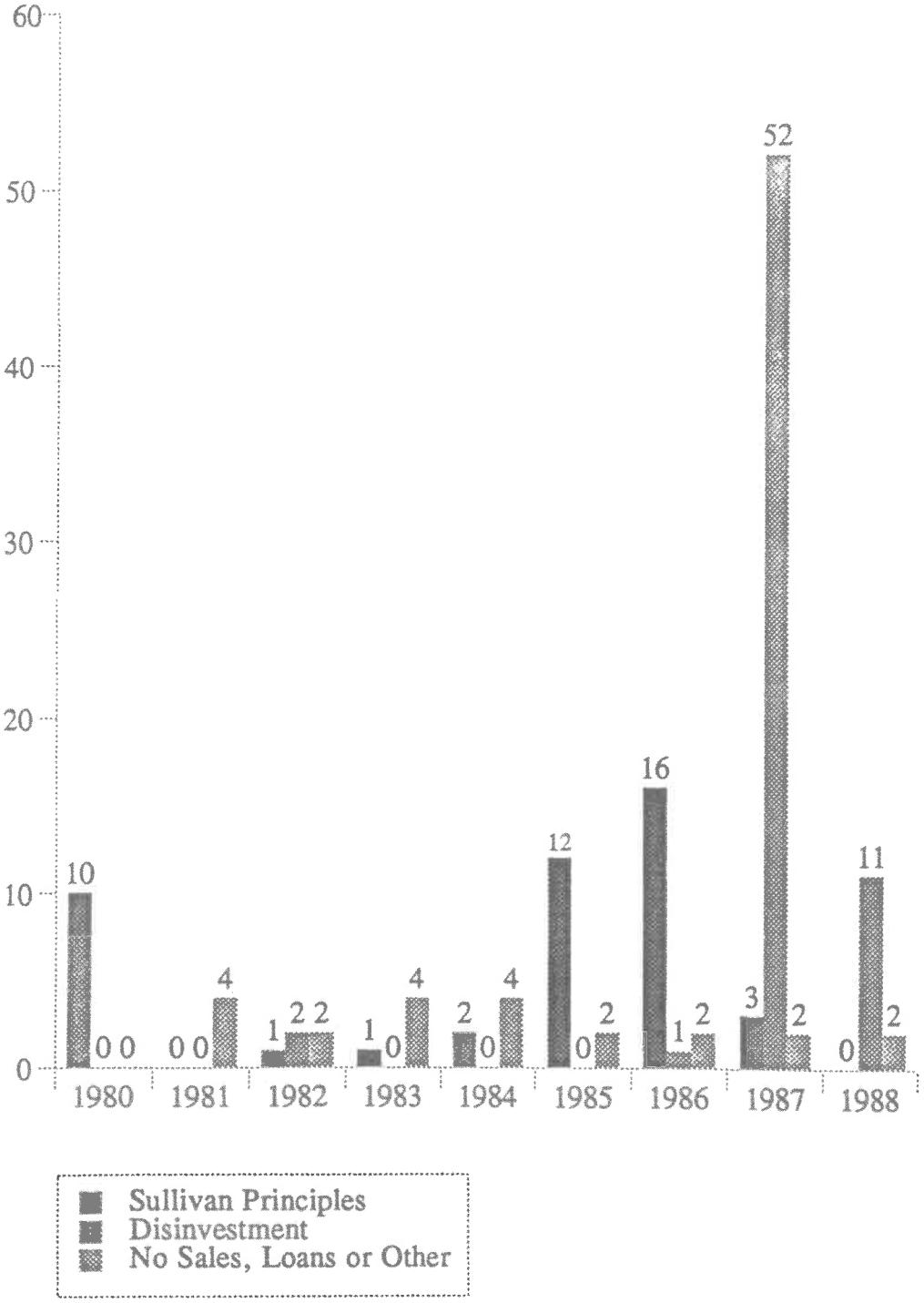
Ultimately, success was achieved when corporations capitulated and met the demands of shareholders. Graph 3 shows the yearly total of anti-apartheid resolutions that were withdrawn because a company had met shareholders' demands. As Graph 3 shows, with the exception of 1980, an average of only five resolutions were withdrawn each year between 1980-1984. This was significantly lower than the average of ten agreements withdrawn per year during the late seventies when the anti-apartheid movement was endorsed by the Cater administration. Congressional Democrats lacked both the power and resolve to oppose Reagan on this issue early in his presidency and effectively champion the anti-apartheid cause.

By 1985, shareholder activists began experiencing greater success as pressure mounted for anti-apartheid legislation. Continued violence and the imposition of martial law by the both government fueled a surge of new protests in the United States. Fearing reprisal at the polls, Congress began to seriously entertain anti-apartheid reforms. Companies found themselves under increasing pressure from both activists and politicians to disinvest from South Africa. At the same time,

GRAPH 2. PERCENTAGE OF SHAREHOLDER RESOLUTIONS RECEIVING SUPPORT FOR RESUBMISSION



GRAPH 3. NUMBER OF ANTI-APARTHEID RESOLUTIONS WITHDRAWN BY AGREEMENT



their return on investment in South Africa declined significantly, from an average of 18 percent at the beginning of the decade to 4 or 5 percent in 1984 (Razis, 1986). Facing declining profits and fearing Congressional sanctions, companies increasingly made concessions by endorsing the Sullivan Code. As Graph 3 illustrates, a total of 14 agreements were reached between activists and management in 1985, most called for signing the Sullivan Principles.

The Passage of the CAAA in 1986 put an end to most protest activity in the United States even through it fell short of calling for corporate disinvestment in South Africa. An unrest continued to escalate in South Africa, shareholder activists joined the other factions of the anti-apartheid movement in calling corporate disinvestment. In a political environment conducive to anti-apartheid activism, the number of resolutions withdrawn by activists increased to an all time high of 57 in 1987 before declining to 13 in 1988; almost all involved disinvestment in South Africa. Proportionately, the level of agreements increased during the decade also. An average of just over 20 percent of resolutions were withdrawn by agreement between 1981-83. However, the percentage of withdrawals between 1984-87 averaged 37 percent before declining to a low of 13 percent in 1988.

Discussion

During the 1980s shareholder activists played a significant role in the anti-apartheid movement by employing an alternative, yet complimentary, strategy to fight corporate involvement in South Africa. While political activists pressured Congress for anti-apartheid legislation and divestment activists pressured institutional investors to divest from companies operating in South Africa, shareholder activists directly confronted management on their involvement in South Africa. Pressure by shareholders forced management to devote more time and energy to their South African operations, which typically accounted for less than 2 percent of total sales, than those operations would normally warrant. Although this alone generally was not enough to dissuade firms from operating in South Africa. It added to the mounting pressure from other factions of the anti-apartheid movement and contributed to the overall success of the anti-apartheid movement.

Shareholder activists also had their victories, though limited, during these years. Throughout the decade shareholder activists negotiated agreement with management. By making more modest demands on business than disinvestment, shareholder activists were able to get firms that they had no intention of disinvesting to agree to review, monitor or modify their operations in South Africa. These successes, however, were largely dependent on the level of support the anti-apartheid movement received from the state. Despite being well organized and mobilized in the early 1980s, shareholder activists experienced limited success until the mid-1980s when the political environment was more favourable to anti-

apartheid activism. In the beginning of the decade, Republicans generally supported Reagan's policy of "constructive engagement", and effectively thwarted attempts by Democrats to pass anti-apartheid legislation. Over the course of the decade, however, many Republicans under pressure from anti-apartheid activists and their black constituencies, joined Democrats in calling for anti-apartheid legislation. With bipartisan support in Congress and their passage of the Comprehensive Anti-Apartheid Act of 1996, anti-apartheid activists reached their highest level of success during the movement.

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APPENDIX

U.S. COMPANIES WITH ANTI-APARTHEID SHAREHOLDER ACTIVISM

Abbott Laboratories
Alenxander and Alenxander
Allegis
AM International Inc.
American Can
American Cyanamid Co.
American Home Products
American Standard Inc.
Armco
Baker International
BankAmerica Corp.
Bausch and Lomb Inc..
The Black and Decker Corp.
Borg-Warner Corp.
Bucyrus-Erie
CBI Industries Inc.
CPC International Inc.
Caterpillar Tractor Co.
Champion Spark Plug Co.
Chesebrough-Pond's Inc.
Chrysler
Citicorp
Coca-Cola Co.
Combustion Engineering Inc.
Continental Illinois Corp.
Crocker National Corp.
Cummins Engine Co. Inc.
Diamond Shamrock Corp.
Doyle Dane Bernabach Inc.
Dun and Bradstreet
Eastman Kodak Co.
Emery Air Freight
Englehard Corp.
FMC Corp.
First Chicago Corp.
Fluor Corp.
Air Products and Chemicals Inc.
Allegheny International Corp.
Allis-Chalmers Corp.
Amdahl
American Brands Inc.
American Express
American Hospital Co.
Arizona Bancwest Corp.
Avery International Corp.
Bandag Inc.
Bankers Trust
Baxter Travenol Laboratories
Borden Inc.
Bristol-Myers Co.
Burroughs Corp.
CBS Inc.
Carolina Power and Light
Centerre Bancorporation
Chase Manhattan
Chevron
Cigna
Clark Equipment Co.
Colgate-Palmolive Co.
Consolidated Freightways
Control Data Corp.
Crown Cork and Seal Co. Inc.
Deera and Co.
Dow Chemical Co.
Dresser Industries Inc.
E.I. Du Pont de Nemours and Co.
Eaton Corp.
Emhart Corp.
Exxon Corp.
Firestone Tire and Rubber Co.
First Union Bancorporation
Ford Motor Co.

Foster Wheeler
General Electric Co.
General Signal Corp.
Goodyear Tire & Rubber Co.
Frank b. Hall
Hewlett-Packard Co.
Hughes Tool Co.
IMS International
Illinois Tool Works
International Flavour and Fragrances Inc.
International Mineral and Chemical Co.
Irving Bank Corp.
Johnson and Johnson Co.
Joy Manufacturing Co.
Kimberly-Clark Corp.
Eli Lilly and Co.
Macmillan Inc.
Marsh and Mclennan
MAC Inc.
McDonnel Douglas Corp.
Merck and Co. Inc.
Minnesota Mining and Manufacturing Co.
Monsanto Corp.
NCNB
Nalco Chemical Co.
Norton Co.
Pan Am
Pepsico Inc.
Pfizer Inc.
Phillips Petroleum Co.
Proctor and Gamble Co.
Republic National Bank
Revlon Corp.
R.J. Reynolds Industries
A.H. Robins
Schering-Plough Corp.
G.D. Searle and Co.
The Singer Co.
The Southern Co.
Fruehauf Corp.
General Motor Corp.
Gillette Co.
W.R. Grace and Co.
Harsco Corp.
Honeywell Inc.
IBM
ITT Corp.
Ingersoll-Rand Co.
International Havester Co.
Integraph Corp.
J.P. Morgan and Co.
Johnson Controls Inc.
Kellog Co.
Kraft
The Lubrizol Corp.
Manufacturers Hanover Trust
Martin Marietta Corp.
Mclena Industries
McGraw-Hill Inc.
Merill Lynch and Co.
Mobil
Motorola Inc.
NCRR
Newmont Mining Corp.
Owens-Illinois Inc.
Parker Hannifin Corp.
Perkin-Elmer Corp.
Philbro-Salomon
Premark International
Raytheon Co.
Republic New York Corp.
Rexnord Inc.
H.H. Robertson
Sara Lee
Schlumberger Inc.
Sears
SmithKline Beckman Corp.
Sperry Corp.

Square D
Standard Oil of California
Sun Chemical Corp.
Tambrands
Tenneco Inc.
The Timken Corp.
Trinova Corp.
Union Carbide Corp.
United States Steel Corp.
Upjoin Corp.
Warner-Lambert Co.
Wells Fargo and Co.
Wynn's International
Squibb Corp.
Sterling Drug Inc.
Sustrand Corp.
Teledyne Inc.
Texaco Inc.
Tokheim Corp.
Union Camp Corp.
United States Gypsum Co.
United Technologies Corp.
Warner Communications Inc.
Wean United Inc.
Westinghouse Electric Corp.
Xerox Corp.

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: _____

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant
and	
THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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CONFIRMATORY AFFIDAVIT

I, the undersigned,

ASIEF MOHAMED

state under oath:

1. I am an adult male and a Director and the Chief Investment Officer of the Second Applicant, Aeon Investment Management ("Aeon"). Aeon's registered business address is 4th Floor, The Citadel, 15 Cavendish Street, Cape Town, 7708.

2. I am duly authorised to make this application and depose to this affidavit on behalf of the Second Applicant. A signed resolution adopted by the Board of Aeon to this effect is attached as annexure "**AM1**".

3. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are both true and correct to the best of my knowledge and belief.

4. I have read the Founding Affidavit deposed to by Tracey Laurel Davies and confirm the contents insofar as they pertain to Aeon. In particular, I confirm that the First Applicant is authorised to depose to the Founding Affidavit on behalf of the Applicants and to seek the relief set out in the Notice of Motion.

Mohamed

DEPONENT

I certify that this affidavit was signed and sworn to before me at Cape Town on this the 26th day of **NOVEMBER 2025**, the deponent having acknowledged that they know and understand the content of this affidavit, with the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977, having been complied with.

COMMISSIONER OF OATHS

KELSEY ALEXA FORTUIN
STBB ATTORNEYS
Practising Attorney
2nd Floor, Buchanan's Chambers,
Cnr Warwick Street & Pearce Road, Claremont, 7708
Attorney, Notary Public, Conveyancer
Commissioner of Oaths, South Africa

aeon INVESTMENT MANAGEMENT
long term wealth creation

BOARD RESOLUTION **AM1** 335

Resolution 24th November 2025

We, the undersigned board members of **Aeon Investment Management (Pty) Ltd on behalf of the Aeon Balanced Prescient Fund,** with registration number 2005/013315/07, hereby authorise **Asief Mohamed** in his capacity as Chief Investment Officer and Chief Executive Officer Designate and Muneer Ahmed in his capacity as Portfolio Manager and Chief Investment Officer Designate to:

1. Initiate legal proceedings, depose to affidavits and take all steps necessary in litigation against Thungela Resources Limited, the Companies and Intellectual Property Commission, and the Companies Tribunal, where the following will be sought:

    1.1. Appropriate declaratory relief to protect and enforce shareholder rights under section sections 65(3) and 62(3)(c) of the Companies Act No. 71 of 2008.

    1.2. Further and / or alternative relief.

2. We further resolve that **Power & Associates Inc.** will be appointed to be Aeon Investment Management's attorneys on behalf of the Aeon Balanced Prescient Fund of record in the above proceedings.

SIGNED at **CAPE TOWN** on the **24th** day of **November 2025**

Nocamagu Nomfundo Mbulawa
Chairperson

TDS Madi

Thulani Dumisani Success Madinginye
Non-Executive Director

Réjane Woodroffe
Non-Executive Director

Rahma Leuner
Non-Executive Director

Retshegofadicoe Mmaebopang Dichabe
Chief Executive Officer – Director

Mohamed

Asief Mohamed
Chief Investment Officer - Director

Mark Edward Rule
Non-Executive Director

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A: 4th Floor, The Citadel, 15 Cavendish St, Claremont, Cape Town, 7708
An authorised financial services provider FSP No. 27126 Reg. No. 2005/013315/07

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: _____

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant
and	
THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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CONFIRMATORY AFFIDAVIT

I, the undersigned,

DAVID LE PAGE

state under oath:

1. I am an adult male and a Director of the Third Applicant, Fossil Free South Africa ("FFSA"). FFSA's registered business address is 3 Tiverton Road, Plumstead, Cape Town, 7800.

2. I am duly authorised to make this application and depose to this affidavit on behalf of the Third Applicant. A signed resolution adopted by the Board of FFSA to this effect is attached as annexure "**DLP1**".

3. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are both true and correct to the best of my knowledge and belief.

4. I have read the Founding Affidavit deposed to by Tracey Laurel Davies and confirm the contents insofar as they pertain to FFSA. In particular, I confirm that the First Applicant is authorised to depose to the Founding Affidavit on behalf of the Applicants and to seek the relief set out in the Notice of Motion.

DEPONENT

I certify that this affidavit was signed and sworn to before me at Cape Town on this the 26th day of **NOVEMBER 2025**, the deponent having acknowledged that they know and understand the content of this affidavit, with the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977, having been complied with.

COMMISSIONER OF OATHS

KELSEY ALEXA FORTUIN
STBB ATTORNEYS
Practising Attorney
2nd Floor, Buchanan's Chambers,
Cnr Warwick Street & Pearce Road, Claremont, 7708
Attorney, Notary Public, Conveyancer
Commissioner of Oaths, South Africa

FOSSIL FREE SA

BOARD RESOLUTION

24 November 2025

NPO 149-064, % Stoep Startup, 3 Tiverton Road, Plumstead, 7800

We, the undersigned board members of Fossil Free South Africa, with registration number NPO 149-064, hereby authorise David Le Page in his capacity as Fossil Free SA director to:

1. Initiate legal proceedings, depose to affidavits and take all steps necessary in litigation against Thungela Resources Limited, the Companies and Intellectual Property Commission, and the Companies Tribunal, where the following will be sought:
   1.1. Appropriate declaratory relief to protect and enforce shareholder rights under section sections 65(3) and 62(3)(c) of the Companies Act No. 71 of 2008.
   1.2. Further and / or alternative relief.
2. We further resolve that Power & Associates Inc. will be appointed to be Fossil Free South Africa's attorneys of record in the above proceedings.

SIGNED at CAPE TOWN on the 24 day of November 2025

NgWills

Nicola Grace Wills (*chairperson)*

BhekumuziBhebhe

Bhekumuzi Bhebhe (member)

Michael Marchant (member)

Jigisha Mandalia (secretary)

Andrew Park (outgoing treasurer)

Mark New

Mark New (member)

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: 2025-231389

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant
and	
THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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NOTICE OF OPPOSITION TO MEDIATION IN TERMS OF RULE 41A(2)

KINDLY TAKE NOTICE THAT the First Applicant and the First Respondent attempted to resolve this dispute through mediation proceedings facilitated by the Companies Tribunal, a juristic body established in terms of section 193 of the Companies Act 71 of 2008.

KINDLY TAKE FURTHER NOTICE THAT on 1 September 2025, the Registrar of the Companies Tribunal issued a Certificate of Failed Alternative Dispute Resolution in terms of section 166 of the Companies Act 71 of 2008, confirming that there does not appear to be any prospect of resolving this dispute through meditation.

KINDLY TAKE FURTHER NOTICE THAT the Applicants have duly exhausted all available alternative remedies in order to resolve this dispute and are opposed to any further referral to mediation.

Dated at **JOHANNESBURG** on the **27th** day of **NOVEMBER 2025**.

POWER & ASSOCIATES INC.
Attorneys for the Applicants
20 Baker Street, Rosebank
JOHANNESBURG, 2196
Tel: +27 10 822 7860
Fax: +27 86 614 5818
E-mail:
tim.lloyd@powerlaw.africa
claire.dehosse@powerlaw.africa
legal@powerlaw.africa
Ref: PLJS-202516

TO: **THE REGISTRAR OF THE COURT**
JOHANNESBURG

AND TO: **THUNGELA RESOURCES LIMITED**
First Respondent
25 Bath Avenue,
Rosebank
JOHANNESBURG, 2196
E-mail: tovi.ellis@thungela.com

AND TO: **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**
Second Respondent
77 Meintjies Street,
Sunnyside
PRETORIA, 0002
E-mail: LSteenkamp@cipc.co.za

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: 2025-231389

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant
and	
THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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NOTICE IN TERMS OF RULE 16A

KINDLY TAKE NOTICE THAT this application raises the following constitutional issues:

1 The proper interpretation of sections 65(3) and 62(3)(c) of the Companies Act 71 of 2008 (and associated provisions) in a manner that best promotes the purposes of the Act and the realisation and enjoyment of constitutional rights, including:

1.1 Section 16 of the Constitution, the right to freedom of expression, including freedom to receive or impart information or ideas;

1.2 Section 18 of the Constitution, the right to freedom of association; and

1.3 Section 24 of the Constitution, the right to an environment that is not harmful to health or well-being, and to have that environment protected for the benefit of present and future generations.

2 In light of these constitutional rights and the purposes and objects of the Companies Act:

2.1 Whether Thungela Resources Limited ("Thungela"), breached its obligations and the Applicants' rights under sections 65(3) and 62(3)(c) of the Act by refusing to circulate and table the Applicants' proposed shareholder resolutions in 2023, 2024 and 2025.

2.2 Whether the Applicants, in their capacity as Thungela shareholders, are legally entitled to propose and exercise voting rights on shareholder resolutions concerning environmental, social, and governance matters, including issues related to climate change.

2.3 Whether the Applicants, in their capacity as Thungela shareholders, are legally entitled to propose and exercise voting rights on non-binding shareholder resolutions.

2.4 Whether Thungela has a unilateral discretion to refuse to circulate and table resolutions submitted in terms of section 65(3) of the Act.

3 Whether the declaratory relief sought by the Applicants is appropriate to vindicate and protect the implicated constitutional rights, in terms of sections 158 and 161 of the Companies Act.

TAKE NOTICE FURTHER that any interested party may, with the written consent of all the parties to the proceedings, given not later than 20-days after this notice has been filed, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE NOTICE FURTHER that the written consent referred to above shall, within five days of it having been obtained, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision of the Rules, comply with the times agreed upon for the lodging of written argument.

TAKE NOTICE FURTHER that if the interested party is unable to obtain written consent they may, within five days of the expiry of the 20-day period prescribed above, apply to the Court in the manner contemplated by Rule16A(6) to be admitted as an *amicus curiae* in the proceedings.

TAKE NOTICE FURTHER that the terms and conditions agreed upon above may be amended by the Court.

KINDLY PLACE this notice on the noticeboard designated for this purpose and ensure that the notice remains on that notice board for a period of 20-days, whereafter you, the Registrar, shall endorse the notice to state on which day the notice was placed on the notice board and, on the expiry of the 20-day period, place such endorsed notice in the Court file.

Dated at **JOHANNESBURG** on the **27th** day of **NOVEMBER 2025**.

POWER & ASSOCIATES INC.
Attorneys for the Applicants
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JOHANNESBURG, 2196
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tim.lloyd@powerlaw.africa
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legal@powerlaw.africa
Ref: PLJS-202516

TO: **THE REGISTRAR OF THE COURT**
JOHANNESBURG

AND TO: **THUNGELA RESOURCES LIMITED**
First Respondent
25 Bath Avenue,
Rosebank
JOHANNESBURG, 2196
E-mail: tovi.ellis@thungela.com

AND TO: **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**
Second Respondent
77 Meintjies Street,
Sunnyside
PRETORIA, 0002
E-mail: LSteenkamp@cipc.co.za