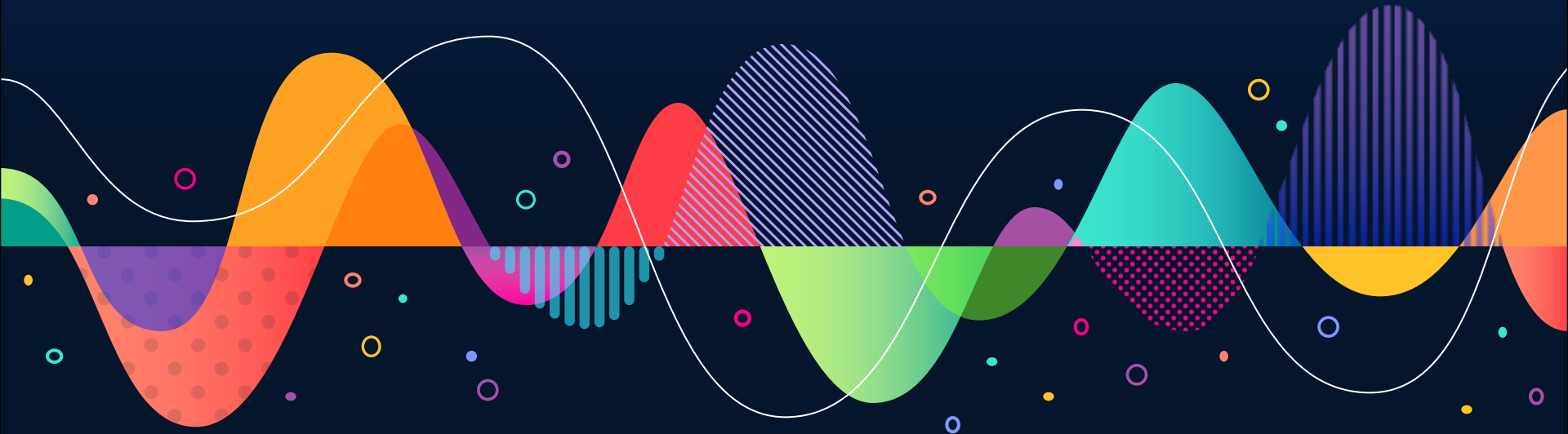



# *Related Party Transactions*

Anshul Jain

Company Secretary, Mumbai



A decorative graphic featuring a central circle with a vertical gradient from light green at the top to light blue at the bottom. A white wavy line passes through the center of the circle and extends across the entire width of the image. The area between the wavy line and the background is filled with various colorful patterns, including solid colors, vertical stripes, and halftone dots. The background is a solid dark blue.

**Thank you for your  
invite.....  
Vadodara Chapter of  
ICSI  
February 26, 2022**

**Disclaimer:**

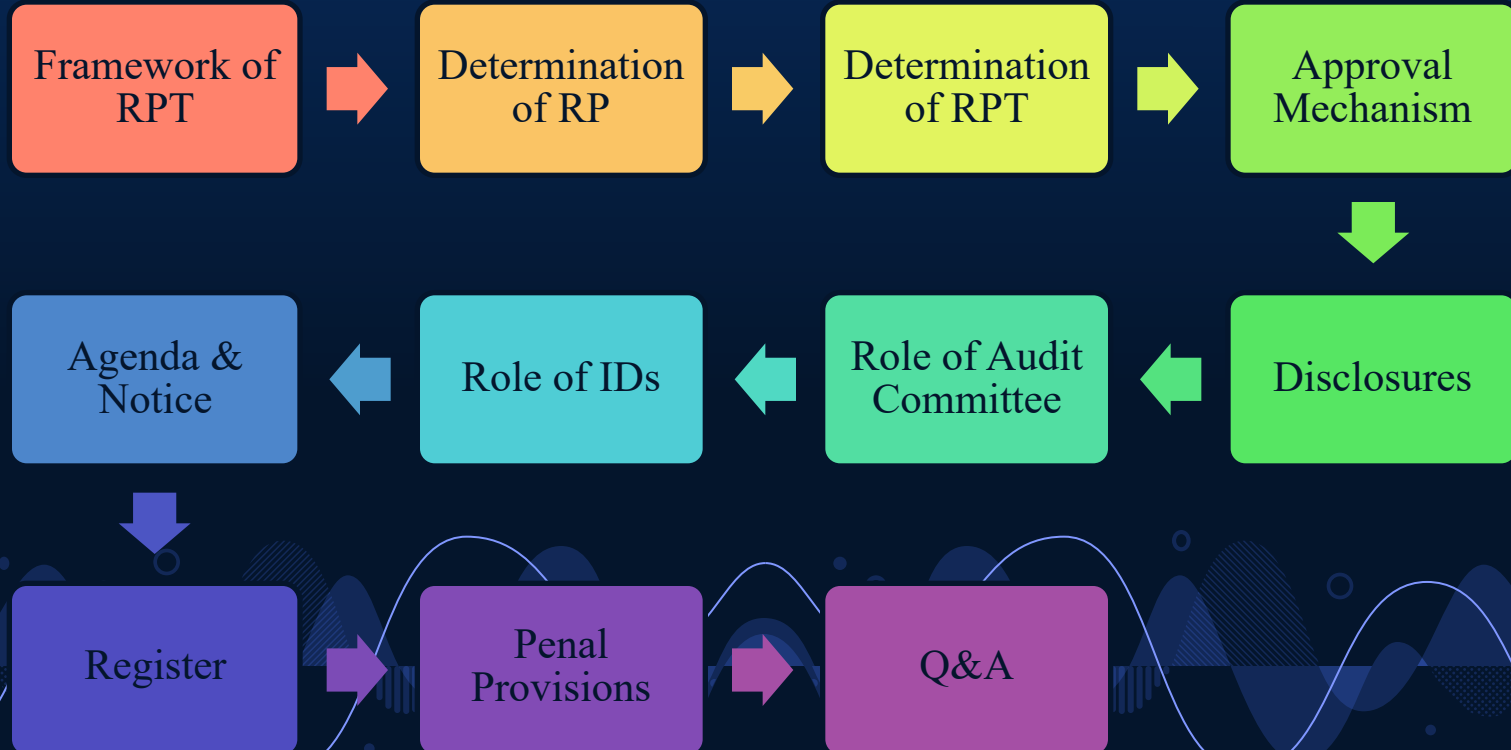
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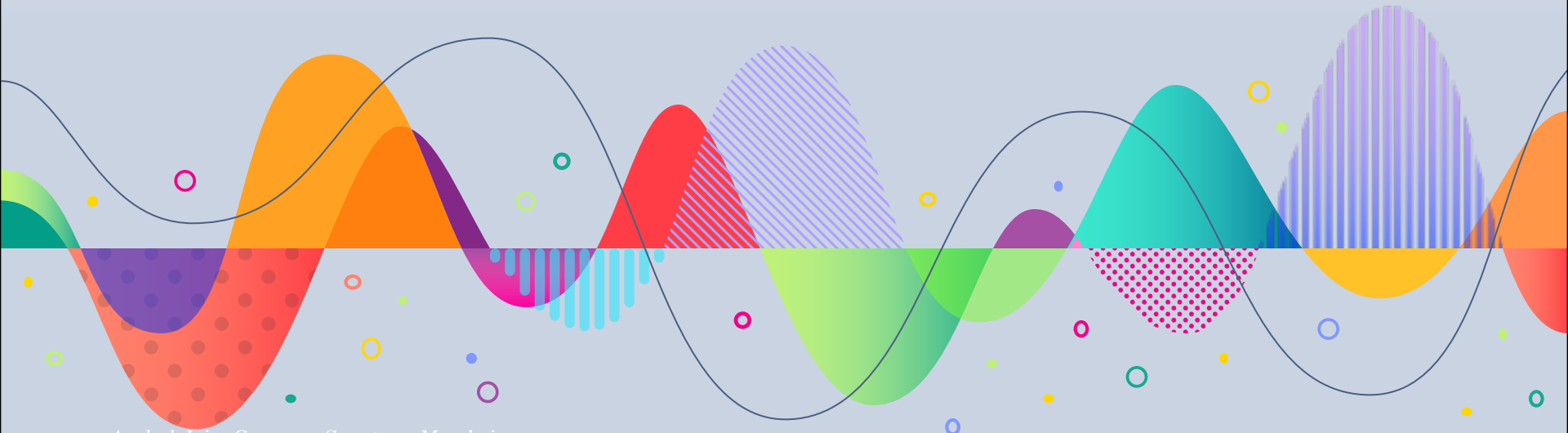
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# Framework of Presentation



# Framework of RPTs



## Framework of RPTs



Section  
2(76)

Section  
177

Section  
188

Regulation  
2(1)(zb)

Regulation  
2(1)(zc)

Regulation  
2(1)(zd)

Regulation  
23

AS-18

IndAS-24

Companies Act,  
2013

SEBI LODR

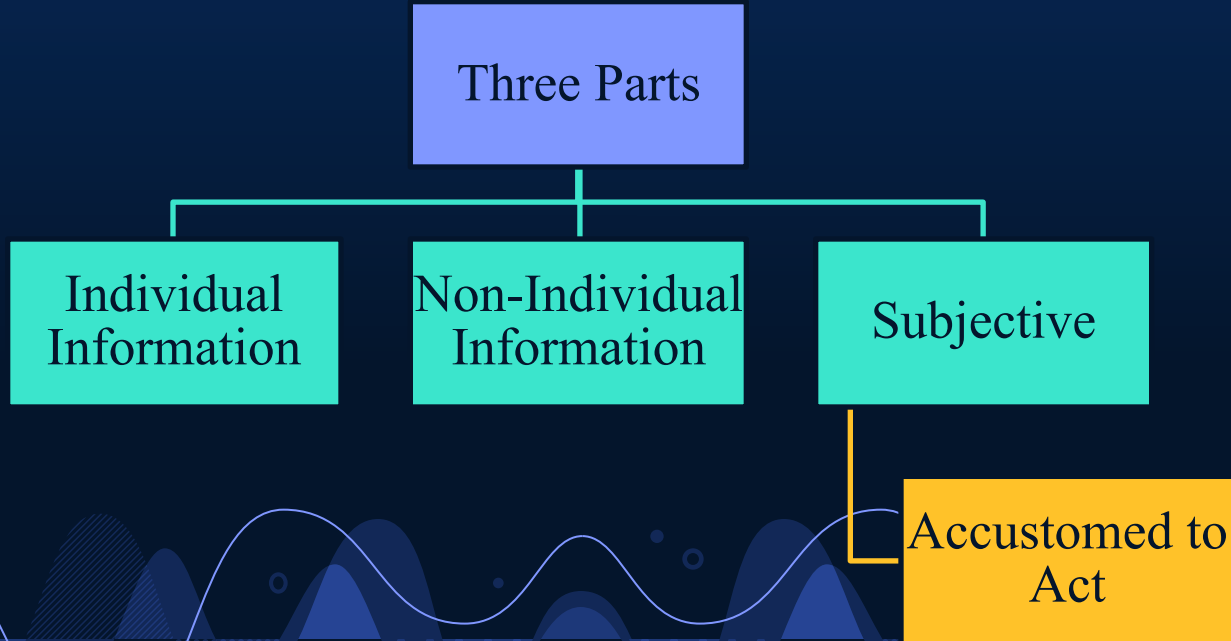
Accounting  
Standards

# Related Party Transactions

# Determination of Related Party



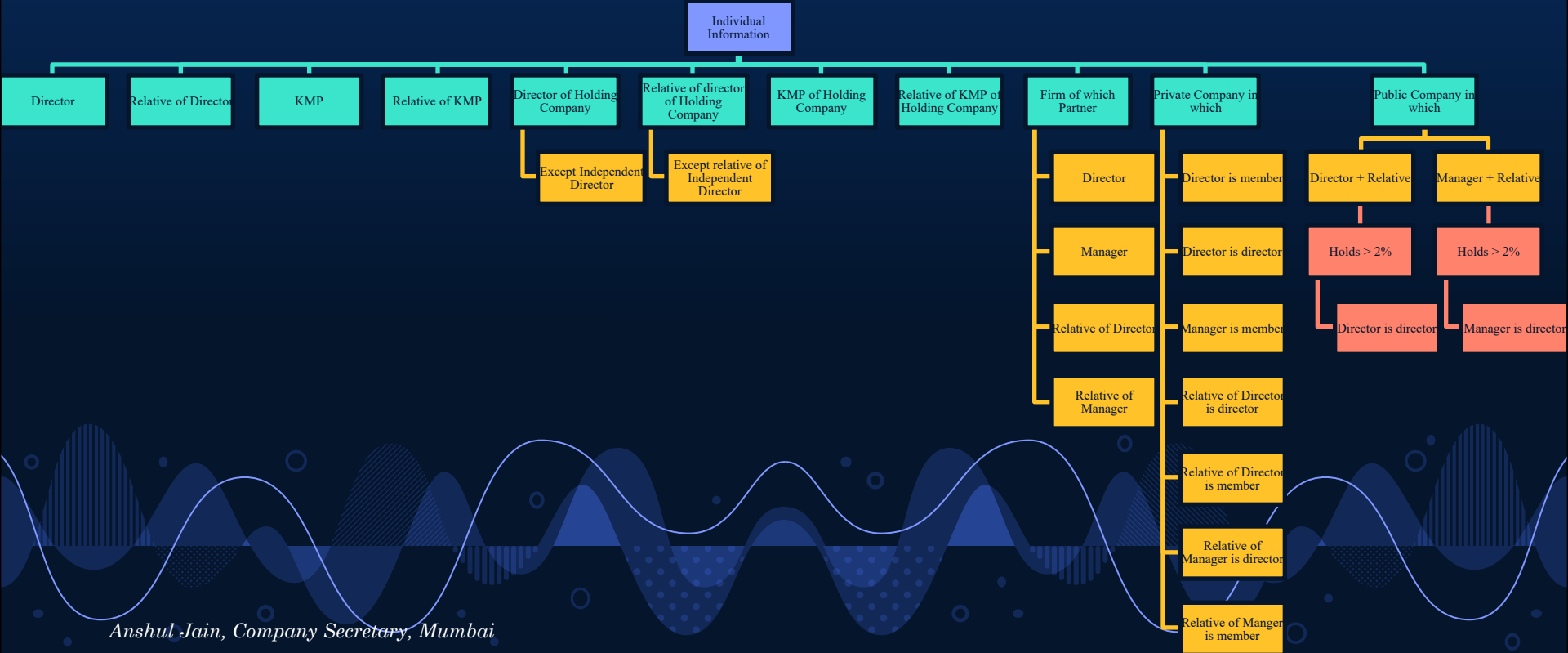
# Break the Definition





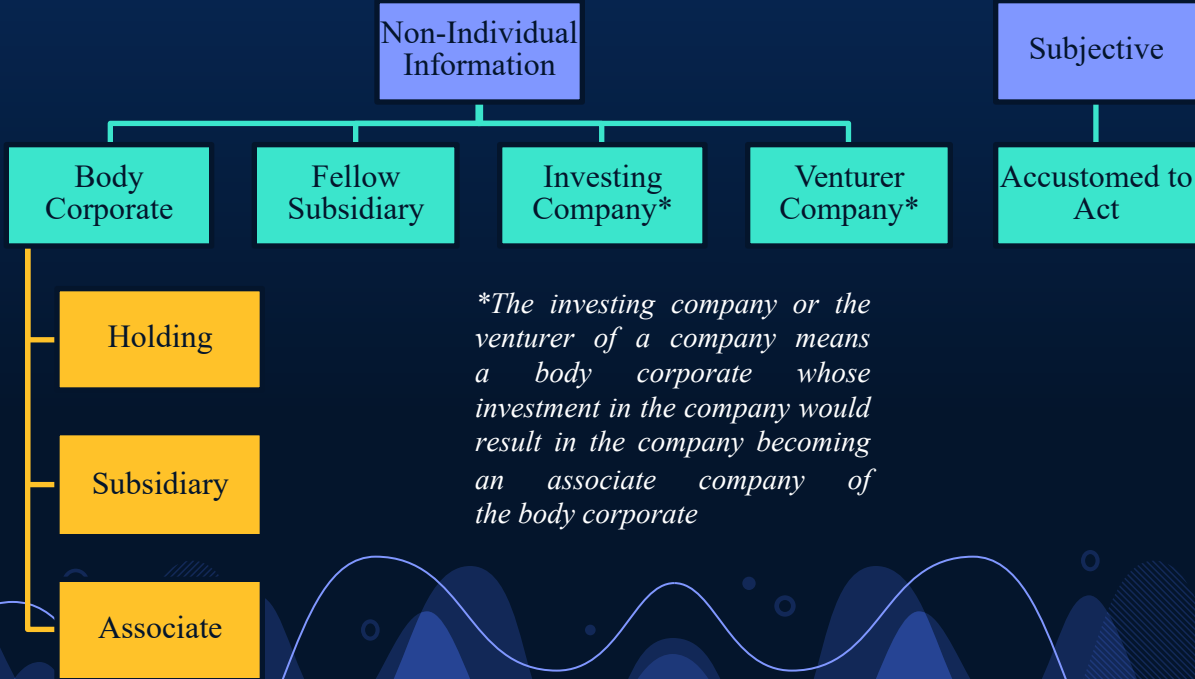


# Break the Definition





# Break the Definition



# Break the Definition



- A Limited is a subsidiary of H Limited, A Limited is having 6 directors whereas H Limited is having 8 directors out of which 3 are independent
- Mr. X is manager of A Limited
- Assume all 14 directors and Mr. X are having 8 relatives
- One of the director of A Limited is partner of a firm XYZ
- Mr. X is member of B Private Limited
- A Limited is having 3 subsidiaries
- S Limited is a subsidiary of H Limited
- Calculate Number of Related Parties in relation to A Limited.



## See the numbers....!



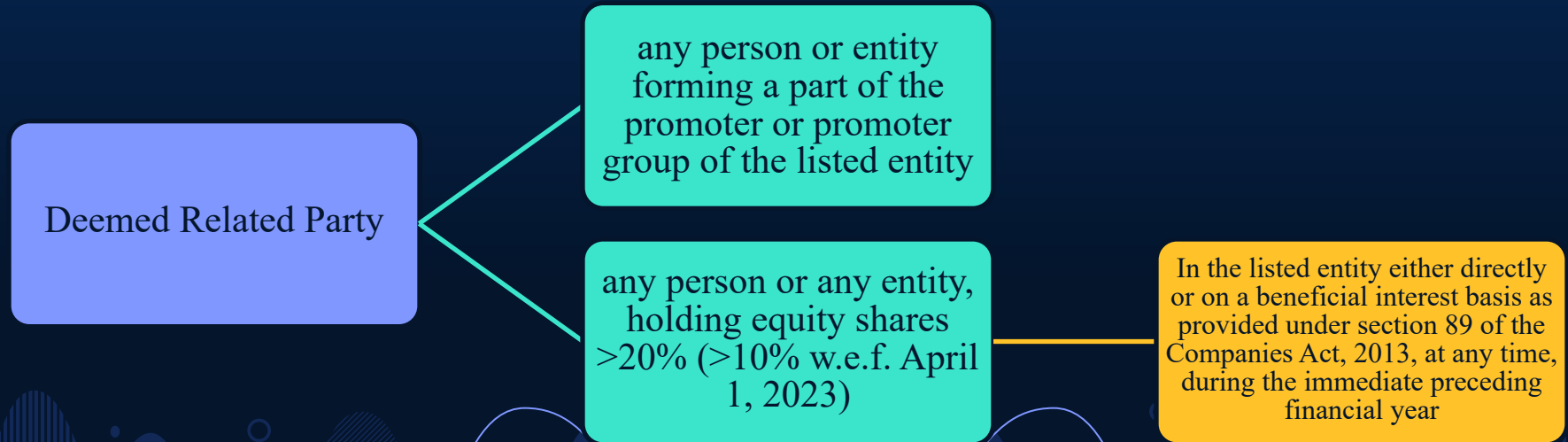
- A Limited is a subsidiary of H Limited, A Limited is having 6 directors whereas H Limited is having 8 directors out of which 3 are independent – **1, 6, 5**
- Mr. X is manager of A Limited - **1**
- Assume all 11 directors and Mr. X are having 8 relatives - **96**
- One of the director of A Limited is partner of a firm XYZ - **1**
- Mr. X is member of B Private Limited - **1**
- A Limited is having 3 subsidiaries - **3**
- S Limited is a subsidiary of H Limited - **1**
- A Limited and H Limited are also having CEO, CFO and CS with 8 relatives each - **54**
  
- Total Related Parties are **169**



# Related Party – 2(1)(zb) of LODR



# Deemed Related Party – 2(1)(zb) of LODR w.e.f. April 1, 2022



# Related Party – AS-18

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)

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

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;

key management personnel and relatives of such personnel; and

enterprises over which any person described in (c) or (d) 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.

## Related Party – IndAS-24

A person or a close member of that person's family is related to a reporting entity if that person

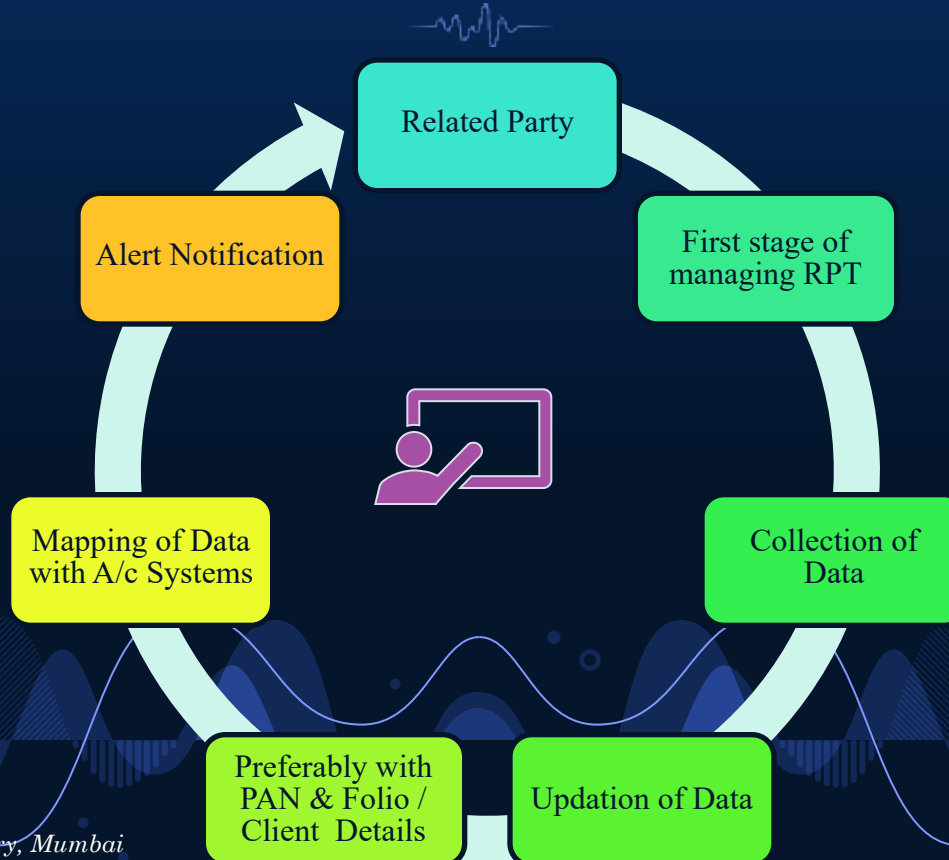
has control or joint control of the reporting entity; or

has significant influence over the reporting entity; or

is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.



# Determination of Related Party



# Determination of Related Party Transaction

# What is Transaction?

Contract or Arrangement between two or more parties

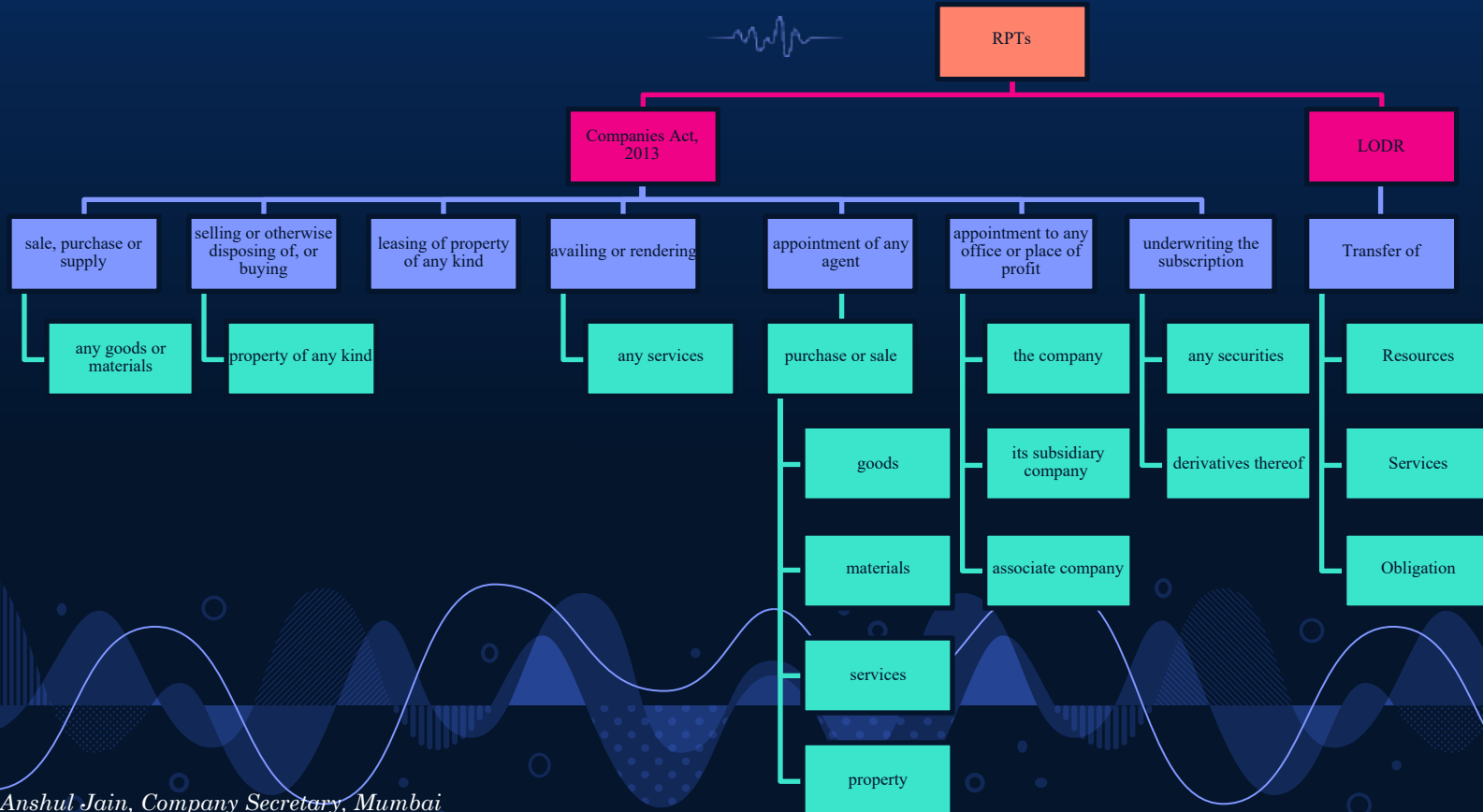
Related Party Transaction in the context of companies means transaction between the company and its related parties

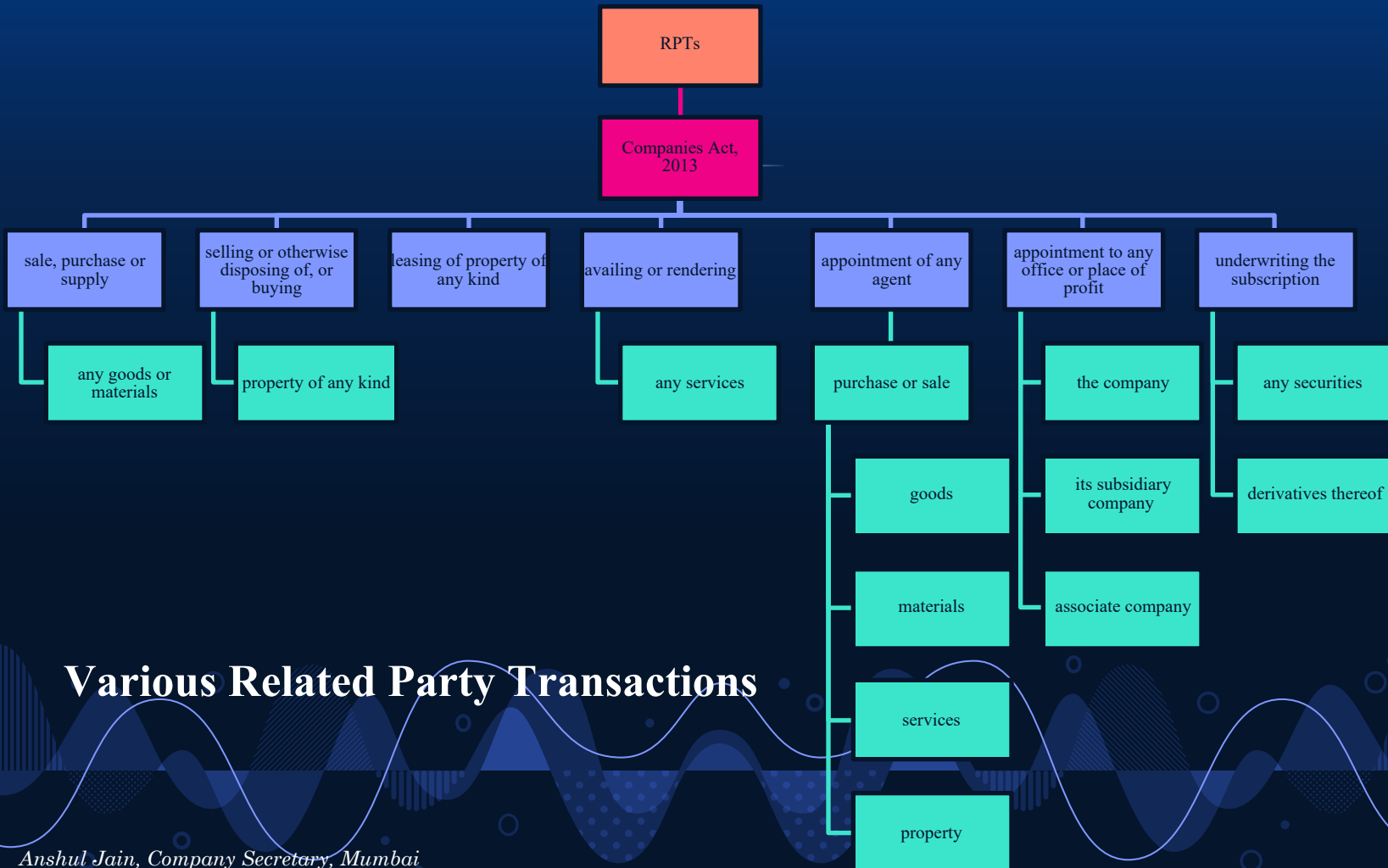
'contract' envisages a written / formal binding document, 'arrangement' may be with or without a written document

Every transaction with related party is related party transaction, however, approval mechanism may be different and situational

Transactions with related parties need not always be disadvantageous to the parties concerned. The concern arises only when there is abuse of a related stakeholders

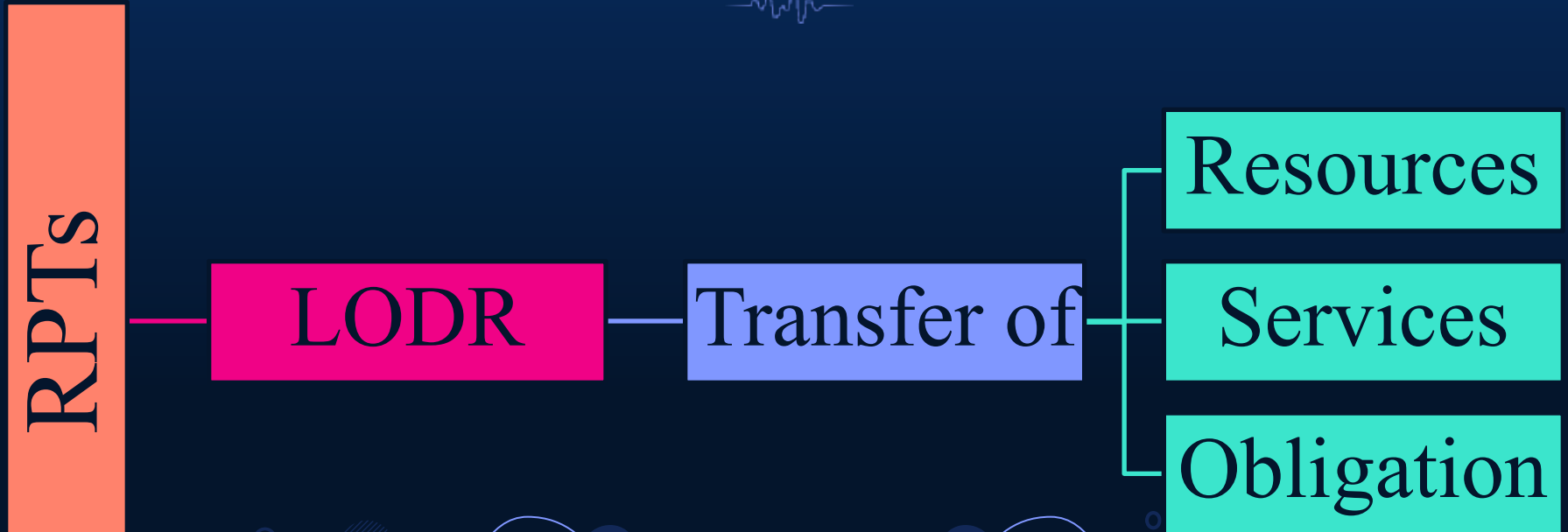
# Various Related Party Transactions



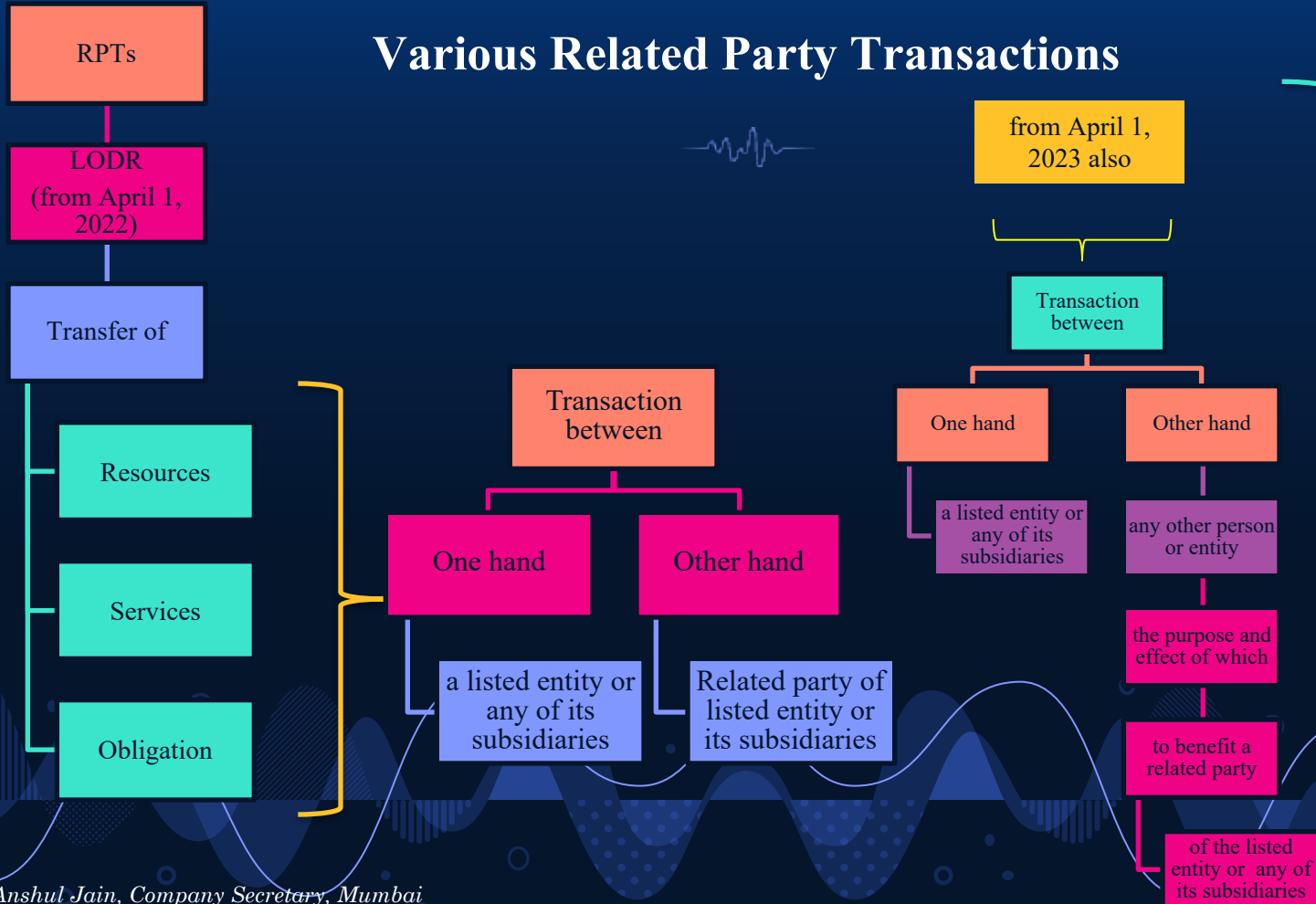


## Various Related Party Transactions

# Various Related Party Transactions



# Various Related Party Transactions



regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract

# Not Related Party Transaction (w.e.f. April 1, 2022)



issue of specified securities on a preferential basis, as per SEBI ICDR

corporate actions by the listed entity

acceptance of fixed deposits

payment of dividend

subdivision or consolidation of securities

issuance of securities by way of a rights issue or a bonus issue

buy-back of securities

by banks

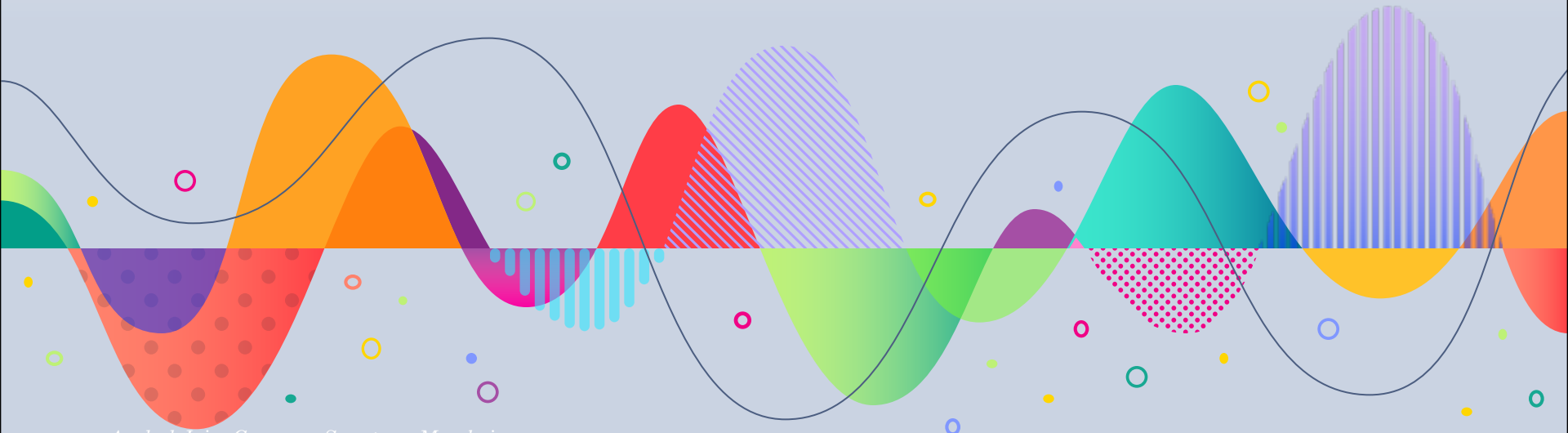
by Non-Banking Finance Companies

uniformly applicable/offered to all shareholders in proportion to their shareholding

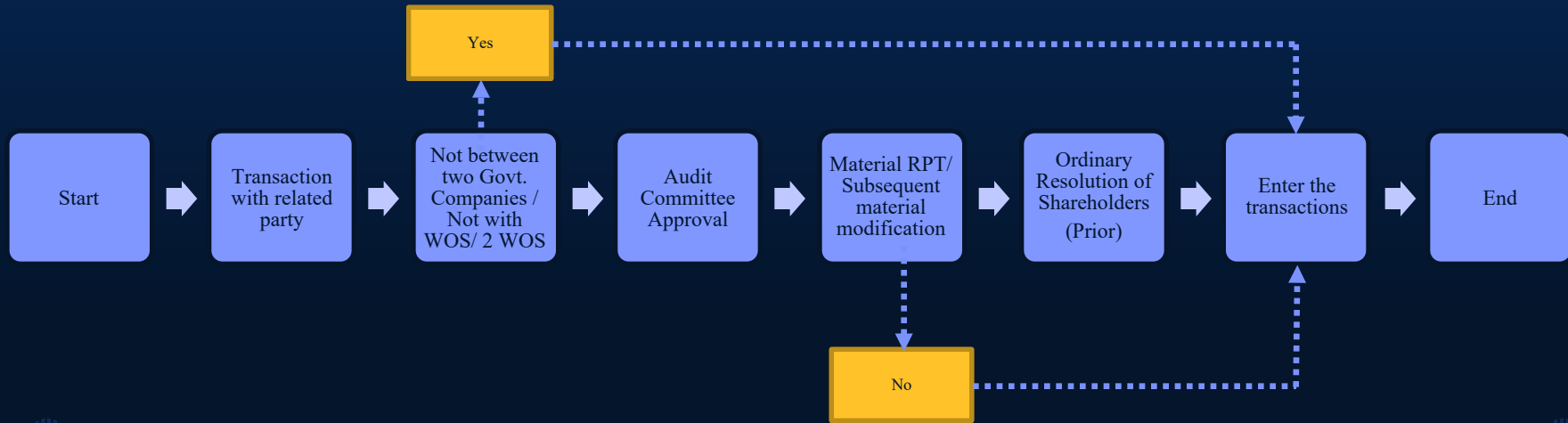
at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure RPT



# Approval Mechanism



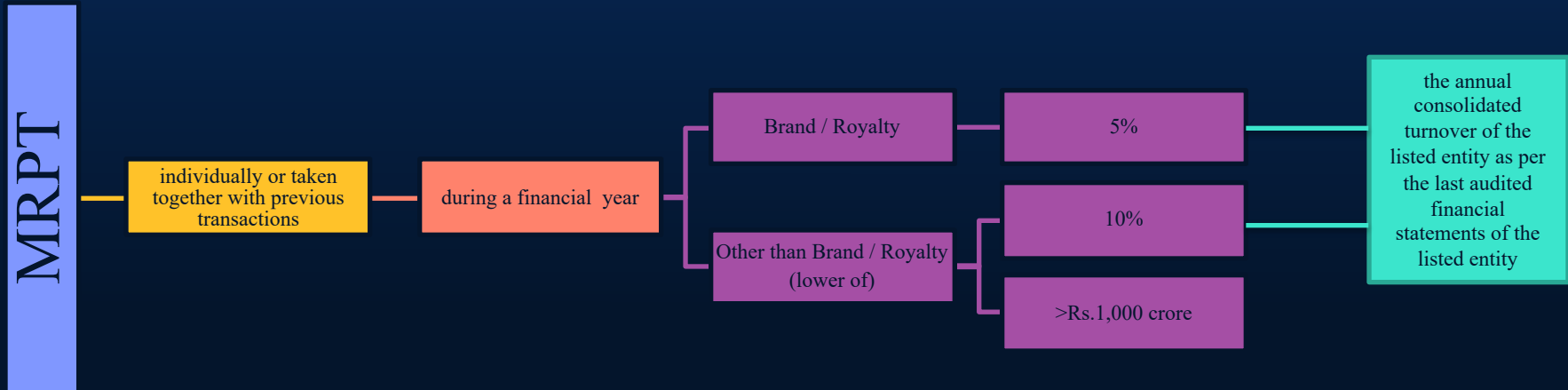
# Approval Mechanism of Related Party Transactions and Listed Companies



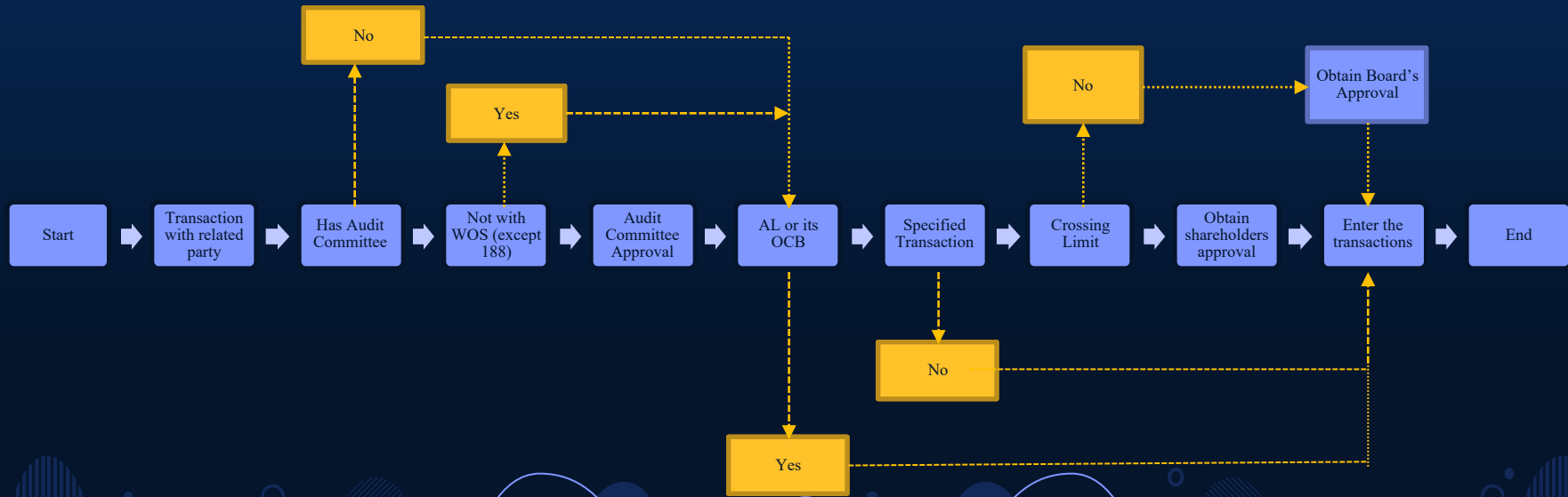
prior approval of shareholders of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and regulation 15(2) of LODR is applicable to such listed subsidiary

For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to above, the prior approval of the audit committee of the listed subsidiary shall suffice

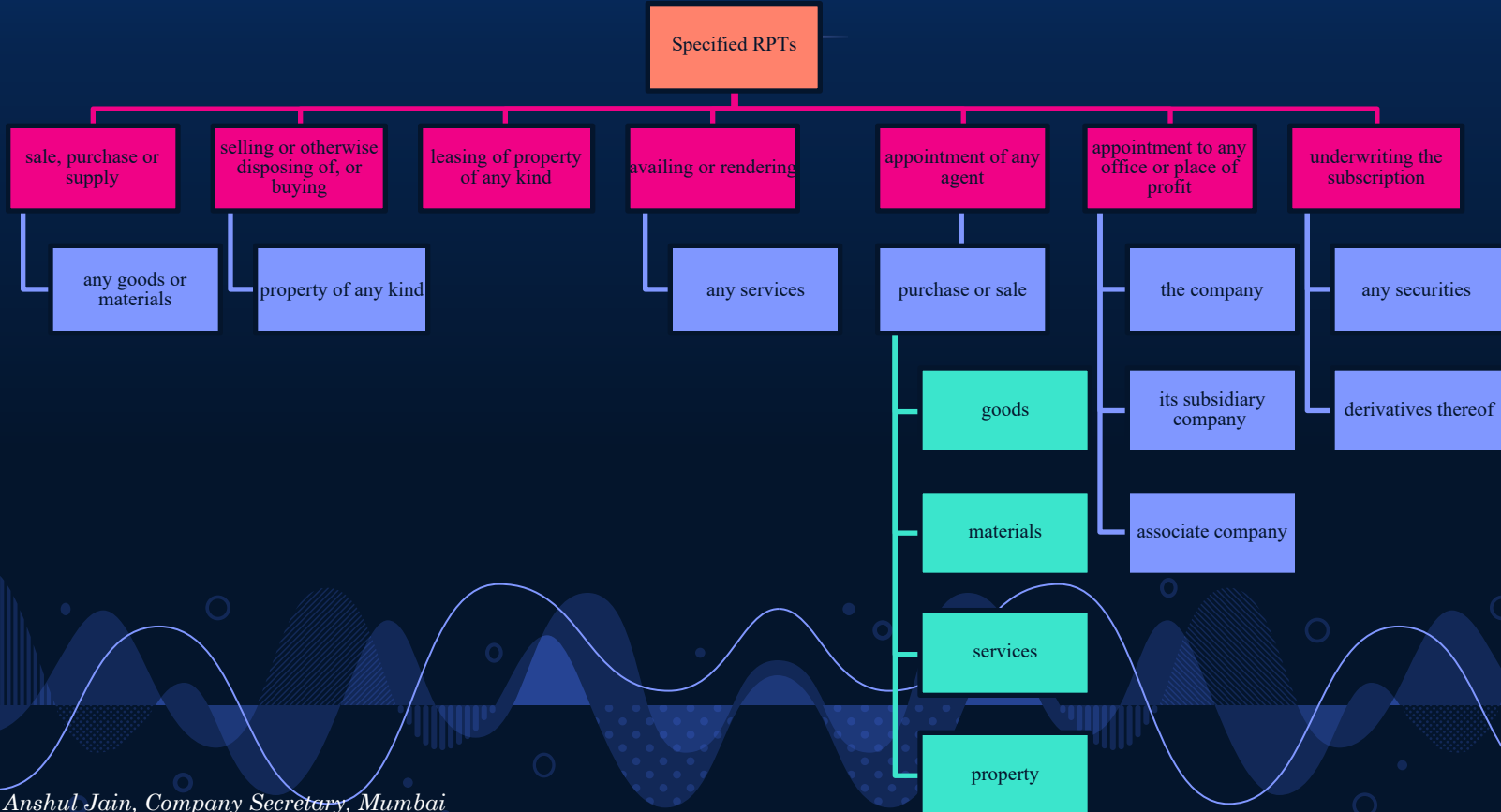
# Material Related Party Transactions Listed Companies



# Approval Mechanism of Related Party Transactions Unlisted Companies



# What are specified transactions – unlisted companies



## What is “its Ordinary Course of Business”?

As per Black’s Law Dictionary, “Ordinary course of business” means: -

- normal routine in managing trade or business
- MOA is not conclusive for deciding whether an activity
- Frequency of the activity is sought to be highlighted
- It should be a continuous activity carried out in a normal organised manner



The following factors may be considered

- Whether the activity is covered in the objects clause of the MOA;
- Whether the activity is in furtherance of the business;
- Whether the activity is normal or otherwise routine for the particular business;
- Whether the activity is repetitive/frequent;
- Whether the income earned from such activity is treated as business income in the company’s books of accounts;
- Whether the transactions are common in the particular industry

## Section 185 of the Companies Act, 2013:

(3) Nothing contained in sub-sections (1) and (2) shall apply to

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan;



## Section 188 of the Companies Act, 2013:

**Provided also** that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Arm's length basis does not mean arm's length price as price is just one of the components of the terms of dealing with the other party and there are several other matters which need to be considered. For example, in case of trading of goods, the price charged to both related and unrelated party is Rs. 100 per unit. Based on the price charged, it may seem to be an arm's length transaction.

However, if the credit period granted to an unrelated party is 15 days whereas to a related party it is 6 months, it will not be considered as an arm's length transaction. The transaction as a whole and the entire bundle of the terms and conditions needs to be considered for determining whether the transaction is on an arm's length basis.



In the case of *Iljin Automative Private Limited v. Asst. Commissioner of Income Tax (2011) 16 Taxmann.Com 225*, the Court opined that “the determination of ‘arm's length price’ seeks answer to the question – What would have been the price if the transactions were between two unrelated parties, similarly placed as the related parties in so far as nature of product, and terms and conditions of the transactions are concerned?”

The Bangalore Bench of the Income Tax Appellate Tribunal in the case of *Filtrex Technologies Private Limited v. Asst. Commerssioner of Income Tax IT (TP) A No. 469/Bang/2017* held that acceptance of arm's length price declared by one party cannot preclude the Revenue from examining arm's length price in the hands of the other party to the same transaction.



# Threshold for Shareholder's Approval



sale, purchase or supply of any goods or materials, directly or through appointment of agent, amounting to ten per cent. or more of the turnover of the company

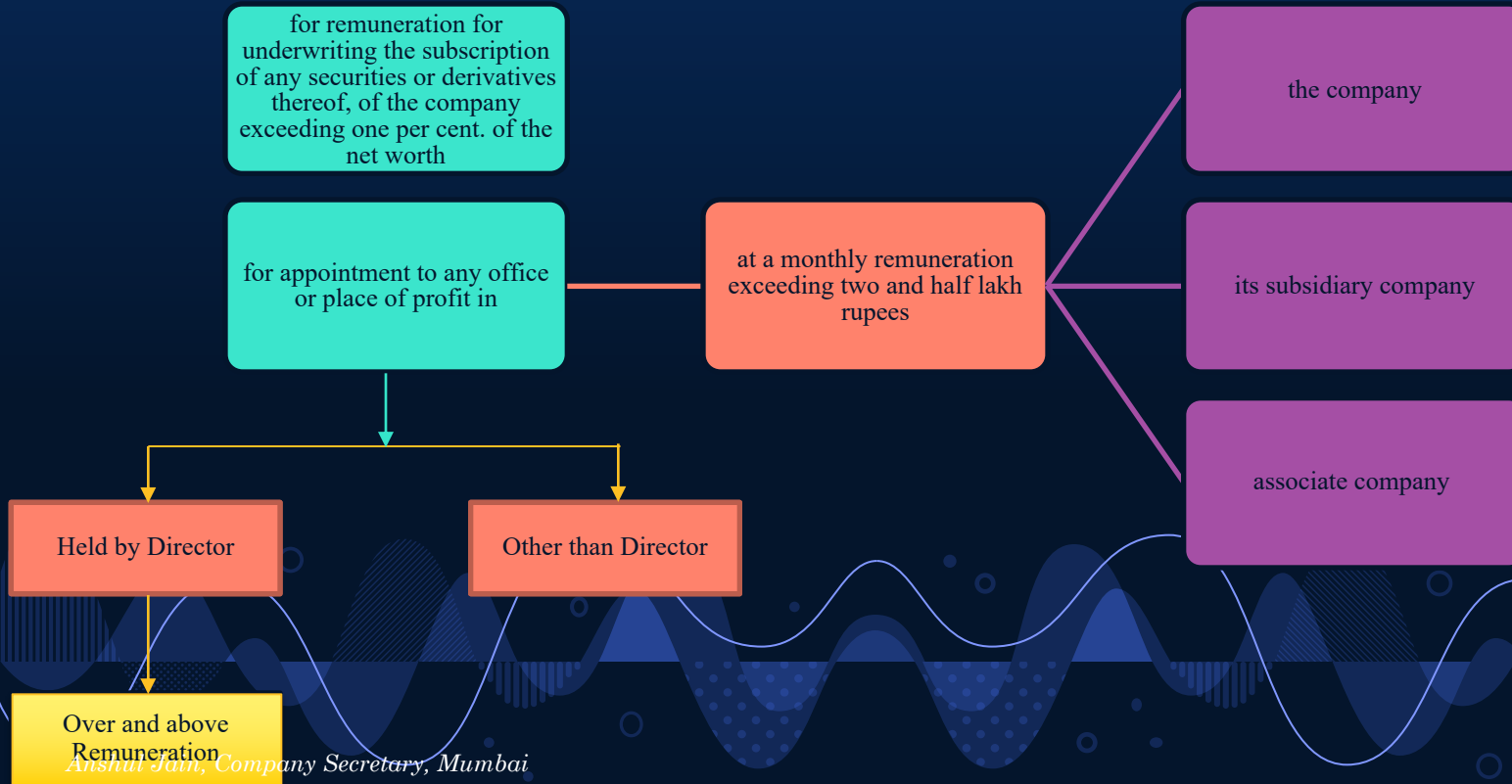
selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten per cent. or more of net worth of the company

leasing of property of any kind amounting to ten per cent or more of the turnover of the company

availing or rendering of any services, directly or through appointment of agent, amounting to ten per cent. or more of the turnover of the company

the limits specified above shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year

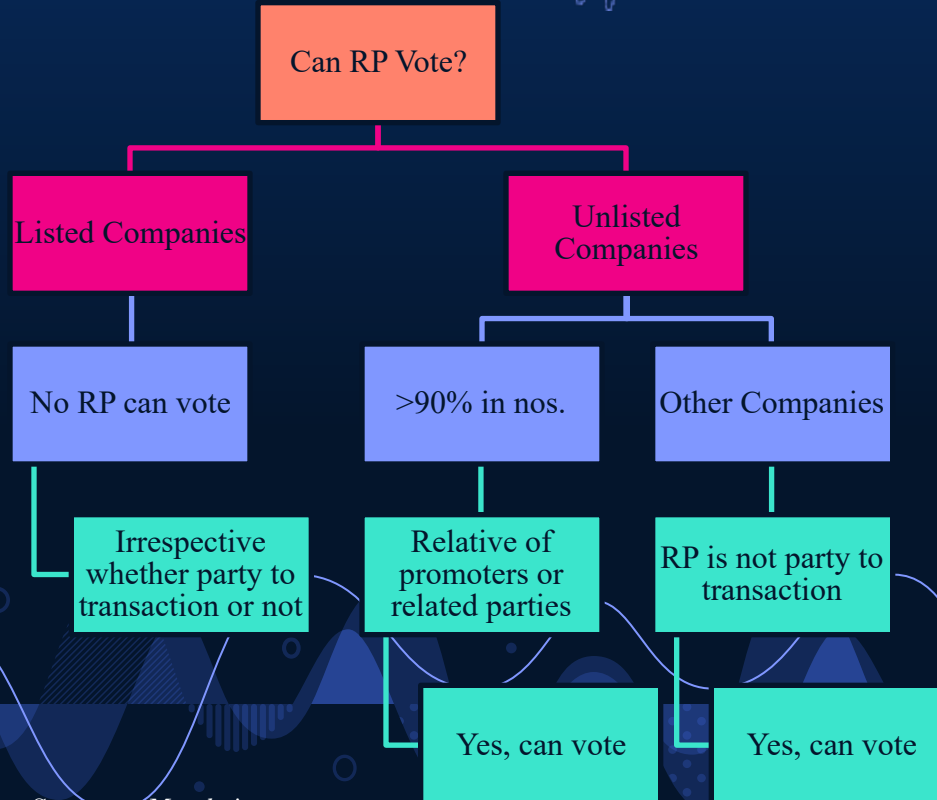
# Threshold for Shareholder's Approval



Over and above  
Remuneration

Anshul Jain, Company Secretary, Mumbai

# Who can vote?



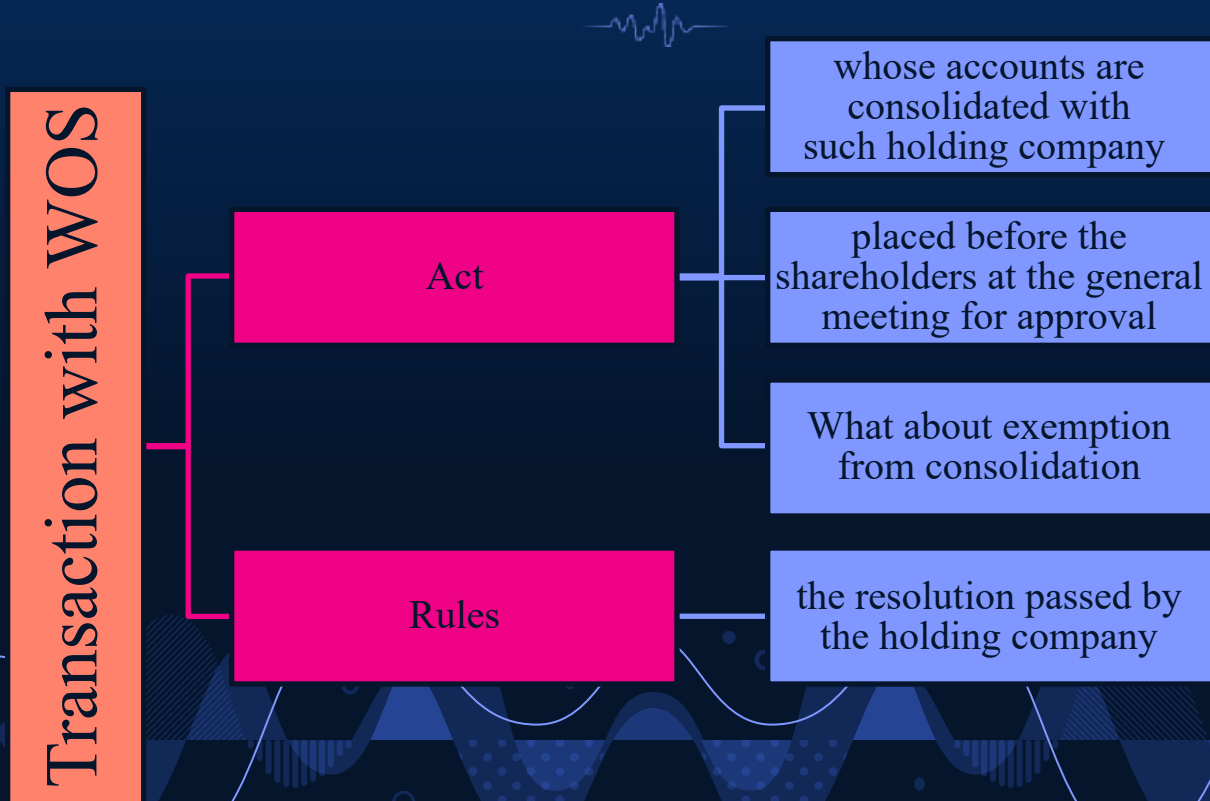
Can related parties vote for not approving the resolution or they can't participate in the voting process only?

In case of WOS, resolution to be passed by which company?

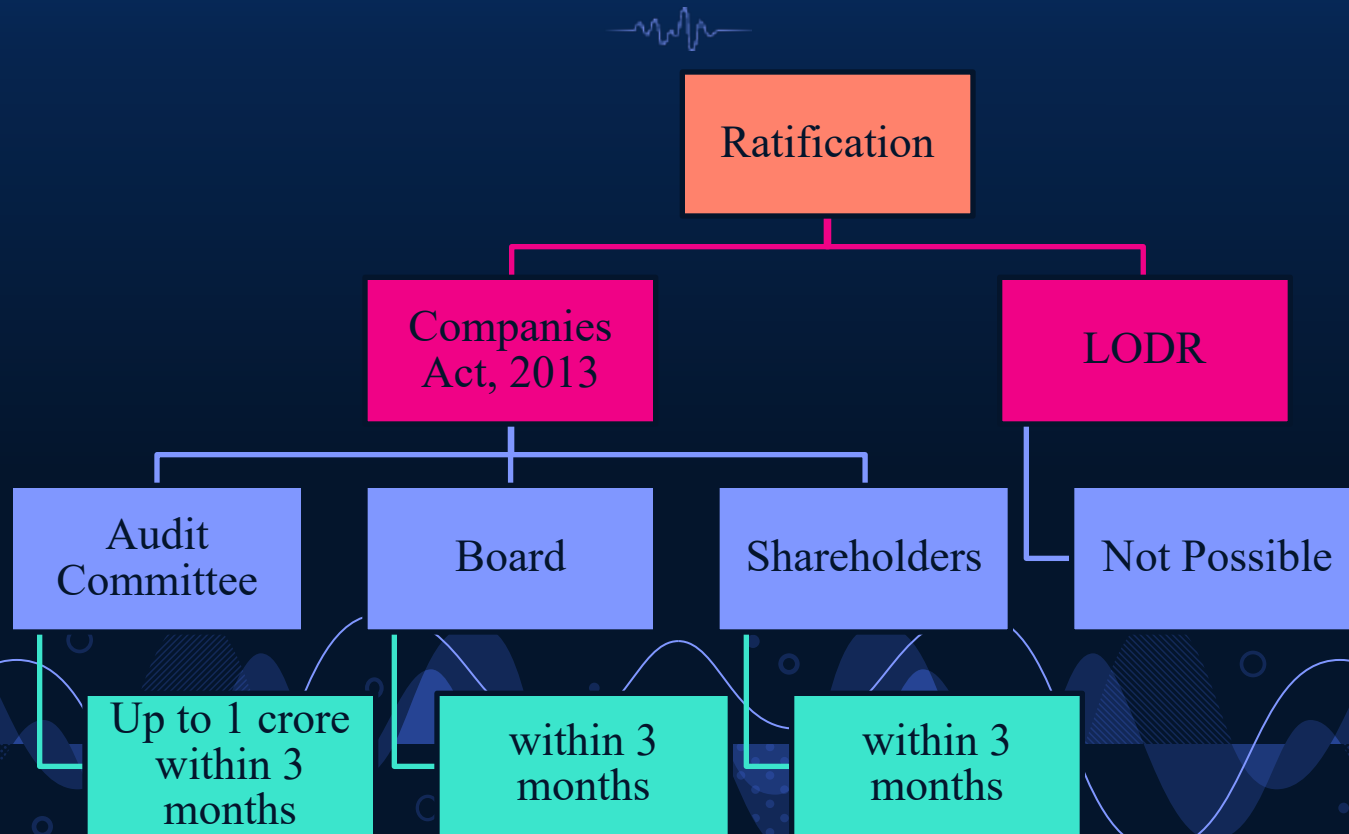
Interested director not to present in the meeting during the discussions

In case of AC: Only members who are IDs can vote (effective from January 1, 2022)

# Transaction between Holding and it's WOS



# Ratification of Related Party Transactions

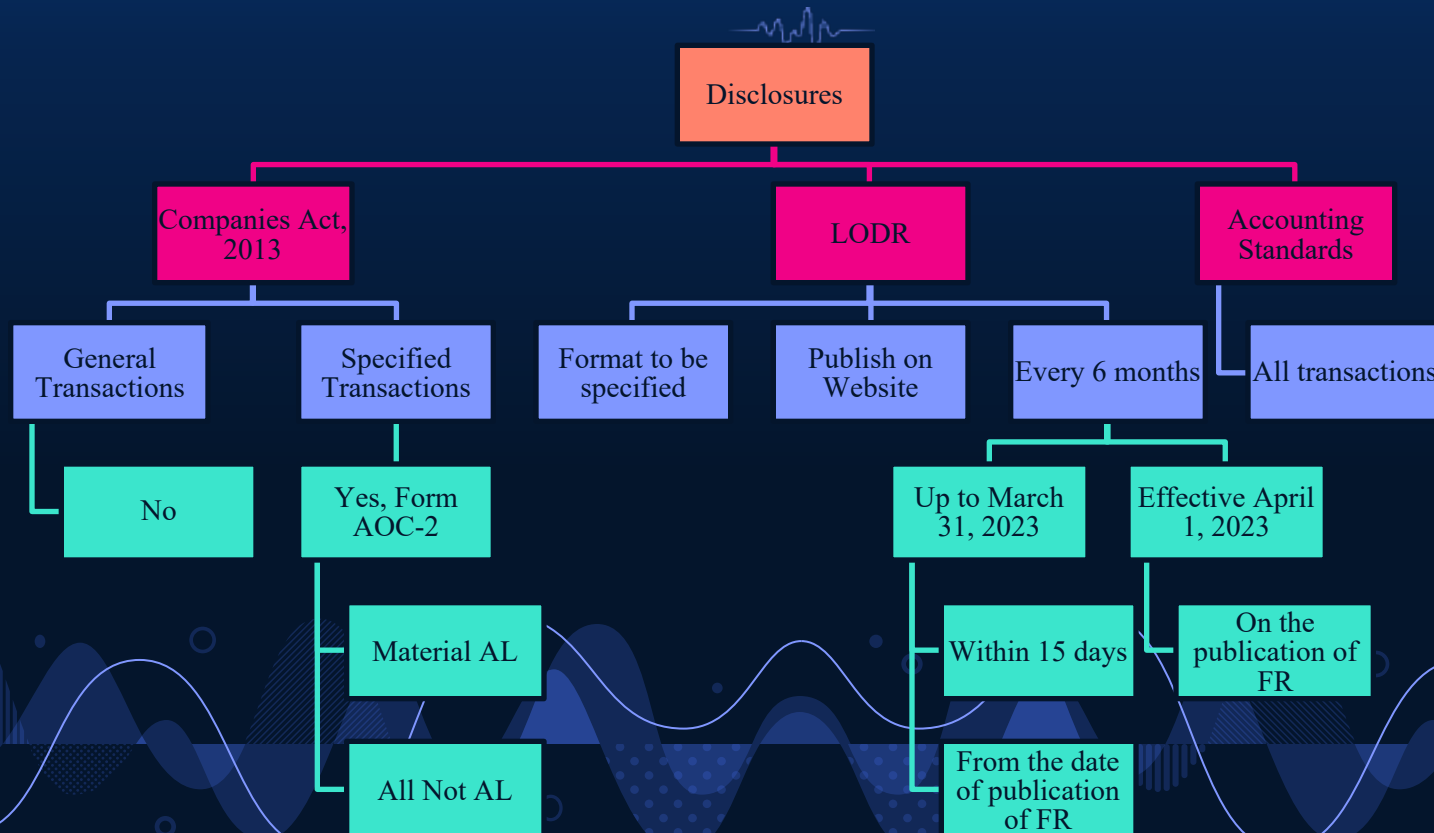


# Disclosures

*Anshul Jain, Company Secretary, Mumbai*

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# Disclosures

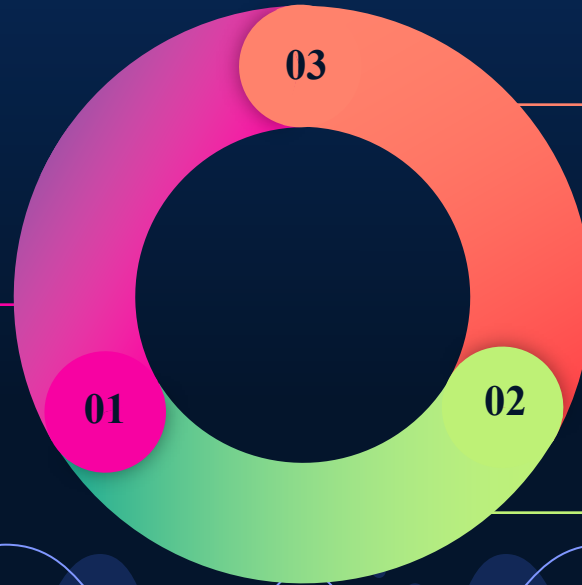


# Role of Audit Committee



# Terms of Reference of Audit Committee

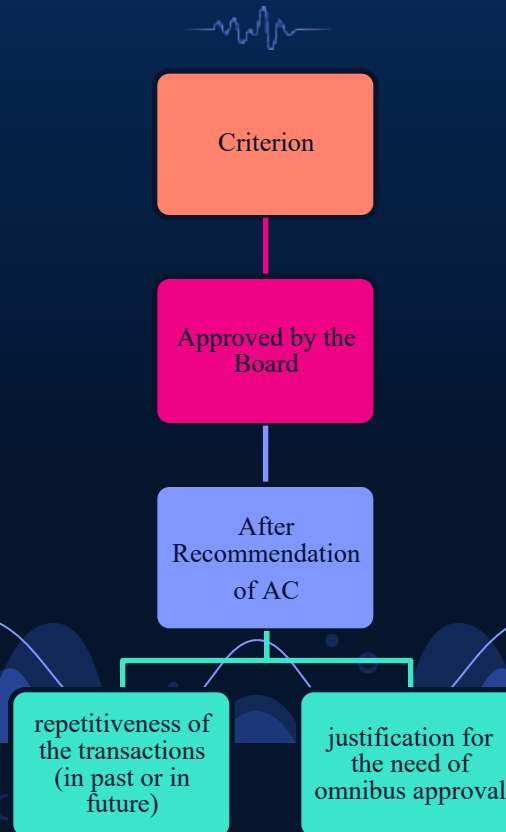
Approval or any subsequent modification of transactions of the company with related party



Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company

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

# Criterion of Omnibus Approval



# Criterion of Omnibus Approval



Criterion

maximum value of the transactions, in aggregate under the omnibus route in a year

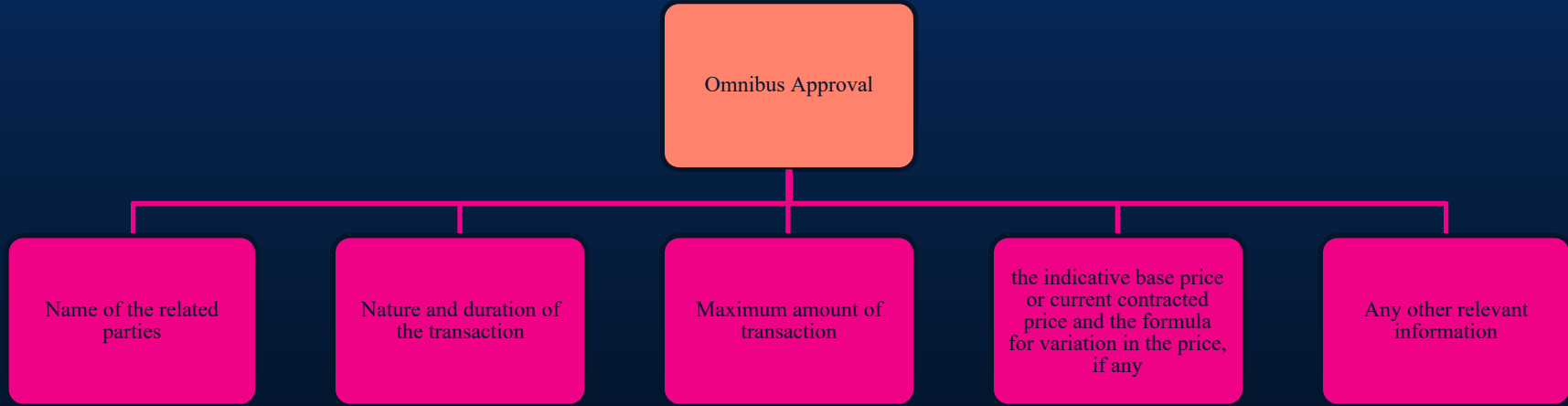
the maximum value per transaction which can be allowed

extent and manner of disclosures to be made to the Audit Committee

review, at such intervals as the Audit Committee may deem fit

transactions which cannot be subject to the omnibus approval by the Audit Committee

# Omnibus Approval



Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year

Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company

# Additional Requirements of Listed Entities

To define Material Modifications

To disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions

related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity

- if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity
- if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary (w.e.f. April 1, 2023)

prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and regulation 15(2) of LODR is applicable to such listed subsidiary

- For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to above, the prior approval of the audit committee of the listed subsidiary shall suffice

# Information to be reviewed by the Audit Committee for approval of RPTs

Type, material terms and particulars of the proposed transaction

Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise)

Tenure of the proposed transaction (particular tenure shall be specified)

Value of the proposed transaction

The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction

RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided

Information to be reviewed by the Audit Committee for approval of RPTs

If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary

- details of the source of funds in connection with the proposed transaction
- where any financial indebtedness is incurred to make or give loans, intercorporate deposits, advances or investments, (i) nature of indebtedness; (ii) cost of funds; (iii) tenure;
- applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security
- the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT

# Information to be reviewed by the Audit Committee for approval of RPTs

Justification as to why the RPT is in the interest of the listed entity

A copy of the valuation or other external party report, if any such report has been relied upon

Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis

Any other information that may be relevant

The audit committee shall also review the status of long-term (more than one year) or recurring RPTs on an annual basis.



# Role of Independent Directors

# Duties of Independent Directors

Role of IDs

Schedule IV

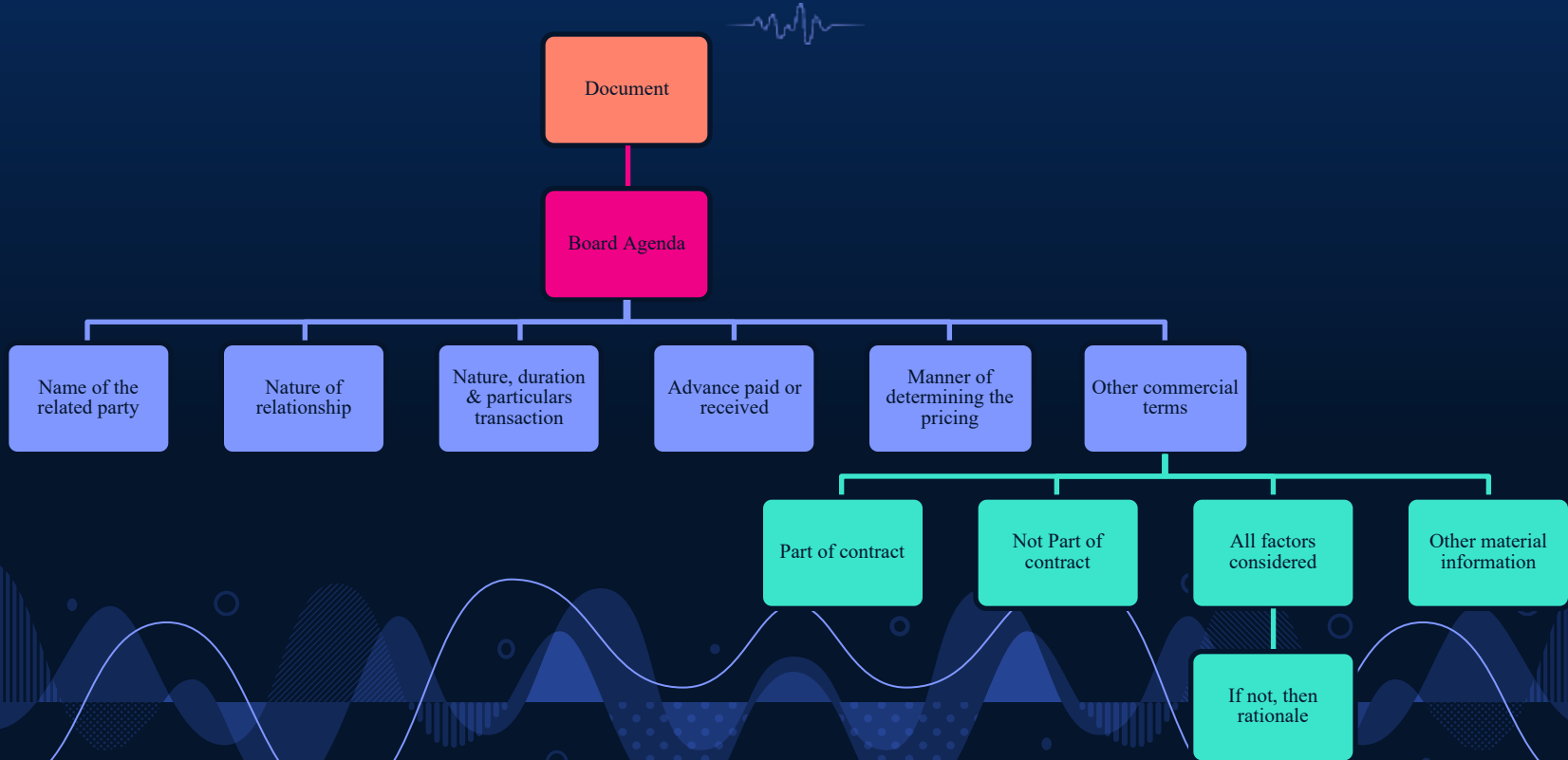
Duties of IDs

Para 9

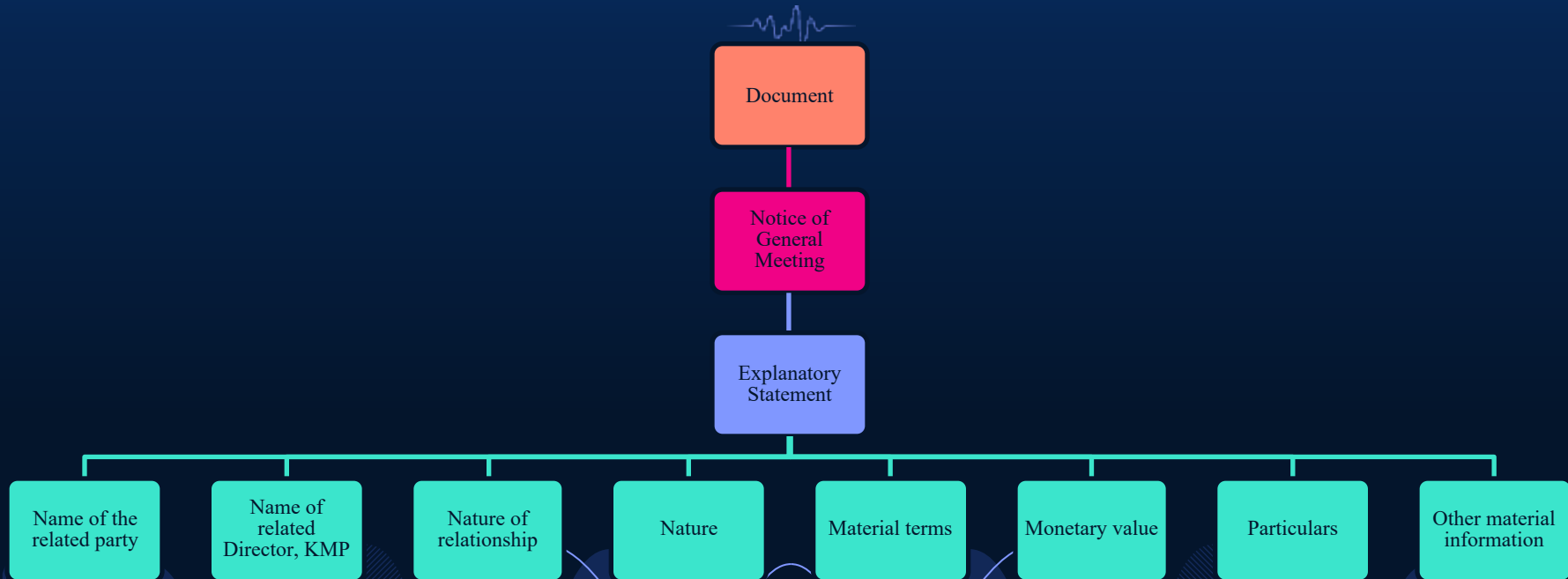
pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company

# Agenda and Notice

# Specific Provisions with regard to Agenda and Notice



# Specific Provisions with regard to Agenda and Notice



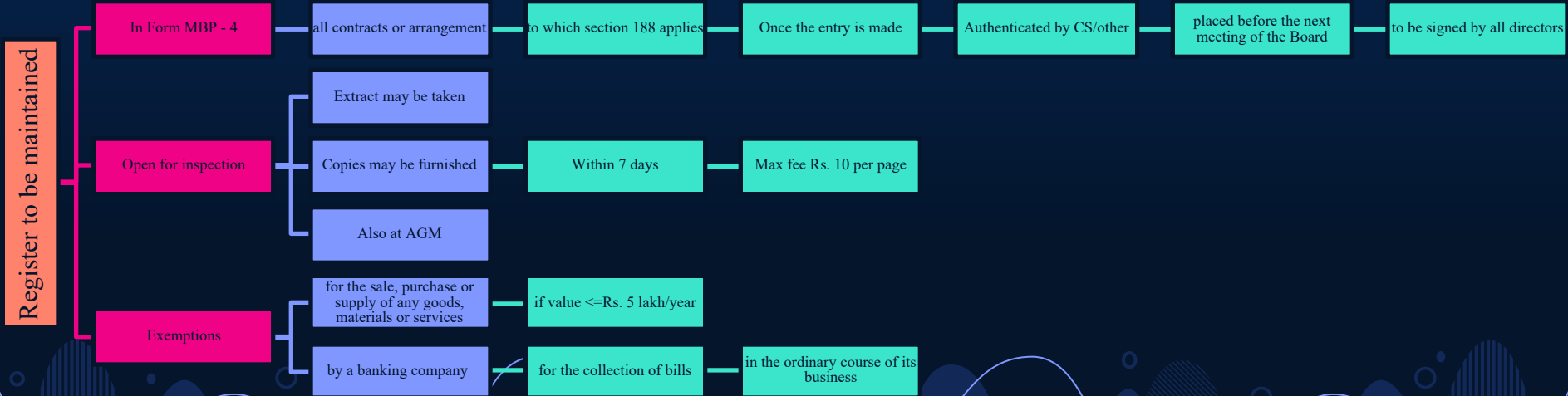
## Specific Provisions with regard to Agenda and Notice

1. A summary of the information provided by the management of the listed entity to the audit committee;
2. Justification for why the proposed transaction is in the interest of the listed entity;
3. Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary, the details specified under point 4(f) above; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
4. A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
5. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
6. Any other information that may be relevant.

# Register

*Anshul Jain, Company Secretary, Mumbai*

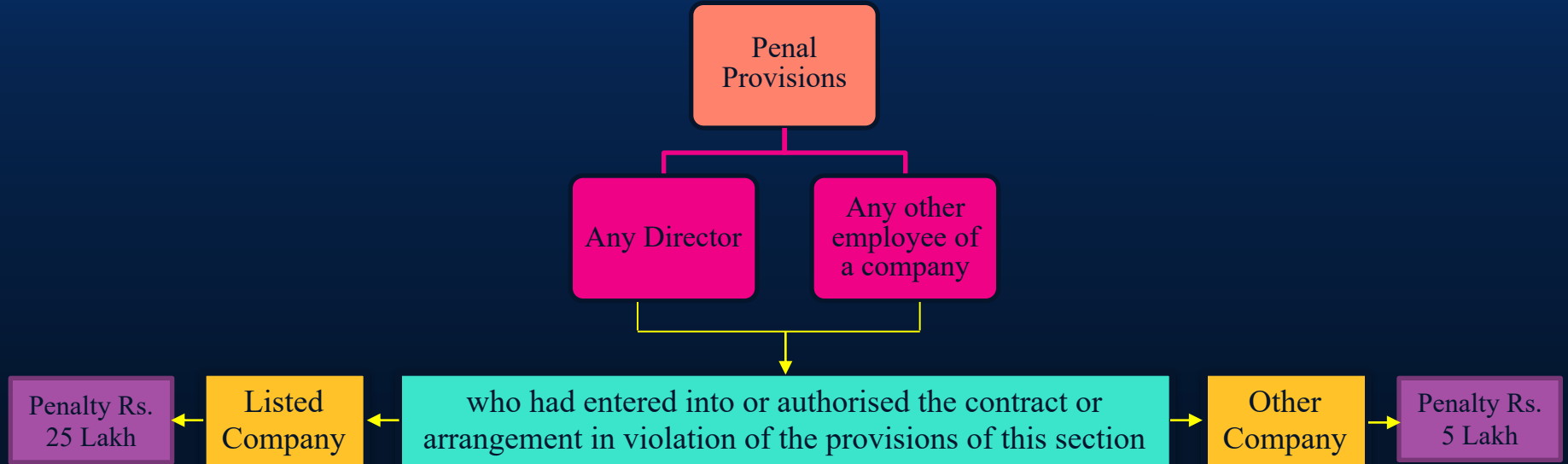
# Register





# Penal Provisions

# Penal Provisions



*A presentation by:*  
**Anshul Jain, Company Secretary, Mumbai**



*Thank You....!*



csanshul



9699972119 / 9082961990



Anshul Kumar Jain II



anshulkumarjain@gmail.com

Happy to take any questions....

