

Related Party Transactions

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- Vinod Kothari and Company, company secretaries, is a firm with over 35 years of vintage
- Based out of Kolkata, Mumbai, New Delhi and Bengaluru.
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Outline

- Meaning of related party
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 - related parties under Ind AS 24
- Meaning of related party transactions
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Regulatory framework for Related Party Transactions

- CA, 2013:
 - S. 2 (76) - definition of RPs;
 - S. 134 (3) (h):
 - disclosure in the board's report of contracts/ arrangements with RPs;
 - S. 177 (4) (iv):
 - audit committee to approve & review RPTs;
 - S. 184
 - Disclosure of interest by directors;
 - S. 188
 - approval of the board and shareholders for specific RPTs;
 - S. 189: register of contracts with RPs;
 - Schedule IV:
 - Duty of IDs to ensure that RPTs are in the interest of the Company
- Listing Regulations:
 - Reg. 2 (1) (zb): definition of RP;
 - Reg. 2 (1) (zc): definition of RPT;
 - Reg. 4 (2) (f) (ii) (6) :
 - board to monitor and manage misuse of corporate assets and abuse in RPTs;
 - Reg. 4 (2) (f) (iii) (8):
 - board to have sufficient NEDs to exercise independent judgment in case of conflict of interest;
 - Reg. 18 read with part C of schedule II - audit committee to approve & review RPTs;
 - Reg. 23 - approval mechanism for RPTs;
 - Reg. 23 (9) - disclosure to the stock exchanges;
 - Reg. 34 (3) r.w. Schedule V para C (10):
 - RPT related disclosures to be made in the CG report;
 - Reg. 46: RPT policy to be disclosed on the website

Penal Provisions

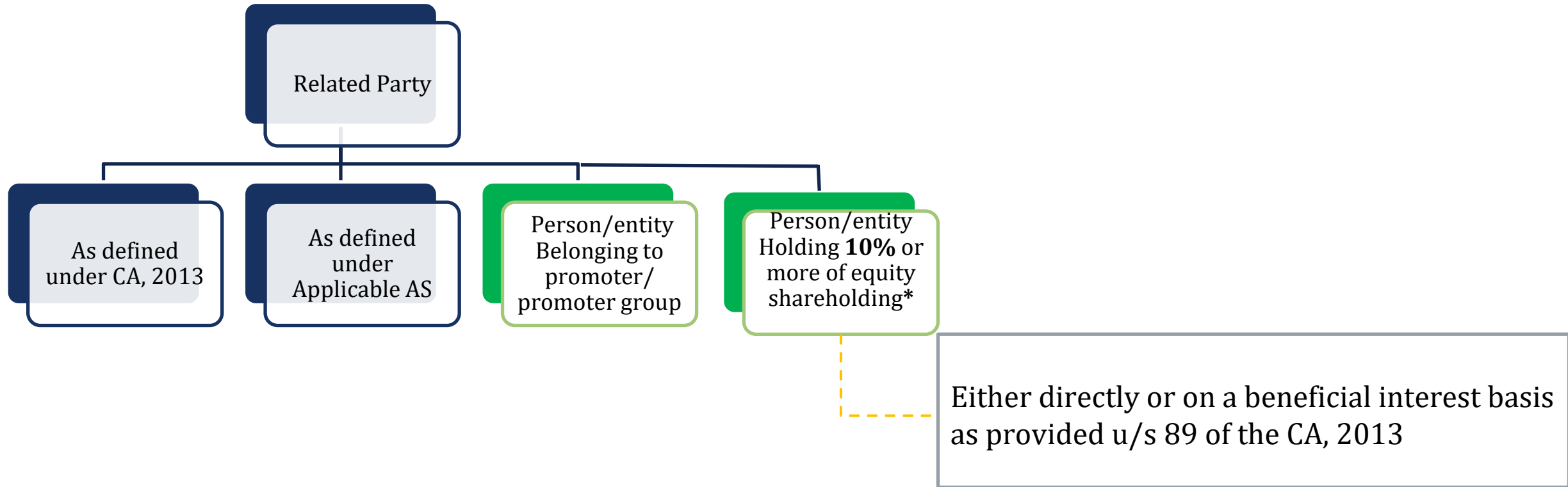
- Companies Act, 2013
 - S. 134 (8) - penalty for failure to make appropriate disclosures in the board's report:
 - Company - Rs. 3 lakhs; Officer - Rs. 50,000.
 - S. 178 (8): penalty for non-compliance with the provisions of S. 177 (including TOR of AC):
 - Company - Rs. 5 lakhs; Officer - Rs. 1 lakh.
 - S. 184 (4) - penalty of Rs. 1 lakh on director or contravention of S. 184
 - Section 167 (1) (b) & (c) - vacation of office of director for failure to disclosure interest for contravention of S. 184
 - S. 188 (5) - penalty of Rs. 25 lakhs on every director/ employee who enters into an RPT in violation of s. 188.
 - S. 164 (1) (g) - disqualification of director convicted of offence of related party transaction u/s 188
 - S. 189 (6) - penalty of Rs. 25 lakhs on every director fails of comply with section 189 w.r.t. maintenance register of contracts with RPs.
- SEBI Act
 - S. 15HB - residuary penalty provision:
 - penalty ranging from Rs. 1 lakh to Rs. 1 crore for non-compliance with any rules/ regulations/ directions issued by SEBI.
 - Premier Polyfilm Limited - Penalty of Rs. 3 lakhs on the Company for not obtaining prior approval of shareholders for material RPTs and non-compliance with disclosure requirements
 - LEEL Electricals - Penalty of Rs. 10 lakhs on IDs for failure to adequately discharge their obligations as members of the AC
 - Linde India - relinquishment of source of profit in favor of an RP is also RPT. Directed in final order to test materiality of future RPTs and approach shareholders, if Material RPT.
- Chapter VII of SEBI Master Circular dated November 11, 2024
 - fine of Rs. 5,000 per day for non-compliance with the requirement to half yearly disclosure of RPTs to the stock exchange.



Meaning of “related parties”



Definition of Related Party (RP) (1/2)



Whether unlisted subsidiaries of listed entities to identify 'related parties' basis their respective applicable laws?

- Unlisted subsidiaries of the LE to identify their RPs as per LODR - as per IG in [Bajaj finserv](#)
- Subsidiaries to identify RPs as per Reg 2(1)(zb) - proposed in [recent CP dated 7th Feb, 2025](#)

Definition of Related Party (RP) (2/2)

Reg 2(1)(zb) of LODR

“Related Party” means:

- as defined under section 2(76) of Companies Act
- Applicable AS.

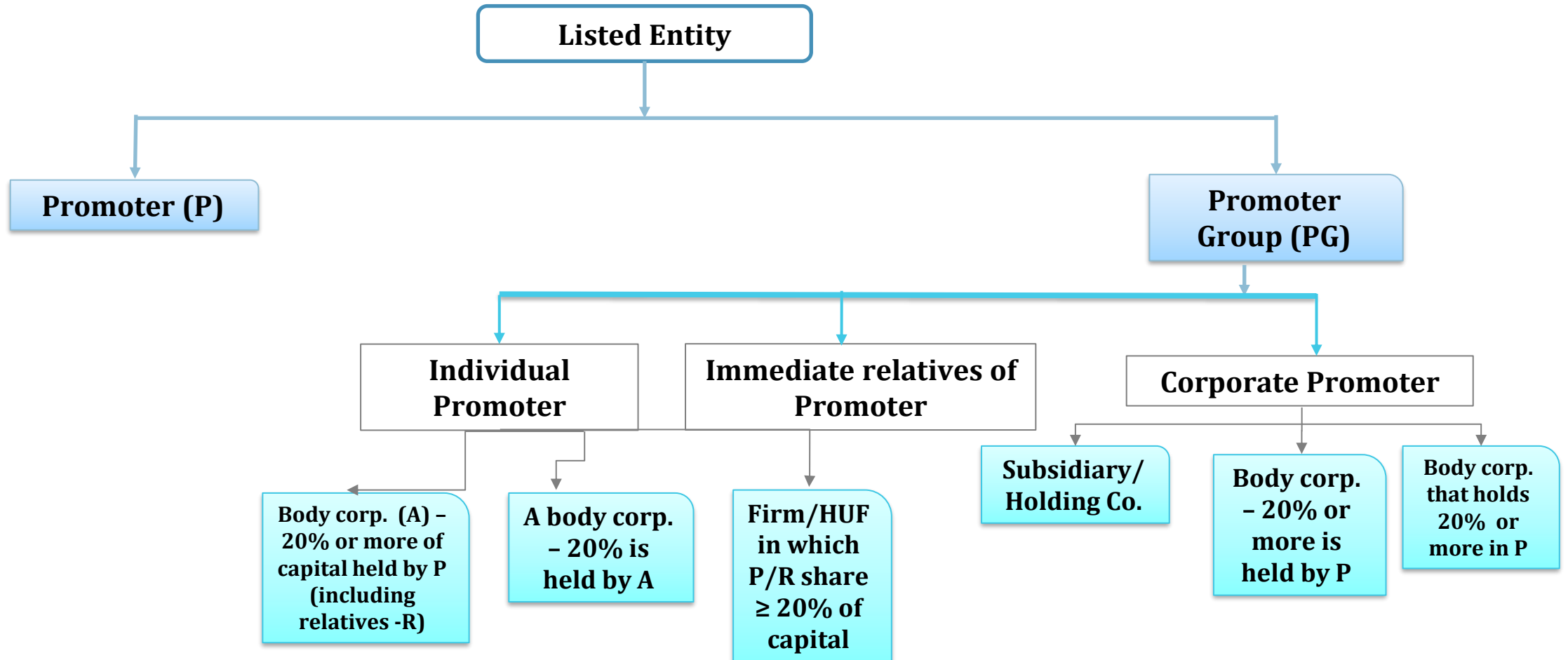
Deemed RPs

- Any person/ entity belonging to promoter/ promoter group
 - irrespective of their shareholding
- Any person/ entity
 - holding equity shareholding of 10% or more
 - Either directly, **OR**
 - **Beneficial interest basis** as under section 89 of CA, 2013
 - At any time
 - During the immediate preceding FY

Section 2(76) of CA

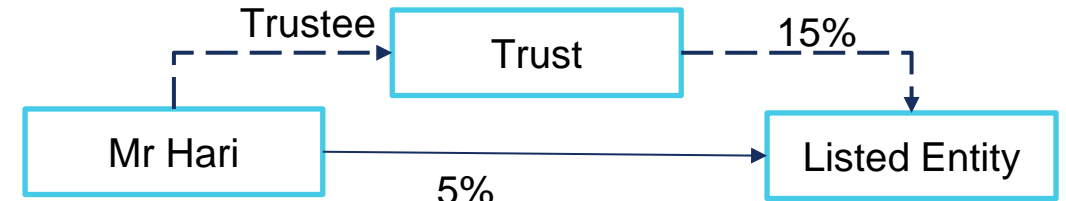
- Director or KMP or his relative
- Firm, in which a director, manager or his relative is a partner;
- Private company in which a director or manager or his relative is a member or director;
- Public company in which a director or manager is a director and holds along with his relatives, >2% of its PSC;
- 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.
- Director (*excluding ID*) or KMP of holding company or his relative

Meaning of promoter and promoter group

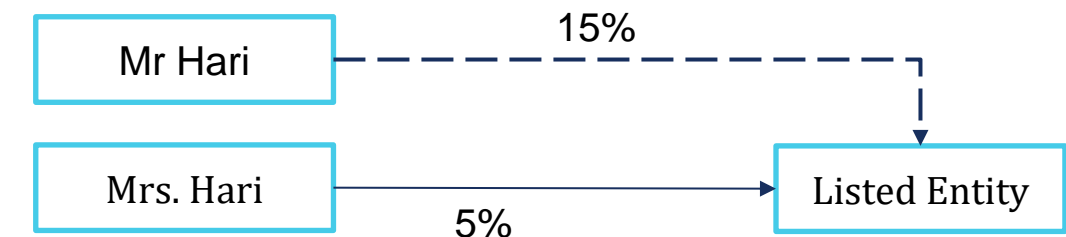
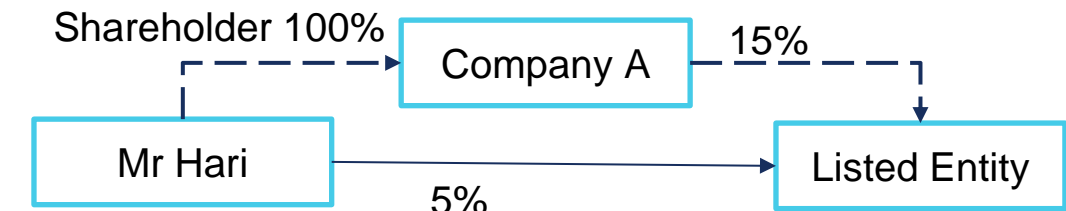
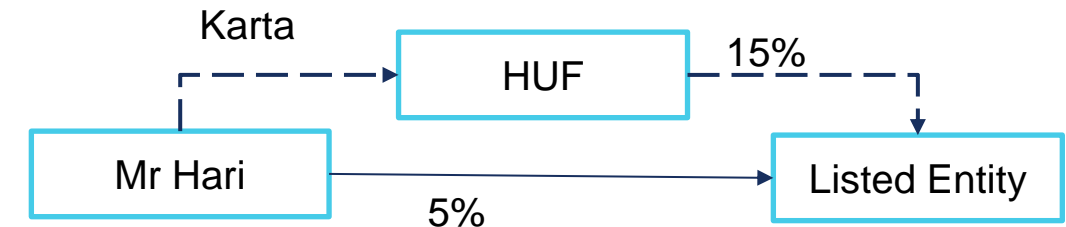


Definition of Related Party – Meaning of Beneficial interest

- **Beneficial interest basis** [as defined u/s 89 of CA, for the purpose of section 89 and 90], includes:
 - directly or indirectly, through any contract, arrangement or otherwise,
 - the right or entitlement of a person alone or together with any other person to-
 - exercise or cause to be exercised any or all of the rights attached to such share; or
 - receive or participate in any dividend or other distribution in respect of such share.
- **Does the definition also capture indirect interest or control by subsidiary entities?**
 - In essence, we are simply taking:
 - Shareholders as per register of members
 - Declared beneficial owners as per Section 89 of CA 13



What if Mr Hari was acting as a beneficiary of the Trust?



Definition of Related Party – basis of calculating threshold

“At any time, during the immediate preceding financial year”

Situations for evaluation

Preceding Year	Current Year
Holding > threshold	Continues to exceed
Holding > threshold	NIL holding
Holding < threshold	Holding > threshold
Variation in the shareholding during the FY	NIL holding
April 1 - Holding > threshold	
June 30 - Holding < threshold	
Dec 30 - Nil holding	

Questions

- Can institutional investors also become related parties?
- Do we also go beyond the list of members?
- Do we aggregate the holding of the person in different capacities?
 - Or the holdings are based on PANs
 - Or holdings of husband /wife
- Can the holders of GDRs be included in the list of RPs?
- Definition of related party of a subsidiary?
 - Listed subsidiary
 - Unlisted company
 - Foreign subsidiary -

Persons who are related parties 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]

“Persons” and “Entities” as per IND AS 24

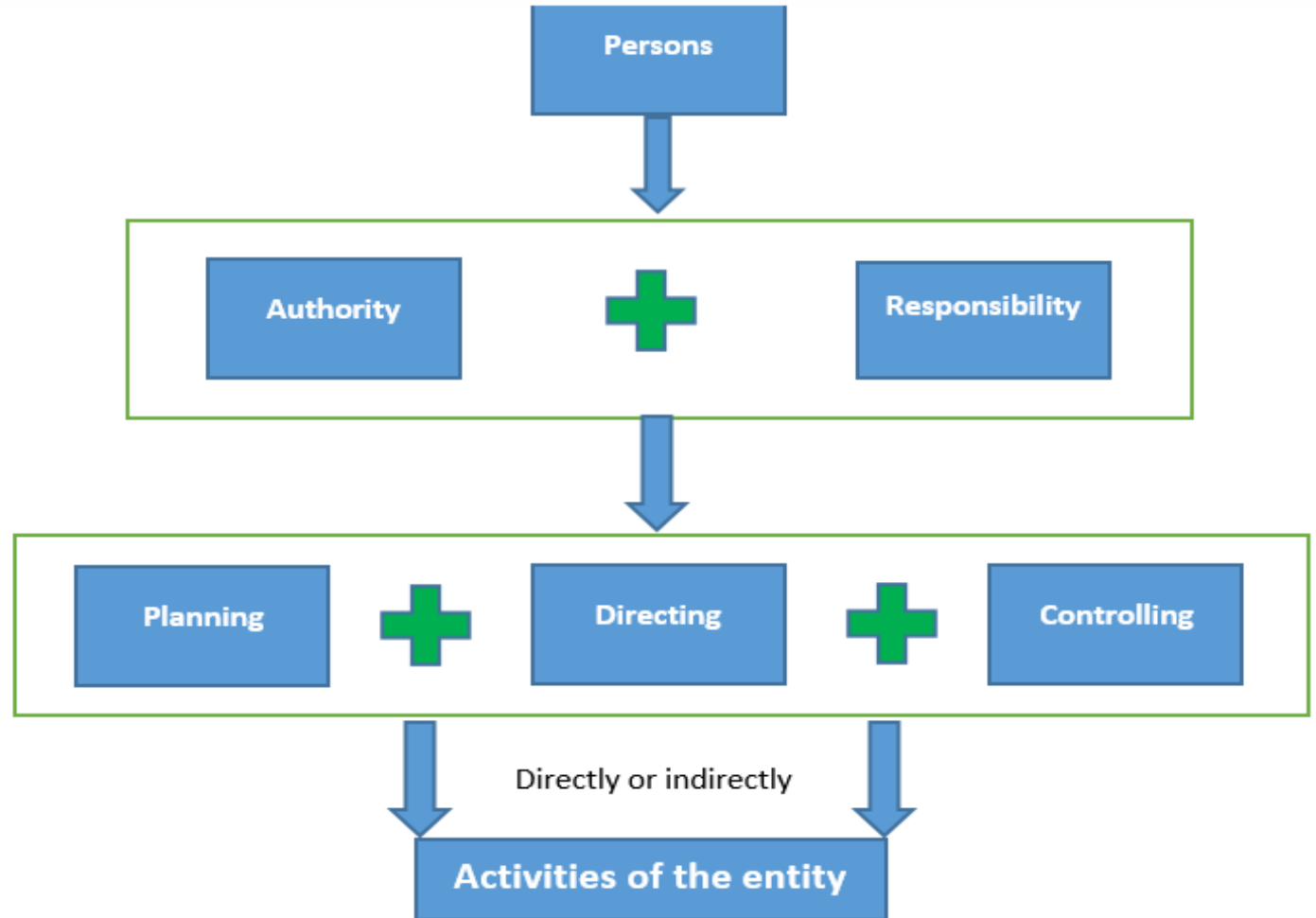
Close members of family of the ‘Person’- Para 9(a) of IND AS 24

- IND AS 24 uses two expressions
 - Persons – unlike the legal meaning of the term, accounting standards use the word in the sense of “individuals”
 - Entities – that is, any entity, whether incorporated or not
 - Hence, the limbs for determination of “related party” are different in case of persons and entities
 - “Persons” applies for determining, with reference to the entity in question, whether a person is a related party or not
 - “Entities” applies, with reference to the entity in question, whether the entity is a related party or not
- Father/ mother
 - Brother/sister
 - Wife/domestic partner
 - Children
 - Children of wife/domestic partner
 - Dependents of the person, wife/domestic partner

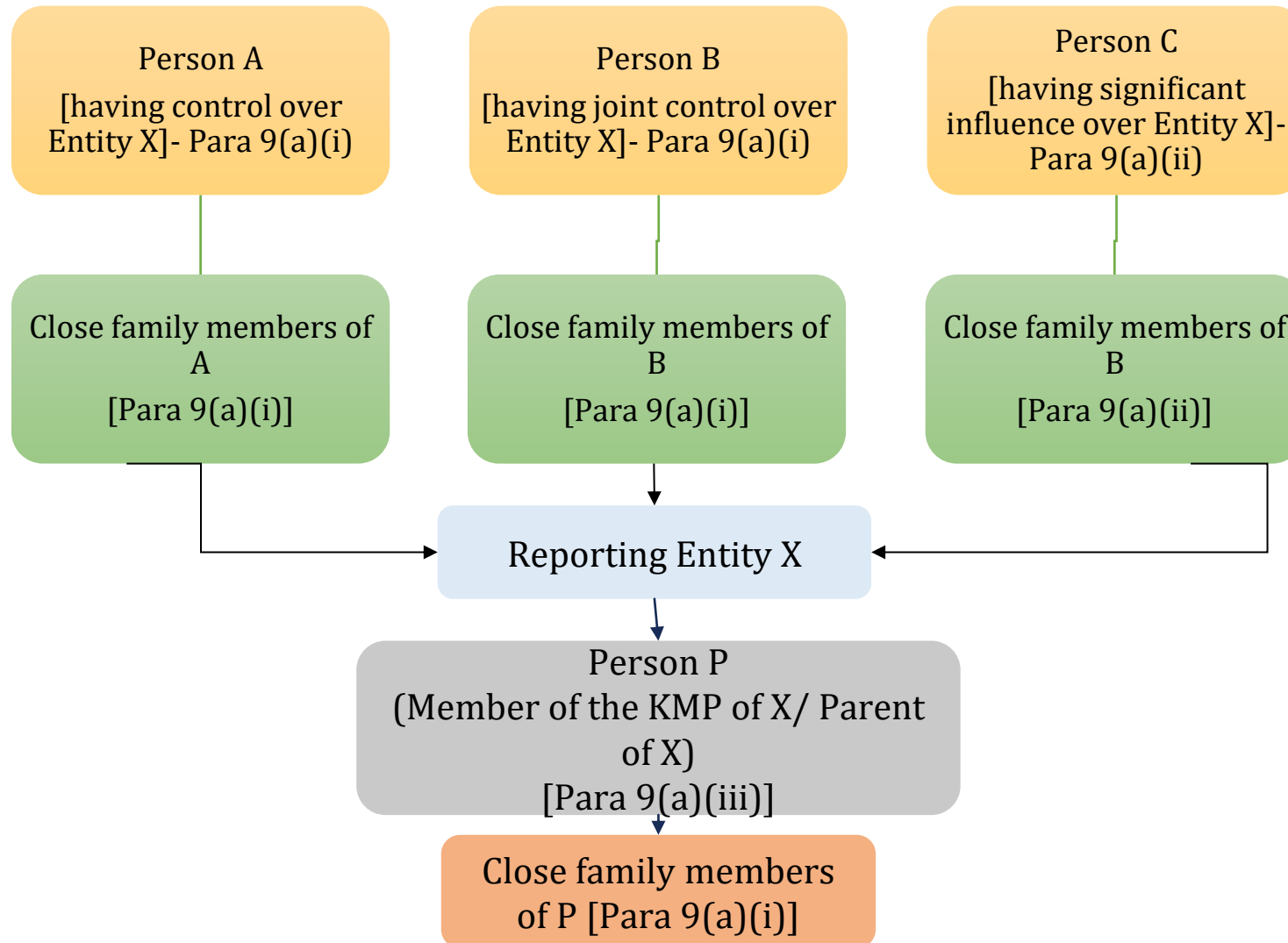
KMPs under IND AS 24

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- For practical purposes, the term KMP in AS 24 means the governing body, such as the board of directors, board of governors, etc



Person who are related parties u/ Para 9(a) of IND AS 24

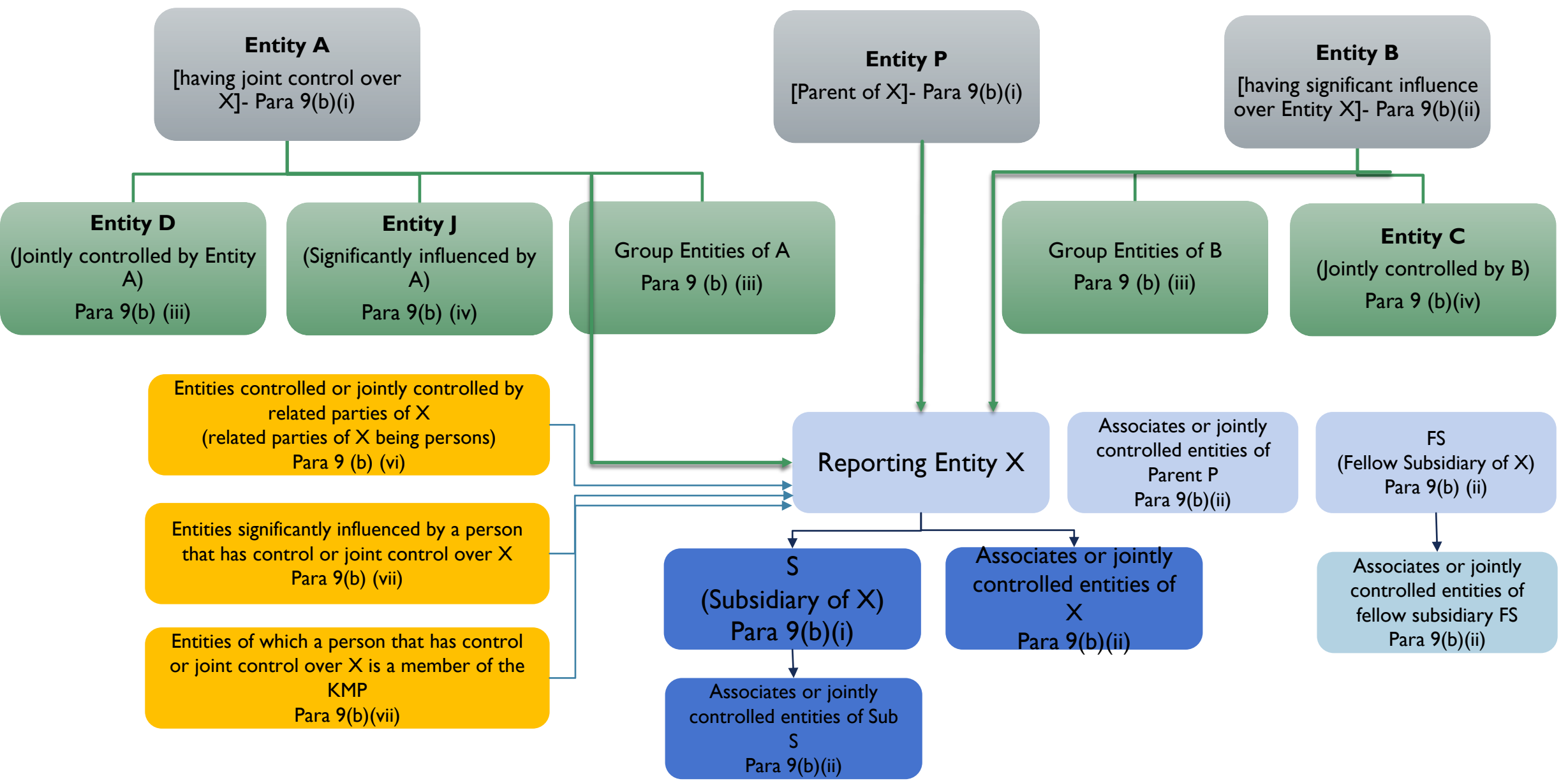


Entities which are related parties under Ind AS 24

■ 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)]





Meaning of “related party transactions”



Definition of Related Party Transactions (RPTs)

Reg 2(1)(zc) of LODR

“Related Party Transactions” 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

■ Re. [Linde India](#)

- relinquishment of source of profit in favor of an RP is also RPT.
 - equivalent to transfer of business/ resources/ assets
 - need not be confined to the present
- Directed in final order to test materiality of future RPTs and approach shareholders, if Material RPT.
- contention by Linde India that for the test of ‘materiality’ under reg. 23 of LODR, consolidation of the transactions with a related party was required only if such transactions were in pursuance of a common objective and were ancillary to a mother contract was rejected by SEBI.
- The words ‘in a contract’ in reg. 2(1)(zc)(ii) cannot be applied towards reg. 23(1) because the latter is clear and unambiguous in its approach.
- For determining materiality, all transactions with such a RP has to be clubbed irrespective of them being in pursuance to a common objective or not.

Exclusions from the definition of RPTs

- Issue of specified securities on preferential basis, subject to compliance with ICDR
 - Issue of non convertible securities is not excluded
- Corporate actions by the listed entity or otherwise that are uniformly applicable/ offered to all shareholders *viz*:
 - payment of dividend
 - subdivision or consolidation of securities
 - rights issue or bonus issue of securities
 - buy-back of securities
- Acceptance of FD by banks/ NBFCs at the terms uniformly acceptable/offered to all shareholders/ public
 - subject to disclosure of the same as per Reg 23(9)
 - includes payment of interest thereon

Changes pursuant to LODR 3rd Amendment:

- Uniformly offered **corporate actions** to be excluded, whether undertaken by listed entity or otherwise
 - Earlier only those 'undertaken by listed entity' were excl.
 - Now will cover other transactions like
 - corporate actions undertaken by subsidiaries
 - corporate actions received by listed entity, or subsidiaries
- Acceptance of **CASA** by banks in compliance with RBI Directions/ other central bank in relevant jurisdiction
 - includes payment of interest thereon
- **Retail purchases**
 - from any listed entity or its subsidiary
 - by its directors or its employees,
 - without establishing a business relationship and
 - at terms that are uniformly applicable / offered to all employees and directors.

Question: Can there be any further exclusions other than those provided under the definition?

Exemptions w.r.t. retail purchases

- Nature of transaction
 - Retail purchases from any listed entity or subsidiary
 - Purchase include both purchase of goods and services
 - without establishing a business relationship
 - does not include purchases by listed entity/ subsidiary
- Counterparty RP
 - directors or employees
 - relatives of directors or employees, other individual RP and RP entities not covered
 - *Companies may provide discounts for retail purchases to their directors and employees. However, such discounts may not be offered to relatives of the directors or KMPs. Hence, the proposed exemption is applicable to retail purchases at terms uniformly applicable/offered to all employees and directors. [SEBI agenda: Para 10.3.4. (iii)(a)]*
- Terms of transaction
 - as uniformly applicable/ offered to all employees and directors
 - to cover the discounts/ concessions that are usually offered by companies to their employees and directors for retail purchases
- **Meaning of “retail purchases”?**
 - *may vary from sector to sector hence not defined [SEBI agenda: Para 10.3.4. (iii)(b)]*
 - examples may include:
 - Purchasing a retail product from company owned outlets
 - Availing regular banking transaction from a branch of bank
 - Booking a room/ services from hotel reception etc
 - Ordering goods from company’s online shopping app
- **Meaning of “without establishing a business relationship”?**
 - not arising from or resulting into a relationship
 - a one-off transaction
- **Whether a retail purchase made by relative of directors/ other individual RPs without creating any business relation be now covered by RPT provisions?**

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
✓	✓
✓	✗
✗	✓
✗	✗

Meaning of the expression “purpose and effect”

- The expression used is “purpose and effect”. Expressions similar to this have been used in different contexts in the past.
- The obvious intent is anti-avoidance
- Therefore, the idea to capture transactions where the identity of the related party was concealed/camouflaged

Some essential conditions for the Purpose and effect test

The transaction is not a transaction in ordinary course of business; it is inspired by the sole or dominant motive of benefiting a related party

While the terms are two, the “purpose” test seems more important. Mere effect of benefiting a related party doesn’t invite the P&E test

One or more layers of unrelated parties have been interposed in the transaction but the chain between the listed entity, and the related party as the eventual beneficiary, is clear and visible

If the purpose and effect are both clear and present, the fact that the transaction benefits the listed entity as well doesn’t matter. RPTs are RPTs, no matter that they benefit the entity as well

The effect of benefiting the RP is clear and direct - it is a collateral benefit, indirect benefit, oblique benefit, or that RP is one of the beneficiaries

If the transaction is motivated with the intent of benefiting an RP, the fact that the transaction passes through several stop-overs, or there is a value addition by intermediaries, or change of form of transaction, or time gap, should not matter



Key concepts under RPT framework



Ordinary course of business

- Whether a transaction is in the ordinary course of business is usually assessed having regard to following factors:
 - Size and incidence of transaction
 - Common practice in the industry
 - Necessary in the normal routine
 - Incidental to the business
- Relevant questions to ask:
 - Had it not been with a related party, will the company still be doing the transaction or similar transaction ordinarily?
 - If the answer is yes, the transaction is in “ordinary course of business”.
 - Had it not been with a related party, will the company still be doing the transaction on similar terms?
 - If the answer is yes, the transaction is in “ordinary course of business”.
- If the company goes out of its way, either in terms of the orbit of its transactions, or in terms of the commercial terms of the transaction, the transaction lacks neutrality, and therefore must come for scrutiny of the board and, under certain triggers, the shareholders.
- However, OCB is not restricted to principal business, main business or main object. Transaction does not have to be some revenue generating activity.

Arm's length principle

- Arm's length transaction would mean a transaction between two related parties that is conducted without any conflict of interest
- Illustrative tests
 - Prices/discounts/premiums and on such terms which are offered to unrelated parties of similar category/profile
 - Commercially negotiated transaction
 - Pricing is arrived at as per the rule/guidelines that may be issued by or acceptable for the purpose of regulatory authorities, as applicable to such contracts
 - Terms of contract/arrangement other than pricing are generally on a basis similar to those as may be applicable for similar category of goods and services or similar category/profile of counterparties
 - May also apply the most appropriate method from any of the methods as prescribed under section 92C(1) of the Income Tax Act read with rule 10B of the Income Tax Rules
 - May seek professional opinion.
- Pricing methods under IT Act – Sec. 92C read with rule 10B
 - Comparable Uncontrolled Price Method: Price charged in a comparable uncontrolled transaction is identified and adjusted for differences, if any.
 - Cost plus method: Direct/indirect costs are increased by an adjusted mark-up to such costs. Adjusted mark-up is normal gross profit mark-up arising in an uncontrolled comparable transaction adjusted for differences, if any.
 - Resale price method: price at which property/services obtained from an associated enterprise is resold to an unassociated enterprise – adjusted by a normal gross profit margin in a CU transaction, expenses, and differences, if any.
 - Profit split method: Combined net profit is split amongst enterprises in proportion to relative contributions. Relative contribution is evaluated on the basis of reliable external market data – unrelated enterprises performing comparable functions.
 - Transactional net margin method: The net profit margin (computed in relation to costs incurred, sales effected, etc.) arising in CU transaction is adjusted for differences.



Approvals required



Approval of related party transactions

- All related party transactions involve a potential conflict of interest; hence, corporate governance requires effective surveillance on such transactions
- Hence, all RPTs need to pass through an internal scanner
- The key elements of internal control
 - Identification of of RPs and RPTs by the system
 - flagging of RPTs, examination of arm's length terms of the transaction
 - putting the transaction for approval

Approval hierarchy

■ Management approval

- every transaction, even though approved by AC, still has to satisfy arm's length test. Hence, must be tested as such
- Reg 26 (5) LODR Regulations - senior management must disclose conflict of interest
 - 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..

■ Audit committee approval

- generally speaking, audit committee is the “audit eye” of the board; hence, AC should act as the prima facie point of control for RPTs

■ Board

- if approved by the AC, board's role is quite limited

■ General meeting

- material transactions
- material modifications in material transaction

Approval matrix

Parties involved (new /ongoing transactions)	AC of LE	Board of LE	Shareholders* of LE
LE with RPs	Yes, Except with WOS Only IDs shall vote to approve the RPT	Specified transactions u/s 188 only if the same is not in ordinary course of business and at arm's length	Material RPTs and material modification except - with WOS - b/w WOS <i>interse</i>
LE & subsidiary with RPs	-Do-		-Do- Whether transactions entered into by the LE & its subsi with a RP should be aggregated?
Subsidiary with RPs (no LE)	Only for unlisted subsidiary, if it crosses threshold u/R 23(2)	No	-Do-
RP with RP – without involvement of LE / Subsidiary	No approval required at the LE level.		

*** No RP shall vote to approve**

Approvals required for RPTs (1/2)

Party to RPT	Transacting party	Approval of Audit Committee	Approval of Shareholders
Holding company	RP of holding company	Yes	Required if material - 10% of consolidated turnover or Rs. 1000 crores - lower
Holding company	RP of subsidiary	Yes	-Do-
Subsidiary	RP of subsidiary	required if significant -10% of subsidiary's turnover*	-Do-
Subsidiary	RP of holding company	- Do-	-Do-
Subsidiary	RP of fellow subsidiary	-Do-	-Do-

Approvals required for RPTs (2/2)

Party to RPT	Transacting party	Approval of Audit Committee	Approval of Shareholders
Listed subsidiary - equity listed	RP of holding company/subsidiary/fellow subsidiary	not required at holding company's level	not required at holding company's level
Listed subsidiary - debt listed	RP of holding company/subsidiary/fellow subsidiary	same as that of an unlisted subsidiary	same as that of an unlisted subsidiary
Listed subsidiary - HVDLE	RP of holding company/subsidiary/fellow subsidiary	not required at holding company's level, if the HVDLE complies	not required at holding company's level, if the HVDLE complies

All the aforesaid cases refer to such transactions where the listed holding entity is not a party

Major differences between Reg 23 of LODR and Section 177/ 188 of CA

	Sec 177/188	Reg 23
Applicability	All companies (audit committee requirement only for certain companies)	Equity Listed entites, HVDLEs
Definition of RPs	Comes from sec. 2 (76)	Combo of sec. 2 (76), AS/IndAS and other limbs
Definition of RPT	Not defined	Defined in lines with AS/IndAS
Specifications of transactions	Transactions listed in sec. 188	No such specification
Materiality thresholds	Based on 10% of turnover	lower of 10% of consolidated turnover, or Rs 1000 crores
OC & AL exception	Applies under sec. 188	Does not apply
Group approach by looking at subsidiary cos.	Does not apply	Applies
Prior approval from shareholders	Not required	Required



Approval of Audit Committee



Approval by Audit Committee - Omnibus approval vs Specific approval

Omnibus approval by Audit Committee

- Annual approval for RPTs
 - for transactions repetitive in nature
 - in ordinary course of business
 - In line with the RPT policy
 - in accordance with criteria laid down by AC
 - AC to satisfy itself of the need for OA
 - Approval is in the interest of the listed entity
- Details to be specified in OA
 - as per Reg 23(3)(c) of LODR read with [SEBI circular](#)
- Quarterly review of RPTs entered into pursuant to OA
- Valid for a period not exceeding one year
 - require fresh approvals after the expiry of one year.

Specific approval by Audit Committee

- Specific approval for RPT
 - for specific contracts or arrangements
 - of specific tenure
 - with specific terms and conditions forming part of the agreement
- Details to be placed before the AC
 - as per [SEBI circular](#)
- Annual review of long-term contracts by AC

- Transaction = a single transaction
 - Contract = a single contract / series of transactions in a contract
- In case contract is a series of transactions, the question of prospective applicability may be taken in reference of the contract / transactions under the contract. [i.e. value of a single transaction shall be relevant for the purpose of approval]
- A series of transaction which has already happened will not require approval.

Significant RPTs of subsidiaries

- Prior approval of AC of listed entity required for significant RPTs of subsidiaries
 - 10% or more of standalone turnover of subsidiary
- Prior approval of shareholders required for material RPTs of subsidiaries
 - lower of Rs. 1000 crores or 10% of consolidated turnover of subsidiary
- Proposal in the Consultation Paper
 - to include absolute threshold of Rs. 1000 crores for AC approval to Significant RPTs of subsidiaries
 - for subsidiaries not having a financial track record
 - 10% limit to be considered based on standalone net worth
 - if net worth negative, aggregate of share capital and premium to be considered
 - computation to be certified by a PCA not more than 3 months prior to seeking approval

Omnibus approval for RPTs of subsidiaries

Omnibus approval for transactions of subsidiaries

- Reg 23(3) of LODR amended as:

*Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity **or its subsidiary** subject to the following conditions*

XXX

- **Does that mean that all RPTs of subsidiaries to also require approval of HoldCo's AC through omnibus approval?**

- Currently only significant RPTs of subsidiaries require approval of HoldCo's AC [proviso to Reg 23(2)(c)]
- No change in the said provision, so limits on subsidiary's RPTs requiring approval continue to apply
- Present amendment allows an additional mechanism for approving recurring RPTs by AC of HoldCo

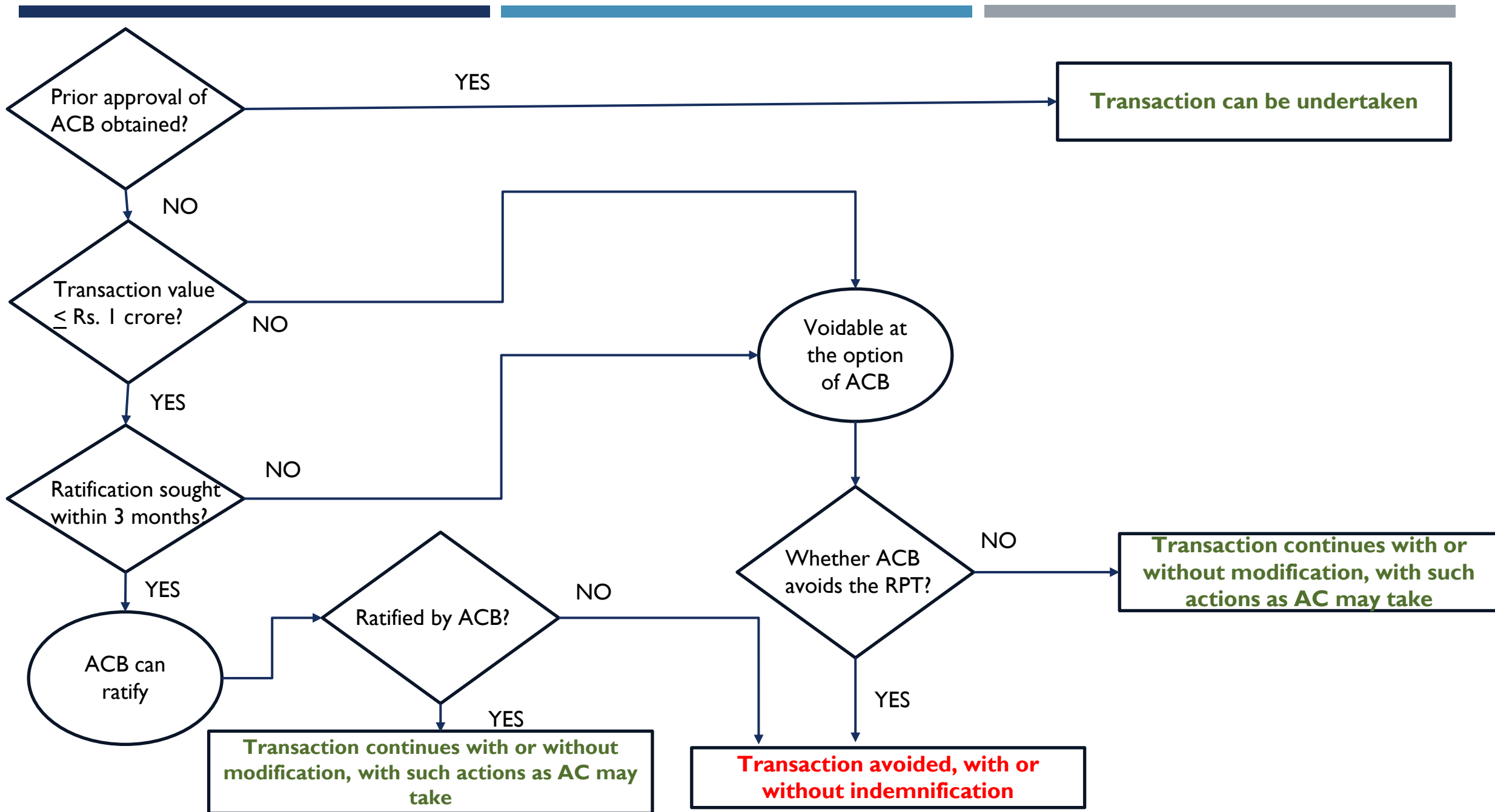
- Extracts from SEBI agenda [Para 12.2.2.(iii)]:

*(a) The provision of omnibus approval is an **additional voluntary option** available to the Company to get approval for recurring transactions from the Audit Committee. Hence, it is **made available for all subsidiaries, irrespective of whether material or not, and can be utilized wherever RPTs of subsidiaries are required to be approved by the Audit Committee of the listed entity.***

*(b) As stated above, there is **no additional burden being placed upon the Audit Committee.** Rather, **an additional mechanism shall be available for the Audit Committee for approving recurring RPTs by the subsidiaries.***

Ratification of RPTs by AC [Reg 23(2)(f) of LODR]

- **Who can ratify?**
 - Independent Directors who are members of Audit Committee
- **By when?**
 - within 3 months from date of RPT or next AC meeting, whichever is earlier
- **Maximum value that can be ratified?**
 - Rs. 1 crore for each party on aggregate for all ratified transactions in a FY
 - this will include transactions already ratified in the same FY
 - Such RPTs may already be covered by the OA limit of Rs. 1 crore per transaction for unforeseen transactions [proviso to Reg 23(3)(c)]
 - rendering ratification provisions infructuous
 - not being material RPT in terms of Reg 23(1)
 - being 10% of consolidated turnover of the listed entity, since absolute turnover threshold is not relevant
- **Disclosures required?**
 - Rationale for inability to seek prior approval for the RPT - before AC at the time of ratification
 - Details of ratification - in half-yearly RPT disclosure to SE
- **Consequences of failure to seek ratification?**
 - Transaction becomes voidable at the option of AC
 - AC may choose to affirm even when conditions under Reg 23(2)(f) not satisfied
 - Indemnity by concerned directors to the listed entity for loss, if any
 - Concerned director would mean director who is RP to the counterparty RP or director who authorised the RPT without AC approval
- Similar provisions under CA [proviso to Section 177(4)(iv)]
 - Further, for ratification by board/ shareholders [Sec. 188(3)]



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 shareholder's 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%?**

Material modification - definition and exclusions

The following may be presumed to be material modification

- A **variation in the value** of the transaction/contract as originally approved, **by 25% or more**.
- The terms of the contract **cease to be arms' length**.
- Granting of any **waiver, abatement or any other relief** to either party, which results into a **financial implication equal to 25% or more of the value of the contract**.
- **Extension** of tenure of the contract **by 25% or more** of the original tenure, or continuation of the contract or arrangement beyond the tenure originally agreed upon, except for completion of any residual performances.
- Any modification which results into the **claims of either party being subordinated, or relaxation of security interest**:
 - Provided that giving any consent for cessation of *pari passu* charge or any other security interest, provided there is adequate asset cover, shall not be deemed as modification of contract
- Any **novation** of the contract or arrangement to a third party.

Following may be **excluded** from meaning of material modification -

- modifications which may be mandated pursuant to **change in law**,
- modifications pursuant to and **in accordance with the terms of the approved transaction/contract**, whether with or without mutual consent of parties, as the case may be,
- modifications resulting from change in constitution of either of the parties **pursuant to schemes of arrangement** (e.g. merger, amalgamation, demerger, etc.),
- modifications which are **purely technical** and do not result in substantive change or alteration of rights, interests, and obligations of any of the parties,
- modifications **uniformly affected for similar transactions with unrelated parties**

Approvals required for ongoing transactions and subsequent modifications

Original RPT	Modification	Implication
Non-Material	Non-material	Requires AC approval, as modification of every RPT requires approval of the AC under sec. 177 (4) (iv).
Non-material	Material	Prior approval of AC; no need to place for shareholders' approval
Material	Non-material	AC approval shall suffice; no need to place for shareholders' approval
Material	Material	Shareholders' prior approval required, in terms of reg. 23(4). Also, 'prior' approval of AC is required.

Disclosures before Audit Committee (1/2)

- Type, material terms and particulars of the proposed transaction;
 - ‘material terms’ means all such terms which constitute the essence of the 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);
 - ‘nature of its concern or interest’ means how the related party is interested in the transaction
- Tenure of the proposed transaction (particular tenure shall be specified);
 - If the contract is of ongoing nature with no specific tenure - approval should generally be sought every year;
- Value of the proposed transaction;
 - If the actual value is not determinable at the time of taking approvals - the basis of determining value may be given;
- 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 (2/2)

- 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;
 - No exemption for financial sector entities
 - where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments,
 - nature of indebtedness;
 - cost of funds (if the same is identifiable); 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.
 - ‘Ultimate beneficiary’ would mean the entity to whom the funds would be passed on.
- Justification as to why the RPT is in the interest of the listed entity;
 - How is the interest to be determined? Merely on the basis of transaction being on an arm’s length basis?
- Any other information that may be relevant.
- **Relevant till March 31, 2025, thereafter SEBI Circular dated February 14, 2025 comes into effect**

Exemptions from AC approval requirements

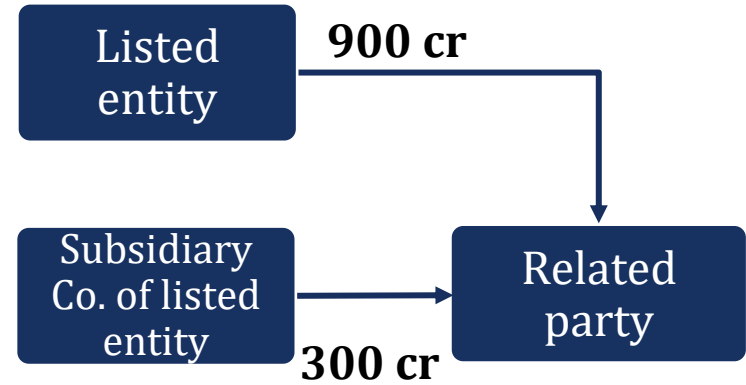
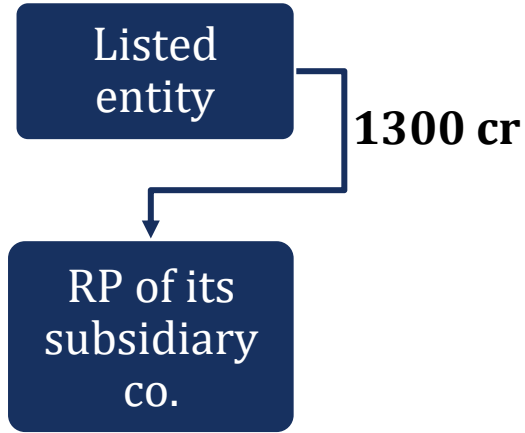
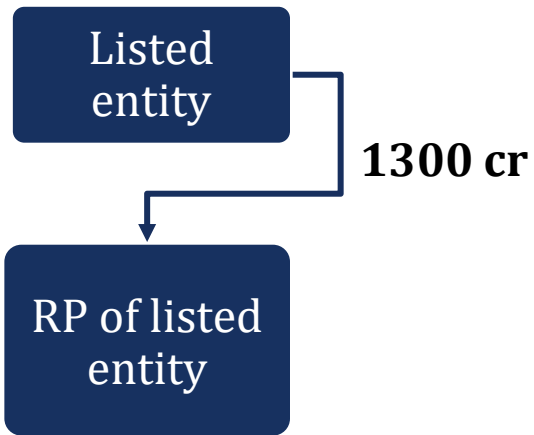
- Exemption from approval and disclosure requirements
 - remuneration and sitting fees paid by LE or its subsidiary
 - is already subject to oversight by NRC and Board
 - further disclosed in CG report, annual return etc
 - to its director, KMP or senior management
 - except if part of promoter/ promoter group
 - and not a material RPT u/ r 23(1)
 - **Whether remuneration paid by listed entity to its employee for being director of subsidiary will be exempted?**
 - **Whether remuneration paid by listed entity to its KMP for services provided to subsidiary will be exempted?**
- Exemptions for 'government company' extended to 'public sector company'
 - defined under Rule 2(d) of Securities Contracts (Regulation) Rules, 1957
- means a body corporate constituted by an Act of Parliament or any State Legislature and includes a government company
- exemption is limited to PSC, subsidiary of PSC is not exempt unless WOS
- Transactions with Central/ State Govt in the nature of payment of statutory dues, statutory fees or statutory charges excluded
 - intent is to cover only transactions in the nature of statutory obligations
 - private contracts etc not excluded [[SEBI Agenda](#): Para 13.3.2.(iii)]



Shareholders' approval



Approval from shareholders



Prior approval of shareholders required for –

- Material RPTs
- 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

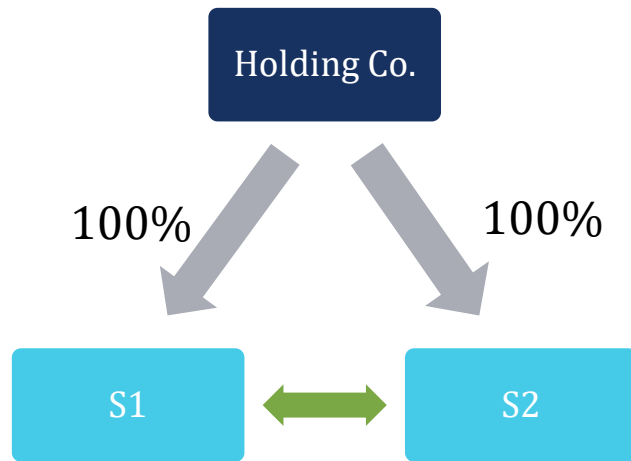
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Exemptions from approval requirements:

- Transactions entered into between two public sector companies
- Transactions entered into between holding company and WOS
- Transactions entered into between two WOS

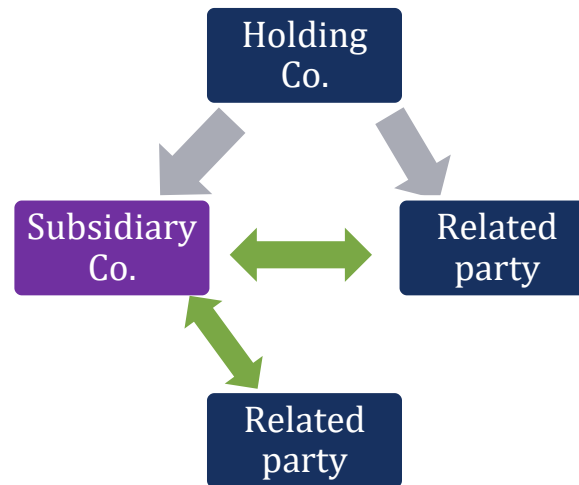
Exemptions from shareholder approval in case of material RPTs

Case 1:



RPT b/w two fellow subsidiaries

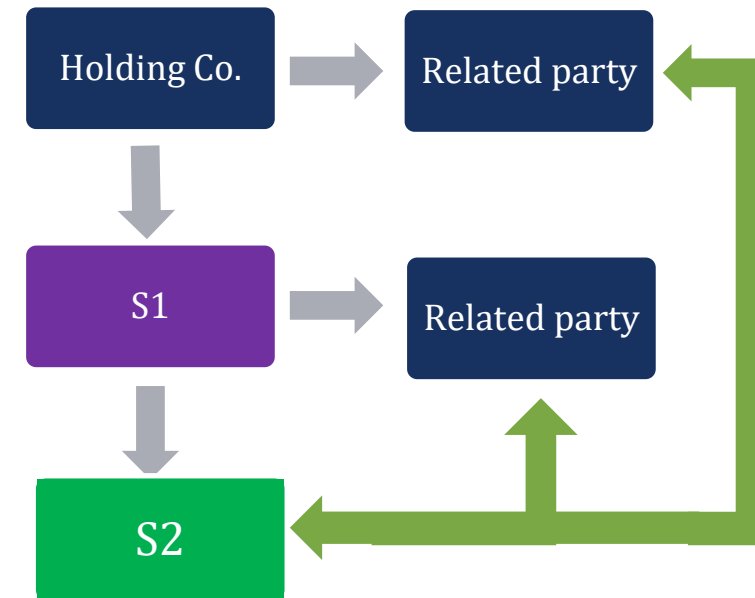
Case 2:



RPT b/w listed subsidiary & related party of holding co. and RPT b/w listed subsidiary and related party of subsidiary

whose specified securities are listed / HVLDEs

Case 3:



RPT b/w step down subsidiary of holding co. and its related party or with related party of subsidiary

- Exempted RPT;
- whether listed / unlisted;
- unlisted

Shareholders' power to ratify

- Ratification is equivalent to a prior authority
 - *Omnis ratihabitio retrorahitur et mandato priori aequiparatur*
- Acts of agent can be ratified by principal
 - Section 196 of the Contract Act
 - for company, director may be said to be its agent
- RPTs entered into without authority of shareholders
 - however transaction not beyond the capacity of Company
- Ratification may be done by shareholders
- Legality of the contract will not be disrupted
- However, attracts violation of Reg 23 of LODR

Principles of ratification

- Shareholders' interest in question
 - Shareholders may ratify
- Question of creditor's interest too
 - cannot be ratified by shareholders
- Question involving public policy
 - ratification not possible
- Premier Polyfilm Limited
 - Penalty of Rs. 3 lakhs on the Company for not obtaining prior approval of shareholders for material RPTs and non-compliance with disclosure requirements.
 - Reiterated that ignorance of law is not an excuse.



Information to be placed before AC/ shareholders for RPT approvals



Industry Standards Note on minimum information to be provided for approval

- SEBI circular dated 14th Feb, 2025
 - specifies Industry Standards to be followed for placing of information before AC & shareholders for RPT approvals
 - Thus, the Standard has the backing of the SEBI Circular, and hence, is binding
 - applicable from 1st April, 2025
- **Whether applicability pertains to date of approval or date of transaction?**
 - Standards refer to: These Standards shall be applicable in respect of RPTs entered into by the Listed Entity on or after 01st April, 2025
 - implies reference to date of entering into RPT
 - such an interpretation is impracticable since
 - for RPTs approved on omnibus basis, approvals may have already been taken
 - Standards pertain to information to be placed at the time of seeking approval, hence, reference date has to be date of seeking approval.

Type of approval	Date of approval	Date of transaction	Whether applicable?
Omnibus approval	before 1st Apr, 25	FY 25-26	No
Omnibus approval	after 1st Apr, 25	FY 25-26	Yes
Shareholders' approval	before 1st Apr, 25	FY 25-26	No
Shareholders' approval	before 1st Apr, 25 (AGM for FY 24)	till AGM for FY 25	No
Shareholders' approval	after 1st Apr, 25	FY 25-26 onwards	Yes

Some upfront questions

- **Does the Standard extend or modify meaning of RP, or meaning/scope of RPT?**
 - No
 - However, there are some inclusions in the line items which may raise issue on inclusion of new transactions:
 - Letter of comfort
- **Does it become mandatory to obtain valuation report/ external report for an RPT?**
 - No
 - But if taken, to be placed before AC and shareholders (for material RPTs)
- **Are bids required to be obtained in every case?**
 - See [Slide](#) on same
- **How to disclose all the information in case of omnibus approval?**
 - transaction specific details may not be available at the beginning of the year
- **Disclosures to be made for nature of transactions not covered under any of the transaction specific fields?**
 - No specific requirements, details may be given as per general details under B(1)

New compliance requirements

- **Identification of ORPTs**
 - In addition to MRPTs, entities which have P/PG/PGIE will need to identify MRPTs:
 - Aggregate all likely transactions during a financial year to see if crossing the 2-2-5 limit
 - Where transactions cross the limit during the year, will the Comp Disclosures become applicable?
 - Yes, from the point they become ORPT
- **Identification, in the list of RPs, of PGIE as a separate item:**
 - Bodies corporate where persons in P or PG hold 2% shares/voting rights, or is a promoter, MD, manager or CEO of that body corporate
 - Does it mean such entities will now be deemed to be RPs?
 - No - the definition of RPs remains unchanged. From within the RPs, the list of PGIE will have to be identified
- **Audit committee minutes to reflect the views of the comments of the AC for all applicable items**

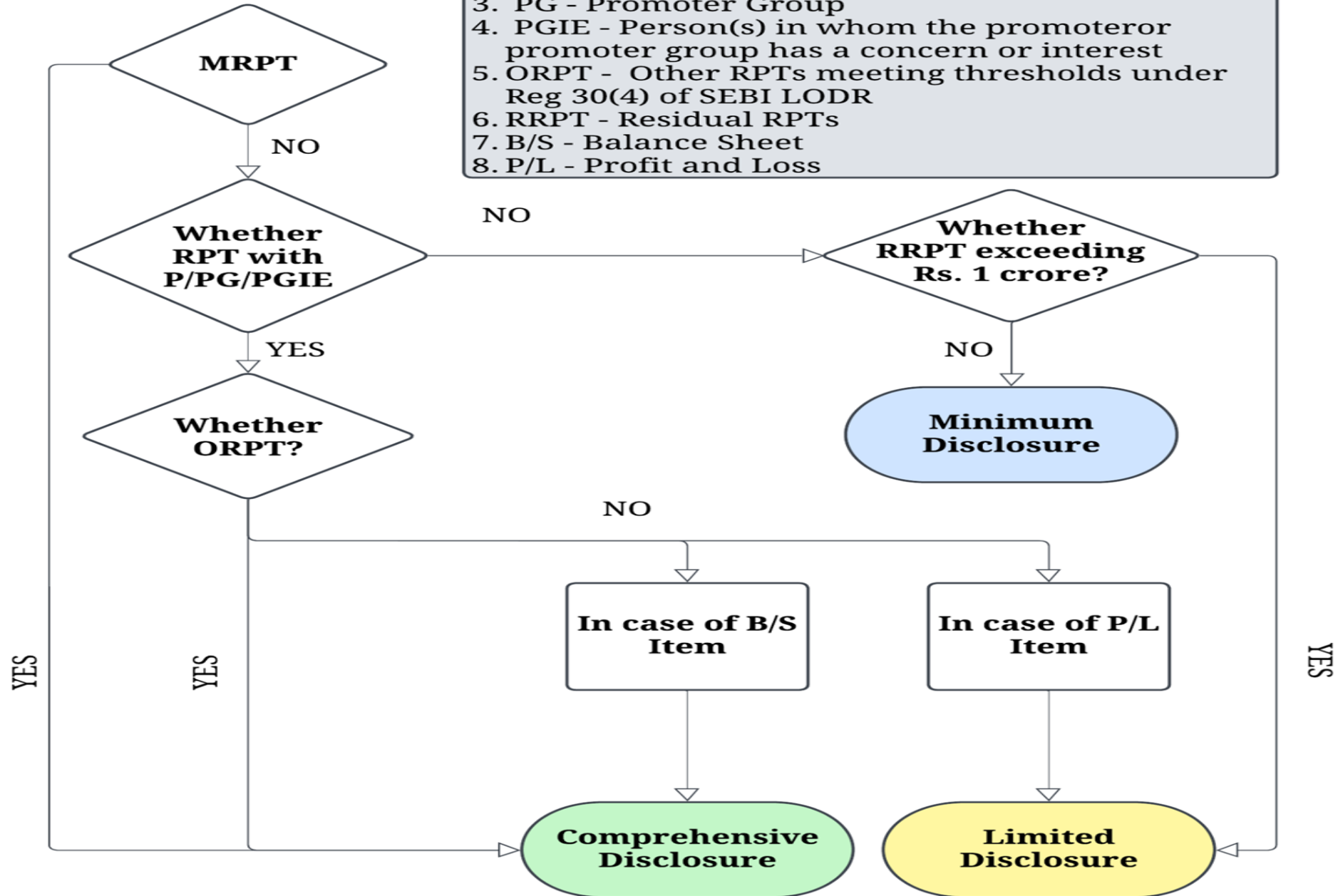
Categories of RPTs and disclosure requirements

- **Comprehensive disclosure**
 - all disclosures as specified in Para 4 of the Standards
 - A. Details of the related party and transactions with the related party
 - B. Details for specific transactions
 - B(1) – Basic details
 - B(2) - Sale, purchase or supply of goods or services or any other similar business transaction
 - B(3) - Loans, inter-corporate deposits or advances given by the listed entity or its subsidiary
 - B(4) - Investment made by the listed entity or its subsidiary
 - B(5) - guarantee (excluding performance guarantee), surety, indemnity or comfort letter, by whatever name called, made or given by the listed entity or its subsidiary
 - B(6) - Borrowings by the listed entity or its subsidiary
 - B(7) - sale, lease or disposal of assets of subsidiary or of unit, division or undertaking of the listed entity, or disposal of shares of subsidiary or associate
 - B(8) – Payment of royalty
- **Limited disclosures**
 - all disclosures as specified in Para 4 of the Standards
 - does not include the following:
 - Additional details for proposed transactions relating to sale, purchase or supply of goods or services or any other similar business transaction
 - For lending transactions, details of past borrowings and interest limited to past FY instead of previous 3 FYs
 - for investment, details of ALM post investment
 - for royalty transactions, details of dividend paid in last 3 FYs and current FY, royalty for current FY, royalty received from foreign entities and peer comparison
- **Minimum disclosures**
 - Basic details of RP (A1)
 - Relationship and ownership of RP (A2)
 - Details of previous transactions with RP (A4)
 - Amount of proposed transactions (A5)
 - Basic details of proposed RPTs (B1)

RELATED PARTY TRANSACTION (RPT)

INDEX:

- 1. MRPT - Material RPT u/r 23(1) of SEBI LODR
- 2. P - Promoter
- 3. PG - Promoter Group
- 4. PGIE - Person(s) in whom the promoter or promoter group has a concern or interest
- 5. ORPT - Other RPTs meeting thresholds under Reg 30(4) of SEBI LODR
- 6. RRPT - Residual RPTs
- 7. B/S - Balance Sheet
- 8. P/L - Profit and Loss



Certificate to Audit Committee

- **Certificate by whom?**
 - CEO/ CFO/ any KMP **and**
 - **every** promoter director
- **To the effect that?**
 - RPTs to be entered into are not prejudicial to the interest of public shareholders
 - Terms and conditions of RPT are not unfavourable to listed entity
 - Compared to terms and conditions, had similar transaction been entered into with unrelated party
- **Provided to whom?**
 - Audit Committee
 - In expl. statement to SHs, disclose the fact that AC has reviewed the certificate
- **What if a promoter director does not provide certificate?**
 - fact to be disclosed to AC and shareholders (in case of material RPT)
- **Whether certificate also needed for RPTs of subsidiary where LE is not a party?**
- **Can AC approve an RPT in absence of such certificate by:**
 - **management?**
 - **promoter director?**

Additional role of AC

- AC to provide comments against applicable line-items
 - to be recorded in minutes
 - forms part of expl. statement in case of material RPTs
- In case of redacted disclosure, AC to certify that the redacted disclosure provides all the necessary information to make an informed decision
- Statement of assessment that
 - relevant disclosures for decision-making were placed before them, and
 - they have determined that the promoter(s) will not benefit from the RPT at the expense of public shareholders.
- In case of purchase/ sale of goods/ services
 - If comparable bids not invited - state justification
 - If comparable bids not available - specify basis for recommending that terms are beneficial to shareholders

Matters that require specific comments from AC (1/5)

S. No (as per ISN)	Particulars of the information	Comments of the Audit Committee
B(1).11	A copy of the valuation or other external party report, if any, shall be placed before the Audit Committee.	If any such report has been considered, it shall also be stated whether the Audit Committee has reviewed the basis for valuation contained in the report and found it to be satisfactory based on their independent evaluation.
B(2).13 B(7).61	Number of bidders / suppliers / vendors / traders / distributors / service providers from whom bids / quotations were received with respect to the proposed transaction along with details of process followed to obtain bids	If the number is less than 3, Audit Committee to comment upon whether the number of bids / quotations received are sufficient
B(2).14 B(7).62	Best bid / quotation received. If comparable bids are available, disclose the price and terms offered.	Audit committee to provide justification for rejecting the best bid /quotation and for selecting the related party for the transaction
B(2).15 B(7).63	Additional cost / potential loss to the listed entity or the subsidiary in transacting with the related party compared to the best bid / quotation received.	Audit committee to justify the additional cost to the listed entity or the subsidiary

Matters that require specific comments from AC (2/5)

S. No (as per ISN)	Particulars of the information	Comments of the Audit Committee
B(3).21	<p>Interest rate charged on loans / inter corporate deposits / advances by the listed entity (or its subsidiary, in case of transaction involving the subsidiary) in the last three financial years:</p> <ul style="list-style-type: none"> • To any party (other than related party) • To related party <p><i>Explanations: Comparable rates shall be provided for similar nature of transaction, for e.g., long term vis-a-vis long term etc.</i></p>	<p>If the interest rate charged to the related party is less than the average rate charged, then the Audit Committee to provide justification for the low interest rate charged.</p>
B(3).30	<p>Latest credit rating of the related party (other than structured obligation rating (SO rating) and credit enhancement rating (CE rating))</p>	<p>If credit rating of the related party is not available, Audit Committee to comment on credit worthiness of the related party</p>
B(3).32	<p>Interest rate paid on the borrowings by the related party from any party in the last three financial years.</p> <p><i>Explanation: Comparable rates shall be provided for similar nature of transaction, for e.g., long term vis-avis long term etc.</i></p>	<p>If the interest rate charged to the related party is less than the average rate paid by the related party, then the Audit Committee to provide justification for the low interest rate charged</p>

Matters that require specific comments from AC (3/5)

S. No (as per ISN)	Particulars of the information	Comments of the Audit Committee
B(3).33	Default in relation to borrowings, if any, made during the last three financial years, by the related party from the listed entity or any other person	<p>In case of defaults by the related party over the last three financial years, in relation to which the Listed Entity or any of its subsidiary has previously provided guarantee, indemnity or other such obligation, the management has to submit justification to Audit Committee for the proposed transaction and the capacity of the related party to service the debt (loan, deposit or advance) proposed to be given by the listed entity or its subsidiary.</p> <p>Audit Committee to comment on the justification provided by Management</p>
B(4).40	<p>Latest credit rating of the related party (other than structured obligation rating (SO rating) and credit enhancement rating (CE rating))</p> <p><i>Explanation: This shall be applicable in case of investment in debt instruments.</i></p>	If credit rating of the related party is not available, Audit Committee to comment on credit worthiness of the related party
B(4).42	Returns on past investments in the related party over the last three financial years	In case of diminishing value of investments (negative returns) over the last three financial years, Audit Committee to provide justification for the proposed investment

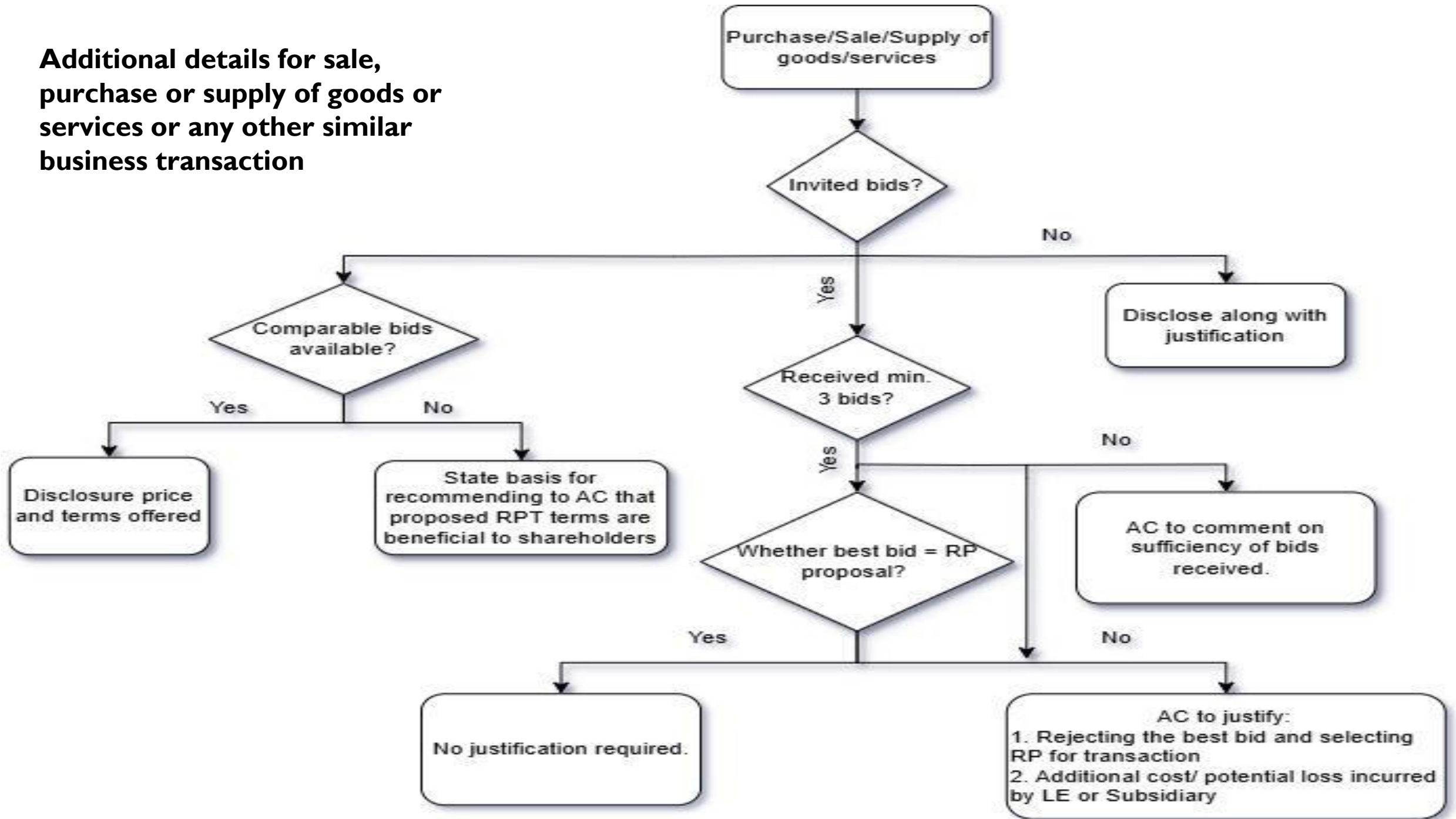
Matters that require specific comments from AC (4/5)

S. No (as per ISN)	Particulars of the information	Comments of the Audit Committee
B(5).48	Latest credit rating of the related party (other than structured obligation rating (SO rating) and credit enhancement rating (CE rating)), if guarantee, surety, indemnity or comfort letter is given in connection with the borrowing by a related party	If credit rating of the related party is not available, Audit Committee to comment on credit worthiness of the related party
B(5).50	Default on borrowings, if any, over the last three financial years, by the related party from the listed entity or any other person.	In case of defaults by the related party over the last three financial years, in relation to which the Listed Entity or any of its subsidiary has previously provided guarantee, indemnity or other such obligation, the management has to submit justification to Audit Committee for the proposed transaction and the capacity of the related party to service the debt (loan, deposit or advance) proposed to be given by the listed entity. Audit Committee to comment on the justification provided by Management.
B(8).75	Purpose for which royalty was paid to the related party during the last three financial years	For companies with a composite license agreement that includes a bundle of intellectual property rights (IPRs) such as brands, patents, technology, and knowhow, it is essential to understand the key components of such agreements and the reasons why these cannot be disclosed separately

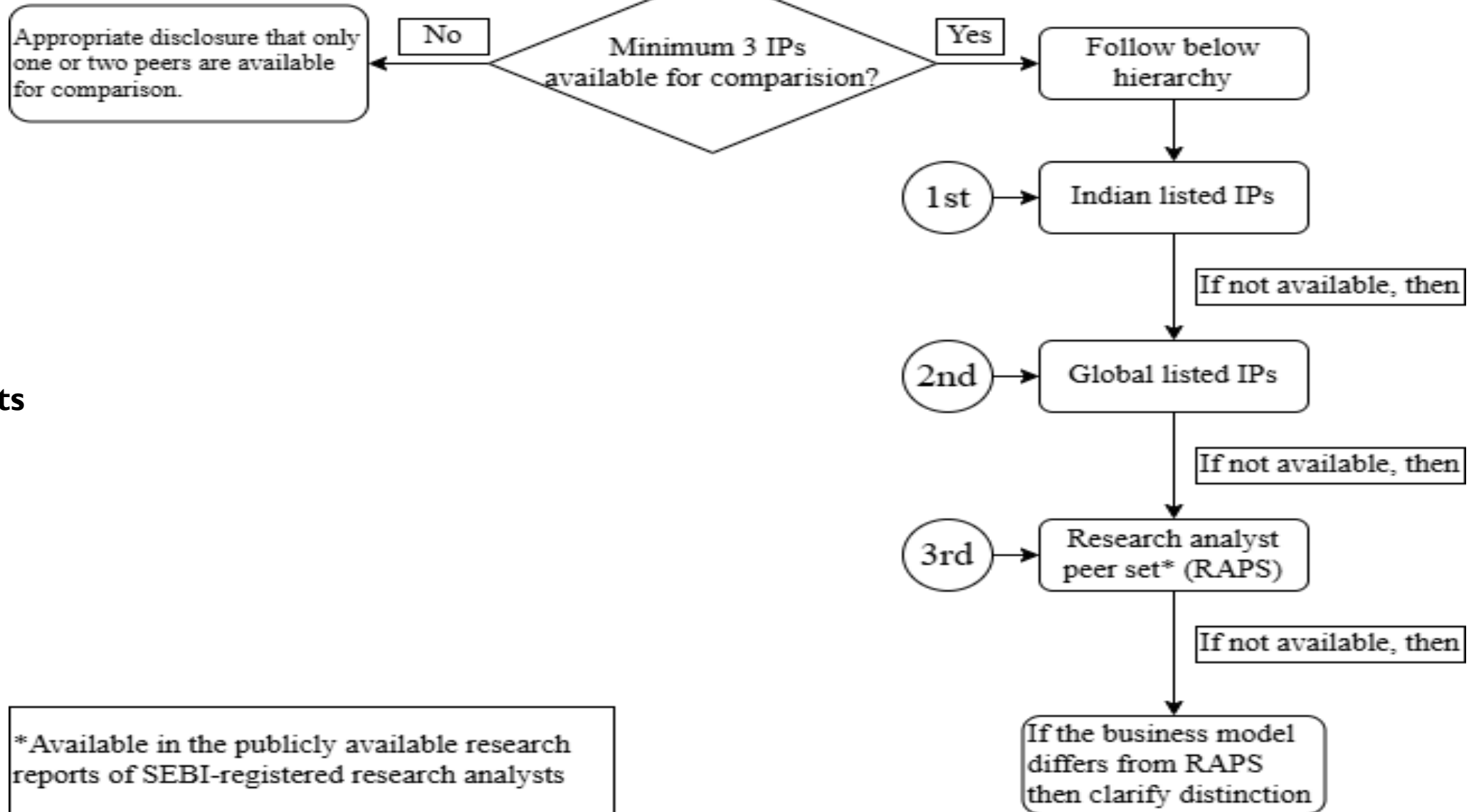
Matters that require specific comments from AC (5/5)

S. No (as per ISN)	Particulars of the information	Comments of the Audit Committee
B(8).78	Dividend paid in last 3 FYs as % of Net Profits of previous FYs	Audit Committee to comment on the reasons for less dividend payment than royalty payment, if so.
B(8).83(C)	Details of in-house research & development, if any: c. If any in-house R&D undertaken by the listed entity or its subsidiary that will reduce or eliminate the royalty currently paid for any technology or technical know-how. Additionally, the absolute value of R&D expenditure incurred by the listed entity or its subsidiary on such in-house R&D, along with the period required for completing the research to achieve the reduction or elimination of royalty, shall be disclosed to the Audit Committee	If no expenses were incurred, the Audit Committee shall provide justification or comment on the same.

**Additional details for sale,
purchase or supply of goods or
services or any other similar
business transaction**



Criteria for selecting Industry Peers (IP) for royalty payments



Disclosures before shareholders

- Information as placed before the audit committee, to the extent applicable
- In case of redacted disclosure, audit committee to certify that the redacted disclosure provides all the necessary information to make an informed decision
- Justification as to why the proposed transaction is in the interest of the company
- Statement of Assessment by audit committee
 - relevant disclosure placed before them; and
 - that the promoter(s) will not benefit from the RPT at the expense of public shareholders.
- Disclose the fact that audit committee has reviewed
 - the certificate provided by the CEO or CFO or any other KMP and
 - the certificate provided by the promoter directors of the listed entity as required under Para 3(2)(b) of these Standards
- Valuation report or any other report considered by the audit committee.
- In case of sale, purchase, or supply of goods or services [as provided in B(2) in the format as specified in Para 4 of these

Standards], or the sale, lease, or disposal of assets of a subsidiary, unit, division, or undertaking of the listed entity [as provided in B(7) in the format as specified in Para 4 of these Standards], if the audit committee has reviewed the terms and conditions of bids from unrelated parties then such fact shall be stated.

- In case bids have not been invited, the fact shall be disclosed along with the justification thereof, and
 - In case comparable bids are not available, the basis for recommending that the terms of the RPT are beneficial to the shareholders is required to be stated.
- Comments of audit committee or board, if any
 - Any other relevant information.

Disclosures to stock exchanges

- Half-yearly disclosures under Regulation 23(9) -

Entities that have listed their specified securities

simultaneously on the date of publication of the financial results

High Value Debt Listed Entities

Along with the standalone financial results
[on comply or explain basis till March 31, 2025]

Notes to disclosures (1/2)

1. The details in this format are required to be provided for all RPT undertaken during the reporting period. However, opening and closing balances, including commitments, to be disclosed for existing RPTs even if there is no new RPT during the reporting period.
2. Where a transaction is undertaken between members of the consolidated entity (between the listed entity and its subsidiary or between subsidiaries), it may be reported once.
 - Whether all RPTs by subsidiaries need to be disclosed or only those placed before AC or S/H of listed entity?
3. Listed banks shall not be required to provide the disclosures w.r.t. RPT involving loans, inter-corporate deposits, advances or investments made or given by the listed banks.
 - Whether listed entity needs to disclose loan availed/ investment received from RP?
 - No exemption for NBFCs/HFCs
4. For companies with FY ending March 31, this information has to be provided for six months ended September 30 and six months ended March 31. Companies with financial years ending in other months, the six months period shall apply accordingly.

Notes to disclosures (2/2)

5. Each type of RPT (for e.g. sale of goods/services, purchase of goods/services or whether it involves a loan, inter-corporate deposit, advance or investment) with a single party shall be disclosed separately and there should be no clubbing or netting of transactions of same type. However, transactions with the same counterparty of the same type may be aggregated for the reporting period. For instance, sale transactions with the same party may be aggregated for the reporting period and purchase transactions may also be disclosed in a similar manner. There should be no netting off for sale and purchase transactions. Similarly, loans advanced to and received from the same counterparty should be disclosed separately, without any netting off.

6. In case of a multi-year RPT:

- a. The aggregate value of such related party transaction as approved by the audit committee shall be disclosed in the column "Value of the related party transaction as approved by the audit committee".
- b. The value of the related party transaction ratified by the audit committee shall be disclosed in the column "Value of the related party transaction ratified by the audit committee".
- c. The value of the related party transaction undertaken in the reporting period shall be reported in the column "Value of related party transaction during the reporting period".

7. "Cost" refers to the cost of borrowed funds for the listed entity.

8. PAN will not be displayed on the website of the Stock Exchange(s).

9. Transactions such as acceptance of fixed deposits by banks/NBFCs, undertaken with related parties, at the terms uniformly applicable /offered to all shareholders/ public shall also be reported - This was included in the WG Report.

- As per clause (c) of exclusions from definition of RPT

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