Amendments to the JSE Debt Listings Requirements (the "Debt Requirements")

Corporate Governance Arrangements & Professional Debt Segment

Part 2 of 2018

September 2018

Transitional Provisions: The JSE appreciates that the proposed amendments below will require a reasonable amount of time for applicant issuers to consume and adopt. The JSE wishes to advise that sufficient lead time will be afforded to applicant issuers to prepare for the adoption of the new Debt Requirements (subject to public consultation), which will be at least a period of 12 months from the effective date.

Item	Proposed Amendment	Rationale
1	Introduction General Principles	The general principles are sound governance principles that underpin the public interest function of the JSE and should therefore be included in the Debt Requirements.
	The JSE intends to amend the Debt Requirements to include the same general principles of the JSE Listings Requirements (the " Equity Requirements ") in the introduction section of the Debt Requirements.	
2	Section 1: Authority of the JSE Section 2: Debt Sponsor and Designated Person	The JSE believes that disclosure (i) on listing and (ii) on a continuing basis relating to the qualifications, experience and integrity of the
	Section 4: Listing Particulars Section 7: Continuing Obligations Section 8: Listing Process	directors of the applicant issuer contribute to sound corporate governance. The contractual undertaking of the director to the JSE confirms the commitment by the director to be bound and to comply with the Debt Requirements.
	Director's Declaration Company Secretary Information	Similarly, the details of the company secretary (i) on listing and (ii) on a continued basis are equally important and will also require disclosure.
	The JSE intends to amend the Debt Requirements to include the obligation so submit certain details of the directors of the	This approach mirrors the approach followed in the Equity Requirements.

applicant issuer to the JSE.

The details required for purposes of the directors' declaration are included in the new Schedule 5. The new Schedule 5 will further include a contractual undertaking of the director to the JSE to be bound and to comply with the Debt Requirements. See amendments to Section 1 and the end portion of the new Schedule 5.

The following paragraphs are impacted by the introduction of the directors' declaration:

- Paragraph 2.10: Positive obligations are placed on the debt sponsor and the designated person to obtain the required signed Schedule 5 from each director and to explain certain responsibilities/obligations to each director arising from the Debt Requirements.
- Paragraph 4.13: The signed Schedule 5 forms in respect of each director must be submitted to the JSE and details of the Schedule 5 disclosures must be included in the placing document. Qualifications, experience and integrity information only.
- Paragraph 4.14: The applicant issuer will also be required to provide certain information on the company secretary to the JSE as prescribed in the new Form A5. The signed Form A5 in respect of the company secretary must be submitted to the JSE in support of the company secretary details included in the placing document pursuant to paragraph 14.12(d).
- Paragraph 7.31: The amendments deal with the continuing obligation of the submission of the Schedule 5 to the JSE when changes to the board of directors occur. Further any amendments to the Schedule 5 must be announced by the applicant issuer immediately after it has been received from the director. The same principle will apply to the details of the company secretary in respect of Form A5.
- Paragraph 8.3: The director's declaration for each director must be submitted to the JSE as part of the formal approval process.

	The South African Government	
	Paragraph 9.3	
	It should be noted that the National Treasury of the South African Government, as an issuer of debt securities pursuant to Section 9 of the Debt Requirements, will not be required to comply with the Schedule 5 provisions.	
3	Section 7: Continuing Obligations	The JSE views these events as material and as such the JSE and the market should be informed.
	Changes to Directors and Company Secretary New paragraphs 7.30 and 7.32	This approach mirrors the approach followed in the Equity Requirements.
	The JSE intends to amend the Debt Requirements to include the publication of an announcement and notification to the JSE when there is a change to the board of directors or to the company secretary of the applicant issuer. Reasons for the change must also be included in the announcement. The South African Government	
	Paragraph 9.3	
	It should be noted that the National Treasury of the South African Government, as an issuer of debt securities pursuant to Section 9 of the Debt Requirements will not be required to comply with the continuing obligation of changes to directors/ company secretary.	

4	Definitions Section 7: Continuing Obligations	The JSE views the market should be			material ar	nd as such	the	JSE :	and the
	Dealings in Securities	This approach Requirements.	mirrors	the	approach	followed	in	the	Equity
	New paragraphs 7.34 to 7.45	rtequirements.							
	The JSE intends to amend the Debt Requirements to include the publication of an announcement if a director, his/her associates or the company secretary of the applicant issuer transacts in the applicant issuer's securities.								
	 The amendment will further include details regarding the process to be followed for dealings in securities by – The directors; The company secretary; and Their associates. 								
	Also refer to the new definitions of:								
	 <i>"associate"</i> and <i>"immediate family"</i>; and <i>"closed period"</i>. 								
	The South African Government								
	Paragraph 9.3								
	It should be noted that the National Treasury of the South African Government, as an issuer of debt securities pursuant to Section 9 of the Debt Requirements, will not be required to comply with the continuing obligation of dealings by directors/ company secretary.								

5	Section 4: Listing Particulars Section 5: Financial Information Section 7: Continuing Obligations	The JSE believes that disclosure of entrenched mandatory corporate governance arrangements contribute to sound corporate governance.
	Corporate Governance Arrangements	This approach substantially mirrors the approach followed in the Equity Requirements.
	New Paragraph 7.49	
	The JSE intends to amend the Debt Requirements to introduce certain mandatory corporate governance practices to applicant issuers, which must be applied and disclosed in the annual financial statements of the applicant issuer.	
	The following paragraphs are impacted by the introduction of the mandatory corporate governance practices:	
	 Paragraph 4.12(h): Confirms the disclosure of the mandatory corporate governance practices in the placing document. Paragraph 5.7(b): Confirms the disclosure of the mandatory corporate governance practices in the financial information. Where an applicant issuer obtains a third party governance rating on its application of the King Code, the governance rating must be disclosed. 	
	Certain governance practices will be required to be disclosed in the placing document pursuant to paragraph 4.12. These items may be incorporated by reference pursuant to paragraph 4.28.	
	Paragraph 7.11(b) has been relocated to paragraph 7.49(g) dealing with the responsibilities of the audit committee.	
	Secondary Registered Issuers	
	Paragraph 4.12(h)	
	It should be noted that secondary registered issuers will not be required to comply with paragraphs 7.49 - 7.63 , save to state	

	which corporate governance codes they comply with (if any).	
	Corporate governance provisions applicable to (i) Securitisations, (ii) Asset-backed Debt Securities, (iii) Project Bonds and (iv) Professionals Board.	
	Refer to the new Appendix 2 to Section 7 for the application of corporate governance provisions to the above securities. Also see paragraphs 6.10, 10.6 and 11.10.	
	Disclosure of interests held in debt securities by directors	
	Paragraph 5.7(c)	
	The JSE intends to amend the Debt Requirements to require disclosure in the annual financial statements of interests held by the directors in debt securities in the applicant issuer.	
	The South African Government	
	Paragraph 9.3	
	It should be noted that the National Treasury of the South African Government, as an issuer of debt securities pursuant to Section 9 of the Debt Requirements, is not required to comply with paragraphs $7.49 - 7.63$.	
6	Section 7: Continuing Obligations Repurchase of Debt Securities	The JSE believes that the process and disclosures regarding the repurchase of debt securities by the applicant issuer must be transparent for the benefit of holders of debt securities.
	Paragraph 4.15 Paragraph 5.7(d) Paragraphs 7.25 and 7.26	This approach substantially mirrors the approach followed in the Equity Requirements.
	The JSE intends to amend the Debt Requirements to introduce certain obligations and disclosures on the repurchase of debt	

	securities by the applicant issuer.	
	An applicant issuer may not repurchase debt securities during a closed period.	
	Also refer to the new definition of "closed period".	
	The JSE will also require disclosure of repurchased debt securities in the annual financial statements of the applicant issuer.	
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7	Section 7: Continuing Obligations	The aim of the approach is to provide clarity in the event of non- compliance as it relates to the preparation and publication of annual
	Non-Compliance – Publication of Financial Statements	financial statements and interim financial statements (if applicable).
	Paragraphs 7.7 and 7.10	This approach substantially mirrors the approach followed in the Equity Requirements.
	The JSE intends to amend the Debt Requirements to clarify the different processes involved in the event of non-compliance	
	for the preparation and publication of the applicant issuer's annual financial statements and interim financial statements (if applicable).	
8	Section 3: Conditions of Listing	The appointment of an investor representative to represent the interests
	Appointment of an Investor Representative	of the holders of debt securities and to support transparency in the applicant issuer follows international best practice.
	New Definition – " <i>Investor Representative</i> " Paragraph 3.15 onwards Paragraph 4.16(b) Paragraph 7.49(i)	The JSE is aware of the additional cost implication for applicant issuer however believes that it will not be unreasonable, bearing in mind the benefit for investors and that the request for the investor representative originated from the investor community. The aim is for the investor
	The JSE intends to amend the Debt Requirements to introduce a condition of listing for an applicant issuer to appoint an investor representative to look after the interests of the holders of debt securities.	representative to facilitate, filter, monitor and streamline comments from potential investors for the benefit of the applicant issuer. The role is similar to that of a facility agent in the loan syndication market and the investor representative will similarly require indemnities for the execution of its function (save in the event of its gross negligence and willful default). The role of the investor representative will ensure that there is

	The investor representative will be defined as: "a company, trust or industry association appointed by the applicant issuer to represent the ongoing interests of the holders of debt securities both prior to and after the issue of any debt securities by the applicant issuer" The investor representative will not be required to be ring- fenced or to hold debt securities in its personal capacity or on behalf of the holders of the debt securities. The investor representative will not act in a fiduciary capacity. An investor representative may not be appointed if any of the items in paragraph 3.16 are present. The role of the investor representative has been set out in paragraph 3.17. The investor representative will have the right but not the obligation to appoint a legal counsel to assist with the fulfilment of its role as investor representative, which appointment must be maintained as a continuing obligation of the applicant issuer pursuant to paragraph 7.49(i). Paragraph 4.16(b) will be amended to clarify the disclosures required in respect of the investor representative. Any change of the investor representative must be announced, pursuant to paragraph 7.44(h).	one single contact point to deal with investor comments, proposed amendments to the placing documents and attendant security documents (if applicable) and investor queries, which will be beneficial for both investors and the applicant issuer.
9	Section 4: Listing Particulars	The inclusion of a brief CV of the directors will support transparency
	Brief CV of the Director	regarding the expertise, experience and competency of directors of the applicant issuer.
	Paragraph 4.12(b) and 7.49(d) The JSE intends to amend the Debt Requirements to introduce the inclusion of a brief CV of each of the directors –	The disclosure of the number of directorships held provides support for the capabilities, experience and expertise of the directors.

	 in the placing document; and standing for election or re-election at a general meeting or the annual general meeting must accompany the notice of the general meeting or annual general meeting. The intention will also be to require disclosure on the number of directorships held by each director, which disclosure can be incorporated by reference. 	
10	Section 7: Continuing Obligations Evaluation of the Board of Directors and Board Committees Paragraph 4.12(r) Paragraph 4.20 Paragraph 4.28 Paragraph 7.22 December 2.40(i)	The evaluation of the board, board committees and the individual directors is a sound corporate governance principle which will enhance the effectiveness of the board as a whole.
	 Paragraph 7.49(j) The JSE intends to amend the Debt Requirements to require the applicant issuer to have a policy on the evaluation of the performance of the board of directors of the applicant issuer and that of its committees, its chair and its individual directors pursuant to the provisions of the King Code. The applicant issuer must confirm this by reporting to holders of debt securities in its annual report that the board of directors has executed this responsibility. A summary of the policy dealing with the evaluation of the board of the applicant issuer must be disclosed in the placing document and may be incorporated by reference. The policy dealing the evaluation of the board of the applicant issuer must be a document open for inspection. 	

11	Section 7: Continuing Obligations	The requirement to have a policy and to have same open for inspection will enhance transparency when dealing with conflicts of interest of the		
		directors of the applicant issuer.		
	Paragraph 4.12(I) Paragraph 4.20 Paragraph 4.28 Paragraph 7.22 Paragraphs 7.50 - 7.52			
	The JSE intends to amend the Debt Requirements to require the applicant issuer to have a policy dealing with conflicts of interest of the directors of the applicant issuer and how such conflicting interests can be identified and managed or avoided.			
	Any interests of directors disclosed pursuant to Section 75 of the Companies Act (Director's personal financial interest) must be recorded.			
	A register of such interests of directors must be maintained by the applicant issuer and must be made available of the website of the applicant issuer when the applicant issuer publishes its annual report.			
	A summary of the policy dealing with conflicts of interest of the directors of the applicant issuer must be disclosed in the placing document and may be incorporated by reference.			
	The policy dealing with conflicts of interest of the directors of the applicant issuer must be a document open for inspection.			
12	Section 7: Continuing Obligations	The requirement to have a policy and to have same open for inspection		
	Nomination of Directors	will enhance transparency when dealing with nomination of directors of the applicant issuer.		
	Paragraph 4.12(m) Paragraph 4.20 Paragraph 4.28			
	Paragraph 7.22			

	Paragraphs 7.53 and 7.54	
	The JSE intends to amend the Debt Requirements to require the applicant issuer to have a policy dealing with the nomination of directors of the applicant issuer, which must include (i) details of the fit and proper assessment to be undertaken in order to evaluate the suitability of candidates and (ii) the process involved when considering the nomination of domestic prominent influential persons as directors.	
	Any amendments to the policy dealing with the nomination of directors of the applicant issuer must be announced immediately.	
	A summary of the policy dealing with the nomination of directors of the applicant issuer must be disclosed in the placing document and may be incorporated by reference.	
	The policy dealing with the nomination of directors of the applicant issuer must be a document open for inspection.	
13	Section 7: Continuing Obligations Domestic Prominent Influential Person	The requirement to have a policy and to have same open for inspection will enhance transparency when dealing with the disclosure and treatment of domestic prominent influential persons at board level of directors of the applicant issuer and in respect of any transactions/dealings with the applicant issuer.
	New Definition – " <i>Domestic Prominent Influential Person</i> " Paragraph 4.12(n) Paragraph 4.20 Paragraph 4.28 Paragraph 7.22 Paragraphs 7.55 and 7.57	
	Paragraphs 7.55 and 7.57	
	The JSE intends to amend the Debt Requirements to require the applicant issuer to have a policy dealing with the disclosure and treatment of domestic prominent influential persons at board level of directors of the applicant issuer and in respect of	

	any transactions/dealings by the applicant issuer with domestic prominent influential persons.	
	Please refer to the definition of domestic prominent influential person pursuant to Schedule 3A of the Financial Intelligence Centre Act 2011 (Act No.38 of 2001).	
	A register of such domestic prominent influential persons and the relationship with the applicant issuer must be maintained by the applicant issuer and must be made available of the website of the applicant issuer when the applicant issuer publishes its annual report.	
	Any amendments to the policy dealing with disclosure and treatment of domestic prominent influential persons must be announced immediately	
	A summary of the policy dealing with domestic prominent influential persons must be disclosed in the placing document and may be incorporated by reference.	
	The policy dealing with the disclosure and treatment of domestic prominent influential persons must be a document open for inspection.	
14	Section 7: Continuing Obligations	The requirement to have a policy and to have same open for inspection will enhance transparency when dealing with dealing with procurement
	Procurement	of services and or products.
	Paragraph 4.12(o)	
	Paragraph 4.20	
	Paragraph 4.28	
	Paragraph 7.22 Paragraphs 7.58 and 7.60	
	The JSE intends to amend the Debt Requirements to require	
	the applicant issuer, if a quasi-governmental entity (most	

	commonly provincial and local authorities/municipalities and state owned entities) to disclose its policy on the procurement of services and/or products (if it has one) on the applicant issuer's website.	
	A register of procurement of services and/or products representing 10% or more of the annual procurement spend must be maintained and must be made available on the website of the applicant issuer when the applicant issuer publishes its annual financial statements. Certain minimum disclosure items of these agreements will be required. A negative statement must be made if there are no such procurement partners at that level.	
	Any amendments to the policy dealing with procurement must be announced immediately.	
	A summary of the policy dealing with procurement must be disclosed in the placing document and the policy may be incorporated by reference.	
	The policy dealing with procurement must be a document open for inspection.	
15	General: Loans and Procurement	
	New Definitions – "Related Party" and "Prescribed	
	Officer'	
	Paragraph 4.12	
	Paragraph 4.20	
	Paragraph 4.28	
	Paragraph 7.22	
	Paragraphs 7.61 and 7.63	
	The JSE intends to amend the Debt Requirements to require	
	the applicant issuer to have a policy dealing with the disclosure	
	and treatment of loans and procurement with related parties	
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	and prescribed officers of the applicant issuer.	
	A register of these agreements must be maintained and must be made available on the website of the applicant issuer when the applicant issuer publishes its annual financial statements. Certain minimum disclosure items of these agreements will be required. A negative statement must be made if there are no such procurement partners at that level.	
	Any amendments to the policy dealing with the disclosure and treatment of loans and procurement with related parties and prescribed officers must be announced immediately.	
	A summary of the policy dealing with the disclosure and treatment of loans and procurement with related parties and prescribed officers must be disclosed in the placing document and may be incorporated by reference.	
	The policy dealing with the disclosure and treatment of loans and procurement with related parties and prescribed officers must be a document open for inspection.	
16	Section 6: Specialist Debt Securities/Entities Continue Obligations: Securitisations and asset backed securities that do not fit into the definition of Securitisations New Paragraph 6.10	The aim is to place a positive statement on continuing obligation on Securitisations and asset backed securities that do not fit into the definition of Securitisations.
	The JSE intends to amend the Debt Requirements to clarify that Section 7 (Continuing Obligations) apply to Securitisations and asset backed securities that do not fit into the definition of Securitisations.	

17	Section 2 : Debt Sponsor or Designated PersonsAppointment of Designated PersonsThe JSE intends to amend the Debt Requirements to clarify the position that only secondary registered issuers will be permitted to appoint a designated person. Applicant issuers with primary listings on the JSE must appoint a debt sponsor.	Due to the proposed additional continuing obligations required from an interest rate issuer, the JSE is of the opinion that the issuer will require a debt sponsor to guide them on an ongoing basis to ensure full compliance, instead of having an individual in the firm.
18	Section 2 : Debt Sponsor or Designated Persons Debt Sponsor Procedures Manual New Paragraphs 2.11 The JSE intends to amend the Debt Requirements to require debt sponsor to prepare a procedures manual on certain items in relation to the debt sponsor itself and in respect of compliance as it relates to the advice and services provider to applicant issuers. It should further be noted that the JSE will arrange courses relating to the Debt Listings Requirements and all debt sponsor staff must attend these, within the time periods prescribed by the JSE, in order to remain approved.	In support of an enhanced debt sponsor oversight approach, the amendments will ensure that debt sponsors apply themselves pursuant to a procedures manual to underpin the confirmations that are provided in the annual compliance certificate and the debt sponsor responsibilities pursuant to paragraph 2.9 of the Requirements. The procedures manual may be inspected by the JSE and the JSE may also request an explanation on how the procedures manual was applied on a specific instance.
19	Section 7: Continuing Obligations Cautionary Announcements Paragraph after paragraph 7.43 (Under Communication with Investors) Appendix 1 to Section 7 New Schedule 6 The JSE intends to amend the Debt Requirements to mirror	The JSE believes that it is in the interest of holders of debt securities that they are informed of any event/circumstances/developments relating to the applicant issuer of which the full impact of which is/are currently being determined and which may have a material effect on the price of the debt securities of the applicant issuer. Accordingly, holder of debt securities must be advised to exercise caution when dealing.

	the approach of cautionary announcements with the provisions of the Equity Requirements. Please note that a closed period includes any period when the applicant issuer is trading under a cautionary announcement.	
20	 Section 2 : Debt Sponsor or Designated Persons Independent Debt Sponsor Paragraph 2.6(e) The JSE intends to amend the Debt Requirements to require the appointment of an independent debt sponsor where the debt sponsor is also the applicant issuer or is a subsidiary, an associate or a division of the applicant issuer. However, where an applicant issuer is listed on the Main Board or AltX of the JSE, an independent debt sponsor is not required to be appointed. The South African Government Paragraph 9.3 It should be noted that the National Treasury of the South African Government, as an issuer of debt securities pursuant to Section 9 of the Debt Requirements, is not required to comply with paragraph 2.6(e). 	In support of an enhanced debt sponsor oversight approach, the JSE believes that an independent debt sponsor must be appointed where the debt sponsor is also the applicant issuer or is a subsidiary, an associate or a division of the applicant issuer. The JSE will not require the appointment of an independent debt sponsor where the debt issuer is already listed on the basis of enhanced governance and regulation already applicable to such issuer.
21	Section 4: Listing Particulars	The aim of the amendment is to provide clarity to ensure disclosure of a material change apply to all debt issuers equally.
	Offering circular or pricing supplement	
	Paragraph 4.24(z)	
	The JSE intends to amend the Debt Requirements to make	

	disclosure of a material change applicable to all debt issuers, notwithstanding that a debt issuer may be governed under the CP Regulations or Securitisation Regulations.	
22	Section 4: Listing Particulars Section 7: Continuing Obligations New Definition – "Restrictive Funding Arrangements" Paragraph 4.12(s) Paragraph 7.49(k) The JSE intends to amend the Debt Requirements to mirror the disclosure of restrictive funding arrangements as per the Equity Rules.	The aim of the amendment is to disclose any impediment on the ability of the applicant issuer's ability to service debt.
23	Section 7: Continuing Obligations Communication with Investors Paragraph 7.38 (c) – (e) The JSE intends to amend the Debt Requirements to make it clear to investors that the covenant has been tested in accordance with the placement document.	It has come to the attention of the JSE that certain issuers are not adhering to financial covenant testing or calculation definitions in accordance with the placing documents. The requested amendment will make it clear to investors that the covenant has been tested in accordance with the placement document (and can be relied upon by investors) as the issuer would be required to make a public declaration in this regard via SENS.

24	New Section 11 - Professional Debt Segment New Section 11 to allow for a professional debt segment that must be distinguished from the general debt segment. As such, of vital importance is the definition of "debt securities" under the general definitions of the Debt Listings Requirements versus the definition of "instrument" under the new Section 11 – Professional Debt Segment.	The purpose of the professional debt segment is to create a market for the listing of instruments referencing assets or entities of which the information, if made public is possibly detrimental to the entity and therefore may not be published on SENS but must be made available to the investor or prospective investor in a virtual data room.
25	 Section 1: Authority of the JSE Paragraph 1.15(a) The JSE intends to amend the Debt Requirements to remove the obligation to release announcements under the JSE's general code. Applicant issues will now be required to release announcements under their own issuer code. 	The amendment is a procedural change as a result of changes to the JSE internal systems.