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PART I - OVERVIEW

1. INTRODUCTION

1.1 The primary obligation of insurance companies to meet their liabilities to policy owners as and when they fall due places a fiduciary duty on directors, shareholders and persons responsible for the management of insurers to act in the best interests of the company and its policy owners. For this reason, the Insurance Act (Act) and Regulations 1996, read together with Companies Act 1965, contain provisions that aim to ensure that related-party transactions are conducted in an independent manner and do not result in a compromise of the fiduciary duty owed by insurers to their policy owners. These provisions legislate, among other things, the disclosure by directors of circumstances and transactions that may give rise to conflicts of interest, the proper conduct of directors, chief executive officers and managers in carrying out their responsibilities, the grant of credit facilities to directors and the acquisition of shares in related companies.

1.2 The guidelines on related-party transactions complement the existing legal framework towards promoting good corporate governance in the conduct of insurance business.

2. COVERAGE

2.1 These guidelines apply to all transactions between licensed insurers and their related parties. A related party is defined to mean a person (including a body corporate) that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the insurer, and includes persons connected with the related party. The term "control" shall have the meaning within the context of "controller" as defined under section 2 of the Act. Persons connected with the related party include:-

- (a) relatives (*as defined under section 2 of the Act*) of a related party who is an individual;
- (b) directors and shareholders of a related party which is a body corporate, and their relatives;
- (c) bodies corporate controlled by persons connected with a related party;
- (d) trustees of a trust under which a related party or persons connected with the related party are beneficiaries; and
- (e) partners of a related party.

2.2 A related-party transaction refers to the transfer of assets or liabilities, or the performance of services, by, to or for a related party irrespective of whether a consideration is given. In the context of insurance companies, related-party transactions include, but are not confined, to:-

- (a) extensions of credit facilities;
- (b) purchases, sales or exchange of shares or assets;
- (c) guarantees or undertakings;
- (d) property rentals;
- (e) management and service agreements, including arrangements for the sharing of resources;
- (f) agency agreements;
- (g) reinsurance arrangements; and
- (h) settlement of inter-company balances including payments in kind for insurance coverage.

2.3 Dividend payments and other distributions to shareholders are not normally regarded as related-party transactions. However, to the extent that such payments involve a transfer of insurance funds to related parties, and controlling shareholders or directors can substantially influence amounts distributed, such payments and distributions have been included within the scope of related-party transactions in these guidelines.

2.4 The guidelines are arranged in three parts:-

- (a) Prescribes minimum standards which are generally applicable to all related-party transactions;
- (b) Prescribes additional requirements to be complied with for related-party transactions of a specific nature; and
- (c) Sets out disclosure requirements in respect of material related-party transactions.

PART II - MINIMUM STANDARDS

3. GENERAL STANDARDS

3.1 The following general standards shall apply to related-party transactions entered into by insurers:-

- (a) the transaction must not be prejudicial to the interests of the insurer, its policy owners, claimants or creditors;
- (b) the terms and conduct of the transaction must be in compliance with relevant requirements of the Insurance Act and Regulations 1996, the Companies Act 1965 and Regulations 1966, the Bank's guidelines and circulars and other applicable legislation in force;
- (c) the transaction must not result in an impairment of the insurer's financial condition;
- (d) terms of the transaction must be fair and reasonable. The determination of fair and reasonable terms should be made with reference to an independent valuation or arm's length commercial terms;
- (e) full disclosure of the nature and extent of all related-party transactions (irrespective of amounts involved) shall be made to the board of directors

of the insurer. In the case of reinsurance, disclosure need not be made for each reinsurance cession, but disclosure of the nature and extent of automatic reinsurance arrangements involving related parties should be made to the board;

- (f) all related-party transactions (excluding reinsurance cessions) involving an amount per transaction/contract exceeding the lower of RM250,000 or 1% of the insurance fund surplus ^{1/} determined at the end of the preceding financial year are deemed material transactions and shall be subject to the approval of the board. For the purpose of this part, board approval may be in the form of underwriting authority delegated by the board to the management of an insurer under documented board-approved internal underwriting guidelines/ procedures for the provision of insurance cover to related parties; and
- (g) the books, accounts and records of the insurer shall be maintained so as to clearly and accurately disclose the precise nature and details of the transactions.

PART III - ADDITIONAL REQUIREMENTS FOR SPECIFIC TRANSACTIONS

In addition to the minimum standards specified under paragraph 3.1 above, the requirements below shall also apply to the following specific transactions:-

4. PAYMENT OF DIVIDENDS

4.1 Any payment of dividend shall strictly comply with restrictions on withdrawals from the insurance fund and payment of dividend under sections 43 and 93 of the Act respectively, and section 365 of the Companies Act. In addition, an insurer shall notify the Bank of any proposed payment of dividends (both interim and final) which, together with other dividends or distributions made to shareholders within the current

financial year, exceeds, or is expected to exceed, the greater of 10% of its insurance fund surplus¹ at the end of the current financial year, or the net profit for the current financial year.

4.2 The insurer shall not declare the dividend to its shareholders until 30 days after the Bank has received such notice of the proposed payment and has not disapproved the payment within the 30-day period. An insurer which intends to hold its annual general meeting before the expiry of the 30-day period, should first obtain confirmation from the Bank that it has no objection to the proposed payment.

4.3 Written notification of proposed dividend payments shall be provided separately to the Bank in accordance with the above paragraph, notwithstanding any disclosure of such proposed payments in the statutory annual or quarterly returns submitted to the Bank under section 87 and 89 of the Act. The notification must be signed by the chief executive officer or director of the insurer and submitted to Pengarah, Jabatan Penyeliaan Insurans dan Takaful, Bank Negara Malaysia.

5. PURCHASE AND SALE OF PROPERTY

5.1 The prior approval of the Bank is required for the purchase or sale of property between an insurer and its related party. The amount paid by the insurer for the purchase shall not exceed the lower of the value of the property determined through an independent valuation by a registered professional valuer or Jabatan Penilaian dan Perkhidmatan Harta (JPPH)². In the case of a sale of property by the insurer to its related party, the consideration received by the insurer shall not be less

¹ Refers to the surplus of assets over liabilities of the general insurance fund or actuarial surplus of the life insurance fund as applicable.

² Referrals to JPPH for valuations of property will be made by the Bank. For this purpose, insurers are required to ensure that valuation reports by independent valuers are submitted to the Bank, together with their applications. The valuation reports should be prepared in accordance with JPPH guidelines which are attached to surat pekeliling JPI: 21/1996 issued by the Bank.

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than the fair value³ of the property determined with reference to independent valuations by a registered professional valuer or JPPH.

6. SETTLEMENT OF PREMIUMS

6.1 Payment for insurance premiums from any party (whether or not related to the insurer) must be in the form of cash or cash equivalents. Cash equivalents are defined to include money or postal orders, valid payment cards, current dated valid cheques, bank drafts, cashier's orders, electronic fund transfers or any other mode of payment provided by a licensed financial institution. Terms of payment afforded to related parties should also be no more favourable than that generally allowed for other customers.

7. SHARING OF COMMON RESOURCES

7.1 Cost allocations by a related party to an insurer for the sharing of common resources such as computer systems and physical premises shall be determined on an actual-incurred basis or using a fair and measurable basis for allocation. Flat charges or charges based on a percentage of premiums generated should not be used for cost allocations.

³ Fair value is defined as the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

PART IV - DISCLOSURE REQUIREMENTS

8. REQUIREMENTS IN ACCORDANCE TO MASB AND INSURANCE ACT 1996

8.1 Insurers are required to disclose related-party transactions in the financial statements in accordance with MASB approved accounting standards on **Related Party Disclosures and Information to be Disclosed in Financial Statements**. In addition, pursuant to section 193 of the Act, insurers are required to submit to the Bank a statement of disclosure signed by the chief executive officer and a non-executive director providing information on all related-party transactions entered into during the specified financial period which:-

- (a) are individually material [as defined in paragraph 3.1(f)]; or
- (b) cumulatively involve a total consideration exceeding RM1 million in aggregate.

8.2 The statement of disclosure shall be submitted in the form attached (modified as appropriate) together with the insurer's statutory annual returns to the Bank and the quarterly returns for the periods ending June and December each year. In addition to the information provided in the attachment, the insurer should also include in the statement of disclosure, any other elements of the transactions necessary for the understanding of the insurer's financial statements. Examples of 'other elements' required to be disclosed are pricing policies and appropriate explanations for any transaction undertaken at an amount materially different from that obtainable on normal commercial terms.

8.3 Details of material transactions with related parties or under item (iii) of the statement of disclosures are not required for transactions in respect of:

- (a) insurance policies, which are sold on terms and conditions no more favourable than those available on similar transactions to other employees or customers. It is sufficient for insurers to declare that insurance policies covering related parties were sold on terms and

conditions no more favourable than those available to the insurers' other employees and customers as provided under item (i) of the statement of disclosure. Such transactions are also exempted from paragraph 3.1(e) in respect of disclosure to the insurer's board of directors. However, where policies are sold to related parties on terms materially different from that available to other customers or employees, insurers are required to make full disclosure to the board and include in the statement of disclosure, details of the differences in pricing or any other terms given, together with appropriate explanations pursuant to paragraphs 3.1(e) and 8.2 respectively.

- (b) reinsurance cessions to related parties;
- (c) claims associated with (i) and (ii);
- (d) dividends paid to shareholders;
- (e) deposits placed with related deposit-taking institutions; and
- (f) bank charges and fees imposed by related parties.

However, amounts due to and from related parties (including amounts provided as doubtful debts) and any amount written off as bad debts should be reported under items (iv) and (v) respectively of the statement of disclosure in the aggregate for **all** related party transactions, including amounts due on the transactions above.

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PART V - WITHDRAWAL OF GUIDELINES/CIRCULARS

9. With the issuance of these consolidated Guidelines, the following guidelines and circular are deemed withdrawn:-

Guidelines/ Circulars	Title	Date of Issuance
JPI/GPI 19	Guidelines on Related Party Transactions	20 July 1999
JPI: 36/1998	Payment of Dividends	23 December 1998

APPENDIX I

Statement of Disclosure on Related-party Transactions

(Name of Insurer)

During the financial period ended *(date, month and year)*:-

- (i) the Company sold insurance to related parties on terms and conditions no more favourable than those available on similar transactions to its other employees or customers;
- (ii) fees and charges paid by the Company to its related parties were based on normal commercial terms and conditions;
- (iii) there were no transactions between the Company and its related parties which were of a material nature or which involved a total consideration exceeding RM1 million in aggregate;

or (whichever is applicable)

transactions between the Company and its related parties were as follows ^{1/}:-

Name of related Party	Nature of relationship with the Company	Description of transaction	Consideration amount received/(paid)	Gain/(Loss) on transaction
Total				

^{1/} Not including insurance policies sold to related parties [subject to declaration under (i) above], reinsurance cessions to related parties and dividends paid by the Company to its shareholders.

(iv) total outstanding balances between the Company and its related parties as at the balance sheet date were as follows:-

	<u>RM</u>	<u>Amount provided as doubtful debts</u>
Amount due to related parties	XXX	-
Amount due from related parties	XXX	XXX

(v) an amount of RMXXX due from related parties was written off as bad debts.

Chief Executive Officer

Director

Name:

Name:

Place: Kuala Lumpur
(date, month and year)