the dtic
Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

SUBMISSIONS AND RESPONSES TO THE COMPANIES AMENDMENT BILL AND COMPANIES SECOND AMENDMENT BILL, 2023

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

19 Substantive Submissions were received as follows:

1. Norton Rose Fullbright
2. Banking Association of South Africa (BASA) and JSE (joint submission)
3. Cliffe Dekker Hofmeyer
4. Consumer Goods Council of South Africa (CGCSA)
5. Congress of South African Trade Unions (Cosatu) and Southern African Clothing and Textile Workers' Union (Sactwu)
6. The Institute of Directors South Africa (IoDSA)
7. IoDSA and King Committee
8. Law Society of South Africa (LSSA)
9. National Clothing Retail Federation of South Africa (NCRFSA)
10. Sasol
11. Webber Wentzel
12. Association of Black Securities and Investment Professionals AEON, (ABSIP) and Just Share
13. Allan Gray

14. Computershare
15. Centre for Environmental rights
16. South African Institute of Chartered Accountants (SAICA)
17. South African Reward Association (SARA)
18. Western Cape Government (WCG)
19. Outsurance

There were 7 Oral representations made on 20 February 2024

1. Banking Association of South Africa and Johannesburg Stock Exchange joint submission
2. COSATU
3. South African Reward Association (SARA) and Institute for Directors of South Africa Remuneration Committee
4. AEON, ABSIP and Just Share joint submission
5. Centre for Environmental Rights
6. South African Institute of Chartered Accountants (SAICA)
7. Consumer Goods Council of South Africa

This document must be read together with the Annex submitted by the **dtic** to the Select Committee on 26 February 2024.

Companies Amendment Bill Matrix 2024

Stakeholder	Clause Section		Comment	Dtic response
CLAUSE 1, SECTION 1-DEFINITIONS				
Law Society of South Africa			● The LSSA maintains that the definition of "securities" introduces debentures, which word is not defined in the Companies Act. They recommend that "debentures" be defined. Section 43 of the Companies Act refers to "debt instrument" and it is suggested that this be changed to "debentures" for the sake of clarity. ● It is suggested that section 43(1)(a) of the Companies Act be amended to read: "(a) debentures - a written acknowledgement of debt issued by a company for one or more loans made to the company, whether on a secured or unsecured basis, which acknowledgement designates the debt/s as debenture/s and specifies the terms applicable, including that the debenture/s is/are freely tradeable, but (ii) does not include promissory notes and loans, whether constituting an encumbrance on the assets of the company or not; and	The comments are noted. The Department is of the view that not all terms need to be defined. A debenture can be interpreted in the ordinary sense. Other instruments like bonds are regulated by National Treasury legislation. The term "debenture is frequently used and well understood in practice. No change is therefore necessary. This same comment was made in the Portfolio Committee and repeated verbatim in this process. It was responded to previously in the same manner.
Centre for Environmental Rights			● They see no reason why the scope of the definition of securities should be limited by omitting the words "or other instruments". This would, for example, mean securities instruments such as bonds would be excluded. This would leave a gap to be exploited. ● Suggested wording: 'securities', for the purposes of this Act, means any shares, debentures, <u>or other instruments</u>, irrespective of their form or title, issued or authorised to be issued by a profit company;	The Department does not propose a change to the Bill. Other instruments were removed in the Act to ensure there will be an alignment between terms used in the text and the definition section. The uncertainty in the definition of securities will have been remedied. This is intended to improve the ease of doing business.
CLAUSE 2, SECTION 16				
Western Cape Government			● The proposed amendment to section 16(9)(b)(i) of the Companies Act, 2008 (Act 71 of 2008) (the Act) states that an amendment to a Company's Memorandum of Incorporation takes effect 10 days after the receipt of the Notice of Amendment by the Commission, unless endorsed or rejected with reasons by the Commission prior to the expiry of the 10 business days period.	The Department is of the opinion the comment is not clear on what needs to be amended because the provision outlines the

Stakeholder	Clause Section		Comment	Dtic response
			● The word "endorse" means to declare one's public approval or support. If the Commission does endorse the amendment prior to the expiry of the 10 business days period when does the amendment then take effect? It is submitted that in such circumstances the amendment takes effect on the date of the endorsement and the amendment Bill should be amended accordingly. Legislation should be clear and unambiguous.	circumstances. The word endorse is supported to be retained. The Companies and Intellectual Property Commission (CIPC) has confirmed that endorse is the most applicable word as it also addresses the actions they will take to validate the process. If the amendment is "endorsed" by the Commission before the expiry of 10 days, the amendment becomes effective immediately and there is no other timeframe to confirm.
CLAUSE 3, SECTION 25				
Cosatu			● Section 25(2) on how it will be handled, because the amendment is unclear. ● The subsection provides that 'A company must file a notice, which the Commission must publish as prescribed, setting out the location or locations at which any particular records referred to in section 24 are kept or from which they are accessible if those records…' ● Amend to be explicit with the drafting suggestion: 'which the Commission must publish on the website of the Commission'	The CIPC places its Notices and procedures online on its website. The Notice will be accessible to the public. The Act does not have to be too prescriptive, this allows for flexibility in the Regulations.
CLAUSE 4, SECTION 26				
Norton Rose Fullbright			● The proposed amendments infringe upon the privacy rights of individuals and private profit companies. The information contained in the Annual Financial Statements (AFS) relate to private matters. In addition to the financial information, the AFS include directors reports to the shareholders which may contain confidential information in regard to the strategy and affairs of the company. Providing public access to such information (including the remuneration of individuals) in regard to the relevant companies simply on the basis of a qualifying Public Interest Score cannot be justified. ● The relevant Companies and the shareholders, directors and employees have a right to privacy under section 14 of the Constitution. In some instances the Relevant Companies will have a proprietary interest in the confidential information contained in their AFS. Where the confidentiality is a critical component of the proprietary information, such as a trade secret,	As a general response to the disclosure concerns to access to company records raised on privacy, types of companies that should disclose, competition and security, we note the following passages from our Constitutional Court and Supreme Court of Appeal respectively: o"Those who choose to carry on their activities through the medium of an artificial legal persona must

Stakeholder	Clause Section		Comment	Dtic response
			then the proprietary interest will be undermined by requiring such information to be made public. Currently all the directly interested persons (e.g. shareholders, employees, customers, creditors and regulators) may have the means to access information in the AFS of the Relevant Companies where reasonably required through the current un-amended provisions of the Companies Act, PAIA and anti-money laundering and other regulatory legislation. ● From a competition perspective, generally it is undesirable for competing companies to have access to each other's information. This runs counter to the Competition laws against information sharing between competitors. This is undermined if competitors can access or determine each other's margins, costs and other details that might be evident from the AFS. Further, competitors will be able to use the remuneration information in the AFS to poach senior officers of the Relevant Companies. ● If the relevant Companies are compelled to make their AFS available to the public, the above concerns are likely to result in many of the relevant companies providing the bare minimum information required in the AFS to limit public transparency and this will disadvantage the shareholders that have a direct interest in the relevant companies. This undermines the objectives of good governance and transparency between a company and its shareholders. ● From a policy perspective, granting unrestricted access to the information in the AFS of relevant companies will expose the relevant companies to undue risks, jeopardizing their competitiveness and potentially harming their ability to innovate and thrive in the market. The proposed amendments may discourage investment in South African private companies. Investors, especially those in venture capital or private equity, may be reluctant to inject capital into enterprises if they know that their financial information will be laid bare for the public to scrutinize. ● This raises the question whether an economic impact study has been conducted in relation to the proposed amendments. ● The proposed amendments will place South African companies at a competitive disadvantage compared to foreign entities. Foreign companies will have access to the AFS of the relevant companies incorporated in South Africa, providing them with valuable insights into their competitors' financial positions. Generally, the relevant companies will not have access to the AFS of foreign companies because in many instances the laws of incorporation applicable to the foreign companies do not provide the public with access to their AFS.1 This one-sided transparency jeopardizes the competitiveness of South African businesses by exposing them to foreign counterparts who can leverage the information for strategic advantage.	accept the burdens as well as the privileges which go with their choice" (S v Coetzee). o"The establishment of a company as a vehicle for conducting business on the basis of limited liability is not a private matter. It draws on a legal framework endorsed by the community and operates through the mobilization of funds belonging to members of that community. Any person engaging in these activities should expect that the benefits inherent in this creature of statute, will have concomitant responsibilities" (Bernstein v Bester). The legal opinion by SC commissioned for the Portfolio Committee confirmed that the proposed amendments to sections 26 and 30 do not unconstitutionally intrude on the right to privacy of the intended entities and persons. Furthermore that the proposed amendments do not offend the provisions of PAIA and POPIA. Neither are they inconsistent therewith. On the comment regarding the Regulatory Impact Assessment, the proposed amendments are based on implementation challenges and were subject of extensive consultations including at Nedlac.

Stakeholder	Clause Section		Comment	Dtic response
			● Granting foreign companies access to this sensitive information without reciprocity places South African businesses in an inherently unequal position. This lack of balance not only undermines fair competition but also hinders the growth and sustainability of South African enterprises in the global market. Moreover, the disclosure of such information may inadvertently lead to a compromised competitive position, potentially affecting the overall economic health and innovation capacity of the nation. (3) Another possible side-effect is that investors may try to avoid incorporating companies in South Africa and instead incorporate them in jurisdictions that do not require them to make their AFS available to the public, for example, Mauritius. This will undermine South Africa's desire to become a gateway to Africa. Disadvantage to Smaller South African Companies: (1) The proposed amendments are likely to prejudice smaller South African companies. Larger companies, benefiting from robust balance sheets, will be able to scrutinize and exploit the financial vulnerabilities of smaller competitors and suppliers, leveraging their stronger balance sheets to attract customers or gain purchasing advantage. This unequal competitive landscape is likely to impede the growth and development of smaller enterprises, discouraging investment and hindering their ability to compete effectively. (2) Additionally, these changes would empower competitors or the media to spotlight companies that are navigating financial challenges. Such exposure could make it more difficult for such companies to continue to do business, which could lead to their collapse and the resultant loss of jobs. The Proposed Amendments underestimate the existing regulatory framework currently in place to ensure corporate accountability. South Africa already has stringent reporting requirements, audits, and regulatory oversight mechanisms to monitor the financial health and conduct of companies. The enforcement authorities also have wide powers of investigation, where justified. Instead of broadening public access, efforts should be directed towards using these existing mechanisms to safeguard the public interest without compromising the integrity of private enterprises and the Relevant Officers and their families.—PAIA, POPIA, Constitution. ● It is submitted that there is no justifiable reason to grant unlimited and unqualified public access to the AFS (including the remuneration of the Relevant Officers) of a private company established solely for a private venture by a single shareholder simply because it has a large turnover. The necessary and desirable transparency can be readily achieved through less intrusive means.	At Nedlac there were extensive debates on the implications of section 26. The Department has two legal opinions on section 26 which have concluded on the constitutionality of this section.

Stakeholder	Clause Section		Comment	Dtic response
			● It is crucial to distinguish between the Relevant Companies on the one hand and state-owned and public companies on the other hand. Unlike the latter, the Relevant Companies are private by their nature. Therefore, subjecting the Relevant Companies to the same disclosure requirements as state-owned and public companies is an unjustifiable overreach. ● They argue the need to tread carefully to avoid inadvertently placing South African companies at a competitive disadvantage, stifling economic growth, discouraging investment, and compromising the privacy rights of private companies and their directors, shareholders, employees and their families. In light of this, they request the committee and legislature to reconsider the proposed amendments in regard to the relevant companies.	
Cliffe Dekker Hofmeyer			● A major area of concern with this, from a privacy and talent retention perspective, is that such private companies are required to disclose in their AFS the remuneration received by their directors and prescribed officers, on an individualised basis.2 It should be appreciated that the level of confidentiality and sensitivity of the content of a securities register, on the one hand, and the remuneration of the company's most senior officers, on the other hand, differs substantially. ● Competitors and the like would be able to abuse the amended section 26 in order to gain an unjustified advantage. ● It is respectfully submitted that clause 4 of the Bill should allow for a similar option for private companies, namely the right to redact or withhold the remuneration details when a member of the public requests the company's AFS. ● They therefore recommend that clause 4 of the Bill additionally introduces a subsection (2B) into section 26 of the Companies Act which reads as follows: ● "(2B) When allowing inspection or providing a copy of the information contained in the records referred to in subsection (1)(cA) to a person not contemplated in subsection (1), a private company or personal liability company may withhold or redact the information regarding the remuneration of its directors and prescribed officers as contemplated in section 30 (4) to (6)."	The comments are noted. Addressed above in the general remarks.
Law Society of South Africa			● The proposed subsection 26(2) appears to be inconsistent with the provisions of section 31 of the Companies Act which provides access to financial statements or related information under limited circumstances only i.e. the provisions of section 31(2) provides a judgement creditor and section 31(3) provides trade unions access to financial statements under certain	In response to the submission from the LSSA request that s26 also be subject to s212, we refer to the SCA judgment of Nova Properties v Cobbett which held that s26

Stakeholder	Clause Section		Comment	Dtic response
			conditions. They restate that the provisions of section 26(2) should also be made subject to the provisions of section 212 of the Companies Act.	provides an unqualified right of access and noted that s26 was enacted with the objectives of openness and transparency in mind as contemplated in s7 of the Act (para 18). It is also noted that this comment was addressed before because it was raised in the Portfolio Committee.
IODSA and King Committee			• They strongly recommend that access to company information in terms of Section 26 should be limited to beneficial interest holders only. • However, if the current section as drafted remains, to allow anyone the right to access company records upon payment of the prescribed fee, they recommend that access should only be allowed to parties (other than beneficial interest holders) subject to the requirements of the Promotion of Access to Information Act, 2000 and other applicable privacy legislation.	The comments are noted. The general remarks above addresses this issue. In addition, transparency and access to company information is an important part of corporate governance and accountability in society. In giving the judgment, the judge clarified as follows- “the Companies Act gives specific recognition to a culture of openness and transparency in section 7, which lists the core objectives of the Companies Act, with section 7(b)(iii) expressing one of the objectives of the Act being to "[encourage] transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation". - In Nova Property Group Holdings Ltd

Stakeholder	Clause Section		Comment	Dtic response
				and Others v Cobbett and Another 2016 (4) SA 317 SCA
Western Cape Government			● While the amendment to section 26 of the Act is likely aimed at promoting transparency, due consideration must be given to the potential adverse impact of the proposed amendment on companies which regard their financial statements as highly confidential. It is submitted that there is a need to balance safeguarding the public's interest in accountable and transparent corporate governance against the need for businesses to protect their commercial interests and prevent commercial prejudice. ● The wording in paragraph (b) [proposed paragraph (cA)] refers to "as stipulated in" whereas the wording in paragraphs (a), (b), (c), (d) and (e) of section 26(1) all refer to "as mentioned in". It is submitted that consistency in wording is important. However, it should be noted that the expression "as contemplated in" is used extensively throughout the Act and it is submitted that this expression should also be used in the amendment Bill for the sake of consistency. See, for example, paragraph (e) [proposed subsection (2A) and (5) of section 26] where "as contemplated in" is used.	The fist point is addressed above on the general principles. The similar comment was responded to previously to align the words 'as contemplated in section 26. A principle is that the issue of language may differ but does not change the substance of the provisions. It is recommended that no change is made. This comment does not affect the provision, it is an editorial comment.
Webber Wentzel			● They submit that the Promotion of Access to Information Act, 2000 provides sufficient rights to interested parties who have reasonable grounds to request information, to obtain the relevant information and an amendment in this regard is not required. ● Extent of application to small companies: They submit that the exemption thresholds proposed in the proposed new section 26(2A) of the CAB 2023: ● are too low and would in effect mean that most companies would not be exempted from providing third party access to their annual financial statements as contemplated in the new proposed section 26(1)(cA). The provisions to provide third party access should not apply to smaller companies (in other words, the exemption thresholds should be raised so that the exemption applies not just to the smallest companies but also to other small companies); and ● should be provided for in the Companies Regulations, 2011, as thresholds are required to be updated from time to time, and updating a regulation is less onerous than enacting an amendment statute.	The legal opinion by SC commissioned for the Portfolio Committee confirmed that the proposed amendments to sections 26 do not unconstitutionally intrude on the right to privacy of the intended entities and persons. Furthermore that the proposed amendments do not offend the provisions of PAIA and POPIA. Neither are they inconsistent therewith. On the threshold, this was agreed upon at Nedlac to ensure that the regulatory burden of small companies is taken into account.

Stakeholder	Clause Section		Comment	Dtic response
Computershare			● In terms of the proposed amendment of section 26 of Act 71 of 2008, as amended by section 17 of Act 3 of 2011 ● "4. Section 26 of the principal Act is hereby amended— (c) by the deletion in subsection (1) of the word "and" at the end of paragraph (d) and by the addition of the following paragraphs: (e) the securities register of a profit company, or the members register of a nonprofit company that has members, as mentioned in section 24(4)[.]; and (f) the register of the disclosure of beneficial interest of the company as mentioned in section 56(7)(a).". (d) by the substitution for subsection (2) of the following subsection: "(2) A person not contemplated in subsection (1) has a right to inspect [or] and copy the information contained in the records referred to in subsection(1)(a),(b),(cA),(e) and (f), upon payment of no more than the prescribed maximum charges for any such inspection and copy. [the securities register of a profit company, or the members register of a non-profit company that has members, or the register of directors of a company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection]. ● It is not clear what the prescribed maximum fee will be and they note that section 6 which refers to a fee of R100 for each inspection is to be deleted. ● When considering the fee for copies of the register there are a number of factors that need to be considered.	The fees will be provided in the Regulations. This was addressed in the current draft amendment. To be prescribed fees rather than maximum prescribed fees. The department does not recommend changes, the issue of the fees will be addressed in the Regulations.
NRCFSA			● The proposed amendments to section 26(1) and (2) of the Act to extend the right of access to information to include annual financial statements ('AFS') of private companies to any person (without the need to show any legally-recognised interest to such information) (clause 4 of the Bill). ● Moreover, it is not clear why private companies (together with public and state-owned companies) are singled out in this manner, whereas other forms of businesses, which might operate at a similar or even greater economic level to private companies (e.g., large partnerships) are not subjected to equivalent regulation. This differentiation is not related to a legitimate government purpose and thus appears to be irrational and unconstitutional (because it breaches the constitutional principle of legality and the right to equality before the law in terms of section 9 of the Constitution).	The comment is noted. The response is above on the general response about the principles underpinning section 26 amendments.

Stakeholder	Clause Section		Comment	Dtic response
Centre for Environmental Rights			● They note that subsection (c) is omitted from the amended section. They do not see a reason for this and in fact this omission (excluding records from annual general meetings), which are important documents in understanding a company. ● Suggested wording: (2)A person not contemplated in subsection (1) has a right to inspect [or] and copy [the securities register of a profit company, or the members register of a non-profit company that has members, or the register of directors of a company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection] the information contained in the records referred to in subsection (1)(a), (b), **(c)** (cA), (e) and (f), upon payment of the prescribed fee for any such inspection and copy.	During Nedlac, constituencies agreed to exclude (c), that addresses reports to annual meetings and annual financial statements. This was to reduce the regulatory burden to companies.
			● While they do not object to the exclusion of companies with public interest scores of less than 100, they think that the threshold for exclusion that excludes companies with public interest scores of less than 350 is too high. This is particularly considering these financial statements are prepared independently. Access to these documents is a crucial part of corporate accountability and transparency in order to combat money laundering, fraud and terrorism. ● Suggested wording: (2A) The right to inspect and copy information contained in the records referred to in subsection (1)(cA), as contemplated in subsection (2), does not apply to a private company, non-profit company or personal liability company, wherein [— (a)] an annual financial statement is internally prepared in a company with a public interest score of less than 100; **[or** **(b) an annual financial statement is independently prepared in a company with a public interest score of less than 350.''**;]	The issues related to the PI score have been noted and to be addressed in the Regulations.
			● 4(g)- Spelling error: "comtemplated" should be "contemplated". The shortened timeframe from 14 days to 10 days is welcomed.	Spelling error noted to be recommended for correction to the Committee. The correct reference is in subsection 5.
			● With regards the deletion of subsection 6-the section to be deleted would exclude a section giving access to registers of directors. While this information is publicly accessible on the CIPC's website, it is often out of date. Access directly from companies should therefore be facilitated. ● They therefore suggest keeping section 26(6).	Section 26(6) should not be retained and should remain deleted. The matter raised is outside the amendments. The comment seeks to address an administrative implementation issue.

Stakeholder	Clause Section		Comment	Dtic response
South African Reward Association			● The amendment in section 26 will significantly expand the scope of who has the right to access highly sensitive and detailed company information which has impact on privacy, protection of confidentiality, information about competitors and risks from criminals identifying individuals which substantial income especially in a country where regular kidnapping of such individuals is a major risk. Because of the major risk, they proposed options related to access to company records and public interest score be reviewed.	The comment is noted. Addressed above in the general remarks in section 26. The issues related to the PI score have been noted and to be addressed in the Regulations.
			● Suggested that the PIS be increased to 850 per any company. ● They also recommended that access to company information be made subject to PAIA.	The comments are noted. The issues related to the PI score have been noted and to be addressed in the Regulations.
SAICA			● The Bill states that the proposed changes to Section 26 will eliminate the burden of compliance on certain companies. The exclusion of the application of certain sections in Section 26 is applicable to companies with a Public Interest Score (PI Score) below 100 with their AFS internally compiled and companies with a PI Score below 350 with their AFS independently compiled ("the exclusion"). The proposed changes excludes the right to inspect and copy the information as set out in section 26(1)(c) – reports to annual meetings and (d) notices and minutes of annual meetings. These exclusions were however not repeated in subsection (2) and the omission potentially nullifies the exclusion. They submit that a consequential amendment is needed in subsection 2 to rectify this small oversight. ● Should the exclusion referred to the right to inspect and copy of other information it only refers to smaller companies with AFS compiled internally and a PI Score below 100 and companies with a PI Score below 350 with their AFS independently prepared. ● There is no clarification on why this exclusion in not extended also to companies with a PI Score between 100 and 350 and the AFS internally compiled.	The issues related to the PI score have been noted and to be addressed in the Regulations. The Bill considers reducing the regulatory burdens to small businesses hence the threshold exemption was recommended. It was part of the Nedlac deliberations. Section 26(2A) clarifies the exempted companies.
			● It is submitted that the documentation meant to be exempted from access to information should be clearly reflected in the wording of the amendments. It is further submitted that it appears that the intention of the legislature is to link the exemption to the public interest and consequently to the PI Score. They agree with this approach and submit that the wording to this effect should reflect the intention consistently throughout the Act. Any assertion that the exemptions are linked to the PI Score, should be made in recognition that a potential future	The Department is of the view the section should be read with the entire section 26(1) and its amendments that describes the various forms of company records. The matter is sufficiently addressed.

Stakeholder	Clause Section		Comment	Dtic response
			increase in the PI Score may influence the outcome of exemptions. Based on their research on the Public Interest score, SAICA would like to propose the following: • an increase in the PI Score as soon as possible, • that within the current legal framework the PI Score of 100 is increased to 350 and the PI Score of 350 increased to 700, and • following the changes to the PI Score that the requirements of when companies require a social and ethics committee in terms of Companies Regulation 43 and the application of the PI Score business rescue as set out in Regulation 127 should similarly be updated. Refer to the SAICA submission that was made to the DTIC in this regard: SAICA PI Score submission.	The **dtic** has noted concerns with the PI score and is aware of the processes that were initiated for its review. Consideration will be given in the Regulations.
Allan Gray			● They strongly oppose certain of the proposed amendments to section 26, being those that provide members of the public the right to access certain information of private companies that relate to the shareholding in those companies as well as the annual financial statements of those companies (which includes the disclosure of director remuneration). They believe that those rights to be granted to said members of the public unlawfully infringe upon the constitutional right to privacy as well as place the security and safety of individuals at risk, and that there is no rational basis for the said amendments. ● Whilst they acknowledge that some of the rights already exist, they note that they have previously advanced and/or supported submissions against such rights; and that the amendments currently imposed will exacerbate these matters/concerns. ● The proposed amendments to section 26, as set out in section 4 of the CAB, will result in any member of the public, upon payment of the prescribed fee, being able to inspect and copy the majority of the various information listed in section 26(1), for a company whose annual financial statement is internally prepared and has a public interest score of 100 or more and for a company whose annual financial statement is independently prepared and has a public interest score of 350 or more. This right to inspect and copy will include access by all members of the public, to the “the annual financial statements as stipulated in section 24(3)(c)(ii)” [s26(1)(cA)], “the securities register of a profit company, or the members register of a non-profit company that has members, as mentioned in section 24(4)” [s26(1)(e)], as well as the “register of the disclosure of beneficial interest of the company as mentioned in section 56(7)(a)” [proposed new s26(1)(f)]. No rationale has been provided in the CAB or supporting documents for these proposals (and this also applies to previous amendments in this regard insofar as access to members of the public is concerned). It goes against the character of a private company and how private companies are generally dealt with in the remainder of the Companies Act. For the	Comment noted and responded to above on the overall policy position for section 26.

Stakeholder	Clause Section		Comment	Dtic response
			further reasons set out below, we do not believe that these proposed amendments should proceed or proceed in their current form. ● They do not believe that the access to this information by any member of the public is warranted and that especially in the absence of a just rationale for such access, such access should not be permitted and provided for in the Companies Act. ● Whilst there may be a sound rationale for such information to be maintained by companies and for them to provide to the regulator in the context of anti-money laundering and transparency, this must be balanced with the right to privacy, especially in the case of private companies. The proposed amendments have major impacts on privacy, the protection of confidential information and risk from criminals identifying individuals who have or who they perceive may have substantial wealth or income. Furthermore, whilst it is concerning enough that any member of the public currently and especially since May 2023 has access to the names of all holders of securities/ beneficial owners, this right is now proposed to be extended to include information on the beneficial owners of "affected companies" as part of a register of the holders of beneficial interest–which, pursuant to the 2023 amendments to the Companies Act and the regulations, obliges companies to maintain detailed personal information such as identity and/or passport numbers and residential address – and therefore it becomes even more problematic and of great concern where companies who are obliged to record and maintain this more detailed personal and private information of those individuals are obliged to not only furnish this information to regulators, but to make it available	
			● Given the above, they believe that the proposed amendments should be dispensed with. Alternatively, but in any event given the current reading of the Companies Act, they propose that a form of 'legitimate interest' test be provided for in the legislation, akin to that which exists in the Protection of Personal Information Act as well as in the European Union under data protection laws, however suitably tailored viz a viz the private company and individuals concerned, when it comes to members of the public requesting any information from a company in regard to its annual financial statements, as well as the identity or otherwise of holders of securities and beneficial interests and/or beneficial owners of any private company concerned. ● The details as to the application of this requirement could be determined or fleshed out in regulations i.e. it would be highly preferable to have a 'legitimate interest' test as a principle and requirement contained in section 26(2) of the Companies Act from the outset to achieve a better balance between the need for transparency and anti-money laundering versus that of privacy.	Comment noted and responded to above on the overall policy position for section 26.

Stakeholder	Clause Section		Comment	Dtic response
			● As many stakeholders, including themselves, have previously raised during stakeholder consultation on previously proposed amendments to the Companies Act (as well as on the current CAB), including in the context of annual financial statements, the need and requirement for regulators to obtain this information of and from private companies is completely different to where such information is readily accessible and available to all members of the public, and this holds true regardless of whether the public interest score of a private company is above the legislated threshold.	
CLAUSE 5, SECTION 30				
Norton Rose Fullbright			● The issue goes beyond just the privacy of companies as the AFS includes the names and remuneration of relevant officers. It is submitted that granting unlimited and unqualified public access to this private information infringes on the right to privacy of the individual Relevant Officers. The threshold for a limitation of the right to privacy of an individual is higher than that of a juristic person.	The inclusion of names is a necessary component of adequate disclosure. In this regard assume, for example, that a particular director or prescribed officer receives a remuneration which is manifestly inappropriate for that person. Shareholders are entitled to that disclosure for the purpose of objecting and for enquiring whether there is an ulterior objective, such as that that particular person is effectively receiving such bloated remuneration for some other purpose. For interest, we note that in terms of UK company law, quoted and unquoted companies have a duty to prepare a directors' remuneration report. According to paragraph 2 of Schedule 8 of the 2008 Regulations to the UK Companies Act, the information required to be shown in the report for or in respect of a

Stakeholder	Clause Section		Comment	Dtic response
				particular person must be shown in a manner that links the information to that person identified by name. Currently there is a level of some disclosure as top executives salaries are debated in public. There is a way companies disclose now. The amendment will make it a legal requirement. But some level of these disclosures already exists.
Cosatu and Sactwu			● Cosatu and Sactwu support the amendment of section 30(4)(a) which will compel private companies that have to audit their financials to not only reveal the salaries of directors and prescribed officers but also the names of those receiving such salaries. In the past, the identity of those receiving the salaries could be kept hidden. ● For them, this provision is necessary taking into account the sky-high inequality in South Africa which is driven by enormous salaries paid to directors and also the huge pay gap in companies. ● By not having a letter of the alphabet or number but actually using the name of the director and prescribed officer will put social pressure on companies when decisions on remuneration are made and will increase accountability in executive pay. This provision may then start to reign in the exorbitant pay packages that have become a regular occurrence in South Africa. ● At Nedlac, Business Unity South Africa (BUSA), the country's umbrella business association and representative of business at Nedlac, presented research showing that publishing directors' and prescribed officers' names is common practice in a number of jurisdictions, including the European Union, the United Kingdom and Australia. ● In South Africa, privacy and data protection concerns are given legal effect through the POPI Act. Contrary to what business will say, the POPI Act does not inhibit the sharing of information but rather regulates how it should be done.	The comments are noted.
NRCFSA			● The right to privacy of the natural persons concerned (each of whom is also a data subject under the POPI Act) will be invaded, while the protections and mechanisms provided by the POPI Act and PAIA will be by passed. ● Clause 5 is tantamount to making a private citizen's pay-slip public information simply	The legal opinion by SC commissioned for the Portfolio Committee confirmed that the proposed amendments to section 30 do not unconstitutionally intrude on

Stakeholder	Clause Section		Comment	Dtic response
			because they hold a particular position within a particular type of company. ● The basic constitutional and statutory requirements of less restrictive means and minimality would again be violated. The PAIA mechanism already exists and has not been demonstrated to be inadequate. Moreover, there is no justification for naming directors individually, when their remuneration could be identified on an anonymized basis. ● It is not clear what legitimate government purpose would actually be served by clause 5 as it stands. If the information were disclosed as a single sum or individually on an anonymized basis (e.g., 'Director A'), the information would be appropriately disclosed and provides the user of AFS with sufficiently detailed information to serve their purposes, and users of AFS are not prejudiced or misled by this form of disclosure. 'Naming and shaming', on the other hand, will pose a clear risk and negative impact on individuals and the company, potentially extending to a risk to physical safety in certain instances (e.g., kidnapping syndicates). There is no additional benefit served by naming. ● Clause 5 is likely to have negative unintended consequences as well, such as the lessening of competition as regards salaries paid to individuals in different companies who occupy an equivalent position.	the right to privacy of the intended entities and persons. Furthermore that the proposed amendments do not offend the provisions of PAIA and POPIA. Neither are they inconsistent therewith.
SAICA			● Whilst SAICA supports the amendment the wording is not clear because the word "or" creates the impression that either the director or prescribed officer's names should be disclosed. We assume that both category names should be disclosed and the wording should clearly reflect this intention. ● Companies and its directors may misinterpret that there is an option to either disclose the director's details OR the prescribed officer's details. ● The new proposed Section 30(4A) states that where directors remuneration is required to be audited, nothing will require the company policies or background statement to be audited. The amendment explicitly omits the implementation report in the context of the company policy and background statement. This is presumably a drafting error and they submit that the implementation report should expressly be inserted and reflected. This comment should not derogate from our submission made under the points 43 to 65 and does not imply that we necessarily agree to the reference and importation of the term "implementation report" in the Act. Should this term be retained they submit that the wording under this section 30(4) be rectified.	This comment was previously made and addressed. The drafting issue has been addressed. On the implementation report, the comment is noted. The implementation report is important and should be considered by companies in the context of section 30. The issue of auditing standards is a separate issue and cannot be addressed in the Bill as it stands currently.

Stakeholder	Clause Section		Comment	Dtic response
			● The following change is suggested: "The AFS of each company that is required in terms of this Act to have its AFS audited, must include particulars showing:(a) the remuneration**,** as defined in subsection (5), and benefits received by each director, or and [**individual holding any prescribed office in the company**] prescribed officer in the company, and such individual must be named;" ● Reference to the term "implementation report" should be included subject to their reservations expressed further on in this submission.	
CLAUSE 6, SECTION 30A AND SECTION 30B				
Cliffe Dekker Hofmeyer			● There is uncertainty as to what exactly is the legal position if the remuneration policy were voted down, under the new section 30A. ● Crisply, if the remuneration policy is voted down by shareholders in general meeting, can directors and prescribed officers continue to be paid in the interim period until the next shareholders' meeting (which might be held only a number of months after the original shareholders' meeting, given that the board will need time to regroup, engage with shareholders and reformulate its policy)? And if so, what can they be paid? ● Naturally it would be catastrophic if the company were precluded from continuing to pay its directors and most senior executives during such interim period. On the other hand, they are mindful that the new section 30A should not be rendered toothless.	Comments are noted. If remuneration policy is not approved, it is tabled in the next AGM. The existing policy will apply.
			● Prima facie it would appear sensible that the same consequences as with regard to the disapproval of the remuneration report (the new section 30B) should apply, namely that – ● the remuneration committee (or board) must, at the next shareholders' meeting, present an explanation on the manner in which the shareholders' concerns have been taken into account; and ● The non-executive directors who serve on the remuneration committee (if there is such a committee) must stand for re-election as members of that committee at the shareholders' meeting at which the explanation is presented. ● If this is the position to be adopted, they recommend this be expressly recorded in the new section 30A, so as to avoid any doubt on an important issue.	Comments are noted. Section 30B provides for the remuneration report and the stand down for re-election of remuneration committee members in the second AGM, if the report is not approved for the second time by an ordinary resolution. Section 30B provides for the two strike rule. If the Remuneration Report is not approved at the first AGM the directors must inform shareholders how they are addressing their concerns. If at the next AGM the Remuneration Report

Stakeholder	Clause Section		Comment	Dtic response
				is again not approved by shareholders then the members of the Remuneration Committee are ineligible to be members of the Remuneration Committee for a period of 2 years thereafter. No change to the text is necessary.
Law Society of South Africa			● Subsection 2(a): subsection 2(a) should be amended to make it obligatory in instances where there is no remuneration policy approved in terms of section 30A(2)(a), to present a remuneration policy at every annual general meeting until same is approved.	This comment has been addressed in the Bill in section 30A(2)(a). The remuneration report must be tabled at the next AGM until it is approved.
			● Subsection (1)(a): the definition of total remuneration should include the following words, which were in the previous draft of Section 30A(3)(d)), in respect of short-term or long-term incentives including share options and incentives awards: '**which have been settled in the year under review in respect of the employee**'. Without these words, how will companies calculate the remuneration of the employees in any particular year in respect of options or incentives which may not come to fruition in that year? ● Subsection (4)(b): if there is no separate remuneration committee, or separate committee responsible for remuneration matters (as per the definition of 'committee' in Section 30B(1)(c)), and instead the entire board make the decisions regarding remuneration, it is not sufficiently clear whether the directors referred to in Section 30B(4)(b) must stand for re-election as directors of the entire board of directors? We assume this is not the intention, but should be made clear. ● Subsection (5): it is not clear which annual general meeting is being referred to where it says "the year contemplated in subsection (4)". The wording needs to be made clearer. Is it : the first annual general meeting at which the remuneration report was not approved? b. or the following annual general meeting at which the explanation by the committee is presented?	Comments are noted. In practice the remuneration are related to the current year in review. The remuneration committee referred to is the same in subsections of section 30B. The committee same committee will stand down for re-election when the report is not approved for the second time, after the explanation to the shareholders. The remuneration committee members may stand down from the committee but not as board members. Subsection 5 refers to the second year AGM. Subsection 4 and subsection 5 must be read together. Subsection 4 refers to the first AGM.

Stakeholder	Clause Section		Comment	Dtic response
Western Cape Government			● It is submitted that provisions such as proposed sections 30A and 30B which provides for a duty to prepare and present a company's remuneration policy and remuneration report, and which requires the disclosure of remuneration and other detailed information pertaining to salary, benefits and incentives may result in unintended consequences such as difficulty in recruiting top corporate managers.	The amendments proposed in the Bill are also required to tackle the injustice of excessive pay. The pay gap has been a historical challenge in South Africa and a contributor to the country's inequality. Following this amendment, the Act will allow for stronger shareholder governance on excessive director pay and for companies, shareholders and stakeholders to be aware of and, if necessary, address unsustainable pay discrepancies. To ensure greater transparency, the Bill requires improved disclosure of remuneration and wage differentials in companies. The issue of disclosure has become a critical theme in global corporate governance debates, and it is evident that the trend is towards greater disclosure.
			● It is submitted that a definition should be provided for "remuneration policy" and "remuneration report" as these terms are used extensively in the amendment Bill. ● Proposed section 30B(2) states that each year all public companies and state-owned companies must prepare a remuneration report, which, in terms of proposed subsection (3) includes a background statement and an implementation report. It is not clear from the draft who within the company is responsible for compiling these documents. Clarity is required.	The terms are commonly used in corporate law environment of South Africa. There is no need to define them. The compilation of documents is an internal matter, it does not have to be legislated.
Cosatu and Sactwu			● Cosatu welcomes the addition of section 30A and the requirement for a remuneration report with specific information. The proposed amendments in this section will provide more information to workers, unions, government, shareholders, investors and the public about wage	The requirement of the remuneration disclosure is new in companies law and the focus is on state owned enterprises or public entities. The consideration for

Stakeholder	Clause Section		Comment	Dtic response
			inequality and excessive executive pay packages by strengthening the remuneration report provisions. ● Cosatu and Sactwu regard this as a major departure from the current situation where listed companies and SOCs often only provide limited information on executive remuneration. ● With regard to the publication of the pay gap in section 30A(3)(f), Cosatu and Sactwu endorse that publicly listed and state-owned companies will, once the Bill is passed, be compelled to disclose pay ratios between the top 5% earners and bottom 5% earners and their average and median remuneration. This will provide workers and investors with information on the wage gap in a company. ● Cosatu and Sactwu supports the amendments to the Act in sections 30A(4), (6) and (9) which will make the shareholders' vote on the remuneration report binding. ● The current advisory vote regime, set out in JSE listing requirements for listed companies, serves no purpose. This is evident in the case of countless companies in recent years, where large proportions of shareholders have voted against the remuneration report year after year without it having any effect on executive remuneration. ● There is a need to recognise that the existing remuneration system is broken, that executive salaries are unjustifiably high and out of sync with what is happening in the country, that shareholders cannot hold directors responsible, that executive remuneration is an important factor in driving inequality, and that there is widespread discontent among workers, working class communities, and the general public with executive salaries. ● Their preference would have been for the vote on the remuneration policy and remuneration report, contained in sections 30A(7) and (9) of the Bill, to be by special resolution, requiring 75% of shareholders to support it before it can be passed (as is done in the current JSE-listing requirements), not an ordinary resolution, as is captured in the Bill currently, only requiring 50% approval. ● They support the current wording in section 30A(3)(d) of the Bill that the pay gap should be calculated on executives' actual annual remuneration, i.e. including bonuses, incentives and share awards. ● Using any other definition, for instance guaranteed remuneration or 'on-target remuneration', will hide the actual pay gap between workers and executives. The gap should be based on actual earnings, not on possible or probable earnings and not on targets conceived of by remuneration consultants and other spin-doctors. ● S30A only applies to listed companies and SOCs (see s30A(1)) BLSA & PSG CEO suggested it apply to privately owned ones also	private companies will be made in the future when new amendments are considered. This is more so because this has not been subject to public participation including at Nedlac. The additional disclosures required in terms of sections 30A and B and the requirement of shareholder approval in respect thereof will constitute a new requirement. As regards private companies, further consideration will be given in the future.

Stakeholder	Clause Section		Comment	Dtic response
			● Support this call; many unlisted companies are bigger than listed companies & have similar pay gaps. ● The amendment suggests a threshold so not to burden small businesses.	
IODSA and King Committee			● Section 30B(4) and (5) on Remuneration Report non-approval consequences: ● They reiterate, as per previous submissions, that they are supportive of a well governed, effective remuneration system in South Africa that promotes fair, responsible and performance driven remuneration for all employees, and a living wage for the most vulnerable employees in our society to foster job creation, economic growth and a sustainable economy. ● They have the following comments concerning the practicality of the current proposals in the Bill: ● The remuneration committee or committee responsible for remuneration is not a statutory committee that is governed by the Companies Act and the election of such committee members in the first place is not done at an AGM. In view of this it is not clear how a re-election will be accommodated at the AGM. 2) None of the other statutory committees (i.e. audit committee or social and ethics committee) are subject to such consequences if their respective reports are not approved. The remuneration committee or committee responsible for remuneration is subjected to more severe consequences comparatively. This is not a fair treatment of directors or committee members who all play a pivotal role in the good governance of a company. 3) The proposed stepping down of directors from the remuneration committee does not serve to address excessive executive remuneration but rather creates a disincentive for directors to serve on such committees, thereby eroding the competency of the committee to perform its oversight function. 4) The proposed sequence of consequences in accordance with this version of the Bill (as we understand it) is: a. Year 1 – remuneration report is not approved. Shareholder engagement to take place to address concerns. b. Year 2 – remuneration committee members must present how they have addressed shareholders concerns and stand for re-election to serve on the remuneration committee. If the remuneration report is again not approved, all the non-executive remuneration committee members must stand for re-election to the board. They are further barred from serving on the remuneration committee for 2 years should they be re-elected onto the board.	The sequence of the provisions in section 30B suffices as is. There is a shift towards shareholder rights on matters of remuneration globally. This is a new requirement of law. Companies will find ways to adjust. The changes were subject of a parliamentary process and consultations. The broad framework of the disclosure of remuneration were discussed at Nedlac. Changing them will require further consultations. The remuneration report is an important disclosure requirement and a significant policy position in corporate law South Africa. The Audit Committee is an example of a statutory committee that is elected at the AGM. The election of members at the AGM will not be an anomaly. The Remuneration committee in this context will become statutory as far as section 30A and section 30B are concerned. The structure of sections 30A and B has been carefully designed and is in accord with international practice. It embodies the two strike rule and has embodied a number of

Stakeholder	Clause Section		Comment	Dtic response
			● Year 1 – remuneration report is not approved (for the first time). Remuneration committee members must engage with shareholders, address concerns and/or fix policy etc. and present back at the next AGM on what they have done. (i.e. no re-election consequence in order to allow remuneration committee members an opportunity to address concerns). ● Year 2 – if the remuneration report is not approved again (for the second time), the non-executive directors who serve on the remuneration committee remain on the board (i.e. do not need to stand for re-election) but must immediately step down from the remuneration committee and are barred from serving on the remuneration committee for a period of two years. ● **Recommendation** ● They recommend simplifying the sequence of events as follows. ● They proposed the following changes to Section 30B(4) and (5): *"30B(4) If at the annual general meeting the remuneration report is not approved by ordinary resolution as contemplated in subsection (2)—* (a) the committee must, at the next annual general meeting, present an explanation on the manner in which the concerns of the shareholders' concerns who did not support the resolution have been taken into account, provided such reasons for non-approval were provided by such shareholders to the committee within a period of two months after the annual general meeting..; and ● (b) subject to subsection (6), the directors who are not involved in the day-to-day management of the business of the company and who serve on the committee must stand for re-election as members of the committee at the annual general meeting at which the explanation is presented. ● 30B(5) Subject to subsection (6), if at the annual general meeting in the year immediately following the year contemplated in subsection (4), the remuneration report in respect of the previous financial year is also not approved by ordinary resolution of shareholders— ● (a) the directors who are not involved in the day-to-day management of the business of the company and who serve on the committee must resign from the committee but may continue to serve as directors provided they successfully stand for re-election at that annual general meeting subject to the requirements of the Act and the MOI; and ● (b) will not be eligible to serve on the committee for a period of two years thereafter."	important components such as a binding shareholder vote at 50 plus 1 for the approval of the Remuneration Policy and the Remuneration Report, significant new disclosures and the consequences for not obtaining the required shareholder approval. Accordingly, not change is required.
Cosatu and Sactwu			● Cosatu and Sactwu would argue that greater transparency and the publication of the pay gap are in line with the King IV Report on Corporate Governance for South Africa (King IV), which states 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.	The comments are noted. These are comments with no recommendations or clarity seeking issues.

Stakeholder	Clause Section		Comment	Dtic response
			This acknowledges the need to address the gap between the remuneration of executives and those at the lower end of the pay scale". ● Disclosing executive remuneration and the pay gap can help companies and shareholders assess whether directors' remuneration is "fair and responsible in the context of overall employee remuneration", as per King IV. Without the pay gap, it would be impossible to know and understand the context. ● It also accords with practices in other countries such as Ireland and the United Kingdom that have introduced requirements to strengthen reporting and disclosure requirements.	
Computershare			● All public companies (listed or not) are to present a remuneration report to their shareholders every 3rd AGM (or sooner if there are material changes to the policy or if it was previously voted down) for approval by ordinary Resolution. ● The report is to cover all remuneration to directors (executive and non-executive) and prescribed officers, and it has to speak to the disparity of earnings between highest earners and lowest earning employees in the Company. ● It seems, however, that a consequence of shareholders voting the Policy down is that the Company must address shareholder concerns at its next AGM – and that the non-executive directors on the Remuneration Committee must step down from that committee for 3 years. Payments under "disapproved" policies will however not be void. ● Guidance and further clarity would be appreciated with regard to the reporting format and the Comment/s: ● If the Policy was voted down the previous year at the AGM – will companies, then be required to submit every year thereafter at the AGM instead of every 3 years? ● Would the report back on income disparity include ALL employees (even those appointed on a fixed term or contract basis)? How would secondments need to be dealt with in the report, in other words, what level of detail (granularity) would companies be required to report on? ● Guidance and further clarity would be appreciated with regard to the reporting format and the minimum disclosure requirements that entities would need to comply with. ● Moving from a non-binding advisory vote to an Ordinary Resolution is a significant development. ● Would 50% or more voting in favour also apply? ● Would the current requirement regarding 25% votes against, still require the company's Remuneration Committees to engage the dissenting shareholders? ● With regard to the composition of the Remuneration Committees:	The Department is of the view the companies will make the necessary arrangements and put systems in place on this matter at an operational basis. The Bill provides the overall principle on how the approvals of these reports must be addressed. Payments will not be void. The step down is for 2 years. This was an amendment compromise in the Portfolio Committee process. Voting on both policy and the remuneration report is an ordinary resolution, which is 50% +1. The stand down by remuneration committee members is on the report not the policy. The companies must ensure they have the legislative requirements. These requirements are not new, for example in the King IV codes, they are there. Many public companies

Stakeholder	Clause Section		Comment	Dtic response
			● If the Remuneration Policy is voted against, non-executive directors on the Remuneration Committee must step down from that Committee for a period of 3 years. ● With regard to majority shareholding: what if the issues of concern have been addressed by the company after the AGM and the shareholders are happy / have comfort that the necessary had been done – would the 3 year ban still be applicable? ● How would the 3-year ban impact on the director (i.e. the individual - from a reputational / personal brand perspective) versus directors being declared delinquent? ● What would be the implication of same with regard to the Remuneration Committees' members – especially if the same individual serves on multiple boards and other companies' Remuneration Committees? ● This would also create a challenge for companies to have to appoint new members to the Remuneration Committee (especially for smaller Boards – taking into account the specific skills set / experience that is required to be able to serve on Remuneration Committees). ● If the Remuneration Committee members need to step down for 3 years, this might automatically also create strain on the remaining Board members (i.e. from a capacity and resource perspective). ● For listed entities, this would also trigger SENS announcements and might result in other unintended consequences. ● What is the rationale and justification to propose a 3 year ban versus for example 1 year? ● Another unintended consequence might mean that the entire Committee would "collapse", which might mean that the remaining Board members might not have the skills or expertise to replace the members of the Remuneration Committee if they had to step down. ● This would also have an impact on the quality of Board members (in terms of attracting and appointment of high calibre / skilled directors) as they might not want to be appointed to the Remuneration Committees. ● From a decision-making perspective and executing the Remuneration Committee's mandate, it might also negatively impact the effectiveness of the governance related aspects going forward.	and state owned enterprises already have these documents as part of their corporate governance measures although they are voluntary.
SASOL			● In order to cater for a transition period, it is proposed that section 30A(1) be amended to provide that the policy may be presented within 12 months after the effective date of this amendment. It is not clear what the situation would be if the ordinary resolution on the remuneration policy is not passed. It is suggested that as per international practice, the previously approved policy remains in force until such time that the amended policy is approved. It is therefore proposed	The moment the Act becomes operational, the obligations in section 30A will also become operational. In terms of section 13 of the Interpretation Act of 1957, the

Stakeholder	Clause Section		Comment	Dtic response
			that the wording be amended as follows: *(a) must be presented to and approved by shareholders at the annual general meeting by an ordinary resolution and if not approved must be presented at the next annual general meeting or at a shareholders meeting called for such purpose and until such time, the previously approved policy shall remain in force;* ● The definition of an "employee" under s213 of the LRA, is extremely broad and includes "(a) any person, excluding an independent contractor, who works for…. or is entitled to receive any remuneration; and (b) any other person who in any manner assists in carrying on or conducting the business of an employer…". This means that part-time, non-permanent, learners, expatriates etc are all included in this definition. If an employee is employed to only work for one month, and pay gap is reported on an annual basis, it will completely distort the data which will become meaningless and inappropriate. It is therefore proposed that section 30B(1)(b) be amended as follows: "employee" means an employee as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995); provided that such an employee is a permanently full-time employed person who has been in service for the full period under review;" ● This is extremely difficult to implement as shareholders are not compelled (an in many cases not willing) to share their voting practices with companies. It is therefore impossible to understand their concerns if they do not disclose their voting practices and the motivations that underlie those. The proposed sanction is considered unfair, unjust and disproportionate in relation to members of other committees. The proposed sanction will lead to board members no longer being prepared to serve on the committee which deals with remuneration matters which will have devastating consequences for employees at all levels.	President can determine different implementation dates for different sections. Given that section 30A does not provide regulations to be determined by Minister, the Department will make a request to the Presidency in this regard. The previous policy will remain in force if the new policy is not approved. The amendment does not have to be included in the Bill. The definition of employee is in terms of the Labour Relations Act and should not be amended in the Companies Act. It is not practical, nor effective, to compel shareholders to disclose their concerns.
Webber Wentzel			● As regards the proposed new section 30B(4)(a) it should be clarified what the position will be if the remuneration committee, acting in the best interests of the company, is of the view that certain shareholder concerns should not or could not be addressed. ● As regards the proposed new section 30B(4)(b), the requirement that non-executive directors serving on the remuneration committee (for more than 12 months in the year under review) stand for re-election as members of the committee at the next AGM seems unduly harsh for the first instance of non-approval. Their re-election as members of the remuneration committee may also have practical timing consequences in instances where the remuneration report in not approved for a second consecutive time. They submit that the in-scope non-executive	There is a legitimate purpose for these amendments, to address historical income disparities.

Stakeholder	Clause Section		Comment	Dtic response
			directors should not be required to be re-elected as members of the remuneration committee where there is a first instance of non-approval. ● It is unclear from Section 30B what would happen in cases where the remuneration committee has to be continuously reconstituted because the remuneration report is not approved at each AGM. It would be counter-intuitive and disruptive for companies to have to continuously reconstitute their remuneration committees. While the carve- out for non-executive directors who have served less than 12 months in the year under review is welcome and would mean there would, in some instances, be retained committee members, these exempted non-executive directors may not constitute a sufficient number on the remuneration committee and/or they may themselves become subject to the consequences of ineligibility where the report is not approved at each subsequent AGM, with the result being that there may be no eligible board members to serve on the remuneration committee. To counter this, the company may then have to continuously elect "fresh" non-executive directors to fall into the under 12-month period exemption. We submit that consideration be given to this potential unintended consequence.	
			● In its current form, the Bill fails to consider basic good governance practices. It will increase the difficulty of attracting and retaining good quality non-executive directors ('**NEDs**') with specialist knowledge regarding remuneration. The reputational harm and resultant *'standing down'* period during which NEDs cannot be re-elected is a form of punishment, which is imposed bluntly without any consideration of individual circumstances. ● These clauses are impractical in certain key respects. ● If a remuneration policy (which is forward looking) is not approved (potentially on a repeated basis) and can only be implemented on approval (including changes to the policy), on what basis will directors be remunerated for the period ahead? This is exacerbated by the fact that AGMs are held after year-end, so the reporting period to which the policy applies will already be underway. For example, if an entity's year end is March and the AGM is in August, in terms of which policy are directors remunerated (in respect of fixed remuneration) for the period April to August, particularly if policy changes are made?	The comments are noted. On the binding vote, we submit that point is far from the facts. Globally there are examples of jurisdictions voting on the remuneration reports and with consequences to directors, Australia is one such example. Given the inequalities of income in South Africa and the increasing pay gaps, it is critical that the voting by shareholders be binding. The pay gap ratios should not be voluntary. The current non-binging measures by other Authorities have not worked. It is important that concerted efforts are made to

Stakeholder	Clause Section		Comment	Dtic response
			● There is accordingly a risk of a repetitive cycle of unapproved remuneration policies and implementation reports, which is a material concern. ● The risk of reputational harm to NEDs and the chairperson of the Remco in the event of non-approval of a remuneration implementation report should not be discounted. Skilled, suitably qualified and experienced NEDs in the remuneration environment are a small pool. These skills may be lost both by the company in question and by the market as a whole. ● NEDs may consider the risks imposed upon them to be too high. This will place additional pressure on remaining skilled NEDs, impacting their availability and capacity as well as potentially the gender and racial diversity of boards. ● The approval of remuneration, it is respectfully submitted, should remain within the purview of the Remco and the directors of the company, who have the necessary knowledge of the relevant factors to determine the appropriateness of the remuneration for the individuals concerned. They are further required to carry out this determination against the backdrop of their statutory and fiduciary duties to the company, which if they fail to execute properly, have statutory consequences. ● A binding shareholder vote essentially allows shareholders to step into the role of directors in respect of remuneration, when they do not have the requisite skills or experience and owe no duties to the company and other shareholders. This also prevents directors from fulfilling their legal duties to the company. This contradicts well-established legal principles on the roles and duties of directors vis-à-vis shareholders. This also contradicts the non-binding advisory vote construct, as per King IV and the JSE Listings Requirements, which the NCRFSA considers to be a more purpose-driven, pragmatic approach, aimed at achieving meaningful shareholder engagement on remuneration issues in a way that does not fundamentally disempower directors. This approach has been working well in the public company environment for several years, which indicates that these amendments in question unnecessary. ● If a remuneration implementation report fails, it remains unclear whether the remuneration already paid to directors is legally paid or would need to be clawed back (which is untenable). ● Retrospectively addressing shareholder concerns would raise serious legal and practical difficulties. ● Regarding the need to include pay-gap information and ratios, the NCRFSA is of the view that such a mandatory requirement in its present form is unlikely to be rationally connected to any legitimate government purpose (and thus to comply with the constitutional principle of legality) and will almost certainly have negative, unintended consequences:	transform the income inequalities in South Africa. “The Department does not agree with the submission regarding the binding vote. The structure adopted in sections 30A and B is in line with the two strike approach adopted in Australia.”

Stakeholder	Clause Section		Comment	Dtic response
			● The pay-gap ratio will not address how the gaps in question should be addressed but will certainly cause division and reinforce ideologies. ● There is no guidance in terms of what constitutes a 'reasonable' ratio per industry or sector. Moreover, the ratio in question ignores other pertinent ratios from a constitutional perspective, such as gender. ● Extensive research should be conducted on this proposal, which should be subject to public scrutiny and comment before it is finalized, potentially as part of separate amendments to the Act. ● The 5% threshold is not meaningful, and it is not clear how this requirement would address critical social issues of unemployment and localisation drives. It appears that the concept is ideological, especially where minimum wage is legislated and the country is (i) in a low growth environment, (ii) less competitive with other territories, and (iii) where companies are also competing with offshore entities that are entering the South African market. ● It is further submitted that there is no justification to subject only public companies to this burden, while other private companies (as well as other forms of business) would not be encumbered with it. ● The NCRFSA therefore proposes that if the pay-gap ratio provisions remain, they be made voluntary. ● To the knowledge of the NCRFSA's members, there is no other jurisdiction in the world that has implemented a binding vote on a remuneration implementation report. These amendments could therefore make South Africa an unattractive, risk-laden country to invest and do business in. It is respectfully submitted that South Africa should be encouraging FDI, rather than providing neighbours and other African countries an opportunity to provide a more attractive gateway to business on the continent. ● This seriously undermines the first 'key pillar' addressed in paragraph 1.4.1 of the memorandum on the objects of the Bill, namely 'the ease of doing business'.	
South African Reward Association			● The proposed pay gap methodology is not supported from two perspectives. ● The ordinary resolution of the implementation report will make SA the most onerous country in the world in terms of remuneration governance.	Excessive remuneration particularly at the highest levels of a company is a matter of great concern internationally including in a number of important foreign jurisdictions. Literature internationally on this topic, as well as the inequity of significant pay gaps between the top

Stakeholder	Clause Section		Comment	Dtic response
				and bottom levels of a company, abounds. The remuneration gap remains a significant policy gap that requires an intervention in South Africa. The article in the Investor Daily echos an example of the issues the Bill is attempting to address and it confirms that this challenge persists.
			● The proposed the payrolls remuneration instead of remuneration policy. ● It is proposed that only policy or target remuneration be used.	These are new matters that have not been researched or consulted upon. They will required further public participation and research.
			● This will impact the skills pool due to the risks. The non-binding advisory vote is suggested.	The approach in the Bill does not go as far as the legal provisions in Australia, where the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act of 2011 requires that only 25% of shareholders are required to vote against the remuneration report. The Bill proposes an ordinary resolution, meaning 50% + 1 of shareholders need to vote against the remuneration report for the provisions of the Act to be triggered. Given the historical pay gap disparities and the fact that other voluntary remuneration measures have not transformed the remuneration landscape in South Africa, it is important that the vote be binding.

Stakeholder	Clause Section		Comment	Dtic response
			● To add: if the remuneration policy is not approved. (a) all the shareholders who did not support the resolution must provide the committee with their reasons for non-approval within a period of two months after the AGM.	This is a new matter and cannot be addressed in this parliamentary process. It requires further public participation.
			● It must be presented at the next AGM for approval or at a shareholders meeting called for such purpose, and	
			● The previously approved policy shall remain in force until such time the revised policy is approved.	This is the position. The current policy remain in place until the new policy is approved.
			● To add-provided that such an employee is a permanent fill the employee person who has been in service to the full period under the review	This is a new matter and cannot be addressed in this parliamentary process. It requires further public participation.
			● The implementation report contained in the remuneration report shall be subject to approval. ● To amend remuneration report and call it the implementation report. ● All shareholders who opted to vote against the resolution must provide the committee with their reasons for doing so, within a period of two months after the annual general meeting. ● To add after AGM-in the year immediately following the year contemplated in subsection 4, the implementation report. ● To replace those who serve with 'subject to rotation requirements as per the Act or MOP and the Chair of the Committee must immediately resign from the Committee. ● Will not be eligible to serve on the Committee for a period of one year there after. ● Clarity will be required on terms like 'material'.	The remuneration report includes the implementation report. The shareholder feedback is a new policy issue being proposed, it will require a new consultation process. The Remuneration Report includes the Implementation Report. Compelled shareholders' feedback is neither practical nor effective. The rotation requirements or MOP are new issues that require research and public consultation. They have not been considered. The Act defines material in section 1.
SAICA			● The concept of a remuneration committee is not defined in the Act. The Bill furthermore does not introduce a definition or description of a remuneration committee as in the case with the Social and Ethics Committee. Although the remuneration committee is a familiar concept in the context of King IV and the listed company environment, the Companies Act does not mandate	The remuneration committee is commonly known in corporate law. Also in the Kings IV report. The Bill

Stakeholder	Clause Section		Comment	Dtic response
			companies to institute a remuneration committee, nor are the functions and constitution of such a committee described in the Act or the Bill. In the case of companies that do not have a remuneration committee or are not required to have such a committee, the position is unclear.	defines a committee responsible for remuneration matters.
			● Furthermore, the Bill introduced the concept of "non-executive directors" which is not defined in the Companies Act. The use of the term "non-executive directors" would need to be defined or aligned with the rest of the act for the sake of consistent terminology. The Companies Act uses the term 'director".	Non-executive directors are commonly used in corporate law. The Act refers to directors who are not involved in the day-to-day management of the business of the company. There is no need to define non-executive directors in the Companies Act.
			● Submission: It is submitted that reference to the lowest paid employee would require additional guidance, employers are not all aware of the Constitutional Court case and this would create various interpretations. ● The impact of a director stepping down needs to be considered and further discussed and the use of "non-executive director" needs to be defined. ● Reference to the background statement and implementation report should be deleted and reference should only be made to the remuneration policy and the remuneration report to remove ambiguity and keep the requirements clear. ● Disclosure of the so called "pay gap" should be referred to and required in the main Act "as prescribed by the Minister" and the detail should be fleshed out in Regulations once more consideration has been afforded to calculation models, interpretation of the word "employee" and the format of disclosure. Consideration can also be given to other jurisdictions such as the UK for example where numerous issues are addressed in the 2018 Companies Regulations, such as the format of disclosure, the treatment of contractors and the calculation models.	Comments are noted. The amendments are very significant and they change the nature of disclosure requirements as far as remuneration is concerned in South Africa. It is important that they be legislated and be in the law given the current challenges in society of inequality and excessive pay to top executives.
BASA and JSE joint submission			● The present practice and requirement for listed/public companies under King IV and terms of the JSE Listings Requirements is for the Implementation Report (not the Remuneration Report) to be tabled for a non-binding advisory vote by shareholders at the AGM. ● Given the content prescribed for the Implementation Report in subsection 30B(3)(c), 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, being matters which are important from a labour perspective. By voting on the Implementation Report, labour's proposal will be carried and the relevant objective/s of the legislator met.	The submission states that it is supportive of the contents of these sections and merely suggest editorial amendments for the sake of clarity. The Department accordingly does not support amendments to the Bill. The Bill does not have to be amended.

Stakeholder	Clause Section		Comment	Dtic response
			● Therefore, BASA and the JSE proposes that the Remuneration Report be presented to shareholders and that shareholders are required to approve the Implementation Report only and not the entire Remuneration Report which, as defined, includes the Remuneration Policy which is already subject to the approval requirements in section 30A. ● BASA and the JSE recommend that Section 30B(2) be amended to read as follows: ● "30B(2) Each year all public companies and state-owned companies must prepare, in respect of the previous financial year, – a remuneration report for presentation to the shareholders at the annual general meeting; and (b) for approval by ordinary resolution by shareholders at the annual general meeting, an implementation report, as contemplated in subsection (3)(c)." ● 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. ● 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.	We note that the proposed changes aim to bring certainty. The remuneration report can be approved. The policy on the report does not have to be adopted.
	30B(4)		● The inclusion of section 30B(4)(b) creates ambiguity in respect of the application of the two-strike approach, specifically when read with section 30(B)(5). In addition, section 30B(4)(b) appears to have the unintended consequence of providing shareholders with the right to re-elect members of the remuneration committee which is not current practice, nor required by the Companies Act and which does not align with our understanding of the intent of the legislator. ● BASA and the JSE therefore propose that section 30B(4)(b) be deleted in order to remove the ambiguity and give effect to the two strike- principle as intended by the new draft section 30B. Reference to the election of committee members should be deleted, given that this is indicative of a requirement of a shareholder vote to approve the initial appointment of members to the committee: Committee appointments fall within the responsibilities of the Board. ● BASA and the JSE recommend that Section 30B(4)(b) be deleted and that Section 30B(4)(a) be amended to read as follows: "30B(4)(a) If, at the annual general meeting (the "**first meeting**"), the implementation report is not approved by ordinary resolution as contemplated in subsection (2), the committee must, at	This is a policy decision to engage with shareholders. Globally there is a move towards the rights of shareholders and their involvement in remuneration decision making. The status quo in the country of historical disparities has to be addressed. A wide range of sources point to the unusually wide inequalities in remuneration in the formal sector in South Africa compared with the rest of the world. Analysis of Statistics South Africa data in the annual Labour Market Dynamics survey shows that inequality in pay contributes as

Stakeholder	Clause Section		Comment	Dtic response
			the next annual general meeting (the **"second meeting**"), present an explanation on the manner in which the shareholders' concerns have been taken into account." ● They 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. ● 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.	much to overall income inequality as joblessness. According to PwC's regular survey of executive remuneration, the median pre-tax package for a CEO of a listed company was R5,2 million in 2020, and after-tax it was R2,8 million. That was 100 times the national minimum wage. The PwC found that the median pre-tax package for CEOs was 35 times the median pay for unskilled workers in big business. Recent years have seen significant shareholder dissatisfaction over pay and multiple instances where large numbers of shareholders have voted against remuneration reports. In the last year, the remuneration policies of several large listed companies have not received 75% shareholder support. Under current practices, except for boards committing to discuss the matter with disgruntled shareholders, shareholders do not have sufficient mechanisms to address their grievances.
	30B(5)		● Section 4 references two annual general meetings, as such the reference to "in the year immediately following the year contemplated in subsection 4" may cause confusion as to which annual general meeting is being referred to. ● In addition, BASA and the JSE are concerned that the inclusion of the phrase "provided they successfully stand for re-election at that annual general meeting" may be read to mean that the members of the committee must, in addition to stepping down as members of the committee,	The stepping down is addressed through the second AGM as a consequence, should the report not be approved.

Stakeholder	Clause Section		Comment	Dtic response
			also stand for re-election as directors of the board at the annual general meeting. Therefore, they propose that this wording be deleted. ● BASA and the JSE recommend that Section 30B(5) be amended to read as follows: ● "30B(5) Subject to subsection (6), if at the second meeting, the implementation report in respect of the previous financial year is also not approved by ordinary resolution of shareholders the directors who are not involved in the day-to-day management of the business of the company and who serve on the committee may continue to serve as directors (subject to applicable requirements) but must stand down as members of the committee at such second meeting; and ● (b) will not be eligible to serve on the committee for a period of two years thereafter."	
	30B(6)		Drafting proposal to align with changes proposed to section 30B(4). ● BASA and the JSE recommend that Section 30B(6) be amended to read as follows to align with Section 30B(4): ● "30B(6) The provisions of subsections **(4)(b),** (5)(a) and (b) do not apply to members of the committee who have served for a period of less than 12 months in the year under review"	The deletion is not recommended. The provision is not conceptually flawed. After implementation, this can be re-considered.
	Short title and commencement		● It is important for listed companies to have certainty in respect of when to comply with the requirements of section 30A and section 30B and for them to have sufficient time to comply and prepare adequately prior to their respective AGMs. For logistical purposes and cost efficiencies, the notice for AGMs is ordinarily mailed to shareholders, together with the Annual Integrated Report, approximately 2 - 4 months before the scheduled AGM. Thus, preparation and governance approval of AGM notices takes place a few months prior to the actual scheduled AGM. ● 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. 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. ● BASA and the JSE recommend that the Short title and commencement be amended to read as follows: ● "This Act is called the Companies Amendment Act, 2023, and comes into operation on dates to be fixed by the President by proclamation in the Gazette, save that the provisions of section 30A and 30B will come into operation in respect of a financial year of a company commencing after 1 January 2025."	The moment the Act becomes operational, the obligations in section 30B will also become operational. In terms of section 13 of the Interpretation Act of 1957, the President can determine different implementation dates for different sections. Given that section 30B does not provide regulations to be determined by Minister, the Department will make a request to the Presidency in this regard.

Stakeholder	Clause Section		Comment	Dtic response
Allan Gray			● They believe that section 30A should differentiate its requirements for listed companies, i.e. while the proposed amendments may be suitable for other companies which do not have existing requirements like the LR, they are not suitable for JSE-listed companies. ● For JSE-listed companies, they recommend that the current process contained in the LR 3.84 (k), which requires an annual non-binding advisory vote by shareholders and a process for shareholder engagement where more than 25% opposition is received, be expressly incorporated into the Act. ● Proposed Amendment: ● S30B On failure of two successive implementation report ordinary resolutions, non-executive directors who serve on the committee responsible may continue to serve as directors but are ineligible to serve on the remco for a period of two years.	The remuneration disclosure requirements are now legislated because of income disparities in earnings between the top executives and the lowest paid employees. The existing measures that are voluntary have not impacted the changes.
			● Damaging the value proposition ● The prospect of being barred from serving on a company's remco for two years will have a significant effect on the value proposition to serve as a remco member. Remco members will be subject to stricter requirements than both their local and global counterparts. Locally, as no other board committee has direct repercussions between failed shareholder resolutions and their role as committee members, and globally, as we believe this amendment is more stringent than what applies in other jurisdictions. ● The potential reputational damage could be a significant deterrent to participate on remcos as being declared ineligible to serve one remco will affect individuals' ability to secure other directorships. ● Quality of South African boards and executive remuneration schemes ● Directors that serve on the remco are often remuneration specialists. Following two failed implementation reports, it is unlikely that all these remco members will continue to serve as directors of that board given that their remuneration-focused skillsets will be underutilised for a period of two years. They have witnessed a shortage in supply of the individuals who possess the required skillset to serve as non-executive directors. This is due to a multitude of factors, including challenges around education and the retention of a highly skilled individuals in a competitive global skills market. They believe that a high turnover of directors, which the proposed amendment is likely to result in, will reduce the quality of individuals that serve as directors. Remco members with a lack of experience and expertise will likely struggle to push back against both management and consultants on executive remuneration concerns. We are already seeing most large JSE-listed companies making use of remuneration consultants whose opinion they rely heavily on.	The consequences on the remuneration report is not unique to South Africa. There are jurisdictions that have similar provisions to address remuneration disparities. These changes may force companies to take cognizant of these issues and they may cause transformation in income levels in society.

Stakeholder	Clause Section		Comment	Dtic response
			● Accountability should lie with the chairperson of the remco as they are ultimately responsible for the decisions taken by the committee and is also the party engaging with dissenting shareholders. ● The following recommendation introduces accountability for the relevant parties while not deterring participation on remcos and, more concerning, on boards in general.	This consideration would be a new amendment to the Bill. The issues in the Bill were subjected to public participation. This proposal requires a process to be considered.
AEON, ABSIP, Just Share			● Aeon Investment Management advocates for the inclusion of a provision mandating companies to disclose their five-year historical pay ratios and gender pay gaps. This recommendation aims to offer insight into the performance of companies in this area, providing stakeholders with a comprehensive understanding of remuneration trends within the organisation. It serves to inform stakeholders about prevailing remuneration dynamics and highlights the strides made by companies in promoting gender pay equality and overall employment equity.	The disclosure amendments are new. This may also be onerous on companies. Further research and consultation is required to address it.
			● Aeon Investment Management commends the inclusion of section 30A(3)(e) in the Bill, which mandates the disclosure of the remuneration of the employee with the lowest total remuneration in the company. The Bill adopts the definition of an employee from Section 213 of the Labour Relations Act that is: “any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and "employed" and "employment" have meanings corresponding to that of " employee". However, the current definition poses a challenge as it excludes sub-contracted workers. They propose the inclusion of sub-contracted workers in the disclosure of the lowest total remuneration in the company.	The issue of contracted workers is one of the issues that have been earmarked for the next amendments process. It is important and must be taken through the public participation process.
			● To address this concern, the inclusion of subcontractors or outsourcing solutions is recommended. Another issue arising from the exclusion of subcontractors is the distortion of ratios, complicating comparisons. To ensure data comparability, it is crucial to encompass subcontracted employees, accurately capturing data for accountability and employment equity perspectives. The omission of subcontracted workers may lead to a misrepresentation of the actual composition of the workforce, potentially affecting stakeholders’ perception of the company's workforce.	This proposed amendment requires further consideration and consultations as indicated above.
			● Gender pay gap disclosure is essential for the fair treatment of our mothers, sisters, and daughters. South Africa can with mandatory disclosure be regarded as a global best practice leader in gender Pay gap disclosure.	In respect of the gender pay gap disclosure, the Department supports the need for the legislation to address this matter, but is concerned at the delays that will be caused should this need to be advertised for public comment. The Minister has the power in Regulation

Stakeholder	Clause Section		Comment	Dtic response
				43 to direct that SEC's also monitor gender pay gaps and include such details in their report to the Annual General Meetings of shareholders. This could be an immediate step to address public representations, pending a future Bill that can embed the provision in legislation
CGCSA			● The proposed insertion of section 30A and 30B are entirely misplaced and inappropriate for the following reasons: a. remuneration policy, by nature, as an instrument of governing affairs of a company, is a prerogative of the board of directors of a company for practical reasons that the directors are empowered to run the day-to-day affairs of a company as contemplated in section 66 of the Principal Act; b. a remuneration policy deals with the terms and conditions of employment of the executive directors and employees of a company, and does not apply to non-executive directors whose remuneration must be approved by shareholders in terms of 66 (8) and (9) of the Principal Act; c. the proposed amendments assume that shareholders act as a collective with the same views on the same issues whereas the views of shareholders may vary, and as has been observed in practice, shareholders generally do not feel a need to register the reasons for the way in which they vote on proposed resolutions of a company especially on a matter such as a remuneration; and d. the practical implications of the proposed amendments will mean an increase in the costs of compliance for companies, taking away time and meaningful resources that should be dedicated to growing companies in the current challenging climate of doing business in South Africa. Remuneration of Executives is a Prerogative of the Board and Shareholders of public companies have a mechanism to hold the Board to account: ● Section 66(1) of the Principal Act stipulates that 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 the Act or the company's Memorandum of Incorporation ("MOI") provides otherwise. ● South Africa's company law is well developed, and it has become accepted that shareholders have a prerogative to regulate the affairs of a company through the MOI and individual companies who may wish to do so, can regulate executive remuneration in terms of the MOI	The policy consideration of the role of shareholders are their rights is outlined above. Other countries globally are moving towards shareholders interest when it comes to remuneration disclosures. The current existing measures are not sufficient and there should be the legislative change. Section 30A and 30B are not aimed at interfering with Board functions. These sections pertains to disclosures of remunerations requirements and the consequences only. The Board retains its functions and autonomy. There is a need for the changes in sections 30A and 30B and therefore they should be retained.

Stakeholder	Clause Section		Comment	Dtic response
			of the company. To regulate remuneration through legislation creates an unnecessary legal compliance burden for companies who do not wish to do so. ● It is the CGCSA's submission that in order for a board of a company to have meaningful authority to exercise all the powers and perform any of the functions of the company, the board must have unfettered discretion to employ the executives of the company and determine their terms of remuneration, which includes the determination of policies which will regulate the terms and conditions of employment of the executives. ● The implications of the proposed section 30A and 30B is that the board will have significant restrictions to determine the terms of employment for the executives of a company, and even if shareholders do approve the remuneration policy, the inability of a board to change a simple instrument such as a remuneration policy without shareholder approval means that companies will not have an ability to attract the right talent by adapting to prevailing market practices. This threat uniquely affects South African public companies who have to compete with some private companies with deep pockets and international companies for talent, thereby disadvantaging the public companies. ● It is important to note that executive remuneration for public companies receives a great deal of attention in the JSE's Listings Requirements and the King IV Report on Corporate Governance for South Africa, 2016 ("King IV Report") ● Therefore, giving shareholders a binding vote for the adoption of a remuneration policy and the remuneration implementation report will undermine the powers of the board in setting the direction of the company in attracting talented human capital to the company. The executive directors and prescribed officers have performance agreements with the company and their remuneration is linked to their input to the performance of the company. ● The current wording of the proposed section 30A and 30B make a wrong assumption that the remuneration policy and the remuneration implementation report are issued unilaterally by the remuneration committee and as such, consequences for non-approval by the shareholders ought to be felt by the members of the committee. ● It is an established practice in corporate governance that board committees are delegated by the board and make recommendations to the board which takes the final decision on all matters that have been delegated to the committees of the board. Therefore, it is incorrect for the proposed amendments to target members of the remuneration committee and ignore the fact that the remuneration policy and the remuneration implementation report are only implemented	

Stakeholder	Clause Section		Comment	Dtic response
			once approved by the board. Shareholders should therefore hold the entire board accountable, and not single out the remuneration committee members. ● It is therefore their submission on the matter of the remuneration policy and the remuneration implementation report for public companies that the current practice as regulated in terms of the JSE Listings Requirements be maintained and that South Africa must not introduce cumbersome legislation which will increase the cost of doing business and the burden of compliance thereby making South Africa an unattractive investment destination.	
Outsurance			● Insertion of section 30B (3) in Act 71 of 2008 ● They suggest that the reporting of the remuneration of the highest paid employee against other metrics may be more appropriate, such as the total employees of the company, the total tax paid to the South African Revenue Service, or the total remuneration paid to all employees of the company. In the alternative, disclosures should be done on a categorical level that takes into account level of qualification, experience and skill, rather than a broad entity wide measure as is proposed. ● They would recommend that disclosures be required on an after-tax basis. The inclusion of these comparisons might have unintended consequences such as that companies may start outsourcing lower paid positions, and therefore circumventing the inclusion of the lowest paid data in the report. Clarity is also needed on whether one has to report on group level or individually for subsidiaries.	The issues of the metrix and after tax basis will require further consultation and research. They are not recommended.
			● Insertion of section 30B (4) in Act 71 of 2008 ● They note that the remuneration report which contains the implementation report is still to be presented and approved by ordinary resolution. In light of this, they are of the view that the vote should not be a binding vote but rather an advisory vote in respect of the acceptance / approval of the implementation report.	Introducing a requirement for approval by ordinary resolution on a remuneration implementation report will entail a vote with consequences, should shareholders be dissatisfied. This is in line with practices seen in Australia where directors have to resign after successive votes against the remuneration report and in the United Kingdom where successive votes that fail mean the composition of the remuneration committee changes.
			● Insertion of section 30A (9) in Act 71 of 2008 ● Clarity is sought on what the consequences would be if the remuneration report is voted down in so far as it relates to remuneration already implemented / paid to employees? For example, the Remco meets in June and agrees on the remuneration payable to directors, senior	The Department is of the view the companies will make the necessary arrangements and systems on this matter at an operational basis. The

Stakeholder	Clause Section		Comment	Dtic response
			management and general employees (which include bonuses, share options etc.) and thereafter the remuneration report is presented at the AGM for argument's sake in November for approval and it is voted down. What is the impact thereof on already paid remuneration from July of that year? If the voting on the remuneration report which contains the implementation report is a binding vote, will this require employees to pay back any payment received until an acceptable implementation report is accepted. Surely the amendment has some unintended consequences that should be considered. Hence the suggestion that the implementation report approval should not be in the form of a binding vote but rather an advisory vote which the Remco can consider and engage shareholders on.	Bill provides the overall principle on how the approvals of these reports must be addressed.
			● Further, in respect of Section 30B (4)(b), when does the standing down of the Remco members become effective, is it immediately at the AGM, or only effective the next year? General practice is for directors to stand down for re-election prior to the AGM and then be re-elected at the AGM. Please could the timing be clarified.	It would be in the next AGM in terms of section 30B(5)(a) when the report is not approved.
CLAUSE 7,Section 33				
Centre for the Environmental Rights			● The wording ("after the end of the anniversary of the date of its incorporation") is unclear. ● Suggested wording: ● ''(1) Every company must file an annual return with the Commission in the prescribed [form with the prescribed fee, and within the prescribed period] manner [after the end of the anniversary of the date of its incorporation] within 30 (thirty) business days after the end of the anniversary of the date of its incorporation, including in that return— ● The previous provision said "within the prescribed period", which is aligned to this and is sufficient time for companies to comply.	The proposed wording is not part of the amendments to the Bill. This was not raised as a concern before, so we take it that the legislation is generally clear. Companies have dates of incorporation. And the concept of an anniversary of date is commonly used, which would mean after the year.
SAICA			● It is submitted that the reference to the PI Score be clarified. Clarification is also needed on which companies are required to submit their annual return together with their AFS, as well as whether all companies must submit their securities register and the register of beneficial interest holders.	The newly proposed s33 as amended applies to every company and companies that meet the threshold must include a copy of its latest annual financial statements approved by the board. These companies include:- (a) a public company, (b) a state-owned company; or

Stakeholder	Clause Section		Comment	Dtic response
				any other profit or non-profit company whose public interest score exceeds the limits set out in s30(2) or the regulations as contemplated in s30(7)
Outsurance			● Amendment of section 33 of Act 71 of 2008, as amended by section 23 of Act 3 of 2011 ● Clarity is sought on what the purpose is of having to share information relating to securities, when a company is not listed on the JSE. In addition, it is not clear as to why private company ownership should be disclosed. Should an entity receive more than 15% of its revenue from the State, it is our proposal that such a company should disclose information as a measure to reduce corruption in SA. ● Clarity is sought on what the purpose is of having to share information relating to securities, when a company is not listed on the JSE, or is a private company.	The department would like to clarify that there is no amendment that addresses disclosure of securities in section 33 in the Bill. The amendment is in the General Laws Amendment Act (GLAA) by National Treasury. This provision was in the version of the Bill before it was introduced to Parliament.
			CLAUSE 8, SECTION 38A	
No comments were made by the public.				
CLAUSE 9, SECTION 40				
No comments were made by the public.				
CLAUSE 10, SECTION 45				
Law Society of South Africa			● The LSSA believes that the proposed amendment in clause (b) does not go far enough. It should cover financial assistance to any group companies. ● Proposed amendment (2A) The provisions of this section shall not apply to the giving by a company of financial assistance to, or for the benefit of [its subsidiaries]: (a) any company in a group of companies of which it is the holding company; (b) its ultimate holding company or any intermediate holding company, subject to the common law that the board is satisfied that there is a reasonable benefit to the company in giving such financial assistance; (c) any company forming part of the same group of companies as it is a member of.	The purpose of section 45 is to protect minority shareholders in a company. When a company gives financial assistance to its own subsidiary there is not a conflict involving its minority shareholders and accordingly the prohibition in section 45 against giving financial assistance to a company's own subsidiary is not required. It will be removed and will thus ease the

Stakeholder	Clause Section		Comment	Dtic response
				doing of business. Any other amendment to section 45 will undermine its very purpose as set out above. The amendments to section 45 are with regards to reducing regulatory burden of the compliance requirements. It does not address the access to finance to any group companies. This would constitute a new amendment that requires a process. The provision in the current Act is burdensome in that it forces the holding company to obtain a special resolution when funding a subsidiary company. This removes the burden by taking away the special resolution requirement. The problem with "inter group loans" may need further research.
CGCSA			● The current proposed amendment of the insertion of subsection (2A) removes the requirement of complying with section 45 in the giving of financial assistance to a subsidiary of a company. This is a move in the right direction, however in practice it will have little impact on improving the functioning of a group of companies as defined in the Principal Act. ● Most of the members are part of a group of companies. The holding company which controls the group is an entity that is usually not an operating entity generating revenue but derives value from the equity it holds in the subsidiary companies. As a result, most holding companies do not reside with a lot of liquid financial resources as they have limited use for such, however on the other hand the operating companies in the group often generate a lot of liquid financial resources which are able to be used to provide assistance to other companies in the group. As such, it is our submission that the proposed section 45(2A) reads as follows:	The comment is addressed above.

Stakeholder	Clause Section		Comment	Dtic response
			● "The provision of this section does not apply to the giving of financial assistance by a company to or for the benefit of another company within the same group of companies as defined in the Act."	
SASOL			● Section should be expanded as follows to ensure clarity with respect to foreign subsidiaries pursuant to the recent Steinhoff judgement in the Cape High Court: "…shall not apply to the giving by a company, **or another company within the same group of companies**, of financial assistance to, or for the benefit of its subsidiaries **as defined in section 1 of the Act, or a person that would have been a subsidiary as defined in section 1 of the Act but for the fact that it is incorporated outside of the Republic of South Africa**, **or a subsidiaries (as defined in this section) within the same group of companies.** ● The definition of distribution, read with section 46, is being interpreted and applied in different ways and gives rise to an additional compliance burden within a group of companies. A distribution is the transfer of money or property for the benefit of its shareholders - by the additional wording "or of another company within the same group of companies" the pure intention of a distribution is expanded unnecessarily and if this section is interpreted in this manner the burden which the amendment of section 45 seeks to alleviate continues to exist in relation to guarantees. It is therefore further recommended that the definition of distribution be amended as follows: ● **"distribution"** means a direct or indirect-… ● (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company **or of another company within the same group of companies**; or ● (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company **or of another company within the same group of companies**,	It is correct that they don't apply to 'foreign subsidiaries' since they do not form part of the definition of a subsidiary not being part of a company. The submissions then state that this was an erroneous omission as the same policy considerations would apply equally to South African subsidiaries and 'foreign subsidiaries'. This is however, not correct. A foreign subsidiary is governed by the laws of the place in which it is incorporated. Those laws may be very different from the laws in South Africa that regulate the relationship between a company and its subsidiaries. The proposed amendment to s45 exempting financial assistance to South African subsidiaries is done in recognition of the South African legal principle that governs the relationship between a holding company and its subsidiary. There is, among other things, an established basis for the criteria that regulate what constitutes control of the subsidiary, the consequences of enjoying control, the relationship between shareholders and creditors

Stakeholder	Clause Section		Comment	Dtic response
				in the company. As regards 'foreign subsidiaries' the laws governing their relationship with their holding company may be entirely different. There may be disqualification of foreign control, there may be difficult relationships and ranking between equity and debt and certain forms of debt.
Webber Wentzel			● While the proposed amendments to the provisions on financial assistance in section 45 of the Act are welcome, on the present definition of "subsidiary" in the Act, foreign entities which are subsidiaries will be excluded from the proposed amendments. They submit that the reference to "subsidiary" should be clarified to include foreign subsidiaries, so that it is clear that the provisions of section 45 do not apply to the giving of financial assistance to a company's foreign subsidiary. ● Webber Webber Wentzel Submission of Companies on the Companies Amendment B-Bills and additional comments for consideration ● The same amendments as in the proposed new section 45(2A) should be made to section 44, to exclude financial assistance to subsidiaries (local and foreign) to subscribe for or acquire securities or options in other subsidiaries.	The comment is addressed above.
SAICA			● Submit that to make a more meaningful difference to the unnecessary compliance burden created by section 45 they propose an expansion to the exclusion from the ambit of section 45 to cover most of the circumstances where financial assistance is granted to related or inter-related companies and where the protection in section 45 is not required. As such, they propose that it be considered to expand the exclusion to cover financial assistance granted between companies who form part of the same "group of companies".	The comments are addressed above.
CLAUSE 11, SECTION 48				
LSSA	Clause 11		● The LSSA restates the view that if a *pro rata* offer is made pursuant to subsection (8)(b)(i), there should be no need to get a shareholders' resolution for the directors since they are participating on a pro rata basis.	•Where the acquisition of shares from directors is occurring pursuant to a pro-rata offer the exemption in the proposed amendment will apply.

Stakeholder	Clause Section		Comment	Dtic response
			● Provision should therefore be made for the acquisition of shares from a wholly owned subsidiary. ● *The proposed subsection (8) should not apply if shares are being acquired but no consideration is made by the company and in addition, no mandatory offer as contemplated under section 123 is triggered by the acquisition of shares as contemplated in subsection (8)(b)(i).* ● They repeat the recommendation that a new subsection should be added as follows: *Unless an acquisition by the company of its securities is being done pursuant to section 114, none of the provisions of section 114 apply.*	Where, however, the directors are disposing of shares other than pursuant to a pro rata offer the exemption proposed will not apply. •It is unnecessary to provide for the acquisition of shares by a company from its wholly owned subsidiaries. •Where shares are acquired for no consideration there is no need to amend section 123 and in such circumstances the Take-Over Regulation Panel will make a determination as to the action required. With regards to section 114, the recommendation of the Department, is that the section 114 requirements do not apply to the share buybacks in section 48. This is clarified in the memorandum of objects. The effect of the changes proposed in the Bill is that there will no longer be a reference to the provisions of section 114. The proposal relating to section 114 is not relevant since in terms of the proposed amendments to section 48 there will no longer be a requirement to comply with the provisions of section 114.

Stakeholder	Clause Section		Comment	Dtic response
CLAUSE 12, SECTION 61				
No submissions were made by the public.				
CLAUSE 13, SECTION 72				
Webber Wentzel			● Proposed section 72(8A)(a)(ii) states that the board must appoint the first members of the social and ethics committee within 12 months after "the determination by the Tribunal of the company's application, if any, and the Tribunal has not granted the company an exemption". It is not clear from the wording what the application referred to in this proposed subparagraph relates to but presumably it is an application in terms of subsection (5) for the exemption from the requirement to appoint a social and ethics committee. This needs to be clarified in the Bill. ● This provision provides for the insertion of proposed subsections (10A) and (10B). Since subsection (10) is the last subsection in section 72 these are technically additions and not insertions and the proposed subsections should be renumbered (11) and (12) instead of (10A) and (10B). ● As regards the proposed revised section 72(7A)(a), it is not clear whether the members of the SEC of a public company and state-owned company, must all be directors, the majority of whom must not be involved in the day-to-day management (ie must be non-executive directors), or whether the members of the SEC can include prescribed officers but that the majority of the members must be directors who are not involved in the day-to-day management (ie must be non-executive directors). The drafting should be revised to clarify.	The exemptions from the establishment of the Social and ethics committee are in the Act and been in practice since 2011. Section 8A provides for the establishment of the Social and ethics committee, part of the considerations include the application for exemption from establishing a SEC. If the company is not exempted, it would be required to establish the SEC, with the required PI score. The numbering suggestion is not recommended. The amendments indicate new insertions which are additions, the change would be editorial and not essential. The comment about members not involved on a day to day was addressed in the Portfolio Committee process. It has been addressed.
Computershare			● Social and Ethics Committees of public companies are now to be elected by shareholders at AGMs (similar to the Audit Committee) and not by the Board. ● It should comprise 3 non-executive directors, and for a private company it should comprise of 3 directors or prescribed officers, at least one of which should be a non-executive director. ● The Social and Ethics Committee is furthermore also required to report to the shareholders at the Company's AGMs.	In terms of section 72, the Minister may prescribe regulations to provide guidance on the remuneration report and the minimum skills, qualifications and experience requirements of SEC members. Exercising this administrative

Stakeholder	Clause Section		Comment	Dtic response
			● Guidance and further clarity would be appreciated with regard to the reporting format and the minimum disclosure requirements that entities would need to comply with. ● With regard to the Social and Ethics Committee's composition – prescribed officers (in other words non-directors) are nowhere else required to be appointed by means of a shareholder resolution. The Regulations would likely also then need to be amended accordingly. ● From an accountability perspective, normally directors' fiduciary duties are not necessarily applicable to prescribed officers - would this mean that same would be formalised and regulated too going forward? ● Will the Minister provide further clarity/guidance regarding the specific skills set / requirements (if any) that prescribed officers would need to meet in order for them to be appointed as a member of the Social and Ethics Committees? ● Under the requirements for the Social and Ethics Committee, they note the requirements in section 13(c) relating to the members and reference to at least one of the members being a director who is involved in the day-to-day management of the business (refer highlighted section below). Is this an error and should it refer to someone who is not involved in the day-to-day management of the business?	mandate, does not render his powers unconstitutional. The regulations may be necessary to create legal certainty and clarity. The Companies Act defines prescribed officers in section 1 of the Act read together with section 66(10) of the Act. Throughout the Act the prescribed officers are read together in provisions with directors which speaks to their powers and roles in companies. Prescribed officers have general executive powers in the company. They can be members of the Social and Ethics Committee if elected as such at the AGM.
NRCFSA			● The NCRFSA is concerned about the proposed amendments to sections 61 and 72 that: ● afford the Minister a discretion to prescribe the minimum qualifications, skills and experience requirements for members of the S&E Committee; ● require public companies to appoint the S&E Committee, annually, at the AGM; and require that the S&E Committee's report be presented at the AGM. ● It is respectfully submitted that insufficient guidance is provided by the proposed amendments regarding the Minister's exercise of discretion, which therefore appears to be unconstitutional. The power conferred on the Minister is impermissibly broad, given that the factors relevant to the exercise of the discretion are not indisputably clear. ● As is the case in relation to a company's Remco, a company's board is also best placed to select its S&E Committee members and to decide on the best skill set, qualifications and experience required, which will vary from industry to industry.	On the concern about unfettered powers given to Minister, the Minister has the power to issue regulations when pursuing legitimate government purpose. A comment was made in relation to a company's Remco, in that a company's board is also best placed to select its S&E Committee members and to decide on the best skill set, qualifications and experience required, which will vary

Stakeholder	Clause Section		Comment	Dtic response
				from industry to industry. The response is that the Bill takes cognisant of that in section 72(9A)(b).
			● Requiring an election of board members at the AGM could have a disruptive impact on the proper functioning and responsibilities of the S&E Committee in a given financial year, if the members are not elected at the AGM. Again, this will cause uncertainty, which is not sustainable nor advisable given the long-term objectives of the Committee. ● There is no guidance regarding content or framework for the S&E Committee report. It will therefore be extremely challenging for a company to predict in advance whether shareholders would support the report.	The SEC reports are very important and they address many issues in the public interest. Shareholders have rights and play more active roles on these matters. Guidance can be provided on these reports.
SAICA			● It is submitted that the specific wording in the Bill must be amended as follows: ● (8) The social and ethics committee of a company must comprise [not less than three directors and may in addition include prescribed officers, provided that]: ● in the case of a public company and state-owned company of not less than three directors and may in addition include prescribed officers, provided that most of the directors are not involved in the day-to-day management of the business of the company, and must not have been so involved at any time during the previous three financial years; and ● (b) in the case of any other company, not being a public company or state-owned company, [must consist] not less than three directors or prescribed officers provided that at least one of the directors must not be involved in the day to day management of the business of the company and must not have been so involved within the previous three financial years.	This matter has been addressed in the Bill. It regards a director not involved in the day to day business of the company.
	72(13)(b)		● t is submitted that the Bill must be amended to clarify what non-compliance must be disclosed and to provide guidance on what would be deemed as material non-compliance.	The issue raised in not in the Bill. It was addressed before introduction to Parliament, It was removed.
	72(13)(e)(ii)		● It is submitted that the section be amended to remove the requirement for companies to publish a statement on the Stock Exchange News Service.	The issue raised in not in the Bill. It was addressed before introduction to Parliament. It was removed.
AEON, ABSIP, Just Share			● However, they have identified certain shortcomings within the proposed framework: ● Standardisation of Social and Ethics Reports:	The report guidance issue is addressed above. The report

Stakeholder	Clause Section		Comment	Dtic response
			● While the Bill mandates the Social and Ethics Committee to prepare a report for shareholders, there is an absence of guidance on the prescribed manner and content of this report. The current lack of standardised reporting renders the report less effective, as comparability is a crucial factor in informed decision-making for shareholders. Aeon Investment Management recommends that the Act provide clear guidance on how these reports should be compiled to ensure consistency and comparability. ● Definition of Prescribed Officer: ● The Bill suggests that the committee must consist of not less than three directors or prescribed officers without providing a clear definition of the latter. Aeon Investment Management proposes the inclusion of a precise definition for 'prescribed officer' to offer clarity and coherence throughout the Act. Our suggested definition is as follows: ● "Prescribed Officer “means a person who exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or regularly participates to a 'material' degree in the exercise of general executive control over and management of the whole, or a significant portion of the business and activities of the company and is part of the top ten highest remunerated employee of the company." ● This definition should be consistently applied throughout the Act, extending beyond the sections related to the Social and Ethics Committee. ● By addressing these concerns, the Companies Amendment Bill can enhance the effectiveness and clarity of the Social and Ethics Committee provisions, ensuring that they align with best practices and facilitate informed decision-making by shareholders."	requirements may be provided in the Regulations. The Companies Act defines/ describes a prescribed officer in terms of section 66(10) of the Act. Although Minister may make Regulations on the functions of a prescribed officer, throughout the Act the prescribed officers are read together in provisions with directors which speaks to their powers and roles in companies. Prescribed officers have general executive powers in the company. They can be members of the Social and Ethics Committee if elected as such at the AGM.
Outsurance			● They take note that clarity has been provided in relation to the replacement of Social and Ethics Committee members when a vacancy on the Committee arises.	Comment is noted.
CLAUSE 14, SECTION 90				
No comments were made by the public.				
			CLAUSE 15, SECTION 95	
No comments were made by the public.				
CLAUSE 16, SECTION 118				
Cliffe Dekker Hofmeyer			● Clause 16 (Amendment of section 118 of the Companies Act) ● It is submitted that two material aspects require clarification and refinement with regard to the proposed new definition / test for when a private company qualifies as a "regulated company" for takeover law purposes, namely –	The reference to indirect shareholding is designed to cover not only shares which are directly owned but those which are, for

Stakeholder	Clause Section		Comment	Dtic response
			● the issue of "indirect shareholding"; and ● the issue of pending (uncompleted) transactions. ● However clarity is required in clause 16 as to what exactly "indirect shareholding" means, as this is an undefined concept and can lead to regrettable confusion. Clarity in takeover law is of particular importance as the applicability (or otherwise) of takeover law to a transaction will often be a decisive factor in the structuring and launching of transactions by offerors. ● With respect, "indirect shareholding" is a potentially loose term because by definition a "shareholder" (per section 1 of the Companies Act) is the person that is registered in the securities register of a company, i.e. the registered shareholder. Clearly the registered shareholder can only have a "direct shareholding". ● Furthermore, takeover law is concerned only with securities that have general voting rights (typically ordinary shares), and not for instance with preference shares which are more akin to debt instruments. The definition of "securities" in section 117(1)(j) refers in this regard, which applies for all purposes of takeover law. ● They therefore recommend that the defined and more well-understood term "**beneficial interest**", as defined in section 1 of the Companies Act, be utilised in this context. This term refers to the legal right or ability to exercise (or cause the exercise of) voting rights, to receive distributions, or direct the disposal of the shares. We also recommend that only holders of securities (which would, by virtue of section 117(1), carry the definition in section 117(1)(j)) be counted. ● **They therefore recommend that** clause 16 should rather be worded as follows: ● "(i) it has 10 or more shareholders with a **direct or indirect shareholding** in holders of a beneficial interest in the issued securities of the company and meets or exceeds the financial threshold of annual turnover or asset value determined in terms of subsection (2): Provided that the Panel may exempt any particular transaction affecting a private company in terms of section 119(6)" ● Transitional arrangement / pending transactions: ● A further issue which may cause uncertainty is this: by the time the Bill is enacted into law, there may be a number of uncompleted transactions (which would otherwise meet the definition of an "affected transaction" in terms of section 117(1)(c)) which commenced at a time when the target / offeree company was **not** a regulated company (based on the current test), but prior to the implementation or closing of the transaction that company nevertheless becomes a regulated company based on the new definition. It is unclear if the parties may continue and finalise the pending transaction based on the "old" definition, and therefore accept that takeover	example, held by a subsidiary or trust of the securities holder. The moment the Act becomes operational, the obligations in section 118 will also become operational. In terms of section 13 of the Interpretation Act of 1957, the President can determine different implementation dates for different sections. Given that section 118 does not provide regulations to be determined by Minister, the Department may make a request to the Presidency in this regard.

Stakeholder	Clause Section		Comment	Dtic response
			law does not apply – or whether takeover laws do in fact intervene as a result of the company becoming regulated. ● A further issue which may cause uncertainty is this: by the time the Bill is enacted into law, there may be a number of uncompleted transactions (which would otherwise meet the definition of an "affected transaction" in terms of section 117(1)(c)) which commenced at a time when the target / offeree company was **not** a regulated company (based on the current test), but prior to the implementation or closing of the transaction that company nevertheless becomes a regulated company based on the new definition. It is unclear if the parties may continue and finalise the pending transaction based on the "old" definition, and therefore accept that takeover law does not apply – or whether takeover laws do in fact intervene as a result of the company becoming regulated. ● In this regard, the current regulation 91(2)(a)(iii) provides for the timing in measuring the 10% transfer rule, namely the aggregation of transfers within the 24 months prior to "*effecting an affected transaction*". As it stands this is potentially vague, and will in any event of course have to be revisited entirely in light of the new definition. ● The overall principle which emerges from the above is that transactions which have commenced prior to the Bill becoming law, or otherwise prior to a target company becoming regulated, should continue to be implemented in accordance with the legal regime in force at the time the transaction started.	
LSSA			● The meaning of indirect shareholders is not clear and should be changed to 'holders with a beneficial interest' ● The number ten offers a low threshold in our view and should be increased to twenty.	Comments are noted and addressed above.
Webber Wentzel			● In respect of the amendments to section 118(1)(c) and the use of the term "indirect: shareholding", they previously submitted comments to the National Assembly's Portfolio Committee, that it is unclear which persons will qualify as having an "indirect shareholding" in a company and how far up the chain of shareholding or beneficial ownership would be required. ● They understand that the DTIC was of the view that the proposed amendment should be retained and that the Chairperson of the Specialist Committee on Company Law advising the DTIC indicated that the term "indirect shareholding" was quite often used in legislation for "beneficial ownership", was a well-known term and did not require a definition. In its	Comments are noted and addressed above.

Stakeholder	Clause Section		Comment	Dtic response
			deliberations, the National Assembly's Portfolio Committee thereafter resolved to retain the term. ● Notwithstanding the above, they submit that given the uncertainty explained in paragraph 5.1, the provision should apply only to direct shareholdings. ● However, if it is determined that the provision's application should extend beyond direct shareholdings, the NCOP's Select Committee should give consideration to use of the term "indirect shareholding" as the term creates the potential for confusion given that it is not defined. This lack of clarity could result in numerous requests for exemptions from the TRP, which may otherwise be avoided had the term been clearly delineated. We submit that the legislature should clarify in the section what is meant by "indirect shareholding" and make clear how far up the chain of shareholding or ownership would be expected for a private company to meet the "10 shareholders with a direct or indirect shareholding" threshold.	
CLAUSE 17, SECTION 135				
LSSA			● The proposed clause 17(b) should read: *"by the substitution for subsection (3) of the following subsection:"*	The reference is correct as is in the Bill.
Webber Wentzel			● It is unclear whether rent is intended to be included by the proposed new section 135(1A) ● The proposed wording is ambiguous as it refers to "any amounts due to the landlord" but then goes on to say "in respect of…such as, the company's share of rates and taxes, electricity, water, sanitation and sewer charges paid by the landlord to third parties".	Rent amount is not included to any amounts due to the landlord. The amounts are related to municipal utilities.
			● The addition of the words "post-commencement financing" as provided by the proposed section 17(b) of the Companies Amendment B-Bill is unclear. Section 135(3), as it is presently formulated, records which payments rank ahead of the different forms of post-commencement financing contemplated in sections 135(1) and (2). By introducing the proposed new words "post-commencement financing" in section 135(3), it is unclear whether there are other unspecified forms of post-commencement funding which are now proposed to rank ahead of the post-commencement financing contemplated in sections 135(1) and (2). ● The proposed new section 135(3)(a)(ii) is problematic in that: ● it suggests that the newly defined form of post-commencement financing contemplated in sections 135(1A) will rank ahead of inter alia all secured claims against the company;	The Department clarifies that section 135 amendments are meant to make sure that companies under business rescue are not evicted from the premises in which they are renting. The place or premises that the company occupy is of primary importance to the success of the business rescue proceedings. The landlord is not a preferred creditor but protection is needed that even if the rent due to be received is not

Stakeholder	Clause Section		Comment	Dtic response
			● it does not clarify whether claims under section 135(1A) rank ahead of section 135(2) or on par; and ● the post-commencement claims contemplated in section 135(3)(a) and (b), as they are presently drafted, do not appear to rank ahead of secured claims. It is unclear why section 135(1A) claims are intended to rank ahead of secured claims whilst other forms of post-commencement financing are not. ● It is our view that section 135(1A) claims should not rank ahead of secured claims. They should only rank ahead of any shortfall that a secured creditor might have – i.e. the unsecured portion of the secured creditors' claim.	unduly preferred, such landlord must be secured in as far as mounts owing to third parties being the rates and municipal costs must not be tempered with. The landlord must still be in the position of servicing municipal costs even though he/she is not able to receive the rent owing. This is to protect the landlord from third party property costs while he /she is able to accommodate the company under business rescue. The provision clarifies that 'any amounts due to the landlord' are amounts 'not paid to the landlord during business rescue proceedings, in respect of and not exceeding the aggregate for all public utility services, such as, the company's share of rates and taxes, electricity, water, sanitation and sewer charges paid by the landlord to third parties'. The provision further states that these amounts will be regarded as post-commencement financing.
SAICA			It is submitted that the section be amended considering the following principles: That the ranking of creditor claims be clarified; and that all suppliers to a company post commencement of business rescue be treated fairly and equally without favour.	The landlord is not a preferred creditor but protection is needed that even if the rent due to be received is not unduly preferred, such landlord must be secured in as far as mounts owing to third parties being the rates and municipal costs must not be tempered with.

Stakeholder	Clause Section		Comment	Dtic response
			● They propose that the ranking of claims should be: ● The practitioner remuneration and expenses referred to in section 143 and other costs arising out of the costs of business rescue proceedings ● Employees for post commencement finance in terms of section 135(1) ● Lenders in respect of post commencement finance in terms of section 135(1) ● Suppliers and creditors in respect of the supply of goods or services post commencement of business rescue ● Employees for pre business rescue claims as contemplated in section 144(2) ● Unsecured claims	
			They therefore propose the following changes to section 135 Post-commencement finance To the extent that any remuneration, reimbursement for expenses or other amount of money relating to employment becomes due and payable by a company to an employee during the company's business rescue proceedings, but is not paid to the employee- (a) the money is regarded to be post-commencement financing; and (b) will be paid in the order of preference set out in subsection (3)(a). (2) During its business rescue proceedings, the company may obtain financing other than as contemplated is subsection (1), and any such financing- (a) may be secured to the lender by utilising any asset of the company to the extent that it is not otherwise encumbered; and (b) will be paid in the order of preference set out in subsection (3)(b). (2A) During its business rescue proceedings, the company may, incur liability for the supply of services and / or goods, and any such liability if expressly approved by the practitioner will be paid in the order of preference set out in subsection (3)(c). (3) After payment of the practitioner's remuneration and expenses referred to in section 143, and other claims arising out of the costs of the business rescue proceedings, all claims contemplated - (a) in subsection (1) will be treated equally, but will have preference over- (i) all claims contemplated in subsection (2), irrespective of whether or not they are secured; and (ii) all unsecured claims against the company; or (b) in subsection (2) will have preference in the order in which they were incurred over: (i) all claims contemplated in subsection (2A), and (ii) all unsecured claims against the company.	The policy rationale is provided above. The proposed change is not recommended.

Stakeholder	Clause Section		Comment	Dtic response
			(c) in subsection (3) will have preference in the order in which they were incurred over all unsecured claims against the company. (4) If business rescue proceedings are superseded by a liquidation order, the preference conferred in terms of this section will remain in force, except to the extent of any claims arising out of the costs of liquidation.	
CLAUSE 18, SECTION 160				
Western Cape Government			● Proposed section 160(5)(b) states: "Where the company fails to change its name within the determined period in terms of the administrative order of the Companies Tribunal, the applicant may approach the Commission, after the expiration of the determined period, to substitute the name of the respondent with its company's registration number…". ● It is submitted that there needs to be a reference here to the administrative order contemplated in proposed subsection (5)(a) which refers to the administrative order contemplated in subsection (3)(b)(ii) of the Act directing a company to perform certain actions. Failure to do so may cause confusion as administrative orders are also directed at the Commission in terms of subsection (3)(b)(i) of the Act. The proposed provision also uses the term "respondent". It is not clear to what this refers. Does this refer to a company that has received an administrative order in terms of subsection (3)(b)(ii) of the Act? It is submitted that this proposed provision needs to be reworded for the sake of clarity.	The department does not recommend any changes. The term respondent is in line with how the Tribunal addresses matters. The administrative order to dispute a name is issued by the Tribunal. The issuing of orders are Tribunal related functions. An applicant is the one who approaches the Tribunal to dispute a name against the other party who is a respondent. A successful order will apply against a "respondent" who is proved to be illegally using the name.
			● The proposed provision deletes the term "alternative dispute resolution" and inserts "mediation or conciliation". However, it must be noted that the heading of the section is "Alternative dispute resolution". It is submitted that the heading of the section be amended from "alternative dispute resolution" to "mediation and conciliation".	It is submitted that the heading of the section be amended from "alternative dispute resolution" to "mediation and conciliation". The Department's response is that the heading is sufficiently broad. Alternative dispute resolution also covers mediation and conciliation. There are no changes recommended.
CLAUSE 19, SECTION 166				
No comments were made by the public.				

Stakeholder	Clause Section		Comment	Dtic response
			CLAUSE 20, SECTION 167	
No comments were made by the public.				
			CLAUSE 21, SECTION 194	
Western Cape Government			● Proposed section 194(1A)(b) states that the chairperson may appoint a Chief Operating Officer and one or more senior managers to the Tribunal. ● It is submitted that the chairperson has been granted an unfettered discretion here and guidelines need to be provided as to the qualifications and experience of the appointees.	It is submitted that the chairperson has been granted an unfettered discretion here and guidelines need to be provided as to the qualifications and experience of the appointees. Section 194 when read in total has safeguards that includes consultation with the Minister and the Minister of Finance. There is no amendment recommended.
			CLAUSE 22, SECTION 195	
Centre for the Environmental Rights	Section 195(d)		● This amendment seems to limit the referral of issues to the Tribal by the B-BEE Commission only. This seems unduly and arbitrarily narrow. ● Suggested wording: ‘‘(d) conciliate, mediate, arbitrate or adjudicate on any administrative matters affecting any person in terms of this Act as may be referred to it in the prescribed manner [**by the B-BBEE Commission in terms of the B-BBEE Act**]; and”	The Department’s response is that the B-BBEE matters are a special dispensation that will expand its mandate and that is currently not provided for because the B-BBEE Commission is established in terms of the B-BBEE Act. The effect of the amendment is to enable the B-BBEE Commission to refer complaints of companies not following the governance procedures in the Companies Act, to the detriment of BEE shareholders. Examples of these may include not keeping proper company records to prevent B-BBEE shareholders from understanding company affairs; excluding minority B-BBEE shareholders from company affairs

Stakeholder	Clause Section		Comment	Dtic response
				(including from shareholder decisions); falsifying company records or diverting economic benefits of a company to the non-B-BBEE shareholders through contractual or other arrangements.
CLAUSE 23, SECTION 204				
Centre for the Environmental Rights			● There is a conflict between the FRSC, which seems to exclude public companies from adherence to its standards. They therefore suggest that this be explicitly stated to provide clarity. They do not see why public companies should be excluded, so long as they aren't in conflict with other stock exchange agencies' listing requirements (like the JSE Listing Requirements) – since these listing requirements should be IFRS compliant, we do not see why public companies should be excluded. ● Suggested wording: ● ''(2) For the purposes of this section, financial reporting pronouncements may be issued by the Financial Reporting Standards Council and published in the Gazette, from time to time, in relation to international reporting standards which require adaptation for local circumstances: Provided that such pronouncements are not in conflict with the International Financial Reporting Standards or the International Financial Reporting Standards for Small and Medium-sized Entities, <u>including the application of standards to public companies.</u>"	The Department's response is that the FRSC functions do not exclude public companies. Section 204 addresses the functions of the FRSC in issuing international financial reporting standards and adoption in the local context.
SAICA			● The importation of financial reporting pronouncements into section 204 requires a consequential definition as the term is not readily used in the Act and clarification is needed on the meaning of financial reporting pronouncement.	The definition of Financial reporting pronouncements is included in the Bill. This comment has been addressed when the Bill was introduced to Parliament.
OTHER PROPOSED AMENDMENTS IN THE COMPANIES ACT				
	Sections 5, 6, 30, 56, 57, 69, 75,129, etc.		**A number of proposals have been made during the public submission process that deserve careful thought and in some cases where the merit of the proposal is clear, an opportunity for other stakeholders and affected parties to make representations. Therefore, it may be worthwhile to consider a further Amending Bill that can be considered early in the new Administration. The amendments that follow are new. They require a new public participation process and further research.**	

Stakeholder	Clause Section		Comment	Dtic response
SECTION 5				
Webber Wentzel			● In the current circumstances, South Africa currently cannot claim effective compliance with the Cape Town Convention and its obligations thereunder as a contracting state. Accordingly, we suggest and recommend that section 5(4)(b)(i) of the Act be amended and extended to include a reference to The Convention on International Interests in Mobile Equipment Act, 2007 (Act No. 4 of 2007). ● This small but significant amendment to the Act is a critical step towards achieving clarity of the Cape Town Convention as a matter of domestic law in South Africa and in so doing assist moving South Africa towards effective compliance under the Cape Town Convention, the Aviation Protocol and Rail Protocol (once ratified).	In relation to a statute in the Cape suggested by Webber Wentzel, it is proposed that the provisions of s5(4) relating to the ranking of the Companies Act in relation to other legislation, should take cognizance of the statute referred to in the submission of Webber Wentzel. This, with respect, should be clarified as follows: •All of the statutes referred to in s5(4) effectively relate to governance in similar matters contained in the Companies Act. That is the reason for those statutes to be specifically mentioned. •If there are other statutes that exist by reason of international treaties, Parliament would have to examine, in any particular case, a conflict between the Companies Act and those Acts and in doing so would clearly have regard to whether a particular provision in the Companies Act conflicts with an international obligation. It would not have to determine whether the entirety of that statute should prevail over the Companies Act, or only those provisions which arise specifically from the treaty. In addition, there is no justification for singling out this particular statute that Webber Wentzel refers to. There are numerous statutes that arise from international obligations.

Stakeholder	Clause Section		Comment	Dtic response
			SECTION 6	
Computershare			● This section appears to contradict section 31 and also section 6(11) referred to below, which allow for electronic communication and a notice of availability, as it requires at least a summarised form of the financial statements to be included in the notice of the meeting. ● Section 62(1) ● Section 62(1) provides that the company must deliver a notice of each shareholders meeting "in the prescribed manner and form". ● The term "prescribed" is defined in section 1. It means – ● "determined, stipulated, required, authorised, permitted or otherwise regulated by a regulation or notice made in terms of this Act". ● Section 6(10) ● Section 6(10) states that if "a notice is required or permitted to be given or published to any person, it is sufficient if the notice is transmitted electronically directly to that person in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost." ● Section 6(11) ● Section 6(11) states that "If a document, record or statement other than a notice contemplated in subsection (10) is required…to be published, provided or delivered it is sufficient if an electronic original or reproduction of the document, record or statement is published, provided or delivered by electronic communication…; or a notice of availability of that document, record or statement, summarising its content and satisfying any prescribed requirements, is delivered to each intended recipient of the document, record or statement, together with instructions for receiving the complete document, record or statement." ● Their understanding is that the intention of this section is to allow for electronic communication and to align South African legislation with the United Kingdom legislation where the "deemed consent" clause applies. A notice is required in certain cases whereas a notice of availability is sufficient in other instances and issuers do not have to send the full documentation.	Comment is noted.
			● Regulation 6 ● Regulation 6 of the Companies Regulations states that "A notice announcing the availability of a document, record or statement, as contemplated in section 6(11)(b) must be in writing and delivered to each intended recipient of the document, record or statement either –(i) in paper	

Stakeholder	Clause Section		Comment	Dtic response
			form at the intended recipient's last known delivery address; or (ii) in electronic form at their last known electronic mail address…" setting out clearly the title of the document, record or statement, the availability of which is being announced, the extent of the period during which the document, record or statement will remain available; and the means by which the document, record or statement may be acquired by the recipient of the notice; and include a statement that succinctly summarizes the purpose of the document, record or statement. ● Point 2 states that "A document, record or statement, the availability of which is being announced as contemplated in section 6(11)(b)(ii), must be made available to intended recipients either – ● In paper copy, or in a printed version of an electronic original produced by or on behalf of the company on demand by an intended recipient; or ● Electronically in a manner and form such that it can conveniently be accessed and printed by the recipient within a reasonable time and at a reasonable cost." ● In terms of paragraph 7(1) of the regulations to the 2008 Act, it is provided that a notice or document to be delivered for any purpose contemplated in the Act may be delivered in any manner – ● contemplated in section 6(10) or (11); or ● set out in Table CR3. ● Section 6(10) or (11) and the first part of Table CR3 provides for delivery by fax or electronic mail – but only if such information is available as provided by the person concerned in either fax or electronic mail address format. ● Failing delivery in that manner, the only other possible method of delivery as provided in Table CR3 is by sending the notice by registered post to the person's last known address. ● This interpretation is both extremely costly and impractical to a number of Issuers and/or their agents. ● Notice of Record Date (RD) ● "In terms of Regulation 37 concerning Record dates: ● If any securities of a particular company are in uncertificated form, or otherwise subject to rules of a central securities depository, the company must set the record date in accordance with those rules. ● Except as contemplated in sub-regulation (1), a company must publish a notice of a record date for any matter by – (a) delivering a copy to each registered holder of its securities; and (b) posting a conspicuous copy of the notice – (i) at its principal office; (ii) on its website, if it has	

Stakeholder	Clause Section		Comment	Dtic response
			one; and (iii) in the case of a listed company, on any automated system of disseminating information maintained by the exchange." ● This section appears to differentiate between notices that are distributed to shareholders who hold certificated and dematerialised/uncertificated securities. ● In terms of Regulation 37(1) above, for example, it appears that any dates for RD for dematerialised shareholders and any notices relating to this must be sent in accordance with the Financial Markets Act, 2012, Strate Rules and Directives. The FMA, Strate Rules and Directives state that clients must be notified of corporate events, but does not prescribe how this must be done. Clients may also elect not to receive notices / AFS and an indicator would be recorded on the CSD Participant or broker's system. Regulation 37 then goes on to state that for other shareholders (certificated shareholders), a notice of the record date must be delivered to each registered holder. This notice would then have to be sent in terms of the Companies Act, either by email where an email address is available or by registered mail. ● This interpretation is also supported by Regulation 36(2) which states that "A company may notify each person who holds any securities of the company for any purpose contemplated in sections….62(1)[i.e. Notice of a meeting], by delivering a completed Form CoR 36.2 to each registered security holder, except to the extent that the requirements of a central securities depository provide otherwise".	
NRCFSA			● The proposed amendments fail to consider the current challenges with shareholder communication such as the closure of post offices, fraud syndicates intercepting mail, the cost of registered mail, return of undelivered mail and that email is currently the only recognised forms of electronic communications within the regulations. It is requested that table CR3 of the Companies Regulations be amended by the replacement of "registered mail" with "ordinary mail" and the inclusion of the recognition of all forms of electronic communication including whatsapp, sms and shareholder electronic communication platforms.	Comment is noted.
			SECTION 30	
SAICA	Section 30(1)		● They submit that there might be instances that due to circumstances beyond the companies control the company would not be able to meet the 6 months deadline. They would like to request that the Act be amended to allow the CIPC or the Companies Tribunal to extend the 6 months due to valid reasons.	

Stakeholder	Clause Section		Comment	Dtic response
			SECTIONS 1 AND 56	
Cosatu (definitions)			Beneficial ownership provisions amended with GLAA in 2022 but conflicting definitions in s1 and 56 between beneficial interest & beneficial owner Concerned not in line with FATF which may prolong greylisting & undermine jobs & investment Proposals: Replace all “beneficial interest” to “beneficial ownership” (as per s1) Streamline provisions obligating companies to ascertain who their beneficial owners are and obligating reporting	There is however a marked difference between the 2 definitions, and it cannot be seen or interpreted as the same concept. “‘beneficial owner’, in respect of a company, means an individual who directly or indirectly, ultimately owns that company or exercises effective control of that company” Beneficial ownership is not only related to securities, but can be in the form of effective control of that company. An example of control would be where a specific person is named in the MOI of a company, with the authority to directly appoint or remove one or more of the directors of that particular company – section 66(4)(a) of the Companies Act. “’beneficial interest’, when used in relation to company’s securities, means the right or entitlement of a person…to- (a) receive or participate in any distribution in respect of the company’s securities; (b) exercise any or all rights attaching to the company’s securities; or (c) dispose of the company’s securities.”

Stakeholder	Clause Section		Comment	Dtic response
				It is clear from the definitions that although a beneficial interest in the securities of a company, is a form of ownership, the concept of beneficial ownership is much wider and encompasses much more than just securities of a company and the ownership thereof. More consideration is required. It is not a matter of replacing one term with another. They may be unintended consequences.
			SECTION 57	
IODSA			● **Stipulate that all companies (including public sector entities) disclosure their application of the most recent King Report principles and recommended practices, as amended from time to time.** ● It would be desirable for both the public and private sectors to be held to the same governance standards in order to create a more equitable and effective socio-economic dispensation. In addition, regulators and policy makers should be encouraged to leverage off King IV to strengthen their oversight and hold directors to the expected standard of performance and accountability. The King Reports are already used in the South African courts when benchmarking the standard of conduct expected of a director and/or the board. Requiring companies to disclosure how they have applied best corporate governance principles and practices as set out in the King Reports, will enforce boards and companies to consider whether the company is applying good governance practices and is acting as a good corporate citizen. ● *Related Companies Act Section: Ch2, Part F . Proposed clause wording:* ● Add new Section 57(A) All companies are required to disclosure how it has applied the principles and recommended practices of the King Report on Corporate Governance™ for South Africa, as amended from time to time.	Comment is noted.

Stakeholder	Clause Section		Comment	Dtic response
			SECTION 66	
IODSA			● **Stipulate the board composition requirements.** Provide a clear guideline on how the board of company should be composed. ● **Stipulate a consistent and transparent nominations process.** Entities (in both public and private sectors and across industry sectors) of a certain size or that fulfil a public interest should be mandated to follow a very clearly governed and transparent nominations process. ● *Related Companies Act Section:* Chapter 2, Part F, Section 66 and 68 ● *Proposed clause wording:* ➢Add new Section 66A: Board Composition and Nomination Process: (1) The composition of the board of a company must consist, in addition to the minimum number of directors required in terms of the Act, unless otherwise provided in the company's Shareholders Agreement, Memorandum of Incorporation and/or other founding document or legislation: (a) a majority of non-executive directors, of which a majority should be independent; (b) at least two executive directors, one of which much be the Chief Executive Officer (CEO); (c) an appropriate mix of knowledge, skills and experience relevant to the needs of the board, due to the type of company, industry and business in which it operates, in order for the board to effectively fulfil its roles and responsibilities; (d) an appropriate diversity of individuals covering age, gender, and race; and (e) persons holding a professional director designation showing the requisite corporate governance knowledge and experience; (2) The nominations criteria for board vacancies must take into account the current needs of the Board in accordance with the requirements in subsection (1). (3) The nominations criteria and process must be set out in an appropriate board policy to ensure transparency and compliance with the set criteria, which policy should be reviewed annually and approved by the board or board committee responsible for nominations. This approved board nominations policy should be made transparent to all stakeholders.	The comment is noted.

Stakeholder	Clause Section		Comment	Dtic response
			(4) Prior to appointing a person as a director on the board, the necessary director due diligence2 must be conducted to ensure, *inter alia*: He/she meets the necessary director competency requirements. The board composition requirements and any independence requirements No conflict of interests and if there are, whether these can be managed or not. No potential reputational issues. Has the necessary qualifications. Not been declared delinquent or prevented from serving as a director. ● Add the following definitions to Section 1: "**executive director**" a director who is involved in the day-to-day operations of the business as an employee, generally the CEO, CFO, or relevant executive manager as applicable for the company. "**independent or 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. "**non-executive director**" a director who is not involved in the day-to-day operations of the business.	
			Establish uniform governance training for national leaders or the public sector to ensure they understand the basic principles of corporate governance and their role and responsibilities. **Stipulate the compulsory requirement for all directors to maintain continuous professional development** to ensure they stay on top of latest trends and information related to their expertise, general corporate governance and areas impacting the company on which they serve. By enforcing directors to have a professional director designation, the professional body will ensure/enforce designees complete the stipulated amount of CPD hours a year. *Related Companies Act Section:* Ch2 Part F, Section 66 *Proposed clause wording* Add new Section 66(B): Director training and continuous professional development: All persons appointed as directors on boards of listed companies and state-owned companies must undergo relevant director training to understand their roles and responsibilities on the board and basic principles of corporate governance. The company must ensure that the board of directors are required to maintain continuous professional development both in their specific area of expertise for which they were appointed onto the board for as well as from a director and corporate governance perspective.	
			The legislation should stipulate that directors cannot register with CIPC unless they are a member of a SAQA-registered professional body for directors and have achieved the necessary competency level	

Stakeholder	Clause Section		Comment	Dtic response
			to earn a professional director designation. This would mean that, like any other professionals, directors would need to have a practice number in order to operate in their profession.	
			SECTION 69	
IODSA			**Stipulate the required director competency or minimum criteria in order to serve as a director.** Being a businessman, lawyer or accountant by profession does not mean you will be a good director. Being a director requires its own skill set and experience, and not everyone is made for such a role. In order to serve as a director, individuals must have the necessary director competencies and should hold a recognised professional director designation. *Related Companies Act Section:* Chapter 2, Part F, Section 69 Proposed clause wording: Add new subsection to Section 69 have the necessary corporate governance knowledge and experience; hold an applicable professional director designation; and be a member of a SAQA registered professional body for directors. (7)(A) (a) In order to qualify to serve as a director on any board of a company, a person must: (b) A person serving as a director is required to maintain the above requirements set out in subsection (a) throughout his/her appointment or directorship. (c) Any person who does not qualify to serve as director shall be considered ineligible in accordance with this Section. (The CIPC should ensure that directors who are registered meet these eligibility criteria and should further ensure they do not meet the disqualified criteria.) Add new subsections (6), (7) and (8) to Section 76: (6) In addition to standards set out in this Section, directors are required to act and exhibit the following ethical characteristics in their conduct both individually and collectively as the Board: Integrity Competence Responsibility Accountability Fairness Transparency (7) Every board must have a board code of conduct which sets out the values and conduct expected of the individual director and the board collectively, to which directors will be held accountable against, in addition to any other statutory or professional code of conduct that applies to them.	

Stakeholder	Clause Section		Comment	Dtic response
			(8) The Board may report any director misconduct to the Commission for investigation.	
			Stipulate that directors must be a member of a SAQA-registered professional body for directors, such as the IoDSA, in order to serve as a director and be registered as a director at the CIPC. **Stipulate that the CIPC also be the statutory regulator for directors and extend its and/or the Companies Tribunal powers** to check companies' compliance with board compliance, check director's competency requirements, remove directors if they do not comply or if there are cases of misconduct, prevent such directors from being registered again on another company etc. *Related Companies Act Section:* Chapter 2, Part F, Section 69 *Proposed clause wording:* See above proposed addition to section 69 in respect to being required to be a member of the IoDSA. No proposed wording for the CIPC powers at this time, it shall be for the legislature to determine the extent thereof.	
			Establish a constitutional means of alternate dispute resolution that will facilitate prompt and effective consequence management for transgressing directors or lax overseers. **Establish an easier mechanism to declare a director delinquent so that the public and other board members will be more inclined to do something.** The current process is tedious and long which may be a deterrent. Allow the CIPC or Companies Tribunal to have the powers after proper investigation as would be required if a matter went to court, to declare a director delinquent and remove a director from a board and added to the delinquent director register. The professional body for directors can assist the CIPC/Companies Tribunal in this regard by being part of its disciplinary panel and providing governance best practice advice and assistance. *Related Companies Act Section: Ch7 Authority of CIPC and outcomes of investigations* *Proposed clause wording:* None at this stage, it is for the legislature and the CIPC to determine the most viable process.	
SECTION 75				
Webber Wentzel	Section 75		They suggest that the extended definition of "related person" in s75(1)(b) as referred to above not be applicable if the relevant companies are in the same group of companies (as defined in the Act). If this amendment is effected, then section 75 would still apply (as per the definition of "related person" set out in section 1 of the Act) to a director if he/she is related to another company in the group as a result of circumstances other than the mere fact that he/she is also a member of the board of such other group company. Alternatively, if companies in the same group of companies are not excluded from the definition of "related person" as aforementioned, then we suggest that a mechanism for shareholder approval (for a particular transaction or a category of transactions) be introduced to resolve the situation	The greater the number of common directors, the more are the protections sought by section 75 needed. It is counterintuitive to suggest that the more the common directors, the less the protections which would flow from the suggested amendments. The

Stakeholder	Clause Section		Comment	Dtic response
			where some or all of the directors are not able to participate in the vote as a result of personal financial interests.	existing law is adequate and in the common director's situation with multiple directors in groups the escape would often be that the related party doesn't have a material personal interest. In addition, shareholder approval is always a panacea. The Department does not support the inclusion of this matter, based on the substantive points. In addition, the proposal would require re-advertising and public hearings.
SECTION 129				
SAICA	Section 129		They would like to request that sub clause (ii) either be removed or that the DTIC clarifies the requirements, an option is to refer to the solvency and liquidity test in section 4.	
SECTION 145				
	Section 145		● They therefore propose the following changes to section 145(4) "In respect of any decision contemplated in this Chapter that requires the support of the holders of creditors" voting interests- (a) a secured or unsecured creditor has a voting interest equal to the value of the amount owed to that creditor by the company <u>on the day of the vote; and</u>	Section 145 was published in 2021 Bill for public comment and was removed following public submissions.

COMPANIES SECOND AMENDMENT BILL, 2023

Companies Second Amendment Bill Matrix 2024

Stakeholder	Section/Clause	Comments	The dtic response
		CLAUSE 1, SECTION 77	
IODSA and King Committee		Section 77(7) on Liability of Directors and Prescribed Officers: ● They disagree with the proposed new changes under Section 77(7), and propose that the matter can be dealt with without limiting the general applicability of the Prescription Act, 1969. Our proposed drafting changes (recommended below) will avoid placing the onus on the claimant to bring a court application in circumstances when the Prescription Act provides for an interruption or stay in prescription. ● They recommend the following change to the proposed section 77(7) in the Bill: "(7) In relation to the proceedings to recover any loss, damages or costs which a person is or may be held in terms of this section – ● the Prescription Act, 1969 (Act No.68 of 1969) does not apply; (a) subject to the Prescription Act, 1969 (Act No. 68 of 1969) and paragraph (c) (b), such proceedings may not be commenced more than three years after the act or omission that gave rise to that liability; and (b) the court may, on good cause, extend the period referred to in paragraph (b) (a) regardless of whether – (i) Such period has expired or not; or (ii) The act or omission that resulted in the loss, damages or costs contemplated in this section, occurred prior to the promulgation of the Companies Second Amendment Act, 2023 (Act No. of 2023)"	The department takes note of the submissions received. No amendments are recommended for the provisions in the Companies Second Amendment Bill.
		CLAUSE 2, SECTION 162	
IODSA and King Committee		● They are in support of the changes effected to the Section 162 (2A) and (3A) as it relates to the courts' powers to extend the time frame for bringing an application to declare a director delinquent or under probation.	The department takes note of the submissions received. No amendments are recommended for the provisions in the

Stakeholder	Section/Clause	Comments	The dtic response
			Companies Second Amendment Bill.
LSSA		● The following aspect within the proposed amendment to section 162 can lead to ambiguity and should be corrected: ● Section 162(2)(a) should be amended to insert the underlined phrase: ● 2) A company, a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to a court for an order declaring a person delinquent or under probation if – ● the person is a director of that company or, within the 60 months immediately preceding the application <u>or the extended period as referred to under subsection (2A)</u>, was a director of that company; and ● any of the circumstances contemplated in- ● subsection (5)(a) to (c) apply, in the case of an application for a declaration of delinquency; or ● subsections (7)(a) and (8) apply, in the case of an application for probation.	
Western Cape Government		● In light of corporate South Africa's recent and widely publicised fraud and corruption scandals, the proposed amendments to sections 77 and 162 of the Act are fully supported. It is recommended that the amendments be monitored and administered correctly, with the required enforcement capacity, to achieve the intended objective of deterring corporate offenders and reinforcing good corporate governance. ● It is submitted that the proposed amendments should not have retrospective effect.	The Zondo Commission made a recommendation in respect of two specific companies and certain persons connected with those companies that section 162 of the Companies Act be amended so as to ensure that the application for a declaration of delinquency may be brought, even after the two years, on good cause shown. In accordance with the Zondo Commission findings, the proposed legislation should be expressed to have the effect of retrospective application, subject to a decision of the courts. Thus,

Stakeholder	Section/Clause	Comments	The dtic response
			the legislation should state that the court on good cause shown may extend the time bar even though the conduct in question was committed during the period before the extension. This gives the courts the discretion to address matters after the actions in question has taken place, to support accountability and in the public interest.