

**Related Party Transactions
Scope & Necessities of Audit**

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- This Presentation is **for knowledge sharing** only and not be considered as legal opinion
- The views expressed herein are of my own and **not of the ICSI or MCA.**
- Request to seek professional guidance for **specific query** before acting upon any view expressed in this material or during the presentation

Scope and Necessities of RPT Audit

Business: Most vital component and a Barometer of country's economic growth

Ethical Business: Corporate fraud will make investors reluctant to invest in such economy/ country.

Legislation and obligations to govern: Economy is always dynamic so the regulation should be which encourages ethical growth

Professionals: are the Trustee of the Society & its resources and need to safeguard it when used by the corporate

Use of RPT for financial fraud

History of Fraud- Satyam, Sahara, Nirav Modi and Gitanjali Gems

- Creating web of corporate structure and SBO/UBO is entity in Tax Heaven jurisdiction
- Transfer of assets to subsidiaries out of India
- Under value of shares and transfer
- Over invoicing by RP to company
- Procurement of cheap material and high value
- Round Tripping
- Grant of loans and advances and write off as bad debt

How audit of RPT help to early detection of fraud, arising from any misstatement or risk pertaining to related party relationships and transactions

Scope and Necessities of RPT Audit

- **ESG is buzz word of the day** - Acronym of ESG is Environment, Social and Governance
- For **Corporate Governance** - Integrity and Transparency are two most important Pillars
- Related Party Transaction is one of the **indicator of Ethical Business**
- Ethical conduct of business **build Trust and image**

Scope and Necessities of RPT Audit

Why- Intent

People prefer to do business with people they know – Its not BAD

Conflict of Interest – Should be in the interest of the company and its shareholders

Abuse of provisions – Under invoicing, over payment, lesser valuation, write off later as debt

RPTs a favoured mechanism for financial frauds and it's a key concern for regulators

How- Process

Getting prior approval of concerned like Audit Committee, Board and the Shareholders

What- Content

Details and documents to be placed before them to take informed decision

Arms' length is not necessarily lowest price, many criteria other than price.

Related Party & Related Party Transactions

3 Possible Levels

Company Level

Management Level

Individual Level

Laws applicable to Related Party Transactions

Companies Act,
2013 and Rules

Accounting
Standards

SEBI (LODR)
Regulations, 2015

Related Parties

At Company Level

Holding

Subsidiary

Fellow Subsidiary

Associate

Investing Company or Venture of a company
(Body Corporate whose investment in the company result making company as its Associate Company)

Entity forming part of
Promoter or Promoter Group
(Disregard of shareholding)

Entity holding 20% or more
Equity Shares
10% or more from 01.04.23
Directly or holding Beneficial
Interest

Related Parties

At Management Level

1. **Director (other than ID) /KMP and Relative** of Director/KMP
2. **KMP and his relatives** of Holding Company;
3. A **Firm** in which Director/ Manager or his Relative is a partner;
4. A **Private Company** in which Director, Manager or his Relative is a **director or member**;
5. A **Public Company** in which Director/Manager is a Director **and** holds along with the Relatives >2% of its paid-up share capital;
6. 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;
7. Any **Person** on whose advice, directions or instructions a director or manager is accustomed to act.

Nothing contained in 5 or 6 above shall apply to the advice, directions or instructions given in a professional capacity

Related Parties

At Individual Level

HUF

Spouse

Parents/ Step Parents

Children & their
spouses

Brother/ Step
Brother

Sister/ Step Sister

Person forming part of
Promoter or Promoter Group
(Disregard of shareholding)

Person holding 20% or more Equity
Shares
10% or more from 01.04.23
Directly or holding Beneficial Interest

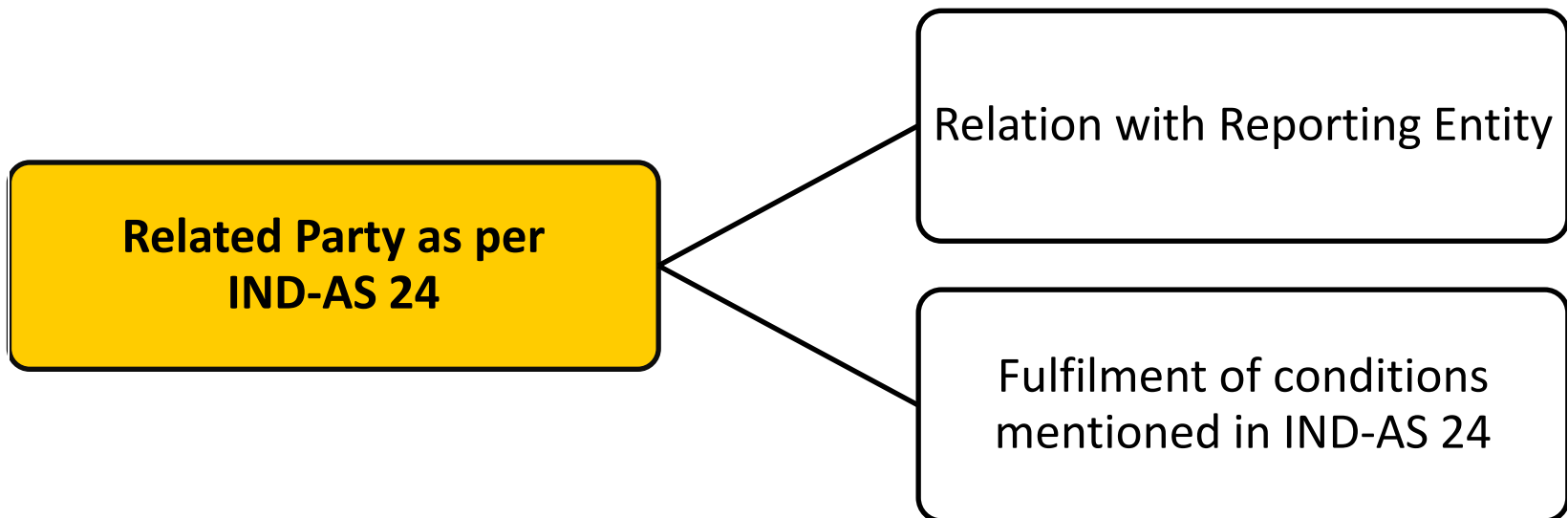
Ind AS 24 also covers Domestic Partner, Children and dependents of the Individual, Spouse and Domestic Partner.

Definition of Related Party as per AS 18

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**.

- 1. 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**);
- 2. Associates and joint ventures** of the reporting enterprise and the investing party or venture in respect of which the reporting enterprise is an associate or a joint venture;
- 3. 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;
- 4. KMP and relatives** of such KMP; and
- 5. Enterprises** over which any person described in (3) or (4) is able to **exercise significant influence**

Definition of Related Party as per IND AS 24



Relation with Reporting Entity

A Related Party is a **person or entity** that is **related to the entity**

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

1. has **control or joint control** over the reporting entity;
2. has **significant influence** over the reporting entity; or
3. is a member of the **KMP** of the reporting entity or of a **parent of the reporting entity**

Related Party as per the conditions mentioned in IND AS 24

An entity is related to a Reporting Entity (RE) if any of the following conditions applies:

1. The entity and the RE are **members of the same group** (which means that each parent, subsidiary and fellow subsidiary is related to the others);
2. 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);
3. Both entities are **Joint Ventures** of the same third party;
4. One entity is a **Joint Venture of a third entity**, and the other entity is an **Associate of the third entity**;

Related Party as per the conditions mentioned in IND AS 24

5. The entity is a **post-employment benefit plan** for the benefit of employees of either the RE or an entity related to the RE. If the RE is itself such a plan, the sponsoring employers are also related to the RE;
6. The entity is **controlled or jointly controlled** by a person, or a close member of that person's family is related to a RE;
7. A **person, or a close member of that person's family** is related to a RE and has **significant influence** over the entity or is a member of the KMP of the entity (or of a parent of the entity).

SEBI Circular dated **November 09, 2021** LODR 6th amendment

SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021

With this amendment SEBI aims to **widen the gamut** of RP and RPT, **strengthen the process** of approval and disclosures

1. Definition of Related Party (RP) & Related Party Transaction (RPT)
2. Approval of Audit Committee (by members who are ID)
3. Materiality threshold for **transaction with RP (not RPT)** for approval of shareholders
4. Enhanced disclosures

These amendments are applicable in a phased manner, with certain amendments coming into effect from **April 01, 2023** and remaining amendments will come into effect from **April 01, 2022**.

Comparison of Related Party as per SEBI LODR-2015 Regulation-2(1)(zb)

Before November 09, 2021

“Related Party” means a related party as defined under **Section 2 (76)** of the Companies Act, 2013 or under the **applicable AS** **And** 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 .

After November 09, 2021

“Related Party” means a related party as defined under **Section 2 (76)** of the Companies Act, 2013 or under the **applicable AS** **And**

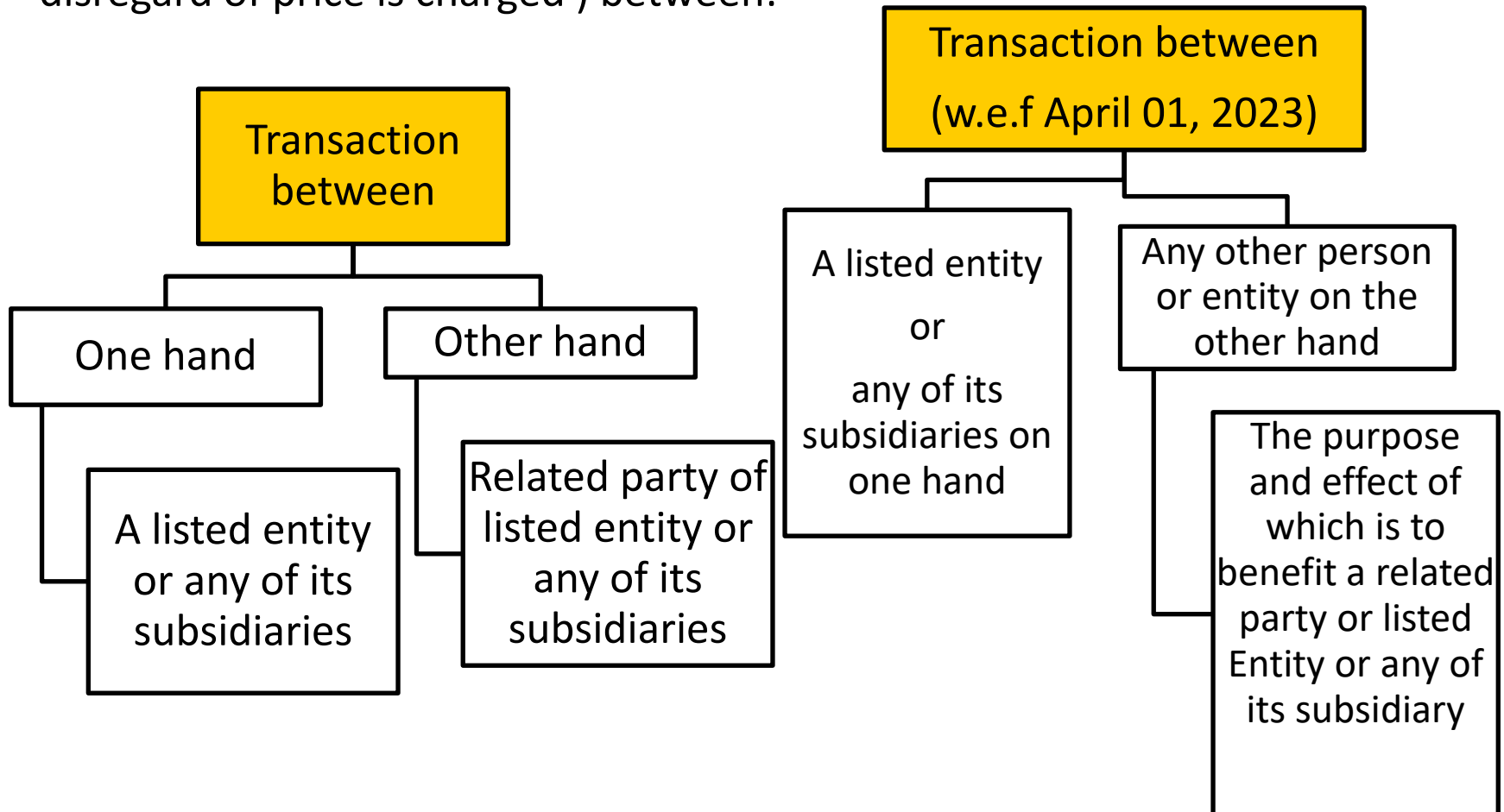
“Provided that:

- (a) any person or entity forming a part of the **promoter or promoter group** of the listed entity (**disregard of their holding**) ; or
- (b) **any person or any entity, holding equity shares:**
 - (i) of 20% or more; or
 - (ii) of 10% or more, with effect from April 1, 2023;

in the listed entity **either directly or on a beneficial interest basis** as provided under **section 89** of the Companies Act, 2013, at any time, during the immediate preceding financial year.

Related Party Transactions as per SEBI LODR, 2015 Regulation-2(1)(zc)

Transaction involving a **transfer of resources, services or obligations** (disregard of price is charged) between:



Related Party Transactions as per SEBI LODR, 2015 Regulation-2(1)(zc)

Listed entity

Trxn with RP of the listed entity

Listed Entity

Trxn with RP of any of the subsidiary of the listed entity

Subsidiary of the listed entity

Trxn with RP of the listed entity

Subsidiary of the listed entity

Trxn with RP of any of the subsidiary of the listed entity

Listed entity

Any person/ entity where the **purpose and effect** of which is to benefit a RP of the listed entity or any of its subsidiaries

Subsidiary of the listed entity

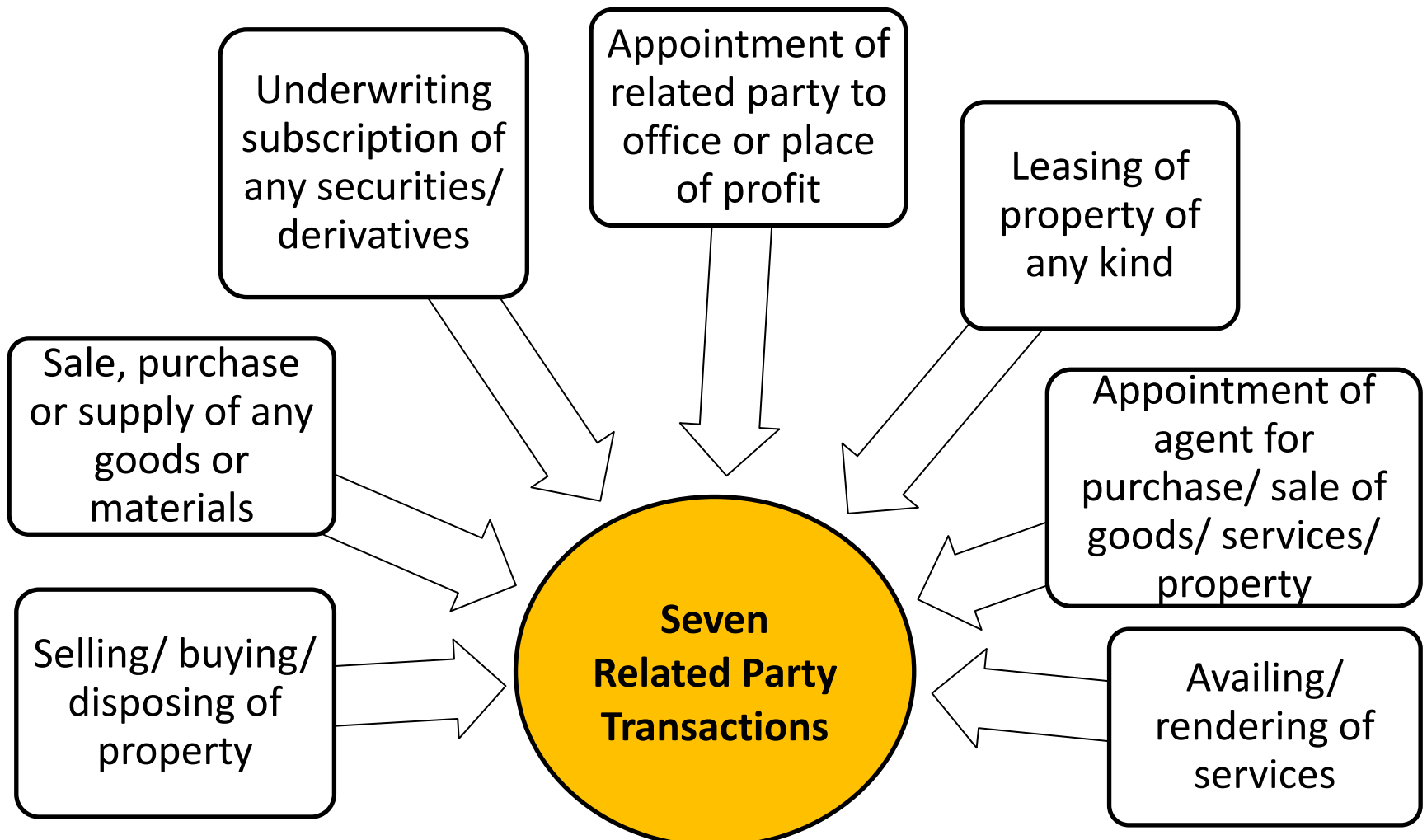
Any person/ entity where the **purpose and effect** of which is to benefit a RP of the listed entity or any of its subsidiaries

Related Party Transactions as per SEBI LODR, 2015 Regulation-2(1)(zc)

Exempted Related Party Transaction

Issue of specified securities	Corporate Action uniformly applicable	Acceptance of Fixed Deposits by Banks / NBFC
<ul style="list-style-type: none"> • Issue on a preferential basis, subject to compliance of the requirements under SEBI (ICDR) Regulation, 2018 	<ul style="list-style-type: none"> • Payment of dividend; • Subdivision or consolidation of securities; • Issuance of security by way of a rights issue or a bonus issue; and • Buy back of securities. 	<ul style="list-style-type: none"> • At the terms uniformly applicable/ offered to all share holder/ public, subject to disclosure of the same along with disclosure of RPT every 6 months to the stock exchange in the format prescribed by the board .

Section 188 of CA 2013 – Related Party Transactions



Section 188– Related Party Transactions

- 1. Approval of Board of Directors** for RPT is **not required** if such transaction is in OCB & at AL (if passed in BM ensure compliance of section 184).
- 2. Members approval** is required for **RPT exceeding such sum**, as may be prescribed. Trxn between HoldCo and WoS – Exempted if accounts of such HoldCo and WoS are consolidated and placed before the shareholders at general meeting for their approval.
- 3. Interested member** shall **not vote** on resolution approving any contract or arrangement with related party. (Exempt to Private Company).
- Every contract or arrangement entered with RP shall be referred in the **Board's Report** to the shareholders **along with justification** for entering into such contract or arrangement.
- Register of Contracts or Arrangement in which Directors are interested is to be maintained in **Form MBP-4**.

**Rule 15- of
The Companies (Meetings of Board and its Powers) Rules, 2014**

Shareholders approval is required for following Transactions (***Turnover or Net worth referred below shall be computed on the basis of the audited financial statement of the preceding financial year***).

Transaction	Threshold Limit
Sale, purchase or supply of any goods or material, directly or through appointment of agent	$\geq 10\%$ of the Turnover
Selling or otherwise disposing of, or buying , property of any kind, directly or through appointment of agent	$\geq 10\%$ of the Turnover
Leasing of property of any kind	$\geq 10\%$ of the Networth

Rule 15 of (Meetings of Board and its Powers), Rules, 2014

In case of WoS the resolution passed by the holding company shall be sufficient for the purpose of entering into the transaction between the WoS & the holding company

Transaction	Threshold Limit
Availing or rendering of any services, directly or through appointment of agent	$\geq 10\%$ of Turnover
Appointment to any office or place of profit in the Company, its subsidiary Company or associate Company at monthly remuneration	$> \text{Rs. } 2.5 \text{ lakhs per month}$
Remuneration for Underwriting the subscription of any securities or derivatives thereof of the Company	$> 1\%$ of the Net worth

Regulation 23 of LODR 2015

Provisions for RPT under Regulation 23

Sub Reg 1- Policy on Materiality of RPT

Sub Reg 2- Approval of Audit Committee

Sub Reg 3- Omnibus Approval by Audit Committee

Sub Reg 4- Prior approval of Shareholders (Except Resolution Plan u/s 31 IBC)

Sub Reg 5- Exempted Transactions

Sub Reg 6- Applicable to Prospective Transactions

Sub Reg 7- “Deleted”- RP shall note vote to approve

Sub Reg 8- Approval of Shareholders after notification-

Sub Reg 9- Disclosure in format to SE + Website

Related Party Transactions as per SEBI LODR, 2015 Regulation 23

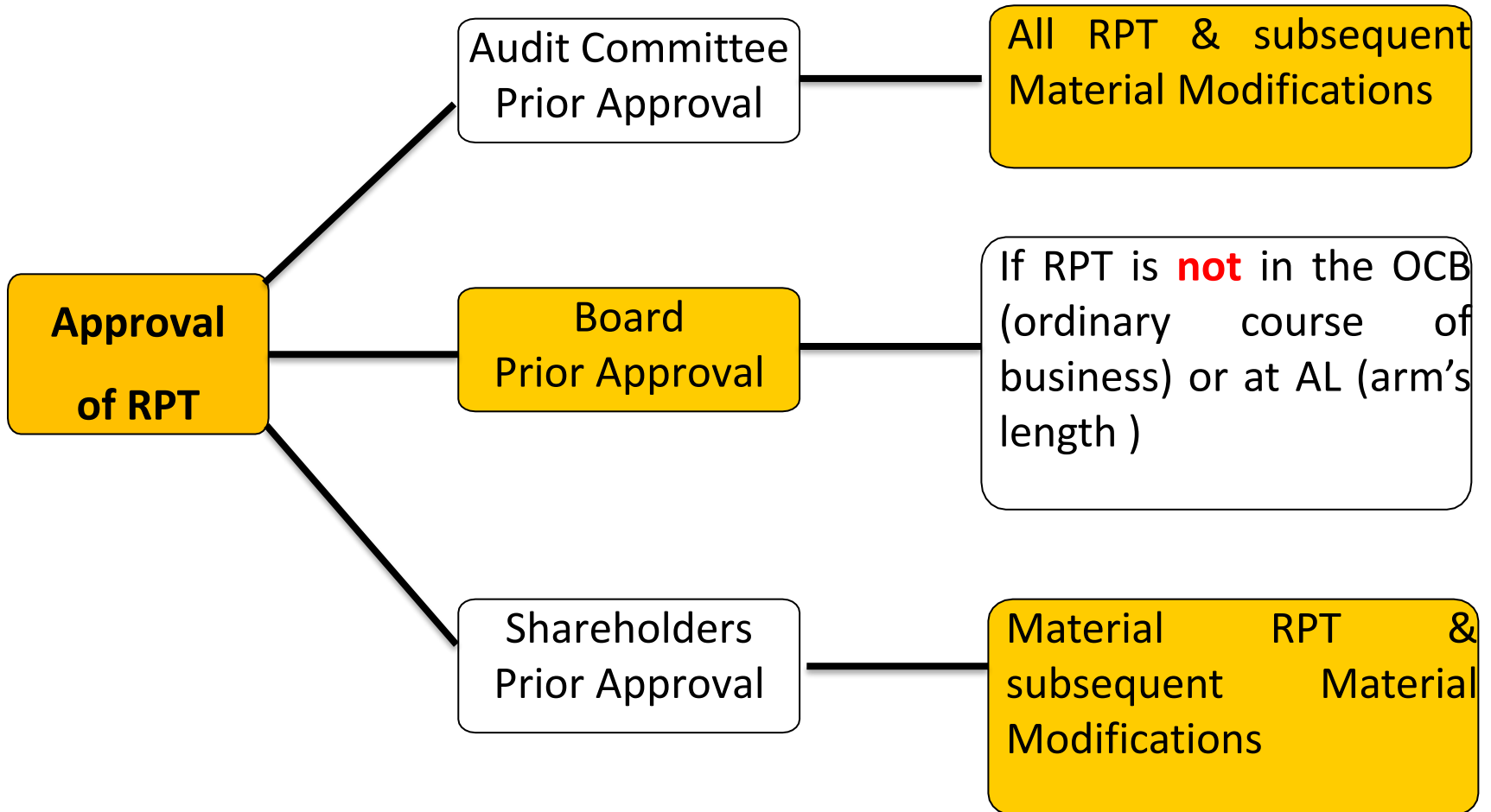
The listed entity shall formulate a **Policy on Materiality of RPTs** and on dealing with RPTs including clear threshold limits duly approved by the BoD and such policy shall be **reviewed** by the BoD **at least once every 3 years** and updated accordingly.

Material Transaction

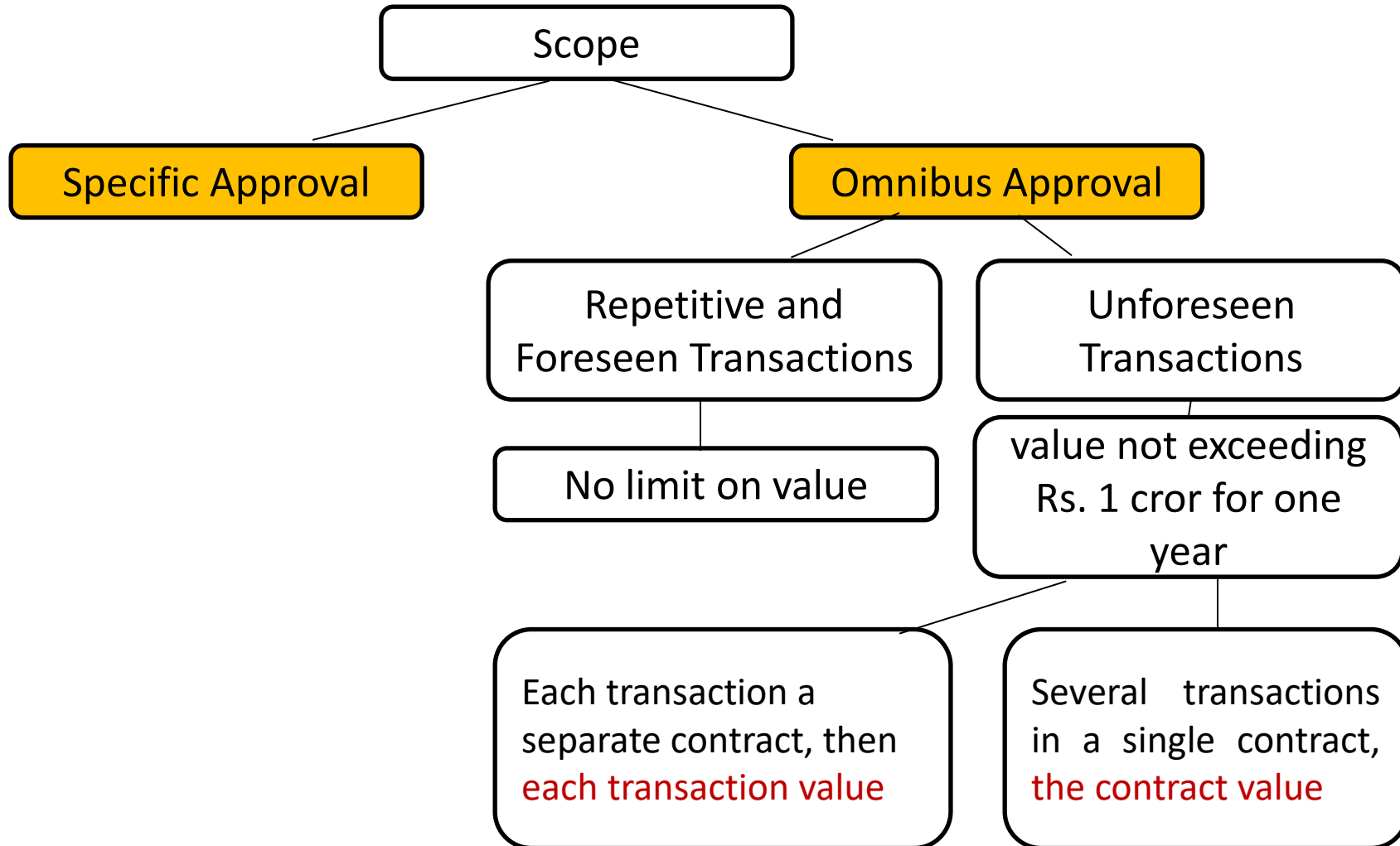
With a RP in a FY, **exceeds Rs. 1000 crore or 10% of the annual consolidated turnover** of the listed entity as per latest audited financials , whichever is lower

involving **payments** made to RP with respect to **brand usage royalty exceeding 5%** of the **annual consolidated turnover** of the listed entity, as per latest audited financials

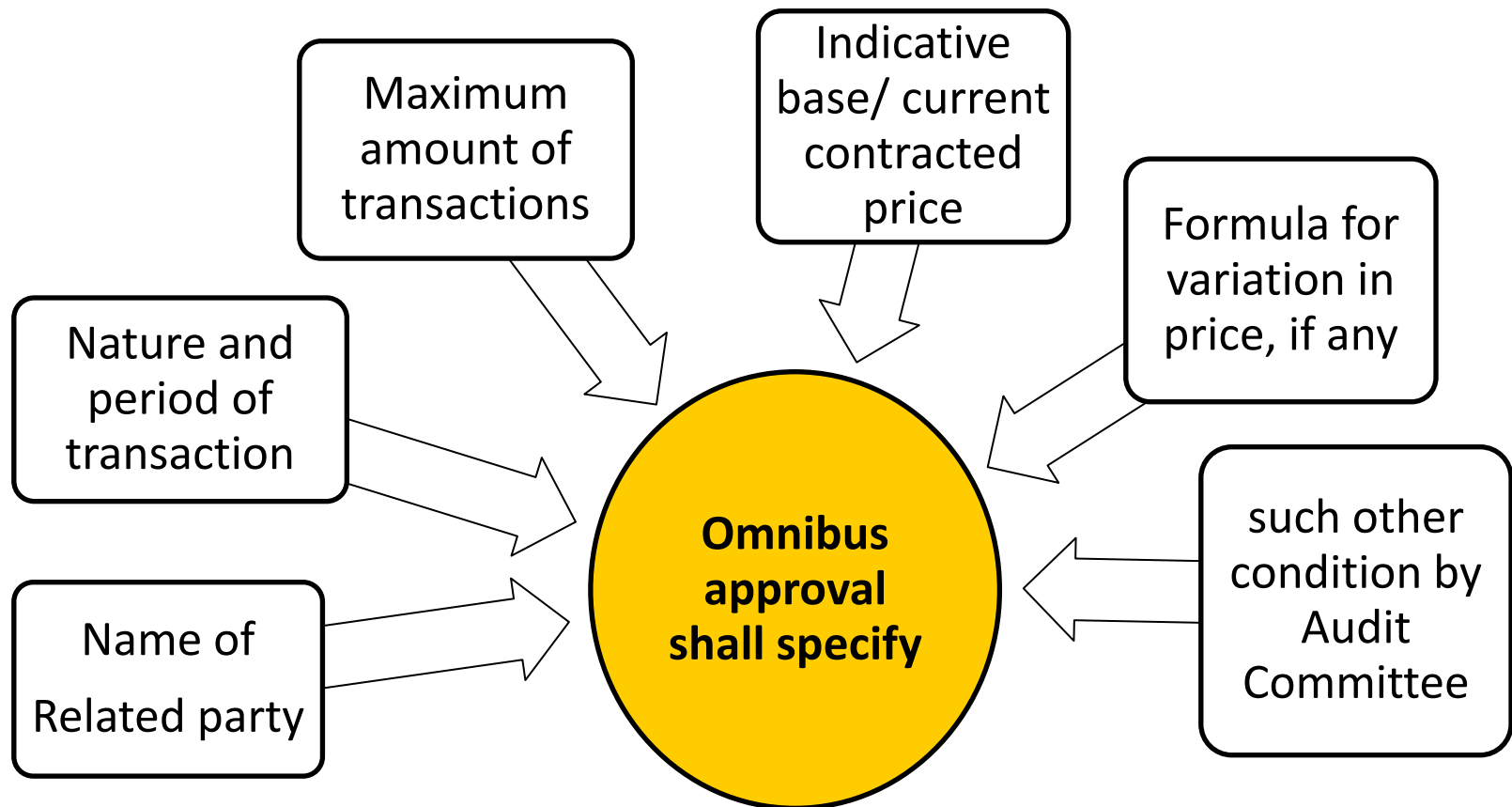
Approval of Related Party Transactions (RPT)



Scope of Audit Committee in approval of RPT



Omnibus approval by Audit Committee for Listed Entity



Audit Committee shall **review**, at least on a **quarterly basis**, the details of RPTs entered into by the listed entity pursuant to each of the omnibus approvals given.

w.e.f 01.04.2022

Role of Audit Committee in approving RPT for Listed Entity

- 1. All RPTs and subsequent Material Modifications** shall require **prior approval** of the Audit Committee of the listed entity – **w.e.f 01.04.22.**
2. By Members of Audit Committee who ***are Independent Directors***
3. The Audit Committee of shall define “**Material Modifications**” and disclose it as part of the **Policy on Materiality of RPTs** and on dealing with the same – **w.e.f 01.04.22.**

w.e.f 01.04.2022

Role of Audit Committee in approving RPT for Listed Entity

4. Prior approval of AC is Required

A transaction in which **subsidiary of a listed entity is a party but the listed entity is not a party**, shall require prior approval of the Audit Committee of the listed entity, if during the F.Y. value of transaction is **exceeds 10% of consolidated Turnover of listed entity** as per its last audited financial statement. (**w.e.f 01.04.2023-** this threshold will be considered at per **standalone Turnover of the subsidiary**)

5. Prior approval of AC is not Required

A transaction in which the **listed subsidiary is a party** but the **listed entity is not a party**, prior approval of the Audit Committee of the listed entity shall not be required if Regulation 23 and Regulation 15 (2) are applicable to such listed subsidiary.

SEBI Circular dated **November 22, 2021** LODR amendment

On **November 22, 2021**, SEBI issued a circular specifying the disclosure obligations of listed entities in relation to RPTs which is effective from April 01, 2022.

(a) **Information to be placed before** the Audit Committee and the Shareholders for consideration of RPTs, and

(Justification as to why the RPT is in the interest of the listed entity)

(b) the **format for disclosure of RPTs** to stock exchanges on a **six-monthly basis** has also been provided

Information to be provided to Audit Committee for approval of RPT

1. **Type, material terms and particulars** of the proposed transaction;
2. **Name** of the related party and its **relationship** with the listed entity or its subsidiary, including **nature of its concern or interest** (financial or otherwise);
3. **Tenure** of the proposed transaction (particular tenure shall be specified);
4. **Value** of the proposed transaction;
5. The **percentage** of the listed entity's **annual consolidated turnover**, for the immediately preceding FY, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);

Information to be provided to Audit Committee for approval of RPT

6. Transaction relating to any **loans, inter-corporate deposits, advances or investments** , Source of fund, security , use of funds, terms, covenants , tenure with other details
7. **Justification** as to why the RPT is in the **interest** of the listed entity;
8. A copy of the **valuation or other external party report**, if any such report has been relied upon;
9. **Percentage of the counter-party's annual consolidated turnover** that is represented by the value of the proposed RPT on a voluntary basis;
10. Any other information that may be relevant.

The audit committee shall review the **status of long-term** (more than one year) or **recurring RPTs** on an **annual basis**.

Information to be provided to Shareholder for consideration of RPT

1. A **summary** of the information **provided by management** of the listed entity to **audit committee**;
2. **Justification** for why the proposed transaction is in the **interest** of the listed entity;
3. If transaction relates to any **loans, inter-corporate deposits, advances or investments** made or given by the listed entity or its subsidiary, same information to be provided to shareholders as provided to Audit Committee;
4. A **statement** that the **valuation** or other **external report** if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
5. **Percentage** of the **counter-party's annual consolidated turnover** that is represented by the value of the proposed RPT, on a voluntary basis;
6. **Any other information** that may be relevant.

Prior approval by shareholder for RPT in listed entity

1. **Prior approval of shareholders of listed entity is required**

For all Material & subsequent Material Modification of transaction.

2. **Prior approval of shareholders of listed entity is required**

For all Material & subsequent Material Modification of transaction of unlisted Subsidiary whether listed entity is party or not.

3. **No approval of shareholders of listed entity is required**

For any Material & subsequent Material Modification of transaction of **Listed Subsidiary is party** but the listed entity is not, if Regl 15(2) & 23 of LODR 2015 applies to listed subsidiary

***No Related Party (whether party or not) to vote to approve**

Exception: Resolution Plan approved u/s 31 of IBC 2016. subject to the event being disclosed to the recognized stock exchanges **within 1 day** of the resolution plan being approved.

SEBI Cir 08.04.2022 Prior approval by shareholder for RPT in listed entity

Representations have been received seeking clarity on the period of validity of the omnibus approval where the transactions are material and shareholders' approval is also required

Shareholders' approval for **material Omnibus RPTs**

1. Approved **in an AGM** shall be valid up-to the date of the next AGM. However, such period shall not exceed **15 months**.
2. Approved **in general meetings** other than AGMs, the validity of such omnibus approvals shall not exceed **12 months**.

RPTs are calculated as per FY and not from AGM to AGM. This circular is confusing

**Exemption as per SEBI LODR, 2015
Regulation 23**

1. Transactions entered into **between Two government companies** , as defined u/s 2(45) of the CA 2013;
2. Transactions entered into between a **holding company and its WOS** whose **accounts are consolidated** with such holding company and placed before the **shareholders at the general meeting for approval**;
3. Transactions entered into **between two WoS** of the listed holding company, whose **accounts are consolidated** with such holding company and placed before the **shareholders at the general meeting for approval**.

Role of Proxy Advisory Firms in Shareholders Activism to curb Managerial Remuneration – Minority Shareholders vs Tata Motors Ltd.

1. **Tata Motors Ltd.**, sought approval of shareholders as Special Resolution vide postal ballot **to compensate its Three Executive Directors** in excess of 5% of its Net income.
2. **Proxy Advisory Firm, Stakeholders Empowerment Services (SES)** informed in its note to stakeholders, that the minimum remuneration to the Directors includes performance-based incentives, in addition to basic salary, benefits, perquisites and allowances, **without setting maximum limit on them** and in view of the Company's weak performance during the year, the Directors should not receive any profit or performance based incentives.

Role of Proxy Advisory Firms in Shareholders Activism to curb Managerial Remuneration – Minority Shareholders vs Tata Motors Ltd.

- 3. 30% shareholders cast their votes against the resolution** thereby depriving the Company to get the required 75% votes.
- 4. A little more than 64% of the Financial Institutions (FI's) which hold a 37% stake in the Company voted against** the resolution.
- 5. This was the first time institutional investors and public shareholders (non-promoter shareholders) rejected a resolution** on pay raise and was a clear reflection of shareholder activism in a company which was not doing well.
- 6. The markets welcomed the rejection of the resolutions on pay raise and the company's shares rose.**

Audit- Evidence and Process

Lets us look at what are the **sufficient or appropriate audit evidence** which should be obtained in Audit to identify whether any related party transactions have been **appropriately accounted for** and **disclosed** in accordance with the applicable regulatory framework

Appropriate ----Adequate ---- Absolute---- Complete and Fair

Smaller companies are likely to have a very different control environment compared to bigger companies and might not have processes in place for specifically identifying and accounting for RPT so how a professionals conduct their Audit for such entities

Details and Data Source for Audit of RPT

1. Check whether Listed Entity has listed specified securities or **High Value Debt Listed Entity**
2. Understanding structure of the organization and its operations
(SAP or EPP System)
3. Process of **identification of Related Party** and frequency of its update
4. Testing how RPT are identified and coded in Enterprise Resource Planning (ERP) system .
5. One may need to **hunt for undisclosed RP or RPT** with documents/ data sources to uncover it and developing a **framework to capture all RP & RPT** with fairness, correctness and completeness
6. List of Relatives / Related Parties of **all subsidiaries** including **Investing Company, Venturer Company , Associate Company(ies)**
7. List of **current RPTs and previous 3 years RPTs**
8. Preparing **Data Base** and documenting the same

Documents and Data Source for Audit of RPT

9. List of **Promoter/Promoter Group** (disregard of shareholdings in the company)
10. Check company's **vendor approval process** to determine whether supplier qualifies as Related Party and **marked as such in ERP System**
11. Calculation of **threshold limits & updation of System on changes**
12. Review of **Policy on Materiality of RPT**
13. Identification of **Material Modification** in the RPT Policy
14. **Form MBP-1** -Disclosure of interest by Directors & KMPs
15. **PAN No. of all such parties** mapping with **Folio No of Reg of Members**
16. **Ledger Account** of each such Transactions
17. Review **Omnibus Approvals**
18. Organization Structure of Related Party and detail of **ownership of such related party entity** and **Nature of relationship** with related party

Documents and Data Source for Audit of RPT

19. **Minutes** of Audit Committee, Board and Shareholders Meetings
20. **Register of Contract** or Arrangements in which directors are interested (in Form MBP-4)
21. **Disclosure** in past Annual Reports
22. **Disclosure to Stock Exchanges** (without netting off or clubbing of transaction of same type)
23. **Disclosures** by Bank/ NBFC of acceptance of Fixed Deposits from RP
24. **Internal Audit Report** help to identify loopholes in **financial control systems** , data controls & other checks and balances.
25. Check the **detail of loans and advances** given, (cost, terms, security) and purpose of its utilization , which need to be reported
26. Process to identify and review transaction of **foreign material subsidiary**

Documents and Data Source for Audit of RPT

27. Meeting persons from **accounts** who is responsible to report RPT
28. Check the **process of approving** and authorizing transactions with related party
29. **Analyzing how the RPT are disclosed** by the Company
30. Whether **relevant information were shared** with Audit Committee and sufficient time was provided to review such documents
31. Audit Committee has approved and noted the **justification of each RPT**
32. How different Department in the Company are sharing the data
33. **Exemptions** available to private limited company and listed entity as per LODR 2015
34. **Website Disclosures & disclosure as per Schedule V, Part A**
35. **Reclassification of transaction (not contract) as Material or Non material w.e.f 01.04.2022 and to get prior approval of shareholders**

Process of Audit of RPT

Discussion with the management about RPT

1. Process of identification of Related Party & frequency of review of Policy on Materiality of RPT
2. Background information of Related Party
3. Rational / Justification of transactions with related party
4. Any change or modification or termination of contract and reason thereof
5. Review of process of approval
6. Review of Risk Management Policy to check modalities for risk assessment for any mis-statement in financials

Process of Audit of RPT

1. Record **Audit evidences** and documents
2. **Communicate** to Audit Team members
3. Steps to take in case **Fraud** or any **irregularity** is identified
4. **Review** all **Disclosure** made, are as per applicable Laws
5. **Supporting documents** to back the views of management on transaction at Arm's Length and OBC
6. **Management Representation Letter** **does not absolves** the Auditors from his professional responsibilities
7. Revisit **design of Audit process**
8. **Ensure** reliance on **Management Representation** relating to other aspects of the financial statements is appropriate and justified.

Challenges/ Clarifications

1. **Form MBP-1** – No disclosure of holding of investment in Start-up or Angel Funding.
2. There is no mandate to promoters, directors, KMP, holding company and subsidiary company of listed entity to disclose list of related parties/ relatives
3. If **ERP system not there** , difficulties in identification of RP and chances are there that threshold limit of materiality is crossed
4. No documents to support transaction is at AL and OCB
5. Identification of **Control & Significant influence**
6. **Register of Contract** covers entry of all contracts to which section 184 (2) or section 188 applies. 184
7. **Quarterly monitoring** by Audit Committee is not done
8. For transaction at AL and in OCB , no need of Board approval and if Board approval is taken , its without compliance of section 184 (2)

Challenges/ Clarifications

9. **Granting of loan or guarantee** cannot be approved as Omnibus as it cannot be repetitive in nature
10. **05th June 2015 exemption** of private limited company may have lost due to delay in annual filing .
11. There are exemption from obtaining approval for certain RPT but there is no exemption from its disclosures.
12. It is left to the **discretion of Audit Committee** to define Material Modification in RPT Policy

Challenges

13. Effective from 01.04.2023 **Investing company, bank, Insurance company** if its **holding is > 10% in equity** of listed entity will be considered as Related Party.

What about the entities controlled by such company. Whether it is Related Party or Not?

14. Section 184 (5) reads that nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the **Directors** of the one company **or two or more of them** together holds or hold **not more than 2% of the paid-up share capital in the other company or the body corporate.**

Challenges

15. RPT regulatory framework will be really sufficient to cover transactions where the listed entity could transfer its assets/value to a subsidiary, whether in India or overseas and such entity could then transact with the related parties of the listed entity to move the assets out of the consolidated entity? What are the key points which should be considered while auditing these types of transactions?
16. Effective from 01.04.2023 - Identification of **Purpose and Effect** of transaction which is benefitting related party of the company or its subsidiaries . Very subjective

Challenges/ Clarifications

17. NSE FAQs 25.04.2022

- (a) As per the new format of SEBI, the column header is "Details of the party (listed entity /subsidiary) entering into the transaction", therefore, the intent of SEBI is that the companies should disclose all the RPT transactions of itself and its subsidiaries. Therefore, the concept of disclosure on **standalone or consolidated basis has been done away** with and all the transactions must be disclosed.
- (b) Listed entities are required to submit the RPT disclosures in the new SEBI format, for reporting period for the **half year end** commencing from **01 October, 2021 to 31 March, 2022**. However the definitions/provisions that are specifically mentioned to be effective from April 01, 2022 shall be applicable on transactions undertaken from April 01, 2022 onwards

Challenges/ Clarifications

17. NSE FAQs 25.04.2022

(c) **Bank and NBFC** to give disclosure under Regulation 23 (9) as declaration statement that "acceptance of fixed deposits by the banks/Non-Banking Finance Companies are at the terms uniformly applicable/offered to all shareholders/public.

(d) In case companies are filing the RPT disclosures in PDF, **PAN details** should not be included in such PDF of RPT disclosure. In case companies are filing the RPT disclosures in Exchanges XBRL, PAN details would have to be included as required in the new SEBI format of SEBI. Exchanges will ensure that PAN details are not disseminated on the Exchange website.

Suggestion

1. Auditor to develop a **separate format** which can be mandated to be disclosed by each Directors, KMP, Promoters, Holding Company, Related party of Subsidiary Company & Associates and the same need to be updated every quarter.
2. Visit Company and check with **accounts by review of ledger** and JV entries for RPT
3. Do **search and research like a watchdog**, but not a bloodhound
4. Gather **supporting** documents to justify AL and OCB
5. Have **general business acumen** and understanding
6. Check **disclosures** properly and qualify adequately

Suggestion

7. May take **certificate from Management and CS** of the Company certifying that

- a) The **list of related parties** is complete and updated based on the disclosure received from the promoters, directors, KMPs and their relatives of the Company and all related parties
- b) That **financials cover all transactions** with related party
- c) That Policy on Materiality of RPT adopted by the listed entity is in accordance with the applicable Regulation of LODR 2015 and is being **reviewed at least once in every three years by the Board;**
- d) **That Requisite approvals of the Audit Committee and the Shareholders**, wherever required have been obtained by the listed entity *wrt* RPT
- e) That **disclosure is submitted by all the concerned persons/ companies** which are required within 15 days from the end of the financial year and within 7 days from the date of change in any related parties.
- f) That the Audit Committee has noted and approved the justification for particular RPT

Shareholder Activism in upholding Corporate Democracy and Supremacy of Shareholders – INVESCO v/s ZEEL

1. Invesco Developing Markets Fund (Invesco) having 17.88% equity stake in Zee Entertainment Enterprises Limited (ZEEL) requisitioned an EGM u/s 100(2)(a) of the CA, 2013 proposing appointment of 6 Independent Directors and removal of a KMP from ZEEL's Board.
2. ZEEL refused to convene the requisitioned EGM on the ground that the proposed requisitions are not "Valid Requisitions" and simultaneously filed Petition before the Bombay High Court seeking to declare the requisition invalid, ultra-vires, illegal and bad in law.
3. The Single Bench Judge of Bombay High Court granted an injunction in favor of ZEEL and restrained Invesco from taking any further action including calling of calling of EGM.
4. Invesco filed an appeal which came to be allowed by a Division Bench of the Bombay High Court.

Shareholder Activism in upholding Corporate Democracy and Supremacy of Shareholders – INVESCO v/s ZEEL

The Division Bench observed that:

- Section 100(2) of CA 13 casts an **obligation upon the Board to convene** an EGM at the requisition made by the shareholders.
- Section 100(4) of CA 13 supposes a **discretionary right in favour of the shareholders to call for the requisitioned EGM** in case the Board fails to do so within the prescribed time.
- The Division Bench of the Bombay High Court held that on a plain reading of Section 100 of the Act, there appears to be **no discretion/ power vested upon the Board** to sit in judgment over the legality of the requisition sought to be convened by the shareholders and the term “valid requisition” is only limited to meeting the numerical and procedural requirements of section 100 of the CA , 2013 and it does not mean review of requisitioned matters by the Board.

Section 29A of Insolvency and Bankruptcy Code 2016

Order of NCLT Delhi **May 2022** u/s 29A of IBC 2016

Argentium International Pvt. Ltd. v Utm Engineering Pvt. Ltd, has held that the NCLT has the power **to pierce the 'corporate veil' in order to ascertain the real successful bidder.**

The separate personality of the company is statutory privilege, but it must be used for the legitimate purpose only, **whenever fraudulent or dishonest use is made of the legal entity**, the individual will not be allowed to hide behind the curtain of the corporate personality.

Scope and Necessities of RPT Audit

Supreme Court judgment in *Arun Kumar Jagatramka v Jindal Steel and Power Ltd. & Anr.*, Civil Appeal No. 9664 of 2019, wherein it was clearly held that *Section 29A of IBC has been enacted in the larger public interest, to facilitate effective Corporate Governance*, and through this provision the Parliament rectified a loophole in the IBC, which allowed **back-door entry** to erstwhile management in the CIRP.

Thank
you



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