

Amendments to the JSE Debt Listings Requirements (the “Debt Requirements”)

Sovereign Issuers

Censure & Penalties

February 2022

| Section | Proposed Amendment | Nature of amendment and rationale |
|----------------|---|--|
| Various | <p>PART A</p> <p>Introduction of Sovereign Debt Issuers</p> <p>Currently foreign sovereign applicant issuers are permitted to issue debt securities under the provisions of the Debt Requirements on the same basis as corporate applicant issuers, although exemptions apply to the South African Government as a debt issuer.</p> <p>The JSE intends to amend the Debt Requirements to allow foreign sovereigns to issue debt securities under the provisions of the Debt Requirements, on the same basis as applied to the South African Government.</p> | <p>Over the years the Debt Requirements were amended to provide for specific provisions applicable to the South African Government as a separate category of debt issuer. Certain provisions of the Debt Requirements are therefore not applied to the South African Government, primarily provisions dealing with corporate governance and certain financial disclosure requirements.</p> <p>The JSE undertook its own research on international governance and financial disclosure requirements for sovereigns. This research covered the London Stock Exchange and Euronext Dublin. Both these exchanges do not require sovereigns to make any governance disclosures, nor do they prescribe a specific governance framework. Further, the only financial information provided by the sovereigns are budget statements with no external assurance requirement.</p> |
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| <p>Section 1 Authority of the JSE</p> | <p>PART B</p> <p>Purpose for the Appropriation of Penalties</p> <p>Paragraph 1.24</p> <p>The JSE is considering amendments to the Debt Requirements dealing with the purpose for the appropriation of penalties.</p> | <p>The appropriation of penalties issued by the JSE currently stipulates the following:</p> <p><i>“The whole or any part of the fines issued in terms of paragraph 1.20 will be appropriated as follows:</i></p> <p><i>(a) the settlement of any costs incurred by the JSE in enforcing the provisions of the Debt Listings Requirements; and/or</i></p> <p><i>(b) the settlement of any future costs which may arise through the enforcement of the provisions of the Debt Listings Requirements.”</i></p> <p>The JSE currently has policy dealing with granular level details in respect of the purpose for the appropriation of penalties. Please refer to the Issuer Regulation Conflicts of Interest Policy available on the JSE website (refer to pages 27 to 29) (the “JSE Policy”).</p> <p>JSE Policy – copy link into browser: https://www.jse.co.za/sites/default/files/media/documents/2020-10/Issuer%20Regulation%20Conflicts%20Policy%20Final%20February%202020.pdf</p> <p>Manual Route: JSE Website www.jse.co.za / Regulation / Issuer Regulation / Useful Links / Conflicts of Interest Policy</p> <p>The provisions in the JSE Policy dealing with the purpose for the appropriation of penalties currently supports paragraph 1.24 of the Debt Requirements. The intention is to mirror the provisions of the JSE Policy dealing with the appropriation of penalties with the Debt Requirements in order to ensure clarity on the purpose for the appropriation of penalties.</p> |
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Introduction of Sovereign Debt Issuers

Definitions

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| <u>sovereign issuer</u> | <u>means the South African Government or a foreign government, including a government department, or special purpose vehicle of that government, acceptable to the JSE, as an applicant issuer;</u> |
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Section 3 – Conditions for Listing

Additional or Amended Conditions of Listing: Type of Debt Instrument/Issuer

- Sustainability Segment;
- Project Bonds;
- Structured Products;
 - o Index-Linked Notes;
 - o Asset-Backed Debt Securities; and
- ~~The South African Government~~Sovereign Issuer.

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~~The South African Government Sovereign Issuer~~

3.27 ~~A sovereign issuer~~~~The National Treasury of the South African Government~~, in its capacity as issuer or guarantor, is not required to comply with Section 5.

Section 4 – Listing Particulars

Additional or Amended Listing Particulars: Type of Debt Instrument/Issuer

- Sustainability Segment;
- Structured Products;
 - o Securitisations;
 - o Asset-Backed Debt Securities;
 - o Credit-Linked Notes;
 - o Index-Linked Notes;
- Project Bonds;
- ~~The South African Government~~Sovereign Issuer; and
- Secondary Registered Issuers.

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~~The South African Government~~Sovereign Issuer

- 4.33 Material risk and the sensitivity of the issue of debt securities to such risk factors pursuant to paragraph 4.10(g) must be addressed in respect of country/government risk.
 - 4.34 The placing document must make provision for modifications to the placing document, pricing supplement, the terms and conditions of the debt securities, the guarantee, security or credit enhancement agreement (where applicable), as per the provisions of paragraph 6.56.
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Section 5 – Financial Information

Additional or Amended Financial Information: Type of Debt Instrument/Issuer

- Project Bonds;
- ~~The South African Government~~, Sovereign Issuer, State-Owned Entities; and Municipalities.

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~~The South African Government~~Sovereign Issuer, State-Owned Entities and Municipalities

5.19 A sovereign issuer, in its capacities as issuer or guarantor, is not required to comply with Section 5.

5.20 With reference to paragraph 5.2, state-owned entities and municipalities~~the above entities~~ that are subject to enabling legislation, may require adherence to other standards and this fact should be disclosed with the necessary details of those other standards.

5.21 With reference to paragraph 5.3(c), state-owned entities and municipalities~~the above entities~~ that are audited by the Auditor General, are not required to comply with that paragraph.

Section 6 – Continuing Obligations

Additional or Amended Continuing Obligations: Type of Debt Instrument

- Sustainability Segment;
- Structured Products:
 - o Asset-Backed Debt Securities;
 - o Credit-Linked Notes;
- Project Bonds;
- ~~The South African Government~~Sovereign Issuer;
- State-Owned Entities;

- Municipalities; and
- Secondary Registered Issuers.

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~~The South African Government~~Sovereign Issuer

6.95 ~~A sovereign issuer~~The National Treasury of the South African Government, in its capacity as an issuer of debt securities, is not required to comply with:

- (a) paragraphs 6.14, 6.15 and 6.17;
- ~~(b) paragraphs 6.22-6.29 on the basis of being audited by the Auditor General;~~
- (c) paragraphs 6.39 and 6.4~~0~~1 only in respect of directors and the company secretary ~~and not as applied to the debt officer~~; and
- (d) paragraphs 6.4~~1~~2-6.53.

Appendix 1 to Section 7

Applicable corporate governance provision pursuant to type of debt securities/issuer.

Keys:

Unless specifically categorised by type of debt securities/issuer through items 2-10 below, item 1 (Debt Securities) must be applied.

| | | |
|----------|---|--------------|
| 1 | Debt Securities | DS |
| 2 | Securitisations | S |
| 3 | Asset-backed debt securities | ABS |
| 4 | Sustainability Segment | SS |
| 5 | Structured Products | SP |
| 6 | Projects Bonds | PB |
| 7 | South African Government <u>Sovereign Issuer</u> | SISAG |
| 8 | State-Owned Entities | SOE |

| | | |
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| 9 | Municipalities | MUN |
| 10 | Secondary Registered Issuers | SRI |

| | DS | S | ABS | SS | SP | PB | SISA G | SOE | MUN | SRI |
|--|-----------|----------|------------|-----------|-----------|-----------|-------------------|------------|------------|------------|
| 7.1 King Code - Placing Document + | √ | X | X | √ | X | X | X | √ | √ | * |
| 7.2 King Code - Financial Statements + | √ | X | X | √ | X | X | X | √ | √ | * |
| 7.3(a) Audit Committee# | √ | X | X | √ | X | X | X | √ | √ | X |
| 7.3(b) CV of Directors | √ | X | X | √ | X | √ | X | √ | √ | X |
| 7.3(c) Capacity of Directors | √ | √ | √ | √ | √ | √ | X | √ | √ | X |
| 7.3(d) Financial Director ^ | √ | X | X | √ | X | X | X | √ | X | X |
| 7.3(e) Audit Committee Functions | √ | X | X | √ | X | X | X | √ | √ | X |
| 7.3(f) Evaluation of Directors | √ | X | X | √ | X | X | X | √ | √ | X |
| 7.3(g) Debt Officer | √ | X | X | √ | X | X | X | √ | √ | √ |
| 7.4 Conflicts of | √ | X | X | √ | X | X | X | √ | √ | X |

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|--|---|---|---|---|---|---|---|---|---|---|
| Interests | | | | | | | | | | |
| 7.7 Nomination of Directors | √ | X | X | √ | X | X | X | √ | √ | X |
| 7.9 Domestic Prominent Influential Person | X | X | X | X | X | X | X | √ | √ | X |
| 7.12 Procurement | X | X | X | X | X | X | X | √ | √ | X |
| 7.15 Loans and Procurement – Related Parties | X | X | X | X | X | X | X | √ | √ | X |

Section 8 – The Listing Process

~~The South African Government~~ Sovereign Issuers

Dispensation

8.9 The following dispensations ~~is~~ are granted to ~~a sovereign issuer, the National Treasury~~ in its capacity as issuer and guarantor (where applicable), as regards documents ~~s~~ to be submitted for formal submission:

- (a) paragraphs 8.3(b), (c), (d), (e), (f), (h), (i), (j), (k), (n), (o) and (p), accepting that (j) will not apply to the South African Government.

Added for ease of reference in relation to the amendment directly above:

Documents to be submitted on formal submission

- 8.3 A new applicant making application for the approval by the JSE of the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement or a listing of debt securities pursuant to an offering circular shall submit an application to the JSE through a debt sponsor or designated person and in accordance with the debt market process document. The JSE will not grant final formal approval unless the following documents, where applicable, have been submitted:
- (a) a signed copy of the placing document;
 - (b) a copy of the certificate of registration and certificate of incorporation of the new applicant;
 - (c) a copy of the resolution or resolutions of the board of directors or the governing authority of the new applicant authorising the establishment and registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement and/or the issue of debt securities as the case may be;
 - (d) a copy of the Memorandum of Incorporation of the new applicant or equivalent constitutive documents;
 - (e) a signed copy of any applicable guarantee/security agreement in respect of the debt security;
 - (f) a duly executed resolution of the appropriate legal authority authorising the provision of the guarantee, security and/or credit enhancement;
 - (g) confirmation from the CSD that the new applicant has been authorised as a participant in terms of the central securities depository rules and directives;
 - (h) any trust deed relating to the debt securities (only in the instance of a debenture trustee or bond trustee);
 - (i) where the new applicant issuer is registering a placing document in relation to a securitisation, a copy of the South African Reserve Bank approval of the securitisation;
 - (j) approval from the Financial Surveillance Department of the South African Reserve Bank is required when the applicant issuer is incorporated or domiciled in a foreign country, including the common monetary area (other than South Africa);
 - (k) written confirmation from the trustee or relevant party holding the guarantee or other security that it has the guarantee in its possession;
 - (l) application letter complying with Schedule 1;
 - (m) a letter from the debt sponsor or designated person complying with Schedule 2;
 - (n) the audit report from the auditor, if the instance referred to in paragraph 5.3(c) is applicable;
 - (o) the audited annual financial statements of the new applicant and/or guarantor (if applicable and if the guarantor has operating assets) in respect of the period of three years prior to the date of such issue or such financial statements as agreed to by the JSE in terms of paragraphs 5.4 to 5.6. If more than 9 months have lapsed since the new applicant's financial year-end and/or guarantor's financial year-end, interim financial statements for the new applicant and/or guarantor must be submitted;

- (p) the auditors consent letter, if paragraph 8.3(n) is applicable;
- (q) letter from the legal adviser that all relevant agreements have been signed;
- (r) in relation to all other asset-backed debt securities, the letter from the new applicant as required by paragraph 3.26; and
- (s) the letter from the new applicant issuer or other foreign issuer, as the case may be, confirming that the information published in the signed placing document was materially the same as that contained in the draft submitted for formal approval to the JSE, or, if not, then in what material respects it differed, as required by paragraph 8.6.

Consequential Amendments

On the premise that sovereign issuers are not required to publish financial information, the following consequential amendments are also being proposed:

Section 4 – Listing Particulars

Asset-Backed Debt Securities

- 4.25 These paragraphs govern the disclosure requirements for issuers issuing asset-backed debt securities that do not fall within the definition of a securitisation.
- 4.26 The placing document or pricing supplement published in connection with the issue of debt securities in asset-backed debt securities must include the following additional information where applicable:
 - (a) Applicant issuers must ensure that the website addresses where the financial information of the issuing entities of the underlying assets, excluding sovereign issuers, as referred to in paragraph 4.28(b)(ix), are included in the pricing supplement, offering circular or the report produced by issuers for its investors. If this information is included in the report produced by issuers for its investors, the pricing supplement or offering circular must include the URL address where the report produced by issuers for its investors will be available; and

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Credit-Linked Notes

- 4.30 The placing document or pricing supplement published in connection with the issue of debt securities as credit-linked notes must, over and above the general information required in this section, include the following additional information where applicable:
- (a) the name of the reference entity, reference index and/or the reference obligation;
 - (b) the characteristics and ISIN of the reference obligation, if applicable; and
 - (c) if the issuing entity of the reference obligation (or if there is no reference obligation, the reference entity):
 - (i) is listed on the Main Board or Interest Rate Market of the JSE, no additional information needs to be provided;
 - (ii) is not listed on the JSE but is guaranteed, a statement that the financial information of the guarantor will be available on the guarantor's website and the website address must be included; or
 - (iii) does not fall within (i) or (ii) above, a statement that the financial information of the issuing entity, excluding sovereign issuers, of the reference obligation (or if there is no reference obligation, the reference entity, excluding sovereign issuers) will be available on the issuing entity's or reference entity's website and the website address must be included. The financial information must be available within six months of the financial year-end of the underlying entity;

Purpose for the Appropriation of Penalties

Censure and penalties

1.23 ...

1.24 The whole or any part of the fines issued in terms of paragraph 1.20 will be appropriated as follows:

~~(a) the settlement of any costs incurred by the JSE in enforcing the provisions of the Debt Listings Requirements; and/or~~

~~(b) the settlement of any future costs which may arise through the enforcement of the provisions of the Debt Listings Requirements.~~

(a) External costs incurred by the JSE at its specific instance and request, in enforcing the provisions of the Debt Listings Requirements, including but not limited to, attorney fees, senior counsel fees, forensic investigation fees and any fees that relate (direct or indirectly) to any investigative services or in support of any investigation initiated by the JSE;

(b) External costs incurred by the JSE to create an observance and awareness as to the interpretation and application of the Debt Listings Requirements in furtherance of the general principles of the Debt Listings Requirements and the objects of the FMA; and

(c) Project costs initiated by the JSE, which are directly associated with the Debt Listings Requirements and falls within the sphere of research and/or analysis in financial markets regulation.