Section 1
Authority of the JSE

**Scope of section**

This section sets out the authority of the JSE.

New and Amended Definition [Definitions Section]

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| Requirements[[1]](#footnote-1)  |  | the listing requirements of the JSE, as amended, including Schedules and Practice Notes, but excluding the Introduction;  |

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| regulated party/ies[[2]](#footnote-2)  |  | subject to the FMA, an issuer, its directors, officers, employees and agents; |
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General authority of the JSE

1.1 The JSE is a licensed exchange in terms of the FMA which statute records the JSE’s licensed duties and functions, one of which is its duty to adopt and enforce the Requirements.

**General Principles**

1.2 The general principles must always be observed in the application and interpretation of the Requirements. The general principles are as follows:

 (a) to ensure the existence of a market for the raising of capital, an efficient mechanism for the trading of securities, and to protect investors;

 (b) to ensure that securities are only listed if the JSE is satisfied that it is appropriate to be listed;

 (c) to ensure that full, equal and timeous public disclosure is made to all holders of securities and the general public regarding the activities of an issuer that are price sensitive;

 (d) to ensure that holders of securities are given full information and are afforded adequate opportunity to consider in advance and vote upon:

 (i) substantial changes in an issuer’s business operations; and

 (ii) other matters affecting an issuer’s constitution or the rights of holders of securities;

 (e) to ensure that all parties involved in the dissemination of information observe the highest standards of care in doing so, which includes adherence to Section 81 of the FMA;[[3]](#footnote-3)

 (f) to ensure that holders of the same class of securities are afforded fair and equal treatment in respect of their securities; and

 (g) to ensure that the Requirements promote investor confidence in standards of disclosure and corporate governance in the conduct of applicant issuers’ affairs and in the market as a whole.

Suspension of securities

1.3 Subject to 1.10, the JSE may suspend the listing of securities if it will further one or more of the objects of the FMA, which may include the following events:[[4]](#footnote-4)

 (a) non-compliance with the Requirements, initiated by the JSE or issuer;

 (b) failure to remedy the existence of two levels of information in the market, initiated by the JSE or issuer;

 (c) an application or court order for the winding-up and/or liquidation of an issuer in terms of the Act, or in respect of a foreign issuer equivalent legislation;

 (d) an application to be placed in business rescue in terms of the Act or in respect of a foreign issuer equivalent legislation;

 (e) where the Commission issues a notice to an issuer in terms of Section 22 of the Act or deregisters an issuer in terms of Section 82(3) of the Act; and

 (f) an issuer ceasing to do business,

 and may impose conditions for the lifting of such suspension.

1.4 Issuers and/or sponsors must inform the JSE immediately if events in 1.3 arise.

1.5 If a listing is suspended and the issuer fails to take adequate steps to enable the JSE to reinstate the listing within a reasonable period of time, the JSE may remove the listing.[[5]](#footnote-5)

1.6 In accordance with Section 12(3) of the FMA, the JSE may immediately suspend the listing of an issuer’s securities if the Requirements or any conditions imposed by the JSE are not complied with or if a circumstance arises which the Requirements envisage as a circumstance justifying the immediate suspension of trading, provided the immediate suspension does not exceed 30 days, which period may be extended for further periods of 30 days.

Continuing obligations in relation to suspensions

1.7[[6]](#footnote-6)  If the listing of securities is suspended, the issuer must, unless the JSE decides otherwise:

 (a) continue to comply with all the Requirements;

 (b) submit a monthly progress report to the JSE pertaining to its current state of affairs and any proposed steps to reinstate the listing; and

 (c) release a SENS announcement, on a quarterly basis, concerning its current state of affairs and any proposed steps to reinstate the listing, including on which expected date the suspension is to be lifted.

Removal of listing of securities[[7]](#footnote-7)

1.8 Subject to 1.10, the JSE may remove the listing of securities if it will further one or more of the objects of the FMA, which may include the following events:[[8]](#footnote-8)

 (a) non-compliance with the Requirements, initiated by the JSE or issuer;

 (b) when holders of securities have approved the removal in the manner specified in 1.9;

 (c) when an offeror intends to remove a listing of securities through a take-over offer in terms of Section 124 of the Act or in respect of a foreign issuer equivalent legislation; or[[9]](#footnote-9)

 (d) on the completion of a scheme of arrangement in terms of Sections 114 and 115 of the Act or in respect of a foreign issuer equivalent legislation, where all the securities have been acquired and the JSE is satisfied that the issuer no longer qualifies for listing; and

 (e) the redemption of securities in accordance with their terms,

 provided the listing of such securities was first suspended.

1.9 Where an issuer seeks the approval from holders of securities for the removal of listing, the following must be adhered:[[10]](#footnote-10)

 (a) a circular must be sent to holders of securities complying with 11.1, clearly stating the reason for the removal;[[11]](#footnote-11)

 (b) a fair offer must be made to all holders of securities disclosing the terms and conditions;

 (c) the board of the issuer must obtain a fairness opinion, which must be included in the circular, with a statement by the board confirming that the offer is fair to holders of securities of the issuer (excluding any related party/ies if they are holders of equity securities); and

 (d) include a notice of general meeting and removal of listing resolution in the circular. At least 75% of the votes of all holders of the securities, present or represented by proxy at the general meeting, must cast their vote in favour of such resolution excluding any votes from the offeror, their associates and any party acting in concert.

**Suspension and removal process**

1.10 When the listing of securities is under threat of suspension or removal, the JSE will, in terms of section 12(2) of the FMA:

 (a) inform the issuer of its intention to suspend/remove;

 (b) give the issuer the reasons for the intended suspension/removal; and

 (c) call upon the issuer to show cause, within a period specified by the JSE, why the suspension/removal should not be effected.

**Objections & Appeals**

1.11 Save for a decision in terms 1.12, a regulated party may object against any other decision taken under the Requirements by notifying the JSE in writing within 48 hours of the decision and giving reasons for the objection. When considering the objection, the JSE may, in its sole discretion, consult with at least three independent members of the Issuer Regulation Advisory Committee. The JSE’s decision will be final.

1.12 An issuer may appeal a removal of listing decision by notifying the JSE in writing within 48 hours of the decision and giving reasons for the appeal. The JSE will constitute the Issuer Regulation Appeal Committee in accordance with the mandate issued by the JSE Board, to hear the appeal.[[12]](#footnote-12)

Revision of the List

1.13 The JSE will revise an issuer’s listing annually after receipt of an annual compliance certificate, available on the JSE Forms Portal, from each issuer which must accompany the issuer’s annual report in terms of 3.16. If the certificate is not submitted to the JSE, the procedure below shall apply: [[13]](#footnote-13)

 (a) on the first day after failure to submit the certificate to the JSE:

 (i) the listing will be annotated on the trading system with an “R” to indicate that it has failed to comply; and

 (ii) the JSE will release an announcement on SENS, advising that the issuer has not provided the JSE with the certificate and cautioning holders of securities of the consequences referred to in (b) below.

 (b) the JSE will consider the possible suspension of the issuer, if the certificate is not submitted to the JSE. [[14]](#footnote-14)  [[15]](#footnote-15)

Penalties

1.14 Save for to the provisions dealing with sponsors in Section 2, and in terms of the FMA, where the JSE finds that any regulated party contravened or failed to comply with the Requirements, the JSE may, subject to the FMA:[[16]](#footnote-16)

 (a) reprimand regulated parties individually or jointly, privately or publicly;[[17]](#footnote-17)

 (b) impose a fine on regulated parties individually or jointly, not exceeding such amount prescribed by the FMA;[[18]](#footnote-18)

 (c) disqualify an issuer’s director(s)/officer(s) from acting in that capacity for any period of time; and/or[[19]](#footnote-19)

 (d) suspend or remove a listing of securities; and/or [[20]](#footnote-20)

 (e) issue any other penalty that is appropriate in the circumstances.

1.15 For any contravention of or failure to comply with the Requirements the JSE may direct that:[[21]](#footnote-21)

 (a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, national newspapers, the website of the JSE or through SENS; and/or[[22]](#footnote-22) [[23]](#footnote-23)

 (b) any party who contravenes or fails to comply with the Requirements pay the costs incurred in an investigation or hearing. [[24]](#footnote-24)

1.16 If any of the parties fail to pay a fine, the JSE may file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed, and such statement thereupon shall have all the effects of a civil judgement lawfully given in that court against that person in favour of the JSE for a liquid debt in the amount specified in that statement.[[25]](#footnote-25)

1.17 The whole or any part of the fines issued in terms of 1.14 will be appropriated as follows:[[26]](#footnote-26)

 (a) External costs incurred by the JSE at its specific instance and request, in enforcing the Requirements, including but not limited to, attorney fees, senior counsel fees, forensic investigation fees and any fees that relate (direct or indirectly) to any investigative services or in support of any investigation initiated by the JSE;

 (b) External costs incurred by the JSE to create an observance and awareness as to the interpretation and application of the Requirements in furtherance of the General Principles, and the objects of the FMA; and

 (c) Project costs initiated by the JSE, which are directly associated with the Requirements and falls within the sphere of research and/or analysis in financial markets regulation.

Disclosure of information

1.18 The JSE may require an issuer to disclose –

 (a) to it any information at the issuer’s disposal about listed securities, or about the affairs of that issuer, if such disclosure is necessary to achieve one or more objects in Section 2 of the FMA; and

 (b) that information to the holders of securities through a SENS announcement, within a period specified by the JSE.

1.19 If an issuer refuses to disclose the information to the JSE or to the holders of securities, the JSE may, unless the issuer obtains a court order excusing it from such disclosure, suspend trading in those securities until such time as the required disclosure has been made to the satisfaction of the JSE.

Publication

1.20 The JSE may, announce through SENS, any penalties in 1.14 and provide reasons. [[27]](#footnote-27)

**Liability**

1.21 In terms of Section 72 of the FMA, the JSE, the chief executive officer, a director, official, other officer, employee or representative or any member of the controlling body or committee of a controlling body, is not liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by the JSE, chief executive officer, other officer, employee, representative or member in the *bona fide* performance of an obligation or function under or in terms of the FMA or the Requirements.

1.22 No applicant issuer or its directors, officers or holders of securities, including nominees, an auditor or reporting accountant specialist shall have any cause of action against the JSE, or against any person employed by the JSE, for damages arising out of any statement or announcement made in terms of paragraph 1.20, unless such publication was made either grossly negligently or with wilful intent.[[28]](#footnote-28)

1.23 The JSE shall not be responsible or liable to any person for any loss or damage resulting from -

 (a) negligence, on the part of the JSE or on the part of any employee or agent of the JSE ;

 (b) any act of omission on the part of any third party;

 (c) incorrect, inaccurate, defective or misleading information furnished or supplied by the JSE or any employee or agent of the JSE or any third party;

 (d) equipment breakdown or the breakdown, interruption, suspension, termination or failure of or defect in any system, including but not limited to any trading system, or service rendered by or on behalf of the JSE;

 (e) computer system malfunction, the interruption or failure of communications links, power failure, the failure of or defect in any software or hardware, whether owned by, licensed or leased to the JSE, the loss or destruction of any data and any loss or damage caused by natural disaster, riot, insurrection, acts of vandalism, sabotage or similar cause; and

 (f) the termination, for any reason, of any licence, registration or other agreement to which the JSE is a party.

Amendments to the Requirements[[29]](#footnote-29)

1.24 Subject to the FMA, the JSE may amend the Requirements through a public consultation process. Proposed amendments to the Requirements will be published through SENS and the JSE website inviting comments from the public for a period of one month.

1.25 Thereafter, the JSE will submit the proposed amendments to the Requirements, together with an explanation of the reasons for the proposed amendments, and any concerns or objections raised during the public consultation process, to the registrar[[30]](#footnote-30)\* for approval.[[31]](#footnote-31)

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30. \* Means the person referred to in Section 6 of the FMA. [↑](#footnote-ref-30)
31. [↑](#footnote-ref-31)