

RELATED PARTY TRANSACTIONS

The Company recognizes that Related Party Transactions as defined in Clause 49(VII) of the Listing Agreement and in section 2(76) of the Companies Act, 2013 (“the Act”) read with Section 188 may give rise to an actual or potential conflict of interest thereby raising the question whether or not such transactions are in the best interests of the Company and its members as a whole.

The Audit Committee of the Board of Directors of the Company (“the Board”) is required by Section 177(4) of the Act to approve all transactions of the Company with related parties (“RPT’s”).

REQUIREMENT OF FORMULATING A POLICY

Part I of this Policy on dealing with RPT’s and determining their materiality is formulated in compliance with Clause 49(VII)(C) of the Listing Agreement entered into by the Company with stock exchanges on which its shares are currently listed as amended by the Securities and Exchange Board of India’s (SEBI) Circular of September 15, 2014. It is intended to ensure timely identification of an RPT, its salient terms and provisions, approval process, disclosure and reporting thereof to ensure transparency in the conduct of RPT’s, so that there is no conflict of interest.

The Board of Directors of the Company (“the Board”) has adopted this Policy with respect to RPT’s on the recommendation of the Audit Committee. The Audit Committee is empowered to review and recommend amendments to this Policy as may be considered necessary from time to time. All amendments to this Policy as may be recommended by the Audit Committee would be subject to the Board’s approval.

Part II deals with RPT’s as envisaged and covered by the applicable provisions of the Act and the applicable Rules framed thereunder.

PART I

Clause 49 of the Listing Agreement deals with the provisions relating to Corporate Governance required to be complied with by the Company.

Clause 49(VII) as revised by SEBI's Circular of April 17, 2014 and further amended by its Circular of September 15, 2014 deals with RPTs. It is applicable from 1st October 2014.

Apart from being required to comply with the provisions of the Clause 49(VII) revised and further amended as above, the Company is also obliged to simultaneously comply with the applicable provisions relating to RPTs contained in the Act read with the applicable Rules made thereunder.

These are dealt in Part II of this Policy

What is a RPT ?

As per the revised and amended Clause 49(VII), a RPT is transfer of resources, services or obligations between the Company and a related party, regardless of whether a price is charged.

A transaction with a related party shall be construed to include a single transaction or a group of transactions in a contract.

Who is a 'related party' ?

An entity shall be considered as related to the Company if :

- (i) such entity is a related party as defined in Section 2(76) of the Act; or
- (ii) such entity is a related party under the applicable accounting standards issued by the Institute of Chartered Accountants.

Section 2(76) defines a ‘related party’, with reference to the Company, to mean –

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is his partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

Provided that nothing in (vi) and (vii) above shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) any company which is –
 - (A) a holding, subsidiary or an associate company of such company; or
 - (B) a subsidiary of a holding company to which it is also a subsidiary;

As per Accounting Standard 18 (“AS18”) “related parties” are :-

- a) enterprises that directly, or indirectly through one or more intermediaries control, or are controlled by, or are under common control with, the Company (including its holding company, subsidiaries and fellow subsidiaries);
- b) associate company of the Company and joint ventures of the Company and the investing party or venture in respect of which the Company is an associate or a joint venture;
- c) individuals owning, directly or indirectly, an interest in the voting power of the Company that gives them control or significant influence over the Company, and relatives of any such individual;
- d) key management personnel and their relatives; and
- e) enterprises over which any person described in c) or d) above is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the Company and enterprises that have a member of key management in common with the Company.

For purposes of the above meaning of ‘related parties’ as per AS18:

- a. A subsidiary company, shall mean a company in which the Holding Company holds, either by itself and/or through one or more subsidiaries, more than one-half in nominal value of its equity share capital; or of which the Holding Company controls, either by itself and/or through one or more subsidiaries, the composition of its board of directors.
- b. The Company will be considered to control the composition of the Board, if it has the power, without the consent or concurrence of any other person, to appoint or remove all or a majority of directors of the Company. The Company will be deemed to have the power to appoint a director if any of the following conditions is satisfied:

- (i) a person cannot be appointed as director without the exercise in his favour by the Company of such a power as aforesaid; or
 - (ii) a person's appointment as director follows necessarily from his appointment to a position held by him in the Company; or
 - (iii) the director is nominated by the Company or its subsidiary.

- c. The Company will be considered to control the governing body of an enterprise that is not a company, if it has the power, without the consent or the concurrence of any other person, to appoint or remove all or a majority of members of the governing body of that other enterprise. An enterprise is deemed to have the power to appoint a member if any of the following conditions is satisfied:
 - (i) a person cannot be appointed as member of the governing body without the exercise in his favour by that other enterprise of such a power as aforesaid; or
 - (ii) a person's appointment as member of the governing body follows necessarily from his appointment to a position held by him in that other enterprise; or
 - (iii) the member of the governing body is nominated by that other enterprise.

- 'Control' shall mean, the ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise. An enterprise/individual is considered to have a substantial interest in another enterprise if that enterprise/individual owns, directly or indirectly, 20% (twenty percent) or more interest in the voting power of the other enterprise.

- d. The term 'significant influence' shall mean the participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies.

- e. The term 'associate company' shall mean one in which the Company will have significant influence and which is neither a subsidiary nor a joint venture of the Company.

- f. The term 'relative' shall mean, in relation to an individual, the spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual in his/her dealings with the Company.

A transaction between the Company and a related party is to be considered as **material** if the transaction to be entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual consolidated turnover of the Company as per its last audited financial statements.

All RPTs, whether material or not, will however require the prior approval of the Audit Committee of the Board.

However, in order to obviate difficulties that may be encountered by the Company in obtaining prior approval of the Audit Committee to RPTs that are needed to be entered into by it from time to time, owing, inter alia, to the repetitive nature of transactions to be entered into or when the need for RTP's cannot be foreseen in advance, the Audit Committee has been empowered under Clause 49(VII) revised and amended as above to grant **Omnibus Approval** for such RPTs, subject to the following conditions:

- (A) the criteria for granting such **Omnibus Approval** is laid down by the Audit Committee in line with the Policy in Part I and such approval shall be applicable in respect of transactions which are repetitive in nature.
- (B) The Audit Committee has satisfied itself as to the need for such **Omnibus Approval** and that grant of such approval is in the interest of the Company.
- (C) The **Omnibus Approval** given by the Audit Committee shall specify the following:
 - (i) the name/s of the related party, nature of transaction, period of transaction, maximum amount of transaction that can be entered into;

(ii) the indicative base price/current contracted price and the formula for variation in the price, if any; and

(iii) such other conditions as the Audit Committee may deem fit.

HOWEVER where the need for an RPT cannot be foreseen and the details in (i), (ii) and (iii) above are not available, the Audit Committee is empowered by Clause 49(VII) revised and amended as above to grant **Omnibus Approval** for such transactions subject to their value not exceeding Rs.1 crore per transaction.

(D) The Audit Committee is required to review, at least on a quarterly basis, the details of RPTs entered into by the Company pursuant to each **Omnibus Approval** given.

(E) All such **Omnibus Approvals** shall be valid for a period not exceeding one year and shall require fresh approval after the expiry of one year.

Where the Audit Committee has satisfied itself as to the need for granting an **Omnibus Approval** and that grant of such **Omnibus Approval** would be in the interest of the Company, such **Omnibus Approval** may hence be of two types, namely,

(A) an **Omnibus Approval** specifying the name of the related parties, the nature, period and the maximum amount of the transaction that can be entered into, the indicative base price/current contracted price and the formula for variation in price, if any and such other conditions as the Audit Committee may deem fit.

OR

(B) an **Omnibus Approval** for RPTs subject to their value not exceeding Rs.1 crore per transaction, where the need for the RPT cannot be foreseen and the details mentioned in (A) above are not available.

CRITERIA TO BE CONSIDERED BY AUDIT COMMITTEE FOR GRANTING APPROVAL TO AN RPT

- The rationale and necessity for entering into such an RPT.
- Whether any compelling business or commercial reasons or justification exist for the Company to enter into the RPT and the availability, if any, of similar transactions between the Company and unrelated counterparties or between two unrelated parties about the same time.
- Whether the terms and provisions of the RPT, viewed in their totality, are fair and the transaction is at arm's length, that is to say, whether it is similar to a transaction conducted as if between two unrelated parties, so that there is no conflict of interest.
- Whether any special or unusual benefits, rights or privileges are extended or given to the related party by the Company which would normally not feature in a similar transaction, were it to be entered into by the Company with an unrelated party or between two unrelated parties.
- Whether the consideration/compensation to be paid to the related party under or pursuant to the transaction is, or can be regarded as being, commensurate with the obligations undertaken by such related party, and/or the scope of services provided by it thereunder.
- Whether the transaction is unreasonably or unfairly weighted in favour of the related party vis-a-vis of price, terms of credit and payment, interest payable or in any other manner or gives rise, or is likely to give rise, to any conflict of interest.
- Whether the RTP will or is likely to, affect the independence of judgment of any of the independent Directors on the Board.
- Whether the RTP is likely to give rise in any manner to a conflict of interest and duty for any Director or Key Managerial Personnel of the Company.

- Whether the RTP would or is likely to give rise to any potential reputational risk for the Company and/or its Directors.
- Any other aspects or factors that may be relevant or material in the opinion of the Committee.

All material RPTs, (whether or not they are entered into by the Company in the ordinary course of its business and are also arms length transaction) shall also require the approval of the shareholders of the Company in general meeting by a special resolution, and the related parties shall abstain from voting on such special resolution irrespective of whether they are a party to the particular transaction or not.

The **Explanatory Statement** annexed to the Notice issued by the Company convening the general meeting for seeking approval of its Shareholders to a **material RPT** as aforesaid shall contain the following details, namely:

- Name of the Related Party;
- Name of Director or his relatives or Key Management Personnel or his relatives;
- Nature of the relationship;
- Material terms, monetary value and particulars of contract or arrangement;
- Other relevant or important information which would help the shareholders to take a decision.

The aforesaid requirement that all RPTs shall require prior approval of the Audit Committee and that all **material RPTs** shall also require the approval of the shareholders of the Company in general meeting by a special resolution, will however **NOT** apply to transactions entered into between the Company and its wholly owned subsidiary whose accounts are consolidated with the Company and placed before the shareholders for approval at the general meeting.

PART II

The Audit Committee of the Board of Directors of a public limited company is required by Section 177(4) of the Act to approve transactions of the Company with related parties and any subsequent modifications thereto.

The criteria to be considered by the Audit Committee for granting approval to an RPT would be the same as set out in Part I of the Policy.

A ‘related party’ has been defined in section 2(76) of the Act. The definition of related party in section 2(76) has been set out in extenso in Part I of the policy.

Some of the other key terms used in the definition of ‘related party’ in section 2(76) are defined for convenient reference in the attached **Annexure**.

Once the counterparty to a proposed contract or arrangement that the Company proposes to enter into is a related party as defined in Section 2(76) of the Act, it becomes necessary to ascertain if it is an RPT covered by Section 188(1) (a) to (g) of the Act read with Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 (“the Rules”). If it is so, then consent of the Board given by a resolution at a meeting of the Board (and not by circulation) would require to be obtained by the Company prior to entering into it. This would be in addition to the prior approval of the Audit Committee to the proposed RPT required by the amended clause 49(VII)(D) of the Listing Agreement.

Section 188(1) of the Act only applies to any contract or arrangement between the Company and a related party which is with respect to a transaction listed in items (a) to (g) thereof, unless where such transaction is (i) entered into by the Company in its ordinary course of business and (ii) the transaction is an arm's length transaction, that is to say; a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. (Refer Explanation (b) to Section 188(1).

However, if the above mentioned twin requirements are not satisfied, then, the prior consent of the Board by a resolution passed at a meeting of the Board (and not by resolution by circulation) would be necessary before the contract or arrangement is at all entered into. Also, the prior approval of the shareholders of the Company by a special resolution would be necessary where the contract or arrangement to be entered into by the Company with a related party is with respect to a contract or arrangement covered by items (a) to (g) of Section 188(1) read with Rule 15(3)(ii).

On the other hand, if the twin requirements at (a) and (b) above are satisfied, then the entire section 188(1) would not apply to the contract or arrangement between the Company and the related party, even though it is and RPT covered under items (a) to (g) thereof.

Consequently, neither the consent of the Board as envisaged in sub-section(1) of Section 188 nor the prior approval of the shareholders of the Company by a special resolution as envisaged by the first proviso in sub-section(1) of section 188 read with Rule 15(3)(ii) of the Rules would be necessary.

Where the Company is required to obtain the prior consent of its Board of Directors by a resolution at a meeting of the Board, pursuant to section 188(1) of the Act read with Rule

15(3) of the Rules, the Agenda of the Board meeting at which the resolution granting consent is proposed to be moved shall disclose the following, namely –

- (a) the name of the related party and nature of relationship;
- (b) the nature, duration of the contract and particulars of the contract or arrangement;
- (c) the material terms of the contract or arrangement including the value, if any;
- (d) any advance paid or received for the contract or arrangement, if any;
- (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
- (f) whether all factors relevant to the contract have even considered, if not, the details of factors not considered with the rationale for not considering those factors; and
- (g) any other information relevant or important for the Board to take a decision on the proposed transaction.

Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

When a transaction entered into by the Company with a related party can be said to be in its ordinary course of business for purposes of Section 188(1)?

Meaning of 'ordinary course of business'

Black's Law Dictionary describes "ordinary course of business" as follows:

- The transaction of business according to the usages and customs of the commercial world generally or of the particular community or (in some cases) of the particular individual whose acts are under consideration.
- The normal routine in managing a trade or business.
- Whether a particular act done is in the course of business or not is really a question of fact and that must be determined according to the evidence led and the circumstances of the case. It must be found as to whether the particular act has any connection with the normal business that the company is carrying on and whether it is so related to the business of the company that it can be considered to be performed in the ordinary course of the business of that company.
- In deciding whether a particular transaction is one, which took place in the ordinary course of business or not, it has been held in several decisions that a stray or casual transaction by a person not possessing the licence would not amount to a transaction done in the ordinary course of business...stray or casual act cannot be called an act done in the ordinary course of business.
- Expression 'in the ordinary course of business' means in the ordinary course of a professional avocation or current routine of business which was usually followed by the person whose declaration it is sought to be introduced.

- To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive.
- The expression “usual course of business” is also found in certain sections of some Acts. These expressions are not statutorily defined in any one of these Acts, but there can be no doubt that they all indicate and imply uniformity of dealings, a certain degree of routine in business practice.
- ...the question to be considered is whether the contract was entered into by the respondent in the usual course of his business...That the respondent has been carrying on business in the production and supply of limestone is amply established. The record shows that he had been supplying limestone and dolomite to the from about the year 1920 and that the contracts of 1935 were entered into only in the carrying on of that business...The contract was made in settlement of the rights under those contracts. It is to be noted that under the agreement under which he received a sum of Rs.2,50,000, he also secured a contract for the supply of limestone for a period of 12 years. On these facts, it is impossible to come to any conclusion other than that the contract in question was entered into by the respondent in the ordinary course of his business.

- The expression “statement made in the ordinary course of business” means a statement made during the course not of any particular transaction of an exceptional kind, but of business or professional employment in which the deceased was ordinarily and habitually engaged.

What is an arm’s length transaction for purposes of Section 188(1)?

- The primary objective of the Act is to avoid a conflict of interest. The Act however does not prescribe rules, approach or methodology for determining whether a transaction is an arm’s length transaction. Therefore, a reference to the provisions on arm’s length transactions in the Income Tax Act, 1961 and the rules made thereunder may provide guidance as to whether a transaction was entered into on an arm’s length basis.
- Section 92C of the Income Tax Act, 1961 read with Rule 10B of the Income Tax Rules provides that the arm’s length price in relation to an international transaction or specified domestic transaction is to be determined by any of the following methods, namely:
 - a. comparable uncontrolled price method;
 - b. resale price method;
 - c. cost plus method;
 - d. profit split method;
 - e. transactional net margin method; and
 - f. such other method as may be prescribed by the Board.

- Further, Rule 10AB of the Income Tax Rules provides “for the purposes of clause (f) of sub-section(1) of section 92C, the other method for determination of the arm’s length price in relation to an international transaction or a specified domestic transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

DISCLOSURES

- 1 Every Director will disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which will include the shareholding, at the first meeting of the Board in which he participates as a Director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, in form MBP-1.

- 2 The Company will maintain a register of all contracts and arrangements with Related Parties in form MBP-4 in the manner prescribed in the Companies Act and the rules thereunder.

- 3 The particulars of contracts or arrangement with Related Parties will be disclosed in the Directors' report in form AOC-2, in the manner prescribed in the Companies Act and the rules thereunder.

ANNEXURE

DEFINITIONS

i. **Relative – section 2(76)**

Relative has been defined to mean any one who is related to another, if:

- they are members of a Hindu Undivided Family;
- they are husband and wife
- father including stepfather
- mother including stepmother
- son including stepson
- son's wife including stepson's wife
- daughter including stepdaughter
- daughter's husband including stepdaughter's husband
- brother including stepbrother
- sister including stepsister

ii. **Key Managerial Personnel – section 2(51)**

In relation to a Company, means -

- the Chief Executive Officer or the managing director or the manager;
- the company secretary;
- the whole-time director;
- the Chief Financial Officer; and
- such other officer as may be prescribed;

iii. Manager – section 2(53)

An individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

iv. Holding Company – section 2(46)

In relation to one or more other companies, means a company of which such companies are subsidiary companies.

v. Subsidiary Company or Subsidiary – section 2(87)

In relation to any other company, that is to say, the Holding company, means a company in which the holding company;

- (i) controls the composition of the Board of Directors; or

- (ii) exercises or controls more than one-half of the Total Share Capital
 - either at its own; or
 - together with one or more of its subsidiary companies

Explanation:

- a. a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

b. the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company, by exercise of some power exercisable by it at its discretion, can appoint or remove all or a majority of the directors;

c. the expression "company" includes any body corporate;

vi. Associate Company – section 2(6)

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation: For the purposes of this clause, "significant influence" means control of at least 20% of the total share capital, or of business decisions under an agreement.

vii. Control – section 2(27)

"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

Place: Mumbai

Date: 24th February, 2015

(Adun Saraban)
Managing Director