



## **NOMINATING AND GOVERNANCE COMMITTEE (the “Committee”)**

### **Terms of Reference**

(Updated recommended for approval by the Board on 8 November 2022)



**INNOVATION**



**COMMITMENT**



**ACCOUNTABILITY**



**RESPECT**



**ENABLING**



**SAFETY**

## 1. **AUTHORITY AND PURPOSE**

- 1.1. The Committee has been established by the board of directors (the “Board”) of Sibanye Stillwater Limited (“Sibanye-Stillwater”, or the “Company” or the “Group”) to identify individuals qualified to become Board members, to recommend that the Board select the director nominees to be proposed for election by Sibanye-Stillwater shareholders at Sibanye-Stillwater annual general meetings (“AGMs”), to develop and recommend to the Board a set of corporate governance principles applicable to Sibanye-Stillwater and, thereafter, to monitor and update the Board on developments which may impact on the corporate governance principles.
- 1.2. The Committee acts in accordance with the delegated authority of the Board, as recorded in these terms of reference, and is accountable to the Board. To this end, the Committee must make recommendations for approval by the Board.
- 1.3. These terms of reference are subject to the provisions of the Companies Act, 2008, as amended (the “Act”), *King IV Report on Corporate Governance for South Africa, 2016* (“King IV”), the Memorandum of Incorporation (“MOI”) of Sibanye-Stillwater and any other applicable law or regulatory provision.

## 2. **COMPOSITION OF COMMITTEE AND CHAIR**

- 2.1. The Committee shall comprise at least three non-executive directors of Sibanye-Stillwater, all of whom must be independent. Members of the Committee, including the chairperson (the “Committee Chair”), who must be the chairperson of Sibanye-Stillwater (the “Board Chair”), shall be appointed by the Board and may be removed by the Board.
- 2.2. Members of the Committee, including the Committee Chair, shall be appointed for such period of time as the Board requires.
- 2.3. The Company Secretary of Sibanye-Stillwater or their designee shall act as secretary to the Committee.

## 3. **FUNCTIONS AND DUTIES**

- 3.1. The functions of the Committee shall be to:

- 3.1.1. develop the approach of Sibanye-Stillwater to matters of corporate governance and make recommendations to the Board with respect to all such matters;
- 3.1.2. prepare and recommend to the Board a set of governance principles applicable to Sibanye-Stillwater and to be included in Sibanye-Stillwater's public disclosure material;
- 3.1.3. keep abreast of best corporate governance practices both locally and abroad, making recommendations to the Board on the need, where appropriate, for Board participation in continuing education programmes;
- 3.1.4. evaluate the effectiveness of the Board and its committees and management as a whole and report thereon to the Board;
- 3.1.5. pursuant to King IV: Principle 7.7, review from time to time the structure, composition and size of the Board, with a view to determining the impact of the number of Board members upon its effectiveness and report thereon to the Board;
- 3.1.6. adopt a policy on the promotion of gender diversity at Board level;
- 3.1.7. adopt a policy on the on the promotion of race diversity at Board level
- 3.1.8. set targets for race and gender representation on the Board;
- 3.1.9. report to the shareholders through the integrated annual report on how the Board of directors or the Committee, as the case may be, have considered and applied the policy of gender diversity in the nomination and appointment of directors. Where applicable, the report would further provide progress in respect thereof on agreed voluntary targets;
- 3.1.10. report to the shareholders through the integrated annual report on how the Board of directors or the Committee, as the case may be, have considered and applied the policy on the promotion of race diversity in the nomination and appointment of directors. Where applicable, the report would further provide progress in respect thereof on agreed voluntary targets;

- 3.1.11. develop and recommend to the Board criteria/ process for the selection of candidates to serve on the Board and any committee of the Board. This may include judgment, skill, diversity of viewpoints, social and ethnic background and other demographics, such as age, race, gender, sexual orientation, culture and nationality, experience with businesses and other organisations with comparable size, the interplay of the candidate's experience with the experience of other Board members, and the extent to which the candidate would be a desirable addition to the Board and any committees of the Board;
- 3.1.12. consider the rotation of directors and make appropriate recommendations to the Board. At least one-third of non-executive directors must retire at the company's annual general meeting (or other general meeting held on an annual basis). These retiring members of the board of directors may be re-elected, provided they are eligible. The Committee, should recommend eligibility, taking into account past performance and contribution made together with clause 24.1 of the MOI;
- 3.1.13. identify and evaluate nominees and recommend to the Board such nominees for election to the Board at the AGM or appointment to fill vacancies on the Board after assessing the credentials and fitness for office of each nominee proposed;
- 3.1.14. recommend to the Board annually, the election of audit committee members (refer to **Annexure A** for special considerations to be given for audit committee member independence); and
- 3.1.15. consider applications by directors for nominations of an alternate director to perform the duties of that director;
- 3.1.16. identify successors to the Board Chair and Chief Executive Officer of Sibanye-Stillwater and recommend such successors to the Board;
- 3.1.17. Assist the CEO in determining the suitability of organisational leadership arrangements;
- 3.1.18. consider the mandates of the Board committees, selection and rotation of committee members and chairpersons and submit recommendations to the

Board in connection with the same. In nominating a candidate for committee membership, the Committee shall take into consideration the criteria for the selection of candidates to serve on a committee in line with paragraph 3.1.7, which shall include, without limitation, the factors set forth in the terms of reference of that particular committee, the consistency of the candidate's experience with the goals of the committee and the interplay of the candidate's experience with the experience of other committee members;

- 3.1.19. review Committee member qualifications and annually conduct a performance evaluation of the Committee and report its findings to the Board for review;
- 3.1.20. oversee the evaluation of the Board;
- 3.1.21. oversee the evaluation of director independence (refer to Section 4 below for special considerations to be given for audit committee member independence);
- 3.1.22. make recommendations for appointment of subsidiary non-executive director representative;
- 3.1.23. The Committee shall be directly responsible for the appointment, compensation and oversight of the work of the external performance evaluator;
- 3.1.24. arrange for directors' and officers' liability insurance coverage for all Sibanye-Stillwater directors and officers and for such insurance premiums to be paid by Sibanye-Stillwater. The adequacy of such cover should be reviewed by the Committee from time to time and should be as extensive as is permitted by law and by Sibanye-Stillwater's Memorandum of Incorporation, including cover for all risks relating to legal costs;
- 3.1.25. recommend the appointment and removal of non-executive and executive directors to the Board in terms of the Approval Framework;

- 3.1.26. monitor and review the policy on classification of directors as independent and director tenure (refer to **Annexure A** for special considerations to be given to audit committee member independence); and
  - 3.1.27. perform such other functions as may be designated in future resolutions of the Board.
- 3.2. The Committee shall develop and facilitate an induction programme for new members of the Board to ensure their understanding of Sibanye-Stillwater and the business environment and market in which Sibanye-Stillwater operates. Such a programme will include the provision of background material, meetings with senior management, visits to Sibanye-Stillwater's facilities and will seek to provide a new director with:
- 3.2.1. an overview of the business (business processes, corporate strategies, organisation, management and people);
  - 3.2.2. an overview of the financials (annual and interim accounts, directors' reports, key financial indicators and financial performance of the business);
  - 3.2.3. an understanding of what is expected from the director on appointment (discussions with Board Chair with regards to the role, why nominated, potential contributions, particular knowledge and the like); and
- 3.3. The Committee Chair (or in his/her absence an alternative member of the Committee) shall attend the AGM and be prepared to answer questions concerning the governance report, appointment of directors and any related issues.

#### 4. **REMUNERATION**

- 4.1. Having regard to the functions performed by the members of the Committee, in addition to their functions as directors on the Board and in relation to the activities of the Committee, members of the Committee may be paid such remuneration for serving on the Committee as shall be recommended by the Remuneration Committee and, to the extent required by the Act, approved by the shareholders of Sibanye-Stillwater at a general meeting; and
- 4.2. Such remuneration shall be in addition to the remuneration such directors receive for service on the Board and on committees. The Committee Chair may receive a fee in

addition to such remuneration as from time to time recommended by the Remuneration Committee and, to the extent required by the Act, approved by the shareholders of Sibanye-Stillwater at a general meeting.

## 5. **MEETINGS**

- 5.1. The Committee shall meet at least four times a year; provided that the Committee Chair or any other member of the Committee may call a meeting at any other time. The Committee shall report to the Board on its activities at the Board meeting following each Committee meeting;
- 5.2. The quorum at any meeting of the Committee shall be 3 members of the Committee present in person or via telecommunication facilities;
- 5.3. Suitably qualified persons may be invited to attend Committee meetings or be consulted by the Committee from time to time to render such specialist services as may be necessary to assist the Committee in its deliberations on any particular matter. Such persons do not form part of the quorum for Committee meetings and shall not be entitled to vote at Committee meetings;
- 5.4. Where the Committee Chair is not present within 15 minutes of the time stipulated for a Committee meeting, the Committee members present at the meeting must elect one of them to chair that meeting;
- 5.5. A meeting of the Committee may be conducted by electronic communication and/or one or more members may participate in a meeting of the Committee by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting;
- 5.6. Each member of the Committee has 1 vote on a matter before the Committee and a majority of the votes cast on a resolution is sufficient to approve that resolution;
- 5.7. In the case of a tied vote the Committee Chair may not cast a deciding vote even if the Chairman did not initially have or cast a vote and the matter being voted on fails;
- 5.8. The Committee Chair may consult members of the Committee at any time and may conclude any matter requiring the approval of the Committee by means of a round

robin resolution to be approved by the full Committee. A round robin resolution of members shall be as valid and effectual as if it had been passed at a meeting of the Committee duly called and constituted, provided that each member has received notice of the matter to be decided upon and that the majority of the members have voted in favour of the matter. A round robin resolution may be executed in any number of counterparts and will have the same effect as if the signatures on the counterparts were on a single copy of the round robin resolution; and

- 5.9. The Committee may specifically delegate to any one or more of its members authority to conclude any matter requiring the authority of the Committee. The outcome of any such delegation shall be reported to the Committee at its next meeting.

## 6. **NOTICE AND PROCEEDINGS OF MEETINGS**

- 6.1. A notice of each meeting of the Committee, confirming the venue, time and date and enclosing an agenda of items to be discussed, shall be forwarded to each member of the Committee at least five working days prior to the date of the meeting;
- 6.2. All members of the Committee shall declare any conflicts of interests in respect of any matters on the agenda at the start of each meeting, unless varied by these terms of reference, meetings and proceedings of the Committee will be governed by the provisions of Sibanye-Stillwater's Memorandum of Incorporation regulating the meetings and proceedings of directors and committees; and
- 6.3. Minutes of the Committee meetings will be prepared and retained by the Company Secretary. These minutes shall be circulated to all members of the Committee for review and approval by the members of the Committee.

## 7. **CONDUCT OF COMMITTEE MEMBERS**

Committee members are expected to:

- 7.1. act in the Company's best interests, in good faith and with integrity and adhere to all relevant legal standards of conduct;



- 7.2. avoid conflicts of interest between their personal affairs and those of the Company or, where unavoidable, disclose any such conflict or potential conflict at any time and as per 6.2 above;
- 7.3. disclose any information they may be aware of that is material to the Company and of which the Board is not aware, unless such director is bound by ethical or contractual obligations of non-disclosure;
- 7.4. keep all information learned by them, in their capacity as Committee members, strictly confidential; and
- 7.5. exhibit the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the Company as those carried out by that person, and having the general knowledge, skill and experience of that person.

#### 8. **COMMITTEE EXPENSES**

Sibanye-Stillwater will pay all expenses reasonably incurred by the Committee in executing its duties. The Committee must be provided with adequate resources in order to properly discharge its duties.

#### 9. **GENERAL**

- 9.1. The Committee shall approve the uploading of the Committee terms of reference on the Company's website;
- 9.2. The Committee, in carrying out its tasks under these terms of reference, may obtain such outside or other independent professional advice as it considers necessary to carry out its duties;
- 9.3. The Committee shall have the authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve any search firm's fees and other retention terms;
- 9.4. These terms of reference may from time to time be amended pursuant to a resolution of the Committee as required, subject to the approval of the Board;



- 9.5. The Committee has reasonable access to the information, including records, of Sibanye-Stillwater, and to the Company's property, employees, facilities and other resources, as well as to that or those, as the case may be, of the other entities within the Group of entities of which Sibanye-Stillwater forms part, as may be necessary to discharge its duties and responsibilities. The Committee shall follow any relevant Board approved process in discharging any of its duties and responsibilities; and
- 9.6. Subject to the above provisions and to the fullest extent permitted under relevant rules, laws and other regulations, the members of the Committee shall not attract any personal liability arising from their appointment or the performance in good faith of their duties as Committee members. Sibanye-Stillwater shall indemnify members of the Committee against all and any claims arising from the execution of their duties.

## Annexure A

### 1. **Special considerations to be given for audit committee member independence**

- 1.1. The Committee must ensure that the audit committee be comprised solely of "independent" directors under the applicable rules of the Securities and Exchange Commission ("SEC") and New York Stock Exchange ("NYSE"), as well as the requirements of the *King IV Report on Corporate Governance for South Africa, 2016* ("King IV").
- 1.2. To qualify as independent, an audit committee member may not, other than for their service as a member of the audit committee, the Board or any other Board committee:
  - 1.2.1. accept, directly or indirectly, any consulting, advisory or other compensatory fee from the Company or any of its subsidiaries; or
  - 1.2.2. be an affiliated<sup>1</sup> person of the Company or any of its subsidiaries.
- 1.3. Examples of prohibited compensation under Section 4.2.1 include direct payments to employees or senior management, and indirect payments such as payments for services to accounting firms, consulting firms, law firms, investment banks or similar entities in which audit committee members are partners, executive officers, senior managers or hold similar positions. Payments to spouses, minor children and children sharing a home with a committee member would also be considered prohibited indirect payments.
- 1.4. The SEC rules apply only to *current* compensation and do not "look back" to periods prior to a director's appointment to the audit committee. By contrast, under the NYSE rules, a new potential audit committee member cannot have received *prior* payments exceeding \$120,000 during any 12-month period in the last three years.
- 1.5. The Committee is required to make an affirmative determination that a director has no material relationship with Sibanye-Stillwater in order for the director to be characterised

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<sup>1</sup> An affiliate is one who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company. "Control" means "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies, whether through the ownership of the Company's shares, by contract, or otherwise". An employee-director or senior manager of the Company will be deemed an affiliate and therefore will be disqualified from serving as an audit committee member. A person who is neither a senior manager, nor the beneficial owner of 10% or more of the Company's shares will be deemed not to "control" the Company.



as independent. To assist with this determination, the Committee will rely on information provided by each existing and new potential audit committee member, including a questionnaire relating to independence.

- 1.6. The Committee must also consider whether a director's simultaneous service on multiple audit committees will impair the ability of such member to serve on the audit committee of the Company.
- 1.7. Upon the appointment or resignation of an audit committee member, the Company's external international legal counsel, Linklaters LLP ([igor.rogovoy@linklaters.com](mailto:igor.rogovoy@linklaters.com)), must be promptly notified in order to make the appropriate regulatory filings in the United States.