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TONGAAT HULETT LIMITED

http://www.tongaat.com

Annual General Meeting
28th September 2020
Financial Year End: 31st March 2020

Proxies voted
Labour Research Services

Tongaat Hulett has been through a difficult period, it has had to restate previous financial statements, and there are on-going investigations with criminal cases opened. The Integrated Annual Report (Report) does make mention of this but perhaps, understandably, plays this down; it states that the company *is committed to doing the right things to turn this company around* … and, … t*he business has been stabilised and streamlined* … and, … *improved our governance and reporting processes.*

As part of this process there is a new board of directors and we report on the many changes below, with this level of change there has been a loss of continuity at board and executive level. We are surprised given the commitment to good governance as stated above, that the board saw fit to nominate a former colleague of the CEO to the audit and remuneration committees and that the remuneration committee does not comprise of the required minimum of 3 non-executive directors. We are assured that the process has been started to appoint a new audit firm which is long overdue as the current auditors have served for 8 decades, and were in office during the accounting scandals.

The Report includes easy to follow details of energy and water usage and carbon emissions. However, what is not dealt with and is perhaps most important is the company's land use policies and practices. Land use for a company such as Tongaat Hulett should form an important part of their environmental report and in addition is of great social importance in South Africa.

The company's contact details and arrangements during the lock-down were not satisfactory, however once we were able to make contact they were extremely helpful and answered all questions promptly.

The Report is laid out in Portrait format which is not suited to a computer screen, cross referencing to other sections of the Report and to information on the website is included but no hyperlinks are embedded.

	Resolution	Rationale	Vote	Outcome of AGM
1	To present the audited consolidated Annual Financial Statements (AFSs) of the company for the financial year ended 31 March 2020	As noted above the company has been through a difficult time and it had to retract its 2018 AFSs. A clean audit report has been issued by the same auditors.		
2	To present the 2020 Integrated Annual Report (Report)	We are surprised that the Report makes little mention of the problems the company has been through but it is pleasing that it (the Report) will be tabled and we will be given an opportunity to ask questions.		
	Ordinary Resolutions			
1	Resolved that Deloitte be and is hereby re-appointed as external auditors for the financial year ending 31 March 2021 (with Mark Holme as individual designated auditor)	Deloitte have been auditors for 82 years and this is far beyond what is considered acceptable. The Audit Committee Report notes that considerable progress has been made in the process of appointing a new firm of auditors. Mr Holme will be a new partner in this position. We do not support the continued appointment of any audit firm for such a long period and this could possibly have contributed to the problems the company has faced over the last 2 years. We acknowledge that the new audit committee is in the process of appointing a new audit firm and would in general, support the retention of the auditors for a further year while that process is concluded. However, Deloitte were the auditors during the accounting scandals and need to be replaced as a matter of urgency.	AGAINST	FOR 74%
	Reappointment and appointment of members of the Board of Directors	The Board has undergone significant change as a result of the problems the company faced. The following changes took place: - 2 directors resigned in May & June 2019 - 5 directors including the Chairman stepped down in September 2019 - 4 new directors were appointed in October 2019 - 1 new director was appointed in November 2019 - 2 directors stepped down in January 2020 - 2 new directors were appointed in July 2020. Clearly our normal criteria of Independence, Continuity, Skills and Diversity will be difficult to apply in the circumstances. Nevertheless, we need to consider the overall composition of the board before deciding if any individual is suitable as a director.		

	Resolution	Rationale	Vote	Outcome of AGM
		Independence: During the period under review there were 5 independent non-executive directors and 3 executive directors. A further 2 independent directors are now being appointed. With the longest serving director having served for 2 years and an average tenure of less than a year, we have no concerns regarding loss of independence as a result of length of tenure. This is in contrast to the directors who previously served on the board who had a relatively high average tenure. We note that the CEO and one of the independent directors previously worked for the same employer. **Continuity:** This is clearly the greatest area of concern with no long serving executives or directors, but given the accounting irregularities it would have been inappropriate to retain the previous executives or directors. **Skills:** The board skills set are heavily biased to economics and accounting with only 1 director with other qualifications. All have good experience but we would like to see more diversity in their skills set. **Diversity:** An area that is often seen as a nice to have, diversity is in fact crucial as people are more likely to become cosy and not sufficiently rigorous with people from the same background/gender/experiences etc. The board is insufficiently diverse although the new directors do bring some diversity.		
2	L von Zeuner, retires by rotation, is hereby re-elected as a director	Mr van Zeuner, 59, has a wealth of business experience and is suitably skilled. His attendance record for 2020 financial year was impeccable. We do not support the chairman of the board holding other directorships and note that Mr van Zeuner is chairman of this board and serves on 4 other listed company boards including various committees of those boards. Mr van Zeuner is overcommitted and we deplore this, Tongaat Hulett needs focussed and undivided attention. However, given the turnover of the board and the fact that Mr van Zeuner is the only director with more than 1 years' experience on the board we support his reappointment.	FOR	FOR 99.4%

	Resolution	Rationale	Vote	Outcome of AGM
3	L de Beer, who retires by rotation, is hereby re-elected as a director	Ms de Beer, 51, was appointed to the board in 2019 and is suitably skilled and experienced, she is a chartered accountant and as noted above we would like to see more diversity in the skills set of the board. Her attendance record for 2020 financial year was impeccable She is a director of 3 other listed companies which is the limit of what we consider manageable.	FOR	FOR 99.4%
4	D Noko, having been appointed by the Board on 1 July 2020, is hereby elected as a director	Mr Noko, 63, is a new appointee to the board. He is suitably skilled and experienced and as an engineer he is the only member of the board who is not an accountant/economist so his experience adds depth to the board. He is a director of 1 other listed company and has various other commitments but does not appear to be overcommitted.	FOR	FOR 99.9%
5	L Stephens, having been appointed by the Board on 15 July 2020, is hereby elected as a director	Ms Stephens, 43, is another new appointee to the board. She is suitably skilled and experienced although as noted we would prefer to see more non-accounting skills on this board. Ms Stephens is a chartered accountant. She is a director of 2 other companies.	FOR	FOR 99.9%
	Appointment of members of the Audit Committee	We do not have concerns regarding the independence of the board and as such no special concern regarding the independence of this committee.		
6	L de Beer, as a member and Chairman of the Audit Committee	Ms de Beer has been commented on under 3 above and she is suitably skilled to serve on this committee.	FOR	FOR 99.5%
7	R Goetzsche, as a member of the Audit Committee	Mr Goetzsche and the CEO Mr Hudson both worked for SABMiller for a long time, 30 years and 26 years respectively. After that they both worked for brewing company Anadolu Efes. It is therefore most unlikely that they do not have a long and satisfactory working relationship. We do not favour a member of the Audit Committee having a close relationship with the CEO.	AGAINST	FOR 99.9%
8	J Nel, as a member of the Audit Committee	Mr Nel, 48, is suitably skilled and experienced to serve on the board and on this committee. He is a chartered accountant with considerable business experience. His attendance record was impeccable.	FOR	FOR 99.9%

	Resolution	Rationale	Vote	Outcome of AGM
9	Resolved that, the Board be empowered, to issue unissued ordinary shares from time to time for cash, on such terms and conditions and in such amounts as the Board may determine. This resolution requires a 75% majority to be passed.	Our base position is that we do not support general resolutions giving the board blanket power to issue new shares. This resolution empowers the board to issue new shares up to a limit equal to 5% of the issued shares at a price no less than 10% below the average market price. No reason is given for this resolution; indeed it states *The Board has no immediate intention to use this authority.* Cold comfort. The Report also states … *and/or an equity raise, with the opportunity to vote on these transactions being extended to shareholders* … This resolution is not in accord with that statement as we, the shareholders, are not being given the opportunity to vote on an "equity raise" but are rather being asked to approve a general power for the directors to be able to engage in such. We recognise that the company is going through a difficult period and that it may need some restructuring. Despite this, we find this resolution far too broad and we are concerned that minority shareholders will be diluted.	AGAINST	FOR 98.4%
10	Resolved that each director and the Company Secretary of the company be authorised, on behalf of the company, to give effect to the resolutions	This is an administrative matter and we support the smooth functioning of the company.	FOR	FOR 99.9%
	Special Resolutions			
1	General authority to purchase shares in the company.	Our base position is to oppose general resolutions empowering the board to repurchase shares as being potentially dilutive of minority shareholders. This resolution empowers the company or any subsidiary to purchase up to 5% of the shares in the company at a price no greater than 10% above the average traded price. The company does not have significant cash resources; it is in the process of selling a division to reduce its debt; it is asking the shareholders to approve a resolution empowering the directors to issue new shares for cash (ordinary resolution 9 above) and yet it seeks permission to repurchase shares. This makes no sense.	AGAINST	FOR 84.2%

	Resolution	Rationale	Vote	Outcome of AGM
2	Approval of Directors' Fees	Directors' fees until now have consisted of a base fee plus an attendance fee – we support this as a measure of performance, albeit a rather blunt measure. As such we oppose the move to a flat fee. We commend the Chairman for declining an increase in his fee but note that other directors' fees have effectively been reduced by 30% according to the report. The Report does include a table showing the reduction of fees for each position based on the standard number of meetings and decreases vary but are substantial. We commend the board for reducing fees in light of the problems the company is facing. However, much as we support this, we do not support the discontinuation of an attendance fee and oppose the resolution for that reason.	AGAINST	FOR 91.5%
3	Financial Assistance in terms of Section 44 of the Companies Act	This resolution empowers the board to provide financial assistance to anyone other than a director or officer of the company, to subscribe for shares in the company. The only limitations being those provided for in law and the regulations. The resolutions states: *The Board has no immediate intention to use the authority granted in this special resolution.* We see no reason for this resolution particularly given the strained financial circumstances of the company and strongly oppose this resolution.	AGAINST	AGAINST 28.7%
	Advisory Resolutions			
	To endorse, through a non-binding advisory vote, the company's remuneration policy,	Not surprisingly given the troubles the company has been through and the apparent role of management in that, the shareholders have not supported the remuneration resolutions during the past 2 years with the 2019 and 2018 resolutions receiving the support of 72.3% and 40.6% for the remuneration policy and 58.3% and 59.6% for the remuneration implementation. These resolutions require 75% support. The Remuneration Committee (Remco) notes *As a result of the voting outcomes, the major shareholders of the company were approached individually, … to address their concerns.* Our underlining.	AGAINST	FOR 88.5%

	Resolution	Rationale	Vote	Outcome of AGM

		However, a SENS notification was issued offering all shareholders the opportunity to engage with the Remco and the Chairman of that committee was ready and willing to engage with Active Shareholder. A table is provided of the issues which the shareholders raised and the response of the Remco, this is as required. The members of the Remco are not named but based on the attendance register the committee consists of 2 independent directors and the CEO, on enquiring we were told the committee consists of the 2 directors only and the CEO attends by invitation. King IV quite clearly states – *The following should be disclosed in relation to each committee …. Its composition…* King IV clearly states - *All members of the committee for remuneration should be non-executive …* JSE regulations state … *provided that each committee must comprise of at least three members …* We note that one of the independent directors and the CEO both worked for the same 2 companies over similar periods prior to their joining Tongaat Hulett, this raises concerns around the independence of the committee. **The non-disclosure of, and the composition of the Remco is unacceptable, it is required to consist of at least 3 independent directors. This committee is insufficiently independent and the CEO should only attend by invitation as and when required.** The report does name the independent consultants but does not give details of what work they undertook as required. Remuneration packages for executives consist of Guaranteed Pay (GP), Short-Term Incentives (STIs), Long-Term Incentives (LTIs) and Wealth at Risk/Share Ownership. The later 2 elements are on hold given the current uncertainty the company faces, see note under LTI below. Guaranteed Pay is benchmarked and the comparator companies pre and post the sale of the starch business are stated.		

	Resolution	Rationale	Vote	Outcome of AGM
		GP is appropriately benchmarked and comparator companies are named, we are not told who does the benchmarking and specifically whether this is independently done. STIs comprise a cash element and a deferred element, executives have 30% deferred and employees below that level have 50% deferred. **We find it inappropriate that executives have a smaller portion deferred than more junior staff.** **Details are not provided of the deferral – how long and what conditions apply.** STIs are determined by annual GP multiplied by On Target score multiplied by Business score multiplied by Personal score. The STI is capped at 200% of annual GP and on target score is 70% of GP for the CEO and 50% for other executives. Business Score is determined by: EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation) 30%; Free Cash Flow 30%; Zimbabwe specific measures 15%; Property specific measures 10% and Non-financial measures 15%. The non-financial measures are LTI days lost (we assume this to mean Lost Time to Injury) with a penalty for any fatalities 25%; Employment Equity 35%; Internal Control Assessment 20% and Enterprise Risk Management 20%. **No details are provided of the Personal Score.** **No details are provided of the On Target score used in the formula.** Given the problems the company is facing in reducing its debt burden and dealing with the accounting scandal the Remco notes *the Board has decided that the calibration of forward looking performance conditions is too challenging in the current climate and that it is inappropriate to make Long-term Incentive (LTI) performance awards in FY2021*. Long-Term Incentives (LTIs) are therefor not eligible at this point in time. **The policy does try to cover all bases but we cannot support this on the information provided:- details of the benchmarking of GP are insufficient; STI deferral conditions are not provided; Personal and On Target score details are not provided.**		

	Resolution	Rationale	Vote	Outcome of AGM
		It is inappropriate that senior executives have a smaller STI deferral than more junior staff. **The composition of the committee does not meet minimum requirements.** **We therefore oppose the resolution.**		
	To endorse, through a non-binding advisory vote, the company's remuneration implementation report	The report deals extensively with the Turnaround Incentives paid to the various executives. **Whilst these incentives may have been appropriate, they are not provided for in the Remuneration Policy and as such we need a clearer statement of intent on these bonuses.** The targets for the Turnaround Incentive were perhaps rather soft given that the actual performance far exceeded the stretch targets even. **We do appreciate that it was not possible to easily set targets given the change in directors and the need to restate certain financials, however these targets do seem very soft.** We note that LTI's are not being awarded. **In terms of the long-term vision of the company we believe that some form of incentive is necessary.** Other allowances in the form of sign-on bonuses were a significant portion of total pay in the year in which they were paid. **Turnaround incentives, may very well be appropriate under the circumstances but they are not even mentioned in the Policy.** **The resolution is opposed on the grounds that the remuneration included significant amounts in the form of turnaround incentives and sign-on bonuses which were not included in the remuneration policy.**	AGAINST	FOR 87.8%

	Resolution	Rationale	Vote	Outcome of AGM

OUTCOME OF THE AGM

The meeting was not very well attended by South African standards with only 71% of shareholders present in person or by proxy.

All the ordinary resolutions were passed with overwhelming majorities other than the appointment of the auditors where 26% of shareholders voted against the reappointment of the long serving auditors (ordinary resolution 1 above).

The special and advisory resolutions which require 75% support were not as well supported with the shareholders not approving of the resolution enabling the directors to provide financial assistance in terms of section 44 of the Companies Act (special resolution 3).