



# The JSE Limited Listings Requirements

**BULLETIN 1 of 2015**

8 July 2015

Dear Subscriber

## JSE Limited Listings Requirements

The JSE made amendments to the JSE Limited Listings Requirements to allow trading in BEE securities on the BEE Segment via the use of a verification agent, in addition to the current BEE contract route.

The amendments have been made in respect of the following Sections:

- Definitions
- Section 4: Conditions for Listing (Amendment of paragraph 4.32 and addition of paragraphs 4.32A and 4.32B).

Pursuant to Board Notice 133 of 2015 as published in the *Government Gazette* No. 38954, the effective date of Bulletin 1 of 2015 is 4 August 2015.

## **Definitions**

Term	Meaning
BEE compliant person	means as interpreted by the courts, from time to time:  (a) as regards a natural person, one who falls within the ambit of the definition of "black people" in the relevant BEE ownership scheme;  (b) as regards a juristic person having a shareholding or similar member's interests, one who falls within the ambit of the definitions of BEE controlled company or BEE owned company, using the principles for determining control or ownership as contemplated in the BEE ownership scheme;  (c) as regards any other entity, any entity similar to a BEE controlled company or BEE owned company using the principles for determining control or ownership as contemplated in the BEE ownership scheme which would enable the issuer of securities owned or controlled by such entity to claim points or obtain similar BEE recognition attributable to the entity's ownership of the securities pursuant to the BEE Codes or applicable legislation which imposes a BEE obligation
BEE controlled company	means a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to exercisable voting rights of an amount specified in the rules of the BEE ownership scheme

Term	Meaning
BEE owned company	means a juristic person, having shareholding or similar members interest, that is BEE controlled, in which black participants enjoy a right to economic interest in an amount specified in the rules of the BEE ownership scheme
BEE ownership scheme	means an issuer ownership scheme that (i) complies with the rules prescribed for broad-based ownership schemes as set out in Annexe 100 B of the BEE Codes and specifies the means of verification to be adopted in determining the eligibility of beneficial owners in respect of BEE securities or (ii) is governed by its own BEE scheme documents in accordance with applicable legislation which imposes a BEE obligation, to the satisfaction of the JSE
BEE verification	means the verification of a BEE compliant person in respect of the applicant issuer, which verification must conclude, inter alia, that: <ul style="list-style-type: none"> <li>(a) the beneficial owner, and the proposed registered owner (if applicable) of securities is a BEE compliant person pursuant to a BEE ownership scheme of the applicant issuer;</li> <li>(b) the BEE compliant person has been advised on the necessary restrictions, limitations and requirements that are imposed by the applicant issuer on the proposed beneficial owner, and on the proposed registered owner (if applicable) in order to achieve the continued ownership of BEE securities by BEE compliant person, and</li> <li>(c) that the BEE compliant person has accepted the prevailing terms and conditions of the BEE ownership scheme</li> </ul>
BEE verification agent	an agent appointed by an applicant issuer, or in the alternative the applicant issuer itself, to conduct the BEE verification

## Section 4 – Conditions for Listing

### BEE Segment

4.32 An applicant issuer seeking a listing of its BEE securities on the BEE Segment must adhere to the following:

- (a) it must meet the basic listing criteria as set out in either Section 4, 15, 19, 20 or 21 of the Listings Requirements and must comply with all other relevant sections applicable thereto, provided that for the purposes of this paragraph 4.32, an equity instrument may be listed on the BEE Segment as an asset-backed security pursuant to Section 19;
- (b) trading in the BEE securities must be restricted to a BEE compliant person pursuant to the use of (i) a BEE contract or (ii) a BEE verification agent;
- (c) inform the JSE whether trading in its BEE securities will be executed via the use of a BEE contract or a BEE verification agent; and
- (d) the applicant issuer must provide the JSE with the details of the BEE verification agent and inform the JSE of any change in the BEE verification agent.

## BEE Contract

4.32A An applicant issuer seeking a listing of its BEE securities on the BEE Segment pursuant to a BEE contract must satisfy the following criteria:

- (a) it must indemnify the JSE against all and any legal costs incurred (including attorney and own client costs) to the extent that, as a result of a BEE contract not having been signed as required in terms of the JSE Equities Rules and Directives, the JSE takes any legal action and is not able to recover its costs from the parties to the legal action pursuant to a costs order awarded in the legal action;
- (b) (i) if the applicant issuer elects, by reason of a breach in terms of a particular BEE contract, to enforce the BEE contract against the beneficial owner of BEE securities and, if applicable, other parties to the BEE contract, by either repurchasing the BEE securities or nominating a third party to so purchase and such third party purchases the BEE securities; and
  - (ii) the relevant CSDP, or its nominee, is then instructed to effect the necessary entries relating to such repurchase or purchase of the BEE securities,

and, as a consequence, litigation ensues and the registered holder and/or the CSDP or its nominee and/or any JSE member (“joined parties”) is/are joined in such litigation, the applicant issuer indemnifies such joined parties and their directors, employees, servants, agents or contractors or other persons for whom, in law, they may be liable (*stipulatio alteri*) against all and any costs (including attorney and own client costs) which may be awarded against any of them as a consequence of the litigation provided that:

- (1) the joined parties shall (unless they were joined by the applicant issuer) notify the applicant issuer, in writing, of such joinder within a reasonable time of becoming aware thereof, to enable the applicant issuer to take steps to act on their behalf as contemplated in paragraph (2) below;
  - (2) subject to paragraph (3) below, the applicant issuer shall be entitled to contest (which shall include an appeal to a court of law) the litigation in the name of the joined parties and shall be entitled to control the proceedings in regard thereto and the joined parties shall take no steps in the litigation which are not approved in writing by the applicant issuer;
  - (3) if the applicant issuer joined the joined parties, they shall merely abide by the decision of the court.
- (c) paragraph 4.32A(b) constitutes a right in favour of the joined parties and their directors, employees, servants, agents or contractors, or other persons for whom in law they may be liable (*stipulatio alteri*), which they will be entitled to invoke, at any time, by notifying the applicant issuer in writing thereof;
  - (d) the indemnities contained in (a), (b) and (c) above must be contained in the application letter to the JSE and in any other relevant listing documents;
  - (e) it must agree to become a party to and be bound by the provisions of the Issuers-Participants Contract, a copy of which is available on the JSE website, with effect from the date on which the applicant issuer’s BEE securities are listed on the BEE Segment. The first issuer whose BEE securities are listed on the BEE Segment will sign the Issuers-Participant Contract and every subsequent issuer whose BEE securities are listed on the BEE Segment will become a party to the Issuers-Participants Contract by signing an Issuer Deed of Adherence, the form of which is attached to the Issuers-Participants Contract. The Issuer Deed of Adherence, duly signed, must be included with the application letter to the JSE; and

- (f) the salient terms of the BEE securities must be contained in the MOI, or relevant constitutional documents, under the heading “Additional Terms of the BEE Contract”.

## **Verification Agent**

4.32B An applicant issuer seeking a listing of its BEE securities on the BEE Segment pursuant to the use of a BEE verification agent must satisfy the following criteria:

- (a) it must indemnify the JSE against all and any legal costs incurred (including attorney and own client costs) to the extent that, as a result of the member not complying with the BEE verification process as required in terms of the JSE Equities Rules and Directives, the JSE takes any legal action and is not able to recover its costs from the parties to the legal action pursuant to a costs order awarded in the legal action;
- (b) (i) if the applicant issuer, or such other person as is entitled to do so pursuant to the relevant BEE scheme documents (“the designated person”) elects, by reason of a breach in the terms and conditions of the relevant BEE scheme documents or the BEE verification process not having been correctly executed by the BEE verification agent, to enforce the terms and conditions of the relevant BEE scheme documents against the beneficial owner of BEE securities and, if applicable, other parties, by either repurchasing the BEE securities or nominating a third party to so purchase and such third party purchases, the BEE securities; and  
(ii) the relevant CSDP, or its nominee, is then instructed to effect the necessary entries relating to such repurchase or purchase of the BEE securities,

and, as a consequence, litigation ensues and the registered holder and/or the CSDP or its nominee and/or any JSE member (“joined parties”) is/are joined in such litigation, the applicant issuer indemnifies such joined parties and their directors, employees, servants, agents or contractors or other persons for whom, in law, they may be liable (stipulatio alteri) against all and any costs (including attorney and own client costs) which may be awarded against any of them as a consequence of such litigation provided that:

- (1) the joined parties shall (unless they were joined by the applicant issuer or designated person) notify the applicant issuer, in writing, of such joinder within a reasonable time of becoming aware thereof, to enable the applicant issuer or designated person to take steps to act on their behalf as contemplated in paragraph (2) below;
- (2) subject to paragraph (3) below, the applicant issuer or designated person, as applicable, shall be entitled to contest (which shall include an appeal to a court of law) the litigation in the name of the joined parties and shall be entitled to control the proceedings in regard thereto and the joined parties shall take no steps in the litigation which are not approved in writing by the applicant issuer or designated person;
- (3) if the applicant issuer or designated person joined the joined parties, they shall merely abide by the decision of the court;
- (4) the indemnity in this paragraph 4.32B(b) shall not apply to such joined party in circumstances where the litigation arises from:
  - (i) a breach by such joined party of any of its obligations under the JSE equity rules and directives or Strate rules and directives, as applicable, or
  - (ii) any breach of an applicable contract between such joined party, the applicant issuer and/or any designated person, and
- (5) paragraph 4.32B(b) constitutes a right in favour of the joined parties and their directors, employees, servants, agents or contractors, or other persons for whom in law they may be liable (stipulatio alteri), which they will be entitled to invoke, at any time, by notifying the applicant issuer in writing thereof;

- (c) the indemnities contained in (a) and (b) above must be contained in the application letter to the JSE and in any other relevant listing documents; and
- (d) the salient terms and conditions of the BEE securities must be contained in the MOI, or relevant BEE ownership scheme documents.

Regards,

Charmaine Esnouf

LexisNexis

Editor: Tax and Financial Services

[charmaine.esnouf@lexisnexis.co.za](mailto:charmaine.esnouf@lexisnexis.co.za)

July 2015