

16 August 2012

Company Secretaries, Sponsors and Designated Advisers

Corporate Governance

The JSE has recently received several requests for clarity regarding our approach to corporate governance as set out in the Listings Requirements (the “**Requirements**”). The JSE’s general approach to corporate governance in relation to the King Code on Corporate Governance for South Africa (the “**King Code**”) is that certain principles are mandatory (as set out in 1 and 2 below) with the balance being adopted on an “apply or explain” basis (as set out in 3 below). It is very important to note that there are additional provisions in the Companies Act No 71 of 2008 (the “**Companies Act**”) that must be complied with, specifically regarding the composition of the board, audit committee and social and ethics committee. We expect issuers to take the necessary advice as it relates to matters pertaining to the Companies Act.

The JSE has issued this guidance to clarify compliance with various items of the King Code as set out in the Requirements and confirms what has been in the Requirements, in most cases, for many years.

1. Mandatory Principles for Main Board issuers

Paragraph 3.84 of the Requirements stipulates that issuers **must** comply with certain specific requirements concerning corporate governance and issuers do not have the option of explaining any non-compliance. It should be understood that although the King Code is generally adopted on an “apply or explain” basis, these provisions require mandatory compliance and as must be adhered to.

Requirement	Principle	JSE Guidance
3.84(a)	There must be a policy detailing the procedures for the appointment to the board.	This policy must be clearly articulated and disclosed in the relevant documentation.
	Appointments must be formal and transparent and a matter for the board as a whole, assisted where appropriate by a nomination committee.	This must be reflected in the policy referred to above.
	Where appropriate the issuer may appoint a nomination committee.	Issuers must consider, given the size and composition of their board, whether it requires such a committee.
	If a nomination committee is appointed, such committee must only constitute non-executive directors and the majority must be independent. The committee must be chaired by the chairman of the board.	The definitions of non-executive director and independent director in terms of paragraph 3.84(f)(ii) and (iii) must be complied with. The nominations committee must be chaired by the Lead Independent Director if the board is chaired by an executive chairman.
3.84(b)	There must be a policy evidencing a clear balance of power and authority at board level to ensure that no one director has unfettered powers.	This policy must clearly demonstrate the balance of power referred to and disclosed in the relevant documentation.
3.84(c)	Issuers must have a CEO and a chairman and these positions must not be held by the same person.	Self-explanatory and no guidance required.
	The chairman must either be an independent director or the issuer must appoint a lead independent director as defined in the King Code.	A lead independent director must be appointed in the case where an executive chairman is appointed or where the chairman is not independent or conflicted.



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Executive Directors: NF Newton-King (CEO),
 F Evans (CFO) **Non-Executive Directors:** HJ Borkum
 (Chairman), AD Botha, MR Johnston, DM Lawrence, A Mazwai,
 NS Nematswerani, N Nyembezi-Heita, N Payne **Alternate
 Directors:** JH Burke, LV Parsons

3.84(d)	Issuers must appoint an audit committee in compliance with the King Code.	All the principles and recommended practice, including composition and duties, as set out in the King Code must be complied with. With regard the composition specifically, this means that the audit committee must comprise at least three independent non-executive directors. The chairman of the board must not be a member of the audit committee and by implication cannot chair this committee. The JSE is aware that some issuers combine the audit and risk committee. Given the difference in the membership of these committees, issuers must ensure that in these instances that the membership of the combined committee meets the more stringent independence criteria of the audit committee.
	Issuers must appoint a remuneration committee in compliance with the King Code.	Self-explanatory and no guidance required.
	Where appropriate, issuers must appoint a risk and nomination committee.	Issuers must consider, given the nature of the business and composition of the board of directors, whether it requires such committees.
	The composition of such committees, a brief description of their mandates, the number of meetings held and any other relevant information must be disclosed in the annual report.	The risk committee must have a minimum of three members. Membership of the risk committee should include executive and non-executive directors. Those members of senior management responsible for the various areas of risk management should attend the meetings. The chairman of the board may be a member of this committee but must not chair it.
3.84(e)	Brief CV of each director standing for election or re-election must accompany relevant notice of meeting.	CV must contain sufficient information to allow shareholders to make an informed assessment of the director.
3.84(f)	Capacity of directors in relation to executive, non-executive and independent must be categorised and disclosed in the relevant documentation.	The provisions in this section must be applied in determining the relevant capacities of the directors. This determination must be taken into account in the composition of the respective committees referred to above.
3.84(g)	Issuers must have a full time executive financial director.	Issuers must have a full time appointed executive financial director and the JSE will only consider part time appointment in exceptional circumstances. Full time appointment means that the director must not hold any other position on the board or have other commitments that would be considered as full or part time employment.
3.84(h)	The audit committee must consider on an annual basis, and satisfy itself of the appropriateness of the expertise and experience of the financial director and report thereon in the annual report.	The fact that the audit committee has executed this responsibility must be clearly stated in the annual report.
3.84 (i)	The provision deals with the competence, qualifications and experience of the company secretary and the board of directors' responsibility in relation thereto.	This provision is contained in Bulletin 4 of 2012 and is self-explanatory.
3.84 (j)	The provision deals with the arms-length relationship between the board of directors and the company secretary and the board of directors' responsibility in relation thereto.	This provision is contained in Bulletin 4 of 2012 and is self-explanatory.

2. Mandatory principles for ALT^x issuers

All of the principles referred to above are applicable to ALT^x issuers with the exception of paragraph 3.84 (c) and (d) where the following is relevant:

3.84(c) as read with 21.5(i)	ALT ^x issuers are not required to separate the appointment of the CEO and chairman.	Unlike Main Board issuers that must comply with this principle, ALT ^x issuers must consider this provision on an "apply or explain" basis.
3.84(d) as read with 21.5(i) and (ii)	Issuers must appoint an audit committee and the DA must be invited to each audit committee meeting.	With regard the composition specifically, issuers must either apply the principles of the King Code or explain why it was not applied.

3. "Apply or explain" Principles – non-mandatory principles

Paragraph 8.63(a) of the Requirements deal with all the principles of the King Code that are not mandatory in terms of 1 and 2 above. The following is important to consider with regards to the non-mandatory principles:

- a) Issuers must refer to **all** the principles as set out in the King Code. It is important to note that the Requirements focus on the principles and not the recommended practice in the King Code.
- b) Issuers must cover all the principles of the King Code and disclose how each was applied or explain why or to what extent they were not applied.
- c) For a list of the King Code principles, kindly refer to the following:
http://www.iodsa.co.za/Portals/0/loDSA_King_Code_Flip_Book/loDSA_King_Code_Flip_Book.html
- d) It is important to note that there are currently approximately 75 principles that must be considered.
- e) A narrative statement must be included in the annual report dealing with each of the principles.
- f) The narrative statement must disclose how each principle was applied or provide reasons why it was not applied.
- g) The disclosure must deal with the entire accounting period. If a particular principle was only applied during a limited period, disclosure thereof must be provided.

4. Disclosure in documentation

The disclosure evidencing compliance with the above must be in the annual report. Although the JSE will not be prescriptive on the exact location in the annual report, we would suggest that issuers attempt to make all the King Code disclosures in one place to allow stakeholders to obtain a complete picture without having to search in different places in the annual report for the relevant compliance.

In addition to the disclosure in the annual report, it is also required in pre-listing statements/prospectuses/listings particulars and certain other circulars as required by the Requirements.

5. Effect of the Guidance

We have issued this guidance on the basis of the uncertainty amongst issuers on the JSE's application of the corporate governance principles as set out in the King Code. We fully appreciate that some issuers may have interpreted the Requirements in a different manner and as such there may be instances of non-compliance and/or conflicts with this guidance. We therefore request issuers to contact the JSE to discuss and disclose any levels of non-compliance and/or conflicts as well as present the JSE with a reasonable timetable in order to ensure compliance.

Yours faithfully


**A F VISSER: GENERAL MANAGER
ISSUER REGULATION**