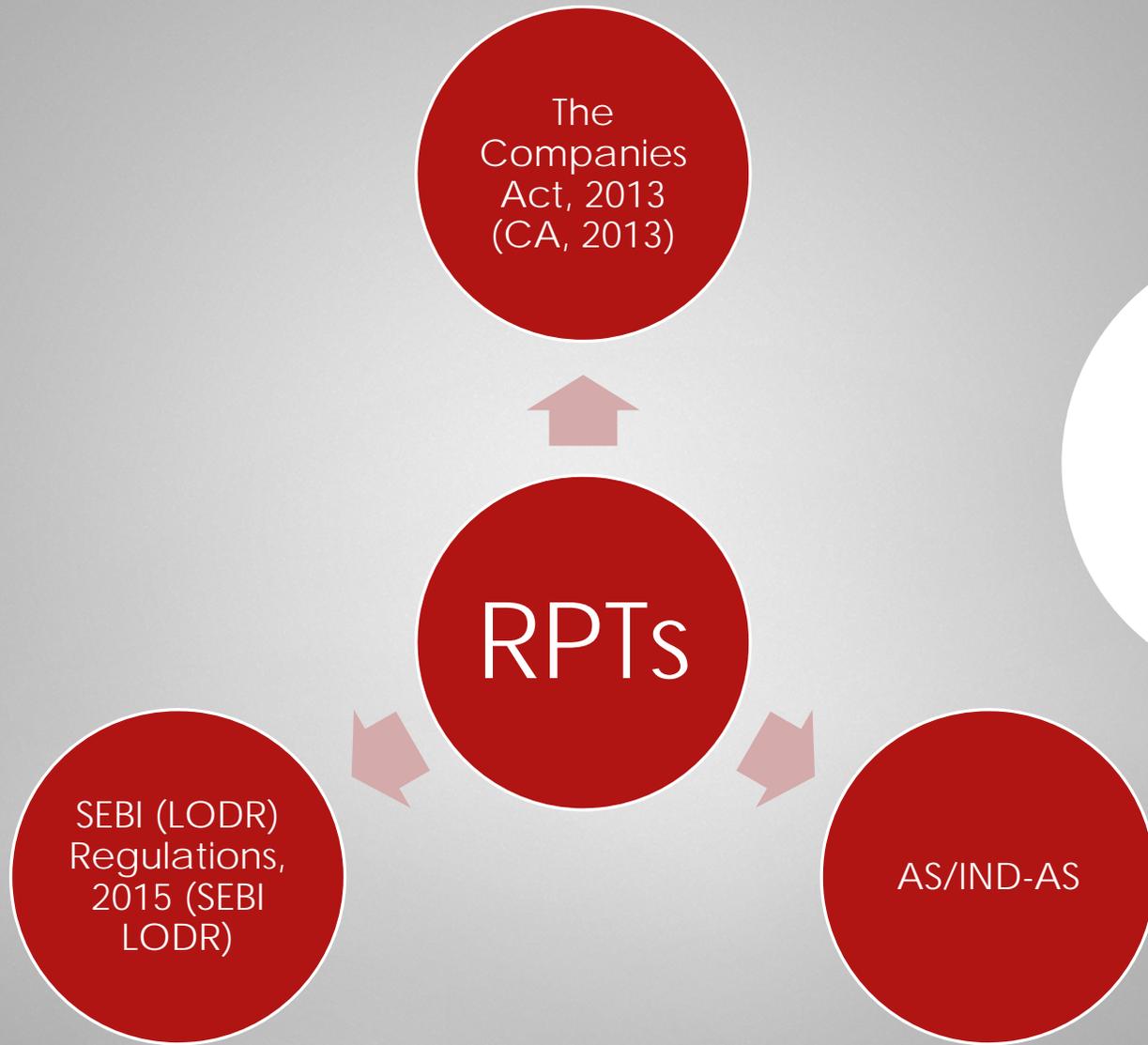




# Related Party Transactions





The Companies Act, 2013 (CA, 2013)

RPTs

SEBI (LODR) Regulations, 2015 (SEBI LODR)

AS/IND-AS



Related Party

# Related Party under CA, 2013 (1/2)

Section 2(76): Related party with reference to a company means:

- (i) a director or his relative;
- (ii) a KMP or his relative;
- (iii) a director other than an ID, or KMP of the holding company or his relative;
- (iv) a firm, in which a director, manager or his relative is a partner;
- (v) a private company in which a director or manager or his relative is a member or director;
- (vi) a public company in which a director or manager is a director **and** holds along with his relatives, more than 2% of its paid-up share capital;
- (vii) 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 (except on professional basis);
- (viii) any person on whose advice, directions or instructions a director or manager is accustomed to act (except on professional basis):

# Related Party under CA, 2013 (2/2)

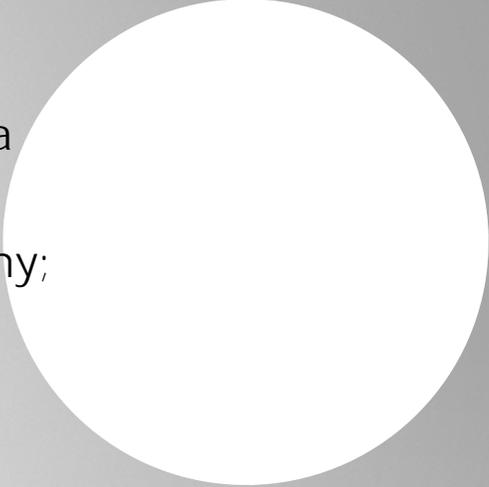


(ix) any body corporate which is—

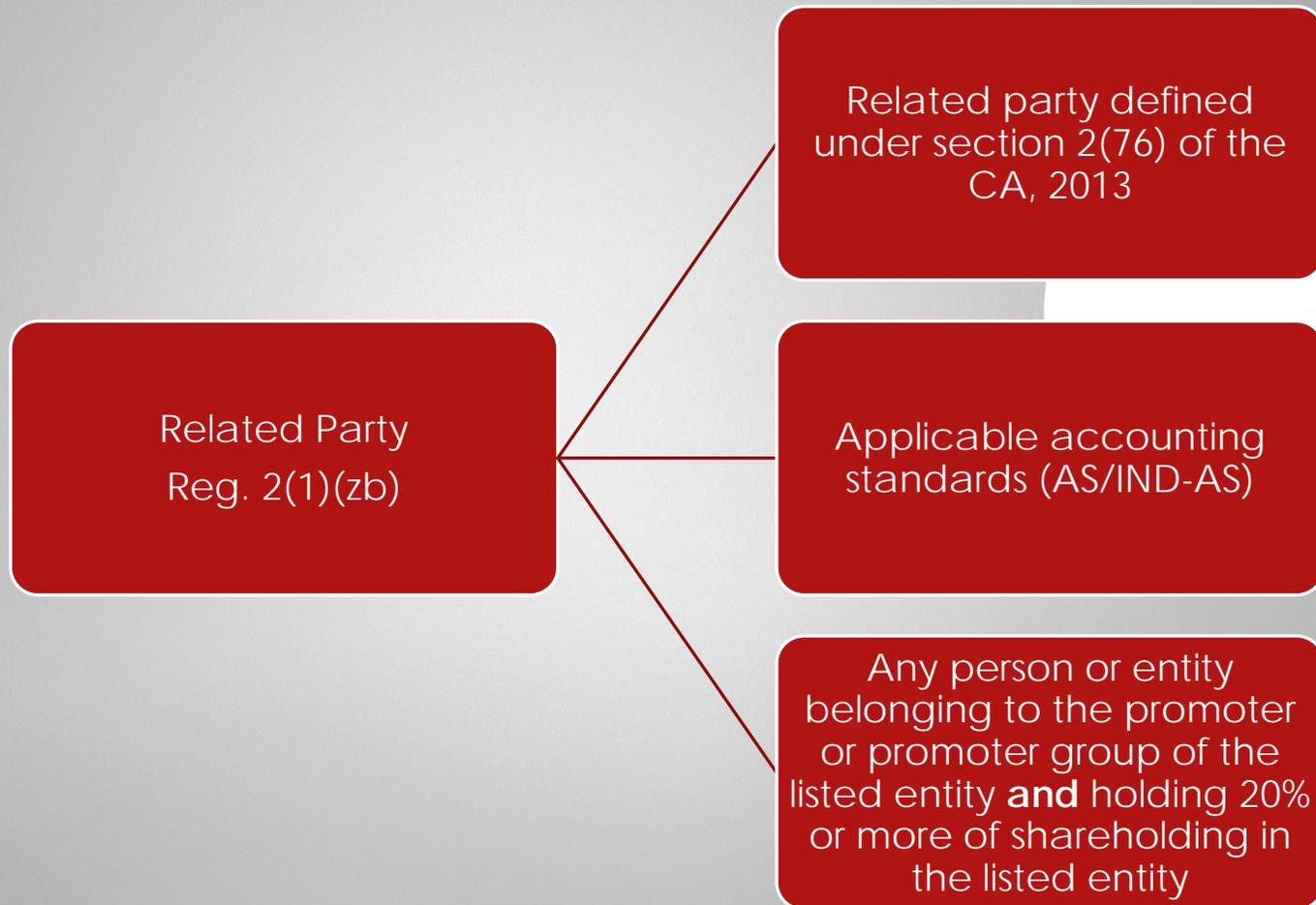
(A) a holding, subsidiary or an associate company;

(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;



# Related Party under SEBI LODR



# Related Party under AS-18

- a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries)
- b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;
- c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;
- d) key management personnel and relatives of such personnel; and
- e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.

# Related Party under IND-AS 24 (1/3)

**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 of the reporting entity; or

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.

# Related Party under IND-AS 24 (2/3)

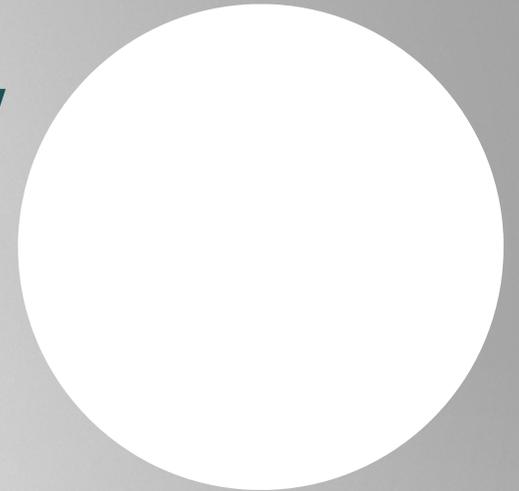
**An entity** is related to a reporting entity if any of the following conditions applies:

- (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
- (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
- (iii) Both entities are joint ventures of the same third party.
- (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
- (v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.

# Related Party under IND-AS 24 (3/3)

- (vi) The entity is controlled or jointly controlled by a person identified in (a).
- (vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).
- (viii) The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

# Related Party Transactions



# RPTs under CA, 2013

## RPTs u/s 188

(Pursuant to section 188 and approval of ACM under section 177)

## Other RPTs

(Pursuant to respective section and approval of ACM under section 177)

# RPTs u/s188 of CA, 2013

Sale, purchase or supply of any goods or materials;

Selling or otherwise disposing of, or buying, property of any kind

Leasing of property of any kind

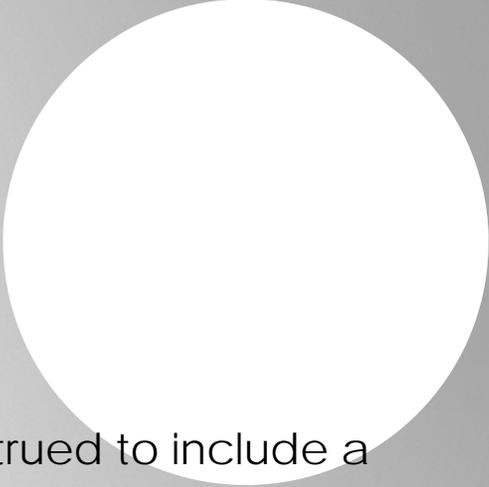
Availing or rendering of any services

Appointment of any agent for purchase or sale of goods, materials, services or property

Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company

Underwriting the subscription of any securities or derivatives thereof, of the company

# RPTs under SEBI LODR



Regulation 2(1)(zc): RPT means

- ▶ A transfer of resources,
- ▶ Services; or
- ▶ obligations
- ▶ between a listed entity and a related party,
- ▶ whether a price is charged or not
- ▶ a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract
- ▶ This definition will not be applicable to units issued by mutual funds which are listed on a recognised stock exchange(s).

# Material RPTs under CA, 2013

**Section 188 read with rule 15 of the Companies (MBP) Rules, 2014:**

A company cannot enter into RPT without the prior approval in the following cases:

Particulars of transaction	Limits
Sale, purchase or supply of any goods or material	10% or more, of the turnover of the company or Rs. 100 crore, whichever is lower
Selling or otherwise disposing of or buying property of any kind	10% or more of net worth of the company or Rs. 100 crore, whichever is lower
Leasing of property any kind	10% or more of the net worth/turnover of company or rupees 100 crore, whichever is lower
Availing or rendering of any services	10% or more of the turnover of the company or rupees 50 crore, whichever is lower
For appointment to any office or place of profit in the company, its subsidiary company or associate company	monthly remuneration exceeding 2.5 lakh rupees
For remuneration for underwriting the subscription of any securities or derivatives thereof	exceeding 1% of the net worth

# Material RPTs under SEBI LODR

A transaction with a related party exceeds 10% of the annual consolidated turnover of the listed entity.

(Previous and proposed transactions during FY)

A transaction involving payments with respect to brand usage /royalty exceed 5% of the annual consolidated turnover of the listed entity.

(Previous and proposed transactions during FY)

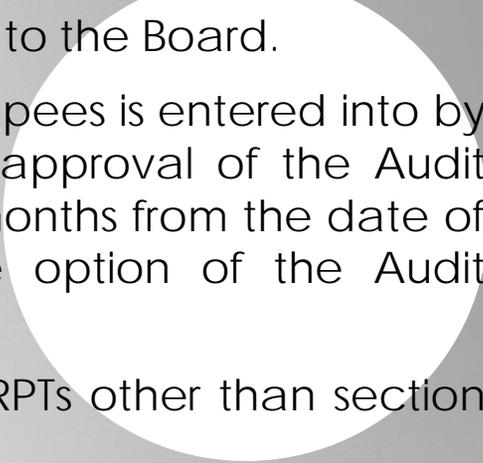
Material  
RPT under  
SEBI LODR  
(Reg. 23)

# Approvals u/s 188 of CA, 2013

- ▶ All RPTs shall require approval of the Audit Committee.
- ▶ Approval of board of directors will be required for every non-material RPT.
- ▶ Approval of board of directors/shareholders shall not be required, in case the transactions are entered in its ordinary course of business and on arm's length basis.
  - ▶ In case the transaction is entered at arm's length but not in ordinary course of business, the board may approve the same based on the recommendation of Audit Committee.
  - ▶ In case the transaction is in its ordinary course of business but not at arm's length, board may approve the same at its discretion. (Since such transactions should not be approved by Audit Committee).
- ▶ Prior approval of shareholders by way of ordinary resolution will be required for every material RPT.
- ▶ No member of the company shall vote on such resolution, to approve any contract or arrangement, if such member is a related party, except 90% or more members, in number, are relatives of promoters or are related parties:
- ▶ Requirement of passing of OR shall not apply for the transaction between holding and WOS.
- ▶ Contract/arrangement earlier not approved shall be ratified by the shareholders within 3 months from the date of entry of such contract/arrangement. Otherwise it will be voidable at the option of shareholders.
- ▶ Compliance w.r.t section 184(2) to be observed in case, RPTs require the approval of the board.

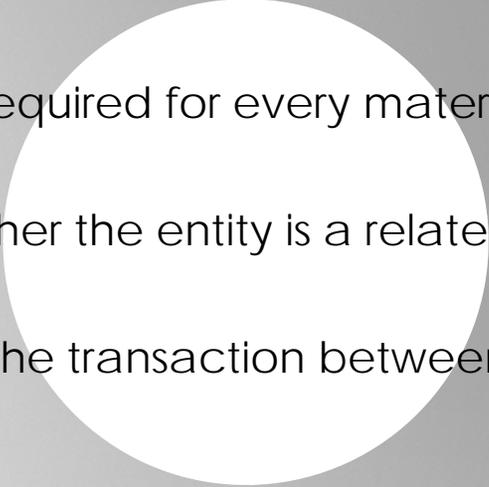
# Approvals u/s 177 of CA, 2013



- ▶ For transactions, other than transactions u/s 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.
  - ▶ Any transaction involving any amount not exceeding 1 crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and not ratified by the Audit Committee within 3 months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee
  - ▶ Approval of Audit Committee will not be required in case of RPTs other than section 188 between holding and WOS.
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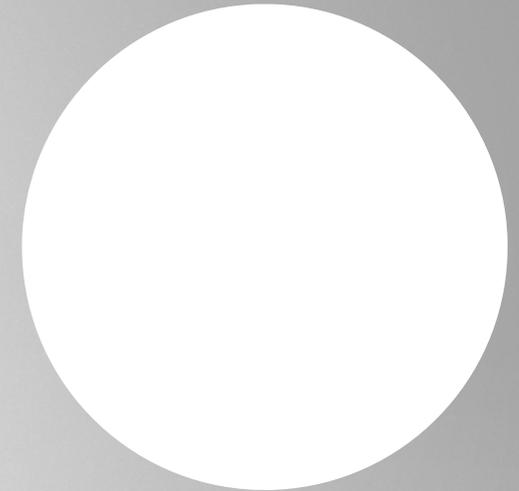
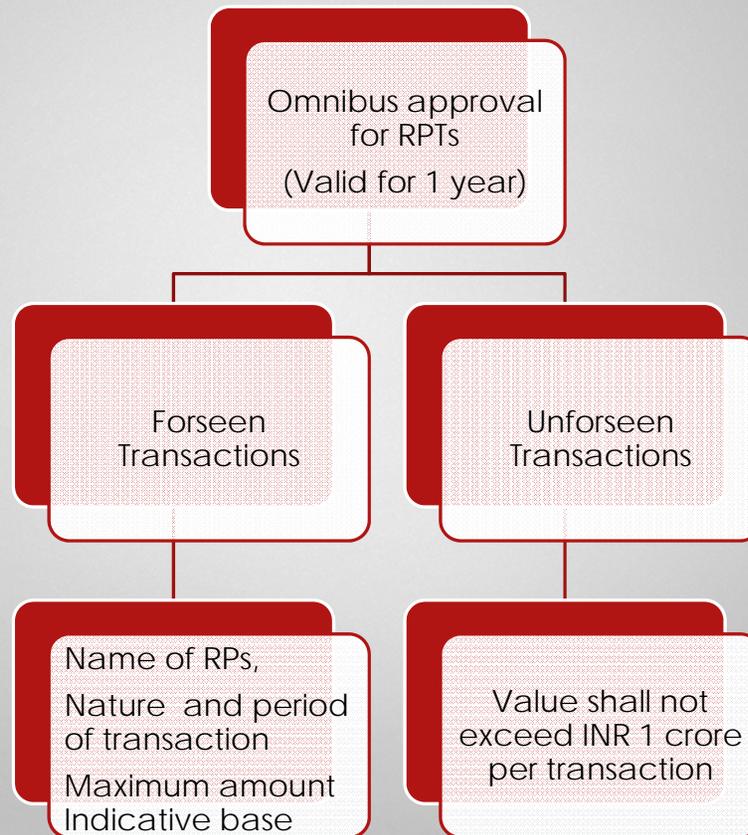
# Approvals under SEBI LODR



- i. All RPTs shall require the prior approval of Audit Committee.
  - ii. Approval of shareholders by way of ordinary resolution will be required for every material RPT.
  - iii. No related party shall **vote to approve** on such resolution, whether the entity is a related party to the particular transaction or not.
  - iv. The requirement of passing of the resolution shall not apply for the transaction between:
    - (a) holding and WOS; and
    - (b) govt. companies.
- 

# Omnibus approval

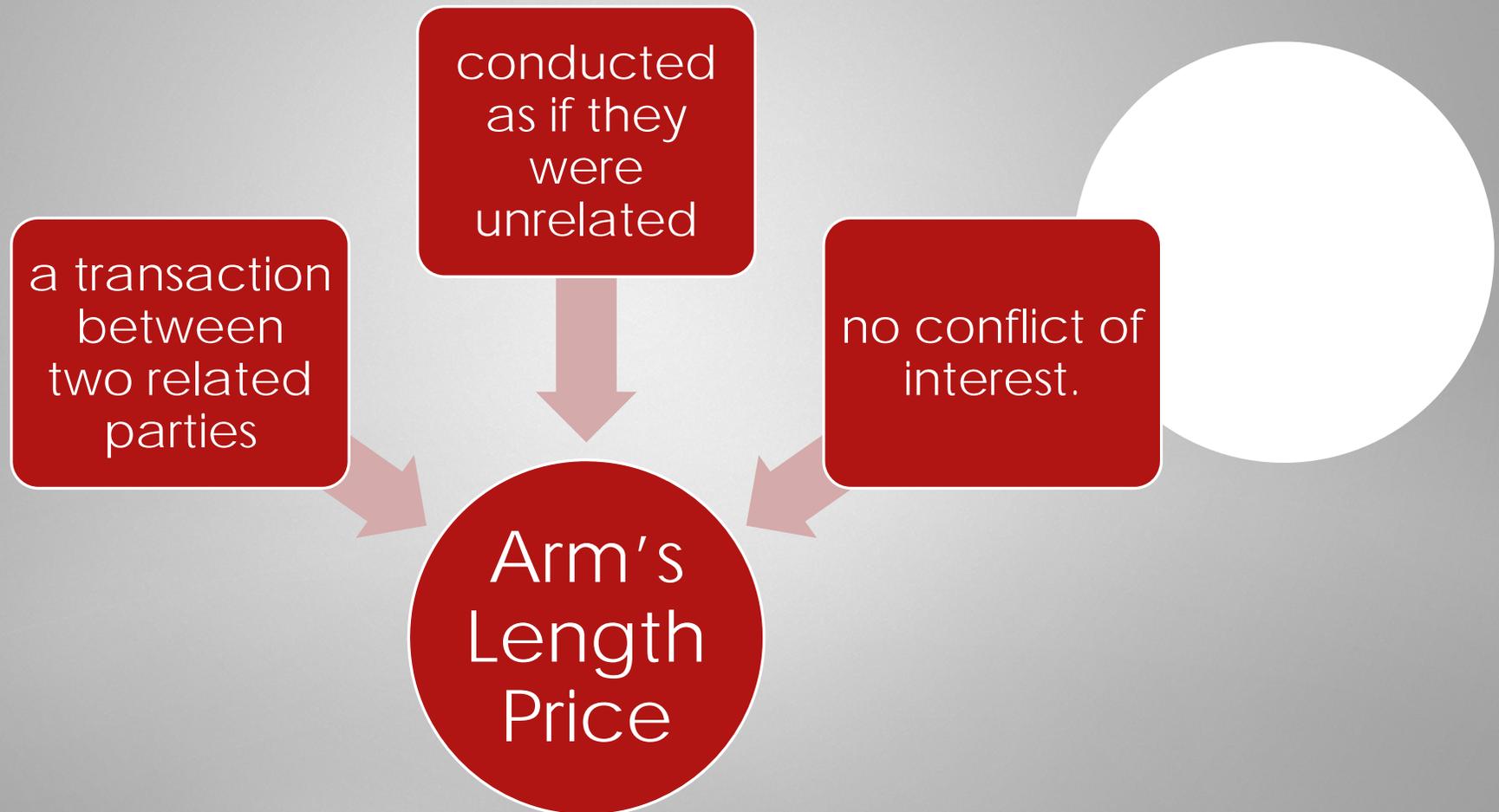
Reg. 6A of Companies (Meetings of Board and its Powers) Rules, 2014 and Reg. 23 of SEBI LODR



# Criteria for granting omnibus approval

- ▶ Maximum value of the transactions allowed under the omnibus route in a year;
- ▶ Maximum value per transaction which can be allowed under the omnibus route;
- ▶ Disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
- ▶ Review of the RPTs entered into by the company pursuant to the omnibus approval made;
  - ▶ Under CA, 2013 no frequency of review has been provided;
  - ▶ Under SEBI LODR, the transaction shall be reviewed quarterly;
- ▶ Transactions which cannot be allowed under omnibus approval e.g transactions in respect of selling or disposing of the undertaking of the company
- ▶ The provisions will not be applicable to the transactions between :
  - ▶ Govt. companies
  - ▶ Holding and its WOS

# Arm's Length Price



# Determination of Arm's Length Price for the RPTs

- ▶ Prices and terms which are offered to unrelated parties of similar category;
- ▶ Pricing is arrived at as per the rule/guidelines that may be issued by or acceptable for the govt. Authorities
- ▶ As per the most appropriate method from the methods as prescribed under Section 92C(1) of the Income Tax Act, 1961 read with Rule 10B of the Income Tax Rules, 1962.
  - ▶ Comparable Uncontrolled Price Method;
  - ▶ Resale Price Method
  - ▶ Cost Plus Method
  - ▶ Profit Split Method
  - ▶ Transaction Net Margin Method
  - ▶ Such other methods as may be prescribed
- ▶ Valuation/opinion by the independent professional

## Ordinary course of business

As per Black's Law Dictionary, "Ordinary course of business" means; normal routine in managing trade or business.

▶ ***M/s Bharti televentures limited vs Addl/jt. Commissioner of Income Tax***

MOA is not conclusive for deciding whether an activity is in the ordinary course of business of the company. Frequency of the activity is sought to be highlighted. It should be a continuous activity carried out in a normal organised manner.

▶ ***Seksaria Biswan Sugar Factory vs Commissioner of Income Tax***

The amount lent by the company to a third party will not be in the ordinary course of business. The Court observed that just because an activity is included in the MOA, the activity does not become an activity in the ordinary course of business of the company.

# Determination of Ordinary course of business



The following factors may be considered:

- ▶ Whether the activity is covered in the objects clause of the MOA;
  - ▶ Whether the activity is in furtherance of the business;
  - ▶ Whether the activity is normal or otherwise routine for the particular business;
  - ▶ Whether the activity is repetitive/frequent;
  - ▶ Whether the income earned from such activity is treated as business income in the company's books of accounts;
  - ▶ Whether the transactions are common in the particular industry
- 

# RPT Policy



## **Reg. 23(1) of SEBI LODR:**

- ▶ The listed entity shall formulate a policy on materiality of RPTs and on dealing with RPTs.
- ▶ The policy shall be reviewed by the board of directors at least once every 3 years.

## **Contents of RPT policy:**

- ▶ Scope of RPTs under the CA, 2013 and SEBI LODR;
- ▶ Identification of related parties and RPTs;
  - ▶ How to ascertain a transaction to be at arm's length;
  - ▶ How to ascertain a transaction to be in ordinary course of business
- ▶ Approval hierarchy;
- ▶ Omnibus approval;
  - ▶ Conditions and criteria for such approval
- ▶ Reporting and dissemination of details of RPTs
- ▶ Review of policy