

SELECT COMMITTEE ON TRADE AND INDUSTRY,  
ECONOMIC DEVELOPMENT, SMALL BUSINESS  
DEVELOPMENT, TOURISM, EMPLOYMENT AND  
LABOUR

COMPANIES AMENDMENT BILL 2023 [B27B-2023]

20 February 2024



THE BANKING  
ASSOCIATION  
SOUTH AFRICA

JSI

# Introduction

- The Banking Association of South Africa (BASA) and the Johannesburg Stock Exchange (JSE) appreciate the opportunity to present our joint submission to Select Committee.
- BASA and the JSE are wholly supportive of the initiatives that provide transparency in respect of executive remuneration.
- Our comments and proposed amendments to the Bill are limited to Section 30B of the Bill and are aimed at providing clarity in respect of the application of the Bill.
- Our proposed amendments to the Bill do not change the principles enshrined in the Bill nor the spirit of the law, rather our intention is to strengthen the operational application and effectiveness of the Bill by providing clarity and certainty to listed companies who will be required to implement these provisions.

# Remuneration vs Implementation Report

Section 30B(2) provides: *“Each year all public companies and state-owned companies must prepare a remuneration report in respect of the previous financial year for presentation and approval at the annual general meeting.*

Section 30B(3)(a) provides that the remuneration report consists of three parts: a background statement; the remuneration policy and an implementation report.

Section 30B(3)(b) further prescribes the content that must be contained the implementation report: total remuneration of directors, highest and lowest paid employees, pay gap as prescribed.

**Recommendation:** We recommend that the remuneration report be presented to shareholders and that shareholders are required to approve the implementation report only, by way of ordinary resolution.

## **Justification:**

- The remuneration policy is voted on in terms of Section 30A and the remuneration report, as defined, includes the remuneration policy
- Given the detailed content prescribed in the implementation report, shareholders will have the opportunity to vote on their assessment of the implementation of the remuneration policy as regards, amongst others, highest and lowest paid employees and the pay gap prescribed to be disclosed in the implementation report, matters which are important to labour.
- By requiring the vote on the implementation report, labour’s concerns will be addressed, and the objective/s of the legislator are met.

# Two-strike Principle- Consequences of failed vote

**Consequences of failed vote in two consecutive years:** the intention of the two-strike principle is that if the implementation report is not approved by shareholders at the AGM for two consecutive years, then the non-executive directors that serve on the remuneration committee ('Remco') must stand down from Remco and may not serve on Remco for a period of two years.

**Recommendation:** We recommend that for the sake of clarity and legal certainty, the following amendments are made

- Section 30B(4)(a) be amended to clarify that if the implementation report (i.e. replacing the reference to the remuneration report) is not approved by ordinary resolution at the AGM (being the first meeting), then at the next AGM (being the second meeting) Remco must provide reasons as to the manner in which shareholders' concerns have been taken into account. This is a consequential change from what we recommend under 30B(2).
- Section 30B(4)(b) be deleted in its entirety in order to avoid duplication and/or uncertainty in relation to the provision in Section 30B(5)(a), which comprehensively deals with the consequence of failed vote in the second consecutive meeting based on the two-strike principle.
- Section 30B(5)(a) to be amended to clarify that at the AGM following a failed vote on the implementation report (being the second meeting) members of Remco may continue to serve as directors on the board (provided they meet applicable requirements) but must stand down as members of Remco at such second meeting.

# Two-strike Principle- Consequences of failed vote (continued)

## **Justification:**

- Removes the unintended consequence of creating the impression that shareholders have the right to elect and/ or re-elect members of Remco, which is not current practice, nor required by the Companies Act. Thus, our recommendations in respect of Sections 30B(4)(b) and 30(B)(5)(a), include the removal of references to “re-election of Remco members at the AGM” and provides legal certainty regarding: stand down as Remco member vs having to be re-elected by shareholders as a consequence of failed vote.
- In essence, our proposed recommendation is a clear distinction between consequences of i) a failed vote at the AGM or first meeting, being explanation at next AGM or second meeting; and ii) a second failed vote at the at the next AGM or second meeting, being the stand down of Remco members from Remco.

# Short title and commencement

The Companies Amendment Act will come into operation on date to be fixed by the President – this may result in companies not having sufficient time to comply with the requirements set out in section 30A and 30B.

## **Recommendation:**

We recommend that the section be amended to provide that the amendments in respect of sections 30A and 30B shall only come into effect in respect of a financial year of a company commencing after 1 January 2025.

## **Justification:**

- The compliance requirements set out in section 30A and section 30B will require companies to revise some of their processes leading up to their AGMs.
- Exchanges such as the JSE will be required to make amendments to their Listing Requirements to align with the provisions in the amended Companies Act.

# Conclusion and Questions

- We re-iterate our support of the initiatives that provide transparency in respect of executive remuneration, and our intention is to strengthen the operational application and effectiveness of the amendments to the Companies Act.
- Our proposed amendments to the Bill do not change the principles enshrined in the Bill nor the spirit of the law: our proposed amendments are aimed at providing clarity and the removal of legal uncertainty.

# About BASA



- BASA advances the interests of the banking industry with its regulators, legislators and stakeholders to make banking sustainable, profitable and better able to contribute to the social and economic development and transformation of South Africa.
- As the national association for 32 domestic and international banks operating in South Africa, BASA advocates the views of the banks on legislation, regulation and socio-economic issues that affect and impact the industry and financial stability in South Africa.



# About the JSE



- The JSE is ranked as the 19th largest stock exchange in the world by market capitalisation and the leading stock exchange on the African continent. The JSE is at the center of the South African capital markets and is the prime platform for financial trading and capital raising in Africa.
- The JSE acts as the Listings Authority and is, licensed as an exchange in terms of the Financial Markets Act, 19 of 2012 (FMA). The JSE's regulatory duties, powers and functions are narrowly circumscribed by the peremptory provisions of the FMA. In accordance with the FMA, the JSE is obliged to make listings requirements and enforce them.
- The JSE advocates for the enhancement of corporate governance and the quality of financial reporting disclosures by companies (i) that have issued equity securities listed on the JSE and (ii) that have their debt securities listed on the JSE, for the benefit of shareholders, securities holders, investors, and other market stakeholders.