Section 10
Transactions with Related Parties

**Scope of section**

This section provides safeguards against shareholders, directors and/or other persons related to an issuer potentially taking advantage of their position. Transactions with parties related to an issuer are known as related party transactions.

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**Amended Definition**

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| associate |  |  | “associate” in relation to an individual means: |
|  |  |  | 1 that individual’s immediate family and a person within the family cross holdings test; and/or |
|  |  |  |  |
| fairness opinion |  |  a fairness opinion prepared in terms of Schedule 5; |
| material shareholder[[1]](#footnote-1)  |  | any person entitled to exercise or control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general/annual general meetings of the listed company, or any other company that is its holding company |

Definitions

10.1 The following definitions apply:

 (a) “related party” means:

 (i) a material shareholder;

 (ii) a director of the issuer or its holding company, or person whose directions or instructions the directors are accustomed to act;

 (iii) an adviser to the issuer, with a beneficial interest, direct or indirect, in the issuer or its associates;

 (iv) a prescribed officer of the issuer;

 Items (i)-(iv) above include, acting in that capacity, within 12 months before the date of the transaction. (v) the asset manager or management company of an issuer, and each of their controlling shareholders, including anyone whose assets they manage,; and [[2]](#footnote-4)

 (vi) an associate of the above.[[3]](#footnote-6)

 (b) a “related party transaction”,

 includes, a transaction in Section 9, an agreement or any variation or novation of an existing agreement, between an issuer, or any of its subsidiaries and:

1. a related party; or
2. any other person, the purpose and effect of which is to benefit a related party,
3. excludes,a transaction, where the issuer has no equity securities listed;
4. a transaction with a categorisation below 0.25%;
5. in respect of an agreement:[[4]](#footnote-7)

 (aa) the grant of credit, loan or guarantee by a related party on normal commercial terms and on an unsecured basis;

 (bb) an employment benefit of a director;

 (cc) indemnification and directors’ insurance in terms of Section 78 of the Act;

 (dd) financial assistance for subscription of securities pursuant to Section 44 of the Act; and

 (ee) underwriting of shares by a related party where the fees are market related, as confirmed by the independent directors of the issuer.[[5]](#footnote-8)

 The JSE may require confirmation from the board, to the best of the knowledge and belief, that any nominee shareholders are not acting in concert with any other person in relation to the related party transaction.

Related party transaction

10.2 If a related party transaction, the issuer must:

 (a) publish an announcement including:

 (i) the information for a Category 2 transaction;

 (ii) the name of the related party; and

 (iii) the interest of the related party in the transaction;

 (iv) the rationale and benefits for the issuer;

 (b) submit the agreement/s to the JSE;

 (c) include a statement in the circular from the independent members of the board on the corporate governance processes that were followed to approve the transaction, and whether:

 (i) the related party 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;

 (d) send a circular to its shareholders, containing the notice of general meeting and the information in paragraph 10.8 within 60 days from the announcement. The JSE may, in its sole discretion, extend this period;[[6]](#footnote-9)

 (e) obtain the approval from its shareholders, prior to the transaction or as a condition, by ordinary resolution excluding the votes of related parties and associates.

Small related party transactions

10.3 A small related party transaction is a transaction where the categorisation exceeds 0.25% but is less than 5%. The issuer must, prior to completing the small related party transaction:

 (a) inform the JSE in writing of the proposed transaction;

 (b) provide the JSE with a fairness opinion;

 (c) announce the transaction in terms of paragraph 10.2(a), including a statement that paragraph 10.3(b) has been complied with, and that the fairness opinion can be inspected through a secure electronic manner for a period of 28 days from the date of announcement; and[[7]](#footnote-18)

 (d) comply with paragraph 10.2, if the transaction is not fair in terms of the fairness opinion.[[8]](#footnote-19)

Ordinary course of business transactions

10.4 Related party transactions with a director and/or any associate of a director will not be classified as ordinary course of business for an issuer in terms of paragraphs 9.1(b) and (c).[[9]](#footnote-20)

10.5 Subject to paragraph 10.4, ordinary course of business transactions with related parties must be announced as soon as possible after terms have been agreed, with a categorisation of 5% or more. The preparation of a fairness opinion is not required.

10.6 The announcement above must include details of the – [[10]](#footnote-21)

 (a) ordinary course of business transaction/s. The price may be excluded if commercially sensitive; and

 (b) corporate governance processes that were followed by the board to approve the transaction, including an opinion from the independent directors that the transaction is in the ordinary course of business and concluded on an arm’s length basis.

Aggregation

10.7 Related party transactions with the same related party or its associates entered within a 12 month period must be aggregated, unless approved by shareholders or announced in terms of paragraph 10.3.

Contents of circular

10.8 A related party transaction circular must comply with the requirements relating to circulars in Section 11 and must include:[[11]](#footnote-23)

(a) the information required by the following paragraphs in relation to the issuer:[[12]](#footnote-24)

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| **Paragraph** | **Nature of statement** |
| 7.A.1 | Name, address and incorporation |
| 7.A.27 | Major shareholders |
| 7.B.17(b)[[13]](#footnote-25)  | Preliminary expenses and issue expenses |
| 7.B.22 | Responsibility statement |
| 7.E.10 | Material change |
| 7.F.10 | Experts’ consents |
| 7.G.1 | Documents and consents to be available for inspection |
| 9.21(f)[[14]](#footnote-26)  | Pro forma financial information |

 (b) where the related party is a director, or an associate of a director, of the issuer (or its holding company) the information in the following paragraphs:[[15]](#footnote-27)

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| --- | --- |
| **Paragraph** | **Nature of statement** |
| 7.B.20 | Directors’ interests in securities |
| 7.B.21 | Directors’ interests in transactions |

 (c) full details of the transaction, including the name of the related party, details of the relationship, and the information in terms of paragraph 9.12;

 (d) the information in paragraph 10.2(e);[[16]](#footnote-28)

 (e) a statement that the related party and its associates will be taken into account in determining a quorum, but that their votes will not be taken into account in determining the results of the voting;

 (f) if the transaction is a Category 1, the information required in a Category 1 circular;[[17]](#footnote-29)

 (g) transactions involving immovable freehold or leasehold property, the applicable information required by Section 13; and[[18]](#footnote-30)

 (h) if a related party transaction as a result of other agreement/s, details of the date, parties, nature/type of agreement/s along with relevant terms.[[19]](#footnote-31)

1. “material shareholder” definition amended with effect from 30 September 2014. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-4)
3. [↑](#footnote-ref-6)
4. [↑](#footnote-ref-7)
5. [↑](#footnote-ref-8)
6. [↑](#footnote-ref-9)
7. [↑](#footnote-ref-18)
8. [↑](#footnote-ref-19)
9. [↑](#footnote-ref-20)
10. [↑](#footnote-ref-21)
11. [↑](#footnote-ref-23)
12. [↑](#footnote-ref-24)
13. [↑](#footnote-ref-25)
14. [↑](#footnote-ref-26)
15. [↑](#footnote-ref-27)
16. [↑](#footnote-ref-28)
17. [↑](#footnote-ref-29)
18. [↑](#footnote-ref-30)
19. [↑](#footnote-ref-31)