

THE SHAREHOLDER  
RIGHTS AND  
ACTIVISM  
REVIEW

SECOND EDITION

Editor  
Francis J Aquila

THE LAWREVIEWS

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SHAREHOLDER  
RIGHTS AND  
ACTIVISM  
REVIEW

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# SOUTH AFRICA

*Ezra Davids and Xolani Ntamane*<sup>1</sup>

## I OVERVIEW

Historically, shareholder activism has not been an important force in South Africa. It is more common to see activism in the South African context from interested parties such as trade unions, rather than shareholders. More recently, following global trends attributable to an increasingly internationalised shareholder base, for instance, shareholder activism has been on the rise and the market has started to take note of the influence shareholders can wield. The regulatory framework in South Africa, which creates platforms for shareholder engagement and the enforcement of shareholder rights, has created a somewhat enabling environment for shareholder activism that is being embraced with increasing levels of participation. While much of the publicised shareholder activism in South Africa has focused on aspects of corporate governance and executive remuneration, there has also been shareholder activism influence, although to a lesser extent, on mergers and acquisitions. While in most deals there is no legal obligation to consult with trade unions and other potential activists in advance of a transaction, it is often in the best interests of the parties to do so, since these activists often use the media and regulatory approval processes as hurdles to getting a deal through.

## II LEGAL AND REGULATORY FRAMEWORK

The South African Companies Act 71 of 2008 (the SA Companies Act) is the main source of company law in South Africa and contains the majority of the provisions that relate to shareholder rights, activism and engagement. The main regulatory authorities under the SA Companies Act include the Companies and Intellectual Property Commission (CIPC), tasked broadly with powers of enforcement under the SA Companies Act (including receiving, initiating and investigating complaints concerning alleged contraventions) and the Companies Tribunal.

Chapter 5 of the SA Companies Act read together with the Companies Regulations, 2011 promulgated thereunder (the Takeover Regulations), regulate takeovers and other affected transactions (i.e., mergers, schemes, asset disposals, etc.). These Takeover Regulations are applicable in respect of public companies and state-owned companies. They also have limited application to private companies (i.e., where there has been a transfer of 10 per cent or more of the private company's shares within the past 24 months). The primary regulatory authority tasked with enforcing the Takeover Regulations is the Takeover Regulation Panel

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<sup>1</sup> Ezra Davids is the chairman of the corporate and M&A practice and Xolani Ntamane is a senior associate at Bowmans.

(TRP). The TRP ensures, among other things, that shareholders have the same information from an offeror during the course of an affected transaction and are afforded enough time to consider the information in order to make an informed decision. The TRP also investigates complaints where necessary in relation to affected transactions.

The Listings Requirements (the Listings Requirements) of the Johannesburg Stock Exchange Limited (JSE), enforced by the JSE, apply to entities whose shares are listed on the JSE. These Listings Requirements, among other things, provide for the fair and equal treatment of shareholders, access to information, certain voting thresholds and pre-emptive rights.

The King Report on Governance for South Africa 2016, issued by the Institute of Directors (the King Code) contains various principles of corporate governance, many of which deal with shareholder rights and engagement. For instance, the King Code recommends that the board of directors must encourage shareholders to attend general meetings and that the board of directors should engage with the shareholders through various means such as websites, advertising and press releases. Certain parts of the King Code have been incorporated into legislation by reference and it has been recently updated to introduce greater disclosure recommendations, including in respect of board committees (which would include a remuneration committee) and CEOs (for example, in respect of notice periods, contractual conditions relating to termination and succession planning). Importantly, recent updates to the King Code specifically introduce recommendations relating to executive remuneration and particular disclosures in this regard. This includes the recommendation that companies should produce and disclose, in respect of a reporting period, a remuneration policy and implementation report (which deals with the implementation of the remuneration policy). This remuneration policy and the implementation report must be tabled annually for a separate non-binding advisory vote by shareholders at the company's annual general meeting. In the event that 25 per cent or more voting rights are exercised against any part of the remuneration policy, the board must engage with shareholders in good faith and with best reasonable effort, in order to understand shareholder dissatisfaction and the reasons for dissenting votes. The board is required to appropriately address reasonable and legitimate concerns raised evaluation of performance. Although the advisory vote given to shareholders is non-binding, this vote coupled with increased disclosure enables greater shareholder activism in that it encourages the board to engage with shareholders, promotes transparency and provides shareholders with a platform to express their dissatisfaction.

Although not intended as a regulatory means for shareholder activism, certain other regulatory avenues indirectly create platforms for shareholder engagement and the enforcement of shareholder rights and related agendas. As an example, shareholders may use the 'public interest' considerations factored in by the Competition Commission and the Competition Tribunal in determining whether or not to approve a merger from a competition perspective as a means to trip up a transaction.

We have set out below some of the regulatory avenues for shareholder activism.

## **i Dissenting shareholders**

The SA Companies Act in Section 164 provides for appraisal rights that allow dissenting minority shareholders, in the context of a scheme of arrangement, a merger or a sale of all or a greater part of the assets or undertaking of the target, to require the target company to

purchase such dissenting shareholders' shares at fair value. These appraisal rights are available to dissenting shareholders that have objected to a resolution to approve such a transaction in advance of it being voted on, and that have voted against the resolution.

Also, in accordance with the provisions of Section 115 of the SA Companies Act, if 15 per cent or more of the shareholders vote against a resolution proposed for implementing a scheme of arrangement, a merger or a sale of all or a greater part of the assets or undertaking of a target company, any dissenting shareholder may within five days of the resolution being passed require the company, at its expense, to obtain court approval before implementing the resolution. Even if less than 15 per cent of the shareholders vote against such resolution, a shareholder who can satisfy a court that there is a *prima facie* case for review, may within 10 days apply to court for a review of the resolution. Such shareholder should first have indicated prior to the meeting that it intended voting against such resolution and subsequently indeed voted against such resolution. A court may only set aside the resolution if it is satisfied that there is manifest unfairness to shareholders or a material procedural irregularity.

## **ii Actions and remedies**

Pursuant to Section 161 of the SA Companies Act, a shareholder may apply to court for an order necessary to protect any right or rectify any harm done to the securities holder by the company (as a consequence of an act or omission that contravened the SA Companies Act or the constitutive documents of the company) or the directors of the company (to the extent that they are liable for a breach of their fiduciary duties).

Similarly, pursuant to Section 163 of the SA Companies Act, a shareholder may apply to court for relief from oppressive and unfairly prejudicial conduct of the company or a related person. The court has a wide range of remedies including restraining the conduct, declaring a person delinquent or under probation or setting aside transactions.

In accordance with the provisions of Section 165 of the SA Companies Act, a shareholder (and other stakeholders such as trade unions and directors) may bring proceedings in the name of and on behalf of a company to protect the legal interests of the company.

## **iii Shareholder approvals**

Certain corporate actions require shareholder approval prior to adoption. This may be by way of an ordinary resolution (supported by more than 50 per cent of the voting rights exercised on the resolution) or a special resolution (supported by at least 75 per cent of the voting rights exercised on the resolution). These thresholds may be adjusted in the constitutive documents of the company (upwards for an ordinary resolution and up or down for a special resolution), provided that there is always a 10 per cent margin between the lowest threshold for passing a special resolution and the highest threshold for passing an ordinary resolution.

In certain instances, the SA Companies Act also imposes additional approval requirements or restrictions. For example, in respect of any resolutions to be passed approving a disposal of all or a greater part of the assets or undertakings of a company, a merger or amalgamation or a scheme of arrangement and certain buy-backs, not only must the resolution be approved at a meeting (affording minorities an opportunity to attend and ask questions) but only the votes of disinterested shareholders will be taken into consideration (i.e., any voting rights controlled by an acquiring party, a person related to an acquiring party, or a person acting in concert with either of them, must not be included in the calculation). Similarly, in respect

of companies listed on the JSE, for example, votes of related parties and their associates will not be taken into account in relation to any resolution in connection with the related party transaction.

A shareholders' meeting must be called if 10 per cent of all voting rights entitled to vote on a matter submit a demand for a shareholders' meeting (or such lower threshold as stipulated in the constitutive documents of the company), unless a court finds the demand frivolous or vexatious. Any two shareholders may propose that a resolution be submitted to shareholders for consideration.

A resolution may not be taken at a shareholders' meeting on a matter unless persons are present to exercise in aggregate at least 25 per cent of all voting rights entitled to be exercised in respect of that matter (subject to a lower or higher threshold stipulated in the constitutive documents of the company); and if the company has more than two shareholders, at least three shareholders must be present. At an adjourned meeting, adjourned for lack of quorum, the shareholders present will constitute a quorum.

#### **iv Protection for making disclosures**

Section 159 creates protection for shareholders who disclose information to the relevant regulators where the shareholder reasonably believed at the time that the company or a director had contravened the SA Companies Act; failed to comply with a statutory obligation; engaged in conduct that endangered or harmed an individual or the environment; unfairly discriminated against a person; or contravened other legislation that could potentially place the company at risk. These shareholders are immune from any civil, criminal or administrative liability and the relevant shareholder has qualified privilege in relation to the disclosure made, which would encourage shareholder activists seeking to hold the board accountable for their conduct.

#### **v Defences available to companies and director's duties**

There are several defences available to companies when faced with instances of shareholder activism, for example, by planning ahead for various scenarios from a legal and commercial perspective, evaluating a company's shareholding profile and anticipating the concerns or needs of each group of shareholders. Strategic private engagements with various stakeholders, tactics such as 'bear hugs' and accounting for potential shareholder activist activity in the course of creating transaction timelines will also play an important role in preventing or resolving shareholder activist issues in a transactional context. The SA Companies Act generally excludes some of the aforementioned platforms for activism in the event that they are exercised in a manner that is vexatious, frivolous or without merit.

Directors need to take care not to engage in any conduct that is directed at frustrating an offer made in good faith. Directors have a duty to act in the best interests of the company and shareholders at all times.

### **III KEY TRENDS IN SHAREHOLDER ACTIVISM**

#### **i Profile of activist investors**

In broad terms, a distinction can be drawn between shareholder activists who are economic activists and governance activists.

Economic activists in South Africa primarily comprise institutional investors and fund managers who have been active in seeking out greater shareholder value. Some examples

of economic activists in South Africa include the Public Investment Corporation (SOC) Limited (PIC), an investment management company that is wholly owned by the South African government and is focused on managing government employees' pension funds; and other institutional and pension funds that hold sizeable stakes in companies listed on the JSE.

Governance activists in South Africa are mainly shareholders seeking to influence policy and improve corporate governance principles, such as transparency and increased shareholder involvement on issues such as executive remuneration. Although there is some overlap in the distinction between economic activists and governance activists, some examples of shareholders who have engaged in governance activist activity in South Africa include: the PIC; Allan Gray; Foord Asset Management, a privately owned investment management company; and certain key individuals who have queried a number of companies on aspects such as good corporate governance, ethics and executive compensation.

Although not yet commonplace in South Africa, shareholder activist activity has been on the rise in companies engaged in a variety of sectors, as shareholders with diversified portfolios seek to enhance shareholder value and activists with various public interest drivers seek to achieve their goals.

A number of recent shareholder activism campaigns have focused on management and executive compensation and remuneration policies. An example is Allan Gray's involvement in the scheme proposed by Sasol Limited (Sasol), an energy and chemical company listed on the JSE. The strategy of shareholder activist involvement by funds such as Allan Gray is to proactively engage with the board and executives of companies in which the fund has invested, with the aim of shaping the relevant companies into better and more sustainable long-term financial prospects, which they believe is likely to unlock shareholder value.

Allan Gray acquired shares in Sasol over the course of 2010 and 2011. After scrutinising Sasol's executive remuneration scheme, Allan Gray was of the view that the executive remuneration scheme was sub-optimum and recommended that its clients vote their shares in Sasol against the scheme at the 2011 annual general meeting. Allan Gray's concerns with the scheme included the minimal level of disclosure, low performance targets and the fact that the majority of the long-term incentives were not subject to performance conditions and simply vested over time.

Allan Gray engaged with Sasol's Remuneration Committee (Remco) with a view to improving the scheme. This included analysis and benchmarking of the remuneration scheme, meeting with the Remco and further formal correspondence with Sasol's board, culminating in Allan Gray's recommendation to its clients that they vote their shares in favour of Sasol's remuneration scheme in 2012, 2013 and 2014 on the basis that disclosure had been enhanced, performance targets required for incentives to vest had been made more challenging, all the long-term incentives were subject to stringent performance conditions and executives were formally required to build substantial shareholdings in the company. Allan Gray believes that these changes went a long way towards ensuring that executives act in the long-term best interests of shareholders.

Another example of shareholder activism, but in the context of public interest considerations, is the case of Woolworths Holdings Limited (Woolworths), where consumer activists acquired a minority shareholding in the company for the purposes of attending shareholders' meetings and raising governance, transparency, political and ethical issues.

A relatively novel shareholder activism tactic that was recently used by a shareholder is a request for information under the South African Promotion of Access to Information

Act 2 of 2000 (PAIA). In broad terms, PAIA allows persons to access any information held by the state, and information held by private bodies, where such information is required for the exercise or protection of any rights.

An individual shareholder, who held one share in Coronation Fund Managers (Coronation) at the relevant time, requested further details on Coronation's remuneration policy on the basis that the information set out in Coronation's annual report was not sufficiently detailed. He was not satisfied with the level of detail provided by Coronation and subsequently used PAIA to launch an information request at Coronation's annual general meeting in January 2016. Coronation refused that PAIA request on the basis that it believed it had complied fully with JSE and SA Companies Act requirements to disclose information related to remuneration to its shareholders. The refusal has not been contested in court, but this tactic, coupled with other forms of pressure applied on Coronation ultimately led to Coronation agreeing to disclose details of its remuneration policy.

In the context of mergers and acquisitions, activists have also been seen to use the rights and remedies afforded to them under the SA Companies Act (as discussed above) or other regulatory procedures (such as the public interest considerations that regulators take into consideration when deciding to allow a merger from a competition perspective or other regulatory approval process) to delay or thwart the implementation of a transaction. Trade unions and other shareholders focused on guarding employee interests, for example, have appealed to the competition authorities to address public interest concerns such as the effect that a merger will have on a particular industrial sector or region, employment, the ability of small businesses, or firms controlled by historically disadvantaged persons, to become competitive and the ability of national industries to compete in international markets. Public interest concerns are generally resolved by the imposition of conditions rather than the prohibition of a merger.

## **ii Outcomes and the path to resolution**

Recent shareholder activist examples indicate that shareholder activists have had an impact on the manner in which South African companies engage with their shareholders. As shareholders become increasingly concerned with executive remuneration policies, transparency and other corporate governance issues, companies will need to pay closer attention to adherence with principles of good governance and engagement in the context of mergers and acquisitions. This is especially so in the context of changes introduced by the King Code.

## **IV RECENT SHAREHOLDER ACTIVISM CAMPAIGNS**

Examples of other recent shareholder activism campaigns in South Africa are set out below.

### **i Sovereign Foods**

At the 2016 annual general meeting for poultry group Sovereign Food Investments Limited (Sovereign Foods) the company intended to obtain approval for a share buy-back scheme comprising members of the executive management team, other and newly introduced shareholders. Minority shareholders, dissatisfied with the costs and structure of the scheme, indicated their intention to exercise their appraisal rights (discussed above). Sovereign Foods then attempted to introduce a revised, smaller transaction that appeared to exclude the minority shareholders' appraisal rights. The minority shareholders took Sovereign to task on

the matter and were successful in obtaining a court judgment that Sovereign Foods' conduct in denying the minority shareholders fair participation in its affairs was oppressive and unfairly prejudicial to their rights and interests.<sup>2</sup>

## ii PPC

The most prominent example of shareholder activism in South Africa unfolded from the highly publicised activities in PPC Limited (PPC), the largest cement company in South Africa, during 2014 where a group of shareholders requisitioned a special shareholders' meeting to consider the removal of the entire board of PPC and to replace it with the nominees of the requisitioning shareholders.

The board had refused to back the decision of the then chief executive officer to dismiss PPC's chief financial officer. The chief financial officer had been appointed by and reported to the board.

The chief executive officer had developed a strong relationship with the employees of PPC and had pioneered initiatives in the Company aimed at redressing the economic differences between employees and management. Following the lack of support from the board, he resigned and following an unsuccessful retraction of his resignation, he approached major shareholders encouraging them to reappoint him and reconstitute the entire board.

Certain minority shareholders of PPC collectively met the minimum threshold required to force a special shareholders' meeting in terms of the SA Companies Act and requisitioned a meeting of the shareholders for 8 December 2014. The aim of the meeting was to remove the existing board by a majority vote of the shareholders and then appoint new directors (PPC's constitutive documents only allowed shareholders to propose directors for nomination if there are no directors).

In the interim, the board, mindful of key corporate governance principles and led by the acting executive chairman, engaged with a number of shareholders, including the requisitioning shareholders, and decided to embark on the process of reconstituting the board at the next annual general meeting, thus cancelling the meeting called by the requisitioning shareholders.

The board successfully countered a 'public bear hug' approach adopted by the shareholder activists, with targeted engagements with various stakeholders. This allowed the board to refocus on its role as ultimate custodian and fiduciary of the company, its stakeholders and all its shareholders (in contrast to narrow possible short-term interest of a small but vocal group of shareholder activists).

A noteworthy point to consider is that PPC employees also held a minority shareholding in PPC and had indicated their support for the chief executive officer, had the board not been able to earn the trust of the requisitioning shareholders, the outcome of the meeting that was to be held on 8 December 2014 may have resulted in a different outcome.<sup>3</sup>

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2 *In Justpoint Nominees (Pty) Ltd and Others v Sovereign Food Investments Limited and Others (BNS Nominees (Pty) Ltd and Others Intervening)* (ECP) (unreported case No. 878/16, 26-4-2016) (Stretch J).

3 Financial Mail: Nick Hedley, 'PPC Shareholder vote: How the chips may fall', 6 November 2014; Rand Daily Mail: Sikonathi Mantshantsha, 'The odds are stacked against Ketso Gordhan's PPC comeback', 16 October 2014; Times Live: Ann Crotty, 'PPC fallout cements need for oversight', 6 December 2014 (internet source, accessed 18 August 2016).

### iii AngloGold Ashanti

In 2014, following public disapproval by one of its shareholders, AngloGold Ashanti Limited (AngloGold), a leading global gold producer, abandoned a planned demerger and rights offer just five days after making the announcement. AngloGold intended to split its international assets from its South African mines to form a new London-listed company. In addition, a rights offer was planned to reduce the high debt of the company.

The proposed transaction was common practice in the industry and was accepted by analysts and shareholders alike, specifically given that the industrial upsets in South Africa tarnished the country's reputation as an attractive destination for mining investment.

A hedge-fund that held a minority shareholding in AngloGold had been one of the most outspoken critics of the proposed transaction. That entity, while supportive of the concept of restructuring, found the limited benefits of the rights issue would be outweighed by the dilution.<sup>4</sup>

The effect of the actions of the hedge fund, apart from causing the company to abandon the rights issue, almost instantly caused a general negative reaction when the proposed transaction was announced.

### iv Adcock

Another example of shareholder activism in South Africa, which took place in 2014, was the PIC's involvement in pharmaceuticals firm Adcock Ingram Holdings Limited's (Adcock) proposed takeover by a Chilean competitor. The PIC held shares in both Adcock and in the Bidvest Group Limited (Bidvest). Bidvest, with the support of the PIC (its shareholder) put in a last-minute bid to become a significant shareholder of Adcock. Suffice it to say, the deal with the Chilean entity fell through.

### v Naspers

A showdown occurred between the chairman of Naspers Limited (Naspers) and a prominent shareholder activist at Naspers' annual general meeting in August 2016. Naspers is the largest listed company on the JSE by market capitalisation. The cause of the tension was the activist shareholder's request for specific documentation that detailed certain management and specialist incentives, and that had been available to shareholders previously. Naspers had consistently taken the view that the time period in which shareholders were entitled to view these documents had closed, and refused to make an exception in this case. The activist shareholder, however, contended that shareholders were entitled to view the documents in terms of Naspers' constitutional documents. The conflict resulted in the activist shareholder being threatened with ejection from the meeting.<sup>5</sup> The relevant shareholder subsequently

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4 Business Day Live: Ed Stoddard and Silvia Antonioli, 'AngloGold makes quick U-turn on planned overhaul after shareholder revolt', 15 September 2014; *Financial Times*: James Wilson and Andrew England, 'John Paulson attacks AngloGold spin-off plan', 11 September 2014 (internet source, accessed 18 August 2016).

5 Business Day Live: Marc Hasenfuss, 'Naspers e-sales ventures punted at disrupted AGM', 29 August 2016, [www.businesslive.co.za/bd/companies/2016-08-29-naspers-e-sales-ventures-punted-at-disrupted-agm/](http://www.businesslive.co.za/bd/companies/2016-08-29-naspers-e-sales-ventures-punted-at-disrupted-agm/) (internet source, accessed 10 July 2017).

engaged a lawyer in order to pursue the matter further and Naspers ultimately confirmed through its legal representatives that the shareholder would be given access to the requested documentation.<sup>6</sup>

#### **vi Coronation**

After two years of persistent pressure from a well-known shareholder activist, together with increased pressure from the CIPC regarding the SA Companies Act requirement to disclose details of remuneration paid to directors and prescribed officers (which is specifically catered for in the SA Companies Act, while remuneration to non-board level executive management is not), Coronation gave shareholders their first opportunity to vote on its remuneration policy at the February annual general meeting.<sup>7</sup>

#### **vii Group Five**

Activist shareholder in JSE-listed construction company Group Five Limited, Allan Gray, expressed doubt that the construction company's board was still able to act in the firm's best interests after a number of executive and non-executive directors, including the CEO, resigned from the company's board between February and June 2017. Allan Gray, which owns a significant minority stake in the company, requested an extraordinary general meeting in May to reconstitute the board. Allan Gray proposed new board members but faced opposition from the existing board. In late June, five directors (including the then chairperson) resigned ahead of the extraordinary general meeting.<sup>8</sup>

#### **viii Net1**

Pressure from shareholder activist Allan Gray, with an approximate 16 per cent stake in Net1 UEPS Technologies (Net1), played a big role in the resignation of Net1's long-standing CEO at the end of May 2017.<sup>9</sup> Net1 is the ultimate parent company of social grant payment provider Cash Paymaster Services, whose social grant contract with the South African Social Security Agency came under scrutiny in the South African Constitutional Court in March 2017. As the problem surrounding payments of social grants grew to crisis levels, and with strong public sentiment against the conduct of Net1, Allan Gray publicly placed pressure on Net1.<sup>10</sup> Allan Gray openly celebrated the announcement of the CEO's resignation, but just as quickly expressed its discontent when it discovered the pay out he was to receive. It was reported that the then CEO would receive a substantial pay out in order to vacate his

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6 Business Day: [www.pressreader.com/south-africa/business-day/20160907/281891592720053](http://www.pressreader.com/south-africa/business-day/20160907/281891592720053) ((internet source, accessed 17 July 2017)).

7 Bizcommunity: Ann Crotty, 'Shareholder activist Theo Botha urges vote against Coronation's pay policy', 6 January 2017 (internet source, accessed 10 July 2017).

8 Eyewitness News: 'Activist shareholder says loses faith in SA's Group Five after resignations', 27 June 2017 (internet source, accessed 10 July 2017).

9 Daily Maverick 'Net1: Lipstick on a pig or fundamental shift?', 25 May 2017, [www.dailymaverick.co.za/opinionista/2017-05-25-net1-lipstick-on-a-pig-or-a-fundamental-shift/#.WWPG3mcUncv](http://www.dailymaverick.co.za/opinionista/2017-05-25-net1-lipstick-on-a-pig-or-a-fundamental-shift/#.WWPG3mcUncv) (internet source, accessed 10 July 2017).

10 Eyewitness News 'Shareholder Allan Grey would welcome stricter grant controls', 22 March 2017, <http://ewn.co.za/2017/03/12/net1-shareholder-allan-gray-would-welcome-stricter-grant-controls> (internet source, accessed 10 July 2017).

position and would also continue to earn a monthly salary from Net1 as a consultant. Allan Gray has stated that it has previously put forward proposals that shareholder approval should be required for golden handshakes and large pay-outs.<sup>11</sup>

## **V REGULATORY DEVELOPMENTS**

The introduction of updates to the King Code (which are effective in respect of financial years commencing on or after 1 April 2017) builds on previous versions of the King Code and encourages shareholder activism while further developing principles such as shareholder engagement through some of its recommendations. The King Code provides an opportunity for a framework for the responsibilities of shareholders to be incorporated in the corporate governance system of checks and balances. Some of the more recent shareholder activism campaigns mentioned above have emphasised issues relating to what is regarded as excessive executive remuneration, and it is possible, given the more stringent standards for disclosure and engagement that the most recent King Code iteration had an impact on shareholder activists and their modes of engagement with companies.

## **VI OUTLOOK**

In the course of preparing for increased shareholder activism in South Africa, companies need to monitor their shareholder portfolio and anticipate the kinds of activists that are likely to emerge, as well as the type of demands that these shareholders are likely to make, on a case-by-case basis. However, as discussed above, shareholder activists who hold insignificant stakes in companies are also afforded certain rights and protections, and companies will need to ensure that they practise good corporate governance and proactively participate in the appropriate level of shareholder engagement with particular focus on unlocking shareholder value. This includes disclosure and engagement as recommended by the King Code, particularly in the context of listed companies. Failure to do so may leave the board exposed to shareholder disapproval sparked by shareholder activists who are armed with an increased amount of information and a variety of regulatory rights and protections.

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<sup>11</sup> Mail & Guardian. 'How Serge beat Net1's shareholders', 2 June 2017, <https://mg.co.za/article/2017-06-02-00-how-serge-beat-net1s-shareholders> (internet source, accessed 10 July 2017).

## Appendix 1

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