Schedule […]
Independent professional expert and fairness opinions[[1]](#footnote-1)

Appointment

1.1 It is the responsibility of the directors to appoint an independent professional expert (the “expert”) to prepare and publish a fairness opinion in terms of the Requirements or, if the directors elect to obtain an opinion on a voluntary basis and wishes to publish the opinion in the market.

1.2 The directors must ensure that any director who is party to the transaction/corporate actions (being the subject matter of the fairness opinion) is excluded from the process of mandating the expert and providing the recommendations to shareholders.

1.3 The directors must determine the competency and independence of the expert. In support of these determinations the following must be submitted to the JSE, with the fairness opinion:

 (a) confirmation of independence by the expert addressed to the directors;

 (b) confirmation of competency by the expert addressed to the directors; and

 (c) declaration by the issuer addressed to the JSE.

 The prescribed forms are available on the JSE Forms Portal.

**General**

1.4 The expert must opine on the fairness of a transaction/corporate action but may also opine on the reasonableness, provided detailed disclosure is provided. Fairness is based on quantitative issues and reasonableness on qualitative issues.[[2]](#footnote-2)

1.5 The date on which the opinion is issued must be the same as the date that the directors authorise the submission to the JSE for formal approval.

**Removal of Listing**

The following applies:

1.6 The expert must perform a valuation of the issuer as whole.

1.7 The expert is not prohibited from applying any discounts or premiums to such valuation which they believe impact their valuation in order to opine whether the offer is fair or not.

1.8 The expert’s opinion must include full disclosure of the valuation number both including and excluding any discount or premium applied. There must be separate disclosure of the details and value attributed to each of the different types of discounts or premiums the expert has applied to the valuation in reaching their opinion.

1.9 The expert must explain why they believe each of the discounts or premiums is relevant in the circumstances.

1.10 The inclusion of a valuation range (for both the entity valuation and the discounts/premiums) as opposed to an absolute figure is acceptable, but that range should not be so wide as to render it meaningless and the opinion must include justification for the size of the range. The JSE may ask the expert to narrow that range.

**Independence of the experts:**

1.11 For purposes of a removal of listing in terms of Section 1, the expert (including its staff) must not:

 (a) have any relationship with the issuer or with any party involved in the removal of listing;

 (b) have had any relationship with the issuer or with any party to the removal of listing within the immediate preceding two years; and

 (c) be related to any person who has or has had a relationship contemplated in (a) and (b) above.

1.12 In relation to other fairness opinions, the JSE deems an expert independent, if the expert:

 (a) for the past 18 months, has had no shareholding in the issuer;

 (b) for the past 18 months, has not been a director of the issuer;

 (c) is not employed by the issuer;

 (d) has had no relationship with any party to the corporate action, other than the applicant issuer in a capacity of auditor,sponsor or CP); and

 (e) has no interest in the success of the corporate action other than its reasonable professional fee (with no success fee element) for acting as expert;

1.13 Experts which are deemed by the JSE not to be independent:

 (a) any financial institution involved in the transaction/corporate action, which has a direct or indirect interest in the transaction/corporate action;

 (b) any adviser to the issuer in relation to the transaction/corporate action; and

 (c) the auditor of the target in respect of an acquisition undertaken by the applicant issuer.

**Content of opinion**

1.14 The content of the fairness opinion must include at least the following:[[3]](#footnote-3)

 (a) title, addressee and date;

 (b) the purpose of the opinion;

 (c) reference to the relevant provisions in the Requirement(s) or Panel rule(s) in terms of which the opinion is being issued;[[4]](#footnote-4)

 (d) headings identifying the major sections including, but not limited to, introduction, procedures and the opinion;

 (e) an explanation as to how the terms “fair” and, if so mandated by the directors “reasonable”, apply in the context of the specific transaction;[[5]](#footnote-5)

 (f) details of the information and sources of information;

 (g) identification and discussion of both the external and internal key value drivers, sensitivities performed and assumptions used;

 (h) if applicable, a summary of the way the expert has satisfied itself as to the appropriateness and reasonableness of the underlying information and assumptions;[[6]](#footnote-6)

 (i) an explanation of the significant factors that led to the opinion given;

 (j) any limiting conditions;

 (k) the relationships between the issuer (and any other parties involved in the transaction) and the expert, as identified in the form in 1.3(a) above;

 (l) confirmation that a valuation has been performed and identification of the valuation methodologies applied and, where there has been reliance upon a third party valuation, confirmation that the expert is satisfied with this valuation;[[7]](#footnote-7)

 (m) a summary of other factors taken into account or procedures carried out in reaching the opinion;

 (n) a statement that an individual shareholder’s decision may be influenced by such shareholder’s particular circumstances and, accordingly, that a shareholder should consult an independent adviser if in any doubt as to the merits or otherwise of the transaction;

 (o) the opinion and the effective date of the opinion;

 (p) the expert’s name, address and authorised signature; and

 (q) any other information that the expert deems appropriate.

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)