



The JSE Limited Listings Requirements

BULLETIN 1 of 2017

25 May 2017

Dear Subscriber

JSE Limited Listings Requirements

The JSE made amendments to the JSE Listings Requirements in relation to the adoption of the King IV Report on Corporate Governance and other governance arrangements, including a race diversity policy and the publication of a compliance report pursuant to the Broad-Based Economic Empowerment Amendment Act No. 46 of 2013.

The amendments impact the following Sections:

- Section 3: Continuing Obligations;
- Section 4: Conditions for listing;
- Section 7: Listing particulars;
- Section 8: Financial information;
- Section 11: Circulars, pre-listing statements/prospectuses and announcements
- Section 16: Documents to be submitted to the JSE; and
- Section 21: Alternative Exchange.

Pursuant to Board Notice 87 of 2017 as published in the *Government Gazette* No. 40847, the effective date of Bulletin 1 of 2017 is 19 June 2017.

Please take note of the guidance letter on implementation of certain of the amendments which is available on the JSE's website www.jse.co.za. Route: Companies & Issuer Regulation/Issuer Regulation/Announcements regarding Listings Requirements.

The JSE Guidance Letter on Corporate Governance dated 30 September 2014 is hereby withdrawn.

Section 3 – Continuing Obligations

Corporate Governance

3.84 In addition to complying with paragraph 8.63(a), issuers must implement the following specific corporate governance practices and must disclose compliance therewith in their annual reports. (The effect of incorporating certain practices from the King Code in the Listings Requirements is to make their implementation mandatory, this is notwithstanding the fact that application of the corporate governance practices in the King Code is generally voluntary):

- (a) there must be a policy evidencing a clear balance of power and authority at board of directors' level, to ensure that no one director has unfettered powers of decision-making;

- (b) the issuer must have an appointed chief executive officer and a chairman and these positions must not be held by the same person. The chairman must either be an independent non-executive director, or the issuer must appoint a lead independent director, in accordance with the King Code;
- (c) all issuers must, in accordance with the King Code appoint an (i) audit committee, (ii) a committee responsible for remuneration and (iii) a social and ethics committee. The composition of such committees must comply with the Companies Act (as applicable) and should be considered in accordance with the recommended practices in the King Code on an apply and explain basis, provided that each committee must comprise of at least three members. A brief description of the committee mandates, the number of meetings held and other relevant information must be disclosed in the annual report;
- (d) a brief CV of each director must be provided in respect of a new listing. It should further be noted that a brief CV for each director standing for election or re-election at a general meeting or the annual general meeting (in relation to Main Board issuers, such election or re-election may not take place at a meeting contemplated in Section 60 of the Act) should accompany the notice of the general meeting or annual general meeting;
- (e) the capacity of each director must be categorised as executive, non-executive or independent, using the following as guidelines to determine which category is most applicable to each director:
 - (iii) independent directors should be determined holistically, and on a substance over form basis in accordance with the indicators provided in Section 94(4)(a) and (b) of the Companies Act and the King Code. In addition, it must be noted that any director that participates in a share incentive/option scheme, will not be regarded as independent;
- (f) all issuers must have an executive financial director. The JSE may, at its discretion, when requested to do so by the issuer and due to the existence of special circumstances, allow the financial director to be employed on a part time basis only. This request must be accompanied by a detailed motivation by the issuer and the audit committee;
- (g) the audit committee must, notwithstanding its duties pursuant to Section 94 of the Companies Act:
 - (i) consider, on an annual basis, and satisfy itself of the appropriateness of the expertise and experience of the financial director. The issuer must confirm this by reporting to shareholders in its annual report that the audit committee has executed this responsibility; and
 - (ii) ensure that the issuer has established appropriate financial reporting procedures and that those procedures are operating;
- (h) all issuers must appoint a company secretary in accordance with the Companies Act and should apply the recommended practices in the King Code. The board of directors must consider and satisfy itself on the competence, qualifications and experience of the company secretary. The issuer must confirm this by reporting to shareholders in its annual report that the board of directors has executed this responsibility;
- (i) the board of directors or the nomination committee, as the case may be, must have a policy on the promotion of gender diversity at board level. The issuer must confirm this by reporting to shareholders in its annual report on how the board of directors or the nomination committee, as the case may be, have considered and applied the policy of gender diversity in the nomination and appointment of directors. If applicable, the board of directors or the nomination committee must further report progress in respect thereof on agreed voluntary targets;

- (j) the board of directors or the nomination committee, as the case may be, must have a policy on the promotion of race diversity at board level. The issuer must confirm this by reporting to shareholders in its annual report on how the board of directors or the nomination committee, as the case may be, have considered and applied the policy of race diversity in the nomination and appointment of directors. If applicable, the board of directors or the nomination committee must further report progress in respect thereof on agreed voluntary targets; and
- (k) the remuneration policy and the implementation report must be tabled every year for separate non-binding advisory votes by shareholders of the issuer at the annual general meeting. The remuneration policy must record the measures that the board of directors of the issuer commits to take in the event that either the remuneration policy or the implementation report, or both, are voted against by 25% or more of the votes exercised. In order to give effect to the minimum measures referred to in the King Code, in the event that either the remuneration policy or the implementation report, or both are voted against by shareholders exercising 25% or more of the voting rights exercised, the issuer must in its voting results announcement pursuant to paragraph 3.91 provide for the following:
 - (a) An invitation to dissenting shareholders to engage with the issuer; and
 - (b) The manner and timing of such engagement.

Section 4 – Conditions for listing

Directors and Company Secretary

- 4.8 (c) All applicants (excluding an issuer of specialist securities) must appoint a company secretary in accordance with the Companies Act and recommended practices in the King Code. The board of directors must consider and satisfy itself on the competence, qualifications and experience of the company secretary.

Section 7 – Listing particulars

King Code

- 7.F.5 An applicant issuer must implement the King Code through the application of the King Code disclosure and application regime.

Section 8 – Financial Information

Minimum contents of annual financial statements

- 8.63 In addition to complying with IFRS, Section 30 of the Act and paragraph 3.84 of the Listings Requirements, issuers are required to disclose the following information in the annual report (in the case of paragraph 8.63(a), (l) and (q)), and in the annual financial statements (in the case of paragraph 8.63(b)–(k), (m)–(p)):
- (a) in respect of its application of the King Code:
 - (i) the implementation of the King Code through the application of the King Code disclosure and application regime; and
 - (ii) a narrative on the non-binding advisory votes pursuant to paragraph 3.84(k), dealing specifically with (i) who the issuer engaged with and the manner and form of engagement and (ii) the nature and steps taken to address objections;

Appendix 1 to Section 11

Guidelines on the publication of information

The following table provides a summary of the requirements for publication of information relating to listed companies:

| Reference (section paragraph unless otherwise stated) | Information | Electronic submission to the JSE | Distribute to shareholders | Publish in press in compliance with paragraphs 3.46 to 3.48 Note 4 | Publish through SENS |
|---|--|----------------------------------|----------------------------|--|--|
| 16.20(g) | Annual compliance report prepared pursuant to section 13G(2) of the BEE Act. | Yes | No | No | Yes (only a notice of availability referring to the website of the issuer) |

Section 16 – Documents to be Submitted to the JSE

Periodical returns

16.20 The JSE must be advised in writing of:

- (e) “stops” placed against the transfer of securities;
- (f) any change in sponsor; and
- (g) the publication of the annual compliance report prepared pursuant to section 13G(2) of the BEE Act, unless an exemption can be provided to the JSE.

Section 21 – Alternative Exchange

Corporate governance

21.5 The following provisions regarding corporate governance apply:

- (i) Application of the King Code disclosure and application regime to the principles set out in Chapter 3, Governing Structures and Delegation of the King Code;
- (ii) Paragraphs 3.84(i), (j) and (k); and;

Regards,

Nicole Smith
LexisNexis
Editor: Tax and Financial Services
nicole.smith@lexisnexis.co.za

May 2017