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| Simplification Ground Rules |
| 1 | Testing regulatory relevance, is the requirement still current and does it serve a regulatory objective? |
| 2 | Converting complex language construction into plain language, whilst maintaining regulatory objective |
| 3 | Cutting red-tape a continuing focus |
| 4 | Articulating what is absolutely necessary by clearly expressing purpose  |
| 5 | Removing ultra long sentences, legal jargon and archaic words  |
| 6 | Maintaining the chain of thought through a sensible chronologic regulatory approach |
| 7 | Removing ambiguity, duplication and administrative matters  |
| 8 | Harmonising outdated legal style drafting in a simplified uniform style to support issuers and sponsors |
| 9 | Amendments which are not considered simplification will be highlighted |

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| Key Amendments to Section 10 - Related Party Transactions |

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| Par | Text*Note: Paragraph references refer to the current Requirements, unless otherwise stated* | Rationale |
| 1 | Scope of Section  | Reduced significantly to deal with core purpose of the Section only. As per definitions, the Scope of Section does not form part of the Listings Requirements. |
| 2 |  DefinitionsSwoped definitions, “*related party*” first, then “*related party transaction*” | Deal with what constitutes a related party first, then what constitutes a related party transaction.  |
| 3 | New Definition“*fairness opinion*” a fairness opinion prepared in terms of Schedule 5. | Used throughout the Listings Requirements, with or without the reference to Schedule 5. |
| 4 | Amended Definition“*material shareholder*” | The reference to 12 months has now been included in the main body of Section 10, and as such can be removed from the definition.  |
| 5 | Definition - Related PartyParagraph 10.1(b)(iii)Text Removed“*any person that falls within the definition of “family cross holdings test” of a director of the issuer*” | These are family members of the director, it is more appropriate to add to the definition of associate of a director, where it also speaks to immediate family. |
| 6 | Definition - Related PartyParagraph 10.1(b)(vi)Amended*“the asset manager or management company of a property entity, including anyone whose assets they manage or administer;”[[1]](#footnote-1)* | There was a misalignment for manager to be included as related parties only for property entities, and should apply wider to include managers of investment entities.  |
| 7 | Definition - Related Party TransactionParagraph 10.6Brought in the provisions of paragraph 10.6 to clarify items not regarded as related party transactions.  | The definition of “*related party transaction*” should deal with matters that are and are not related party transactions, in one place under definitions.  |
| 8 | Definition - Related Party Transaction & JSE DiscretionText RemovedParagraph 10.1 (end) *“Notwithstanding the above definitions, the JSE may, in its sole discretion, determine that a transaction is a related party transaction if extraordinary conditions exist.”*Paragraphs 10.2 *When an issuer is contemplating a transaction which will result in any unusual, vested or other interest(s) or rights being created for any of the parties in paragraph 10.1(b)(i) to (viii) above, the issuer must discuss the transaction with the JSE at an early stage in order for the JSE to determine whether it will exercise its discretion and classify the transaction as a related party transaction and any parties as related parties in terms of the transaction concerned.[[2]](#footnote-2)* | Removed the discretion of the JSE, creates uncertainty. Mirrored approach of the LSE, to include as a related party “*any other person, the purpose and effect of which is to benefit a relatedparty*”. |
| 9 | Removal of fairness opinion for category 1 transactionsParagraph 10.4(f)Text Removed*“(f) include a statement by the board of directors confirming whether the transaction is fair insofar as the shareholders of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular) prepared in accordance with Schedule 5, before making this statement …”* | The current approach of the JSE for a related party transaction requiring shareholders’ approval, mandates the preparation of a fairness opinion prepared by an independent professional experts acceptable to the JSE. It would appear that the JSE is not aligned with certain peer markets as regards the preparation of fairness opinions. Some markets afford the opinion to be expressed, to be prepared by the sponsor, appointed financial adviser, independent members of the board or the audit committee. As a reminder, shareholders are afforded the ability to make an investment decision based on the content of a category 1 circular, where no related parties are involved. However, where related parties are involved, an expert must advise the board, at a cost for the issuer (and indirectly to shareholders), whether the related party transaction is fair or not. It must be recognised that the ultimate power for a related party transaction to proceed or not, vests with the shareholders (excluding the votes of any related parties and their associates), based on the premise that they are afforded full details of the transaction through the transaction circular as approved by the JSE. Based on the above considerations, that JSE believes that broader scope should be applied as regards the preparation of a fairness opinion, provided there are adequate safeguards.The safeguards for the removal of the fairness opinion are the following:* Full particulars of the related party and terms of the transaction must be provided to shareholders through a category circular 1, prescribed and approved by the JSE;
* Related parties and their associates are excluded from voting;
* Far lower shareholder approval thresholds apply to related party transactions. Shareholders’ approval for a related party transaction commences at a 5% categorisation threshold, far lower than non-related party transactions which commences at a 30% categorisation threshold. This affords far greater and direct shareholder participation for a related party transaction to proceed or not;
* The independent members of the board must express an opinion on the corporate governance processes that were followed to approve the related party transaction, and whether (i) the transaction was concluded on an arm’s length basis, including key assumptions and factors taken into account in reaching the conclusion, (ii) the transaction is fair to shareholders; and (iii) shareholders should vote in favour of the transaction; and
* The provisions of small related party transactions (between 0,25%-5%) remain unchanged as regards the preparation of a fairness opinion.
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| 10 | Items not regarded as related party transactionsText RemovedParagraph 10.6(c)(iii)*“(cc) a benefit arising to a director from an employee share option scheme and/or share incentive scheme of the issuer;”* | Consolidated with paragraph 10.6(c)(ii), employment benefits of a director. |
| 11 | Items not regarded as related party transactionsText RemovedParagraph 10.6(c)(vi)*“loans and other financial assistance to directors pursuant to Section 45 of the Companies Act;* | This provision in the Act goes far wider than directors and could involve other related parties. This matter has been a key provision for abuse in an investigation, and should therefore be removed.  |
| 12 | Usual requirements for a related party transactionText RemovedParagraph 10.5*“Where a general/annual general meeting of the issuer has been called to approve a transaction and, after the date of the notice of meeting but prior to the meeting itself, the transaction becomes a related party transaction, the JSE may require that the issuer either:**(a) takes immediate steps to amend the relevant resolution by including the condition referred to in paragraph 10.4(e) and give notice of the amendment to shareholders by way of a circular. Such circular must also contain any information required by paragraph 10.11 that was not contained in the original circular accompanying the notice of general/annual general meeting; or**(b) withdraws the notice of the general/annual general meeting and convenes a fresh general/annual general meeting complying with paragraph 10.4.”* | No regulatory value, it is either a related party transaction or not. If a related party, then Section 10 must be applied.  |
| 13 | Drafting notesGuidance letter dated 25 October 2012 (10-1), withdraw guidance letter. | Principle of cash against property valuation and CPR has been incorporated – no fairness opinion required. |

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)