Section 11Contents of Circulars and Listing Particulars

[See Relocation Report: To be moved to Section 7]

**Scope of section**

This section sets out the general provisions dealing with the content of circulars and listing particulars.

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Contents of all circulars and listing particulars

11.1 Circulars and listing particulars (collectively for this section the “circular”) must:

 (a) provide a clear and adequate explanation of the subject matter;

 (b) if voting or other action is required contain:

 (i) the information necessary to allow the holders of the securities to make a properly informed decision; and

 (ii) a heading drawing attention to the importance of the circular and advising holders of securities that are in any doubt as to what action to take, to consult appropriate independent advisers;

 (c) be prepared in English;

 *[creates uncertainty, contents of circulars are prescriptive]*

 (e) where new securities are being issued in substitution for existing securities, include details of the treatment of the existing documents of title;

 (f) details of the action required by certificated and dematerialised shareholders, as follows:

 (i) wherever reference is made to shareholders of an applicant issuer, the procedures for certificated, dematerialised own name and dematerialised shareholders must be separately detailed;

 (ii) the surrender of share certificates will only apply to certificated shareholders and the surrender forms must state this;

 (iii) in the case of dematerialised shareholders, the CSDP or broker will automatically action the surrender of ownership title in accordance with the corporate action or after having received an election instruction;

 (iv) election forms only apply to certificated shareholders and the election forms must state this. The circular must state that dematerialised shareholders’ elections should be provided to their appointed CSDP or broker in the form stipulated in the custody agreement entered into between the shareholder and the CSDP or broker;

 (v) the form of proxy included in the circular should state that it is for completion by certificated shareholders and own name dematerialised shareholders only. The circular must state that dematerialised shareholders must inform their CSDP or broker of their intention to attend any general meeting in order for such CSDP or broker to be able to issue them with the necessary authorisation to enable them to attend such meeting, or, alternately, should they not wish to attend the meeting, they should provide their CSDP or broker with their voting instruction;

 (vi) the salient dates should include all the dates in the declaration data and finalisation information. The definitions for such dates should be included in the “Definitions” section of the document; and

 (vii) if new securities are to be issued, securities must be issued dematerialised form.

11.2 Certain information required to be disclosed in a circular may be incorporated by reference, as set out below. *[moved up]*

Other classes of security

11.45 If a circular is dispatched to the beneficial owners of any particular class of security, the issuer must dispatch a copy or summary of such circular to the beneficial owners of all other classes of securities in such issuer, unless the contents of such circular is irrelevant to them.

*.[no regulatory relevance]*

Summary circulars

11.58 An issuer may prepare a summary circular based on a circular prepared in terms of the Requirements and approved by the JSE

 The summary circular:

 (i) must be approved by the sponsor and not be misleading or inaccurate;

 (ii) include a statement from the sponsor and the board, that they has reviewed and approved the summary circular and that it includes accurate information from the circular approved by the JSE ;

 (iii) must include a notice of availability, with a weblink to the issuers’ website, where the contents of the full circular can be viewed or accessed. The cover page of the summary circular must include a statement in bold and in capital letters stating clearly that the summary circular is only a summary and does not contain full or complete details; and

 *[moved up]*

 (v) be signed by the company secretary, a director of the applicant issuer and the sponsor.

 *[consolidated above]*Incorporation by reference

11.61 Information prepared in terms of the Requirements may be incorporated by reference in a circular, provided that the information:[[1]](#footnote-3)

 (a) must be the most recent available. and any changes must be disclosed in the circular;

 (b) must be disclosed under a separate heading in a cross reference table, clearing identifying the information to be disclosed on the applicant issuers’ website or made available through a secure electronic manner at the election of the person requesting inspection for a reasonable period of time:

 *[no need to specify]* *[all documents must be able to be incorporated by reference]*Circulars and other source information[[2]](#footnote-7)

11.64 Where is circular is required in terms of the Requirements, the JSE will allow disclosure in the circular to be substituted with information in the applicant issuer’s current annual report/annual financial statements provided the required information is either:[[3]](#footnote-8)

 (a) separately included or incorporated by reference in the notice of annual general meeting; or

 (b) clearly cross reference to the current annual report/annual financial statements.

Appendix 1 to Section 11[[4]](#footnote-9)

Guidelines on the publication of information

The following table provides a summary of the requirements for publication of information relating to listed companies:

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| --- | --- | --- | --- | --- | --- |
| **Reference (section paragraph unless otherwise stated)** | **Information** | **Electronic** **submission** **to the JSE** | **Distribute to share-holders** | **Publish in press**  | **Publish through SENS** |
| 3.4(b) | Trading statement | No | No | No | Yes |
| 3.11 | Dividend announcement | No | No | No | Yes |
| 3.15 | Condensed financial statements  | No | No | YesNote 3 | Yes, available through the JSE cloudlink |
| 3.15 | Annual financial statements  | Yes  | NoNote 4 | No | Yes, available through the JSE cloudlink |
| 3.15 | Summary financial statements  | No | No | No | Yes available through the JSE cloudlink |
| 3.16 | Annual reports | Yes | No | No | Yes, available through the JSE cloudlink |
| 3.17 | Interim Results | No | No | Yes | Yes, available through the JSE cloudlink |
| 3.18 | Quarterly Results | No | No | No | Yes, available through the JSE cloudlink |
| 3.16(a) | Notices regarding annual general meetings | Yes | Yes | No | Yes, in compliance with paragraph 3.90 |
| 3.46–3.48 | All announcements except those specifically detailed in this appendix | No | No | YesNote 3 | Yes |
| 3.49 | Circulars | Yes | Yes | No | No |
| 3.49 | Pre-listing statements and prospectuses | Yes | Yes | YesNotes 1 and 3 | YesNote 1 |
| 3.78 | Change of auditors | Yes | No | No | Yes |
| 3.59 | Changes to the boards of directors | Yes | No | No | Yes |
| 3.63 | Directors dealings in securities | No | No | No | Yes |
| 11.2 | Voluntary price sensitive announcements | No | No | No | Yes |
| 16.21(g) | Annual compliance report prepared pursuant to section 13G(2) of the BEE Act. | Yes | No | No | Yes (only a notice of availability referring to the website of the issuer) |

Notes:

1. Alternatively, an abridged version of the pre-listing statement/prospectus can be published through SENS and in the press.[[5]](#footnote-10) [[6]](#footnote-11) [[7]](#footnote-12)

2. If an applicant issuer makes a voluntary publication in the press, there is no minimum information required but the applicant issuer must ensure that the information is not misleading.[[8]](#footnote-13) [[9]](#footnote-14)

3. Announcements requiring publication in the press may be short-form announcements published in accordance with paragraphs 3.46 and 3.46(A).[[10]](#footnote-15) [[11]](#footnote-16) [[12]](#footnote-17)

4 A South African company must consider its statutory obligations to distribute its annual financial statements under the Companies Act.[[13]](#footnote-18)

Appendix 2 to Section 11[[14]](#footnote-19)

Information to be included in summary circulars

The following information must be contained in the summary:

1. The statement in accordance with paragraph [11.59].

2. Details of the corporate action:

 • description of the corporate action;

 • parties involved;

 • rationale;

 • purchase consideration/price receivable or to be paid;

 • timetable and effective date;

 • guidance in respect of any event requiring action by certificated and dematerialised shareholders, including voting and other actions required.

3. Details of any conditions.

4. In the event of a fairness opinion being included, a copy of the fairness opinion and a statement by the board of directors confirming whether the corporate action is fair or not insofar as the shareholders of the issuer are concerned and that the board of directors has been advised by an independent expert acceptable to the JSE.

5. Details of the name of any related party and a description of the relationship between the issuer and the related party and the extent of the interest of such party in the corporate action.

6. Details on whether any parties are excluded from voting on the corporate action and the reasons therefore.

7. The report of historical financial information, profit forecast and pro forma financial information, including the reporting accountants’ report thereon.

8. If required, the Competent Person’s Report pursuant to Section 12.

9. If required, the valuation report pursuant to Section 13, the additional property information pursuant to paragraphs 13.17–13.19 and the REIT disclosure requirements.

10. Details of the financial effects of the corporate action in terms of:

 • Net Asset Value per share.

 • Net Tangible Asset Value per share.

 • Earnings per share.

 • Headline Earnings per share.

11. In the event of shares being issued or repurchased, disclosure of the number and price at which the shares are to be issued or repurchased and details of any discount/premium (if any).

12. Working capital statement pursuant to paragraphs 7.E.7–7.E.8 (if applicable).

13. Details of irrevocable undertakings received.

14. Details of any name change.

15. Details of any changes to the board of directors as a result of the corporate action.

16. A recommendation given by the board of directors as to how shareholders should vote and an indication as to how the directors intend to vote their shares.

17. Any other relevant information.

Additional information to be included in summary circulars in relation to revised listing particulars and pre-listing statement/prospectuses:

1. The reason for the revised listing particulars.

2. Description of business pursuant to paragraph 7.D.2.

3. Directors’ information pursuant to paragraphs 7.B.1 and 7.B.9.

4. Share capital of the issuer pursuant to paragraphs 7.A.4 or 7.A.5.

5. In respect of property companies, the value pursuant to the valuation report/s.

6. In respect of mineral companies, the mineral resource and reserve statement and valuation statement.

7. In respect of an investment entity, the information required pursuant to paragraphs 15.5 and 15.7.

8. Disclosure of directors’ interests pursuant to paragraphs 7.B.20 and 7.B.21.

Additional information required in summary circulars in respect of sale or subscription of shares, rights offers and claw back offers:

1. Details on any underwriting and commission payable.

2. Details of any minimum subscription.

3. Details on the treatment of over-subscription.

4. Details on the treatment of excess applications.

The summary circulars must be accompanied by the notice of meeting, proxy and voting forms in full form complying with the Listings Requirements.

1. [↑](#footnote-ref-3)
2. [↑](#footnote-ref-7)
3. [↑](#footnote-ref-8)
4. [↑](#footnote-ref-9)
5. [↑](#footnote-ref-10)
6. [↑](#footnote-ref-11)
7. [↑](#footnote-ref-12)
8. [↑](#footnote-ref-13)
9. [↑](#footnote-ref-14)
10. [↑](#footnote-ref-15)
11. [↑](#footnote-ref-16)
12. [↑](#footnote-ref-17)
13. [↑](#footnote-ref-18)
14. [↑](#footnote-ref-19)