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Letter issued by the Johannesburg Stock Exchange on 21 April 2020 on the Payment of Dividends ("JSE Letter")

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1. **Background**

The COVID-19 pandemic has caused considerable and unanticipated disruption to the South African business sector and a number of JSE-listed companies have issued SENS announcements regarding, *inter alia*, the cancellation, postponement and the amendment of declared dividends, which the Johannesburg Stock Exchange ("**JSE**") has had to carefully consider in light of the JSE Listings Requirements[1] ("**LRs**") and the Companies Act[2].

2. **The Companies Act**

2.1 The provisions of Section 46(2) of the Companies Act stipulate that when the board of directors of a company has by resolution acknowledged that it has applied the solvency and liquidity test (as set out in Section 4) and reasonably concluded that the company will satisfy the same test immediately after the proposed distribution[3], then the distribution must be made, subject to compliance with Section 46(3).

2.2 For this reason, listed companies are not permitted to cancel, amend or postpone declared dividends unless they have complied in full with the Companies Act, any other applicable legislation and applicable legal principles.

3. **A company's declaration of a dividend**

3.1 In the JSE Letter:

3.1.1 the JSE confirms that the communication by a company of the amount of the dividend and the date on which it will be paid gives rise to "*an obligation on the [company] pay the dividend on the date stipulated and also results in an enforceable claim against the [company] for payment of such amount*"; and

3.1.2 JSE emphasises that it is incumbent on a company to ensure that it fulfils the obligations arising as a result of the declaration of a dividend and that if it intends to cancel, postpone or vary the payment of an existing declared dividend, it is required to publish a SENS announcement, setting out in detail, the basis for the cancellation, postponement or variation of the declared, including the circumstances and/or reasons that support its release from the obligation to pay the declared dividend. This is because shareholders and investors make investment decisions predicated on, *inter alia*, a company's declaration of a dividend and are entitled to, and do in fact, rely on a company's communication of the payment of a dividend.

4. **The relationship between the Companies Act, the JSE and LRs**

4.1 In the JSE's letter of 2 April 2020 and again in the JSE Letter, the JSE emphasises a company's responsibility to act in accordance with the Companies Act and reminds sponsors and companies to timeously release announcements providing details of price sensitive information, including in relation to any proposed cancellation, postponement or variation of a declared dividend.

4.2 Companies are reminded to comply with the JSE Corporate Actions Timetable[4] and the obligation to timeously submit a written explanation to the JSE explaining why its reliance on the provisions of the Companies Act precluded it from complying with the JSE Corporate Actions Timetable[5].

4.3 The JSE acknowledges that whilst certain companies may not be subject to the provisions of the Companies Act, the publication and notifications requirements set out in the JSE Letter apply equally to such companies.

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[1] JSE Listing Requirements Service Issue 27.

[2] Companies Act, No. 71 of 2008.

[3] Defined in Section 1 of the Companies Act.

[4] Schedule 2 Form H.

[5] Schedule 2 Form H.



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