

GN-5

**GUIDANCE NOTE
ON
RELATED PARTY TRANSACTIONS
(Revised Edition)**



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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PREFACE TO REVISED EDITION

Related Party Transactions (RPTs) are a normal feature of present day commercial activities. Apart from unrelated parties, companies do their business activities through various subsidiaries, associates and joint venture companies which are treated as related parties. Transactions between related parties may not be made on the same terms as between unrelated parties. By virtue of existing relationship, related party may get favourable treatment in terms of pricing or other conditions which may affect the financial position or profitability of the company concerned.

RPTs need not always be disadvantageous to the parties concerned. The concern arises only when there is an abuse arising out of RPTs on account of conflict of interest and non-arm's length dealings. RPTs raise important concerns and hence transparency in such transactions is essential. The law contains detailed compliance and disclosure provisions with respect to RPTs. The restrictions imposed by the Companies Act, 2013 ("the Act") as well as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") are reasonable to avoid a conflict of interest between the company and the related parties.

Recently, the Listing Regulations stipulate a requirement that only independent directors who are members of the Audit Committee shall approve the RPTs, which indicates the prominence given to independent directors in the legal fabric of RPTs and how important is the subject.

In order to appreciate the nuances of RPTs, it is important to understand the updated provisions of law and the related aspects which may need explanation. Hence, this revised edition of the Guidance Note on Related Party Transactions is formulated to explain the various provisions, procedures, practices and compliances associated with the subject matter of RPTs.

I place on record my sincere thanks to all members of the Secretarial Standards Committee (SSC) as well as the Expert Group on Secretarial Standards, for their valuable contribution made during formulation of this revised edition of the Guidance Note on RPTs, under the leadership of CS B. Narasimhan and CS Satwinder Singh. My special thanks to CS S. Sudhakar, Vice-Chairman, Expert Group on Secretarial Standards for leading the task of formulating this revised edition.

I commend the dedicated efforts put in by CS Rakesh Kumar, Assistant Director under the guidance of CS Saurabh Jain, Joint Director in bringing out this revised edition of Guidance Note on RPTs under the stewardship of CS Asish Mohan, Secretary, ICSI.

I am sure that this revised edition of Guidance Note on RPTs will be immensely useful for all readers interested in the subject. Improvement is a continuous process and equally applicable to this Guidance Note. I would personally be grateful to the readers to offer their suggestions/ comments for further advancement of this Guidance Note.

Place: NOIDA

Date: 12th January, 2023

CS Devendra V. Deshpande

President

The Institute of Company Secretaries of India

PREFACE

In the interest of good corporate governance, companies should maintain an arm's length relationship in all transactions, including Related Party Transactions (RPTs) which are generally seen as an area of conflict of interest and therefore it requires extra caution to avoid abuse of such transactions.

Transactions with related parties need not always be disadvantageous. The concern arises only when there is abuse of a related party transaction on account of conflict of interest and non-arm's length dealings which are beneficial to a related party but detrimental to the other stakeholders. Therefore, transparency in such transactions is essential in the interest of stakeholders and good corporate governance.

To develop the legal fabric in respect of RPTs, the necessary provisions are enshrined under the Companies Act, 2013 and Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

In order to understand and appreciate the nuances of RPTs, it is necessary to understand the various provisions of law and the related aspects which needs explanation. Hence, this Guidance Note on Related Party Transactions is formulated by the Secretarial Standards Board of ICSI and aims to explain the procedures, practices and compliances associated with RPTs.

I place on record my sincere thanks to CS Pavan Kumar Vijay, former Chairman-Secretarial Standards Board (SSB) and all Members of the SSB for their tireless efforts and contribution made during the preparation and finalisation of this Guidance Note on RPTs.

I also wish to place on record my appreciation for the efforts put in by CS Rakesh Kumar, Assistant Director under the leadership of CS Banu Dandona, Joint Director, Directorate of Corporate Laws & Governance and under the overall guidance of CS Ashok Kumar Dixit, Officiating Secretary of the ICSI, in bringing out this Guidance Note.

I urge upon the Corporates as well as all my professional colleagues to promote the compliance of applicable laws on RPTs in the light of this Guidance Note issued by the ICSI, so as to promulgate good Corporate Governance.

Improvement is a continuous process and therefore, suggestions of the readers to improve this Guidance Note are most welcome.

Place: New Delhi
Date: 20th March, 2019

CS Ranjeet Pandey
President, ICSI

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GUIDANCE NOTE ON RELATED PARTY TRANSACTIONS

INTRODUCTION

A company, in the course of conduct of its business, enters into various transactions with different parties, including its related parties. Companies also carry on their business activities through subsidiary and associate companies. Accordingly, related party relationships are a normal feature of business.

Due to this relationship, related parties may enter into transactions that unrelated parties may not. For example, an entity that sells goods to its related party at cost might not do so on similar terms to another customer. Also, transactions between related parties may not be made on the same terms as between unrelated parties. While entering into a contract or arrangement with a related party, such related party may get favourable treatment in terms of pricing or on some other conditions (such as credit period) which may affect the financial position or profit and loss of the company concerned. Hence, the law contains detailed compliance and disclosure provisions with respect to related party transactions (RPTs). The restrictions imposed by the Act as also by the SEBI Listing Regulations are perfectly reasonable given the fact that such transactions give rise to a conflict of interest between the company and the related parties.

RPTs need not always be disadvantageous to the parties concerned. The concern arises only when there is an abuse arising out of an RPT on account of conflict of interest and non-arm's length dealings with a related party. The concern also arises when there is siphoning of funds and diversion of resources of a company. RPTs raise important concerns and hence transparency in such transactions is essential. Therefore, the law requires certain specific compliances with respect to RPTs.

Every transaction with a related party may not be a 'related party transaction' although every 'related party transaction' is necessarily a transaction with a related party.

It is important that the directors exercise due diligence before approving any RPT and satisfy themselves that the proposed transaction is not detrimental to the interest of the company or its stakeholders. Here, it is pertinent to mention the following duties of directors which are enlisted under Section 166 of the Companies Act, 2013 ("the Act"):

- a director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company, its employees, the shareholders, the community and for the protection of environment.
- a director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- a director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- a director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

The directors have a fiduciary duty towards the companies in which they are associated as directors and they should always act in a manner which is in the best interest of the company. They must avoid situations which lead to a conflict of interest between the company and the interests of themselves and others who may be associated with the company and interested in transactions entered into by the company. It is for this reason that provisions have been introduced in the Act through Section 177 and 188 which impose restrictions as also emphasis on the need for approval of the Audit Committee/the Board and where required, the approval of members. The subject of RPTs also gains importance from the fact that Directors' Responsibility Statement under Section 134 of the Act requires affirmation to the effect that applicable accounting standards have been followed in preparation of financial statements so as to give true and fair view of the state of affairs.

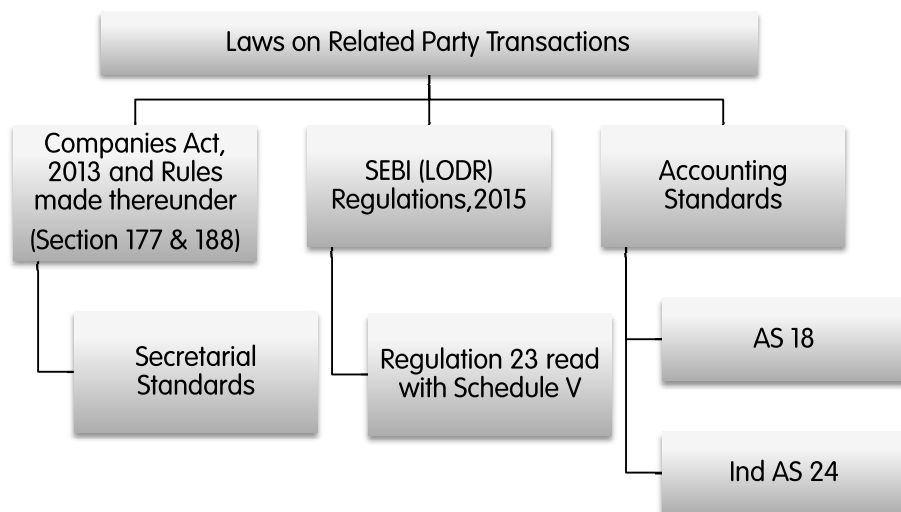
With an intention to review and strengthen the regulatory norms pertaining to RPTs undertaken by listed entities in India, SEBI constituted a Working Group in November 2019 (hereinafter referred as the Working Group) comprising members from the Primary Market Advisory Committee (PMAC) of SEBI, persons from the Industry, Intermediaries, Proxy Advisors, Stock Exchanges, Lawyers and Professional bodies etc. Based on the report of the Working Group and public comments received thereon, the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021 have been notified effective from April 01, 2022, except for a few provisions which have prospective application from April 01, 2023. These amendments have substantially changed the legal framework of RPTs for listed companies.

The SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment)

Regulations, 2021 were also introduced effective from January 01, 2022, which stipulate, *inter alia*, that only independent directors who are members of the Audit Committee shall approve the RPTs. It follows from the above that independent directors who are not part of the Audit Committee will have no role to play in the approval of RPTs in the case of listed entities.

In order to appreciate the nuances of RPTs, it is necessary to understand the scope of the provisions of law, meaning of certain terms such as goods, property, ordinary course of business, arm's length basis, etc. The law relating to RPTs can be summarised in the following chart.

However, there are several important aspects which need an explanation and hence this Guidance Note which is contemporary and incorporates the amendments referred to above.



RPTs may be with respect to purchase or sale of goods or availing or rendering of services or may be with respect to financial transactions such as granting of loan or providing of security or subscribing to securities in the capital of the related party or may be with respect to appointment of a related party to any office or place of profit whether as a director or otherwise or for underwriting the subscription of shares, etc. It is therefore necessary to understand the legal provisions as well as the procedural compliances.

However, corporate actions by the companies which are uniformly applicable to all the shareholders and the actions which are specifically covered under the various provisions of the Act (other than Section 188 of the Act) requiring approval of the Board or Shareholders, as the case may be, may not be treated as RPTs and the

approval granted by the Board/Shareholders following the specific provisions/procedures in compliance to those sections may be sufficient compliance i.e. payment of dividend, issue of shares on preferential basis, bonus shares, rights issue, merger and amalgamation, etc.

SCOPE

This Guidance Note explains the provisions, procedures and compliances for transactions with related parties after considering the following:

1. Companies Act, 2013 read with the Rules thereunder;
2. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015;
3. Companies (Auditor's Report) Order, 2020;
4. Indian Accounting Standard (Ind AS) 24 – Related party disclosures notified under the Companies (Indian Accounting Standards) Rules, 2015;
5. Accounting Standard (AS) 18 – Related party disclosures notified under the Companies (Accounting Standards) Rules, 2021; and
6. Secretarial Standards.

DEFINITIONS

The following terms are used in this Guidance Note with the meanings specified:

“Act” means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

“Committee” means a Committee of Directors mandatorily required to be constituted by the Board under the Act.

“Contract”¹ means an agreement enforceable by law.

“Listing Regulations” means the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

“Property”² means assets of any kind, whether moveable or immoveable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property.

1. As per Clause 2(h) of the Indian Contract Act, 1872.

2. As per Clause 2(26) of the Prohibition of Benami Property Transactions Act, 1988.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act, the Listing Regulations and the Secretarial Standards, as may be applicable.

GUIDANCE NOTE

1. Meaning of terms used in the context of transactions with Related Parties

There are a few terms which are used in the Act in the context of RPTs but these terms are not defined in the Act. The following refer to the context in which these terms have been used or defined in other laws or decided cases.

1.1 'Arrangement'

The definition of term 'agreement' under the Competition Act, 2002 includes any arrangement. Such arrangement may be formal or informal, oral or written and may also be a concerted practice. The term arrangement used in the Act would also have the same interpretation.

In *Ashton v. CIR* (NZ) 75 ATC 6001, their Lordship held that if an arrangement has a particular purpose, then that would be its intended effect and that if it has a particular effect, it will be its intended purpose.

The Hon'ble Bombay High Court, in the case of *Bank of India v. Ahmadabad Manufacturing & Calico Printing Co. Ltd.* (1972) 42 Comp. Cases 211 (Bom), while interpreting the word 'arrangement' as appeared in Section 390 of the Companies Act, 1956, has observed as under:

"The word 'arrange' has, as one of its meaning, in the Shorter Oxford Dictionary, 3rd edition, 'to come to an agreement or understanding', and the word 'arrangement' has, as its primary meaning, 'the action of arranging'. As a matter of plain language it would, therefore, follow that the term 'arrangement' means any agreement or understanding between the parties concerned."

The word "arrangement" also represents the disposition of measures for a particular purpose. (P. Ramanatha Aiyar in Concise Law Dictionary – Seventh Edition at page No.100)

The Hon'ble Division Bench of Karnataka High Court, in the case of *KV Kuppa Raju v. Government of India* (1997) 224 ITR 169 (Mad), has noted that the report of an Expert Group to rationalize and simplify Income Tax law had given the following definition of 'arrangement':

'arrangement' means any scheme, trust, grant, understanding, covenant, agreement, disposition, transaction and includes all steps by which it is carried into effect.

1.2 'Ordinary course of business'

The Act uses the term 'ordinary course of business', however it does not define the said term.

The ordinary meaning of the expression 'in the ordinary course of business' in dictionaries is 'part of doing regular business; the regular or customary condition or course of things; as things usually happen'.

Black's Law Dictionary defines 'ordinary course of business' as the 'normal routine in managing trade or business'.

In common parlance, 'ordinary course of business' would include transactions which are entered into in the normal course of the business pursuant to or for promoting or in furtherance of the company's business objectives, as per the charter documents of the company. For example, in case of a manufacturing company, purchase and sale of goods, taking premises on lease/rent, construction of factory, employing workers, etc. will be considered as ordinary course of business. To carry on a business, several activities are carried on by the company; all such activities will be considered to be in the ordinary course of business.

However, if a manufacturing company, for the purpose of diversification, decides to acquire another company which is engaged in a completely unrelated business, this activity will not be considered to be in the ordinary course of business.

To decide whether an activity which is carried on by the business is in the 'ordinary course of business', the following factors may be considered:

- a. Whether the activity is covered in the objects clause of the Memorandum of Association. (*Matrix Logistics Ltd. v. CIT (122 ITD 228)*).
- b. Whether the activity is in furtherance of the business.
- c. Whether there is a reasonable connection between the activity and the nature of the business carried on by the company. (*A. Ebrahim and Company v. State of Bombay (13 STC 877)*).
- d. Whether the activity is normal or otherwise routine for the particular business (i.e. activities like advertising, staff training, etc.).
- e. Whether the activity is repetitive/frequent. (*Herbertsons Ltd. v. Deputy CIT (87 TTJ 840)*).
- f. Whether the income, if any, earned from such activity/transaction is treated as business income in the company's books of account.
- g. Whether the transactions are common in the particular industry.

- h. Whether there is any historical practice to conduct such activities.
- i. The financial scale of the activity with regard to the operations of the business.
- j. Revenue generated by the activity.
- k. Sale of old machinery undertaken not with profit motive is not in the ordinary course of business. (*Commissioner of Sales Tax v. Hindustan Spinning and Weaving Company Ltd.* (15 STC69).
- l. Resources committed to the activity.

The above list is illustrative. Individually, none of the above parameters should be seen in isolation to determine whether the transaction is in the ordinary course of business or not.

In the case of ***M/s. Bharti Televentures Ltd. v. Addl./Jt. Commissioner of Income Tax*** [ITA 1395/2006, ITA 1656/2010], it was held that the Memorandum and Articles of Association is not conclusive for deciding whether an activity is in the ordinary course of business of the company. Frequency of the activity is sought to be highlighted. It should be a continuous activity carried out in a normal organised manner.

In the case of ***Seksaria Biswan Sugar Factory v. Commissioner of Income Tax*** AIR 1950 Bom 200, the Hon'ble High Court decided that the amount lent by the company to a third party will not be in the ordinary course of business. The Court observed that just because an activity is included in the Memorandum of Association, the activity *per se* does not become an activity in the ordinary course of business of the company. It must be found as to whether the particular act has any connection with the normal business that the company is carrying on and whether it is so related to the business of the company that it can be considered to be performed in the ordinary course of the business of that company.

However it may be noted that the position will be different based on the facts of the case i.e. if the company is engaged in financial activities or lending to or investing in subsidiaries, associates and joint ventures, the said activities would be considered in the ordinary course of business.

In ***Commissioner of Income-tax and Excess Profits Tax, Madras v. The South India Pictures Ltd.*** (1922) 12 Tax Cas. 427, the assessee had entered into agency agreements for exploitation of three films in question. It was held that entering into such agency agreements for acquiring films was a part of the assessee's business and the agreements in question having been entered into by the assessee in the ordinary course of business, cancellation of those agreements was also a part of the assessee's business and was resorted to in order to adjust the relation between the assessee and the producer of those films.

In other words, any activity which is routine and in accordance with the usual customs and practices of a particular business can be described to be 'in the ordinary course of business'. For a company, the interpretation needs to be contextual, taking into account the nature of the activity and its relevance in the overall context of the company's businesses.

For example, if a company is purchasing land from a related party:

- (i) for developing a township to provide accommodation to its employees;
- (ii) for developing a township and selling apartments exclusively to its employees at concessional rates;
- (iii) for developing a township to sell the apartments to its employees as well as general public;

The purchase of land for the purpose mentioned at (i) and (ii) above, is in the furtherance of business of the company and the transaction for purchase of land may be considered in the ordinary course of business. However, in point no. (iii) above, the purchase of land will not tantamount to ordinary course of business unless the company is engaged in the business of real estate development.

Issue: Who determines that the transaction with related party is in the ordinary course of business? Is it the Board or the Audit Committee?

View: The Act does not clearly lay down tests for determining whether a transaction is in the ordinary course of business.

The Memorandum of Association of the company should be referred to for ascertaining whether the activity is covered in the objects clause therein. This is not a conclusive test but will assist in determining whether a transaction is in the ordinary course of business or not. The Audit Committee may decide whether a particular transaction is in the ordinary course of business and such decision will be based on the policy on transactions with related parties, if any. The company's policy on RPTs should specify the parameters to guide the Audit Committee on whether a transaction is in the ordinary course of business or not. Apart from such a policy, a company may formulate guidelines approved by the Audit Committee and the Board of Directors on RPTs. In such cases, the Audit Committee can consider the transaction for approval based on the approved guidelines.

In case the company does not have an Audit Committee, the decision as to whether a transaction is in the ordinary course of business or not should be taken by the Board.

1.3 'Arm's length transaction'

Explanation to sub-section (1) of Section 188 of the Act defines the term 'arm's length transaction' as a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

Black's Law Dictionary (6th edition) defines the term "Arm's length transaction" as a transaction negotiated by unrelated parties, each acting in his or her own self-interest; the basis for a fair market value determination. A transaction in good faith in the ordinary course of business by parties with independent interests.

In Wharton's Legal Lexicon, arm's length represents the market price. (***Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*** (7 SCC1).

Arm's length basis does not mean arm's length price as price is only 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 ***Ijij Automotive Private Ltd. 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 Pvt. Ltd. v. Asst. Commissioner 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.

Illustration

Suppose company A Ltd. sells a product in the market for Rs. 400 per unit and it also sells the same to its associate company B Ltd. for Rs. 400 per unit and on the same terms of contract as with other parties. Here, the price charged from the associate company and others is the same and the transaction between A Ltd. and B Ltd. is governed by market forces and, therefore, is on arm's length basis.

Arm's length transactions under the Income-tax Act, 1961

In terms of Section 92F of the Income-tax Act, 1961, "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

The term "associated enterprise" as referred to above, is defined in Section 92A of the Income-tax Act, 1961, as under:

"associated enterprise", in relation to another enterprise, means an enterprise –

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
- (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

In terms of Section 92C of the Income-tax Act, 1961, the arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of the transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Central Board of Direct Taxes (CBDT) may prescribe, namely:

- a. comparable uncontrolled price method;
- b. resale price method;
- c. cost plus method;
- d. profit split method;
- e. transactional net margin method;
- f. Such other method as may be prescribed by the CBDT.

The other method for determination of the arm's length price shall be any method which considers the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

The most appropriate method shall be applied, for determination of arm's length price. Where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices.

Here, it is worth noting that “transaction on arm’s length” may not mean a price at which the third parties transact similar goods. The term “arm’s length basis” means a bundle of terms and conditions including price and not price alone, in isolation of other terms and conditions.

Illustrations

The following are some illustrations in respect of transactions with entities other than a Wholly Owned Subsidiary (WOS):

Nature of transaction	Suggested Method/Criteria/Basis for determining Arm’s length
1. Sale, purchase or supply of goods or materials or sale/ supply/rendering of services or availing of services	<p>Any appropriate method under the provisions of Income-tax Act 1961 dealing with the computation of arm’s length price.</p> <p>Terms and conditions may be as per business requirements and with comparable third party rates, wherever possible and available.</p>
2. Leasing of properties	<p>Any appropriate method under the provisions of Income-tax Act 1961 dealing with the computation of arm’s length price.</p> <p>Rentals and terms are to be compared with market rates and other factors, such as location, size, age of property, quality, security deposit, increases if any during the lease period, stamp duty & other levies etc., supported by valuer’s report to the extent possible.</p> <p>May also consider applicable Rent Control Regulatory Act, circle rate prescribed by the concerned Authority and any other applicable local laws.</p>
3. Taking flats on lease from key managerial personnel	<p>As per company policy</p> <p>Market Rate and other terms to be considered as in leasing of properties mentioned above in S. No 2.</p>
4. Providing accommodation in company owned / leased flats to employees of group company	<p>Any appropriate method under the provisions of Income-tax Act, 1961 dealing with the computation of arm’s length price.</p> <p>Market Rate and other terms to be considered wherever possible as indicated in S. No. 2 above.</p>

Nature of transaction	Suggested Method/Criteria/Basis for determining Arm's length
5. Use of common infrastructure services like security, canteen services, administrative services at various locations	Cost + Fair Margin (and subject to provisions of mutual agreement, if any)
6. Appointment of related party to any office or place of profit in the company, its subsidiary or associate company	Based on study by HR consultant & comparable industry figures; HR policy of the company with respect to recruitment and remuneration policy of the company with respect to remuneration. Remuneration/consideration should be in line with industry practice and company policies.
7. Shared services: Employee benefits processing, travel expenses processing, vendor processing, HR portal services & HR transactions outsourcing, salary & retirement benefit, administration etc.	Based on number of employees, documents processed, man-hours spent, etc. Cost + Fair Margin
8. Services provided by corporate IT	Based on number of e-mail IDs, no. of licences used, bandwidth used, storage space on server, etc. Cost + Fair Margin
9. Appointment of any agent for purchase or sale of goods, materials, services or property	Charges have to be comparable with industry. Cost + Fair Margin
10. Guarantee	Rate equivalent to arm's length compensation. Generally, average rates charged by banks for bank guarantee may be taken.

Nature of transaction	Suggested Method/Criteria/Basis for determining Arm's length
11. Use of brand name/royalty including provision of technical services)	Such rate and method as comparable with industry practice and subject to applicable laws.
12. Deputation of staff	Salary paid to be recovered at actuals.
13. Purchase / sale of market investments	At Market or Fair value.
14. Purchase / sale of non-current investments	At Market or Fair value.
15. Sale / purchase of property	To comply with relevant provisions of the Act and in particular Section 188 of the Act. Based on market rate of similar properties or valuation report.
16. Financial transactions such as inter-corporate deposit, inter-corporate loans/ borrowings, etc.	Not lower than the interest rate as prescribed under Sections 185 and 186 of the Act.
17. Trading in market instruments of group companies (e.g. non-convertible debentures, mutual funds, bonds, etc.)	Will not get covered under Section 188 of the Act, as these are traded on the exchanges and are mostly purchased / sold from/to third parties. Even in case of IPO, it is the same price as applicable for a general investor.
18. Primary investment in the form of rights issue in the capital of group companies / related parties	The fact that it is on rights basis to all shareholders is a good basis for arms' length. Corporate actions by the companies which are uniformly applicable to all the shareholders and the actions which are specifically covered under the various provisions of the Act (other than Section 188 of the Act) requiring approval of the Board or Shareholders, as the case may be, may not

Nature of transaction	Suggested Method/Criteria/Basis for determining Arm's length
	be treated as RPTs and the approval granted by the Board/Shareholders following the specific provisions/procedures in compliance to those sections may be sufficient compliance i.e. payment of dividend, issue of shares on preferential basis, bonus shares, rights issue, merger and amalgamation, etc.
19. Primary investment in the form of preferential issue in the capital of group companies	The price determination by valuation report in terms of Section 62 of the Act is a good basis for arms' length. Corporate actions by the companies which are uniformly applicable to all the shareholders and the actions which are specifically covered under the various provisions of the Act (other than Section 188 of the Act) requiring approval of the Board or Shareholders, as the case may be, may not be treated as RPTs and the approval granted by the Board/Shareholders following the specific provisions/procedures in compliance to those sections may be sufficient compliance i.e. payment of dividend, issue of shares on preferential basis, bonus shares, rights issue, merger and amalgamation, etc.
20. Administrative and management expenses charged to subsidiary / associate companies	Based on group turnover or any other methodology as the company may feel appropriate as per their internal policies.
21. Reimbursement of expenses	At actuals with supporting documents.

A simple way to demonstrate absence of conflict of interest, is to prove that existence of special relationship between contracting parties have not affected the transaction and its critical terms, including price, quantity, quality and other terms and conditions governing the transaction, by following industry benchmarks, past transactions entered by the company, etc.

In large business conglomerates, transactions may arise within group companies, such as deputation of personnel, security services, canteen services, use of office

premises, shared services such as salary processing, vendor payments, etc. Such transactions help the group to economize on the cost of infrastructure at common locations. However, such transactions should be executed on arm's length basis.

Issue: To determine the criteria of arm's length pricing should every transaction be accompanied with a certificate from a valuer?

View: One may check if there are comparable products in the market. If yes, check the terms of sale/purchase, etc. of similar transactions and try obtaining quotes from other sources. Price in isolation cannot be the only criteria. Terms of sale such as credit terms should also be considered. It is not mandatory to obtain a certificate from a valuer in every case but this is dependent on the policy of the company on transactions with related parties.

Issue: What are the parameters to be considered by the Audit Committee while considering whether a transaction is on arm's length basis? How should the Audit Committee decide such an issue?

View: The Act does not prescribe methodologies and approaches which may be used to determine whether a transaction has been entered into on an arm's length basis. Audit Committee may consider the parameters given in the company's policy on transactions with related parties. The provisions of Income-tax Act 1961 dealing with the computation of arm's length price may also be used. Depending on the nature of individual transaction, any appropriate method may be used by the Audit Committee to arrive at a considered decision to determine arm's length basis.

1.4 'Goods'

As per Black's Law Dictionary, goods are tangible or movable personal property other than money.

Section 2(7) of the Sale of Goods Act, 1930, defines the term 'goods' as every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Actionable claims include as stated in Section 3 of the Transfer of Property Act 1882 a claim to any debt other than a debt covered by a mortgage. Examples of actionable claims include unsecured debentures, fixed deposit receipts, dividend due on shares etc.

The General Clauses Act, 1897, defines the term 'movable property' to mean property of every description except immovable property. The expression 'immovable property'

is defined to include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

Issue: Will a preferential allotment of shares to a related party be treated as RPT?

View: Preferential issue of shares will require approval of the shareholders as provided in Section 42 and Section 62(1)(c) of the Act. Shares should be treated as goods once allotted. In case of preferential allotment although it is a transaction with a related party, the same is not covered under Section 188 of the Act. However the approval of Audit Committee will be required under Section 177 of the Act.

In case of a listed entity, Regulation 2(1)(zc) of the Listing Regulations exempts the following transaction and the same will not be considered an RPT:

- the issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018

However, corporate actions by the companies which are uniformly applicable to all the shareholders and the actions which are specifically covered under the various provisions of the Act (other than Section 188 of the Act) requiring approval of the Board or Shareholders, as the case may be, may not be treated as RPTs and the approval granted by the Board/Shareholders following the specific provisions/procedures in compliance to those sections may be sufficient compliance i.e. payment of dividend, issue of shares on preferential basis, bonus shares, rights issue, merger and amalgamation, etc.

Issue: Will allotment of rights issue or bonus issue to a related party be treated as RPT in case of a listed entity?

View: In case of a listed entity, Regulation 2(1)(zc) of the Listing Regulations exempts the issuance of securities by way of a rights issue or a bonus issue and the same will not be considered as an RPT.

1.5 'Service'

According to Philip Kotler, the father of modern marketing, a service is an act of performance that one party can offer to another that is essentially intangible and does not result in the ownership of anything. Its production may or may not be tied to a physical product.

Section 2(102) of the Central Goods and Services Tax Act, 2017, defines the term 'services' to mean anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode,

from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Issue: Will providing corporate guarantee to the bank by the holding company for a loan availed by its subsidiary company attract the provisions of Section 188 of the Act?

View: The provisions of Section 188 are not attracted. However, requirements of Section 177 need to be complied with. In case of listed companies, such transaction would be covered in the definition of RPTs under Regulation 2(1)(zc) of the Listing Regulations.

1.6 'Office or place of profit'

In ordinary parlance, an office or place of profit means an office or place or position, which gives the person holding such office some pecuniary gain or advantage or benefit. The amount of such profit or benefit is not relevant. The Board should ensure that those who occupy a fiduciary position in the company do not directly or indirectly, derive any other benefit except in accordance with the provisions of law.

As per the definition in Explanation to sub-section (1) of Section 188 of the Act, the expression 'office or place of profit' means any office or place where such office or place is held by:

- (i) a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- (ii) an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise.

For example, in case of remuneration of a director, if the director gets remuneration as a director in accordance with the provisions of Section 197 read with Schedule V of the Act, it will not be considered as an office or place of profit.

In ***Firestone Tyre & Rubber Co. v. Synthetics & Chemicals Ltd.*** (1971) 41 Comp. Cases 377 (Bom), the Hon'ble Bombay High Court held that 'the object underlying Section 314 of the 1956 Act (corresponding to Section 188 of the Companies Act, 2013) is to prevent a director or his relative from holding any office or place of profit carrying a total monthly remuneration beyond the prescribed limits under the company and

thereby put in his pocket, directly or indirectly, additional profit over and above the remuneration to which he is entitled as such director, without obtaining the requisite permission.'

In **A.R. Sundarsanam v Madras Puraswalkam Hindu Janapakara Saswadha Nidhi Ltd.** (57 Comp Cas 776) it was held that if a director receives only remuneration for attending meetings of the Board he cannot be held to be holding an office of profit.

Illustrations

- a) Mr. A is the managing Director in AB Ltd., which is engaged in manufacturing medicines. Mr. A is a qualified software expert. AB Ltd. after following a due process of tendering engages the services of Mr. A in his capacity of a software expert for which an amount of Rs 50 lakh is proposed to be paid. The next lowest quotation for the proposal is Rs. 2 crore.

This is a transaction with a related party. If the terms and conditions are comparable with those offered by other parties, the transaction will not be treated as an office or place of profit as covered under Section 188 of the Act. (Price offered by Mr. A is certainly far lower than the next lowest quote but the other terms also need to be examined). However, compliance of the provisions of Section 197 of the Act also need to be ensured.

- b) Mr. X was appointed as the managing director in MNP Ltd. on 1st January 2018. MNP Ltd. is engaged in manufacturing automobiles. Mr. X holds a few patents in his name since July 2010 and he is requested by MNP Ltd. for a licence of five years of one of the patents and for which an amount of Rs. 50 lakh is proposed to be paid.

Section 188(1) of the Act will be attracted if the transaction is not on an arm's length basis. This transaction is in the same line of business as that of the company and obtaining a license of the patent will be in its ordinary course of business. However, approval of the Audit Committee will be necessary. Compliance of the provisions of Section 197 of the Act also need to be ensured.

2. Who is a Related Party?

2.1 As per the Act

According to Section 2(76) of the Act, 'related party', with reference to a company, means –

- “(i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- ³(viii) any body corporate which is –
 - (A) a holding, subsidiary or an associate company of such company;
 - (B) a subsidiary of a holding company to which it is also a subsidiary; or
 - (C) an investing company or the venturer of the company;

Explanation – For the purpose of this clause, “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.

- (ix) such other person as may be prescribed.”

The Companies (Specification of Definitions Details) Rules, 2014, prescribes that a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company shall also be deemed to be a related party.

3. By virtue of MCA exemption notifications dated 5th June, 2015 and 4th January, 2017, Section 2(76)(viii) of the Act shall not apply, with respect to Section 188 of the Act to a private company and an unlisted public company which is licensed to operate by the RBI or SEBI or IRDA from the International Financial Services Centre located in an approved multi services SEZ set up under the SEZ Act.

As per sub-section (77) of Section 2 of the Act, relative with reference to any person, means anyone who is related to another, if –

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed under the Act.

Rule 4 of Companies (Specification of Definitions Details) Rules, 2014, prescribes persons who shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

- (1) Father: the term 'Father' includes step-father;
- (2) Mother: the term 'Mother' includes the step-mother;
- (3) Son: the term 'Son' includes the step-son;
- (4) Son's wife;
- (5) Daughter;
- (6) Daughter's husband;
- (7) Brother: the term 'Brother' includes the step-brother;
- (8) Sister: the term 'Sister' includes the step-sister.

2.2 As per the Listing Regulations

Regulation 2(1)(zb) of the Listing Regulations defines the term 'related party' as follows:

'Related party' means a related party as defined under Section 2(76) of the Act or under the applicable accounting standards.

⁴[Provided that:

- (a) any person or entity forming a part of the promoter or promoter group of the listed entity; or
- (b) any person or any entity, holding equity shares:
 - (i) of 20% cent or more; or

(ii) of 10% or more, with effect from April 1, 2023;

in the listed entity either directly or on a beneficial interest basis as provided under

Section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;

shall be deemed to be a related party]

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

It may be observed from the above that in addition to the related parties within the meaning of the Act, the Listing Regulations also include related parties within the meaning of the Accounting Standards.

Background Recommendations made by the Working Group

The Working Group deliberated and was of the view that all persons or entities belonging to the 'promoter' or 'promoter group', irrespective of their shareholding in the listed entity, should be deemed to be related parties for the following reasons:

- (i) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR") *inter-alia* defines a "promoter" as a person who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise or in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act. Thus, a promoter may exercise control over a company irrespective of the extent of shareholding.
- (ii) The Working Group observed that the definition of "related party" as per the accounting standards includes, *inter-alia*, any person who has control or significant influence over an entity; however, the accounting standards define these terms in a subjective manner. Hence, there is a possibility that owing to the subjectivity of the definition, certain promoters/promoter group entities with less than 20% shareholding in the listed entity may not get categorised as related parties. Therefore, transactions with such persons may not get categorised as RPTs under the LODR.
- (iii) The Working Group noted that control over a listed entity does not depend only on shareholding. Further, a significant percentage of Indian businesses are structured as intrinsically linked group entities that operate as a single economic unit, with the promoters exercising influence over the entire group. The Working Group observed that it is thus not uncommon for group entities to regularly engage in RPTs such as inter corporate loans, cross collateralization and significant influence arrangements; such inter-linkages in business, operations and management can raise concerns relating to

RPTs. Considering that promoters may exercise control on promoter group entities and consequently, influence decision making on the group as a whole, the Working Group recommended that promoter group members may also be included under the definition of a related party, irrespective of their shareholding.

Taking a cue from the international scenario, the Working Group deliberated that in the Indian context also, there may be a shareholder who is not classified as a promoter, but may exercise influence over the decisions of the listed entity by virtue of shareholding. The Working Group was therefore of the view that shareholders above a certain threshold of holding in a company should be classified as a related party.

The Working Group deliberated on the threshold for determining shareholding above which a person not forming part of the promoter/promoter group would get classified as a related party and determined that a 20% threshold would be appropriate for the following reasons:

- (i) The Working Group noted that the term 'significant influence' is defined in the Companies Act under the definition of 'associate company' to mean "control of at least 20% of the total voting power, or control or participation in business decisions under an agreement".
- (ii) The Indian Accounting Standard on 'Investments in Associates and Joint Ventures' (Ind AS 28) also states that: "If an entity holds, directly or indirectly (e.g. through subsidiaries), 20% or more of the voting power of the investee, it is presumed that the entity has significant influence, unless it can be clearly demonstrated that this is not the case".

Thus, a shareholding of 20% is considered sufficient to confer a shareholder with significant influence over the company. The Working Group further determined that a deeming provision may be created for aggregation of direct and indirect shareholding of individual shareholders and their relatives as defined under the Companies Act, for the purposes of calculating the 20% threshold.

In view of above recommendations of the working group and after considering the public comments thereon, the provisions of the Listing Regulations were amended by the SEBI.

While the recommendation that the promoter/promoter groups shall be deemed to be a related party irrespective of shareholding was accepted by SEBI, the second recommendation for inclusion of significant shareholders under the ambit of RPTs was accepted with a modification that any person or any entity, holding 20% or more of the equity shareholding in the listed entity, either directly or on a beneficial

interest basis (under Section 89 of the Companies Act, 2013), at any time during the immediately preceding financial year, shall also be deemed to be a related party.

With effect from 1st April 2023, the threshold of 20% shall stand modified to 10%.

Additional amendments in regulatory framework of RPTs

In addition to the proposed amendments in the regulatory framework of RPTs, the SEBI at its Board meeting held on 28th September, 2021 also approved the amendments that with effect from 1st April, 2023:

- a. any person/entity with 10% or more equity shareholding in the listed entity, either directly or on a beneficial interest basis, at any time during the immediately preceding financial year shall be considered as a related party.
- b. approval of the Audit Committee shall be required for RPTs where subsidiary is a party but listed entity is not a party subject to threshold of 10% of the standalone turnover of the subsidiary.

Accordingly, the provisions of the Listing Regulations were amended to this effect.

2.3 As per the Accounting Standards

AS-18 contains the following definition of the term 'related party':

Parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

Further, AS-18 applies to the following related party relationships:

- (a) 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);
- (b) 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;
- (c) 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;
- (d) Key management personnel and relatives of such personnel; and

- (e) 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.

2.4 As per the Indian Accounting Standards (Ind AS)

Ind AS-24 defines the term 'related party' as follows:

A related party is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the 'reporting entity').

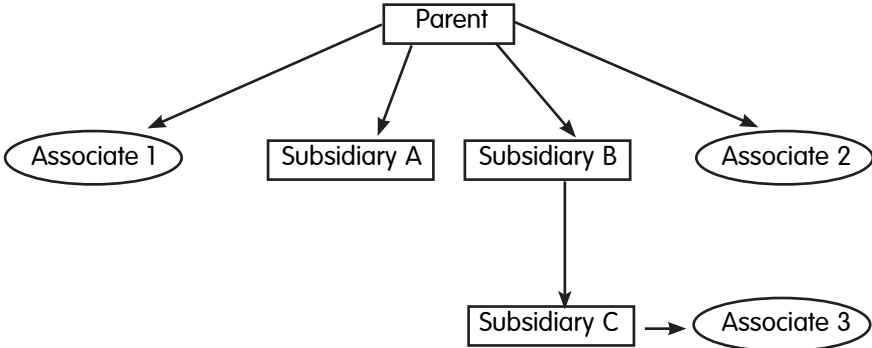
- (a) A person or a close member of that person's family is related to a reporting entity if that person:
 - (i) has control or joint control over the reporting entity;
 - (ii) has significant influence over the reporting entity; or
 - (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.
- (b) An entity is related to a reporting entity if any of the following conditions apply:
 - (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
 - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
 - (iii) Both entities are joint ventures of the same third party.
 - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
 - (v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.
 - (vi) The entity is controlled or jointly controlled by a person identified in (a).
 - (vii) A person identified in (a)(i) has significant influence over the entity or

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

- (viii) The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

Illustration

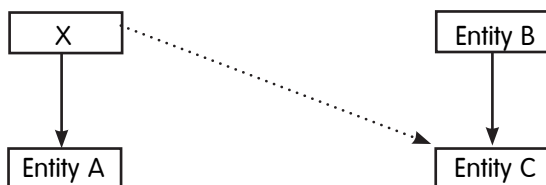
Associates and subsidiaries: A Parent entity has a controlling interest in Subsidiaries A, B and C and has significant influence over Associates 1 and 2. Subsidiary C has significant influence over Associate 3. Subsidiary C is the subsidiary of Subsidiary B.



1. For Parent’s separate financial statements, Subsidiaries A, B and C and Associates 1, 2 and 3 are related parties. [Paragraph 9(b)(i) and (ii) of Ind AS-24]
2. For Subsidiary A’s financial statements, Parent, Subsidiaries B and C and Associates 1, 2 and 3 are related parties. For Subsidiary B’s separate financial statements, Parent, Subsidiaries A and C and Associates 1, 2 and 3 are related parties. For Subsidiary C’s financial statements, Parent, Subsidiaries A and B and Associates 1, 2 and 3 are related parties. [Paragraph 9(b)(i) and (ii) of Ind AS-24]
3. For the financial statements of Associates 1, 2 and 3, Parent and Subsidiaries A, B and C are related parties. Associates 1, 2 and 3 are not related to each other. [Paragraph 9(b)(iii) of Ind AS-24]
4. For Parent’s consolidated financial statements, Associates 1, 2 and 3 are related to the Group. [Paragraph 9(b)(ii) of Ind AS-24]

Illustration

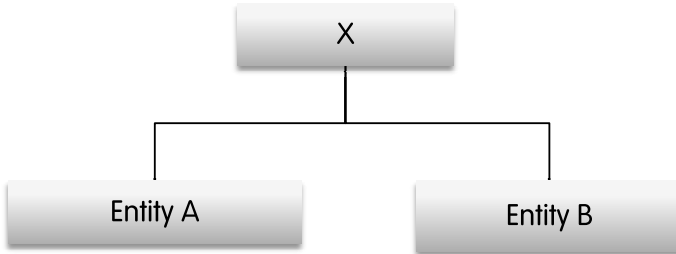
Key management personnel: A person X has a 100% investment in Entity A and is a member of the Key Managerial Personnel of Entity C. Entity B has a 100% investment in Entity C.



1. For Entity C's financial statements, Entity A is related to Entity C because X controls Entity A and is a Key Management Personnel of Entity C. [Paragraph 9(b)(vi)–(a)(iii) of Ind AS-24]
2. For Entity C's financial statements, Entity A is also related to Entity C, if X is a Key Management Personnel of Entity B and not of Entity C. [Paragraph 9(b)(vi)–(a)(iii) of Ind AS-24]
3. Furthermore, the outcome described in paragraphs 1 and 2 above will be the same if X has joint control over Entity A. [Paragraph 9(b)(vi)–(a)(iii) of Ind AS-24]
4. The outcome described in paragraphs 1 and 2 would be different, if X had only significant influence over Entity A and not control or joint control; then Entities A and C would not be related to each other.
5. For Entity A's financial statements, Entity C is related to Entity A because X controls A and is a member of Entity C's key management personnel. [Paragraph 9(b)(vii)–(a)(i) of Ind AS-24]
6. Furthermore, the outcome described in paragraph 5 will be the same if X has joint control over Entity A.
7. The outcome described in paragraph 5 will also be the same if X is a Key Management Personnel of Entity B and not of Entity C. [Paragraph 9(b)(vii)–(a)(i) of Ind AS-24]
8. For Entity B's consolidated financial statements, Entity A is a related party of the Group, if X is a Key Management Personnel of the Group. [Paragraph 9(b)(vi)–(a)(iii) of Ind AS-24]

Illustration

Person as investor: A person, X has an investment in Entity A and Entity B.



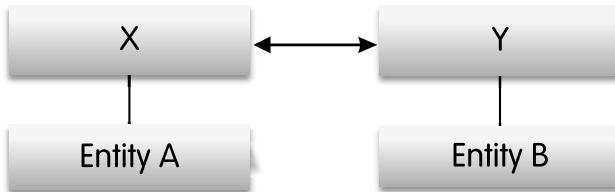
For Entity A's financial statements, if X controls or jointly controls Entity A, Entity B is related to Entity A when X has control, joint control or significant influence over Entity B. [Paragraph 9(b)(vi)-(a)(i) and 9(b)(vii)-(a)(i) of Ind AS-24]

For Entity B's financial statements, if X controls or jointly controls Entity A, Entity A is related to Entity B when X has control, joint control or significant influence over Entity B. [Paragraph 9(b)(vi)-(a)(i) and 9(b)(vii)-(a)(iii) of Ind AS-24]

If X has significant influence over both Entity A and Entity B, Entities A and B are not related to each other.

Illustration

Close members of the family holding investments: A person X, is a partner of Y. X has an investment in Entity A and Y has an investment in Entity B.



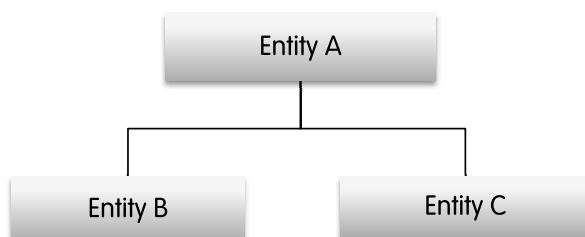
For Entity A's financial statements, if X controls or jointly controls Entity A, Entity B is related to Entity A when Y has control, joint control or significant influence over Entity B. [Paragraph 9(b)(vi)-(a)(i) and 9(b)(vii)-(a)(i) of Ind AS-24]

For Entity B's financial statements, if X controls or jointly controls Entity A, Entity A is related to Entity B when Y has control, joint control or significant influence over Entity B. [Paragraph 9(b)(vi)-(a)(i) and 9(b)(vii)-(a)(iii) of Ind AS-24]

If X has significant influence over Entity A and Y has significant influence over Entity B, Entities A and B are not related to each other.

Illustration

Entity with joint control: Entity A has both (i) joint control over Entity B and (ii) joint control or significant influence over Entity C.



For Entity B's financial statements, Entity C is related to Entity B. [*Paragraph 9(b)(iii) and (iv) of Ind AS-24*]

Similarly, for Entity C's financial statements, Entity B is related to Entity C. [*Paragraph 9(b)(iii) and (iv) of Ind AS-24*]

While related party is defined under the Act, the definition under the Listing Regulations encompasses the definition under the Act as well as that under AS-18 and Ind AS-24. The definition under the Listing Regulations therefore is extensive and covers all direct and indirect subsidiaries, enterprises under common control and enterprises over which any key managerial personnel or their relatives exercise significant influence.

Issue: Whether trustee will be covered in the definition of related party?

View: Companies Act, 2013 does not cover 'trusts' within the definition of 'related party' under Section 2(76) as they are neither natural persons nor firms / companies / bodies corporate.

In ***Tree House Education and Accessories Ltd. and others vs. SEBI*** [Appeal No. 78 of 2019; Order dated 07.11.2019], SAT-Mumbai held that a correct reading of the definition of related party/related party transactions does not make a trust or a trustee fall within the ambit of that definition in the absence of any finding that those trusts were in fact set up/functioning for the benefit of the appellants, as trust is not covered within the definition of related party either in Companies Act or in Listing Regulations.

Under Regulation 2(1)(zb) of the Listing Regulations, the definition of related party includes the related party under applicable accounting standards. A trustee will be covered within the definition of related party as per Ind AS-24, if the trustee:

- (a) directly or indirectly through one or more intermediaries controls the entity (including parent, subsidiary and fellow subsidiary); or
- (b) if he jointly controls the entity; or
- (c) he has an interest in the entity that give it significant influence over the entity; or
- (d) is a member of the key management personnel of the entity or its parent; or
- (e) is a close member of the family of the trustee who is having control, common control or joint control of the entity; or
- (f) is a trustee of a trust formed for the purposes of post-employment benefit for the benefit of the employees of the entity or of an entity that is related party of the entity.

There can be situations where trusts are formed by promoters of listed entities (which are generally in the nature of private trusts) with professional trustees appointed by them. In such situations, the given definition may not cover such trustee being a third party, whereas their sponsor and / or beneficiary may be the promoters of listed entity or their family members.

3. What are Related Party Transactions?

RPTs means contracts or arrangements between a company and its related parties with respect to transactions covered in Section 188 of the Act. The expression 'contract or arrangement' has different connotations under the Act. While 'contract' envisages a written / formal binding document, 'arrangement' may be with or without a written document.

Section 188 of the Act lists out few specified RPTs such as sale, purchase or supply of goods or materials, selling, buying or leasing of property of any kind and availing or rendering of any services. The requirements prescribed under Section 188 of the Act are only applicable to the aforesaid transactions. Further, a transaction of giving loan, making investment, providing guarantee or security is a transaction of a financial nature and is not covered under Section 188 of the Act. However, the requirement of Section 177 of the Act, which mandates the approval of the Audit Committee for all transactions with related parties would continue to apply.

Lease vs. Licence

Section 188 of the Act only covers lease leaving out licence. The Supreme Court in its order dated 02.03.2011 passed in *Bharat Petroleum Corporation Ltd. vs. Chembur*

Service Station [(2011) 3 Supreme Court Cases 710 : (2011) 2 Supreme Court Cases (Civ) 49], has gone in length to distinguish between the terms 'Lease' and 'licence'. Also in reference is the order of Supreme Court in *Associated Hotels of India Ltd. v. R. N. Kapoor* (AIR 1959 SC 1262). To understand in detail, reading of the cited judgements is strongly recommended. The essence of all these judgements is summarised in the following sentences:

- (1) Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor.
- (2) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form. The real test is the intention of the parties - whether they intended to create a lease or a licence. If the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence. If under the document a party gets exclusive possession of the property, prima facie, such party is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

The concept of licence was also explained by the Supreme Court in *C.M. Beena vs. P.N. Ramachandra Rao* – 2004 (3) SCC 595 that in licence, the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and, but for the permission so given the occupation would have been unlawful. Licence is only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created.

As per Regulation 2(1)(zc) of the Listing Regulations, the term ⁵['related party transaction' means a transaction involving a transfer of resources, services or obligations between:

- (i) 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
- (ii) 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:

Provided that the following shall not be a related party transaction:

- (a) issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;
- (b) following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:
 - i. payment of dividend;
 - ii. sub-division or consolidation of securities;
 - iii. issuance of securities by way of a rights issue or a bonus issue; and
 - iv. buy-back of securities.
- (c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the Board:

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);”

Thus, the term “related party transaction” under the Listing Regulations and as defined under the Act has different meanings. The Listing Regulations contains a much broader definition of the term.

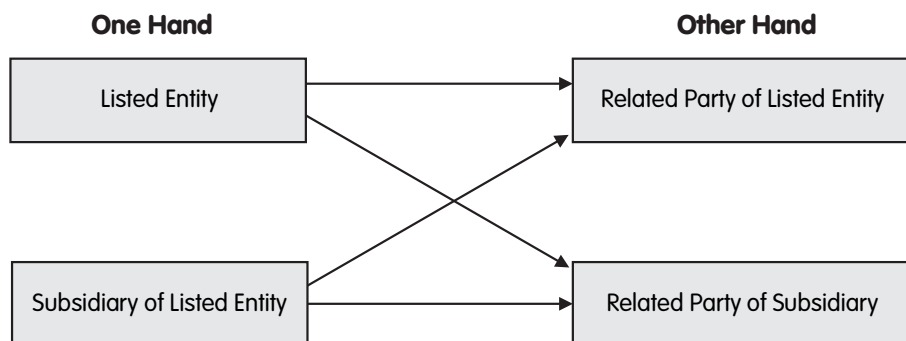
The new definition of RPT can be understood with the following diagrammatic presentation:

RPT under the Listing Regulations is divided into the following two parts:

1) RPT as per Regulation 2(1)(zc)(i):

RPT as per Regulation 2(1)(zc)(i) is defined as transactions between two entities (described below) which involves a transfer of resources, services or obligations regardless whether a price is charged or not.

Diagrammatic Presentation:



Four transaction emerges from the above diagram or definition:

- (i) Transaction between listed entity and related party of listed entity.
- (ii) Transaction between listed entity and related party of the subsidiary of the listed entity
- (iii) Transaction between subsidiary of listed entity and related party of the listed entity.
- (iv) Transaction between subsidiary of listed entity and related party of the subsidiary of the listed entity.

Furthermore, a transaction between two subsidiaries of the listed entity will also be covered by the above definition because on one hand a subsidiary is entering into transaction with another subsidiary (related party of listed entity) on the other hand.

SEBI (LODR) (Sixth Amendment) Regulations has made a paradigm shift in RPT definition to include even transactions of subsidiary companies with either (i) related party of listed entity and (ii) related party of the subsidiary to include in the RPT of listed entity although in these transactions the listed entity itself may not be party to the transaction.

Therefore, it is needless to say that the listed entity has to share the list of its related party with its subsidiaries and the subsidiaries have to share the list of related parties

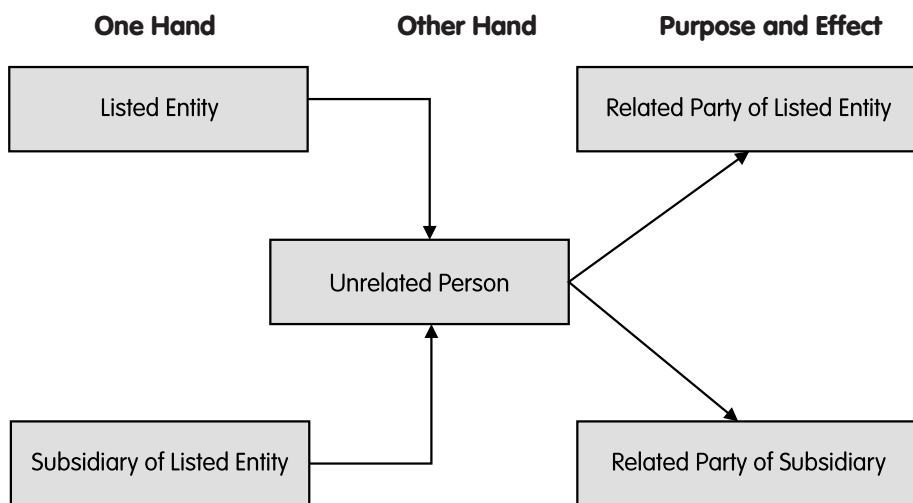
to its listed entity. The list of related parties has to be exchanged every time when there is a change in the list of related party already shared.

Transaction outside the ambit: A transaction between related party of listed entity and related party of subsidiary of listed entity is outside the ambit of this definition.

2) RPT as per Regulation 2(1)(zc)(ii):

RPT as per Regulation 2(1)(zc)(ii) is defined as transactions between two entities (described below) which involves a transfer of resources, services or obligations regardless whether a price is charged or not. The interesting point of this regulation is the transactions between two unrelated persons but still regarded as RPT.

Diagrammatic Presentation:



Four transaction emerges from the above diagram or definition:

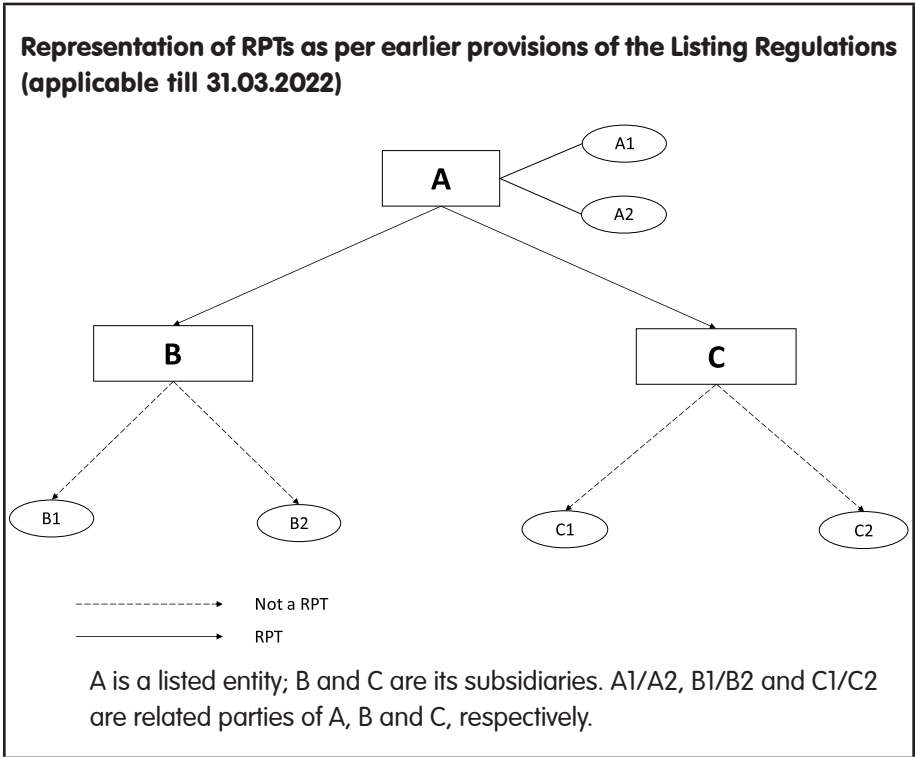
- (i) Transaction between listed entity and unrelated person, the purpose & effect is to benefit Related Party of listed entity
- (ii) Transaction between listed entity and unrelated person, the purpose & effect is to benefit Related party of subsidiary of listed entity
- (iii) Transaction between subsidiary of listed entity and unrelated person, the purpose & effect is to benefit the related party of the listed entity.
- (iv) Transaction between subsidiary of listed entity and unrelated person, the

purpose & effect is to benefit the related party of subsidiary of the listed entity.

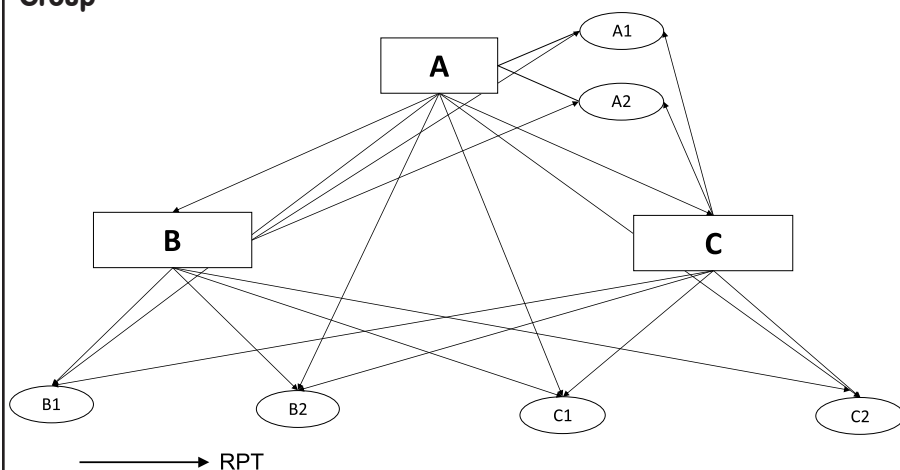
Background Recommendations made by the Working Group

The Working Group felt that the current RPT regulatory framework may be insufficient to cover transactions where the listed entity could transfer its assets/value to a subsidiary, whether in India or overseas, and such entity could then transact with the related parties of the listed entity to move the assets out of the consolidated entity.

It was also observed that certain innovative structures have been used, in the recent past, to avoid classification of transactions as RPTs, thereby avoiding regulatory compliance and disclosure requirements. In order to address the issues, the definition was proposed to be broadened to include transactions which are undertaken, whether directly or indirectly, with the intention of benefitting related parties.



Representation of RPTs as per the recommendations made by the Working Group



Note: Representation excludes second part of the recommendations which refers to transactions with unrelated parties, the purpose and effect of which is, to benefit related parties of the listed entity.

Further, to ease the compliance burden, it was proposed to exempt corporate actions from the purview of RPTs which are subject to procedures specifically laid down by SEBI in its other regulations and which are uniformly applicable to all shareholders.

SEBI had accepted the recommendation of working group along with a modification that the scope of exclusions expanded to include any acceptance of fixed deposits by banks/NBFCs at the terms uniformly applicable/ offered to shareholders/public subject to disclosure of the same along with the disclosures of RPTs every six months in the format specified by SEBI.

Issue: While corporate action by the listed entities is exempted, the same is not explicitly exempted for the listed entity as a recipient / beneficiary of the corporate action. Can the same be extended even in case of the latter?

View: Based on the principle of the reciprocity the exemption under Regulation 2(1)(zc) of the Listing Regulations can be construed even for cases where listed entity receives the benefits of such corporate actions, so long as it is uniformly applicable/offered to all shareholders in proportion to their shareholding.

Issue: Whether all corporate actions, require Audit Committee approval under Section 177 of the Act?

View: Corporate actions which are uniformly applicable / offered to all the shareholders in proportion to their shareholding and are covered separately under the provisions of the Act shall not require the approval of Audit Committee. However, compliances of the respective provisions of the Act need to be ensured.

Regulation 23(1) of the Listing Regulations contains the following definition of the term 'material related party transaction':

*A transaction with a related party shall be considered material, if the transaction(s) to be entered into **individually or taken together** with previous transactions during a financial year, exceeds rupees one thousand crore or 10% of the **annual consolidated turnover** of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.*

Issue: Is the limit of Rs. 1000 crore for material RPTs to be considered as an aggregate of all transactions with a related party or class wise transactions? In other words whether the given ceiling will be aggregate of all transactions with a related party or it is according to each category of transactions?

View: Proviso to Regulation 23(1) of the Listing Regulations provides that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

Arising from the above regulation, the following two views emerge:

- (a) That all transactions with a related party irrespective of their category in a financial year have to be aggregated to determine whether the materiality threshold as above has been breached. Accordingly, approval of the shareholders has to be obtained.
- (b) The other view is that transactions with a related party need to be categorised separately and only if the prescribed threshold is exceeded with a related party for a particular category of transaction, approval of the shareholders has to be obtained accordingly.

In view of the above, a considered view may be taken.

Notwithstanding the above, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

Issue: A listed entity X Ltd. pays a royalty of Rs. 2000 crore for the year 2022-23 which is 3.5% of the annual consolidated turnover X Ltd. as per its last audited financial statements. Does it require to obtain the approval of its shareholders for this payment?

View: The provision of payment of royalty in the Listing Regulations is covered under non-obstante clause and is independent of the limit of Rs. 1000 crore. It should not exceed the limit of 5% to fall under the provisions of materiality. Meaning thereby that even if the total amount exceeds Rs. 1000 crore but if it does not exceed the limit of 5%, no approval of the shareholders is required for such payment.

Background Recommendations made by the Working Group

The working group recommended that any transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds Rs.1,000 crore or 5% of the annual total revenues, total assets or net worth of the listed entity on a consolidated basis as per the last audited financial statements of the listed entity, whichever is lower, provided that the criterion relating to net worth shall not be applicable if the net worth of the listed entity is negative.

Primary Market Advisory Committee (PMAC) of SEBI had recommended to consider the modification of materiality thresholds for RPTs to Rs. 5000 crore or 10% of the consolidated turnover of the listed entity, whichever is lower.

However, it is felt appropriate to continue with the existing threshold of 10% of the annual turnover of the listed entity on a consolidated basis as per the last audited financial statements of the listed entity and also to continue with the recommendation of the Working Group to prescribe an absolute threshold of Rs. 1000 crore on account of the fact that certain high value transactions may not get covered under the existing threshold for materiality.

Accordingly, this recommendation of the Working Group was accepted by SEBI with modification by prescribing a threshold for materiality as Rs. 1,000 crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

As per Accounting Standard (AS)-18, 'Related Party Transaction' is a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.

Indian Accounting Standard (Ind AS)-24 defines the term 'Related Party Transaction' as a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.

Issue: Will easement rights granted to a director's relative be deemed as RPT under Section 188 of the Act?

View: This will depend on the facts of the case. For example, if the land was owned by the relative and grant of easementary rights is an integral part of the transaction of sale of land, then although it is a transaction with a related party, it will not be a RPT and the same is not covered under Section 188(1) of the Act.

Issue: "Leasing of property of any kind" is covered under Section 188(1)(c) of the Act. Whether a Leave and Licence agreement will be counted as Leasing of property?

View: A Leave and Licence agreement is not treated as equivalent to leasing of property. A licence creates limited rights with respect to use of immovable property. However, it will be a transaction with a related party covered under Section 177 and need approval of the Audit Committee.

Issue: Whether issue of "shares and debentures" to a related party is covered under the ambit of Section 188 of the Act?

View: Shares and debentures are not to be treated as goods until allotted. Hence, issue of shares and debentures will not fall under the purview of Section 188 of the Act. However, transfer of shares or debenture to or by a related party would be considered as a RPTs.

Issue: X Ltd. has one subsidiary Y Pty Ltd. in South Africa and another subsidiary Z Pte Ltd. in Mauritius. When a transaction takes place between Y Pty Ltd. and Z Pte Ltd., the amount gets consolidated in the accounts of X Ltd. Whether the transactions will be treated at RPTs by X Ltd.?

View: The transactions between two subsidiaries is not a RPT under the Companies Act, 2013 *vis-a-vis* X Ltd. However, if X Ltd. is a listed entity, the transaction between two of its subsidiaries would be a RPT in terms of Regulation 2(1)(zc) of the Listing Regulations.

Issue: In case of foreign subsidiaries of a listed entity, what would be the definition of "related party"? Whether it will be as per the Companies Act, 2013 or SEBI's Listing Regulations or Ind AS-24 or as per the governing law of the country in which such foreign subsidiaries are incorporated?

View: The parent holding company would seek the desired information from the foreign subsidiary company in accordance with the applicable law in India. The information furnished by the foreign subsidiary company in reply to the parent company's request should be considered for the purposes of compliance of regulatory requirements relating to a RPT.

Issue: What is the legal position on applicability of Section 188(1)(b) of the Act to buyback of shares in a private company?

View: Buy-back of shares between a company and its shareholders is per se not a RPT. Section 68(5)(a) of the Act provides that the buy-back may be from the existing shareholders/ security holders on a proportionate basis.

Since, it is a part of the scheme of buy-back and allows equal opportunity to all members to tender shares on a proportionate basis, it is not be considered to be a RPT even if the directors may be members. Moreover, since, it is a part of a scheme and not a contract or arrangement with any individual director; it will not be treated as a RPTs.

Issue: There are two directors in a private limited company and both are relatives. If one of the directors is receiving rent for the premises used as the registered office of the company, will the same be considered as a RPT?

View: Leasing of property of any kind is covered under Section 188(1)(c) of the Act. The requirement of taking premises on rent for its registered office is a transaction in the ordinary course of business for any company. However, the concept of "arm's length transaction" should be considered for such kind of transactions to determine whether the same is a RPT requiring approval of the Board and shareholders.

Issue: The Managing Director of a listed entity gives his building on rent to the company for registered office and rent agreement is executed for 11 months. Whether approval from members will be required every year if the transaction is not a material transaction?

View: Approval of the Audit Committee is sufficient subject to the transaction being on arm's length basis.

Issue: If a company has taken an immovable property from a HUF in which a director is member, will it be regarded as a transaction with a related party?

View: Yes. Section 2(77) of the Act defines the term "relative" which includes the members of an HUF. Further, this particular transaction will be covered under Section 188(1)(b)/(c) of the Act, if the transaction is not in the ordinary course of business and is not on an arm's length basis.

Issue: Would the appointment of a Managing Director of a holding company as Chairman in a subsidiary company be treated as RPT even if he is not getting any remuneration from subsidiary?

View: Appointment of a related party to any office or place of profit in the company, its subsidiary company or associate company, is covered under Section 188(1)(f) of the Act.

However, explanation (a) to this sub-section provides that the expression “office or place of profit” means any office or place –

- (i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

Therefore, in view of the explanation given under Section 188(1), the appointment of a Managing Director of a holding company as Chairman in a subsidiary company, without any remuneration, will not be treated as a RPT and will not require approval of the Board/ shareholders as provided in Section 188 of the Act.

Issue: Company A Ltd. is holding 49% of the equity shares of company B Ltd. and there is one common director Mr. X. If the director (Mr. X) is also in receipt of commission from company B Ltd. which is within the limits under the Act, will the same become a RPT for company A Ltd.?

View: No. Commission paid by company B Ltd. to Mr. X will not be a RPT for company A Ltd, since the same is a transaction between company B Ltd. and Mr. X. However, necessary disclosures as per Schedule V to the Act will need to be made by company B. Ltd.

Issue: An employee who is also a relative of a director is proposed to be paid a hefty bonus by the company. Examine whether such payment of bonus will be treated as a RPT?

View: Please examine the limits under Section 188 of the Act and the bonus being considered. If such employee who is a relative is proposed to be paid any bonus which other employees are not eligible to, the transaction cannot be said to be in the ordinary course of business and on arm’s length basis and would require approval of the Audit Committee and Board. The same will also require approval of the shareholders, if it exceeds the limit of Rs 2.50 lakh per month.

4. Legal framework pertaining to Related Party Transactions

Section 177 and 188 of the Act and Regulation 23 of the Listing Regulations deal with RPTs. Approval by the Board is necessary if the transaction with a related party is covered under Section 188(1) of the Act provided it is either not in the ordinary course of business or not on arm’s length. In addition, the approval of the members shall also be required if it exceeds the thresholds under Rule 15(3) of the Companies (Meetings of the Board and its Powers) Rules, 2014. No approval of the Board/ Members is required if such transaction is in the ordinary course of business and on arm’s length. In such cases, the approval of the Audit Committee is sufficient. Also the approval of the members is not required for transactions covered under

Section 188(1) between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed for approval before the shareholders at the general meeting.

Regulation 23 of the Listing Regulations provide for an approval framework for RPTs. Prior approval of the Audit Committee is necessary in all cases of RPTs including subsequent material modifications except with respect to transactions between a listed entity and its wholly owned subsidiary. It may be noted that only those members of the Audit Committee, who are independent directors, shall approve RPTs.

Issue: Whether in case of listed entity when RPT is being considered by the Independent directors at the Audit Committee meetings, can the other directors who are members of the Audit Committee continue to be present at such meeting?

View: While considering the RPT, the Chairman of the Audit Committee may ask other non-independent directors who are members of the Audit Committee to leave the meeting as a good governance practice.

Second proviso to Regulation 23(2) of the Listing Regulations provides as under:

- (a) the Audit Committee of a listed entity shall define “material modifications” and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;
- (b) a 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 10% of the annual consolidated turnover, as per the last audited financial statements of the listed entity;
- (c) with effect from April 1, 2023, a 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 10% of the annual standalone turnover, as per the last audited financial statements of the subsidiary;
- (d) 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 sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to in (d) above, the prior approval of the Audit Committee of the listed subsidiary shall suffice.

Prior approval of the shareholders is necessary to be obtained in case of a material related party transaction and subsequent material modifications as defined by the Audit Committee (Regulation 23). No related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

Provided that prior approval of the shareholders of a 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 sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.

It is clarified that all material related party transactions of an unlisted subsidiary of a listed entity shall require prior approval of the shareholders of the listed entity.

Material Modification

Prior to SEBI (LODR) (Sixth Amendment) Regulations (which is majorly effective from 1st April, 2022), any related party transaction required obtaining prior approval of Audit Committee and if the transaction with related party is material, the regulation also provided for obtaining prior approval of the shareholders. However, after the amendment made by SEBI (LODR) (Sixth Amendment) Regulations, any subsequent material modifications to an already approved RPT, also requires the approval of Audit Committee/shareholders as the case may be.

It is common business practice that contracts/agreements undergo modifications after they are originally approved. Hitherto, these modifications were outside the ambit of the approval process, but by virtue of SEBI (LODR) (Sixth Amendment) Regulations, the material modifications to any such existing contracts/agreements amendments were called within the purview of approval framework of the originally approved authority. It may be noted that only material modifications to existing contracts/ agreements need to be placed for approval and not every modification.

Clause (a) to second proviso to sub-regulation (2) of regulation 23 casts responsibility on Audit Committee of the listed entity to define the term "material modification" and disclose it as a part of policy on materiality of RPTs and on dealing with RPTs. Accordingly, it is left to the discretion and understanding of the Audit Committee to define the term "material modifications" which would best suit to the nature of their business/company.

Indicative parameters that can be considered by Audit Committee while defining the term “material modification”:

A contract/agreement or an arrangement is a bundle of rights and obligations of various parties to the contract. The contract contains various clauses including but not limited to contract price, tenure, nature of contract, credit periods, other exposure, various deliverables, penalties, disputes etc. The Audit Committee may lay down threshold or any other parameter for it to consider a modification to the contract to be material. A separate criteria of material modification can also be laid down for transaction for which omnibus approval are given and for other contracts/ transactions.

The following parameters can be considered by the Audit Committee while defining the term material modifications:

1. Any modification to the already approved contract price by X percentage. Alternatively, the Audit Committee may also prescribe an X amount as variation as material modification or even a mix of both as X percentage or X amount whichever is higher or lower can be defined to mean material modification. (the X percentage can also be on any other parameter such as on turnover or net worth depending upon the nature of business activities of the listed entity)
2. Any modification which significantly alters the nature or commercial terms of the contract or transaction or has significant impact on the value, tenure, exposure or likely financial impact of the transaction on the financials of the company.
3. Any modification which results the contract ceasing to be on arms’ length basis.
4. Any extension of the tenure by X period in comparison to originally approved period.
5. Novation of the contract in the favour of another company.
6. Significant increase in the credit periods.
7. Any significant increase/decrease in the repayment periods in case of loan contracts.
8. Any change in the terms relating to inspection of materials to be provided under the contract having a significant bearing on the same.

Further while defining the term “material modifications”, the Audit Committee may also choose to define what would not be termed as material modification. A few examples are:

1. Any modification which is mandated pursuant to any change in law.

2. Modifications which are in accordance with the terms of the originally approved contract/transactions.
3. Modifications which is due to change of constitution of either parties pursuant to the Scheme of arrangements, mergers, demergers etc.
4. Modification which results in terms and conditions being offered which are uniformly offered to even unrelated persons.
5. Any change to the contract which is due to the revision of statutory levies, duties or taxes.
6. Any change in the price of the contract which is due to change in the international prices of such commodities (such as gold, silver, metals, energy, crude etc.)

With effect from 1st April, 2019, following listed entities are exempted from compliance of Regulation 23 by virtue of Regulation 15(2) of the Listing Regulations:

Sl. No.	Type of listed entity	Conditions for Non-applicability of Regulation 23
1.	whose paid-up equity share capital <ul style="list-style-type: none"> ● does not exceed Rs.10 crores and; ● whose net worth does not exceed Rs.25 crores; as on last date of previous financial year.	Once the regulation 23 becomes applicable to a listed entity, it shall continue to remain applicable till such time the equity share capital or the net-worth of such entity reduces and remains below the specified threshold for a period of three consecutive financial years.
2.	Whose specified securities are listed on SME Exchange	-

Framework on obtaining the approval of Audit Committee

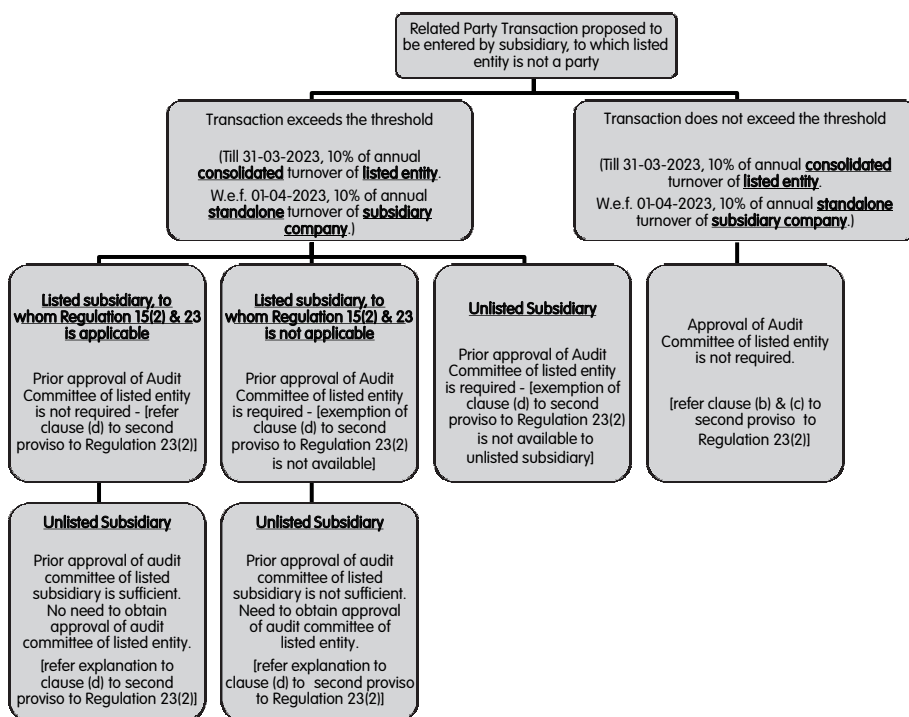
The RPTs as defined in Regulation 2(1)(zc) of the Listing Regulations includes both transactions of listed entity and transactions of subsidiary companies. Sub-regulation (2) of regulation 23 along with the second proviso provides for transactions which would require the approval of the Audit Committee.

As far the listed entity is concerned, sub-regulation (2) of regulation 23 clearly provides that all the RPTs of the listed entity shall require prior approval of the Audit Committee. SEBI (LODR) (Sixth Amendment) Regulations has further provided that all subsequent material modification (which would be defined by the Audit Committee)

of already approved RPT would also require prior approval of the Audit Committee. Hence a modification which is not material of already approved RPT will not require approval of the Audit Committee.

As far as the transactions of subsidiary companies with its related party or with the related party of listed entity are concerned, whether the approval of the Audit Committee of the listed entity will be required or not can be understood with the help of following diagrammatic presentation. One has to note that the approval framework provided in second proviso of sub-regulation (2) of regulation 23 is only when the listed entity is not a party to the transaction. If the listed entity itself is a party to the transaction, it will be covered by regulation 23(2) itself and would require prior approval of the Audit Committee.

Diagrammatic Presentation:



Explanation to Clause (d) to second proviso provides for approval only when the transaction is entered by **unlisted subsidiary of a listed subsidiary**. If suppose, a transaction is proposed to be entered by listed subsidiaries of listed subsidiary, one has to analyze the provision again from Clause (b), (c) & (d) perspective.

Framework on obtaining the approval of Shareholders

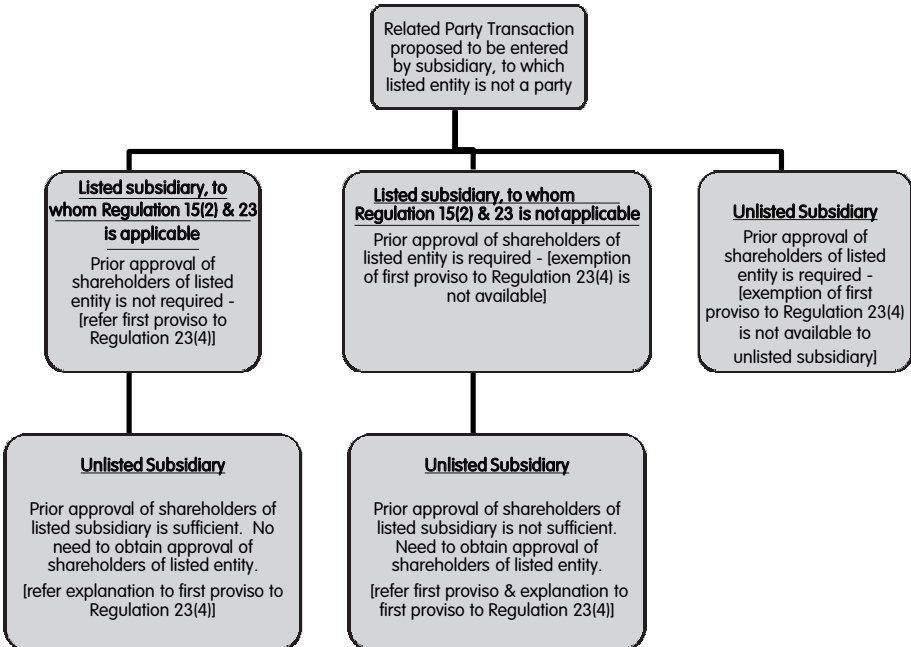
The RPTs as defined in Regulation 2(1)(zc) includes both transactions of listed entity

and transactions of subsidiary companies. Sub-regulation (4) of regulation 23 along with the first second proviso provide for transactions which would require the approval of the shareholders.

As far the listed entity is concerned, sub-regulation (4) of regulation 23 clearly provides that all the material RPTs of the listed entity shall require prior approval of the shareholders. SEBI (LODR) (Sixth Amendment) Regulations has further provided that all subsequent material modification (which would be defined by the Audit Committee) of already approved material RPT would also require prior approval of the shareholders. Hence a modification which is not material of already approved material RPT will not require approval of shareholders again.

As far the transactions of subsidiary companies with its related party or with the related party of listed entity are concerned, prior approval of the shareholders of the listed entity will be required or not can be understood with the help of following diagrammatic presentation. One has to note that the approval framework provided in first proviso of sub-regulation (4) of regulation 23 is applicable only when the listed entity is not a party to the transaction. If the listed entity itself is a party to the transaction, it will be covered by regulation 23(4) itself and would require prior approval of shareholders.

Diagrammatic Presentation:



Explanation to first proviso provides for approval only when the transaction is entered by **unlisted subsidiaries of listed subsidiary**. If suppose, a transaction is proposed to be entered by listed subsidiaries of listed subsidiary, one has to analyze and fall back on proviso to Regulation 23(4) again.

Background Recommendations made by the Working Group

The working group recommended that:

- a) All RPTs and subsequent material modifications shall require prior approval of the Audit Committee of the listed entity.
- b) RPTs 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. Such approval is mandatory only if the value of RPT (whether entered into individually or taken together with previous transactions during a financial year) exceeds 10% of the annual total revenues, total assets or net worth of the subsidiary, on a standalone basis, for the immediately preceding financial year, whichever is lower, provided that the criterion relating to net worth shall not be applicable if the net worth of the subsidiary is negative.
- c) Further, prior approval of the Audit Committee of the listed entity shall not be required for RPTs of listed subsidiaries where the listed entity is not a party.

The SEBI had accepted the recommendation of the Working Group with modification by authorising the Audit Committee to define material modification and disclose it as a part of policy on materiality of RPTs and on dealing with RPTs.

Further, w.r.t. recommendation of the Working Group for RPTs involving the subsidiary of a listed entity but not the listed entity, the threshold for placing such transactions before the Audit Committee of the listed entity, was linked to the annual consolidated turnover, as per the last audited financial statements of the listed entity.

With effect from 1st April 2023, the threshold shall be linked to the standalone turnover as per the last audited financial statements of the subsidiary.

The Act requires disclosure of RPTs in the Board's Report. The Accounting Standards mandate disclosure of the amount of the transactions with related parties. The Listing Regulations require multiple disclosures on a quarterly basis in the Corporate Governance Report as provided under Regulation 27; in the Corporate Governance Report which is part of the Annual Report as required under Regulation 34; and in the half yearly report to be filed with the stock exchanges (Regulation 23). So, it may be observed that the compliance requirements are a mix of disclosures and approvals.

According to the provisions of the Act, the following items require shareholders' approval provided the transactions are either not in the ordinary course of business or not on arm's length:

Particular	Threshold
Sale, purchase or supply of any goods or materials, directly or through appointment of agent	Transaction value \geq 10% of annual turnover of the company
Selling or otherwise disposing of, or buying, property of any kind, directly or through appointment of agent	Transaction value \geq 10% of net worth of the company
Leasing of property of any kind	Transaction value \geq 10% of annual turnover
Availing or rendering of any services, directly or through appointment of agent	Transaction value \geq 10% of annual turnover of the company
Appointment to any office or place of profit in the company, its subsidiary company or associate company	Monthly remuneration > Rs. 2.50 lakh
Remuneration for underwriting the subscription of any securities or derivatives thereof	Transaction value > 1% of net worth

For a listed entity, the Listing Regulations prescribe a threshold which exceeds rupees one thousand crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower, for determining material RPT. Further, w.e.f. July 1, 2019, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

While Section 188 of the Act is applicable to all public and private companies, including listed companies, Section 177 is only applicable to listed public companies and other public companies having paid up share capital of 10 crore rupees or more; or having turnover of 100 crore rupees or more; or which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees. Further, a company which has

voluntarily constituted an Audit Committee would also be required to comply with the requirements of Section 177(4)(iv) of approving transactions with related parties.

As provided under Rule 4(2) of the Companies (Appointment and Qualifications of Directors) Rules, 2014 read with Rule 6 of the Companies (Meetings of Board and its powers) Rules, 2014, the following unlisted public companies are exempted from constituting the Audit Committee - wholly owned subsidiaries, joint ventures and dormant companies.

In case of a company which has not constituted an Audit Committee, the Board of Directors of such company should approve transactions with related parties as required under the provisions of the Act.

The provisions of Regulation 23 of the Listing Regulations are only applicable to a listed entity which has listed its specified securities, i.e., equity shares and convertible securities on any recognized stock exchange(s), either on the main board or on the SME Exchange or on an innovators growth platform.

In case the listed entity is not a company but is a body corporate which is subject to regulations under other statutes, the corporate governance provisions as specified in Regulation 23 shall apply to the extent that the body corporate does not violate the respective statutes and the guidelines or directives issued by the relevant authorities, as may be applicable to such body corporate.

In other words, listed companies need to comply with the requirements prescribed under both the Act and the Listing Regulations.

A legal matrix pertaining to RPTs is placed at **Annexure-V**.

Issue: If the value of RPTs involving royalty is within 5% threshold under Regulation 23(1A) of the Listing Regulations. Then for the purpose of determining materiality of other RPTs between the same parties, whether value of the RPT for brand usage is to be excluded while ascertaining the threshold of rupees one thousand crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower?

View: Regulation 23(1A) of the Listing Regulations starts with the word 'Notwithstanding' and when a clause begins with the word "Notwithstanding" the object is to give it an overriding effect over other provisions.

As such the materiality threshold for brand royalty as provided in Regulation 23(1A) is in addition to the materiality limit provided under proviso of Regulation 23(1) and as such the RPTs with respect to brand usage or royalty shall not be aggregated for the purpose of determining materiality thresholds under proviso of Regulation 23(1).

Clarifications issued by the Ministry of Corporate Affairs (MCA)

The MCA has, vide General Circular No. 30/2014 dated 17th July 2014, clarified the following:

- (a) Transactions arising out of compromises, arrangements and amalgamations dealt with under specific provisions of the Companies Act, 1956 / Companies Act, 2013, will not attract the requirements of Section 188 of the Companies Act, 2013.
- (b) Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which came into effect before the commencement of Section 188 of the Companies Act, 2013 (i.e. before 1st April 2014) will not require fresh approval under Section 188 till the expiry of the original term of the contracts. Thus, if any modification is made to such contracts on or after 1st April 2014, the requirements of Section 188 will have to be complied with.

Issue: If a transaction is covered under two Sections of the Act (example Section 186 and 188) which one would prevail? The problem is more complex when one of the Sections has a non-obstante clause in the said Section.

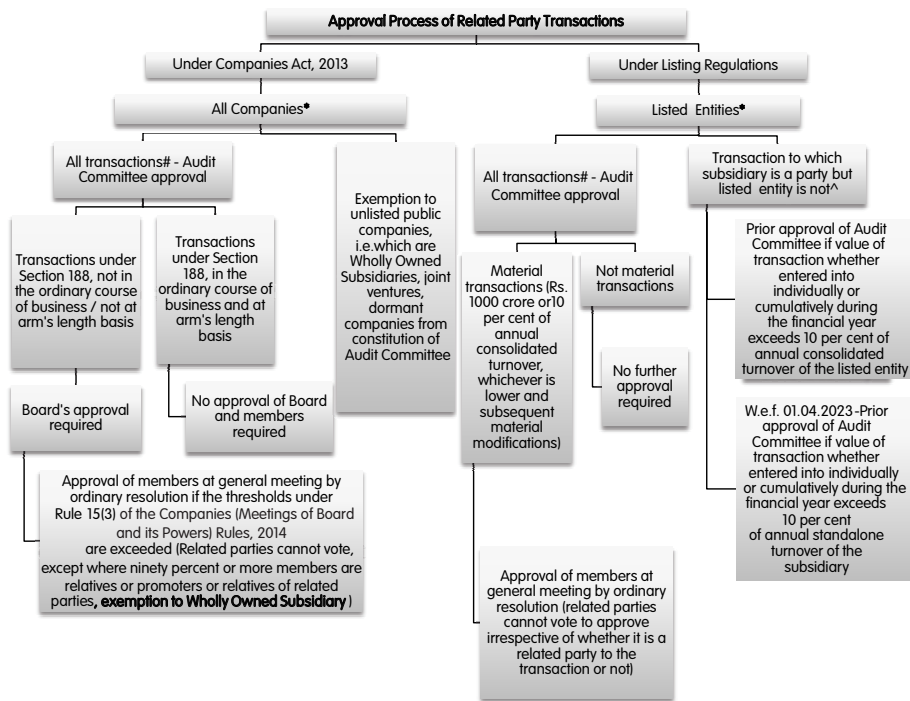
View: If there is a specific Section in the Act which applies, and the transaction is in the ordinary course of business as well as on an arm's length basis, then ordinarily Section 188 of the Act will not apply.

5. Board Processes

The Act casts onerous responsibility on the directors. The directors must take active steps to inform the Board about their interest in other entities. It is also expected that the directors also submit a list of relatives along with their PAN number/other identifications to enable the management to determine whether any transaction is with a related party and to track the transactions with such persons. Further, the list should be refreshed as and when there is any change, so that non-compliance with the applicable provisions of law can be avoided. Moreover, the management should apprise the Board about every transaction which would be with a related party or is expected to be a RPT. The Chairman of the Audit Committee should also brief the Board about the decisions of the Audit Committee on transactions with related parties.

6. Approval requirements for Related Party Transactions

As briefly explained above, the requirements of the Act and the Listing Regulations are somewhat different. However, the principles remain the same viz. that RPTs need to be approved as prescribed by the law.



[* Except transactions between the holding company and its wholly owned subsidiary (WOS)]

#All the transactions with related parties, with or without consideration, require the approval of Audit Committee.

[^]Prior approval of Audit Committee of the listed entity is not required if Regulation 15(2) & 23 of the Listing Regulations are applicable to the subsidiary.

Issue: Whether a related party can vote while rescinding the earlier resolution approving certain RPTs?

View: Section 188 of the Act and Regulation 23 of the Listing Regulations on related parties operate only at the time of entering into contract or arrangement, that is, when resolution was passed and it does not prohibit related parties from voting for recalling/rescinding the said resolution.

In the case of **R.T. Agro (P) Ltd v. SEBI**; Appeal No. 33 of 2020; SAT-Mum; Order dated 21.01.2022, the related parties abstained from voting on the original resolution while approving the transaction and later on a resolution was proposed for recall of the original resolution. The related parties voting on such recall

resolution was held to be valid. Section 188 or Regulation 23 do not prohibit related parties from voting for rescinding/recalling the resolution which is passed earlier by the company.

Upon appeal by SEBI, the Supreme Court has upheld the judgement of SAT in **SEBI vs. R.T. Agro (P) Ltd** in Civil Appeal No. 2957 of 2022 order dated April 25, 2022. [2022] 172 SCL 279 (SC)[25-04-2022].

6.1 As per the Act

6.1.1 Approval of the Audit Committee

In terms of Section 177 of the Act, all companies which are required to constitute an Audit Committee, or which have constituted an Audit Committee voluntarily, would require approval or subsequent ratification of the Audit Committee for all RPTs. Subsequent modifications to RPTs would also require approval of the Audit Committee.

Considering that Section 177 of the Act does not relate or refer to Section 188 of the Act, approval of the Audit Committee is required for all RPTs irrespective of whether they are in the ordinary course of business or not or whether they are on an arm's length basis or not.

In case of transaction, other than transactions referred to in Section 188 of the Act, and where Audit Committee does not approve the transaction, it shall make its recommendation to the Board. In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with a related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by the company.

Section 188 of the Act lists out certain specified transactions which would trigger the requirements of the said Section. However, approval of the Audit Committee under Section 177 of the Act will be required for all transactions between related parties, including financial transactions. Further, Section 177 of the Act permits the Audit Committee to grant omnibus approval for RPTs on an annual basis subject to fulfillment of certain conditions prescribed in Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014, namely:

- (1) The Audit Committee shall, after obtaining approval of the Board of Directors,

specify the criteria for making the omnibus approval which shall include the following, namely: -

- (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
 - (b) the maximum value per transaction which can be allowed;
 - (c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
 - (d) review, at such intervals as the Audit Committee may deem fit, RPTs entered into by the company pursuant to each of the omnibus approvals made;
 - (e) transactions which cannot be subject to the omnibus approval by the Audit Committee.
- (2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -
- (a) repetitiveness of the transactions (in the past or in the future);
 - (b) justification for the need of omnibus approval.
- (3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of a repetitive nature and that such approval is in the interest of the company.
- (4) The omnibus approval shall contain or indicate the following: -
- (a) name of the related parties;
 - (b) nature and duration of the transaction;
 - (c) maximum amount of transaction that can be entered into;
 - (d) the indicative base price or current contracted price and the formula for variation in the price, if any; and
 - (e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction

Provided that where the need for RPT cannot be foreseen and aforesaid details are not available, Audit Committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (5) 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.

- (6) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.
- (7) Any other conditions as the Audit Committee may deem fit.

Information to be reviewed by Audit Committee for approval of RPTs

SEBI vide circular dated 22nd November, 2021 provides that effective from 1st April, 2022 the listed entity shall provide following information, for review of the Audit Committee while considering proposed RPTs :

- a. Type, material terms and particulars of the proposed transaction;
- b. 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);
- c. Tenure of the proposed transaction (particular tenure shall be specified);
- d. Value of the proposed transaction;
- e. 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 (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);
- f. If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
 - (i) details of the source of funds in connection with the proposed transaction;
 - (ii) where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments,
 - nature of indebtedness;
 - cost of funds; and
 - tenure;
 - (iii) applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and
 - (iv) the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.

- g. Justification as to why the RPT is in the interest of the listed entity;
- h. A copy of the valuation or other external party report, if any such report has been relied upon;
- i. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;
- j. Any other information that may be relevant

In addition, the Audit Committee shall also review the status of long-term (more than one year) or recurring RPTs on an annual basis.

Background Recommendations made by the Working Group

It was felt that while the company's management is expected to provide all relevant information regarding an RPT to the Audit Committee to evaluate the same, it would be prudent to specify, the minimum information to be provided to the Audit Committee in relation to any RPT for which approval is sought.

It was also felt that since considerable information is being provided to the Audit Committee for approval of a RPT and it is also proposed to prescribe an extensive format for public disclosure of RPTs, the need to place, before the Audit Committee, a separate statement of significant RPTs, provided in Para 2 of Part B of Part C of Schedule II of the Listing Regulations, may not be required.

Accordingly, recommendation of the Working Group was accepted and requirement were prescribed vide SEBI circular dated November 22, 2021 as stated above.

Issue: Where a Board meeting is held prior to the Audit Committee meeting and the Board approves a transaction with a related party. Can the Audit Committee approval be taken subsequently?

View: Yes. The legal requirement is clear that the transactions referred to in Section 188 of the Act require approval of the Audit Committee. Audit Committee approval after Board's approval is irregular but not illegal. Further, the approval of the Audit Committee should be obtained before the transaction.

Issue: Whether approval of the Board will need to be taken by a wholly owned subsidiary which is not required to constitute an Audit Committee, for entering into transactions with related parties in the ordinary course of business and on an arm's length basis?

View: In such case, it is a good practice to place the item pertaining to related party(ies) before the Board. This is, however, not mandatory.

Issue: Where transactions are between a holding company and its wholly owned subsidiary company, will Section 177 of the Act be attracted?

View: A transaction between a holding company and its wholly owned subsidiary company is exempted from the requirement of Audit Committee approval under Section 177 of the Act and as per Regulation 23 of the Listing Regulations in case of a listed entity. However, if the transaction is a RPT, *i.e.*, of the nature falling under Section 188(1) of the Act, then approval of the Audit Committee will be required for such transaction.

In case of a transaction between a holding company and a subsidiary company which is not a wholly owned subsidiary, Sections 177 and 188 of the Act as well as Regulation 23 of the Listing Regulations will apply. The company is required to check whether it is a transaction in the ordinary course of business and on an arm's length basis as per Section 188 of the Act. In case it is a material RPT for the purpose of Regulation 23 of the Listing Regulations, then prior approval of shareholders will also be necessary.

Issue: Can approval of the Audit Committee, to a RPT, be granted by passing of resolution by circulation?

View: Section 188(1) of the Act prohibits the Board from dealing with an item of business pertaining to a contract or arrangement with a related party through a resolution by circulation. However, the law is silent on dealing with any item of business by the Audit Committee through a resolution by circulation. Here, the intention of the Legislature is required to be gathered from the language used; which means that attention should be paid to what has been said as also to what has not been said. As a consequence, though it cannot be added that the law imposes any restriction, the principle applicable on meetings of the Board would be applicable to the meetings of the Audit Committee too, while dealing with items of business on RPTs. As per the Secretarial Standard on Meetings of the Board of Directors (SS-1), the Audit Committee should discuss RPTs which are not in the ordinary course of business or which are not on arm's length basis at its meetings and not through resolution by circulation. However, there is expressly no bar on omnibus approval of limits being passed by a resolution by circulation by the Audit Committee.

6.1.2 Approval of the Board of Directors

Section 188(1) of the Act provides that a company cannot enter into the following contracts or arrangements with its related parties without the approval of its Board of Directors at a meeting of the Board:

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company.

However, such approval by the Board of Directors will not be required for transactions entered in the ordinary course of business and on an arm's length basis. In other words, approval of the Board of Directors will only be required for RPTs which are either not in the ordinary course of business or not on an arm's length basis.

Approval of the Board for RPTs is required to be taken at a Board meeting and cannot be taken through a resolution by circulation.

Section 188(3) of the Act provides that where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board, such approval may be taken within three months from the date on which such contract or arrangement was entered into.

Rule 15(1) of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that the agenda of the Board meeting at which the resolution is proposed to be moved shall disclose:

- (a) the name of the related party and nature of relationship;
- (b) the nature, duration of the contract and particulars of the contract or arrangement;
- (c) the material terms of the contract or arrangement including the value, if any;
- (d) any advance paid or received for the contract or arrangement, if any;
- (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
- (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and

- (g) any other information relevant or important for the Board to take a decision on the proposed transaction.

In terms of Rule 15(2) of the Companies (Meetings of Board and its Powers) Rules, 2014 and Paragraph 3.2 of the Secretarial Standard on Meetings of the Board of Directors (SS-1), where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

In other words, the concerned interested director shall leave the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

Schedule IV to the Act specifically provides that independent directors shall pay sufficient attention and ensure that adequate deliberations are held before approving RPTs and assure themselves that the same are in the interest of the company.

It is pertinent to refer to the provisions relating to quorum at a board meeting contained in Section 173 of the Act, which in turn refers to Section 184(2) of the Act. It is important to note that Section 184(2) of the Act only refers to interest of a director and not to interest of his relative. The Section refers to a director being a partner in a firm. In case his wife is a partner in a firm, the director concerned will not be said to be interested in matters related to that firm and hence will be capable of being counted for quorum when such matter is being considered by the Board. If, however, the transaction with the firm where his wife is a partner is a RPT falling under Section 188 of the Act read with Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 then the director concerned will be required to leave the room during the discussion on the item of business by the Board of a public company. In relation to any item of business being considered by the Board, "Quorum", "participation" and "voting" are three important points which are affected by the provisions of the law relating to related parties.

Issue: Will payment of commission to non-executive directors be treated as a RPT? Should they vacate the room where the Board meeting is conducted while the item considering their commission is discussed? Or can they participate on this item of agenda?

View: While there is a view that payment of commission to non-executive directors is approved by the shareholders and such payment of commission will not be a RPT under Section 188 of the Act read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, it is a good practice for the non-executive directors to vacate the room where the Board meeting is discussing his/ their

remuneration. A dis-interested quorum should be present during discussion of such item. If the item on approval for payment of commission which is placed before the Board is within the overall ceiling already approved by the shareholders, then specific approval at the general meeting is not required. The non-executive directors cannot participate nor vote on the discussions on the said item.

Issue: Where a director is nominated by a related party, whether the nominee director can be present at a Board meeting where a RPT is being considered?

View: It is a good practice for the nominee director not to be present at the meeting even if he is not an interested director as per Section 184(2) of the Act.

Issue: In case of a public company there are three Directors and all are related to each other and there is an item of business in which all the three directors are interested. What is the way forward in such a situation?

View: The Board may approve such items only if a dis-interested quorum is present. Otherwise, the matter would need to be placed for approval at a general meeting. At a general meeting, if 90% or more of the number of members are related to the promoters or are related parties, then the related parties can also vote on the resolution to approve any contract or arrangement.

In case of a listed public company, the directors need to decide first on the proposed resolution and then the matter needs to be placed before the shareholders for approval.

6.1.3 Approval of Shareholders

Prior approval of the shareholders by way of a resolution shall be required for RPTs which are either not in the ordinary course of business or not on an arm's length basis, where the transaction(s) to be entered into, either individually or taken together with previous transactions during the financial year, exceed the following threshold limits, as specified in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014:

- (a) Sale, purchase or supply of any goods or materials, directly or through appointment of an agent, amounting to 10% or more of the turnover of the company.
- (b) Selling or otherwise disposing of or buying property of any kind, directly or through appointment of an agent, amounting to 10% or more of the net worth of the company.
- (c) Leasing of property of any kind amounting to 10% or more of the turnover of the company.

- (d) Availing or rendering of any services, directly or through appointment of an agent, amounting to 10% or more of the turnover of the company.
- (e) Appointment to any office or place of profit in the company, its subsidiary or associate company at a monthly remuneration exceeding Rs. 2.5 Lakh.
- (f) Remuneration for underwriting the subscription of any securities or derivatives thereof, of the company, exceeding 1% of the net worth of the company.

In case of a wholly owned subsidiary, the resolution passed by the holding company shall be sufficient for entering into transactions between the wholly owned subsidiary and its holding company.

Further, the aforesaid requirement of obtaining prior approval of the shareholders is also not applicable to the RPTs between a holding company and its wholly-owned subsidiary, whose accounts are consolidated with such holding company and placed before the shareholders of the holding company at their general meeting for approval.

However, if a company avails of the exemption provided in Rule 6 of the Companies (Accounts) Rules, 2014 read with Section 129(3) of the Act, and does not consolidate accounts of its subsidiary, then it will not be entitled to avail the aforesaid exemption from obtaining approval of the shareholders.

Prior approval of the shareholders is not required in case of Government companies, where contracts or arrangements are entered into with any other Government company, and for other contracts or arrangements by a non-listed Government company, in case such company obtains the approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, of the State Government, before entering into such contract or arrangement.

Explanation (3) to Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that the explanatory statement to be annexed to the notice of a general meeting shall contain the following particulars namely:-

- (a) name of the related party;
- (b) name of the director or key managerial personnel who is related, if any;
- (c) nature of relationship;
- (d) nature, material terms, monetary value and particulars of the contract or arrangement;

- (e) any other information relevant or important for the members to take a decision on the proposed resolution.

Paragraph 1.2.5 of Secretarial Standard on General Meetings (SS-2) provides that in respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.

The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any item of special business or in a proposed Resolution, shall be disclosed in the explanatory statement:

- (a) Directors and Manager;
- (b) Other Key Managerial Personnel; and
- (c) Relatives of the persons mentioned above.

Second proviso to Section 188(1) of the Act provides that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. This proviso is not applicable to:

- A private company,
- An unlisted public company which is licensed to operate by the RBI or the SEBI or the IRDAI from the International Financial Services Centre located in an approved multi services Special Economic Zone (SEZ) set-up under the SEZ Act, 2005;
- A Government company in respect of contracts or arrangements entered into by it with any other Government company and to other contracts or arrangements by a non-listed Government company where such company obtains the approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, of the State Government before entering into such contractor or arrangement.

By virtue of MCA Notification dated 13th June, 2017, the exemption from applicability of the said proviso is available only to those private and Government companies who have not committed a default in filing of their financial statements under Section 137 of the Act or their annual return under Section 92 of the Act with the Registrar.

Further, in case of a company in which 90% or more of the number of members are relatives of the promoters or are related parties, a member who is a related party can vote on a resolution to approve any contract or arrangement which may be entered into by the company, even if such member is a related party.

The MCA has, vide its Circular No. 30/2014 dated 17th July 2014, clarified that the 'related party' referred to in the second proviso, as stated above, has to be construed with reference only to the contract or arrangement for which the said resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said resolution is being passed.

Issue: Will the requirement of passing a shareholder's resolution not be applicable for transactions entered into between a Holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed for approval before the shareholders at the general meeting of the Holding company?

View: Yes, the fifth proviso to Section 188(1) of the Act provides that the requirement of passing the resolution under the first proviso to Section 188(1) shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

It is pertinent to observe that explanation (2) to Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that in case of a wholly owned subsidiary, the resolution that is passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company. This will mean that in case the fifth proviso to Section 188(1) of the Act is not available to a company as the accounts are not so consolidated, then as per explanation (2) to Rule 15 a resolution passed by the holding company will be sufficient.

Issue: Can shareholders approve the transactions without recommendations of the Audit Committee/ Board?

View: No. Any such transaction requires recommendation/approval of the Audit Committee and the Board. It cannot be directly approved by the shareholders of the company.

Issue: Can the Board take up any RPT which has not been approved by the Audit Committee?

View: Pursuant to the provisions of Section 177 of the Act, all the RPTs require prior approval of the Audit Committee. However, as per second proviso to Section 177(4) (iv) of the Act, if a transaction is not referred to under Section 188 of the Act and not approved by the Audit Committee, it shall make its recommendation to the Board and the Board can either approve or reject the transaction.

Issue: RPTs between two government companies are exempted. Is it necessary to place such RPTs before the Audit Committee and the Board for information?

View: Government companies are not required to obtain prior approval of members for entering into transactions with related parties and, also, a member can vote to approve such transactions. Therefore, it is a good practice to place such items before the Audit Committee and the Board for Noting.

Also given the fact that there is no specific exemption granted for Government Companies under Section 177 of the Act, it would be required to place such RPTs for approval of the Audit Committees of the Government Companies also.

Issue: A Ltd. is a wholly owned subsidiary of B Ltd. and C Ltd. is a wholly owned subsidiary of A Ltd. A Ltd., being an intermediate wholly owned subsidiary, does not prepare consolidated financial statements and B Ltd., the ultimate holding company, prepares consolidated financial statements. A Ltd. proposes to enter into a transaction with C Ltd. with respect to sale of a property, not at arm's length and also not in the ordinary course of business of the company. The said transaction also exceeds the threshold limit prescribed under Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Whether the aforesaid transaction will be exempted from obtaining shareholder's approval as required under Section 188 of the Act?

View: The aforesaid transaction will be treated as a RPT under Section 188 of the Act and will not be eligible to claim exemption from obtaining shareholder's approval, as the financial statements of C Ltd. are not consolidated with A Ltd.

For further details on the approval framework for RPTs, please refer to the charts given in this Guidance Note.

Issue: Will remuneration by way of salary proposed to be paid to a director amount to a RPT?

View: Appointment of a director in a company requires approval of the Nomination & Remuneration Committee as per Section 178 of the Act and thereafter Board's approval. There is no requirement of referring the appointment to the Audit Committee if the person proposed to be appointed as director is not a related party. When the appointment recommended by the Nomination & Remuneration Committee is approved by the Board, it has to be approved by the shareholders of the company at the ensuing Annual General Meeting (except in a few cases where the Act clearly mandates prior approval). At the time of appointment, the person proposed to be appointed is not a related party (not being from the promoter group or a relative of a director, etc) and therefore, there is no RPT.

If in a case the person proposed to be appointed as a director is a related party at the time of appointment, (for example if the person is a relative of a promoter who is also a director of the company), it will be a case of a RPT and therefore would require approval in the following order:

- Nomination and Remuneration Committee as per Section 178 of the Act,
- Audit Committee as per Section 177 of the Act,
- Board as per Section 196 of Act,
- Shareholders in general meeting as per Section 196 of the Act.

Note: Although there is no bar on the Audit Committee approving the appointment subject to the approval of the Nomination & Remuneration Committee, it will not be considered a good practice, since such items are initially considered and recommended by the Nomination and Remuneration Committee and thereafter approved by the Audit Committee and then by the Board.

6.2 As per the Listing Regulations

In the Listing Regulations, there is no explicit provision requiring approval / ratification / review of RPTs by the board of directors. However, in Chapter II of the Listing Regulations relating to 'Principles governing disclosures and obligations of listed entity', SEBI has prescribed the key functions of the directors, in which it is stated that Board of Directors are required to monitor and manage 'potential conflict of interest' by the company.

Regulation 23 of the Listing Regulations mandates prior approval of the Audit Committee for all RPTs (except with a wholly owned subsidiary) and approval of the shareholders in case of a 'material RPT.' The Audit Committee is also be required to approve any subsequent material modification of transactions of the listed entity with its related parties.

In terms of Schedule II of the Listing Regulations, the role of the Audit Committee includes reviewing with the management, the annual financial statements of the company with particular reference to 'disclosure of any RPTs'.

However, Regulation 23 permits the Audit Committee to grant omnibus approval for RPTs proposed to be entered into by the company subject to the following conditions:

- (a) The Audit Committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the company and such approval shall be applicable in respect of transactions which are repetitive in nature.

- (b) The Audit Committee shall satisfy itself on the need for such omnibus approval and that such approval is in the interest of the company.
- (c) Such omnibus approval shall specify (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into, (ii) the indicative base price / current contracted price and the formula for variation in the price, if any, and (iii) such other conditions as the Audit Committee may deem fit.

Where the need for RPT cannot be foreseen and the aforesaid details are not available, the Audit Committee may grant omnibus approval for such transactions subject to their value not exceeding Rs.1 crore per transaction.

- (d) The Audit Committee shall review, at least on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

Further, Regulation 23 requires that all material RPTs and subsequent material modifications as defined by the Audit Committee shall require prior approval of the shareholders through a resolution. Such approval is required irrespective of whether the transaction is in the ordinary course of business or whether the same is on arm's length basis.

However, prior approval of the shareholders of a listed entity shall not be required for a RPT to which the listed subsidiary is a party but the listed entity is not a party, if Regulation 23 and 15(2) of the Listing Regulations are applicable to such listed subsidiary.

Explanation: For RPTs of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.

In this connection, it may be noted that Regulation 2(1)(zc) of the Listing Regulations provides that a transaction with a related party shall be construed to include a single transaction or a group of transactions in a contract. In other words, for the purpose of computing the threshold limit, such transactions would be aggregated as they are undertaken under a single contract.

Background Recommendations made by the Working Group

- (a) All material RPTs and subsequent material modifications, shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

- (b) Prior approval of the shareholders of a listed entity shall not be required for a RPT to which the listed subsidiary is a party but the listed entity is not a party.

SEBI had accepted the recommendations of the working group and additionally specifies that subsequent material modifications shall be as defined by the Audit Committee.

Issue: In a listed entity, is a related party not allowed to vote on a resolution (pertaining to a material RPT) proposed to be passed in a general meeting even if that party is not a party to the proposed transaction?

View: Yes, a related party is only entitled to vote against the resolution.

Issue: Does shareholders' approval for material RPTs have to be limited to a particular financial year, or may span across financial years?

View: Companies can take approval of shareholder for multi-year contract/arrangements with related parties after disclosing specific details for each of the RPT along with justification as required under SEBI Circular dated 22nd November, 2021.

The SEBI Circular dated 8th April, 2022 is enabling in nature to facilitate listed entities to align their processes to conduct AGMs and obtain omnibus shareholders' approval for material RPTs. This applies where a company does not have a specific contract /arrangement with a related party and is seeking omnibus approval of shareholders basis an estimated value. Only in case of such omnibus approvals the company needs to seek approval on an annual basis from the shareholders for material RPTs.

The Act provides for individual thresholds for each type of RPT for the purpose of taking shareholder's approval through ordinary resolution. However, the Listing Regulations prescribe a common threshold exceeding Rs. 1000 crore or 10% of annual consolidated turnover as per the last audited financial statements of the listed entity, whichever is lower for transaction(s) to be termed as material RPT, for which prior approval of shareholders is required. For this purpose, it is noteworthy that all such transactions are to be taken together, provided the said transactions are undertaken under a common contract. In some cases, this might lead to a situation in which a transaction, which otherwise would be exempt from shareholder's approval under the Act, might have to be approved by the shareholders under the Listing Regulations, or vice versa.

Illustration

ABC Ltd. is an automobile manufacturing company having two subsidiaries i.e. PQ Ltd. and RS Ltd. The turnover of ABC Ltd. for the financial year 2021-22 is Rs. 5000 crore. PQ Ltd. is in the business of manufacturing of machinery for the automobile sector and has a turnover of Rs. 2000 crore for the financial year 2021-22. RS Ltd. is in the business of manufacturing of tyres and its turnover for the financial year 2021-22 is Rs. 3000 crore.

The annual consolidated turnover of ABC Ltd. would be Rs. 10000 crore.

ABC Ltd. procures goods from its subsidiaries and also from the market. During the previous financial year, ABC Ltd. established a new production unit and procured machinery of Rs. 1100 crore for this purpose from PQ Ltd. During the year, ABC Ltd. procured tyres for its different units of Rs. 1500 crore from RS Ltd. by placing a master purchase order.

Here, the transactions with both companies are material, since the transaction with PQ Ltd. and RS Ltd. during the financial year exceeds 10% of its annual consolidated turnover as also exceeds the threshold of Rs. 1000 crore. Hence, approval of the shareholders will be necessary apart from approval of the Audit Committee.

Approval of the Audit Committee and the shareholders under Regulation 23, as stated above, will not be required in the following cases:

- (i) transactions entered into between two government companies;
- (ii) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval;
- (iii) transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Here "Government Company(ies)" means Government Company as defined in Section 2(45) of the Companies Act, 2013.

Issue: What should be the meaning of a wholly owned subsidiary?

View: For the purpose of Regulation 23(5) of the Listing Regulations, a wholly owned subsidiary would mean a subsidiary where the entire economic interest is held by parent listed entity, directly and/or indirectly (through one or more subsidiaries).

Regulation 23(5) of the Listing Regulations exempts RPT framework for transactions between holding company and its wholly owned subsidiary ("WOS") or between two WOS, whose accounts are consolidated with parent company.

Whether the WOS would include such subsidiaries, where interest in addition to the parent listed entity is owned partially by another WOS of such parent listed entity i.e., entire economic interest in the downstream subsidiary is ultimately owned by the parent company directly and/or together with one or more other subsidiaries, such questions are unanswered.

So, in line with SEBI's informal guidance in the matter of Renaissance Jewellery Ltd. dated September 13, 2017, wherein the meaning of WOS for Regulation 37 of the Listing Regulations has been explained, the same should be extended here.

Issue: The term "holding company" or "holding listed entity" refers to the listed entity or whether the aforesaid terms can be extended to any subsidiary company which is an intermediate holding company to its wholly owned subsidiaries and Inter-se between such intermediate holding company and WOS?

View: The terms "holding company" or "holding listed entity" in the exemptions provided to the transactions involving subsidiaries under Regulation 23(5) (b) and (c) of the Listing Regulations do not necessarily refer only to the listed entity and shall include intermediate holding companies also.

Regulation 23(5) of the Listing Regulations provides exemptions to the below transactions involving subsidiaries:-

- transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.
- transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Issue: Are RPTs entered into between the holding company and its WOS from the date of incorporation of WOS till the time its accounts are consolidated with the holding company and placed before the shareholders of the holding company at the general meeting for approval, exempt under Regulation 23(5) of the Listing Regulations?

View: If the company is incorporated as a WOS and there is RPT between the holding company and WOS, it would be exempt under Regulation 23(5) of the Listing Regulations even if the first accounts of WOS are yet to be consolidated and placed before the shareholders of the holding company.

The key test for seeking exemption is that there should be a holding company and WOS relationship at the time of entering into RPT. The companies do not have to wait till the general meeting of the shareholders of the holding company for approval of consolidated accounts. Nonetheless, the accounts of such WOS would later necessarily be consolidated with such holding company and placed before the shareholders at the general meeting for approval, to avail the exemption provided under Regulation 23(5) of the Listing Regulations.

If such WOS ceases to be a subsidiary of such holding company at a later stage after entering into RPT and no consolidation of accounts takes place at the year end, this exemption would not be available. In such case the RPT entered between the holding company and WOS may amount to a non-compliance with the Regulations. Hence once the exemption is availed it should be ensured that the conditions under which the exemption is availed are satisfied.

Issue: A holding company enters into RPT with WOS and avails exemption under Regulation 23(5) of the Listing Regulations. Subsequently, such WOS becomes a non-WOS during the same financial year. In such a scenario, for ascertaining the materiality threshold provided in the proviso to Regulation 23(1) of the Listing Regulations, whether all the RPTs entered into with such subsidiary when it was a WOS should be included OR only the transactions between the holding company and subsidiary as non-WOS, should be considered to reckon the threshold of rupees one thousand crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower?

View: The RPTs entered between the holding company and its WOS whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval are exempted. Hence the transactions entered between the holding company and its WOS are exempted and only the transactions between the holding company and its subsidiary as non-WOS should be considered to reckon the threshold limits.

Background Recommendations made by the Working Group

In line with the exemption given to transactions between a holding company and its wholly owned subsidiary from the requirements of Audit Committee and shareholder approval, it is felt that transactions between two wholly owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval, should be similarly exempt from such requirements.

Accordingly, the working group recommended to exempt transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval from the provisions of Regulation 23 (2), (3) and (4) of the Listing Regulations in addition to the existing exemptions.

SEBI had accepted the recommendation of the Working Group without any modification.

Clarification issued by SEBI vide circular dated March 30, 2022 (effective from April 1, 2022)

Based on the representations received from listed entities and industry bodies, following clarifications and guidance for smooth implementation of the amended Regulation 23 of the Listing Regulations were issued by SEBI:

- (i) 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.
- (ii) Regulation 23(8) of the Listing Regulations specifies that all existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

In accordance with the said regulation, 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.

- (iii) It is reiterated that 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 Listing Regulations.

- (iv) Transparency, accountability and shareholder empowerment are the bedrock of robust corporate governance. Listed entities, therefore, shall ensure to comply with the spirit of the law and endeavor to provide relevant and detailed information to enable and empower shareholders for taking an informed decision.
- (v) 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.

The information so provided shall include but not be limited to the information specified in circular dated November 22, 2021 so as to enable to the shareholders to take an informed decision.

Issue: A listed holding company (A Ltd.) has two subsidiaries, one high value debt listed subsidiary (B Ltd.) and another unlisted subsidiary (C Ltd.). B Ltd. has further unlisted subsidiary D Ltd. A transaction is contemplated between C Ltd. and D Ltd. and the value of such transaction exceeds 10% of consolidated turnover of A Ltd. Does this RPT have to be approved by Audit Committee & shareholders of B Ltd. (being the immediate holding listed entity) or by the Audit Committee and shareholders of A Ltd. or by both? Would it make any difference if the transaction was between B Ltd. and C Ltd.

View: In terms of Regulation 23 of the Listing Regulations, all material RPTs require prior approval of the Audit Committee and shareholders of the listed entity. However, in terms of the proviso to Regulation 23(4) of the Listing Regulations, if a listed subsidiary of the listed entity is a party to such material RPTs and the listed entity itself is not, then approval of the listed entity is not required, so long as the Regulation 23 and 15(2) of the Listing Regulations are applicable to such listed subsidiary.

In the above case, if the material RPT is between B Ltd. and C Ltd. and so long as the Audit Committee and shareholders of B Ltd. have approved the RPT, there is no requirement for the Audit Committee and shareholders of A Ltd. to approve the same. The contract between C Ltd. and D Ltd. need to be approved by A Ltd.

While from the Listing Regulations perspective, above is the view, from a Companies Act perspective, approval as may be required in terms of Section 177 or Section 188 of the Act, as the case may be, will have to be obtained.

7. Disclosures

7.1 Disclosures of details of Relatives by Directors and others

Every director must disclose to the company, details of his relatives preferably along with his disclosure of his interest, as follows:

- At the first meeting of the Board in which he participates as a director.
- Disclosure at the beginning of every financial year.
- Whenever there is any change in the disclosures already made, within thirty days or at the first Board meeting held after such change, whichever is earlier.

Key managerial personnel other than directors should also disclose details of their relatives within 30 days of joining the company or upon any change thereafter.

The company should maintain a register to record the details of the relatives of the persons mentioned above. Such register should be kept at the registered office of the company in the custody of the Company Secretary or any other person authorized by the Board for the purpose and shall be preserved permanently.

Further, the company may develop a system to enable it to capture the names of such relatives in transactions entered or to be entered into by the company in order to enable it to identify RPTs.

A suggested format for disclosure of details of relatives is placed at **Annexure-I**.

7.2 Disclosures of Interest by Directors

7.2.1 As per the Act

In terms of Section 184 of the Act, every director of a company is required to disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals, to all the companies in which he is a director.

The duty to disclose applies also to an alternate director as well as to every other director appointed by any person or in any manner, including Nominee Directors.

Section 184 of the Act can be divided into two parts as detailed below:

- (a) Section 184(1) - Every director of a company is required to disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals, including shareholding, to all the companies in which he is a director as follows:
 - At the first meeting of the Board in which he participates as a director.

- At the first meeting of the Board in every financial year.
- Whenever there is any change in the disclosures already made, at the first Board meeting held after such change.

In terms of Section 189(2) of the Act, in case of change, directors are required to make disclosures within 30 days of such change. The disclosure under Section 184(1) of the Act shall be given in Form MBP-1.

Accordingly, the director would be required to disclose change in the disclosures already made at the first Board meeting held after such change or within 30 days of such change, whichever is earlier.

Further, in terms of Section 189 of the Act, such disclosures under Section 184(1) of the Act are also required to be made by key managerial personnel, other than directors.

According to Rule 9(3) of the Companies (Meetings of Board and its Powers) Rules, 2014, the notices of such disclosures shall be kept at the registered office of the company in the custody of the Company Secretary or any other person authorized by the Board for the purpose and shall be preserved for a period of eight years from the end of the financial year to which they relate.

- (b) Section 184(2) - Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into –
- with a body corporate in which a director (singly or alongwith other directors) holds more than 2% shareholding or is a promoter / manager / chief executive officer of that body corporate; or
 - with a firm or other entity in which such director is a partner, owner or member,

shall disclose the nature of his concern or interest at the Board meeting in which such contract or arrangement is discussed.

Paragraph 3.2 of the Secretarial Standard on Meetings of the Board of Directors (SS-1) provides that a Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of private companies, the interested director may participate in such meeting after disclosure of his interest.

In case of an unlisted public company which is licensed to operate by the RBI or the SEBI or the IRDAI from the International Financial Services Centre located in an approved multi services SEZ set-up under the SEZ Act, the interested director may

participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting. Further, Section 184(2) of the Act shall apply to Section 8 companies, only if the transaction with reference to Section 188 of the Act on the basis of terms and conditions of the contract or arrangement exceeds Rs. 1 lakh.

In case a director is not concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Disclosure under Section 184(2) of the Act must be made at a meeting of the Board while the disclosure under Section 184(1) of the Act is to be given at or brought before a meeting of the Board. Such disclosures must be recorded in the minutes of the Board meeting. It shall be the duty of the director giving the notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

Issue: What are the consequences of failure to make disclosure of interest by a director in case of a private company?

View: MCA Notification dated 5th June, 2015 which grants exemptions to private companies' states that Section 184 of the Act (which deals with disclosure of Interest by Directors) will be applicable to a private company except that a director of a private company who is interested in a transaction with a related party will have to make a disclosure regarding the same and thereafter, he shall be entitled to participate as well as vote on the said transaction. The exemption given in the said notification is that the director shall make a disclosure after which, he shall be entitled to participate in the discussion as well as the voting. This is also applicable to a one person company which is also a private limited company.

However, the benefits of above exemptions shall be available only to those companies which have not committed a default in filing its financial statements under Section 137 of the Act or annual return under Section 92 of the Act with the Registrar. [MCA Notification dated 13th June, 2017]

Further, as per Section 167(1)(c) & (d) of the Act, the office of a director shall become vacant in case he acts in contravention of the provisions of Section 184 of the Act relating to entering into contracts or arrangements in which he is directly or indirectly interested; or if he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184 of the Act.

7.2.2 As per the Listing Regulations

Members of the Board of directors and Key Managerial Personnel shall disclose to the Board of Directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

7.3 Disclosures of Related Party Transactions

7.3.1 As per the Act

Section 134(3) of the Act read with Rule 8(2) of the Companies (Accounts) Rules, 2014 requires all companies to disclose in the Board's Report, particulars of contracts or arrangements with related parties in Form AOC-2.

Further, in terms of Section 177(8) of the Act, where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in Board's Report along with the reasons thereof.

Form AOC-2 has been prescribed for disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in Section 188(1) of the Act including certain arm's length transactions under the third proviso thereto.

Form AOC-2 requires disclosure of (a) RPTs which are entered into not on arm's length basis and (b) material RPTs which are entered into on arm's length basis.

Issue: Will a transaction of payment of salary to an employee who is a relative of a director, where such payment is in the ordinary course of business and on arm's length, require disclosure as a RPT in the Board's Report?

View: The same need not be disclosed as a RPT in Form AOC-2 in the Board's Report unless the same is material in the context of the company's business.

Issue: Is it required that items falling in the ambit of the fourth proviso to Section 188(1) of the Act i.e. transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis, be mentioned in Form AOC-2?

View: Form AOC-2 uses the term 'material' and therefore if the transactions are material, the same will need disclosure. A transaction which is in the ordinary course of business and on arm's length basis but which is considered to be material will require disclosure in Form AOC-2. It is to be noted that approvals of the Board and the shareholders are not required if the transaction is in the ordinary course of business and on arm's length basis, but disclosure is required from the perspective of transparency.

Illustration

A payment of Rs. 500 crore to a related party for rendering of services, wherein the turnover of the company is Rs. 2000 crore will be treated as a material transaction and will require disclosure in Form AOC-2 as a RPT.

Form AOC-2 shall be signed by the persons who have signed the Board's Report.

Issue: In case the disclosure is an annexure to the Board's Report, whether the same needs to be signed by the persons who have signed the Board Report?

View: According to Section 134(6) of the Act, the Board's Report and any annexures thereto under sub-section (3) shall be signed by the chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director. Hence, AOC-2 is required to be signed as above even if it is an annexure to the Board's Report.

While Form AOC-2 refers to disclosure to be made with respect to material contracts or arrangements or transactions at arm's length basis, the term 'material contracts' is not defined under the Act. Such materiality may be determined as per Regulation 23 of the Listing Regulations for listed companies and as per the threshold limits provided in Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 for unlisted companies.

7.3.2 As per the Listing Regulations

(a) Disclosure to shareholders

SEBI circular dated 22nd November, 2021 provides for following information to be provided to shareholders for consideration of RPTs effective from 1st April, 2022:

The notice being sent to the shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, include the following information as a part of the explanatory statement:

- a. A summary of the information provided by the management of the listed entity to the Audit Committee for approval of a proposed RPT;
- b. Justification for why the proposed transaction is in the interest of the listed entity;
- c. Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:

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

(The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)

- d. 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;
- e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
- f. Any other information that may be relevant.

Background Recommendations made by the Working Group

It was observed that the level of minority individual shareholder voting in India is currently low and due to the requirement of a majority vote of non-related shareholders for RPTs, a need was felt to maximize informed shareholder participation. It was felt that the information required to be disclosed to the Audit Committee should also be provided to the shareholders in a brief and comprehensible manner. Further, it may be relevant for the shareholders to know whether the approval for the RPT was given unanimously by the Audit Committee.

It was also felt that a copy of the valuation report or any other external report relied upon by the management of the company should be annexed to the notice to the shareholders so as to provide useful insights on the RPT. However, the Working Group also recognised the fact that such reports may be voluminous and technical. Accordingly, it was proposed that such reports should be made available for inspection at the registered office of the listed entity.

In view of above and since, there was no provision related to information to be placed before the shareholders for approval of RPTs, the working group recommended that the notice being sent to shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, *inter-alia*, include certain specific information as a part of the explanatory statement.

SEBI had accepted the recommendation of the Working Group with following modification:

- (1) Disclosure of whether the approval of the RPT by the members of the Audit Committee was unanimous may not be included;
- (2) Exemption to listed banks/NBFCs from the requirement of disclosure of information with respect to details of source of funds and cost of funds relating to loans, ICDs, advances or investments, etc.
- (3) Valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction may be made available on the registered email address of the shareholder of the listed entity.

(b) Disclosure in the Annual Report

In terms of Schedule V of the Listing Regulations, companies shall make the required disclosures in their Annual Reports, in compliance with the Accounting Standard on 'Related Party Disclosures'. This disclosure shall be applicable to all listed entities which has listed its non-convertible securities except listed banks.

The company shall make disclosures on materially significant RPTs that may have potential conflict with the interests of the company in the corporate governance section of the Annual Report.

Further, the Annual Report should also include disclosures of transactions of the listed entity with any person or entity belonging to the promoter/ promoter group which hold(s) 10% or more shareholding in the listed entity. This disclosure shall be in the format prescribed in the relevant accounting standards for annual results. [Schedule V: Clause A1. (2A) of Listing Regulations]

It may be noted that a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

Background Recommendations made by the Working Group

The working group noted that the Listing Regulations mandates certain disclosures relating to loans and advances as specified under Schedule V in the Annual Report of the listed entity except for listed banks. The format recommended by the Working Group covers such disclosures except with respect to “loans and advances which are in the nature of loans to firms/companies in which directors are interested by name and amount”.

Accordingly, in order to avoid duplication in disclosures and for ease of compliance, it was recommended that the disclosure requirements under Schedule V in the Annual Report should be made applicable only to entities which have listed debt securities and not to entities which have listed specified securities (equity shares and convertible securities).

In view of above, the working group recommended that:

- a) The disclosure requirements currently specified under Schedule V in the Annual Report should be applicable only to companies with listed debt securities.
- b) Further, disclosures with respect to ‘loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount’, which are currently specified under Schedule V, shall be included as part of the corporate governance disclosures to be made in the Annual Report of the listed entity as per the Listing Regulations.

The above recommendations of the Working Group was accepted by SEBI without any modification.

c) Disclosures to the stock exchange(s)

- i) In terms of Regulation 27(2) of the Listing Regulations, details of all material transactions with related parties are required to be disclosed in the quarterly compliance report on corporate governance to be submitted to the stock exchange(s) within twenty one days from the end of each quarter.
- ii) In terms of Regulation 23(9) of the Listing Regulations,

A listed entity shall submit to the stock exchanges disclosures of RPTs in the format as specified by the Board from time to time, and publish the same on its website. Such disclosure shall be submitted by:

- (i) A ‘high value debt listed entity’ along with its standalone financial results for the half year;
- (ii) A listed entity every six months within fifteen days from the date of publication of its standalone and consolidated financial results:

Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023

With this, the shareholders will have a complete picture of RPTs on an annual and half-yearly basis.

Issue: Whether payment of remuneration by a listed holding company to its employee who is a director of its subsidiary and as such a related party of such subsidiary is required to be disclosed under Regulation 23(9) of the Listing Regulations, where there is no debit /no amount charged by the holding company to such subsidiary for provision of services of such an employee?

View: The payment of remuneration by the listed holding company to its employee is on account of services rendered by the employee to the listed holding company and not as a director of the subsidiary. As such there is no RPT and hence no disclosure is required.

Issue: Whether payment of remuneration by a listed holding company to its employee who is a director / Key Managerial Personnel (KMP) of its subsidiary and as such a related party of such subsidiary is required to be disclosed under Regulation 23(9) of the Listing Regulations, where there is a debit /an amount charged by the holding company to such subsidiary for provision of services of such an employee?

View: Yes, it would be considered as RPT only to the extent of debit /amount charged by the holding company and would require disclosure under Regulation 23(9) of the Listing Regulations. However, this is a transaction between the holding company and its subsidiary, as such name of the employee(s) need not be disclosed.

Issue: Whether reimbursement of expenses by a listed entity to its director/ Key Managerial Personnel (KMP) is required to be disclosed under Regulation 23(9) of the Listing Regulations?

View: No., since the concerned related party has incurred expenses on behalf of the company for business purposes and the transaction is a mere reimbursement.

Issue: As per Regulation 23(2) of the Listing Regulations, approval of the Audit Committee of the listed entity is not required where listed entity is not a party subject to certain conditions and thresholds. However, there is no corresponding exemption provided in Regulation 23(9) of the Listing Regulations for disclosure of such exempted RPTs. Does this mean that even where listed entity is not a party and the transaction is within the thresholds mentioned in Regulation 23(2) of the Listing Regulations yet the same would need to be disclosed?

View: Regulation 23(9) of the Listing Regulations needs to be read holistically with the exemptions provided in Regulation 23(2) of the Listing Regulations and hence a view may be taken that no disclosures as provided under Regulation 23(9) of the Listing Regulations are required for such exempted transactions.

Background of Recommendations made by the Working Group

It was observed that:

- (i) there was no consistency in RPT disclosures, being made to the stock exchanges, across listed entities, more so since there is no specific format prescribed in the Ind AS. Thus, with a view to address issue of asymmetry in information due to varied reporting formats, the need was felt to standardize the same through a prescribed format.
- (ii) Ind AS requires these disclosures only at an aggregate level with a specific category of related party such as parent, subsidiary etc. Disclosure of aggregate level information does not provide substantive information and a breakup of the same should be given such that RPTs with different counterparties should be separately disclosed. Further, as it is alleged that RPTs are being misused by way of advancement of loans/ICDs to related parties, it was felt that such transactions need more detailed disclosures.
- (iii) Currently, the listed entity is required to make RPT disclosures within 30 days from the date of publication of its standalone and consolidated financial statements. It was felt that the details of all RPTs would already be available with the listed entity when the financial results are announced; accordingly, the listed entity should be able to disclose details of RPTs in the prescribed format on the same day of publication of financial statements.

In view of above, working group recommended as under:

- a) The listed entity shall submit, to the stock exchanges disclosures of RPTs, in the format specified by SEBI and publish the same on its website.
- b) The format broadly includes disclosure of details of name of the related party, type of transaction, tenure and value of the proposed transaction, etc.
- c) The listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results.

The SEBI had accepted the recommendations of the Working Group with modification that the listed entity shall make RPT disclosures every six months within 15 days of, and simultaneously on the date of publication of its standalone and consolidated financial

results with effect from April 1, 2022 and April 1, 2023, respectively. Considering the comments received and the recommendations of the Working Group, format for disclosure of RPTs every six months, was prescribed by SEBI vide its circular dated 22nd November, 2021. (refer **Annexure-VI**)

7.3.3 As per the Accounting Standard 18

In terms of Accounting Standard 18, the following disclosures are required to be made in the Annual Report:

- (a) Name of the related party and nature of the related party relationship where control exists should be disclosed irrespective of whether or not there have been transactions between the related parties.
- (b) If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following:
 - (i) the name of the transacting related party;
 - (ii) a description of the relationship between the parties;
 - (iii) a description of the nature of transactions;
 - (iv) volume of the transactions either as an amount or as an appropriate proportion;
 - (v) any other elements of the RPTs necessary for an understanding of the financial statements;
 - (vi) the amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and
 - (vii) amounts written off or written back in the period in respect of debts due from or to related parties.
- (c) Items of a similar nature may be disclosed in aggregate by type of related party except when separate disclosure is necessary for an understanding of the effects of RPTs on the financial statements of the reporting enterprise.

7.3.4 As per the Indian Accounting Standard (Ind AS) 24

In terms of Ind AS 24, the following disclosures are required to be made in the financial statements:

- (a) Relationships between a parent and its subsidiaries shall be disclosed irrespective of whether there have been transactions between them. An

entity shall disclose the name of its parent and, if different, the ultimate controlling party. If neither the entity's parent nor the ultimate controlling party produces consolidated financial statements available for public use, the name of the next most senior parent that does so shall also be disclosed.

- (b) An entity shall disclose key management personnel compensation in total and for each of the following categories:
- (i) short-term employee benefits;
 - (ii) post-employment benefits;
 - (iii) other long-term benefits;
 - (iv) termination benefits; and
 - (v) share-based payment.

If an entity obtains key management personnel services from another entity (the 'management entity'), the entity is not required to apply the requirements in above paragraph to the compensation paid or payable by the management entity to the management entity's employees or directors.

- (c) If an entity has had RPTs during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements. At a minimum, disclosures shall include:
- (i) the amount of the transactions;
 - (ii) the amount of outstanding balances, including commitments, and:
 - (A) their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement; and
 - (B) details of any guarantees given or received;
 - (iii) provisions for doubtful debts related to the amount of outstanding balances; and
 - (iv) the expense recognised during the period in respect of bad or doubtful debts due from related parties.
- (d) The disclosures mentioned above (in paragraph (c)) shall be made separately for each of the following categories:

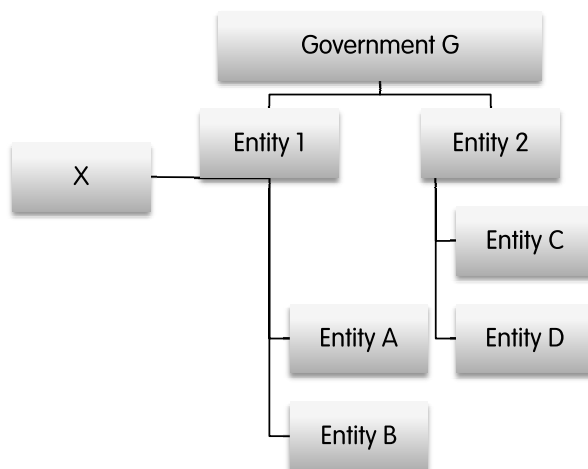
- (i) the parent;
 - (ii) entities with joint control of, or significant influence over, the entity;
 - (iii) subsidiaries;
 - (iv) associates;
 - (v) joint ventures in which the entity is a joint venturer;
 - (vi) key management personnel of the entity or its parent; and
 - (vii) other related parties.
- (e) A reporting entity who is a Government related entity is exempt from the disclosure requirements (of Paragraph (c) above) in relation to RPTs and outstanding balances, including commitments, with:
- (i) a Government that has control or joint control of, or significant influence over, the reporting entity; and
 - (ii) another entity that is a related party because the same Government has control or joint control of, or significant influence over, both the reporting entity and the other entity.

However, such Government related entity shall disclose the following details about the transactions and related outstanding balances:

- (i) the name of the Government and the nature of its relationship with the reporting entity (i.e. control, joint control or significant influence);
 - (ii) the following information in sufficient detail to enable users of the entity's financial statements to understand the effect of RPTs on its financial statements:
 - (A) the nature and amount of each individually significant transaction; and
 - (B) for other transactions that are collectively, but not individually, significant, a qualitative or quantitative indication of their extent. Types of transactions include those which are required to be disclosed if they are with a related party.
- (f) Amounts incurred by the entity for the provision of key management personnel services that are provided by a separate management entity shall be disclosed.

Illustration

Partial exemption for government related entities: Government G directly or indirectly controls Entities 1 and 2 and Entities A, B, C and D. Person X is a member of the key management personnel of Entity 1.



For Entity A's financial statements, the exemption in paragraph 25 of Ind AS 24 applies to:

- a) transactions with Government G; and
- b) transactions with Entities 1 and 2 and Entities B, C and D.

However, that exemption does not apply to transactions with Person X.

Illustration**Disclosure requirements when exemption applies (paragraph 26 of Ind AS)**

In Entity A's financial statements, an example of disclosure to comply with paragraph 26 (b)(i) for individually significant transactions could be:

Example of disclosure of individually significant transaction carried out on non-market terms.

On 15th January 2017, Entity A, a utility company in which Government G indirectly owns 75% of the outstanding shares, sold a 10 hectare piece of land to another government-related utility company for Rs. 5 million. On 31st December 2017, a plot of land in a similar location, of a similar size and with similar characteristics, was sold for Rs. 3 million. There had not been any appreciation or depreciation of the land in the intervening period. See note X [of the financial statements] for

disclosure of government assistance as required by Ind AS 20 *Accounting for Government Grants and Disclosure of Government Assistance* and notes Y and Z [of the financial statements] for compliance with other relevant Accounting Standards.

Example of disclosure of individually significant transaction because of size of transaction

In the year ended December 2017, Government G provided Entity A, a utility company in which Government G indirectly owns 75% of outstanding shares, with a loan equivalent to 50% of its funding requirement, repayable in quarterly instalments over the next five years. Interest is charged on the loan at a rate of 3%, which is comparable to that charged on Entity A's bank loans. See notes Y and Z [of the financial statements] for compliance with other relevant Accounting Standards.

Example of disclosure of collectively significant transactions

In Entity A's financial statements, an example of disclosure to comply with paragraph 26(b)(iii) for collectively significant transactions could be:

Government G indirectly owns 75% of Entity A's outstanding shares. Entity A's significant transactions with Government G and other entities controlled, jointly controlled or significantly influenced by Government G are a large portion of its sales of goods and purchases of raw materials or about 50% of its sales of goods and about 35% of its purchases of raw materials.

The company also benefits from guarantees by Government G of the company's bank borrowing. See note X [of the financial statements] for disclosure of government assistance as required by Ind AS 20 *Accounting for Government Grants and Disclosure of Government Assistance* and notes Y and Z [of the financial statements] for compliance with other relevant Accounting Standards.

7.3.5 As per the Companies (Auditor's Report) Order, 2020

Auditors Report and Related Party Transactions

In terms of the Companies (Auditor's Report) Order, 2020, the auditor's report on the financial statements of a company shall include a statement on whether all transactions with the related parties are in compliance with Sections 177 and 188 of the Act, where applicable, and that the details have been disclosed in the financial statements, etc., as required by the applicable accounting standards.

8. Registers and Records

In terms of Section 189 of the Act, disclosures and contracts under Sections 184 and 188 of the Act are required to be entered in the Register(s) of contracts with related

parties and contracts and bodies etc. in which directors are interested, as required to be maintained by the company. Particulars of companies or bodies corporate in which a director himself together with any other director holds 2% or less of the paid-up share capital would not be required to be entered in the Register. Further, in case of Section 8 companies, only details of contracts or arrangement exceeding Rs. 1 lakh are required to be entered in such Register. It is worth noting that no entry is required to be made in the said Register, if Sections 184 and 188 of the Act are not applicable.

This Register shall be maintained in Form MBP-4 and will contain the following details:

- (a) Names of companies or bodies corporate, firms or other association of individuals, in which directors of a company have any concern or interest, as is required to be disclosed by them under Section 184(1) of the Act.
- (b) Contracts or arrangements with a body corporate or firm or other entity as provided under Section 184(2) of the Act, in which any director is directly or indirectly, concerned or interested; and
- (c) Contracts or arrangements with a related party with respect to transactions to which Section 188 of the Act applies, *i.e.*, RPTs which are not in the ordinary course of business or not on arm's length basis.

The following contracts or arrangements are not required to be entered in the Register:

- (a) contracts or arrangements for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed Rs. 5 lakh in the aggregate in any year; or
- (b) contracts or arrangements by a banking company for the collection of bills in the ordinary course of its business.

It is advisable that the contract or arrangements which are expected to exceed Rs. 5 lakh in the financial year are entered in the register. However, in case the transactions were not entered in the register and same exceed Rs. 5 lakh at the end of the financial year, it would be a good practice to enter all the transactions during the year as per the spirit of law.

Entries of particulars of contracts or arrangements with related parties as covered in Rule 16 of the Companies (Meetings of Board and its Powers) Rules, 2014, should be entered in the register at once, whenever there is a cause to make an entry, in chronological order and should be authenticated by the Company Secretary of the company or by any other person authorised by the Board for the purpose.

After entering the particulars, such register shall be placed before the next meeting of the Board for signature by all directors.

The entry in the register and its placing at the Board meeting:

Details of contracts or arrangements to which Sections 184(2) and 188 of the Act applies - In this case, the Register should be placed before the Board at the next meeting after entering into such contract, arrangement or transaction.

The Register shall be open for inspection at the registered office of the company during business hours.

The Register shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

The company shall provide extracts from such register to a member of the company on his request, within 7 days from the date on which such request is made upon payment of such fee as may be specified in the Articles of the company but not exceeding Rs. 10/- per page.

Such register shall be kept at the registered office of the company in the custody of the Company Secretary or any other person authorized by the Board for the purpose and shall be preserved permanently.

Issue: Mr. A is a director of XYZ Ltd. which has entered into a transaction with ABC Pvt. Ltd. on 11.05.2021. Afterwards Mr. A becomes director in ABC Pvt. Ltd. w.e.f. 15.06.2021. Are RPT provisions applicable to the transaction?

View: Mr. A was not a director of ABC Pvt. Ltd. at the time of the transaction and as such the transaction did not require approval of the Audit Committee or the Board of Directors or the shareholders. No further approval will be required and the provisions of RPTs will not be applicable in this case.

However, if the transaction is a part of a series, *i.e.*, a master agreement with separate purchase orders being placed from time to time and the same continues even after the appointment of Mr. A as director of ABC Pvt. Ltd., it will be considered as a RPT and in accordance with Rule 16 of the Companies (Meeting of Board and its powers) Rules, 2014 the same will require to be entered in the Register of Contracts with related party and contracts and bodies etc. in which directors are interested.

Issue: Mr. P, the promoter of A Ltd. is also a promoter of B Ltd. If Mr. P is holding less than 2% shareholding in B Ltd., whether entries in the register of contracts or arrangements in which directors are interested required to be made as per Section 184 of the Act?

View: The common promoter, Mr. P, will be covered under Section 184(2)(a) of the Act irrespective of the shareholding of the promoter. Such transactions with the common promoter will require entry in the Register of contracts.

9. Policy on Related Party Transactions

Regulation 23 of the Listing Regulations requires listed companies to formulate a policy on materiality of RPTs and also on dealing with RPTs including setting up clear threshold limits duly approved by the board of directors and such policy shall be reviewed and updated by the Board of Directors at least once every three years. However, there is no such requirement under the Act.

The policy on RPTs should specify the threshold for determining materiality of the transaction with related party. Threshold for determining the limits for each class of the transactions may be different.

The Policy may contain the processes to identify, review and approve RPTs. It may also specify what would mean by 'ordinary course of business' in case of the company.

Such policy is required to be disclosed by the company under a separate section on its website and a web link thereto is required to be provided in the company's Annual Report.

Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 also requires Systemically Important Non-Deposit taking NBFCs and Deposit taking NBFCs to formulate a policy on materiality of RPTs and also on dealing with RPTs and to disclose the same on their website and in their Annual Report.

A suggested policy on RPTs is placed at **Annexure-II**.

10. Consequences, prosecution and penalty

10.1 As per the Act

- I. (i) Section 188(3) of the Act provides that where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board or, as the case may be, of the shareholders and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

(ii) Section 188(4) of the Act provides that it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this Section for recovery of any loss sustained by it as a result of such contract or arrangement.

(iii) Section 188(5) of the Act provides that any director or any other employee of a company, who had entered into or authorised a contract or arrangement in violation of the provisions of this Section shall:

- (a) in case of a listed entity, be liable to a penalty of twenty-five lakh rupees; and
- (b) in case of any other company, be liable to a penalty of five lakh rupees .

II. Every Director who fails to comply with the provisions of Section 189 of the Act and the rules made thereunder shall be liable to a penalty of Rs. 25,000/-. Since no specific penalty is provided in Section 189 of the Act for the company, Section 450 of the Act with respect to punishment where no specific penalty or punishment is provided will apply.

III. (i) A contract or arrangement entered into by the company without disclosure under Section 184(2) of the Act or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(ii) If a director of the company contravenes the provisions of Section 184(1) or 184(2) of the Act, such director shall be liable to a penalty of one lakh rupees.

(iii) In terms of clause (c) & (d) of Section 167(1) of the Act, a director who acts in contravention of the provisions of Section 184 of the Act relating to entering into contracts or arrangements in which he is directly or indirectly interested or where he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, is liable to vacate his office by virtue of Section 167 of the Act.

IV. In terms of Section 164(1)(g) of the Act, if a director is convicted of any offence dealing with RPTs under Section 188 of the Act (prior to the amendment dated 21st December, 2020), such director shall be disqualified to become a director in any company for the next 5 years after such conviction.

V. In case of any contravention of the provisions of section 177 of the Act, the company shall be liable to a penalty of five lakh rupees and every officer of

the company who is in default shall be liable to a penalty of one lakh rupees. (as provided under section 178(8) of the Act)

- VI. The Act does not prescribe any specific penalty in Section 188 for the contravention by the company, therefore the penalty prescribed under Section 450 of the Act will apply.

According to Section 450 of the Act, if a company or any officer of a company or any other person contravenes any of the provisions of the Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

10.2 As per the Securities Contracts (Regulation) Act, 1956 (SCRA) and the Listing Regulations

Regulation 98 of the Listing Regulations provides that the listed entity or any other person thereof who contravenes any of the provisions of these Regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified by the SEBI:

- (a) imposition of fines;
- (b) suspension of trading;
- (c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories.
- (d) any other action as may be specified by the SEBI.

Section 21 of the SCRA requires all listed companies to comply with the provisions contained in the Listing Agreement. Further, Section 23(2) of SCRA, *inter alia*, provides that any person who fails to comply with the provisions of Section 21 shall, without prejudice to any award of penalty by the Adjudicating Officer, on conviction, be punishable with imprisonment for a term which may extend to 10 years or with fine, which may extend to Rs. 25 crore or with both.

In terms of Section 23A of SCRA, any person, who is required to furnish any information, document, books, returns or report to the recognized stock exchange

or to the SEBI, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder or who furnishes false, incorrect or incomplete information, document, books, return or report, shall be liable to a penalty which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 lakh for each day during which such failure continues subject to a maximum of Rs. 1 crore for each such failure. Further, the person who is required to maintain books of account or records, as per the Listing Agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 lakh for each day during which such failure continues subject to a maximum of Rs. 1 crore.

In terms of Section 23E of SCRA, if a company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it shall be liable to a penalty of not less than Rs. 5 lakh but which may extend to Rs. 25 crore.

Further, the stock exchanges may compulsorily delist the company if the company or any of its promoters or any of its directors have been convicted for failure to comply with any of the provisions of the SCRA or the Securities and Exchange Board of India Act, 1992, or the Depositories Act, 1996, or rules, regulations, agreements made thereunder, and have been awarded a penalty of not less than Rs. 1 crore or imprisonment of not less than 3 years.

The regulatory requirements (Act and Listing Regulations) which impose onerous responsibility on directors for various corporate actions and RPT are very important provisions. Directors are liable to indemnify the company for any losses where transactions are with directors (or a related party of such director). In case of conviction of the offence dealing with RPTs, the directors are liable to be disqualified to act as director for a five-year period from the date of such conviction. Further, the company and its shareholders are entitled to initiate action for recovery of losses from a director or any employee who being a related party had entered into any unauthorized transactions.

Where a company enters into a contract or arrangement with a related party without the approval of the Audit Committee, or the Board or the shareholders, as the case may be, or has failed to ratify such contract or arrangement by the Board or the shareholders or has failed to disclose the same in the Board's report along with justification for entering into such contract or arrangement, then any director who had entered into or authorised such contract or arrangement would be held liable. Where a director is convicted of an offence under Section 188 of the Act, he shall not be eligible for appointment as a director of a company. Further, in case of a listed entity, wherein an order has been passed against a director and he has

been sentenced to imprisonment for a term exceeding six months, then the office of such director shall become vacant.

It is essential that the directors exercise due and reasonable care in complying with the provisions of law relating to RPTs in view of the serious consequences of any default in such compliance.

11. Ratification of Transactions with Related Party

Where a company enters into any RPT without prior approval, the company may ratify such transaction within three months to avoid any penal consequences.

In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with a director's related party or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by the company from such transaction.

12. Audit of Related Party Transactions

The company may opt for audit of transactions with related parties from the perspective of checking correctness of compliances by a qualified professional. The company should provide adequate information to the auditor during the audit, i.e. details of parties who are or may be related parties, details of transactions with related parties during the year, etc. The auditor should check the records of the Ministry of Corporate Affairs to ascertain names of companies where the directors hold directorships or are partners in a LLP and should check the filings of the company with the stock exchange(s) as also orders, if any, passed by the Registrar of Companies, SEBI, etc. relating to the directors of the company.

The register maintained by the company in respect of RPTs, contracts or arrangements in which directors are interested, shall be kept at the registered office of the company and shall remain open during business hours for inspection by the members of the company. The extract or copies thereof as may be required by any member, shall be furnished accordingly.

Such register shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting. [Section 189(3) & (4) of the Act]

13. Best Practices

Companies need to identify and put in place systems in electronic accounting format and establish controls to identify transactions with related parties. Approvals of the Audit Committee/Board and Shareholders can be captured in such systems and flags can be raised in case such approvals are absent. Additionally, flags can be drawn in case transactions exceed the limits approved by the Audit Committee/Board/Shareholders. Such a system should also serve the purpose of the Act, the Income-tax Act and Cost Records/Cost Audit.

Some practices that a company may follow while dealing with RPTs are as under:

- (a) Where a company has multiple subsidiaries, one-time effort should be made to identify all the related parties and integrate them with the MIS.
- (b) The MIS should be refreshed on half yearly basis with updated information. A sign-off may be done by the Company Secretary and the Head of MIS confirming the accuracy of data.
- (c) Identify the ordinary course of business in relation to company.
- (d) Identify transactions with related parties.
- (e) Establish a process for obtaining internal clearance before entering into any transaction with a related party/ person /entity.
- (f) Collate documentation for arm's length basis of transactions with related parties.
- (g) Establish a process of placing proposals for transaction with related parties before the Audit Committee or the Board, as may be applicable, in a pre-determined format. The transaction details should be circulated along with the agenda for the meeting.
- (h) The Chairman of the Audit Committee should brief the Board about transactions with related parties at Board Meetings.
- (i) Sensitise and create awareness in senior management about compliances with respect to transactions with related parties
- (j) Establish a process of serially numbering all transactions with related parties during a financial year and record the same in a separate register/ book.
- (k) Check if there are system controls to track related parties and transactions with such parties.

The Secretarial Checklist of RPTs and Specimen Resolutions to be passed are placed at **Annexure-III & IV** respectively.

Annexure-I**Suggested Format for Disclosure of details of Relatives****Name of Person:**

The details of my relatives are as under:

Sl. No.	Name of Relative	Relationship	Occupation of Relative	PAN Number/ other Identifications	Entities in which the relative is a self-proprietor/ partner or Member/ Director of a Pvt. Company	Entities in which the director together with his relative(s) holds more than 2% of the paid-up share capital of a public limited company of which the director is also a director.
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						

Date:**Signature**

Annexure-II**Suggested Policy on Related Party Transactions**

The Company may enter into transactions with related parties to leverage scale, size and drive operational synergies while ensuring that such transactions are in compliance with the applicable legal requirements.

Objective of the Policy

The Board of Directors of the Company ("the Board"), on the recommendation of the Audit Committee, has adopted this Policy and associated procedures for regulating related party transactions, in line with the requirements of the Companies Act, 2013 ("the Act") and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations").

This Policy is intended to ensure that proper reporting, approval and disclosure processes are in place for all transactions between the Company and its related parties. This Policy specifically deals with the review and approval framework of material related party transactions keeping in mind the potential or actual conflicts of interest that may arise because of such transactions.

Definitions and Applicability

"Audit Committee or Committee" means a Committee of the Board of Directors of the Company constituted in terms of the Listing Regulations and the Act;

"Board" means the Board of Directors of the Company;

"Material Related Party Transaction" means a transaction with a related party if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds Rs. 1000 crore or 10% of the annual consolidated turnover of the Company as per the last audited financial statements of the Company, whichever is lower;

However, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% of the annual consolidated turnover of the Company as per the last audited financial statements of the Company.

An entity shall be considered as related to the Company if any of the following conditions applies:

- a. The entity is a "related party" as defined in the Listing Regulations;

- b. The entity is a related party under Section 2(76) of the Companies Act, 2013; or
- c. Such entity is a related party under the applicable accounting standards;

Words and expressions used in this Policy but not defined herein shall have the meaning ascribed to them in the Companies Act, 2013 and the Rules framed there under and the Listing Regulations, as amended from time to time.

1. Dealing with Related Party Transactions

All Related Party Transactions, other than transactions between the Company and wholly owned subsidiaries which are in the ordinary course of business and which are on arm's length basis, shall require approval of the Audit Committee and / or the Board of Directors of the Company in accordance with this Policy.

2. Identification of Related Party Transactions

All Related Party Transactions shall be placed before the Audit Committee of the Company for its approval.

Any employee of the Company who is aware of any transaction that is or may be perceived to be a Related Party Transaction is required to bring the same to the attention of the Company Secretary (or such other person who may be entrusted for this purpose by the Audit Committee) who would in turn take necessary steps to place the same before the Audit Committee.

All Directors, Members of the Management Committee and Key Managerial Personnel (KMPs) are responsible for informing the Company of their interest (including interest of their Relatives) in other companies, firms or concerns at the beginning of every financial year and any change in such interest during the year, immediately on occurrence. Further, Directors and KMPs should disclose to the Board whether they, directly, indirectly, or on behalf of third parties, have material interest in any transaction or matter directly affecting the Company.

In addition, all Directors, Members of the Management Committee and KMPs are responsible for giving notice to the Company Secretary of any potential Related Party Transaction involving them or their Relatives.

Such notice of any potential Related Party Transaction should be given well in advance so that the Company Secretary (or such other person who may be entrusted for this purpose by the Audit Committee) has adequate time to obtain and review information about the proposed transaction and place the same before the Audit Committee.

3. Review and Approval of Related Party Transactions

Unless otherwise stated in this Policy, all Related Party Transactions, other than

transactions between the Company and wholly owned subsidiaries which are in the ordinary course of business and which are on arm's length basis, shall require prior approval of the Audit Committee of the Company. Transactions between the Company and wholly owned subsidiaries which are in the ordinary course of business and which are on arm's length basis should also, as a measure of good governance, be placed before the Audit Committee for information.

For the aforesaid purpose, all Related Party Transactions must be reported to the Company Secretary who shall place the same before the Audit Committee in accordance with this Policy.

The Audit Committee may grant omnibus approval to Related Party Transactions that are:

- a. repetitive in nature; and
- b. entered in the ordinary course of business and on arm's length basis.

Such omnibus approval may be granted to the transactions which, in addition to meeting the above criteria, also satisfy the following considerations:

- (a) The transaction in question is necessary to be executed as it is in the business interest of the Company;
- (b) The requisite information is presented to the Audit Committee's satisfaction to confirm that the transaction is entered in the ordinary course of business and on arm's length basis;
- (c) Such omnibus approval shall specify –
 - i. the name/s of the Related Party, nature of transaction, period of transaction, maximum amount of transaction that can be entered into;
 - ii. the indicative value and the formula for variation in the value, if any and
 - iii. such other conditions as the Audit Committee may deem fit;
- (d) Such omnibus approval shall be valid for a period not exceeding one year and shall require fresh approval after the expiry of the financial year.

The Audit Committee shall on quarterly basis review the details of the Related Party Transactions entered into by the Company pursuant to the omnibus approval granted by the Audit Committee earlier.

Any member of the Audit Committee, who has a potential interest in any Related Party Transaction, will recuse himself or herself and abstain from discussion or voting on the approval or ratification of such Related Party Transaction.

All Related Party Transactions that are not in the ordinary course of business or not on arm's length basis shall be referred to the Board of Directors for their approval. Any member of the Board who has a potential interest in such Related Party Transaction will recuse himself or herself and abstain from discussion or voting on the approval of such Related Party Transaction.

Any such Related Party Transactions shall also be placed for prior approval of shareholders if it exceeds the thresholds as prescribed under the Companies Act, 2013 and the Rules framed there under and the Listing Regulations, 2015.

4. Related Party Transactions that shall not require Approval

Following Related Party Transactions shall not require any separate approval under this Policy:

- a. Any transaction pertaining to appointment and remuneration of Directors and KMPs that require approval of the Nomination and Remuneration Committee of the Company and the Board;
- b. Transactions that have been approved by the Board under the specific provisions of the Companies Act, 2013 e.g. inter-corporate deposits, borrowings, investments etc. with or in wholly owned subsidiaries or other Related Parties;
- c. Payment of Dividend;
- d. Transactions involving corporate restructuring, such as buy-back of shares, capital reduction, merger, demerger, hive-off etc. which are approved by the Board and carried out in accordance with the specific provisions of the Companies Act, 2013 or the Listing Regulations, 2015;
- e. Contribution towards Corporate Social Responsibility (CSR) within the overall limits approved by the Board that require approval of the CSR Committee.
- f. Any other transaction exempted under the Act or Listing Regulations.

5. Material Related Party Transaction

All Material Related Party Transactions and subsequent material modifications shall be placed for prior approval of shareholders through a Resolution unless otherwise provided under the Act or the Listing Regulations.

6. Disclosure(s)

Details of all Material Related Parties Transactions shall be disclosed to the Stock Exchanges on a quarterly basis along with the compliance report on corporate governance.

The Company shall disclose this Policy on its website and provide the web link in the Annual Report. In addition to the disclosures required under the Accounting Standards, Related Party Transactions that are not at arm's length basis and Material Related Party Transactions that are at arm's length or such other transactions as may be statutorily required, shall be disclosed in the Annual Report of the Company as part of the Board's Report.

7. Governance of the Policy

The Company may constitute a Steering Committee which will be headed by the Chief Financial Officer and the Company Secretary and will have such members from Finance, Corporate Secretarial and other functions as may be determined by the Chief Financial Officer and the Company Secretary. The Steering Committee shall meet periodically to ensure that the actions agreed with the Audit Committee and the Board with respect to Related Party Transactions have been implemented. The Steering Committee shall also ensure that the systems and processes are in place for identification and approval of Related Party Transactions as per this Policy.

8. Amendments to the Policy

The Audit Committee of the Company shall review this Policy from time to time, but at least once every three years, and may recommend amendments to the same for approval of the Board.

In case of any amendment(s), clarification(s), circular(s) etc. issued by the relevant authorities not being consistent with the provisions laid down in this Policy, then such amendment(s), clarification(s), circular(s), etc. shall prevail upon the provisions herein and this Policy shall stand amended accordingly from the effective date as laid down under such amendment(s), clarification(s), circular(s), etc.

9. Communication

This Policy will be communicated to all Directors, KMPs and Members of the Management Committee and other concerned persons of the Company.

Annexure-III

Secretarial Checklists - Related Party Transaction

PRIVATE COMPANY

S. No.	Check	Yes/No	Remarks
a)	Whether the company has entered into any specified transaction (within the meaning of Section 188 of the Act) with any of its related parties		If both points (a) and (b) is YES , then see next point
b)	Whether such transaction is with related party as defined under section 2(76) of the Act		
c)	Whether such transaction is in the ordinary course of business		If any of point (c) or (d) is NO , then see next point
d)	Whether such transaction is on arm's length basis		
If the transaction within the threshold limits specified under Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014:			
e)	Whether the company has taken approval of the Board at Board meeting <i>Note:</i> It should not be passed by resolution by circulation		
f)	Whether the agenda of the aforesaid Board meeting contains the requisite disclosures		
g)	Whether interested director has disclosed his interest in Form MBP-1 before participation in the meeting		
If the transaction exceeds the threshold limits specified under Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014:			
h)	Whether the company has taken prior approval of its shareholders by way of a resolution (ordinary resolution)		

i)	Whether the explanatory statement annexed to the notice convening the general meeting contains the requisite disclosures		
Register of contracts or arrangements in which directors are interested:			
j)	Whether the company has made all entries in the Register as required under Section 189 of the Act in Form MBP-4		

UNLISTED PUBLIC COMPANY

S. No.	Check	Yes/No	Remarks
a)	Whether the company has entered into any specified transaction (within the meaning of Section 188 of the Act) with any of its related parties		If both points (a) and (b) is YES , then see next point
b)	Whether such transaction is with related party as defined under section 2(76) of the Act		
c)	Whether such transaction is in the ordinary course of business		If any of point (c) or (d) is NO , then see next point
d)	Whether such transaction is on arm's length basis		
If company is required to constitute Audit Committee:			
e)	Whether the company has taken approval of its Audit Committee for entering into such transactions.		
f)	Whether the Audit Committee has granted omnibus approval for certain related party transactions		If point (f) is YES , then see next points

S. No.	Check	Yes/No	Remarks
g)	whether the omnibus approval is in accordance with the criteria laid down in Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014		
h)	Whether the transactions entered into in pursuance of such omnibus approval are put up for review by the Audit Committee		
If the transaction within the threshold limits specified under Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014:			
i)	Whether the company has taken approval of the Board at Board meeting <i>Note:</i> It should not be passed by resolution by circulation		
j)	Whether the agenda of the aforesaid Board meeting contains the requisite disclosures		
k)	Whether any interested director was not present at the meeting before discussions on the subject matter of the resolution relating to such contract or arrangement was initiated		
If the transaction exceeds the threshold limits specified under Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014:			
l)	Whether the company has taken prior approval of its shareholders by way of a resolution (ordinary resolution)		
m)	Whether the explanatory statement annexed to the notice convening the general meeting contains the requisite disclosures		
n)	Whether interested members has not voted at the general meeting		

S. No.	Check	Yes/No	Remarks
Register of contracts or arrangements in which directors are interested:			
o)	Whether the company has made all entries in the Register as required under Section 189 of the Act in Form MBP-4		

LISTED ENTITY

S. No.	Check	Yes/No	Remarks
a)	Whether the company has entered into any specified transaction (within the meaning of Section 188 of the Act) with any of its related parties		If both points (a) and (b) is YES , then see next point
b)	Whether such transaction is with related party as defined under section 2(76) of the Act		
c)	Whether such transaction is in the ordinary course of business		If any of point (c) or (d) is NO , then see next point
d)	Whether such transaction is on arm's length basis		
Approval of Audit Committee:			
e)	Whether the company has taken approval of its Audit Committee for entering into such transactions <i>Note:</i> Also Check whether only those members of the Audit Committee, who are independent directors, had approved related party transactions.		
f)	Whether the Audit Committee has granted omnibus approval for certain related party transactions		If point (f) is YES , then see next points

S. No.	Check	Yes/No	Remarks
g)	whether the omnibus approval is in accordance with the criteria laid down in Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014		
h)	Whether the transactions entered into in pursuance of such omnibus approval are put up for review by the Audit Committee		
<ul style="list-style-type: none"> ● If the transaction within the threshold limits specified under Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014; and ● If there is not any material RPT 			
i)	Whether the company has taken approval of the Board at Board meeting <i>Note:</i> It should not be passed by resolution by circulation		
j)	Whether the agenda of the aforesaid Board meeting contains the requisite disclosures		
k)	Whether any interested director was present at the meeting before discussions on the subject matter of the resolution relating to such contract or arrangement was initiated		
<ul style="list-style-type: none"> ● If the transaction exceeds the threshold limits specified under Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014; or ● In case of all material RPT (whether in the ordinary course of business or not) 			
l)	Whether the company has taken prior approval of its shareholders by way of a resolution (ordinary resolution)		

S. No.	Check	Yes/No	Remarks
	<p>Check materiality of transactions</p> <ul style="list-style-type: none"> ● Individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower ● a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity. 		
m)	Whether the explanatory statement annexed to the notice convening the general meeting contains the requisite disclosures		
n)	Whether interested members has not voted at the general meeting		
Register of contracts or arrangements in which directors are interested:			
o)	Whether the company has made all entries in the Register as required under Section 189 of the Act in Form MBP-4		

Annexure-IV**Specimen Resolutions****A. Audit Committee's Resolutions****a. In case of specific approval**

- (a) **"RESOLVED THAT**, in pursuance of Section 177(4) of the Companies Act, 2013 read with the Rules thereunder, approval be and is hereby granted for the related party transaction for a contract to be entered into for supply of _____, between the company and _____, a subsidiary of the company."
- (b) **"RESOLVED THAT**, in pursuance of Section 177(4) of the Companies Act, 2013 approval be and is hereby granted for the related party transaction for giving a loan of Rs. _____ to _____, an associate company, on the following terms and conditions:
_____."

b. In case of Listed entity - omnibus approval

"RESOLVED THAT, in pursuance of Section 177(4) of the Companies Act, 2013 read with Regulation 23(3) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the provisions of the Company's Policy on Related Party Transactions, approval be and is hereby granted to related party transactions for the financial year 2021-22, subject to the limits given hereunder on the following terms and conditions:_____."

Mr. ____ & Mr. _____, directors of the company, be and are hereby severally authorised to do all acts, deeds and things as may be necessary to give effect to this resolution.

B. Board Resolutions

"RESOLVED THAT, in pursuance of Section 188 and other applicable provisions of the Companies Act, 2013 read with the relevant Rules made thereunder, approval be and is hereby granted for the related party transaction for a contract to be entered into for supply of _____, between the company and _____, a subsidiary of the company."

The Board noted that the aforesaid related party transaction is in the ordinary course of business of the company but not on arm's length basis and for reasons recorded in the note placed before the meeting is in the interest of the company to enter into the transaction.

C. General Meeting Resolution

“RESOLVED THAT in pursuance of Section 188 and other applicable provisions of the Companies Act, 2013 read with the relevant Rules made thereunder, approval be and is hereby granted to the Board of Directors of the company to enter into a contract to sell, lease, transfer, assign or otherwise dispose of the whole or part of the _____ business of the company to _____, a wholly-owned subsidiary of the company, at a consideration of Rs. _____ to be discharged in such manner and on such terms and conditions as may be mutually agreed upon between the Board of Directors of the company and _____, a related party within the meaning of Section 2(76) of the Companies Act, 2013.”

RESOLVED FURTHER THAT the Board of Directors of the company be and is hereby authorised to do all such acts, deeds, matters and things as may be necessary to give effect to the above resolution.”

Annexure-V

Legal Matrix

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
<p>Definition of Related Party</p>	<p>According to Section 2(76) "related party", with reference to a company, means —</p> <ul style="list-style-type: none"> (i) a director or his relative; (ii) a KMP or his relative; (iii) a firm, in which a director, manager or his relative is a partner; (iv) a private company in which a director or manager or his relative is a member or director; (v) a public company in which a director and manager is a director and holds along with his relatives, more than 2% of its paid-up share capital; (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; 	<p>According to Regulation 21(i)(zb) "related party" means a related party as defined under sub-section (76) of Section 2 of the Companies Act, 2013 or under the applicable accounting standards:</p> <p>Provided that:</p> <ul style="list-style-type: none"> (a) any person or entity forming a part of the promoter or promoter group of the listed entity; or (b) any person or any entity, holding equity shares: <ul style="list-style-type: none"> (i) of 20% or more; or (ii) of 10% or more, with effect from April 1, 2023; <p>in the listed entity either directly or on a beneficial interest basis as provided under Section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;</p> <p>shall be deemed to be a related party:</p>	<p>A related party is a person or entity that is related to the entity that is preparing its financial statements (referred to as the 'reporting entity').</p> <ul style="list-style-type: none"> (a) A person or a close member of that person's family, if that person has control or joint control; has significant influence; or is a member of the KMP of the reporting entity or of a parent of the reporting entity. (b) An entity is related to a reporting entity if any of the following conditions applies: <ul style="list-style-type: none"> (i) Both are members of the same group. (ii) One entity is an associate or joint venture of the other entity. (iii) Both entities are joint ventures of the same third party. (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity. 	<p>Parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.</p>

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
	<p>(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;</p> <p>Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;</p> <p>(viii) any body corporate which is—</p> <p>(A) a holding, subsidiary or an associate company of such company;</p> <p>(B) a subsidiary of a holding company to which it is also a subsidiary; or</p> <p>(C) an investing company or the venturer of the company;</p> <p>Explanation: For the purpose of this clause, “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.</p>	<p>Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).</p>	<p>(v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.</p> <p>(vi) The entity is controlled or jointly controlled by a person identified in (a).</p> <p>(vii) A person identified in (a) has significant influence over the entity or is a member of the key management personnel of the entity.</p> <p>(viii) The entity, or any member of a group of which it is a part, provides KMP services to the reporting entity or to the parent of the reporting entity.</p>	

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
Definition of Related Party Transaction	<p>(ix) a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company.</p> <p>Not defined</p> <p>The Companies Act, 2013 provides that no company shall enter into any contract or arrangement with a related party with respect to certain matters.</p>	<p>“related party transaction” means a transaction involving a transfer of resources, services or obligations between:</p> <p>(i) 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</p> <p>(ii) 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;</p> <p>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:</p>	<p>Related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.</p>	<p>Related party transaction is a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.</p>

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
		<p>Provided that the following shall not be a related party transaction:</p> <ul style="list-style-type: none">(a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;(b) the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:<ul style="list-style-type: none">i. payment of dividend;ii. subdivision or consolidation of securities;iii. issuance of securities by way of a rights issue or a bonus issue; andiv. buy-back of securities.		

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
Exemption	<p>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 do not require approval of the Board and the shareholders.</p> <p>Further, exemptions from applicability of these provisions are available to some classes of companies.</p>	<p>(c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the Board;</p> <p>Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);</p> <p>No exemption to any transaction.</p>		

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
<p>Approvals</p> <p>A. Audit Committee Approval All Companies which are required to form an Audit Committee under Section 177 of the Companies Act, 2013, require prior approval of the Audit Committee for all Related Party Transactions.</p> <p>B. Board of Directors and Shareholder's Approval All related party transactions which are not in the ordinary course of business and/or on arm's length basis : (a) require approval of the Board; and (b) require prior approval of the shareholders, in case such related party transactions exceed the limits as specified therein.</p>	<p>All Material related party transactions require approval of the shareholders, irrespective of the fact whether the transactions entered into by the company are in the ordinary course of business and/ or on an arm's length basis.</p> <p>Material RPTs- Transaction value to be entered into individually or taken together with previous transactions during a financial year > Rs.1000 crores or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.</p> <p>Audit Committee to define material modification.</p> <p>Prior approval of the Audit Committee is required for the following:</p>	-	-	-

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
		<p>With effect from 01.04.2022 - A related party transaction to which the subsidiary of a listed entity is a party, but the listed entity is not a party and where value of such transaction to be entered into individually or taken together with previous transactions during a financial year > 10% of the annual consolidated turnover, as per the last audited financial statements of the listed entity.</p> <p>With effect from 01.04.2023 - A related party transaction to which the subsidiary of a listed entity is a party, but the listed entity is not a party and where value of such transaction to be entered into individually or taken together with previous transactions during a financial year > 10% of the annual standalone turnover as per the last audited financial statements of the subsidiary.</p> <p>Audit Committee approval not required if transaction involves listed subsidiary to which Regulation 23 is not applicable.</p>		

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
Threshold	<p>Shareholder's approval is required where a Related Party Transactions:</p> <ul style="list-style-type: none"> • Amounting to 10% or more of the turnover - in transactions of sale, lease, purchase, supply, etc. • Amounting to 10% or more of turnover – in transactions for availing or rendering of services • Exceeds Rs. 2.50 Lakh per month – in remuneration for office or place of profits • Exceeds 1% of net worth - in underwriting the subscription of securities or derivatives thereof. 	<p>Shareholder's approval for Material Related Party Transactions: If the transaction(s) is more than Rupees 1000 Crore or 10% of the annual consolidated turnover</p>	-	-

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
Disclosures	<p>As per Section 134(3) of the Act read with Rule 8(2) of the Companies (Accounts) Rules, 2014</p> <ul style="list-style-type: none"> All companies to disclose in the Board's Report, the particulars of contracts or arrangements with related parties in Form AOC-2. Form AOC-2 shall be signed by the persons who have signed the Board's Report. 	<p>In terms of Schedule V of the SEBI (LODR) Regulations, 2015</p> <ul style="list-style-type: none"> Applicability: all listed entities which has listed its non-convertible securities except for listed banks. Disclosures: <ol style="list-style-type: none"> To be made in the corporate governance section of the Annual Report In compliance with the Accounting Standard on "Related Party Disclosures" On materially significant related party transactions that may have potential conflict with the interests of the listed entity The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website: 	<p>Following disclosures are to be made in the Annual Report by the reporting enterprise:</p> <ul style="list-style-type: none"> Name of the related party and nature of the related party relationship where control exists Details, as under, of transactions between related parties during the existence of a related party relationship: <ol style="list-style-type: none"> name of the transacting related party; description of the relationship between the parties; description of the nature of transactions; volume of the transactions; any other elements of the related party transactions necessary for an understanding of the financial statements; 	<p>Following disclosures are to be made if an entity has had related party transactions during the periods covered by the financial statements:</p> <ol style="list-style-type: none"> the nature of the related party relationship, information about related party transactions, outstanding balances including commitments; and such other details as specified therein.

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
	<p>Provided that a 'high value debt listed entity' shall submit such disclosures along with its standalone financial results for the half year:</p> <p>Provided further that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results:</p> <p>Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023.</p> <p>In terms of Regulation 27(2) of the SEBI (LODR) Regulations, 2015</p> <ul style="list-style-type: none"> The details of all material transactions with related parties are required to be disclosed quarterly in the compliance report on corporate governance. 	<p>(f) the amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and</p> <p>(g) amounts written off or written back in the period in respect of debts due from or to related parties.</p> <ul style="list-style-type: none"> Disclosure of items of similar nature in aggregate by type of related party -except cases where separate disclosure is required 	<ul style="list-style-type: none"> Separate disclosures to be made for each of the following categories: <ul style="list-style-type: none"> (a) the parent; (b) entities with joint control of, or significant influence over the entity; (c) subsidiaries; (d) associates; (e) joint ventures in which the entity is a joint venturer; (f) key management personnel of the entity or its parent; and 	

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
				<p>(g) other related parties.</p> <ul style="list-style-type: none"> • In case of a Government related entity which is exempted from detailed disclosure requirements of a related party transaction, the following minimum details must be disclosed: <ul style="list-style-type: none"> (a) the name of the government and the nature of its relationship with the reporting entity (i.e. control, joint control or significant influence);

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
				<p>(b) the nature and amount of each individually significant transaction; and</p> <p>(c) for other transactions that are collectively, but not individually, significant, a qualitative or quantitative indication of their extent. Types of transactions include those which are required to be disclosed if they are with a related party.</p>

Notes:

1. The details in this format are required to be provided for all transactions undertaken during the reporting period. However, opening and closing balances, including commitments, to be disclosed for existing related party transactions even if there is no new related party transaction during the reporting period.
2. Where a transaction is undertaken between members of the consolidated entity (between the listed entity and its subsidiary or between subsidiaries), it may be reported once.
3. Listed banks shall not be required to provide the disclosures with respect to related party transactions involving loans, inter-corporate deposits, advances or investments made or given by the listed banks.
4. For companies with financial year ending March 31, this information has to be provided for six months ended September 30 and six months ended March 31. Companies with financial years ending in other months, the six months period shall apply accordingly.
5. Each type of related party transaction (for e.g. sale of goods/services, purchase of goods/services or whether it involves a loan, inter-corporate deposit, advance or investment) with a single party shall be disclosed separately and there should be no clubbing or netting of transactions of same type. However, transactions with the same counterparty of the same type may be aggregated for the reporting period. For instance, sale transactions with the same party may be aggregated for the reporting period and purchase transactions may also be disclosed in a similar manner. There should be no netting off for sale and purchase transactions. Similarly, loans advanced to and received from the same counterparty should be disclosed separately, without any netting off.
6. In case of a multi-year related party transaction:
 - a. The aggregate value of such related party transaction as approved by the Audit Committee shall be disclosed in the column "Value of the related party transaction as approved by the Audit Committee".
 - b. The value of the related party transaction undertaken in the reporting period shall be reported in the column "Value of related party transaction during the reporting period".
7. "Cost" refers to the cost of borrowed funds for the listed entity.

8. PAN will not be displayed on the website of the Stock Exchange(s).
9. Transactions such as acceptance of fixed deposits by banks/NBFCs, undertaken with related parties, at the terms uniformly applicable /offered to all shareholders/ public shall also be reported.

Annexure-VII**Standard Operating Procedure (SOP)****(For Related Party Transactions)****Preamble & Objective:**

This SOP sets forth the framework for identification, approvals and reporting requirements for related party transactions, to ensure that all related party transactions are entered with due approval of the Audit Committee and/or by the Board of Directors and/or shareholders as the case may be. Endeavour shall be to ensure that no related party transaction skips prior approval or the reporting requirement.

1. RPT Policy

- 1.1 All Listed Companies shall adopt a policy and procedures for Related Party Transactions (including transactions with Related Parties).
- 1.2 Unlisted Companies may adopt a RPT policy as a good governance practice.
- 1.3 All Transactions with Related Parties must be reported to the Audit Committee for its approval (**prior approval in all cases**) and referred by the Audit Committee to the Board, if required, for approval in accordance with the Policy.

2. Workflow Activities

- 2.1 Identification of related parties and related party transactions
 - Related Parties (RPs) will be identified in accordance with Section 2(76) of the Companies Act, 2013, relevant accounting standards and provisions of SEBI LODR (Master List of RPs).
 - Related Parties for body corporate incorporated outside India- All group companies under the common control of the Ultimate Holding Company shall be considered as Related Parties.
- 2.2 Unlisted subsidiaries of listed companies, besides identifying RPTs as per Companies Act, 2013 & the relevant accounting standards, shall also identify RPTs in terms of SEBI LODR ("Addln RPTs") as detailed below:
 - RPTs between said subsidiary and RPs of listed companies
 - RPTs between said subsidiary and RPs of other subsidiaries of the listed companies

This is required for the purpose of reporting such transactions to all the listed holding companies above it; and for **prior** approval of the Audit Committee of its immediate listed holding company in the following cases:

- *where transaction whether entered into individually or taken together with previous transactions during a financial year exceeds 10% of the consolidated turnover of the listed entity as per last audited financial statements of the listed entity and w.e.f. April 01, 2023, 10% of standalone turnover of the relevant subsidiary as per its last audited financial statements.*

2.3 Secretarial Department in coordination with Finance & Accounts Department (F&A Dept.) shall be responsible for identification of related parties ("RPs"). While Secretarial Department shall be responsible for list of RPs under the Companies Act, 2013, the F&A Dept., shall be responsible for identifying RPs under IndAS. Secretarial Department shall at all times maintain the consolidated list of related parties. The F&A Dept. shall share the list of related parties as per IND-AS to Secretarial Department by 5th of every month. The Secretarial Department shall consolidate together list of related parties as per Companies Act 2013, SEBI (LODR) and as per IND-AS ("Master List of RPs").

2.4 The Master List of RPs shall be updated and uploaded on ____ (Company Intranet) and also reported to the following departments ("**Concerned Department**") by 15th of every month:

- Shared Service Centre
- Business/Sector CFO and F&A Dept.
- Legal team
- Procurement and Contracts
- FMS & HR
- Any other department that may deal in commercial contracts and agreements

While the Master List of RPs will be uploaded by the Corporate Secretarial Department (Group CS Dept), communication to the concerned of the above functions/departments shall be done by the respective secretarial teams at business/sector/unit level.

- 2.5 Based on the above list, F&A Dept. shall update the related parties in SAP and tag the RPs with a special code.
- 2.6 The Concerned Department (as defined above) shall before entering into any agreement/arrangement, shall verify from the Master List of RPs uploaded on Intranet, whether parties to the agreement are Related Parties or not. If the parties are Related Parties, the Concerned Department shall prior to entering into the agreement/arrangement, send the proposed transactions details to the concerned secretarial teams to obtain necessary approval of their respective Audit Committee/Board. A lead time of upto 15 days shall be required for the secretarial teams to obtain this approval.
- 2.7 Arms' length basis shall be established taking into account either comparable with unrelated parties or by obtaining quotations or on cost plus reasonable margin basis or certified by any independent agency. It is responsibility of the Concerned Department proposing transaction to give necessary information and confirmation on arms' length to the Secretarial Department.

In case of inter corporate borrowings between group entities, interest rate shall be as per the Policy for Loans between Group Companies.

- 2.8 At least 30 days prior to every Audit Committee meeting, emails to be circulated by Secretarial Department to all Concerned Departments and any other head of department, to forward any expected / proposed related party transactions along with the standard RPT sensitization presentations.

3. Specific period RPTs

For related party transactions where approval has been obtained from the Audit Committee for a specific period of time, say 3 or 5 years with all details including escalation if any in commercial terms, the said approval of the Audit Committee shall as such be valid for that entire specific period and approval need not be obtained every financial year. However, the actual transactions value during financial year shall be placed before the Audit Committee for noting at periodic intervals (quarterly for Listed Entities).

4 Review Mechanism

- 4.1 At the time of quarterly closing, all the related party transactions are to be reviewed by the respective finance teams through designated SAP codes.

- 4.2 Secretarial Department to circulate the list of RPTs approved by the Audit Committee to F&A team on a quarterly basis. F&A team to check and compare the related party transactions entered with the approvals as taken by the Secretarial Department. This exercise to be done every quarter, using SAP Code and/or other means.
- 4.3 In case the RPTs entered have reached to 75% or more of the approved amount, an alert should be sent by F&A team to Secretarial Department for modification/ enhancement of the approved amount. (Given the process detailed above, Concerned Departments and Secretarial Department should ensure that the instances of ratification are avoided).
- 4.4 Secretarial Department will communicate the updated approved amount of RPT by the Audit Committee, to the F&A team, within 7 days of such approvals.
- 4.5 Audit Committee shall review RPTs at least on quarterly basis (mandatory for listed entities) or at such intervals as provided in the RPT policy or as decided by the Board. This review shall be of both omnibus and non-omnibus approved RPTs and F& A team shall be responsible for providing the details of the RPTs (actual Vs approved) to be placed before the Audit Committee for review.
- 4.6 All RPTs entered and placed for review of the Audit Committee shall be certified by the CFO or the Finance Head of the Company, if there is no CFO.
- 4.7 The internal auditor shall review the RPTs on quarterly basis and a give confirmation to the Audit Committee that there are no related party transactions to be reported other than as reported to the Audit Committee at every quarterly meeting.

