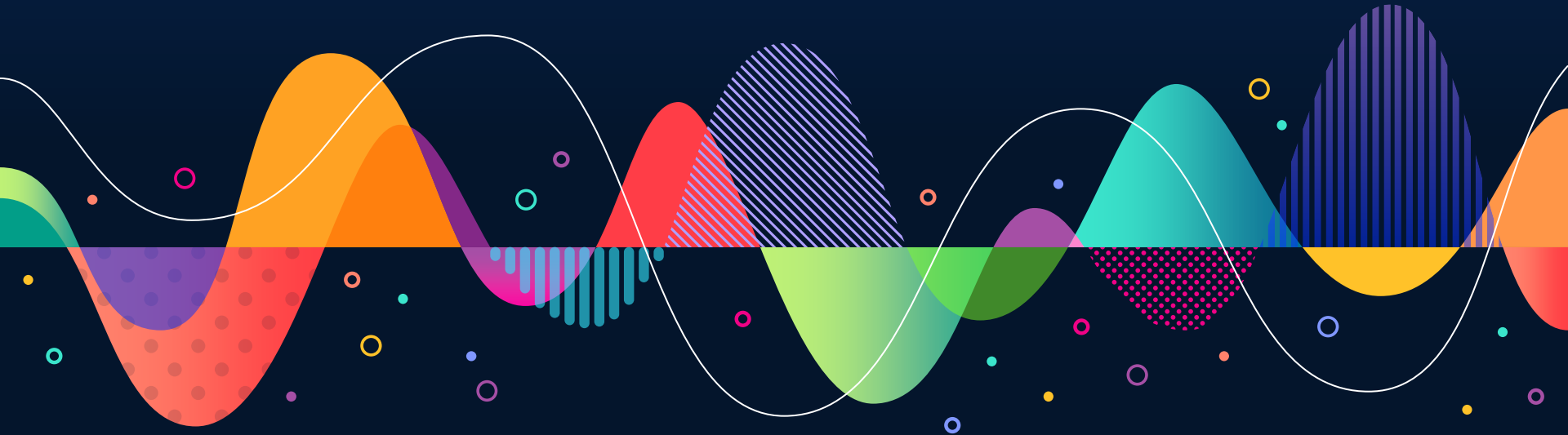



# *Related Party Transactions*

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 wave pattern with various colored and patterned fills (including solid colors, stripes, and dots) extends horizontally across the page, passing through the circle. The background is a solid dark blue.

**Thank you for your  
invite.....  
Thane Chapter of ICSI  
September 2, 2023**

**Disclaimer:**

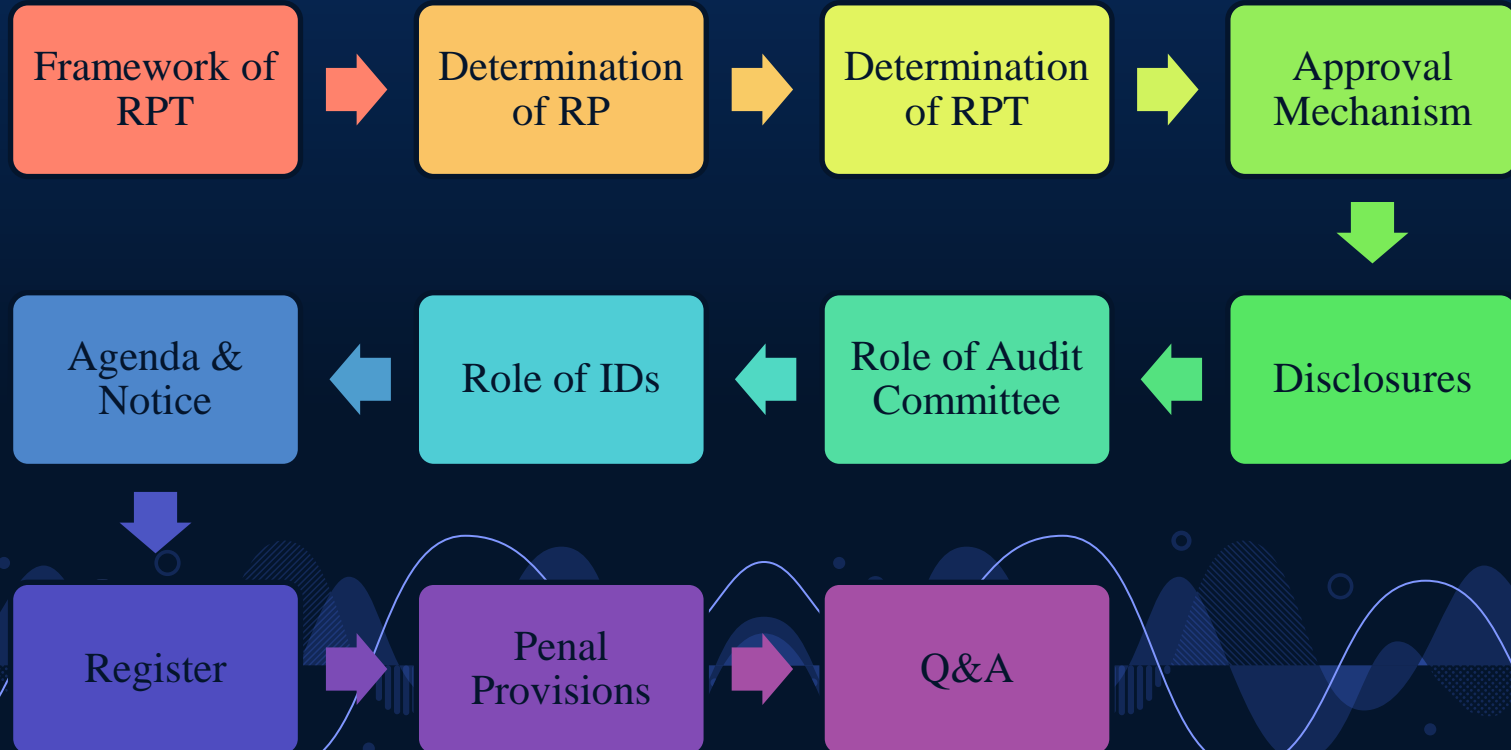
**The views and opinions expressed in this presentation are my own views and are subject to my understanding of the subject and do not necessarily represent views of the any organization(s) to which I belong or had belonged in past. No part of this presentation can be copied/circulated without prior permission. Any error in the presentation may be notified to owner. No liability for action taken based on this. It is advised to take professional consultation from experts before taking any action.**

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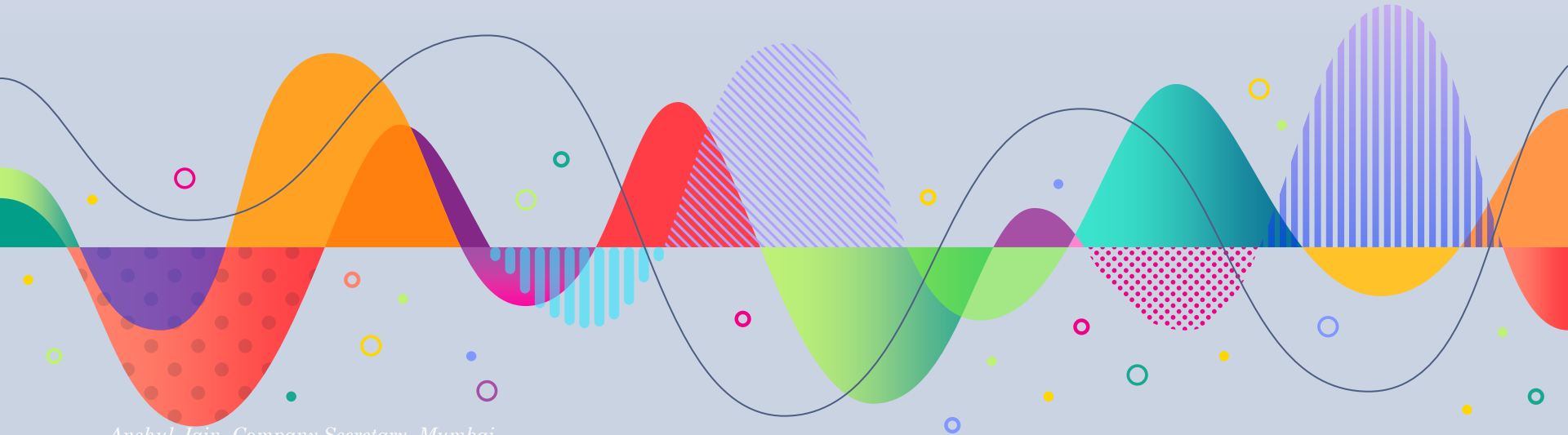
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# Framework of Presentation



# Framework of RPTs



## Framework of RPTs



Companies Act,  
2013

SEBI LODR

Accounting  
Standards

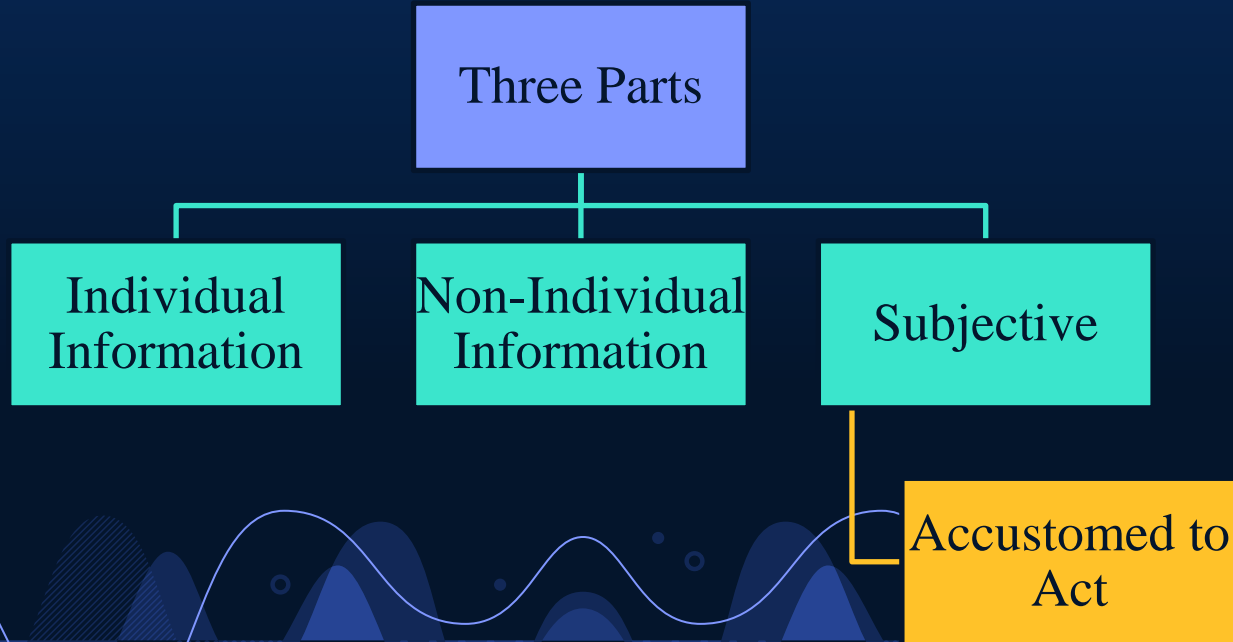
Related Party Transactions

# Determination of Related Party





# Break the Definition







**Break the Definition**



# Individual Information

Director

Relative  
of  
Director

KMP

Relative  
of KMP



## Break the Definition



# Individual Information

Director of  
Holding Company

Relative of  
director of  
Holding Company

KMP of Holding  
Company

Relative of KMP  
of Holding  
Company

Except  
Independent  
Director

Except relative of  
Independent  
Director



## Break the Definition



# Individual Information

Firm of which  
Partner

Private Company in which

Director

Manager

Relative  
of  
Director

Relative  
of  
Manager

Director  
is  
member

Director  
is  
director

Manager  
is  
member

Relative  
of  
Director  
is  
director

Relative  
of  
Director  
is  
member

Relative  
of  
Manager  
is  
director

Relative  
of  
Manger  
is  
member



## Break the Definition



Individual Information

Public Company in which

Director + Relative

Manager + Relative

Holds  $> 2\%$

Holds  $> 2\%$

Director is director

Manager is director



# Break the Definition



Non-Individual Information

Subjective

Body Corporate

Fellow  
Subsidiary

Investing  
Company\*

Venturer  
Company\*

Accustomed  
to Act

Holding

Subsidiary

Associate

*\*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*

## 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



Related party defined under S 2(76) of the CA, 2013



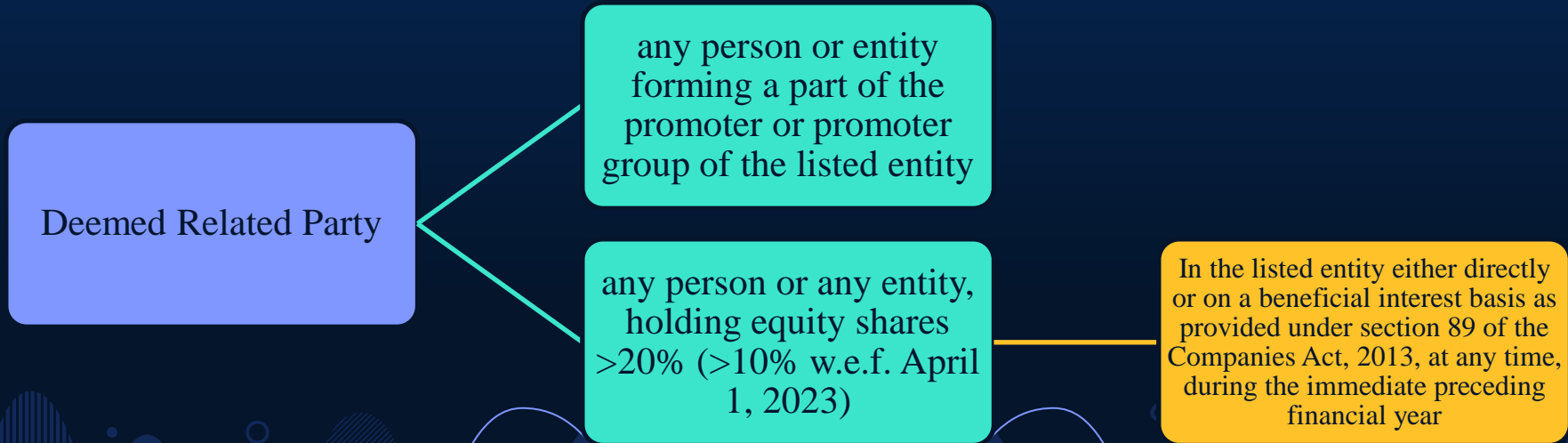
Related Party under applicable accounting standards (AS/IND-AS)



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



# 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



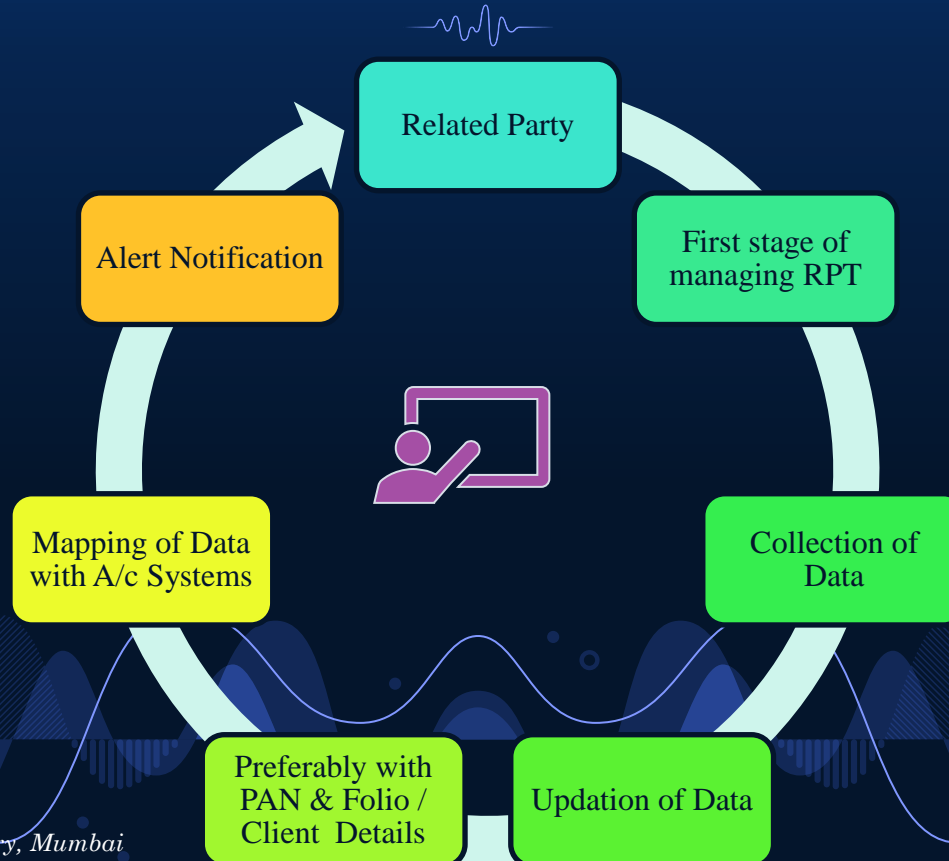
A person or a close member of that person's family is related to a reporting entity if that person

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

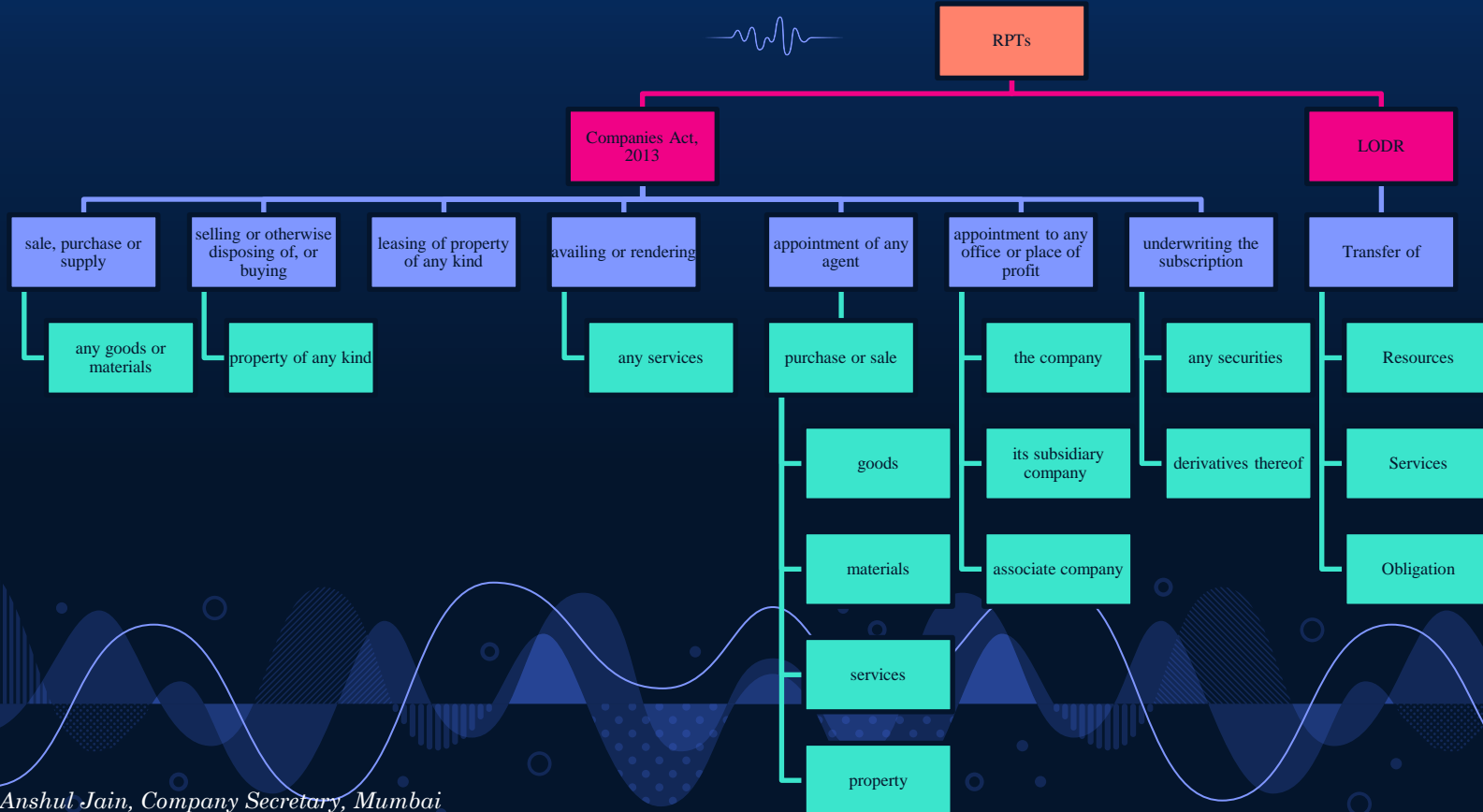
Related Party Transaction in the context of companies means transaction between the company and its related parties

'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

RPTs

Companies Act,  
2013

sale, purchase or  
supply

selling or otherwise  
disposing of, or  
buying

leasing of property  
of any kind

availing or  
rendering

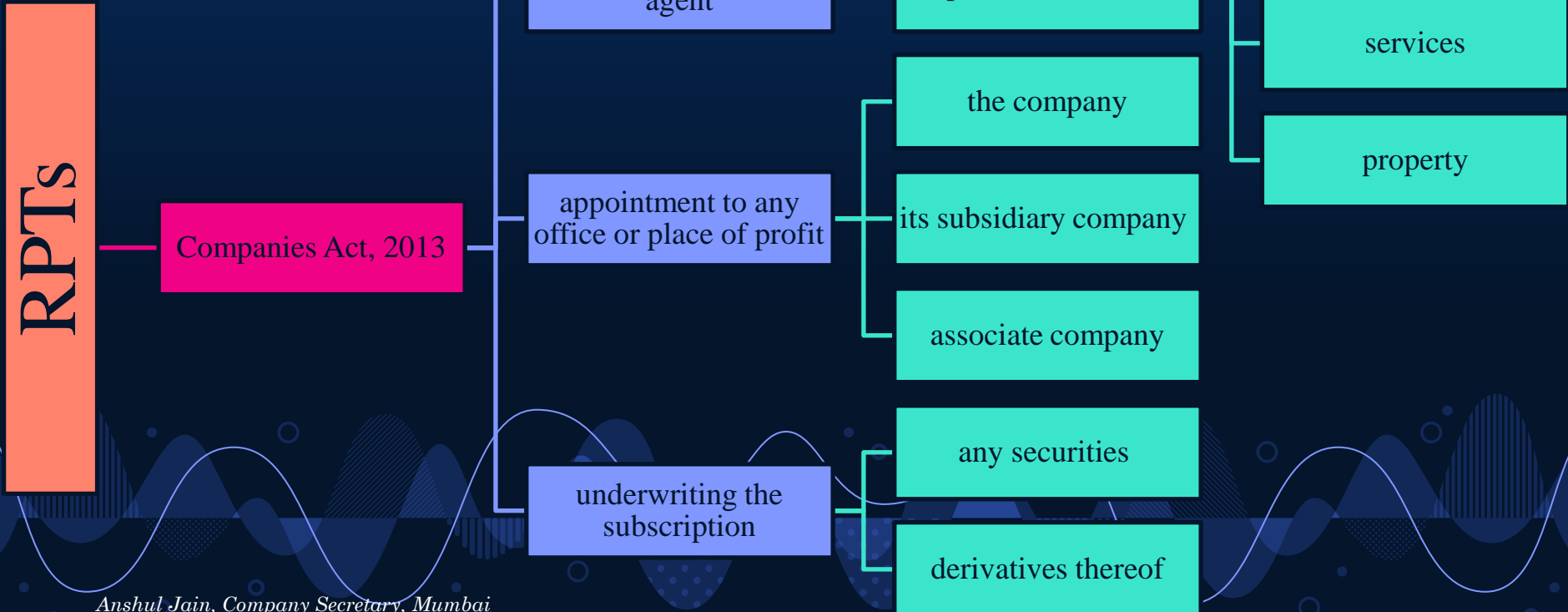
any goods or  
materials

property of any  
kind

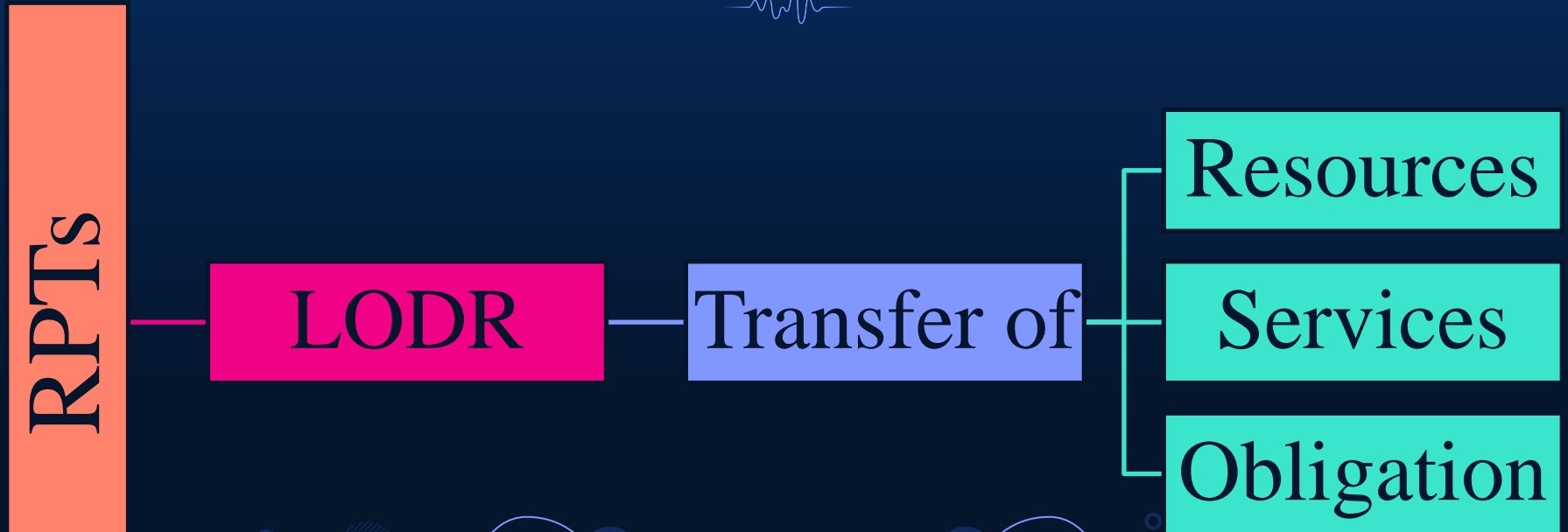
any services



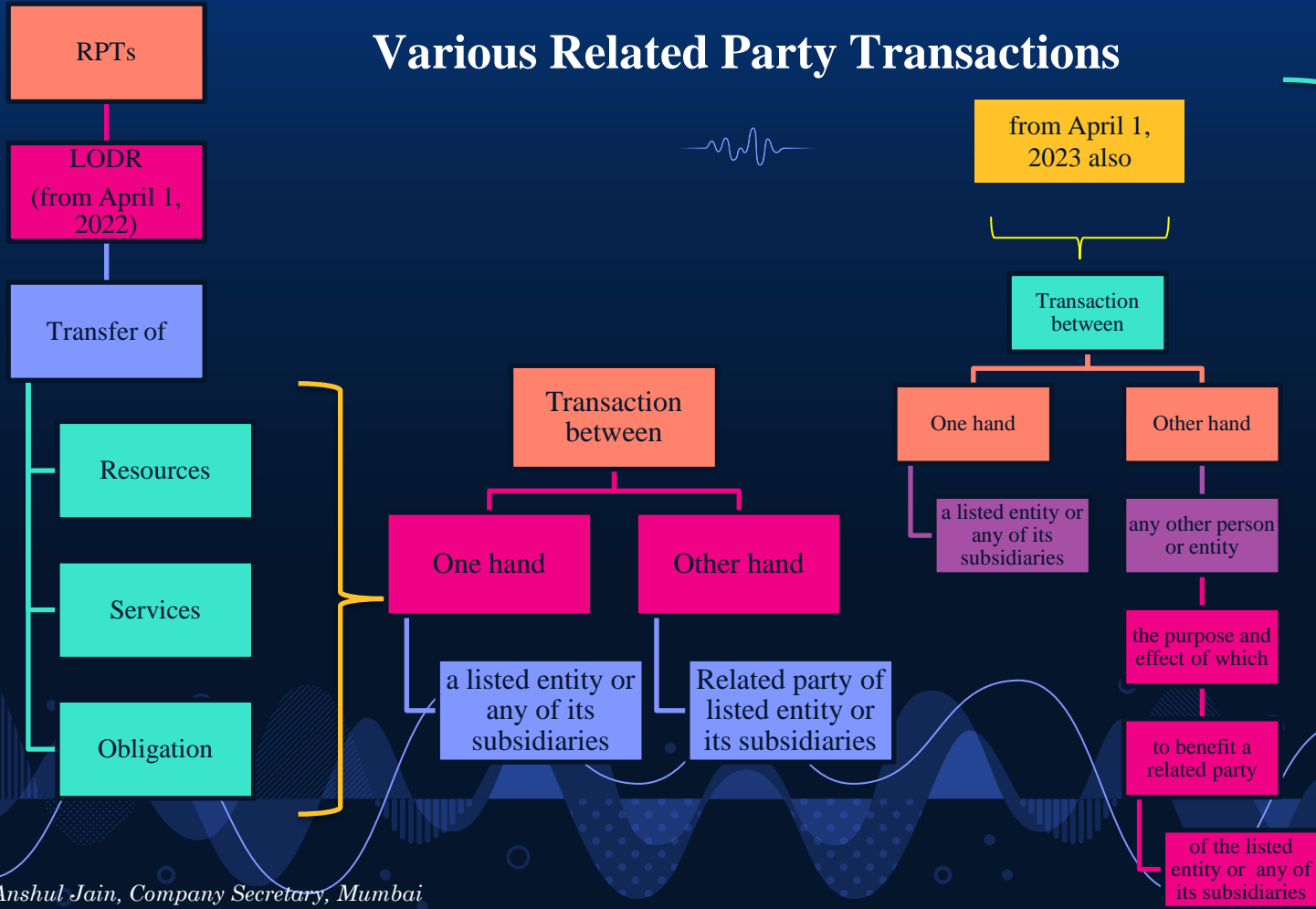
# Various Related Party Transactions



# Various Related Party Transactions

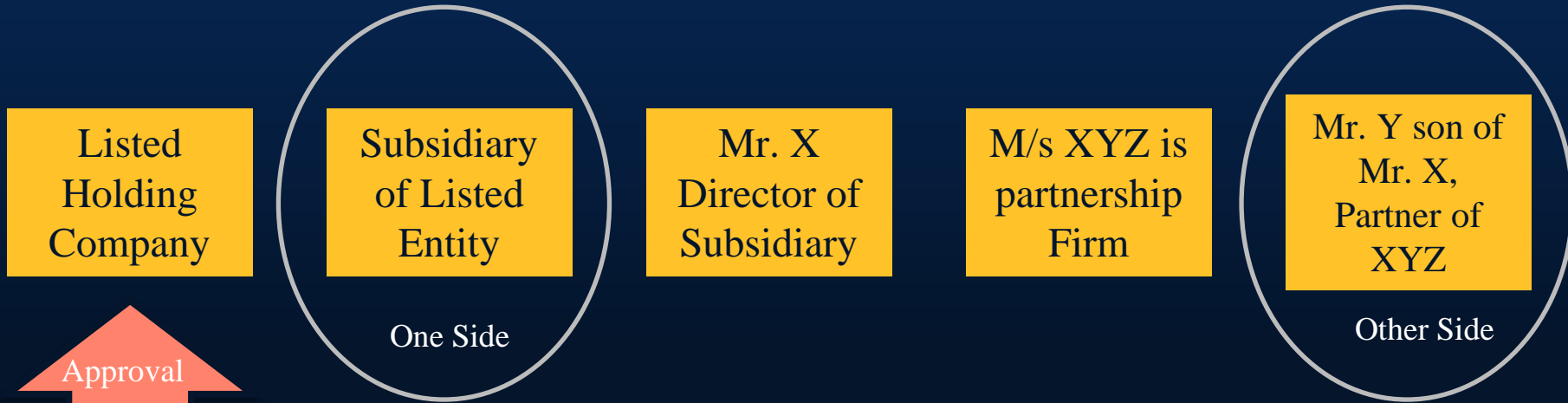


# Various Related Party Transactions



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

# Various Related Party Transactions



# Various Related Party Transactions



One Side

Other Side

Listed  
Holding  
Company

Another  
Company –  
(Non-RP)

Lease  
Agreement

Sub-leasing  
restricted  
except for  
subsidiaries

Beneficiaries  
are  
subsidiaries  
i.e. RPs

Approval

# 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

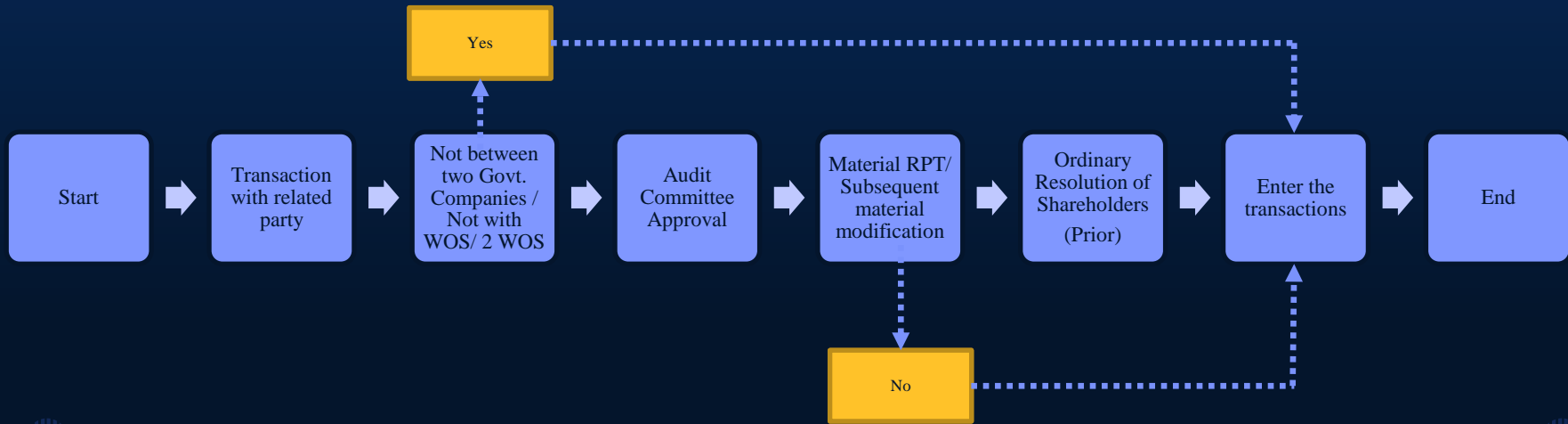
by Non-Banking Finance Companies

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

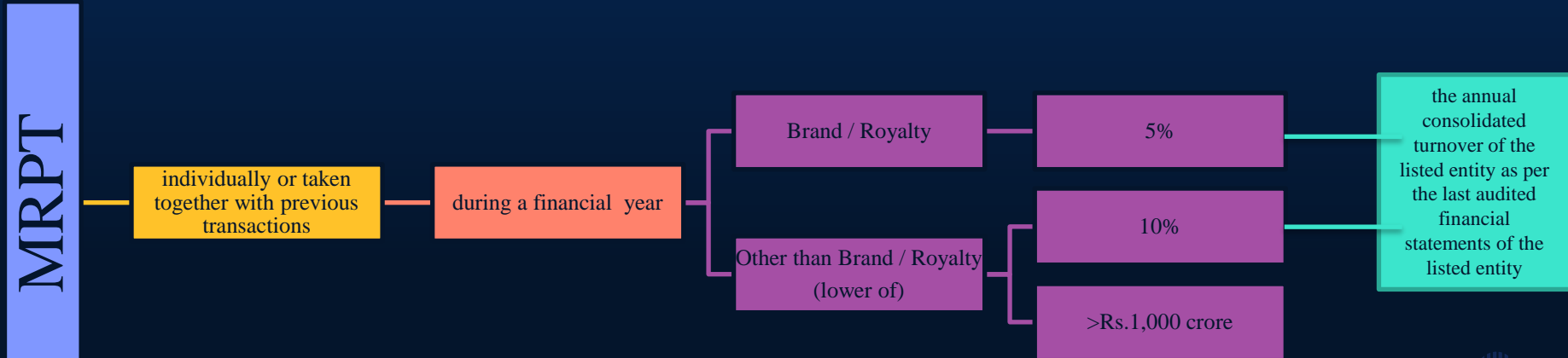


prior approval of shareholders of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and regulation 15(2) of LODR is applicable to such listed subsidiary

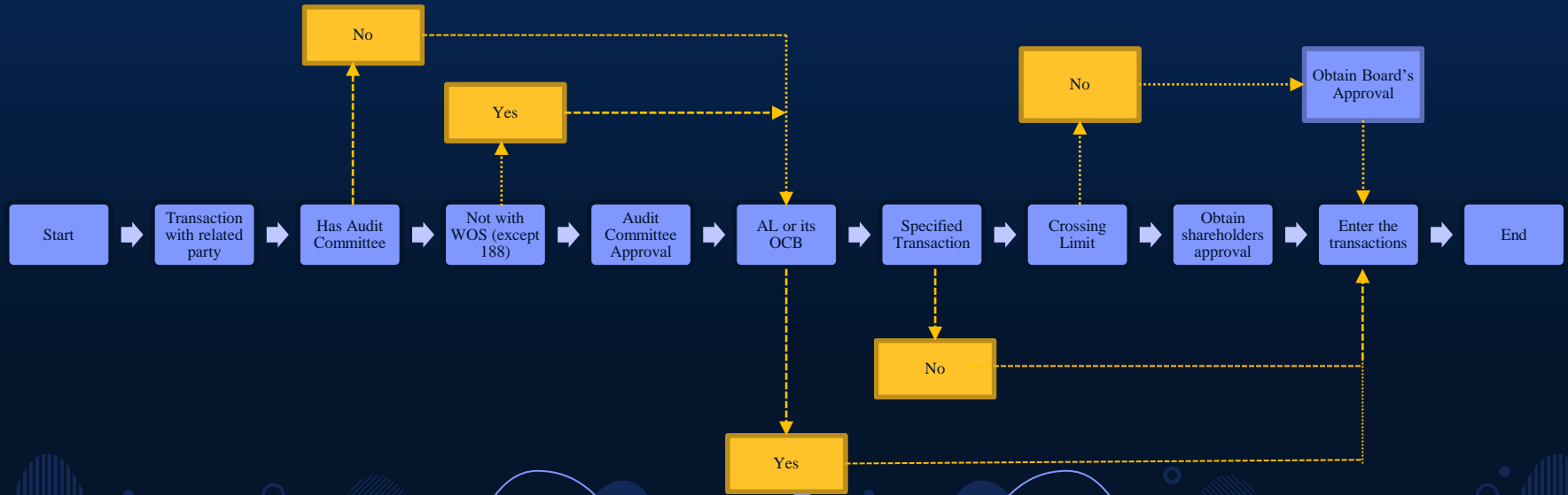
For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to above, the prior approval of the audit committee of the listed subsidiary shall suffice



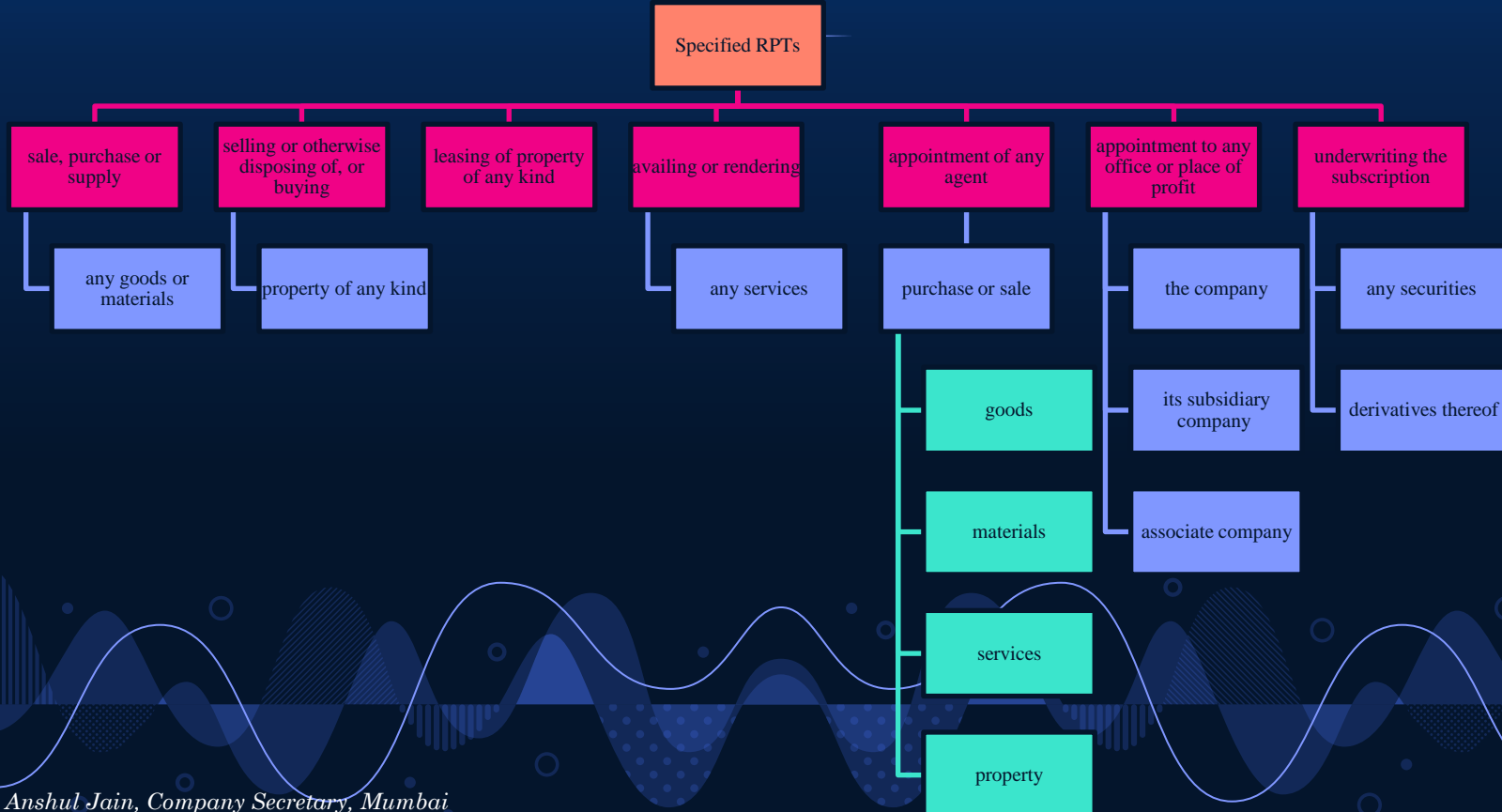
# Material Related Party Transactions Listed Companies



# 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

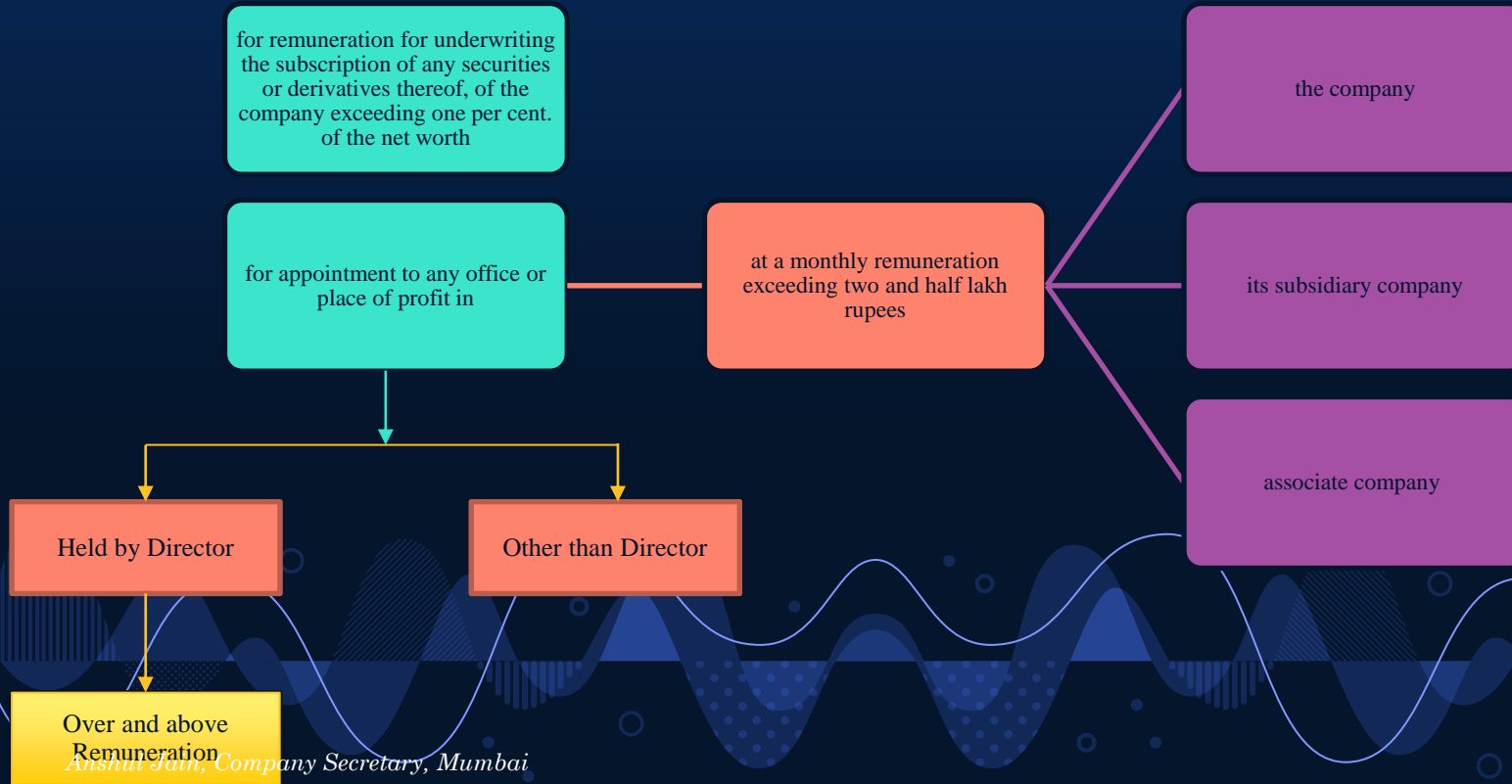
selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten per cent. or more of net worth of the company

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



Can RP Vote?

## Who can vote?

Listed Companies

Unlisted Companies

No RP can vote

>90% in nos.

Other Companies

Irrespective  
whether party to  
transaction or not

Relative of  
promoters or  
related parties

RP is not party to  
transaction

Yes, can vote

Yes, can vote

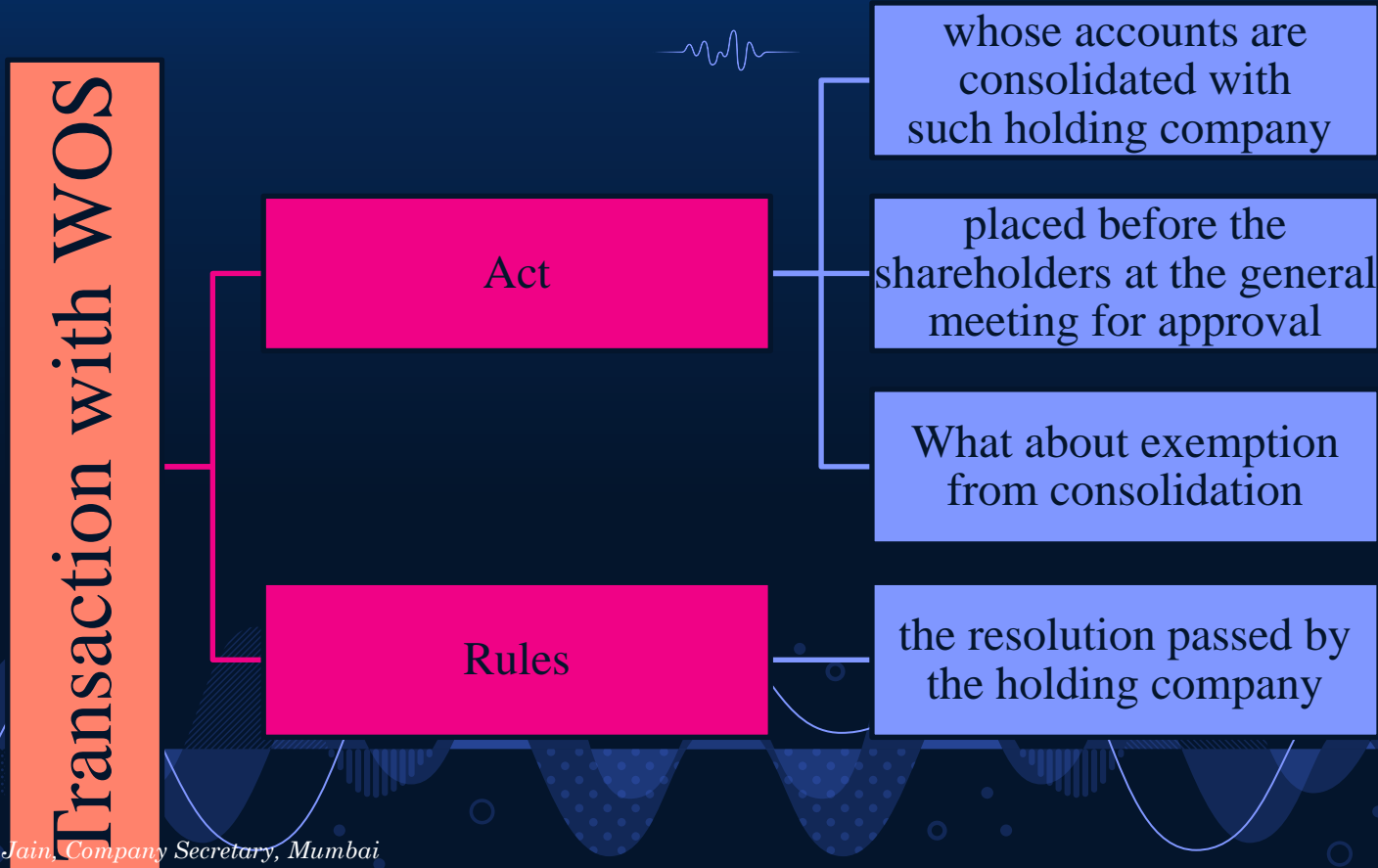
Can related parties  
vote for not  
approving the  
resolution or they  
can't participate in  
the voting process  
only?

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

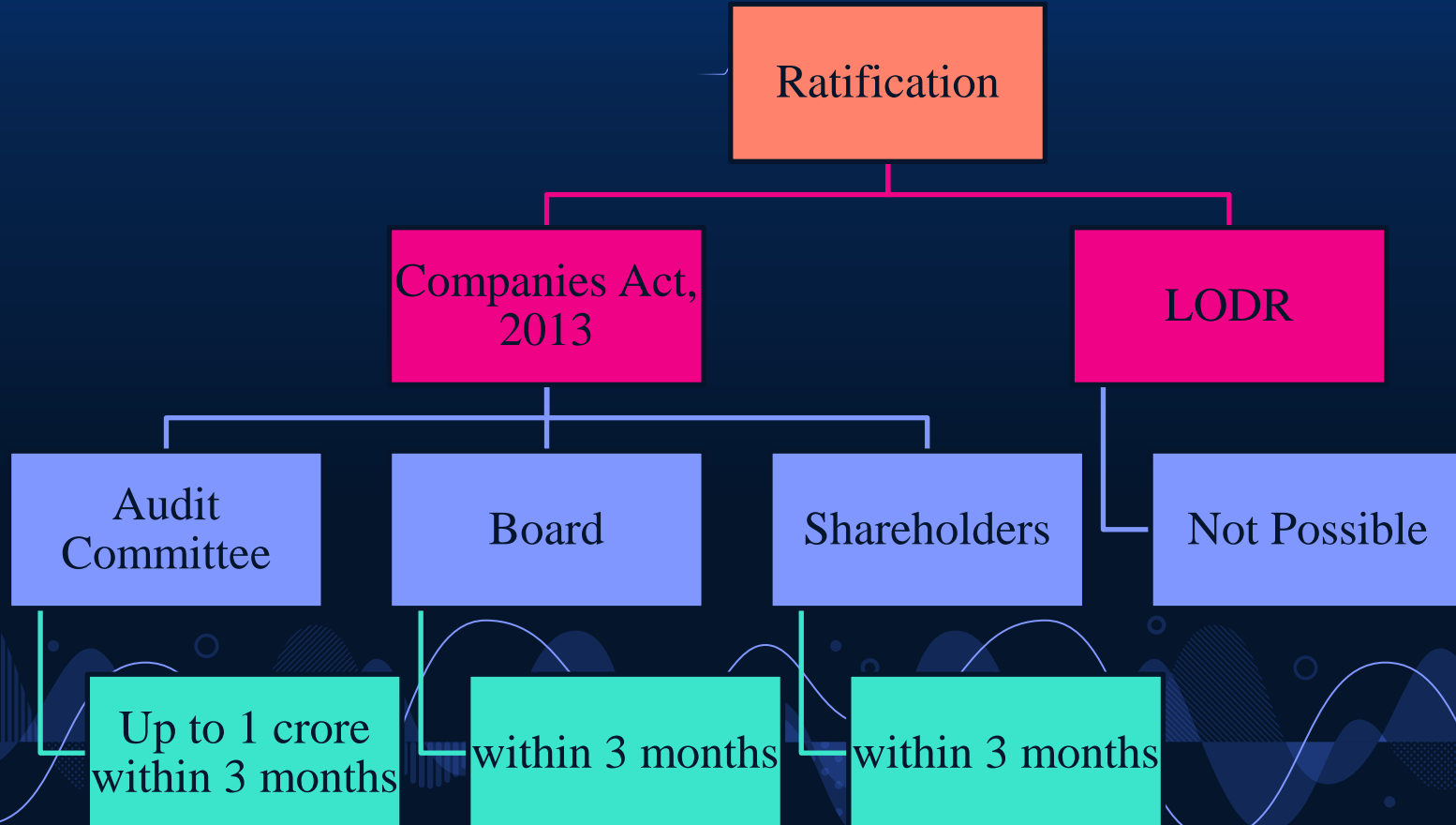
Interested director  
not to present in the  
meeting during the  
discussions

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



## SEBI Clarification on RPTs

For an RPT that has been approved by the audit committee and shareholders prior to April 1, 2022, there shall be no requirement to seek fresh approval from the shareholders.

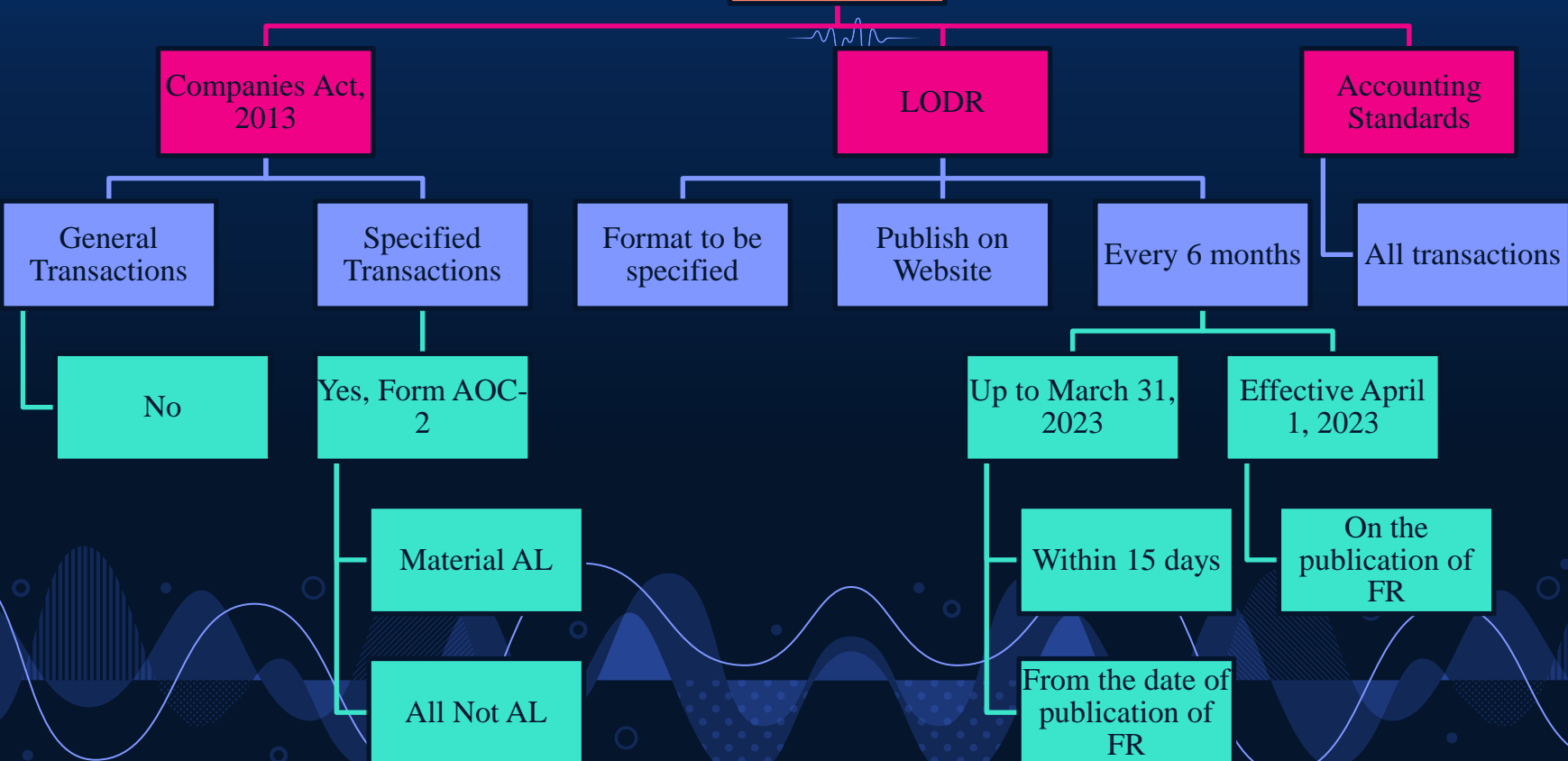
an RPT that has been approved by the audit committee prior to April 1, 2022 which continues beyond such date and becomes material as per the revised materiality threshold shall be placed before the shareholders in the first General Meeting held after April 1, 2022

an RPT for which the audit committee has granted omnibus approval, shall continue to be placed before the shareholders if it is material in terms of Regulation 23(1) of the LODR Regulations

# Disclosures

# Disclosures

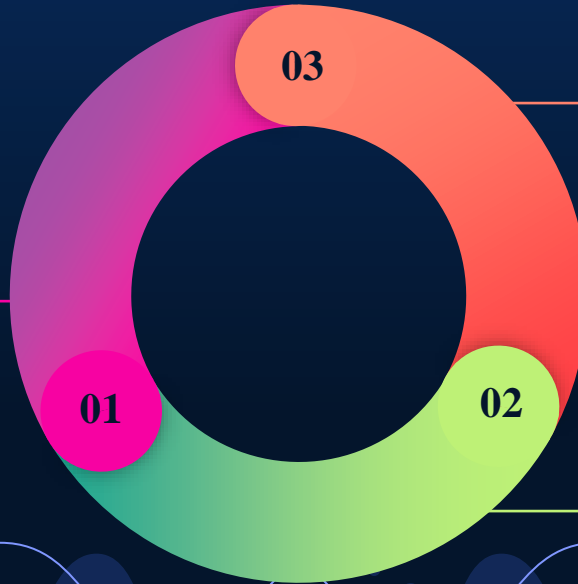
# Disclosures



# Role of Audit Committee

# Terms of Reference of Audit Committee

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

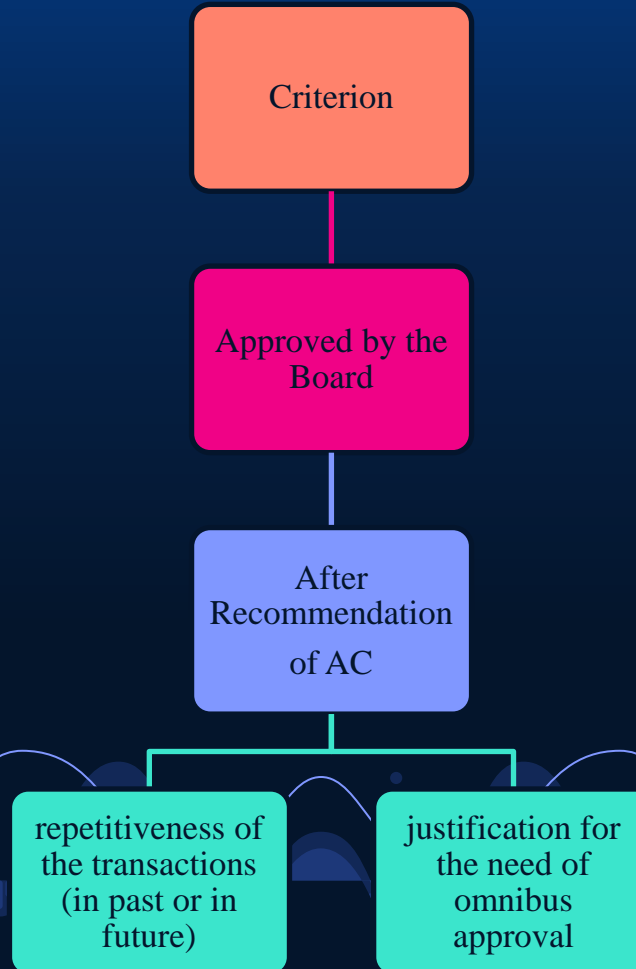


Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company

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

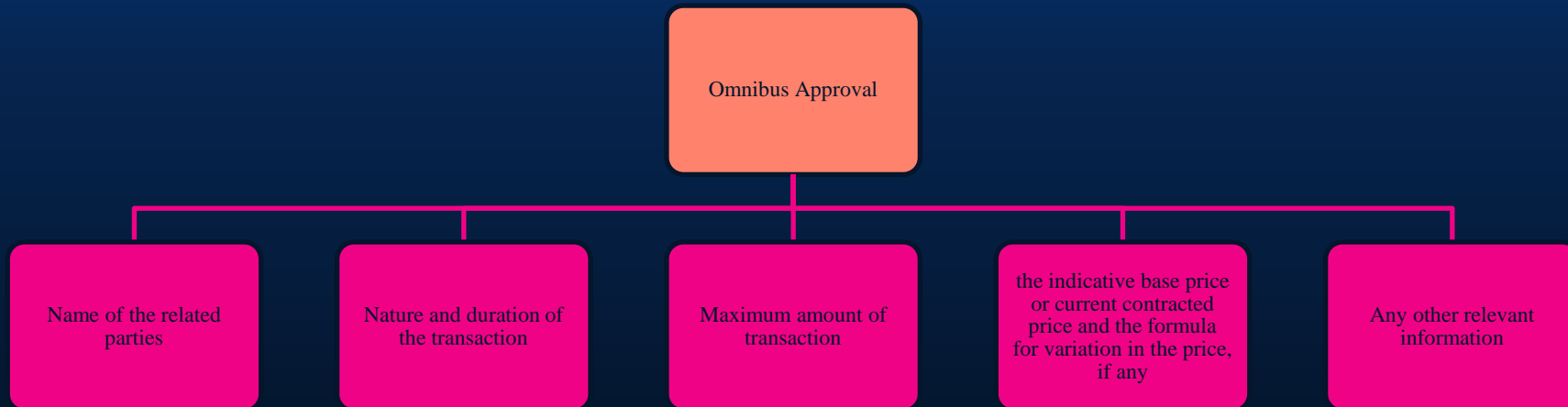
the maximum value per transaction which can be allowed

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

The shareholders' approval of omnibus RPTs approval in AGM shall be valid upto the date of the next AGM for a period of not exceeding 15 months

In case on omnibus approval for material RPTs obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year

# 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

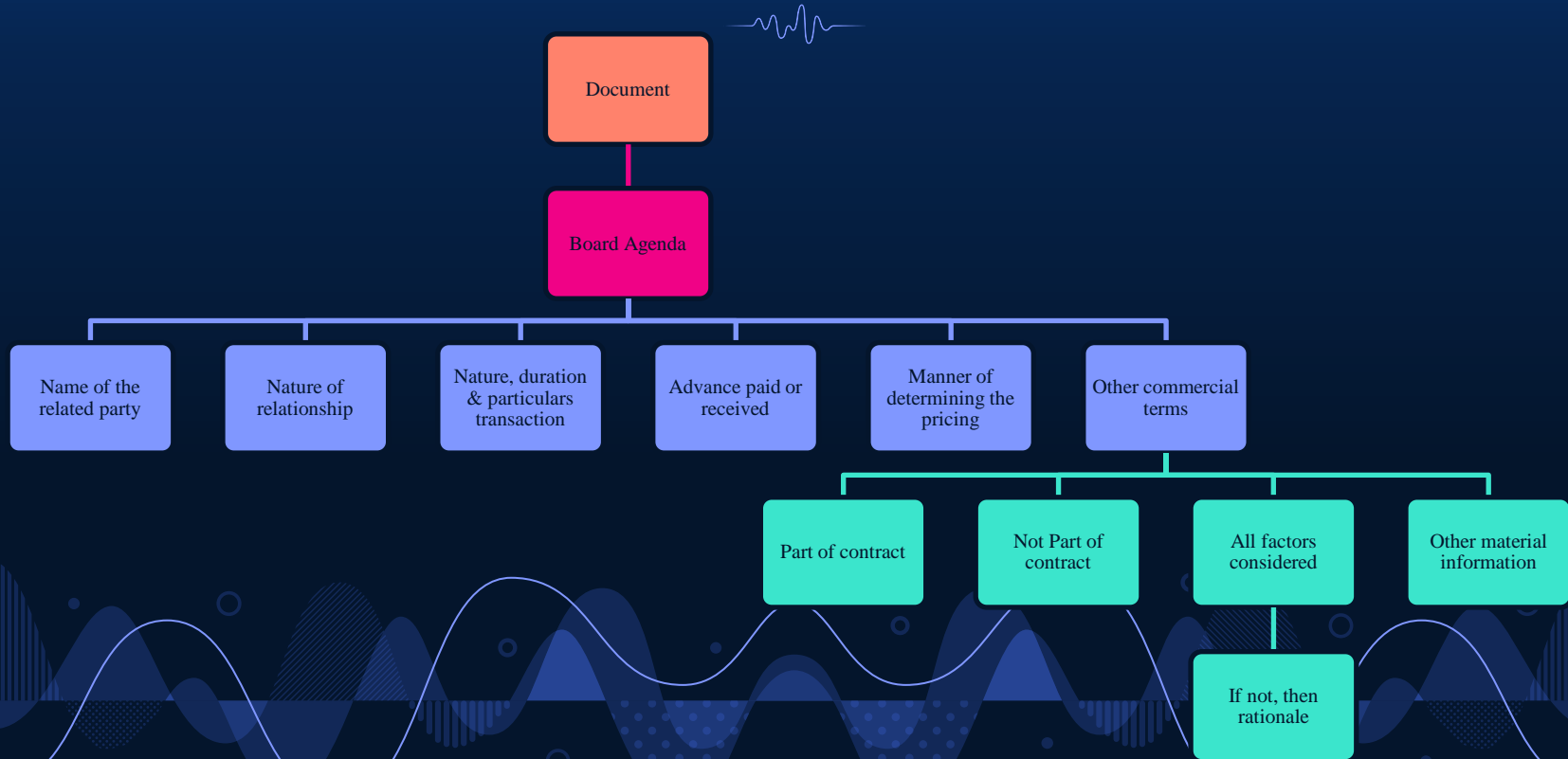
Duties of IDs

Para 9

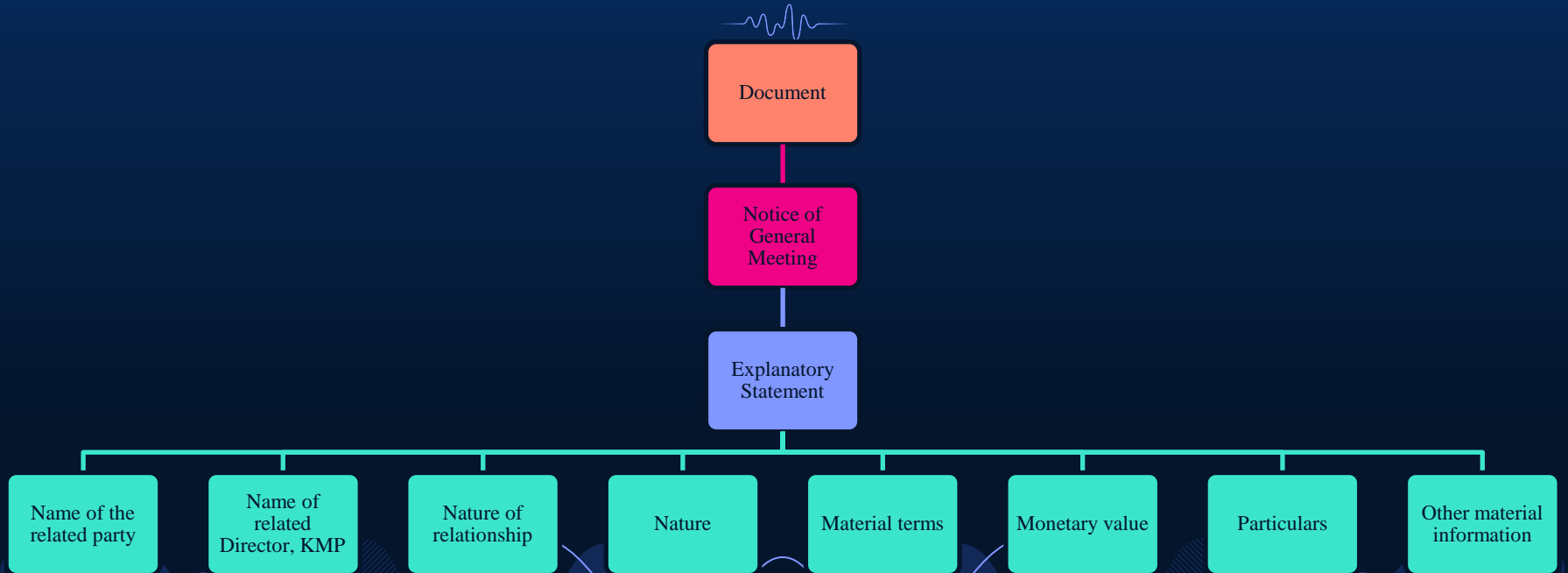
pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company

# 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

The explanatory statement contained in the notice sent to the shareholders for seeking approval for an RPT shall provide relevant information so as to enable the shareholders to take a view whether the terms and conditions of the proposed RPT are not unfavorable to the listed entity, compared to the terms and conditions, had similar transaction been entered into between two unrelated parties.

# Specific Provisions with regard to Agenda and Notice

A summary of the information provided by the management of the listed entity to the audit committee;

Justification for why the proposed transaction is in the interest of the listed entity;

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.)

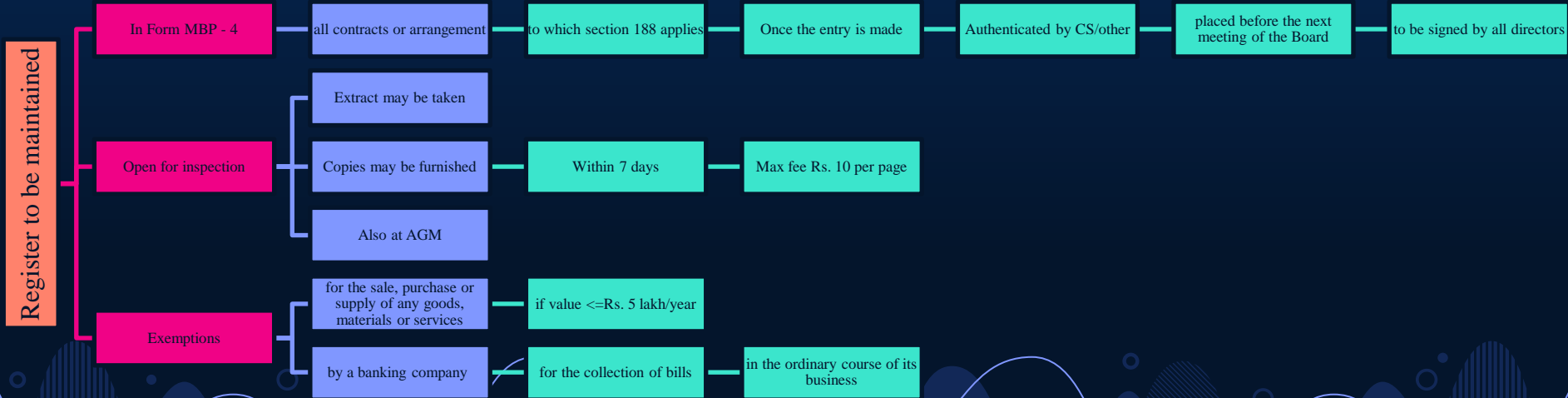
A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;

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.

# Register

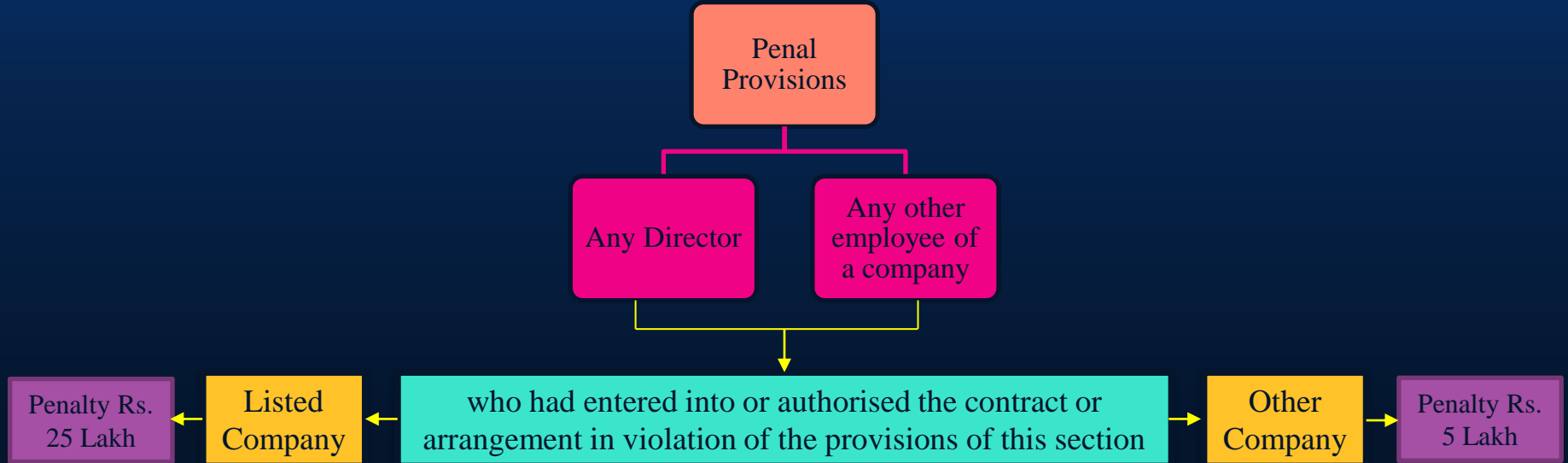
# Register





# 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....

