

## Key Amendments to Section 10 - Related Party Transactions

Par	Text	Rationale
	<i>Note: Paragraph references refer to the current Requirements, unless otherwise stated</i>	
1	<b>Scope of Section</b>	Reduced significantly to deal with core purpose of the Section only. As per definitions, the Scope of Section does not form part of the Listings Requirements.
2	<b>Amended Definition</b>  <i>“material shareholder”</i>	The reference to 12 months has now been included in the main body of the new Section 9, and as such can be removed from the definition.
3	<b>Family Cross Holdings Test</b>  This definition has been deleted and has been incorporated into the existing definition of <i>“extended family”</i> .	General simplification, as <i>“extended family”</i> referred to the <i>“family cross holdings test”</i> .
4	<b>Definition - Related Party</b>  <b>Paragraph 10.1(b)(ii)</b>  When referring to a director as a related party, the JSE is proposing to also refer directly to the chief executive officer to avoid any confusion and to support related party considerations.	Clarity being afforded to the related party definition.
5	<b>Definition - Related Party</b>  <b>Paragraph 10.1(b)(vi)</b>  <b>Amended</b>  <i>“the asset manager or management company of a <u>property entity</u>, including anyone whose assets they manage or administer;”</i>	There was a misalignment for manager to be included as related parties only for property entities, and should apply wider to also include managers of investment entities.  Wording added to clarify that the provision applies to both property and investment entities.
6	<b>Definition - Related Party Transaction &amp; JSE Discretion</b>  <b>Text Removed</b>	Removed the discretion of the JSE, creates uncertainty. Mirrored approach of the LSE, to include as a related party <i>“any other person, the purpose and effect of which is to benefit a related party”</i> .

	<p><b>Paragraph 10.1</b></p> <p><i>“Notwithstanding the above definitions, the JSE may, in its sole discretion, determine that a transaction is a related party transaction if extraordinary conditions exist.”</i></p> <p><b>Paragraphs 10.2</b></p> <p><i>When an issuer is contemplating a transaction which will result in any unusual, vested or other interest(s) or rights being created for any of the parties in paragraph 10.1(b)(i) to (viii) above, the issuer must discuss the transaction with the JSE at an early stage in order for the JSE to determine whether it will exercise its discretion and classify the transaction as a related party transaction and any parties as related parties in terms of the transaction concerned.</i></p>	
7	<p><b>Removal of fairness opinion for category 1 transactions</b></p> <p><b>Paragraph 10.4(f)</b></p> <p><b>Text Removed</b></p> <p><i>“(f) include a statement by the board of directors confirming whether the transaction is fair insofar as the shareholders of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular) prepared in accordance with Schedule 5, before making this statement ...”</i></p>	<p>The current approach of the JSE for a related party transaction requiring shareholders’ approval, mandates the preparation of a fairness opinion prepared by an independent professional expert acceptable to the JSE.</p> <p>It would appear that the JSE is not aligned with certain peer markets as regards the preparation of fairness opinions. Some markets afford the opinion to be expressed and be prepared by the sponsor, appointed financial adviser, independent members of the board or the audit committee.</p> <p>As a reminder, shareholders are afforded the ability to make an investment decision based on the content of a category 1 circular, where no related parties are involved. However, where related parties are involved, an expert must advise the board, at a cost for the issuer (and indirectly to shareholders), whether the related party transaction is fair or not. It must be recognised that the ultimate power for larger related party transaction to proceed or not, vests with the shareholders (excluding the votes of any related parties and their associates), based on the premise that they are afforded full details of the transaction through the transaction circular as approved by the JSE.</p> <p>Based on the above considerations, that JSE believes that broader scope should be applied to related party transactions by removing the requirement for a fairness</p>

		<p>opinion, provided there are adequate safeguards.</p> <p>The safeguards for the removal of the fairness opinion are the following:</p> <ul style="list-style-type: none"> <li>• Full particulars of the related party and terms of the transaction must be provided to shareholders, prescribed and approved by the JSE;</li> <li>• Related parties and their associates are excluded from voting;</li> <li>• Far lower shareholder approval thresholds apply to related party transactions. Shareholders' approval for a related party transaction commences at a 5% categorisation threshold, far lower than non-related party transactions which commences at a 30% categorisation threshold. This affords far greater and direct shareholder participation for a related party transaction to proceed or not;</li> <li>• The independent members of the board must express an opinion on the corporate governance processes that were followed to approve the related party transaction, and whether (i) the 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.</li> </ul>
8	<p><b>Items not regarded as related party transactions</b></p> <p><b>Text Removed</b></p> <p><b>Paragraph 10.6(c)(iii)</b></p> <p><i>“(cc) a benefit arising to a director from an employee share option scheme and/or share incentive scheme of the issuer;”</i></p>	Consolidated with paragraph 10.6(c)(ii), employment benefits of a director.
9	<p><b>Items not regarded as related party transactions</b></p> <p><b>Text Removed</b></p>	This provision in the Act goes far wider than directors and could involve other related parties. This matter has been a key provision for abuse in an investigation and should be removed.

	<p><b>Paragraph 10.6(c)(vi)</b></p> <p><i>“loans and other financial assistance to directors pursuant to Section 45 of the Companies Act;</i></p>	
<b>10</b>	<p><b>Usual requirements for a related party transaction</b></p> <p><b>Text Removed</b></p> <p><b>Paragraph 10.5</b></p> <p><i>“Where a general/annual general meeting of the issuer has been called to approve a transaction and, after the date of the notice of meeting but prior to the meeting itself, the transaction becomes a related party transaction, the JSE may require that the issuer either:</i></p> <p><i>(a) takes immediate steps to amend the relevant resolution by including the condition referred to in paragraph 10.4(e) and give notice of the amendment to shareholders by way of a circular. Such circular must also contain any information required by paragraph 10.11 that was not contained in the original circular accompanying the notice of general/annual general meeting; or</i></p> <p><i>(b) withdraws the notice of the general/annual general meeting and convenes a fresh general/annual general meeting complying with paragraph 10.4.”</i></p>	<p>No regulatory value, it is either a related party transaction or not. If a related party, then the new Section 9 must be applied.</p>
<b>11</b>	<p><b>Small Related Party Transactions</b></p> <p><b>Fairness opinion</b></p> <p>In line with the general approach of simplification, fairness opinions are being removed throughout the Requirements, save for removal of listings. With more emphasis being placed on transparency and the role of the independent members of the board.</p> <p>The opinion expressed by the independent directors must be fair, otherwise shareholders’ approval is required.</p> <p>The related party agreement must be open for</p>	<p>Alignment with simplification approach.</p>

	inspection for a period of at least 14 days.	
<b>12</b>	<b>Restrictive funding arrangements</b>  <b>New Paragraph 10.7</b>  The related party provisions dealing with restrictive funding arrangements have been moved from paragraph 11.60(b) to the related party transaction section.	Any restrictive funding arrangement with a related party will trigger Section 10, under “other agreements”)
<b>13</b>	<b>Contents of circular</b>  <b>New Paragraph 10.9(i)</b>  In relation to contents of circular, reference has been included to additional disclosure obligations for mineral and oil/gas as is the case with properties.	Clarity on disclosure
<b>14</b>	<b>Schedule 5: Independent fairness opinion</b>  The schedule will be retained but only have bearing where an independent professional expert must be appointed to prepare and publish a fairness opinion in terms of a removal of listing in terms of Section 1 of the Requirements and if the directors elect to obtain an opinion on a voluntary basis and wishes to make it available to the market.	Adoption of JSE amended approach to fairness opinions.
<b>15</b>	<b>Drafting notes</b>  Guidance letter dated 25 October 2012 (Fairness opinion: related party transactions in respect of property and mineral assets) withdraw guidance letter.	

~END~