**Section 13**

**Definitions**

Existing definitions

In main LR

The Act, Applicant issuer, issuer, subsidiary, IFRS, group, Main Board

In section 13

-revenue, CSIP, property entity (but this will be amended)

**Amended definitions**

Paragraph (ii) of the existing definition of property entities which deals with “the purchase and resale of properties or purchase, development and resale of properties” to be deleted.

This definition will now read

(n) “property entity” is a company or CISIP who is primarily engaged, directly or indirectly, in property activities including:

(i) the holding of properties and development of properties for letting and retention as investments; or

(ii) the purchase of land for development of properties for retention as investments;

**Additional definitions** to be added to 13.1 (which will need to be renumbered)

“failed the REIT tax test“ means that the issuer was granted REIT status by the JSE, but on assessment by the South African Revenue Services did not qualify for a tax deduction of distributions under section 25BB(2) of the Tax Act ;

“GAV” is the consolidated gross asset value as reflected in the applicant issuers latest published results which are prepared in terms of IFRS;

“Nominal value of the debt” means the original amount borrowed from a lender, less any capital repayments that have been made on those specific borrowings, where debt includes derivative liabilities;

“Tax Act” means the South African Income Tax Act, 1962, Act 58 of 1962, as amended form time to time;

“Rental revenue” means revenue that is derived from the owning or leasing of immovable property which is let or sub-let to tenants;

“REIT” means Real Estate Investment Trust and is defined as an applicant issuer who receives a REIT status in terms of the Listings Requirements.

**Other consequential changes**

13.20 A valuation report prepared by an independent registered valuer must be obtained by:

(e) any other new applicant issuer with a substantial property asset

Where

Substantial property asset means property assets of a non property entity which represent, or will represent 25% or more of the total assets or generate 25% or more of the revenue or profits of that entity

**REIT**

**REIT listing criteria**

13.46 An applicant issuer seeking to receive a REIT status from the JSE must satisfy the following criteria:

(a) the MOI of the applicant issuer must contain the provisions set out in paragraph 13.47 and must be approved by the JSE;

(b) the applicant issuer must have gross assets of at least R300 000 000, as reflected in either:

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

(ii) a pro forma consolidated balance sheet compiled in terms of paragraph 13.16 ;

whichever reflects the more recent financial position;

(c) the applicant issuer must be a property entity ;

(d) at least 75 % of the revenue as reflected in the statement of comprehensive income of the applicant issuer’s group must be derived from rental revenue;

(e) the applicant issuer must qualify for a listing in terms of paragraphs 4.28 or 21.3 read together with paragraph 13.3;

(f) the directors must confirm that the applicant issuer 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 ;

(g) the directors of the applicant issuer must :

(i) provide an undertaking to the JSE ensure that the total consolidated group borrowings , measured at the nominal value of the debt, will not increase to more than 60% of the greater of GAV or adjusted GAV. This test is undertaken at the time of board authorisation for the borrowings. Adjusted GAV is GAV plus the increase in value of any existing properties plus the value of any new properties acquired since the date of the lasts results , where any increase in value or new valuations are supported by a valuation report prepared in terms of paragraph 13.20; and

(ii) confirm that the total consolidated group borrowings is not more than 60% of the total consolidated group assets as reflected in either its:

(1) latest audited or reviewed consolidated IFRS financial statements; or

(2) pro forma consolidated balance sheet which has been compiled in terms of paragraph 13.16, provided that the valuations attributable to the properties are supported by valuation reports prepared in terms of paragraph 13.20 ;

whichever reflects the more recent financial position;

13.47 The MOI of a REIT must include the following REIT provisions:

(a) the company must distribute at least 75% of its total distributable profits as a distribution by no later than six 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;

(b) the company will procure that, subject to the solvency and liquidity test and section 46 of the Act, its subsidiaries incorporated in the Republic of South Africa will distribute at least 75% of their total distributable profits as a distribution by no later than six months after their financial year ends

(c) distributable profit in respect of a financial year is

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

(ii) less deductions and allowances that can be deducted by a REIT in terms of the Tax Act,;

(iii) other than the qualifying distribution, as defined in terms of section 25BB of the Tax Act;

(d) interims distributions may occur before the end of a financial year end

**Application for an existing issuer to receive REIT status**

13.48 An issuer wishing to make application to receive a REIT status must:

(a) Comply with the provisions of paragraph 13.46;

(b) Not have failed the REIT tax test for the last two consecutive financial years; and

(c) Not have been in breach of the REIT provisions of its MOI in the last 24 months, where their MOI included the wording set out in paragraph 13.47.

**Continuing obligations for REIT’s**

13.49 In order to retain their REIT status, applicant issuers must, on an ongoing basis, meet the following criteria:

(a) the MOI of the applicant issuer must continue to contain the provisions set out in paragraph 13.47:

(b) the applicant issuer must :

(i) qualify for a tax deduction of distributions under section 25BB(2) of the Tax Act for the immediately preceding financial year end ; or

(ii) must not have failed the REIT tax test for the last two consecutive financial year ends:

(c) the directors of the REIT must ensure that:

(i) the total consolidated group borrowings of the issuer will not be more than 60% of the total consolidated group assets as reflected in their IFRS results; or

(ii) if this is not the case that they did comply with their undertaking provided in terms of paragraph 13.46(g)(i):

(d) the directors of the REIT must submit a compliance declaration to the JSE within 6 months of the issuer’s financial year end which must:

(i) confirm that the directors of the issuer have ensured that the applicant issuer’s group compiled with paragraph 13.46(f) and (g)(i) above; or

(ii) where the issuer did not comply with paragraph 13.46 (g)(i) above, the directors must confirm that despite the non-compliance, the total consolidated group borrowings of the issuer are not more than 60% of the total consolidated group assets as reflected in the annual financial statements for that financial year end;

(iii) be signed by all of the directors, the company secretary and the sponsor/ designated advisor of the issuer; and

(iv) be submitted at the time of submission of the issuers annual report (which report must be submitted in terms of paragraph 3.21 of the Listings Requirements).

13.50 The following procedure shall apply to an issuer that fails to comply with paragraph 13.49(d):

(a) on the day following the due date as contemplated in paragraph 13.49(d) above, a letter of reminder will be sent by the JSE to the issuer requesting that it rectify the situation and advising that it has been granted a period of one month, from the date of such reminder, in which to submit the compliance declaration, failing which the issuer’s REIT status will be removed by the JSE;

(b) failing compliance within 14 days of dispatch of the reminder to the issuer, the JSE will release an announcement through SENS informing holders of securities that the issuer has not submitted its compliance declaration and cautioning shareholders that the issuer REIT status is under threat of removal; and

(c) the issuer’s REIT status will be removed by the JSE if it fails to submit the compliance declaration within one month period referred to in (a) above and the JSE will release an announcement on SENS confirming this fact.

13.51 In every announcement that a REIT makes:

(a) it must make reference to the fact that it has a REIT status with the JSE; and

(b) for announcements that deal with distributions they must specify;

(i) that this distribution is effectively regarded as rental income in that hands of the local tax resident and dividend for foreign tax revenue recipient for tax purposes; and

(ii) for which financial year end the distribution relates to.

13.52 An issuer with a REIT status must keep the market informed regarding its tax status. In this regard the issuer must release an announcement containing full details of the implications thereof for the issuer and its shareholders, without delay, if it:

(a) fails 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;

(b) has breached the REIT provisions of its MOI as set out in paragraph 13.47; or

(c) has breached the gearing provisions of paragraph 13.49(c)

13.53 Where at any time, an issuer, fails to comply with any of the REIT requirements as set out in paragraph 13.49:

(a) the JSE will remove its REIT status;

(b) it must make an announcement advising the market of this fact; and

(c) it may make application any time to reapply to the JSE to receive a REIT status in terms of paragraph 13.48.

**Application for removal of the REIT status**

13.54 An issuer who has received a REIT status may at any time make application to the JSE to have this status removed. An announcement must be made, advising the market of this fact, as soon as:

(a) the board of directors has taken the decision to make such an application, stating the reasons for this decision; and

(b) then again once the application has been processed by the JSE .

**Applicability to CISIP’s**

13.55 A CISIP is eligible to receive a REIT status. To receive a REIT status, a CISIP must make application to the JSE, which applications must be signed by the trustees of the CISIP, the directors of the management company and the sponsor/ designated advisor and must:

(a) provide evidence of compliance with paragraphs 13.46(b) to (e) above;

(b) provide evidence of registration from the CIS Registrar ; and

(c) confirm that their Deed has been approved by the CIS Registrar.

13.56 In every announcement that a REIT makes it must make reference to the fact that it has a REIT status with the JSE.

13.57 An issuer with a REIT status must keep the market informed regarding its status. In this regard the issuer must release an announcement containing full details of the implications thereof for the issuer and its shareholders, without delay, if it:

(i) fails 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 the provisions of its Deed; or

(iii) has breached the provisions of the CISCA.

**Transitional provisions**

13.58 The following transitional provisions are applicable:

(a) the following issuers are eligible to make application to receive a REIT status under these transitional provisions;

(i) they were listed on the JSE prior to 30 November 2012: and

(ii) at that time they were listed on the Main Board of the JSE in the real estate sector and had listed securities comprising of an ordinary share linked to a debenture, and which securities trade as a linked unit;

(b) all issuers referred to in paragraph 13.61(a) above must make application to the JSE, by no later than 1 June 2013, to receive a REIT status under these transitional provisions;

(c) the application letter must be signed by the company secretary and each of the directors of the issuer as well as the sponsor/designated advisor and must contain:

(i) an undertaking that the MOI of the company will be amended in line with paragraph 13.47 Listings Requirements by no later than 31 December 2013:

(ii) an undertaking that the company will comply with the provisions of paragraph 13.47 even though the MOI has not been updated;

1. a statement of confirmation by the directors that the issuer 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 its first financial year commencing on or after 1 April 2013 ; and

(iv) confirmation and evidence of compliance with paragraph 13.46;

(d) an issuer that makes application to the JSE and meets the requirements set out in this transitional paragraph will receive a REIT status even though they may not necessarily meet all the criteria set out in paragraph 13.46;

(e) issuers who make the necessary application to the JSE and comply with the transitional provisions will, , receive a REIT status:

(i) from the commencement of their first financial year ending on or after 1 April;2013; or

(ii) one month after they have made such application;

whichever is the later date and

(f) any other property entity listed on the JSE which is not eligible to apply for the transitional provisions can make application to the JSE in terms of paragraph 13.46 to receive a REIT status.

**Applicable Fees**

These fees applicable to REITS will be contained in the document that sets out the listing and other fees payable by Issuers and will be as follows:

REITs

11 The following fees are payable by REIT’s in addition to the fees that are payable by all Applicant Issuers, set out above:

(a) An initial listing fee is of R12 000 is payable by an Applicant Issuer upon application for a REIT status

(b) An annual fee of R10 000 per annum, which will be charged on 1 January of each year

(c) The following additional documentation fees on all circulars submitted for approval:

(i) R6 500 for each new listing;

(ii) R6 500 for each Category 1 transaction; and

(iii) R2 500 for each related party transaction

(d) An additional transitional fees is payable by Issuers:

(i) making application under the transitional provisions as set out in paragraph 13.61 ;or

(ii) who were CISIP’s listed on the JSE prior to 30 November 2012;

Which fee will be finalised next year but will be based on the principle of recovering the costs incurred by the JSE to develop and implement these Requirements. The costs will be recovered equally across all issuers.