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PROXY VOTING POLICY



A part of the FirstRand Group

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1. Introduction

Ashburton Fund Managers (Pty) Ltd (“Ashburton”) manages investments portfolios for its clients and has a responsibility to exercise voting authority over securities managed on behalf of its clients.

Ashburton regards the management of client’s assets to be of paramount importance as part of fulfilling its obligations towards its clients; as a result, we aim to ensure that management is ultimately accountable for company performance and conduct. We believe that it is our duty to provide our appointed managers with guidelines on how to exercise of our client shareholder rights in the best interests of our clients.

This policy provides the guidelines to the investment managers of Ashburton Fund Managers (Pty) Ltd on how to exercise shareholders rights in the best interests of their clients. This is not, however, prescriptive and there may be instances where the investment manager elects to vote in a manner that is contrary to the policy guidelines. In these instances a record will be kept as to the reasons for such deviation.

2. Disclosure and transparency

Ashburton will disclose investment manager proxy voting records to clients upon written request.

3. Scope

This policy is applicable to all mandates that include, but is not limited to, equity as a component, recognising:

- The unique value proposition of each manager and the independent nature of their investment styles aligned with the Ashburton Houseview;
- The mandated responsibility of managers to pursue superior risk-adjusted returns on behalf of our clients.

Further hereto, this policy is applicable to all South-Africa based Ashburton Investments operating divisions and entities that manage discretionary investment portfolios on behalf of clients namely:

- Ashburton Fund Managers (Pty) Ltd.

Ashburton will exercise votes on shares, in accordance with this policy, where those shares are held within Funds whereby Ashburton has been appointed as investment manager.

4. Applicable legislation and reference documents

- International Corporate Governance Network on Global Corporate Governance Principles
- King III Code on Corporate Governance
- South African Companies Act 71 of 2008
- JSE listing requirements

5. Shareholder to be represented by proxy

In terms of section 58 of the Companies Act 71 of 2008, at any time, a shareholder of a company may appoint any individual, including an individual who is not a shareholder of that company, as a proxy to:

- Participate in, and speak and vote at, a shareholders meeting on behalf of the shareholder; or
- Give or withhold written consent on behalf of the shareholder to a decision as contemplated in section 60 of the Companies Act 71 Of 2008.

A proxy appointment must be in writing, dated and signed by the shareholder; and remains valid for a period of one year after the date on which it was signed; or any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in subsection (4)(c), or expires earlier as contemplated in subsection (8)(d) of the Companies Act 71 of 2008.

In the event a discretionary mandate or an investment management agreement has been signed which includes a power of attorney authorising Ashburton to vote on a proxy basis on behalf of the shareholder, the expiry date of the proxy appointment will be the date in which the mandate or investment management agreement is terminated.

A proxy is entitled to exercise, or abstain from exercising, any voting right of the shareholder without direction, except to the extent that the Memorandum of Incorporation, or the instrument appointing the proxy, provides otherwise.

6. Voting at shareholders meetings

Ashburton will attend and vote on resolutions, where:

- Ashburton's aggregate holdings are in excess of 0.5% of the company's shares in issue; or
- The value of the holding is greater than 0.5% of the total portfolio/fund.

There may be circumstances where the above criteria do not apply and Ashburton chooses to vote.

Ashburton is of the view that the investment management team in conjunction with the company secretary are best placed to consider the shareholders resolutions as per section 65 of the Companies Act 71 of 2008, as they have an in-depth knowledge of the company, and this is aligned with their responsibility of ensuring performance of the assets they are managing. The investment managers are responsible for identifying sustainability, corporate governance or strategic concerns with companies held in the portfolios.

The analyst responsible for the equity will review the proposed resolutions, and put together the voting recommendations which will be reviewed by either the head of Research or the head of Portfolio Management. There may be instances where the investment manager elects to vote in a manner that is contrary to the policy guidelines. In these instances a record will be kept of this and the reasons for such deviation. This requires approval from the head of Portfolio Management.

7. Proxy voting guidelines

Ashburton will exercise their proxy on the merits of the case for each such proxy and in the best interests of their clients. These guidelines have been created to aid the investment manager on how to best discharge these responsibilities.

7.1 Approval of Annual Financial Statements

Each year, a company must prepare annual financial statements within six months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7) of the Companies Act 71 of 2008. The company's directors are responsible for the preparation and approval of the annual financial statements.

The annual financial statements must be audited, in the case of a public company; or in the case of any other profit or non-profit company be audited, if so required by the regulations made in terms of section 30(7) taking into account whether it is desirable in the public interest, having regard to the economic or social significance of the company, as indicated by any relevant factors as stated in terms of section 30 of Companies Act 71 Of 2008.

Annual financial statements should be prepared in accordance with International Financial Reporting Standards (IFRS).

Voting guideline

In exercising the proxy vote, the Investment manager should consider whether:

- There has been any audit qualification; or
- There is Insufficient financial or non-financial disclosure of material items; or
- The reports were made available to the shareholders prior to the meeting

7.2 Appointment or re-election of directors

Subject to section 68(3), each director of a public company, other than the first directors or a director contemplated in section 66(4)(a)(i) or (ii), must be elected by the persons entitled to exercise voting rights in such an election, to serve for an indefinite term, or for a term as set out in the Memorandum of Incorporation as set out in section 68 of the Companies Act 71 of 2008.

The Board has a fiduciary duty to act in the best interests of its shareholders and the company it serves. The Board is selected by the shareholders of the company in order to represent and manage the company on its behalf.

The Board is the custodian of corporate governance and of the trust that the shareholders have in the company being a long-term financial and economic success and being managed in an ethical and sustainable manner in order to enhance shareholder value and meet stakeholder expectations.

7.2.1 Balance/ Board Composition – Independence

Ashburton supports the King III Code principle 2.18 recommendations that the Boards must comprise a balance of power, with a majority of non- executive directors who are independent, of management.

King III Code principle 2.19 indicates that the directors should be appointed through a formal process. A nomination committee should assist with the process of identifying suitable members of the Board.

The Board should make full disclosure regarding individual directors to enable shareholders to make their own assessment of directors.

Voting guideline

- Ashburton will vote against any resolution that attempts to dilute the number of independent, non-executive Board members to a number below 50%.
- Criteria for independence:

The Board is responsible for appointing independent, non-executive directors who are independent in both character and judgment. Various criteria are used as guidelines which indicate whether a director's independence may be perceived as having been compromised.

These include:

- If a director has been an employee of the company within the past 3 years.
- If the director had a material business relationship with the company, either in his/her personal capacity or through a related party within the past 3 years.
- If the Independent, non-executive director has received remuneration from the company (other than a director's fee). This could include participation in any incentive scheme, consulting fees or being a member of a company's pension fund.
- Having close family ties through the company's advisors, directors, senior employees or business relations. Business relations could mean, for example, someone with close ties to a client responsible for a percentage of the company's business.

- Having cross directorships with other directors through involvements in other companies, bodies or business enterprises. For example, if audit firm X has been the company's auditors for the past five years and an audit partner of that firm is now elected to the Board as the new chairman of the audit committee, his/her independence may be questioned.
- Representing a shareholder or investment management company that holds a significant proportion of the issued share capital on behalf of its clients.
- If an independent, non-executive director has been a member of a Board for a consecutive 9 year period, this may be an indication that he/she has built up relationships and become integrated into the company's way of thinking to such an extent that he/ she may be an 'insider' as opposed to an independent 'outsider'. In these instances, directors should be subjected to a rigorous review of their independence. While the affirmation of independence by the Board may suffice for a further 3 years after the initial nine-year period, no votes in favour of a current independent, non-executive director will be made after 12 years in that position.
- Any other issue that may present itself as materially affecting the independence of the director.

Additional criteria with regards to election of non-executive directors:

- The record of a director, as well as the present performance of the Board, collectively and as individuals, will be taken into account when voting in directors.
- If directors are absent for more than 30% of Board meetings, an automatic negative vote for their re-election will ensue. This applies to other committees that directors may be members of.
- The number of Board positions held by a director should be questioned.
- The following should be used as guidance when evaluating concerns around directorship numbers:
 - A person who is the Chairman of the Board of a top-40 listed company should not be the Chairman of the Board of another listed company.
 - An executive director of a top-40 listed company should not hold more than one independent directorship (excluding subsidiaries).
 - A non-executive director, holding no executive position, should not hold more than 5 non-executive director positions.

7.2.2 Composition of Board committees and independence of directors

As per King III Code principle 2:18, the Board should comprise a balance of power, with a majority of non-executive directors. The majority of non-executive directors should be independent. When determining the number of directors serving on the Board, the knowledge, skills, experience and resources required for conducting the business of the Board should be considered.

Every Board should have a minimum of two executive directors of which one should be the CEO and the other the director responsible for finance. At least one third of the non-executive directors should rotate every year. Any independent non-executive directors serving more than 9 years should be subjected to a rigorous review of his independence and performance by the Board.

The Board should include a statement in the integrated report regarding the assessment of the independence of the independent non-executive directors. The Board should be permitted to remove any director without shareholder approval. There should be no concentration of power in the hands of a small quorum of directors, this relates in particular to the composition of Board sub-committees.

Vote guideline

- Ashburton should vote against Board structures and director nominations that may permit a concentration of power to in the hands of a small quorum.
- Ashburton should support a continuous process of new director appointments through the committees to mitigate against power concentration.

7.2.3 Separate CEO and Chairman

The members of the Board should elect a chairman on an annual basis as per King III Report principle 2:16. The chairman should be independent and free of conflict upon appointment. A lead independent director should be appointed in the case where an executive chairman is appointed or where the chairman is not independent or conflicted.

The appointment of a chairman, who is not independent, should be justified in the integrated report. The role of the chairman should be formalised. The chairman's ability to add value, and his performance against what is expected of his role and function, should be assessed every year. The CEO should not become the chairman until 3 years have lapsed.

The Chairman of the Board should be separate from operational responsibilities. The Chairman of the Board sets the tone and agenda of Board discussions. Hence it is imperative that this position be occupied by an independent person. Failure to do this could potentially impair the oversight responsibilities of the Board. Separation of CEO and Chairman of the Board is a requirement as per King III Code principle 2:16 as well as per the JSE Listing Requirement.

Vote guideline

- Ashburton should vote against proposals where the CEO and Chairman of the Board are combined.
- Ashburton should vote against a proposal that the CEO move into the position of Chairman of the Board following their retirement.
- There may be exceptional circumstances, where Ashburton may vote for a combined role in listed companies after taking into account the overall governance structures, whether a lead independent non-executive director is appointed, that a majority of independent directors are on the Board and that the members of key Board committees are independent.

7.2.4 Board size

The size of Board needs to be considered against the size and the complexity of the company. Every Board should consider whether its size, diversity and demographics make it effective as per King III Code principle 2.18.4.

Vote guideline

- Ashburton should consider the size of the Boards on a case by case basis. Excessively large Boards should be discouraged.

7.2.5 Election of directors

King III Code principle 2.19 indicates that directors must be appointed through a formal process. The Board should make full disclosure regarding individual directors to enable shareholders to make their own assessment of directors King III Code principle 2.19.4. Section 68 (1) of the Companies Act 71 of 2008 subject to subsection (3), indicates that each director of a profit company, other than the first directors or a director contemplated in section 66(4)(a)(i) or (ii), must be elected by the persons entitled to exercise voting rights in such an election, to serve for an indefinite term, or for a term as set out in the Memorandum of Incorporation.

Where resolutions are tabled to elect all Board members, or members of Board committees, by a single vote, it is recommended that Ashburton vote against any such resolution. Shareholders have the right to vote on each member of a Board and Board committee. The requirement whereby shareholders vote on a basket of names is considered poor corporate governance.

Voting guideline

Votes on directors will be assessed on a case by case basis. The following will be considered:

- Board independence and the balance of independent and non-independent directors.
- Independence of the Board and its committees, especially the audit committee.
- Composition of Board committees and independence of members.
- The corporate governance report, which forms part of the annual report, should stipulate the function of, and contain abbreviated terms of reference for, every Board committee.
- Balance of skills and diversity on the Board in terms of Board synergies.
- Performance of the company over the years since the director was put forward for election
- The company should provide sufficient information regarding the proposed director, in terms of experience, qualifications, proposed role on the Board, other fiduciary commitments.
- An attendance record of the directors should be made available in the annual report.

7.3 Remuneration

Section 66(8) of the Companies Act 71 of 2008 indicates that except to the extent that the Memorandum of Incorporation of a company provides otherwise, the company may pay remuneration to its directors for their service as directors, subject to subsection (9).

Remuneration contemplated in section 66(8) of the Companies Act may be paid only in accordance with a special resolution approved by the shareholders within the previous two years. King III Code principle 2.25 Companies should remunerate directors and executives fairly and responsibly.

Companies should adopt remuneration policies aligned with the strategy of the company and linked to individual performance. Non-executive fees should comprise a base fee as well as an attendance fee per meeting.

The company's remuneration policy should aim to attract and retain competent executives, reward executives fairly in a way consistent with their performance, and align the incentives for the executives with the best interests of shareholders.

Best local and international practice on corporate governance requires that the remuneration of executive directors be determined by a quorum of independent or non-executive directors.

Remuneration paid to each executive and non-executive director, must be fully disclosed as per King III Code principle 2.26. Disclosure should include details of base pay, bonuses, share-based payments, granting of options, restraint payments and other benefits.

As per King III Code principle 2.27, Shareholders should approve the company's remuneration policy. Shareholders should pass a non-binding advisory vote on the company's yearly remuneration policy. The Board should determine the remuneration of executive directors in accordance with the remuneration policy put to shareholder's vote.

Voting guideline

Policies giving the remuneration committee and the Board full discretion on what remuneration and incentive payments are received by the executives should be voted against.

- Voting the shareholder advisory vote on remuneration policy :

- Executive remuneration
 - Make use of comparative peer analysis to gauge the appropriateness of remuneration packages. The base pay should not materially exceed median base pay for comparable roles in comparable companies
 - Potential performance based pay should be capped unless the executive is willing to bear unlimited downside risk to match unlimited upside potential. There should be a clear link between performance based pay and the performance of the executive, for areas under the executive's control. The performance targets for executives must include a combination of financial and non-financial targets
 - Generally, pension contributions should be linked to basic remuneration. In cases, where not, this should be explained.
- Non-executive remuneration
 - Non-executive director fees are usually a reflection of the company's size, operational complexity, business risk environment and performance. The quantum of fees should be evaluated in this context. For example, the Chairmen of banks' Boards are usually well remunerated because of the complexity and risk inherent in a bank's operations and the fact that it is regarded as a full time job in that industry. Independents or non-executives, who are beneficiaries of an option scheme, cannot be regarded as independent, and support for that director's re-election should be considered in the context of the balance of the Board as a whole.
- Use of options
 - Approval of share option schemes should always be sought from shareholders in advance. Options should not be re-priced. Neither should new options be issued under a new scheme while the old scheme is still in operation as the previous targets cannot be met.
 - Vesting periods should be greater than 3 years and directors should not have unrestricted discretion in shortening the vesting periods
 - Ashburton should not support options and grants issued at a discount to the market price.
 - The quantum, strike price, time of issue and assumptions regarding valuation of options should be disclosed.

7.4 Board Committees

In terms of section 72(1) of the Companies Act 71 of 2008, except to the extent that the Memorandum of Incorporation of a company provides otherwise, the Board of a company may appoint any number of committees of directors; and delegate to any committee any of the authority of the Board.

In terms of King III Code principle 2.23 the Board should delegate certain functions to well-structured committees but without abdicating its own responsibilities. The most important committees are the audit, risk, remuneration and nominations committees. Audit and risk committees are usually combined.

Each committee must have terms of reference. Terms of reference, should form part of the annual report. Detailed terms of reference should be available to shareholders on request or on the company website. The committees' terms of reference should be reviewed annually.

Audit committee

- In terms of King III Code principle 2.23.4 public and state-owned companies must appoint an audit committee.
- Section 94 (2) of the Companies Act 71 of 2008 indicates at each annual general meeting, a public company or state-owned company, or other company that is required only by its Memorandum of Incorporation to have an audit committee as contemplated in sections 34(2) and 84(1)(c)(ii), must elect an audit committee comprising at least three members, unless the company is a subsidiary of another company that has an audit committee; and the audit

committee of that other company will perform the functions required under this section on behalf of that subsidiary company.

- The Chairman of the audit committee must always be an independent non-executive member of the Board.
- The audit committee should be made up of independent non-executive directors.
- The Chairman should be knowledgeable about the status and requirements of the role and have the required business and financial skills
- At least one member must have financial qualifications and/or experience that is relevant.
- The audit committee should have the authority to initiate an investigation into aspects of the company without the need for company management approval. The cost thereof has to be borne by the company without any (within limits) prior authorisation by the executive.
- Members of the executive should only attend audit committee meetings by invitation. This invitation should never be a standing invitation in order not to compromise the independence of the audit committee.
- Audit committee should have primary responsibility for making recommendations on audit appointment or removal.

Voting guideline

- o Ashburton should vote for proposals to create audit committees in which all of the members are independent.
- o Ashburton should vote against individual directors who are not independent and sit on the audit committee.

7.5 Auditors

In terms of section 90(1) of the Companies Act upon its incorporation, and each year at its annual general meeting, a public company or state-owned company must appoint an auditor.

A company referred to in section 84(1)(c)(i), or a company that is required only in terms of its Memorandum of Incorporation to have its annual financial statements audited as contemplated in sections 34(2) and 84(1)(c)(ii), must appoint an auditor in accordance with subsection (1), if the requirement to have its annual financial statements audited applies to that company when it is incorporated; or at the annual general meeting at which the requirement first applies to the company, and each annual general meeting thereafter.

Auditors are appointed by shareholders, on the recommendation of the audit committee, to provide them with the financial performance and affairs of the company. The audit firm recommended by the audit committee as auditors must have the required resources, competence and skills to fulfil the audit function effectively.

Resignation - when auditors have resigned, or have had their services terminated by the company, a written copy of the notification of no material irregularity having occurred, as required by the Companies Act, should be made available for shareholder inspection or on company website. When the company dismisses its auditors in terms of Section 93 of the Companies Act, public notice should be given and steps must be taken to ensure that the auditor is given the opportunity to make representation to shareholders as required by the Companies Act.

Additional work and independence - all contracts that may impact the independence of the auditor with regard to the audit, directors' and audit committee report must be fully disclosed to shareholders. This includes additional non-audit related work, which includes fees higher than a proportion of 25% of the current year's audit fee.

Issues relating to previous financial years which may call into question the correctness or appropriateness of previous audit opinions, or which may materially affect the results of work performed in previous years, should be considered when voting for the re appointment of an auditor.

Audit remuneration resolutions relating to audit remuneration involve approval from shareholders to authorise the Board, through the audit committee, to fix audit fees by agreement with the auditors, the following should be noted:

- Remuneration relative to prior years and other benchmarks, such as size and complexity of company operations, etc.
- All non-audit work performed, and whether this charge is warranted given the nature and extent of the work.
- Any other relevant issues that could have affected the audit fee during the current year.

7.6 Shareholder matters relating to capital management

7.6.1 Placing unissued and ordinary shares under the control of the directors

At almost all AGMs, resolutions are put forward for placing unissued shares under the control of directors. JSE listing requirements stipulate that any resolution put before shareholders where the mandate requested by directors is unrestricted, that the following statement should be included:

- “No issue of these shares, however, is contemplated at the present time and no issue will be made that could effectively transfer the control of the company without the prior approval of shareholders in a general meeting.” (JSE Listing requirements 11.34).

Permission to issue shares to option and executive incentive schemes should be put forward in separate resolution, as prescribed by the 2008 Companies Act. The resolution should be supported if these schemes have already been approved by shareholders.

Voting guideline

- o Ashburton recommends that Investment managers oppose these resolutions as it may dilute the shareholding of current shareholders.
- o Ashburton requires a separate resolution at the time of any further issue with the appropriate motivation provided by the directors.
- o If the maximum threshold is set to 5%, that could be considered an acceptable ceiling limit, where the directors have demonstrated a good track record of maintaining and enhancing shareholder value.

7.6.2 Providing directors the authority to issue shares for cash

JSE Listings Requirements places restriction on issuing shares for cash up to a maximum of 15% of issued share capital. Directors may also use issuance of shares for cash as a defence mechanism against groups of shareholders. As with other issues relating to share issuance, this may also dilute the relative holding of current shareholders.

Voting guideline

- o Like the issuance of shares in general, Ashburton believes that significant restrictions should be placed on a general authority to issue shares for cash. Ashburton will only approve the issuance of a small percentage of shares (maximum 5%) for cash for all companies, except property companies where the limit can be higher at 10% of shares in issue.

7.6.3 Renunciation of pre-emptive rights

These resolutions are linked to granting directors the right to issue shares for cash. It avoids the company having to conduct a rights offer to existing shareholders on a pro rata basis, as required in the JSE Listing Requirements.

Voting guideline

- Ashburton recommends that Investment managers oppose this resolution if it would materially prejudice shareholders.

7.6.4 Authority to repurchase shares

Share repurchases are seen as an effective way of giving money back to shareholders. This applies when the company believes that there are no worthwhile projects to invest in for the benefit of shareholders.

Voting guideline

Before voting on the issue, the following should to be taken into consideration:

- Where the free float of the company is less than 50%, or approaching it, unbalanced share repurchases will shrink the free float. This is not recommended and should be opposed.
- When there are both resolutions for issuing large numbers of shares and repurchasing shares, the perception is that management is not sure about strategies for the coming year but will want flexibility. This is regarded as too open ended and should be opposed.
- When no value was added by previous share repurchases, these should also be opposed.
- Share repurchases that are undertaken to odd lot resolutions should generally be supported.
- When a pyramid or controlling shareholder structure applies – then repurchase should ideally be done on a pro-rata basis.
- Should Ashburton have a material concern with an incentive scheme structure it will vote against a repurchase of shares to feed the required shares to the incentive scheme or structure.
- Where the share repurchase is large, special scrutiny needs to be given to the price of that repurchase in relation to the fair value of the shares.
- All shareholders should be given the opportunity to participate

7.6.5 Payment of dividends

Analyse the effect of the declared dividend on capital structure and liquidity status. Where no dividend is declared, reasons should be provided.

Voting guideline

- Assess the reasons given by a company and determine the voting position given the circumstances.
- Ashburton should vote against the payment of dividends where it feels that such a payment is likely to place the company in a precarious position with regards to the availability of cash resources.

7.6.6 Capitalisation issues

In terms of section 47(1) of the Companies Act 71 of 2008, except to the extent that a company's Memorandum of Incorporation provides otherwise:

- The Board of that company, by resolution, may approve the issuing of any authorised shares of the company, as capitalisation shares, on a pro rata basis to the shareholders of one or more classes of shares;
- Shares of one class may be issued as a capitalisation share in respect of shares of another class; and
- Subject to subsection (2), when resolving to award a capitalisation share, the Board may at the same time resolve to permit any shareholder entitled to receive such an award to elect instead to receive a cash payment, at a value determined by the Board.

The Board of a company may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in subsection (1)(c) of the Companies Act 71 Of 2008 unless the Board:

- Has considered the solvency and liquidity test, as required by section 46 of the Companies Act 71 Of 2008, on the assumption that every such shareholder would elect to receive cash; and
- Is satisfied that the company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.

Voting guideline

- o With regards to the use of a capitalisation issue to return funds to shareholders, the investment manager should vote against or abstain from voting where:
- o The difference between the value of the capitalisation issue versus the cash offer (if a choice is provided) is of a significant size that shareholders will effectively be in a worse off position by taking the cash offer and are in effect being 'forced' into selecting the capitalisation offer.
- o The size of the capitalisation offer in relation to the current shares in issue would significantly increase the total number of shares in issue and potentially have a significantly negative impact on the company's earnings per share going forward.

The following will be considered:

- o The share capital structure before and after such an issue.
- o The value of the capitalisation issue relative to the dividend offered.

7.6.7 Odd lot offers

The company may propose to mop up smaller and odd number shareholdings in an effort to reduce administrative burdens and costs associated with a large number of shareholders with small holdings.

On a whole, Ashburton should vote in favour of those resolutions aimed at reducing the costs and administrative burden associated with being a listed company. Thus the Investment manager will vote in favour of odd-lot offers and related resolutions (permission to repurchase and issue shares in relation to the odd-lot offer) as long as the odd-lot offer will not concentrate voting power or increase existing concentration of voting power in a small number of shareholders.

Ashburton may choose to vote against any odd-lot offers that pertain to a specific sub-class of voting shares (for example lower voting rights shares) where such an odd-lot offer will ultimately result in the increase in voting power of other shareholders within the company.

Voting guideline

- o Assess on case by case basis.

7.6.8 Share splits and consolidations

Share splits are generally understood to increase the liquidity of shares and are usually conducted for just such a reason. Share splits will be considered on a case-by-case basis in order to ensure that Ashburton is acting in the best interest of the existing shareholders through the implementation of a share split. Conversely consolidations of shares would be expected to reduce the overall liquidity of the stock.

Ashburton will look to the company to provide a sufficient rationale for the share consolidation and will only vote in favour of such a resolution where it feels satisfied that a share consolidation makes sense and is in the interest of all shareholders.

Voting guideline

- Assess on a case by case basis.

7.7 Changes in the MOI

In terms of section 16(1) of the Companies Act 71 of 2008, a company's Memorandum of Incorporation may be amended:

- in compliance with a court order in the manner contemplated in subsection (4); or
- in the manner contemplated in section 36(3) and (4); or
- at any other time if a special resolution to amend it is proposed by the Board of the company; or shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution; and is adopted at a shareholders meeting, or in accordance with section 60, subject to subsection (3).

A company's Memorandum of Incorporation may provide different requirements than those set out in subsection (1)(c)(i) with respect to proposals for amendments. The changes should be explicit, with the old and new Memorandum of Incorporation compared and published on the company website. If both are not published, the changes have to be highlighted, but the Memorandum of Incorporation has to be accessible on the website. Phrases such as 'copy available at shareholder meeting (or AGM)' will not suffice.

7.7.1 Introduction of new share classes and debt instruments

The effect of these proposals over time can be to consolidate voting power in the hands of a few insiders, disproportionate to the percentage ownership of the company's share capital as a whole. Doing this negates the modern view of shareholder democracy.

In the case of debt instruments, there may be more leniencies and this will be judged on a case-by-case basis. It will mean that there are preferential ranks of debtors, which is not that uncommon. The preference structure relative to current debt usually affects the pricing of the debt issue.

Voting guideline

- Consider whether the proposal is in the client's best interest and assess company's commercial reasoning for proposing such a resolution.

7.7.2 Changes in Board composition

The MOI determines the minimum and maximum number of Board members, qualifications of directors and the procedure and rules relating to alternates.

Voting guideline

- The proposal may be necessary for a number of commercial interests and Ashburton should evaluate on a case by case basis.

7.7.3 Directors indemnification

In terms of section 77 of the Companies Act 77 of 2008, a director of a company may be held liable in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss, damages or costs sustained by the company as a consequence of any breach by the director of a duty contemplated in section 75, 76(2) or 76(3)(a) or (b); or in accordance with the principles of the common law relating to delict for any loss, damages or costs sustained by the company as a consequence of any breach by the director of-

- a duty contemplated in section 76(3)(c);
- any provision of this Act not otherwise mentioned in this section; or
- any provision of the company's Memorandum of Incorporation.

A director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director having not acted in the best interest of the company. The liability of a director in terms of subsection (3)(e)(vi) as a consequence of the director having failed to vote against a distribution in contravention of section 46.

The liability of a person in terms of this section is joint and several with any other person who is or may be held liable for the same act. In terms of King III Report Provisions exist for relieving directors of liability in certain circumstances, either by the courts or, if permitted, by the company's Memorandum of Incorporation, but not in the case of gross negligence, wilful misconduct or breach of trust.

With increased awareness of director's personal liabilities, clauses are being proposed that commit company funds to indemnify any person employed by the company against liabilities incurred when defending proceedings against them.

Without such indemnity, people may be reluctant to accept a position within the company that could attract these liabilities. There can be no indemnification in the case of negligence or dishonesty, but in the case of negligence, this is often hard to determine.

Voting guideline

- o Assessed on a case by case basis.

7.7.3.1 Borrowing powers of directors

Section 45 of the Companies Act 71 of 2008 indicates, except to the extent that the Memorandum of Incorporation of a company provides otherwise, the Board may authorise the company to provide direct or indirect financial assistance to a director or prescribed officer of the company or of a related or inter-related company, or to a related or inter-related company or corporation, or to a member of a related or inter-related corporation, or to a person related to any such company, corporation, director, prescribed officer or member, subject to subsections (3) and (4).

If the Board of a company adopts a resolution to do anything contemplated in above, the company must provide written notice of that resolution to all shareholders, unless every shareholder is also a director of the company, and to any trade union representing its employees within 10 business days after the Board adopts the resolution, if the total value of all loans, debts, obligations or assistance contemplated in that resolution, together with any previous such resolution during the financial year, exceeds one-tenth of 0,1% of the company's net worth at the time of the resolution; or within 30 business days after the end of the financial year, in any other case.

The Companies Memorandum of Incorporation may place a restriction on the borrowing powers of directors in order to ensure that such financing is achieved in a prudent manner.

Voting guideline

- o The circumstances under which the proposal is made and the current level of director's borrowing powers to ensure that the company does not allow reckless borrowing that may place itself in illiquid or insolvent circumstances must be assessed.

7.8 Empowerment transactions

Ashburton recognises that broad-based black economic empowerment (“BBBEE”) is an important social and business imperative. BBBEE transactions are fundamental to the success of the companies in which Ashburton invests. Ashburton have a duty to act in the best interests of its clients in evaluating such transactions.

Voting guideline

Principles to be considered for BBBEE transactions:

- Ashburton should support proposed BBBEE transactions that have a good investment case.
- Companies should demonstrate the benefits of BBBEE transactions, and calculate and disclose the economic cost and impact on key financial metrics.
- The economic cost should include the cost of any discount to the market price of shares issued or sold to the black economic empowerment (“BEE”) parties and/or the effective cost of any funding or option arrangement. The economic cost should be calculated using generally accepted financial or option valuation methodologies applicable. Investment managers should consider whether such costs are fair in relation to the expected benefits and fair in relation to norms in the marketplace.
- The structure and design of the BEE scheme and selection of participants in such a transaction remain the prerogative of the management of the company. Full and detailed disclosure by a company needs to be provided on all relevant terms of the BEE deal. Ashburton anticipate management to substantiate the structure and composition of the BEE deal.
- Ashburton favours BEE transactions that are sustainable, including those that are reasonably expected to result in a high probability of value realisation for empowerment partners.
- To the extent that a BEE transaction is put in place to meet BEE legislation (such as the Department of Trade and Industry (“DTI”) Codes), or to meet the requirements of an industry charter, the Investment manager would expect the company to obtain the necessary sign-off, advice (legal or otherwise) and/or evidence that the transaction complies with such legislation or charter; and that such sign-off, advice and/or evidence be disclosed to shareholders. A transaction which does not meet the legislation or charter requirements, or where insufficient comfort is provided to shareholders that it does meet such legislation or charter requirements, is likely to be rejected in the absence of other strong reasons, which must be motivated by a company.
- Such legislation or charter may have certain ownership targets in the future, and Investment managers would therefore need to gain comfort on the extent to which the transaction meets both current and future requirements.
- To support the longevity of BEE transactions, Ashburton supports a minimum lock-in arrangement with the BEE parties.

Principles applying to BEE constituents in transaction consortia

- Each component constituent in a consortium that is introduced should be justified on a cost benefit basis on its own merits. Ashburton favours the composition of a consortium that would add the most value and the least cost to the company concerned. The choice of the constituents and the evaluation of which will add the most value to the company, is the responsibility of management, who will be required to justify their choice in the context of the company.
- Subject to the above, all things being equal, Ashburton favours BEE transactions that are as broad based as possible, and therefore will generally support proposals where staff, customers and other stakeholders are included in the transaction deal.
- In so far as any part in a BEE transaction is not broad based and there is a cost to the company with regard to the transaction, Ashburton would expect such empowerment

partners to provide a capital commitment upfront that is material in the context of the BEE deal and the empowerment partner's financial position. Ashburton also expects that such partners have suitable performance conditions towards the company and suitable arrangements, including lock-ins and restrictions around competing ownership. Ashburton does not expect a capital commitment for the broad-based elements of the transaction. It is therefore possible that some components of the transaction will provide an upfront commitment whereas other components will not.

- As a consequence to the third point above, where a component is not broad based, but there is no cost to the company as a result of the transaction (i.e. where historically disadvantaged individuals have acquired shares in the market or from the company at full price, and there is no recourse at all to the company), then Ashburton would not expect such further conditions outlined in the third point above to be imposed.