

Related Party Transactions



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**CS Devang Katudia
Company Secretary, Sabarmati Gas Limited**

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Contents of Presentation

- Scope of Related Party Transactions (RPTs)
- Definitions
- Evolution of RPT provisions under Companies Act, 2013 and LODR
- Approval matrix for RPT
- Comprehensive process for entering into RPTs
- Illustrative list of Related Party Transactions and Examples
- Contents of Ideal RPT policy & Best Practices
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- Hint to Frequently asked Questions
- Consequences, Prosecution and Penal
- Discussion on issues related to RPTs



RPT

The diagram features two large, light green arrows pointing in opposite directions. The left arrow points left and contains the text 'RPT' in bold black font. The right arrow points right and contains the text 'Scope' in white font. The arrows are positioned horizontally and overlap slightly in the center.

Scope

Related Party Transactions
(RPTs)

Companies Act, 2013

(Sections – 2(76),2(77),134,164,
166, 167,177,184,185,188, 189
Schedule IV)

CARO, Secretarial Standards

SEBI (LODR) Regulations,
2015

(Regulation –
2(zb),2(zc),2(zd),4(2), 15, 23,
24, 27, 46, 34, 53, Schedule - V

Applicable Accounting
Standard - AS 18/IND AS 24

Scope of RPT

Companies Act, 2013 v/s SEBI (LODR), 2015

Key Terms	Companies Act, 2013	SEBI (LODR), 2015
Related Party	Defined	Same, includes Related party as per AS.
Relative	Defined	Same
Related Party Transactions	Not defined	Broadly Defined (Transfer of Resource, Service and obligation)
Material Transactions	Transaction wise threshold limits	10 % of CT
Arms Length Price -	Defined	No relevance
Ordinary Course of Business	Not Defined	No relevance
Policy	Policy on criteria for omnibus approval.	Policy on materiality of RPT and dealing with RPT.
Voting Rights	Only interest in Transaction should not vote to approve.	No related parties shall vote to approve irrespectively interested in transaction or otherwise.
Approvals	Audit Board Shareholders	Audit Committee Shareholders
Exemption	<ol style="list-style-type: none"> 1. GoG with GoG 2. Holding with WOS 3. Gog other then listed with approval of state From approval of Shareholders	GoG with GoG Holding with WOS From approval of Audit and Shareholder



RPT

Definitions

Related Party [Sec 2(76) of CA, 2013]

Deemed RP: A Director(other than **ID**) or **KMP** of the holding Co./ his relative with reference to a Co.

A **Director/KMP** / their **relatives**

A firm, in which a director/**Manager**/his relative is a partner;

1. **Holding/Subsidiary/Associate Co.**

2. Subsidiary of a holding co.to which it is also a subsidiary;

3. Investing Co./Venturer of the company

A **private company** where director or manager or his relative is a member/director;

any person on whose advice, directions/ instructions a director/manager is **accustomed to act** (Not in professional capacity)

BC whose BOD, MD/ manager is **accustomed to act** in accordance with the advice, directions or instructions of a director/manager (Not in professional capacity)

A public company where director/manager is director & holds along with his relatives, > 2% of its **paidup share capital**

Interested Director

Related party as defined under section 2(76) of the Companies Act, 2013

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

Related Party [Reg. 2(1)(zb) of SEBI (LODR)]

Related party as defined under the applicable accounting standards

SEBI Working
Group
Recommendation

Related Party – As per Ind AS 24

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 person or a close member of that person’s family is related to a reporting entity if that person:
 - has control or joint control over the reporting entity;
 - has significant influence over the reporting entity; or
 - is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

- An entity is related to a reporting entity if any of the following conditions applies:
 - 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).
 - **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).**
 - Both entities are joint ventures of the same third party.
 - One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
 - 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.
 - The entity is controlled or jointly controlled by a person identified in (a).
 - 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).
 - 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.

Related Party Transaction

Under CA, 2013

- Not Defined
- List of Transactions prescribed under Section – 188 of the Companies Act, 2013
- Section 177 covers all possible transactions with Related Party.

Under SEBI (LODR)

- “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.

Under IND AS- 24

- A 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.

SEBI Working Group Recommendation

- “Related party transaction” means a transaction involving a transfer of resources, services or obligations **between:**

Material Related Party Transaction

Under CA, 2013

- Not Defined
- Limited prescribed for list of Transactions under Section – 188 of the Companies Act, 2013 which requires approval of Shareholders at the meeting.

Under SEBI (LODR)

- “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 ten percent of the annual consolidated turnover of the listed entity** as per the last audited financial statements of the listed entity. “

SEBI working group recommendation

- Material for Audit Committee Approval
- Material for Shareholders Approval



RPT

**Evolution of RPT
under Companies
Act, 2013 and LODR**

Flashback to evaluation of RPT provisions

12th Sep, 2013

Section – 2 (77) and Section – 2 (76) made effective from 12th September, 2013

26th Mar, 2014

Section – 188, Section – 177 and relevant rules effective from 1st April, 2014.

- Company having a paid-up share capital of 10 Cr rupees or more shall require approval of shareholders from RPT irrespective of limits

17th Apr, 2014

SEBI :- Revised Clause 49 effective from - 1st October, 2014

- Never came into effect

- Materiality of related party transaction (5% of Turnover or 20% NW)

- Complex definition was designed

Apr-Sep, 2014

MCA issued Amendments, Orders and clarifications.

- Amendment in definition of related party

Flashback to evaluation of RPT provisions

15th Sept, 2014

SEBI :- Modified Revised Clause – 49 effective from 1st October, 2014.

- Came into effect
- Accepted definition of related party as specified under section 2(76) of companies Act, 2013
- Limit Specified to consider any transaction as material transaction (10% of CT)

26th May, 2015

Companies (Amendment) Act, 2015

- Provision for omnibus approval has been introduced
- Requirement of Special Resolution was replaced by Ordinary resolution

5th June, 2015

MCA :- Exemption to Government Companies

- Government Company to Government Company
- Government Company to other

5th July, 2015

MCA:- Exemption to Private Companies

Flashback to evaluation of RPT provisions

2nd Sep, 2015

SEBI :- Notified SEBI (LODR) effective from 2nd December, 2015

14th Dec, 2015

MCA :- Rules notified with reference to Companies (Amendment) Act, 2015.

- Process for granting Omnibus approval for related party transaction on annual basis

30th Mar, 2017

MCA issues Amendment Rules

- Change in Limit for obtaining approval of Shareholders

3rd Jan, 2018

Companies (Amendment) Act, 2017

- Where Audit committee does not approve the transaction other than 188, it shall make its recommendations to the Board.

- Approval for transaction other than referred to in section 188 is not applicable between Holding and its wholly owned subsidiary company

- To be ratified with 3 Months (not exceeding one crores)

Flashback to evaluation of RPT provisions

9th May, 2018

SEBI (LODR) Amendment Regulations 2018

- No related party shall vote to approve based on kotak committee recommendation in line with provisions of Companies Act, 2013
- 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.
- a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) exceed five percent of the annual consolidated turnover

18th Nov, 2019

MCA issues Amendment Rules

- Change in Limit (10% of Tunover/NW)

January, 2020

SEBI WORKING GROUP RECOMMENDATION

RPT

**Approval
Matrix**

Approval Matrix for Related Party Transactions

Companies Act, 2013

SEBI (LODR), 2015

Audit Committee – All Transactions

Companies exempted from constitution of Audit Committee – No approval of AC

Audit Committee – All Transactions

Transaction -188 not in ordinary course of business of at ALB

Transaction -188 in ordinary course of business of at ALB

Other Transactions

AC does not approve then it shall make recommendation to Board

Material Transactions

Not Material Transactions

Board Approval

No further approval required

Board Approval

Shareholders Approval

No further approval required*

Exceeds Thresholds Shareholders approval

Does not Exceeds Thresholds

*If non-material transaction covered under 188 ARB and Ordinary Course of Business – No approval
If not in Ordinary Course of Business – Board and Shareholders approval in case it exceeds criteria

Exemption/Exclusion from approvals

Under Companies Act, 2013

- Private Companies/Unlisted Public Companies which does not exceed the criteria prescribed/Wholly owned Subsidiary/Joint Venture Company are **not required to constituted Audit Committee** and hence provision of Section – 177 shall not be applicable to those Companies.
- Audit Committee Approval not required - Transaction other than transaction referred to under Section – 188 between a holding company and its wholly owned subsidiary Company.
- If transaction is between Holding Company and its wholly owned subsidiary **shall not require approval of Shareholder** if accounts are consolidated with such holding Company and placed before the shareholders at General Meeting for approval.
- Contract or Arrangement between two Government Companies **shall not require approval of Shareholders.** It will still require approval of Audit Committee and Board.
- Contract or Arrangement between non-listed Government Company with any other Company **shall not require approval of shareholders, if Company obtains approval of concerned Ministry/Department of the CG/SG in charge.**
- In case of private Companies the members who are related party can vote at the resolution placed before the shareholder for approval under Section – 188.
- Transaction covered under Section – 188 which are entered into ordinary course of business and at Arm Length Basis shall not require approval of Board and shareholders.**

Activity is covered in the objects clause of the MOA

Revenue generated by the activity & Resources committed to the activity

Activity is in furtherance of the business

Factors to be considered to determine whether activity is in Ordinary Course of Business.

There is any historical practice to conduct such activities

Activity is normal or otherwise routine for the particular business, common in the particular industry & Repetitive in nature.

Income, if any, earned from such activity/transaction is treated as business income in the company's books of account

Industry
Benchmark

Any other
Method which
can
demonstrate
that there is no
conflict of
interest

Past
Transactions

**Arm Length
Basis**

**Means a transaction
between two related
parties that is
conducted as if they
were unrelated, so
that there is no
conflict of interest.**

Valuation
Report

Cost+Margin

Terms &
Condition with
comparable
with third
Party s



RPT

Comprehensive
process for
entering into RPTs

Process

Audit Committee Approval

- **Approval** or any subsequent modification of transactions of the company with related parties.
- The Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company. Criteria for granting omnibus approval shall be approved by the Board.
 - **maximum value** of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
 - the maximum value per transaction which can be allowed;
 - extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
 - review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made; (SEBI LODR) – At least on Quarterly basis
 - transactions which cannot be subject to the omnibus approval by the Audit Committee.

Process

Omnibus Approval of Audit Committee:

Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely

- The Audit Committee shall, after obtaining **approval of the Board of Directors**, specify the criteria for making the omnibus approval.
- The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -
 - (a) repetitiveness of the transactions (in past or in future);
 - (b) justification for the need of omnibus approval.
- The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of **repetitive nature** and that such approval is in the **interest of the company**.
- Where the need for related party transaction cannot be foreseen, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

Process

Omnibus Approval of Audit Committee:

- ❖ Omnibus approval **shall include** 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:

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.

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

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

Process

- ❖ Audit Committee of Listed Companies to Quarterly review of Transaction entered in accordance with the omnibus approval on quarterly basis as per SEBI (LODR) and for unlisted Companies under Companies Act, 2013 the Board may decide (it can be quarterly, half yearly or annual basis).
- ❖ To set monitoring mechanism to identify transaction if any (not exceeding Rs. one crores) entered without approval of Audit Committee for purpose of ratification within a period of three month. Otherwise it shall be voidable at the option of Audit Committee.

Process

Board Approval

- ❖ **Prior approval** of the Board if contract or arrangement for list of transactions **under section – 188** of the Companies Act, 2013 **not in ordinary course of business or at arms length price.**
- ❖ Approval of Board has to be at a **duly convened Board Meeting**. It cannot be approved by way circular resolution.
- ❖ Agenda of the Board Meeting shall include the following
 - (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.

If Director is interested in a contract with related party then such Director shall not Participate

Process

Shareholders Approval

- ❖ Shareholders **prior approval by way of ORDINARY RESOLUTION** in case the value **exceeds the limits** of value of contract or arrangement for list of transactions under section – 188 of the Companies Act, 2013 not in ordinary course of business or at arms length price. Material Transaction for Listed Companies. Rule 15 The Companies (Meetings of Board and its Powers) Rules, 2014.

- ❖ The explanatory statement to be annexed to the notice of a general meeting convened pursuant to **section 101** 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 arrangements;
 - (e) any other information relevant or important for the members to take a decision on the proposed resolution.

- **Voting** :- **Related party** cannot vote on the resolution the meeting (Co, act & LODR)
- Restriction shall not apply in case ninety per cent. or more members, in number, are relatives of promoters or are related parties.
- Restriction dose not apply to Private Companies



RPT

Illustrative list of
Related Party
Transactions with basis
for determining ALB

Illustrative list of Related Party Transactions with basis for determining ALB

Particulars of Transactions	Arms Length Basis
<p>Sale, Purchase or supply of any goods or materials</p>	<p>Agreement in line with those with unrelated Parties</p> <p>Unrelated parties contract having same price for similar nature of contract or agreement.</p>
<p>Selling or otherwise disposing of or buying, property of any kind</p>	<p>Property Valuation Report from a valuer</p>
<p>Leasing of Property</p>	<p>Rentals comparable with market rate and other factors such as Location, size age of property.</p> <p>Fair rent value assessment from a Valuer</p>
<p>Availing or rendering of any Services</p>	<p>Agreement in line with those with unrelated Parties</p> <p>Unrelated parties contract having same price for similar nature of contract or agreement.</p>

Illustrative list of Related Party Transactions with basis for determining ALB

Particulars of Transactions	Arms Length Basis
Appointment of any agent for purchase or sale of Goods, material, services or property	Charges should be Comparable with Industry
Purchase or share of Market Investments	At Market Value – If shares are of listed entity At valuation price – If shares are of Unlisted entity
Use of Brand Name	Such Rate and Methods as Comparable with Industry Practise.

Illustrative list of Related Party Transactions with basis for determining ALB

Particulars of Transactions	Arms Length Basis
Sharing of services (Employees deputed or seconded to subsidiaries or Holding companies)	It an Reimbursement based on Salary slip of employee/Additional Charge Allowance/Man-hour Worked <u>at actuals</u>
Utility Charges (Electricity, Housekeeping etc.)	Charges will be recovered on the basis of area allotted. Actual allocation and supporting documents if any should be obtained.
Sharing of services provided by IT	Cost Sharing based on no. of email ids, no of licence, bandwidth used, storage on servers etc.
Other Reimbursement of Expensed (Administrative)	At actual with supporting documents.

Illustrative list of Related Party Transactions with basis for determining ALB

Particulars of Transactions	Arms Length Price
Dividend Paid and Received	MOM of Board & Shareholders approval to be kept as proof along with the proof of Dividend Distribution Tax Paid
Payment to Directors	The payment made to Directors should be within the limit of Companies Act and based on Shareholders/Board approval
Payment of Salary & Benefits to KMP	As per the salary Agreement & HR Policy
Loans to Related Party (Director restricted)	Market Rate (On the basis of the one prescribed under Section – 185/186)
Security given in form of Bank Guarantees	As per agreement with unrelated party.
Parent Company Guarantee	Rate equivalent to which Banks will charge if availed from Market.

RPT

Contents of Ideal
RPT policy & Best
Practices

Contents of RPT polices

Axis Bank

- Company Secretary to keep database of Related Parties
- 10% of Annual Consolidated Turnover – Material
- Function Department shall submit to the head of finance and accounts and CS the details of transaction with related party other than those having omnibus approval with justification fro ALP and OCB.
- Bank is unable to take approval of from Audit Committee, such a transaction shall not be deemed to have violated the provision of the policy or be invalid or unenforceable so long placed for approval of Audit Committee within reasonable practical period.
- Audit/Board will judge it the transaction is in ordinary course of business and at arms length price

Contents of RPT polices

Bharti
Airtel

- 10% of Annual Consolidated Turnover – Material.
- **Ordinary course of Business**, means activities that are normal, regular, frequent and incidental to the business of the Company.
- The transactions or arrangements which are specifically dealt under the separate provisions of the laws and executed under separate approvals / procedures shall not be covered under this Policy.
 - a) Appointment and payment of remuneration, including any variation, to Key Managerial Personnel;
 - b) Payment of remuneration, Fees, Commission etc. to any director in compliance with legal provisions;
 - c) Issues of shares / securities to related party;
 - d) Any benefits, interests etc. arising to related party solely from the ownership of Company's shares at par with other holders e.g. Dividends, Right Issues, Stock Split, Bonus shares, etc.
 - e) Shares based incentive plans for the benefits of Directors or KMPs approved by the Shareholders including ESOPs.
 - f) CSR Contribution.

Contents of RPT polices

Dr. Reddy Laboraories Limited

- Every Director, Key Managerial Personnel and Senior Management Personnel (SMP) are responsible for providing notice to the Board or the Audit Committee, of any potential Related Party Transaction involving him/her or his/her relative. SMP – One Level below MD.
- “Ordinary Course of Business” for the purpose of this policy will cover the businesses of Dr. Reddy’s & its ‘Group’, usual transactions, customs and practices of a business including incidental and/or facilitative activities of the business of Dr. Reddy’s and its ‘Group’.
- Audit Committee shall approval transaction which are in ordinary course of business and at arms length basis. Rest will require approval of Board.

Contents of RPT polices

GAIL

- This Policy shall supplement Company's other policies/ procedures/ practices/ Delegation of Powers etc. which require approval of the Transactions/ Contracts/ Arrangement in specified manner and by specified authority. If there are more than one set of requirements due to application of multiple laws and regulations, the endeavor will be based on the compliance principle which would meet the higher governance standards.
- Concerned Head(s) of Department are responsible for placing an agenda for all Related Party Transaction(s).
- Audit Committee may, inter-alia, consider the following factors:
 - All relevant facts and circumstances including the terms of the transaction,
 - The **Business purpose** of the transaction,
 - The **Benefits to the Company and to the Related Party;**
 - Ordinary course of the Company's business and are on an arm's length basis,
 - **Business reasons** for the Company and the nature of alternative transactions,
 - whether the Related Party Transaction **would affect the independence** or present a conflict of interest for any Director or KMP of the Company;

Contents of RPT polices

GRASIM INDUSTRIES LIMITED

- **Arm's Length Basis** - In case the Company is not doing similar transactions with any other non- related party, terms for similar transactions between other non-related parties of similar standing can be considered to establish 'arm's length basis'. Other methods prescribed for this purpose under any law can also be considered for establishing this principle.
- It is the duty of all employees of the Company to ensure that they do not deal with related parties under any kind of influence or coercion. The cases involving any unwarranted pressure should be promptly reported as per mechanism provided under the Whistle Blower Policy of the Company. (Hindalco Industries Limited same clause).
- **All unit Heads, Finance & Commercial Heads shall certify compliance with this policy on Quarterly basis to the Audit Committee.**
- The **Internal Auditors** of the Company shall **review** the RPTs entered into by the Company on a periodic basis and **report their observations to the Audit Committee.**

Contents of RPT polices

ONGC

- **Criteria for granting omnibus approval**

- The maximum value of **all RPTs**, in aggregate, which can be allowed under omnibus route in a year, shall **not exceed 25% of the annual consolidated turnover** of the company as per last audited financial statements.
- The maximum value **per RPT** which can be approved under omnibus route shall not exceed **10% of the consolidated turnover** of the company as per last audited financial statements.
- **Transaction of following nature shall not be subject to the omnibus approval of the Audit Committee: (Tata Motors)**
 - Transactions which are not at arm's length or not in the ordinary course of business
 - Transactions which are not repetitive in nature
 - Transactions exceeding 10% of the consolidated turnover of the Company as per latest audited financial statements.
 - Transactions in respect of selling or disposing of the undertaking of the company
 - Financial Transactions eg. Loan to related parties, Inter Corporate Deposits, subscriptions to bond, debenture or preference shares issued by the related parties, corporate guarantee given/received from related parties

Contents of RPT polices

Common Contents included in Policies of various Companies

- Responsibility of Companies Secretary/Legal Department to maintain database of list of related parties.
- Responsibilities of Head of respective department to submitted agenda for approval.
- Approval of Audit Committee may be taken by way of circular resolution.
- Audit Committee has authority to modify or waive any procedural requirements of the policy.
- Nothing contained in the policy shall apply to providing remuneration by way of sitting fees or dealt under the separate provisions of the laws and executed under separate approvals / procedures shall not be covered under this Policy.

Contents of RPT polices

Common Contents included in Policies of various Companies

- Internal Auditors of the Company shall review the RPTs entered into by the Company on a periodic basis and report their observations to the Audit Committee.
- Duty of all employees of the Company to ensure that they do not deal with related parties under any kind of influence or coercion and report under whistle blower policy.
- In case unable to take approval of from Audit Committee, such a transaction shall not be deemed to have violated the provision of the policy or be invalid or unenforceable. However required approval subsequently.
- Responsibility on the Board and Key Managerial Personnel to give notice to Audit Committee/Board of any potential related party transaction involving him or her relative well in advane.

Contents of RPT policies

Common Contents included in Policies of various Companies

- Elaborate term like Ordinary Course of Business” and Arm Length Basis”.
- Certain Companies have expanded scope of related parties.
- Certain policy provides references to the relevant and applicable legislation, with a note as may be applicable from time to time. So such policies are offers flexibility to accommodate future amendments.

Best Practice

- List of related party may be compiled and integrated in MIS ERP or SAP system. To update on half yearly basis.
- System controls to track related party and transactions with such related parties.
- Awareness to Head of Department with respect to various stage of approvals required.
- Pre-developed format of Agenda in line with the provisions should be circulated to all HOD to enable them to compile the data and timely place the agenda.
- Identify all possible transactions for the Company which are in ordinary course of business and fix criteria for entering into such transaction on Arm Length Basis.
- Adequate documentation for justification of transaction in Ordinary course of Business and Arms length basis.

RPT

Disclosure &
Records

Register of Contract – Section - 189

Every company shall maintain one or more registers in Form MBP 4, and shall enter therein the particulars of-

- Company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under sub-section (1) of section 184:

Provided that the particulars of the company or companies or bodies corporate in which a director himself together with any other director **holds two percent. or less of the paid-up share capital would not be required to be entered in the register;**

- Contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and
- Contracts or arrangements with a related party with respect to transactions to which section 188 applies.

After entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

Register of Contract – Section - 189

- Section – 189 (2) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in subsection (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that subsection
- Authenticated by the company secretary
- Reserved permanently and shall be kept in the custody of the company secretary.
- Kept at the registered office of the company and it shall be open for inspection
- Extracts from such register to a member of the company on his request, within seven days from the date on which such request is received
- Register shall be produced at the commencement of every annual general meeting of the Company and shall remain open during the meeting.

Other Disclosures – Companies Act, 2013

- ◉ List of Relative by Director – To identify Related Parties.
- ◉ Section – 184(1) and Section – 189(2) MBP – 1 by Directors and KMPs within 30 days from the date of appointment.
- ◉ Disclosure by Director of his concerned or interested in a contract or arrangement entered into with
 1. Body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate
 2. is a promoter, manager, Chief Executive Officer of that body corporate
 3. firm or other entity in which, such director is a partner, owner or member, as the case may be.
- ◉ Section – 134 (3) – All Companies to disclose particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in Form – AOC – 2 as part of Directors Report.
- ◉ Section – 177(8) Board has not accepted any recommendation of Audit Committee the same shall be disclosed in Directors Report.

Other Disclosures – SEBI LODR

- Regulation – 27(2) details of all material transactions with related parties – Quarterly in the compliance report on Corporate Governance.
- Regulation – 23 Policy on Related party shall be reviewed once in every three year.
- Regulation – 46 Policy to be disclosed on website of the Company.
- Regulation – 53 Related Party disclosure in Annual Report in the format prescribed under Schedule – V.
- Regulation – 33 The listed entity shall submit 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 to the stock exchanges and publish the same on its website.
- Annual Report filed for the year ended 31st March, 2019 should include disclosure of transaction with any person or entity belonging to promoter/promoter group which holds 10% of more shareholding in listed entity. – **Based on KOTAK Committee recommendation**

Other Disclosures – Audit Report & Financial Statements

1. Disclosure as required under the Accounting Standards/Indian Accounting Standard in the Annual Report.
2. As per Companies (Auditor's Report) Order, 2016, the Auditor shall include a statement on whether all transactions with related parties are in compliance with Section 177 and 188 of the Companies Act and that the details have been disclosed in financial statements as required by the applicable accounting standard.
3. Secretarial Audit includes a statement on compliance with the provision of Companies Act, 2013.
4. **Diligence Report** to be submitted include disclosure of transactions with business entities in which directors of the company



RPT

Consequences,
Prosecution and
Penal

In case any contract or arrangement is entered without obtaining the approval of Audit Committee – **not exceeding one crore**
Cannot Enter into Transaction exceeding one crore without approval of Audit Committee

As per
Section 177

- It has to be ratified by the Audit Committee at a meeting.

Time limit for
ratification

- Within 3 Months from the date on which such contract or arrangement was entered into.

What if not
ratified?

- Such contract or arrangement shall be voidable at the option of the Audit Committee. **AND**
- If the transaction is with the related party to any Director or is authorized by any Director, the Director concerned shall indemnify against any loss incurred by it.

In case any contract or arrangement is entered without obtaining the consent of Board or approval by a resolution in the General Meeting

As per Section
188(3)

- It has to be ratified by the Board or, as the case may be, by the shareholders at a meeting.

Time limit for
ratification

- Within 3 Months from the date on which such contract or arrangement was entered into.

What if not
ratified?

- Such contract or arrangement shall be voidable at the option of the Board or, as the case may be, of the shareholders.

In case any contract or arrangement is entered without obtaining the consent of Board or approval by a resolution in the General Meeting

As per Section
188(3)

- If the transaction is with the related party to any Director or is authorized by any Director, the Director concerned shall indemnify against any loss incurred by it.

As per Section
188(4)

- The company can proceed against a director or any employee who has entered into such related party contract or arrangement in contravention of the provisions for recovery of any loss sustained by it as a result of such contract or arrangement.

Section 188(5)

Any Director or employees who had entered into or authorized a contract or arrangement in violation of this provision:

In case of
Listed
Company

Existing
Punishable with imprisonment for a term which may extend to one Year.
Or
Fine which shall not be less than Rs. 25000/- but which may extend to Rs 500000/-

Companies (Amendment) Act, 2020

Penalty of 25 lakh Rupees

(Yet to be notified)

In case of
Unlisted
Company

Existing
Punishable with fine which shall not be less than Rs 25000/- but which may extend to Rs 500000/-

Companies (Amendment) Act, 2020

Penalty of 5 lakh Rupees

(Yet to be notified)

In case any contract or arrangement is entered without obtaining the consent of Board or approval by a resolution in the General Meeting

As per
Section 189

- Every Director who fails to comply with the provision of section - 189 and rules thereunder shall be liable to a penalty of Rs. 25000/-.

As per
Section 184

- 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.**
- 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.
- **Section 167** - If a director is convicted of any offence dealing with related party transaction under Section 188, such director shall be disqualified to become a director in any company for the next 5 years after such conviction.

Under SEBI (LODR) Regulations, 2015

The listed entity or any other person thereof who contravenes any of the provisions of listing 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.



RPT

Hint to Frequently
asked Questions

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

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.

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?

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

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?

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

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?

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

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?

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.

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

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. 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.

- 1) So – Transactions on OCB and ALB can be approved by circulation.
- 2) However, there is no bar on omnibus approval of limits being passed by a circular resolution by the Audit Committee

**Discussion on issues if any on
Related Party Transactions**

THANK YOU

Office or Place of Profit

The expression “office or place of profit” means any office or place—

1. 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;
2. Where such office or place is held by 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

Director

- “Director” means a director appointed to the Board of a company;

Independent Director

Key Managerial Personnel

- "key managerial personnel", in relation to a company, means—
 - (i) the Chief Executive Officer or the managing director or the manager;
 - (ii) the company secretary;
 - (iii) *the whole-time director*;
 - (iv) the Chief Financial Officer;
 - (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
 - (vi) such other officer as may be prescribed]



Relatives

“Relative”, with reference to any person, means any one who is related to another, if

- they are members of a Hindu Undivided Family;
- they are husband and wife; or
- one person is related to the other in such manner;

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

1. Father - Provided that the term “Father” includes step-father.
Mother - Provided that the term “Mother” includes the step-mother.
2. Son - Provided that the term “Son” includes the step-son.
3. Son’s wife
4. Daughter
5. Daughter’s husband.
6. Brother - Provided that the term “Brother” includes the step-brother;
7. Sister - Provided that the term “Sister” includes the step-sister

Manager

- "Manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

Private Company

- "private company" means a [company having a minimum paid-up share capital [Omitted] as may be prescribed, and which by its articles],—
 - (i) restricts the right to transfer its shares;
 - (ii) except in case of One Person Company, limits the number of its members to two hundred:
Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:
Provided further that—
 - (A) persons who are in the employment of the company; and
 - (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,
shall not be included in the number of members; and
 - (iii) prohibits any invitation to the public to subscribe for any securities of the company;

Paid –up share capital

"paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

Body Corporate

- "Body Corporate" or "corporation" includes a company incorporated outside India, but does not include—
- (i) a co-operative society registered under any law relating to co-operative societies; and
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

Holding Company

- “Holding Company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;
- Explanation.—For the purposes of this clause, the expression “company” includes any body corporate.]

Subsidiary Company

"subsidiary company" or "subsidiary

", in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the **[total voting power]** either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

Associate Company

- "Associate Company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purpose of this clause,—

- (a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
- (b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;]

Independent Director

- “Independent Director” means an independent director referred to in sub-section (6) of section 149;
- An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
 - (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;]
 - (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
 - (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
 - (c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;]

Independent Director

- (d) none of whose relatives—
- (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding ^{financial} years or during the current financial year:
 - Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
 - (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
 - (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);]

Independent Director

- (e) who, neither himself nor any of his relatives—
(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
○ Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.
- (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
- (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
- (iv) is a Chief Executive or director, by whatever name called, of any non profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
(f) who possesses such other qualifications as may be prescribed.

Promoter

promoter" means a person—

- a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided *that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;*

Interested Director

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—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

Section - 185

"any person in whom any of the director of the company is interested" means—

(a) any private company of which any such director is a director or member;

(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

Related Party Transaction under CA, 2013

Transaction covered#	Transaction value*
Sale, Purchase or supply of any goods or materials directly or through appointment of agents	10% of Turnover**
Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents	10% of Net Worth**
Leasing of property of any kind	10% of Turnover**
Availing or rendering of any services directly or through appointment of agents	10% of Turnover**
Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company	Monthly remuneration > Rs. 2.5 lakhs
Remuneration for underwriting the subscription of any securities or derivatives thereof, of the company	1% of Net Worth

*Limits amended vide MCA notification dated 18th November, 2019.

**Limits shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

#Excluding 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.

Accustomed to Act

- Term Accustomed to Act has not been defined under the Companies Act, 2013
- In : Swastik Textile Mills Ltd. and In Re: Phaltan Sugar Works Ltd., the **Bombay High Court** while examining the expression “accustomed to act” (as used in the Monopolies and Restrictive Trade Practices Act, 1969) - “whether certain persons are accustomed to act in a particular manner or not is something which can be shown by **instances of past behaviour** or **other material facts and not by mere presumptions.**”
- The **Companies Act, 2006 of England**, defines a ‘**shadow director**’ to mean “a person in accordance with whose directions or instructions the directors of the company are accustomed to act”.

Further, the Chancery Division in Re: Hydrodan (Corby) Limited while distinguishing between a de facto director and a shadow director held that “to establish that a defendant is a shadow director of a company it is necessary to allege and **prove**:

- that the defendant **directed those directors** how to act in relation to the company or that he was one of the persons who did so;
- that those **directors acted in accordance with such directions**; and
- that they were accustomed so to act. What is needed is first, a board of directors claiming and purporting to act as such; and secondly, a **pattern of behaviour** in which **the board did not exercise any discretion or judgment of its own, but acted in accordance with the directions of others.**
- The mere ability of a person to direct or instruct the directors of a company to act in a particular manner, does not establish that such directors are accustomed to act in accordance with the directions or instructions of such person.

Goods

- As per Black's Law Dictionary, goods are tangible or movable personal property other than money.
- Section 2(7) of 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 'movable property' to mean property of every description except immovable property. The expression and things attached to the earth or permanently fastened to anything attached to the earth.
- Section 2(52) of the Central Goods and Service 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.

Section 3(a)	Particulars	1 st April, 2014	14 th August, 2014	30 th March, 2017	18 th November, 2019
Sec 3 (a) (i)	sale, purchase or supply of any goods or materials directly or through appointment of agents	Exceeding <u>twenty five percent</u> of the annual turnover	exceeding <u>ten per cent</u> of the turnover of the company or rupees <u>one hundred crore</u> , whichever is lower	Amounting to <u>ten per cent</u> or more of the turnover of the company or rupees <u>one hundred crore</u> , whichever is lower	Amounting to <u>ten per cent or more of the turnover</u> of the company.
Sec 3 (a) (ii)	selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents	exceeding <u>ten percent of net worth</u>	exceeding <u>ten per cent</u> of net worth of the company or rupees <u>one hundred crore</u> , whichever is lower	Amounting to <u>ten per cent</u> or more of <u>net worth</u> of the company or rupees one hundred crore, whichever is lower	Amounting to <u>ten per cent or more of net worth</u> of the company.
Sec 3 (a) (iii)	leasing of property of any kind	exceeding <u>ten percent of the net worth</u> or exceeding <u>ten percent of turnover</u>	exceeding <u>ten per cent</u> of the <u>net worth</u> of the company or ten per cent. of <u>turnover</u> of the company or rupees <u>one hundred crore</u> , whichever is lower,	Amounting to <u>ten per cent</u> or more of the <u>net worth</u> of the company or <u>ten per cent of turnover</u> of the company or rupees <u>one hundred crore, whichever is lower,</u>	Amounting to <u>ten per cent or more of the turnover</u> of the company.
Sec 3 (a) (iv)	availing or rendering of any services directly or through appointment of agents	exceeding <u>ten percent of the net worth</u>	exceeding <u>ten per cent</u> of the <u>turnover</u> of the company or <u>rupees fifty crore, whichever is lower</u>	Amounting to ten per cent or more of the turnover of the company or rupees fifty crore, whichever is lower	Amounting to <u>ten per cent or more of the turnover</u> of the company.
Sec 3 (b)	appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration	exceeding <u>two and half lakh rupees</u>	-	-	-
Sec 3 (c)	remuneration for underwriting the subscription of any securities or derivatives thereof of the	exceeding <u>one percent of the net worth</u>	-	-	-

Voidable

- Voidable is a term typically used with respect to a contract that is valid and binding unless avoided or declared void by a party to the contract who is legitimately exercising a power to avoid the contractual obligations.
- A contract may be voidable on the grounds of Fraud, mistake, Misrepresentation, lack of capacity, duress, Undue Influence, or abuse of a fiduciary relationship. A contract that is based on one of these grounds is not automatically void but is voidable at the option of the party entitled to avoid it. For example, a person who was induced by fraud to enter into a contract may disclaim the contract by taking some positive action to disaffirm the contract. Or the victim of the fraud may ratify the contract by his or her conduct or by an express affirmation after acquiring full knowledge of the facts.

SEBI Working Group recommendation

“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:

Provided that:

1. any person or entity belonging to the promoter or promoter group of the listed entity, or
2. any person or any entity, directly or indirectly (including with their relatives), holding 20% or more of the equity shareholding in the listed entity,

shall be deemed to be a related party.

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

SEBI Working Group Recommendation

“Related party transaction” means a transaction involving a transfer of resources, services or obligations between :

- I. the listed entity or any of its subsidiaries on the one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or
- II. the listed entity or any of its subsidiaries on the one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries,

regardless of whether a price is charged or not such “transaction” shall be construed to include a single transaction or a group of transactions:

Provided that the following **shall not be treated** as related party transactions:

- a) the issue of specified securities on a preferential basis, subject to requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 being complied with; and
- b) the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:
 - i. payment of dividend;
 - ii. subdivision or consolidation of securities;
 - iii. issuance of securities by way of a rights issue or a bonus issue; and
 - iv. buy-back of securities.

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);

Material for Shareholders Approval

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

Material for Audit Committee Approval

All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity.

Provided that a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity only if the value of such transaction (whether entered into individually or taken together with previous transactions during a financial year) exceeds 10% of the annual total revenues, total assets or net worth of the subsidiary, on a standalone basis, for the immediately preceding financial year, whichever is lower, provided that the criterion relating to net worth shall not be applicable if the net worth of the subsidiary is negative.

Provided further that prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if such listed subsidiary is not exempt from regulation 23 and the other corporate governance provisions of these regulations specified in regulation 15(2).

Explanation: for related party transactions of unlisted subsidiaries of a listed subsidiary specified above, the prior approval of the audit committee of the listed subsidiary would suffice.