Repurchase of securities

Description

5.67 (A) In the event that a shareholder of an issuer exercises its rights in terms of Section 164 of the Act and the issuer, in terms thereof, purchases its shares from the shareholder, the purchase of such shares will not be regarded as a repurchase of securities in terms of the Listings Requirements. The issuer must, however, within 48 hours of repurchasing the shares from the shareholder:[[1]](#footnote-1)

(a) apply to the JSE for the removal of such shares in terms of Schedule 2 Form A5 of the Listings Requirements. The application need only comply with paragraphs 1.1(a) to (e) and 1.3–1.5, however, and must state the reason for the application to delist the shares; and

(b) on the same day that the issuer applies to the JSE for the delisting of the shares, the issuer must announce on SENS the following details concerning the delisting of the shares:

(i) the effective date of the delisting of the shares;

(ii) the number of shares that will be delisted (expressed in a number and a percentage of the issued share capital of the issuer):

a. the price paid by the issuer for the shares;

b. the identity of the shareholders from whom the shares were repurchased; and

c. in respect of which resolution the shareholder exercised its rights in terms of Section 164(2) of the Act.

(B) Repurchase of securities not requiring shareholder’s approval:

(a) A pro rata repurchase by the issuer or through its subsidiary of its securities from all its shareholders; and[[2]](#footnote-2)

(b) Intra-group repurchases by the issuer of its securities from wholly-owned subsidiaries, share incentive schemes pursuant to Schedule 14 and/or non-dilutive share incentive schemes controlled by the issuer, where such repurchased securities are to be cancelled,

save to the extent required in terms of the Act.

Repurchases pursuant to paragraph 5.67(B)(b) must be announced in accordance with paragraph 3.95.[[3]](#footnote-3)

(C) In all other instances an acquisition by an issuer of its own securities or a purchase by a subsidiary of securities in its holding company (in accordance with Section 48 of the Act or in accordance with repurchase laws of a foreign incorporated issuer), will be regarded as a repurchase of securities in terms of the Listing Requirements, in which case the holding company must comply with paragraphs 5.67(B) to 5.84:[[4]](#footnote-4)

(a) on terms that are approved by securities holders in a general meeting in respect of that particular repurchase (“a specific repurchase of securities”), which shall be valid until such time as the approval is amended or revoked by a special resolution; or

(b) generally approved by securities holders by the giving of a renewable mandate, which shall be valid until the company’s next annual general meeting or for 15 months from the date of the resolution, whichever period is shorter, to the directors of the company to repurchase its securities subject to the requirements of the JSE and to any other restrictions set out in the mandate (“a general repurchase of securities”).

5.68 The general repurchase by a company of its own securities shall not, in the aggregate in any one financial year exceed 20% of that company’s issued share capital of that class in any one financial year.

Requirements for specific authority to repurchase securities (“specific repurchase”)

5.69 In respect of specific repurchases (which includes the grant of an option in terms of which an issuer may or will be required to repurchase its securities in future) and a specific offer (being an offer from securities holders specifically named) an applicant may only make a specific repurchase subject to the following:[[5]](#footnote-5)

(a) authorisation thereto being given by its MOI;

(b) approval being given in terms of a special resolution excluding, in the case of a specific offer, the votes of any shareholder and its associates that are participating in the repurchase;

(c) a statement by the directors that, after considering the effect of such repurchase, the provisions of Section 4 and Section 48 of the Act have been complied with and that the:

(i) company and the group will be able in the ordinary course of business to pay their debts for a period of 12 months after the date of approval of the circular; and

(ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the approval of the circular. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited consolidated annual financial statements which comply with the Act; and

(iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the circular (refer to paragraph 7.E.7); and

(iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of approval of the circular (refer to paragraph 7.E.7);

(d) a resolution by the board of directors of the issuer that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of any company of the group;[[6]](#footnote-6)

(e) if the repurchase is:[[7]](#footnote-7)

(i) from a related party/ies as described in paragraphs 10.1 to 10.3, and

(ii) the price at which the securities are purchased is at a premium to the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the repurchase is agreed in writing between the issuer and the party selling the securities (the JSE should be consulted for a ruling if the applicant’s securities have not traded in such 30 business day period)

then such repurchase shall be subject to the inclusion of a statement by the board of directors stating whether the repurchase is fair insofar as the shareholders (excluding the related party/ies if it/they are equity securities holders) of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular) prepared in accordance with Schedule 5 before making this statement;

(f) this requirement has been repealed;

(g) if a company has announced that it will make a specific repurchase, it must pursue the proposal, unless the JSE permits the company not to do so; and

(h) a company or its subsidiary may not repurchase securities (including the convening of a general meeting to obtain the required shareholders’ approval) during a prohibited period as defined in paragraph 3.67 unless they have in place a repurchase programme or involves the execution of an existing authority obtained from shareholders as contemplated above. The issuer must instruct only one independent third party, which makes its investment decisions in relation to the issuer’s securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme. The repurchase programme must be submitted to the JSE in writing prior to the commencement of the prohibited period and must include the following details:[[8]](#footnote-8)

(i) the name of the independent agent;

(ii) the date the independent agent was appointed;

(iii) the commencement and termination date of the repurchase programme; and

(iv) the quantities of securities to be traded during the relevant period which must be fixed (not subject to any variation).

Documents to be submitted to the JSE

5.70 The documents detailed in paragraph 16.32 must be submitted to the JSE in accordance with the relevant corporate action timetable.[[9]](#footnote-9)

Documents to be published

5.71 The documents that require publication regarding a repurchase of securities are set out in paragraphs 11.23 to 11.25, and must be actioned in accordance with the relevant corporate action timetable.[[10]](#footnote-10)

Requirements for general authority to repurchase securities (“general repurchase”)

5.72 A company may only make a general repurchase of securities subject to the following:

(a) the repurchase of securities being effected through the order book operated by the JSE trading system and done without any prior understanding or arrangement between the company and the counter party (reported trades are prohibited);

(b) authorisation thereto being given by its MOI;[[11]](#footnote-11)

(c) approval by shareholders in terms of a special resolution of the company, in annual general/general meeting, which shall be valid only until the next annual general meeting or for 15 months from the date of the resolution, whichever period is shorter;

(d) repurchases may not be made at a price greater than 10% above the weighted average of the market value for the securities for the five business days immediately preceding the date on which the transaction is effected. The JSE should be consulted for a ruling if the applicants securities have not traded in such five business day period;

(e) at any point in time, a company may only appoint one agent to effect any repurchase(s) on the company’s behalf;

(f) [Repealed]

(g) a resolution by the board of directors that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and[[12]](#footnote-12)

(h) an issuer or its subsidiary may not repurchase securities during a prohibited period as defined in paragraph 3.67 unless they have in place a repurchase programme. The issuer must instruct only one independent third party, which makes its investment decisions in relation to the issuer’s securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme. The repurchase programme must be submitted to the JSE in writing prior to the commencement of the prohibited period and must include the following details:[[13]](#footnote-13)

(i) the name of the independent agent;

(ii) the date the independent agent was appointed by the issuer

(iii) the commencement and termination date of the repurchase programme; and

(iv) where the quantities of securities to be traded during the relevant period are fixed (not subject to any variation).

Documents to be submitted to the JSE

5.73 The documents detailed in paragraph 16.32 must be submitted to the JSE in accordance with the relevant corporate action timetable.[[14]](#footnote-14)

Documents to be published

5.74 The documents that require publication regarding a repurchase of securities are set out in paragraphs 11.26 to 11.27, and must be actioned in accordance with the relevant corporate action timetable.[[15]](#footnote-15)

General

5.75 Whenever an issuer wishes to use treasury shares, such use must comply with the Listings Requirements as if such use was a fresh issue of securities.[[16]](#footnote-16)

5.76 The requirements of paragraphs 5.67 to 5.81 do not apply in respect of the following:[[17]](#footnote-17)

(a) transactions entered into on behalf of *bona fide* third parties, either by the company or any other member of its group on arm’s length terms; or[[18]](#footnote-18)

(b) any acquisition by an issuer which is a financial services company (for the purposes hereof a company that is an authorised user as defined in the FMA, a long-term insurer as defined in the Long-term Insurance Act 1998, as amended, a short-term insurer as defined in the Short-term Insurance Act 1998, as amended and/or a bank as defined in the Banks Act 1990, as amended) of its own securities or a purchase by a subsidiary (which is a financial services company) of an issuer of the issuer’s securities on an arm’s length basis and held by such financial services company for the benefit of or to hedge the financial services company’s obligations to third parties and/or as a component of a financial services product made available to clients of that financial services company in the normal course of business. Such securities purchased will not be treated as treasury shares for purposes of the Listings Requirements.

5.77 Where there are securities in issue that are high/low voting shares or are convertible into, exchangeable for, or carry a right to subscribe for securities of the class proposed to be repurchased, a separate meeting of the holders of such convertible securities or high/low voting shares must be held and their approval by special resolution obtained before the company enters into any contract to repurchase securities of the relevant class unless the trust deed or terms of issue of the convertible securities provides for the company purchasing its own equity securities. A circular and notice of meeting must also be sent to them as stipulated in paragraphs 11.23 (in terms of a specific repurchase) and 11.26 (in terms of a general repurchase).

Purchase of securities other than equity securities  
*Notification of decision to repurchase*

5.78 Where a company intends to make an offer, which is to be open to all holders in respect of all or part of their holdings, to repurchase any of its securities other than equity securities, it must:

(a) while the offer is being actively considered, ensure that no dealings in the relevant securities are carried out by or on behalf of the company or another member of its group, associate or subsidiary, until the proposal has either been submitted to the JSE or abandoned; and

(b) notify the JSE of its decision to proceed with the offer to repurchase.

Announcement of repurchases, early redemptions and cancellations

5.79 Any repurchases, early redemptions or cancellations of the issuer’s securities, other than equity securities, must be announced when an aggregate of 3% of the initial number of the relevant class of securities has been purchased, redeemed or cancelled and for each 3% in aggregate of the initial number of that class acquired thereafter. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the business day following the day on which the relevant threshold is reached or exceeded. The announcement must state the number of securities purchased, redeemed or cancelled since the most recent announcement, the number of the class of securities that remain outstanding, and when the securities repurchased are to be cancelled and the listing removed, if applicable.

Period between repurchase and notification

5.80 In circumstances where the repurchase is not being made pursuant to an offer announced in accordance with paragraph 5.78 and the repurchase results in the company reaching or exceeding a relevant threshold as specified in paragraph 5.79, no further repurchases may be effected until after notification in compliance with paragraph 5.79 has been made.

Convertible securities

5.81 In the case of securities that are convertible into, exchangeable for, or carry a right to subscribe for equity securities, unless a partial offer is made to all holders of that class of securities on the same terms, repurchases must not be made at a price more than 10% above the 5 business day weighted average price of the securities immediately preceding the date of repurchase.

Derivative transactions relating to the repurchase of securities (general authority)

5.82 [Repealed][[19]](#footnote-19)

5.83 [Repealed][[20]](#footnote-20)

5.84 [Repealed][[21]](#footnote-21)

Repurchase of securities

Specific repurchases

11.23 The circular must be sent to shareholders within 60 days of publication of the announcement and must comply with and/or contain the following information:[[22]](#footnote-22)

(a) contents of all circulars (refer to paragraph 11.1);

(b) general information including:[[23]](#footnote-23)

(i) Major shareholders (7.A.27);

(ii) Material change (7.E.10);

(iii) Directors’ interests in securities (7.B.20);

(iv) Share capital of the company (7.A.4 or 7.A.5);

(v) Preliminary expenses and issue expenses (7.B.17);[[24]](#footnote-24)  and

(vi) Responsibility (7.B.22 and 7.B.23);[[25]](#footnote-25)

(c) the reason for, and method by which a company intends to repurchase its securities, including the number of securities to be repurchased and the price to be paid;

(d) in the case of a repurchase from a specific shareholder or shareholders, the name of such shareholder(s) and the current shareholding(s) of such shareholder(s) and the names and details of the parties excluded from voting in terms of paragraph 5.69(b); [[26]](#footnote-26)

(e) subject to (f) below, the effect on earnings per share, headline earnings per share, net asset value per share, net tangible asset value per share and, if applicable, diluted earnings and headline earnings per share;[[27]](#footnote-27)

(f) if the specific repurchase is for cash only, an explanation, including supporting information (if any), of the impact of the repurchase on the financial information;[[28]](#footnote-28)

(g) a statement by the directors that, after considering the effect of such repurchase, the:

(i) company and the group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the approval of the circular;

(ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the approval of the circular. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited consolidated annual financial statements;

(iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the approval of the circular (refer to paragraph 7.E.7);[[29]](#footnote-29)

(iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the approval of the circular (refer to paragraph 7.E.7); and

(v) a resolution by the board of directors that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group;

(h) a statement as to the source of funds to be utilised; and

(i) if applicable in terms of paragraph 5.69, a statement by the board of directors confirming whether the repurchase is fair insofar as the shareholders of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular), prepared in accordance with Schedule 5, before making this statement.[[30]](#footnote-30)  [[31]](#footnote-31)

11.24 In the case of a pro rata offer, announcements must be made in accordance with the relevant corporate action timetable.[[32]](#footnote-32)

11.25 In the case of a specific repurchase, the issuer, after it has agreed the terms, must immediately publish an announcement containing full details, including:[[33]](#footnote-33)

(a) the terms of the repurchase;

(b) the date of the general meeting at which the specific authority will be sought;

(c) from whom the specific repurchase is to be made. If paragraph 5.69(e) is applicable, a statement must be included that the repurchase shall be subject to the inclusion of a statement by the board of directors in the circular confirming whether the repurchase is fair insofar as the shareholders (excluding the related party/ies if it/they are equity securities holders) of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion prepared in accordance with Schedule 5 before making this statement;

(d) the date on which the repurchase is to be made and the date on which the securities will be cancelled and the listing terminated, if applicable;

(e) the effect on earnings per share, headline earnings per share, net asset value per share, net tangible asset value per share and, if applicable, diluted earnings and headline earnings per share or the explanation as contemplated in paragraph 11.23(f);[[34]](#footnote-34)

(f) the number of treasury shares held after the repurchase; and[[35]](#footnote-35)

(g) a statement that a circular containing details of the above will be dispatched to shareholders.

General repurchases

11.26 If a company is seeking a general authority to purchase its own securities, a circular must be sent to securities holders, including a notice of annual general/general meeting, including the following:

(a) contents of all circulars (refer to paragraph 11.1);

(b) general information including:[[36]](#footnote-36)

(i) Major shareholders (7.A.27);

(ii) Material change (7.E.10);

(iii) Share capital of the company (7.A.4 or 7.A.5); and

(iv) Responsibility statement (7.B.22);

(c) a statement of the board of directors’ intention regarding the utilisation of the authority sought;

(d) a statement by the directors that after considering the effect of such maximum repurchase the:

(i) company and the group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the notice of the annual general/general meeting;

(ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the notice of the annual general/general meeting. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited annual group financial statements;

(iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the notice of the annual general/general meeting (7.E.7);[[37]](#footnote-37)

(iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the notice of the annual general/general meeting (refer to paragraph 7.E.7); and

(v) a resolution by the board of directors that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and[[38]](#footnote-38)

(e) a statement in the resolution that such authority is limited to paragraph 5.72(a), (c), (d) and 5.68.[[39]](#footnote-39)

11.27 When a company has cumulatively repurchased 3% of the initial number (the number of that class of shares in issue at the time that the general authority from shareholders is granted) of the relevant class of securities, and for each 3% in aggregate of the initial number of that class acquired thereafter, an announcement must be made. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the second business day following the day on which the relevant threshold is reached or exceeded, and must contain the following information:

(a) the date(s) of repurchase(s) of securities;

(b) the highest and lowest prices paid for securities so repurchased;

(c) the number and value of securities repurchased;

(d) the extent of the authority outstanding, by number and percentage (calculated by using the number of shares in issue before any repurchases were effected);

(e) a statement as to the source of funds utilised;

(f) a statement by the directors that, after considering the effect of such repurchase, the:

(i) company and the group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the announcement;

(ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the announcement. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited group annual financial statements;

(iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the announcement (refer to paragraph 7.E.7);

(iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the announcement (refer to paragraph 7.E.7);

(g) a statement confirming that paragraph 5.72 (a) has been complied with;

(h) an explanation, including supporting information (if any), of the impact of the repurchase on the financial information;[[40]](#footnote-40)

(i) the number of treasury shares held after the repurchase;[[41]](#footnote-41)

(j) the date on which the securities will be cancelled and the listing removed, if applicable; and[[42]](#footnote-42)

(k) in the event that the repurchase/purchase was made during a prohibited period through a repurchase programme pursuant to paragraphs 5.72 and/or 14.9(e) of Schedule 14, a statement confirming that the repurchase was put in place pursuant to a repurchase programme prior to prohibited period in accordance with the Listings Requirements.[[43]](#footnote-43)

Repurchase of securities

16.33 The following information is required to be submitted to and approved by the JSE before approval (where applicable) will be granted for a repurchase of securities, as contemplated in paragraphs 5.67 to 5.81:[[44]](#footnote-44)

(a) the circular;

(b) the application for removal complying with Schedule 2 Form A5;

(c) copies of any exchange control (refer to paragraph 16.26) approvals required;[[45]](#footnote-45)

(d) certified copies of any experts’ consents (refer to paragraph 7.F.10) appearing in the circular;[[46]](#footnote-46)

(e) the board of directors’ resolution approving the repurchase and confirming that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and[[47]](#footnote-47)

(f) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.[[48]](#footnote-48)

Announcement of intra-group repurchases

3.95 An issuer must release an announcement on SENS, immediately after terms have been agreed, with the details of any intra-group repurchases concluded pursuant to paragraph 5.67(B)(b), which must include the following:[[49]](#footnote-49)

(a) the date/s and total number of equity securities repurchased;

(b) whether the equity securities are repurchased from either a wholly-owned subsidiary/ies, share incentive scheme/s pursuant to Schedule 14 and/or and/or non-dilutive share incentive schemes controlled by the issuer;

(c) confirmation that the repurchased equity securities have reverted to authorised but unissued equity securities of the issuer in accordance with section 35(5) of the Act;

(d) the price paid for the repurchased equity securities; and

(e) the balance of the number of treasury shares held.

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)
8. [↑](#footnote-ref-8)
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46. [↑](#footnote-ref-46)
47. [↑](#footnote-ref-47)
48. [↑](#footnote-ref-48)
49. 3.95 introduced with effect from 1 June 2022. [↑](#footnote-ref-49)