



Recent Amendments in SEBI LODR

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Disclaimer

- ▶ Views expressed are my own and not of the Company in which I am employed
- ▶ This presentation is to the best of my understanding of the subject which is ever evolving

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Amendments in RPT effective from April 1, 2023



Amendments in SEBI LODR

SEBI (LODR) (Amendment) Regulations, 2023 dated January 17, 2023

CG Norms for REIT & InvIT

- Omitted the applicability of CG norms for 'High Value Debt Listed entity' that is Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InvIT)
- Governance norms as specified under the SEBI (Real Estate Investment Trust) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014 shall be applicable.

Definition of Senior Management

- Now functional head (by whatever name called) are part of the senior management

Shareholders' approval for appointment of a Director

- Requirement of obtaining shareholders approval for appointment of a Director at next General Meeting or within 3 months, whichever is earlier, now extended for **re-appointment**.
- However, above criteria of 3 months is NA for public sector company.

Disclosure of material Subsidiary in CG Report

- Details of material subsidiaries, including the date and place of incorporation and the name and date of appointment of the statutory auditors of such subsidiaries
- to be disclosed in the CG Report in AR.

SEBI (LODR) (Seventh Amendment) Regulations, 2022

dated December 5, 2022

- **Insertion of Sub-Reg 1A in Reg 102** – power to relax strict enforcement of the Regulation
- To provide relaxation from strict enforcement of any of the requirements, **if an application is made by the Central Government in relation to its strategic disinvestment in a listed entity.**

SEBI (LODR) (Sixth Amendment) Regulations, 2022

dated November 14, 2022

- **Appointment / re-appointment and removal requirement for IDs**
- **requirement to appoint a monitoring agency in cases of preferential issue and QIP**
- **Clarificatory changes for submission of financial results by an NCS listed entity**
- **Changes proposed in relation with schemes of arrangement by NCS listed entities.**

SEBI (LODR) (Sixth Amendment) Regulations, 2022 dated November 14, 2022

Appointment / re-appointment and removal requirement for IDs

- Rationalized the requirements of SR for appointment, re-appointment or removal of IDs
In case, the requisite majority of votes are not obtained, the SR is passed, if
 - votes cast in favour of the resolution exceed the votes cast against the resolution and
 - votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution
- any ID who has been appointed using this dual voting will be able to be removed after applying the same voting test.

Requirement under Companies Act, 2013

- 1st time appointment of an ID requires ordinary resolution
- Re-appointment of ID u/s 149(10) requires special resolution
- Removal of ID during 2nd term requires special resolution u/s 169

SEBI (LODR) (Sixth Amendment) Regulations, 2022 dated November 14, 2022

Submission of Financial Results

- for last quarter, submit un-audited or audited, quarterly and year to date standalone FS within 60 days from the end of the quarter.
- in case of audit by CAG, submit annual un-audited FR along with limited review by CAG or auditor appointed by CAG or Practicing CA within 60 days from FY end and financial results, audited by CAG, within 90 days from FY end.
- timelines for submission of a statement on utilization of issued proceeds along with disclosure on material deviation changed from 45 days from quarter end to along with the financial results.
- If 52(4) information is NA, listed entities to disclose such other ratio/equivalent financial information, as may be required to be maintained under applicable laws, if any.
- option is now provided to publish only the consolidated FS, in case company is publishing both, standalone and consolidated FR along with details of 52(4).

Unclaimed amount on NCS

- Applicable to entities, who are not “company” under the Companies Act, 2013.
- transfer amount lying in the escrow account that remains unclaimed for 7 years to the Investor Protection and Education Fund.

SEBI (LODR) (Sixth Amendment) Regulations, 2022 dated November 14, 2022

Changes proposed in relation with schemes of arrangement by NCS listed entities

- Debt listed entities are also required to obtain no-objection letter from the SE before filing any Scheme of arrangement with NCLT.
- No requirement to file the scheme of arrangement with the SE, in case, the same is pursuant to the approval of resolution plan by NCLT u/s 31 of the IBC Code and is submitted to the Stock Exchange within 1 day of the approval of the resolution plan.
- Prescribed procedure to be followed by the Stock Exchanges and the SEBI once the Scheme of Arrangement is filed.
- An entity with only listed non-convertible debt securities or NCRPS, shall, are required to remit a fee at the rate of 0.1% of the amount of outstanding debt of the listed/ transferee/ resulting company (maximum cap of Rs. 5 lakh)

SEBI (LODR) (Fifth Amendment) Regulations, 2022 dated July 25, 2022

- Definition of designated securities has been modified to include “Zero Coupon Zero Principal Instruments”
- A Social Enterprise which is a Not for Profit Organization registered with a Social Stock Exchange may make an issue of Zero Coupon Zero Principal Instruments and list them on such Social Stock Exchange
- A new chapter on ‘Obligations of Social Enterprises’ has been added
- SEBI has provided detailed framework for Social Stock Exchange.

SEBI (LODR) (Fourth Amendment) Regulations, 2022 dated April 25, 2022

- The procedural requirement applicable for transfer of shares are made applicable for transmission of shares also.
- SEBI also prescribed the documents requirements in case of transmission of securities.

SEBI (LODR) (Third Amendment) Regulations, 2022 dated April 11, 2022

- The heading of "Asset Cover" was replaced with the words "Security Cover".
- Further, Security Cover was made applicable only to **secured** listed non-convertible securities



Consultation Paper - review of CG norms for a High Value Debt Listed Entity

Review of CG norms for High Value Debt Listed Entities

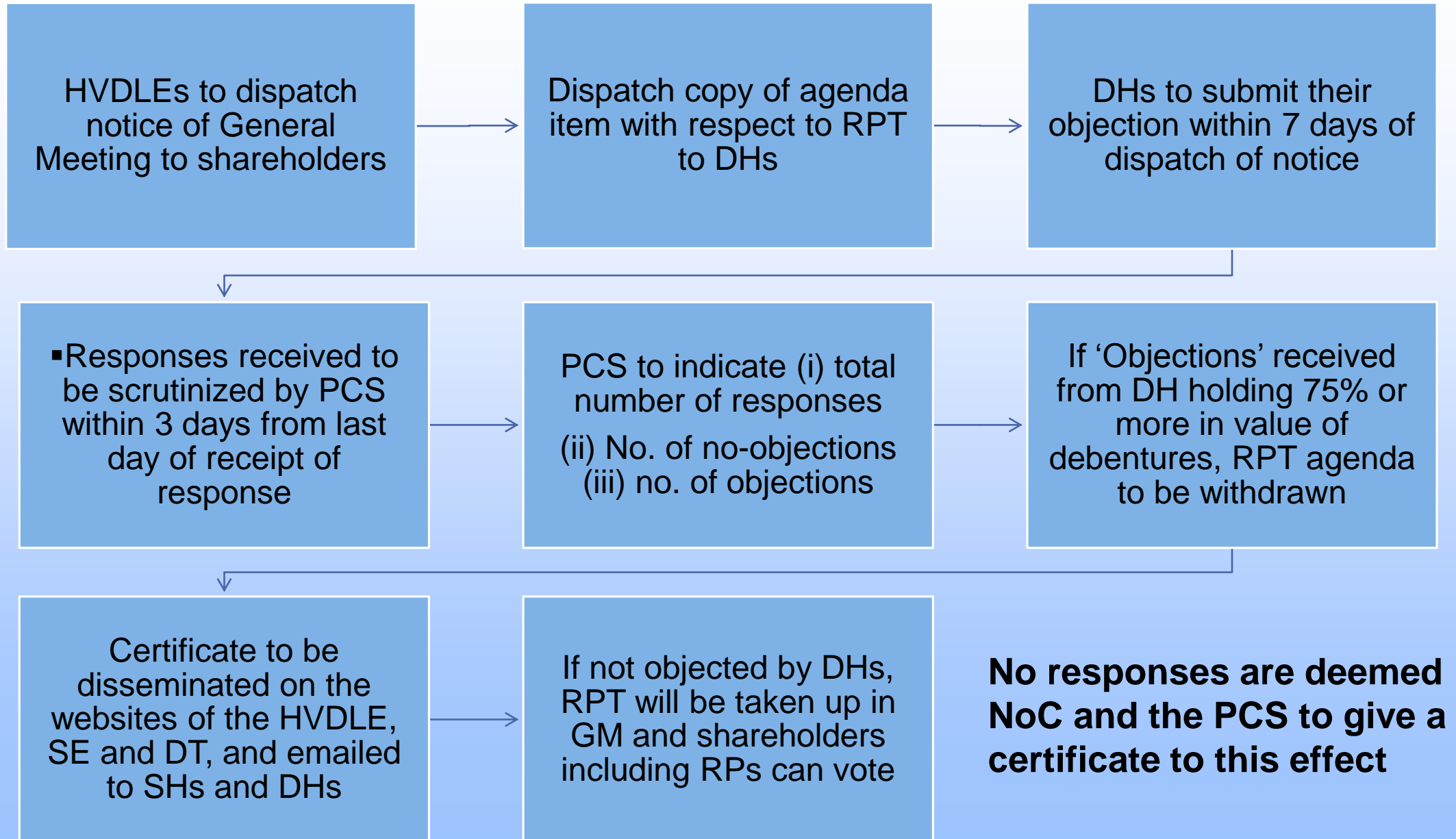
Rationale for Proposal

- CG norms - applicable to HVDLEs vide SEBI amendment in September 2021
- Compliance with CG norms - within 6 months from trigger date and on a '*comply or explain*' basis until March 31, 2023, and on a mandatory basis thereafter.
- Reg 23(4) - all material RPTs and subsequent material modifications requires prior approval of the shareholders' and no related party can vote to approve such resolutions whether the entity is a related party to the particular transaction or not
- difficulties in obtaining shareholders' approval for material RPTs as their shareholding is wholly / substantially held by one or few shareholders and negligible portion is held by non-related parties, resulting in "**impossibility of compliance**"
- Proposed a new procedure for HVDLEs to obtain shareholders' approval on material RPTs

Proposal is for whom?



- applicable for HVDLEs, having
 - only listed non-convertible debt securities and
 - 90% or more of the shareholders in number are related parties.

Proposed procedure to obtain shareholders approval



Review of CG norms for High Value Debt Listed Entities

- once the regulations become applicable to a HVDLE,
 - they shall continue to remain applicable till such time the outstanding value of listed non-convertible debt securities of such entity reduces and remains below the specified threshold
 - for a period of 3 consecutive Financial Years.



**Consultation Paper on review of
disclosure requirements for Material
Events or information**

Review of disclosure requirements for Material Events or information

Key Proposal

- Quantitative criteria for determination of an event / information
- Amendments in materiality policy
- reduction in timelines for disclosure of material events / disclosures
- Verification of market rumors
- Disclosure of communication from any regulatory, statutory, enforcement or judiciary
- Disclosure of cyber security incidents or breaches and loss of data / documents
- events proposed to be added / modified in Para A
- Events proposed to be added / modified in Para B – based on materiality of events

Why?

- Inadequate / inaccurate / misleading disclosures
- Delayed disclosures
- Need uniformity
- Frequent non-compliance
- Many complaints from investor
- Replies to rumor verification

Quantitative criteria for determination of an event / information

Current : Following criteria for determination of materiality of events/ information:

- 1) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
- 2) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;
- 3) an event/information be treated material if in the opinion of the BOD, it is material.

Proposed : in addition to above, following quantitative criteria

- the omission of an event or information, whose value or the expected impact in terms of value exceeds the lower of the following:
 - 2% of turnover, 2% of net worth, 5% of 3-year average profit/loss after tax, as per the last 3 audited standalone FS of the listed entity.

Amendments in materiality policy

Current :

- 1) Frame a policy for determination of materiality, based on criteria specified in reg 30(4),
- 2) Get approved by its board of directors and disclose on its website

Proposed :

in addition to above, **proviso to be added**

- 1) The Policy should not dilute any requirements specified under reg 30(4)
- 2) Frame in a manner to assist employees in identifying potential material event or information which shall be escalated and reported to the relevant KMP for determining materiality of the event or information and for making disclosure to SE(s).

Reduction in timelines for disclosure of material events / disclosures

Current :

- 1) Within 24 hours from the occurrence of event or information
- 2) If not made in 24 hours, provide explanation for delay
- 3) Within 30 meeting - conclusion of Board meeting in case of para 4 of para A of part A events

Proposed :

New timelines proposed as under:

- 1) **within 24 hours – If events or information not emanating from within the entity**
- 2) **Within 12 hours – if events or information emanates from within the entity**
- 3) **within 30 minutes** from the closure of the **meeting of board of directors** in which the decision pertaining to the event or information has been taken

Verification of market rumors

Current :

The listed entity may **on its own** initiative also, confirm or deny any reported event or information to SE(s).

Proposed :

in addition to above, **proviso to be added**

- **Top 250 listed entities** to **mandatorily** confirm or deny
- any event or information reported in mainstream media, whether in print or digital mode,
- which may have material effect on the listed entity.

Disclosure of communication from any regulatory, statutory, enforcement or judiciary

Current :

No such provision

Proposed :

- In case disclosure of any event or information is made by the listed entity
- pursuant to receipt of a communication from any regulatory, statutory, enforcement or judicial authority,
- the disclosure of such communication shall be made in the form and manner as specified by SEBI.

Disclosure of cyber security incidents or breaches and loss of data / documents

Current :

No such provision

- Cyber security concerns are monitored & reviewed by the RMC.

Proposed :

- Disclosures in relation to “cyber security incident” or “cyber security breaches” or loss of data / documents of the listed entity
- in the quarterly CG Report in the format specified by SEBI
 - Remedial Action
 - Root Cause analysis

Acquisition / Scheme of Arrangement

Current

- Acquisition / agree to acquire > 5% of shares or voting rights / any change of more than 2%

Proposed

In addition to above,

- If cost of acquisition > materiality threshold of 2% turnover , net worth or 5% three years avg net profit after tax
- To include acquisition in existing + newly incorporate company

Sale / Disposal

Current

- Sale / disposal of unit / division / subsidiary

Proposed

In addition to above,

- Sale / disposal of whole or substantially whole of the undertaking or sale of stake in associate company
- ‘Sale / disposal of subsidiary’ and ‘sale of stake in associate co. to include
 - Ceasing control in subsidiary
 - Sale / agreeing to sale more than 2% of shares / voting rights in subs or associate company

Revision in Ratings

Current

- New ratings / revision in ratings

Proposed

In addition to above,

- Disclosure of rating or revision in rating to be made even if
- it was not requested by the listed entity or the request was withdrawn by the listed entity

Fraud / Default

Current

Fraud/defaults by promoter or KMP or by Company or arrest of KMP or promoter

Proposed

In addition to above,

Fraud / defaults by Director, senior management, subsidiary or arrest of senior management or director

Changes in Directors / KMP

Current

- Change in directors, KMP (MD, CEO, CFO, CS) Auditor and Compliance Officer.

Proposed

In addition to above, Senior Management

Analyst / institutional investor meet

Current

- Schedule of analysts or institutional investors meet and presentations made to analysts or institutional investors.

Proposed

Above disclosure,

- at least 2 working days in advance (excluding the date of the intimation and the date of the meet)

Voluntary revision of FS

Current

- No such disclosure required

Proposed

- Voluntary revision of financial statements or the report of the BOD

Managing Director

Current

- No such disclosure required

Proposed

- MD or CEO is indisposed or unavailable to fulfil requirements of his/her role in a regular and consistent manner for more than 1 month.

Resignation

Current

- No such disclosure required

Proposed

- Resignation of KMP or a senior management or a director other than ID,
- letter of resignation along with detailed reasons for the resignation
- within 7 days from the date of resignation.

Announcement to mass communication media

Current

- No such provision

Proposed

- Announcement or communication to any form of mass communication media
 - by directors or promoters or KMP or senior management of a listed entity,
 - which is not already made available in the public domain by the listed entity

Action taken or initiated

Current

- No such provision.

▪ Proposed

- Action(s) taken or initiated by any regulatory, statutory, enforcement or judicial authority against
- Company, directors or KMP or senior management or promoter or subsidiary,
- in relation to the listed entity, towards
 - suspension; imposition of fine/penalty; settlement of proceedings; debarment; disqualification; closure of operations; sanctions imposed; warning or caution; search or seizure; inspection; investigation into affairs of the entity; and re-opening of accounts

Material Loan Agreement

Current

- Loan Agreement in which listed entity is borrower, which are binding and not in the normal course of business

Proposed

- Loan Agreement, which are binding and not in the normal course of business
- included both, where listed entity is borrower or lender

Guarantee / Indemnity

Current

- Giving of guarantees or indemnity or becoming a surety for any third party.

Proposed:

- Above **by whatever name called**

Alteration in general character or nature of business

Current

- Disclose if change is brought by arrangement
 - strategic, technical, manufacturing, or marketing tie-up,
 - adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).

Proposed

Any of the following events:

- arrangements for strategic, technical, manufacturing, or marketing tie-up; or
- adoption of new line(s) of business; or
- closure of operation of any unit/division/**subsidiary** (entirety or piecemeal)

Litigation / Dispute / regulatory action with impact

Current

- Disclose if Company, its KMP, promoter or ultimate person in control, becomes party to
- litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or
- upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact.

Proposed

- Included listed entity's subsidiary and director in above

Fraud / defaults

Current

- Fraud / defaults by directors (other than KMP) or employees

Proposed:

- Fraud / defaults by employees


Delay or default in payment

Current

- No such disclosure

Proposed:

- Delay or default in payment of fines, penalties, dues, etc. to any regulatory, statutory, enforcement or judicial authority.



**Amendments in RPT
effective from April 1, 2023**

Definition of RP – Reg 2(1)(zb) of SEBI LODR

Related Party
under LODR

=

Related Party
under CA

+

Related Party
under
Applicable AS

+

Deemed
Related
Parties*

Deemed Related Parties means: Any person or entity:

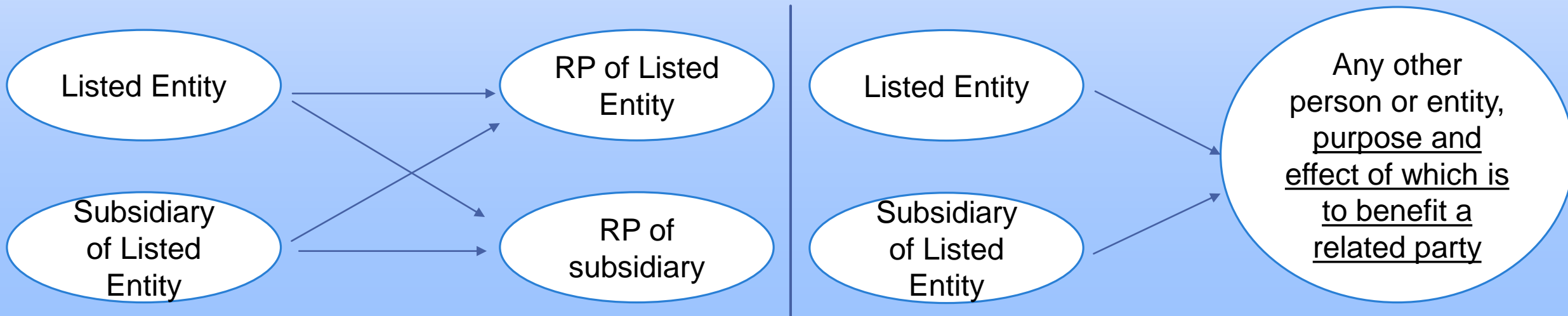
- forming a **part of the promoter or promoter group** of the listed entity or
- holding equity shares of:
 - 20% or more or
 - 10% or more **w.e.f. April 1, 2023**in the listed entity either **directly or on a beneficial interest basis** as provided u/s 89 of CA, at any time, during the preceding financial year. (does not include units issued by mutual fund)

Definition of RPT – 2(1)(zc) of SEBI LODR

Related Party Transaction means

- a transaction involving a transfer of resources, services or obligations between:
 - a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand or
 - a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, **with effect from April 1, 2023**
- 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

Illustration



Audit Committee approval under SEBI LODR

All RPT's and subsequent material modifications requires prior approval of the Audit Committee of the listed entity

Members of the Audit Committee who are Independent Directors shall only approve RPTs

A RPT 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 10% of the annual consolidated turnover, as per the last audited financial statements of the listed entity.

Illustration



Approval of Audit Committee of A Ltd is required if value of transaction is exceeding 10% of annual consolidated turnover of A Ltd

AC approval under SEBI LODR continues....

W.e.f April 1, 2023, a RPT 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 10% of the annual standalone turnover, as per the last audited financial statements of the subsidiary.

Audit Committee can grant omnibus approval based on the criteria specified by it

Illustration



Approval of Audit Committee of A Ltd is required if value of transaction is exceeding 10% of annual standalone turnover of B Ltd



THANK YOU