

## Section 23

### BEE SEGMENT

#### **Scope of section**

[This section sets out the Listings Requirements relating to a listing on the BEE Segment. The aim of the section is to set out the listing criteria for the different types of securities and entities that may be listed, the continuing obligations and general requirements that apply to securities and entities that list on the BEE Segment. This Section should be read with the JSE DSS requirements where applicable.]

#### **New Definition [Definitions Section]**

"BEE SPV" means a special purpose vehicle created with the specific objective of facilitating a black economic empowerment transaction;

"DSS Requirements" the JSE Debt and Specialist Securities Listings Requirements, as amended.

#### **Conditions of Listing**

23.1 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 the **DSS Requirements** or Section 4, **12, 13**, 15, 20 or 21 of the Listings Requirements and ~~must~~ comply with all other relevant sections applicable thereto or list as a BEE SPV pursuant to this Section;
- (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. The market must be informed which method will be used; and
- (c) the applicant issuer must provide the JSE with the details of the BEE verification agent, if applicable.

Copied verbatim from paragraph 4.32, save as marked-up

#### **BEE Contract**

23.2 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 23.2(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 **applicant** issuer whose BEE securities are listed on the BEE Segment will sign the Issuers-Participant Contract and every subsequent **applicant** 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".

Copied verbatim from paragraph 4.32A

### Verification Agent

23.3 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
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(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 23.3(b)(4) 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 23.3(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.

Copied verbatim from paragraph 4.32B

### **General**

23.4 A BEE SPV must either appoint a sponsor pursuant to Section 2 of the Listings Requirements, or the DSS Listings Requirements unless otherwise agreed to by the JSE. The sponsor must therefore execute its obligations under the Listings Requirements or the DSS Requirements, as the case may be.

23.5 The JSE may consider suspending the listing of a BEE SPV in accordance with Section 1 of the Listings Requirements or the DSS Listings Requirements, if the underlying applicant issuer which the BEE SPV references is suspended.

### **Criteria for listing of a BEE SPV**

23.6 An applicant seeking a listing as a BEE SPV must satisfy the following criteria:

(a) it must have committed capital (to be received from the issue) or subscribed capital of at least R10 million prior to listing;

(b) it must have assets that are held by a trust, a ringfenced entity or through an applicant issuer that has the quality of insolvency remoteness from the arranger or applicant issuer of the underlying assets, subject to JSE approval, which must be administered by trustees or board of directors representing the interests of the security holders of the BEE SPV. A separate trust, company or entity may be required for each class of asset with respect to the issuance of BEE SPV relating to a different composition of assets. If the assets are held via a vehicle other than a trust the JSE must be satisfied that such vehicle provides similar protections to safeguard the assets 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 though the director is a trustee. Thus, the provisions of this paragraph that apply to trustees and trusts must apply mutatis mutandis to the directors and the vehicle used to hold the assets;

(c) the applicant issuer of the underlying assets must be listed on an exchange acceptable to the JSE. If not listed, the JSE must be consulted at an early stage to consider the suitability of the applicant issuer; and

(d) it must have 10% of each class of equity securities held by the public pursuant to paragraphs 4.25-4.27 to ensure reasonable liquidity.

23.7 Where the underlying assets are equity in nature the BEE SPV must:

(a) have underlying assets that are listed on the JSE. If the underlying assets are not listed, the financial information of the underlying assets must be published in accordance with paragraphs 3.16 to 3.22. The procedure for non-compliance will apply accordingly on the listed BEE SPV as set out in paragraphs 3.17 and 3.23 to 3.25 if the financial information on the underlying assets is not published.

(b) have underlying assets which are minority interests and must not confer legal or management control of the listed companies.

### **Requirements for a pre-listing statement**

23.8 The pre-listing statement must be prepared in accordance with Section 6 and must also include the following:

(a) in respect of the applicant issuer:

(i) a description of the rights of the holders of securities in the event of the liquidation and/or business rescue proceedings of the applicant issuer and the applicant issuer of the underlying asset; and

(ii) a description of how the proceeds generated from the issuing of the securities will be used by the applicant issuer, if applicable;

(b) details of the underlying asset/s in respect of which the securities will be issued, including any relevant recently published information relating to the underlying asset/s;

(c) a statement that the pre-listing statement is available on the applicant issuer's website along with a web-link;

(d) a statement detailing the risks of investing in securities and all possible material risks and uncertainties facing the applicant issuer and the industry in which it operates or is invested in. Proper consideration must be given to the material risks that face the applicant issuer and generic disclosures must be avoided. Material risks should be grouped together in a coherent manner and material risks considered to be of the most immediate significance should be prominent at the beginning within the material risks disclosure. This should include details of the trading risk as well as the risk of the applicant issuer not being able to fulfill its obligations, notwithstanding the fact that the applicant issuer will have been obliged to comply with the Listings Requirements. The statement must also detail the following:

(i) the restrictive nature of ownership of the BEE SPV;

(ii) including the potential punitive measures and forced sales if ineligible participants acquire securities or become ineligible post the acquisition of securities and do not remedy the situation within the prescribed timeframes, and

(iii) risks associated with the funding structure; and

(e) disclosure of how the day to day management of the BEE SPV and key administrative functions that are normally run by executive directors are managed.

## **Financial information**

23.9 An applicant issuer making application for listing as a BEE SPV must comply with the following:

(a) the financial information shall either be included in the pre-listing statement or incorporated by reference in the pre-listing statement at the time of the listing of the security. Where information is incorporated by reference it must be made available to the public on the applicant issuer's website;

(b) in the case of a newly incorporated BEE SPV without assets or historical financial information, the latest audited balance sheet must be included in the pre-listing statement. This audited balance sheet must have been prepared in terms of IFRS;

(c) if the BEE SPV does have a financial history, same should be disclosed for a maximum of two years;

(d) the financial information in (b) and (c) must have been prepared in terms of paragraph 8.3 - 8.13, if applicable; and

(e) if the underlying asset is unlisted, the applicant issuer must publish the following financial information on the underlying asset:

(i) which have been prepared in respect of at least the last two financial years and the latest audited financial statements of such underlying asset must be in respect of a period not ending more than 12 months before the date of the pre-listing statement; or

(ii) which have been prepared for the interim financial period where the

audited financial statements of such underlying asset are older than 9 months. No audit or review opinion is required on the interim financial information.

### **Ancillary documents**

23.10 The pre-listing statement to be submitted to the JSE must include the following:

- (a) the annual financial report of the applicant issuer and guarantor (if applicable) in respect of the periods referred to in paragraphs 23.9(b) and 23.9(c) above;
- (b) exchange control approval (if applicable);
- (c) where regulatory approval for the issue and/or listing of securities is required from other regulators, the JSE will not grant approval for the issue and/or listing until such time as it receives a copy of the related approval/ruling;
- (d) a draft abridged prelisting statement;
- (e) Part I and Part II documents pursuant to paragraphs 16.10 - 16.12; and
- (f) agreements that relate to the terms and conditions or relationship between the BEE SPV and the applicant issuer of the underlying asset.

### **Continuing obligations**

23.11 A BEE SPV is required to comply with the following continuing obligations:

- (a) in the event that the applicant issuer makes any changes to the agreements that govern the applicant issuer or terms and conditions of the securities or any changes to the applicant issuer that the JSE deems material, other than as set out in the memorandum of incorporation and changes which are of a formal, minor or technical nature or are made to correct a manifest error or to comply with mandatory provisions of the law, the applicant issuer must obtain approval from the majority of the holders of securities in a general meeting. The applicant issuer must engage the JSE regarding any proposed changes at an early stage in order for the JSE to determine whether the changes require approval from the holders of securities in a general meeting;
- (b) publish on SENS, without delay, details of any new issue of securities (and, if applicable, guarantees, security or credit enhancements relating thereto), as well as any amendments and proposed amendments to the terms and conditions attaching to existing listed securities, unless agreed otherwise by the JSE;
- (c) publish its annual financial statements in accordance with paragraph 3.19 and 3.21. The procedure for non-compliance as set out in paragraph 3.23 and 3.24 will apply to a BEE SPV that fails to comply with paragraph 3.19. In addition, the requirements of paragraph 3.25 will also apply where a modified auditors' report has been issued on an BEE SPV's annual financial statements;
- (d) publish its interim financial statements in accordance with paragraph 3.15. The procedure for non-compliance as set out in paragraph 3.17 will apply to a BEE SPV that fails to comply with paragraph 3.15 in relation to interim financial statements;
- (e) release an announcement on SENS confirming that the information pursuant to paragraphs 23.11(c) and (d) above is available on its website;
- (f) inform the JSE of any change in the BEE verification agent, and

- (g) an applicant issuer is required to comply with Section 3, subject to the following exclusions:

Paragraphs

3.16 and 3.20 Results;

3.26 Cash Companies;

3.29 to 3.31 Pre-emptive rights;

3.32 and 3.33 Waiver of pre-emptive rights;

3.34 Profit warranties;

3.35 and 3.36 Issues by subsidiaries other than on listing;

3.46 Press announcements. Announcement must be made on SENS only; and 3.84 Corporate Governance: Paragraphs (a), (g), (h) and application of the King Code disclosure and application regime to the principles set out in Part 5.3, Governing Structures and Delegation of the King Code.

**Application for additional listing**

23.12 All applications for the listing of additional securities shall be made in compliance with the following:

- (a) in the case of a subsequent issue of securities be done in accordance with the Listings Requirements and the memorandum of incorporation of the applicant issuer;
- (b) the application to the JSE must be supported by a duly executed resolution of the board, or legal authority, specifically authorising the subsequent issue and further issue and listing; and
- (c) announced on SENS prior to the issue date of securities.

**Circulars**

23.13 An applicant issuer must comply with the following provisions of Section 11 with regards to circulars:

Paragraphs

11.1 Contents of all circulars and pre-listing statements;

11.2 Approval;

11.43 Embargo placed on company announcements/circulars; and

11.44 Name and logo of a sponsor.

**Announcements**

23.14 An applicant issuer must publish the following with respect of the BEE SPV:

- (a) a SENS announcement, which is to be made immediately after the JSE has approved an application for listing, containing:
  - (i) the full name and place and date of incorporation in respect of the applicant issuer and if applicable any guarantor;
  - (ii) the period of marketing (if applicable) and the expected listing date;
  - (iii) the salient terms of the issue;
  - (iv) a statement that JSE approval for the listing has been granted;

- (v) the code under which the securities will trade and the ISIN;
- (vi) confirmation of the underlying authority to issue additional securities;
- (b) Any declaration of dividends (as defined in terms of the Income Tax Act), interest and other similar payments (distribution payments and cash disbursements to shareholders) by an applicant issuer should immediately be announced as per paragraphs 11.17(a)(i) to (x).

23.15 The applicant issuer will also be required to make an announcement should there be any changes in the constituents of the asset pool relating to a corporate action or otherwise (if applicable). Such announcement must be made through SENS and posted on the applicant issuer's website.

23.16 An applicant issuer must announce any corporate action or restructuring in the underlying asset/s, provided it affects the listed security. The announcement is to be made at least ten business days prior to the record date of the relevant corporate action or such other date acceptable to the JSE. The final terms of the amendment must be announced by no later than 10am on the business day prior to the effective date of such amendment.

23.17 Any corporate action proposed by an applicant issuer is to be undertaken in accordance with the Listings Requirements, read with the corporate action timetables unless otherwise agreed to by the JSE.