

Dear Company Secretaries, Sponsors and Designated Advisers

31 January 2013

**GUIDANCE ON 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.

This guidance letter replaces the guidance letters dated 16 August 2012 and 23 November 2012 and serves as the current guidance on corporate governance from a JSE perspective pursuant to the Requirements.

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,	The definitions of non-executive director and



	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.	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.
3.84(d)	Issuers must appoint an audit committee in compliance with the King Code.	<p>With regard to the composition of the audit committee, the committee must comprise at least three independent non-executive directors.</p> <p>If an issuer has an independent non-executive chairman of the board, he/she may be a member of the audit committee, subject to the following provisions:</p> <ul style="list-style-type: none"> <li>• All the other members of the audit committee (at least two) are independent non-executive directors;</li> <li>• He/she may not be the chairman of the audit committee;</li> <li>• The dual role (chairman of the board and member of the audit committee) is specifically disclosed to shareholders at the annual general meeting referred to in Section 94(2) of the Act; and</li> <li>• Shareholders approve the appointment of the chairman to the audit committee at the annual general meeting.</li> </ul> <p>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 as set out in the King Code.</p>
	Issuers must appoint a remuneration	The remuneration committee must only comprise

	committee in compliance with the King Code.	of members of the board and should have a majority of non-executive directors. The majority of the non-executive directors serving on the remuneration committee must be independent. The chairman of the board must not chair the remuneration committee, but may be a member of it.
	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 financial director must not hold any other position 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	This provision is contained in Bulletin 4 of 2012 and is self-explanatory.

	and the board of directors' responsibility in relation thereto.	
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## 2. Mandatory principles for ALT<sup>x</sup> issuers

All of the principles referred to above are applicable to ALT<sup>x</sup> 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 <sup>x</sup> issuers are not required to separate the appointment of the CEO and chairman.	Unlike Main Board issuers that must comply with this principle, ALT <sup>x</sup> 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 JSE has adopted the Practice Note issued by the Institute of Directors in Southern Africa: "King III Reporting in terms of the JSE Listings Requirements" which is attached hereto for ease of reference.

The JSE will expect issuers, in accordance with the King Committee recommendations, to:

- address **all** the principles as set out in the King Code, which currently covers 75 principles;
- disclose how each and every principle has been applied or explain why or to what extent they were not applied;
- document the assessment of the 75 principles in the form of a register which must be made available on the website of the issuer (the "**Register**"); and
- review the Register on a regular basis to ensure that the disclosures are current and remain relevant.

Once the Register is placed on the website of the issuer, the JSE will allow such issuers to cross-reference compliance with the principles in the King Code by referring to the website where the register can be viewed. This approach will result in an issuer not being required to publish the full register in its annual report and/or circulars issued pursuant to the Requirements.

The JSE further supports the recommendation of the King Committee to include a summary of the application of all the principles contained in Chapter 2 of the King Code in an integrated/annual report.

## 4. 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 handwritten signature in black ink, appearing to be 'A.F. Visser', written on a light yellow background.

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