

Guidance Note

on

Related Party Transactions



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

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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

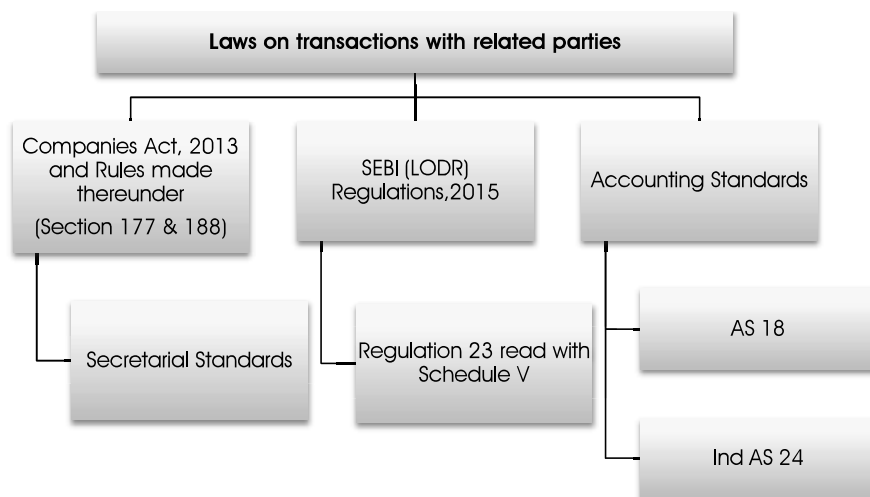
INTRODUCTION

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 activities through subsidiary companies 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 sell on those 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 favoured 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 transactions with related parties.

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.

Transactions with related parties need not always be disadvantageous to the parties concerned. 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. The concern also arises when there is siphoning of funds and diversion of resources of the company. Transactions with related parties raise important concerns and hence transparency in such transactions is essential. Therefore, law requires certain specific compliances with respect to related party transactions.

In order to appreciate the nuances of related party transactions, it is necessary to understand the scope of the provisions of law, meaning of certain terms like goods, property, ordinary course of business, arm's length basis, etc. The law on transactions with related parties can be summarised in the following chart. However, there are several important aspects which need an explanation and hence this Guidance Note:



Transactions with related parties 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 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.

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, 2016

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, 2006.
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.

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

“Property” includes property of every description and includes movables, immovables, tangibles and intangibles.

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 related party transactions 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 said 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 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
- b. Whether the activity is in furtherance of the business
- c. Whether the activity is normal or otherwise routine for the particular business (i.e. activities like advertising, staff training, etc.)
- d. Whether the activity is repetitive/frequent
- e. Whether the income, if any, earned from such activity/transaction is treated as business income in the company’s books of account
- f. Whether the transactions are common in the particular industry
- g. Whether there is any historical practice to conduct such activities
- h. The financial scale of the activity with regard to the operations of the business
- i. Revenue generated by the activity
- j. Resources committed to the activity

The above list is not exhaustive. Individually, none of the above parameters can amount to the transactions being in the ordinary course of business.

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.

Note: However, 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.

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 transactions with related parties 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 transactions with related parties. In such cases, the company can enter into transactions based on the approved guidelines and every transaction need not be placed before the Audit Committee for determining whether the same is in the ordinary course of business or not. 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 will 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.

Arm's length basis does not mean arm's length price as price is just one of the components of the terms of dealing with the other party and there are several other matters which need to be considered. For example, in case of trading of goods, the price charged to both related and unrelated party is Rs. 100 per unit. Based on the price charged, it may seem to be an arm's length transaction. However, if the credit period granted to an unrelated party is 15 days whereas to a related party it is 6 months, it will not be considered as an

arm's length transaction. The transaction as a whole and the entire bundle of the terms and conditions needs to be considered for determining whether the transaction is on an arm's length basis.

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

The Bangalore Bench of the Income Tax Appellate Tribunal in the case of *Filtrex Technologies 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

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 Board of Directors of the company 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

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	Basis for determining Arm's length basis of charge	
	Method to be adopted	Any entity Other than a WOS
Sale, purchase or supply of goods or materials	Any one appropriate method under Transfer Pricing Guidelines of Income-tax Act and Rules	Terms and conditions will be based on business requirements and be comparable with third parties
Leasing of properties	Any one appropriate method under Transfer Pricing Guidelines of Income-tax Act and Rules	Rentals comparable with market rates and other factors such as location, size, age of property, etc.
Use of common infrastructure services like security, canteen services, administrative services at various locations	-	Cost + margin (subject to provisions of JV agreement)
Appointment and Remuneration of Executive / Non-Executive Directors / Key Managerial Personnel	Remuneration will be in line with industry practice. The same will be approved / recommended by the Nomination and Remuneration Committee and approved by the Board and Shareholders in line with the provisions of the Act.	Same in case of WOS and any entity other than a WOS

Shared Services: Employee benefits processing, Travel Expenses processing, Vendor Processing, HR Portal Services & HR transactions outsourcing, Salary & Retirement Benefit Administration	Based on number of employees, documents processed, man-hours spent, etc.	Cost + margin
Training by Corporate HR	Based on number of employees trained	Cost + Margin
Services provided by Corporate IT	Based on number of e-mail ID, no. of licences used, bandwidth used, storage space on server, etc.	Cost + Margin
Appointment of any agent for purchase or sale of goods, materials, services or property	Charges to be comparable with industry	Cost + Margin
Parent Company Guarantee		Rate equivalent to arm's length compensation. Generally, average rates charged by banks may be taken
Use of brand name		Such rate and method as comparable with industry practice

Deputation of staff		Salary paid recovered at actuals
Purchase / Sale of market investments		At market value
Purchase / Sale of non-current investments	Market Rate	Market Rate
Sale / purchase of property	To comply with relevant provisions of the Companies Act in addition to Section 188	Based on valuation report.
Financial Transactions such as Inter-Corporate Deposit, Inter-Corporate Borrowings, etc.	Will be in line with the approvals given by the Board/Committee thereof	Not lower than the interest rate as prescribed under Sections 185 and 186 of the Act
Investment in market instruments of group companies (Eg. Non-Convertible Debentures, mutual funds, bonds, etc. by financial services companies)	Will not be covered under Section 188 as these are traded on the exchanges and are mostly purchased / sold from/to third parties. Even in case of IPO, the same price as a general investor would get is received	Not covered
Taking flats on lease from Key Managerial Personnel	As per company policy	Market Rate
Administrative & Management Expenses charged to Subsidiary / Associate Companies	-	Based on group turnover

Reimbursement of Expenses	-	At actuals with supporting documents
Providing accommodation in company owned / leased flats to employees of group company	Any one appropriate method under Transfer Pricing Guidelines of Income-tax Act & Rules	Market Rate

A simple way to demonstrate absence of conflict of interest, is to prove that existence of special relationship between contracting parties has 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 the cost of infrastructure at common locations. However, such transactions should be done on arm's length basis.

Issue

How do you satisfy 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. There are different practices adopted by companies like obtaining a certificate from the internal auditors, certificate from management, etc.

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. Transfer Pricing guidelines given under the Income-tax Act, 1961 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 price.

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.

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.

Section 2(52) of the Central Goods and Services Tax Act, 2017, defines the term 'goods' to mean every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Issue

Will a preferential allotment of shares to a related party be treated as related party transaction under Section 188 of the Act?

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 a related party transaction in accordance with the Act.

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 transaction of providing corporate guarantee is covered specifically under Sections 185 and 186 of the Act, which also covers transaction described above. Ordinarily in such cases, Section 188 is not attracted, however requirements of Section 177 need to be complied.

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 given 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 a transaction with respect to remuneration of a director, it will be considered to be on an arm's length basis if the director gets remuneration in accordance with the provisions of Section 197 read with Schedule V of the Act.

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.'

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 and 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. This transaction will fall under the proviso to Section 197(4) of the Act. 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. (Price offered by Mr. A is certainly far lower than the next lowest quote but the other terms also need to be examined). However, approval of the Audit Committee will be necessary. Approval of the Nomination & Remuneration Committee as provided under Section 197 of the Act will also be required.

- 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 for which an amount of Rs 50 lakh is proposed to be paid.

Although this transaction is with a related party, this transaction will be protected under the proviso to Section 197(4) of the Act. 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. Approval of the Nomination & Remuneration Committee as provided under Section 197 of the Act will also be required.

Issue

Whether rendering of service which is covered under proviso to Section 197(4) would attract provisions of Office of Profit under Section 188(1)?

View

Such transactions need to be tested on whether they are in the ordinary course of business and on arm's length basis. If yes, then the same will not be covered under Section 188.

Issue

Will payment for services rendered under the Proviso to Section 197(4) be covered in the limits of remuneration as referred to in the Explanation to Section 188 which defines the term office or place of profit?

View

If the services rendered are not covered under the conditions of service of the directors concerned, and the remuneration is for rendering services in a capacity other than as a director, then such amount will not be covered in the limits of remuneration of a director as per the Proviso to Section 197(4).

Issue

Is the amount referred to above considered as over and above the "remuneration entitled as a Director" as referred to in the Explanation to Section 188?

View

Yes, this is in addition to his remuneration as a director. Thus, it will be necessary to examine it with reference to arm's length and ordinary course of business.

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 two per cent 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;

- (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.

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(7)(zb) of the Listing Regulations defines the term 'related party' as follows:

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

Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party." (The amended Regulation, to be effective from 1st April, 2019)

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.

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)

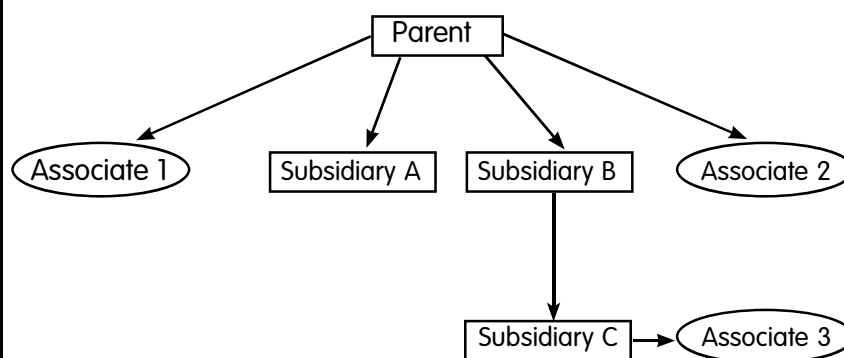
Ind AS-24 defines the term 'related party' as follows:

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

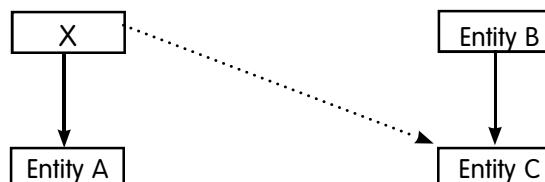
Associates and subsidiaries: A Parent entity has a controlling interest in Subsidiaries A, B and C and has significant influence over Associates 1 and 2. Subsidiary C has significant influence over Associate 3. Subsidiary C is the subsidiary of Subsidiary B.



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)(ii) 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

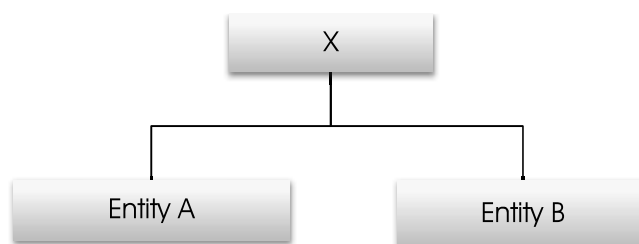
Key management personnel: A person X has a 100 per cent investment in Entity A and is a member of the Key Managerial Personnel of Entity C. Entity B has a 100 per cent investment in Entity C.



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)(vi)–(a)(ii) 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.



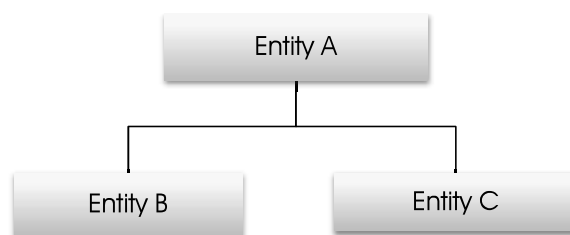
For Entity A's financial statements, if X controls or jointly controls Entity A, Entity B is related to Entity A when Y has control, joint control or significant influence over Entity B. [Paragraph 9(b)(vi)–(a)(i) and 9(b)(vii)–(a)(i) of Ind AS-24]

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)(vi)–(a)(ii) 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.

3. What are Related Party Transactions?

Related party transactions mean 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 related party transactions 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 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 (subject to the exception of transactions with wholly owned subsidiaries), would continue to apply.

As per Regulation 2(7)(zc) of the Listing Regulations, the term 'related party transaction' means a transfer of resources, services or obligations between a listed entity and a related party, 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. 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.

Regulation 23(7) 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 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

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 two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity. *(Amended Regulation 23 to be effective from 1st April, 2019).*

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 related party transaction?

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 related party transaction and the same is not covered under Section 188(7) of the Act.

Issue

"Leasing of property of any kind" is covered u/s 188(7)(d). 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.

Issue

Whether issue of "shares and debentures" to a related party, covered under the ambit of Section 188?

View

No. Shares are treated as goods once allotted. Hence, issue of shares and debentures will not fall under the purview of Section 188. However, transfer of shares to a related party would be considered as a related party transaction.

In case of an issue of "shares and debentures" to a related party by way of private placement, the transaction will be treated as one with a related party but would not be regarded as a related party transaction under Section 188 of the Act provided the valuation requirements are met. Further, issue of shares on rights basis, ESOPs, sweat equity, etc. will also not be treated as related party transactions under Section 188 of the Act, if they comply with the provisions of the Act/Listing Regulations.

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 provisions of Indian law for such transactions between Y Pty Ltd. and Z Pte Ltd. will be applicable?

View

In accordance with the provisions of Ind AS, the provisions of related party transactions are applicable even to transactions between two foreign subsidiaries situated out of India. However, this applicability of Ind AS will only be for disclosure and not for obtaining approvals. No approval of the Audit Committee or Board of X Ltd. will be required for transactions between the two foreign subsidiaries.

Issue

What is the legal position on applicability of Section 188(7)(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 related party transaction. 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 related party transaction although 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 related party transaction.

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 related party transaction?

View

Leasing of property of any kind is covered under Section 188(7)(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 related party transaction requiring approval of the Board and shareholders.

Approval of the Audit Committee will be necessary in any event.

Issue

The Managing Director of a listed company 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(7)(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 related party transaction 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(7)(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(7), 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 related party transaction 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 related party transaction for company A Ltd.?

View

No. Commission paid by company B Ltd. to Mr. X will not be a related party transaction 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.

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 related party transaction?

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 mechanism pertaining to Related Party Transactions

Section 188 of the Act and Regulation 23 of the Listing Regulations deal with transactions with related parties. The Act provides for approval of all transactions with related parties except with respect to transactions with a wholly owned subsidiary. Approval by the Board is necessary if the transaction with a related party is covered under Section 188(1) of the Act but does not exceed the thresholds under Rule 15(3) of the Companies (Meetings of the Board and its Powers) Rules, 2014. However, approval of the shareholders is required in all cases where the transaction exceeds the thresholds referred to above. If the transaction is in the ordinary course of business and on arm's length basis then approval of the Audit committee will be necessary (under section 177(4)(iv) of the Act) but approval of the Board is not necessary to be obtained.

The Listing Regulations provide for an approval mechanism – approval of the Audit Committee is necessary in all cases except with respect to transactions between a listed company and its wholly owned subsidiary. Approval of the shareholders is necessary to be obtained in case of a material related party transaction (Regulation 23). All related parties (irrespective of whether they are related parties in the transaction proposed to be considered or not) are not entitled to vote on such a resolution.

The Act requires disclosure of related party transactions in the Directors' 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 from the half year ending 31st March, 2019 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:

Particular	Threshold
Sale, purchase or supply of any goods or materials, directly or through appointment of agent	Transaction value \geq 10% of annual turnover or Rs. 100 crore, whichever is lower

Selling or otherwise disposing of, or buying, property of any kind, directly or through appointment of agent	Transaction value \geq 10% of net worth or Rs. 100 crore, whichever is lower
Leasing of property of any kind	Transaction value \geq 10% of net worth or \geq 10% of annual turnover or Rs. 100 crore, whichever is lower
Availing or rendering of any services, directly or through appointment of agent	Transaction value \geq 10% of annual turnover or Rs. 50 crore, whichever is lower
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 of 10% of the annual consolidated turnover for determining material related party transaction. Further, w.e.f. 1st April, 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 two percent 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.

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 institutional trading 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 applicable to such bodies corporate and the guidelines or directives issued by the relevant authorities.

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 Related Party Transactions is placed at **Annexure**.

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

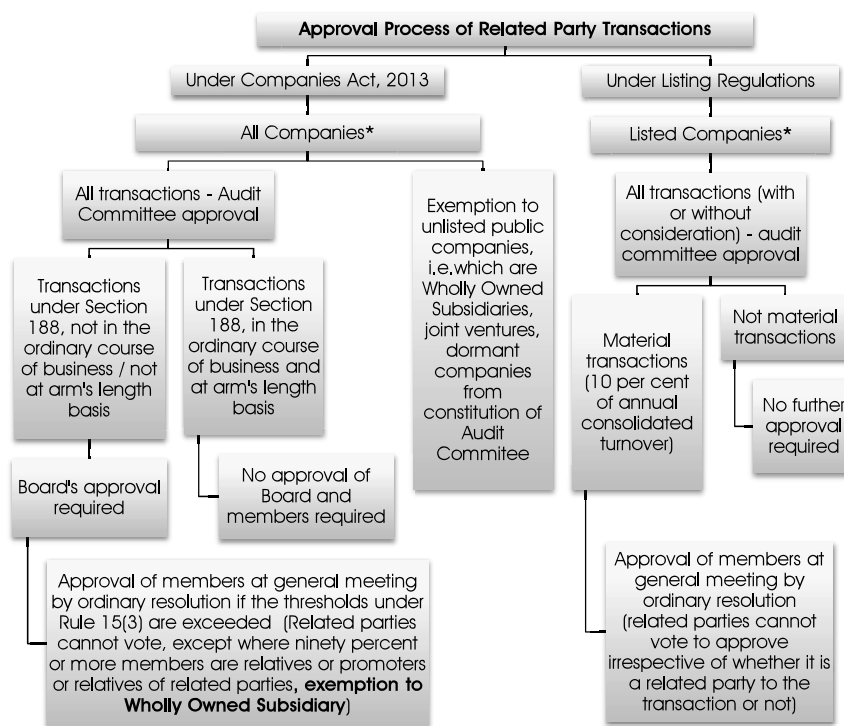
If there is a specific Section in the Act which applies, and the transaction is in the ordinary course of business as well as on an arm's length basis, then ordinarily Section 188 of the Act will not apply.

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 related party transaction. 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 Regulations are somewhat different. However, the principles remain the same viz. that related party transactions need to be approved as prescribed by law.



[Except Transactions between the Holding Company and its wholly owned subsidiary (WOS)]*

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 transactions with related parties. Subsequent modifications to related party transactions 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 related party transactions 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.

It is worth noting that specific approval of the Audit Committee is required in related party transactions; recommendations are not sufficient.

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 Section. However, approval of the Audit Committee under Section 177 will be required for all transactions between related parties, including financial transactions. Further, Section 177 permits the Audit Committee to grant omnibus approval for related party transactions 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, related party transactions 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 related party transaction 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.

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 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 company. However, if the transaction is a related party transaction 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 related party transaction for the purpose of Regulation 23 of Listing Regulations, then approval of shareholders will also be necessary.

Issue

Can approval of the Audit Committee, to a related party transaction, be granted by passing a circular resolution?

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 circular resolution. However, the law is silent on dealing with any item of business by the Audit Committee through a circular resolution. 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 related party transactions. As per the Secretarial Standard on Meetings of the Board of Directors (SS-1), the Audit Committee should discuss related party transactions which are not in the ordinary course of business or which are not on arm's length basis at its meetings and not through circulation. However, there is no bar on omnibus approval of limits being passed by a circular resolution by the Audit Committee.

6.1.2 Approval of the Board of Directors

Sub-section (7) of Section 188 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 related party transactions which are either not in the ordinary course of business or not on an arm's length basis.

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

Sub-section (3) of Section 188 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(7) 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, 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 related party transactions 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, which in turn refers to Section 184(2) of the Act. It is important to note that Section 184(2) 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 related party transaction falling under Section 188 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 related party transaction? 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 related party transaction 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 on 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.

If an independent director is proposed to be paid an amount of Rs. 20 lacs which is 20% of his total income, though he will be entitled to the said amount as per Section 197(4) of the Act, however, cease to be treated as Independent Directors.

Issue

Where a director is nominated by a related party, whether the nominee director can be present at a Board meeting where a related party transaction 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 related party transactions 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 or Rs. 100 crore, whichever is lower.
- (b) Selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to 10% or more of the net worth of the company or Rs. 100 crore, whichever is lower.
- (c) Leasing of property of any kind amounting to 10% or more of the net worth of the company or 10% or more of the turnover of the company or Rs. 100 crore, whichever is lower.
- (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 or Rs. 50 crore, whichever is lower.
- (e) Appointment to any office or place of profit in the company, its subsidiary or associate company at a monthly remuneration exceeding Rs. 2,50,000/-.
- (f) Underwriting the subscription of any securities or derivatives thereof, of the company, at a remuneration 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 related party transactions 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 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(7) 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 contract 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 ninety per cent. 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 sub-section (1) of Section 188 of the Act provides that the requirement of passing the resolution under the first proviso to sub-section (1) of Section 188 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) 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

The Audit Committee of a company and the Board had deferred the matter for the approval of a related party transaction to the shareholders. Can shareholders approve the transactions without recommendations of the Audit Committee/ Board?

View

The transactions under Section 188 require approval of the Audit Committee before the same is placed before the Board. The Audit Committee cannot upward delegate the matter. (Second proviso to clause (iv) to sub-section (4) of Section 177 of the Act). The consent of the Board through a resolution at a meeting is required before entering into a related party transaction (Section 188(1) of the Act). It means approval of the Audit Committee and the Board is required for related party transactions, and mere recommendations are not sufficient. Further, w.e.f. 1st April 2019, in case of a listed company, the explanatory statement to be annexed to the notice for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the Board to the shareholders on each of the specific items. (Regulation 17(11) of the Listing Regulations).

Issue

Related Party Transactions between two government companies are exempted. Is it necessary to place such related party transactions 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.

Issue

A Limited is a wholly owned subsidiary of B Limited and C Limited is a wholly owned subsidiary of A Limited. A Limited, being an intermediate wholly owned subsidiary, does not prepare consolidated financial statements and B Limited, the ultimate holding company, prepares consolidated financial statements.

A Limited proposes to enter into a transaction with C Limited 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 related party transaction 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 Limited are not consolidated with A Limited.

For further details on the approval mechanism for related party transactions, please refer to the Chart given in this Guidance Note.

Issue

Will remuneration by way of salary proposed to be paid to a director amount to a related party transaction?

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 related party transaction.

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 related party transaction and therefore would require approval in the following order:

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

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 & 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 related party transactions 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 related party transactions (except with a wholly owned subsidiary) and approval of the shareholders in case of a 'material related party transaction.' The Audit Committee is also be required to approve any subsequent modification of transactions of the listed company 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 related party transactions'.

Further, the Audit Committee is also required to review at periodic intervals 'statement of significant related party transactions (as defined by the Audit Committee)', submitted by the management.

However, Regulation 23 permits the Audit Committee to grant omnibus approval for related party transactions 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 related party transaction 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 related party transactions 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 related party transactions shall require approval of the shareholders through a resolution and no related party shall vote to approve such resolution whether the entity is a related party to the particular transaction or not. 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.

In this connection, it may be noted that Regulation 2(7)(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 10% limit, such transactions would be aggregated as they are undertaken under a single contract.

Issue

In a listed company, is a related party not allowed to vote on a resolution (pertaining to a material related party transaction) 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.

The Act provides for individual thresholds for each type of related party transaction for the purpose of taking shareholder's approval through ordinary resolution. However, the Listing Regulations prescribe a common threshold i.e. 10% of annual consolidated turnover for transaction(s) to be termed as material related party transaction, for which 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 2017-18 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 2017-18. RS Ltd. is in the business of manufacturing of tyres and its turnover for the financial year 2017-18 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. 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 required 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.

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 disclosure of his interest, as follows:

- At the first meeting of the Board in which he participates as a director.
- 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 related party transactions.

A suggested template for disclosure of details of relatives is placed at **Annexure**.

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 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), in case of change, directors are required

to make disclosures within 30 days of such change. The disclosure under Section 184(7) 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, such disclosures under Section 184(7) 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 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 interest is made by the concerned director either prior to or at the meeting. Further,

Section 184(2) shall apply to Section 8 companies, only if the transaction with reference to Section 188 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) must be made at a meeting of the Board while the disclosure under Section 184(1) 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 (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 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), the office of a director shall become vacant in case he acts in contravention of the provisions of Section 184 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.

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), 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 sub-section (1) of Section 188 of the Act including certain arms length transactions under the third proviso thereto.

Form AOC-2 requires disclosure of (a) related party transactions which are entered into not on arm's length basis and (b) material related party transactions 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 related party transaction in the Board's Report?

View

The same need not be disclosed as a related party transaction 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(7) 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 related party transaction.

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's Report?

View

According to Section 134(6), 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 the provisions 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 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 except listed banks.

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

Further, the Annual Report filed for the year ended March 31, 2019 and thereafter, 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.

Note: Effective from 1st April, 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 two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(b) 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 quarterly in the compliance report on corporate governance.
- ii) According to the amended Regulation 33, a listed entity shall submit, with effect from the half year ended March 31, 2019 and thereafter, to the stock exchanges within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results. The same shall also be published on its website.

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

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 related party transactions 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 related party transactions 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.
- (c) If an entity has had related party transactions 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:

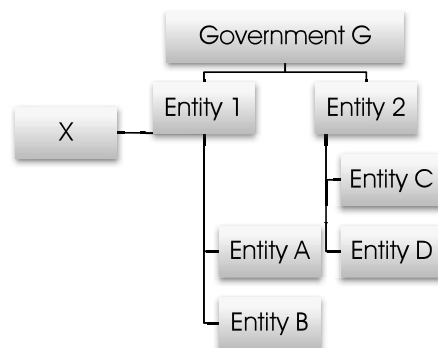
- (a) the parent;
 - (b) entities with joint control of, or significant influence over, the entity;
 - (c) subsidiaries;
 - (d) associates;
 - (e) joint ventures in which the entity is a joint venturer;
 - (f) key management personnel of the entity or its parent; and
 - (g) other related parties.
- (e) A reporting entity who is a Government related entity is exempt from the disclosure requirements (of Paragraph (c) above) in relation to related party transactions 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 related party transactions 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 per cent 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 per cent of outstanding shares, with a loan equivalent to 50 per cent of its funding requirement, repayable in quarterly instalments over the next five years. Interest is charged on the loan at a rate of 3 per cent, 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)(ii) for collectively significant transactions could be:

Government G indirectly owns 75 per cent 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 per cent of its sales of goods and about 35 per cent 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, 2016

Auditors Report and Related Party Transactions

In terms of the Companies (Auditor's Report) Order, 2016, the auditor's report on the financial statements of a company shall include a statement on whether all transactions with 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 standard.

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 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 applies i.e. related party transactions 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 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 11.05.2018. Afterwards Mr. A becomes director in ABC Pvt. Ltd. w.e.f. 15.06.2018. Are related party transaction 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 related party transactions 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 related party transaction 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) 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 requires listed companies to formulate a policy on materiality of related party transactions and also on dealing with related party transactions including 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 related party transactions 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 related party transactions. 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 related party transactions and also on dealing with related party transactions and to disclose the same on their website and in their Annual Report.

A suggested policy on Related Party Transactions is placed at **Annexure**.

10. Consequences, prosecution and penalty

10.1 As per the Act

- I. (i) Sub-section (3) of Section 188 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) Sub-section (4) of Section 188 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.

- (ii) Sub-section (5) of Section 188 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 company, be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/-, or with both; and
 - (b) in case of any other company, be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/-.
- II. Every Director who fails to comply with the provisions of Section 189 and the rules made thereunder shall be liable to a penalty of Rs. 25,000/-. Since no specific penalty is provided in Section 189 for the company, Section 450 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) 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 Section 184(2), such director shall be punishable with imprisonment for a term which may extend to 1 year or with fine which may extend to Rs. 1 lakh, or with both.
 - (iii) Every director who acts in contravention of Section 184 of the Act or 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. The vacation of office is automatic and does not require any resolution.
- IV. In terms of Section 164(1)(g) of the Act, if a director is convicted of any offence dealing with related party transactions under Section 188, such director shall be disqualified to become a director in any company for the next 5 years after such conviction.
- V. The Act does not prescribe any specific penalty in Section 177 and therefore the penalty prescribed under Section 450 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 punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

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 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 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 a recognized stock exchange, fails to furnish the same within the time specified therefor in the Listing Agreement, 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. Further, the person who is responsible 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 related party transaction 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 related party transactions, 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, 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 related party transactions 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 related party transaction 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 related party transactions, 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 and Cost Audit.

Some practices that a company may follow while dealing with related party transactions 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 said transaction memo 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 Related Party Transactions and Specimen Resolutions to be passed are placed at **Annexure**.

ANNEXURES**Suggested Format for Disclosure of details of Relatives****Name of Person :**

The details of my relatives are as under:

Sl. No.	Name of Relative	Relation-ship	Occu-pation of Rela-tive	PAN Number / other Identifi-cations	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 pub-lic limited company of which the di-rector is also a director.
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						

Date:

Signature

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 mechanism 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/ transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the Company as per the last audited financial statements of the Company;

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 two percent 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;

“Related Party Transaction” means any transaction directly or indirectly involving any Related Party that involves transfer of resources, services or obligations between a Company and a related party, regardless of whether a price is charged;

A “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract;

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.

All entities falling under the definition of Related Parties shall not vote to approve the said resolution being placed before the shareholders, irrespective of whether the entity is a party to the transaction or not.

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.

5. Material Related Party Transaction

All Material Related Party Transactions shall be placed for prior approval of shareholders through a Resolution. However, the Material Related Party Transactions entered into between the Company and its wholly owned subsidiaries shall not require prior approval of the shareholders.

6. Disclosure(s)

Details of all Material Related Party 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.

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) 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)		
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 Note: 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 disclose 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		

S. No.	Check	Yes/ No	Remarks
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 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) 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)		
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 any of point (f) is YES , then see next points
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		

S. No.	Check	Yes/ No	Remarks
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 Note: 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		
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 in Form MBP-4		

LISTED COMPANY

S. No.	Check	Yes/ No	Remarks
a)	Whether the company has entered into any specified transaction (within the meaning of Section 188) 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)		

S. No.	Check	Yes/ No	Remarks
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		
f)	Whether the Audit Committee has granted omnibus approval for certain related party transactions		If any of point (f) is YES , then see next points
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 Note: It should not be passed by resolution by circulation		
j)	Whether the agenda of the aforesaid Board meeting contains the requisite disclosures		

S. No.	Check	Yes/ No	Remarks
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		
<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)		
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 in Form MBP-4		

Specimen Resolutions

A. Audit Committee's Resolution

a. In case of specific approval

(a) "Resolved that, in pursuance of Section 177(4) of the Companies Act, 2013 read with the 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."

(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 Company - 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 2018-19, 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 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 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.”

Legal Matrix

Parameter	Companies Act, 2013	SEBI (LODR) Regulations	Ind AS 24	AS 18
Definition of Related Party	<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 2(1) (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 any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.</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>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>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.</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>		<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>	
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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 transfer of resources, services or obligations between a listed entity and a related party, 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>
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>No exemption to any transaction.</p>	<p>-</p>	<p>-</p>

<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 :</p> <p>(a) require approval of the Board; and</p> <p>(b) require prior approval of the shareholders, in case such related party transactions exceed the limits as specified therein.</p>	<p>As per SEBI (LODR)</p> <p>All Material related party transactions require approval of the shareholders.</p> <p>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>-</p>	<p>-</p>
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Threshold	<p>Shareholder's approval is required where a Related Party Transactions:</p> <ul style="list-style-type: none"> • Exceeds 10% of the turnover or Rs. 100 crore - in transactions of sale, lease, purchase, supply, etc. • Exceeds 10% of turnover or Rs. 50 crore - in services • Exceeds Rs. 2.50 Lakh per month – in remuneration • Exceeds 1% of net worth-in underwriting 	<p>Shareholder's approval for Material Related Party Transactions:</p> <p>If the transaction(s) is more than 10% of the annual consolidated turnover</p>	-	-
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<p>Disclosures</p>	<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 except for listed banks. Disclosures: <ul 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 and publish on its website within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the 	<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: <ul 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; 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 	<p>Following disclosures are to be made if an entity has had related party transactions during the periods covered by the financial statements:</p> <ul 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. Separate disclosures to be made for each of the following categories: <ul style="list-style-type: none"> the parent;
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		<p>format specified in the relevant accounting standards for annual results .</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>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 	<p>(b) entities with joint control of, or significant influence over the entity;</p> <p>(c) subsidiaries;</p> <p>(d) associates;</p> <p>(e) joint ventures in which the entity is a joint venturer;</p> <p>(f) key management personnel of the entity or its parent; and</p> <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: <p>(a) the name of the government and the nature of its relationship with the reporting entity</p>
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<p>(i.e. control, joint control or significant influence);</p>	<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>				
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