Section 10 (Version 2 March 2024)  
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.

**Amended Definitions (Main Body)**

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| --- | --- | --- | --- | --- | --- | --- |
|  |  | |  |  | | |
| associate |  | |  | “associate” in relation to an individual means: | | |
|  |  | |  | 1 that individual’s immediate family; 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 issuer, or any other company that is its holding company; | | |

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 upon 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 (ii)-(iv) above include, acting in that capacity, within 12 months before the date of the transaction.

(v) any person that falls withing the “family cross holdings test” of a director of the issuer; *[reinstated par 10.1(b)(iii)]*

(vi) the asset manager or management company of an issuer, and each of their controlling shareholders, including anyone whose assets they manage;[[2]](#footnote-2)

(vii) an associate of all of the above.[[3]](#footnote-3)

(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,

(c) a “related party transaction” excludes, a transaction, where -

1. the issuer has no equity securities listed;
2. the categorisation is 0.25% and below;
3. an agreement:[[4]](#footnote-4)

(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-5)

The JSE may require confirmation from the board that, to the best of its knowledge and belief, no nominee shareholders are 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, as soon as possible after terms have been agree, including:

(i) the information for a Category 2 transaction in Section 9;

(ii) the name of the related party;

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

(iv) the rationale for the transaction and expected benefits for the issuer;

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

(c) include a statement in the circular from the independent directors 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 10.9 within 60 days from the announcement. The JSE may, in its sole discretion, extend this period;[[6]](#footnote-6) and

(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 their associates.

Small related party transactions

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

(a) make a submission to the JSE with details of the proposed transaction with a fairness opinion. The sponsor must ensure compliance of the fairness opinion in terms of the Requirements;

(b) announce the transaction in terms of 10.2(a) and include a statement that a fairness opinion has been prepared which can be inspected through a secure electronic manner for a period of 28 days from the date of announcement; and[[7]](#footnote-7)

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

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 of9.1(b) and (c).[[9]](#footnote-9)

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

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

(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.

Restrictive funding arrangements

10.7 If a related party participates in the restrictive funding arrangement shareholder approval will be required and the requirements of 10.9 will apply.

**Aggregation**

10.8 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 10.3.

Contents of circular

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

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

|  |  |
| --- | --- |
| **Paragraph** | **Nature of statement** |
| 7.A.1 | Name, address and incorporation |
| 7.A.27 | Major shareholders# |
| 7.B.17(b)[[13]](#footnote-13) | 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-14) | 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-15)

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

# These items in the table must only be included in a 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.

(c) full details of the transaction, including the name of the related party, details of the relationship, and the information in terms of 9.13; (d) the information in 10.2 (c) and (e);[[16]](#footnote-16)

(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) for a Category 1 transaction, the information required in a Category 1 circular;[[17]](#footnote-17)

(g) for a transaction involving immovable freehold or leasehold property, the required information in Section 13;

(i) for a transaction involving mineral or oil/gas assets, the applicable required information in Section 12; and[[18]](#footnote-18)  and[[19]](#footnote-19)

(j) for 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.[[20]](#footnote-20)

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)
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19. [↑](#footnote-ref-19)
20. [↑](#footnote-ref-20)