



# The JSE Limited Listings Requirements

**BULLETIN 3 of 2013**

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Dear Subscriber

## Real Estate Investment Trust

In light of recent amendments to South Africa's Taxation Laws, the JSE has been requested to facilitate the introduction of Real Estate Investment Trust regulation in South Africa. The concept of REIT regulation in South Africa is a project that has been under discussion between National Treasury and the Property Industry for more than six years. The amendments to the Listings Requirements will allow Property Loan Stock entities to take advantage of the recent tax amendments.

The effective date of Bulletin 3 of 2013 is 1 May 2013, however early implementation by applicant issuers will be permitted.

## **Section 13**

### **Amended definitions**

Paragraph 13.1(n)(ii) of the existing definition of property entities which deals with "the purchase and resale of properties or purchase, development and resale of properties" is deleted.

This definition will now read

- (n) "property entity" is a company or CISIP which 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 paragraph 13.1 (which will be renumbered in the next service issue)**

"adjusted GAV" means GAV adjusted for the following events occurring

after the reporting period of the latest published results:

- (i) the addition of any increase in value of any existing properties, but only where any increase in value is supported by a valuation report prepared in terms of paragraph 13.20;
- (ii) the addition of the nominal value of any new debt to the extent that the intended utilisation of that new debt is such that it results in an increase in GAV;
- (iii) the addition of any amount of any capital raised through the issue of new securities to the extent that the intended utilisation of the capital raised is such that it results in an increase in GAV;
- (iv) the deduction of any capital repayments that have been made on the liabilities; and
- (v) the deduction of any amount of any capital returned to security holders through a repurchase of securities in terms of paragraphs 5.67 to 5.80 or through a payment to security holders in terms of paragraph 5.85.

“failed the REIT tax test” means that the applicant 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 Income Tax Act;

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

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

“new borrowings” means

- (i) the amount borrowed measured as the nominal value of the amount borrowed from a lender in respect of the new borrowing;
- (ii) less, if applicable, the original nominal value of the borrowings which are being repaid or replaced by this new debt;
- (iii) plus, any capital repayments that have been made on those original borrowings;

“nominal value of the new debt” means the nominal value of new borrowings including derivative liabilities entered into;

“rental revenue” means group revenue that is derived from the owning

or leasing of immovable property which is let or sub-let to tenants plus dividends received from another REIT where the investment in that REIT is not consolidated in the group accounts;

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

“substantial property asset” means property assets held (whether by way of leasehold or freehold title) of an applicant issuer that is not a property entity which asset/s represent, or will (post acquisition) represent, 25% or more of the total assets or generate 25% or more of the revenue or profits of that group as measured against the latest consolidated financial information of the applicant issuer.

## **Other consequential changes**

### **Amendment to paragraph 13.18(b)**

3.18(b) a sectoral profile (showing existing use), by rentable area and by revenue. This sector profile should at a minimum distinguish between the following sectors: industrial, office, retail, residential, hotels and specialised sectors such as healthcare facilities, timber properties and auto dealerships.

### **Addition of a new paragraph (e) to paragraph 13.20**

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

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

## **REITs**

### **REIT status listing criteria for property entities other than CISIPs**

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

- (a) the directors of the applicant issuer must provide an undertaking and must ensure that the applicant issuer complies with the distribution provisions set out in paragraph 13.47;
- (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 (for a listing on the Main Board) or paragraph 21.3 (for a listing on Alt\*) read together with paragraph 13.3;
- (f) the directors must each 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 Income 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 and ensure that at the time that they authorise any new borrowings that:
    - (1) the total consolidated liabilities as reflected in the latest published interim or annual consolidated IFRS financial statements;
    - (2) less, any capital repayments made on those liabilities after the balance sheet date;
    - (3) plus, the nominal value of the new debt,  
divided by the greater of GAV or adjusted GAV will not be more than 60%; and
  - (ii) confirm that the total consolidated liabilities, is not more than 60% of the total consolidated 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;
- (h) the applicant issuer must ensure that the audit committee or a separate risk committee of the board is, as a minimum, responsible for:

- (i) adopting and implementing an appropriate risk management policy, which policy must as a minimum:
  - (1) be in accordance with industry practice; and
  - (2) specifically prohibit the applicant issuer from entering into any derivative transactions that are not in the normal course of the applicant issuers business;
- (ii) reporting in the annual report each year that they have monitored compliance with the policy and that the applicant issuer has, in all material respects, complied with the policy during the year concerned;
- (iii) reporting to the JSE, in the annual compliance declaration referred to in paragraph 13.49(d), that they have monitored compliance with the policy and that the applicant issuer has, in all material respects, complied with the policy during the year concerned; and
- (iv) at the time of listing, confirming to the JSE and disclosing in the pre-listing statement that it has adopted the policy referred to in paragraph 13.46(h)(i) above.

13.47 A property entity, other than a CISIP, wishing to receive a REIT status must ensure that it complies with the following distribution provisions:

- (a) the company must distribute at least 75% of its total distributable profits as a distribution to the holders of its listed securities (which includes shares and linked units) by no later than 6 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) interim distributions may occur before the end of a financial year end;
- (c) the company will procure that, subject to the solvency and liquidity test and section 46 of the Act, those of its subsidiaries that are property entities incorporated in the Republic of South Africa will distribute at least 75% of their total distributable profits as a distribution by no later than 6 months after their financial year ends;
- (d) distributable profit in respect of a financial year is defined as:
  - (i) gross income, as defined in terms of the Income Tax Act;
  - (ii) less deductions and allowances that are permitted to be deducted by a REIT in terms of the Income Tax Act, other than the qualifying distribution, as defined in terms of section 25BB of the Income Tax Act being qualifying distributions form part of distributable profit;

## **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; and
  - (b) not have failed the REIT tax test for the last 2 consecutive financial years; and
  - (c) not have been in breach of the distribution provisions, set out in paragraph 13.47, in the last 24 months provided that it was classified as a REIT during that period; or
  - (d) be a CISIP, in which case it must only comply with the provisions of paragraph 13.55 to 13.57.

## **Continuing obligations for REIT's (other than CISIP's)**

- 13.49 In order to retain their REIT status, applicant issuer's must, on an ongoing basis, meet the following criteria:
- (a) comply with the distribution provisions set out in paragraph 13.47;
  - (b) the applicant issuer must:
    - (i) qualify for a tax deduction of an amount equal to its distributions under section 25BB(2) of the Income Tax Act for the immediately preceding financial year end; or
    - (ii) must not have failed the REIT tax test for the last 2 consecutive financial year ends;
  - (c) the directors of the REIT must ensure that:
    - (i) the total consolidated liabilities of the issuer (as reflected in the IFRS results) will not be more than 60% of the total consolidated assets (as reflected in the IFRS results); or
    - (ii) if the issuer is not in compliance with paragraph 13.49(c)(i) the directors 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 declaration must:
    - (i) confirm that the directors of the issuer have ensured that the applicant issuer's group complied with paragraphs 13.46(a), (f), (g)(i) and (h) above; or
    - (ii) where the applicant issuer did not comply with paragraph 13.46(g)(i) above, the directors must confirm that despite

the non-compliance, the total consolidated liabilities of the issuer are not more than 60% of the total consolidated assets, where the liability and asset amounts are those reflected in the group annual financial statements for that financial year end;

- (iii) be signed by each of the directors, the company secretary and the sponsor or designated advisor of the issuer; and
- (iv) be submitted at the time of submission of the applicant issuer's 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 the issuer rectify the situation and advising that it has been granted a period of 1 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 informing holders of securities that the issuer has not submitted its compliance declaration and cautioning holders security that the issuer's 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 the 1 month period referred to in (a) above and the JSE will release an announcement confirming this fact.

13.51 In every announcement issued by a REIT:

- (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 it must specify:
  - (i) that this distribution is regarded as 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 from 1 January 2014 (distributions to foreign tax residents before that date are exempt from dividends tax); and
  - (ii) for which financial period 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 security holders, 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 Income Tax Act; or
  - (b) has breached the distribution provisions 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 applicant issuer, fails to comply with any of the REIT Listings Requirements as set out in paragraph 13.49 (after taking into account paragraph 13.50):
- (a) the JSE will remove its REIT status;
  - (b) the issuer must make an announcement advising the market of this fact; and
  - (c) the issuer may make application at 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) once the application has been processed by the JSE.

#### **Applicability of the REIT provisions 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 application 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) and (h) above, where any reference to the directors of the applicant issuer must be read as being the directors of the management company appointed as such in terms of the CISCA;
  - (b) provide evidence of registration as a CISIP from the CIS Registrar; and



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

### **Continuing obligations for CISIP's**

- 13.56 A CISIP must submit a compliance declaration to the JSE within 6 months of the issuer's financial year end, which declaration must:
- (a) confirm that the CISIP has compiled with paragraph 13.46(h) above, where any references to the directors of the applicant issuer must be read as being the directors of the management company which is appointed as such in terms of the CISCA; and
  - (b) be signed by the trustees of the CISIP and the directors of the management company.
- 13.57 In every announcement issued by a CISIP with a REIT status, it must make reference to the fact that it has a REIT status with the JSE.
- 13.58 An issuer that is a CISIP with a REIT status must keep the market informed regarding its REIT status. In this regard the issuer must release an announcement containing full details of the implications thereof for the issuer and its holders of securities, 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 Income Tax Act;
  - (b) has breached the provisions of its Deed; or
  - (c) has breached the provisions of the CISCA.

### **Dual listings**

- 13.59 Any applicant issuer wanting to apply to receive a REIT status must, despite the provisions of Section 18, make application for a primary listing on the JSE.

### **Transitional provisions**

- 13.60 The following transitional provisions are applicable to property entities other than CISIP:
- (a) the following issuers are eligible to make application to receive a REIT status under these transitional provisions:
    - (i) property entities that were listed on the Main Board of the JSE in the financials-real estate sector prior to 30 November 2012; and
    - (ii) at that time the listed securities of the property entity

comprised of an ordinary share linked to a debenture, and traded as a linked or combined unit;

- (b) all issuers referred to in paragraph 13.60(a) above must make application to the JSE, by no later than 1 July 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 company will comply with the provisions of paragraph 13.47;
  - (ii) a statement of confirmation by each of 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 Income Tax Act for its first financial year commencing on or after 1 April 2013;
  - (iii) confirmation and evidence of compliance with paragraph 13.46(d) and (g);
  - (iv) confirmation that the applicant issuer will comply with paragraph 13.46(h) by no later than the end of its first financial year commencing on or after 1 April 2013;
  - (v) details of the applicant issuer's year end and the proposed date of the first distribution which is likely to be made by the issuer as a REIT; and
  - (vi) an extract from the applicant issuer's latest published results showing the sector profile (showing existing use) of the revenue as reflected in those results. The sector profile should at a minimum distinguish between the following sectors: industrial, office, retail, residential, hotels and specialised sectors such as healthcare facilities, timber properties and auto dealerships.
- (d) an applicant issuer that makes application to the JSE and meets the transitional Listings Requirements set out in this paragraph will receive a REIT status even though it may not necessarily meet all the criteria set out in paragraph 13.46;
- (e) applicant issuers who make the necessary application to the JSE and comply with the transitional provisions will, receive a REIT status from the commencement of their first financial year commencing on or after 1 April 2013; and
- (f) any other property entity listed on the JSE to which the transitional provisions do not apply may make application to the JSE

in terms of paragraph 13.46 to receive a REIT status.

13.61 The following transitional provisions are applicable to property entities that are CISIP:

- (a) CISIP that were listed on the JSE prior to 30 November 2012 are eligible to make application to receive a REIT status under these transitional provisions;
- (b) all applicant issuers referred to in paragraph 13.61(a) above must make application to the JSE, by no later than 1 July 2013, to receive a REIT status under these transitional provisions;
- (c) the application letter must be signed by trustees of the CISIP, the directors of the management company and the sponsor/designated advisor and must contain:
  - (i) confirmation that they are in good standing with the CIS Registrar;
  - (ii) confirmation that the issuer will comply with paragraph 13.46(h) by no later than the end of its first financial year commencing on or after 1 April 2013;
  - (iii) details of the issuer's year end and the proposed date of the first distribution which is likely to be made by the issuer as a REIT; and
  - (iv) an extract from the issuer's latest published results showing the sector profile (showing existing use) of the revenue as reflected in those results. The sector profile should at a minimum distinguish between the following sectors: industrial, office, retail, residential, hotels and specialised sectors such as healthcare facilities, timber properties and auto dealerships;
- (d) an applicant issuer that makes application to the JSE and meets the transitional Listings Requirements set out in this paragraph will receive a REIT status even though it may not necessarily meet all the criteria set out in paragraph 13.55;
- (e) applicant issuers who make the necessary application to the JSE and comply with the transitional provisions will, receive a REIT status from the commencement of their first financial year commencing on or after 1 April 2013; and
- (f) any other CISIP listed on the JSE to which the transitional provisions do not apply may make application to the JSE in terms of paragraph 13.55 to receive a REIT status.

## **Applicable Fees**

Fees applicable to REITS or applications to receive a REIT status 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 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 calendar year after the effective date on which the applicant issuer received its REIT status;
  - (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 fee is payable by applicant issuers:
    - (i) making application under the transitional provisions as set out in paragraph 13.59 and 13.60; or
    - (ii) who were CISIP's listed on the JSE prior to 30 November 2012,

which fee will be based on the principle of recovering the costs incurred by the JSE to develop and implement these Listings Requirements. The costs will be recovered equally across all applicant issuers.

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