



Issuer Regulation

Amendments to the JSE Listings Requirements: Corporate Governance

September 2024

Introduction

The Companies Amendment Act 2024, No. 16 of 2024 (the “**Amendment Act**”) and the Companies Second Amendment Act 2024, No. 17 of 2024 were assented to by the President on 25 July 2024. The amendments to the Companies Act will only become effective on a date to be proclaimed by the President. Until such date the amendments are not yet in force.

The provisions of Section 30A and 30B of the Amendment Act, dealing with the approval by shareholders of the remuneration policy and remuneration report, impacts the following provisions of the JSE Listings Requirements (the “**Requirements**”):

- Corporate Governance: The remuneration policy and the implementation report that must be tabled every year for separate non-binding advisory votes by shareholders of the issuer at the annual general meeting in terms of paragraph 3.84(j); and
- Share Incentive Schemes: Schedule 14: Requirements for share incentive schemes.

In anticipation of the effective date of the Amendment Act, the JSE is proposing to amend the Requirements. The JSE will monitor developments to ensure that it takes due regard of the effective date of the Amendment Act, as it related to these proposed amendments.

Proposed Amendments

1 Paragraph 3.84(j): Non-binding advisory votes the remuneration policy and the implementation report

The JSE introduced the above provision in June 2017 in support of the recommended practice in the King IV Report on Corporate governance, that the remuneration policy and the implementation report be tabled every year for separate non-binding advisory votes by shareholders at the AGM. The new sections 30A and 30B of the Amendment Act now require all public and state-owned companies to prepare and present a remuneration policy and remuneration report to shareholder for approval.

The JSE is of the view that matters regarding remuneration, as contemplated in paragraph 3.84(j) of the Requirements, are now adequately dealt with through the Amendment Act.

In order to avoid confusion, duplication and regulatory effort, the JSE is of the view that it is no longer appropriate to deal with these matters through the Requirements. The JSE is therefore proposing to remove the provisions of paragraph 3.84(j) dealing with a non-binding advisory vote on remuneration.

2 Foreign Primary Issuers

Foreign companies having a primary listing or seeking a primary listing on the JSE are not subject to the Companies Act and the Requirements must therefore contain provisions to ensure reasonable regulation on remuneration for those issuers. The JSE also recognises that the consequences of shareholders not approving the remuneration policy and the remuneration report as contemplated in Section 30A and B of the Amendment Act will not have any bearing on such companies.

The JSE therefore proposes to substantially maintain the non-binding advisory vote on the remuneration (similar to paragraph 3.84(j) of the Requirements), for foreign primary applicant issuers. The only proviso being, that the announcement inviting dissenting shareholder to engage with the issuer is only triggered if the remuneration policy or report, or both, are voted against by 50% or more (previously 25% or more) of the votes exercised. The rationale for the approach is to mirror the majority vote required by the Amendment Act on the remuneration policy and report.

3 Schedule 14: Requirements for share incentive schemes

Section 30A of the Amendment Act sets out the requirements for the remuneration policy, including that such policy:

- must be presented to and approved by a company's shareholders at the AGM by an ordinary resolution and, if not approved, must be presented at the next AGM or at a shareholders meeting called for such purpose;
- if approved, will remain in force for 3 years from approval and must be approved every 3 years thereafter; and
- may be amended prior to the end of the 3 year period provided that any material amendment can only be implemented after it is approved by the shareholders by an ordinary resolution at a shareholders meeting called for this purpose or at an AGM.

Remuneration in terms of Section 30(6) of the Companies Act must be disclosed in the annual financial statements and includes:

- salary, bonuses and performance-related payments;
- the value of any option or right given directly or indirectly to a director, past director or future director, or person related to any of them, as contemplated in section 42;
- financial assistance to a director, past director or future director, or person related to any of them, for the subscription of shares, as contemplated in section 44.

(collectively “incentives”)

The JSE is of the view that remuneration, including incentives, will be adequately dealt with under (i) the disclosure provisions in terms of Section 30(6) and (ii) of the Companies Act and the imposed shareholders’ approval of the remuneration policy and remuneration report in terms of Section 30A and 30B of the Amendment Act.

The JSE therefore proposes to substantially remove the provisions of Schedule 14 (Requirements for share incentive schemes). Going forward, the JSE, will play a reduced role in dilutive share schemes, save for:

- the approval of dilution to shareholders;
- basic minimum content of dilutive share schemes; and
- general governance arrangements.

In order to accommodate the above approach, it is being proposed to remove Schedule 14 (Requirements for share incentive schemes) in its entirety and introducing new provisions dealing with dilutive share schemes in Section 5 (Methods and Procedures of Brining Securities to Listing), following the issue for cash provisions.

4 Consequential amendments

As a result of the proposed amendments above, certain consequential amendments will need to be made throughout the Requirements to (i) remove any references to Schedule 14 and (ii) deal with the removal of paragraph 3.84(j) of the Requirements.

See proposed amendment below

Proposed Amendments

Amendment 1

Corporate Governance

3.84 In addition to complying with paragraph 8.62(a), issuers must implement the following specific corporate governance practices and must disclose compliance therewith in their annual reports. (The effect of incorporating certain practices from the King Code in the Listings Requirements is to make their implementation mandatory, this is notwithstanding the fact that application of the corporate governance practices in the King Code is generally voluntary):

(a) ...

~~(j) The remuneration policy must record the measures that the board of directors of the issuer commits to take in the event that either the remuneration policy or the implementation report, or both, are voted against by 25% or more of the votes exercised. In order to give effect to the minimum measures referred to in the King Code, in the event that either the remuneration policy or the implementation report, or both are voted against by shareholders exercising 25% or more of the voting rights exercised, the issuer must in its voting results announcement pursuant to paragraph 3.91 provide for the following:~~

~~(a) An invitation to dissenting shareholders to engage with the issuer; and~~

~~(b) The manner and timing of such engagement; and~~

Amendment 2

New paragraph (j):

~~(j) if a foreign applicant issuer with a primary listing on the JSE, the remuneration policy and the implementation report must be tabled every year for separate non-binding advisory votes by shareholders of the issuer at the AGM. The remuneration policy must disclose the steps that the directors of the issuer commit to take if the policy or report, or both, are voted against by 50% or more of the votes exercised. If the policy or report, or both, are voted against by shareholders exercising 50% or more of the voting rights exercised, the issuer must in its voting results announcement in terms of 3.91 provide for the following:~~

~~(a) an invitation to dissenting shareholders to engage with the issuer; and~~

~~(b) the date and time of such engagement;~~

Amendment 3

dilutive scheme

a share option/incentive schemes to incentivise staff, where equity securities (including options) are issued by issuers (trusts or special purpose vehicles formed for such purpose) to employees and other persons involved in the business of the issuer resulting in a dilution to holders of equity securities. This includes a fresh issue of equity securities and/or the use of equity securities held as treasury shares. Dilutive scheme must not be used for trading purposes

Issues for cash

Description

- 5.50 An issue for cash is an issue of equity securities for cash (~~or including~~ the extinction of a liability, obligation or commitment, restraint, ~~or~~ settlement of expenses or issuances under a dilutive scheme) in compliance with paragraphs 5.50 to 5.57:
- (a) on terms that are specifically approved by equity securities holders in general meeting (if applicable in terms of paragraph 5.51(g)) in respect of that particular issue (“a specific issue for cash”); or
 - (b) on terms generally approved by equity securities holders in general/annual general meeting by granting the board of directors of the issuer the authority to issue a specified number of securities for cash pursuant to paragraph 5.52(c), which authority will be valid until the issuer’s next annual general meeting or for 15 months from the date on which the general issue for cash ordinary resolution was passed, whichever period is shorter, subject to the requirements of the JSE and to any other restrictions set out in the authority (“a general issue for cash”).

Requirements for dilutive schemes [Following the issue for cash provisions]

5.54 Dilutive schemes must be approved in terms of 5.50(a) and include the following:

- (a) the category of participants;
- (b) a fixed maximum total number of equity securities that may be issued; and
- (c) a fixed maximum number of equity securities for any one participant.

5.55 Any amendment to the above must be approved by holders of equity securities, excluding the votes of equity securities owned or controlled by persons who are existing participants in the dilutive scheme.

5.56 The following general provision apply to dilutive schemes:

- (a) the trustee/responsible party may not be:
 - (i) executive directors;
 - (ii) non-executive directors benefiting from the dilutive scheme; and

- ~~_____ (ii) _____ participants;~~
- ~~_____ (b) equity securities held by a dilutive scheme may not vote at general meetings of the issuer on any resolutions proposed in terms of the Listings Requirements or be taken into account for categorisation purposes in terms of Section 9; and~~
- ~~_____ (c) a dilutive scheme may not purchase securities during a prohibited period, save through a mechanism similar to 5.69(h).~~

Schedule 14
Requirements for share incentive schemes

~~Share option schemes and share incentive schemes (“schemes”) are to be used to incentivise staff and may not be used for trading purposes. The following provisions apply to all schemes involving the issue of equity securities (including options) by issuers (or trusts or special purpose vehicles formed for this purpose) to, or for the benefit of, employees and other persons involved in the business of the group and which result in a dilution of the shareholding of equity securities holders in the issuer or applicant. This includes the issue of equity securities from the authorised but unissued share capital, as well as the use of equity securities held as treasury shares. The rules set out below apply to schemes as contemplated for companies at listed company level and also to schemes of all subsidiaries of issuers which provide for the issue of equity securities in the listed holding company.~~

~~The JSE must be consulted on the application of these provisions to schemes intended to apply to employees of associates.~~

~~14.1 The scheme must be approved by equity securities holders passing an ordinary resolution (requiring a 75% majority of the votes cast in favour of such resolution by all equity securities holders present or represented by proxy at the general meeting to approve such resolution) and must contain provisions relating to:~~

- ~~_____ (a) the category of persons to whom, or for the benefit of whom securities may be purchased or issued under the scheme (“participants”);~~
- ~~_____ (b) the number of equity securities which may be utilised for purposes of the scheme must be stated and this number may not be exceeded without equity securities holders’ approval as required above. Use of the wording “from time to time” or a percentage is prohibited;~~
- ~~_____ (c) a fixed maximum number of equity securities for any one participant;~~
- ~~_____ (d) (i) the amount, if any, payable on application or acceptance, subscription or exercise, as the case may be;~~
- ~~_____ (ii) the basis for determining the price (if any and regardless of the form that it takes) payable by participants and the period after or during which such payment must be made. This must be a fixed mechanism for all participants. Repricing of options is prohibited; and~~
- ~~_____ (iii) the period in which payments, or loans to provide the same, may be paid;~~
- ~~_____ (e) the voting, dividend, transfer and other rights, including those arising on a liquidation of the issuer, attaching to the securities and to any options (if appropriate);~~
- ~~_____ (f) the basis upon which awards are made;~~
- ~~_____ (g) the treatment of options (vested and unvested) in instances of mergers, takeovers or~~

corporate actions; and

- ~~(h) the rights of participants who leave the employment of the issuer whether by termination, resignation, retirement or death insofar as their early departure from the scheme is concerned.~~
- ~~14.2 The provisions relating to the matters contained in paragraph 14.1 above cannot be altered without the prior approval of equity securities holders in accordance with paragraph 14.1 above, excluding all the votes attaching to all equities securities owned or controlled by persons who are existing participants in the scheme. Only the equity securities which have been acquired in terms of the relevant scheme and may be impacted by the changes will be excluded from the said vote.~~
- ~~14.3 (a) The scheme must provide, in the event of a sub-division or consolidation of securities, for an adjustment to the number of equity securities that may be utilised in terms of paragraph 14.1(b) above and the amount payable in terms of paragraph 14.1(d) above. Such adjustment should give a participant entitlement to the same proportion of the equity capital as that to which he was previously entitled.~~
- ~~(b) The scheme may provide, in the event of a capitalisation issue, a special dividend, a rights issue or reduction of capital for adjustment to the fixed maximum number in paragraph 14.1(c) above and the amount in terms of paragraph 14.1(d) above. Such adjustment should give a participant entitlement to the same proportion of equity capital as that to which he was previously entitled.~~
 - ~~(c) The issue of equity securities as consideration for an acquisition, the issue of securities for cash and the issue of equity securities for a vendor consideration placing will not be regarded as a circumstance requiring adjustment.~~
 - ~~(d) The company's auditor, or other independent advisers acceptable to the JSE must confirm to the JSE, in writing, that any adjustments made in terms of paragraph 14.3 are in accordance with the provisions of the scheme. Such written confirmation must be provided to the JSE at the time that any such adjustment is finalised.~~
 - ~~(e) Any adjustment made in accordance with paragraph 14.3 above must be reported on in the issuer's annual financial statements in the year during which the adjustment is made.~~
 - ~~(f) Allocated equity securities which are not subsequently issued to the identified participant/s, for example as a result of forfeiture, must revert back to the scheme.~~
- ~~14.4 Executive directors may not be appointed as trustees of schemes. Non-executive directors, subject to any restriction as contained in the Act, may be appointed as trustees of the scheme, provided that they do not benefit from the scheme.~~
- ~~14.5 The trustees may not be participants under the scheme.~~
- ~~14.6 The resolution to approve a scheme must make specific reference to the scheme and be accompanied by either the full scheme or a summary of the principal terms as set out in paragraphs 14.1 and 14.3 above and must be circulated to equity securities holders.~~
- ~~14.7 The scheme document, if not circulated to the equity securities holders, must be available for inspection by equity securities holders during normal business hours at the issuer's registered office and in Johannesburg. The full scheme must be open for inspection for a reasonable period of time (being not less than 14 days).~~
- ~~14.8 The issuer must summarise in its annual financial statements the number of securities that may be utilised for purposes of the scheme at the beginning of the financial year, changes in such~~

~~number during the accounting period and the balance of securities available for utilisation for the purposes of the scheme at the end of the financial year.~~

~~14.9 With regards to the trading of shares on behalf of schemes, the following requirements apply:~~

- ~~(a) equity securities may only be issued or purchased by a scheme once a participant or group of participants to whom they will be allocated, has been formally identified (e.g. applicants to whom options over securities have been issued);~~
- ~~(b) equity securities held in trust may only be sold:

 - ~~(i) once the employment of a participant has been terminated or a participant is deceased; or~~
 - ~~(ii) on behalf of the participant, once the rights of ownership have vested;~~~~
- ~~(c) unless a scheme explicitly provides for the purchase of securities through the market, in order to satisfy obligations in terms of the scheme, no purchases through the market will be permitted. Any shares purchased through the market will not be taken into account when calculating the number of shares utilised by the scheme;~~
- ~~(d) the provisions of paragraphs 3.63 to 3.74 apply mutatis mutandis to any dealings by the issuer or a scheme involving securities relating to the scheme, save for the circumstances pursuant to paragraph 3.92 being present;~~
- ~~(e) a scheme may not purchase securities during a prohibited period as defined in paragraph 3.67 unless it has in place a purchase programme. The issuer must instruct only one independent third party, which makes its investment decisions in relation to the issuer's securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme. The repurchase programme must be submitted to the JSE in writing prior to the commencement of the prohibited period and must include the following details:

 - ~~(i) the name of the independent agent;~~
 - ~~(ii) the date the independent agent was appointed;~~
 - ~~(iii) the commencement and termination date of the repurchase programme; and~~
 - ~~(iv) where the quantities of securities to be traded during the relevant period are fixed (not subject to any variation).~~~~
- ~~(f) in the event that the purchase was made during a prohibited period through a purchase programme pursuant to paragraph 14.9(e), an announcement must be made pursuant to paragraph 14.9(d) which must include a statement confirming that the purchase was put in place pursuant to a purchase programme prior to prohibited period in accordance with the Listings Requirements.~~

~~14.10 Equity securities held by a share trust or scheme will not have their votes at general/annual general meetings taken into account for the purposes of resolutions proposed in terms of the Listings Requirements. Such equity securities will also not be taken into account for purposes of determining categorisations as detailed in Section 9.~~

General

~~14.11 Any issue of equity securities to employees, which do not fall within the rules of an issuer's scheme,~~

~~will be treated as a specific issue of shares for cash as contemplated in paragraph 5.51.~~

~~14.12 Rolling over (including the arrangement assuming that equity securities which have already vested and been issued in terms of the scheme, and which usually revert back to the number referred to in paragraph 14.1(b) after a 10-year period) is prohibited.~~

~~14.13 Back-dating of options i.e. the practise of issuing options retrospectively is not permitted. The date upon which the decision to issue options is determined must be the date upon which all the components relating to the scheme i.e. the strike price, etc., are determined.~~

Amendment 4

Consequential Amendments

Sponsors

2.4 To the extent that an applicant issuer is required to have an independent sponsor pursuant to paragraph 2.3, the independent sponsor must attend to the following events and corporate actions:

(a)

* Excluded Items: Although shareholders' approval is required, the following items are excluded, being approvals in relation to MOIs, ~~Schedule 14 dilutive share incentive~~ schemes, general issue of shares for cash, general repurchases, increase in share capital and change of name.

Dealings by share incentive schemes

3.96 The provisions of paragraphs 3.63 to 3.74 apply mutatis mutandis to any dealings by the issuer or a scheme (~~including a dilutive or~~ non-dilutive scheme) involving securities relating to the scheme, save for the following circumstances being present:

Announcement of intra-group repurchases

3.99 An issuer must release an announcement on SENS, immediately after terms have been agreed, with the details of any intra-group repurchases concluded pursuant to paragraph 5.67(B)(b), which must include the following:

(a) ...

(b) whether the equity securities are repurchased from either a wholly-owned subsidiary/ies, ~~share incentive scheme/s pursuant to Schedule 14 and/or and/or dilutive schemes and/or~~ non-dilutive ~~share incentive~~ schemes controlled by the issuer;

Repurchase of securities

Weighted Voting Shares: Governance Arrangements

4.45 The applicant must apply to the following governance arrangements:

- (a) ...
- (f) the following matters must be voted on through the enhanced voting process:
 - (i) variation of rights attaching to securities;
 - (ii) appointment and removal of auditors;
 - (iii) appointment, re-election or removal of independent non-executive directors;
 - ~~(iv) remuneration policy and implementation report pursuant to paragraph 3.84(j);~~
 - (v) reverse takeover; and
 - (vi) removal of listing.

Description

5.67 (B) Repurchase of securities not requiring shareholder's approval:

- (a) ...
- (b) Intra-group repurchases by the issuer of its securities from wholly-owned subsidiaries, ~~share incentive schemes pursuant to Schedule 14~~ and/or dilutive and non-dilutive share incentive schemes controlled by the issuer, where such repurchased securities are to be cancelled,

save to the extent required in terms of the Act.

General repurchases

11.27 When a company has cumulatively repurchased 3% of the initial number (the number of that class of shares in issue at the time that the general authority from shareholders is granted) of the relevant class of securities, and for each 3% in aggregate of the initial number of that class acquired thereafter, an announcement must be made. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the second business day following the day on which the relevant threshold is reached or exceeded, and must contain the following information:

- (a) ...
- (k) in the event that the repurchase/purchase was made during a prohibited period through a repurchase programme pursuant to paragraphs 5.72 and/or dilutive scheme~~14.9(e) of Schedule 14~~, a statement confirming that the repurchase was put in place pursuant to a repurchase programme prior to prohibited period in accordance with the Listings Requirements.

Dilutive Share incentive schemes

- 16.32 The following documents pertaining to ~~executive and staff share~~ a dilutive schemes (“schemes”) must be submitted to the JSE for approval:
- (a) a draft copy of the dilutive scheme, which must comply with ~~5.54~~ Schedule 14;
 - (b) the trust deed, if applicable; and
 - (c) a draft of the circular or notice relating to the adoption of or amendment(s) to the dilutive scheme.

AltX: Corporate governance

- 21.5 The following provisions regarding corporate governance apply:
- (i) 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;
 - (ii) Paragraphs 3.84(g), (h), (i), ~~(j)~~ and (k); and
 - (iii) The DA must be invited to, and must attend, all audit committee meetings and must advise the audit committee on the Listings Requirements for a period equal to:
 - (a) the first anniversary of listing of the applicant issuer; or
 - (b) the date of the publication of the applicant issuer’s annual financial statements, whichever is the longer.

Notwithstanding the above provisions, the DA must be allowed to attend any audit committee meeting of the applicant issuer should it wish to attend same. The DA is to be an observer at these meetings and not a member.