

eClerx

Policy Governing Transactions with Related Parties and Material Subsidiaries



Project	Policy Governing Transactions with Related Parties and Material Subsidiaries
Company	eClerx Services Ltd.
Prepared by	Legal & Secretarial

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1. Process Overview

This policy deals with the review and approval of Material Related Party Transactions keeping in mind the potential or actual conflicts of interest that may arise consequent upon the transaction entered into by the Company and the whether the said transactions are consistent with the Company's and its shareholder's interest.

This policy also deals with transactions involving Material Subsidiary(ies) of the Company.

Accordingly, pursuant to the Section 188 of the Companies Act, 2013 ('the Act'), and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (erstwhile Listing Agreement) ('the Listing Regulations'), this policy was adopted by the Company's Board of Directors vide its resolution dated July 31, 2014 in order to set forth the procedures under which certain transactions must be reviewed and approved or ratified, as permitted. The Audit Committee shall review significant related party transactions, submitted to it by the Management, approve and / or recommend for Board and / or shareholders' approval thereon.

The Board of Directors of the Company shall review this policy atleast once every three years and update the policy, if required, subject to the provisions of the Act and Listing Regulations.

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2. Purpose

The Listing Regulations requires that the Company shall formulate a policy on materiality of related party transactions and also on dealing with transactions pertaining to related parties. This policy also intends to ensure the proper approval and reporting of transactions by the Company and any of its Directors whether independent and non-independent, Senior Managerial Personnel or Significant shareholders or certain entities or persons related to them. The Listing Regulations also requires that the Company shall formulate a policy for determining material subsidiary.

3. Definitions

For the purposes of this policy, the following definitions apply:

“Act” means Companies Act, 2013, as amended from time to time.

“Arm’s length price”, pursuant to Income tax Act, 1961, OECD guidelines, Advance Rulings from tax authorities, judicial pronouncements), and other applicable provisions from time to time, means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;

“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.

“Board” means Board of Directors of the Company

“Company” means eClerx Services Limited;

“Committee” means Audit Committee of the Company as constituted or reconstituted by the Board

“Directors” means Directors of the Company

“Independent Director” means a director referred to in Section 149 (6) of the Act and the applicable Regulations of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

“Key Managerial Personnel” (KMP) means:

- a. Chief Executive Officer and / or Managing Director
- b. Whole-time Director
- c. Chief Financial Officer
- d. Company Secretary
- e. Such other officer as may be prescribed

“Ministry” means the Ministry of Corporate Affairs

“Material subsidiary” means a subsidiary whose income or net worth (i.e. paid up capital and free reserves) exceeds 10% of the consolidated income or net worth respectively, of the Company and its subsidiaries in the immediately preceding accounting year.

“Ordinary course of business” would have the meaning as defined by the Institute of Chartered Accountants of India, Act, and as per the guidelines and judicial and other pronouncements, as applicable from time to time.

“Relative” means and includes:

- a. members of HUF
- b. Spouse
- c. Father includes step-father
- d. Mother includes the step-mother

- e. Son includes the step-son
- f. Son's wife
- g. Daughter
- h. Daughter's husband
- i. Brother includes the step-brother
- j. Sister includes the step-sister

“Related Party” includes:

- A director or his / her relative
- A Key Managerial Personnel or his / her relative
- A firm in which a Director or Manager or his / her relative is a partner
- A private company in which Director or Manager or his relative is a member or director
- A public company in which Director or manager is a director and holds alongwith his / her relatives, more than 2% 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 advise, directions or instructions given in professional capacity shall be excluded.
- Any person on whose advise, directions or instructions a director or manager is accustomed to act. Any advise, directions or instructions given in professional capacity shall be excluded.
- A company that is a holding, subsidiary or associate company of such a company or subsidiary of a holding company of which it is also a subsidiary or an investing company or the venturer of a company. Investing company or the venturer of a company means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate
- A director other than an independent director or key managerial employee of the holding company or his / her relative
- A person or a close member of that person's family is related to a company if that person:
 - Has control or joint control or significant influence over the company; or
 - Is a key management personnel of the company or of a parent of the company; or
- An entity is related to a company if any of the following conditions applies:
 1. The entity and the company are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others); or
 2. One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member); or
 3. Both entities are joint ventures of the same third party; or

4. One entity is a joint venture of a third entity and the other entity is an associate of the third entity; or
5. The entity is a post-employment benefit plan for the benefit of employees of either the company or an entity related to the company. If the company is itself such a plan, the sponsoring employers are also related to the company; or
6. The entity is controlled or jointly controlled by a person identified in (1)
7. A person identified in (1)(b) has significant influence over the entity (or of a parent of the entity); or
8. Any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party

“Control” shall have the same meaning as defined in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

“Related Party Transaction” means transaction involving transfer of resources, services or obligations between the company and a related party, regardless of whether a price is charged and includes the following transactions:

- 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, its subsidiary company or associate company; and
- g. Underwriting the subscription of any securities or derivatives thereof, of the company

Explanation: Related Party Transaction includes a single transaction or a group of transactions in a contract, with a Related Party.

“Senior Management Personnel” for this purpose shall mean officers/personnel of the company who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below the chief executive officer/manager, in case they are not part of the board) and shall specifically include company secretary and chief financial officer. **“Significant transaction or arrangement”** means any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.

Unless the context otherwise requires, words and expressions used in this policy and not defined herein but defined in the Act and Listing Regulations as may be amended from time to time shall have the meaning respectively assigned to them therein.

4. Procedures

This Policy will operate within the framework of the Act, Rules framed thereunder and the Listing Regulations as amended from time to time.

1. Related Party Transactions:

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.

All Related Party Transactions shall require prior approval of the Audit Committee.

Pursuant to the Listing Regulations, as amended from time to time, a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year:

- a. In case of transactions involving payments made with respect to brand usage or royalty, if it exceeds 2% of the annual consolidated turnover of the Company as per its last audited financial statements;
- b. In case of any other transaction(s), if the amount exceeds 10% of the annual consolidated turnover of the Company as per its last audited financial statements

All material Related Party Transactions shall require approval of the shareholders through ordinary resolution and the related parties of the Company shall not vote to approve such resolutions where the entity is a related party to the particular transaction or not.

However, transactions which have been entered into by the Company in its "ordinary course of business" and which are on an "arm's length" basis are exempted.

The Company shall enter into any contract or arrangement with a Related Party subject to the following conditions, namely:

- a. The agenda of the Committee / Board meeting at which the resolution is proposed to be moved shall disclose:
 - i. The name of the related party and nature of relationship
 - ii. The nature, duration of the contract and particulars of the contract or arrangement alongwith justification
 - iii. The material terms of the contract or arrangement including the value, if any
 - iv. Any advance paid or received for the contract or arrangement, if any
 - v. The manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract
 - vi. Whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
 - vii. Any other information relevant or important for the Board to take a decision on the proposed transaction
- b. 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. The company shall not enter into a

transaction or transactions beyond the limits specified in first proviso to sub-section 188(1) of the Act and relevant rules thereunder except with the prior approval of the shareholders

- c. In case of wholly owned subsidiary, the resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company
- d. The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars namely:
 - i. Name of the related party
 - ii. Name of the director or key managerial personnel who is related, if any;
 - iii. Nature of relationship
 - iv. Nature, material terms, monetary value and particulars of the contract or arrangement
 - v. Any other information relevant or important for the members to take a decision on the proposed resolution
- e. The Audit Committee shall provide omnibus approvals for related party transactions as may be required on a case to case basis and in accordance with the provisions of Act and Listing Regulations.
- f. The Company shall maintain register in Form MBP 4 or such other Form as may be prescribed, wherein the particulars of:
 - i. Company(ies) or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under section 184(1) of the Act. However, the particulars of the company(ies) or bodies corporate in which a director himself together with any other director holds 2% or less of the paid-up share capital would not be required to be entered in the register
 - ii. Contracts or arrangements with a body corporate or firm or other entity as mentioned under section 184(2) of the Act, in which any director is, directly or indirectly, concerned or interested; and
 - iii. Contracts or arrangements with a related party with respect to transactions to which section 188 of the Act, applies
- g. The entries in the register shall be made in chronological order and authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose
- h. The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose
- i. The company shall provide extracts from such register to a member of the company on his request, within 7 days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page
- j. A subsidiary shall be considered as material if the subsidiary's income or networth exceeds 10% of the consolidated income or networth respectively of the company and its subsidiaries in the immediately preceeding accounting year

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- k. The company shall not dispose shares in its material subsidiary which would reduce its shareholding (Either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting
- l. In order to sell, dispose and lease of assets amounting to more than 20% of the assets of the material subsidiary, the Company shall obtain prior approval of shareholders by way of special resolution
- m. Contracts entered into by the Company pursuant to the hitherto Companies Act 1956, which already come into effect before the commencement of section 188 of the Act, will not require fresh approval under section 188 of the Act, till the expiry of the original term of such contracts. Thus if any modification in such contract is made on or after April 1, 2014, the requirements under section 188 of the Act, will have to be complied with

2. Subsidiary Company(ies):

- a. At least one independent director on the Board of Directors of the Company shall be a director on the Board of Directors of unlisted material subsidiary company, whether incorporated in India or not.
- b. The Audit Committee of the Company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company
- c. The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the Company. The management shall periodically (Atleast annually) bring to the attention of the Board of Directors of the Company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company
- d. Furthermore the Audit Committee as and when it deems fit may provide that a particular transaction be undertaken post prior approval of the Board of Directors of the Company and / or that of the shareholders of the Company procured via Postal Ballot or at a general meeting

The Audit Committee shall put in place mechanism to implement this policy and is also authorized to delegate any / all of its powers and duties herein to any Director(s) and / or officers of the Company.

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5. Dislcosure(s)

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 and material subsidiary on its website and also in the Annual Report. Furthermore all the related party transactions shall be disclosed in the Annual Report of the Company.

5.1. Amendments to the Policy

The Board of Directors on its own and / or as per the recommendations of Audit Committee can amend this Policy, as and when deemed fit. Any or all provisions of this Policy would be subject to revision / amendment in accordance with the Rules, Regulations, Notifications etc. on the subject as may be issued by relevant statutory authorities, from time to time.

In case of any amendment(s), clarification(s), circular(s) etc. issued by the relevant authorities, not being consistent with the provisions laid down under this Policy, then such amendment(s), clarification(s), circular(s) etc. shall prevail over the provisions hereunder and this Policy shall stand amended accordingly from the effective date as laid down under such amendment(s), clarification(s), circular(s) etc.

Date: November 1, 2018
Place: Mumbai

P.D. Mundhra
(Executive Director)