

## Section 18

### Secondary ~~Dual~~ Listings and Depository Receipts ~~Listings by External Companies~~

#### Scope of section

The main headings are:

- 18.1 General
- 18.2 Primary listings
- 18.3 Secondary listings
- 18.25 Dual listings
- 18.28 External companies
- 18.29 Dual listed companies structure
- 18.44 Fast-track Listing Process
- 18.45 Conditions of Listing
- 18.46 Pre-Listing Announcement
- [18.47 Depository Receipts](#)

Appendix to Section 18

#### New definitions to be included in Definitions Section of the Main Body

<a href="#">depository</a>	<p><a href="#">means a bank or entity acceptable to the JSE, that issues DRs representing the securities of an issuer or underlying reference entity that are held in trust or other acceptable vehicle, by the depository, in the issuer or underlying reference entity's local market. The depository may also act as a registrar, transfer agent and corporate actions agent and may cancel or issue the DRs for withdrawal or for deposit of the securities, all in accordance with a deposit agreement with the issuer for a sponsored program, or in accordance with unsponsored terms and conditions for an unsponsored program;</a></p> <p><b>Copied verbatim from Section 19</b></p>
<a href="#">depository receipt or DR</a>	<p><a href="#">means an instrument representing an issuer's securities, where the instrument confers rights in respect of such securities;</a></p> <p><b>Copied verbatim from Section 19</b></p>
<a href="#">fully covered</a>	<p><a href="#">means in relation to DRs, that the DRs must at all times represent the issuer's underlying securities held by the depository or its custodian, or any collateral held in terms of any pre-release arrangement;</a></p> <p><b>Copied verbatim from Section 19</b></p>
<a href="#">issuer</a>	<p><a href="#">in relation to -</a></p> <p><a href="#">(i) sponsored DRs, means a company that has been admitted to listing, or which is</a></p>

	<p><a href="#">the subject of an application for admission to listing, on an exchange as contemplated in paragraph 18.3(b); and</a></p> <p><a href="#">(ii)unsponsored DRs means the depository;</a></p> <p><a href="#">Copied verbatim from Section 19 definition of "issuer", save for "in relation to specialist securities, means an entity that issues specialist securities"</a></p>
<a href="#">sponsored DR</a>	<p><a href="#">that the DR is established at the direction of the issuer and in accordance with a deposit agreement between the issuer and the depository.</a></p> <p><a href="#">Copied verbatim from Section 19</a></p>
<a href="#">unsponsored DR</a>	<p><a href="#">means that the DR is established solely by the depository (without the involvement of the issuer) in accordance with unsponsored terms and conditions;</a></p>

## General

- 18.1 (a) An applicant issuer seeking a dual listing on the JSE may decide (subject to being classified in terms of the Listings Requirements as a primary or secondary listing) where it intends to have its primary or secondary listing or listings.
- (b) Where appropriate, an applicant must be registered as an external company in terms of Section 23 of the Act before making application for a listing on the JSE. An applicant issuer must obtain a legal opinion as to whether it is required to register as an external company. A copy of this legal opinion must be furnished to the JSE on application for listing.

## Primary listings

- 18.2 An applicant issuer seeking a primary listing on the JSE must comply in full with all the Listings Requirements.

## Secondary listings

### Conditions for listing

- 18.3 An applicant issuer seeking a secondary listing on the JSE must:
- comply with the conditions for listing as set out in Section 4 or Section 21, unless otherwise stated in the Listings Requirements or agreed to by the JSE (full details must be disclosed in the pre-listing statement). The conditions for listing in Section 4 must be read with regard being had to the jurisdiction in which the applicant issuer is incorporated;
  - confirm that it has a primary listing on an approved exchange;
  - confirm that the primary listing referred to in paragraph 18.3(b) above is at least on an equivalent board/exchange to that for which application is being made on the JSE. The JSE will therefore not grant a secondary listing on the JSE Main Board for an applicant issuer that has a primary

listing on a junior/secondary market of an exchange; and

- (d) not have traded in its securities on the JSE in respect of which a secondary listing is sought of more than 50% of both the total volume and value traded in those securities on all markets in which it is listed over 12 months.

- 18.4 Secondary listing status means that once an applicant issuer is listed, it will only be required to comply with the Listings Requirements of the exchange where it has its primary listing, save as otherwise specifically stated in the Listings Requirements.
- 18.5 The applicant issuer must upon application to the JSE confirm that it is in full compliance with all the requirements of the exchange/competent authority on which it has its primary listing. The JSE may request that this confirmation be supported by a letter from the relevant exchange/ competent authority.
- 18.6 The JSE will not grant a listing or list securities which are not listed in the country of incorporation unless the applicant issuer can demonstrate that the absence of such a listing is not due to any negative or problematic circumstances, events or regulatory issues.
- 18.7 In the event that the applicant issuer is not incorporated in the country of an approved exchange, the applicant issuer must discuss the proposed secondary listing on the JSE at an early stage in order for the JSE to familiarise itself with the laws of incorporation/company law of the applicant issuer. The JSE may elect to require additional and prominent disclosure regarding the laws of incorporation/company law applicable to the applicant issuer.
- 18.8 Compliance with paragraph 21.3(a) is not required, provided that the applicant issuer appoints and maintains a sponsor in accordance with Section 2.
- 18.9 Compliance with paragraph 21.3(d) and (g) is not required.
- 18.10 An applicant issuer must either:
  - (a) have the required spread in accordance with paragraph 4.28(e) (in the case of a Main Board listing) or 21.3(c) (in the case of an ALT<sup>x</sup> listing) on the South African share register; or
  - (b) make arrangements, to the satisfaction of the JSE's clearing and settlement division, to ensure that sufficient scrip is available on the South African share register.
- 18.11 An applicant issuer must appoint and maintain a sponsor.

### **Pre-listing statements**

- 18.12 An applicant issuer must produce a pre-listing statement in compliance with the relevant Listings Requirements save as otherwise specifically stated in the Listings Requirements. Where the disclosure requirements of Section 7 relate to continuing obligations, the JSE may allow the applicant issuer to address this in the context of the requirements of the exchange where it has its primary listing. The procedure for approval as contained in Section 16 will be applicable.
  - 18.13 The applicant issuer must disclose in the pre-listing statement headline earnings per share and diluted headline earnings per share together with an itemised reconciliation between headline earnings and the earnings used in the calculation.
  - 18.14 The JSE will, for purposes of the pre-listing statement, accept financial
-

information prepared in accordance with the following accounting frameworks:

- (a) IFRS;
- (b) IFRS as adopted by the European Union;
- (c) United Kingdom GAAP;
- (d) United States GAAP;
- (e) Australian GAAP; and
- (f) Canadian GAAP.

18.15 For purposes of the pre-listing statement, the JSE may accept extracts of financial information which have been prepared in accordance with paragraph 18.14 provided that:

- (a) the information was published subsequent to the applicant issuer being granted a listing on the exchange where it has its primary listing and in accordance with that exchange's Listings Requirements;
- (b) the extracts are in compliance with IAS 34; and
- (c) the pre-listing statement contains full details of the applicant issuer's accounting policies.

18.16 Notwithstanding paragraphs 18.14 and 18.15 above, the applicant issuer must, via its sponsor, obtain a formal ruling from the JSE on the exact presentation of the financial information in the pre-listing statement.

18.17 For purposes of the pre-listing statement, the JSE will accept a competent person's report (as required by Section 12) which has been prepared within the 12 months prior to listing on the JSE, provided that it has been prepared in accordance with SAMREC, Joint Ore Reserves Committee Code or National Instrument 43-101 and that there have either been no changes since that date or that any changes are reported on by the competent person. Applicant issuers who do not comply with the aforementioned must produce a new competent person's report in compliance with one of the aforementioned reporting codes and this report must be approved by the JSE's Readers Panel.

18.18 Applicant issuers must obtain a legal opinion as to whether it is required to register as an external company. This opinion must be submitted to the JSE.

18.19 The JSE may allow applicant issuers to modify the relevant Part I and II documents required in Section 16 where full compliance would be in conflict with the requirements of this section or the exchange where it has its primary listing.

### **Pre-listing statements**

18.20 The applicant issuer must disclose on the pre-listing statement the following differences between the applicable provisions of the Listings Requirements and the regulatory/legislative framework of the exchange where it has its primary listing:

- (a) pre-emptive rights, ranking of securities in the same class, and expropriation rights in respect of securities;
  - (b) transferability of securities and transfer of securities;
  - (c) preferences, rights, limitations and other share terms;
  - (d) special voting rights in respect of securities;
  - (e) process dealing with amendment/s to the constitutional document of the issuer;
-

- (f) appointment and removal of directors;
- (g) authority to issue shares or other securities (general and specific);
- (h) disclosure of changes in beneficial ownership of securities;
- (i) regulation in respect of director's interests in transactions;
- (j) regulation in respect of transactions (acquisitions and disposals) and related party transactions;
- (k) mandatory corporate governance provisions and the corporate governance code applied;
- (l) the pro-active monitoring process (if any) dealing with the review of financial statements of the issuer by the listing authority or any other relevant regulatory body. Further, confirmation will be required whether the applicant issuer has been subject to such review or not;
- (m) takeover laws applicable to the issuer; and
- (n) special disclosure requirements dealing with mining companies, such as the preparation of special reports dealing with reserves, life of mine and valuation of mining activities.

It should be noted that additional disclosure may be required where matters not covered in above are significant to providing an understanding of the differences between the regulatory and legislative frameworks applicable to an applicant issuer.

### **Continuing obligations**

- 18.21 The JSE will allow the requirements of the primary exchange to take precedence in relation to applicant issuers with a secondary listing on the JSE, with the following exceptions:
- (a) the annual financial statements and any other communication with shareholders must state where the primary and secondary listings of the applicant issuer's securities are;
  - (b) when an applicant issuer wishes to release any information on another exchange, it must ensure that such information is also released on SENS and that such release takes place no later than the equivalent release on any other exchange provided that, if the JSE is not open for business, it must ensure that such information is released through SENS at the commencement of business on the next business day. The announcement must be submitted via the applicant issuer's sponsor, albeit that the announcement does not require the approval of the sponsor;
  - (c) it must publish, in its interim and year-end results, headline earnings per share and diluted headline earnings per share together with an itemised reconciliation between headline earnings and the earnings used in the calculation;
  - (d) its interim and year-end results must be prepared and published in compliance with the acceptable accounting frameworks of the exchange where it has its primary listing;
  - (e) where there are any notifications dealing with (i) changes of beneficial ownership in the issuer or (ii) dealings in securities in the issuer by directors and those closely related to the directors as may be prescribed by local legislation, the listings requirements of the exchange where it has its primary listing or otherwise, such changes and dealings must be announced within 48 hours after receipt of such notice or such notice
-

being made available, through SENS; and

- (f) issuers must advise, and obtain approval from, the JSE with regard to the timetables for corporate actions stipulated in the relevant corporate action timetable. Issuers must ensure that the JSE is notified in advance in order to ensure that the JSE can accommodate the processing of these corporate actions for shareholders on the South African share register.

- 18.22 In respect of an applicant issuer with a primary listing on an exchange not approved by the JSE, the applicant issuer must submit to the JSE, together with the applicant issuer's annual financial statements pursuant to paragraphs 3.19 and 3.21(a) or by no later than four months from the financial year-end of the applicant issuer, details of the volume and value of securities traded (over the previous 24 months), on all exchanges where it has a listing, in order for the JSE to consider the applicant issuer's continued secondary listing status.
- 18.23 In respect of an applicant issuer with a primary listing on an exchange not approved by the JSE, if both the volume and value of securities traded on the JSE exceeded 50% of the total volume and total value of those securities (over the previous 24 months) traded on all exchanges where the applicant issuer has a listing, then the applicant issuer's listing status on the JSE in respect of those securities may be converted to a primary listing. The converse would apply when both the volume and value of securities traded on the JSE was 50% or below.
- 18.24 The applicant issuer must advise the JSE in writing each time that its listing status changes and must also inform its shareholders by releasing an announcement over SENS.

### **Dual listings**

- 18.25 A company with a dual listing must immediately notify the JSE, in writing, of any suspension or removal of listing on any other exchange on which it has securities listed.
- 18.26 An applicant issuer may only move its primary listing from the JSE to another exchange and maintain a secondary listing on the JSE provided the following has been complied with:
  - (a) the other exchange must be an approved exchange; and
  - (b) It must comply fully with the relevant provisions of this section and obtain the approval of its shareholders. A 50% + 1 majority of the votes of all shareholders present or represented by proxy at the general meeting, excluding any controlling shareholder, its associates and any party acting in concert, must be cast in favour of such a resolution. The resolution must be accompanied by a comparison explaining to shareholders the key regulatory and disclosure differences applied by the JSE and the new primary exchange.

A secondary listing onto another exchange only requires the approval of the issuer's directors.

- 18.27 If an applicant issuer has applied and been granted permission for its JSE-listed securities to be listed on another exchange, it is required to ensure that the securities will be accepted for transfer, without delay, if presented in any of the centres in which the securities are listed.

### **External companies**

---

- 18.28 An external company with a listing on the JSE must appoint and maintain, whilst it remains listed on the JSE, a person authorised to accept service of due process and notices on its behalf in the Republic of South Africa and must notify the JSE of such appointment (or termination, providing that, in the event of termination, another person must immediately be appointed and their details provided in accordance with this paragraph), including:
- (a) the name of the person appointed ("person") and the person's address for services of due process and notices;
  - (b) if different, the person's business and residential address;
  - (c) the person's business and residential telephone number;
  - (d) the person's e-mail address; and
  - (e) any change in the above particulars.

### **Dual listed companies structure**

- 18.29 A Dual Listed Companies ("DLC") structure applies to an aggregated group, with combined businesses, accounted for under two separately listed companies, one housing the South African ("SA") based businesses ("the SA listed company"), with its primary listing on the JSE, and the second company housing the offshore business entities ("the overseas listed company") with its primary listing on the LSE or on another exchange acceptable to the JSE. If the primary listing of the overseas listed company is not on the JSE, then it must have a secondary listing on the JSE. The SA listed company and the overseas listed company together comprise the DLC structure.
- 18.30 All the conditions for listing, set out in Section 4 of the Listings Requirements, must be complied with in respect of each company comprising the DLC structure to be listed on the JSE.
- 18.31 The proportion of the combined business that each company comprising the DLC structure represents, should be discussed with the JSE well in advance of implementing the DLC structure in order to obtain the necessary in principle consents and/or rulings.
- 18.32 The companies in the DLC structure must be able to demonstrate that they participate in the control of the combined business. This must be evidenced through a formal agreement and/or veto rights, and/or such other mechanisms acceptable to the JSE.
- 18.33 Every company comprising the DLC structure will be required to comply with all continuing obligations provided that, in the event of a conflict in the requirements of the relevant exchanges, the most stringent requirements must be complied with. This includes the Code of Corporate Practices and Conduct, which will apply to directors of any board or committee and relevant employees of the DLC structure, as well as the directors of every company comprising the DLC structure. Companies are encouraged, at an early stage, to discuss with the JSE how compliance with continuing obligations will be achieved.
- 18.34 The related party transaction provisions set out in Section 10 of the Listings Requirements will apply to the companies comprising the DLC structure but not in respect of transactions necessary to constitute the DLC structure or transactions between the companies comprising the DLC structure and/or their respective groups.
- 18.35 Variations to any agreement governing the relationship between the companies comprising the DLC structure will be considered to fall within Section 10 of the Listings Requirements.
- 18.36 Transactions undertaken by the companies comprising the DLC structure will be subject to the transaction requirements set out in Section 9. The
-

categorisation tests will be calculated by comparing the whole of the target with the whole of the DLC structure.

- 18.37 Controlling shareholder provisions will apply to any controlling shareholder of either company comprising the DLC structure.
- 18.38 Common accounting policies should be used for the companies comprising the DLC structure.
- 18.39 Aggregated annual financial statements must be published in accordance with IFRS for the merged DLC structure. In the event that the annual financial statements published for the merged DLC structure are not in accordance with IFRS, a comprehensive reconciliation to IFRS must be published and presented in Rands. Annual financial Statements for the companies comprising the DLC structure may be published as supplementary information to the aggregated accounts of the DLC structure.
- 18.40 Interim financial information, on an equivalent basis to paragraph 18.39, on the merged DLC structure, and for the separate companies, respectively, must be published.
- 18.41 Where an announcement is required, it must be released in accordance with the relevant exchange's requirements and simultaneously on both the JSE and the overseas listed company's exchange(s).
- 18.42 With respect to any calculations/categorisations/measurements in terms of the Listings Requirements applicable to either company comprising the DLC structure, the DLC will be regarded as one combined entity.
- 18.43 Where there is a conflict between the requirements of the relevant exchanges, the most stringent requirements must be complied with.

### **Fast-track Listing Process**

- 18.44 In these Listings Requirements pertaining to the fast-track listing process, unless the contrary intention appears, the following terms shall have the meanings assigned to them below:

**"accredited exchange"** means an exchange accredited by the JSE for purposes of the fast-track listing process, such exchanges being the:

- (a) Australian Securities Exchange;
- (b) London Stock Exchange,
- (c) NYSE and NYSE Euronext; and
- (d) Toronto Stock Exchange,

or such other exchange acceptable to the JSE, in its discretion;

**"accredited applicant"** means an issuer which had its securities primary listed and traded on an accredited exchange and equivalent board of the JSE for at least 18 months prior to applying to have its securities admitted on the Main Board or AltX, as the case may be, and which seeks to take advantage of its status in applying for a secondary listing of its securities on the JSE.

### **Conditions of Listing**

- 18.45 The accredited applicant must comply with Section 18, save for paragraphs 18.12–18.19. An accredited applicant may make application for a secondary listing on the Main Board or AltX by publishing a pre-listing announcement. In the event that capital will be raised in conjunction with the fast-track listing process, the JSE must be consulted and the accredited applicant must confirm that such capital raising will comply with the requirements of the accredited
-



exchange.

- (a) An accredited applicant must submit to the JSE, via its sponsor:
- (i) the signed application for listing pursuant to Schedule 18;
  - (ii) in respect of a listing application on AltX:
    - a. the latest audited financial statements prepared within the accounting frameworks of paragraph 18.14 (if more than nine months have elapsed since the last financial year-end, interim results must be submitted);
  - (iii) in respect of a listing application on the Main Board:
    - a. the latest audited financial statements prepared within the accounting frameworks of paragraph 18.14 for the preceding three years (if more than nine months have elapsed since the last financial year-end, interim results must be submitted);
- (b) The submission process pursuant to paragraph 16.3 will apply.

### Pre-Listing Announcement

18.46 The accredited applicant must publish a pre-listing announcement with the information specified in the Appendix to Section 18, on SENS five business days before the date of listing. If there are any changes to such information prior to the date of listing, the applicant must inform the JSE immediately by supplying details of such changes. Where, in the opinion of the JSE, such changes result in the information being significantly different from that provided in the pre-listing announcement, the JSE may delay the listing. In the event that the listing is delayed by the JSE, the Issuer must immediately release an announcement on SENS.

### Depository Receipts

**Paragraphs 19.86 - 19.103 copied verbatim from Section 19, unless as otherwise indicated.**

**New text has been placed in square brackets [ ] and shaded text**

### Depository Receipts

18.47 This section sets out the requirements for the listing of sponsored DRs and unsponsored DRs as defined. The following provisions apply to sponsored DRs:

**Section 19 has been removed from the JSE Listings Requirements and moved to the new Debt and Specialist Securities Listings Requirements. All references to Section 19 no longer relevant.**

- \_\_\_\_\_ Paragraph
- \_\_\_\_\_ 19.1 and 19.2
- \_\_\_\_\_ 19.4 to 19.6
- \_\_\_\_\_ 19.8
- \_\_\_\_\_ 19.18 and 19.19
- \_\_\_\_\_ 19.21
- \_\_\_\_\_

~~19.25 to 19.28~~

~~19.30~~

~~19.87 to 19.90~~

~~19.92 to 19.95~~

~~19.97 to 19.101~~

~~The following provisions apply to unsponsored DRs:~~

~~Paragraph~~

~~19.1 and 19.2~~

~~19.4 to 19.8~~

~~19.10(a) to (d)~~

~~19.18 to 19.19~~

~~19.26 to 19.28~~

~~19.30~~

~~19.87 to 19.89~~

~~19.91 to 19.94~~

~~19.96 to 19.105~~

## **General**

~~18.48 An issuer of DRs is subject to the provisions of Section 1;~~

~~18.49 Subject to Section 1, DRs may be suspended if the issuer of the DRs fails to comply with the Listings Requirements.~~

~~19.87 Due to the complex nature of DRs the JSE must be consulted at an early stage before formal application for listing is made. Depending on the nature and structure of any particular issue, the requirements set out in the following paragraphs may be modified or additional requirements may apply.~~

## **Sponsor**

~~18.50 The issuer of both sponsored and unsponsored DRs must comply with the provisions of Section 2 regarding the appointment of a sponsor. In relation to unsponsored DRs, the depository [will fulfil the role of the sponsor but will] carry out limited duties and responsibilities, in accordance with the provisions set out below in paragraphs 18.63 and 18.64.~~

## **New paragraph 18.50 and 18.51**

### **[Criteria for Issuer**

~~18.50 An issuer of sponsored DRs must demonstrate to the JSE that it meets paragraphs 18.1 to 18.11, applicable to a secondary listing.~~

~~18.51 An issuer of unsponsored DRs must meet the following criteria~~

~~(a) it must be regulated under the Banks Act of 1990 or the equivalent foreign legislation in the case of foreign issuers;~~

~~(b) relevant expertise to issue securities or has the access to such expertise;~~

~~(c) generally acceptable to the JSE, having regard primarily, but not only, to the interests of investors and the objects of the FMA; and~~

- ~~(d) the issuer must be in conformity with the applicable laws of its jurisdiction of incorporation, having obtained all necessary statutory, or other, consents required to apply for and maintain a listing of securities.]~~

### **Criteria for DRs**

18.52 An issuer or depository seeking a listing of DRs must satisfy the following criteria:

- ~~(a) it must be a sponsored or unsponsored DR;~~
- ~~(a) the DRs must be issued by a depository which must be independent of the issuer or underlying entity;~~
- ~~(b) the depository must maintain adequate arrangements to safeguard DR holders' rights to the securities to which the DRs relate, and to all rights relating to the securities and all money and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expenses of the issuer of the depository;~~
- ~~(c) the entity referred to in (b) above must hold in trust or custody, for the sole benefit of the holders of DRs, the securities to which the DRs relate, all rights relating to the securities and all the money and benefits that it may receive in respect of them, subject only to payment of remuneration and proper expenses of the entity;~~
- ~~(d) the DRs must be fully covered at all times;~~
- ~~(e) the DRs must be fully paid up and freely transferable;~~
- ~~(f) the securities which the DRs represent must be free from all liens and any restrictions on the right of transfer to the depository;~~
- ~~(g) there must be a duly signed deposit agreement in accordance with paragraph 18.56 in place between the issuer, the depository and the custodian (if applicable), for sponsored DRs;~~
- ~~(h) there must be a duly signed unsponsored terms and conditions in accordance with paragraph 18.56 for unsponsored DRs; and~~
- ~~(i) the entity referred to in (b) above must be independent from the issuer or underlying entity, unless otherwise agreed to by the JSE, and such entity must be insolvency remote.~~

~~19.90 An issuer of sponsored DRs must:~~

- ~~(a) demonstrate to the JSE that it meets the Listings Requirements set out in paragraphs 18.1 to 18.6; and~~
- ~~(b) be in full compliance with all the requirements of the exchange on which it has its listings.~~

18.53 For unsponsored DRs, the underlying entity must:

- ~~(a) be sufficiently liquid to ensure efficient price formation in the secondary market; and~~
- ~~(b) have its primary listing on another exchange and it must:~~
- ~~(i) be listed on an exchange that is a member of the World Federation of Exchanges, and such primary listing must be at least on an equivalent board/exchange to the JSE Main Board; or~~
- ~~(ii) have a subscribed capital, as defined in section 4.28(a) of at least R500 million.~~

18.54 The depository must satisfy the JSE that it has the relevant expertise to arrange an issue of DRs or has access to such expertise.

18.55 Arrangements must be made to the satisfaction of the JSE's Clearing and Settlement Division, to ensure that sufficient DRs are available on the South African DR register.

### **The Deposit agreement or unsponsored terms and conditions**

18.56 The deposit agreement for sponsored DRs, or unsponsored terms and conditions for unsponsored DRs, must provide without limitation for the following:

- (a) In the case of sponsored DRs, the appointment of the depository by the issuer with authorisation to act on behalf of the issuer in accordance with the deposit agreement;
- (b) the status of DRs as instruments, representing ownership interests in securities of an issuer or underlying entity, that have been deposited via the depository;
- (c) the status of beneficial holders of DRs as the legal owners of those DRs;
- (d) the role of the depository to issue DRs, the role of the depository to issue DRs as agent of the issuer in the case of sponsored DRs, and to arrange for the deposit of the securities which the DRs represent;
- (e) the duties of the depository, which must include the duty to keep in South Africa and make available for inspection a register of holders of DRs and the transfers of the DRs, as well as the duty to keep a record of the deposits of securities which the DRs represent, the issue of DRs, the cancellation of DRs and the withdrawal of securities;
- (f) the role and duties of the custodian, if applicable, appointed by the depository to hold the deposited securities for the account of the depository on behalf of the holders of the DRs, segregated from all other property of the custodian;
- (g) the mechanism for the issue and registration of DRs by the depository upon receipt of securities in the issuer or underlying entity and the form of the DR;
- (h) the right of DR holders to surrender DRs to be cancelled in exchange for the delivery of the shares which the DRs represent, subject to payment of any applicable charges and taxes and any legal or regulatory restrictions;
- (i) the right of DR holders to corporate action entitlements. The deposit agreement or unsponsored terms and conditions should address the rights (if any) and procedures applying to cash distributions, distributions of shares, rights issues or any other distribution accruing to the securities which the DRs represent, as per [Form H1] Schedule 24 or in such other manner acceptable to the JSE;
- (j) to the extent applicable, the right of DR holders to exercise the voting rights attached to the securities represented by the DRs and the procedures by which DR holders will be notified of shareholder meetings or solicitations of proxy votes and their entitlement to issue instructions to the depository as to how to exercise their voting rights;
- (k) the manner in which any corporate action, or other reclassification of the issuer or underlying entity's securities, will be represented by and accrue to the DRs, in accordance with the principle that holders of DRs are to be treated as having generally equivalent rights to holders of the securities which the DRs represent;
- (l) the conditions and process for the issue of new DRs if any DR instrument is lost, destroyed, stolen or mutilated (if applicable);
- (m) the obligations of holders of DRs, including any liabilities for taxes and other charges and the obligation to disclose the beneficial ownership of

the DRs on request of the issuer (for sponsored DRs), the depository or the JSE;

(n) a clear statement of the fees and charges payable by holders of DRs, including fees and charges payable to the depository and the custodian (if applicable);

(o) procedures for the replacement or removal of the depository and/or the custodian, by or with the consent of the issuer in the case of sponsored DRs, including an obligation to inform DR holders by advance announcement, of any prospective resignation, removal and replacement of the depository and/or the custodian;

(p) procedures for the amendment of the deposit agreement or unsponsored terms and conditions;

(q) the governing law of the deposit agreement or unsponsored terms and conditions should be that of South Africa or, if another jurisdiction is chosen, one that is generally used in accordance with international practice and that is acceptable to the JSE;

(r) For sponsored DRs:

(i) the procedures by which the depository and/or the custodian, at the direction of the depository, will, in consultation with the issuer for sponsored DRs, fix corporate action dates in accordance with [Form H1]Schedule 24;

(ii) the procedures by which the depository will, at the direction of the issuer, dispatch to holders of DRs copies of all notices, reports, voting forms or other communications sent by the issuer to its shareholders; and

(iii) an obligation to provide sponsored DR holders with a minimum of 30 days notice period prior to any material changes to the [depository agreement] ~~unsponsored terms and conditions being effected;~~

(s) For unsponsored DRs:

(i) an obligation to provide unsponsored DR holders with a minimum of 30 days notice period prior to any material changes to the unsponsored terms and conditions being effected; and

(ii) the procedures by which the depository will notify holders of DRs as to where copies of all notices, reports, voting forms or other communications published by the underlying entity to its shareholders can be obtained.

### **Listing documents in respect of sponsored DRs**

18.57 An issuer must produce a listing document and address the following in such document. [An issuer must address the following in the pre-listing statement in addition to the requirements in paragraph 18.12-18.19 above]:

(a) disclosure as follows [in respect of a depository]:

(i) in respect of the issuer and the depository:

(i) its full name;

(ii) its place and date of incorporation;

(iii) the full names and addresses of its directors; (or in the event that the [depository] issuer is not a company, the persons with corresponding duties and powers in relation to the [depository] issuer of the DRs);

(ii) a statement that the JSE's approval of the listing of the DR is not

~~to be taken in any way as an indication of the merits of the issuer of the DR, and that the JSE has not verified the accuracy and truth of the contents of the documentation and that to the extent permitted by law, the JSE will not be liable for any claim of whatsoever kind;~~

~~(iii) the names and addresses of the advisors and transfer secretaries to the issuer, if any;~~

~~(b) a statement to the effect that investors must seek their own independent tax advice;~~

~~(c) every pre-listing statement must contain the following statement on the front of the document:~~

~~"Prospective purchasers of any DRs must ensure that they understand fully the nature of the product and the extent of their exposure to risks, and that they consider the suitability of DRs as an investment in light of their own circumstances and financial position"; and~~

~~(b) the provisions relating to pre-listing statements as set out in paragraphs 18.12 to 18.19;~~

~~(d) full details of the deposit agreement must be included as per paragraph 18.56; and~~

~~(d) any other details that the JSE may deem appropriate.~~

#### **Listing documents in respect of unsponsored DRs**

18.58 The depository must produce a listing document and include the following in such document:

[(a) In respect of the depository:

(i) its full name;

(ii) its place and date of incorporation; and

(iii) full names and addresses of its directors; or in the case that the depository is not a company, the persons with corresponding duties and powers in relation to the depository;]

(b) in respect of the underlying entity to the extent available through public filings, as well as the depository:

(1) its full name;

(2) its place and date of incorporation;

(3) the description of business of the underlying entity; and

(4) the alpha code, ISIN number, and a description of where information on the underlying entity can be obtained;

(c) a statement that the JSE's approval of the listing of the DR is not to be taken in any way as an indication of the merits of the issuer of the DR, and that the JSE has not verified the accuracy and truth of the contents of the documentation and that to the extent permitted by law, the JSE will not be liable for any claim of whatsoever kind;

(d) the names and addresses of the advisors and transfer secretaries to the issuer, if any;

(e) a statement to the effect that investors must seek their own independent tax advice; and

(f) every listing document must contain the following statement on the front

of the document:

“Prospective purchasers of any DRs must ensure that they understand fully the nature of the product and the extent of their exposure to risks, and that they consider the suitability of DRs as an investment in light of their own circumstances and financial position. It must be noted that it is the investors’ responsibility to seek and obtain the information pertinent to the underlying entity.”

(g) full details of the unsponsored terms and conditions must be included as per paragraph 18.56; and

(h) any other details that the JSE may deem appropriate.

### **Continuing obligations**

18.59 The issuer, or depository in the case of unsponsored DRs, must ensure the following:

(a) the continued suitability of the depository for listing in the case of sponsored DRs;

(b) that [at least 30 day notice] prior notification per the procedures outlined in the deposit agreement or unsponsored terms and conditions, is given to holders of DRs of any material change to [the depository agreement or unsponsored terms and conditions] such document;

(c) application is made for the additional listing or withdrawal of listings of DRs in compliance with the listings requirements. Arrangements can be made with the JSE which will allow the creation of uncovered DR inventory pending transfer of underlying securities. Such arrangement must be made by the issuer in writing and is subject to the approval of the JSE;

(d) the listing document, [pre-listing statement] and the deposit agreement or unsponsored terms and conditions, must be made available on the issuer’s and depository’s websites, for sponsored DRs, and must be available on the depository’s website for unsponsored DRs [for the duration of the listing of the DR’s];

(e) that a semi-annual submission is made to the JSE, providing a reconciliation of the amount of DRs outstanding at that time, the amount of underlying securities that such DRs represent and confirmation that the amount of DRs in issue did not exceed the authorised amount at any point in time, in terms of the DR listing documentation; [and]

(f) compliance with the provisions as set out in paragraph 18.20± for sponsored DRs.

(g) where the DRs are to be held in dematerialised form, the issuer and/or the depository must be approved by and comply with the Central Securities Depository Rules and Directives;

19.98 When a sponsored DR issuer whose securities and/or DRs are listed on a foreign exchange, wishes to release any information on that exchange, it must ensure that such information is also released through SENS and that such release take place no later than the equivalent release on any other exchange, provided that if the JSE is not open for business, it must ensure that such information is released through SENS at the commencement of business on the next business day; and

18.60 The provisions relating to the responsibilities of the depository for unsponsored DRs set out in paragraph 18.63 and 18.64 apply to unsponsored DRs.

### **Documents to be submitted to the JSE on application for listing**

18.61 The following documentation must be submitted to the JSE for approval via a sponsor or depository in the case of unsponsored DRs:

- \_\_\_\_\_ (a) the listing document [~~or pre-listing statement~~];
- \_\_\_\_\_ (b) exchange control approval;
- \_\_\_\_\_ (c) the deposit agreement or unsponsored terms and conditions, depository agent agreement, and custody agreement;
- \_\_\_\_\_ (d) the formal application for listing complying with Schedule 1;
- \_\_\_\_\_ (e) confirmation in writing from the Central Securities Depository that the applicant has been approved in terms of the Central Securities Depository Rules and Directives; and
- \_\_\_\_\_ (f) such other information as may be requested by the JSE.

### **Announcements**

18.62 ~~In addition to paragraphs 19.27 to 19.29 above, the~~ The issuer, or depository in the case of unsponsored DRs, must publish the following via SENS:

- \_\_\_\_\_ (a) after the JSE has approved an application for listing of the DRs, an announcement must be made five business days prior to listing, containing the following:
  - \_\_\_\_\_ (i) the information referred to in paragraphs 18.55 and 18.56 ~~19.94~~ in respect of the issuer of the DRs; and
  - \_\_\_\_\_ (ii) places where copies of the DR offering circular and deposit agreement or unsponsored terms and conditions can be obtained.

### **Responsibilities of the depository for unsponsored DRs**

18.63 The responsibilities of the depository in the case of unsponsored DRs are provided below and must be complied with at all times. Failure to carry out these responsibilities may result in the JSE taking one or more steps referred to in Section 1.

18.64 In addition to the depository's responsibilities set out in the unsponsored terms and conditions as well as 18.59~~19.97~~ relating to continuing obligations above, the depository must:

- \_\_\_\_\_ (a) at all times remain independent of the [~~underlying entity~~] issuer and must provide an undertaking that it will not act as depository for any entity from which it is not independent upon application to the JSE to act as a depository;
- \_\_\_\_\_ (b) complete a Schedule 1 application prior to the listing;
- \_\_\_\_\_ (c) ensure that the underlying entity is sufficiently liquid to ensure reasonable and transparent price formation;
- \_\_\_\_\_ (d) manage the submission of the relevant documentation to the JSE and ensure its completeness and correctness before submission;
- \_\_\_\_\_ (e) discharge its responsibilities with due care and skill;
- \_\_\_\_\_ (f) apply the Listings Requirements, including the application of the spirit of the Listings Requirements and upholding the integrity of the JSE;
- \_\_\_\_\_ (g) must make any documentation or public information on the underlying entity available via a SENS announcement, specifying the web link where such information can be obtained, by no later than one business day [~~from the date that the~~] where the depository has had receipt of a publication in its capacity as shareholder, provided that if the JSE is not open for business, the depository must ensure that such information is available at the commencement of business on the following business day;
- \_\_\_\_\_ (h) [~~must announce on SENS and within 10 business days of publication of the financial information make available on the website all financial~~]



information on the underlying entity. The SENS announcement must include the link to the website where such information can be obtained;]

must make any documentation relating to all financial information on the underlying entity available on the web, or an announcement must be made specifying the web link where such information can be obtained, within 10 calendar days from the publication of such information;

(i) when the underlying entity releases any price-sensitive information on another exchange that impacts the DR instrument, the depository must ensure that such information is also released on SENS specifying the web link where such information can be obtained. Such [SENS announcement] release must take place no later than one business day after the [publication] release on any other exchange provided that, if the JSE is not open for business, the depository must ensure that such information is [published on] released through SENS at the commencement of business on the following business day. The announcement must be submitted via the depository, and such announcements must also be available on the depository's website. The JSE must be consulted in the event that the aforementioned requirement cannot be complied with; and

(i) the depository must advise, and obtain approval from the JSE with regard to the timetables for corporate actions stipulated in [Form H1] Schedule 24. The depository must ensure that the JSE is notified in advance in order to ensure that the JSE can accommodate the processing of these corporate actions for DR holders on the South African share register.

## Appendix to Section 18

An accredited applicant seeking a fast-track listing must disclose the following in the pre-listing announcement:

- (a) name and address of the registered office (also in the Republic of South Africa if an external company);
- (b) the transfer office in the Republic of South Africa;
- (c) date and country of incorporation;
- (d) the accredited exchange, equivalent board and date of admittance, as well as details on which other exchanges the securities of the accredited applicant is listed;
- (e) confirmation whether a listing is sought on Alt<sup>x</sup> or the Main Board and the reasons for seeking a secondary listing on the JSE;
- (f) listing date and timetable;
- (g) the number and class of securities in respect of which the accredited applicants seeks a listing and disclosure of the number of treasury shares held, including details of any restriction as to the transfer of the securities;
- (h) the market capitalisation on date of application;
- (i) the full names and functions of the board of directors;
- (j) a brief description of its business (including its main country of operation);
- (k) details of the prospects of the applicant following the date of listing;
- (l) insofar as is known to the accredited applicant, the name of any shareholder other than a director, that directly or indirectly, is beneficially interested in 5% or more of a class of securities issued by the accredited applicant, together with the amount of such shareholder's interest;
- (m) a statement by the board of directors of the accredited applicant, that to the best of their knowledge and belief, the accredited applicant has adhered to all legal and regulatory requirements of the accredited exchange;
- (n) the website address of the accredited applicant where any documents (such as financial information, competent person's report, valuations reports and the like) or announcements which the accredited applicant has made public over the last two years (in consequence of having its securities listed on an accredited exchange), including its constitutional documents, are available;
- (o) disclosure of headline earnings per share and diluted headline earnings per share together with an itemised reconciliation between headline earnings and the earnings used in the calculation;
- (p) a description of any significant change in the financial or trading position of the accredited applicant which has occurred since the end of the last financial period for which audited financial statements have been published;
- (q) a statement from the directors of the accredited applicant that they have no reason to believe that the working capital available to the accredited applicant or its group will be insufficient for at least twelve months from the date of listing;
- (r) the financial year-end; and
- (s) disclosure of the differences between the regulatory and legislative frameworks applicable to the applicant issuer pursuant to paragraph 18.20 above.