

Related Party Transactions Identification to Disclosure

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At CCGRT- Mumbai

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A photograph of a law library. In the foreground, a wooden gavel with a brass head rests on a dark wooden sound block. To the left, a brass scale of justice stands on a wooden base. In the background, a wooden bookshelf is filled with numerous books, likely legal texts. The scene is lit with warm, soft light, creating a professional and scholarly atmosphere.

Disclaimer

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

Why it is relevant

1 Business

The most vital component and a barometer of the country's economic growth.

2 Ethical Business

Corporate fraud will make investors reluctant to invest in such an economy/ country

RPT is legal and not banned

3 Legislation & Obligations to Govern

The economy is always dynamic so regulation should be which encourage Growth

4 Professional

Are Trustees of the Society & its Resources. They have to safeguard it when used by the Corporate



The Necessity of Related Party Transactions

Why-Intent

People prefer to do business with people they know – **It's not BAD**

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

Abuse of provisions – Under invoicing, overpayment, lesser valuation, write-off later as debt. RPTs a favoured mechanism for financial fraud and it's a key concern for regulators

How-Process

Three-layer Prior approval
– Audit Committee,
-- Board, and
-- Shareholders

What-Content

Details and documents are to be placed before them to make an informed decision

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



Duties of Directors under the CA 2013

Act following the Articles of the company

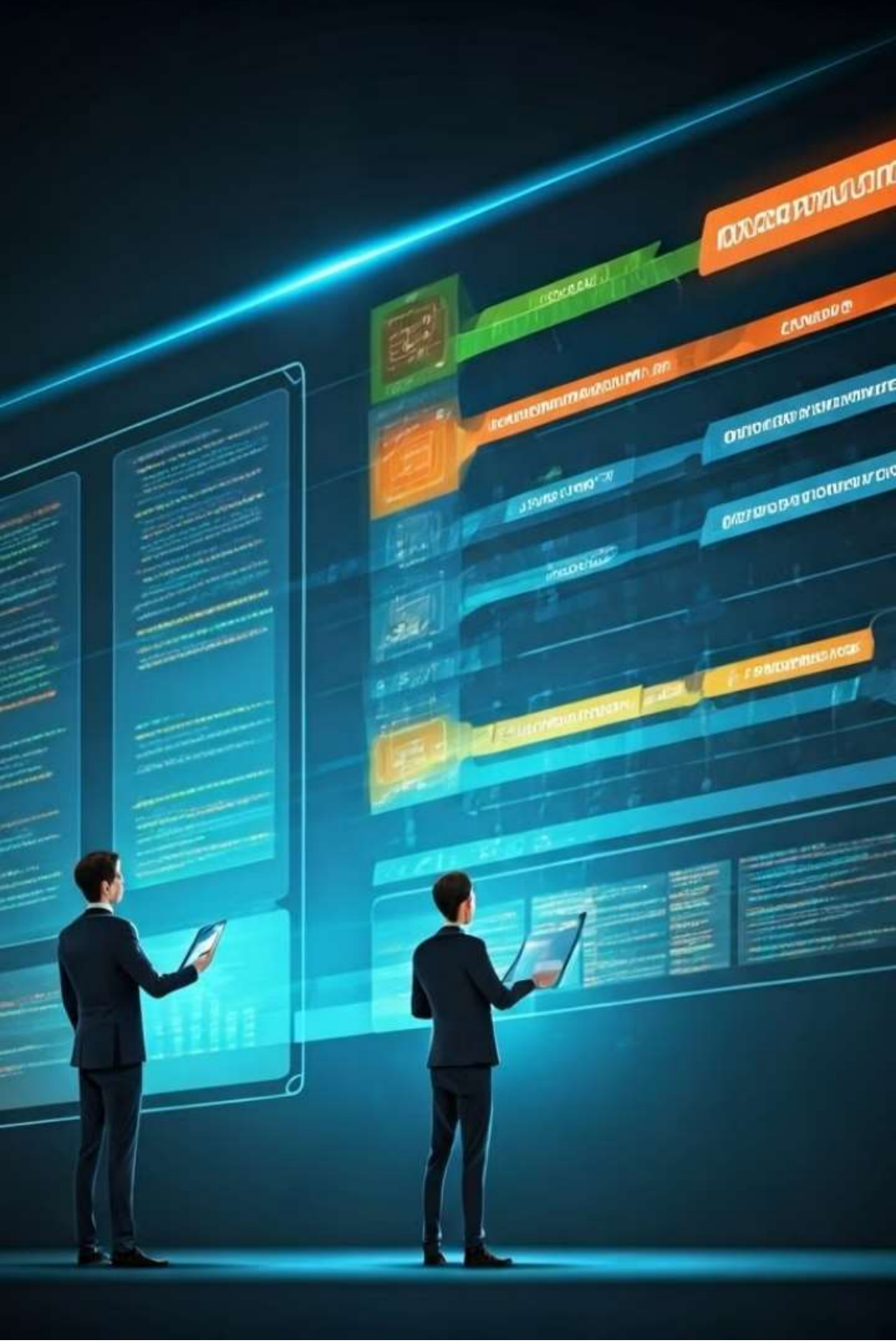
Act in good faith to promote the objectives of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, and the community, and for the protection of the environment

Exercise his duties with *due and reasonable care, skill, and diligence* and shall exercise independent judgment

Not to have a direct or indirect conflict of interest with the interest of the company

Not achieve or attempt to achieve any undue gain or advantage

Not assign his office



Law Regulating Related Party Transactions

- 1 — Companies Act, 2013, and the Rules made thereunder
 - Sections 2(76), 164, 166, 167, 174, 177, 184 & 188 of the Companies Act, 2013
 - Rules 6A & 15 of the Companies (Meetings of Board and its Powers) Rules, 2014
 - Secretarial Standards
- 2 — SEBI (LODR) Regulations, 2015
 - Regulation 2(1)(zb), 2(1)(zc), 23
 - Schedule V
- 3 — Accounting Standards & CARO
 - AS 18 and IND AS 24 and CARO 2016/ 2020



Guiding Principles

- Ordinary Course of Business
- Aram's Length
- Transparency
- Accountability
- Documentation
- Disclosures



Basic



Three Basic Checks

- Is it a *Related Party*
- Is it a *Related Party Transaction*
- Is it in the *ordinary course of business* and on an *arm's length basis*? (However, for listed companies, the exemption is not available)



Related Party & Related Party Transactions



Company Level



Management Level



Individual Level







Related Party as per Section 2(76) Companies Act 2013

"related party", with reference to a company, means

Individual

- A **Director** or his relative;
- A **KMP** or his relative;
- Any person on whose advice, directions, or instructions a Director or Manager is **accustomed to act**
- A Director (other than ID) or KMP of the **holding company** or his relative with reference to a company, shall be deemed to be a related party.

Entity

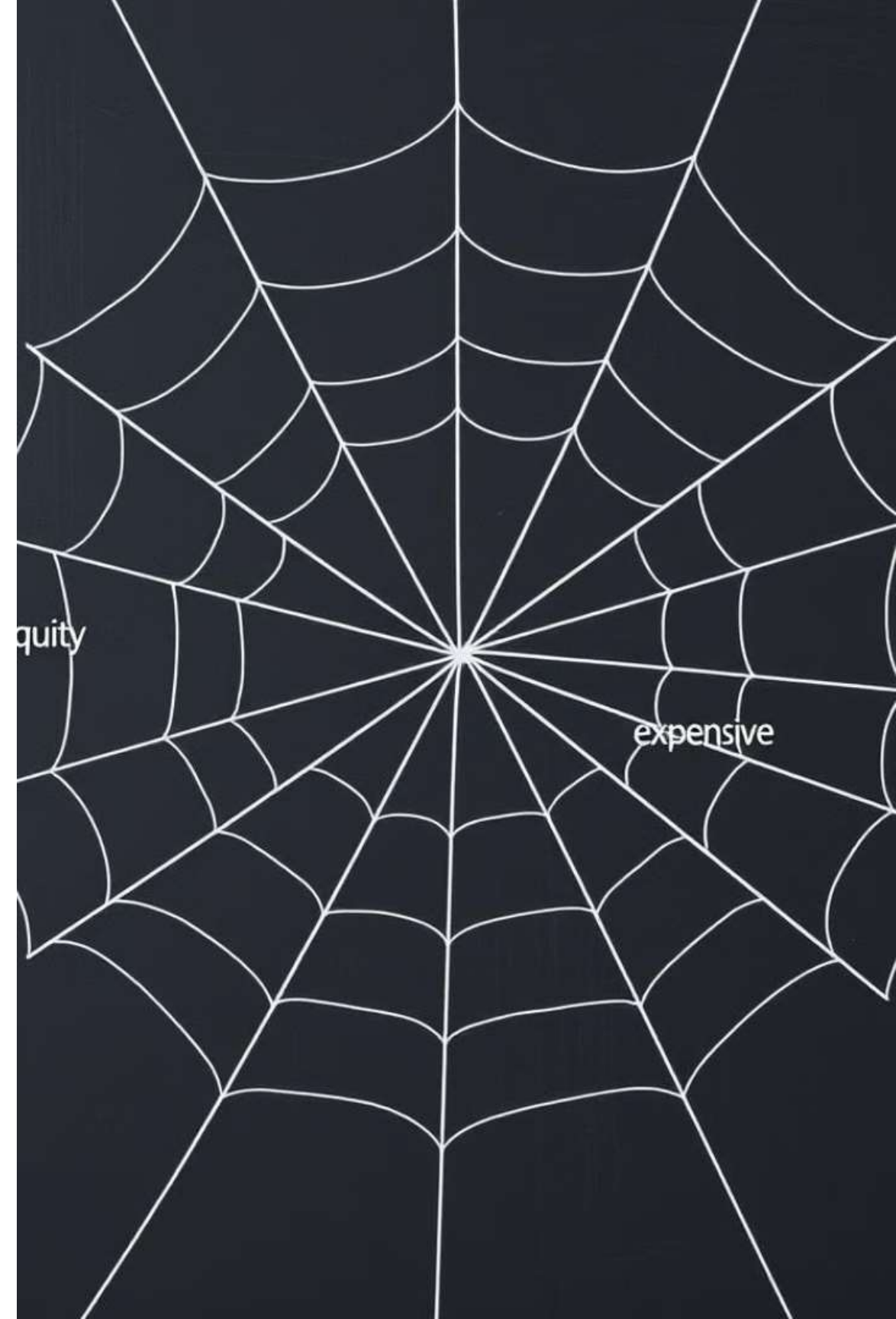
- A **Firm**, in which a Director, Manager, or his relative is a partner;
- A **Private Company** in which a Director or Manager or his relative is a member or director;
- A **Public Company** in which a Director or Manager is a Director and holds along with his relatives >2% of its paid-up share capital;
- Any **Body Corporate** whose Board of Directors, MD, or Manager is accustomed to act in accordance with the advice, directions, or instructions of a Director or Manager;
- Any **Body Corporate** which is—(A) a holding, subsidiary, or an associate company of such company; (B) a subsidiary of a holding company to which it is also a subsidiary; or (C) an investing company or the venturer of the company (making it as an ASSOCIATE COMPANY); **Exempted to Private Limited Company- 05 June 2015 & 13 June 2017**

Excludes

- 1 Director of Associate & JV companies
- 2 KMP of Associate & JV companies
- 3 Public companies where directors hold < 2% paid-up share capital
- 4 Any person appointed in senior management in the company or its Holding, or Subsidiary or Associate company

Whether by virtue of having a common director of two public companies, they become related parties.?

No, unless holding is >2% of paid-up share capital



Related Parties- **AT INDIVIDUAL LEVEL**



HUF

Spouse

Parents/ Step Parents

Children & their spouses

Brother/ Step Brother

Sister/ Step Sister

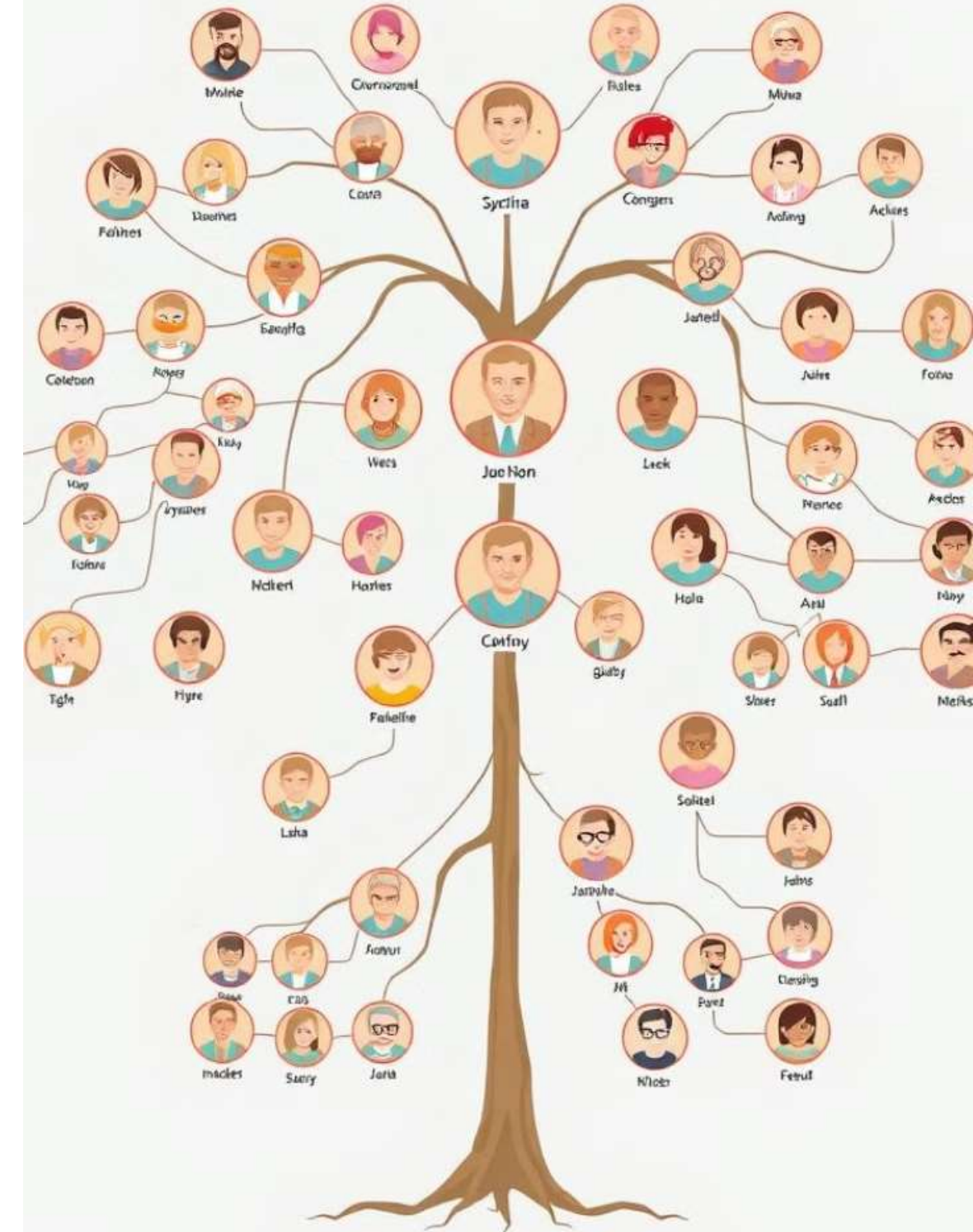


Person forming part of Promoter or Promoter Group (Disregard of shareholding)

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

Ind AS 24 also covers the

- Spouse, Children, and dependents of the Individual
- Spouse, Children, and dependents of **Domestic Partner**





Related Parties--- **AT COMPANY LEVEL**

Holding

Subsidiary

Fellow Subsidiary

Associate

Investing Company or Venture of a company

(Body Corporate whose investment in the company results in making the company its **Associate Company**)

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

Entity holding 20% or more
Equity Shares
**NOW 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** of Holding Company **and his relatives ;**
3. A **Firm** in which the Director/ Manager or his Relative is a partner;
4. A **Private Company** in which the Director, Manager, or his Relative is a **director or member;**
5. A **Public Company** in which the 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 6 or 7 above shall apply to the advice, directions or instructions given in a professional capacity

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

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

“Provided that:

Promoter or Promoter Group

any person or entity forming a part of the promoter or promoter group of the listed entity (**disregard of their holding**); or

10% Shareholders

any person or any entity, **holding equity shares of 10% or more** (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.

This above-mentioned is not applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

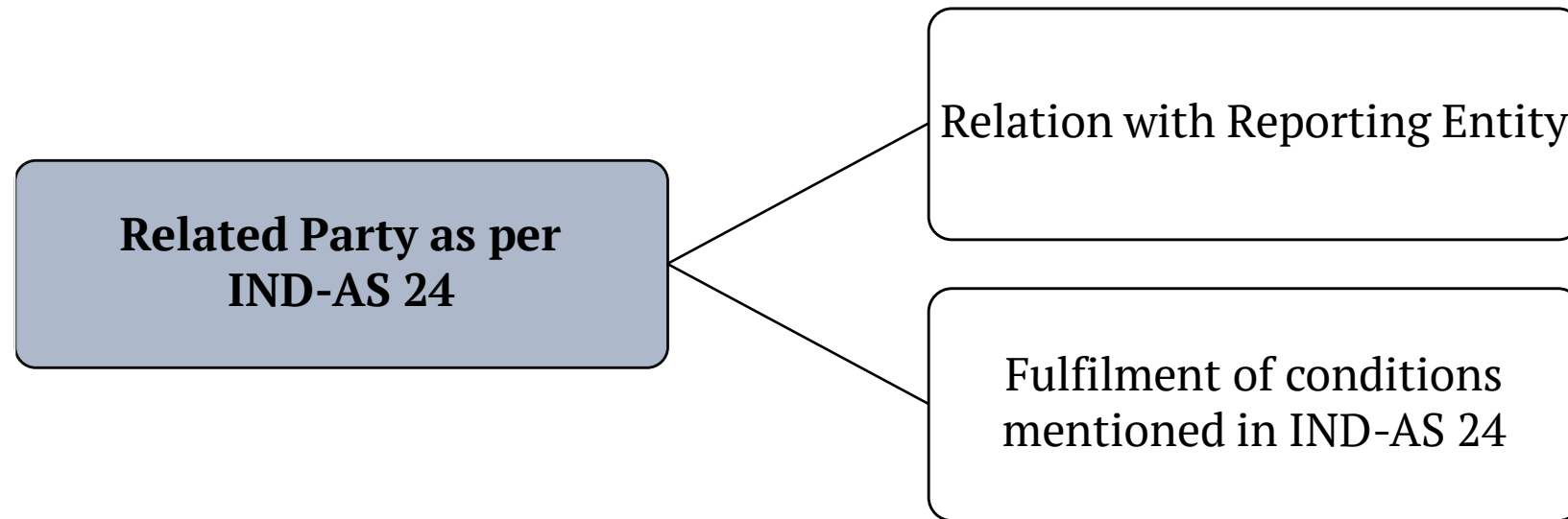
Definition of Related Party as per AS 18

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 the 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**

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**;

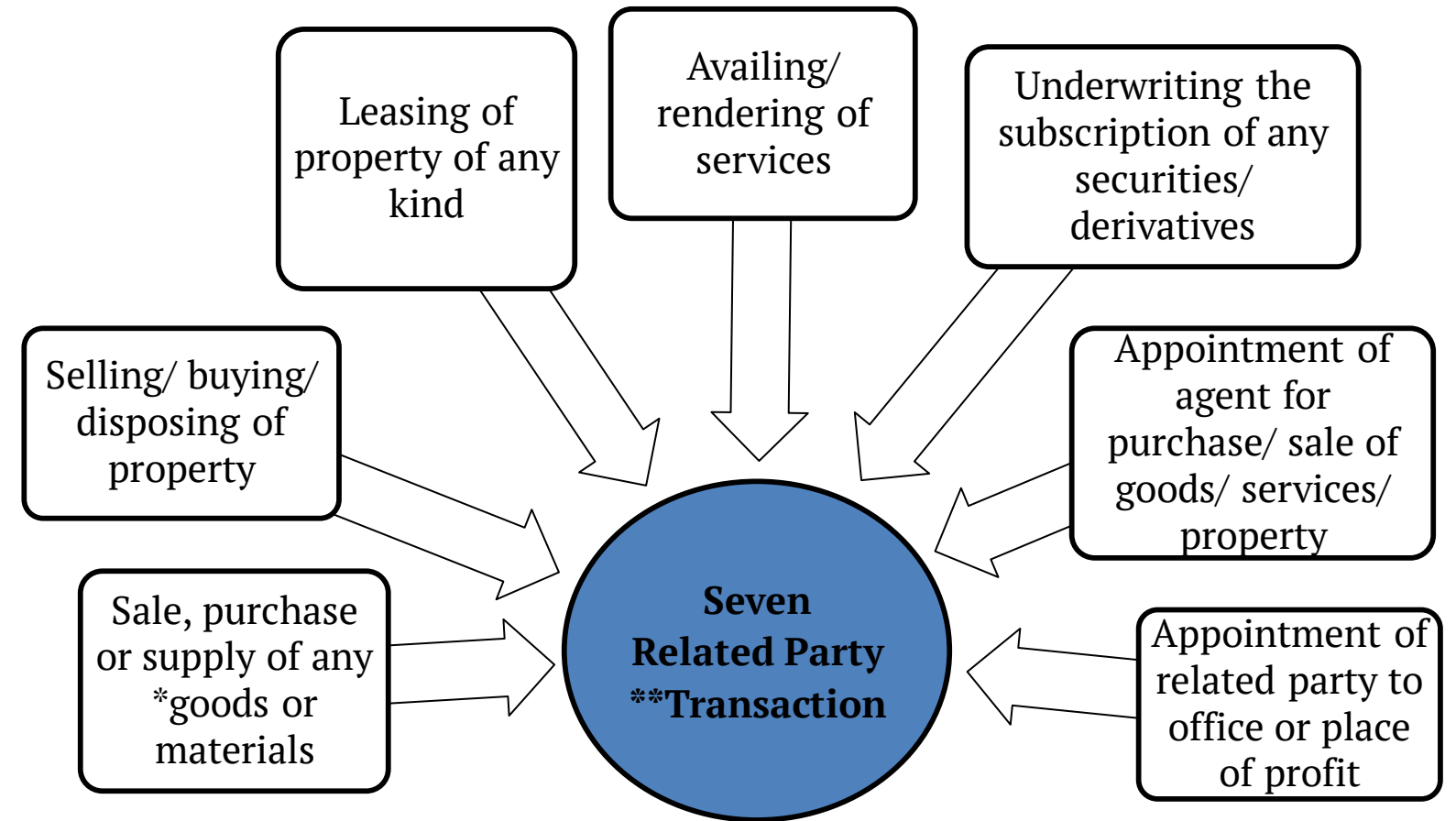
Related Party as per the conditions mentioned in IND AS 24

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).
8. The entity or any member of a group **provides KMP services** to the RE or to the parent of the RE.

Transactions--- Mine is **Mine**, Yours is **also Mine**



Section 188 of CA 2013 – Related Party Transactions



***goods**, means 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. (**Sec2(7)of the Sale of Goods Act,1930**)

****Transaction** of giving **loan or guarantee** or **issue or subscription of securities** are not covered under section 188.

Ordinary Course of Business

- Not defined anywhere in the Act
- Fourth Proviso to Section 188 (1) provides that transactions entered by the company in its ordinary course of business with related parties at arm's length basis **need not comply with approval requirements.**
- Black Law's Dictionary defines the term as "**normal routine in managing trade or business**"
- **MOA and AOA** are not conclusive for deciding whether an activity is in the ordinary course of business of the company
- Whether the activity is in **furtherance of the business**? Usual customs and practices of a particular business.
- **Frequency of the activity** is sought to be highlighted as giving rise to a continuous and organized activity



Arms Length

- **MEANING:** Explanation to Section 188(1) of the Act defines the term ‘arm’s length transaction’ as a transaction between two related parties that is conducted **as if they are unrelated** so that there is no conflict of interest.
- **METHODOLOGY:** Section 188 **does not prescribe** any methodology to calculate the price on an arm’s length basis.
- **NOT JUST PRICE:** Arm’s length basis does not mean arm’s length price as price is just one of the components of the terms of dealing with the other party and **several other matters** need to be considered.
- **COMPARABLE DATA & ANALYSIS** – Analysis is required to ensure the related parties and transactions with **operations, risk profiling, and Industry practice** and Comparable Uncontrolled Price to be determined.

One needs to review the term “Associated Enterprises” referred to in section 92A of the Income Tax Act 1961





Places of Profit

Office or place is held by a director

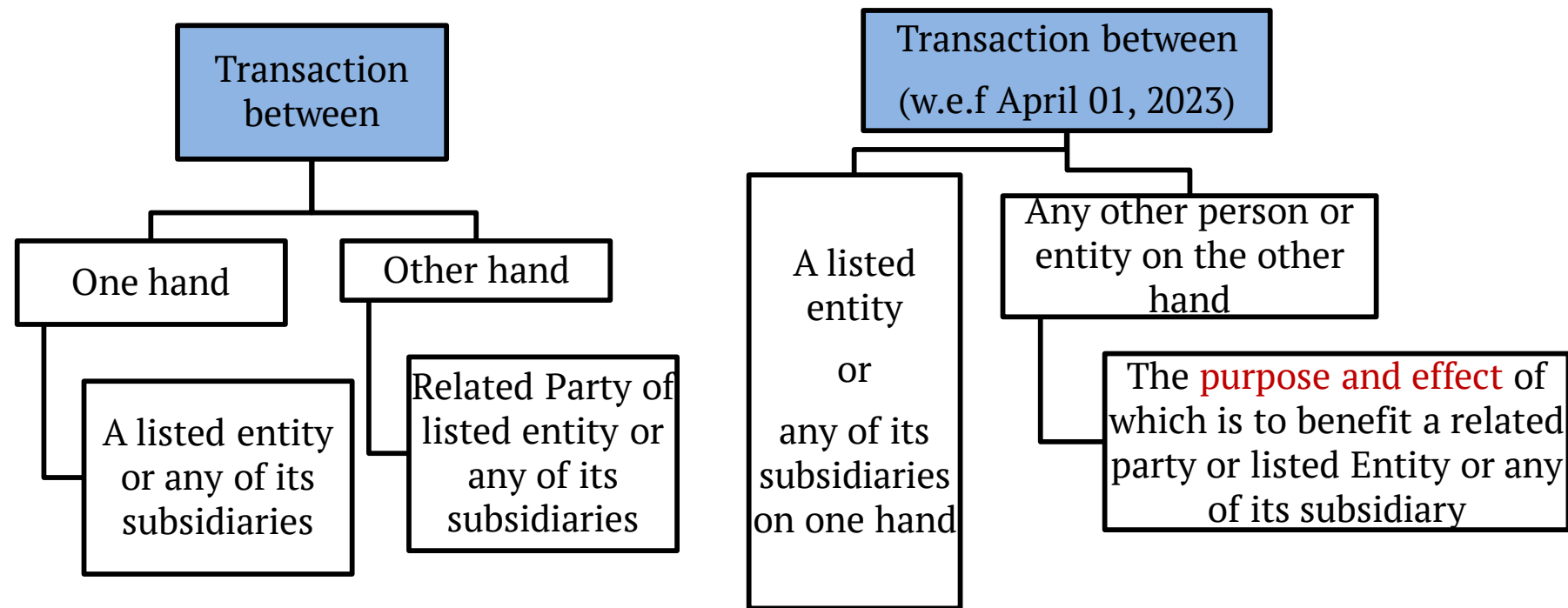
If the director holding it receives from the company anything by way of remuneration **over and above the remuneration** to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise

Office or place is held by an individual other than a director or by any firm, private company, or other body corporate

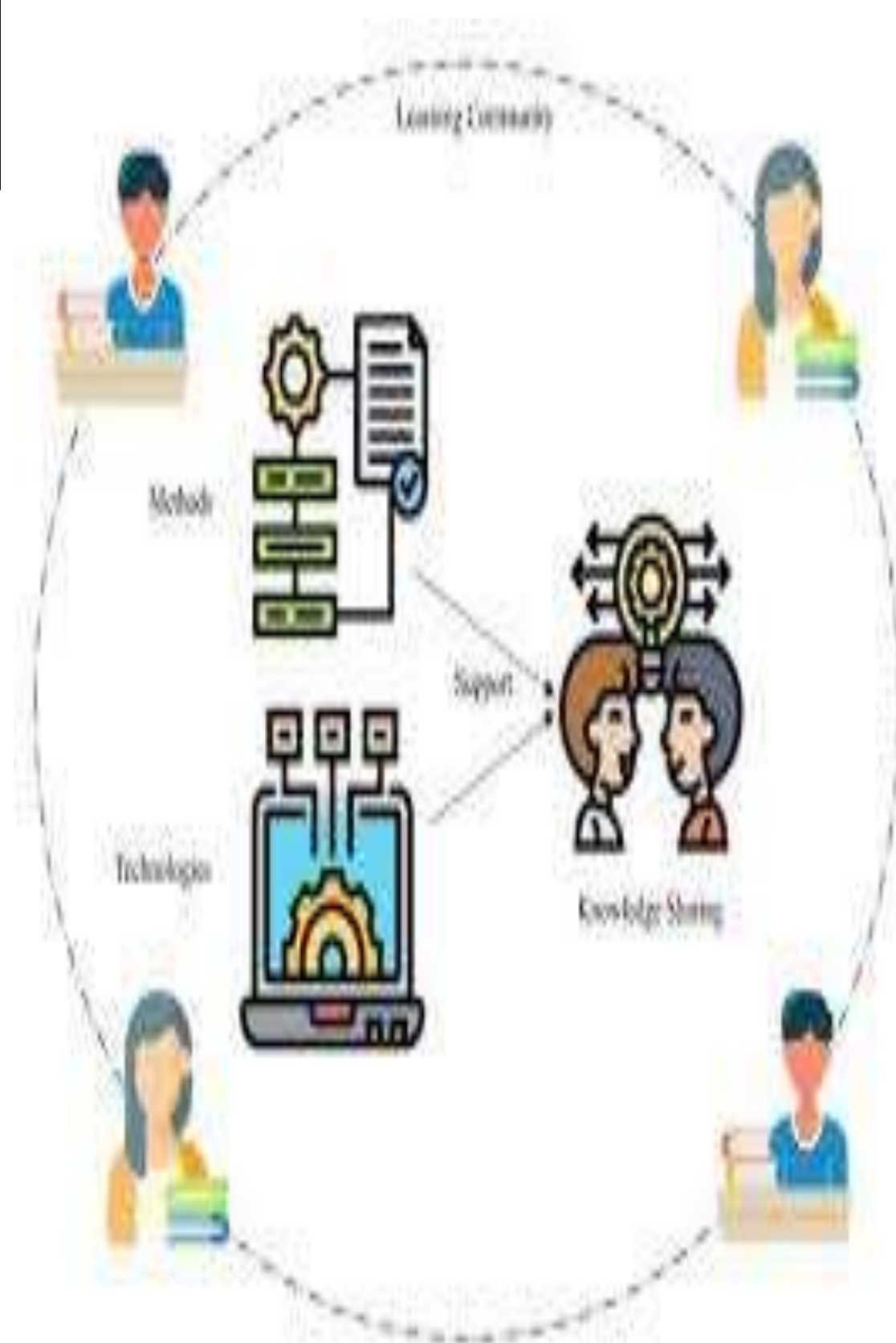
If the individual, firm, private company, or body corporate holding it receives from the company anything **by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise.**

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

Transaction involving a **transfer of Resources, Services, or Obligations** between



regardless of whether a price is charged and “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract



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 of securities 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/Consolidation of securities;• Issuance of security by way of a rights issue or a bonus issue; and• Buyback of securities	<ul style="list-style-type: none">• At the terms uniformly applicable/ offered to all shareholder/ public, subject to disclosure of the same along with disclosure of RPT every 6 months to the stock exchange in the format prescribed

This above-mentioned is not applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

Policy

Policy: The Listed entity shall formulate a policy on the materiality of RPT and on dealing with RPT

- The Policy to include clear threshold limits duly approved by the board of directors and
- The Policy is to be reviewed once in 3 years and updated

Materiality: TXN individually or together with the previous transactions during the FY exceeds

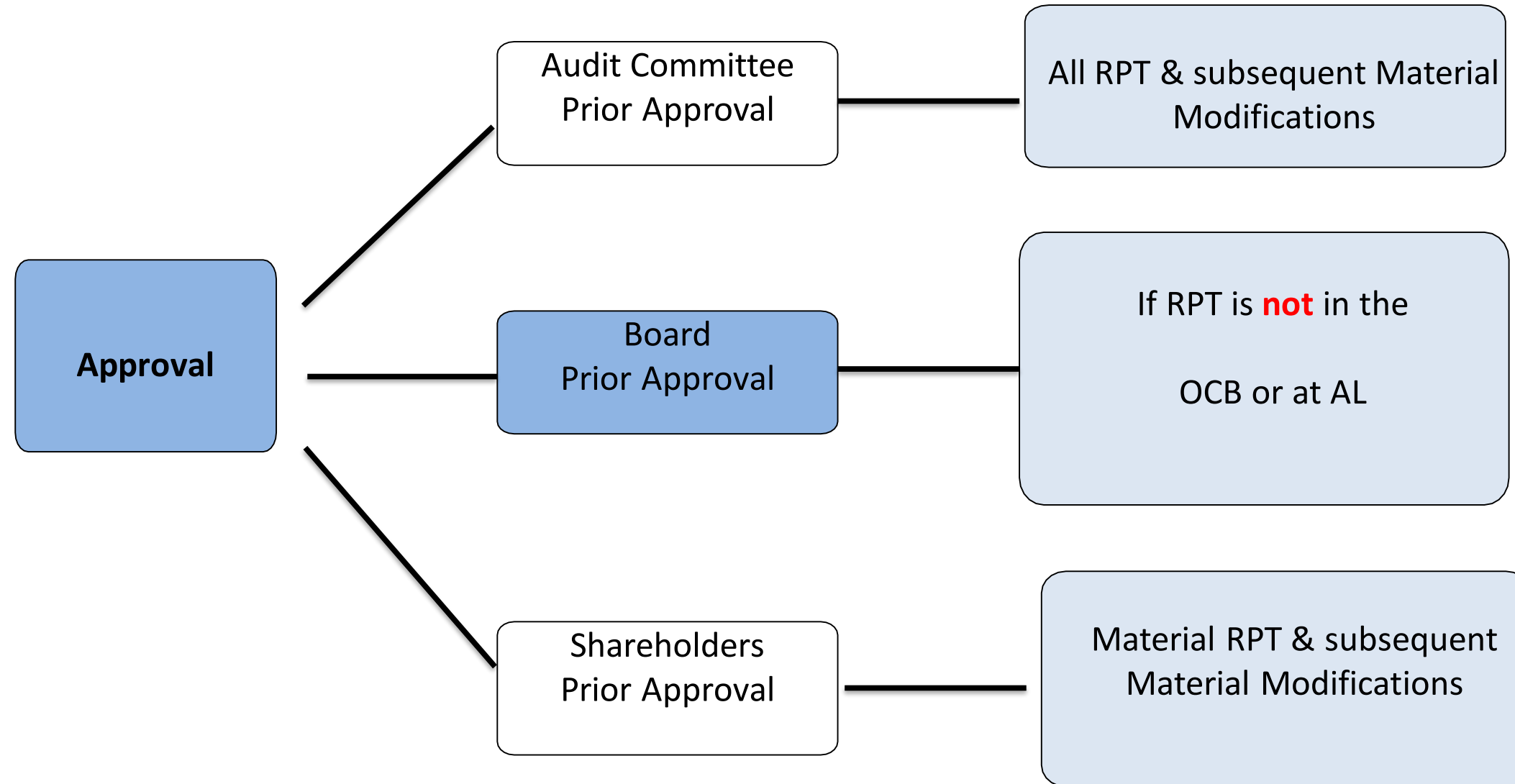
- for brand usage/royalty: 5% of Annual consolidated turnover
 - for others: Rs.1000 Crores or 10% of the Annual consolidated turnover of the listed entity (whichever is lower),
- (as per the last audited financial statements of the listed entity)

Audit Committee: shall define “material modifications” and disclose it as part of the policy on materiality of RPT and on dealing with RPT

Website: The listed entity shall disseminate the policy on dealing with related party transactions on its website



Approval of Related Party Transactions (RPT)



Section 188– Related Party Transactions



- 1. Approval of Audit Committee-** For every RPT
- 2. Approval of the Board of Directors** for RPT is **not required** if such transaction is in OCB & at AL (if passed in BM ensure compliance with section 184).
- 3. 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 the general meeting for their approval.
- 4. Interested members** shall **not vote** on the resolution approving any contract or arrangement with a related party. (*Exempt for Private Company*).

Audit Committee approval

All **RPT and subsequent material modifications** shall require prior approval of the audit committee of the listed entity]

Only those members of the audit committee, who are **Independent Directors**, shall approve related party transactions

Schedule V to the CA 2013—Independent Director to pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company.



Audit Committee Approval of RPT

Scope

Specific Approval

Omnibus Approval

Repetitive and Foreseen Transactions

Unforeseen Transactions

No limit on value

value not exceeding
Rs. 1 crore for one year

Each transaction a
separate contract, then
each transaction value

Several transactions
in a single contract,
the contract value

In case of transactions, other than transactions referred to in section 188, and where the Audit Committee does not approve the transaction, **it shall make its recommendations to the Board**

Omnibus Approval- Rule 6A of the Companies (MPB) Rules, 2014



Audit Committee to set criteria for granting omnibus approval after obtaining approval from the Board. The criteria to include:

1. Maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year
2. Maximum value per transaction, which can be allowed
3. Extent and manner of disclosures to be made to AC at the time of seeking such approval;
4. Review, at such intervals, as decided by the committee of RPTs entered into by the company under each of the omnibus approvals made;
5. Transactions which cannot be subject to the omnibus approval by AC

Omnibus Approval: Factors to be Considered

- The repetitiveness of the transactions (in the past or in the future);
- Justification for the need for omnibus approval
- Is it in the interest of the company?
- Valid for a period not exceeding one financial year .and
- Need fresh approval every year

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



Omnibus Approval: Contain or Indicate



- (a) Name of the related parties;
- (b) Nature & duration of the transaction;
- (c) Maximum amount of transactions that can be entered into;
- (d) 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 to decide on the proposed transaction:

Where RPT cannot be foreseen and aforesaid details are not available- The Audit Committee may grant omnibus approval for such transactions subject to their value not ***exceeding Rs.1 Crore per transaction.***

Omnibus Approval: Audit Committee

In case any transaction involving any amount < 1 Crore is entered into by a Director or Officer of the company without obtaining the approval of the Audit Committee

1. Such transaction needs to be ratified by the Audit Committee within three months from the date of the transaction
2. Otherwise such transaction shall be voidable at the option of the Audit Committee
3. If the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it.

Board Agenda

***Every Director** must disclose details of his interest and list of relatives in prescribed form **MBP-1** at the 1st meeting in which he participates and later if any change therein.*

KMPs are also to disclose details of their relatives within 30 days of their joining or upon any change thereafter.

Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 the following details shall be disclosed in the **Board Agenda** for obtaining approval for any related party transaction

- Name of the related party and nature of relationship
- Nature, duration and particulars of the contract or arrangement
- Material terms of the contract or arrangement including the value, if any
- Any advance paid or received for such contract or arrangement, if any
- Manner of determining the price and other commercial terms
- Whether all factors relevant to the contract have been considered or not
- Factors not considered, if any, with the rationale for not considering those factors
- Any other relevant information



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

Shareholders' approval is required for the following Transactions
(Turnover or Net worth referred to below shall be computed based on 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 Net-worth

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

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

*In the case of **WoS**, the resolution passed by the **Holding Company** shall be sufficient for entering into the transaction between **WoS** & the Holding Company*



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)

Sub Reg 5- Exempted Transactions

Sub Reg 6- Applicable to Prospective Transactions

Sub Reg 7- **Deleted**

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

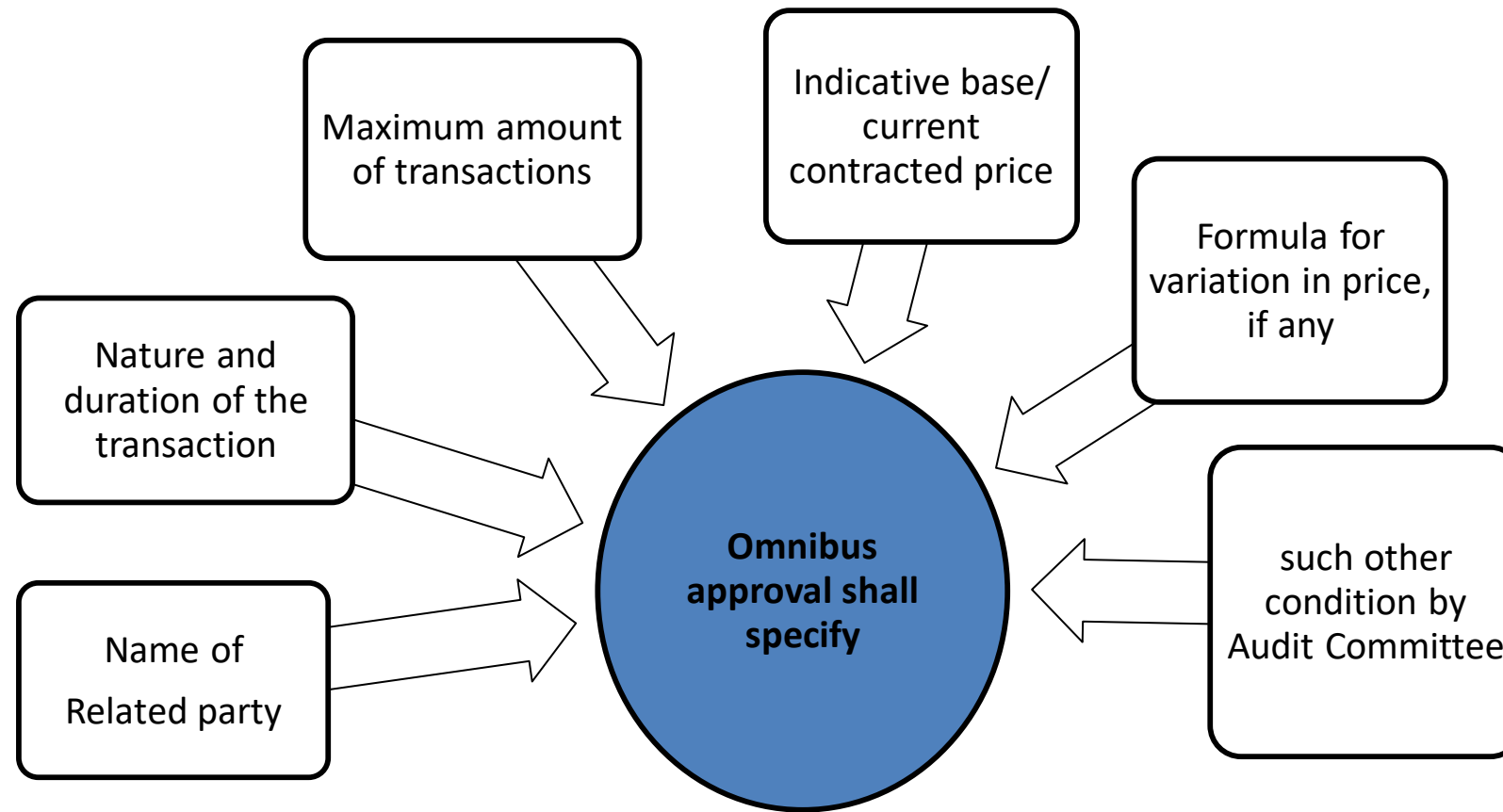
The listed entity shall formulate a **Policy on Materiality of RPTs** and on dealing with RPTs including clear threshold limits duly approved by the BoD and such policy shall be **reviewed** by the BoD **at least once every 3 years** and updated accordingly.

Material Transaction (Proposed)

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

Payments made to RP for **brand usage royalty > 5% of the annual consolidated turnover** of the listed entity, as per the latest audited financials

Omnibus Approval by the Audit Committee for Listed Entity



The 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.

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 the Audit Committee who **are Independent Directors**
3. The Audit Committee 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.**
4. **Prior approval of AC is Required**
A transaction in which a **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 the transaction is **> 10% of the consolidated Turnover of the listed entity** as per its last audited financial statement.
(w.e.f 01.04.2023- this threshold will be considered as 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.

Information to be provided to the 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 the **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 an RPT involving a subsidiary, such percentage is calculated on the basis of the subsidiary's annual turnover is 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 funds, 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;

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



Prior approval by shareholder for RPT in listed entity

1. **Prior approval of shareholders of the listed entity is required**
For all Material & subsequent Material Modification of transaction

2. **Prior approval of shareholders of the listed entity is required**
For all Material & subsequent Material Modification of transactions where **unlisted Subsidiary** is a party whether the listed entity is party or not.

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

For all Material & subsequent Material Modification of transactions where **Listed Subsidiary** is a party but the listed entity is not party, if Regl 15(2) & 23 of LODR 2015 applies to such Listed Subsidiary

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

Exception: Resolution Plan approved u/s 31 of IBC 2016

Prior approval by the shareholder for RPT in the listed entity

SEBI Cir 08.04.2022

Shareholders' approval for material Omnibus RPTs

1. Approved in an **AGM** shall be valid up to the date of the next AGM. However, such a period shall not exceed **15 months**.
2. Approved in any other **GM** it shall be valid not exceeding **12 months**.

Information to be provided to Shareholder for consideration of RPT

1. A **summary** of the information **provided by the management** of the listed entity **to the audit committee**;
2. **Justification** for why the proposed transaction is in the **interest** of the listed entity;
3. If the transaction relates to any **loans, inter-corporate deposits, advances, or investments** made or given by the listed entity or its subsidiary, the same information to be provided to shareholders as provided to the Audit Committee;
4. A **statement** that the **valuation** or other **external report** if any, relied upon by the listed entity 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.




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**.



Disclosures

- 
- a. Details are to be placed before the **Audit Committee**
 - b. Details are to be placed in the Notice to **shareholders** for material RPTs – Details in Explanatory Statement as per Rule 15 of Co (MBP) Rules, 2014
 - c. In the **Financials Statement** as per Accounting Standard 18 or IND AS 24
 - d. As per **CARO 2016 or CARO 2020- Auditor Report**
 - e. In the **Board Report**

-If the Board has **not accepted any recommendation of AC**, with reason

-In **Form AOC--** If the **transactions are material** the same will need disclosure. It is to be noted that approvals of the Board and the shareholders are not required if the transaction is in the ordinary course of business and on an arm's length basis, but disclosure is required from the perspective of **transparency**. * **AOC_2 needs to be signed by two Directors as signed by Board Report**

- f. **Register** u/s 189 in Form MBP-4

Disclosures



g. Disclose all transactions with RP to the **Stock Exchanges**
– Half-Yearly

- within 15 days from the date of publication of financials
(**up to 31 March 2023**)
- Simultaneously with the financials
(**from April 1, 2023**)

h. **Annual Report** -RPT disclosures -Para A of Schedule V of Listing Regulations

i. On **Website**---Policy on dealing with RP

j. **Corporate Governance Report**



Voting

In Board Meeting

The Interested Director shall not be present at the meeting during discussions on such RPT or any arrangement. *This provision shall not apply to a private company*

In shareholders Meeting

For the **listed company** all material related party transactions and subsequent material modification require approval of the shareholders through resolution. For **unlisted company** as per Materiality under Rule 15 of MBP Rules, 2014

- No member of the company shall vote on such resolution if such member is a related party. *As per Regulation 23 of the Listing Regulations, all related parties shall not vote.*
- *However, this provision shall not apply to a private company.* MCA has clarified in Circular No. 30 dated July 17, 2014, that the **concerned related party** with the transaction shall not vote on such shareholder resolution. For a company in which 90% or more members, in number, are relatives of promoters or are related parties this provision is not applicable

In the case of a wholly-owned subsidiary (WoS)

The Resolution passed by the Holding Company shall be sufficient for entering into the transaction between the WoS and the Holding Company



Penalty for Non-Compliance

Any **Director or any other employee of a company**, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall,—

- (i) In case of a **listed company**, be liable to a penalty of **Rs.25 Lakhs** and
- (ii) In case of **any other company**, be liable to a penalty of **Rs.5 Lakhs**

Section 164(1)(g)

The Director shall be **disqualified** for appointment as Director if convicted of an offence u/s 188 during the preceding 5 years

Section 167(c) & (d)

Vacate office if he contravenes the provisions of Section 184 relating to contracts in which he is interested or when he fails to disclose his interest in such contracts.



Proxy Advisory Firms and Shareholder Activism



1

Tata Motors Case

Proxy advisory firm SES advised Tata Motors' shareholders to vote against the proposed **executive compensation**, citing the company's weak performance.

2

Shareholder Rejection

Over 30% of shareholders, including major financial institutions, voted against the resolution, denying the required 75% approval.

3

Market Response

The rejection of the resolution on pay raise was welcomed by the markets, with the company's shares rising in response.



In the AGM held on 05th June 2017, Raymond Limited presented a resolution to make **an offer to sell its premium real estate at throw-away rates** to its promoters and their extended family. This transaction if approved would result in a loss of over Rs.6.5 billion for the Company and its shareholders

Raymond Limited's own valuation report stated that the residential property is valued at Rs.1,17,000 per square foot (built-up), putting a value on the entire transaction at Rs.7.1 bn.

Raymond, however, proposed to sell the property to the Singhanian family factions for Rs.9,200 per square foot of carpet area – an over 90% discount to market rates. **However, the resolution was not passed.**

70.66% voted against the resolution and only 1.682% votes were cast in favour.

Linde India Limited

Linde India Limited (LIL), a leading industrial gas company, provides a valuable case study on the importance of RPT disclosures and shareholder engagement.

On 29 March 2024- SEBI issued an Ex-Party Order against Linde India Limited, on getting complaints predominantly concerning various transactions and agreements that :

- (a) LIL had entered into RPT with Praxair India Pvt. Ltd. (“**PIPL**”) and Linde South Asia Services Pvt. Ltd. (“**LSASPL**”), which are Material, and LIL **has not obtained shareholder’s approval** for the same;
- (b) Irregularities alleged in respect of a **business agreement entered by LIL** with PIPL wherein certain products and geographic areas were allocated between the companies; and
- (c) The Board of LIL decided on RPT **without the Valuation Report.**



Linde India Limited

LIL had sought shareholder approval for the RPT to be entered with Praxair India Pvt. Ltd (PIPL) at its 85th AGM held on June 24, 2021. This resolution **was rejected by the shareholders** with approximately 93.94% of the votes against the resolution. Later LIL obtained three legal opinions from the experts, in the backdrop of the failure to get shareholder approval for the RPTs.

Legal Opinion relied on the terms ***“in a contract”*** used in the definition of RP and RPT under Listing Regulations for concluding that RPT needs to be grossed up only if such transactions are under a mother contract or were in pursuance of a common objective. The Legal Opinion essentially held that there needs to be some form of nexus between the different transactions and in the event the **transactions under question pertained to unrelated items, there was no requirement to consolidate the value of such contracts** when considering materiality under Regulations 23 of the LODR Regulations.



Linde India Limited

SEBI is of the view that the test for materiality is found in the proviso to Regulation 23(1) of Listing Regulations which clearly provides that the **“transaction in question has to be taken together with previous transactions during a financial year with the same related party while considering whether it has crossed the materiality threshold.”**

LIL has executed a JV&SHA with Praxair India Pvt. Ltd. (“PIPL”) and Linde South Asia Services Pvt. Ltd. (“LSASPL”), accordingly LIL and PIPL were to each hold 50% of the equity share capital of LSASPL.

*The JV&SHA also contained a clause that provided for the product allocation and geographical allocation of the businesses of LIL and PIPL (“Business Allocation”) essentially involved granting promising future business opportunities to PIPL. **According to SEBI, the business allocation between LIL and its RP is a transfer of assets.***



Linde India Limited

LIL preferred an appeal against the SEBI Order before the Hon'ble Securities Appellate Tribunal ("SAT"). The **SAT vide its Order dated May 22, 2024** ("SAT Order"), set aside the SEBI Order and directed LIL to file its reply for the Ex-Parte Order of SEBI.

LIL submitted its reply and it was granted an opportunity for personal hearing. **LIL submitted that only contracts of a similar nature need to be added up while considering the *materiality threshold*.**

LIL argues that the use of the words "***in a contract***" in definition of RP and RPT denotes that only transactions under a common contract fall within the definition of RPTs and, consequently, while computing the *materiality threshold* only such transactions, that come within the definition of *RPT*, can be considered.

SEBI issued its **Order on 24 July 2024** stating that LIL had violated Regl 23 and the view of SEBI is that multiple contracts appearing within the same contract will get covered under the definition of RPTs under the LODR Regulations



Linde India Limited

SEBI in its Order dated 24 July 2024 concluded that the only reasonable interpretation that can be imputed to the proviso to Regulation 23(1) is the one adopted by it as the *proviso* clearly lays down that for computing the *materiality threshold*, **transaction entered into individually or taken together with previous transactions during a financial year should be taken into consideration while testing the 'materiality threshold'**. The *proviso* does not restrict the definition to transactions of a similar nature or any such other qualifying or limiting criteria while calculating the threshold.

SEBI also noted that a **valuation exercise** would have illuminated whether the decision required approval solely from the Audit Committee or necessitated shareholder approval as well. In light of these considerations, it was viewed by SEBI that the **business allocation between LIL and PIPL, a related party, is fundamentally flawed** because a valuation exercise was not conducted prior to the Board approving the transaction.

SEBI directed LIL to get the valuation done

LIL moved the Supreme Court challenging the SAT order that rejected LIL's appeal against a SEBI-directed valuation exercise. **Supreme Court refused to interfere with the valuation exercise** being conducted on LIL by an NSE-appointed valuer in connection with RPT case.



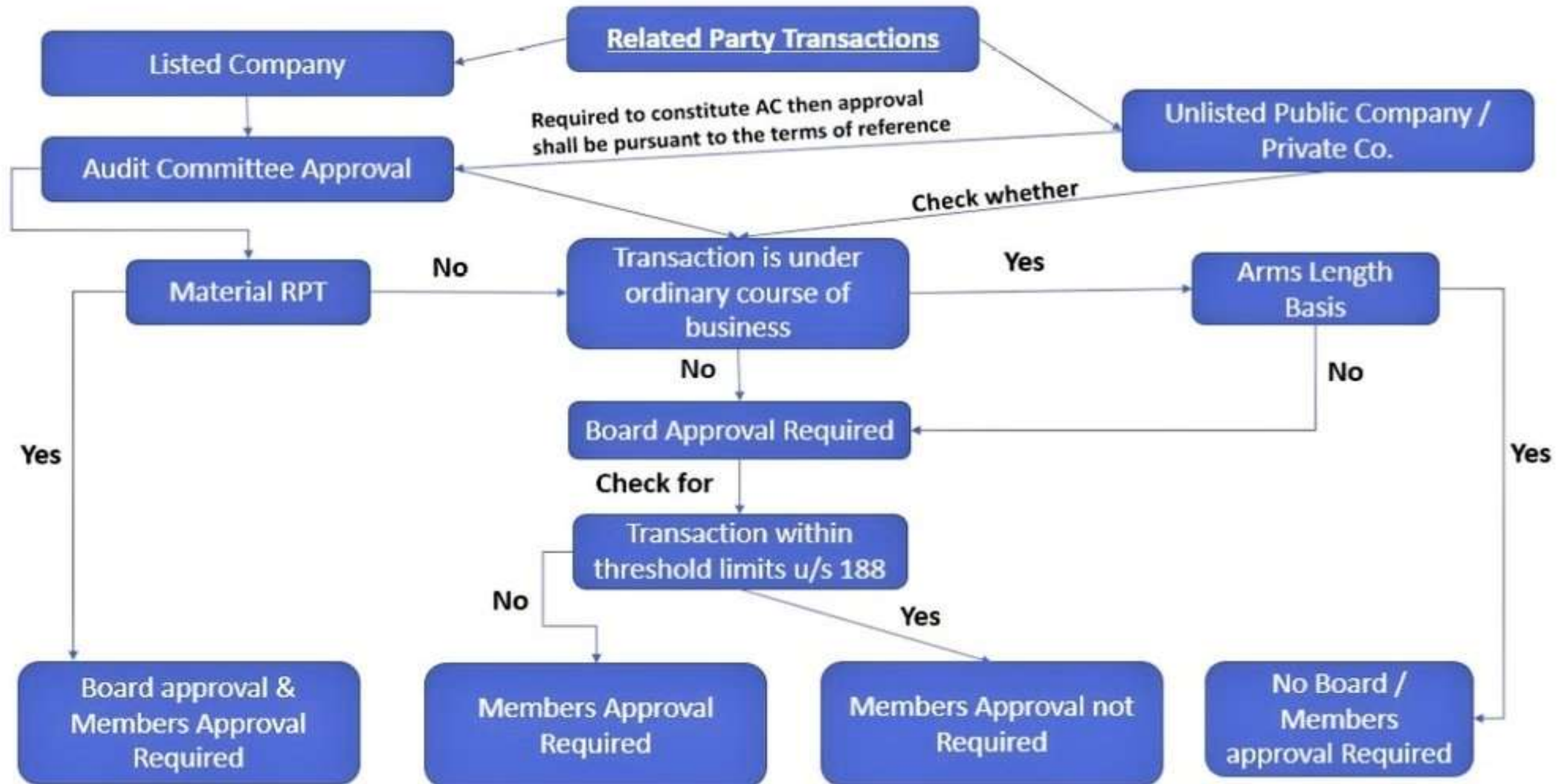
Transactions with Related Parties (RP)

Particulars	RPT as per CA 2013	RPT as per Listing Regulations
Loan or Guarantee given to RP	NO	YES
Issue of shares to RP	NO	YES if not given uniformly to others
Transfer of shares to RP	YES	YES
Lease agreement with RP	YES	YES
Leave and License Agreement with RP	NO	YES
Approval of Remuneration to Director	NO, if not place of profit	NO, if not place of profit and not services over and above remuneration of Director
Approval of Remuneration to employee who is RP	YES as place of profit	YES

Transactions with Related Parties (RP)

Particulars	Approval Audit Committee	of Approval Board	of Approval of shareholders
Transaction in the OCB and at AL	YES	NO	NO
Transaction in the OCB but not at AL	YES	YES	NO
Transaction in the OCB and at AL but >10% of the consolidated Turnover of the Company	YES	YES	YES
Transaction is MATERIAL Or there is SUBSEQUENT MATERIAL MODIFICATION	YES	YES	YES

APPROVAL PROCESS FOR RPT



Thank
you



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Audit- Evidence and Process

Let us look at what are **sufficient or appropriate audit evidence** that should be obtained in the Audit to identify whether any RPT have been **appropriately accounted for** and **disclosed** under 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 **the 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 RPTs are identified and coded in the Enterprise Resource Planning (ERP) system.
5. One may need to **hunt for undisclosed RP or RPT** with documents/ data sources to uncover it and develop 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 the company's **vendor approval process** to determine whether the supplier qualifies as a Related Party and is **marked as such in the ERP System**
11. Calculation of **threshold limits & updation of the 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. The 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 the 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 the 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 evidence** 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 transactions at Arm's Length and OBC
6. **Management Representation Letter** **does not absolve** the Auditors from their professional responsibilities
7. Revisit the **design of the Audit process**
8. **Ensure** reliance on **Management Representation** relating to other aspects of the financial statements is appropriate and justified.

RELATED PARTY IDENTIFICATION



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 the listed entity **to disclose a list of related parties/ relatives**
3. If the **ERP system is not there**, there are difficulties in the identification of RP, and chances are there that the threshold limit of materiality is crossed
4. **No documents** to support the transaction are 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.
7. **Quarterly monitoring** by the Audit Committee is not done

Challenges/ Clarifications

8. For transactions at AL and in OCB, no need for Board approval, and if Board approval is taken, it is **without compliance with section 184 (2)**
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 **might have been lost** due to delay in annual filing.
11. There are exemptions from obtaining approval for certain RPTs but there is **no exemption from its disclosures.**
12. It is left to the **discretion of the Audit Committee** to define Material Modification in RPT Policy

Challenges/ Clarifications

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

What about the entities controlled by such a company? Whether it is a 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.**
15. Effective f01.04.2023 - Identification of **Purpose and Effect** of transaction which is benefitting related party of the company or its subsidiaries. Very subjective

Suggestion



1. Auditor to develop a **separate format** which can be mandated to be disclosed by each Director, KMP, Promoters, Holding Company, Related party of Subsidiary Company & Associates and the same need to be updated every quarter.
2. Visit the Company and check with **accounts by reviewing 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 a **certificate from the Management and CS of the Company certifying**

- a) That 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 **disclosure is submitted by all the concerned persons/companies** as required, within 15 days from the end of the financial year and within 7 days from the date of change in any related parties;
- d) That the Audit Committee has noted and **approved the justification** for a particular RPT.





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