

Amendments to the JSE Debt Listings Requirements – Part 2 of 2018

The JSE amended the JSE Debt Listings Requirements (the “**Debt Requirements**”) to introduce significant enhancements to (i) corporate governance, with a specific focus on state-owned entities, and (ii) disclosure and transparency in general in the debt market.

During the JSE public consultation process which commenced during September 2018, the JSE embarked on an unprecedented four rounds of public consultation, played a key role in arranging two active engagement sessions between investors and debt issuers, and engaged actively through one on one sessions with various debt market participants. The amendments were then subject to a further public consultation process by the Financial Sector Conduct Authority (“**FSCA**”) pursuant to the provisions of the Financial Markets Act No.19 of 2012 (the “**FMA**”) and the Debt Requirements. All the above steps have facilitated the JSE to hear and understand the concerns raised by investors, debt issuers, debt sponsors and other stakeholders on the proposed amendments to the Debt Requirements.

It was clear from the spirited debate and divergent opinions and comments received that market participants had competing interests and conflicting points of view in respect of the regulatory structure underpinned by FMA and the Debt Requirements. The Debt Requirements must strike a balance between these competing commercial and other interests of market participants.

The amendments are aimed to ensure a fair, efficient and transparent South African financial debt market through the application of sound corporate governance provisions by debt issuers supported by a focused disclosure regime to enable holders of debt securities to make informed investment decisions. These provisions, include but are not limited to, the following, -

- Applying more focus on debt sponsor independence in the application and interpretation of the Debt Requirements;
- Prescribing general minimum listing entry criteria for applicant issuers and reformatting the Debt Requirements as a whole to allow for the fit for purpose application thereof depending on the type and nature of the debt issuer/type of debt securities;
- Broader disclosure obligations aimed at the board of directors and the applicant issuer itself in the listing particulars;
- Additional continuing obligations dealing with covenants, price sensitive information, publication of financial results, changes to the board of directors and dealings in securities by the board of directors;
- Focused disclosure on repurchases of debt securities by debt issuers, subject to the threshold, to ensure that the market is appraised on (i) debt issuer funds being used to acquire debt securities and (ii) the nominal value of debt securities outstanding, during a financial year;
- Affording holders of debt securities the ability to call meetings, which demand must be communicated by the debt issuer, as well as the outcome of such meeting, through SENS;
- The mandatory appointment of a debt officer to act as central contact person to assist holders of debt securities with any issues pertaining to compliance with the terms and conditions of any placing document, security documents and/or any applicable pricing supplements(s) and the Debt Requirements, and to assist holders of debt securities to access the register of holders of debt securities;
- Mandatory corporate governance provisions, introduced as a standalone section, to allow for the fit for purpose application thereof depending on the type and nature of the debt issuer/type of debt securities. The mandatory corporate governance provisions deal with the following:

- King IV application disclosure in placing document and financial information;
- Appointment of audit committee with defined responsibilities;
- Inclusion of a brief CV of each director in the annual financial statements and notice of the general meeting or annual general meeting (election or re-election).
- Capacity of each director to be disclosed;
- Policy dealing with the evaluation of directors;
- Policy on conflicts of interest; and
- Policy on nomination of directors.
- Additional mandatory corporate governance provisions applying specifically to state-owned entities:
 - Policy on treatment of domestic prominent influential persons;
 - Policy on procurement; and
 - Policy on loans and procurement where related parties and prescribed officers are involved.

The FSCA has today published the approval of the amendments to the Debt Requirements in the Government Gazette through Board Notice 89 of 2020 No. 43571, with the effective date of 31 August 2020.

From the outset of the public consultation process followed by the JSE, the JSE acknowledged that applicant issuers and debt sponsors would require a reasonable amount of time to consume and adopt the new Debt Requirements. The JSE will issue a notice to the debt market on the transitional provisions in respect of the new Debt Requirements before the effective date.

The new Debt Requirements are available on the JSE's website: www.jse.co.za (Route: Companies & Issuer Regulation/Issuer Regulation/Announcements regarding Listings Requirements).

The JSE is working with its publisher to prepare the new Service Issue to the Debt Requirements.

31 July 2020