

Depository Receipts

19.68 This section sets out the requirements for the listing of Depository Receipts ("DR").

Definitions

19.69 In these Listings Requirements for the listing of DRs, unless the context clearly indicates a contrary intention, the following terms shall have the meanings below assigned to them:

"Depository" means a bank (or institution) acceptable to the JSE, that issues DRs representing the securities of an issuer that are held in trust by the depository in the issuer's local market. The depository could also act as a registrar, transfer agent and corporate action agent and cancels or issues the DRs for withdrawal or deposit of the securities, all in accordance with a deposit agreement with the issuer for a sponsored program;

"depository receipt" or "DR" means an instrument representing an issuer's securities, where the instrument confers rights in respect of such securities;

"issuer" means a company that has been admitted to listing or the subject of an application for admission to listing on an exchange as contemplated in Section 18.3(b);

"sponsored DR" means that the DR is established at the direction of the issuer and in accordance with a deposit agreement between the issuer, and the depository; and

"fully covered" means DRs must at all times represent the issuer's underlying securities held by the depository or its custodian, or any collateral held in terms of any pre-release arrangement.

General

19.70 Due to the complex nature of DRs the JSE must be consulted at an early stage before formal application for listing is made. Depending on the nature and structure of any particular issue, the requirements set out in the following paragraphs may be modified or additional requirements may apply.

Sponsor

19.71 The issuer of DRs must comply with the provisions of Section 2 regarding the appointment of a sponsor.

Criteria for listing of DRs

19.72 An applicant seeking a listing of DRs must satisfy the following criteria:

- a) it must be a sponsored DR;
 - b) the DRs must be issued by a depository which must be independent of the issuer;
 - c) the securities of the issuer must be held by a trust, which trust must be administered by independent trustees representing the interest of the holders of the DRs. The securities may, however, also be held by the depository or via a vehicle other than a trust provided the JSE is satisfied that such vehicle or depository provides similar protection to safeguard the securities and in particular the powers and duties of the directors (or in the event that the vehicle is not a company, the persons with corresponding duties and powers in relation to that vehicle) must be limited as if the director is a trustee. Thus the provisions of paragraph 19.72 that apply to trustees and trusts must apply mutatis mutandis to the director and the vehicle used to hold the securities;
 - d) the entity referred to in (c) above must, hold on trust, for the sole benefit of the holders of DRs the securities to which the DRs relate, all rights relating to the securities and all the money and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expense of the entity;
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- e) the DRs must be fully covered at all times;
- f) the DRs must be fully paid up and freely transferable;
- g) the securities which the DRs represent must be free from all liens and any restriction on the right of transfer to the depository;
- h) there must be a duly signed deposit agreement in accordance with paragraph 19.75 in place between the issuer, the depository and the custodian (if applicable);
- i) 20% of the DRs for which application for listing has been made must be held by the public and the number of public DR holders will be at least 50 (the JSE may accept a lower percentage or number if it considers that the market will operate properly with such percentage or number), unless a market maker has been appointed as per paragraph 19.82; and
- j) the entity referred to in (c) above must be independent from the issuer unless otherwise agreed to by the JSE, and such entity must be insolvency remote.

19.73 An issuer must:

- a) demonstrate to the JSE that it meets the Listings Requirements in paragraphs 18.1 to 18.6;
- b) be in full compliance with all the requirements of the exchange on which it has its listings; and
- c) make arrangements to the satisfaction of the JSE to ensure that sufficient DRs are available on the South African DR register.

19.74 The depository must satisfy the JSE that it has the relevant expertise to arrange an issue of DRs or has access to such expertise.

The Deposit Agreement

19.75 The deposit agreement must provide, without limitation, for:

- a) the appointment of the depository by the issuer with authorisation to act on behalf of the issuer in accordance with the deposit agreement;
- b) the status of DRs as instruments representing ownership interests in securities of an issuer that have been deposited with the depository;
- c) the status of beneficial holders of DRs as the legal owners of those DRs;
- d) the role of the depository to issue DRs as agent of the issuer, and to arrange for the deposit of the securities which the DRs represent;
- e) the duties of the depository, which must include the duty to keep in South Africa and make available for inspection a register of holders of DRs and the transfers of the DRs and the duty to keep a record of the deposits of securities which the DRs represent, the issue of DRs, the cancellation of DRs and the withdrawal of securities;
- f) the role and duties of the custodian, if applicable, appointed by the depository to hold the deposited securities for the account of the depository on behalf of the holders of the DRs, segregated from all other property of the custodian;
- g) the mechanism for the issue and registration of DRs by the depository upon receipt of securities in the issuer and the form of the DR;
- h) the right of DR holders to surrender DRs to be cancelled in exchange for the delivery of the shares which the DRs represent, subject to payment of any applicable charges and taxes and any legal or regulatory restrictions;

- i) the right of DR holders to corporate action entitlements. The deposit agreement should address the rights (if any) and procedures applying to cash distributions, distributions of shares, rights issues or any other distribution accruing to the securities which the DRs represent, as per Schedule 24 or such other manner acceptable to the JSE;
- j) To the extent applicable, the right of DR holders to exercise the voting rights attached to the securities represented by the DRs and the procedures by which DR holders will be notified of shareholder meetings or solicitations of proxy votes and their entitlement to issue instructions to the depository as to how to exercise their voting rights;
- k) the manner in which any corporate action or other reclassification of the issuer's securities will be represented by and accrue to the DRs, in accordance with the principle that holders of DRs are to be treated as having generally equivalent rights to holders of the securities which the DRs represent;
- l) the procedures by which the depository and/or the custodian at the direction of the depository will, in consultation with the issuer, fix corporate action dates in accordance with Schedule 24;
- m) the procedures by which the depository will at the direction of the issuer despatch to holders of DRs copies of all notices, reports, voting forms or other communications sent by the issuer to its shareholders, and make available for inspection at its principal office, and at the office of the custodian and sponsor, copies of any such notices, reports or communication received from the issuer, and such information must also be made available on the issuer and depository's website;
- n) the conditions and process for the issue of new DRs if any DR instrument is lost, destroyed, stolen or mutilated;
- o) the obligations of holders of DRs, including any liabilities for taxes and other charges and the obligation to disclose the beneficial ownership of the DRs on request of the issuer or the depository or the JSE;
- p) a clear statement of the fees and charges payable by holders of DRs, including fees and charges payable to the depository and the custodian (if applicable);
- q) procedures for the replacement or removal of the depository and/or the custodian by or with the consent of the issuer including an obligation to inform DR holders by advance announcement of any prospective resignation, removal and replacement of the depository and/or the custodian;
- r) an obligation to inform DR holders in advance of and seek their prior consent to any material changes to their existing rights and obligations under the deposit agreement, by achieving a 75% majority of the votes cast in favour of such material change by all DR holders entitled to vote, present or represented by proxy at the general meeting convened to approve such material change;
- s) procedures for the amendment of the deposit agreement; and
- t) the governing law of the deposit agreement should be that of South Africa or, if another jurisdiction is chosen, one that is generally used in accordance with international practice and that is acceptable to the JSE.

Pre-listing statements

19.76 An issuer must produce a pre-listing statement/prospectus and include the following in such document:

(a) the following requirements of Section 6:

Paragraph

6.1	Requirements for pre-listings statements
6.6 to 6.9	Form and content
6.11 and 6.12	Formal approval
6.13 and 6.14	Supplementary pre-listing statements
6.18	Omission of material contracts from disclosure
6.19 and 6.20	Issues not requiring pre-listing statements;

(b) further disclosure as follows:

i. in respect of the issuer and the depository:

1. its full name;
2. its place and date of incorporation;
3. the full names and addresses of its directors; (or in the event that the issuer is not a company, the persons with corresponding duties and powers in relation to the issuer of the DRs);

ii. a statement that the JSE's approval of the listing of the DR is not to be taken in any way as an indication of the merits of the issuer of the DR, and that the JSE has not verified the accuracy and truth of the contents of the documentation and that to the extent permitted by law, the JSE will not be liable for any claim of whatsoever kind;

iii. the names and addresses of the advisors and transfer secretaries to the issuer, if any;

iv. an explanation of the tax implications on the DR holder; and

v. every pre-listing statement must contain the following statement on the front of the document:

“Prospective purchasers of any DRs must ensure that they understand fully the nature of the product and the extent of their exposure to risks, and that they consider the suitability of DRs as an investment in light of their own circumstances and financial position”;

(c) the provisions relating to pre-listing statements as set out in Section 18.11 to 18.18;

(d) full details of the deposit agreement must be included as per paragraph 19.75; and

(e) any other details that the JSE may deem appropriate.

Continuing obligations

19.77 The issuer must ensure the following:

a) the continued suitability of the depository;

b) that prior notification per the procedures outlined in the deposit agreement, is given to holders of DRs of any material change to the deposit agreement;

c) application is made for the additional listing or withdrawal of listings of DRs in compliance with the listings requirements;

d) the pre-listing statement/prospectus and the deposit agreement must be made available on the issuer and depository's website;

e) that a quarterly submission is made to the JSE, providing a reconciliation of the amount of DRs outstanding at that time, the amount of underlying securities that such DRs represent, and confirmation that the amount of DRs in issue did not exceed the authorised amount at any point in time during the quarter, in terms of the DR listing documentation;

f) compliance with the provisions as set out in Section 18.19;and

g) where the DRs are to be held in dematerialised form, the issuer and, or the depository must be approved by and comply with the Central Securities Depository Rules and Directives.

19.78 When an issuer whose securities and/or DRs are listed on a foreign exchange, wishes to release any information on that exchange, it must ensure that such information is also released through SENS and that such release take place no later than the equivalent release on any other exchange, provided that if the JSE is not open for business, it must ensure that such information is released through SENS at the commencement of business of the next business day.

Documents to be submitted to the JSE on application for listing

19.79 The following documentation must be submitted to the JSE for approval via a sponsor:

- a) the pre-listing statement/prospectus;
- b) the approval of the Exchange Control Department of the South African Reserve Bank;
- c) deposit agreement, depository agent agreement, and custody agreement;
- d) formal application for listing complying with Schedule 1;
- e) confirmation in writing from the Central Securities Depository that the applicant has been approved in terms of the Central Securities Depository Rules and Directives; and
- f) such other information as may be requested by the JSE.

Announcements

19.80 After the JSE has approved an application for listing of the DRs, the issuer of the DRs must publish an announcement, which is to be made 5 business days prior to listing , containing the following:

- (a) the information referred to in paragraph 11.8 in respect of the issuer of the DRs;
- (b) the period of marketing (if applicable) and the expected date of listing;
- (c) a statement that JSE approval for the listing has been granted;
- (d) the ISIN, alpha and any relevant code under which the DR will trade; and
- (e) places where copies of the DR Pre-listing Statement and deposit agreement can be obtained.

The appointment of market makers

19.82 A DR issuer may appoint a market maker and such duly appointed market maker must undertake to maintain a secondary market in the DRs.

Initial and annual listings fees

The initial listing fees and annual listing fees payable, as determined by the JSE from time to time, are available on the JSE's website.