

# **Delta Property Fund Limited**

## **(“the Fund” or “the company”)**

### **Director Conflicts of interest**

One of the fundamental duties of a director is to avoid any possible conflict of interests with the company. It is an accepted principle in South African law that, as a result of the trust placed in the director, he or she is bound to put the interests of the company before their own personal interests.

Section 75 of the Companies Act makes clear provision for dealing with a director’s use of company information and conflict of interest. It extends the application of the conflict of interest provisions to prescribed officers and members of board committees (even if those persons are not directors).

Where a director, prescribed officer or member of board committees has a conflicting personal financial interest (where his or her own interests are at odds with the interests of the company), he or she is prohibited from making, participating in the making, influencing, or attempting to influence any decision in relation to that particular matter. This provision seems to impose a strict duty not to allow personal financial interest to impact, in any way, on the dealings with the company. In addition, where a director, prescribed officer or member of board committees has a conflicting personal interest in respect of a matter on the board agenda, he or she has to declare that personal interest and immediately leave the meeting. Such person is also prohibited from any action that may influence or attempt to influence the discussion or vote by the board, and is prohibited from executing any document on behalf of the company in relation to the matter, unless specifically requested to do so by the board.

It is important that all directors and prescribed officers comply with the conflict of interest declaration provisions, as non-compliance may render certain transactions and agreements void.

The conflict of interest provisions apply equally to persons related to the director, prescribed officer or member of a board committee. Thus, where a director, prescribed officer or member of board committees knows that a related person has a personal financial interest in a matter to be considered at a meeting of the board, or knows that a related person has acquired a personal financial interest in a matter, after the board has approved that agreement or matter, he or she should disclose that fact to the board.

#### **Liability of directors and prescribed officers**

In terms of the Companies Act a director or prescribed officer of a company may be held liable for any loss, damages or costs sustained by the company as a consequence of any breach by him or her of a duty contemplated in the standard of directors conduct, failure to disclose a personal financial interest in a particular matter, or any breach by the director or prescribed officer of a provision of the Companies Act or the company’s Memorandum of Incorporation.

## Policy/procedure

The policy/procedure that has been adopted at Delta Property Fund Limited is that on listing (2 November 2012) directors were required to declare their interests as part of the PLS document.

Annually thereafter directors are required to re-submit their declarations indicating any changes to the company secretary which declarations are published to the board.

At each board meeting and valuation committee meeting there is a standard agenda item that provides for directors declaration of interests where they can confirm any changes to their declarations.

Directors have the responsibility of during any of the board or committee meetings to declare their interest should the need arise as prescribed by the Companies Act (refer detail below).

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Company Secretary

## For reference purposes - extracts from the Company's Act

### Definitions:

**“director”** means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated;

**“inter-related”**, when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2 (1), and one of them is related to the third in any such manner, and so forth in an unbroken series;

**“knowing”, “knowingly” or “knows”**, when used with respect to a person, and in relation to a particular matter, means that the person either—  
(a) had actual knowledge of the matter; or  
(b) was in a position in which the person reasonably ought to have— (i) had actual knowledge; (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or (iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;

**“material”**, when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is—  
(a) of consequence in determining the matter; or  
(b) might reasonably affect a person’s judgement or decision-making in the matter;

**“personal financial interest”**, when used with respect to any person—  
(a) means a direct material interest of that person, of a financial, monetary or economic nature, or to

which a monetary value may be attributed; but

(b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

**“related”**, when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2 (1) (a) to (c);

**“relationship”** includes the connection subsisting between any two or more persons who are related or inter-related, as determined in accordance with section 2;

**2. Related and inter-related persons, and control.**—(1) For all purposes of this Act—

(a) an individual is related to another individual if they— (i) are married, or live together in a relationship similar to a marriage; or (ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;

(b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with subsection (2); and

(c) a juristic person is related to another juristic person if— (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2); (ii) either is a subsidiary of the other; or (iii) a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with subsection (2).

(2) For the purpose of subsection (1), a person controls a juristic person, or its business, if—

(a) in the case of a juristic person that is a company—

(i) that juristic person is a subsidiary of that first person, as determined in accordance with section 3 (1) (a); or

(ii) that first person together with any related or inter-related person, is—

(aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or

(bb) has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board;

(b) in the case of a juristic person that is a close corporation, that first person owns the majority of the members’ interest, or controls directly, or has the right to control, the majority of members’ votes in the close corporation;

(c) in the case of a juristic person that is a trust, that first person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or

(d) that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c).

(3) With respect to any particular matter arising in terms of this Act, a court, the Companies Tribunal or the Panel may exempt any person from the application of a provision of this Act that would apply to that person because of a relationship contemplated in subsection (1) if the person can show that, in respect of that particular matter, there is sufficient evidence to conclude that the person acts independently of any related or inter-related person.

**S75. Director's personal financial interests.**—(1) In this section—

(a) “director” includes— (i) an alternate director; (ii) a prescribed officer; and (iii) a person who is a member of a committee of a board of a company, irrespective of whether the person is also a member of the company's board; and

(b) “related person”, when used in reference to a director, has the meaning set out in section 1, but also includes a second company of which the director or a related person is also a director, or a close corporation of which the director or a related person is a member.

(2) This section does not apply—

(a) to a director of a company— (i) in respect of a decision that may generally affect— (aa) all of the directors of the company in their capacity as directors; or (bb) a class of persons, despite the fact that the director is one member of that class of persons, unless the only members of the class are the director or persons related or inter-related to the director; or

(ii) in respect of a proposal to remove that director from office as contemplated in section 71; or

(b) to a company or its director, if one person— (i) holds all of the beneficial interests of all of the issued securities of the company; and (ii) is the only director of that company.

(3) If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued securities of the company, that person may not—

(a) approve or enter into any agreement in which the person or a related person has a personal financial interest; or

(b) as a director, determine any other matter in which the person or a related person has a personal financial interest, unless the agreement or determination is approved by an ordinary resolution of the shareholders after the director has disclosed the nature and extent of that interest to the shareholders.

(4) At any time, a director may disclose any personal financial interest in advance, by delivering to the board, or shareholders in the case of a company contemplated in subsection (3), a notice in writing setting out the nature and extent of that interest, to be used generally for the purposes of this section until changed or withdrawn by further written notice from that director.

(5) If a director of a company, other than a company contemplated in subsection (2) (b) or (3), has a personal financial interest in respect of a matter to be considered at a meeting of the board, or knows that a related person has a personal financial interest in the matter, the director—

(a) must disclose the interest and its general nature before the matter is considered at the meeting;

(b) must disclose to the meeting any material information relating to the matter, and known to the director;

(c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;

(d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c);

(e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c);

(f) while absent from the meeting in terms of this subsection— (i) is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors are present to constitute the meeting; and (ii) is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

(g) must not execute any document on behalf of the company in relation to the matter unless

specifically requested or directed to do so by the board.

(6) If a director of a company acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the company, the director must promptly disclose to the board, or to the shareholders in the case of a company contemplated in subsection (3), the nature and extent of that interest, and the material circumstances relating to the director or related person's acquisition of that interest.

(7) A decision by the board, or a transaction or agreement approved by the board, or by a company as contemplated in subsection (3), is valid despite any personal financial interest of a director or person related to the director, only if—

(a) it was approved following disclosure of that interest in the manner contemplated in this section; or

(b) despite having been approved without disclosure of that interest, it— (i) has subsequently been ratified by an ordinary resolution of the shareholders following disclosure of that interest; or (ii) has been declared to be valid by a court in terms of subsection (8).

(8) A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the board, or shareholders as the case may be, despite the failure of the director to satisfy the disclosure requirements of this section.