

ICICI Prudential Life Insurance Company Limited Policy on dealing with Related Party Transactions

I. Background

The Companies Act, 2013 ('Companies Act' or 'the Act') has introduced sections 177, 184 and 188, which contain provisions regarding related party transactions. These sections, along with the relevant Rules framed under the Companies Act, have introduced certain compliance and approval requirements regarding the related party transactions. Further, Regulation 23 of Securities and Exchanges Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 (Regulation) has also introduced certain approval requirements regarding the related party transactions. Regulation 23 requires the listed companies to formulate a policy on dealing with related party transactions. Such a policy is also mandated by the Guidelines on Corporate Governance, 2016 as released by the Insurance Regulatory and Development Authority of India.

Accordingly, the Board of Directors (the Board) of ICICI Prudential Life Insurance Company Limited (the Company) has adopted the following policy with regard to related party transactions.

II. Definitions

"Arm's length basis" In terms of the Companies Act, 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.

A transaction with a related party will be considered to be on arm's length basis if the key terms, including pricing of the transaction, taken as a whole, are comparable with those of similar transactions if they would have been undertaken with unrelated parties. It may be noted that this policy framework, including the definitions above, is meant solely for the purposes of compliance with related party transaction requirements under Companies Act, 2013 and Regulation 23. The above terms may have different connotations for other purposes like disclosures in the financial statements, which are governed by applicable regulations, accounting standards, regulatory guidelines etc.

"Material related party transaction" as per Regulation 23 means a transaction with a related party if the transaction/transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the Company as per the last audited financial statements of the Company.

Notwithstanding the above, a transaction involving payments with respect to brand usage or royalty shall be considered material if the transaction/ transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds five percent of the annual consolidated turnover of the Company as per the last audited financial statements of the Company.

"Related party transaction" 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. This includes any transaction pursuant to the provisions of Companies Act, 2013 read with relevant rules thereunder.

“Turnover” has been defined as the aggregate value of the realisation of amount made from sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year. Accordingly, for the Company, the ‘turnover’ will be considered as the ‘Total Income’, i.e. premium income + other income.

“Related party” has been defined in the Companies Act, 2013 as amended, in Accounting Standard 18 (‘AS 18’) and in Regulation 23.

Definitions as per the respective regulations are given below; for the purposes of this policy, definitions as amended from time to time, shall be considered.

a. Under the Act:

As per section 2 (76) of the Act, ‘related party’ with reference to a company means:

i. a director or his relative. Section 2(77) of the Act defines ‘relative’ as one who is related to another if:

1. they are members of a Hindu Undivided Family (HUF); or
2. they are husband and wife; or
3. one person is related to the other as father (including step-father), mother (including step-mother), son (including step-son), son’s wife, daughter, daughter’s husband, brother (including step-brother), sister (including step-sister)

ii. a key managerial personnel (KMP) or his relative. In terms of section 2(51) of the Act, ‘KMP’ in relation to a company means:

1. the Chief Executive Officer or the managing director or the manager
2. the company secretary;
3. the whole-time director;
4. the Chief Financial Officer;
5. such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
6. such other officer as may be prescribed

iii. a firm, in which a director, manager or his relative is a partner

In terms of section 2(53) of the Act, ‘manager’ means 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. a private company in which a director or manager or his 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 body corporate which is:

1. a holding, subsidiary or an associate company of such company;
2. a subsidiary of a holding company to which it is also a subsidiary; or
3. an investing company or the venturer of the company

The “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.

ix. a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company (as per Companies (Meetings of Board and its Powers) Rules, 2014).

In clauses (vi) and (vii) above, there is a criterion of ‘accustomed to act’ for identification of related parties. While Act does not contain a guidance on this criterion, the following general propositions would be considered:

- a general conduct indicating that one is in the habit of carrying out the instructions or directions of the third person concerned, which may involve non-exercise of own discretion or judgment by the concerned person (or Board of Directors) and acting in accordance with the directions or instructions of the third person
- holding of more than 50% voting power or control over the composition of majority of board of directors by any body corporate or individual, directly or indirectly. In such cases the Board of the former company can be deemed to be accustomed to act in accordance with the directors or instructions of the latter.

b. Under AS 18:

Related party relationships are described under AS 18, as follows:

- i. 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);
- ii. 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;
- iii. 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;
- iv. key management personnel and relatives of such personnel;
- v. enterprises over which any person described in (3) or (4) 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.

c. Under Regulation 23:

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.

Provided that 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.

The related party relationships described under the Regulation 23 are more comprehensive and substantially cover the relationships identified under the Act, AS18.

“Holding company” in relation to one or more other companies, means a company of which such companies are subsidiary companies.

For this purpose, the expression “company” includes any body corporate.

“Subsidiary company” or **“subsidiary”**, 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 voting power either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation — For the purposes of this clause:

- i. 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
- ii. 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;
- iii. the expression “company” includes any body corporate;
- iv. “layer” in relation to a holding company means its subsidiary or subsidiaries;

“Associate company” 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.

“Significant influence” means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

“Joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

“Total share capital” means the aggregate of the paid-up equity share capital and convertible preference share capital.

“Ordinary Course of Business” includes but not limited to a term for activities that are necessary, normal, and incidental to the business. These are common practices and customs of commercial transactions. The ordinary course of business covers the usual transactions, customs and practices related to the business.

The following factors are indicative of a transaction being in the ordinary course of business:

- i. the transaction is normal or otherwise unremarkable for the business
- ii. the transaction is frequent/regular
- iii. the transaction is a source of income for the business
- iv. transactions that are part of the standard industry practice, even though the Company may not have done it in the past.

These are not exhaustive criteria and the Company will have to assess each transaction considering its specific nature and circumstances. Some examples for Ordinary course of business are –

- a. insurance services
- b. distribution payout
- c. expenses towards infrastructure sharing
- d. expenses towards use of trademarks
- e. investment transactions
- f. banking transactions

III. Method of determination of arms' length pricing

For the purpose of compliance with arm's length principle both for indigenous and also for foreign transactions, an effective approach is a comparison with pricing of transactions with independent parties, which may involve comparison of the terms

- a. with those of an identical or similar transaction with one or more unrelated parties; or
- b. with known market terms for identical or similar transactions

Further, different types of transactions may require other methods of assessing arm's length principle.

- i. In the case of insurance cover given by the insurance company to the group companies or commission paid to group companies; the premium received or the commission paid are as per the product approved by IRDAI which would be considered as arm's length.
- ii. Compensation/reimbursement of expenses towards infrastructure sharing, deputation of employees and other expenses, including ESOPs and other arrangements among related parties are incurred on the basis of a cost sharing policy between the group entities, or internal cost and effort estimates of the respective entities.

IV. Approval of related party transactions

A. Audit Committee

- i. All the transactions which are identified as related party transactions should be pre-approved by the Audit Committee before entering into such transaction. The Audit Committee shall consider all relevant factors while deliberating the related party transactions for its approval.
- ii. Any member of the Committee who has a potential interest in any related party transaction will recuse himself and abstain from discussion and voting on the approval of the related party transaction. A related party transaction which is (i) not in the ordinary course of business, or (ii) not at arm's length price, would

require approval of the Board of Directors or of shareholders as discussed subsequently.

- iii. The Audit Committee may grant omnibus approval for related party transactions which are repetitive in nature and subject to certain criteria/conditions as required under Regulation 23 and chapter XII, rule 6A of Companies (Meetings of Board and its Powers) rules, 2014 and such other conditions as it may consider necessary in line with this policy and in the interest of the Company. Such omnibus approval shall be valid for one financial year.
- iv. A related party transaction entered into by the Company, which is not under the omnibus approval or otherwise pre-approved by the Committee, will be placed before the Committee for ratification.
- v. In case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board
- vi. In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.
- vii. Provisions of clause 177(4)(iv) of the Act shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company

B. Board of Directors

Under the Act, the consent of the board of directors is required, by a resolution at a meeting of the Board, for entering into related party transactions within the thresholds specified in section 188 of the Act and which are (i) not in the ordinary course of business, or (ii) not at an arm's length price.

In case any related party transactions are referred to the Board for its approval, the Board will consider such factors as, nature of the transaction, material terms, the manner of determining the pricing and the business rationale for entering into such transaction. On such consideration, the Board may approve the transaction or may require such modifications to transaction terms as it deems appropriate under the circumstances. Any member of the Board who has any interest in any related party transaction will rescue himself and abstain from discussion and voting on the approval of the related party transaction. The Company shall further disclose any conflict of interests to the Board for their management and control.

C. Shareholders

If a related party transaction is (i) a material transaction as per Regulation 23 or (ii) not in the ordinary course of business, or not at arm's length price and exceeds certain thresholds prescribed under section 188 of the Act, it shall require shareholders' approval by a resolution. In such a case, any member who is a related party, shall not vote on resolution passed for approving such related party transaction.

However, 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, do not require approval of shareholders.

V. Threshold limits for material related party transactions

In furtherance to the "material related party transaction" as articulated in the point II above, a transaction with a related party except transactions pertaining to brand usage or royalty,

entered individually or taken together with previous transactions during a financial year, of maximum value, in excess of ten percent of the annual consolidated turnover (premium income plus other income) of the Company, as per the last audited financial statements of the Company, shall be considered material related party transaction.

For transactions involving payments to a related party with respect to brand usage or royalty, entered individually or taken together with previous transactions during a financial year, of maximum value, in excess of five percent of the annual consolidated turnover (premium income plus other income) of the Company, as per the last audited financial statements of the Company, shall be considered material related party transaction.

VI. Reporting of Related Party Transactions

The Act, accounting standard 18 and Regulation 23 place the following reporting requirements on an entity, which will be duly complied with by the Company:

- i. a note on transactions with related parties, along with the pricing justifications to be placed at the Audit Committee every quarter for its review, in compliance with the requirements of sections 177 and 188 of the Act, 2013
- ii. disclosure of related parties and transaction with related parties as per AS 18 in the notes to account forming part of Financials of the Company
- iii. every contract or arrangement, which is required to be approved by the Board/shareholders under this Policy, to be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.
- iv. the details of material transactions with related parties to be included in the corporate governance reports which are required to be submitted to the stock exchanges on a quarterly basis.
- v. reporting of details of material contracts or arrangements or transactions in Form No. AOC-2 to be filed with registrar of companies. In this regard, since materiality has not been defined for this purpose under the Act, the same threshold limits will be used as defined under the Act for transactions requiring shareholders' approval.
- vi. submitting within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website
- vii. submitting disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results
- viii. For the purpose of this policy, reporting requirements as amended from time to time, shall be considered.

VII. Review of the policy

The Policy will be reviewed once in a financial year or as and when warranted.