



Mercator Limited

**Related Party Transaction and Arm's Length Pricing Policy
Version No 1.0**

Preamble:

- 1.1 Mercator Ltd. directly/ through its subsidiaries (collectively called Mercator Group) has diversified business interests in coal, oil and gas, commodity transportation and dredging. Mercator aims to continue this legacy of growth in its focus on the business of Energy based resources especially coal mining and oil & gas exploration and services.
- 1.2 As a part of its compliance to the Companies Act 2013, Mercator Ltd is considering formally documenting its policy and procedures with regard to Related Party Transactions and Arms Length Pricing of those transactions to be effective from 7th November, 2014.
- 1.3 The formally documented policy will be implemented after the same is duly approved by the Audit Committee and the Board of Directors of the Company.

2. Purpose of the Policy:

- 2.1 The primary purpose of this policy is to ensure a proper identification, approval process and reporting of transactions between company and its related parties as required as per the Companies Act, 2013 and its Rules and Regulations. Further as per revised clause 49 of Listing Agreement, the company is required to formulate a policy on materiality of related party transactions and also on dealing with Related Party Transactions.

3. Definitions:

- 3.1 For the purpose of this Policy the Company has adopted the following definitions:-

3.1.1 Related Party:

- A) As defined by Companies Act 2013 under section 2(76):

“Related Party”, with reference to a company, means—

- a director or his relative;
- a key managerial personnel or his relative;
- a firm, in which a director, manager or his relative is a partner;
- a private company in which a director or manager or his relative is a member or director;
- 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;
- 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;
- 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;

- any company which is—
 - ✓ a holding, subsidiary or an associate company of such company; or
 - ✓ a subsidiary of a holding company to which it is also a subsidiary;
 - such other person as may be prescribed;
- B) As defined in Clause 49 of Listing Agreement amendment dated 15th September,2014
An entity shall be considered as related 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."
- C) As defined by Accounting Standard 18 on Related Parties
Parties are considered related if:
○ One party has control over other or
○ has significant influence over other in making financial and/or operating decisions

3.1.2 **Relative:**

- A) As defined by Companies Act 2013 under section 2(77):
“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) one person is related to the other in such manner as may be prescribed;

As prescribed in Companies Rules, 2014, list of relatives are:

- Father (including step-father)
 - Mother (including the step-mother)
 - Son (including the step-son)
 - Son’s wife
 - Daughter
 - Daughter’s husband
 - Brother (including the step-brother)
 - Sister (including the step-sister)
- B) As defined in Clause 49 of Listing Agreement:
“Relative” shall mean “relative” as defined in section 2(77) of the Companies Act, 2013 and rules prescribed there under.
- C) As defined by Accounting Standard 18 on Related Parties
Relative - in relation to an individual, means 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 reporting enterprise.

3.1.3 **Related Party Transactions (RPT)**

A) As defined under section 188 of Companies Act, 2013:

Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company

B) In determining a RPT the following also needs to be considered:-

Section 185 of Companies Act, 2013

No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

The following are exceptions to the above requirement:-

Exception mentioned in the Act:

- (a) the giving of any loan to a managing or whole-time director
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution; or
- (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India..

Exemptions specified under Companies Rule,2014:

- (1) Loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section; and

- (2) Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted. Provided that such loans made are utilised by the subsidiary company for its principle business activities.

Section 186 of Companies Act, 2013

1. Investment

A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies.

This does not apply to -

- (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layer as per the laws of such country;
- (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

2. Limits for Loans/ Guarantees/ Security/ Investment

No company shall directly or indirectly —

- a. give any loan to any person or other body corporate;
- b. give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- c. acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

3. Interest charged should not be lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.
4. The Company which is in default of repayment of deposit accepted or interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.
5. The Company needs to maintain a register at registered office as mentioned in Form no.MBP 2 of the Companies (Meetings of Board and its Powers) Rules 2014, and the same shall be kept open for inspection and extract can be taken and copies can be provided to members on payment of prescribed fees.

Exemptions specified under Companies Rule,2014-

Loan and investment by a company under section 186 of the Act.-

Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub-section (3) of section 186 shall not apply ,provided that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement.

B) As defined under Clause 49 of Listing Agreement,

A 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. As per amendment September 15, 2014 of clause 49, A transaction with a related party shall be construed to include single transaction or a group of transactions in a contract. As per amendment September 15, 2014 of Clause 49, RPT transaction is considered as material if, transaction/transactions to be entered into individually or taken together with previous transactions during a financial year exceeds 10% of annual consolidated turnover of the Company as per the last audited financial statement of the Company.

3.1.4 **Arms Length**

A) As defined by Companies Act 2013 under section 188,

The expression “arm’s length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest

B) Clause 49 of Listing Agreement & AS18 on Related Parties have not defined "Arms length".

C) As defined under Section 92F(ii) of the Income Tax Act ,

Arm’s length price is a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

4. Related Party Transactions:

4.1 Identification of RPT

The Company shall determine whether a potential transaction with a Related Person constitutes a “Related Person Transaction” / RPT requiring review under this Policy (including whether the Related Person has a material interest).

It needs to take into consideration various aspects for assessing a Related Party Transaction (RPT). For this, following points can be considered relevant:

- Parameters for determining arm’s length pricing in a related party transaction
- Parameters for determining ordinary course of business
- Nature of relationship with the related party
- Business reasons for entering into RPT
- Commercial reasonableness of the terms of RPT including transactions entered on a urgent or time sensitive basis
- Materiality of RPT to the Company

- Whether the terms of RPT are fair and on the same basis as would apply if the transaction did not involve a Related Party Transactions
- Conflict of interest of the Related Party participating in the RPT.

4.2 Ordinary Course of Business

The phrase “ordinary course of business” is not defined by any of the three regulations viz. under Companies Act 2013, Clause 49 and AS 18.

The assessment of whether a transaction is in ordinary course of business is very subjective, judgmental and can vary on case-to-case basis. Variety of factors like size and volume of transactions, arms-length, frequency, purpose, etc, should be considered to make this assessment. Hence, for the purpose of the Policy the Company adopts the perceived understanding of the legislations that ordinary course of business will cover the usual transactions, customs and practices of a business and of a company. The following document can be referred to justify ordinary course of business:

- Scope provided by objects of the Company; if necessary the objects of the related party may also be referred to
- Activity of the Company.
- Standard Business Agreements.

Parameters for determining Ordinary course of business:

- Regularity / frequency of the activity/ transaction
- Uniformity and consistency of the activity
- Involvement of own resources in the activity

4.3 Parameters for determining Arm’s Length Pricing in a Related Party Transaction:

Following parameters can be considered for determining Arm’s Length Transaction:

- Nature and term of business association
 - ✓ Exclusive basis
 - ✓ Repetitive or a sporadic intervention
 - ✓ If association is newly formed, the benefits of preferring a related party over any other third party
- Performing due diligence exercise of the capabilities of the related party
- Rating the related party like it would have been done for a third party vendor/ customer
- Ordinary course of Business (as defined above)
- Comparison of contractual terms of dealings with related party and those of non-related party. E.g.: Pricing terms, Supply Terms etc.
- Third party quotations
- Valuation report
- Documents related to negotiations
- Standard rate contracts

4.4 Illustrative List of transactions:

Illustrative list of transactions which may be classified as in Ordinary Course of Business	Illustrative list of transactions which may not be classified as in Ordinary Course of Business
1) Transactions necessary for continuation of business uninterruptedly.	1) Complex Equity Transactions, such as corporate restructurings or acquisitions
2) Transactions which form part of regular activity	2) Rendering of services by the entity to another party, if no consideration is exchanged.
3) Transactions which form part of main objects of the company	3) Transactions with unusually huge discounts or returns.
4) Transactions carried out in past	4) Transactions which do not form part of regular activity/ main objects of the company.
5) Transactions which form part of revenue from operations	5) Transactions under contracts whose terms are changed before expiry.
6) Transactions which form part of operating expenses	6) Transactions with circular arrangements such as sale with commitment to repurchase.
7) Reimbursement of reasonable business and travel expenses.	
8) Transactions which are frequent in nature.	
9) Brand licensing.	
10) Transactions to support / promote the activities of the subsidiaries, associates and joint ventures.	

4.5 Approvals related to RPT:

The following table is based on a combined reading of Companies Act / Rules / Circulars & Clause 49.

Approval by	Type of Approval
Audit Committee	<ul style="list-style-type: none"> • Related Party Transactions entered between April 1, 2014 and October 1, 2014, company may place all such transactions for Audit committee ratification. • The Audit Committee shall mandatorily review and prior approval for all Related Party transactions entered into after October 1, 2014; as required by Clause 49. • Audit Committee may grant omnibus approval for RPT proposed to be entered subject to the full-fulfillment of the condition mentioned in Amendment dated 15th September, 2014 of Clause 49 point VII(D). • Section 177(4)(iv) of the Act, requires Audit Committee to approve transactions or any subsequent modifications thereof of the company with the related parties.
Board of Directors	<ul style="list-style-type: none"> • Related party transactions covered under Section 188 not in ordinary course of business or not at arm's length.
Shareholders	<ul style="list-style-type: none"> • RPT covered under Section 188 and meeting certain threshold limits would need special resolution. • Transaction/transactions to be entered into individual or taken together with previous transaction with Related Party >10% of annual consolidated turnover of the Company as mentioned in Amendment dated 15th September, 2014 of Clause 49. • As per clause 49, All existing material related party contracts or arrangements as on the date of the circular which are likely to continue beyond March 31, 2015 shall be placed for approval of the shareholders in the first General Meeting subsequent to October 01, 2014. However, a company may choose to get such contracts approved by the shareholders even before October 01, 2014. • Where the giving of any loan or guarantee or providing any security or the acquisition exceeds the limits specified under section 186 prior approval by means of a special resolution passed at a general meeting shall be necessary. • Special resolutions in general meeting is required for disposal of shares in material subsidiary resulting into shareholding less than 50% or cease the exercise of control over the subsidiary. • Divestment under a Court approved Scheme of Arrangement excluded. • Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary shall require

Approval by	Type of Approval
	prior approval of shareholders by way of special resolution. Divestment under a Court approved Scheme of Arrangement excluded.
Board and Financial Institutions	<ul style="list-style-type: none"> • In pursuant to section 186(5) of the Act, every Company shall take consent of every directors present at the board meeting before making any investment, giving loan and guarantee and providing security. In case of company has already taken loan etc, from any PFI , then it is mandatory to take prior approval from such PFI. • Provided that prior approval of PFI shall not be required where the aggregate loan, investment, guarantee and security proposed is within the limits as specified under section 186(2) and there is no default in repayment of loan or interest thereon to the PFI.

Concept of omnibus approval subject to conditions:

- a) Audit Committee to lay down criteria for granting the omnibus approval in line with the RPT policy & such approval shall be applicable in respect of repetitive transactions.
- b) The Audit Committee shall satisfy itself the need for such omnibus approval and that such approval is in the interest of the company;
- c) Approval to specify certain details
- d) Audit Committee shall review on quarterly basis details of RPT entered pursuant to omnibus approval
- e) Such omnibus approvals shall be valid for a period not exceeding 1 yr and an amount of Rs. 1 cr & fresh approvals shall be required

As per amendment dated September 15, 2014 there is an exemption from obtaining audit committee's prior approval for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. However, as per Companies Act 2013, Section 177(4) Audit Committee approval will be required for such transactions.

4.6 Voting

In determining whether to approve or ratify a Related Party Transactions, the Committee/ Board, as the case may be, shall take into account among other factors it deems appropriate, whether the Related Party Transactions is in ordinary course of business of the Company and on arms length basis and the extent of the related party's interest in the transaction. For this purpose, the Audit Committee/ Board as the case may be, are entitled to seek the assistance of any employee of the Company or one or more independent experts or external professional advisors of its choice at the expense of the Company.

- If any director of the Company is interested in any contract or arrangement with a related party, such director cannot be present at the board meeting of the Company during discussion in the matter.
- Members who are related parties in the context of the related party contract or arrangement for which special resolution is to be passed to abstain from voting on special resolution and only disinterested shareholder and disinterested related party shall be eligible to vote.
- Members who are related parties to abstain from voting on special resolution in respect of approval of material Related Party Transaction and only disinterested shareholder (not related party) shall be eligible to vote.
- Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) of section 188 and if it is not 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, 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.

5. Consequences of Non-compliance:

As per Companies Act 2013 under section 188

Sr No.	Penalty for	Type of Company	Penalty on	Penalty Terms
1.	Entering into or authorizing any contract or arrangement in violation of provisions of Sec 188	Listed	Director or any other employee of a company who enters into it	Imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both
2.	Being convicted of the offence of dealing with RPT under Sec 188 at any time during last preceding five years	Listed Company	Any person who commits the offence	Not eligible to be appointed as a director under section 164
3.	Any RPT or contract entered without seeking Board's and/or member's approval and if the same is not ratified by the	Listed Company	Any person who enters into such transaction or contract	The contract or transaction will be voidable at the option of the board and if such transaction is with related party to director or is

Sr No.	Penalty for	Type of Company	Penalty on	Penalty Terms
	board and/or members as the case may be, within three months at a meeting			authorized by any director, then concerned directors are liable to indemnify any loss incurred by the company.

Non Compliance As per Companies Act 2013 under section 185

Sr No.	Penalty on	Penalty Terms
1	Company	Punishable with fine in range of Rs 5-25 lakh
2	Director or the other person to whom any loan is advanced or guarantee or security is given or provided.	1. Punishable with imprisonment which may extend to six months 2. Punishable with fine between Rs 5-25 lakh. 3. Or with both.

Non Compliance As per Companies Act 2013 under section 186

Sr No.	Penalty on	Penalty Terms
1	Company	Punishable with fine ranging from 25 thousand Rs to 5 lakh Rs.
2	Officer in Default	1. Punishable with imprisonment which may extend to 2 years. 2. Punishable with fine between Rs 25 thousand to 1 lakh.

6. Disclosures:

The statute governing an enterprise often requires disclosure in financial statements of transactions with certain categories of related parties, considering the fiduciary nature of their relationship with the enterprise.

Disclosures required under different regulations are stated below:

A) Companies Act, 2013:

As per section 134, there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include, among others, particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form above.

As per section 186, the company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security. (includes loan to wholly owned subsidiaries)

Every contract or arrangement entered into under Section 188 sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

B) Clause 49, SEBI:

As per clause 49 of listing agreement, details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.

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.

C) Accounting Standard 18:

As per AS 18, where control exists, name of the related party and nature of the related party relationship should be disclosed irrespective of whether or not there have been transactions.

A list of Related Party Transactions, if any, should be presented before the Audit Committee or Board of Directors or Shareholders for their required approval. The same can attached as an Annexure to the Policy as and when approved.

07th November, 2014
Effective Date