Section 9
Transactions

**Scope of section**[[1]](#footnote-1)

This section deals with transactions, principally acquisitions and disposals, by issuers and their subsidiaries.

Additional requirements relating to transactions are set out in Section 12 (Mineral companies), Section 13 (Property entities), Section 14 (Pyramid companies) and Section 15 (Investment entities).

**New Definition (Main Body)**

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| --- | --- | --- | --- |
| Reverse takeover[[2]](#footnote-2)  |  |  | Means an acquisition where the categorisation is 100% or more and will result – |
|  |  |  | (a) in a fundamental change in the business; |
|  |  |  | (b) a change in board of directors of the issuer (changes of 35% or more); or |
|  |  |  | (c) a change in control,which events will be treated as a new listing; |

General

9.1 A transaction by an issuer:

 (a) includes:

 (i) a transaction by any subsidiary;

 (ii) the grant or acquisition of an option to acquire or dispose of assets as if the option had been exercised, provided that where the right to exercise is at the issuer’s discretion, the transaction must be categorised on exercise of the option and only the premium/consideration for the option must be categorised at the date of such grant or acquisition; and

 (b) excludes:

 (i) an issue of securities (other than an issue by subsidiaries in terms of paragraph 3.35, 3.36 or 4.11) or transaction to raise finance, which does not involve the acquisition or disposal of assets;

 (ii) a transaction with or between wholly owned subsidiaries; and

 (iii) a transaction in the ordinary course of business where:[[3]](#footnote-3)

1. the categorisation percentage is less than 30%; or[[4]](#footnote-4)
2. a financial institution (as defined in the Financial Sector Regulation Act, No. 9 of 2017) uses funds (such as policyholders funds or trust property) which are not held primarily for the benefit of its shareholders and the transaction is not with a related party.

 (c) the JSE must decide on ordinary course of business transactions and in its assessment, the JSE will have regard to –

 (i) the nature of business of the transacting parties;

 (ii) the incidence of similar transactions;

 (iii) the size measured against similar transactions;

 (iv) whether the transaction contributes to the issuer’s existing income arising in the ordinary course of the issuer’s activities;

 (v) if the transaction contributes to costs that relate directly to the revenue contemplated in (iv) above; and

 (vi) if the transaction is in the ordinary course of business for both transacting parties.

Categorisation

 9.2 A transaction is categorised by assessing its size relative to that of the issuer.

 9.3 The categorisation is expressed as a percentage. The categories of transactions are:

 (a) Category 2: 5% or more but less than 30%;[[5]](#footnote-5) and

 (b) Category 1: 30% or more or if the consideration is not subject to any maximum.

Categorisation Calculation

9.4 The categorisation percentage must be calculated before the announcement of terms, excluding treasury shares, and is calculated as follows:

 (a) consideration:[[6]](#footnote-6)

 the consideration measured against the market capitalisation of the issuer; or

 (b) dilution:[[7]](#footnote-7)

 the number of listed securities issued measured against those in issue; or

 (c) settled partly in cash and shares: [[8]](#footnote-8)

 the categorisations percentages in (a) and (b) must be aggregated.

9.5 In circumstances where:[[9]](#footnote-9)

 (a) the categorisation produces an anomalous result; and/or

 (b) the transaction components are not included at fair value,

the JSE may require a fairness opinion on transaction values or use other relevant indicators of size to determine the categorisation.

Consideration

9.6 When calculating the consideration:

 (a) where consideration is securities to be listed, the consideration will be the aggregate market value of those securities before the announcement of terms;

 (b) where consideration is cash, the consideration is the amount paid to the vendor/s. The JSE may include further amounts such as the discharge of any liabilities, whether actual or contingent, of the vendor/s as part of the transaction;

 (c) if deferred consideration is payable, the consideration is the maximum possible consideration; and[[10]](#footnote-10)

 (d) the consideration for a new class of listed equity securities will be the issue price of such securities or, if no price is attributable thereto, the expected aggregate market value.

Indemnities and similar arrangements

9.7 Any agreement with a party, outside the issuer’s group:

 (a) where the issuer agrees to discharge liabilities, costs, expenses, commissions or losses incurred by that party, whether actual or contingent;

 (b) which is exceptional and

 (c) the maximum liability is unlimited,

 will be treated as a Category 1 transaction. Indemnities that are customarily given with sale and purchase agreements and indemnities given to advisers against liabilities to third parties for providing advisory services, are not exceptional.

Aggregation of transactions

9.8 Transactions (other than ordinary course of business transactions) entered into during the 12 months prior to the date of the latest transaction must be aggregated with the latest transaction to determine the categorisation of the latest transaction. Aggregation is done by adding the categorisation percentage/s at the time of the previous transaction/s with the categorisation percentage of the latest transaction. Category 1 transactions will not be aggregated, unless it results in a reverse take-over when taken into account, in which case the reverse take-over requirements must be applied.

9.9 Transactions will only be aggregated if they:

 (a) are entered into with the same party or its associates;

 (b) involve the acquisition or disposal of securities or an interest in one company or asset; or

 (c) lead to substantial involvement in a business activity that did not form a part of the issuer’s/group’s principal activities.

9.10 Where the aggregation results in a Category 1 transaction, then shareholders’ approval is required in respect of the latest transaction only.

Cash company

9.11 If a disposal results in an issuer becoming a cash company, the following applies:[[11]](#footnote-11)

 (a) Within six months after classification as a cash company, the issuer fails to enter into an agreement and make an announcement relating to the acquisition of viable assets that satisfy the conditions of listing in Section 4, its listing may be suspended.

 (b) If a cash company fails, within 3 months of suspension, to obtain approval from the JSE for a circular relating to the acquisition of viable assets, its listing may be removed.[[12]](#footnote-12)

 (c) Where a cash company is utilised for a reverse takeover, the reconstituted company must meet the conditions for listing in Section 4.

Category 2 requirements

9.12 As soon as possible after terms of a Category 2 transaction have been agreed, the issuer must publish an announcement containing the following details:[[13]](#footnote-13)

 (a) particulars of the transaction, including details of:

 (i) the subject of the transaction;

 (ii) if an acquisition, the vendors and its beneficial owners;[[14]](#footnote-14)

 (iii) if a disposal, the purchasers and its beneficial owners;[[15]](#footnote-15)

 (iv) the effective date;

 (v) the conditions precedent; and

 (vi) any other significant terms of the agreement;

 (b) a description of the business carried on by the subject of the transaction;

 (c) the consideration, including any deferred consideration, and terms of settlement;

 (d) the value of the net assets that are the subject of the transaction;[[16]](#footnote-16)

 (e) the profits attributable to the net assets that are the subject of the transaction;[[17]](#footnote-17)

 (f) the rationale for the transaction;[[18]](#footnote-18)

 (g) in the case of a disposal, the application of the sale proceeds;

 (h) in the case of a disposal, if securities formed part of the consideration received, a statement as to whether such securities are to be sold or retained; and

 (i) in the case of a property entity, the information required by paragraph 13.11.[[19]](#footnote-19)

 Issuers must publish the announcement even if it is not possible to include all the details required or if there are outstanding conditions. If details are omitted, issuers must include a cautionary announcement and then announce the omitted details once they have been established.

 Categorisation calculations must be submitted to the JSE with the announcement.

9.13 If a company acquired becomes a subsidiary it must adhere to the provisions of Schedule 10. Such confirmation must be included in the announcement in terms of paragraph 9.12.

9.14 If a transaction results in an issue of securities, then the issuer must consider paragraph 6.19(h).[[20]](#footnote-20)

Supplementary notification

9.15 The JSE must be advised immediately and a supplementary announcement made as soon as possible, after the transaction announcement but before the shareholders meeting, the issuer becomes aware that:[[21]](#footnote-21)

 (a) there has been a significant change affecting any matter contained in the earlier announcement; or

 (b) a significant new matter has arisen which would have been required to be disclosed in the earlier announcement had such information been know at that time;

 (c) “significant” means:

 (i) a change of 10% or more to the pro forma financial effects of the transaction; or

 (ii) any other matter that could influence an investor’s assessment of the transaction.

9.16 The supplementary announcement must:[[22]](#footnote-22)

 (a) provide details of the change or new matter; and

 (b) contain a statement that, save as disclosed, there has been no significant change or new matter since publication of the previous announcement.

9.17 (a) If a change to the transaction requires re-categorisation into a higher category, and therefore requires shareholders’ approval or additional regulation, a supplementary announcement must be made as soon as possible.

 (b) If the matter in paragraph 9.15 is identified after the shareholders’ meeting, a supplementary announcement is required unless such information falls within paragraph 3.4(a).

Category 1 requirements

9.18 As soon as possible after terms of a Category 1 transaction have been agreed, the issuer must[[23]](#footnote-23) comply with the requirements for a Category 2 transaction and state within the announcement that –

 (a) the transaction is subject to shareholders’ approval; and

 (b) that a circular to shareholders, containing a notice of general meeting, will be issued within 60 days. The JSE may, in its sole discretion, extend this period.

9.19 The Category 1 circular must comply with the requirements relating to circulars in Section 11 and must include:[[24]](#footnote-24)

 (a) the information required under a Category 2 transaction;

 (b) details of any service contracts of proposed directors of the issuer;

 (c) where goodwill is involved, a statement regarding the issuer’s accounting policy towards goodwill, as well as the reasons for such goodwill payment;

 (d) a statement –

 (i) giving the directors’ opinion on the transaction; and

 (ii) the directors’ recommendation as to how shareholders should vote at the general meeting to approve the transaction and an indication as to how the directors intend to vote their shares, if applicable, at the general meeting;

 (e) the information required by the Appendix to this section in relation to Category 1 circulars;

 (f) pro forma effects on:[[25]](#footnote-25)

 (i) the statement of financial position and the net assets and net tangible assets per share of the issuer; and

 (ii) the statement of comprehensive income and earnings and headline earnings per share of the issuer, including, if applicable, diluted earnings and diluted headline earnings per share; and

 (g) in the case of a transaction involving immovable freehold or leasehold property, the applicable information required by Section 13.

Reverse take-over

9.20 The announcement of a reverse take-over must contain adequate warning about the uncertainty of whether the JSE will allow the listing to continue following the acquisition.

9.21 The issuer must prepare a Category 1 circular and listing particulars as though the issuer is a new applicant and if not provided to shareholders within 60 days of the announcement, the JSE may suspend the listing. The Category 1 circular must clearly state that the JSE will continue to grant a listing to the issuer if shareholders approve the acquisition.[[26]](#footnote-26)

Take-overs

9.22 Any announcement concerning a possible take-over must be approved by the Panel prior to its release on SENS.[[27]](#footnote-27)

9.23 A copy of the Panel’s approval must be submitted to the JSE in respect of any documentation that is circulated to shareholders.[[28]](#footnote-28)

**Rescue operations**

9.24 Issuers that are in severe financial difficulty must refer to Schedule 11.[[29]](#footnote-29)

Restrictive funding arrangements

9.25 Any restrictive funding arrangements must comply with paragraph 11.60.[[30]](#footnote-30)

Appendix to Section 9[[31]](#footnote-31) - Contents of Circular

1 The working capital statement and, where relevant, information on group prospects and any profit forecast, must be prepared on the basis that the acquisition or disposal has taken place.

2 When issuing securities, disclosure regarding major shareholders and directors’ interests in securities must be provided on existing share capital and as enlarged, by the securities for which listing is sought.[[32]](#footnote-32)

3 Where a circular and a PLS is required, a single document may be issued that includes listing particulars.

4 If securities are being issued as consideration and a Category 1 circular is required, then listing will not be granted for those securities until shareholders’ approval is obtained.

5 The following table identifies the information required to be in a Category 1 circular (in addition to that required by paragraph 9.18 to 9.21) in respect of the issuer and the subject of the transaction. Information denoted by \* is required.

|  |  |  |  |
| --- | --- | --- | --- |
| **Paragraph** | **Description** | **Issuer** | **Undertaking the subject of the transaction** |
| 7.A.1 | Name, address and incorporation | \* | \* |
| 7.A.15 | Details of material loans | \*[[33]](#footnote-33)# | \* |
| 7.A.27 | Major shareholders | \* |  |
| 7.B.7 | Directors’ remuneration and benefits | \*# |  |
| 7.B.17(b) | Preliminary expenses and issue expenses | \* | \* |
| 7.B.20 | Directors’ interests in securities | \* |  |
| 7.B.21 | Directors’ interests in transactions | \*# |  |
| 7.B.22 | Responsibility statement | \* |  |
| 7.B.23[[34]](#footnote-34)  | Responsibility of directors, managers and advisers | \* |  |
| 7.D.5 | Group prospects | \* | \* |
| 7.D.11 | Litigation |  | \* |
| 7.E.2 | Reporting accountant’s report |  | \* |
| 7.E.3 | Report of historical financial information |  | \* |
| 7.E.7 to 7.E.9 | Statement as to working capital | \* |  |
| 7.E.10 | Material change |  | \* |
| 7.E.12 | Pro forma financial information pursuant to paragraph 9.21(f) | \* |  |
| 7.F.1 | Material contracts |  | \* |
| 7.F.10 | Experts’ consents | \* |  |
| 7.G.1 | Documents and consents to be available for inspectionAll agreements associated with the transaction of which the applicant issuer and/or its subsidiaries are a party | \* | \* |
| 7.H | Vendors |  | \* |

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
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31. [↑](#footnote-ref-31)
32. [↑](#footnote-ref-32)
33. # These items in the table must only be included in a Category 1 circular if the proposed transaction directly results in any change in respect of such disclosure items, if not, an appropriate negative statement must be included. [↑](#footnote-ref-33)
34. [↑](#footnote-ref-34)