

Compliance from Boardroom perspective under SEBI LODR

Prepared for session for Birla Precision Technologies Ltd

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- Vinod Kothari and Company, company secretaries, is a firm with over 30 years of vintage
 - Based out of Kolkata, New Delhi, Mumbai and Bengaluru
- We are a team of qualified company secretaries, chartered accountants and lawyers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

About Birla Precision Technologies Ltd (BPTL)

- **Equity listed entity**
 - Listed on BSE
 - Sr. no 1675 as per market cap
 - Provisions applicable to top 2000 will apply
- **Subsidiaries**
 - Birla Precision USA Limited
 - Birla Accucast Private Limited
 - Birla Engineering Private Limited
 - Birla Precision Technologies GmbH
- **S/H pattern as on December 31, 2022**
 - Promoter and promoter group – 59.84%;
 - Public – 40.16%;
 - No holding company;
 - Not a Foreign owned or controlled company.
- **Paid-up capital and Net-worth as on March 31, 2022**
 - Exceeds Rs. 10 cr and Rs. 25 cr. respectively
 - Corporate Governance provisions applicable.

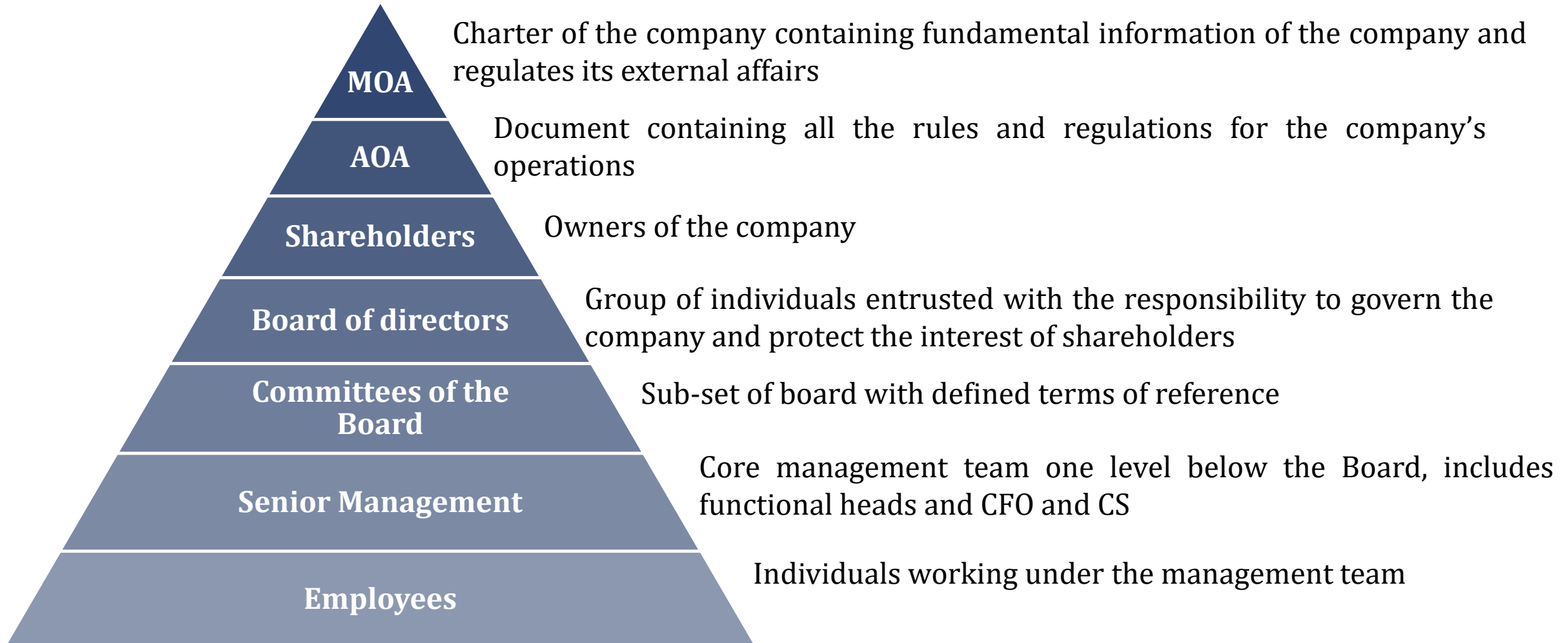


Structure of Corporate Governance

Powers of Board and Shareholders

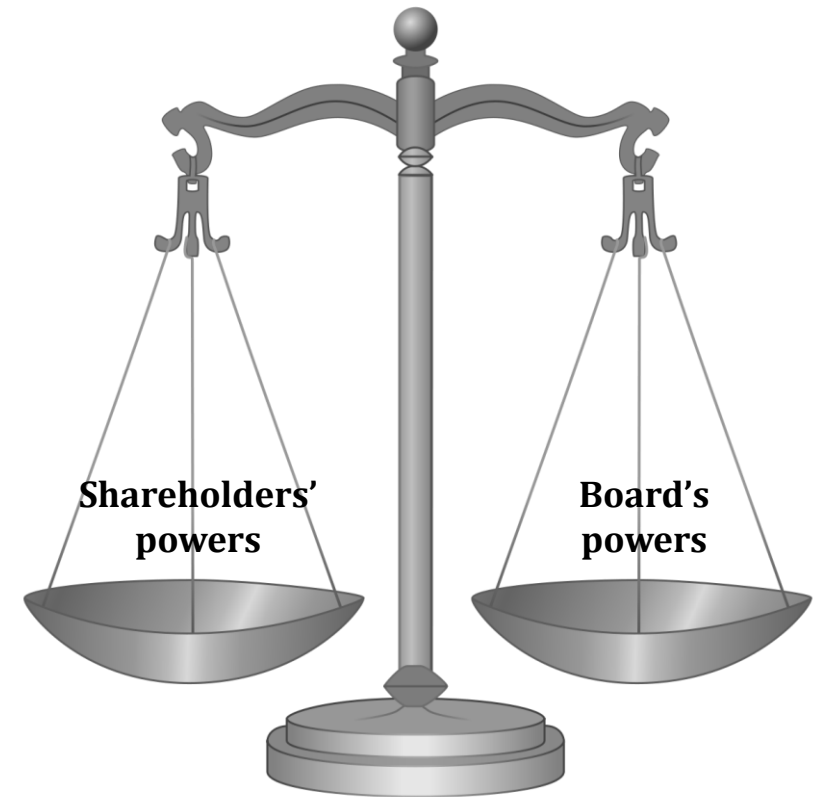


Structure of Corporate Governance



Board and Shareholders – Balance of Powers

- Shareholders derive their powers from the Memorandum of Association.
 - Therefore, the company has all the powers except those that are ultra vires (beyond legal authority)
- The Board has the general power to do everything that the company is empowered to do [section 179(1)]
 - Except for matters where the law requires concurrence of general meeting;
 - Or matters where the shareholders have regulated the conduct of the directors;
 - Or the Articles confine the powers.
- Common situations of Articles confining powers of directors
 - Shareholders' agreement/ Joint venture agreement



Powers of Board that can be exercised in the Board Meeting [sec. 179(3), rule 8 of MBP rules]

- to make calls on shareholders in respect of money unpaid on their shares;
 - to authorise buy-back of securities;
 - to issue securities, including debentures, whether in or outside India;
 - to borrow monies;
 - to invest the funds of the company;
 - to grant loans or give guarantee or provide security in respect of loans;
 - to approve financial statement and the Board's report;
 - to diversify the business of the company;
 - to approve amalgamation, merger or reconstruction;
 - to take over a company or acquire a controlling or substantial stake in another company;
 - to make political contributions;
 - to appoint or remove key managerial personnel;
 - to appoint internal auditors and secretarial auditor.
 - Additional items as per Secretarial Standards -1 (*Refer next slide*)
 - List for listed companies same as Part A of Schedule II to LODR
- } Can be delegated to a committee/MD/manager/principal officer. Delegation by express resolution

Matters to be placed, responsibilities of the Board under LODR

- ❑ **Periodical review of compliance reports**
 - pertaining to all laws applicable to the listed entity, as well as steps taken by the listed entity to rectify instances of non-compliances.
- ❑ **Succession plans for Board and SMPs**
- ❑ **Code of Conduct for Board and SMPs**
 - Incorporating duties of ID under CA, 2013
 - **Actionable**
- ❑ Be informed about risk assessment and minimization procedures.
- ❑ Responsible for framing, implementing and monitoring the risk management plan for the listed entity.
- ❑ Recommendation for each item of special business to be transacted at a general meeting, to be specified in the notice.
- ❑ **Additional Board matters under LODR (Sch. II Part A):**
 - Annual operating plans, capital budgets and any updates;
 - Quarterly results;
 - Minutes of committee meetings;
 - Appointment, remuneration, removal of senior officers ;
 - Materially important SCN, and penalty notices;
 - Fatal or serious accidents;
 - Any material default in financial obligations;
 - Any issue, which involves possible public or product liability;
 - Details of any JV or collaboration agreement;
 - Substantial payment for goodwill, brand equity, or IP;
 - Significant labour problems and their proposed solutions;
 - Sale of investments, subsidiaries, assets which are material;
 - Quarterly details of foreign exchange exposures & mitigating steps;
 - Non-compliance of any regulatory / statutory requirements;
 - Compliance certificate certified by the CEO & CFO under Schedule II Part B.

Powers of Board that can be exercised in the Board Meeting [Additional items under Annexure A of SS-1] – 1/2

■ **General Business Items**

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.

■ **Specific Business Items**

- Approving Remuneration of MD, WTD and Manager.
- Appointment of a person as a Managing Director / Manager in more than one company.
- the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company.
- Sanction for RPTs which are not in the OCB or which are not on arm's length basis.

- Purchase and Sale of material tangible/intangible assets not in the OCB.
- Approve Payment to Director for loss of office.
- Items arising out of separate Meeting of the IDs if so decided by the IDs.

■ **Corporate Action**

- Authorise Buy-Back of securities.

Powers of Board that can be exercised in the Board Meeting [Additional items under Annexure A of SS-1] – 2/2

■ **Additional items for listed companies**

- Approving annual operating plans and budgets.
- Capital budgets and any updates.
- Information on remuneration of Key Managerial Personnel.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
- Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property
- Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.



Board of Directors

Composition, roles, responsibilities and duties

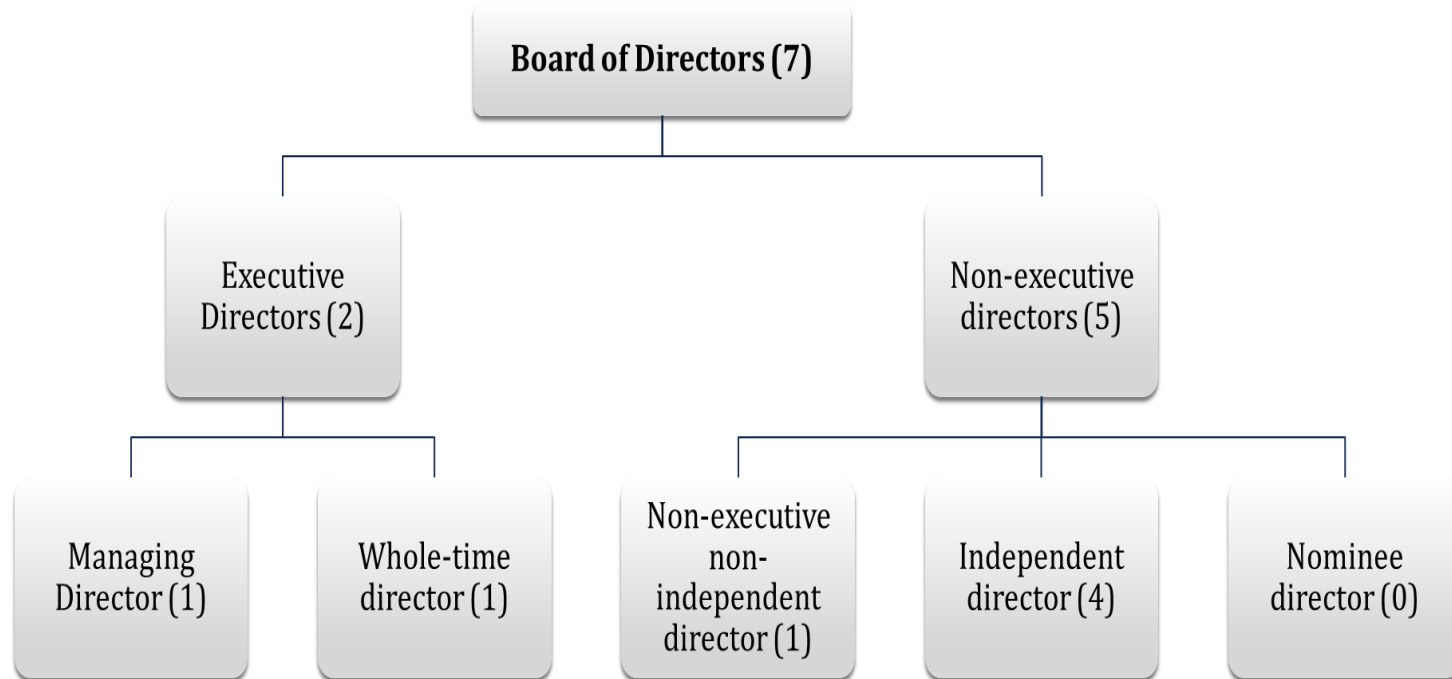




Composition of Board

Minimum requirements, limits, process of appt., disclosure requirements, remuneration related.

Types of Directors in BPTL



Other types of directors

- Additional director
- Alternate director
- Director filling casual vacancy

- **Board Composition as per Reg. 17**
 - Minimum 6 directors;
 - At least one woman director;
 - At least 50% of the board as NEDs;
 - Number of IDs based on office of Chairperson
 - Executive Chairperson – 50% IDs
 - Non-Executive Chairperson, related to promoter – 50% IDs
 - Non-Executive Chairperson, independent – 1/3rd IDs
- Appt./ re-appt. of director,, shareholder approval to be taken in the next AGM or within 3 months of appt. (whichever is earlier).

Criteria for appointment of Directors

- **Age criteria**
 - For MD, WTD – min. age should be 21 years and max. 70 years, beyond which special resolution will be required for his appointment.
 - For NED – max. age should be 75 years, beyond which special resolution will be required for his appointment.
 - For ID – min. age should be 21 years. If more than 75 yrs, SR needed with justification.
- **DIN requirement** - A person proposed to be appointed must have only 1 Director Identification Number (DIN).
- **Background check** - Company should verify if the person is not debarred from holding the office of director pursuant to any legislation. If the person is a KMP in another company, requisite permission of Board has been obtained.
- **Previous rejection** - Company should check if the appointment of the person was earlier rejected by shareholders for appointment as a director, MD or WTD or manager. If he was earlier rejected, his appointment will require prior approval of shareholders.
- **Appointment of ED/ WTD** – Company should check if he fulfils conditions of Para A of Schedule V, otherwise, CG approval will be required.
- **Criteria of independence** - A person proposed to be appointed as ID should fulfil the criteria provided under Companies Act and SEBI LODR and give a declaration that he fulfils such criteria. Board to undertake due assessment to check veracity
- **Maximum number of directorships** – A person should not breach the limits of directorships. Refer next slide.
- **Consent to act as director** – A person shall give his consent to hold office as a director.

Process for appointment of directors

Consent of director

- Proposed candidate to give:
 - Consent to act as director
 - Declaration that he is not disqualified
 - Declaration of independence, in case of ID.

NRC recommendation

- Identify persons who are qualified to become director
- recommend their appointment to the Board after assessing the fit and proper status

In case of IDs, NRC to-

- *carry out gap analysis of skills required on the Board*
- *Prepare description of role of IDs*
- *Seek assistance of external agencies, consider candidates of various backgrounds to identify the candidate.*

Board approval

- Approve appointment of such person as an additional director.

Shareholders' approval

- Within 3 months, shareholders to approve appointment of director by passing OR for fixed tenure or liable to retire by rotation.

SR to be passed when:

- *ID is appointed*
- *NED's age exceeds 75 years*
- *MD's / WTD's exceeds 70 years*
- *Proposed appointee was rejected by shareholders earlier, then detailed justification by Board & NRC*

Other compliances

- Filing DIR-12
- SE intimation
- Entry in the register of directors and KMPs

Disqualifications for appointment of director (S. 164)

■ Personal disqualifications [S. 164(1)]

- unsound mind
- undischarged insolvent;
- Pending adjudication of insolvency
- convicted for offence, involving moral turpitude or otherwise, and sentenced to imprisonment for not less than 6 months, within last 5 years
- if convicted for offence and sentenced to imprisonment 7 years or more, he cannot be appointed as a director in any company;
- Disqualified by court or NCLT
- unpaid calls for 6 months
- Convicted of RPT violation during the last 5 years
- Not having DIN
- Exceeds maximum no. of directorship

■ Corporate disqualifications [S. 164(2)]

- Failure to file financial statements for 3 years at a stretch
- Failure to pay for at least 1 year any of these:
 - Repay deposits or pay interest
 - Redeem debentures or pay interest on the same
 - Pay declared dividend
- The director cannot be re-appointed in that company or appointed in other company for the next 5 years.
- In a person is appointed as a director of a company which has made above defaults, he shall not incur the disqualification for 6 months from the date of his appointment.

Disclosure of interests by Directors (S. 184, Reg. 26)

Disclosure of interest in other entities

- All directors to disclose his concern or interest in any company(ies), bodies corporate (including shareholding interest), firms or other association of individuals, in Form MBP-1
 - at the first meeting of the Board in which he participates as a director;
 - at the first meeting of the Board in every financial year;
 - whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

Disclosure of interest in any contract/ arrangement

- If any director is in any way, directly/ indirectly, concerned or interested in a contract/ arrangement entered into/ proposed to be entered into —
 - with a **body corporate** in which such director or with other directors, holds > 2% shares, or is a promoter, manager, CEO; or
 - with a **firm or other entity** in which, such director is a partner, owner or member, as the case may be.
- Such director to first, disclose the his concern or interest at the Board meeting in which the contract/ arrangement is discussed and then participate in such meeting.
- If the contract/ arrangement is entered into without such disclosure, it will be voidable at the option of the company.

Disclosure of disqualification

- In form DIR-8, at the time of appointment / re-appointment.
- In case disqualified, Company to inform Registrar in Form DIR-9.

Chairperson or membership

- Details of committee positions he or she occupies in other listed entities; and
- notify changes as and when they take place

Vacation of office of director (S. 167)

Reasons for vacation of office

- **Disqualifications under section 164**
 - In case of corporate disqualification, the office shall become vacant in all companies, other than the company which has made the default
- Absent in all board meetings held in 12 months with or without seeking leave of absence
- **Violates section 184** relating to entering into contracts or arrangements in which he is interested
- Failure to disclose interest in contract or arrangement in which he is interested
- Disqualified by court or NCLT
- Convicted of offence, whether involving moral turpitude or otherwise and imprisoned for at least 6 months
- Removed under section 169
- Appointed by virtue of holding any office or employment in the holding, subsidiary or associate company, ceases to hold such office or employment in that company.
- In case disqualified by court or Tribunal; or convicted for offence and imprisoned for 6 months
 - office shall not be vacated for 30 days from the date of conviction
 - where an appeal is filed within 30 days, until expiry of 7 days from the date on which appeal is disposed of; o
 - where further appeal is filed within seven days, until such further appeal or petition is disposed of.
- If a person, functions as a director even when he knows his office has become vacant, he shall be punishable with fine of not less than Rs. 1 lakh but which may extend to Rs. 5 lakh.
- Where all the directors vacate their offices, the promoter or, in his absence, the CG shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

Maximum number of Directorships, Committee membership etc. (S. 165 & reg. 17A and 26)

Particulars	Maximum no. of directorship
In all companies (excluding dormant companies)	20
Public companies for directorships (including private companies that are either holding company or subsidiary company of a public company)	10
Equity listed entities	7
Independent directorships in equity listed entities	7
Independent directorship in equity listed companies in case such person is a MD/ WTD of an equity listed entity.	3
Managing Director position in companies	2
Chairperson of committees viz. Audit and Stakeholders' Relationship Committee*	5
Membership in committees viz. Audit and Stakeholders' Relationship Committee*	10

Public limited companies, whether listed or not, shall be included. All other companies including private limited companies, foreign companies, high value debt listed entities', and Section 8 companies shall be excluded;

Obligations with respect to Independent Directors (reg. 25)

Same as in CA, 2013:

- Tenure of ID (i.e. two terms of upto 5 consecutive years).
- ID of a listed entity cannot have an alternate director.
- At least 1 meeting of ID in a FY, without the presence of non-IDs and members of the management to review the performance of non-IDs, Board and the chairperson and to assess the flow of information.
- Liability of ID is limited to such acts by the entity which had occurred:
 - with his knowledge, attributable through processes of Board, and
 - with his consent or connivance or
 - where he had not acted diligently w.r.t LODR the provisions contained in these regulations

Appointment of ID

- The appointment / re-appointment / removal of an ID shall be subject to a special resolution.
 - In case no SR, but ordinary majority of public shareholders recd
 - Appt. will be valid. Removal to be done in similar manner.

Declaration of Independence

- ID shall be required to give declaration in line with LODR as the same seems broader than the requirements under CA, 2013.
- Further, LODR mandates Board to assess veracity of the same.

D&O Insurance shall to be obtained for all IDs by top 1000 LE (CA, 2013 required such disclosure in letter of appointment)

Vacancy due to Resignation/ removal

- ID who resigns or is removed shall be replaced by a ID at the earliest but not later than 3 months from the date of vacancy
- LEs shall not be required to fill the vacancy of ID if requirement of IDs in the Board is fulfilled without filling the vacancy.

Familiarization program for IDs

LE shall familiarise its ID through various programmes about LE, which shall provide for

- (a) nature of the industry in which the LE operates;
- (b) business model of the LE;
- (c) roles, rights, responsibilities of IDs; and
- (d) any other relevant information.

Restriction on appointment of ID as WTD/ED

In case an ID has resigned from a LE, he/she shall not be appointed as an executive / WTD on the board of the LE, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an ID.

Remuneration to Directors – limits and nature of approval [reg. 17(6)]

NRC to recommend to the board, all remuneration, in whatever form, payable to the directors.



Board to recommend remuneration, payable to the directors, to the shareholders for approval



Shareholders to approve the remuneration payable to directors [S. 197 (4) & Reg 17 (6) of LODR].

Payment of remuneration to EDs:

- The fees or compensation payable to EDs who are promoters/ promoter group, will require special resolution, if-
 - the annual remuneration payable to such ED exceeds Rs. 5 crore or 2.5% of the net profits of the Company, whichever is higher; or
 - where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5% of the net profits of the Company.
 - The approval shall be valid only till the expiry of the term of such director.

Payment of remuneration to NEDs:

- NEDs entitled to receive sitting fees, commission and reimbursement for attending meetings.
- Shareholders' approval required for payment of remuneration
 - not required in case of payment of sitting fees to directors as per limits under the Act.
 - Upto Rs. 1 lakh for meeting of Board or committee.
 - Shareholders' approval to specify the limits for maximum stock options that may be granted to NEDs in any financial year and in aggregate.
 - IDs are not entitled to any stock option.
- Special resolution required to be obtained every year, in which the annual remuneration payable to a single NED exceeds 50% of total annual remuneration payable to all NEDs, giving details of the remuneration thereof.



Duties & Obligations of Directors



Duties of the Board under Companies Act (S. 166)

- To act in accordance with the Articles of Association of the company;
- To act in good faith in order to promote the objects of the company for the benefit of its members;
- To act in the best interests of the company, its employees, shareholders, community and for the protection of environment;
- To exercise duties with due and reasonable care, skill and diligence and exercise independent judgment;
- Not to involve in a situation in which he may have a direct/ indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- Not to achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;
- Not to assign his office and any assignment so made shall be void.

Duties of Independent Directors under Companies Act (Sch. IV)

- To undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- To seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- To strive to attend all BMs, committee meetings and GM;
- To participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- To ensure that concerns regarding running or proposed action are sufficiently resolved and to the extent not resolved, are recorded in minutes of BM;
- To keep themselves well informed about the company and the external environment in which it operates;
- Not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- **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;**
- **To ascertain and ensure that the company has an adequate and functional vigil mechanism;**
- To report concerns about unethical behaviour, suspected fraud or violation of company's code of conduct or ethics policy
- To act within their authority and assist in protecting the legitimate interests of the company, shareholders and its employees;
- Not to disclose confidential information, unpublished price sensitive information unless approved by the Board.

Key functions of the Board under SEBI LODR (reg. 4)

- **Review** and guide corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments;
- **Monitor** the effectiveness of the company's governance practices and making changes as needed;
- **Select**, compensate, monitor and, when necessary, replace key managerial personnel and oversee succession planning;
- **Align** key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders;
- **Ensure a transparent nomination process** to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors;
- **Monitor and manage potential conflicts of interest** of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions;
- **Ensure the integrity of the company's accounting and financial reporting systems**, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
- **Oversee** the process of disclosure and communications;
- **Monitor and review** board of director's evaluation framework.

Other responsibilities of the Board under SEBI LODR (Reg. 4)

- Provide strategic guidance to the company, ensure effective monitoring of the management and be accountable to the company and the shareholders;
- Set a corporate culture and the values by which executives throughout a group shall behave;
- Act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders;
- Encourage continuing directors training to ensure that they are kept up to date;
- Treat all shareholders fairly where decisions of the board may affect different shareholder groups differently;
- Maintain high ethical standards and take into account the interests of stakeholders;
- Exercise objective independent judgement on corporate affairs;
- **Consider assigning a sufficient number of non-executive members of the board capable of exercising independent judgement to tasks where there is a potential for conflict of interest;**
- Ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the company to excessive risk;
- **Have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the company's focus;**
- When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors;
- Commit themselves effectively to their responsibilities;
- In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information;
- The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors

Statutory points for Board meetings [Section 173 & Reg. 17 (2A)]

Number of board meetings

- Atleast 4 times in a year.
- Maximum time gap between 2 meetings shall be 120 days.

Quorum of board meeting

- 3 directors or 1/3rd of total directors, whichever is higher.
- Participation of directors by OAVM shall be counted.
- Atleast 1 ID.

Authority

- Any director may call for a meeting and the CS shall convene the meeting in consultation with the Chairperson/ MD/ WTD.

Day, time, place, mode and serial number of board meeting

- Every meeting shall have serial number.
- Meeting may be convened at any time and place, on any day.



Committees of Board under LODR

Composition, roles and responsibilities



Statutory committees



Audit Committee (Reg. 18)

Composition

- Minimum 3 directors.
- At least 2/3rd shall be IDs.
- All members shall be financially literate & at least 1 member shall have accounting/ financial expertise.

Chairperson

- Chairperson shall be an ID.
- Shall be present at AGM to answer shareholder queries.

Number of meetings

- At least 4 times in a year.
- Not more than 120 days shall elapse between 2 meetings.

Quorum of meeting

- 2 members or 1/3rd of members, whichever is greater.
- At least 2 IDs shall be present.

Powers

- investigate any activity within its terms of reference,
- seek information from any employee,
- obtain outside legal or other professional advice,
- secure attendance of outsiders with relevant expertise, if it considers necessary.

Role of the Audit Committee (1/2) (Sch. II, Part C)

■ Financial statements

- To oversee company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
- To review, with the management, quarterly financial results before submission to the Board for approval;
- To review, with the management, the annual financial statements and the auditors' report thereon before submission to the Board for approval, focussing primarily on:
 - Matters required to be included in the Directors' Responsibility Statement forming part of the Board's Report.
 - Changes, if any, in accounting policies and practices and reasons for the same.
 - Major accounting entries involving estimates based on exercise of judgement by the management.
 - Significant adjustments made in the financial statement arising out of audit findings.
 - compliance with listing and other legal requirements relating to financial statements.
 - Disclosure of any RPT.
 - Modified opinion(s) in the draft audit report.

■ Internal controls

- To review with the management, statutory and internal auditors, the adequacy of the internal control systems.
- To review internal audit reports relating to internal control weaknesses and management's response to the reports;
- To review the findings and management's response to any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board.

■ Internal Audit

- To review with management the adequacy of internal audit function, structure of the internal audit department; staffing and seniority of the official heading the department and reporting structure.
- To review with management the audit plan its coverage and frequency of internal audit.
- To review the appointment, removal and terms of remuneration of the Chief Internal Auditor.
- To discuss with internal auditors any significant findings, management's response on these, and follow up there on.
- To evaluate the performance of the internal auditors.

Role of the Audit Committee (2/2) (Sch. II, Part C)

■ **Statutory Audit**

- Before commencement of audit, discuss with the statutory auditors regarding the nature, scope of the audit and post audit discussion to ascertain any area of concern.
- Review the letters of internal control weaknesses, management letters.
- Review and monitor the independence, performance of the effectiveness of the audit process.
- Recommend to the Board the appointment, remuneration and terms of appointment of auditors.
- Approve payment to statutory auditors for any other services rendered by the statutory auditors.

■ **Related Party Transactions**

- To approve all transactions or any modification with related parties.
- To consider granting omnibus approval for RPTs proposed to be entered into by the Company in accordance the RPT Policy.

■ **Vigil Mechanism**

- Review with management the functioning of the whistle blower mechanism.
- Ensure that mechanism provides safeguards against victimisation of complainant who avail mechanism and also provide for direct access to the Chairperson of the Committee in exceptional cases.

■ **Other responsibilities**

- Scrutinise the inter-corporate loans and investments.
- Review the valuation of undertakings or assets of the Company, wherever it is necessary.
- Look into the reasons for substantial defaults in payment to depositors, debenture holders, shareholders in case of non-payment of declared dividends and creditors.
- Approve appointment of Chief Financial Officer after assessing the qualification, experience, background, etc. of the candidate.
- Review , with Management, the statement of uses of funds raised through an issue, the statement of funds utilized for purposes other than those stated in the offer document and the report submitted by monitoring agency, and making appropriate recommendations to the Board to take up steps in this matter.
- Review the 'Management Discussion and Analysis of Financial Condition and Results of Operations'.
- Consider and comment on rationale, cost-benefits and impact of schemes involving merger, demerger, amalgamation, acquisition, etc., on the Company and its shareholders.
- Ensure that an Information System Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the Company.

Nomination and Remuneration Committee ('NRC') (Reg. 19)

Composition

- Minimum 3 directors.
- All directors shall be NEDs.
- At least 2/3rd shall be IDs.

Chairperson

- Chairperson shall be an ID.
- Chairperson of the Company can be a member of NRC but cannot chair it.
- Shall be present at AGM to answer shareholder queries.

Number of meetings

- At least once in a year.

Quorum of meeting

- 2 members or 1/3rd of members, whichever is greater.
- At least 1 ID shall be present.

Role of the NRC (Sch. II, Part D, Para A)

- Formulate the criteria for determining qualifications, positive attributes and independence of a director;
- Recommend to the board, a policy relating to, the remuneration of the directors, key managerial personnel and other employees;
- Formulate the criteria for evaluation of performance of independent directors and the board of directors;
- Devise a policy on diversity of board of directors;
- Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
- Recommend to the board, all remuneration, in whatever form, payable to senior management.
- For every appointment of an independent director, the NRC shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:
 - use the services of an external agencies, if required;
 - consider candidates from a wide range of backgrounds, having due regard to diversity; and
 - consider the time commitments of the candidates.
- Whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Stakeholders Relationship Committee ('SRC') (Reg. 20)

Composition

- Minimum 3 directors.
- At least 1 shall be ID.

Chairperson

- Chairperson shall be a NED.
- Shall be present at AGM to answer security holders' queries.

Number of meetings

- At least once in a year.

Role of the SRC (Sch. II, Part D, Para B)

- Resolve the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.
- Review of measures taken for effective exercise of voting rights by shareholders.
- Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.
- Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

Risk Management Committee (Reg. 21)

Composition

- Minimum 3 members.
- Majority shall be members of the Board, including CEO/ MD.
- At least 1 shall be IDs.
- Senior executives/ head of various verticals may be members of the committee.

Chairperson

- Chairperson shall be member of the Board.

Number of meetings

- At least twice in a year.
- Not more than 180 days shall elapse between 2 meetings.

Quorum of meeting

- 2 members or 1/3rd of members, whichever is greater.
- At least 1 member of the Board shall be present.

Powers

- seek information from any employee,
- obtain outside legal or other professional advice,
- secure attendance of outsiders with relevant expertise, if it considers necessary

Role of Risk Management Committee (Sch. II, Part D, Para C)

- To formulate a detailed risk management policy which shall include:
 - A framework for identification of internal and external risks specifically faced by the listed entity, in particular including financial, operational, sectoral, sustainability (particularly, ESG related risks), information, cyber security risks or any other risk as may be determined by the Committee.
 - Measures for risk mitigation including systems and processes for internal control of identified risks
 - Business continuity plan.
- To ensure that appropriate methodology, processes and systems are in place to monitor and evaluate risks associated with the business of the Company;
- To monitor and oversee implementation of the risk management policy, including evaluating the adequacy of risk management systems;
- To periodically review the risk management policy, at least once in two years, including by considering the changing industry dynamics and evolving complexity;
- To keep the board of directors informed about the nature and content of its discussions, recommendations and actions to be taken;
- The appointment, removal and terms of remuneration of the Chief Risk Officer (if any) shall be subject to review by the Risk Management Committee.

Corporate Social Responsibility Committee (S. 135)

Composition

- 3 or more directors.
- At least 1 shall be ID.

Chairperson

- Chairperson shall be member of the Board.

Number of meetings

- At least once in a year.

Quorum of meeting

- 2 members or $1/3^{\text{rd}}$ of members, whichever is greater.

Role of Corporate Social Responsibility Committee (S. 135)

- formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the Company in areas or subject, specified in Schedule VII;
- recommend the amount of expenditure to be incurred on the activities referred above;
- monitor the CSR Policy of the company from time to time.
- formulate and recommend to the Board, an annual action plan in pursuance of CSR policy, which shall include the following, namely:-
 - the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
 - the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
 - the modalities of utilisation of funds and implementation schedules for the projects or programmes;
 - monitoring and reporting mechanism for the projects or programmes; and
 - details of need and impact assessment, if any, for the projects undertaken by the company.



Framework for Related Party Transactions



Group level governance of RPTs

- RPT controls are key part of corporate governance
- Depending on the size/significance of subsidiaries, it is important for the board/audit committee of every holding company to ensure RPT controls at subsidiary level
 - Failure to ensure RPT control at subsidiary level may lead to dilution of control at holding entity level
- Interconnectivity of entities in a group
 - Uday Kotak Committee Report
 - emphasised on setting up of group governance unit/governance committee or a group governance policy.
 - the decision of setting up of such a unit/committee and having such a group governance policy may be left to the board of the listed entity
 - SEBI was to issue guidance for listed entities having multiple unlisted subsidiaries.
 - SEBI Circular of May 10, 2018
 - Where a listed entity has large number of unlisted subsidiaries
 - Board of a listed entity to take a considered call on whether to form a group governance unit/committee or have a policy.
- Board oversight by parent entity through policies
 - may be particularly needed in case of RPTs

Definition of RP

1. Under Companies Act, 2013 (CA)

- Director or KMP or his relative
- Firm, in which a director, manager or his relative is a partner;
- Private company in which a director or manager or his relative is a member or director;
- 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 BOD, MD or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - NA if advice given in professional capacity
- Any person on whose advice, directions or instructions a director or manager is accustomed to act.
 - NA if advice given in professional capacity
- Any body corporate which is;
 - a holding, subsidiary or an associate company of such company;
 - a subsidiary of a holding company to which it is also a subsidiary; or
 - an investing company or the venturer of the company

2. Under LODR Regulations

- Related Party” means:
 - as defined under section 2(76) of CA;
 - Applicable Accounting Standard (AS)
- Deemed RP
 - Any person/ entity belonging to promoter/ promoter group
 - irrespective of their shareholding
 - Any person/ entity
 - holding equity shareholding
 - 20% or more [w.e.f April 1, 2022]
 - 10% or more [w.e.f April 1, 2023]
 - Either directly, OR
 - Beneficial interest basis as under section 89 of CA, 2013
 - At any time during the immediate preceding FY

Definition of RP

3. Under Ind AS 24

- Persons [Para 9(a)]
 - A person or a close family member is related if he:
 - Has control/joint control [Para 9(a)(i)]
 - Has significant influence [Para 9(a)(ii)]
 - Is a member of the key managerial personnel (KMP) [Para 9(a)(iii)];
 - of the reporting entity or its parent.
- Close members of a family of a person [Para 9(a)]
 - are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity including:
 - That person's children, spouse or domestic partner, brother, sister, father and mother [Clause (a) of the definition];
 - Children of that person's spouse or domestic partner [Clause (b) of the definition]; and
 - Dependants of that person or that person's spouse or domestic partner [Clause (c) of the definition];.
- KMPs are those person having authority and responsibility for
 - planning, directing and controlling the activities of the entity,
 - directly or indirectly, including any director (whether executive or otherwise) of that entity [Definition under Para 9]
- Entity [Para 9(b)]
 - An entity is related to a reporting entity if any of the below conditions are met:
 - Parent, subsidiaries and fellow subsidiaries [Para 9(b)(i)]
 - One entity is JV or an associate of the other entity [Para 9(b)(ii)];
 - One entity is associate/ JV of a member of the same group of the other entity [Para 9(b)(ii)];
 - Both entities are JV of the same third party [Para 9(b)(iii)]
 - One entity is a JV of a third party and the other entity is an associate of the third entity [Para 9(b)(iv)];
 - The entity is a post-employment benefit plan for the employees [Para 9(b)(v)]
 - of the reporting entity or
 - of an entity related thereto
 - The entity is controlled or jointly controlled by the natural person who is a related party [Para 9(b)(vi);
 - A person having control or joint control of the reporting entity has significant influence over the entity or is the member of the KMP of the entity or of the parent [Para 9(b)(vii)];
 - The entity or any member of its group providing KMP services to the reporting entity or to the parent of the reporting entity [Para 9(b)(viii)]

Definition of RP

4. Under AS-18

- Enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise including holding companies, subsidiaries and fellow subsidiaries;
- Associates and joint ventures;
- Company to which the reporting enterprise is an associate or a joint venture;
- 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;
- KMP and relatives of such personnel; and
- Enterprises over which any person described in (c) or (d) (*immediately preceding two bullets above*) is able to exercise significant influence - 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.

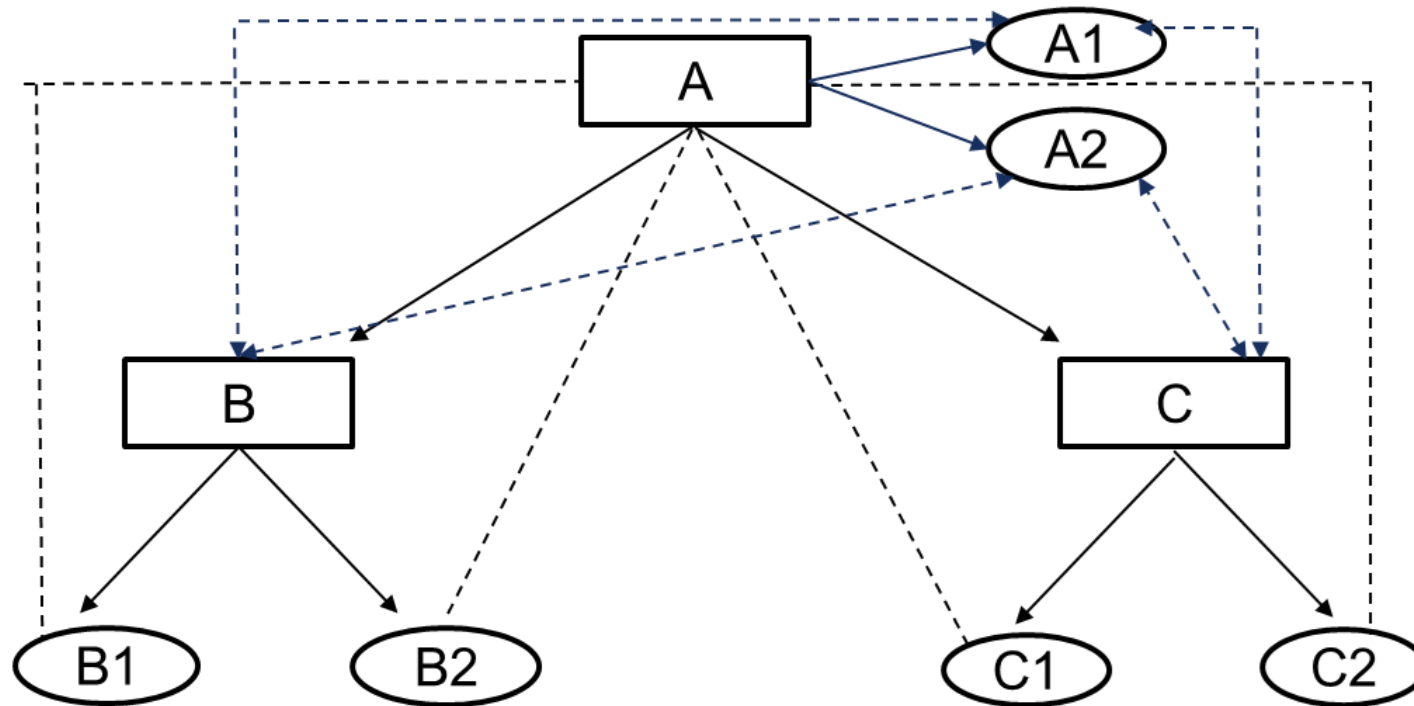
Interpretation of 'RP' for subsidiaries

- Basis of determination of scope of 'RP' for subsidiaries
 - As per law applicable to listed parent; OR
 - As per law applicable to the subsidiary?
- Equity listed to which reg. 15 and 23 of LODR is applicable:
 - LODR Regs = Promoter/promoter group + substantial shareholders + Companies Act + Applicable AS
 - How to determine applicable AS?
 - As applicable to the entity?
 - As applicable to the consolidating entity?
- Equity listed to which reg. 15 and 23 of LODR is not applicable (i.e. SME, Co. with PUE<10Cr & NW<25Cr ,):
 - CA
- Debt listed entities which are HVDLE:
 - LODR Regs = Promoter/promoter group + substantial shareholders + Companies Act + Applicable AS
 - comply/explain till March 31, 2023
- Debt listed entities which not are HVDLE:
 - CA
- Unlisted Company
 - CA
- Foreign companies
 - As per laws of the host country
- LLPs
 - no specific definition under LLP Act
 - Partners?

Definition of RPT

- No definition under CA.
 - Sec. 188 lists down certain types of RPTs;
 - financial transactions are not covered.
 - Framework for approval of RPTs u/s 177 and 188
- RPT under LODR Regulations means –
 - A transaction involving
 - transfer of resources, services or obligations between
 - a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or
 - a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand,
 - the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, [w.e.f. April 1, 2023]
 - regardless of whether a price is charged; and
 - a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract

Erstwhile definition of RPT



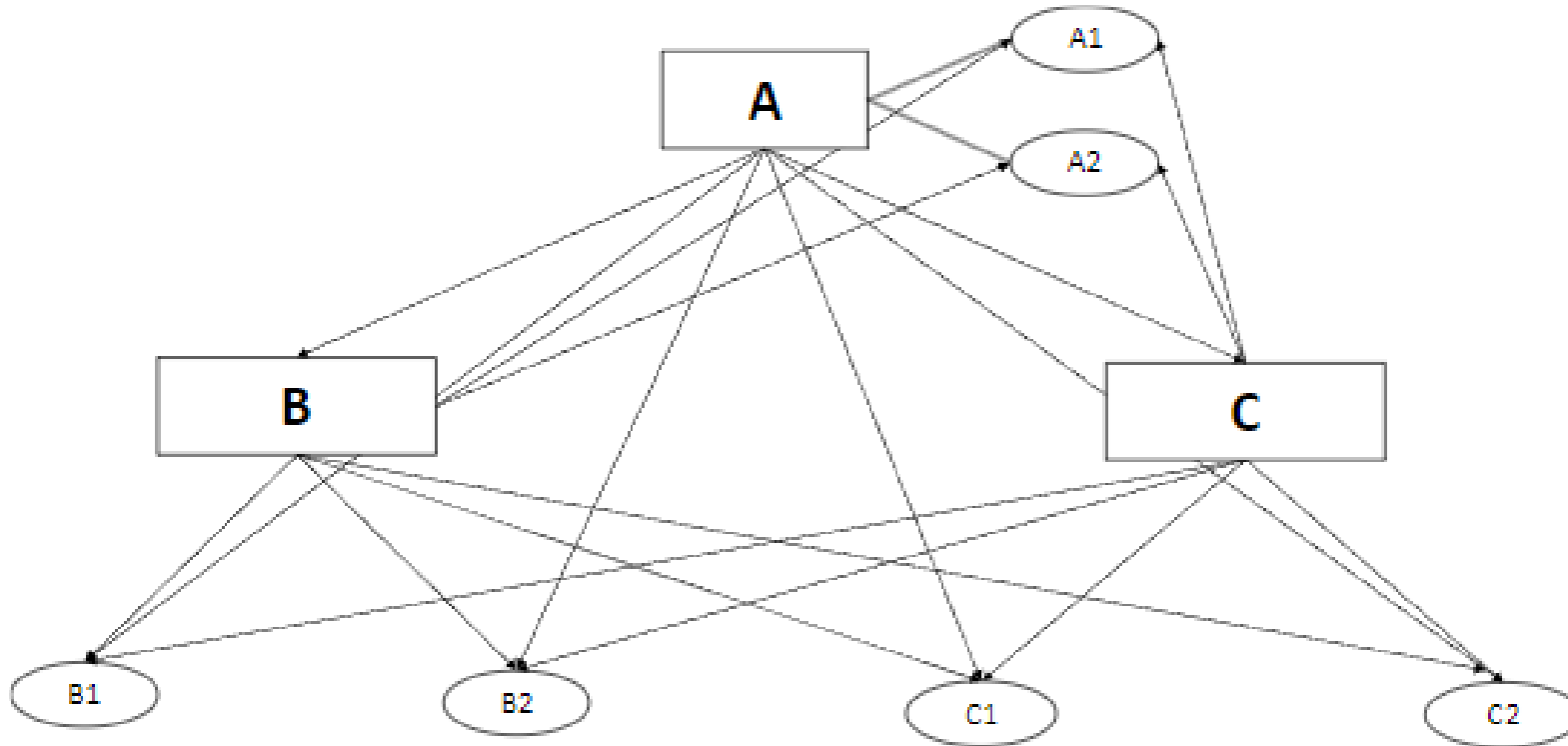
A is a listed entity;
B and C are its
subsidiaries.

A1/A2, B1/B2 and
C1/C2 are related
parties of A, B and
C respectively.

—————→ RPT
- - - - - not a RPT

Source: [Annexure II of SEBI Meeting file](#)

Amended definition of RPT



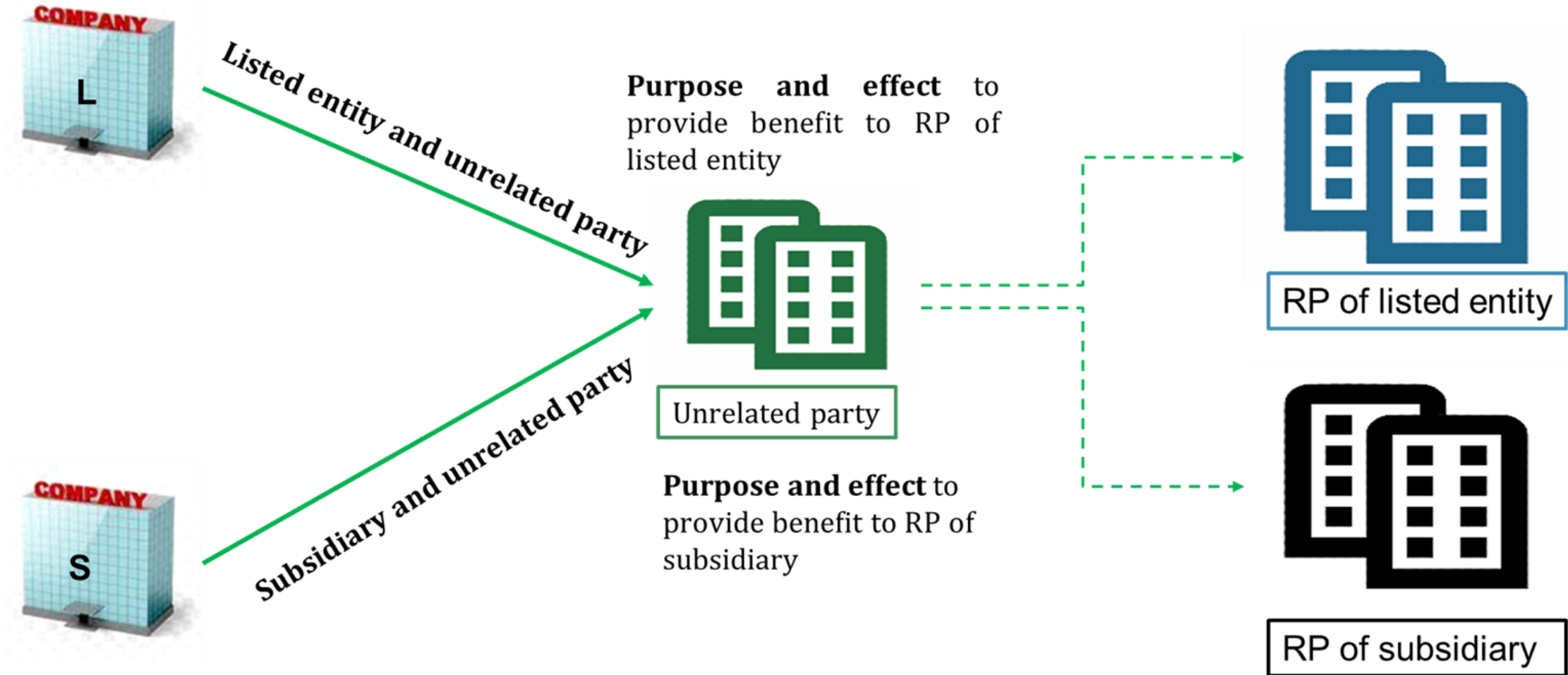
—————> RPT

A is a listed entity; B and C are its subsidiaries. A1/A2, B1/B2 and C1/C2 are related parties of A, B and C respectively.

Representation excludes second part of the recommendations which refer to transactions with unrelated parties, the *purpose and effect* of which is, to benefit related parties of the listed entity.

Source: [Annexure II of SEBI Meeting file](#)

Amended Definition of RPTs wef 1st April ,2023



Decoding the phrase “Purpose and Effect” (P&E)

Purpose

- never documented or explicit
- may be evident by examining the commercial justification of a transaction
 - If the transaction did not have a commercial justification, sans the benefit to the RP, the purpose becomes clear
- determination remains subjective and investigative/ forensic.

Effect

- is likely to be explicit.
- may be evident by examining the presence of purpose
 - If the transaction did not have a purpose to benefit, however, effect is visible, the same may not be counted
- determination remains subject to establishment of purpose.

The words have been used cumulatively, with a conjunctive, hence both the purpose and effect have to be directed to the RP.

Purpose	Effect
✓	✓
✓	✗
✗	✓
✗	✗

Relevance of Subsidiaries in RPT compliances on listed entities

- Transactions possible
 - RPTs of parent listed entity with the RPs of subsidiaries
 - RPTs of subsidiaries with its own RPs
 - RPTs of subsidiaries with RPs of parent listed entity
 - RPTs of subsidiaries with RPs of other subsidiaries
- Controls required
 - Determination of RPs
 - Approval mechanism:
 - approval by the transacting entity
 - approval by the audit committee of the holding entity
 - approval by the shareholders of the holding entity
 - Information flow from subsidiaries to holding entity
 - Policy

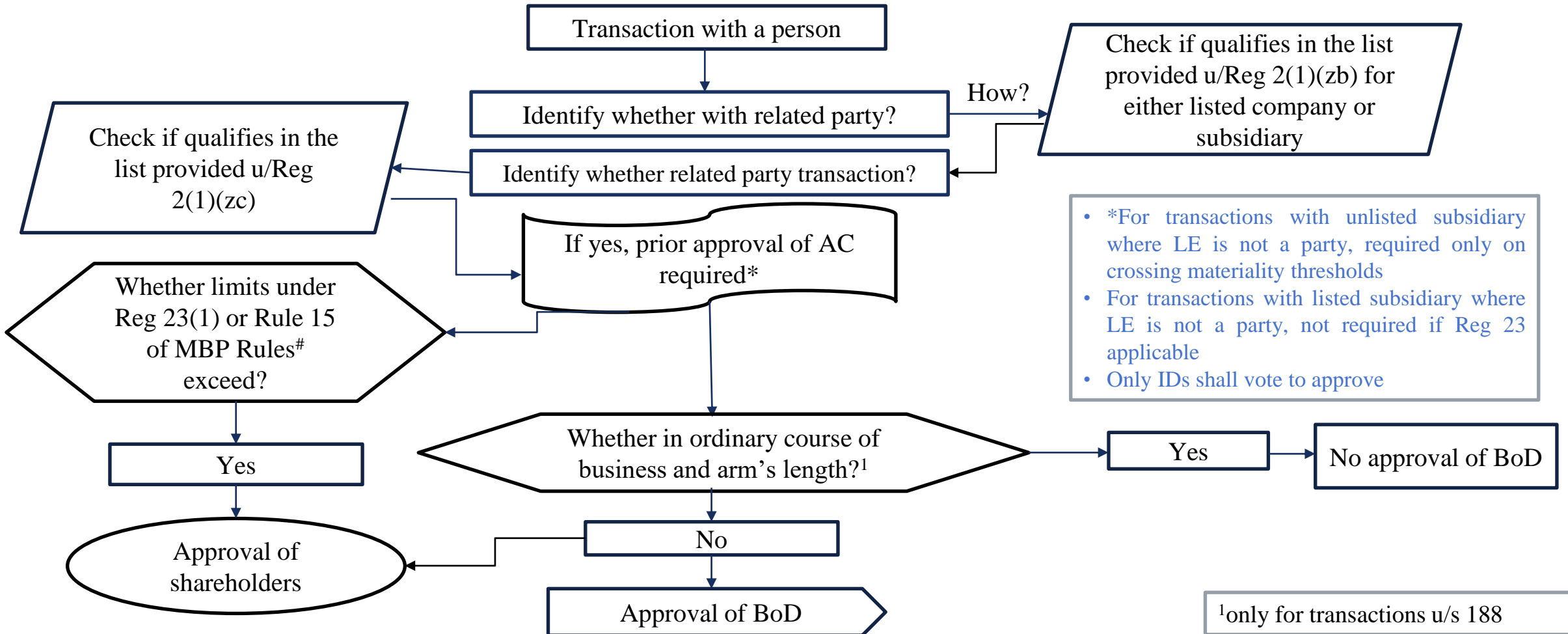
An overview of systems and controls required for

- Identification and mutual sharing of list of related parties
 - Subsidiaries to have information about related parties of the parent and fellow subsidiaries
 - Parent to have information about RPs of the subsidiaries
- Tracking/collating of all related party transactions, basis the RPs identified
- Setting up approval systems, to ensure that RPTs are approved by AC of the subsidiary/AC of the parent, as the case may be, wherever so required (see discussion in subsequent slides)
 - Approvals by the transacting party, approvals from AC and shareholders of holding company
 - Identifying significant RPTs in terms of reg. 23(2) - for approval by AC of listed parent
 - 10% of the annual consolidated turnover of LE;
 - 10% of the annual standalone turnover of the subsidiary. (wef 01.04.2023)
- Identifying material RPTs in terms of reg. 23(4) - for approval by shareholders of listed parent
 - Material RPTs - Whether aggregation will be done across transactions with one RP by parent and subsidiaries? OR
 - Whether aggregation will be done across transactions with one RP by respective entities?
- Identifying material modifications
- Information flow: Subsidiary to make disclosures of RPTs to listed holding company for reporting purpose u/r 23(9)
- Policy for RPT controls
 - only at holding entity level or subsidiary level too?
 - Confirmation/ certification to be obtained from the subsidiary?

Identification of RPs and RPTs

- Preparation of list of RPs
 - RPs of subsidiary itself
 - RP of the parent
 - RP of fellow subsidiaries
 - as per respective laws applicable to each of the companies
- Sharing of lists
 - Subsidiary to share with the parent, fellow subsidiaries
 - Parent, fellow subsidiaries to share with the subsidiaries
- Periodicity of sharing
 - At regular intervals +
 - Adhoc, on any change
 - Mutual obligation
- Streamlining of systems for obtaining inputs for preparation of RP list
 - declarations from directors/KMPs, promoters, promoter group entities, etc.
- Identification of RPTs basis lists prepared
 - RPTs of subsidiary with own RPs
 - RPT controls as per laws applicable to the subsidiary
 - RPT of subsidiary with own RPs, RPs of the holding company and fellow subsidiary:
 - identification of significant transactions [reg. 23(2)]
 - for seeking prior approval of AC of holding entity
 - identification of material transactions [reg. 23(4)]
 - for seeking prior approval of shareholders of holding entity
 - Exemptions for listed subsidiaries covered under reg. 23 and other exemptions - see further slides
 - Collation of details of all RPTs for disclosure purposes to holding entity
 - includes RPTs undertaken with RPs of holding and fellow subsidiaries

Process of approval for RPT by a listed company



#only for transactions u/s 188 if not in ordinary course of business/ not in arm's length

¹only for transactions u/s 188

General Exemptions [reg. 23(5)]

- Approval of AC and shareholders exempted in following cases:
 - RPT between two Govt. companies.
 - RPT between holding company & WOS whose accounts are consolidated with holding company & placed before shareholders for approval
 - RPT between two WOS of listed company whose accounts are consolidated with the holding company & placed before shareholders for approval
- Exempted transactions entered into by the subsidiaries
 - approvals of parent's AC and shareholders not required
- Exemption from approvals; disclosures still required u/r 23(9)

Disclosure before Audit Committee: LODR & SEBI Circular

As per Reg. 23 (3) of LODR (conditions for OA)	As per SEBI Circular
Name of the RP and nature of relationship with the RP	-Do-
Nature, Tenure of RPT	-Do-
Maximum amount of RPT to be entered into	-Do-
Indicative base price/ current contracted price and formula for variation in the price, if any	-Do-
Justification as to why such RPT is in the interest of listed entity	-Do-
	% of listed entity's annual consolidated turnover, for the immediately preceding FY, that is represented by value of the proposed RPT (and for a RPT involving a subsidiary, such % calculated on the basis of the subsidiary's annual turnover on a standalone basis);
	% of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;
-	Copy of the valuation or other external party report, if any such report has been relied upon;
	Additional disclosures If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary: For details, see below

Disclosures before Audit Committee

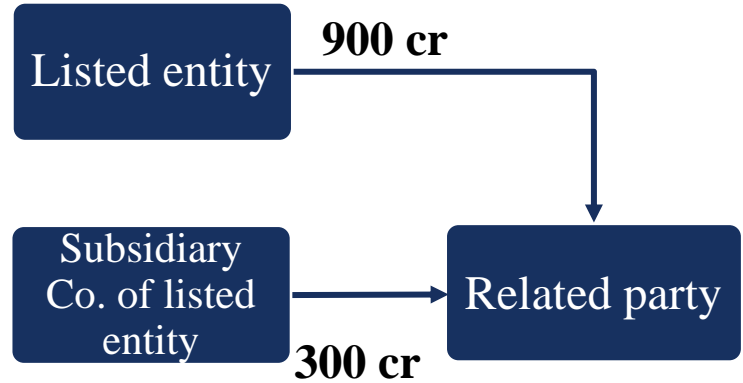
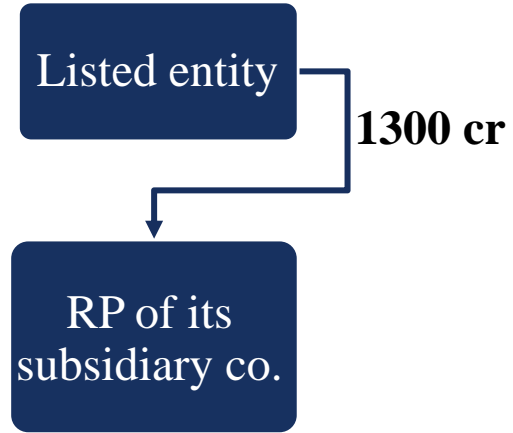
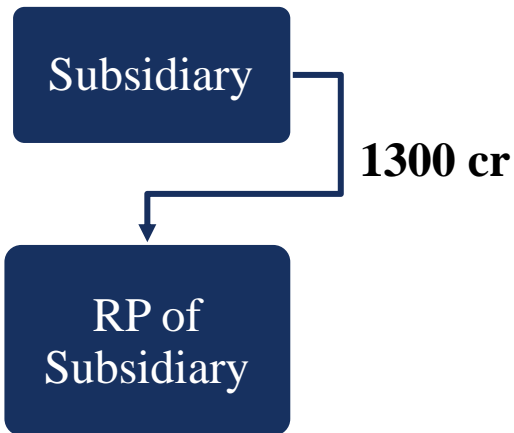
- Type, material terms and particulars of the proposed transaction;
- Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
- Tenure of the proposed transaction (particular tenure shall be specified);
- Value of the proposed transaction;
- The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, 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);
- A copy of the valuation or other external party report, if any such report has been relied upon;
- Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;
- Audit committee shall also review the status of long -term (more than one year) or recurring RPs on an annual basis

Disclosures before Audit Committee

- If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
 - details of the source of funds in connection with the proposed transaction;
 - where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments,
 - nature of indebtedness;
 - cost of funds[#]; and
 - tenure;
 - applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and
 - the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.
- Justification as to why the RPT is in the interest of the listed entity;
- Any other information that may be relevant

[#]if the same is identifiable

Determining materiality for approval by shareholders



Prior approval of shareholders required for –

- a. Material RPTs
- b. Subsequent material modifications in RPTs

Threshold of materiality

If the transaction(s) to be entered into **individually / taken together with previous transactions during a FY** exceeds:

- Rs. 1000 crore OR
- 10% of the annual **consolidated turnover** of the listed entity

} lower

Whether the transactions entered into by listed entity and one or more subsidiaries with the same related party are required to be aggregated at listed holding company's level to calculate the materiality thresholds? No

Disclosure before Shareholders for Material RPTs

As per Rule 15 of MBP Rules	Additional disclosures as per SEBI Circular
Name of the related party;	A summary of the information provided by the management of the listed entity to the audit committee
Name of the director or key managerial personnel who is related, if any;	Justification for why the proposed transaction is in the interest of the listed entity
Nature of relationship;	Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary, the details specified in earlier slide; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
Nature, material terms, monetary value and particulars of the contract or arrangements;	d. 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;
Any other information relevant or important for the members to take a decision on the proposed resolution	e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;

Material modification and subsequent approval

❑ What is termed as a material modification?

- The term has not been explicitly defined in the Regulations but the idea of requiring prior approval is to put the modifications at the same pedestal as that of the RPT for approval

❑ Who is to determine the material modifications?

- The Audit Committee has been entrusted with the task of determining material modification
- The material modification shall be documented in the Policy - materiality of related party transactions

Modification under CA, 2013

- S.177 requires prior approval of audit committee in case of modification of RPTs;

Material modification under LODR

- Prior approval reqd. in case of material modification;
- In case of material RPT, any material modification would require approval of shareholders also

▪ Intriguing questions-

Whether material modification will be determined on the basis of :

Whether materiality be taken into account of the original transaction or the modification



- Value of transaction;
- T&C of transaction;

YES

- What will be the threshold of materiality ? **25%?**

RPT Policy requisites

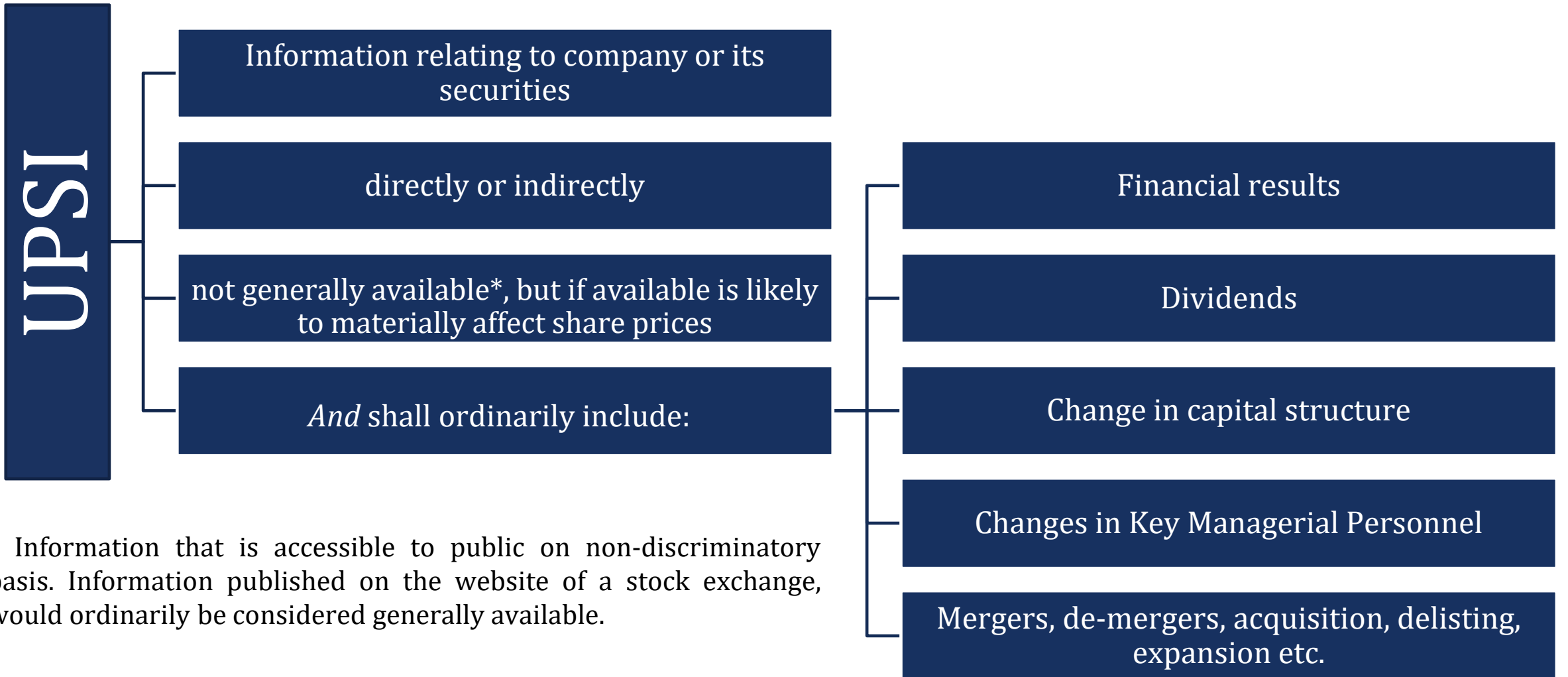
- Group level governance by listed parent
 - orchestration of entire RPT controls of subsidiaries
 - from laying down standards of transacting to those of reporting
- General philosophy and approach towards RPTs
- Standards of transacting
- Approach of framing the database of related parties
- Arms' length assessment
- Determination of ordinary course
- Exceptions from definitions of RPT
- Systems to ensure all significant transaction reach the parent's AC
 - with requisite details
- Obligations to share details of RPs at required intervals and details of RPTs for disclosures to stock exchange
 - periodicity of flow of information
 - format of reporting
 - standards of reporting
- Formal confirmation for RPT compliances at subsidiary level
 - on periodic basis
- Consequences of violation of policy



Material events under Reg. 30 and UPSI



Unpublished Price Sensitive Information (UPSI)



* Information that is accessible to public on non-discriminatory basis. Information published on the website of a stock exchange, would ordinarily be considered generally available.

Determination of UPSI: Meaning of 'Price Sensitive' & 'Unpublished'

■ What is price sensitive information?

- Information likely to materially affect the price of the securities
 - When made generally available

■ How to determine the price sensitivity?

- It is probabilistic in nature
- Requires 'taking of a view' based on price sensitivity.
- Quantum of impact on price cannot be ascertained upfront
 - Impact on other parameters that will ultimately impact the price, to be ascertained
 - Forms the basis for determining the thresholds
 - E.g. 10 % of turnover or net-worth or specific limit.

■ Correlation with material events under Reg. 30

- Event / information that is deemed material under Reg. 30
 - May or may not be price sensitive.
- Event/ information determined as material under Reg. 30
 - Will be deemed to be price sensitive

■ System of determining

- Feedback system to be adopted
- Type of information not regarded as material in the past, however, had an impact on price
- System should be dynamically reviewed and evolved

■ What is Unpublished?

- Information that is not generally available

■ When is an information said to be generally available?

- Information available on a non-discriminatory basis
- Information published on the website of stock exchange, would ordinarily be considered generally available

■ Disclosure of material event/ information to the stock exchange

- Information ceases to be unpublished.
- Becomes generally available information

■ Manner of making UPSI generally available

- As per Code of Fair Disclosure
 - Prompt public disclosure once credible and concrete information comes into being
 - Uniform and universal dissemination
 - No selective disclosure
 - In case of any inadvertent selective disclosure, prompt corrective action
- Until then, handle all UPSI on need to know basis.

UPSI & Material events : manner of determination

■ Material events and information

- Guidance on criteria for determining materiality given in Reg. 30 of Listing Regulations
- Events deemed to be material
 - Indicated in Para A of Part A of Schedule III to Listing Regulations
- Events determined to be material
 - Indicated in Para B of Part A of Schedule III to Listing Regulations
 - Based on the impact of the omission of an event or information is likely to result
 - in discontinuity or alteration of event or information already available publicly;
 - in significant market reaction if the said omission came to light at a later date;
 - Based on the opinion of the board of directors
 - Manner laid down in the board approved policy
 - For determination of materiality.
 - One or more KMP authorized to determine
 - Includes events relating to subsidiaries
 - Material for the listed parent.

■ UPSI

- Includes few events deemed to be material under Reg. 30
 - Financial results;
 - Dividend;
 - changes in KMP;
 - change in capital structure;
 - mergers, de-mergers, acquisitions, delistings, disposals.
- Events determined to be material
 - Deemed UPSI?
 - 'Events' determined 'material' if it is likely to 'materially affect the price'.
 - Criteria is same as definition of UPSI
- KMP authorised under Reg. 30 should be responsible for determining UPSI
 - Recording of reasons, rationale
 - For determination as well as non-determination
- Events/ information that materially impacted the price in the past

Indicative list of UPSI

- Acquisitions/ takeovers
 - Proposal for merger/ amalgamation
 - Setting up a significant subsidiary or joint venture by way of significant expansion of business/assets
 - Proposal for setting up new units
 - Dissolution of a significant subsidiary or a joint venture
- Revenue side UPSI
 - Financial results of a company
 - Expansion of production capacity, new product launch
 - Major orders of a non-recurring nature or unusual concession agreement, or similar item
- Expense side UPSI
 - Significant breakdown in production
 - Disruption of operations due to natural calamity, strikes, lockouts etc
- Shareholder related UPSI
 - Proposal for declaration of dividend
 - Management change/shareholders' agreement indicating change of control
 - Proposal for raising funds through increase in capital
- Regulatory changes/ approvals related UPSI
- Debt-related UPSI
 - Debt-restructuring arrangements or inter-creditor arrangements
 - Application for CIRP by the company itself or by any operational/ financial creditor against the company
 - Potential but almost certain Default in loans or debt servicing obligations
- Corporate governance UPSI
 - Changes in management structure
 - Resignation of independent directors signalling corporate governance issue
- Litigation/ exposures/negatively impacting UPSI
 - Tax demand notice received by the company
 - Notice for initiation of any major regulatory proceedings against a company
 - Initiation of arbitration proceedings for a major demand/claim
 - Commencement of investigation by regulators such as RBI, SEBI etc
 - Fraud/defaults by promoter or KMP or by the listed company
 - Arrest of KMP or promoter
 - Initiation of forensic audit
 - Giving of guarantees, indemnity, becoming surety for third party

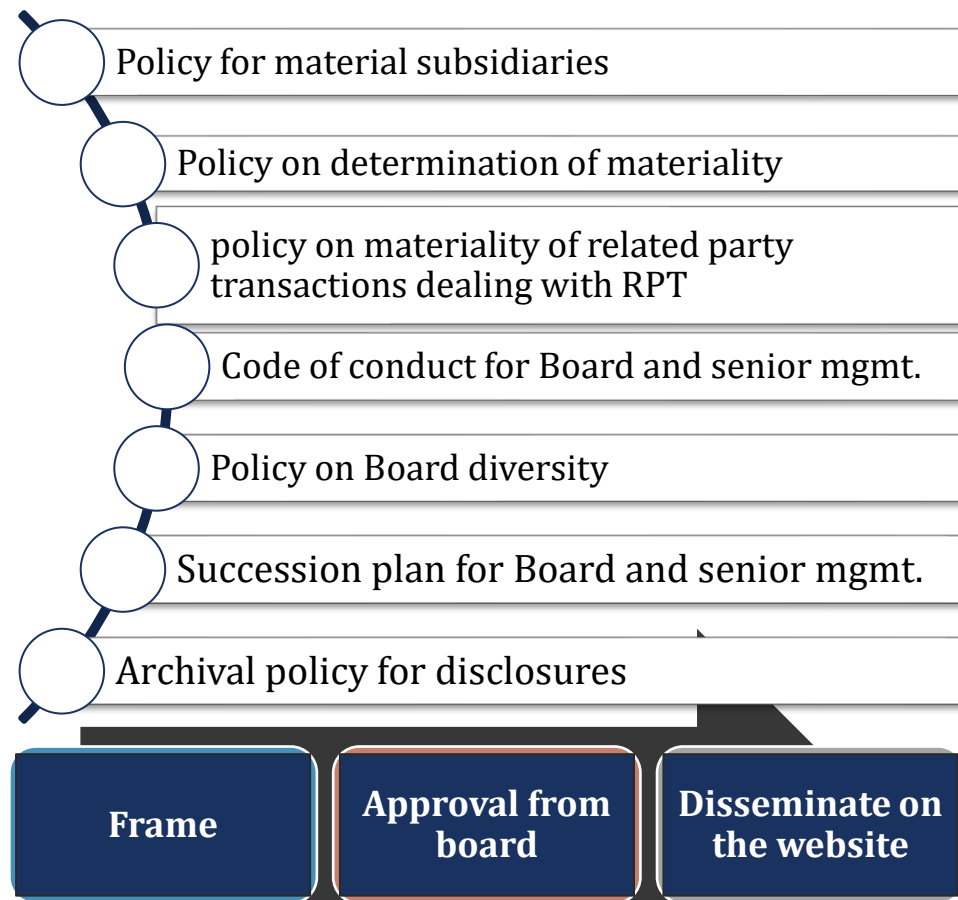


Other Requirements under LODR



Policies, Secretarial audit, Obligations of Directors, KMPs and SMPs

LEs will have to formulate the following policies



Secretarial Audit

Under LODR, all listed entities are required to undertake Secretarial Audit. *(Under CA, 2013, it was applicable to listed companies, Public companies with paid-up capital \geq Rs. 50 crore; or turnover \geq Rs. 250 crore and companies having o/s bank/ PFI borrowings \geq Rs. 100 crore.)*

Additionally, a secretarial compliance report to be submitted to SE as per format specified in [SEBI Circular dated February 8, 2019](#)

Agreement for compensation or profit sharing in connection with dealings in the securities of such listed entity by any employee, KMP, Director, Promoter with any shareholder or third party –

- Prior approval of Board + Public Shareholders.

Obligations of senior management / Directors:

- Every director shall notify about the changes in his/her committee positions as and when they take place.
- All Directors and senior mgmt. shall annually affirm compliance with the code of conduct.
- Senior mgmt. shall disclose all material, financial and commercial transactions where they have personal interest that may have a potential conflict with the interest of the listed entity.
 - conflict of interest relates to dealing in the shares of listed entity, commercial dealings with bodies, which have shareholding of management and their relatives etc.

Quarterly compliance report on CG

Quarterly
(Annex I)

Annually
(Annex II)

6 months
ended
(Annex III)

Half-yearly
(Annex IV)

- **Composition of Board and Committees** including details of directors viz. PAN, DIN, date of appointment & cessation, tenure, DoB, no. of directorships / committee memberships, etc.
- **Details w.r.t. meetings of Board & Committees** viz. date, quorum, gap between meetings, etc.
- **Details w.r.t RPTs** viz. approvals obtained and review of RPT.
- **Affirmations** w.r.t. compliance of composition & meetings of Board & committees.

- **Disclosure on website:**
 - In terms of Reg. 46
 - Materiality policy
 - Dividend distribution policy
- **Affirmations with the CG requirements relating to:**
 - Board and its committees;
 - RPTs and omnibus approval;
 - Subsidiaries;
 - Annual Secretarial Compliance report;
 - Independent Directors – meeting, familiarisation;
 - D&O insurance;
 - Obligations of senior management;
 - Shareholding of NEDs;
 - Material subsidiary Policy.

- Affirmations w.r.t. the following:
- Disclosure of annual report on website.
 - Presence of Chairperson of the following at the AGM:
 - Audit Committee
 - NRC
 - SRC
 - Whether 'CG Report' is disclosed in Annual Report?

- **Disclosure of aggregate & o/s Loans / guarantees / comfort letters / securities etc. to:**
 - Promoters, Promoter group;
 - Directors & KMPs (relatives) or entities controlled by them.
- **Affirmation stating that the above transactions are in the economic interest of the company.**

Fine for non-compliance with SEBI LODR

Pursuant to SEBI Circular dated [January 22, 2020](#)

Regulation	Fine/action
Reg. 6(1) - Non-compliance with requirement to appoint a CS as the compliance officer	₹ 1,000 per day
Reg. 7(1) - Non-compliance with requirement to appoint STA	₹ 1,000 per day
Reg. 13(1) - Failure to ensure that adequate steps are taken for expeditious redressal of investor complaints	₹ 1,000 per day
Reg. 13(3) - Non-submission of the statement on shareholder complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances.	₹ 1,000 per day
Reg. 17(1) - Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director	₹ 5,000 per day
Reg. 17(1A) - Non-compliance with the requirements pertaining to appointment or continuation of Non-executive director who has attained the age of seventy five years	₹ 2,000 per day
Reg. 17(2) - Non-compliance with the requirements pertaining to the number of Board meetings	₹ 10,000 per instance

Regulation	Fine/action
Reg. 17(2A) - Non-compliance with the requirements pertaining to quorum of Board meetings.	₹ 10,000 per instance
Reg - 18(1) - Non-compliance with the constitution of audit committee	₹ 2,000 per day
Reg. 19(1)/ 19(2) - Non-compliance with requirement to appoint STA	₹ 2,000 per day
Reg. 20(2) / (2A) - Non-compliance with the constitution of stakeholder relationship committee	₹ 2,000 per day
Reg. 21(2) - Non-compliance with the constitution of risk management committee	₹ 2,000 per day
Reg. 23 (9) - Non-compliance with disclosure of related party transactions on consolidated basis.	₹ 5,000 per day
Reg. 24A - Non-compliance with submission of secretarial compliance report	₹ 2,000 per day
Reg. 27(2) - Non-submission of the Corporate governance compliance report within the period provided under this regulation	₹ 2,000 per day

CONTACT US

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