Section 13  
Property Entities

**Scope of section**

This section applies to property entities.

Definitions

13.1 The following definitions apply:

|  |  |  |
| --- | --- | --- |
| asset manager |  | the entity or individual providing management services by making recommendations regarding the strategy of the property entity including the structure of the property entity, further acquisitions and disposals and new property developments; |
| CISIP |  | a collective investment scheme in property; |
| CIS Registrar |  | the Registrar of Collective Investment Schemes; |
| failed the REIT tax test |  | where the issuer was granted REIT status by the JSE, but on assessment by the South African Revenue Service did not qualify for a tax deduction of distributions under section 25BB(2) of the Tax Act; |
| gearing ratio  operational net income  property |  | the total consolidated liabilities divided by total consolidated assets;  the annual rental income less any expenses directly attributable to that property (including property management fees) but before interest, head office costs, any general management fees or taxation;  freehold and leasehold immovable property, being land and the things attached to the land that cannot be moved from one place to another without damage or change of form; |
| property entity |  | an entity primarily engaged in property activities, being: |
|  |  | 1 holding of property as an investment to earn rental and/or for capital appreciation; or |
|  |  | 2 development of property to be held as an investment; |
| rentable area |  | the total space of a property that can be rented and for a building it is as determined in terms of the South Africa Property Owners Association guidelines; and |
| rental revenue |  | group revenue received for the use of property, including rental guarantees and dividends received from another REIT that is not consolidated in the group accounts which is: |
|  |  | 1 contracted, if the agreement has not expired; |
|  |  | 2 near-contracted, if the agreement has expired but there is a reasonable expectation of renewal;  3 uncontracted, if neither (1) nor (2) above applies; and  4 short-term, if the period specified in the agreement, excluding automatic renewals, is for a period less than 18 months. |
| significant properties |  | being those that account for 3% or more of the rental revenue or value of the property portfolio. |
|  |  |  |
|  |  |  |

Listing criteria

13.2 Subject to 13.3, applicant issuers must meet the main board or ALTx listing criteria.

13.3 An applicant issuer seeking a listing as a property entity on the main board can either comply with [4.28(c)(i)(a)] or produce a forecast in terms of 13.11 reflecting forecast profit before taxation of R15 million after taking account of pre-tax headline earnings adjustments provided that:

(a) contracted and near-contracted rental revenue account for 75% of rental revenue in each of the periods; and

(b) if 13.3(a) relates to short-term rental revenue, the board confirms that:

* 1. the properties have generated rental revenue for the immediately preceding two years; and
  2. for the last financial year, based on audited financial information, the properties generated at least R15 million profit before taxation, after taking account of pre-tax headline earnings adjustments.

13.4 Applicant issuers must evidence:

(a) legal title to all significant properties ; and

(b) adequate and appropriate experience of the executive directors and/or asset manager in relation to the type of properties earmarked for investment.

Transaction specific requirements

13.5 The percentage ratio to trigger a category 2 transaction for a property transaction in [9.4(a)] is 10%.

13.6 For a category 1 transaction involving property, an issuer can elect to present either:

(a) historical and pro forma financial information in terms of [Section 8]; or

(b) a forecast in terms of 13.11 and a pro forma statement of financial position for:

(i) an acquisition, in terms of 13.13; or

(ii) a disposal, in terms of [Section 8].

Transaction announcements

13.7 The transaction announcement in terms of Section 9:

(a) must also include the property specific information in 13.19(a)(i), (c)(i), (ii), and (e); and

(b) may include a forecast for the profits attributable to the net assets in terms of [9.13(e)] provided it covers the periods in 13.11(a) and includes the:

(i) revenue disclosures of 13.11(c)(i) - (iv); and

(ii) warning statement of [8.40(b)].

Content of listing particulars and circulars

13.8 In addition to the provisions for listing particulars, the following information must be included:

(a) if a forecast has been elected, the financial information in terms of 13.10-13.13 instead of [Section 8];

(b) property portfolio information in 13.18;

(c) property specific information in 13.19;

(d) manager information in 13.20 - 13.23;

(e) a statement of confirmation of legal title to all significant properties and that the evidence in 13.4(a) is open for inspection in term of [7.G.1]; and

(f) for valuations required by 13.14 a statement by the board that the valuer is independent in terms of the independence indicators of 13.17 and that there are no material changes in circumstances that affect the valuation since the effective date of the valuation.

13.9 In addition to the provisions for category 1 circulars, the following information must be included on the subject of the transaction:

(a) the financial information in 13.6;

(b) the information in 13.18(b), 13.19 and 13.8 (f);

(c) the information in 13.20 - 13.23 where asset manager agreements are acquired, entered into or amended; and

(d) details of any benefit arising from existing asset manager agreements.

Financial information

13.10 An applicant issuer seeking a listing based on a forecast in terms of 13.3 must produce:

(a) historical financial information for one financial period, being its latest financial year or interim results (if [8.7] is applicable), with an audit opinion; and

(b) a pro forma statement of financial position in terms of 13.13 and is exempt from preparing a pro forma statement of comprehensive income.

Forecast

13.11 The forecast statement of comprehensive income must:

(a) be prepared for the current financial year and for a period of 12 months thereafter;

(b) comply with [8.43];

(c) include separate disclosure for each period of:

(i) rental and non-rental revenue;

(ii) revenue linked to rental guarantees;

* 1. contracted, near-contracted and uncontracted rental;
  2. short-term rental for each of the categories in 13.11(iii) above;

(iv) assumptions made for new rentals and renewals, including reversionary rates;

(v) each category of expenditure that accounts for 10% or more of the total expenditure;

(vi) an explanation where the expenditure of a category in 13.11(c)(v) changes by 15% or more from its historical levels (or contain a negative statement); and

(d) include the amount of forecast distribution, with a reconciliation to attributable earnings.

13.12 An applicant issuer must obtain an assurance report on the forecast in terms of [Section 8].

**Pro forma statement of financial position**

13.13 A consolidated pro forma statement of financial position must be prepared applying the following:

(a) it must comply with [8.15 - 8.33];

(b) if the subject matter is a company, the information must be extracted from audited financial information and the notes must provide details of the auditor of the underlying entity and any modifications contained in their audit report;

(c) if the applicant issuer accounts for its properties at fair value in terms of IFRS, it must apply that policy to the pro forma financial information and include the related disclosures of IAS 1 and IFRS 13;

(d) a reporting accountant’s report on the pro forma financial information must be prepared in compliance with [8.48 - 8.56]; and

(e) a reporting accountant must also issue a review conclusion on the assets and liabilities being acquired, as reflected in the adjustment column where:

(i) the review engagement must be performed in terms of the IRBA guide entitled *Reporting Responsibilities of the Reporting Accountant* *relating to Property Entities in terms of the JSE Listings Requirements*; and

(ii)  the review conclusion must indicate that the reporting accountant has no reason to believe that the assets and liabilities are not prepared, in all material respects in accordance with the accounting policies adopted by the applicant issuer and the recognition and measurement criteria of IFRS and includes all relevant IFRS disclosures.

Valuation reports

13.14 A valuation report must be prepared by an independent registered valuer, subject to 13.15 below:

(a) for a new listing, on all of the significant properties of the applicant issuer; and

(b) for a transaction, on the property that is the subject of a category 1 transaction.

13.15 A valuation report is not required on a property if the:

(a) listing particulars/category 1 circular includes historical or forecast financial information reflecting at least 12 months of rental revenue for that property, supported by an average vacancy level of less than 10%; and

(b) rental agreements for at least 90% of the rental revenue in 13.15(a) are not with related parties, the applicant issuer or its subsidiaries.

13.16 The valuer performing a valuation must:

(a) be independent in terms of 13.17 below;

(b) be a registered professional valuer or associate valuer in terms of the Property Valuers Professional Act, No 47 of 2000 (or similar legislation in the case of a foreign valuer); and

(c) submit a valuation report with an effective valuation date not less than 9 months from the date of the report (which must be dated on formal submission to the JSE). The valuation must be updated if there are material changes in circumstances that affect the valuation within this period.

13.17 A valuer will not be regarded as independent, if the valuer:

(a) is the applicant issuer, its subsidiary or associate, or asset manager;

(b) controls the applicant issuer or their asset manager;

(c) is an employee of the applicant issuer or their asset manager ;

(d) has an investment or interest in the applicant issuer or their assert manager which is material to the valuer; or

(e) earned or will earn fees of more than 20%, measured over a 12-month period, from the applicant issuer or their asset manager.

Property portfolio information

13.18 Property portfolio information must be presented for all financial periods presented and includes the following:

(a) both by rentable area and revenue, the:

(i) geographical profile;

(ii) sectoral profile, reflecting the different characteristics of the properties;

(iii) tenant profile, grouped into appropriate risk categories, together with the definition of and reason for the categories; and

(iv) the rental expiry profile per sector;

(b) for each sector calculated on rentable area, the:

(i) vacancy profile;

(ii) building grading; and

(iii) weighted average monthly rental;

(iv) weighted average escalation profile; and

(c) the average annualised property yield per sector calculated as operational net income divided by the value attributable to each property.

Property specific information

13.19 Property specific information includes the following:

(a) physical attributes:

(i) location;

(ii) existing use;

(iii) age of the assets attached to the land; and

(iv) the date of expected commencement and completion for properties under development;

(b) legal attributes:

(i) registered description;

(ii) town planning conditions;

(iii) statutory/regulatory contraventions or a negative statement; and

(iv) tenure (i.e. freehold or leasehold, providing the term);

(c) economic indicators, for all financial periods presented:

(i) rentable area by sector;

(ii) weighted average rental per rentable area. For single-tenant buildings, the figure can be aggregated for all of the single tenant buildings;

(iii) vacancy rate;

(iv) details of any grading of a building; and

(v) any other matters that could materially impact the value of the property;

(d) other attributes:

(i) consideration for the property, either in total or separately per property if identified as such, and material direct transaction expenditure;

(ii) effective date of the transaction; and

(e) if a valuation has been prepared, even on a voluntary basis:

(i) the name and qualifications of the valuer;

(ii) the effective date and amount of the valuation;

(iii) a statement as to whether or not the valuer is independent in terms of 13.17 and if not clearly disclosing their relationship to the issuer and whether or not they are a registered valuer, and if so with whom;

(iv) the valuation framework/s applied; and

(v) the disclosure provisions of IFRS 13 for the valuation.

Manager information

13.20 The following information on the asset manager:

(a) name, legal status, business address and material shareholders;

(b) relevant experience and appointments to other listed property entities;

(c) the significant terms of the asset management agreement; and

(d) the asset management agreement must be available for inspection in terms of [7.G.1];

13.21 The following information on the asset manager and its directors:

(a) beneficial interest in the securities of the applicant issuer;

(b) beneficial interest in any property held or to be acquired by the applicant issuer, including any tenant relationships; and

(c) the information required by [7.B.18 - 7.B.21] in the context of the asset manager and its directors.

13.22 For the subsidiaries and holding company of the asset manager and promoters the information in 13.21(a) and (b).

13.23 The following information relating to any property manager of individual properties:

(a) name and details of its directors;

(b) description of the functions; and

(c) the agreement must be available for inspection in terms of [7.G.1]

**Asset management agreement**

13.24 An external asset management agreement being entered into, amended or renewed must:

(a) be approved by a majority of disinterested shareholders where the circular must include the information in 13.20 - 13.22; and

(b) provide for the right of disinterested shareholders to vote on the cancellation of the asset management agreement in general meeting before its expiry date.

Disinterested shareholders means all shareholders other than shareholders and their associates who are party to or have an interest in the asset management agreement.

**Collective investment schemes in property**

13.25 A collective investments scheme in property must comply with all aspects of the Requirements unless they are prohibited from doing so through statute. The Requirements must therefore be interpreted as follows:

(a) “participatory interest” replaces “share”;

(b) “participatory interest holder” replaces “shareholder”;

(c) “deed” (as approved by the CIS Registrar) replaces “memorandum of incorporation”;

(d) “CISIP manager” replaces “asset manager”, where CISIP manager is the person authorised in terms of the Collective Investment Schemes Control Act, No. 45 of 2002 (or similar legislation if a foreign issuer) to administer the collective investment scheme in property; and

(e) “directors of the CISIP manager” replaces “directors” and any board committees/responsibilities fall on the CISIP manager.

**Continuing obligations**

Results

13.26 In any results announcement for which a forecast has been published on the applicant issuer or an acquisition in terms of this section, the issuer must:

(a) confirm that the forecast has been materially achieved; and

(b) provide details of, and an explanation for, any material deviation.

Annual financial statements

13.27 Annual financial statements must include the following:

(a) property portfolio information in 13.18, but comparative information can be omitted if it was previously presented and is unaffected by any restatements;

(b) property specific information in 13.19(a)(i),(ii) and (c)(i),(ii); and

(c) details of a REITs risk management policy in 13.31(c).

Dealings in securities

13.28 The requirements of [3.63 - 3.71] apply equally to the asset manager and its directors.

**REITs**

Criteria for REIT status

13.29 In order to receive REIT status an applicant issuer must:

(a) be a property entity;

(b) comply with the criteria for a listing on either:]

(i) the main board; or

(ii) ALTx, provided it has R8 million profit before taxation after taking account of pre-tax headline earnings adjustments and any forecast complies with 13.3(a) and (b);

(c) have a primary listing on the JSE;

(d) control the majority of its assets, where control is 50%+ 1 of the voting shares;

(e) reflect R300 million of gross assets and 75% rental revenue in its:

(i) latest audited or reviewed consolidated financial statements; or

(ii) its pro forma statement of financial position in terms of 13.13 and forecast in terms of 13.11 if these reflect more recent information;

(f) provide the confirmation in 13.30 and an undertaking to comply with 13.31; and

(g) apply 13.38 if its REIT status was previously removed.

13.30 The board must confirm that the applicant issuer:

(a) will, to the best of their knowledge (after making all reasonable enquiries to ascertain such facts), qualify for a tax deduction of distributions under section 25BB(2) of the Tax Act for the current or future financial year end;

(b) has a gearing ratio not exceeding 60% as reflected in either its:

(i) latest audited or reviewed consolidated financial statements; or

(ii) pro forma statement of financial position in terms of 13.13, if this reflects more recent information;

13.31 The board must ensure that:

(a) the applicant issuer complies with the distribution provisions in 13.32;

(b) any acquisitions or new borrowings (excluding amounts that replace existing liabilities) will not cause the gearing ratio to exceed 60%; and

(c) a risk management policy is adopted and adhered to, which must:

(i) be in accordance with industry practice; and

(ii) specifically prohibit the applicant issuer from entering into any derivative transactions that are not in the normal course of their business.

Distribution obligations

13.32 A REIT:

(a) must make a cash distribution of at least 75% of each financial year’s distributable profits to its shareholders by no later than four months after its financial year end, subject to the relevant solvency and liquidity test as defined in the Act and applied in section 46 of the Act, where distributable profit is:

(i) gross income, as defined in terms of the Tax Act;

(ii) less deductions and allowances that are permitted to be deducted by a REIT in terms of the Tax Act, other than the qualifying distribution, (as defined in terms of section 25BB of the Tax Act because qualifying distributions form part of distributable profit); and

(b) must procure that its subsidiaries that are property entities incorporated in the Republic will comply with (a);

Continuing obligations

13.33 To retain REIT status the:

(a) board must confirm compliance with 13.31; and

(b) issuer must:

(i) qualify for a tax deduction of an amount equal to its distributions under section 25BB(2) of the Tax Act for the immediately preceding financial years; and

(ii) not have failed the REIT tax test in either of its last two financial year ends.

13.34 The issuer must submit a declaration to the JSE with its annual report, signed by each of the directors and company secretary, confirming compliance with 13.30(a) and 13.33 for the preceding financial year end.

13.35 An announcement:

(a) must state that the issuer has REIT status with the JSE;

(b) dealing with distributions must specify

(i) that the distribution is regarded as a taxable dividend for income tax purposes in the hands of local tax residents and a taxable dividend for dividends tax purposes for foreign tax residents; and

(ii) for which financial period the distribution relates to;

(c) must be released without delay containing details of the implications thereof if the issuer:

(i) failed the REIT tax test or believes that it will not qualify for a tax deduction of distributions under section 25BB(2) of the Tax Act;

(ii) has breached any of the obligations in 13.31; or

(iii) has a gearing ratio of more than 60%.

Removal of REIT status

13.36 An issuer may at any time apply to have its REIT status removed, in which case it must release an announcement as soon as the:

(a) board has taken the removal decision, stating the reasons; and

(b) application has been processed by the JSE.

13.37 Where an issuer fails to comply with 13.33 - 13.34 the:

(a) issuer must release an announcement advising the market of this fact; and

(b) JSE will remove its REIT status.

13.38 Reapplication for REIT status can only be made after:

(a) 18 months from the date of removal in terms of 13.36; or

(b) 30 months from the date of removal in terms of 13.37.

Applicability of the REIT provisions to CISIP’s

13.39 In order receive REIT status a CISIP must:

(a) comply with 13.29(a) - (e) and (g), 13.30(a) and 13.31(c);

(b) provide evidence of registration as a CISIP from the CIS Registrar;

(c) confirm that the CISIP Deed has been approved by the CIS Registrar; and

(d) ensure that the trustees also sign all JSE documents.

13.40 A CISIP is exempt from the distribution and gearing ratio provisions in 13.30(b), 13.31(b) and 13.32, 13.35(c)(i)(ii)] and must instead ensure compliance with its deed and the Collective Investment Schemes Control Act, No. 45 of 2002.

13.41 The following additional requirements apply to a CISIP:

(a) the trustees of the CISIP must also sign all JSE related applications and declarations;

(b) the consequence of any breaches of its deed or the Collective Investment Schemes Control Act, No. 45 of 2002 is that a CISIP can lose its REIT status, which fact must also be addressed as part of 13.35(c).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The following provisions will be moved to their appropriate sections, dealing with property transactions by non-property entities:**

**Section 7 (Non-property entities)**

A valuation report must be prepared in terms of 13.16 on properties where, on an aggregated basis, they represent 50% or more of the total asset value of the applicant issuer measured against the pro forma statement of financial position, unless 13.15 applies.

**Section 9 (Non-property entities)**

A valuation report must be prepared in terms of 13.16 on properties where they represent 50% or more of total asset value measured against the statement of financial position of the subject matter for the category 1 transaction, unless 13.15 applies.

**Section 10 (all issuers)**

A valuation report in terms of 13.16 can be used instead of a fairness opinion for the purposes of a small-related party transaction, provided that the subject of the transaction is property and the consideration is cash.