Section 15
Investment Entities and SPACs

**Scope of section**

This section deals with investment entities and special purpose acquisition companies.

**Investment Entities**

**General**

15.1 An investment entity must comply with the following:

 (a) the persons responsible for managing the investments must have adequate experience;

 (b) there must be an adequate spread of portfolio risk;

 (c) it must not, to a significant extent, speculate in securities;

 (d) it must either have an existing investment portfolio or it can list with cash only;

 (e) the investment manager, if appointed, must, at all times, have an investment in the subscribed capital of the applicant equal of at least 10%, unless the JSE in its sole discretion, after taking account of the relevant experience of the management company, otherwise decides;

 (f) the directors must demonstrate that they are able to act independently of any investment manager/s of the applicant, and a majority of the directors must not be employees of or professional advisers to the investment managers or any other company in the same group as the applicant;

 (g) it must express an intention that its income will be derived wholly or mainly from investments in shares or other securities, and neither the applicant, nor any of its subsidiaries, may conduct any trading activity that is material to its group;

 (h) if investments are made in other companies or funds, which in turn invest in a portfolio of investments, it must ensure that the policies and objectives of the investee company or funds conform to the investment objective(s) of this section; and

 (j) it must be classified in the “Closed-Ended Investment” sub-sector of the FTSE Russell Industry Classification Benchmark;

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15.2 The provisions of Section 7 apply, in addition to the following:

 (a) the investment policy;

 (b) whether investments will be limited to ten or less;

 (c) the investment portfolio, or proposed investment portfolio, disclosing:

 (i) the industrial or commercial sector; and

 (ii) listed and unlisted investments;

 (d) investments not held in securities;

 (e) income derived from dividends, interest and other forms;

 (f) investments with a value of greater than 5% of the investment portfolio, and the ten largest investments, along with the following information:

 (i) a description of the investment/s and interest held;

 (ii) whether securities held are listed and on which stock exchange;

 (iii) the cost of the investment;

 (v) the valuation amount, the valuation methodology/ies, details of the assumptions, a sensitivity analysis, the date of the valuation and the details of the valuer;

 (vi) the total income received during the year (explaining any abnormal income);

 (vii) any extraordinary items; and

 (vii) the proportionate underlying net assets attributable to the investment;

 (g) disclosure of any unrealised profits stating separately those between listed and unlisted investments; and

 (h) details of the manager which manages the investments, including material terms of appointment (including term and fees) and details of their investment experience; and

Transactions

15.3 Section 9 will not apply provided transactions are concluded in terms of its investment policy.

15.4 Subject to 15.5, all transactions must be categorised but will not require shareholders’ approval. However, all transactions exceeding 10% must be announced in terms of Section 9. In respect of transactions less than 10%, issuers must consider the application of the general obligation of disclosure of price sensitive information in terms of [3.4(a)] (applied individually or on a cumulative basis).[[1]](#footnote-1)

15.5 Section 10 will apply to transactions involving related parties, even if executed in terms of the investment policy.

15.6 Any transaction contemplated outside the scope of the investment policy will require an amendment of the policy first in terms of 15.9, in order to allow the transaction to fall within the scope of the policy.

Continuing Obligations

**Investment portfolio**

15.7 If listed with cash only, the issuer must disclose its investment portfolio to shareholders on a quarterly basis until such time as at least 50% of the investment portfolio has been established in investments other than cash or short dated securities.

Annual financial statements

15.8 The issuer must report the information in 15.2 in its annual financial statements.

Investment policy

15.9 All material changes to the investment policy or any proposed new policy must be approved by the JSE and shareholders in general meeting.[[2]](#footnote-2)

**SPAC**

**General**

15.10 A SPAC must complete an acquisition of viable assets within 36 months from the date of listing as a SPAC (the “acquisition window”).[[3]](#footnote-3)

15.11 Once the acquisition of viable assets has been completed, it must meet the listing criteria for the main board or the ALTX (excluding for main board, the control requirement). On listing, the SPAC will be subject to the Requirements as an issuer in all respects.

15.12 A SPAC must comply with the following:

 (a) it must have an investment policy for the acquisition of viable assets, specifying the operating industry/ies;

 (b) an applicant may consider an acquisition of viable assets provided that the applicant has not entered into any formal and binding acquisition agreement/s. A call option agreement in relation to the acquisition of viable assets will be permitted where the applicant issuer has the right but not obligation to acquire viable assets post listing, subject to shareholders’ approval in terms of 15.15;

 (c) it must determine the estimated operating expenses of the applicant in respect of the operational costs which will be incurred during the acquisition window;

 (d) the directors may receive remuneration prior to the acquisition of viable assets;

 (e) the directors must have subscribed for shares in the applicant representing at least a 5% interest, on a collective basis, in the applicant on the date of listing. If the subscription is at a nominal value, the interest held by the directors must not exceed 20% of the applicant’s issued share capital on listing. The subscription shares of the directors must be held in trust by the applicant’s attorneys or other party providing custodial services and must not be sold for a period of at least six months from the date the acquisition of viable assets have been completed by the applicant;

 (f) investors in a SPAC must be afforded a redemption right subject to the following:[[4]](#footnote-4)

 (i) the directors and their associates may not be afforded redemption rights;

 (ii) the redemption price must be the initial listing subscription price, after applying the *pro rata* operating expenses and interest earned on the capital under escrow, up to the redemption right exercise date; and

 (iii) an applicant may establish a limit as to the maximum number of securities with respect to which each eligible shareholder may exercise a redemption right, provided that such total limit may not be less than 10% of the issued share capital of the applicant on listing. Any redemption limit established by the applicant must apply equally to all shareholders entitled to a redemption right;

 (g) a SPAC must not have a weighted voting share structure on listing; and

 (h) the following provisions must be included in its MOI:[[5]](#footnote-5)

 (i) it must require shareholders to vote on any proposed acquisition of viable assets;

 (ii) redemption rights; and[[6]](#footnote-6)

 (iii) a distribution requirement in terms of which shareholders must, if an acquisition of viable assets is not completed within the acquisition window, be entitled to receive an amount equal to the aggregate amount then in escrow (net of any applicable taxes and expenses related to the distribution and voluntary liquidation), plus the interest earned, divided by the aggregate number of securities.[[7]](#footnote-7)

Capital and escrow arrangements

15.13 The SPAC must comply with the following:[[8]](#footnote-8)

 (a) all capital raised by the SPAC must be held in escrow with an escrow agent;

 (b) the escrow agent must invest the capital in escrow in:

 (i) investment grade bonds (being debt securities with a rating of “BBB” or above as rated by Standard and Poor’s Corporation or an equivalent rating by any similar institution); or

 (ii) bank deposits with a recognised bank;

 The interest earned on the capital under escrow shall accrue in favour of the SPAC and accumulate in escrow.

 (c) the escrow agreement must provide for the following:

 (i) release of such amount that will be used to cover the operating expenses, and redemption rights, at the request of the directors;[[9]](#footnote-9)

 (ii) release of the balance or portion of the capital to the SPAC once it receives approval for the acquisition of viable assets within the acquisition window; and

 (iii) the termination of the escrow agreement and the distribution of the capital in escrow to shareholders in terms of 5.15(b) and 5.16; and

 (d) prior to an acquisition of viable assets being completed within the acquisition window, the JSE may permit a SPAC to raise additional capital for the acquisition of further assets by issuing further shares or units provided that:

 (i) it is part of a rights offer; and/or

 (ii) shareholders have granted approval of the further issue in accordance with the Requirements;

 All additional capital raised must be held in escrow with an escrow agent.

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15.14 The provisions of Section 7 apply, in addition the following:

 (a) a statement that it is not carrying on any commercial and/or business operations at the time of application of listing to the JSE;

 (b) the acquisition criteria for viable assets, including details of the operating industry/ies;

 (c) details of any call option acquisition agreement, including:

 (i) name of the parties and whether a related party;

 (ii) call option exercise timeframe, post listing;

 (iii) description of viable assets;

 (iv) purchase consideration; and

 (v) any conditions;

 (d) the estimated operating expenses of the applicant in respect of the operational costs which will be incurred during the acquisition window;

 (e) the remuneration of the directors of the applicant for the period prior to the acquisition of viable assets;

 (f) the terms of the subscription directors and the terms of the custodial arrangements;

 (g) confirmation that all capital raised have/will be paid directly into an account managed by an escrow agent;

 (h) the redemption right mechanism and timing;

 (i) in relation to conflicts of interest:[[10]](#footnote-10)

 (i) details of all incentives (whether in cash and/or securities in the applicant, or otherwise) payable to directors of the applicant, including their associates, in the identification and pursuit of the acquisition of viable assets;

 (ii) details of any service agreement/s in the identification and pursuit of the acquisition of viable assets, between the applicant and director/s of the applicant, including their associates;

 (iii) details of any other fiduciary or contractual obligations by the directors of the applicant to other companies or entities that relate to the identification and pursuit of viable assets;

 (iv) details of any other potential conflicts of interests between the applicant and the directors (including their associates); and

 (v) the proposed governance measures to identify, avoid and/or manage potential conflicts of interests as identified in (i)-(iv) above where the applicant pursues viable assets;and

(j)a statement thatit shall not obtain any form of debt financing (excluding those of short-term trade or accounts payable used in the ordinary course of business) to settle any operating expenses, except to facilitate the acquisition of viable assets.

Acquisition of viable assets

15.15 When acquiring viable assets, the following must be complied with:[[11]](#footnote-11)

 (a) the acquisition of viable assets must be approved in general meeting by a majority of disinterested directors and the majority of shareholders of the SPAC at a general meeting; and

 (b) the notice of meeting above must also include a resolution on the proposed use of the residual capital not allocated for the proposed acquisition of viable assets for which the approval is being sought. Should shareholders not approve a proposed resolution dealing with the further use and retention of the balance of the capital after the acquisition has been approved, then such residual capital must be returned to shareholders within 60 calendar days after the date of the general meeting.

Failure to acquire Viable Assets

15.16 If a SPAC has not acquired viable assets within the acquisition window, it must:[[12]](#footnote-12)

 (a) complete a distribution within 60 calendar days after the expiry of the acquisition window to all shareholders *pro rata* to their holdings. The distribution must be the maximum amount while still complying with the solvency and liquidity test as required pursuant to the Act. All interest earned in escrow will form part of the distribution, excluding any taxes and expenses relating to the distribution and anticipated voluntary liquidation; and

 (b) propose a special resolution to shareholders in general meeting for the voluntary liquidation of the SPAC.

15.17 In the event that a SPAC has not completed an acquisition of viable assets within the acquisition window, the JSE will suspend the SPAC’s listing on the first business day following the expiry of the acquisition window and may remove the listing of the SPAC, in terms of Section 1 once the capital raised has been distributed to shareholders in terms of this Section.[[13]](#footnote-13)

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 **Contents of acquisition circular**

15.18 The circular is not a PLS but the equivalent of a category 1 acquisition circular.[[14]](#footnote-14)

15.19 The circular must include the following:[[15]](#footnote-15)

 (a) compliance with the criteria for listing for the main board or ALTX, considering the industry;

 (b) the required subscribed capital and profit (if applicable) must reflect in the pro forma financial information prepared in terms of Section 8,

 (c) any forecast information, if applicable, prepared to reflect the new combined issuer must comply with Section 8;

 (d) the experience and expertise of the directors and senior management;

 (e) working capital statement in terms of Section 7;

 (f) corporate governance as applied to main board or ALTX in terms of Section 4;

 (g) the current balance of proceeds raised on listing, including interest and any additional financing obtained by the applicant, if applicable, as held in escrow as at the time of the conclusion of the acquisition agreement;

 (h) the balance of operating expenses, as at the time of the conclusion of the acquisition agreement;

 (i) details on the governance process in respect of how the acquisition of viable assets was identified, evaluated and approved by the directors;

 (j) a statement on whether the acquisition criteria of viable assets complies with the disclosures in the PLS and whether there are any variations from such acquisition criteria, if any;

 (k) the redemption right mechanism;

 (l) details of all incentives (whether in cash and/or securities in the applicant, or otherwise) received or to be received by the directors and their associates arising from the identification and acquisition of viable assets; and

 (m) the details of potential conflicts of interests between the applicant and the directors (and their associates) of the applicant as disclosed in the PLS, as it relates to the identification and acquisition of viable assets.

Continuing obligations

15.20 The following must be complied with:[[16]](#footnote-16)

 (a) it will be subject to the corporate governance provisions in Section 4, with the exception of [4.5(e) and (i)];

 (b the investment policy for the acquisition of viable assets may not be changed unless a resolution is passed in general meeting by achieving a 75% majority of the votes cast to that effect;[[17]](#footnote-17)

 (c) it may not exceed the estimated operating expenses as disclosed in PLS unless a resolution is passed in general meeting by achieving a 75% majority of the votes cast to that effect; and

 (d) it shall not be permitted to obtain any form of debt financing (excluding those of short-term trade or accounts payable used in the ordinary course of business to settle any operating expenses, except to facilitate the acquisition of viable assets.

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
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