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# **Related Party Transactions Policy**

**HMC Capital Limited**

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# HMC Capital Related Party Transactions Policy

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## 1. Purpose

- 1.1. HMC Capital Limited (the **Company** or **HMC Capital**) has implemented this policy (**Policy**) to mitigate the risk of regulatory breaches and to prescribe expected standards of conduct to ensure that the Company and any entity, body corporate or trust managed or controlled by the Company (**Group**) complies with:
- its fiduciary duties, including to act in the best interests of securityholders;
  - the *Corporations Act 2001* (Cth) (**Corporations Act**); and
  - the ASX Listing Rules.

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## 2. Background

### (a) Application

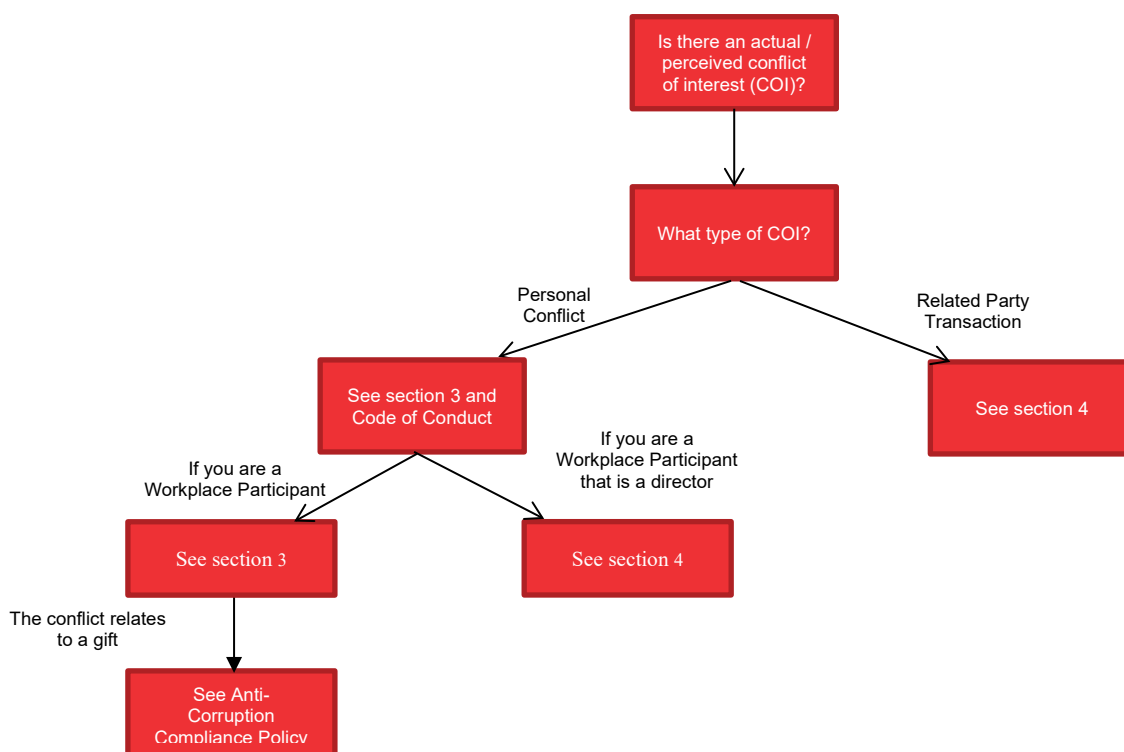
- 2.1. This Policy applies to all HMC Capital employees, directors (both executive and non-executive), contractors, labour hire employees and suppliers (collectively, "**Workplace Participants**" or "**you**").
- 2.2. This Policy is to be read in conjunction with the:
- (a) Code of Conduct;
  - (b) Anti-Corruption Compliance Policy;
  - (c) Delegation of Authority Policy;
  - (d) Board Charter;
  - (e) Audit and Risk Committee Charter; and
  - (f) Investment Committee Charter.
- 2.3. Other documents may also apply to the management of conflicts of interest such as the documents that apply to a joint venture or other business arrangements entered into by the Group.

### (b) What is a conflict of interest?

- 2.4. A conflict of interest arises where:
- (a) the interests of a Workplace Participant actually or potentially conflict from those of the Group (see the Personal Conflicts section below); or
  - (b) the interests of a Group entity are inconsistent with the interests of the person to whom that Group entity is providing a service or where a Group entity owes a duty to a third party that is inconsistent with a duty that it owes to the Group as a whole (see the Related Party Transactions section below).
- 2.5. Where it is unclear whether a matter constitutes a conflict of interest or not, advice should be sought as soon as practicable from the Audit and Risk Committee. Where practicable, this advice should be in writing.
- 2.6. How a conflict of interest is managed will depend on the type of conflict of interest. The below diagram summarises the conflict management process set out in this Policy.

# HMC Capital

## Related Party Transactions Policy



### 3. Personal conflicts of interest

#### (a) Personal conflicts of interest - Workplace Participant

- 3.1. Workplace Participants should ensure that any personal relationships with third parties, clients or suppliers do not influence or prejudice their obligations to the Group or its tenants.
- 3.2. All Workplace Participants are required to understand conflicts of interest, how they may arise and what should be done when a conflict is identified. The Audit and Risk Committee will require that all employees conduct training at least annually on this Policy.
- 3.3. Examples of a personal conflict of interest can include where a Workplace Participant:
- (or a friend or family member) has a personal interest in a business decision involving the Group. This may include granting a lease to a family member or friend;
  - uses its position at the Group for personal gain or for the personal gain of a family member, friend or other party. This may include where a developer can influence decisions relating to a convenience centre he/she has contracted to develop;
  - uses the Group's systems and equipment for personal gain. This may include using the Group's systems as part of secondary employment;
  - is an employee and has another job outside the Group that conflicts with Company's business;
  - joins the board, or become a director, of another company;
  - receives a financial benefit from a business decision that involves the Group including where he/she has a direct or indirect ownership interest in the beneficiary of the transaction; or

## HMC Capital Related Party Transactions Policy

- is involved in any personal relationship (including any consensual, romantic or sexual relationship) with another Workplace Participant which may give rise to an actual or potential conflict of interest.
- 3.4. If you are a Workplace Participant and become aware of an actual or perceived conflict of interest, you must disclose the conflict of interest as soon as possible to the Company Secretary, the Audit and Risk Committee or the Board and set out:
- Sufficient detail in order for the Company Secretary, Audit and Risk Committee or the Board to properly assess whether or not the circumstances present an actual or potential conflict of interest.
  - If requested:
    - a proposal for how any perceived or actual conflict is to be managed (**Conflict Management Proposal**). For example, will the Workplace Participant be removed from any involvement in the tender with the conflicted party?
    - A proposal for how the arrangements for the management of the conflict are to be monitored or evidenced. For example, will the relevant Workplace Participant's manager ensure that the Workplace Participant is excluded from negotiations with the conflicted party?

The Company Secretary will keep a record of and notify the Audit and Risk Committee of any actual or perceived conflicts of interest which have been reported or which are being managed.

- 3.5. Other examples as to how a conflict of interest may be managed include (i) clear disclosure concerning the conflict, (ii) abstaining from voting on, making or influencing decisions or proposals, (iii) withdrawing from discussion on relevant proposals, (iv) having access restricted to information relating to the conflict and/or (v) having access denied to sensitive documents or confidential information relating to the conflict.
- 3.6. The Workplace Participant must not be involved in a transaction subject to the notification unless requested by the Company Secretary, the Audit and Risk Committee or the Board and unless involvement is subject to documented protocols relating to how the perceived or actual conflict is to be managed, monitored and evidenced. Where a conflict of interest relates to a material transaction or may affect the reputation of the Group, the Audit and Risk Committee must seek the approval of the board of directors of the Company (**Board**) prior to agreement to any Conflict Management Proposal.
- 3.7. All Workplace Participants are required to complete an annual "Declaration of Personal Conflicts of Interest". Selected employees may be required to complete the declaration on a more frequent basis. Any conflicts of interest notified to the Audit and Risk Committee on an ad hoc basis must also be included in the disclosure made under the periodic Declaration of Personal Conflicts of Interest disclosure.
- 3.8. The disclosures made will form the Declaration Register which is maintained by the Audit and Risk Committee and made available to the Board and HMC Capital's external auditors.
- 3.9. Where a personal conflict of interest relates to a Workplace Participant giving or receiving a gift, the Workplace Participant must also comply with the procedures set out in the Anti-Corruption Compliance Policy.

### (b) Personal conflicts of interest - Directors

# HMC Capital

## Related Party Transactions Policy

- 3.10. A director of any Group entity who has an interest in any matter that relates to the affairs of the Company should:
- give the other directors notice of the interest unless the interest is exempted (section 191 of the Corporations Act); and
  - in the case of a director of a public company (such as HMC Capital Limited) where the interest is a “material personal interest”:
    - not be present while such a matter is being considered at a board meeting unless allowed to by the disinterested directors or by ASIC<sup>1</sup>; and
    - not vote on the matter.
- 3.11. A director does not need to give notice of an interest under section 191 if the director has given a standing notice of the nature and extent of the interest and the notice is still effective in relation to the interest.
- 3.12. A material personal interest is an interest that has the capacity to influence the vote of a particular director.
- 3.13. A director of a Group entity must notify the secretary of the relevant Group entity of any interest that needs disclosure under section 191 of the Corporations Act.

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#### **4. Related party transactions**

- 4.1. A related party transaction is a transaction that involves a Group entity providing a financial benefit to a related party (see definition in section 4.3 below).
- 4.2. The concept of a "financial benefit" will be broadly defined for the purposes of this Policy and the following are examples of giving a financial benefit:
- giving or providing related party finance or property;
  - buying an asset from or selling an asset to a related party;
  - leasing an asset from or to a related party;
  - supplying services to or receiving services from a related party;
  - issuing or allocating securities, or granting an option to a related party;
  - agreeing to an arrangement that benefits the business operations of a related party; and
  - taking up or releasing an obligation of a related party.

##### **(a) What is a Related Party?**

- 4.3. Related parties of the Group include:
- (a) an entity that controls the Company;

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<sup>1</sup> Under section 196 of the Corporations Act, ASIC may declare in writing that a director of a public company who has a material personal interest in a matter that is being, or is to be, considered at a directors' meeting may, despite the director's interest, be present while the matter is being considered at the meeting, vote on the matter, or both be present and vote. However, this declaration may only be made in circumstances where the number of directors entitled to be present and vote would be less than the quorum for a director's meeting and the matter needs to be dealt with urgently.

# HMC Capital

## Related Party Transactions Policy

- (b) the directors (and their immediate family members) of (i) the Company (and any nominee shareholder with whom they are associated), or (ii) any entity referred to in (a);
- (c) any entity which is controlled by a related party referred to in (a) or (b) (including a trust for which any Group entity acts in a trustee capacity);
- (d) any entity which was a related party of the Company in the previous six months; or
- (e) an entity that believes it will become a related party in the future; and
- (f) an entity acting in concert with a related party.

### **(b) Related Party Transactions - Corporations Act**

- 4.4. Unless it is an “arm’s length transaction”, a financial benefit can only be given to a related party when securityholder approval has been granted and the financial benefit is given within 15 months of such approval. <sup>2</sup>
- 4.5. A transaction will be “arm’s length” where the financial benefit is given on terms that would be reasonable in circumstances where the parties are dealing at arm's length, or on terms that are less favourable to the related party.

'Arm's length' refers to transactions conducted as if the parties were not related. In general, 'arm's length' terms and conditions will be determined having regard to ASIC Regulatory Guide 76 'Related party transactions'.

### **(c) Related Party Transactions - ASX Listing Rules**

- 4.6. In addition to the Corporations Act requirements for related party transactions, under the ASX Listing Rules, the Company is required to obtain securityholder approval to acquire a substantial asset from, or dispose of a substantial asset to a related party, subsidiary or substantial securityholder. “Substantial asset” means an asset representing 5% or more of the equity interests of the Group, as set out in the last financial accounts for the Group. The equity interests are the paid up capital, reserves and accumulated profits or losses of the Group.<sup>3</sup>

### **(d) How are Related Party Transactions to be managed?**

- 4.7. Other than those transactions set out below as "Pre-approved Transactions", any related party transaction or proposed related party transaction is to be notified to the Audit and Risk Committee, who will make a recommendation to the Board. Those related party transactions must be approved by the Board and any such approval must be given in accordance with the requirements of the Board Charter.
- 4.8. In providing its recommendation, the Audit and Risk Committee must consider, among other things:
  - (a) if it is in the best interests of existing shareholders;

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<sup>2</sup> The Corporations Act also provides for a number of other exceptions to the requirement to obtain member approval which apply in certain circumstances. Please contact the Audit and Risk Committee for more information on the relevant exemptions.

<sup>3</sup> The ASX Listing Rules provide certain exemptions from the requirement to obtain securityholder approval. Please contact the Audit and Risk Committee for more information on relevant exemptions.

## HMC Capital Related Party Transactions Policy

- (b) the terms negotiated of the transaction and whether they are as good as, or better than the Company would receive if it were dealing at arm's length on a commercial basis;
  - (c) the documentation relating to the proposed related party transaction, including the reason as to why the transaction is a related party transaction, records to justify the price and any other terms and conditions upon which the transaction is proposed to be entered into, in particular the rationale for entering into the transaction;
  - (d) if relevant, any independent reports as to the reasonableness of the price and other terms and conditions; and
  - (e) if it is a transaction being considered by the Investment Committee, those factors relevant to the Investment Committee's decision in accordance with the Investment Committee Charter.
- 4.9. The Audit and Risk Committee must provide the Board with all material facts of the proposed or existing related party transaction including the terms of the transaction, whether those terms are on arm's length and the business purpose of the transaction.
- 4.10. The Board will consider the information provided in order to determine whether and how to proceed with the proposed transaction. In considering the information, the Board may seek further advice from appropriately qualified advisers and professionals as required.
- 4.11. A checklist of factors to be taken into consideration in determining whether a transaction is on arm's length is set out at Annexure 1 to this Policy. This checklist is not exhaustive.
- 4.12. The Company's Related Party Transactions Protocol sets out the details of the steps to taken in identifying a proposed related party transaction and submitting the transaction for approval by the Board.

### Pre-Approved Transactions

- 4.13. The following transactions are considered "Pre-approved Transactions" and do not require notification to the Audit and Risk Committee or approval by the Board (provided such authority has been delegated in accordance with the Delegation of Authority Policy):
- the appointment of each director;
  - director remuneration approved by the Board;
  - reimbursement of director expenses incurred in performing director duties in accordance with the Company's policies, as amended from time to time;
  - payment of indemnities, insurance premiums and legal expenses incurred in performing director duties;
  - transactions in the ordinary course of business that do not exceed \$5,000 per annum in aggregate;
  - a benefit is given to the director in their capacity as a shareholder of the Company where the benefit does not discriminate unfairly against other shareholders of the Company;
  - a benefit is given as a result of a court order; and

## **HMC Capital Related Party Transactions Policy**

- any transactions with a closely-held subsidiary (as that term is defined in the Corporations Act).
- 4.14. For the avoidance of doubt, any Pre-approved Transaction must be consistent with any applicable provision of the Corporations Act.

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### **5. Review**

- 5.1. The Audit and Risk Committee is responsible for reviewing the effectiveness of this Policy at least every two years and to make recommendations to the Board of any amendments to this Policy. This Policy may be amended by resolution of the Board.

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# HMC Capital Related Party Transactions Policy

## Annexure 1

### Factors for Determining whether Transaction is at "Arm's Length"

	Yes	No
1. Is the transaction a Pre-approved Transaction?		
2. How do the terms of the overall transaction compare with those of any comparable transactions on an arm's length basis?		
3. Are there any other options available to the Company? For example, has a process for tender occurred?		
4. Has any expert advice been received by the Company (including any professional or expert advice from appropriately qualified advisers)?		
5. Are the terms of the proposed transaction fair to the Company and on the same basis that would apply if the transaction did not involve a related party?		
6. Are the terms of the proposed transaction on terms that are less favourable to the related party than arm's length?		
7. Are there business reasons for the Company to enter into the proposed transaction?		
8. Will the proposed transaction impair the independence of the relevant director?		
9. What are the implications for the Company's financial position and performance?		
10. What is/was the nature and content of the deal process (include reference to any unique or unusual terms/content)?		