



# The JSE Limited Listings Requirements

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Dear Subscriber

## MOI for subsidiary companies of applicant issuers

The amendments below remove the requirement for the MOI of a subsidiary company of an applicant issuer to comply with the provisions of Schedule 10 of the Listings Requirements, save for the general undertaking to be complied with pursuant to paragraph 10.21 of Schedule 10. As a consequence, the MOI of a subsidiary company will no longer be reviewed or approved by the JSE.

Although the specific disclosures in respect of the MOI of subsidiary companies will no longer be required, it was always the intention that subsidiary companies which form part of the group of an applicant issuer should be audited on an annual basis and as such the provision has been maintained and included in Section 3 of the Listings Requirements.

The above amendments have resulted in further consequential amendments to the Listings Requirements as it relates to the MOI of subsidiary companies.

The effective date of the aforesaid Listings Requirements will be 3 December 2012.

## **Section 3 Continuing Obligations**

### **Audited Financials for Subsidiaries**

A new section 3.90 has been inserted:

- 3.90 All subsidiaries of listed companies, save for foreign subsidiaries not registered in the Republic of South Africa, which form part of the group must be audited on an annual basis.

## **Section 9 Transactions**

### **Category 2 Requirements**

Section 9.16 has been amended as follows:

- 9.16 In addition, if securities have been acquired in a company that, as a result, becomes a subsidiary company as defined in the Act, the applicant issuer must adhere to the provisions of paragraph 10.21 of Schedule 10. Such confirmation must be included in the announcement in terms of paragraph 9.15.

## **Section 16 Documents to be Submitted to the JSE**

### **Acquisitions and disposals**

Section 16.18(d) is to be deleted and the subsections following the deletion are to be renumbered accordingly:

- 16.18 The following information is required to be submitted to, and approved by, the JSE before listing/transaction approval will be granted:
- (a) the circular or pre-listing statement;
  - (b) the acquisition or disposal agreement;
  - (c) any vendor placing document;
  - (d) the application for listing, if applicable, complying with Schedule 4;

- (e) copies of any exchange control (refer to paragraph 16.25) approvals required;
- (f) certified copies of any experts' consents (refer to paragraph 7.F.7) appearing in the circular or pre-listing statement;
- (g) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17; and
- (h) the detailed valuation reports prepared in terms of Section 13.

## Appendix to Section 16

The checklist for First submissions has been amended by the deletion of "MOI of the company being acquired attached" from the particulars:

Particulars	N/a	Complied with
Signed copies of the agreement(s) attached		
Timetable attached		
Circular/pre-listing statement attached		
Circulars and accompanying checklist/s relevant to the corporate actions/s		
Report of historical financial information attached		
Reporting accountants' report on report of historical financial information attached		
Fairness opinion attached		
Reporting accountant's report on pro-forma financial information attached		
Reporting accountant's report on profit forecast attached		
Section 8.56(a) reporting accountant's letter		
Valuation report (property entities) attached		
Competent Person's Report (mining companies) attached		
Listing / Documentation fee (cheque or proof of transfer) attached		
Signed copy of the working capital letter (in terms of paragraph 2.12) from sponsor attached		
Draft application for transaction/listing of shares/amendment of List attached		
Signed sponsor declaration – Schedule 17 attached		
Part I and II documents attached		
SARB approval attached		
Underwriting agreement attached		
Consent letters attached		

## Schedule 7 General Undertaking

Section 7.4 is amended as follows:

7.4 That the MOI of the applicant issuer complies with the Listings Requirements that are now or hereafter may be in force.

A new section 7.5 has been inserted and the sections which follow have been renumbered accordingly:

7.5 That the MOI of any subsidiary of the applicant issuer shall not frustrate the applicant issuer in any way from compliance with its obligations in terms of the Listings Requirements and that nothing contained in the MOI of a subsidiary of an applicant issuer shall relieve the applicant issuer from compliance with the Listings Requirements.

7.6 That the minutes of all shareholders' meetings, either general or annual general, will be read at the next succeeding meeting of shareholders at the request of any shareholders at the meeting, if the proceedings of such meeting have not been made available.

- 7.7 That:
- (a) all the said securities, or in the case of these being more than one class of share, all the securities of each respective class, are, and will remain, identical in all respects, viz.:
    - (i) they are of the same nominal value and are all fully paid;
    - (ii) they carry the same rights as to unrestricted transfer, attendance and voting at general/annual general meetings and in all other respects; and
    - (iii) they are entitled to dividends at the same rate and for the same period so that, on the next ensuing distribution the dividend payable on each share will be the same amount;
  - (b) before taking any action which, for statutory or other reasons would require the reinstatement of distinguishing numbers of the said securities or would or might cause difficulty or doubts in distinguishing between securities for which a listing has been granted and between other securities in the capital of the applicant issuer, formal notice will be given to the JSE of the intended action with full particulars of all relevant facts; and
  - (c) the applicant issuer will accept for registration transfer deeds and certificates.

## **Schedule 10 Requirements for the MOI**

Schedule 10 has been amended as follows:

No application for listing will be considered until the MOI of the applicant issuer has been approved by the JSE.

All amendments to the MOI of the applicant issuer must be submitted to the JSE for approval before such amendments are submitted to shareholders for approval.

The MOI must be in English and must comply with the requirements in this Schedule 10 in respect of the applicant issuer.

The requirements set out in this Schedule 10 are not exhaustive. The JSE will not allow the MOI to contain any provisions that are unlawful, will in any way restrict free dealings in securities (unless otherwise required by statute) or may, in the JSE's opinion, be unreasonable.

There must be no provision in the applicant issuer's and/or its subsidiary company/ies' MOI that is in conflict with any provision in the Listings Requirements or that prevents the enforcement of any provision in the Listings Requirements. In the event that the MOI contains such a provision, the applicant issuer must amend the MOI of the applicant issuer and/or its subsidiary company/ies accordingly.

This does not prevent the JSE from taking action against the relevant parties in terms of Section 1 of the Listings Requirements.

The Act provides that a company must harmonise its MOI within two years from 1 May 2011. An applicant issuer must, within the same period, harmonise its MOI with the Listings Requirements.

Prior to harmonisation of the MOI and as of 1 May 2011, where the Listings Requirements prescribes a requirement which is not provided for in the unharmonised MOI and the Listings Requirement states that it must be provided for in the MOI then, until the MOI is harmonised, that requirement shall apply to the applicant issuer and to its directors, notwithstanding the fact that it has not yet been provided for in the unharmonised MOI.

### **MOI for subsidiary companies of applicant issuers**

Section 10.21 is amended as follows and sections 10.22–10.24 have been deleted:

The following provisions apply to the MOI of subsidiary companies of applicant issuers:

- 10.21
- (a) The applicant issuer must ensure that the provisions of the MOIs of its subsidiaries do not frustrate the applicant issuer in any way from compliance with its obligations in terms of the Listings Requirements.
  - (b) Nothing contained in the MOI of a subsidiary of an applicant issuer shall relieve the applicant issuer from compliance with the Listings Requirements.