

## Related Party Transactions Policy

### Policy No.: 7.20

Issue Date: 19/03/10 • Version 1.00

#### 1 Introduction

- 1.1 The purpose of this policy is to establish a protocol for directors and management in negotiating and entering transactions between Gerard Lighting Group Limited (**Gerard Lighting**) and related parties.
- 1.2 Transactions between Gerard Lighting and a related party raise a number of potential legal issues:
  - (a) there may be an actual or perceived conflict of interest on the part of a director and a director may have a material personal interest for the purpose of section 195 of the Corporations Act;
  - (b) a director could breach their duties owed to Gerard Lighting if they fail to separately consider and act in the best interests of the Company, as distinct from the interests of the related party;
  - (c) a transaction could contravene Chapter 2E of the Corporations Act (the Act) which, subject to certain exceptions, prohibits public companies from giving financial benefits to a related party of the public company without shareholder approval. Directors, other persons involved in the negotiations and the related party may be liable for civil penalties for a breach of Chapter 2E.
  - (d) the ASX Listing Rules may require approval of the shareholders of Gerard Lighting where Gerard Lighting acquires or disposes of a substantial asset, or issues equity securities, to certain related and other parties.

#### 2 Who is a related party of Gerard Lighting?

- 2.1 For the purpose of Chapter 2E, related parties of Gerard Lighting include:
  - (a) a director of Gerard Lighting or members of that director's immediate family such as a spouse, parent or child;
  - (b) any entity which has the ability to control Gerard Lighting (Controlling Entity);
  - (c) directors of any Controlling Entity and their immediate families;
  - (d) other entities controlled by any of the above parties;
  - (e) an entity which was a related party to Gerard Lighting within the previous 6 months;
  - (f) an entity that believes it will become a related party in the future; and

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(g) an entity acting in concert with a related party.

2.2 'Control' exists where a person has the ability to determine decisions in relation to the financial and operating policies of another entity.

2.3 The definition of 'related party' for the purpose of the ASX Listing Rules is similar.

### 3 What does 'giving a financial benefit' involve?

3.1 For the purpose of Chapter 2E, giving a financial benefit is interpreted broadly under the Corporations Act, having regard to the substance rather than the form of the transaction, and includes giving a financial benefit indirectly. Where there is a purchase or sale transaction, both parties to the transaction are 'giving a financial benefit' to the other. The fact that there is payment of consideration for the benefit, even if fair value, does not cause the transaction to escape Chapter 2E of the Act.

3.2 Examples of giving a financial benefit include:

- (a) giving or providing finance or property;
- (b) buying or selling an asset;
- (c) leasing an asset;
- (d) supplying or receiving services;
- (e) issuing securities or granting options; and
- (f) taking up or releasing an obligation.

### 4 Shareholder approval under Chapter 2E - exceptions

4.1 Shareholder approval will not be required for a related party transaction where the following circumstances apply.:

- (a) benefits to closely held (ie: wholly owned) subsidiaries;
- (b) where the transaction is conducted on an arm's length basis (or more favourable to Gerard Lighting than an arm's length basis);
- (c) the financial benefit consists of reasonable remuneration or reimbursement to employees or officers;
- (d) payment of reasonable indemnities, insurance premiums and legal costs;

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- (e) small amounts paid to a director or his/her spouse (less than \$5,000);
- (f) benefits that do not discriminate unfairly between members; and
- (g) payments made under an order of court.

## 5 Shareholder approval under the Listing Rules

- 5.1 Subject to a number of exceptions, under ASX Listing Rule 10.1, Gerard Lighting may not, without the approval of non-associated shareholders, acquire a substantial asset from, or dispose of a substantial asset to:
- (a) a related party;
  - (b) a subsidiary;
  - (c) a substantial shareholder who has or who had at any time within 6 months prior to the transaction an interest in at least 10% of the voting securities in the Company;
  - (d) an associate of any of the persons referred to above; or
  - (e) a person whose relationship to Gerard Lighting or to a person referred to above is such that, in Australian Securities Exchange (ASX) ASX's opinion, the transaction should be approved by the shareholders in the Company.
- 5.2 An asset is a 'substantial asset' if its value, or the value of the consideration is, or in ASX's opinion is, 5% or more of the equity interests in the Company.
- 5.3 The ASX may deem shareholder approval is necessary even where the transaction falls below the 5% threshold in certain circumstances.
- 5.4 Subject to a number of exceptions, under ASX Listing Rule 10.11, shareholder approval may be required for an issue of equity securities to a related party.

## 6 Procedures for related party transactions

- 6.1 All proposed or potential related party transactions must be disclosed to the Board of Gerard Lighting before they are entered into.
- 6.2 All related party transactions must be undertaken on arm's length terms or otherwise in compliance with Chapter 2E and the ASX Listing Rules.
- 6.3 Consideration of all proposed or potential related party transactions must be undertaken in compliance with section 195 of the Corporations Act, which may preclude a director

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- 6.4 Arrangements concerning related party transactions should generally be negotiated at arm's length by persons who are independent of the related party. This may require an independent committee of the Board to be formed to supervise negotiations.
- 6.5 All related party transactions should generally be approved only by independent members of the Board of Gerard Lighting.
- 6.6 Independent advice should be sought (where appropriate) in relation to whether a related party transaction is permitted by the Chapter 2E or the ASX Listing Rules, requires shareholder approval or is on arm's length terms.