

# **RELATED PARTY TRANSACTIONS**

Policy on Materiality of Related Party Transactions and dealing with Related Party Transactions

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## A. BACKGROUND

The Companies Act, 2013 was enacted on August 30, 2013 which provides major overhaul in the Corporate Governance norms for all Companies. The rules pertaining to Corporate Governance were notified on March 27, 2014. The requirements under the Companies Act, 2013 and the rules notified there under would be applicable to every company or a class of companies (both listed and unlisted) as may be provided therein.

Section 188 of the Companies Act, 2013 read with Companies (Meetings of Board and its Powers) Rules, 2014 provides the detailed mechanism for dealing with Related Party Transaction's ("RPT's") of a Company. Further, it provides for certain compliance requirements such as Board approval and Shareholder's approval in specific circumstances. In addition, Section 177 of the Companies Act, 2013 read with Companies (Meetings of Board and its Powers) Rules, 2014 provides for approval of the Audit Committee for RPT's.

Securities and Exchange Board of India (SEBI) has also amended Clause 49 of the Listing Agreement ("Revised Clause 49") which is effective from 1<sup>st</sup> October 2014. The Revised Clause 49, in addition to the approvals required for RPT's, also provides that the company shall formulate a policy on materiality of related party transactions and also on dealing with related party transactions.

Keeping in view the above mentioned compliance requirements provided in Companies Act, 2013 read with related rules issued thereon and Revised Clause 49 of the Listing Agreement, including any amendment thereof, the Board of Directors of Hindustan Petroleum Corporation Limited ("HPCL" or "the Company"), acting upon the recommendations of the Audit Committee of the Board, has approved and adopted the following policy on Materiality of Related Party Transaction's and dealing with Related Party Transaction's.

All RPT's as defined in this Policy shall be subject to review in accordance with the procedures set forth below.

## B. PURPOSE

This policy is to define the approval mechanism and reporting of transactions between the Company and its related parties. It may be modified pursuant to the amendment in the Companies Act, 2013 or Listing Agreement or any Rules and Regulations made therein.

## C. DEFINITIONS

1. **Arm's length transaction** - The transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

2. **Government Company** - In accordance with Section 2(45) of the Companies Act, 2013 read with related rules issued thereon, Government Company means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;
3. **Ordinary Course of business** - includes, but not limited to, activities that are necessary, normal, and incidental to the business.
4. **Related Party** - In accordance with Clause 49 of Listing Agreement including any statutory modification, amendment thereof as may be issued from time to time, an entity shall be considered as related party to the Company if:
  - (i) Such entity is a related party under Section 2(76) of the Companies Act, 2013; or
  - (ii) Such entity is a related party under the applicable Accounting Standards.

In accordance with Section 2(76) of the Companies Act, 2013, Related Party in relation to a company means:

- (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 a partner;
- (iv) a private company in which a director or manager or relative 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 sub-clauses (vi) and (vii) 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;
- (ix) A Director (other than Independent Director) or KMP of the holding company of such company or his relative.

**The Accounting Standard 18 defines related party as** - “parties are considered to be related if at any time during the reporting period one party has the ability to control the other party

or exercise significant influence over the other party in making financial and / or operating decisions.”

The Accounting Standard 18 deals only with related party relationships described below:

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

In the context of this Accounting Standard, the following are deemed not to be related parties:

- (a) two companies simply because they have a director in common notwithstanding paragraph (d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);
- (b) a single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and
- (c) the parties listed below, in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process):
  - (i) Providers of finance;
  - (ii) Trade unions;
  - (iii) Public utilities;
  - (iv) Government departments and government agencies including government sponsored bodies

No disclosure is required in the financial statements of state-controlled enterprises as regards related party relationships with other state-controlled enterprises and transactions with such enterprises. State-controlled enterprise means an enterprise which is under the control of the Central Government and/or any State Government(s).

## 5. Related Party Transactions

- a) In accordance with Revised Clause 49, related party transaction is a transfer of resources, services or obligations between a Company and a related party, regardless of whether a price is charged or not.

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

- b) In accordance with Companies Act, 2013, Related Party Transaction includes the following transactions between the related parties:

- sale, purchase or supply of any goods or materials;
- selling or otherwise disposing of, or buying, property of any kind;
- leasing of property of any kind;
- availing or rendering of any services;
- appointment of any agent for purchase or sale of goods, materials, services or property;
- such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- Underwriting the subscription of any securities or derivatives thereof, of the company.

## 6. Material Related Party Transactions

- a) In accordance with Revised Clause 49, material related party transactions means any related party transaction / transactions, to be entered into individually or taken together with previous transactions during a financial year, which exceeds 10% of the annual consolidated turnover of the Company as per the last audited financial statements of the company; and

- b) In accordance with Section 188 of the Companies Act, 2013 read with related rules issued thereon including any statutory modification, amendment thereof as may be issued from time to time Material Related Party Transaction means the Transactions which are not on Arm's Length Basis and / or are not in the Ordinary Course of Business and exceed limits provided for the specified transactions as mentioned below:

| Transactions covered  | Transaction value  |
|---|--|
| sale, purchase or supply of any goods or materials directly or through appointment of agents *                                | exceeding 10% of Turnover or Rs. 100 Crore, whichever is lower               |
| selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents *                | exceeding 10% of Net Worth or Rs. 100 Crore, whichever is lower.             |
| leasing of property of any kind*  | exceeding 10% of Turnover or Net Worth or Rs. 100 Crore, whichever is lower. |
| availing or rendering of any services directly or through appointment of agents *   | exceeding 10% of Turnover or Rs. 50 Crore, whichever is lower.               |
| such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company | monthly remuneration exceeding Rs. 2.5 Lakh                                  |
| Remuneration for underwriting the subscription of any securities or derivatives thereof, of the company*                      | exceeding 1% of Net Worth  |

\* The limits shall apply for these transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

**Explanation** - The Turnover or Net Worth referred above shall be on the basis of the Audited Financial Statement of the preceding financial year.

7. **Relatives** - In accordance with Section 2 (77) of the Companies Act, 2013 read with related rules issued thereon including any statutory modification, amendment thereof as may be issued from time to time, relative with reference to any person, means anyone who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-
  - (a) Father: Provided that the term "Father" includes step-father.
  - (b) Mother: Provided that the term "Mother" includes the step-mother.
  - (c) Son: Provided that the term "Son" includes the step-son.
  - (d) Son's wife.
  - (e) Daughter.
  - (f) Daughter's husband.
  - (g) Brother: Provided that the term "Brother" includes the step-brother;

(h) Sister: Provided that the term "Sister" includes the step-sister;

8. **Key Managerial Personnel's (KMPs)** - in relation to a company, means-
- (i) the Chief Executive Officer or the managing director or the manager;
  - (ii) the company secretary;
  - (iii) the whole-time director;
  - (iv) the Chief Financial Officer; and
  - (v) such other officer as may be prescribed under Companies Act, 2013.
9. **Subsidiary Company** - The terms Subsidiary Company shall have the same meaning as specified under Companies Act, 2013 read with related rules issued thereon including any statutory modification and amendment thereof as may be issued from time to time.

#### **D. PROCEDURE**

1. In line with the provisions of Revised Clause 49 of the Listing Agreement and the provisions of Section 177 of the Companies Act, 2013, the Audit Committee of the Company shall review and approve all Related Party Transactions existing on the date of this Policy or proposed to be entered into by the Company.
2. **a)Omnibus Approval** - Audit Committee may grant omnibus approval for Related Party Transactions provided it is satisfied that there is a need to grant such approval in the interest of the Company. Such approval may be granted by Audit Committee for the proposed transaction subject to the following:
- i) Transactions are repetitive in nature;
  - ii) Sufficient disclosure shall be made to the Audit Committee, including the following:
    - a. name/s of the related party,
    - b. nature of transaction
    - c. period of transaction
    - d. maximum amount of transaction that can be entered into
    - e. the indicative base price / current contracted price and the formula for variation in the price if any and
    - f. such other conditions as the Audit Committee may deem fit.
- b) In case any of such transaction considered to be Material Related Party transaction, audit committee shall recommend to the Board for its approval and to seek approval from Shareholders of the Company.
3. In case, the above details mentioned in Point 2 are not available or need for Related Party Transaction cannot be foreseen, Audit Committee may consider to grant omnibus approval for any transaction or transactions, subject to the maximum value of Rs.1 crore per transaction.



In case such transaction exceeds the threshold limit of Rs. 1 Crore and Company propose to continue the omnibus approval of the Audit Committee for said transaction, in such scenario, to continue the said transaction the Company is required to give the necessary disclosures/ information before the Audit Committee and Audit Committee shall evaluate such transaction in light of the above mentioned criteria's for Omnibus approval of Audit Committee.

4. Audit Committee shall review, at least on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approval given. Further, such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.
5. **Exemptions from Audit Committee approval** - In terms of Clause 49 of the Listing Agreement, following transactions are exempted from the requirement of obtaining the Audit Committee approval however approval of Audit Committee will be required as per Section 177 of the Companies Act, 2013:
  - i) Transactions entered into by Hindustan Petroleum Corporation Limited with other government companies;
  - ii) Transactions entered into between HPCL and its wholly owned subsidiary whose accounts are consolidated with HPCL. f

In case such transaction is not on Arm's length and / or not in the Ordinary course of business, then the Audit Committee may recommend to the Board of Directors for approval of such transactions.

6. **Details to be provided to the Audit Committee** - In accordance with Companies Act, 2013 read with related rules issued thereon and Revised Clause 49, including any statutory modification and amendment thereof, with respect to Related Party Transactions following information, to the extent relevant, shall be presented to the Audit Committee:
  - A general description of the transaction(s), including the nature, duration of the contract, material terms and conditions and particulars of the contract or arrangement.
  - The name of the Related Party and the basis on which such person or entity is a Related Party.
  - Name of director or KMP who is related
  - Nature of relationship
  - Any advance paid or received for the contract or arrangement, if any.
  - Period of transaction
  - Maximum amount of transaction that can be entered into

- The Related Party's interest in the transaction(s), including the Related Party's position or relationship with, or ownership of, any entity that is a party to or has an interest in the transaction(s).
  - The indicative base price / current contracted price and the formula for variation in the price if any. Other commercial terms, both included as part of contract and not considered as part of the contract
  - Any other material information regarding the transaction(s) or the Related Party's interest in the transaction(s).
7. The Audit Committee shall also review and approve subsequent modification of transactions of the Company with Related Parties.
8. **Approval of Board / Shareholders** - In accordance with the provisions of Section 188 of the Companies Act, 2013 and Revised Clause 49 of Listing agreement, the Board of Directors and shareholders of the Company shall accord prior approval for related party transactions, for the following:
- a. **Board of Directors and Shareholders approval in terms of Companies Act, 2013** - All Related Party Transactions which are either not on arm's length basis or not in the Ordinary Course of Business shall be recommended by the Audit Committee for the approval of the Board of Directors. In case the said transaction is a Material Related Party Transaction as provided under clause C.6.(b) above, the Board of Directors shall further recommend the same for the approval of the Shareholders by way of Special Resolution of the Company.
  - b. **Board of Director's and Shareholders approval in terms of Listing Agreement** - In terms of Revised Clause 49 of the Listing Agreement, all Material Related Party Transaction as provided under Clause C.6.(a) above shall be recommended by the Audit Committee for the approval of the Board of Directors. The Board of Directors shall further recommend the same for the approval of the Shareholders by way of special resolution of the Company.

All entities falling under the definition of related parties shall abstain from voting at the shareholders meeting, irrespective of whether the entity is a party to the particular transaction or not.

Further, in accordance with Section 184 of the Companies Act, 2013 and all other applicable provisions, every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

c. **Exemption from Shareholder's approval** - In terms of Revised Clause 49 of the Listing Agreement, following transactions are exempted from the requirement of obtaining the Shareholders approval,:

- i) Transactions entered into by HPCL with other government companies;
- ii) Transactions entered into between HPCL and its wholly owned subsidiary whose accounts are consolidated with HPCL

However approval of Shareholders would be required under the Companies Act 2013 for above transactions if they are not in the ordinary course of business and / or are not on arms length basis and exceed the limits prescribed under clause C.6.(b) above.

d. All existing Material Related Party contracts or arrangements as on the date of SEBI circular i.e. 17<sup>th</sup> April 2014 which are likely to continue beyond 31<sup>st</sup> March 2015 shall be placed for approval of the shareholders in the first General Meeting subsequent to 01<sup>st</sup> October 2014.

e. In accordance with Section 188 of the Companies Act, 2013 read with related rules issued thereon, in case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

## **E. MECHANISM FOR APPROVAL FOR RELATED PARTY TRANSACTIONS IN HPCL**

### **a. TRANSACTIONS WHICH ARE ON ARM'S LENGTH BASIS AND ARE IN ORDINARY COURSE OF BUSINESS**

- Approval of Audit Committee for all transactions
- Board to take note of such transactions
- Approval of shareholders by way of special resolution only if the value of transactions exceeds the limits provided under Clause C.6.(a) above.

### **b. TRANSACTIONS WHICH ARE EITHER NOT ON ARM'S LENGTH BASIS AND / OR NOT IN ORDINARY COURSE OF BUSINESS**

- Approval of Audit Committee for all transactions
- Approval of the Board for all transactions
- Approval of shareholders by way of special resolution only if the value of transactions exceeds the limits provided under Clause C. 6 (a) or Clause C.6.(b) above as the case may be.

**c. TRANSITIONAL PROVISIONS**

- In accordance with Revised Clause 49 of listing agreement, all transactions which have been entered into prior to April 01, 2014 and are likely to continue beyond March 31, 2015 and the value of transactions exceeds the limits provided under Clause C.6.(a) above shall require approval of the Shareholders in the General Meeting scheduled after October 1, 2014.
- All transactions which have been entered into after April 01, 2014 shall require approval of Audit Committee. The approval of the Board / Shareholders would be required in case the transaction exceeds the limits provided under Clause C.6(a) or C.6(b) as the case may be.

**F. RATIFICATION OF THE RELATED PARTY TRANSACTIONS**

Where any contract or arrangement, which is considered as a Related Party Transaction exclusively as per Companies Act, 2013, is entered into by a director or any other employee, without obtaining the consent of Audit Committee or the Board or the shareholders of the Company, as the case may be, such transaction shall be ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into.

In case such transaction is not ratified within the specified period, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

**G. RELATED PARTY TRANSACTIONS NOT APPROVED UNDER THIS POLICY**

In the event of inadvertent omission to seek the approval of the Related Party Transaction in accordance with the Policy, the matter shall be reviewed by the Audit Committee.

**H. DISCLOSURE**

Every Contract or arrangement entered with Related Parties with the approval of Board / Shareholders in line with sub-section (1) of Section 188 of the Companies Act 2013 and as provided under clause C.6.(b) of the policy, shall be referred to in the Board's Report to the shareholders along with the justification for entering into such contract or arrangements.

Details of Material Related Party Transactions as per clause C.6(a) of the policy shall be disclosed quarterly along with the compliance report on corporate governance to be filed with Stock Exchanges.

The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report.

#### **I. MODIFICATIONS AND AMENDMENTS IN THE POLICY**

The Audit Committee will review and may amend this policy as may be required from time to time in accordance with the provisions of the Companies Act, 2013, rules made therein, Listing Agreement and any further amendments and notifications as may be made effective in this regard. Any subsequent notification, circular, guidelines or amendments under Companies Act, 2013, revised listing agreement, accounting standards and all other applicable laws, as may be issued from time to time shall be mutatis mutandis applicable without any further modification or amendment in this policy.

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