



The JSE Limited Listings Requirements

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Dear Subscriber

The JSE wishes to introduce new Listings Requirements which aim to boost corporate governance. The amendments to the Listings Requirements are in the following four areas:

1. Requiring the board to assess and include details thereof of the qualification, competence and expertise of the company secretary.
2. To ask for explicit disclosure in the annual report of the application of the King principle of having an arms-length relationship between the company secretary and that the company secretary should not be a director.
3. In instances where the company secretary is also a director, that person is prohibited from signing off in both capacities on JSE documents and instead another director must also sign off.
4. Greater focus on the responsibilities of the board and the audit committee for the financial information contained in the listing documents.

The effective dates are as follows:

1. For existing issuers the section 3 and section 7 changes are effective for all annual reports or circulars issued on or after 1 December 2012;
2. For new applicant issuers the section 3 and section 7 changes are effective for any circulars or annual reports issued on or after 1 July 2012 ; and
3. The effective date for the section 4 and section 16 changes is 1 July 2012.

The amendments are as follows:

Section 3

CONTINUING OBLIGATIONS:

Paragraph 3.84 deals with corporate governance. New paragraphs 3.84(i) and (j) are inserted as follows:

- (i) the board of directors must consider and satisfy itself, on an annual basis, on the competence, qualifications and experience of the company secretary. The issuer must confirm this by reporting to shareholders in its annual report that the board of directors has executed this responsibility. This communication must specifically include details of the steps which the board of directors took to make this annual assessment as well as providing information which demonstrates the actual competence, qualifications and experience of the company secretary ; and
- (j) the recommended practice of the King Report on Governance for South Africa highlights, inter alia, that the company secretary should maintain an arms-length relationship with the board of directors and that the company secretary should ideally not be a director. The board of directors must specifically consider these two points and provide an explanation in the annual report as to why it believes that there is an arms-length relationship between itself and the company secretary. If the company secretary is a director of the company or if the board of directors otherwise concludes that there is not an arms-length relationship between itself and the company secretary, the board of directors must justify how the issuer is still able to ensure that the company secretary effectively performs the role as the gatekeeper of good governance in the issuer and how they have been able to adequately and effectively perform and carry out the roles and duties of a company secretary. Where the company secretary is a juristic person the board of directors in its assessment must consider the individual/s who perform the company secretary role as well as the directors and shareholders of the juristic person. The imposition of a juristic person in itself does not create an arms-length relationship.

Section 4

CONDITIONS FOR LISTING

Directors and Company Secretary

- 4.8(c) All applicants (excluding an issuer of specialist securities) must appoint a company secretary. The board of directors must consider and satisfy itself on the competence, qualifications and experience of the company secretary. Details of this assessment must be included in any listing particulars prepared by the applicant (refer to paragraph 7.F.6(i)). The

recommended practice of the King Report on Governance for South Africa highlights, inter alia, that the company secretary should maintain an arms-length relationship with the board of directors and that the company secretary should ideally not be a director. The board of directors must specifically consider these two points and provide an explanation as to why it believes that there is an arms-length relationship between itself and the company secretary in any listing particulars prepared by the applicant (refer to paragraph 7.F.6(j)).

Section 7

LISTING PARTICULARS

New paragraphs 7.F.6(i) and (j) are inserted as follows:

- (i) the board of directors must consider and satisfy itself, on an annual basis, on the competence, qualifications and experience of the company secretary. The issuer must confirm this by reporting to shareholders that the board of directors has executed this responsibility. This communication must specifically include details of the steps which the board of directors took to make this annual assessment as well as providing information which demonstrates the actual competence, qualifications and experience of the company secretary ; and
- (j) the recommended practice of the King Report on Governance for South Africa highlights, inter alia, that the company secretary should maintain an arms-length relationship with the board of directors and that the company secretary should ideally not be a director. The board of directors must specifically consider these two points and provide an explanation to shareholders as to why it believes that there is an arms-length relationship between itself and the company secretary. If the company secretary is a director of the company or if the board of directors otherwise concludes that there is not an arms-length relationship between itself and the company secretary, the board of directors must justify how the issuer is still able to ensure that the company secretary effectively performs the role as the gatekeeper of good governance in the issuer and how they have been able to adequately and effectively perform and carry out the roles and duties of a company secretary. Where the company secretary is a juristic person the board of directors in its assessment must consider the individual/s who perform the company secretary role as well as the directors and shareholders of the juristic person. The imposition of a juristic person in itself does not create an arms-length relationship.

Section 16

DOCUMENTS TO BE SUBMITTED TO THE JSE

In paragraph 16.1, which deals with general matters, a new paragraph 16.1(e) is inserted as follows:

- (e) several of the schedules referred to in this section 16 require the signature of both the company secretary and a director. In the instance where the company secretary is also a director the JSE will not accept that schedule if signed by the same person in both capacities. Therefore a director, other than the company secretary must always sign the letter.

Paragraph 16.10 deals with documents to be submitted by new applicants. A new paragraph 16.10(u) is inserted as follows:

- (u) a letter signed by the chairman of the board of directors and by the chairman of the audit committee stating that:
 - (i) the financial information contained within the JSE circular has been considered by the audit committee and as part of that consideration it has *inter alia*:
 - (aa) specifically considered the accounting policies applied by the issuer as disclosed in the JSE circular and believes that they are appropriate;
 - (bb) evaluated the significant judgements and reporting decisions made by management affecting the information and believes that that they are appropriate;
 - (cc) evaluated the clarity and completeness of the financial disclosures and believes that the disclosure is appropriate;
 - (dd) obtained explanations from management on the accounting for significant or unusual transactions and considered the views of the external auditors in these instances;
 - (ee) understands how materiality has been evaluated for reporting purposes and believes that the materiality levels are appropriate;
 - (ff) considered the effectiveness of internal financial controls and is satisfied with such controls;
 - (ii) the audit committee has recommended that the financial information be approved by the board of directors;
 - (iii) the board of directors has approved the financial information including the specific matters set out in paragraph 16.10(u)(i) above,

- (iv) the board of directors to the best of their knowledge believes that the accounting policies disclosed in the circular will be applied in the next reporting period; and
- (v) the board of directors considers the internal controls of the issuer to be effective.

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