

WRITTEN SUBMISSION ON THE COMPANIES AMENDMENT BILL

Submission relates to the proposed amendments in
B27-2023 with specific reference to s30A(1)(2)(3a – f)

17 OCTOBER 2023

About

The Pre-distribution and Ownership Project

- The pre-distribution and ownership project aims to investigate how the production system itself can be reconfigured to generate outcomes that improves equity within society prior to fiscal transfers to support vulnerable households and communities. The project is located within the Southern Centre for Inequality Studies (SCIS) at the University of the Witwatersrand.
- More about the project here: <https://www.wits.ac.za/scis/research-projects/pre-distribution-and-ownership/>

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Pay gap disclosures and inequality

- South Africa has **historically high income and wealth inequality**
 - Gini coefficient of 0.67 for South Africa (0 = perfectly equal; 1 = perfectly unequal). Inequality fluctuated but remained high in democratic SA.
 - 3 500 individuals (the top 0.01% of the wealth distribution) own about 15% of all wealth in SA. The top 0.1% own 25% of all wealth. The bottom 50% have more liabilities than assets to the value of R16 000.
- Disclosures on wage differentials will mean **companies cannot continue to ignore the inequalities** in earnings in South Africa.
 - In 2021 SARS reports that 44 324 individuals earned over R2m annually with an estimated taxable income of R169.4Bn (1% of assessed taxpayers). Slightly under 50% of all taxpayers had a taxable income between 70k and 350k
 - At the bottom of the distribution many households are dependent on social grants or have zero/low wages .
- Disclosures will **provide other social actors with evidence** to demand and question intra-firm inequalities and petition for change.
- Higher paid workers will face external pressure for wages earned and this will impose downward pressure on wages/ increases in subsequent periods.

Preliminary analysis of pay gaps

Company	Sector	CEO Monthly Wage (2022/2023)	CEO: Average Pay Ratio	2022 / 2023 Salary	CEO Daily wage
BHP Billiton	Mining	R22 435 000	949	R269 220 000	R737 589
BAT	Manufacturing	R18 958 333	802	R227 500 000	R623 288
Sibanye Still water	Mining	R16 502 500	698	R198 030 000	R542 548
Richemont	Retail	R13 975 000	591	R167 700 000	R459 452
AB InBev	Manufacturing	R11 766 667	498	R141 200 000	R386 849
Thungela Resources	Mining	R10 788 333	456	R129 460 000	R354 685
Glencore	Mining	R9 125 000	386	R109 500 000	R300 000
Naspers	ICT / Service	R8 933 333	378	R107 200 000	R293 699
Prosus N.V.	Finance	R8 933 333	378	R107 200 000	R293 699
Anglo American	Mining	R8 412 500	356	R100 950 000	R276 575
African Rainbow Minerals	Mining	R7 301 667	309	R87 620 000	R240 055
Capitec	Finance	R5 166 667	219	R62 000 000	R169 863
Standard Bank	Finance	R4 640 833	196	R55 690 000	R152 575
FirstRand	Finance	R4 024 167	170	R48 290 000	R132 301
Nedbank	Finance	R3 633 333	154	R43 600 000	R119 452

Notes:

1. CEO earnings obtained from public news reports and includes a base salary and other incentives
2. Figures compared to StatsSA's Average Monthly Earnings for all industries (R283 680 annually) – likely to be lower and therefore these ratios above higher.

Support for the disclosure proposal (1)

- As with similar legislation in other jurisdictions important that the legislation does not appear to regulate the amount of compensation payable to top executives.
 - This is an internal matter for companies and their shareholders to decide.
 - Legislation must focus on stipulating adequate disclosures so that all stakeholders have sufficient data to make informed decisions.
- “Highest earning individual and top 5%” considers that earnings at the top of the organisation are such that the CEO / other stipulated title would not always be the highest earning individual.
- “Average and median remuneration of all employees”
 - Important to include both measures as the value of the former only would be higher as it is subject to outliers.
- Calculating the remuneration gap using the top and bottom 5% shows the degree of spread in inequality between the extremes of the income distribution.
 - Amendments do not specifically state whether in addition an individual pay gap will be calculated between the highest and lowest earning individuals.

Support for the disclosure proposal (2)

- “All salary and benefits”
 - Important to include short- and long-term benefits because in some industries the base pay alone might deflate the pay gap ratio.
- Applies to both public companies and state-owned companies
 - In 2021 70% of workers are employed in the formal sector.
 - This is an indicative measure of the reach of the legislation but not all workers would be covered by the proposed amendment.

Additions to the proposed amendment: Definitions

- LRA definition of employee
 - *Anyone other than an independent contractor who works for another person.*
 - Instead, it should include **all** individuals working at the business premise regardless of the length of their contract whether in- or out-sourced to avoid “hiding” low earning workers to understate the ratio.
- Include the title of the lowest worker to be able to determine whether the salary posted is commensurate with the listed job.
- Is the definition of pay and benefits exhaustive enough?
 - Expenses paid by the company for these individuals that are charged against income tax or in the provision of other services to the firm.
 - compensation for loss of office paid to or received by any individual together with any other payments relating to termination of services.
 - Consider including “other” to capture other income that may vary from one firm or sector to another.

Additions to the proposed amendment: Gender issues

- Missed opportunity to include reporting on gender dynamics.
 - A characteristic of the labour market is that female workers tend to cluster in lower earning occupations **occupational segregation**. Even with similar characteristics, women also tend to earn lower than men.
 - The introduction of such legislation provides room to legislate the inclusion of similar disclosures along gender lines by requiring similar analysis for all workers and then separately for males and female workers.

Some South African public companies cross-listed in the UK are already reporting on gender pay gaps

- To begin addressing this gender inequality, we propose the inclusion of payment disclosures along gender lines. In particular, the following information should be reported on:
 - i. The number of male and female workers across the Employment Equity occupational categories.
 - ii. The difference between the median and average hourly rate of pay that male and female employee earn.
 - iii. The difference between the median and average bonus and commission paid to male and female workers.
 - iv. The proportion of male and female works that earned a bonus or commission in the year being reported.

Additions to the proposed amendment: Other

- Include a minimum employee threshold size to capture the information of large employers of unlisted companies.
- Consider including the following from other jurisdictions:
 - Similar disclosure in Germany include: (i) the responsibilities and a measure of the performance of the relevant individual (ii) the company's performance and outlook and (iii) the general economic and social situation.
 - From the UK: (i) The number and type of shares held (ii) share options that have been exercised and those that have not
 - Pay disclosures in the US accommodate for in- and outsourced workers by recommending that firms with 100+ employees hired through a labour contractor should file two separate reports for payroll and outsourced workers.



THANK YOU