Non-executive directors

Practices and fees trends report

15th edition • February 2022 • South Africa

pwc

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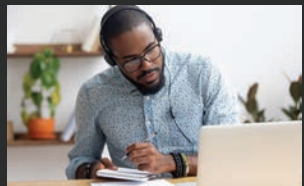
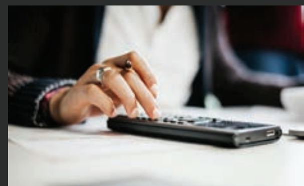
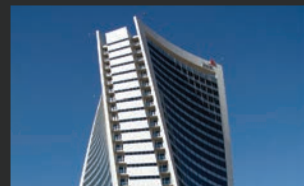






Editor's note

Leila Ebrahimi

For our report this year, we decided to ask non-executive directors what issues and trends are dominating the boardroom. Our findings reveal three key themes — Purpose. Risk. Retention. We share more detail on our findings in Chapter 1.

Purpose: Seemingly the buzzword of the year, this speaks to the global challenges that have been rightly pushed to the forefront, such as climate change and inequality, and the role of business in addressing them. One thing we have all become very attuned to is that every company has an impact on people and the planet. The flood of ESG information and opinion, while leaving many overwhelmed, has driven home the point that we need to understand our impact — whether it be personal, or organisational. Every diligent board has invested valuable time in educating themselves on these important matters, ensuring they are embedded in strategy, and that business is transformed to reflect this.

Purpose goes hand in hand with 'trust'. Trust levels appear to be at an all-time low, and this has had a knock-on effect on many areas in which boards generally concern themselves. The retention of talent and lack of support for executive pay structures are two interlinked issues that the trust deficit has exacerbated.

Retention: It is 2022 and we find ourselves in the midst of what seems to have been aptly named 'the Great Resignation'. Retention of the talent that businesses need to move forward is suddenly a major risk factor. However, shareholders and media commentators still appear to lack empathy for the 'war for talent' argument, maintaining that it is but one of many excuses to increase executive pay. Indeed, globally trends are reflecting increases of retention awards and sign-on bonuses.

The pandemic appears to have prompted many people to reflect more on the 'why' of their jobs. The unsatisfactory answers many have come up with contributed to the 'Great Resignation'. Some say that the power balance is changing from employer to employee. However, in South Africa, where unemployment is higher than ever, this is nuanced. Certainly, there are notable challenges being experienced with finding skilled and executive talent in light of increased emigration and other pressures. Creative retention arrangements, which are more sophisticated than cash alone, are becoming an increasingly important weapon in the talent war.

Risk: We all have a heightened awareness of risk at the moment. Something close to home for RemCos is the proposed amendments to the Companies Act, which would place more power in the hands of the shareholder by enhancing their votes on remuneration. We have also seen support levels for executive remuneration decisions decreasing, while shareholder pushback on various issues increases. This has left some boards feeling stifled in terms of their decision-making. Certainly, boards are feeling increased pressure from many angles to 'comply', while needing to be agile and competent to make appropriate decisions for unique business scenarios that have not necessarily been experienced in our market before, or to this extent.

The COVID-19 pandemic and related economic and social challenges have had a significant impact on African economies, businesses and communities. There is undoubtedly an expectation that the private sector needs to work together with other role-players in creating a stable, viable economy through robust response to material environment, social and governance (ESG) matters.

In 2021, the latest report from the Intergovernmental Panel on Climate Change (IPCC) demonstrated that the impacts from climate change and global warming are definitively linked to human activity and we are already experiencing the impacts of our past actions today. Meanwhile, studies show that Southern Africa is experiencing warming at twice the global average, meaning that even if global temperatures are maintained in line with the most ambitious goals of the Paris Agreement, the economic costs for South Africa will be on par with the impacts from COVID-19 and will include further job losses. The more likely warming range we will achieve would see significantly worse economic impacts.

The need for a rapid but just transition to a net-zero economy is therefore vitally important. Embedding ESG is now core to business strategy and success, not a 'reporting issue' to fix. To get this right, while balancing other priorities, boards need to be agile, and good chemistry is vital. Strong, capable, and aware boards who are confident, well-informed of both present and future risks, and prepared to take courageous action in line with a well-defined purpose, are what will take business and our economy forward and help us navigate these times.

Abbreviations and acronyms used in this report

ADI	Authorised deposit-taking institution
AGM	Annual general meeting
AltX	The alternative public equity exchange for small and medium-sized companies in South Africa operated and owned by the JSE.
APRA	Australian Prudential Regulation Authority
bn	Billion
BSR	Business for Social Responsibility
CGT	Capital gains tax
COLA	Cost-of-living adjustment
CSR	Corporate social responsibility
DSL	Decent standard of living
EPS	Earnings per share
E&S	Environment and/or social
ESG	Environment, social and governance
EVP	Employee value proposition
FAR	Financial Accountability Regime (UK)
FCA	Financial Conduct Authority (UK)
FTSE	Financial Times Stock Exchange
GAAP	Generally accepted accounting principles
GHG	Greenhouse gas
IA	Investment Association (UK)
ICB	Industry Classification Benchmark
IFPR	Investment Firms Prudential Regime (UK)
IPCC	Intergovernmental Panel on Climate Change
ISS	Institutional Shareholder Services
JSE	Johannesburg Stock Exchange
KPI	Key performance indicator
LQ	Lower quartile
LTI	Long-term incentive
LTIP	Long-term incentive plan
m	Million
M	Median
MRT	Material risk taker
MSR	Minimum shareholding requirement
NMW	National minimum wage
IoDSA	The Institute of Directors South Africa
RemCo	Remuneration Committee
RSE	Registrable superannuation entity
SEC	Securities and Exchange Commission (US)
SFI	Significant Financial Institutions
SPII	Studies in Poverty and Inequality Institute
SPNs	Socially perceived necessities
STI	Short-term incentive
STIP	Short-term incentive plan
Stats SA	Statistics South Africa
TCFD	Task Force on Climate-related Financial Disclosures
UNGPs	UN Guiding Principles on Business and Human Rights
UQ	Upper quartile
VCP	Value Creation Plan

Information used in this report

This publication focuses primarily on non-executive directors of companies listed on the Johannesburg Stock Exchange (JSE).

Data presented is drawn from information publicly available on 31 October 2021 (the cut-off date) and is valid for the period from 1 September 2020 to 31 October 2021 (the 2021 reporting period).

The analysis is based on actual fees paid to non-executive directors as disclosed in the annual financial statements of JSE-listed companies for the period under review (rather than forecast fees disclosed in the notices of AGMs). The total market capitalisation of the 261 (2020: 278) companies listed on the JSE Main Board on the cut-off date was R16.85 trillion (2019: R13.44 trillion). This analysis excludes preference shares, special-purpose listings and suspended companies.

Directors' fees

As in previous years, we have analysed remuneration data using quartiles/percentiles rather than averages and standard deviations that assume a normal distribution. We include averages as a point of interest or where there are not enough data points to perform a quartile analysis.

As with the previous edition of this report, we have restricted our analysis to active directors on the cut-off date, as opposed to all directors that have been reported on in the annual financial statements of companies. Therefore, in instances where non-executive directors have resigned from their roles, we have excluded them. In the event that non-executive directors have been appointed to their roles after the financial year end, they too have been excluded from the analysis. Please note that we have not shown comparator figures in this year's report.

Quartile/percentile ranges used in our analysis:

- **LQ – Lower quartile (25th percentile)**
  75% of the sample earns more and 25% earn less than this fee level.
- **M – Median (50th percentile)**
  50% of the sample earns more and 50% of the sample earns less than this fee level.
- **UQ – Upper quartile (75th percentile)**
  25% of the sample earns more and 75% earn less than this fee level.
- **Average**
  Calculated by dividing the sum of the values in the set by the number of data points in the set.

Company size

In our experience there is no definitive correlation between the market capitalisation of a company and the remuneration of directors. However, we have found that market capitalisation is a good proxy for size and complexity. It is also an appropriate metric to use when identifying comparator groups for benchmarking purposes. It is in this context that remuneration data for companies listed on the JSE's Main Board is analysed in terms of:

- **Super cap**
  The top 10 JSE-listed companies valued by market capitalisation
- **Large cap**
  1 to 40 JSE-listed companies valued by market capitalisation
- **Medium cap**
  41 to 100 of the JSE-listed companies, valued by market capitalisation
- **Small cap**
  101 to 261 of the JSE-listed companies, valued by market capitalisation.

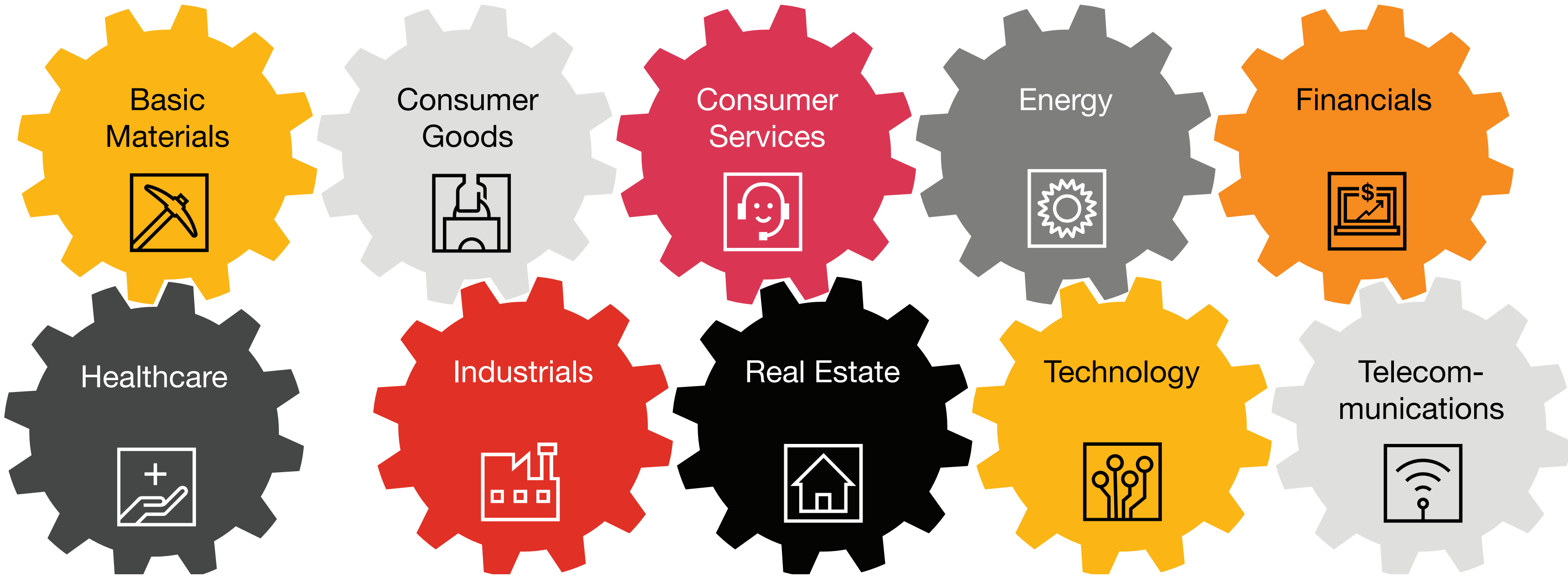
AltX

AltX is the alternative public equity exchange for small and medium-sized companies operated by the JSE in parallel with the Main Board. Our AltX analysis as a stand-alone group refers to 24 (2020: 24) active trading companies with a total market capitalisation of R21.01bn (2020: R6.99 bn).

Industry classification

This analysis applies the Industry Classification Benchmark (ICB), as used by the JSE. Fees paid to chairpersons and NEDs appointed to JSE-listed company boards have accordingly been categorised according to the company's ICB classification.

ICB industries



1 NED RemCo member survey

Insights from RemCo members on issues affecting South African boards

It's been a tumultuous few years to be a board member and there are no signs of the turbulence easing in the near future.

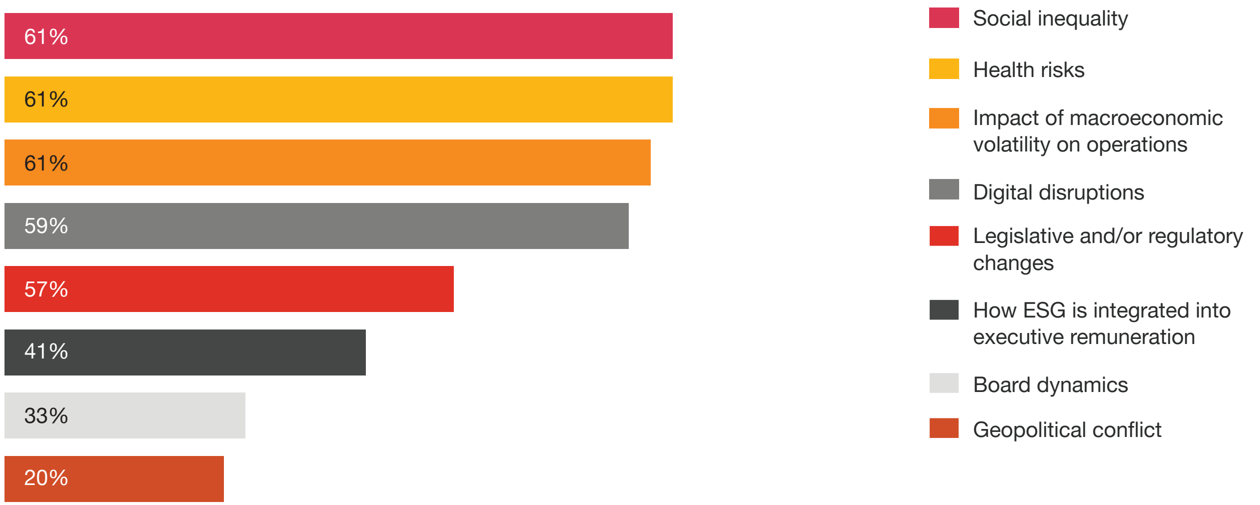
RemCo members, in particular, have had their work cut out for them in balancing the remuneration of executives and senior management with the interests of shareholders and other stakeholders, assessing performance pay outcomes in a declining economy and determining how best to retain key talent critical to the delivery of business strategies. They have been required to undertake their duties in the face of, inter alia, the COVID-19 pandemic, ESG considerations and a volatile global business environment. Outside of these challenges, they face intensified pressure arising from the increased scrutiny of executive pay by broader society, which, through the proposed amendments to the Companies Act, may have a direct impact on their roles as members of the committee.[1]

We recently invited NEDs serving on the RemCos of listed and unlisted companies in South Africa to participate in a survey aimed at revealing key insights and identifying trends in the South African market. The survey sought to ascertain how these, and emerging risks, are impacting RemCos and their individual members in the decision-making process.

Fifty-one NEDs completed the survey, giving us valuable insights into the challenges of sitting on a RemCo these days, as well as some idea of the wider risk perceptions of members of South African boards. What emerged is that being on a RemCo is perceived to be a more complex, onerous, and at times thankless task, than in previous years. In fact, many question whether this complexity and the increased breadth of their responsibilities is adequately reflected in their own remuneration.

[1] See Chapter 7 (Regulatory update).

Figure 1.1: Risks participating NEDs are most concerned about



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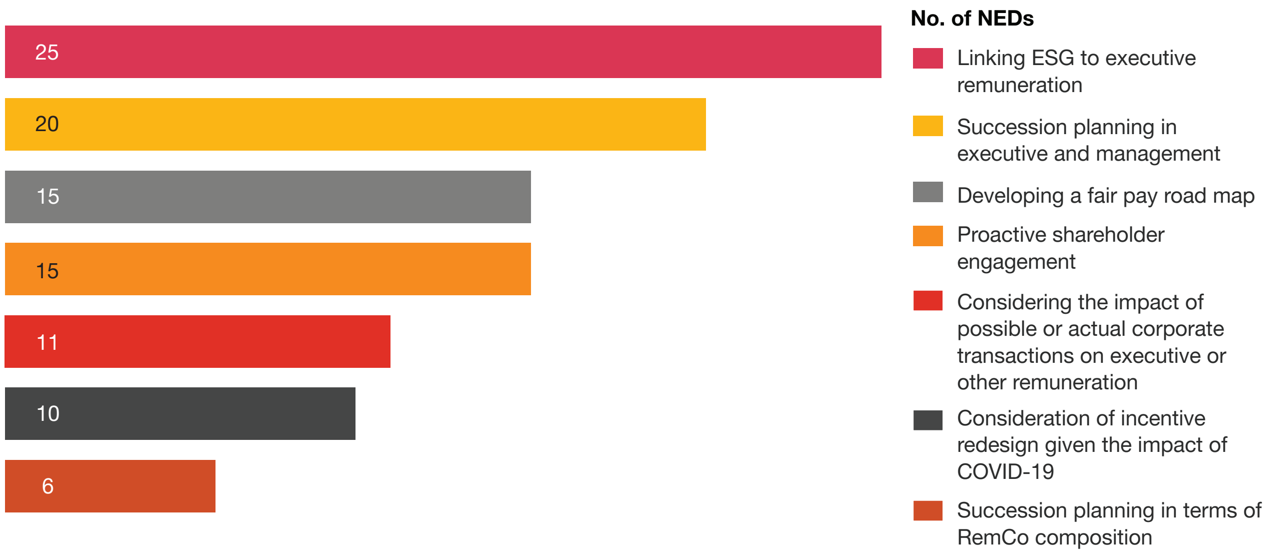
Source: PwC NED RemCo member survey 2022

Figure 1.2: Priorities identified by participating NEDs



Base: 51
Source: PwC NED RemCo member survey 2022

ESG and fair pay

Two years into the COVID-19 pandemic, there remains widespread varying practice (and opinion) with regards to the integration of ESG strategy into executive remuneration structures. Within the South African context, the pandemic exposed the glaring social ills that exist and continue to persist in the face of a 34.9%[2] unemployment rate, our highest yet, macroeconomic volatility, gender and/or race inequality, and other issues. It was unsurprising that 86% of respondents voiced concern in relation to the health risks (this is inclusive of new COVID-19 waves and variants, other chronic illness, mental health and well-being issues) that could impact their companies. This context has also contributed to the increased importance of fair pay, and a telling observation was noted by one NED who says:

> "The main struggle for me is the issue of the pay gap between the highest and the lowest in this country, as it is steeped in the socio-economic and political dynamics of this country. I do not see any strategy or movement towards addressing it overall.

[2] Statistical Release P0211: *Quarterly Labour Force Survey: Quarter 3, 2021*. Pretoria: Statistics South Africa, p.7. http://www.statssa.gov.za/publications/P0211/P02113rdQuarter2021.pdf, 2021

Moreover, 50% of NEDs surveyed indicated that their organisations did not have a stand-alone fair pay policy with short- and long-term objectives, while 46% indicated that their organisations are in the active process of developing one. Without sufficient disclosure of these policies and their implementation in companies' integrated annual/ remuneration reports, many stakeholders may wonder how comprehensive and effective such policies are. In this regard, it's interesting to note that 49% of NEDs surveyed indicated that a gender pay gap analysis is currently being conducted in their organisations. This demonstrates that while mandatory disclosure of gender wage gaps is not yet legislated in South Africa, many entities have begun to prepare themselves for a step they see as inevitable. Until now, the local focus has been on the vertical pay gap as opposed to the gender pay gap (which has been emphasised by the proposed amendments to the Companies Act and its regulations). Nonetheless, it is reassuring that companies are preparing to address potential future changes to reporting requirements. However, it's yet to be seen if they have the will to implement the changes necessary to redress the gender-based pay disparities that these disclosures are sure to expose.

Surprisingly, and despite their concerns, a third of participating NEDs appear to not be losing sleep over the manner in which ESG issues are addressed by their organisations. At face value, this suggests that companies already have well-developed ESG strategies in place and this may be the case with 61% of participating NEDs providing that they had developed and adopted an ESG strategy and 37% indicating that their boards were working on an ESG strategy.

Furthermore, the vast majority of NEDs acknowledge the importance of ESG with 94% indicating that their company either already includes or is working towards incorporating ESG into the performance conditions underpinning their short- and long-term incentive plans. It will be interesting to observe whether disclosures are made in forthcoming remuneration reports about the methodologies used to select and evaluate ESG measures incorporated into these structures.

Board dynamics

Some 'softer' issues, such as succession planning and board chemistry, are not perceived to be significant risks by the RemCo members surveyed[3], despite numerous mentions of these issues in answers to other questions in the survey. One NED stated that in their RemCo's case 'effectively, a new committee has been appointed due to the retirement of several committee members'. Another mentioned that 'the company has a long-term view of addressing this particular issue at both board and management level. Board members have long tenure and when recruiting, we look at skills mix as well as race, gender and age.'

These issues are not perceived to be immediate threats and boards are paying more attention to 'urgent' risks that need addressing, such as social inequality, health risks, the impact of macroeconomic volatility on operations, digital disruption and cybersecurity, to name a few.

Concerningly, 51% of participants cited lack of experience among RemCo members, lack of effective decision-making or inefficiencies during RemCo meetings, and a lack of appropriate information from management on issues that the RemCo is required to make decisions on, as contributing issues to efficient board dynamics. These are not new concerns, but it is unclear whether enough action is being taken to address them.

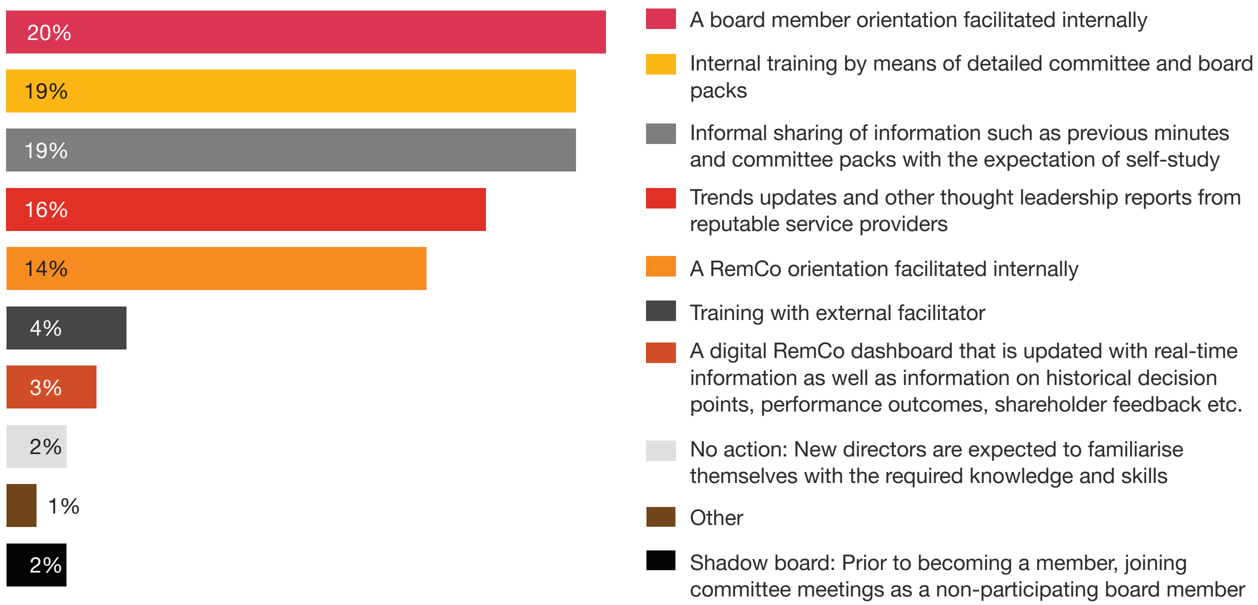
To quote a particularly candid NED:

> "Very little is being done to correct these issues — to the contrary, the board is seeking to "talk down" challenges particularly for political correctness and/or to drive their own agendas, which do not necessarily align with shareholder interest.

[3] 22% of the NEDs consider board dynamics as a potential risk to the company.

In the face of often complex and nuanced remuneration decisions, necessitated by the pandemic, the need to incorporate ESG considerations into remuneration structures and the requirement to ensure fair and responsible pay throughout the organisations, it is not surprising that many RemCo members feel somewhat overwhelmed, or at least, underequipped.

Figure 1.3: Methods used to onboard new RemCo members



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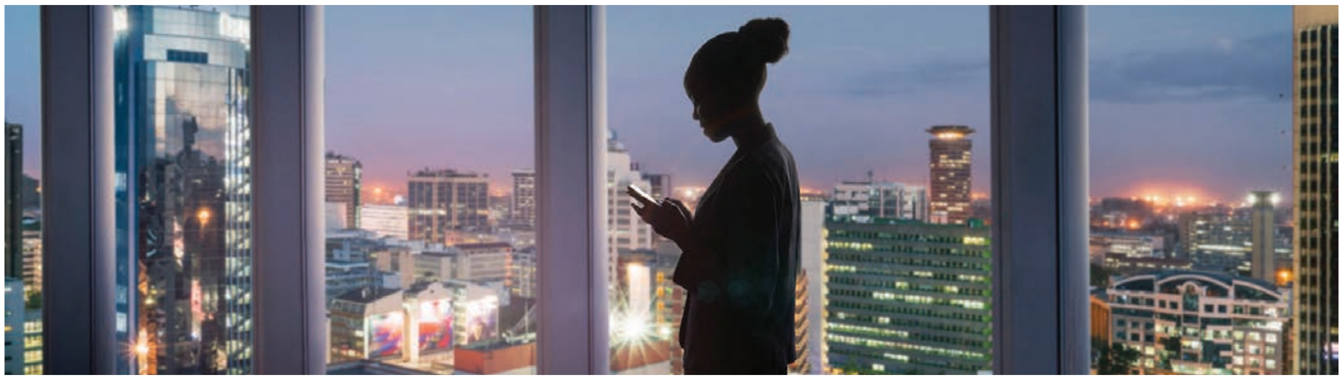
Source: PwC NED RemCo member survey 2022



Among these NEDs, one advised that they attend the Institute of Directors South Africa (IoDSA) workshops, another stated that meetings are facilitated at the new member's request and a third advised that they deliberately retained experienced NEDs, some of whom had served on the board for more than 12 years.

When we asked NEDs what they are currently doing to tackle the issue of underpreparedness and/or lack of experience, only 20% seek the expertise of external advisors/consultants, either through direct training, or indirectly through trends updates or thought leadership reports. The majority opt for internal upskilling through the use of detailed committee and board packs, RemCo/board orientation (facilitated internally) and informal sharing of information such as previous minutes and committee packs with the expectation of self-study.

An approach suggested by one NED is 'seconding' an experienced board member with RemCo experience, but who does not currently sit on the RemCo, when there is a need to include a member who is knowledgeable in certain areas to provide expertise.

The least commonly used onboarding methods include training with external facilitators (who are the subject matter experts) and using tech-enabled solutions such as a digital RemCo dashboard.

In some instances, NEDs who may require assistance, receive little to no guidance on their roles.

Comments from other participants include:

> No action is required; new directors are expected to familiarise themselves with the required knowledge and skills.
>
> The other member was left to his own devices.

Allied to this, the common practice of recruiting new board members from within a close network without much effort being made to look further, is one that needs to be looked at more closely.

Board chemistry

Participants' feedback indicated that measures employed by South African boards to improve diversity include setting aside appointments for select genders and increasing the size of the RemCo by adding an additional member.

We have often wondered whether shadow boards may resolve some of the issues that our boards face, improving diversity and accelerating the gaining of experience by board members. Disappointingly, respondents representing only two companies indicated that their respective board had established a 'shadow board'. It would be interesting to know whether other boards have considered and dismissed the idea, or whether this will become more prevalent in the future.

Shadow boards assist in seamlessly integrating new board members by offering first-hand exposure to the role, offering an opportunity to positively impact diversity and transformation. This facilitates seamless integration into boards and subcommittees when members are appointed to the board, as they are already prepared by the experience they have gained. Considering the ease with which we now hold virtual meetings, shadow boards are easier to constitute and use than ever before.

Proposed amendments to The Companies Act

A quarter of survey respondents are reconsidering their membership of RemCos as a direct result of the perceived burdens and risks arising from the proposed amendments to the Companies Act in their current form. A number also indicated that the fees may not be commensurate with the level of risk and responsibility for RemCo members. Such sentiment is a worry given that there is already widespread concern about lack of experience among board members and given the relative scarcity of RemCo skills.

2 Unpacking board culture

How behavioural psychology can explain board dynamics

Given the dynamics of South Africa's political, social and economic evolution, it is perhaps not surprising that many boards are still finding their way 28 years after the country's first democratic election.

Boards are often preoccupied with 'big picture' concerns such as balancing composition issues like diversity and transformation with other imperatives such as experience, age and tenure.

With these high-visibility considerations taking precedence, have we overlooked the importance of the climate in which boardroom interactions take place, or the tendency of humans to think and act in certain ways?

The mythology of corporate boards goes something like this: put a group of high achieving, experienced, strategic-minded and diverse individuals in a room together. Add commitment and a lot of hard work. What you get is a top-notch board with a healthy culture and effective oversight.

In practice, no boardroom culture is perfect. Every director has witnessed derailed discussions, dismissed opinions, side conversations, directors who dominate, and those who seem to be biting their tongue. This may be explained by the fact that each director brings his or her own habits, preferences, past experiences and individual biases. These all impact the board's culture and decision-making.

Boards can't build a truly strong culture without taking these dynamics into account. In this article, adapted from a report by PwC USA on board culture and behavioural psychology,[4] we explore how boards can spot some of the issues that may be holding them back.

[4] PwC, Unpacking board culture: How behavioral psychology might explain what's holding boards back, (New York: 2021). https://www.pwc.com/us/en/governance-insights-center/publications/assets/pwc-unpacking-board-culture.pdf

Bias

Every person has biases. Biases can help our brains order information and make decisions. But behavioural psychology also tells us that it influences the way we judge ourselves and others. The dangers in not actively correcting biases we possess inherently, may cause us to over or undervalue certain people around the table, or certain ideas. We might give too much credit to one opinion, while dismissing another.

Social biases may come out in a group setting and can be characterised as those unseen or underlying dynamics that push collective decisions in a certain direction. They can also influence collegiality, the ability to feel 'safe' to speak out and the potential to nurture diversity of thought.

We have identified four biases that we believe have the greatest influence in the boardroom: deference to authority, groupthink, a preference to maintain the status quo and confirmation bias.

Bias in the boardroom

Authority bias

The boardroom needs experts and indeed directors are recruited for their skill sets and expertise. But in some cases, boards may give too much credence to one director's experience or opinion on a particular matter. Boards can become unduly influenced by the opinions of directors who other members of the board look up to, leading them to dismiss what others have to say or to abdicate their responsibilities.

This dynamic is not just about respecting expertise. It's also about a perceived power structure within the board. For example, the board may be more likely to prioritise the views of specific board members, long-tenured directors, those with a commanding stature, tone of voice, or even those who speak with a European accent.

Tips to minimise authority bias

- Board leadership can solicit views from each director in turn. This ensures that all directors can have a voice on an issue — and also that an 'expert' in one area has their voice heard in other areas as well.
- Offer deep board education opportunities in specialised areas to prevent the board from relying too much on one director's experience.

Groupthink

Boards can only be effective if they have the ability to come to a consensus. No one wants to feel that the board is made up of factions with irreconcilable differences. Even when the board undergoes a shake-up, like the addition of an activist director, they tend to quickly reach a new equilibrium.

But while consensus-building is important, boards may be too inclined to seek harmony or conformity. This can lead to groupthink, where dissenting views are not welcomed or entertained. In fact, while most boards work to solicit a range of views and come to a consensus on key issues, 36% of directors in a recent PwC survey said that it is difficult to voice a dissenting view on at least one topic in the boardroom.[5] In situations where board members avoid making waves, this can lead to dysfunctional decision-making. In fact, the most common reason that directors cite for stifled dissent on their boards is the desire to maintain collegiality among their peers. This tendency is particularly strong in South Africa, as there is a common practice of directors nominating and appointing known associates, and recruiting within their personal networks, without making much effort to look further afield. Camaraderie between 'friends' may increase the need to maintain collegiality even more.

Shockingly, virtual board meetings may magnify groupthink. In person, a director might be able to quietly float an issue or take a member of management aside to ask a question. But these types of informal communications are much harder in a virtual meeting. A director may be more likely to bite their tongue when they are not effectively educated on a topic, or do not have access to the right information. Virtual meetings also raise the question of director engagement. When directors are distracted during board meetings, perhaps multitasking while on a virtual call, they are less likely to push back against an issue.

[5] PwC, 2020 Annual Corporate Directors Survey, September 2020, 16. https://www.corporatecomplianceinsights.com/wp-content/uploads/2020/09/PwC-2020-ACDS-Report.pdf?vgo_ee=s2bNOPunFlnHrrFuQLjRuO8Y1WW8Gp8hAps8Rn8HuME%3D

Tips to minimise groupthink

- Discourage side conversations between directors outside of meetings, as they relate to the business. When business matters are discussed, bring that conversation back to the boardroom to seek input from the whole board.
- On controversial issues, solicit views from each director.
- Recruit directors who bring a true diversity of thinking and viewpoints to the boardroom.
- Push management for the information directors need when they need it. Ensure the information and materials shared highlight key issues and discussion points.
- Bring in outside advisors to share a new or dissenting view on issues to shake up discussions.

Status quo bias

Change can be scary and people resist it. If things are working, we want to keep them the way they are. Boards too, often prefer a set of established norms and value that which is familiar. They may overvalue what they know and be reluctant to pursue initiatives involving substantial change, simply because it brings too many risks of the unknown. To add to this dynamic, when change is mandated by legislation, research has shown that directors do not support laws that would require boards to make changes.[6] This could explain why transformation, gender and/or race wage gaps, are still perennial issues in South African boardrooms.

Boards may also be reluctant to embrace new strategies and ideas. While individually directors may be creative thinkers, as a group they may be more likely to want to stick with the status quo.

[6] PwC, *2020 Annual Corporate Directors Survey*, September 2020, 12, 27 https://www.corporatecomplianceinsights.com/wp-content/uploads/2020/09/PwC-2020-ACDS-Report.pdf?vgo_ee=s2bNOPunFlnHrrFuQLjRuO8Y1WW8Gp8hAps8Rn8HuME%3D

This can also lead to boards and companies under-investing in long-term projects like research and development, which may not lead to returns for some time.

A problem related to status quo bias is the 'sunk cost' fallacy — the tendency to follow through on things we have already invested time, effort or money on, regardless of whether the current costs are greater than the benefits. In the boardroom context, such fallacious logic leads boards that have devoted too much time and effort to an idea or topic to not walk away from it. Similarly, while a decision may not make sense anymore, management teams and boards may have invested so much time and work already, that they feel reluctant to walk away.

Tips to minimise status quo bias

- Make structural changes to board deliberations. Bring in outside experts, revamp the agenda of a strategic offsite meeting.
- Take a fresh look at board materials. Ask advisors and other contributors to suggest revisions and recommend best practices.
- Use the board assessment process to identify ways the board might benefit from refreshment. Having a static group of directors for a long period of time may contribute to the previously mentioned bias of groupthink.

Confirmation bias

We all have a subconscious tendency to seek out and overvalue evidence that confirms our own beliefs, while undervaluing evidence that challenges them. Confirmation bias can lead to overconfidence in the outcome that directors are hoping for. If the company has had success in the past, the board may expect that success will continue, and overvalue the evidence that supports it. The board members that were strongly in favour of a project, or a new hire, or a new strategy, can find glimmers of positivity in almost any report from management. But confirmation bias isn't always about overconfidence — it can also confirm a negative view. The director who was against the project from the start may, in the same report, see only the bad news.

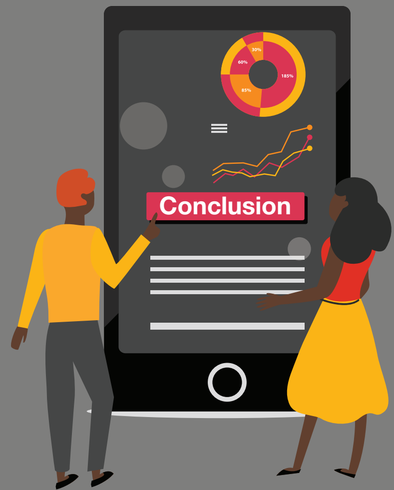
A common mistake when recruiting is finding directors who can 'fit in'. People are often looking for directors who share the same viewpoints and agree on key issues. But this only strengthens the board's confirmation bias, as facts that support shared opinions are given more weight. What they are missing, and what can really benefit a boardroom, is rigorous debate among directors with different views and perspectives.

Tips to minimise confirmation bias

- Have management present strategies that they considered but dismissed. There could be useful elements within those strategies.
- Recruit a director who will challenge the board's preconceived notions.
- When confronting a major strategic move, hire one outside advisor to present arguments in favour of the idea, and another to present arguments against it.
- Ask directors to rotate presenting hypothetical dissenting views. Even if the director does not hold that view, it can change the shape of the discussion.
- Ask internal audit and other support functions to provide strong, data-based challenges to the prevailing view.
- Highlight diversity in the room, including diversity of industries and varied past roles. When new directors are added to the board, ensure that they are brought fully into the fold.

The insights provided in this article into behavioural psychology should assist you in seeing your board interactions through a new lens. Understanding people and more importantly, understanding how they think, may be the missing element in creating that elusive board that is made up of high achieving, experienced, strategic-minded and diverse individuals who work together and achieve effective outcomes as a cohesive unit.[7]

Board dynamics won't change unless directors are willing to have an honest look at how the biases and practices on their own boards affect efficiencies. Once you've identified some potential issues, you can apply the tools outlined above to help bring about change, and enjoy the result of a more efficient, dynamic and effective board.



[7] PwC, Unpacking board culture: How behavioral psychology might explain what's holding boards back, (New York: 2021), 3, 5-6, 8-13.

3 Estate planning, ESG and executive pay

During the past two years, we have seen COVID-19 progress from being a novel occurrence in a far-off land to being a global pandemic that has touched our lives in every way. In this time, we have all been confronted by humanity's vulnerability and resilience. We have been united in the extreme loss suffered by our families and communities: losing loved ones, leaders and people with endless potential to achieve remarkable things. Companies in South Africa have not been immune to this loss, with many losing staff, directors and executives to COVID-19.

For those affected by the passing of a loved one, death not only comes with a profound sense of loss, but also administrative and tax obligations where there is an estate to wind up. Unfortunately, in instances where the deceased had no effective and up-to-date estate plan and/or last will and testament in place, their dependants may be left struggling to deal with these burdens.

This article looks at the areas of ESG and estate planning that intersect and delves into the responsibility that this creates on companies, board members and executives. It also examines some of the ways in which estate planning shows up in the variable pay of executives in South Africa.

The duty of care and ESG

Since the emergence of ESG as a priority in recent years, companies have placed a significant emphasis on the environmental aspects of ESG. However, when implementing their ESG measures, companies should also be careful to avoid neglecting their social and governance responsibilities.

There have been many advancements in ESG resulting in agreed international and national standards for effectively measuring an organisation's actual/tangible environmental impact for ESG reporting purposes. But, other than the traditional corporate social responsibility (CSR) initiatives, how do we evaluate a company's exercise of its duty of care to society? How do companies exercise their duty of care in an actual/tangible way? The answers to these questions appear to be less settled and certain. Nevertheless, they are aligned with the new approach to ESG, which is to include measures linked to diversity, sustainability and other social responsibility actions, rather than simply fulfilling regulatory requirements by means of a 'tick box' exercise.[8]

Aligning with these social responsibility imperatives, companies have a duty of care to place estate planning on the agenda as well as to ensure that board members, executives and staff have effective estate plans and wills in place. By placing well-structured estate and succession plans, estate duty and wills on the board's agenda, companies can assist dependants and heirs in a meaningful way.

Estate planning and variable pay

This section addresses the practical ways in which estate planning and various aspects of executive pay are affected, such as an executive's group life and retirement benefits, and the interaction between a company's minimum shareholding requirements (MSR) and a board member's estate plan.

[8] "The changing shift of ESG measures" in PwC South Africa's Executive directors: practices and remuneration trends report, 13th edition, August 2021 *https://www.pwc.co.za/en/assets/pdf/executive-directors-report-2021.pdf*

Beware of the Pension Funds Act

In terms of section 37C of the Pension Funds Act, an individual can nominate any person to receive the benefits payable as a result of their membership of a retirement fund (including a retirement annuity, pension and provident fund).[9] If the nominee is not a dependant of the individual holding the benefits, the fund is required to search for the dependants of the deceased individual for 12 months following the date of death.[10] Depending on the results of the fund's search, the following situations can arise in terms of section 37C:

- If dependants are found within 12 months from the date of death, the benefit will be paid to the dependants and apportioned among the dependants as the fund deems equitable.[11]
- If dependants are found within 12 months and the deceased has a nominee, the fund will apportion the benefits as it deems equitable.[12]
- If dependants are not found within 12 months from the date of death, the benefit will be paid to the nominee.
- If no dependants are found and no nominations were made by the deceased, the benefit will be paid into the estate of the deceased or into an unclaimed benefit fund.[13]

In the case of insolvent estates, where no dependants are found but a nomination has been made, the benefit is first paid to correct the solvency of the estate and the remaining amount of the benefit (if any) is paid to the nominee.[14] Alternatively, where a dependant is found within 12 months, subject to specific exclusions, the benefit cannot be included in the sequestration of an insolvent estate.[15]

[9] Section 37C of the Pension Funds Act 24 of 1956 as amended. Pension Funds Act 24 of 1956, (Government of South Africa, 1956), *https://www.gov.za/documents/pension-funds-act-22-may-2015-1349.9*

[10] Section 37C(1) of the Pension Funds Act 24 of 1956 as amended.

[11] Section 37C(1)(a) of the Pension Funds Act 24 of 1956 as amended.

[12] Section 37C(1)(bA) of the Pension Funds Act 24 of 1956 as amended.

[13] Section 37C(1)(c) of the Pension Funds Act 24 of 1956 as amended.

[14] Section 37C(1)(b) of the Pension Funds Act 24 of 1956 as amended.

[15] Section 37B of the Pension Funds Act 24 of 1956 as amended. Pension Funds Act 24 of 1956, (Government of South Africa, 1956), *https://www.gov.za/documents/pension-funds-act-22-may-2015-1349.9*

In all the listed instances, dependants of the deceased (and not nominees) are prioritised. In our experience, we have seen family trusts of the deceased nominated to receive the fund benefits to ensure that the amounts are received by dependants in tranches over time. However, as a trust is not a dependant of the deceased, this purpose risks being overridden by section 37C. In order to ensure that the deceased's nomination is effective and not overridden by section 37C, specific mechanisms must be included in the family trust's trust deed relating to the application of income, capital and the trustees' discretion. This may necessitate a review of the trust deed to make sure that the minimum requirements are met for section 37C purposes.

Minimum shareholding requirements and estate planning

An MSR policy is intended to encourage directors to hold shares in the company or to have 'skin in the game'. MSR is used to align the interests of executives and shareholders as well as to encourage executives to act in good faith toward the company. The MSR is built up through shares vesting over the period of a company's LTI, which is typically five years from the introduction of the MSR policy or the date of the executive's appointment.

Methods of implementation of an MSR policy include executives holding the shares outright or through a family trust on behalf of the executive. Generally, the holding of shares indirectly through any other mechanism would not be counted in terms of an MSR policy. However, executives holding shares in their personal capacity, on death, would increase the value of their estates for estate duty and capital gains tax (CGT) purposes.

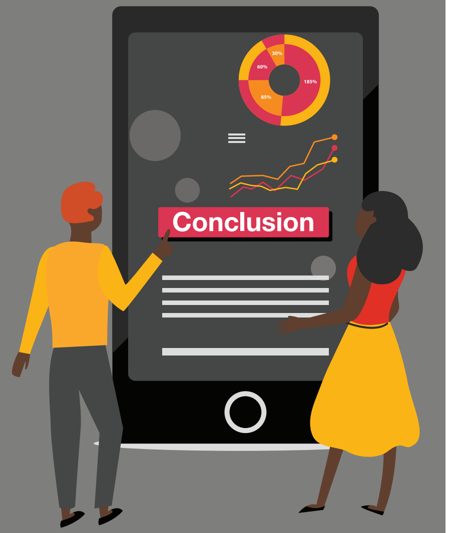
On the other hand, holding the shares in a family trust is not without consequence. For instance, when an executive no longer owns the shares and they belong to the trust, they have no say regarding the holding or disposal of the shares. In addition, trusts are taxed at flat rates from an income tax and CGT perspective and executives transferring the shares into the trust could face ongoing tax liabilities arising from that initial transfer. Generally, the benefits of holding the shares in a trust or other estate planning structure are not found in tax savings, but rather through the protection of wealth over generations.

Allowing MSR policies to achieve their intended purposes and providing executives with the option of integrating shares into their estate plans is a delicate balancing act. It is difficult to assess the measure of flexibility that should be allowed between the manner of holding the shares and an executive's estate plan because indirect holdings could defeat the MSR policy's purpose. We recommend that companies consult with professionals on a case-by-case basis to explore the options available to an executive, and to engage stakeholders about these options to ensure that the estate plan integration does not defeat the purpose of the MSR policy.

What happens when group life benefits become payable?

As with nominating beneficiaries in relation to pension benefits, a director (or employee) can also nominate beneficiaries with regards to group life benefits that may become payable as a result of their death. Unlike with pension nominees, section 37C does not apply to beneficiary nominations relating to group life benefits. The life assured could in essence nominate any person, body and/or institution to receive the benefits and the life office will have to pay accordingly. In this regard, it is imperative that due consideration be given to the fiscal consequences of the nomination and the impact such nomination will have on the deceased estate's liquidity. Consideration should also be given to the beneficiary's solvency position and financial maturity. A last will and testament should 'dovetail' the nominations so that there is no ambiguity or uncertainty, which may lead to unnecessary delays in winding up the estate.

People spend a lifetime building an estate, but often fail to take the time to ensure that their estates are structured and safeguarded in such a manner that they will endure and provide a seamless transfer of wealth to loved ones. The interaction between estate planning and variable pay can often result in unintended consequences and must be considered on an individual basis, keeping a company's strategies in mind. This interaction is not an easy one to manage, but it is clear that there is a positive social role for companies to play in meaningfully engaging with directors (and employees) about estate planning.



4 Are your employees among the working poor?

Having a job is no guarantee of decent living conditions

Working poverty is a reality in South Africa, as, for many employees, holding down a job does not enable them to lift themselves and their families out of poverty.

In 2021, it was estimated that 55.5% of South Africans were living below the upper-bound poverty line of R1,335 per month.[16] The COVID-19 pandemic has highlighted the vulnerability of lower-income earners and has shown us the impact that major world and economic events can have on human capital development in a fragile and developing economy.

The World Bank reported that by the end of 2020, the number of people employed in South Africa had fallen by nearly 1.5m and that the wages of those still employed had fallen by 10%–15%. By July 2021, only 40% of job losses had been recovered.[17]

The International Labour Organisation has recognised a living wage as a basic human right since 1919. Organisations have a responsibility, as reflected in the UN Guiding Principles on Business and Human Rights (UNGPs), to respect human rights and this should be ingrained in the entity's culture and values. Treating employees with respect and ensuring that they live a dignified life is not charity, but the foundation of a successful, sustainable and responsible enterprise.

Many companies have started questioning whether they are remunerating their full-time employees sufficiently to ensure that they do not live in poverty. But what remuneration level represents this?

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16 PMBEJD. *Household Affordability Index*, (Pietermaritzburg Economic Justice and Dignity Group, 2021), *https://pmbejd.org.za/wp-content/uploads/2021/11/November-2021-Household-Affordability-Index-PMBEJD_30112021.pdf*.

17 World Bank "South Africa Economic Update: South Africa's Labor Market Can Benefit from Young Entrepreneurs, Self-Employment," World Bank, last modified 13 July 2021, *https://www.worldbank.org/en/country/southafrica/publication/south-africa-economic-update-south-africa-s-labor-market-can-benefit-from-young-entrepreneurs-self-employment*.

Minimum level of remuneration

The national minimum wage (NMW) was implemented in South Africa on 1 January 2019 at R20 per hour worked (subject to certain exceptions) and is adjusted annually by The National Minimum Wage Commission. The NMW is currently R21,69 for every hour worked, resulting in an average monthly salary of R3,630, based on a 21-day work month of 8 hours a day.

Research performed by the Pietermaritzburg Economic Justice & Dignity Group found that a worker earning the NMW for a 21-day work month would have a shortfall of R1,353 a month for the three core household expenses: transport, electricity and food.[18] Employees earning the minimum wage are therefore not able to secure basic needs for themselves or their families.

It is clear that the legislated NMW is not a sufficient wage to lift people out of poverty and that employment at the minimum wage perpetuates poverty and maintains the numbers of 'working poor'. This can be contrasted to what is termed 'a living wage', which is a wage that is sufficient to allow workers to maintain a frugal but dignified standard of living. This represents a wage that is enough to cover the expenses of food, water, housing, education, health care, transport, clothing and other essential needs.

Currently there is no 'official' definition of a living wage in South Africa (and it remains a concept that has not been widely legislated, even internationally).

18 Household Affordability Index

What companies in South Africa can do

The call to remunerate employees at a living wage is often countered by the argument that the country needs to create employment and remain in business to protect existing jobs. However, this perspective should not discourage employers from striving to improve the lives of their workers by committing to pay a wage that meets employees' minimum needs, lifts them out of poverty and allows them to live a dignified life.

Improving wages starts by identifying which levers are within the control of the employer and making initial efforts on these. This process can be integrated into the organisation's fair pay journey, that we set out in our 2020 executive directors report:[19]

- **Make a commitment and ensure support from the board of directors and the senior leadership of the company**.

  It is critical that leadership sets the tone and is seen by employees to be committed to change, as leadership's behaviour will permeate through to all levels of the organisation.

  In making a commitment, companies should determine a minimum level of pay that they commit to paying all employees within the company (beyond the national minimum wage) and must establish a process for monitoring and updating this minimum level of remuneration on an annual basis.

- **Collecting data to determine the gap between basic pay currently paid and minimum level of pay that has been committed to**.

  We understand that while many organisations might aspire to pay a living wage, it might not be viable from an affordability perspective. For this reason, it might be preferable for the company to implement a multi-year approach that starts at an affordable, but dignified level of pay, which progresses to a living wage over time.

  Companies that commit to a living wage, for instance, multinationals which have greater expectations placed upon them, should identify a benchmark to be used. The process of determining a benchmark could be supported by a reliable external service provider. There are several organisations across the world that provide living wage data. These include the Global Living Wage Coalition, BSR, Fair Wage Network, Fair Wear Foundation and WageIndicator.[20]

19 "PwC Executive Directors' Report." PwC 2020. *https://www.pwc.co.za/en/press-room/pwc-executive-directors-report-2020.html*.

20 UN Global Compact. "SDG Ambition Benchmark Reference Sheets: 100% of Employees Across the Organisation Earn a Living Wage." United Nations Global Compact, last modified 2020. *https://unglobalcompact.org/library/5790*.

The data provided by international organisations mentioned above might not be as appropriate for companies operating in countries with developing economies where the economic landscape and considerations in determining a living wage is significantly different to that of developed economies. Companies operating in these countries might obtain more reliable information from local service providers.

- **Developing an implementation of a plan to align with the living wage that has clear goals and actions**

  Once the minimum level of pay has been approved by the company, an assessment of the minimum remuneration level against the current remuneration of all the company's employees can be undertaken to identify any employees who are remunerated below the approved minimum level.

  A wage adjustment plan can then be devised, approved and implemented to align these employees to the approved minimum level. The plan must include timelines and specific goals to align the current employees' wages with those of the minimum level of pay the company has committed to.

  As adjustments to wages to meet the minimum can have significant impacts on a company's financial situation, they must be done in a way that is fair, transparent, affordable and responsible. The outcome should not have a negative impact on employees through retrenchments, reductions in the overall benefits received, or changes in workplace conditions that will be deemed harmful by employees.

- **Engaging and supporting suppliers**

  The three steps outlined above will assist the company to contribute to achieving the vision of a world without poverty[21] internally, but many companies have the power to do more and have a bigger impact. We note that a growing number of international companies are committing to paying a living wage to their employees, with some going further, and committing to ensuring their suppliers also pay living wages throughout their supply chains.

  Both companies and suppliers can achieve business benefits by embedding a living wage policy in a broader sustainability and competitiveness strategy. Companies may benefit from reduced staff turnover and absenteeism, reduced training costs, output improvements in productivity and quality, and access to higher-value markets and improved reputation.

  Companies can drive quality supply and achieve more effective risk management as well as reputational gains by promoting living wages in their supply chains. For example, consolidating and shortening supply chains may be necessary to ensure living wage efforts, but can also improve trading relationships and resilience of supply.

- **Measuring and monitoring progress**

  The company must hold itself accountable and measure progress against the wage adjustment on an annual basis to determine whether it is on track to meeting its goal or whether the plan needs to be modified.

Quantifying a living wage in South Africa

Although there is broad understanding of what a living wage entails, the definition of a living wage can be hard to quantify. The Global Living Wage Coalition defines a living wage as the

> *"remuneration received for a standard workweek by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and other essential needs, including provision for unexpected events."*[22]

In South Africa, there is no official or even widely accepted definition of what a 'living wage' is. In the absence of an official living wage in South Africa, we have identified three reference points that employers can consider to benchmark their minimum level of pay against and include in their fair pay policies and practices:

- **Reference point 1:** International living wages adjusted for cost of living
- **Reference point 2:** The Decent Standard of Living project
- **Reference point 3:** Living wage published by Trading Economics

[21] United Nations Global Compact, *The Poverty Footprint – A People-centred Approach to Assessing Business Impacts on Sustainable Development*, (United Nations Global Compact, Oxfam, 2015), https://www.unglobalcompact.org/library/3131.

[22] Richard Anker and Martha Anker, *Living Wages Around the World: Manual for Measurement* (Gloucestershire: Edward Elgar Publishing, 2017).

Reference point 1: International living wages adjusted for cost of living

In order to determine a proxy living wage for South Africa, a statistical analysis was performed on the published living wages of 26 European countries[23] to determine a proxy South African equivalent living wage by applying a cost of living[24] and exchange rate adjustment.

The living wage that we have used in our analysis was calculated based on the following two household types to provide alternate scenarios for living wage information.

- **Type 1:** Representing the standard European family, which is made up of two adults and two children. Standard family living wage indicates the gross monthly income for a full-time equivalent worker at which the total earned family income is sufficient to cover necessary costs. The family employment rate for a standard family is assumed to be 1.8, which means one partner is a full-time worker and the second works four days per week (i.e. 80% part-time employment). The total disposable income earned by two adults working for a living wage must be sufficient to reach a defined living standard.
- **Type 2:** Individual living wage represents the gross monthly income to support a household with a single individual, without children, employed full-time.

In determining a living wage for South Africa, it is important to note that the typical household in South Africa can look a lot different to the standard European family. In South Africa, large sections of the population are subject to crippling poverty and the financial support received in the form of social grants is not sufficient to cover people's basic needs.

Statistics South Africa (Stats SA) defines households as

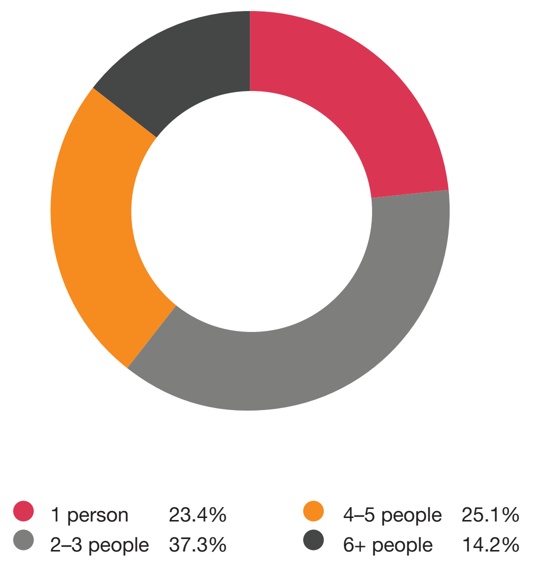
> *"all individuals who live together under the same roof or in the same yard, and who share resources such as food or money to keep the household functioning."*

[23] The Left in the European Parliament – GUE/NGL. "Cost of Living, Living Wages, and Minimum Wages in EU-27 Countries." GUE/NGL. 2021. *https://left.eu/issues/publications/cost-of-living-living-wages-and-minimum-wages-in-eu-27-countries/*.

[24] The cost of living is the amount of money needed to sustain a certain standard of living by affording basic expenses such as housing, food, taxes, and healthcare. The cost of living is often used to compare how expensive it is to live in one territory versus another. We obtained the cost of living used in our analysis from Numbeo.com

A 2019 study by Statistics South Africa found that 23.4% of households consisted of a single person, 37.3% consisted of 2–3 people, 25.1% of 4–5 people and 14.2% of 6 or more people.[25]

Household composition



Source: Statistics South Africa

In addition to the direct dependants included in the definition of a household, many South Africans find themselves in a position in which they have to financially support, fully or partially, other family members outside of their households.

In order to make this analysis more meaningful to South African employers by considering that South African families are likely to look different to European families, we have added the following additional data points:

- **One person contributing to a standard family:** To determine what one adult in full-time employment should earn to maintain a standard family of 4.
- **Family of five:** The standard family calculation was adjusted to include an additional, non-working dependant.
- **Family of six:** The standard family calculation was adjusted to include two additional, non-working dependants.

[25] Stats SA, General Household Survey 2019, (Pretoria: Statistics South Africa, 2020), *https://www.statssa.gov.za/publications/P0318/P03182019.pdf*

It is important to note that while a living wage is intended to contribute towards a decent and dignified life for all, the starting point for remuneration is that employees should be remunerated in a way that reflects their roles and responsibilities within the company, rather than their personal circumstances.

The results of the analysis are shown in the table below.

Living wage analysis

	Need of an individual wage earner contributing to a household		Collective need of a family		
Household size	**1 person**	**4 people**	**4 people**	**5 people**	**6 people**
25th percentile[26]	R5,582	R6,972	R12,549	R14,898	R17,232
50th percentile	R7,448	R9,495	R17,091	R20,356	R23,688
75th percentile	R9,648	R12,756	R22,961	R27,606	R32,271

We need to be cognisant of the fact that wealth inequality in South Africa contrasts significantly with that of the 26 European countries included in this analysis. Additionally, in most of these countries, fiscal spend translates into free or affordable access to healthcare, education and public transport. It is also expected that the population in countries with a more equal distribution of wealth, like the countries included in the analysis, would also offer better access to employment opportunities and housing. This means that the basket of goods that South Africans will spend their money on will be different to that of many of those living in Europe. This could result in Europeans having larger discretionary incomes than their South African counterparts.

Reference point 2: The Decent Standard of Living project

According to research partners Studies in Poverty and Inequality Institute (SPII), Labour Research Service and Southern African Social Policy Research Insights, the average South African needs to earn R7,911 or more per month in order to maintain a decent standard of living (DSL).[27]

[26] A percentile analysis was performed on the 26 data points included in the analysis. The following percentiles are shown: 25th percentile — 25% of living wages are lower than this figure and 75% are higher, 50th percentile — this is the midpoint with 50% of the living wages in the analysis being lower than this figure and 50% being higher, and 75th — where 25% of the living wages are higher than this figure and 75% are lower.

[27] DSL. "R7 900 Is What the Average South African Needs to Have a Decent Living Standard." Decent Standard of Living. Accessed 12 January 2022. *https://dslnow.net/r7-900-is-what-the-average-south-african-needs-to-have-a-decent-living-standard/*

The DSL is defined as living in a South African household with 21 socially perceived necessities (SPNs) that have been determined as essential for everyone to have, or have access to, in order to have an acceptable standard of living. The amount of R7,911 is determined as the median per capita household income of people who had a full set of the 21 SPNs.[28]

SPII makes it clear that the analysis shows the income levels associated with possession of SPNs. The analysis does not show what it costs to acquire the SPNs.

Reference point 3: Living wage published by Trading Economics

Economic and financial market data provider, Trading Economics estimates the living wage in South Africa to be R6,700[29] per month for an individual and R10,630[30] per month for a family. Trading Economics does not provide a definition of a family.

[28] Frye I., G. Wright, E. Trenton, M. Noble, H. Barnes, J. Jele, F. Masekesa, W Zembe-Mkabile and D McLennan. Towards a Decent Life for All – Decent Standard of Living Index (Final Report). Decent Standard of Living, 2018. *https://dslnow.net/towards-a-decent-life-for-all-decent-standard-of-living-index-final-report/*.

[29] Trading Economics, "South Africa Living Wage Individual," Trading Economics, accessed 12 January 2022, *https://tradingeconomics.com/south-africa/living-wage-individual*.

[30] Trading Economic, "South Africa Living Wage Family", Trading Economics, accessed 12 January 2022, *https://tradingeconomics.com/south-africa/living-wage-family#:~:text=Living%20Wage%20Family%20in%20South%20Africa%20is%20expected%20to%20reach,according%20to%20our%20econometric%20models*.

Why you should pay a living wage

There are strong business reasons for companies to move beyond paying the minimum wage and ensuring their employees have sufficient income to support their needs and those of their dependants. We know that employees who are fairly remunerated are happier, more motivated and more productive and companies do reap the benefits of this. The impact of the way you remunerate your employees extends further than your bottom line to the quality of life of your employees, their dependants and wider society.[31]

Outside of the patent benefits of remuneration such as increased motivation, retention of talent, improved company reputation, improved company culture, research confirms other latent benefits of fair pay include lowered absenteeism. This points to the direct correlation between increased wages and increased quality of life, as better-paid employees have access to better quality food, housing and healthcare.[32]

Remunerating in a dignified manner is one way, perhaps the most important way, to alleviate poverty and raise standards of health and well-being among a portion of the workforce that is vital to the economy and to support those who are not fortunate enough to currently enjoy employment. Although this is only a first step towards tackling a major issue, companies should not stop the conversation there, but should continue to investigate different elements of remuneration and employment that can positively contribute to the living and working conditions of employees. These elements include, but are not limited to, employee benefits, providing opportunities for career advancement and upskilling workers to ensure that they do not become redundant as the world of work continues to change.

31 K. Sudiardhita et al., "The Effect of Compensation, Motivation of Employee and Work Satisfaction to Employee Performance Pt. Bank XYZ (Persero) TBK," Academy of Strategic Management Journal 17, no. 4 (2018), *https://www.abacademies.org/articles/the-effect-of-compensation-motivation-of-employee-and-work-satisfaction-to-employee-performance-pt-bank-xyz-persero-tbk-7432.html*.

32 Sherihan Gamal El Din Radi, "The Impact of Fair Equity Increase in Wages and Compensations on Employees' Low Absenteeism, Motivation & Attitude: The Case of Multinational Companies in Egypt," IOSR Journal of Business and Management 22, no. 8 (August 2020): *https://www.abacademies.org/articles/the-effect-of-compensation-motivation-of-employee-and-work-satisfaction-to-employee-performance-pt-bank-xyz-persero-tbk-7432.html*.

5 Fending off the Great Resignation: Retaining talent through co-investment

Nearly two years into the COVID-19 pandemic, the initial shock to systems and economies has ebbed and, while for the most part, there are pockets of recovery (economies, company performance, and unemployment rates), an unexpected outcome has arisen in the pandemic's wake — a wave of mass resignations widely termed the 'Great Resignation'.[33]

[33] Cohen, A (2021). "How to Quit Your Job in the Great Post-Pandemic Resignation Boom." Bloomberg Businessweek, 10 May 2021. https://www.bloomberg.com/news/articles/2021-05-10/quit-your-job-how-to-resign-after-covid-pandemic.

With no indication of slowing down at the end of 2021[34], many employers are exploring ways to curb the effects of this movement on their businesses and retain talent and critical skills, which are key to their recovery. Could incentives that explore financial co-investment by employees (so-called 'skin in the game') be the key to winning the war?

How many people are employers losing?

In the United States, resignation figures have been reported at anywhere between 4m[35] and 11.5m[36] people and by August 2021, there had been widespread pandemic-related resignations reported across the United Kingdom (4.7% of the workforce) and Europe.[37] Forbes reports that up to 40% of the global workforce is considering changing jobs post-pandemic.[38] Harvard Business Review reports that the greatest increase in resignations has been observed in the 30–45 age group with an average increase of more than 20% between 2020 and 2021.[39]

Although there are widespread concerns and much discussion about the apparent increase in resignations in South Africa, no official statistics are available. It is possible that we are yet to experience the Great Resignation locally, but between other factors such as the extremely high unemployment rate and skills exodus, it is very difficult to reliably discern any trends.

[34] Kaplan, J. (2021) "The Great Resignation is causing 'structural changes' to the workforce, BofA says". Business Insider, 15 October 2021. https://www.businessinsider.com/great-resignation-structural-changes-to-workforce-quitting-labor-shortage-bofa-2021-10?IR=T

[35] Al Tai, A (2021). "The Great Resignation Is Here: How to Find Purpose in the Next Stage of Your Career" Forbes, 18 October 2021. https://www.forbes.com/sites/forbescoachescouncil/2021/10/18/the-great-resignation-is-here-how-to-find-purpose-in-the-next-stage-of-your-career/?sh=438e84017394

[36] Kane, P (2021). "The Great Resignation is Here, and It's Real." Inc., 26 August 2021. https://www.inc.com/phillip-kane/the-great-resignation-is-here-its-real.html

[37] LLB Staff Reporter (2021) "Pandemic fuels "Great Resignation" in UK job market as workforce rethinks career priorities." London Loves Business, 11 August 2021. https://londonlovesbusiness.com/pandemic-fuels-great-resignation-in-uk-job-market-as-workforce-rethinks-career-priorities/

[38] Al Tai, A (2021). "The Great Resignation Is Here: How to Find Purpose in the Next Stage of Your Career" Forbes, 18 October 2021. https://www.forbes.com/sites/forbescoachescouncil/2021/10/18/the-great-resignation-is-here-how-to-find-purpose-in-the-next-stage-of-your-career/?sh=438e84017394

[39] Cook, I. (2021) "Who is Driving the Great Resignation?" Harvard Business Review, 15 September 2021. https://hbr.org/2021/09/who-is-driving-the-great-resignation

Why?

The pandemic, and the corresponding 'forced' changes to working environments (remote and hybrid working models) have accelerated individuals rethinking how they spend their time, balancing work and other parts of their lives (prioritising work and accommodating life, or vice versa), and whether their current 9 – 5 office grind and commute are 'worth it'.[40] This questioning has potentially been exacerbated by many employers' insistence that employees return to the office full-time, while many employees have discovered greater productivity, flexibility and free time by working remotely.

This pandemic-accelerated introspection[41] has also enabled individuals to reconsider their 'pre-pandemic' way of living with some employees questioning what they want from their careers and whether they are getting a fair deal and sufficient value from their employers in return[42]. The shared global economic struggles have also amplified the war on talent with many companies, desperate for business recovery, paying higher levels of remuneration for the necessary skills. However, not all remuneration packages are created equal and not all career decisions are made over money — perhaps it is about maximising personal value in individualised total reward structures, such as those considered by PwC and TrueChoice in a recent study[43] — but until then it is a race to conquer today's retention issues.

Where do retention problems arise?

In simple terms, in some instances a failure to create employee buy-in and alignment to a company's strategy and/or purpose and underlying values, and a reduction or absence of incentives vesting (particularly at a C-suite level) has made the barriers to leaving a company (such as unvested incentives) much lower. This, coupled with the introspection mentioned above, has led to an acceleration of resignations.

In the 12th edition of our *Executive directors: Practices and remuneration trends report*, we considered waging war on retention problems[44] and providing 'low-cost, high-impact' solutions to increase employee value propositions (EVPs), which were core to the advice offered to cash-strapped companies at the time. These remain an important tool in the armoury. However, and while acknowledging the positive effects of solutions not directly linked to cash, it is hard to deny that cash remains king.[45] The question is, how best it can be used to secure an employee's 'buy-in' and retain them long-term?

Avoiding ineffective retention incentives

Having gained popularity in the 1980s, retention bonuses are often seen as companies offering cash or equity which 'provide an incentive to do nothing'.[46] These are incentives to not move on, but to stay put, in the form of cash or equity, often locked up for a specified period, with the employee contracted for a guaranteed minimum period. The problem with this approach is that companies attempt to buy loyalty rather than grow it by identifying and resolving whatever caused the retention risk in the first place and aligning employees' interests with their own. These incentives have limited effect, rarely translating into long-term loyalty, engagement or motivation[47], and are often simply more trouble than they are worth.[48,49]

Reasons for this include:

- It is not uncommon for employees to take a retention incentive and to leave shortly after the guaranteed period of their retention (having used the time to continue looking for a new role).
- Offering retention incentives to too many employees will likely mean offering unnecessary incentives to some people who had no intention of leaving.
- Sign-on bonuses for rare skills or senior management positions may match or be worth more than the retention incentive.

40 Cohen, A (2021). "How to Quit Your Job in the Great Post-Pandemic Resignation Boom." Bloomberg Businessweek, 10 May 2021. https://www.bloomberg.com/news/articles/2021-05-10/quit-your-job-how-to-resign-after-covid-pandemic.

41 PwC Australia (2021) The Future of Work. What workers want: Winning the war for talent. https://www.pwc.com.au/important-problems/future-of-work-design-for-the-future/what-workers-want-winning-the-war-for-talent.html

42 Kane, P (2021). "The Great Resignation is Here, and It's Real." Inc., 26 August 2021. https://www.inc.com/phillip-kane/the-great-resignation-is-here-its-real.html

43 PwC (2021) Proceedings of Rethinking total reward strategies - a global perspective, a webinar, November 17, 2021. PwC South Africa.

44 PwC (2020) "Employee Retention in Challenging Times", Executive Directors: Practices and remuneration trends report, 12th ed. https://www.pwc.co.za/en/assets/pdf/executive-directors-report-2020.pdf.

45 PwC Australia (2021) "The Future of Work. What workers want: Winning the war for talent." https://www.pwc.com.au/important-problems/future-of-work-design-for-the-future/what-workers-want-winning-the-war-for-talent.html

46 Heskett, J. (2009) "Are Retention Bonuses Worth the Investment?" Harvard Business School, 3 September 2009. https://hbswk.hbs.edu/item/are-retention-bonuses-worth-the-investment

47 ValueWalk (2020) "Retention Bonuses Don't Work; Here's Why," ValueWalk, 15 January 2020. https://www.valuewalk.com/2020/01/retention-bonuses/

48 Heskett, J. (2009) "Are Retention Bonuses Worth the Investment?" Harvard Business School, 3 September 2009. https://hbswk.hbs.edu/item/are-retention-bonuses-worth-the-investment

49 Sullivan, J. (2014) "What's wrong with retention bonuses? Pretty much everything" DrJohnSullivan.Com, 22 September 2014. https://drjohnsullivan.com/articles/whats-wrong-with-retention-bonuses-pretty-much-everything/

- Offering retention incentives can make employees more attractive to recruiters or competitors, leading them to increase their efforts to draw employees away. Within a global recruitment framework, this is further complicated by the weaker South African currency measured against other currencies.
- The tax liability will reduce the excitement and value the incentive tries to create.
- Traditional retention incentives do not improve company performance either — they encourage employees to stay and are not linked to improved (or sustained) performance. This is also an issue for shareholders, who will always expect pay to bear a strong and obvious link to performance.

With more money available to numerous post-pandemic companies as they recover economically, and the need to create significant levels of 'lock-in' to stave off retention risks, perhaps the most powerful tools companies have in their arsenals remain their incentives, leveraged for greater effect.

Co-investment for retention

Traditional co-investment plans offer a leveraged incentive where participants create 'skin in the game' by making an investment of their own money upon entry to the structure. With origins in private equity firms, where many traditional incentives only offer binary outcomes, co-investment plans may be the perfect tool to ensure that the interests of participants remain aligned with those of shareholders from inception to settlement.

Co-investment plans are found in investment banks, fund management organisations and other financial services firms, which have in some cases required their key personnel to make such an investment as an alignment of interests and a commitment to performance[50] — not unlike the growing minimum shareholding requirement trend. There is no reason why these structures could not be applied to other forms of businesses.

The co-investment plans aimed at retention differ from those in private equity firms in that rather than pooling the upfront investments of participants with those of the entity, or pooling them in a separate purpose-built fund or other collective investment scheme, this concept of co-investment is aimed at settlement in the shares of the employer company itself.

50 Private Debt Investor (2002) "Employee private equity co-investment plans" Private Debt Investor, 14 November 2002. *https://www.privatedebtinvestor.com/employee-private-equity-co-investment-plans/*

In exchange for making a 'buy-in' investment, which is used to purchase shares in the employer company (shares could be subjected to a defined holding period), participants are offered a matching award of shares in proportion to the number of shares purchased, with or without performance conditions, which makes the incentive 'worth it'. This is most commonly offered in a ratio of up to 1:3 (one purchased share to three matching shares).

This leveraging provides a kicker to the incentive and alignment of interests provided by co-investment as participant's remuneration and/or personal wealth is directly tied to the company's outcomes.[51] Where a company is in its infancy or in need of a turnaround, non-financial performance conditions can be set as functional goals that need to be met to do the 'groundwork' for improving financial performance.

The best time to implement an incentive like this is when the company's share price is expected to grow and perform (i.e. in anticipation of, or during, a growth or turnaround cycle). Co-investment is not suitable where a company's share price is so depressed that a matching award of an excessive amount would need to be made in order to be of real value, which creates the risk of windfall gains upon share price recovery (to the dismay of shareholders).

What happens if participants don't have cash to invest?

As tricky as incentives can be in normal situations, the fact that co-investment plans require an upfront investment by participants provides an additional nuance for consideration. If participants simply do not have the cash to invest, the incentive will be a non-starter. Provided that the company is performing and STIs are paying out or, at least, expected to pay out in the near future, there is a potential solution to this problem. Designing the structure to use the deferral of cash-based short-term incentives as the upfront investment required for participation may be a viable mechanism.

51 Ellis, D. (2019) "Co-Investment considerations crucial for alignment" Private Funds CFO, 29 November 2019. *https://www.privatefundscfo.com/co-investment-considerations-crucial-for-alignment/*

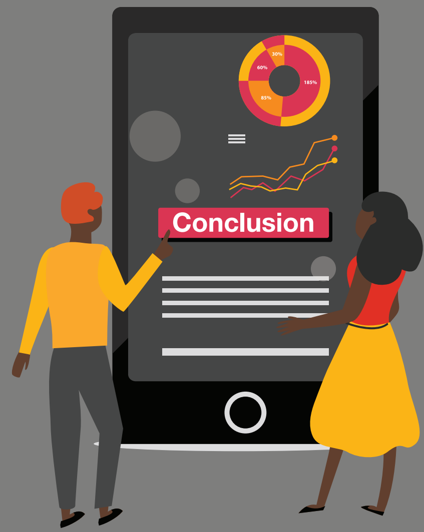
How are co-investment incentives managed?

As with any other incentive where the potential outcomes can be rather 'rich' for participants, best practice indicates that certain 'guard rails' be drawn during the design phase to ensure that the company does not get disadvantaged by the deal. These include considerations of:

- holding periods for shares obtained through the structure;
- malus and clawback provisions; and
- termination of employment, notice and restraint of trade provisions.

While the Great Resignation is in our midst[52], and many employees recentre their understanding of what work-life integration means to them, employers will continue grappling with remuneration and benefit options to find their perfect EVP offering. As explored in previous reports, the use of traditional incentive tools may need to be reconsidered, particularly at a C-suite level.[53] Employees need to know that employers care about their well-being, but also that what they get from signing in on each day outweighs the stress, lost time, compromise and opportunity cost that working for the company entails.[54]

In the wake of COVID-19, co-investment incentives could help companies by retaining talented staff, driving performance and aligning the interests of management and shareholders.



[52] Staff Writer (2021) "South Africa is set to be hit by a 'great resignation' as more highly-skilled people quit their jobs" BusinessTech, 24 October 2021. *https://businesstech.co.za/news/business-opinion/531318/south-africa-is-set-to-be-hit-by-a-great-resignation-as-more-highly-skilled-people-quit-their-jobs/*

[53] PwC (2020) "Employee Retention in Challenging Times", Executive Directors: Practices and remuneration trends report, 12th ed. *https://www.pwc.co.za/en/assets/pdf/executive-directors-report-2020.pdf.*

[54] Kane, P (2021). "The Great Resignation is Here, and It's Real." Inc., 26 August 2021. *https://www.inc.com/phillip-kane/the-great-resignation-is-here-its-real.html*

6 Regulatory update

Since our last regulatory update, the local and global regulatory landscape has seen the release of long-awaited updates to legislation and regulatory frameworks. This section outlines remuneration-related developments in South Africa, United Kingdom, United States and Australia.

South Africa

The revised draft of the Companies Amendment Bill was released for public comment on 1 October 2021.[55] Various changes have been made following the previous amendment Bill released for public comment in September 2018. The proposed Bill has far-reaching implications for the remuneration report, mainly pertaining to the introduction of a binding vote on the remuneration policy as well as a vote on the implementation report that will have ramifications for RemCo members if failed, as well as the introduction of certain mandatory disclosures relating to the pay gap.

Remuneration-related proposed amendments and our commentary are summarised below.

Composition of the remuneration report

The Bill proposes the insertion of a new section, 30A, requiring public companies and state-owned companies to prepare and present a directors' remuneration report for approval by the board of the company and to disclose information on the pay gap between directors and workers in their annual financial statements and annual reports.

The remuneration report must present the following:

- a background statement;
- a remuneration policy;
- an implementation report containing details of remuneration and benefits received by directors and prescribed officers;
- the total remuneration of the highest earner of the company;

55 *Revised Companies Amendment Bill*, (Department of Trade, Industry and Competition, 1 October 2021), http://www.thedtic.gov.za/wp-content/uploads/Revised_Companies_Amendment_Bill-1_October2021.pdf.

- the total remuneration of the lowest paid employee of the company;
- the average remuneration of all employees of the company;
- the median remuneration of all employees of the company; and
- the pay gap between the highest paid 5% and the lowest paid 5% employees of the company.
- The remuneration report must be:
  - approved by the board of the company;
  - presented at AGM for approval; and
  - voted upon by shareholders (separate ordinary resolutions of the implementation report and the remuneration policy).
- Public and state-owned companies must submit a remuneration policy for approval by way of an ordinary resolution at their AGMs every three years or where material changes are proposed. Where approval of the remuneration policy is not obtained, it must be presented at the next AGM or at the next called shareholders' meeting until approval is obtained. The contents of the policy cannot be effected until approval has been obtained.
- Where approval of the implementation report is not obtained:
  - the RemCo, or other board committee responsible, shall, at the following AGM provide an explanation of the manner in which shareholders' concerns have been addressed; and
  - the RemCo (or relevant committee) members must stand down for re-election every year of the rejection of the implementation report.

The introduction of a legislated requirement for shareholder approval of the remuneration policies of public and state-owned companies in South Africa seems inevitable, largely due to this practice being followed in the UK. However, the lack of a definition or other substantive guidance as to what constitutes 'any material change' means that it is unclear in what exact instances the policy would need to be resubmitted for approval by shareholders. It is also unclear whether, until such time as this approval is ultimately obtained, the company will be able to continue in terms of the existing approved remuneration policy. This would lead to inconsistent application if clarity is not provided.

Voting on the remuneration policy and implementation report

While we are in favour of the balanced approach taken regarding binding voting power conferred on shareholders in that an ordinary resolution is required for the approval of a remuneration policy, shareholders will need to exercise their powers responsibly as voting outcomes could potentially have serious ramifications.

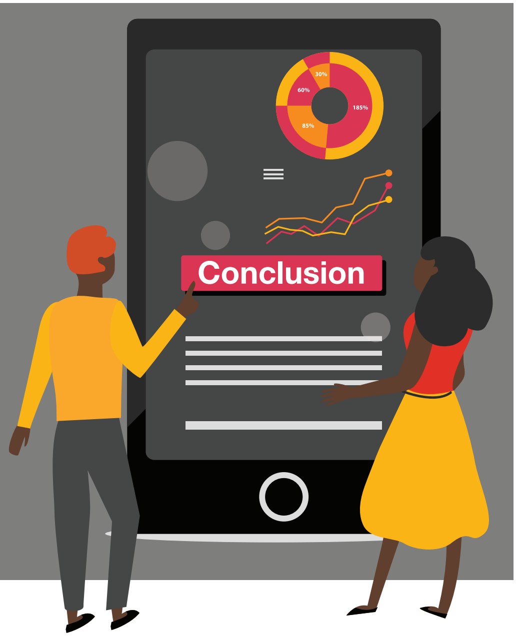
In respect of voting on the implementation report, it is unclear whether NEDs who serve on the directors' committee responsible for remuneration should stand down for re-election from the committee or from the board of directors as a whole if the implementation report is not approved by ordinary resolution of the shareholders.

It is also unclear whether they should stand down for re-election immediately after the implementation report is not approved or ahead of the following AGM. If it is the latter, this would result in an instance where committee members would serve the company for a further year with the knowledge that they will not be re-elected.

Wage gap and the gender pay gap

Considering that one of the primary aims of the Bill is to provide for greater transparency of wage ratios in a bid to address public concerns on the high levels of inequality in South Africa, it is concerning that there is no mention of, or provision made for, the disclosure of the gender pay gap in the Bill.

The proposed amendments place the spotlight on executive remuneration, particularly the RemCo of public and state-owned companies. The harsh proposed sanctions for a negative vote on a company's implementation report makes sitting on a RemCo very unappealing. The overall burden that could be imposed by the proposed amendments may deter companies from publicly listing or remaining publicly listed.



United Kingdom

Investment Firms Prudential Regime

The Financial Conduct Authority (FCA) has published its Policy Statement, final rules and final disclosure requirements for the new Investment Firms Prudential Regime (IFPR).[56] The final rules set out feedback from firms on the consultation on the disclosure requirements and the subsequent amendments made to the draft remuneration rules originally published in the Consultation Paper released in August 2021.

The Policy Statement released in July covers final rules for remuneration (excluding disclosure) and includes key changes such as:

- Amendments to the application of extended remuneration requirements for significant firms will not apply on a consolidated basis. Only Material Risk Takers (MRTs) of a significant entity will be subject to the extended requirements such as deferral and instruments.
- The requirement regarding the deferral periods for members of senior management has been softened to read that 'it may be appropriate' to apply for a deferral period of longer than three years for senior management of significant firms.
- Interest and dividends can now be accrued and paid at the end of the vesting period (e.g. through dividend equivalents), providing the distribution is not higher than that which would have been paid to an ordinary shareholder.
- Clawback should cover at least the deferral and retention period where these rules apply and should apply for at least three years where deferral of variable pay is not operated.
- For buyout awards, firms need to ensure that these reflect the deferral/vesting and retention period as well as malus and clawback provisions and periods as required.
- Where a group contains a significant entity, its remuneration committee requirement can be met by another existing remuneration committee (if one exists) provided the existing committee meets the requirements set out in the IFPR rules.

56 *P S21/17: Implementation of Investment Firms Prudential Regime Policy Statement*, (Financial Conduct Authority, 2021), *https://www.fca.org.uk/publication/policy/ps21-17.pdf*

The changes detailed in the Policy Statement only relate to disclosures, which the FCA provides must not be made on a consolidated basis. However, where firms are disclosing fewer than three individuals for the majority of the data points, it will be permissible to aggregate the senior management and other MRT categories. If this still results in disclosure for less than three individuals, there is an exemption from disclosure. The first disclosure is required at the same time as the publication of financial statements after the end of the first performance period in the scope of IFPR (i.e. 2023 for most firms).

The effective date of the IFPR was 1 January 2022 and the remuneration requirements will come into effect for the first full performance period starting on or after this date. For firms with calendar financial years, it will come into effect from 1 January 2022 and impact annual bonuses paid in Q1 2023. The disclosure requirements apply following the end of the first impacted performance year. More information on the final remuneration rules (including the disclosure requirements) for the IFPR is provided in the Financial Conduct Authority November 2021 Policy statement.[57]

The Consultation Paper also provides for alternative forms of variable remuneration such as:

- **Carried interest awards:** Provided certain conditions have been met, these can be used to meet deferral requirements.

57 PS21/17

- **Co-investment:** Where an investment is made using a loan provided by the firm with no commercial terms attached to it, or if it is not repaid in full at the point of vesting, a co-investment award may be considered to be remuneration.
- **Partnership pay structures:** Profit share distributions based on performance will be considered variable remuneration and drawings are considered fixed remuneration, but profit share distributions determined by reference to a partner's ownership share will not be considered remuneration.

The Investment Association Principles of Remuneration

The Investment Association (IA) published the annual update to its Principles of Remuneration and guidance for RemCos (IA Principles) in November 2021.[58] In addition to a number of minor changes to the IA Principles, there are five main broad areas of focus:

- **COVID-19 guidance:** Where direct government support has been received during the financial year and has not been repaid, bonuses should not be paid.
- **ESG metrics:** With increased pressure from shareholders and proxy voting agencies to adopt ESG measures into executive pay, there is a greater emphasis on these measures to be quantifiable. It is however acknowledged that some companies are still working through the process of linking executive pay to ESG.
- **Justifying levels of pay:** IA members are clearly concerned about increases in executive remuneration (through salary and variable pay opportunities) and expect there to be clear rationale justifying pay increases. Where benchmarking is the sole rationale, it will be deemed insufficient.
- **Windfall gains:** In contrast to the approach adopted in early 2020, where share prices have fallen, IA members expect that companies will make adjustments to awards at grant (rather than vesting), in order to avoid windfall gains. The IA Principles do not specify what level of reduction in share price should trigger this adjustment.
- **Value Creation Plans:** IA members raise concerns over the increased adoption of Value Creation Plans (VCPs) and are sceptical about their introduction. The new guidance expects a clear strategic rationale to be presented and the terms of such plans should include a monetary cap (and a cap on the number of shares). Performance targets should be substantially more stretching compared to standard arrangements and the appropriateness of the targets (and the percentage shared above a hurdle) should be disclosed.

Other key changes include:

- **Pay levels:** There is an expectation that companies will provide a clear rationale for 'significant' increases to any element of remuneration (not benchmarking as the sole rationale for salary increases) and use a specific and clearly disclosed comparator group.
- **Long-term incentive plan structures:** RemCos should be confident that the selected LTIP structure should be appropriate considering the company's long-term strategy. The structure should not be chosen as a result of short-term performance and should not change regularly.
- **Restricted share plans:** For the first grant, a discount above 50% may be required if the scheme has been implemented following a 'significant' fall in the company's share price.
- **Bonus outcomes:** When approving outcomes, the RemCo should consider the wider stakeholder experience (especially shareholders and employees) with the remuneration report providing an explanation regarding the bonus outcome and the reason(s) as to why it is appropriate in the context.
- **Discretion:** The RemCo should disclose how it has considered the experience of material stakeholder concerns where discretion was applied.
- **Malus and clawback:** Companies should explain how these provisions will be enforced.

[58] *Principles of Remuneration 2022*, (The Investment Association, November 2021), *https://www.theia.org/sites/default/files/2021-11/Principles%20of%20Remuneration%202022%20-%20Final.pdf*

Australia

Prudential Standard CPS 511 Remuneration

The Australian Prudential Regulation Authority (APRA) released its final Prudential Standard CPS 511 Remuneration[59] and accompanying Response Paper[60] to consultation submissions on 27 August 2021. This comes as the third and final iteration, reflecting minimal change from the revised draft released in November 2020.

The new standard finalises APRA's heightened expectations on regulated entities to establish and maintain:

- stronger incentives to manage the risks that individuals are responsible for (a sole focus on financial metrics in determining variable remuneration will be unacceptable);
- appropriate consequences for adverse risk and conduct outcomes (also with longer deferrals combined with provisions for in-year, malus and clawback adjustments); and
- increased board oversight, transparency and accountability for remuneration.

The three main revisions concern:

- **Introducing a risk-based approach to the oversight of third-party service provider remuneration arrangements**
  Entities must focus on mitigating strategies for dealing with identified material conflicts to the objectives of the remuneration framework as a result of third-party service provider remuneration arrangements.
- **Removing prescription associated with the use of risk and conduct adjustment tools**
  The finalised standard now adopts a principle-based approach to allowing entities flexibility in determining the adjustment tool used. A similar approach to the Financial Accountability Regime (FAR) is used in that downward adjustments may be made in proportion to the severity of the risk and conduct outcomes. It is intended to be simpler and provide for a single set of criteria prompting consideration of adjustment.

- **Increasing the quantitative asset threshold for authorised deposit-taking institutions (ADIs) for determining Significant Financial Institutions (SFIs) and clarifications for registrable superannuation entity (RSE) licensees and foreign branches**
  APRA has amended the quantitative asset thresholds for determining SFIs. It has clarified that the asset thresholds are not indexed or averaged and will be reviewed periodically. The defined thresholds are set out in detail in the full publication.

It may be important to note that SFIs will have more prescriptive requirements in respect of the new standard, whereas non-SFIs have simpler requirements, but the same principles remain relevant.

The CPS 511 will come into effect after the Financial Accountability Regime (which commences on 1 July 2022) in phases from 1 January 2023 and the effective dates are staggered based on the institution type in the following order:

- ADI SFIs from 1 January 2023
- Insurance and RSE licensee SFIs from 1 July 2023
- Non-SFIs (across all APRA-regulated industries from 1 January 2024)

More information on APRA's supervisory focus on the implementation of the new CPS 511 requirements over the next 18 months and the next steps for APRA-regulated entities are provided in PwC Australia's '5 minutes on… The release of the Final Prudential Standard CPS 511 Remuneration' article[61], which should be read with '5 minutes on… The Final Prudential Practice Guide CPG 511 Remuneration'[62].

59 *Final Prudential Standard CPS 511 Remuneration*, (APRA, August 2021), *https://www.apra.gov.au/sites/default/files/2021-08/Final%20Prudential%20Standard%20CPS%20511%20Remuneration%20-%20clean_0.pdf*

60 *Response Paper – Strengthening prudential requirements for remuneration*, (APRA, August 2021) *https://www.apra.gov.au/sites/default/files/2021-08/Response%20paper%20-%20Strengthening%20prudential%20requirements%20for%20remuneration.pdf*

61 "The release of the Financial Prudential Standard CPS 511 Remuneration," PwC Australia, August 2021. *https://www.pwc.com.au/people/reward-advisory-services/5-minutes-on-final-prudential-standard-cps-511-remuneration.html*

62 "The release of the Final Prudential Practice Guide CPG 511 Remuneration" PwC Australia, October 2021. *https://www.pwc.com.au/people/reward-advisory-services/5-minutes-on-final-prudential-standard-cps-511-remuneration-update.html*

United States

Nasdaq Board Diversity Rule[63]

On 6 August 2021, the US Securities and Exchange Commission (SEC) approved new listing rules regarding board diversity requiring companies listed on the Nasdaq Stock Market to:

- have at least two diverse directors, including one self-identified woman director and one director who self-identifies as an underrepresented minority or as LGBTQ+, and
- to publicly disclose statistical information on their board diversity.[64]

From 2022, companies listed on the Nasdaq Stock Market will be required to disclose certain board diversity statistics annually in a standardised format in the proxy statement or on the company's website and will be required to provide this disclosure by the later of 8 August 2022 or the date the company files its proxy statement for its 2022 annual meeting.

63 Nasdaq Rule 5605(f)

64 "Board Diversity Disclosure Five Things" Nasdaq, October 2021. *https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf*

Proxy advisors

Glass Lewis policy guidelines

South Africa

No updates were proposed for the 2022 voting cycle for South Africa and the 2021 policy voting guidelines remain applicable.

United Kingdom

The Glass Lewis 2022 policy guidelines were updated and published on 16 November 2021.[65] The most relevant changes include:

- The general recommendation against those with more than five directorships has been amended and now only applies if they are non-executive.
- Conditions have been added requiring FTSE 100 boards to involve at least one ethnic minority group member or the committee chair will be voted against.
- Glass Lewis recommends voting against rather than abstaining when the RemCo has less than the suggested member count.
- The section on STIPs has been rewritten and calls for a short-term bonus or incentive to be demonstrably tied to performance that supports a company's strategy. Glass Lewis believes performance measures for STIs should encompass a mix of corporate and individual performance measures, including internal financial measures such as net profit after tax, earnings per share (EPS) growth and divisional profitability as well as non-financial factors such as those related to employee turnover, safety, environmental issues and customer satisfaction. However, since performance metrics vary depending on the company, industry and strategy, among other factors, metrics tied to the company's business drivers will be considered to be acceptable.
- Glass Lewis will generally recommend against a chair if the board's term time exceeds nine years without a definitive succession plan.

65 *United Kingdom: 2022 Policy Guidelines*, (Glass Lewis, November 2021) *https://www.glasslewis.com/wp-content/uploads/2021/11/UK-Voting-Guidelines-GL-2022.pdf?hsCtaTracking=f9ca5e11-5b4e-4ac7-9d09-29314eb66ee9%7C47d0b530-269c-48b2-91f4-e7e01d22e372*

United States

The updated Glass Lewis policy guidelines were published on 15 November 2021.[66]

The most relevant changes include:

- In instances when 20% or more of shareholders vote for a shareholder proposal, the board should demonstrate some level of responsiveness to address the concern.
- The section on board gender diversity has been expanded. Beginning in 2022, Glass Lewis will generally recommend voting against the chair of the nominating committee of a board with fewer than two gender diverse directors, or the entire nominating committee of a board with no gender diverse directors, at companies within the Russell 3000 index.
- For companies outside the Russell 3000 Index, and all boards with six or fewer total directors, the existing policy requiring a minimum of one gender diverse director will remain in place.
- Beginning with shareholder meetings held after 1 January 2023, Glass Lewis will transition from a fixed numerical approach to a percentage-based approach and will generally recommend voting against the nominating committee chair of a board that is not at least 30% gender diverse at companies within the Russell 3000 Index.
- Insufficiently challenging performance targets and/or high potential payout opportunities may cause Glass Lewis to recommend voting against a say-on-pay vote.
- Adjustments to GAAP figures may be considered in the assessment of the effectiveness of the incentive at tying executive pay with performance.
- For awards that are granted in the form of equity, Glass Lewis may consider the total potential dilutive effect of such an award on shareholders.

66 *United States: 2022 Policy Guidelines* (Glass Lewis, November 2021), *https://www.glasslewis.com/wp-content/uploads/2021/11/US-Voting-Guidelines-US-GL-2022.pdf*

ESG

The largest area of change in the 2022 policy guidelines is the addition of a new section on expectations relating to ESG metrics in incentive plans. It should be noted that Glass Lewis generally refers to environment and/or social (E&S) issues rather than ESG measures in its 2022 policy guidelines. A number of voting policies including those for the UK and US have been updated to include these ESG guidelines, although South Africa-specific guidelines have yet to be updated.

The 2022 policy guidelines emphasise that:

- Glass Lewis evaluates all environmental and social issues through the lens of long-term shareholder value. However, it does not maintain a policy on the inclusion of E&S metrics or whether these metrics should be used in either a company's short- or long-term incentive programmes.
- Glass Lewis recognises that companies should retain flexibility to include E&S measures in the annual bonus or long-term incentive plan (if at all), noting that:
  - some companies may wish to include such measures in the annual bonus to incentivise the achievement of short-term milestones and allow for more manoeuvrability in strategic adjustments to long-term goals; and
  - other companies may determine the best way to incentivise the achievement of long-term sustainability targets is via a LTI.
- Beginning in 2022, Glass Lewis will note a concern when boards of companies do not provide disclosure concerning the board-level oversight afforded to E&S issues. For shareholder meetings held after 1 January 2022, the proxy advisor will generally recommend voting against the governance chair of a company who fails to provide explicit disclosure concerning the board's role in overseeing these issues.
- Disclosure on E&S metrics should include:
  - clear explanation of how the measures align with the company's strategy, the rationale for specific measures, the target-setting process and corresponding payout opportunities;
  - for qualitative metrics, the basis on which performance will be assessed; and
  - for quantitative metrics, prospective disclosure of performance targets.

ISS voting policy updates

South Africa

The Institutional Shareholder Services (ISS) proxy voting guidelines for South Africa were published on 2 September 2021 and effective for meetings on or after 1 October 2021. The most relevant changes:

- There have been nomination committee policy changes and a vote against will be recommended for the re-election of directors where the director is a board chair and a formal nomination committee has not been established.
- ISS now considers that a director is also a non-independent NED if the majority of NEDs on the board are not independent, there is no formally established nomination committee and the board chair's re-election is not on the agenda.
- There have been remuneration policy changes and a vote against the remuneration policy will be recommended where the policy does not provide accurate disclosure on payment of dividends on unvested shares and options. It is not viewed as best practice to deliver payment of dividends on unvested awards delivered through an equity incentive scheme (options or shares) as it is generally expected that dividend payments only apply to vested shares.[67]

[67] *Israel and South Africa: Proxy Voting Guidelines — Updates for 2021*, (ISS, September 2021), *https://www.issgovernance.com/file/policy/active/updates/Israel-and-South-Africa-Policy-Updates.pdf*

United States

The updated ISS benchmark policy updates were published on 7 December 2021.[68] The most relevant changes include:

- ISS adopted a US board gender diversity policy for companies in the Russell 3000 or S&P 1500 indices in 2019 that came into effect in February 2020. After a one-year transition period and institutional investor feedback, the board gender policy will now be extended to all companies covered under US policy from 2023.
- In 2021 the ISS Climate Policy survey revealed that a high percentage of investor respondents supported the establishment of minimum standards to which companies would be held to in order to be considered to be strongly contributing to climate change.[69] In 2022, the ISS will be focusing on the 167 companies currently identified as the Climate Action 100+ Focus Group, recommending a vote against incumbent directors or appropriate committee chair in cases where a company does not have both minimum criteria disclosure such as those of the Task Force on Climate-related Financial Disclosures (TCFD) and quantitative greenhouse gas (GHG) emission reduction targets covering at least a significant portion of the company's direct emissions.

United Kingdom

The ISS proxy voting guidelines for the UK were updated with effect from 7 December 2021.[70] The most relevant changes:

- The ISS will be introducing a new board ethnic diversity policy, which reflects the recommendations of the UK Parker Review, for FTSE 100 and FTSE 250 companies. Excluding investment companies, it will be effective for 2022 for FTSE 100 companies where the ISS will recommend a vote against the chair of the nomination committee if the company has not appointed at least one individual from an ethnic minority background to the board. The expectation is to ultimately extend this policy to constituents of the FTSE 250, the FTSE SmallCap, the ISEQ 20 indices and the AIM index with a market capitalisation of over GBP500m by 2024.

[68] *ISS Benchmark Policy Updates: Executive Summary,* (ISS, December 2021) *https://www.issgovernance.com/file/policy/latest/updates/Executive-Summary-of-ISS-Policy-Updates-and-Process.pdf*

[69] *2021 Global Policy Survey – Climate: Summary of Results*, (ISS, October 2021), https://www.issgovernance.com/file/publications/2021-climate-survey-summary-of-results.pdf

[70] ISS Policy Updates: Executive Summary

- The policy on board accountability on climate will be similar to the one presented in the US section above with the focus being on the 167 companies currently identified as the Climate Action 100+ Focus Group. Targeting of negative vote recommendations will be market specific and the vote recommendations will be against the board chair.
- Non-financial ESG performance conditions: In line with the IA's Principles of Remuneration, the ISS policy update confirms that ESG metrics can be included as performance measures utilised by a company's variable remuneration schemes, provided the measures are clearly linked to the company's long-term strategy, material to the business and quantifiable.

Australia

The ISS published its updated proxy voting guidelines for Australia on 8 October 2021. The most relevant changes include:

- A board gender diversity policy was introduced that requires at least 30% female representation on the boards of large companies listed on the S&P/ASX 300 index and at least one woman on the board for all other Australian companies. The ISS will generally recommend a vote against the chair of the nomination committee or chairman of the board if the company does not meet these requirements.
- The wording of the requirements for 'board independence' was updated to clarify the standard approach to director election recommendations when boards are not majority independent.

The ISS will generally recommend against proposals that would permit a company to convene virtual-only shareholder meetings absent exceptional circumstances.

7 ESG: From apathy to action

The last few years have seen a flurry of attention and activity centred around ESG issues. Many of us are now fatigued by the inundation of information related to ESG investment and the importance of ESG integration into executive remuneration and performance measurement.

As is evident from the latest updates to various global proxy advisors' voting policies,[71] discussion of linking ESG measures to executive remuneration continues to gain momentum. Perhaps now is an appropriate time for companies and boards to take a step back and perform an honest assessment of where they are in respect of ESG, where they would like to be, and the steps they can take to get there.

The maturity scale for ESG

While ESG has dominated conversations, there are distinct ways in which companies have approached it. Some companies recognise the inherent risks (and opportunities) presented in ESG and recognise ESG issues as a business imperative which, if successfully navigated, could result in positive differentiation, setting them up for long-term success and value creation. In contrast, other companies approach ESG as a 'tick-box' exercise and incorporate ESG purely for compliance purposes.

We propose that all companies start by evaluating where they stand relative to their peers on these three stages of ESG maturity[72]:

- **Laggards**

  These companies don't provide anything documented on corporate social responsibility, either in a report or on their website or anywhere else. They have not identified ESG issues and have not considered insights from investors or other stakeholders and their views on ESG matters. Essentially, the ESG efforts of these companies are still anchored in philanthropy rather than incorporating a strategic business focus.

[71] See chapter 6: 'Regulatory update' for more information. Although these principles have not been incorporated into the South Africa policies per se, through the overarching global policy, there is an expectation for their principles to be considered when voting.

[72] "ESG and the Role of the Board," PwC, accessed 1 October 2021, 2021. https://www.pwc.com/mt/en/publications/sustainability/esg-and-the-role-of-the-board.html.

- **Middle of the pack**

  These companies may be publishing a sustainability or corporate responsibility report or disclosing information on a webpage, but do not have a cohesive ESG strategy that is linked to their business purpose and embedded in their core operations. They likely do not have standardised metrics to measure progress or the data gathering processes and controls required to do ESG reporting consistently and on a timely basis. Board oversight is scant at best.

- **Front runners**

  These are companies in which ESG strategy is regularly reviewed by board/committees and embedded in core operations. The company has adopted commonly accepted ESG/sustainability standards and reporting frameworks to guide its ESG disclosures. Robust processes, controls and governance are in place to ensure disclosures are 'investor grade'.

Once a company has identified its stage of maturity, the next step is, with the appropriate individuals at the helm, to formulate a plan on the way forward to achieve (or maintain) front runner status.

What is an ESG-competent board?

One aspect that differentiates companies in their ESG journey is how active the board and leaders are in undertaking the ESG process and delegating specific responsibilities to subcommittees and other management bodies. Their views, and corresponding actions and priorities, set the tone for the ESG journey and the culture of ESG for the company as a whole.

As a first step, introspection as to what is most appropriate for the company is required. For some companies the suitable approach may lie in updating the terms of reference and responsibilities of existing subcommittees; for others, it may entail the creation of a new subcommittee. Given that mandatory ESG reporting is gaining momentum internationally, a number of global companies have constituted new committees specifically tasked with responsibilities relating to ESG. So far, this practice does not appear to have taken hold in South Africa. Based on our research, none of the top 100 JSE-listed companies has a standalone ESG committee, with ESG and sustainability responsibilities being managed by other committees such as the social and ethics committee.[73]

[73] Data contained on PwC Reward's database. The data is collected from the annual integrated reports of JSE-listed companies.

In composing an appropriate committee, or where a current committee is utilised, or for purposes of the board as a whole, it is critical that there is an 'appropriate balance of knowledge, skills, experience and diversity, [and] that the Governing Body ensures that the organisation has access to individuals who have the knowledge, skills and experience in respect of sustainability and ESG matters, including climate change'.[74] On this basis, while it may not always be possible for everyone in the committee to be an expert, to effectively discharge the associated ESG responsibilities it is essential that all board members have a basic level of understanding, which they can rely on, with relevant expert input, to make informed ESG decisions. Other board members could provide deep expertise or, where this is not possible, independent external advisors should be appointed to support the company. Where such NED and executive skills are identified to be insufficient, it is critical that appropriate upskilling is acquired, as without an organisation having the requisite foundational knowledge, the ESG journey is unlikely to achieve its purpose.

Ultimately, a company's ESG journey cannot be addressed by the board or one subcommittee alone. A company's ESG strategy spans the entire organisation, requiring multiple functions to work together towards common goals and reporting that links deeply and directly to the overall business strategy. To meaningfully execute an aligned ESG strategy requires accountability and responsibility from all subcommittees and in this regard, effective coordination and a collaborative approach will be critical to achieving ESG transformation.

For example, a RemCo would not be responsible per se for the development of an ESG strategy. Nevertheless, RemCos themselves are heeding calls from institutional investors and shareholders to incorporate ESG measures into executives' variable remuneration structures. However, to do this effectively, a well-developed ESG strategy is required to inform the metrics selected and accurately assess achievement against such metrics, while also being aligned to the principles provided in proxy advisors' policies.

Once the relevant committee responsible for ESG has been identified or constituted, it can consider the three interconnected dimensions of ESG set out on the next page and determine where action is required for each of them to advance their progress in the ESG journey.

[74] King IV Guidance Papers, Responsibilities of Governing Bodies In Responding to Climate Change, (Institute of Directors, 2021), *https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/04630F89-33B7-43E7-82B3-87833D1DC2E3/King_Committee_Guidance_paper_on_the_responsib.pdf.*

Three dimensions of ESG

At the very least, companies should ensure they have considered:

Strategy

Companies should ensure they have a strategy that creates a clear blueprint for action and a foundation to drive ESG. This should involve taking agreed ESG aspirations (risks and opportunities) and translating these into concrete actions, which specify the 'when' and the 'how'. Where additional guidance is sought, ESG data audits in which a company's operations, products or services are evaluated against environmental and social risks, could also be explored.

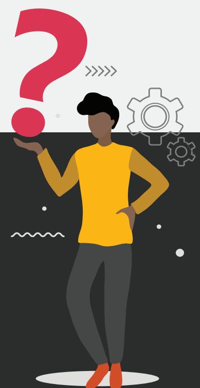
The KPIs that arise from the formulation of the ESG strategy will inform the metrics that can be incorporated into executives' remuneration structures.

Reporting

While companies may feel pressured to report, it is important that they take their time to consider the metrics that are disclosed, taking guidance from their ESG strategy and basing disclosure on what is material and information that can be verified to be consistent and reliable. In determining what to disclose, companies should first consider how their company currently reports on ESG to ensure that there is an existing measurement of relevant metrics. After that, meaningful reporting and transparent disclosure should be provided. Again, the measurement of relevant metrics, and the detail provided in the reporting, will link into the testing of ESG measures included in remuneration structures, giving investors the comfort they need to ensure that achievement is meaningful and not just a token.

Transformation

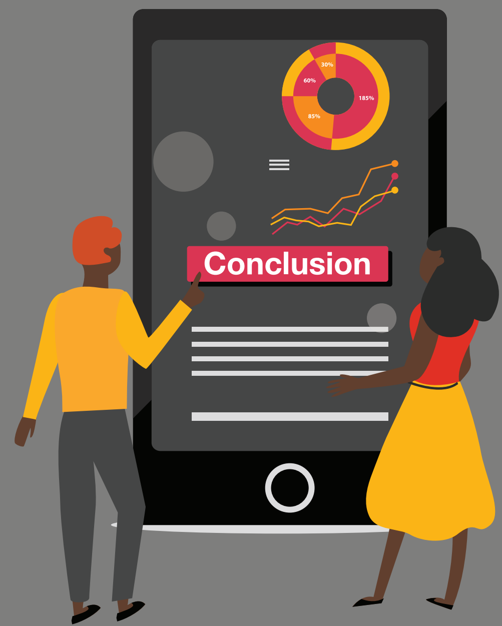
To deliver on a new strategy that incorporates ESG at its core, every aspect of the company should be transformed, including the company culture, systems, processes and how performance and success are measured. When business moves beyond reporting against financial metrics alone, change will be required to meaningfully set targets and report on the new set of relevant metrics. While change may appear daunting, encouraging and rewarding executives for performance and behaviours directed at the company's long-term sustainability will drive the ESG strategy and the corresponding positive results.



ESG strategy: What shareholders say

As has been observed in the recent Glass Lewis guidance, although investors believe that ESG strategy is important and push for ESG metrics in executive remuneration structures, they are nevertheless hesitant when presented with ESG in remuneration structures, as they believe that there is an opportunity for remuneration to be artificially increased for achieving ESG goals that should be part of executives' core responsibilities, and not warrant an additional reward.

ESG has been 'the next big thing' for a number of years and many are experiencing ESG fatigue and may feel apathy towards getting started on their ESG journeys. However, this could be the right time to take action as we expect ESG fervour to continue, with increasing pressures on boards to meaningfully demonstrate what steps they are taking and how they are incorporating identified issues into their ESG strategies and linking these metrics to executives' variable remuneration.



8 Profile of a JSE non-executive director

In this chapter, we outline the characteristics of a JSE non-executive director.

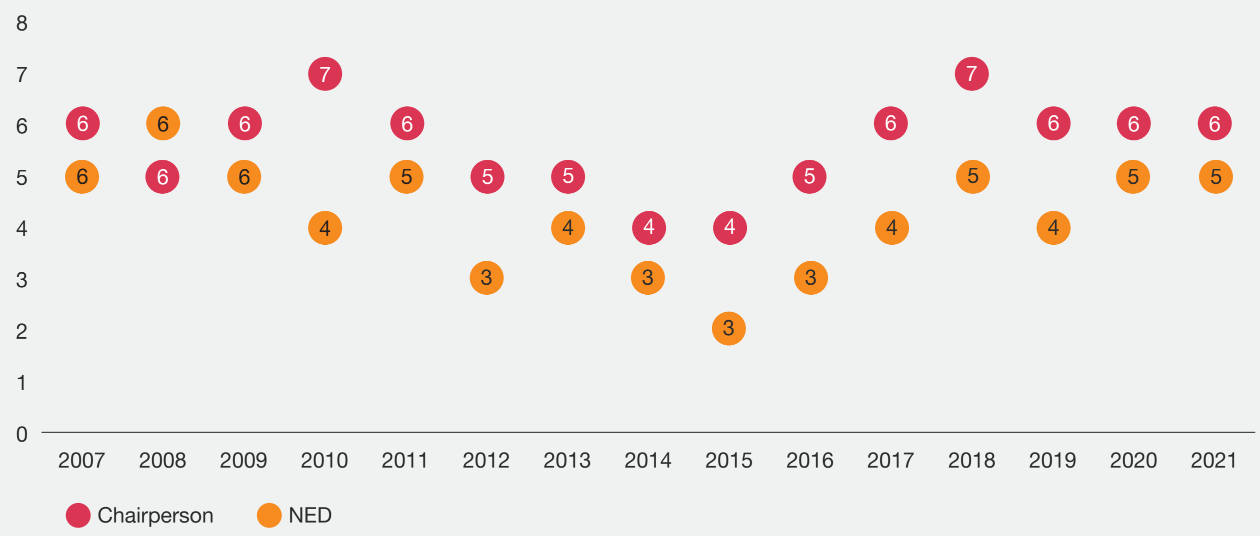
As of 31 October 2021, the total number of non-executive directors serving on the boards of active JSE companies was 1,955 (2020: 2,106), which is 151 fewer than in the prior reporting period.

Board tenure

The average tenure for chairpersons of JSE-listed companies remains unchanged at six years while the average tenure for NEDs is five years. This has remained relatively consistent over the past four years with the exception of 2019 when an average tenure of four years was observed for NEDs.

Our analysis found that 16% (304) of NEDs had a tenure of nine years or longer, with the longest serving having held office for more than 37 years.

Figure 8.1: Average tenure, 2007–2021



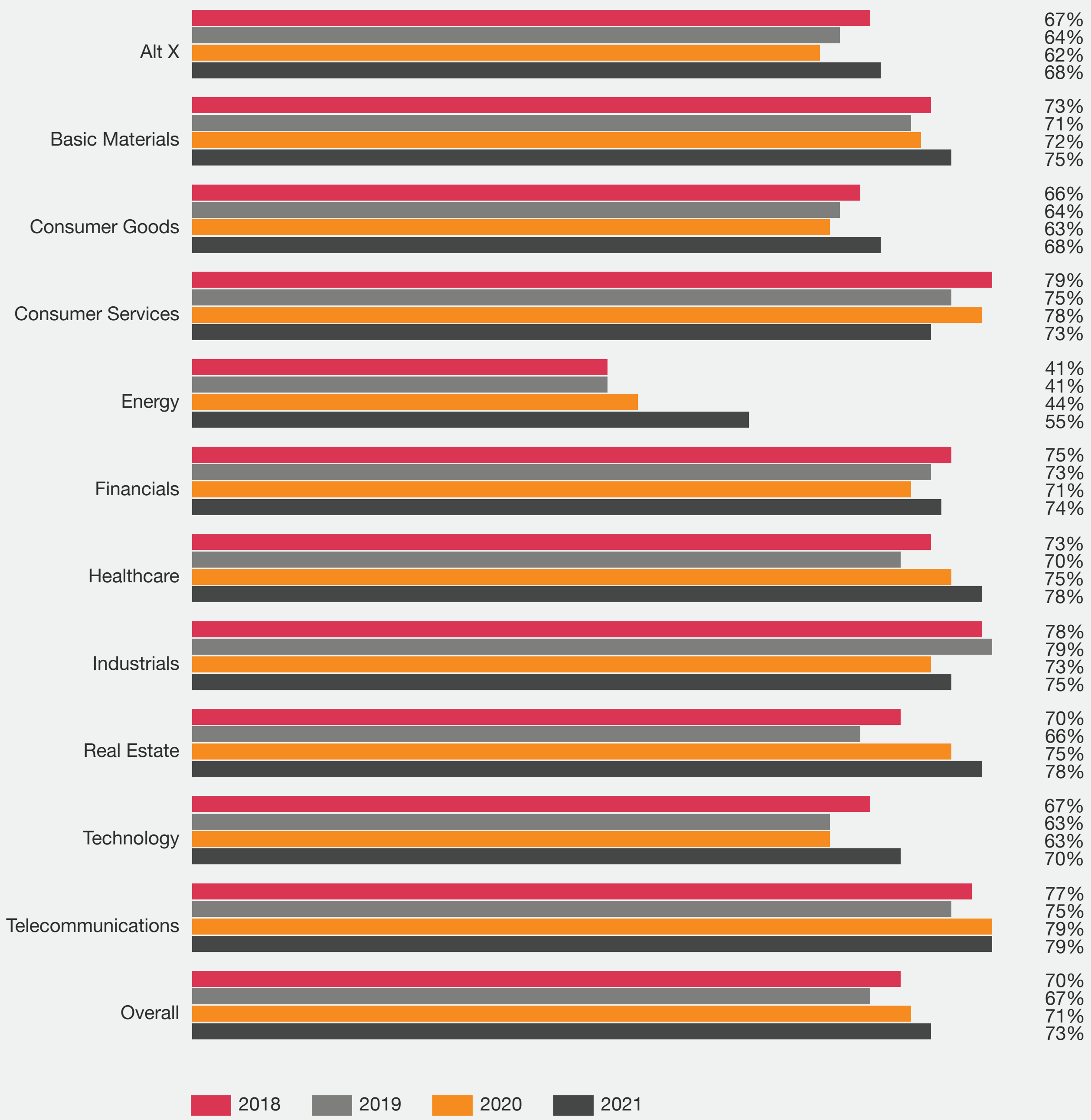
Source: PwC analysis

Independence

Independence rules aim to ensure that directors avoid conflicts of interest that may impede their services to the board. Shareholders continue to place pressure on listed companies where a director's tenure is perceived to be excessive, or where the potential for a conflict of interest exists.

It is encouraging to see that NEDs continue to demonstrate a suitable level of independence.

Figure 8.2: Proportion of independent non-executive directors, 2018–2021



Source: PwC analysis based on companies' categorisation of NEDs as independent

Age

Our research indicates that the median age of South African chairpersons is 64, with the median age of board members (excluding chairpersons) being 58. This demonstrates that South African boards have a reasonable experience base and tenure profile. Age diversity has not historically been a major focal area, and it has traditionally been expected that board members be older, with many boards linking age with experience.

Having said that, a mixture of young and old NEDs is important to ensure diversity of thinking and approach, and to ensure that boards are able to face the challenges of the digital age. Boards should consider whether a counterbalance should be introduced to drive board effectiveness by placing a greater emphasis on age diversity within the board composition.

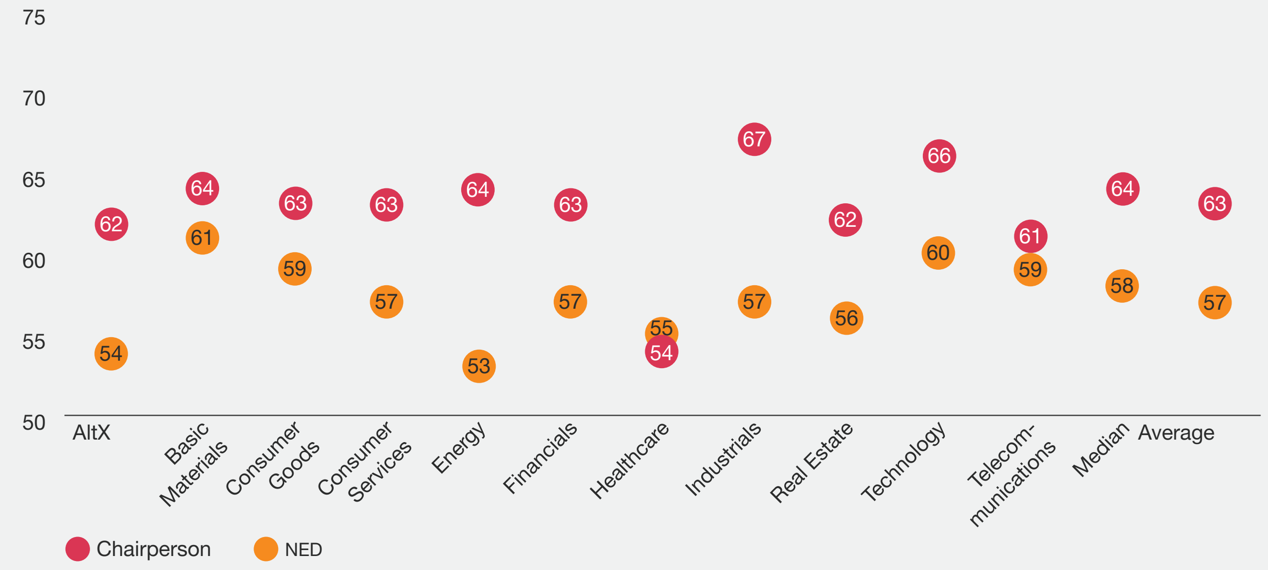
Multiple board memberships

There should be a healthy balance between not becoming 'over boarded' – i.e. serving on too many boards, resulting in not having sufficient time available to fulfil board member responsibilities, which could result in 'groupthink' – and having the requisite network and exposure that serving on more than one board may afford a non-executive director.

It is interesting to note that proxy advisor ISS has suggested in other global voting policies (although not in South Africa), that where directors have multiple board appointments (generally seen as five or more mandates), it may recommend a vote against the appointment of such directors.

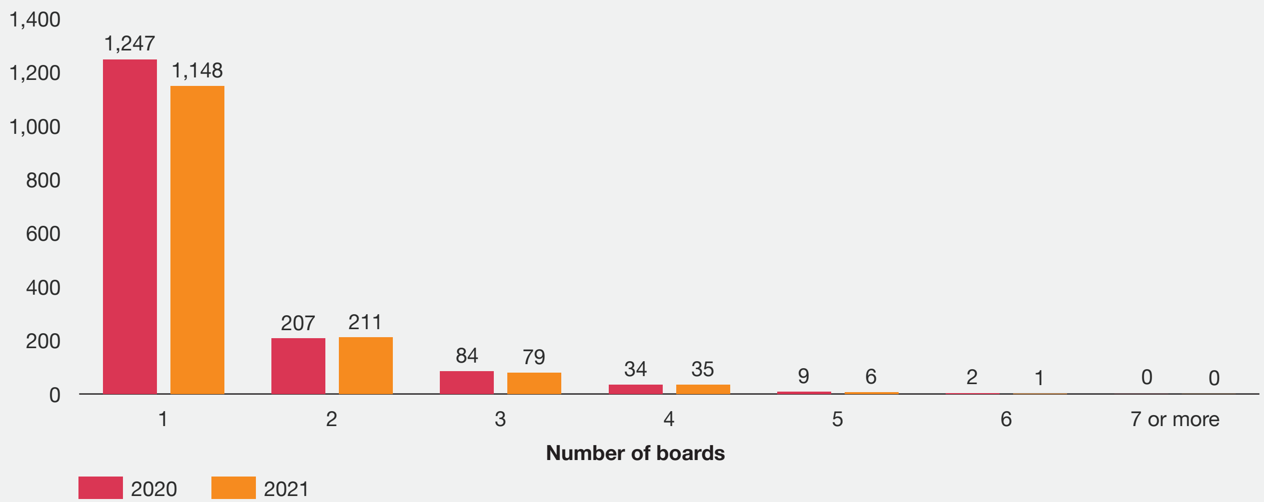
In our analysis of JSE companies, fewer than 50 NEDs served on four or more boards during the 2021 period with only one serving on six boards.

Figure 8.3: Median age of board members



Source: PwC analysis

Figure 8.4: Non-executive directors' membership of multiple boards

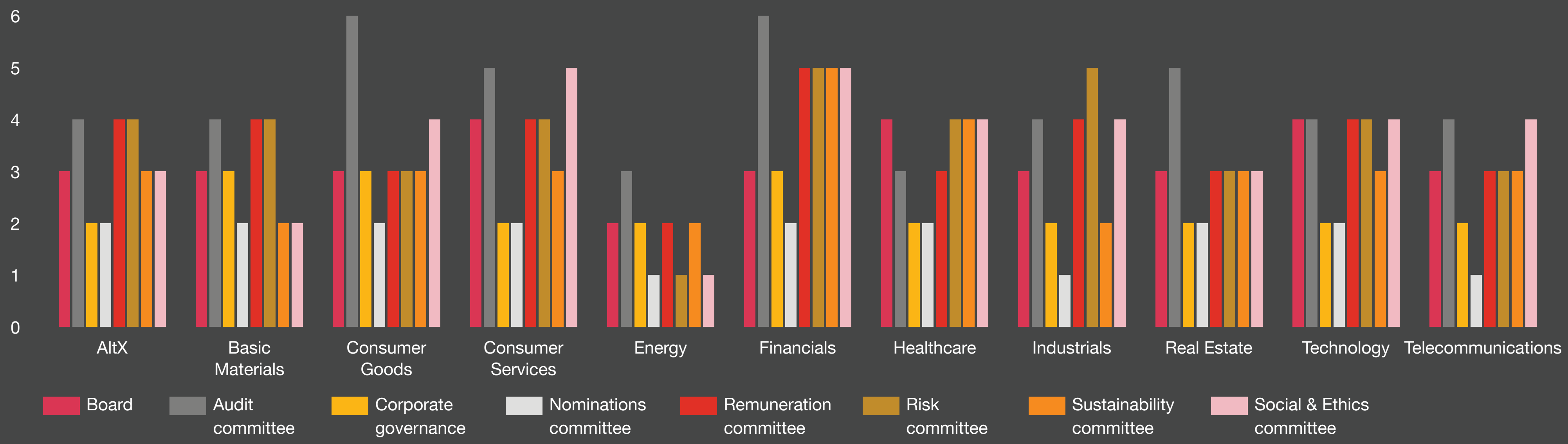


Source: PwC analysis

Meetings

The figure below sets out the average number of meetings held by the boards and all major subcommittees of all JSE Main Board and AltX companies analysed.

Figure 8.5: Average number of meetings held by industry, including AltX



	Board	Audit committee	Corporate governance	Nominations committee	Remuneration committee	Risk committee	Sustainability committee	Social & Ethics committee
AltX	3	4	2	2	4	4	3	3
Basic Materials	3	4	3	2	4	4	2	2
Consumer Goods	3	6	3	2	3	3	3	4
Consumer Services	4	5	2	2	4	4	3	5
Energy	2	3	2	1	2	1	2	1
Financials	3	6	3	2	5	5	5	5
Healthcare	4	3	2	2	3	4	4	4
Industrials	3	4	2	1	4	5	2	4
Real Estate	3	5	2	2	3	3	3	3
Technology	4	4	2	2	4	4	3	4
Telecommunications	3	4	2	1	3	3	3	4

Source: PwC analysis

Diversity

According to the JSE Listings Requirements, issuers are required to adopt a policy on the promotion of broader diversity on the board, focusing not only on race and gender, but also on the promotion of other diversity attributes such as culture, age, field of knowledge, skills and experience.

The company must publish its performance against the policy annually in its integrated report. Although many companies report on their adherence to the adoption of such a policy, very few report on their progress and diversity composition.

We have analysed the racial diversity among the JSE top 100 companies and have included additional analysis on the nationality of NEDs.

Nationality and race

Our analysis shows that 75% (2020: 81%) of NEDs are South African. This change in nationality profile is influenced by the change in the number of NEDs included in our analysis (2020: 2,106 vs 2021: 1,955). The increase in foreigners on boards is also indicative of companies seeking to increase the international experience of their boards. This ties in with the globalisation strategies that many companies are adopting.

Within the South African NED group, the breakdown of non-executive directors by race has been classified in terms of the following categories:

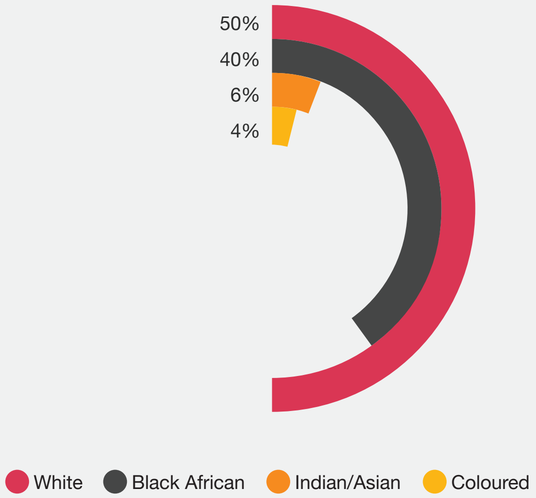
- Black African
- Coloured
- Indian/Asian
- White.

The analysis has been performed for chairpersons and other NEDs.

Of the South African NEDs (including chairpersons), most NEDs (50%) were White, with Black Africans making up 40%. The remaining two categories registered low levels of representation, with Indian/Asians at 6%, and Coloureds at 4%.

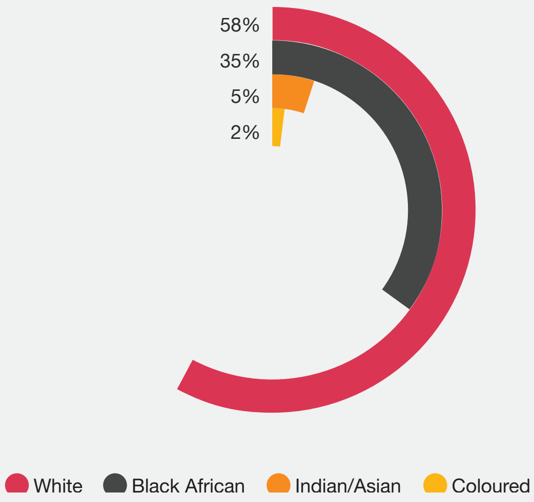
The representation of Black Africans and Whites as non-executive chairpersons increased from 32% to 35% and 52% to 58% respectively, while the Indian/Asian and Coloured categories decreased to 4% (2020: 11%) and 2% (2020: 5%) respectively.

Figure 8.6: Racial representation: All non-executive directors, including chairpersons



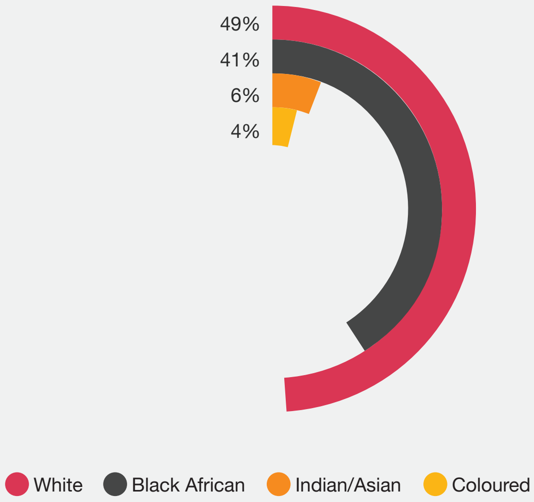
Source: PwC analysis

Figure 8.7: Racial representation: Chairpersons



Source: PwC analysi

Figure 8.8: Racial representation: Non-executive directors, excluding chairpersons



Source: PwC analysis

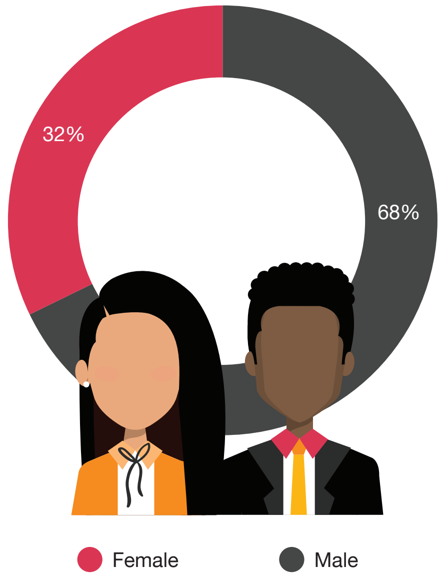
Gender

We have analysed gender diversity among all JSE-listed companies.

Our analysis shows that male non-executive directors (68%) are still heavily favoured. This is a slight improvement on our findings last year, which reflected a 71% male to 29% female split.

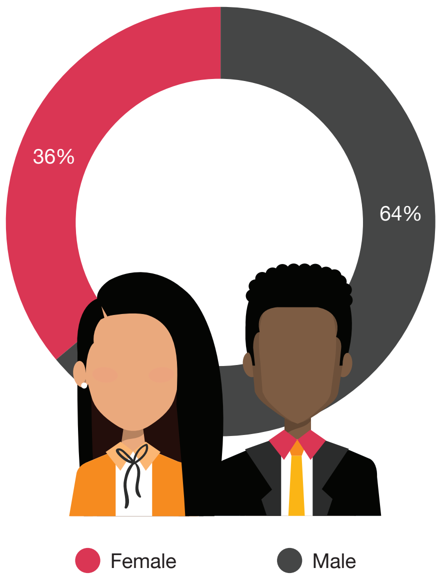
We have also noted a slight improvement in companies of different sizes, with large caps having 64% (2020: 68%) male non-executive directors, medium caps having 63% (2020: 66%) and small caps having 72% male (2020: 74%) non-executive directors.

Figure 8.9: Gender representation: All JSE



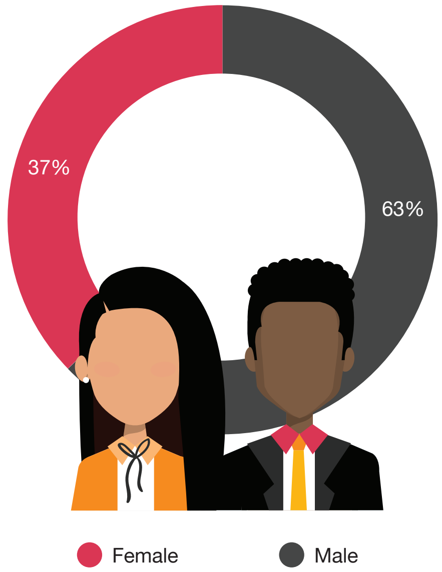
Source: PwC analysis

Figure 8.10: Gender representation: Large cap



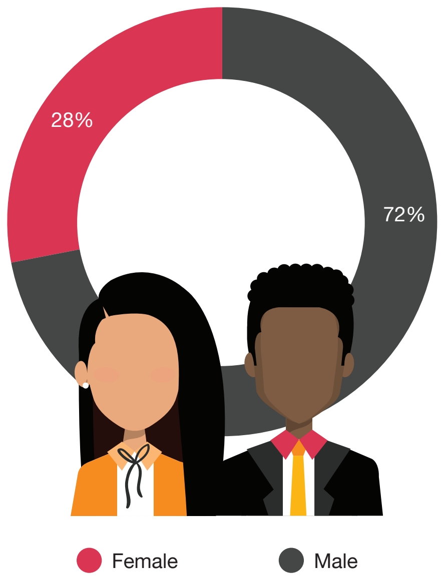
Source: PwC analysis

Figure 8.11: Gender representation: Medium cap



Source: PwC analysis

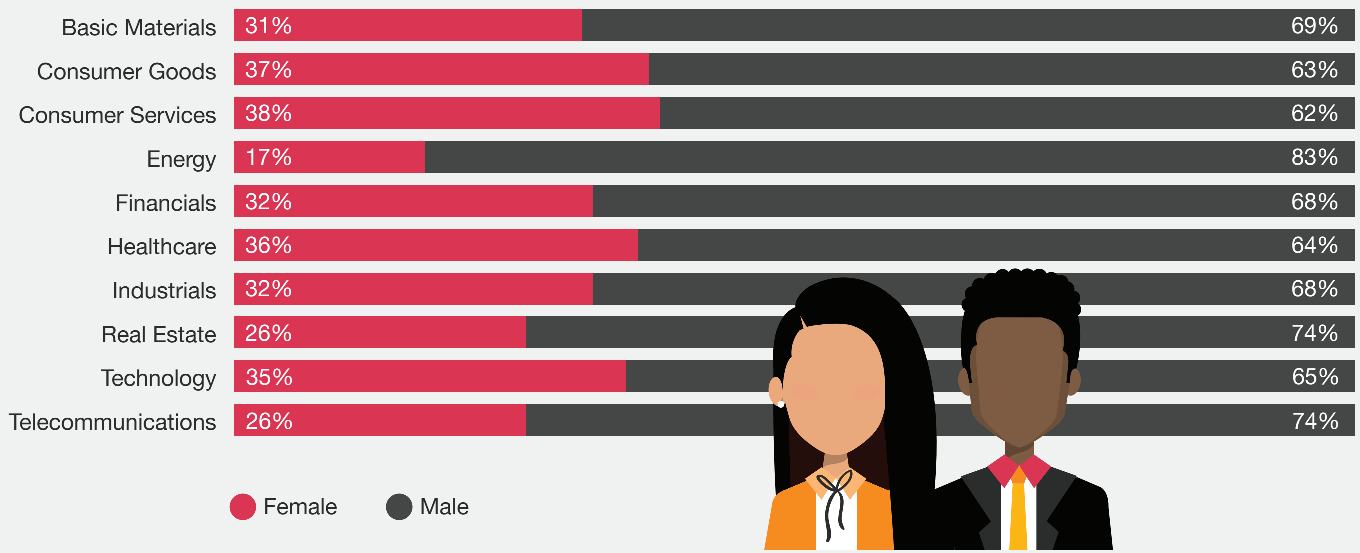
Figure 8.12: Gender representation: Small cap



Source: PwC analysis

In terms of industries, the trends are consistent with those of the overall JSE analysis with the exception of the Basic Materials, Healthcare, Industrials and Real Estate, where the number of male non-executive directors has increased since 2020.

Figure 8.13: Gender representation: By industry



Source: PwC analysis

9 JSE non-executive directors' fees

This section of the report provides an analysis of JSE non-executive director fees for the period 1 September 2020 to 31 October 2021. The analysis is based on actual non-executive director fees disclosed in the annual financial statements of JSE-listed companies for the period under review (rather than forecast fees as disclosed in the notices of AGMs).

This analysis is based on active directors as at 31 October 2021. In instances where non-executive directors have resigned from their positions, we have excluded them. In the event that non-executive directors have been appointed to their roles after the financial year end, they too have been excluded from the analysis.

Where non-executive directors have been remunerated in foreign currency, their fees have been converted into South African rand using the exchange rates as at the cut-off date (31 October 2021).

Non-executive directors' fees: JSE all industries and AltX

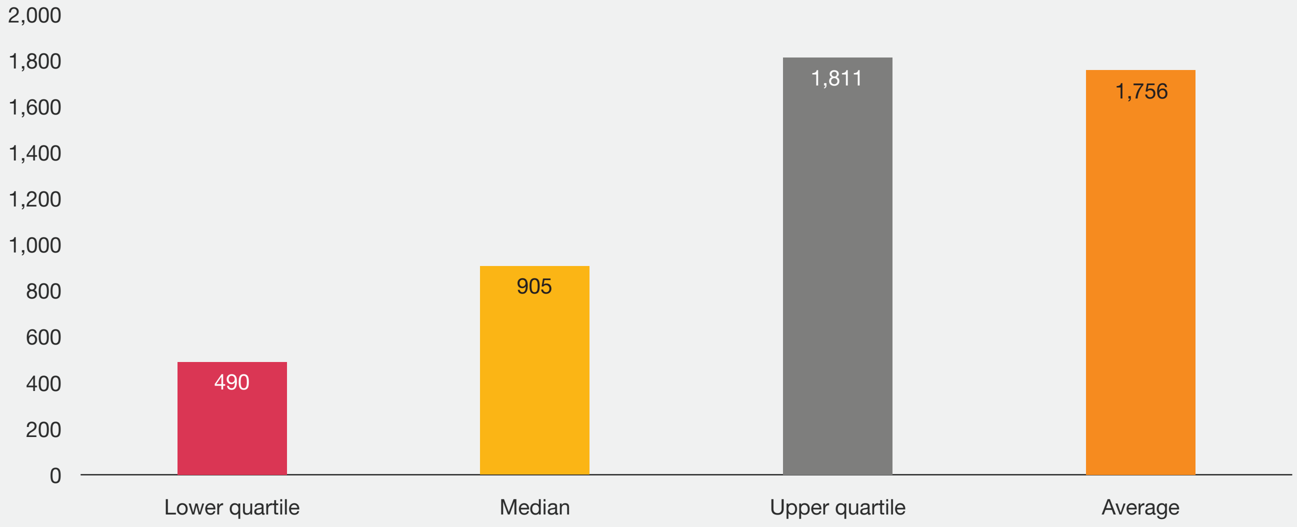
The four categories of non-executive board members analysed are:

- Chairperson
- Deputy chairperson
- Lead independent director
- Non-executive director.

Chairperson

The role of a chairperson requires a large time commitment and an increasing level of involvement as it includes additional work carried out between scheduled meetings, representing the organisation externally and interacting with fellow board members and employees.

Figure 9.1: JSE all industries: Chairperson (R'000)

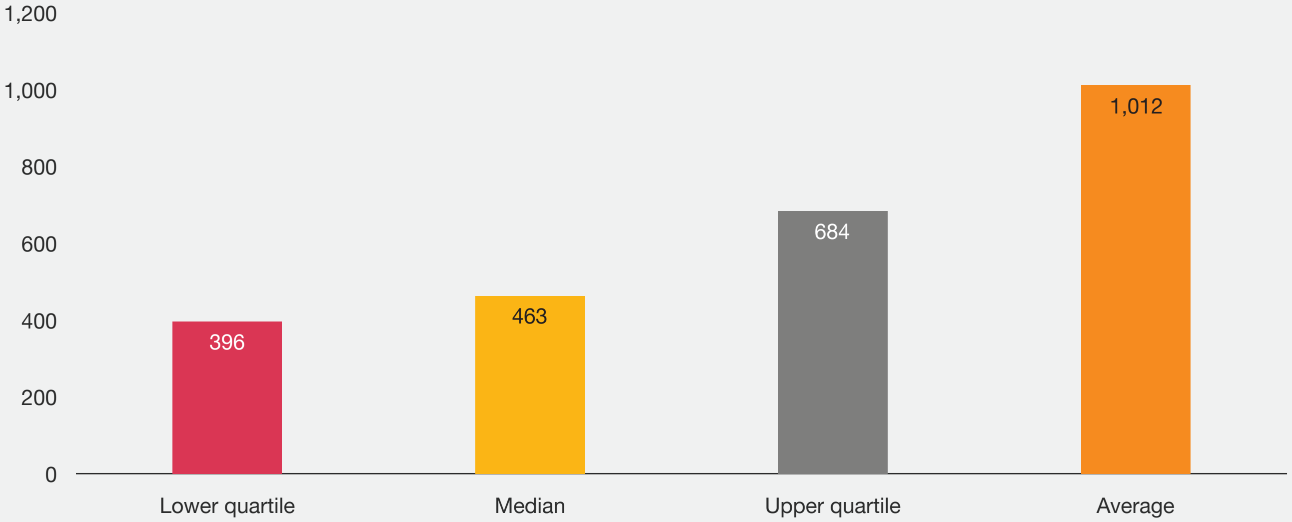


Source: PwC analysis

Deputy chairperson

Some boards include the position of deputy chairperson. This person assists the chairperson and fills in at meetings if the chairperson is unavailable.

Figure 9.2: JSE all industries: Deputy chairperson (R'000)



Source: PwC analysis

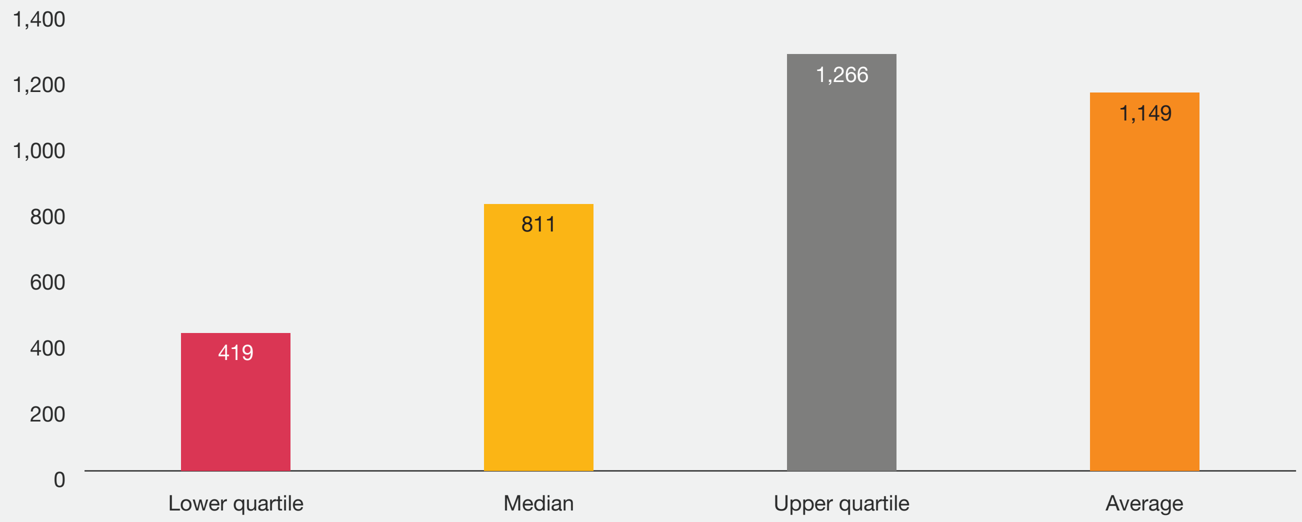
Lead independent director

The lead independent director is required to preside over all meetings of the board at which the chairperson is not present, or where the chairperson is conflicted, including any session of the independent directors.

Their duties include calling meetings of the independent directors, where necessary, and serving as principal liaison between the independent directors and the chairperson. Their responsibilities would also include liaising with major shareholders if requested by the board in circumstances in which the chairperson is conflicted.

Over the last few years, we have observed that lead independent directors have begun to play a larger role on boards, taking on greater prominence and responsibility in driving board independence. This has resulted in lead independent director fees increasing more rapidly than other positions on boards.

Figure 9.3: JSE all industries: Lead independent director (R'000)

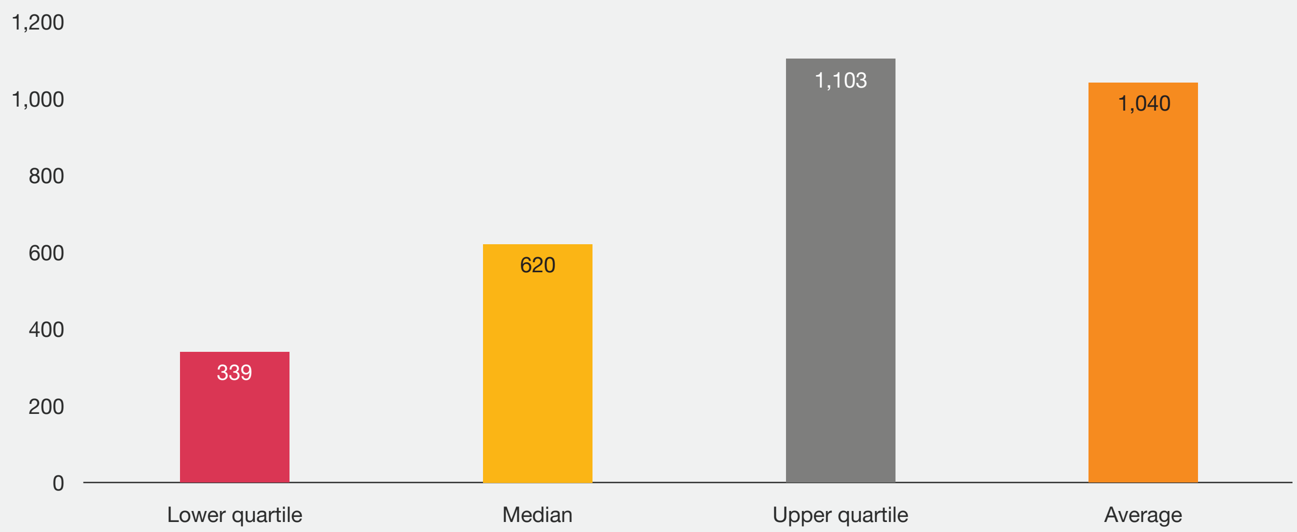


Source: PwC analysis

Non-executive director

Non-executive directors are required to make up the majority of a board's membership. The majority of non-executive directors should also be independent.

Figure 9.4: JSE all industries: Non-executive director (R'000)



Source: PwC analysis

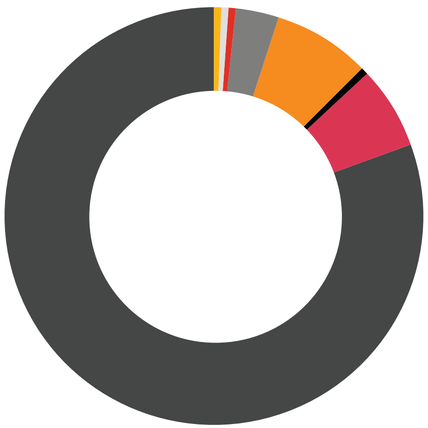
Foreign director premium

During our research, we analysed the difference between the fees paid to non-executive directors who were paid in foreign currencies and those paid in South African rand.

The foreign director premium identified has been further broken down to distinguish between the portion of the premium that relates to a cost-of-living adjustment (COLA) and that portion that is in excess of the COLA.

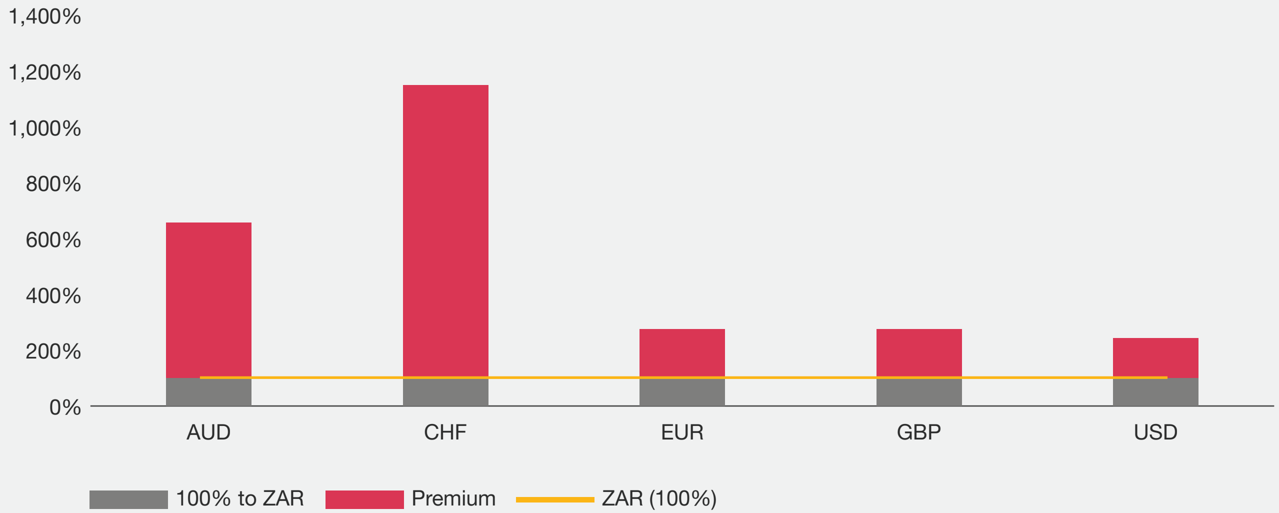
Our analysis revealed that a premium was paid in excess of the COLA for remuneration in all foreign currencies. Where a significant premium was paid, this is mainly a result of non-executive directors and chairpersons sitting on boards of super cap and large cap companies.

Figure 9.5: Currency of fees paid: Chairperson



Source: PwC analysis

Figure 9.6: Foreign director premium: Chairperson



Currency	Premium compared to ZAR	COLA premium	Premium in excess of COLA
AUD	557%	90%	467%
CHF	1049%	188%	861%
EUR	175%	N/A	N/A
GBP	175%	65%	110%
USD	144%	79%	65%

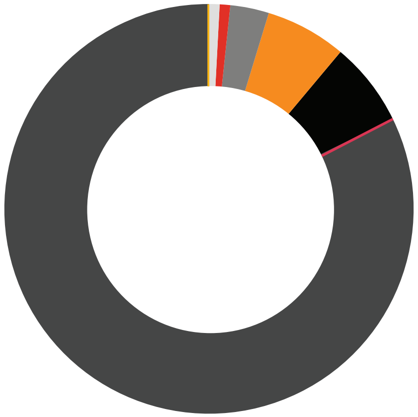
Note: As COLA data is only available for individual European countries and not the euro area as a whole, the COLA and premium in excess of COLA could not be determined.

The premium calculated for CHF is based on data analysed for two companies whose NEDs are remunerated in Swiss francs.

Source: PwC analysis based on Numbeo COLA comparisons[1]

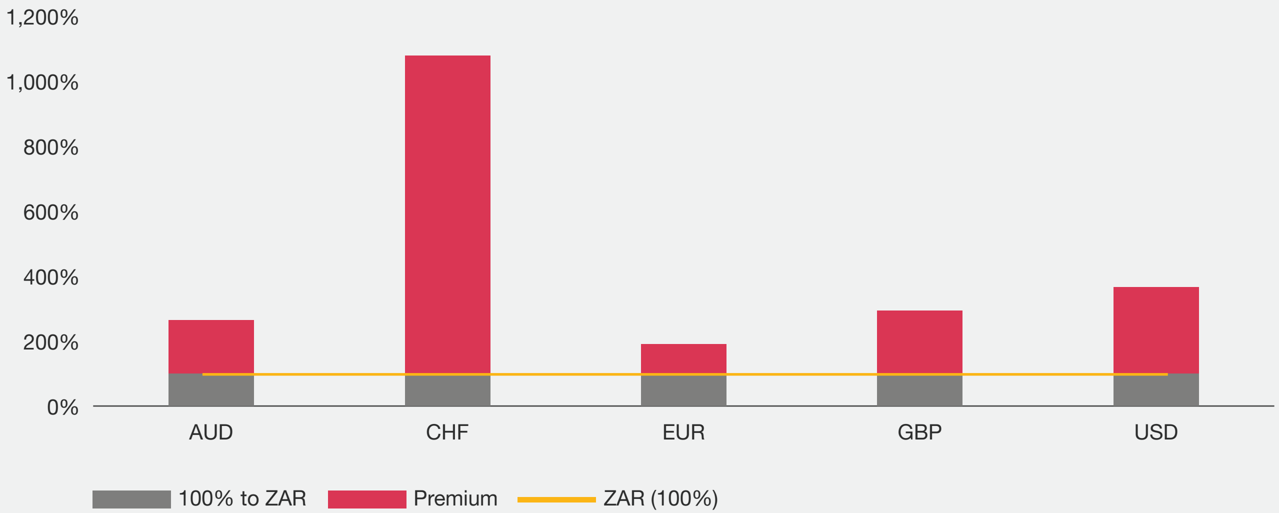
[1] "Cost of Living Comparison," Numbeo, accessed 12 December 2021, https://www.numbeo.com/cost-of-living/comparison.jsp.

Figure 9.7: Currency of fees paid: Non-executive director



Source: PwC analysis

Figure 9.8: Foreign director premium: Non-executive director



Currency	Premium compared to ZAR	COLA premium	Premium in excess of COLA
AUD	164%	90%	74%
CHF	978%	188%	790%
EUR	90%	N/A	N/A
GBP	193%	65%	128%
USD	266%	79%	187%

Note: As COLA data is only available for individual European countries and not the euro area as a whole, the COLA and premium in excess of COLA could not be determined.

Source: PwC analysis

Non-executive director fees among super caps

Super caps represent the top ten companies on the JSE. As at 31 October 2021, these companies accounted for 67% of the exchange's total market capitalisation.

JSE super caps, 2021 vs 2020

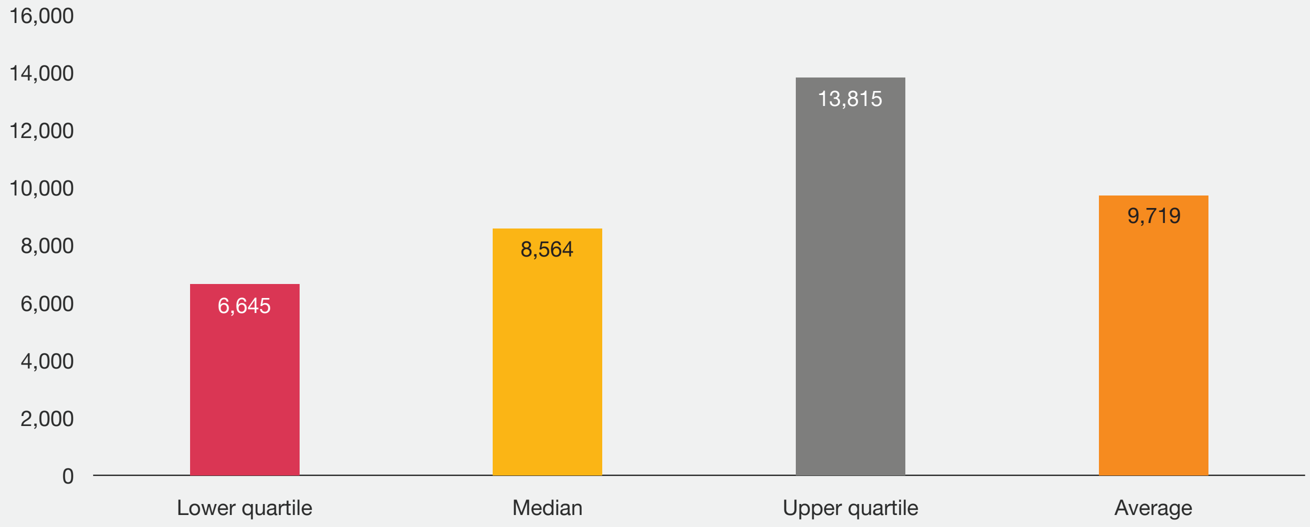
2020	2021
Prosus N.V.	Prosus N.V.
Anheuser-Busch InBev SA/NV	Anheuser-Busch InBev SA/NV
Naspers Ltd	British American Tobacco PLC
British American Tobacco PLC	Naspers Ltd
BHP Group PLC	Glencore PLC
Compagnie Financière Richemont S.A.	Compagnie Financière Richemont S.A.
Anglo American PLC	BHP Group PLC
Glencore PLC	Anglo American PLC
Anglo American Platinum Ltd	Anglo American Platinum Ltd
Vodacom Group Ltd	FirstRand Ltd

Source: PwC analysis

The JSE super caps have remained the same other than the replacement of Vodacom Group Ltd by FirstRand Ltd.

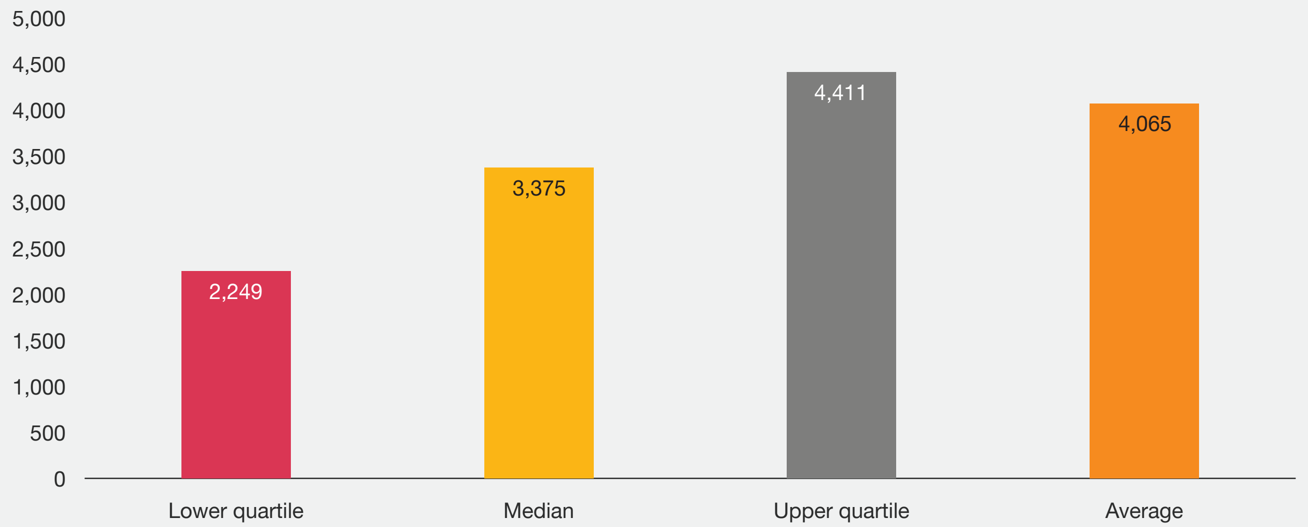
The quartile analysis (including median) for super caps chairpersons and non-executive directors (excluding chairpersons) is set out on the right:

Figure 9.9: Super caps: Chairperson (R'000)



Source: PwC analysis

Figure 9.10: Super caps: Non-executive director (R'000)



Source: PwC analysis

Non-executive directors' fees by industry

In this section we analyse non-executive director fees for each industry. The table below outlines the industries analysed as well as their individual contribution to the total market capitalisation of the entire JSE.

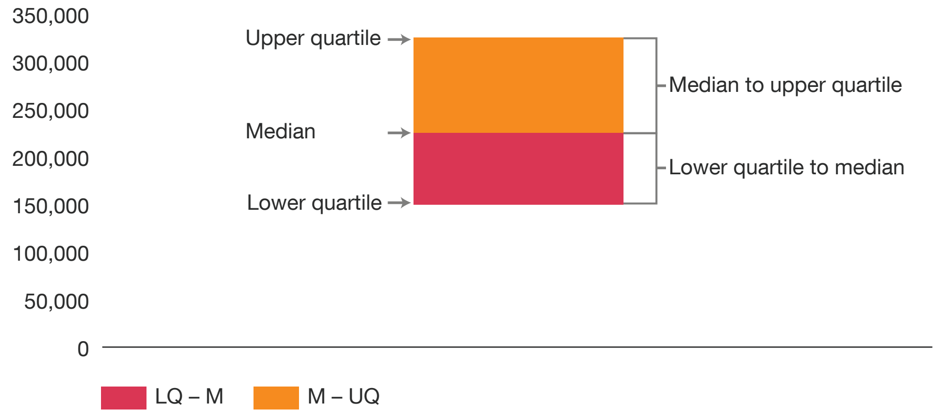
JSE market capitalisation by industry (%)

	2021	2020	2019	2018
Basic Materials	26.7%	24.7%	26.3%	23.1%
Consumer Goods	20.5%	25.3%	26.8%	29.5%
Consumer Services	8.5%	4.6%	10.4%	16.5%
Energy	0.4%	0.1%	0.0%	0.2%
Financials	10.7%	9.3%	18.1%	17.2%
Healthcare	1.4%	1.1%	1.4%	1.7%
Industrials	2.6%	1.2%	1.6%	3.0%
Real Estate	2.5%	2.1%	4.3%	5.0%
Technology	23.3%	29.0%	7.7%	0.3%
Telecommunications	3.5%	2.6%	3.4%	3.5%

Source: PwC analysis

The figures that follow illustrate our non-executive director fee analysis. Where sufficient data points were not available, the average has been used.

Guide to data presentation

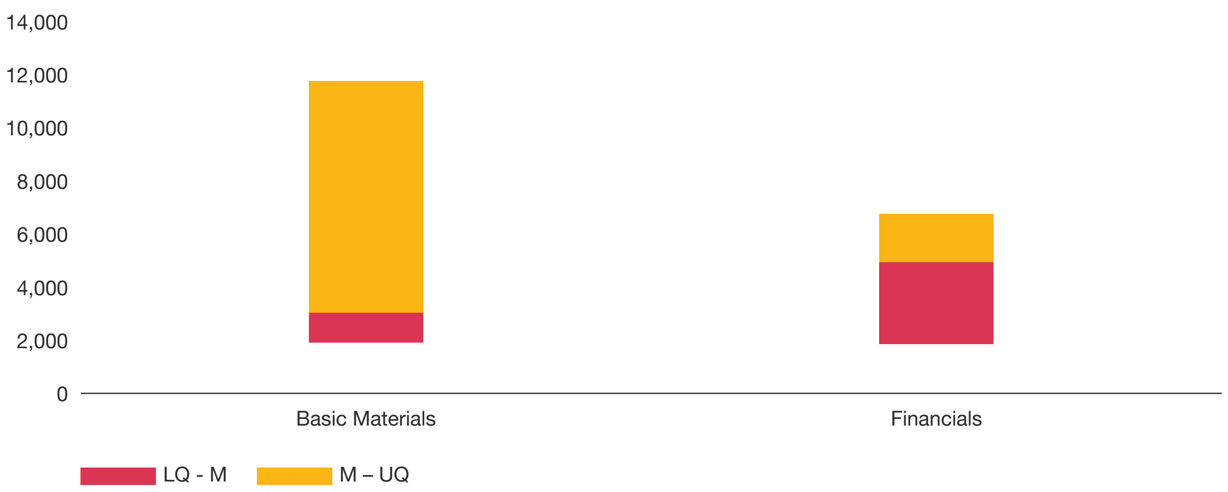


Chairperson

Large cap

The quartile analysis for the Basic Materials and Financials industries chairpersons is shown below.

Figure 9.11: Large cap: Chairperson, quartiles (R'000)

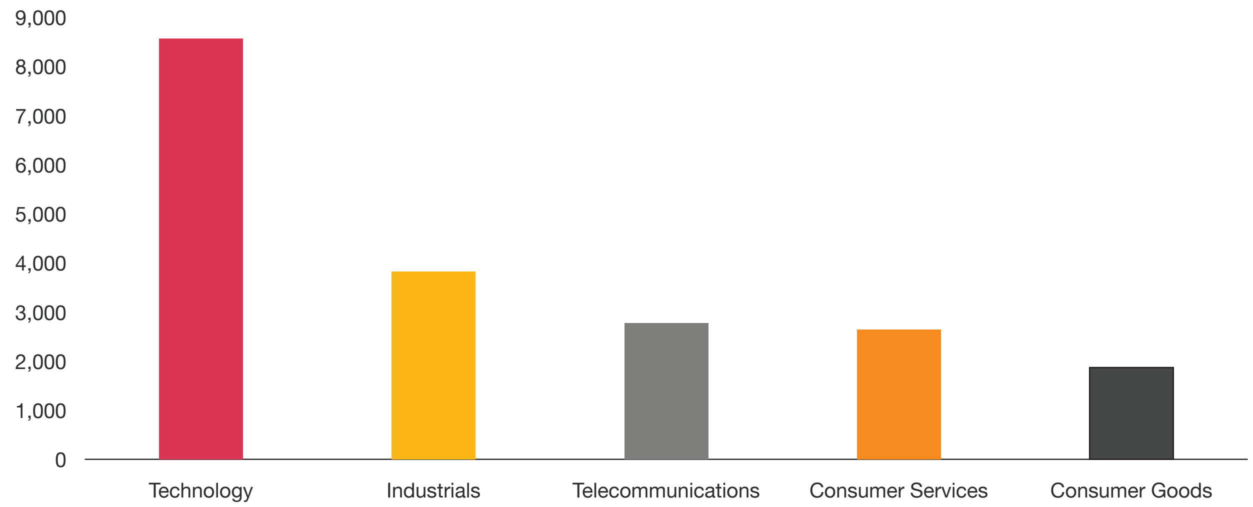


	Lower quartile	Median	Upper quartile
Basic Materials	1,908	3,025	11,762
Financials	1,857	4,923	6,758

Source: PwC analysis

The average fees for chairpersons in the Technology, Industrials, Telecommunications, Consumer Services and Consumer Goods industries are shown below.

Figure 9.12: Large cap: Chairperson, averages (R'000)



Industry	Average
Technology	8,564
Industrials	3,822
Telecommunications	2,772
Consumer Services	2,641
Consumer Goods	1,868

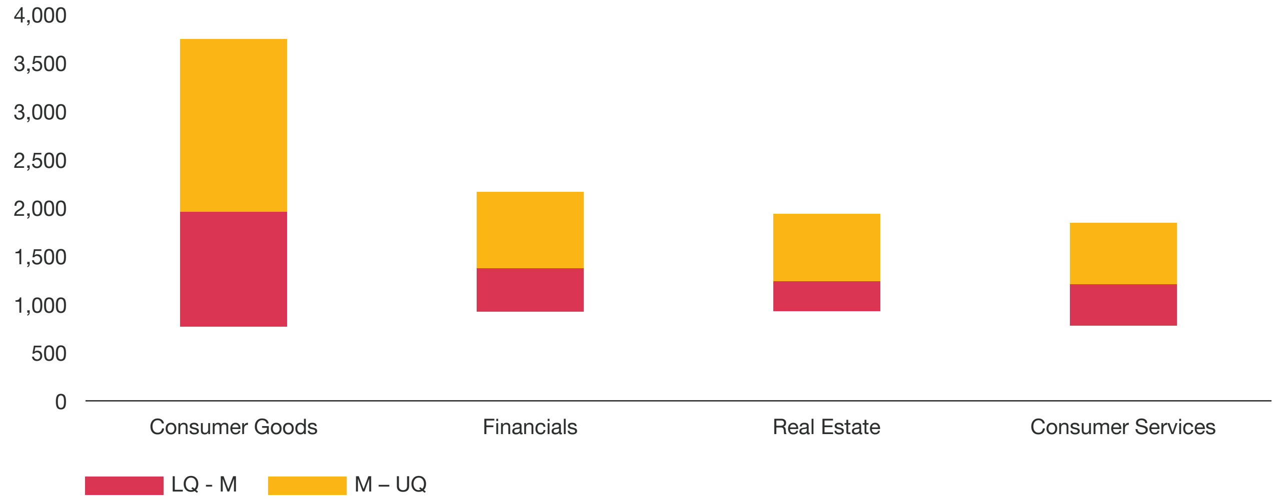
Source: PwC analysis

As there were insufficient data points, an analysis for the Energy, Healthcare and Real Estate industries has not been included.

Medium cap

The quartile analysis for Consumer Goods, Financials, Real Estate and Consumer Services chairpersons is shown below.

Figure 9.13: Medium cap chairperson, quartiles (R'000)

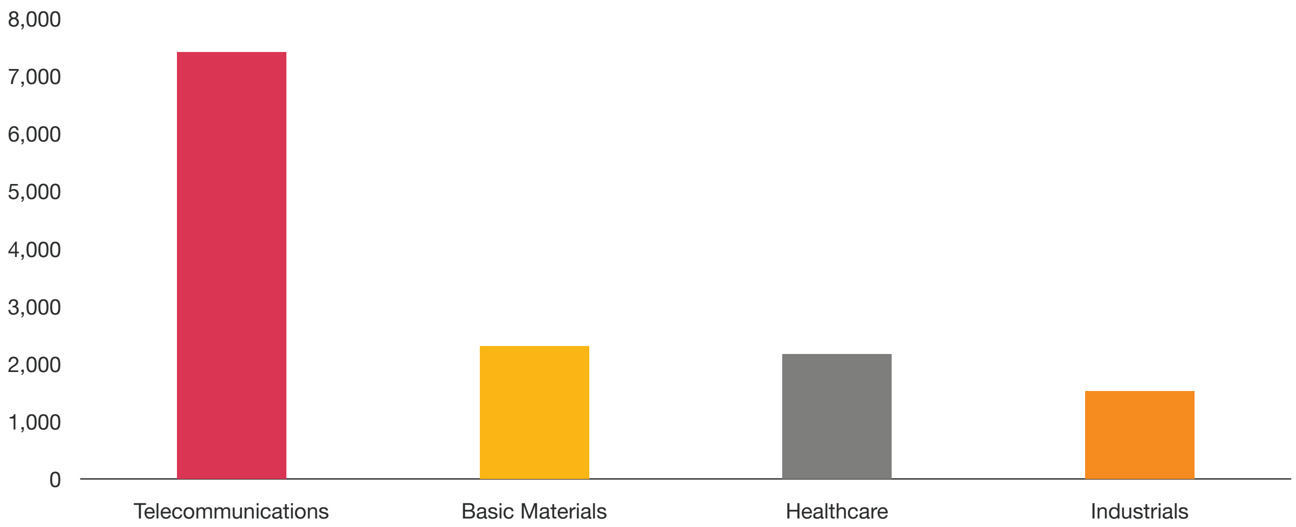


Industry	Lower quartile	Median	Upper quartile
Consumer Goods	767	1,955	3,745
Financials	924	1,370	2,164
Real Estate	928	1,237	1,936
Consumer Services	778	1,207	1,841

Source: PwC analysis

The average chairperson's fees for Telecommunications, Basic Materials, Healthcare and Industrials industries are shown below.

Figure 9.14: Medium cap chairperson, averages (R'000)



Industry	Average
Telecommunications	7,415
Basic Materials	2,304
Healthcare	2,164
Industrials	1,521

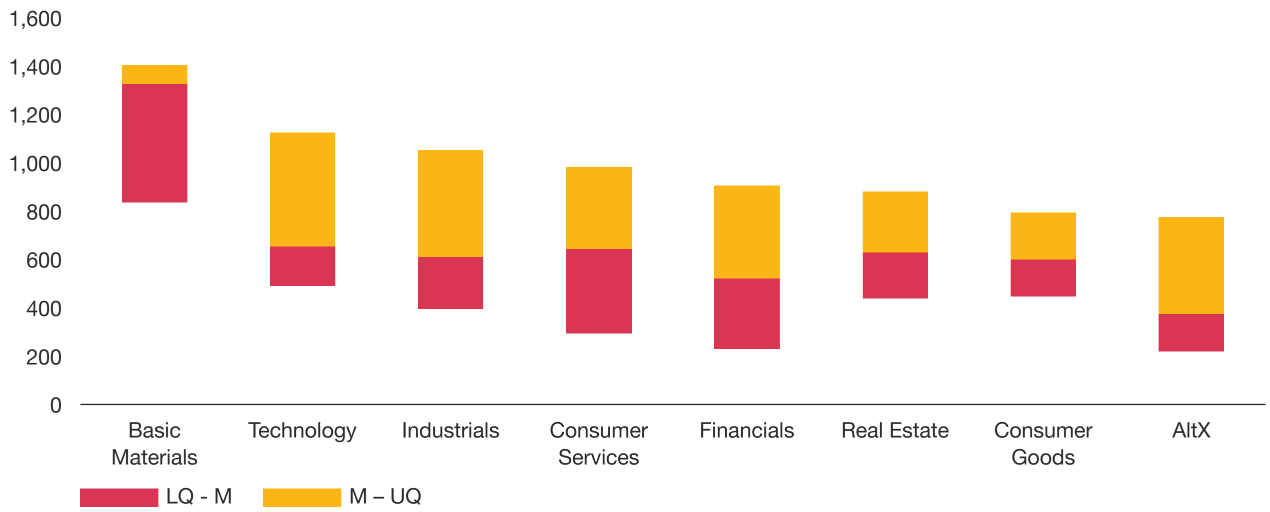
Source: PwC analysis

As there were insufficient data points, an analysis for the Energy and Technology industries has not been included.

Small cap, including AltX

The quartile analysis for all industries, including AltX, but excluding Energy, Healthcare and Telecommunications, is shown below.

Figure 9.15: Small cap chairperson, quartiles (R'000)

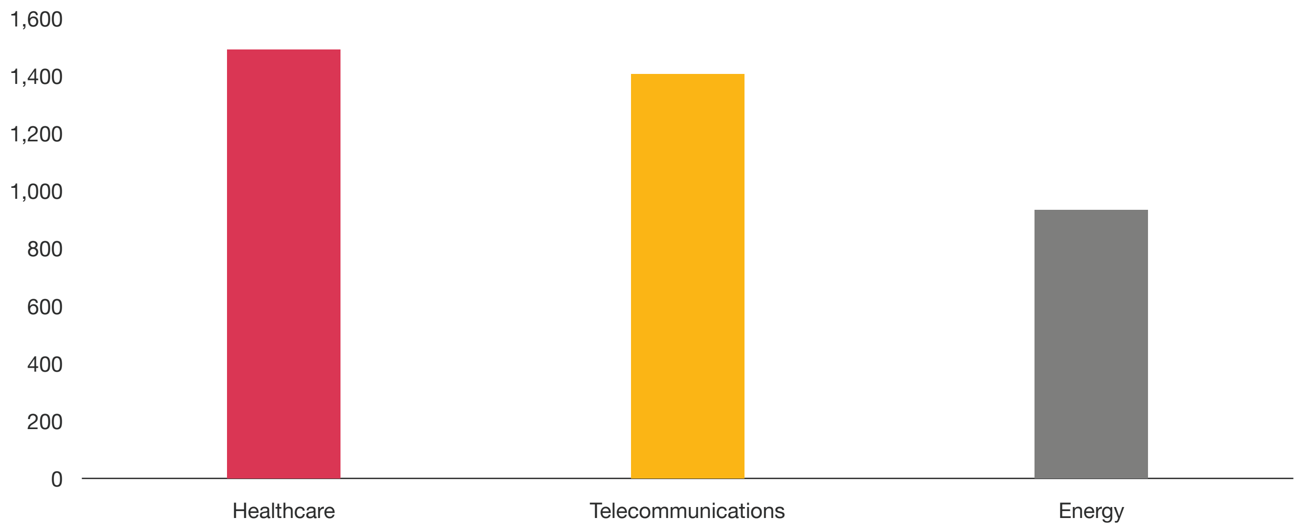


Industry	Lower quartile	Median	Upper quartile
Basic Materials	835	1,326	1,405
Technology	491	654	1,125
Industrials	394	608	1,051
Consumer Services	294	643	983
Financials	229	520	905
Real Estate	438	626	879
Consumer Goods	447	598	792
AltX	219	374	774

Source: PwC analysis

The average for chairpersons' fees for the Healthcare, Telecommunications and Energy industries are shown below.

Figure 9.16: Small cap chairperson, averages (R'000)



Industry	Average
Healthcare	1,490
Telecommunications	1,406
Energy	933

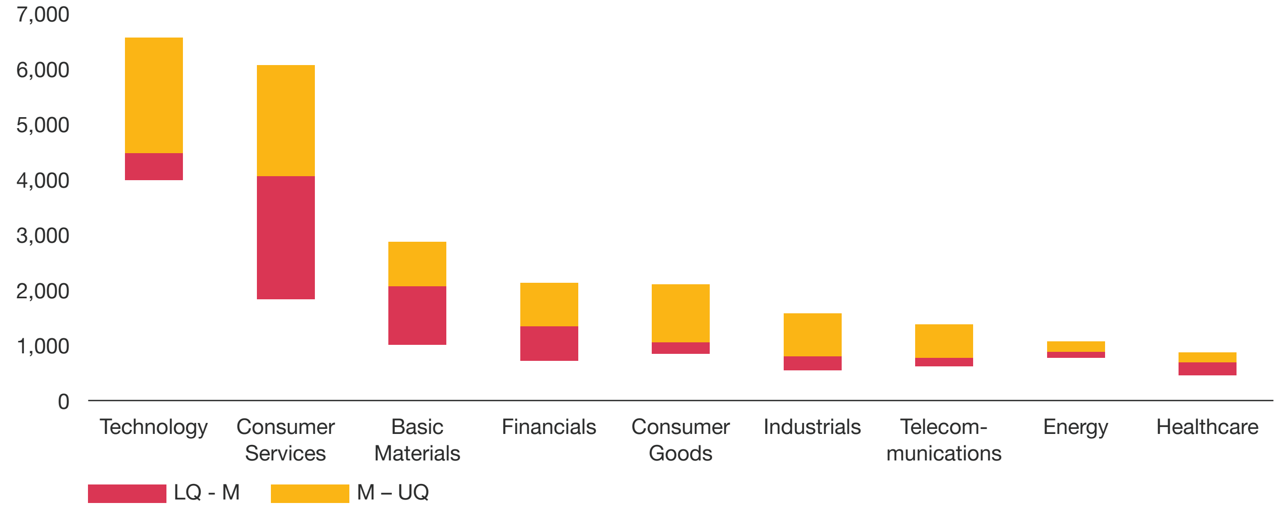
Source: PwC analysis

Non-executive directors, excluding chairpersons

Large cap

The quartile analysis for non-executive directors in the Technology, Consumer Goods, Basic Materials, Consumer Goods, Industrials, Telecommunications, Energy and Healthcare industries is shown below.

Figure 9.17: Large cap non-executive director, quartiles (R'000)

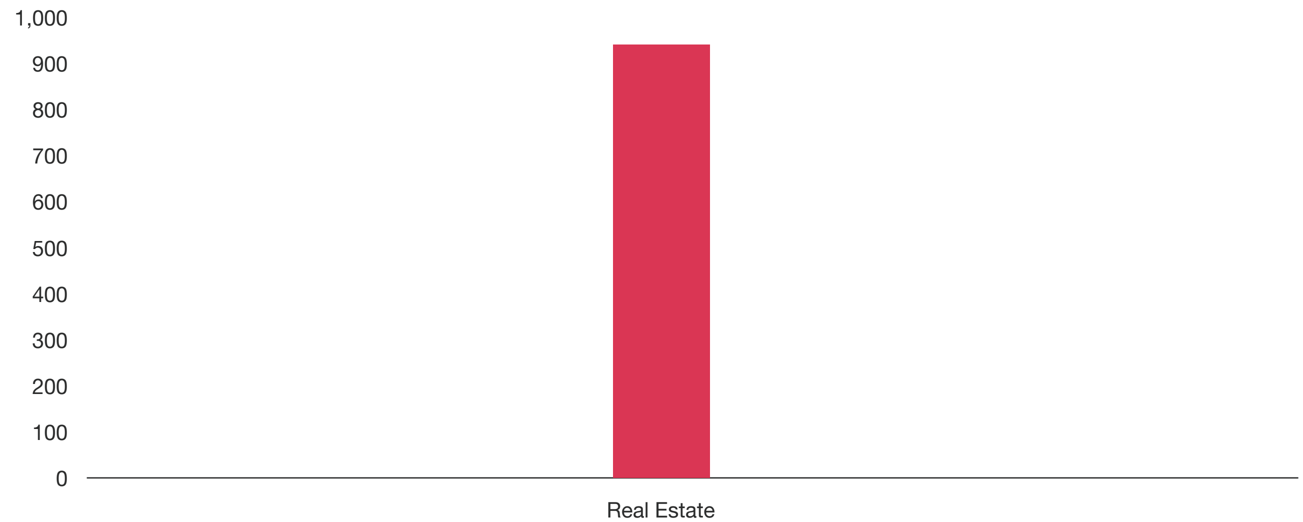


Industry	Lower quartile	Median	Upper quartile
Technology	3,985	4,465	6,560
Consumer Services	1,833	4,055	6,062
Basic Materials	1,010	2,067	2,865
Financials	720	1,342	2,121
Consumer Goods	841	1,047	2,097
Industrials	545	796	1,570
Telecommunications	623	768	1,372
Energy	774	880	1,062
Healthcare	454	685	872

Source: PwC analysis

The average for Real Estate non-executive director fees is provided below.

Figure 9.18: Large cap non-executive director, averages (R'000)



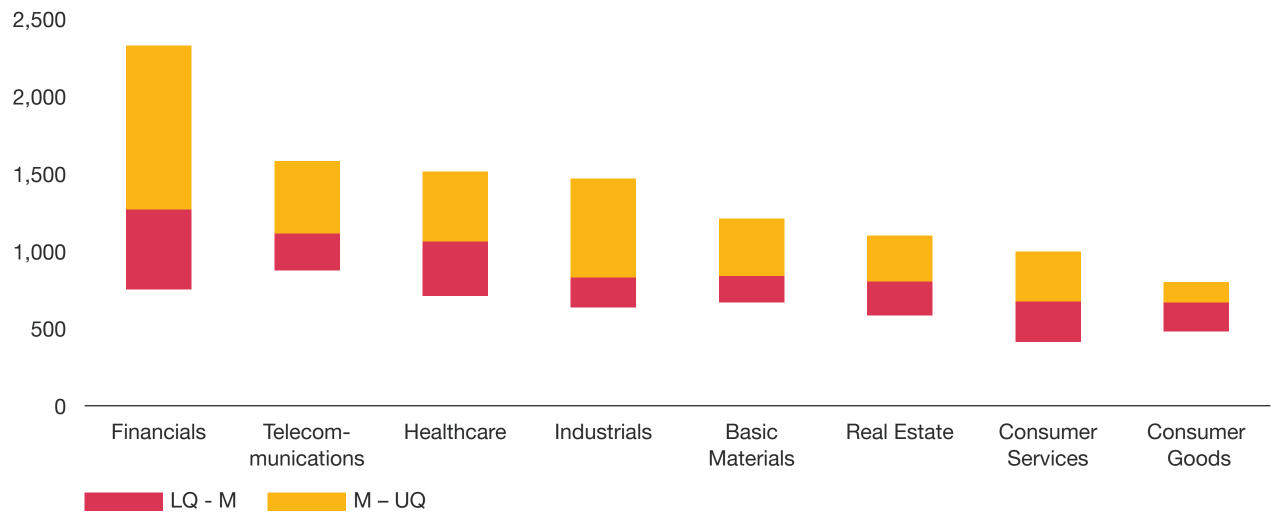
Industry	Average
Real Estate	940

Source: PwC analysis

Medium cap

The quartile analysis of non-executive directors of all industries, excluding Energy and Technology, is provided below.

Figure 9.19: Medium cap non-executive director, quartiles (R'000)



Industry	Lower quartile	Median	Upper quartile
Financials	752	1,266	2,326
Telecommunications	874	1,112	1,580
Healthcare	712	1,061	1,512
Industrials	637	829	1,468
Basic Materials	666	837	1,209
Real Estate	586	803	1,100
Consumer Services	414	673	996
Consumer Goods	480	665	799

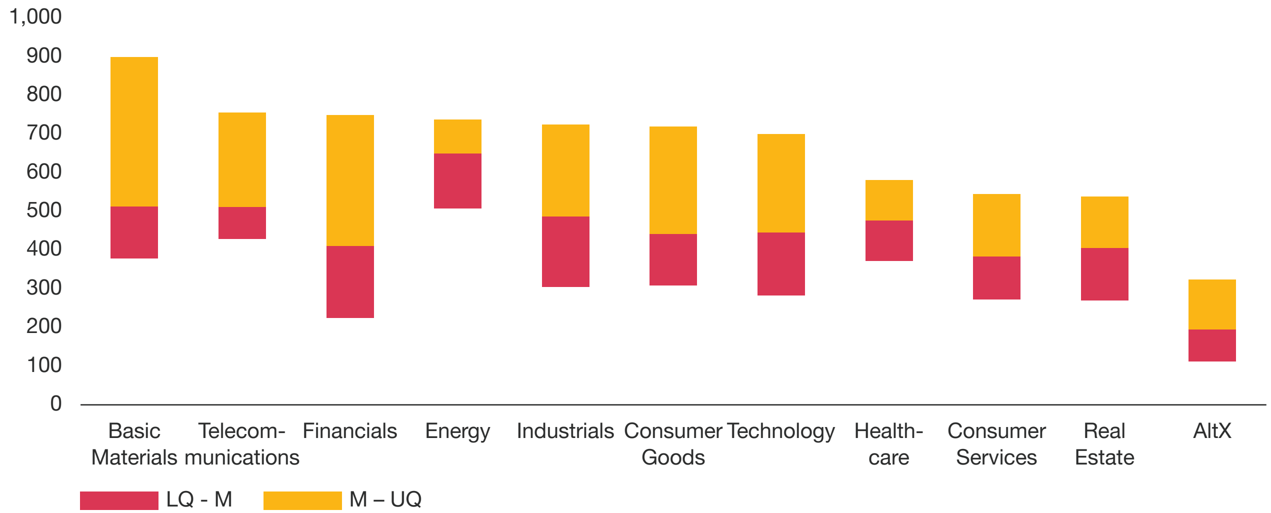
Source: PwC analysis

As there were insufficient data points, the Energy and Technology industries have been excluded from this analysis.

Small cap, including AltX

The quartile analysis for all industries, including AltX, is shown below.

Figure 9.20: Small cap non-executive director, quartiles (R'000)



Industry	Lower quartile	Median	Upper quartile
Basic Materials	379	513	899
Telecommunications	429	511	754
Financials	225	409	748
Energy	508	650	737
Industrials	305	486	723
Consumer Goods	309	440	718
Technology	283	445	700
Healthcare	372	475	580
Consumer Services	273	383	545
Real Estate	270	405	538

Appendix

The South African marketplace (285)

Main Board	261

Basic Materials	34
Chemicals	4
Industrial Materials	2
Industrial Metals and Mining	14
Precious Metals and Mining	14

Consumer Goods	22
Beverages	2
Food Producers	12
Personal Care, Drug and Grocery Stores	7
Tobacco	1

Consumer Services	37
Automobiles and Parts	1
Consumer Services	3
Leisure Goods	2
Media	3
Personal Goods	1
Retailers	18
Travel and Leisure	9

Energy	4
Oil, Gas and Coal	4

Financials	52
Banks	8
Closed End Investments	7
Finance and Credit Services	1
Investment Banking and Brokerage Services	25
Life Insurance	6
Non-life Insurance	2
Open End and Miscellaneous Investment Vehicles	3

Healthcare	7
Healthcare Providers	4
Pharmaceuticals and Biotechnology	3

Industrials	43
Construction and Materials	10
Electronic and Electrical Equipment	5
General Industrials	9
Industrial Engineering	1
Industrial Support Services	8
Industrial Transportation	10

Real Estate	41
Real Estate Investment and Services Development	8
Real Estate Investment Trusts	33

Technology	15
Software and Computer Services	13
Technology Hardware and Equipment	2

Telecommunications	6
Telecommunications Service Providers	6

AltX	24
Basic Materials	3
Consumer Goods	2
Energy	1
Financials	5
Healthcare	2
Industrials	2
Real Estate	4
Technology	3
Telecommunications	2

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At PwC, we apply our industry knowledge and professional expertise to identify, report, protect, realise and create value for our clients and their stakeholders. In an increasingly complex world, we help intricate systems function, adapt and evolve so they can benefit communities and society.

In our network of firms in 156 countries with over 295,000 staff members, our approach is centred on what we call 'The New Equation', which is about building trust in society through shared values and open communication, in order to deliver sustained outcomes to our clients. We are human-led, and tech-powered, and believe that by combining the best people and technologies, we will apply an innovative mindset to identify opportunities to create value. We use technology to help solve complex business challenges, free up capacity and leverage the power of technology to identify new opportunities for our clients and in our communities.

Most importantly, we are focused on delivering quality. We reinforce the quality of our work through investment in people, data, tools, technology, products and services.

The New Equation

Community of solvers

Building trust + Delivering sustained outcomes

Human-led and tech-powered

Delivering quality

Community of solvers

About People and Organisation: Reward

The PwC Reward practice consists of 19 dynamic professionals, all experts in different, but related professional fields. We combine our qualifications and experience to deliver proven value and project success. We handle complex and strategically important reward projects, providing high-quality, meaningful and detailed reports, analyses and research, along with unique solutions for specific needs.

Our team of solvers is agile and diverse, bringing together a broad range of capabilities, people and organisation skills, with an increased focus on developing digital products that enable our clients to operate with greater efficiency and versatility. This allows us to deliver remuneration solutions that are founded on strong governance principles, speak directly to an organisation's strategy and are designed to add value in the future. Our network is unmatched in the market and we draw on our global expertise to design and develop a relevant, multifaceted range of bespoke solutions aligned with international trends and best practice, while remaining locally focused.

We believe that for inclusive growth to be achieved in South Africa, remuneration structures should reward innovation and growth delivered by executive teams, while being rooted in fairness and transparency for all employees. As a team we regularly engage with key industry players to ensure that current market sentiment and developing trends are known and proactively applied in the context of our client engagements, to add value and win shareholder approval.

Acknowledgements

- Mariangela Venturi, Senior Manager, PwC
- David Seale-Brews, Manager, PwC
- The PwC Reward team
- Dave Yzelle, independent project researcher

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