

South African Reserve Bank

Financial Stability Department

Discussion paper

Group structure reporting requirements for resolution planning¹

General disclaimer:

The content of this discussion paper is based on relevant legislation together with published versions of relevant draft legislation, legislative amendments or Bills and may be amended or updated accordingly as and when relevant legislation is issued or amended.

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¹ This discussion paper expands on section 3.4 of the paper published by the South African Reserve Bank in July 2019, *Ending too big to fail: South Africa's intended approach to bank resolution (2019 Discussion Paper)*.

Contents

1. Introduction	4
2. Reporting requirements to identify resolution groups	5
2.1 Banks, non-bank SIFIs, payment system operators and participants of a systemically important payment system.....	6
2.2 Holding companies.....	6
2.2.1 Ultimate holding company	6
2.2.2 Intermediate holding company.....	7
2.3 Market infrastructures	8
2.4 Resolution support entities	8
2.5 Format of reporting the group structure.....	8
3. Submission requirements.....	9
Request for comments	9
Definitions	10
Abbreviations	12
Annexure A: Illustration of a hypothetical group structure	13
Annexure B: Reporting templates for shareholders of ultimate holding company	14
Annexure C: Reporting template for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems	16
Annexure D: Intermediate holding companies.....	17
Annexure E: Reporting of RSEs.....	18
Annexure F: Reporting of market infrastructures.....	19

Tables and figures

Reporting templates for shareholders of ultimate holding company

Table B.1: Main identified shareholders of ultimate holding company	14
Table B.2: Aggregate remaining minority shareholders of ultimate holding company	14
Table B.3: Example 1 of main identified shareholders of ultimate holding company	14
Table B.4: Example 2 of main identified shareholders of ultimate holding company	15
Table B.5: Example 1 of aggregate remaining minority shareholders of ultimate holding company	15
Table B.6: Example 2 of aggregate remaining minority shareholders of ultimate holding company	15

Reporting template for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems

Table C.7: Reporting template for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems	16
Table C.8: Example of completed reporting template for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems	16

Intermediate holding companies

Table D.9: Reporting template for intermediate holding companies	17
Table D.10: Example of completed reporting template for intermediate holding companies	17

Reporting of RSEs

Table E.11: Reporting template for the identified RSEs	18
Table E.12: Example of completed reporting template for the identified RSEs	18

Reporting of market infrastructures

Table F.13: Reporting template for identified market infrastructures	19
Table F.14: Example of completed reporting template for identified market infrastructures	19

1. Introduction

The Financial Sector Laws Amendment Bill, 2018 (FSLAB) proposes an insertion of a new clause 29A into the Financial Sector Regulation Act 9 of 2017 (FSR Act), which defines a designated institution (DI) as any of the following:

- a. a bank;
- b. a systemically important financial institution (SIFI);
- c. a payment system operator and participant of a systemically important payment system;
- d. a company that is a holding company of a bank, a SIFI, or a payment system operator of a systemically important payment system; and
- e. if a bank or a SIFI is a member of a financial conglomerate, each of the other members of the financial conglomerate.

In terms of this clause, an institution can fall in the scope of the resolution framework either in its own right (by being a bank, a non-bank SIFI, a payment system operator, a participant of a non-bank SIFI or a holding company of any of the above), or by being part of a financial conglomerate as determined by the Prudential Authority (PA) in terms of section 160 of the FSR Act.

Section 166E of the FSLAB puts an obligation on the SARB, as a resolution authority (RA), to “plan for the potential need for the orderly resolution of DIs”, that is, to develop resolution plans for DIs. In order to avoid a situation in which the SARB has to potentially include a multitude of group entities in a resolution plan, which may not necessarily be relevant for an orderly resolution, the FSLAB provides that the Governor may, by written notice to a person or body that is a DI because of being part of a financial conglomerate, determine that such person or body is not a DI. In short, all entities in a financial conglomerate are DIs for the purposes of resolution planning, unless they are excluded by the Governor. The entities in a financial conglomerate that are not excluded by the Governor are referred to in this paper as a resolution group.

The objective of the requirements set out in this paper is to propose criteria to be applied by banks and by the SARB, as an RA, to identify resolution groups (i.e. which

entities in a financial conglomerate should be treated as part of a DI, and which entities could be excluded by the Governor without affecting the ability of the SARB to conduct an orderly resolution). These criteria will also inform DI's future reporting requirements on their group structures, for resolution planning purposes. The development of a feasible resolution plan is dependent on a good understanding of the group structure and the identification of relevant entities in the group that will play an important role in order to achieve an orderly resolution.

2. Reporting requirements to identify resolution groups

The existing regulatory requirements for the reporting of group structures are not suitable for the identification of resolution groups. For example, regulation 56(2)(a)(ix)(C) of the Regulations relating to Banks (Regulations) requires banks to submit a group structure that identifies all interest held as at 31 March and 30 September of each year, or in the event of any major change in the group structure. This regulation potentially results in very detailed and lengthy group structures, without sufficient background information to identify resolution groups. A similar situation may arise with the reporting of financial conglomerates to which non-bank SIFIs belong.

In order to identify resolution groups and group entities that should be excluded by the Governor from the definition of DIs, more specific requirements on the reporting of group structures will be placed on DIs. Paragraphs 2.1 to 2.4 set out the proposed entities that should be reported to the SARB (reportable entities) in order to facilitate the identification of resolution groups.

For certain of the reportable entities, the SARB will also require information about their ownership structures at a minimum level of detail. An understanding of the ownership structure is important when identifying applicable resolution actions, for example, to assess contagion effects if shareholders and creditors are to be bailed in. The format in which this information has to be reported is illustrated in Annexure A, which provides an illustration of a hypothetical group structure, as well as Annexure B, which sets out the relevant reporting template.

2.1 Banks, non-bank SIFIs, payment system operators and participants of a systemically important payment system

All entities in a financial conglomerate that are defined in the FSLAB as DIs in their own right will by default form part of a resolution group and will thus have to be reported in the group structure. In the 2019 Discussion Paper, the SARB described REs as the entities in a financial group that the SARB intends to put in resolution in order to apply resolution actions to them. Entities that are DIs in their own right are likely to also be REs.

For companies in this category, the following information should be reflected on the group structure:

- i. The registered name and percentage of shareholding held in the banks, non-bank SIFIs, payment system operators and participants of a systemically important payment system institution (REs), respectively.
- ii. The registered name and percentage shareholding of the intermediate holding company/ies between the identified potential RE and the ultimate holding company.

Refer to Annexure A for an illustration of a hypothetical group structure and Annexure C for the relevant reporting template.

2.2 Holding companies

The FSLAB includes holding companies of a bank, a SIFI, or a payment system operator of a systemically important payment system as DIs. For the purposes of resolution planning, both the ultimate holding company and intermediate holding companies should be reported on the group structure.

2.2.1 Ultimate holding company

The ultimate holding company is the highest level juristic person, registered in South Africa, which controls the subsidiaries in the group. The ultimate holding company

should be the first entity reflected on the group structure, after the identification of its shareholders.

The following information about shareholders of the ultimate holding company should be provided, as set out in Annexure A which is an illustration of a hypothetical group structure and Annexure B which provides the relevant reporting template.

- a. The names and shareholding percentage of all the shareholders who have a shareholding of $\geq 5\%$.
- b. The names of the top five shareholders and their percentage shareholding, regardless of the percentage shareholding.
- c. The aggregate of all remaining shareholders should be disclosed as 'minority shareholders', together with remaining aggregate shareholding percentage.

2.2.2 Intermediate holding company

Intermediate holding companies are the entities which have the majority shareholding/control of a subsidiary in the group; however, the intermediate holding company itself is owned by another entity in the group.

All intermediate holding companies of entities reported in terms of paragraph 2.1, 2.3 and 2.4 should be reported.

The following information about the intermediate holding company should be provided, as set out in Annexure A, which is an illustration of a hypothetical group structure and Annexure D, which sets out the relevant reporting template.

- i. The names and shareholding percentage of all shareholders who have a shareholding of $\geq 5\%$.
- ii. The names of the top five shareholders and their percentage shareholding, regardless of the percentage shareholding.
- iii. The aggregate of all remaining shareholders should be disclosed as 'minority shareholders', together with remaining aggregate shareholding percentage.

2.3 Market infrastructures

Market infrastructures are essential for the smooth functioning of the financial system as they provide functions such as clearing and settlement for all types of financial transaction. All market infrastructures, excluding those captured under paragraph 2.1, should be reflected in the group structure.

The reporting template that relates to market infrastructures is set out in Annexure F and an example of how the market infrastructure should be reported in the group structure is set out in Annexure A.

2.4 Resolution support entities

The 2019 Discussion Paper introduced the concept of ‘resolution support entities’ (RSEs). RSEs are entities in a financial conglomerate that do not have to be put in resolution when the resolution group fails, but that will play an important role in supporting an orderly resolution.

RSEs include group entities that are not included in 2.1 to 2.3 above, but that perform either a critical function or critical shared service, or that operate a core business line or core shared service, as defined in this paper.

The following information about RSEs should be provided, as set out in Annexure A – the illustrative group structure example – and Annexure E which sets out the specific reporting template requirements:

- i. The registered name and percentage of shareholding held in the RSE.
- ii. The registered name and percentage shareholding of the intermediate holding company/ies between the identified potential RSE and the ultimate holding company.

2.5 Format of reporting the group structure

An illustrative example of the format in which the group structures should be submitted is included in Annexure A. For ease of analysis and comparison between different

resolution groups, the group structure should be reported according to the following colour code:

- Shareholders of ultimate holding company – red blocks
- Ultimate holding company – blue blocks
- Banks, non-bank SIFIs, payment system operator or participant in systemically important payment system – green blocks
- Intermediate holding companies – white blocks
- RSEs – yellow blocks
- Market infrastructure – purple blocks
- Third-party shareholders of the intermediate holding company – orange blocks.

3. Submission requirements

The resolution group, together with the relevant annexures, should be submitted

- as at 31 March and 30 September of each year, or

in the event of any major change in the group structure, within 30 days of the aforementioned dates of such change.

Request for comments

Comments are invited on the group structure reporting requirements for resolution planning, as set out in this discussion paper.

All comments should be sent to FST-RPD@resbank.co.za. The closing date for comments is 30 November 2020.

Definitions

Term	Definition
Control	means, as set out in International Financial Reporting Standards (IFRS) 10, having power over the investee; exposure or rights to variable returns from involvement with the investee; and the ability to use power over the investee to influence the amount of those returns. In addition, an entity will also be deemed to have control should the regulator pronounce/designate the entity as having control.
Core business line	means those business lines that the Resolution Authority (RA) would seek to protect through the implementation of resolution options in order to ensure the sustainability of the designated institution (DI) after the implementation of one or more resolution options.
Core shared service	means those activities performed by an entity within the financial group, or outsourced to a third party; the failure of which would impair the designated institution's ability to continue its core business lines.
Critical functions	means, as defined in the Financial Sector Laws Amendment Bill, 2018 (FSLAB), in relation to a designated institution, a function that is - <ul style="list-style-type: none"> a. essential to, or that contributes substantially to, financial stability and is performed by the designated institution; and b. provided to, and essential to the continued operation of, the designated institution.
Critical shared services	means activities performed by an entity within the financial group, or outsourced to a third party; the failure of which would impair the DI's ability to perform critical functions.
Designated institution	means, as defined in clause 45 of the FSLAB (or section 29A of the amended Financial Sector Regulation Act 9 of 2017 (FSR Act))- <ul style="list-style-type: none"> a. a bank; b. a systemically important financial institution; c. the payment system operator and participants of a systemically important payment system; d. a company that is a holding company of a bank, a systemically important financial institution, or a payment system operator of a systemically important payment system; and e. subject to any determination in terms of subsection (2), if a bank or a systemically important financial institution is a member of a financial conglomerate in terms of section 160 of the FSR Act, each of the other members of the financial conglomerate.
Financial conglomerate	means a group of companies designated as a financial conglomerate in terms of section 160 of the FSR Act.
Financial group	means a group of companies under common control where at least one entity conducts material activities in at least one sector which is regulated by a financial sector regulator.
Financial system	means, as defined in the FSR Act, the system of institutions and market through which financial products, financial instruments and financial services are provided and traded, and includes the operation of a market infrastructure and a payment system.

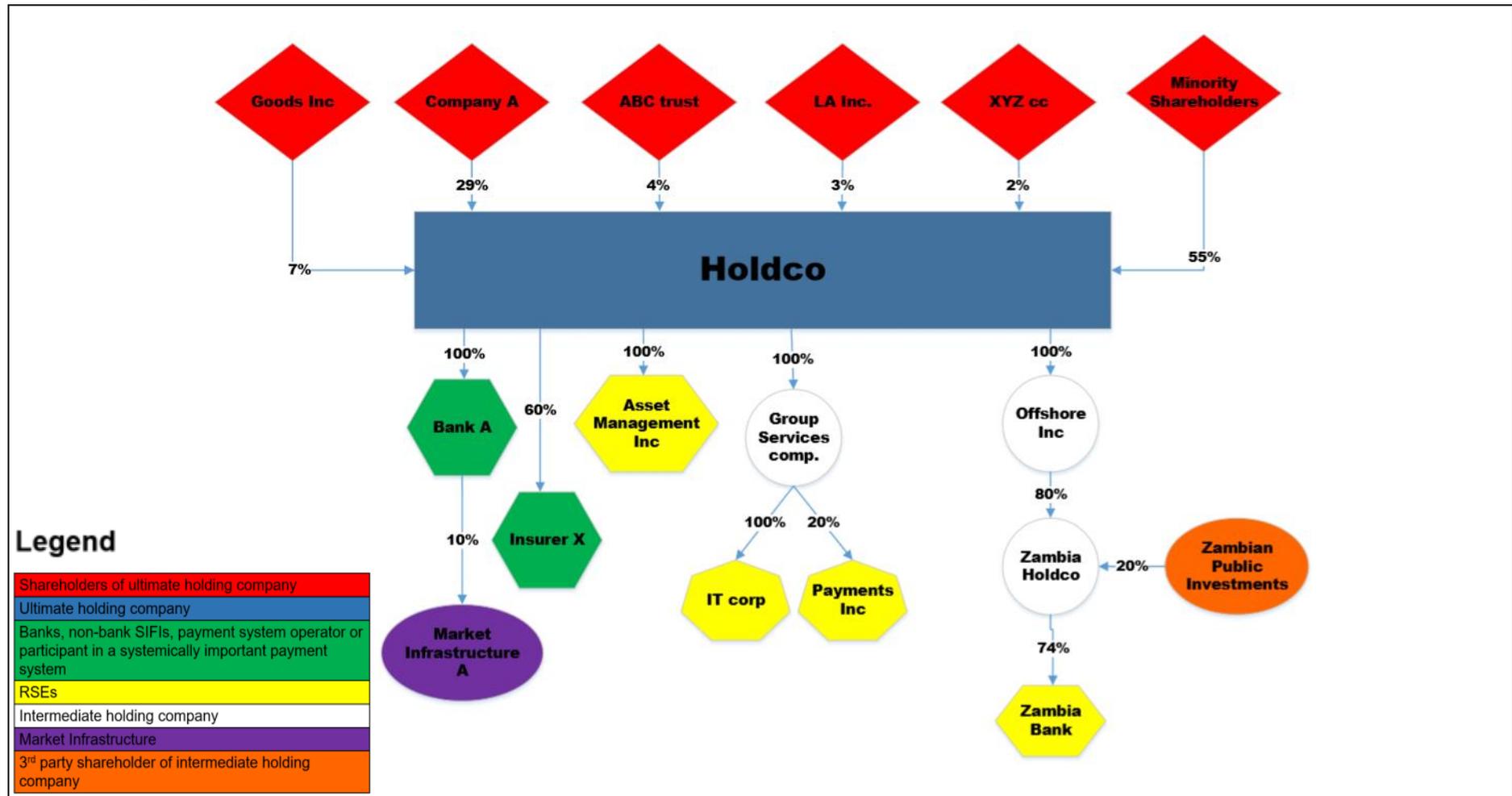
Group of companies	means, as defined in section 1 the Companies Act 71 of 2008 (Companies Act), a holding company and all its subsidiaries.
Holding company	means, as defined in the Companies Act, in relation to a subsidiary, a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a) of the Companies Act.
Intermediate holding company	means, a holding company which has the majority shareholding/control of a subsidiary within a group of companies, whereas the same holding company itself is owned by another holding company within the group.
Market infrastructure	means, as defined in the Financial Markets Act 9 of 2012 (FMA), each of the following- <ul style="list-style-type: none"> a. licensed central counterparty; b. licensed central securities depository; c. licensed clearing house; d. licensed exchange; and e. licensed trade repository.
Resolution entity	means an entity in a financial group that the SARB has identified as necessary to put in resolution in order to exercise the required resolution actions on the specific entity. Resolution entities will include designated systemically important financial institutions (SIFIs) and other entities that perform critical functions.
Resolution group	means all entities in a financial conglomerate, or financial group, of which a bank or SIFI forms part, and which had not been excluded by the Governor in terms of clause 45 of the FSLAB (or section 29A of the amended FSR Act).
Regulated financial institution	means an institution that is supervised by a financial sector regulator and is required to comply with legislation to ensure that such an institution adheres to certain requirements, restrictions and guidelines, aiming to maintain the integrity of the financial system.
Resolution support entity	means an entity in a financial group that is excluded from being a designated institution, but which the SARB has included in the resolution group and resolution planning in order to ensure its continued provision of support functions it will have to perform for the designated institution in a resolution.
Shareholding	means the actual shareholding held.
Subsidiary	Has the meaning as determined in accordance with section 3 of the Companies Act.
Third party shareholder	means a shareholder, other than a company within the group, that holds shares in an entity within the group and does not form part of the group.
Ultimate holding company	means the highest level juristic person, registered in South Africa, that has control over other companies (subsidiaries) in the group.

Abbreviations

DI	Designated Institution
FSLAB	Financial Sector Laws Amendment Bill, 2018
FSR Act	Financial Sector Regulation Act 9 of 2017
IFRS	International Financial Reporting Standards
PA	Prudential Authority
RA	Resolution Authority
RE	Resolution Entity
RSE	Resolution Support Entity
SARB	South African Reserve Bank
SIFI	Systemically Important Financial Institution

Annexure A: Illustration of a hypothetical group structure

The illustration below is an example of a group structure and is subsequently used to explain how to populate the templates as per annexures B to F.



Annexure B: Reporting templates for shareholders of ultimate holding company

This annexure has to be completed for the shareholders of the ultimate holding company.

Table B.1: Main identified shareholders of ultimate holding company

Shareholder as identified on group structure	Sector/ industry	Shareholder percentage	Headquarters	Listed exchanges	Group affiliation

Table B.2: Aggregate remaining minority shareholders of ultimate holding company

Number of minority shareholders	Total minority shareholding	Largest individual minority shareholder (excluding the shareholders disclosed in table B1)	Shareholder percentage of largest individual minority shareholder	Group affiliation of largest minority shareholder

Table B.3: Example 1 of main identified shareholders of ultimate holding company²

Shareholder as identified on group structure	Sector/ industry	Shareholder percentage	Headquarters	Listed exchanges	Group affiliation ³
Company A	Financial services	29%	America	NYSE	Group A
Goods Inc.	Luxury goods	7%	Switzerland	Swiss Exchange and the JSE	Goods Group
ABC trust	Property	4%	South Africa	N/a	N/a
LA Inc.	Retail	3%	South Africa	N/a	N/a
XYZ cc	Rental agency	2%	South Africa	N/a	Group A

² In this example, only two shareholders have shareholding of $\geq 5\%$ and therefore the top five are reported, regardless of shareholding percentage.

³ The purpose of this column is to identify whether two or more shareholders belong to the same group, thereby increasing the effective shareholding. In this example, it is clear that Group A effectively holds 31% of the shares (Company A – 29%, XYZ cc – 2%).

Table B.4: Example 2 of main identified shareholders of ultimate holding company⁴

Shareholder as identified on group structure	Sector/industry	Shareholder percentage	Headquarters	Listed exchanges	Group affiliation
Company B	Financial services	12%	America	NYSE	Group B
Labels Inc.	Clothing	7%	London	London Exchange	Goods Group
Investing co.	Financial services	7%	South Africa	JSE	Investing Group
Bean co.	Production	6%	South Africa	N/a	N/a
LA Inc.	Retail	6%	South Africa	N/a	N/a
XYZ cc	Rental agency	5%	South Africa	N/a	Group A
Secure Assets	Asset management	5%	South Africa	N/a	N/a
ABC property	Property investment	5%	South Africa	N/a	N/a

Table B.5: Example 1 of aggregate remaining minority shareholders of ultimate holding company

Number of minority shareholders	Total minority shareholding	Largest individual minority shareholder (excluding the shareholders disclosed in table B1)	Shareholder percentage of largest individual minority shareholder	Group affiliation of largest minority shareholder
4658	55%	S&T trust	1.89%	Group X

Table B.6: Example 2 of aggregate remaining minority shareholders of ultimate holding company

Number of minority shareholders	Total minority shareholding	Largest individual minority shareholder (excluding the shareholders disclosed in table B1)	Shareholder percentage of largest individual minority shareholder	Group affiliation of largest minority shareholder
4130	47%	PBH trust	1.2%	Group Z

⁴ In example 2, eight shareholders each have a shareholding of $\geq 5\%$ and therefore all eight shareholders need to be disclosed.

Annexure C: Reporting template for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems

This annexure needs to be completed for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems.

Table C.7: Reporting template for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems

RE as identified on group structure	Share-holding percentage	Type of services	Jurisdiction	Listed exchange	% of group consolidated assets	% of group consolidated liabilities	% of group consolidated profit

Table C.8: Example of completed reporting template for banks, non-bank SIFIs, payment system operators and participants of systemically important payment systems

RE as identified on group structure	Share-holding percentage	Type of services	Jurisdiction	Listed exchange	% of group consolidated assets	% of group consolidated liabilities	% of group consolidated profit
Bank A	100%	Banking	South Africa	JSE and A2X	60%	55%	58%
Insurer X	60%	Non-life and Life business	South Africa	JSE	10%	15%	9%

Annexure D: Intermediate holding companies

This Annexure has to be completed for third party shareholders of the intermediate holding companies only.

Table D.9: Reporting template for intermediate holding companies

Shareholder as identified on group structure	Sector/industry	Shareholder percentage	Headquarters	Listed exchanges

Table D.10: Example of completed reporting template for intermediate holding companies

Shareholder as identified on group structure	Sector/industry	Shareholder percentage	Headquarters	Listed exchanges
Zambian public investments	Financial services	20%	Zambia	LuSE

Annexure E: Reporting of RSEs

This annexure has to be completed for the RSEs.

Table E.11: Reporting template for the identified RSEs

Reportable RSE	Share-holding percentage	Type of services	Jurisdiction	Support function	% of group consolidated assets	% of group consolidated liabilities	% of group consolidated profit

Table E.12: Example of completed reporting template for the identified RSEs

Reportable RSE	Share-holding percentage	Type of services	Jurisdiction	Support function	% of group consolidated assets	% of group consolidated liabilities	% of group consolidated profit
Asset Management Inc.	100%	Management of third-party assets	South Africa	Core business line	2%	12%	12%
IT corp.	100%	Data steward	South Africa	Critical shared service	2%	0%	3%
Zambia Bank	74%	Banking	Zambia	Core business line	8%	6%	10%
Payments Inc.	20%	Payments and settlements	Zambia	Core business line shared service	0%	0%	0%

Annexure F: Reporting of market infrastructures

This annexure should be completed for market infrastructures.

Table F.13: Reporting template for identified market infrastructures

Name of infrastructure	Type of infrastructure	Shareholder percentage	Group affiliated shareholder	Jurisdiction	Listed exchanges

Table F.14: Example of completed reporting template for identified market infrastructures

Name of infrastructure	Type of infrastructure	Shareholder percentage	Group affiliated shareholder	Jurisdiction	Listed exchanges
Market infrastructure A	Central Securities Depository (CSD)	10%	Bank A	SA	N/a