

A close-up photograph of two individuals in business attire shaking hands over a table. The table is covered with various documents, including what appears to be a contract or agreement. The background is bright and slightly blurred, suggesting an office or meeting room environment. The overall tone is professional and positive, symbolizing a successful business deal or agreement.

# **RELATED PARTY TRANSACTIONS**

**M P Vijay Kumar**

# Context...

# The Related Party Issue

- RPT – Common globally
- Approach change – Nothing wrong with RPT
  - Quality reasons
  - Propriety technology
  - Many cases transactions **SHOULD BE @ OTHER THAN FAIR VALUE**
- Share information – no issues

*Key Issue:*

Information held back raises discomfort

# Fundamentals – Why Group Ops??

1. Enterprises operate as Groups; not as single entity for all business
2. Group includes
  - Subsidiary
  - Associates
  - Joint Ventures
3. Reasons
  - Fiscal incentives –Direct and Indirect
  - Optimal allocation of resources
  - Core competence - Technology
  - Difference in Management skills, Board personnel
  - Differing degree of control need and “dominance factor”
  - Succession planning
  - Regulatory framework

# Corporate Laws regulating RPT

- Companies Act, 2013 and the Rules made thereunder
  - Sections 177 & 188 of Companies Act, 2013
  - Rules 6A & 15 of Companies (Meetings of Board and its Powers) Rules, 2014
  - Secretarial Standards

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- SEBI (LODR) Regulations, 2015
  - Regulation 23
  - Schedules V & XII

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- Accounting Standards
  - AS 18
  - IND AS 24

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# Other Legislations in India - IT, Competition Act, Excise

- IT 1973 : Charitable Institutions 12A(b), listing in terms of 13(1) (3) Manager, Trustee etc
- IT : 40(A)(2)(b) - disallowance for “excessive” payments
- IT : 80-I, 80-IA - disallowance if, transaction is in excess of fair market price
- Competition Act - Dominant or Group Undertakings
- Excise Law - Related party sale (valuation rules)
- Likely many others exist

# Companies Act, 2013...

Sections 2(76), 177 & 188 of Companies Act, 2013 and related Rules

## **WHAT IS RELATED-PARTY TRANSACTION**

**A Related-Party Transaction is a deal or arrangement between two parties who are joined by a preexisting Business Relationship or Common Interest.**

# RP : Definition – Only 8 (1/2)

1. **Individual** : Director, KMP or relative of such person
2. **Firm** : in which a director, manager or relative is a partner
3. **Private company**: in which a director or manager or his relative is a member or director
4. **Public Company**: in which a director or manager is (a) a director; and holds (b) along with relatives holds more than 2% of its paid-up share capital
5. **Body corporate** : whose Board, Managing Director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager (except in professional capacity)

## RP : Definition – Only 8 (2/2)

**6. Individual:** Any person (except in professional capacity) on whose advice, directions or instructions a director or manager is accustomed to act

**7. Any Body Corporate** which is:

- a H Co , S Co or an A Co of such company
- a S Co of a H Co to which it is also a S Co (fellow subsidiary)
- an investing Co or the venturer of the Co

*(Not applicable to a private company. H Co / S Co / A Co / fellow subsidiaries will not be related parties to a private company)*

**8. Individual:** A Director other than an Independent Director or KMP of the H Co or his relative with reference to a company

# Relative : Definition

## Includes

- Members of HUF
- Spouse
- As may be prescribed



## As may be prescribed

- Father / Mother (incl step-father / mother)
- Son (incl step-son)
- Son's wife
- Daughter / Daughter's husband
- Brother / Sister (incl step-brother / sister)

# Watch out!!

4

## Public Company:

Director / Manager is a Director **and** Director / Manager + Relatives > 2% of PUC

3

## Private Company:

Director / Manager or his relative is a Director **Or** Member

2

## Partnership Firm:

Director, Manager or his relative is a partner in Firm

1

## Individual:

Director, KMP or his relatives



5

## Body Corporate:

BOD / MD / Manager (Accustomed to act)

In accordance with advice / directions / instructions of Director / Manager

6

## Individual:

Any Person on whose directions or advice or Instructions a Director / Manager is Accustomed to act

7

## Body corporate which is:

a holding, subsidiary or an associate company of such company; or  
a subsidiary of a holding company to which it is also a subsidiary; or  
an investing company or the venturer of the company

8

## Holding Company:

a director other than an independent director or key managerial personnel of the holding company or his relative

# RPT: 3 Categories

1. Without Board Approval
  - Ordinary course of business & on an arm's length basis
2. With Board approval
  - Specified transactions and not in ordinary course of business and not at arm's length
3. With Shareholders prior approval – Ordinary resolution
  - Specified transactions > limit

# RPT with approval – Specified transactions

Type of Transaction	Threshold Limit for Board approval
Sale, purchase or supply of any goods or materials, directly or through appointment of agent	Amounting to less than 10% of the Turnover of the company
Selling or otherwise disposing of, or buying property of any kind, directly or through appointment of agent	Amounting to less than 10% of the Net worth of the company
Leasing of property of any kind	Amounting to less than 10% of turnover of the company
Availing or rendering of any services, directly or through appointment of Agent	Amounting to less than 10% of Turnover of the Company
Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company	Monthly Remuneration less than Rs 2.5 lakhs per month.
Remuneration for underwriting the subscription of any securities or derivatives thereof	Less than 1% of the Net worth

1. Shareholders' approval is required for all the specified transactions equal to / exceeding the limit prescribed above
2. Threshold limits for transactions shall apply either individually or taken together during a financial year
3. Net worth / Turnover computed on the basis of audited financial statement of preceding financial year

# Watch out !!!!

## Audit Committee

- Audit Committee approval is **mandatory** for all the Transactions (whether “arm’s length or not” or “ordinary course of business or not”).
- Terms of reference of Audit Committee shall contain a clause for approval or subsequent modification of related party transactions.

## Transactions > limits prescribed needs prior approval from Shareholders by way of Ordinary Resolution

- Member (related party) interested in the Resolution shall not vote on such resolution to approve any contract to be entered with a related party (**not applicable to private Company**)
- In case of a company in which 90% or more of the number of members are relatives of the promoters or are related parties, a member who is a related party can vote on a resolution to approve any contract or arrangement which may be entered into by the company, even if such member is a related party

# Watch out !!!!

Any contract or arrangement entered into by a director or any other employee, without obtaining the consent of the Board or approval by an Ordinary resolution in the general meeting:

- *Needs to be ratified within 3 months from the date on which such contract or arrangement was entered into otherwise the transaction shall be voidable.*

If the contract or arrangement is with a related party to any director, or is authorized by any other director:

- *Directors concerned shall indemnify the company against any loss incurred by it.*

Director interested in any contract or arrangement shall not be present at the meeting during discussions on the subject

# Exemptions

Approval of the Board and the shareholders **NOT** required in the following cases:

- TXNs entered into between 2 Govt Cos;
- TXNs entered into between a H Co and its **wholly** owned subsidiary whose accounts are consolidated with H Co and placed before the shareholders at the general meeting for approval (for such TXNs, it shall be sufficient if the resolution is passed by H Co);
- TXN entered into by the Company in the ordinary course of business and on an arm's length basis.

# Ordinary course of Business (OCB)?

- Not defined anywhere in the Act
- Fourth Proviso to Section 188 (1) provides that transactions entered by the company in its ordinary course of business with related parties at arm's length basis need not comply with approval requirements
- Black Law's Dictionary defines the term as “normal routine in managing trade or business”
- **M/s. Bharati Televentures Ltd. Vs Addl / Jt. Commissioner of Income Tax [ITA 1395/2006, ITA 1656/2010]**
  - MOA and AOA is not conclusive for deciding whether an activity is in the ordinary course of business of the company
  - But, it shows the intention to pursue main objects
  - Frequency of the activity is sought to be highlighted as giving rise to a continuous and organised activity

# OCB – Four-part test

Uniform Commercial Code defines a "Buyer in the ordinary course of business" by a four-part test:

1. a person that buys goods in good faith,
2. without knowledge that the sale violates the rights of another person in the goods [e.g. a security interest],
3. and in the ordinary course from a person, other than a pawnbroker, **in the business of selling goods of that kind.**
4. a person buys goods in the ordinary course if the sale to the person **comports with the usual or customary practices** in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

# OCB – Factors to be considered

1. Whether the activity is covered in the objects clause of the Memorandum of Association
2. Whether the activity is in furtherance of the business
3. Whether the activity is normal or otherwise routine for the particular business
4. Whether the activity is repetitive/frequent
5. Whether the income, if any, earned from such activity/transaction is treated as business income in the company's books of account
6. Whether the transactions are common in the particular industry
7. Whether there is any historical practice to conduct such activities
8. The financial scale of the activity with regard to the operations of the business
9. Revenue generated by the activity
10. Resources committed to the activity

# Arm's Length basis?

- MEANING: Explanation to Section 188(1) of the Act defines the term 'arm's length transaction' as a transaction between two related parties that is conducted as if they are unrelated, so that there is no conflict of interest.
- NOT JUST PRICE: Arm's length basis does not mean arm's length price as price is just one of the components of the terms of dealing with the other party and there are several other matters which need to be considered. The transaction as a whole and the entire bundle of the terms and conditions needs to be considered for determining whether the transaction is on an arm's length basis.
- Section 188 does not prescribe any methodology to calculate price on arm's length basis.
- ***Filtrex Technologies Pvt. Ltd. Vs Asst. Commissioner of Income Tax IT (TP) A NO. 469/Bang/2017***

Bangalore Bench of the Income Tax Appellate Tribunal held that acceptance of arm's length price declared by one party cannot preclude the Revenue from examining arm's length price in the hands of the other party to the same transaction.

# Arm's Length transactions under IT Act

- In terms of Section 92F of the Income-tax Act, 1961, “arm's length price” means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.
- In terms of Section 92C of the Income-tax Act, 1961, the arm's length price in relation to any transaction be determined by any of the following methods:
  - a) Comparable uncontrolled price method;
  - b) Resale price method;
  - c) Cost plus method;
  - d) Profit Split method;
  - e) Transactional net margin method;
  - f) Such other method as may be prescribed.

# Absence of conflict of interest

To prove that existence of special relationship between contracting parties has not affected:

- transaction and its critical terms,
- including price, quantity, quality and
- other terms and conditions governing the transaction, by following industry benchmarks, past transactions entered by the company, etc.

# Office or place of profit?

- An office of profit means a position that brings to the person holding it some financial gain, or advantage, or benefit. It may be an office or place of profit if it carries some remuneration, financial advantage, benefit etc.
- The expression “office or place of profit” means
  - i. where such office or place is held by a director**, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise
  - ii. where such office or place is held by an individual other than a director** or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise
- In case of a transaction with respect to remuneration of a director, it will be considered to be on an arm’s length basis if the director gets remuneration in accordance with the provisions of Section 197 read with Schedule V of the Act

# Related Party Transactions in OPC - S. 193

1. **Conditions to be satisfied** when OPC enters into a contract with the sole member who is also the director of the company:
  - the contract shall be in writing or
  - the terms of the contract or offer shall be as contained in a memorandum or
  - the terms are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract
2. Stipulated conditions are not applicable to contracts entered in the ordinary course of business.
3. Such contracts entered by OPC with the sole member who is also the director of the company and recorded in minutes shall be informed to the Registrar within 15 days of approval by the Board.

# Omnibus Approval [Rule 6A of Chapter 12 of CA 2013]

- AC to set criteria for granting omnibus approval after obtaining approval from BoD
- The criteria to include:
  1. maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year
  2. maximum value per transaction, which can be allowed
  3. extent and manner of disclosures to be made to AC at the time of seeking such approval;
  4. review, at such intervals, as decided by the committee of RPTs entered into by the company pursuant to each of the omnibus approval made;
  5. transactions which cannot be subject to the omnibus approval by AC

# Omnibus Approval : Factors to be Considered

- Repetitiveness of the transactions (in past or in future);
- Justification for the need of omnibus approval
- AC shall satisfy itself on the need for omnibus approval for transactions of a repetitive nature and that such approval is in the interest of the company.  

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- Omnibus approvals shall be valid for a period *not exceeding one financial year* and shall need fresh approvals after the expiry of one year.
- Where the need for related party transaction cannot be foreseen and aforesaid details are not available:
  - ✓ AC may grant omnibus approval for such transactions subject to their value *not exceeding Rs.1 Crore per transaction*.

# Conditions of Omnibus Approval

1. Omnibus approval shall specify:

- name of the related party
- nature and duration of transaction
- maximum amount of transaction that can be entered into
- indicative base price / current contracted price and the formula for variation in the price if any
- other relevant information for AC to take a decision on the proposed transaction

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

3. Such other conditions as AC may deem fit

# Watch out !!!!

- Any contract or arrangement not exceeding Rs. 1 crore is entered into by a director or officer, without obtaining the approval of AC:
  - ***Needs to be ratified by AC within 3 months from the date of such transaction, otherwise the transaction shall be voidable.***
- If the contract or arrangement is with a related party to any director, or is authorized by any other director:
  - ***Directors concerned shall indemnify the company against any loss incurred by it.***
- In case of transactions other than specified transactions under Sec. 188, which require approval of the Board or shareholders, where AC does not approve such transactions:
  - ***It shall make its recommendations to the Board***

# Issue of Shares & Debentures to Related Party

## Issue of Shares:

- Issue of shares and debentures to a related party is not RPT
- In case of an issue of “shares and debentures” to a related party by way of private placement, the transaction will be treated as one with a related party but would not be regarded as a RPT under Section 188 of the Act provided the valuation requirements are met
- Further, issue of shares on rights basis, ESOPs, sweat equity, etc. will also not be treated as RPT under Section 188 of the Act, if they comply with the provisions of the Act / Listing Regulations

## Transfer of Shares:

- Transfer of shares to a related party would be considered as RPT

# SEBI LODR Regulations...

Regulation 23 of SEBI LODR and related Schedules

# Related Party [Regulation 2 (1) (zb) of SEBI LODR] - Meaning

Related Party means a related party as defined under:

- Section 2(76) of the CA, 2013 or
- Applicable Accounting Standards

Note:

1. **Deemed RP:** Any person or entity belonging to the promoter or promoter group of the listed entity or any person or any entity, holding equity shares of **10% or more** with effect from 1<sup>st</sup> April, 2023 either directly or on a beneficial interest basis as provided under Section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year
2. **Not Applicable:** For the units issued by mutual funds which are listed on a recognised stock exchange(s)

# RPT [Regulation 2 (1) (zc) of SEBI LODR] - Inclusions

## Means

A transaction involving transfer of resources, services or obligations between:

- i. 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
- ii. 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, with effect from April 1, 2023

## Includes

A transaction with related party shall be construed to include:

- i. a single transaction or
- ii. a group of transactions in a contract

# Related Party Transaction - Exclusions

## Not treated as RPT:

- Issue of specified securities on preferential basis, subject to compliance of the requirements under the ICDR Regulations.
- Corporate actions (uniformly offered) viz:
  - i. payment of dividend
  - ii. subdivision or consolidation of securities
  - iii. rights issue or bonus issue of securities
  - iv. buy-back of securities
- Acceptance of fixed deposits by banks / NBFCs at the terms uniformly acceptable/offered to all shareholders / public, subject to RPT disclosure every six months to the stock exchange(s), in the format as specified by the Board

# Related Party Transaction - Exclusions

## Not treated as RPT:

- Acceptance of current account and savings account deposits by banks in compliance with the directions issued by the Reserve Bank of India or any other central bank including payment of interest thereon.
- Retail purchases from any **listed entity or its subsidiary** by **directors or KMPs and their relatives**, without establishing a business relationship and at terms uniformly applicable / offered to all employees, directors, KMPs and relatives of directors or KMPs.

# Audit Committee - Approval Procedure

1. All RPTs and subsequent material modifications - Prior approval of AC is mandatory
2. AC shall define material modifications
3. AC members **who are independent directors** shall approve RPT
4. AC – **Prior approval** required for:
  - RPT above Rs.1 crore, to which subsidiary is a party but listed entity is not a party
  - Where value of such transaction whether entered into individually or taken together with previous transactions during a FY **exceeds lower** of the following:
    - i. **10%** per cent of the annual **standalone** turnover, as per the last audited financial statements of the subsidiary or
    - ii. scale-based materiality threshold as specified in Schedule XII of LODR

# Audit Committee - Approval Procedure

5. AC – **Prior approval** required for:
  - RPT above Rs.1 crore, to which subsidiary is a party but listed entity is not a party
  - Where such **subsidiary** does not have audited financial statement for at least **1 year**
  - Where value of such transaction whether entered into individually or taken together with previous transactions during a FY **exceeds lower** of the following:
    - i. **10%** per cent of the aggregate paid-up capital and securities premium account of the subsidiary (not older than 3 months prior to the date of seeking AC approval) or
    - ii. scale-based materiality threshold as specified in Schedule XII of LODR
6. AC – Prior approval **not required** for:
  - RPT to which listed subsidiary is a party but listed entity is not a party (if specified LODR regulations are applicable to such listed subsidiary)

# Audit Committee - Approval Procedure

7. Remuneration and sitting fees paid to directors, KMP or senior management of listed entity or its subsidiary **shall not require AC approval** if –
  - They are not part of promoter or promoter group
  - The remuneration and sitting fees does not exceed materiality threshold
8. Ratification of RPT – AC members who are Independent Directors may ratify RPTs within 3 months from the date of the transaction or in the immediate next meeting, whichever is earlier, subject to the conditions prescribed:
  - Aggregate value of RPT with concerned RP shall not exceed Rs. 1 crore during a FY
  - RPT is not material & rationale for not taking prior approval shall be placed before AC
  - Details of ratification to be reported in RPT disclosure and other condition specified by AC
9. RPT not ratified shall be **voidable** at the option of AC and if director is involved in such RPT then he shall **indemnify** the listed entity against any loss incurred by it

# Audit Committee – Omnibus Approval

AC may grant **omnibus approval** for RPT entered by listed entity or its subsidiaries subject to the prescribed conditions:

- AC to lay down criteria in line with RPT policy & such approval shall be applicable for transactions of repetitive nature
- AC to satisfy the need for such approval & such approval is in the interest of listed entity
- Approval shall specify:
  - the name of related party,
  - nature of the transaction, period, maximum amount of transaction,
  - indicative base price / current contracted price and formula for variation in price and
  - such other conditions as AC may deem fit
- AC to review RPT details entered by listed entity or subsidiary at least on a quarterly basis
- Such approval shall be valid for a period of 1 year & requires fresh approval every year
- AC may grant approval where need for such RPT cannot be overseen upto Rs. 1cr per transaction

# Shareholders - Approval Procedure

## 1. Prior approval of shareholders **required** for:

- All material transactions and subsequent material modifications shall require prior approval of shareholders and
- No related party shall **vote to approve** such resolution whether the entity is a related party to the particular transaction or not

## 2. Prior approval of shareholders **not required** for:

- RPT to which the listed subsidiary is a party, but the listed entity is not a party, if specified LODR Regulations are applicable to such listed subsidiary
- Resolution plan approved under IBC subject to the event being disclosed to stock exchange within 1 day of approving the resolution plan

## 3. **Omnibus approval** granted by shareholders for material RPTs **shall be valid till:**

- next AGM as per timelines prescribed under Companies Act, 2013 – for AGM and
- one year – for EGM

# Applicability / Non-applicability

## 1. Applicability:

Reg. 23 of LODR shall be applicable to all prospective transactions

## 2. Non-applicability:

(a) transactions entered into between two **public sector companies**;

(b) transactions entered into between a **listed H Co and its WOS** whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

(c) transactions entered into between **two WOS** of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

# Non-applicability - Contd.

## **Non-applicability:**

- (d) transactions which are in the nature of payment of statutory dues, statutory fees or statutory charges entered between the listed entity and the Central Government or any State Government or any combination thereof;
- (e) transactions between Public Sector Company on one hand and the Central Government or any State Government or any combination thereof on the other hand.

# Policy on RPT

- 1. Listed entity shall formulate policy on “materiality” of Related Party Transactions and on dealing with RPTs** including clear threshold limits duly approved by Board to be reviewed **once in every 3 years** and updated:

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

- for brand usage/royalty : 5% of Annual **consolidated** turnover
- for others : Scale-based threshold (**Schedule XII – next slide**)  
as per the last audited financial statements of listed entity

- 2. AC shall define “material modifications” and disclose it as part of the policy on materiality of RPT and on dealing with RPT**
- 3. The listed entity shall disseminate the policy on dealing with related party transactions on its website**

# Scale-based materiality threshold (Schedule XII LODR)

RPT shall be considered material where the value of transactions individually or taken together with previous transactions during a FY, exceeds thresholds prescribed below:

Consolidated turnover of Listed Entity	Threshold
Up to Rs.20,000 crores	10% of annual consolidated turnover
From Rs. 20,001 to 40,000 crores	Rs.2,000 crores + 5% of annual consolidated turnover exceeding Rs.20,000 crores
Above Rs.40,000 crores	Rs.3,000 Crore + 2.5% of annual consolidated turnover above Rs.40,000 crores or Rs.5,000 crore, whichever is lower

# Secretarial Standards...

SS 1 & SS 2

# SS 1 Meeting of Board

1. A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in private company, Director shall be entitled to participate in respect of such item after disclosure of his interest. Section 184 (2) of CA, 2013 & Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014 also states that interested directors **shall not be present** at the meeting at the time of discussion of such item
2. SS-1 provides that Director shall not be present at the meeting, physically or through electronic mode, during discussions and voting on an item, if such item is RPT
3. If Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any non-interested director with the consent of majority of directors present
4. RPT transactions which are not in OCB and not in ALB shall be placed before the **Board at its meeting and shall not be passed by circulation**

## SS 2 General Meetings

1. Member who is a related party is not entitled to vote on a resolution relating to approval of any contract in which such member is a related party.
2. Related party not entitled to vote in a resolution in which he is a related party, if present shall be counted for the purpose of quorum
3. In case of public companies,
  - Chairman is not entitled to propose a resolution in which he is interested
  - Chairman is not entitled to conduct proceedings for that item of business
  - Conduct of the proceedings of the meeting to be taken by dis-interested Director or any other member
  - Resume the Chair only after that item of business has been transacted

# Accounting Standards...

AS - 18 & IND AS 24

# AS 18 - Brief Overview

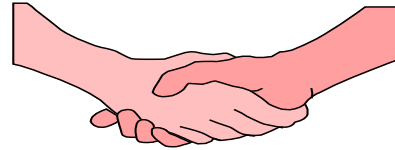


- Applicability (*All other than Ind AS entities*)
- The Related Party Issue
- Meaning of Related Party Relationships
- Certain other definitions
- Disclosure requirements
- Control, Significant influence

# AS 18 - Related Party Disclosures - Objectives

## Disclosure Requirements

Related Party Relationships



Related Party Transactions

Related Party Relations arise from:

..ability to control the other party

or

..exercise significant influence in financial and/or operating decisions of the other party.

Related Party transactions..

.. is transfer of resources or obligations between related parties

.. regardless of price being charged or not.

## Two simple rules

- **RPR:** Only if control exists, during the period, disclose relationship whether or no transactions
- **RPT:** Disclose nature of relationship and details of transaction

- RPR with control:  
Disclose if exists at any time in the year RPR , even if not there on B/s date.
- TXN:  
Disclose only if transaction took place when relationship existed.

# Exceptions to disclosure

- Even if control or significant influence exists no need for any disclosure - where
  - a) RE's duties of confidentiality (Bank)
  - b) Intra group transactions in CFS (rationale, they already stand eliminated)
  - c) All kinds of PSUs - their transactions with other PSUs (Volume, and meaninglessness)

# Related Party Relationships of Control

What should be disclosed -

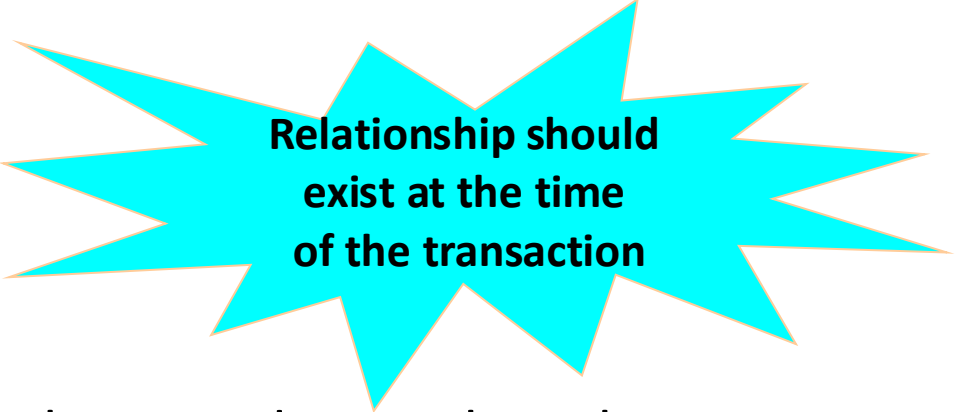
- a) Name of the related party
- b) Nature of the related party relationship where control exists.



# Related Party Transactions – C or SI

Disclose :

1. Name of the transacting party
2. Description of the relationship
3. Description of the nature of transactions including volume and any other elements considered necessary for understanding
4. Amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date
5. Provisions for doubtful debts due from such parties at that date; and
6. Amounts written off or written back in the period




**Relationship should  
exist at the time  
of the transaction**

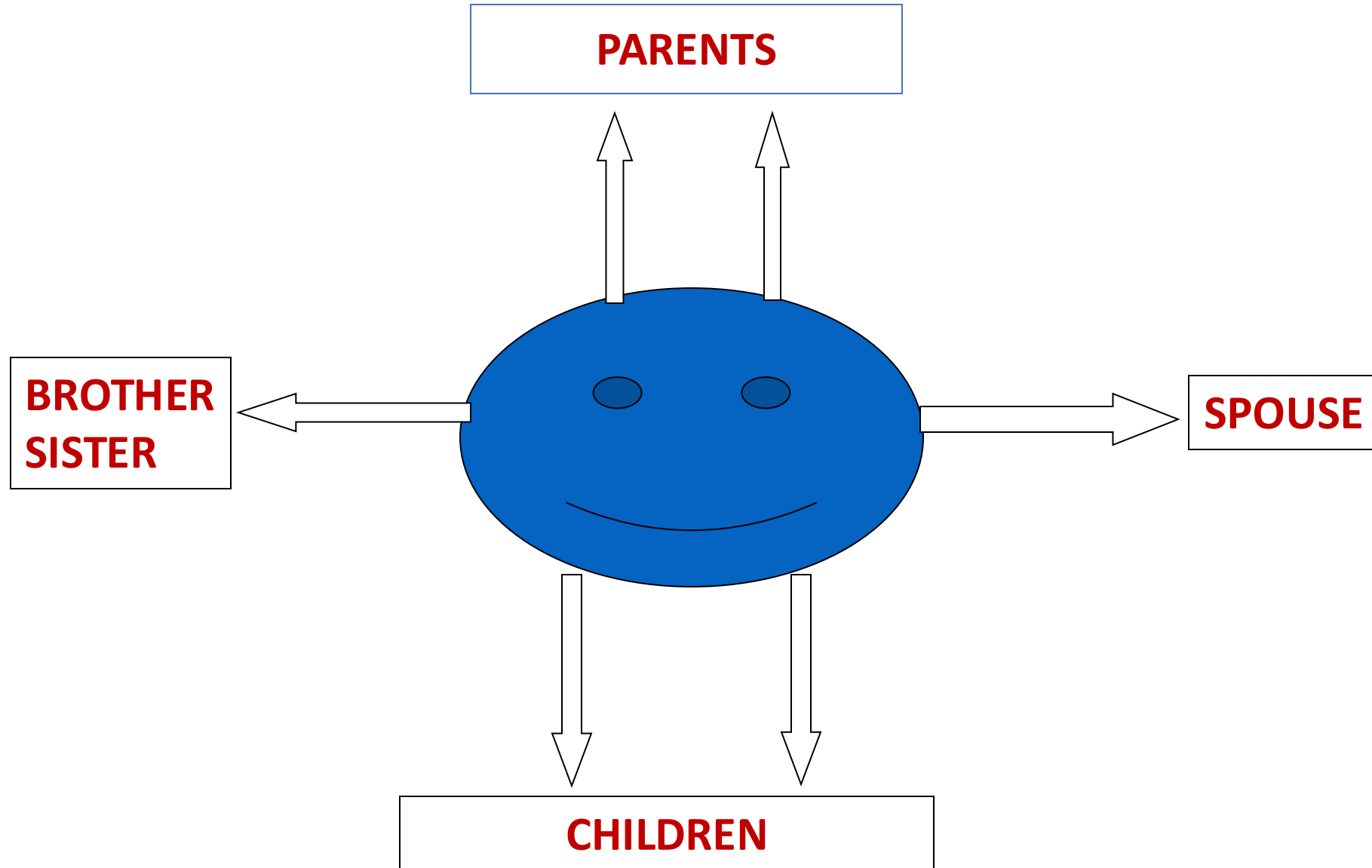
# Meaning of Related Party + RPT

- One who has the “ability” to control, or exercise significant influence over another
- RPT - where there is a transfer of resource or obligations, with or without consideration
- Can be many situations - leading to Related party relationships
- Standard provides five specific situations

## 5 Relationships only

1. HC, Sub, Fellow Sub
  2. Associate & JV: common economic activity of two or more parties, under contractual arrangement (vice versa)
  3. Individuals - control or significant influence & Relatives
  4. KMP - “Authority and Responsibility” - planning, directing and controlling activity & Relative
  5. Enterprises in which such Individuals or KMP have significant influence (includes enterprises owned by Directors or major shareholders)
- 

# Relative : so simple..



# Exceptions

## NOT A RPR

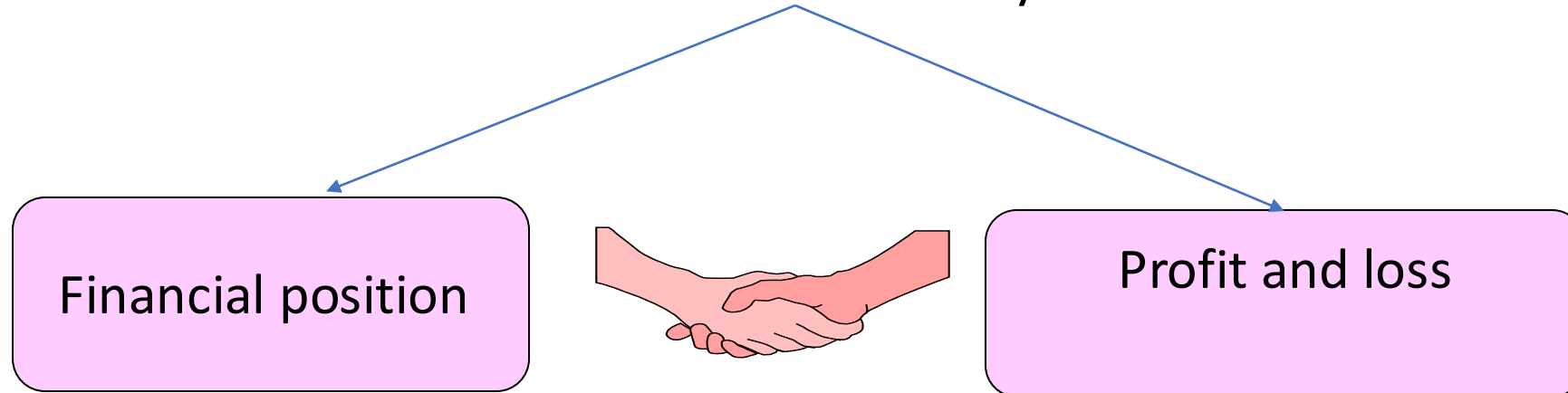
1. Only because there is common directorship in two companies - NO RPR, unless “control, or significant influence”
2. Single customer - franchisee, distributor etc
3. Finance Providers, Trade Unions, Public utilities, GOI departments/agencies etc

## RPT NO DISCLOSURE

- Even if control or significant influence exists no need for any disclosure – where:
  - a) RE’s duties of confidentiality (Bank)
  - b) Intra group transactions in CFS (rationale, they already stand eliminated)
  - c) State Controlled Enterprises

# IND AS 24 - Related Party Disclosures - Objectives

To ensure that financial statements contain necessary disclosures to draw attention to



which may have been affected by the  
existence of related parties  
&  
by transactions and outstanding balances,  
including commitments with related parties

# Related Parties under Ind AS 24 – Individual & Entity

A related party is a **person or entity that is related to the entity** that is preparing its financial statements (“reporting entity”)

- A. **A person or a close member of that person’s family is related to a reporting entity** if that person:
1. has control or joint control of the reporting entity;
  2. has significant influence over the reporting entity; or
  3. is a member of the key management personnel of the reporting entity or of a parent of the reporting entity

## Control – Ind AS 110

An investor controls an investee when the investor is **exposed, or has rights, to variable returns** from its involvement with the investee and has the **ability to affect those returns through its power over the investee**

## Joint Control – Ind AS 111

The contractually agreed sharing of control of an arrangement, which exists **only when decisions about the relevant activities require the unanimous consent of the parties sharing control**

## Significant influence – Ind AS

Power to participate in the **financial and operating policy decisions** of the investee but is not control or joint control of these policies.

# Related Parties under Ind AS 24 – Individual & Entity

**B.** An **entity is related to a reporting entity (RE)** if any of the following conditions applies:

The entity and RE are members of the same group (parent, subsidiary and fellow subsidiary)

One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member)

Both entities are joint ventures of the same third party

One entity is a joint venture of a third entity and the other entity is an associate of the third entity

Entity is a post-employment benefit plan for the benefit of employees of either RE or an entity related to RE

The entity is controlled or jointly controlled by any of the RE's individual related parties

A person identified in (A)(1) has significant influence over the entity or is a member of the key management personnel of the entity or its parent

The entity, or any of its group members provide key management personnel services to RE or its parent

# Who are not related parties & What is RPT under Ind AS 24

## Deemed not to be related

- Two entities simply because they have a director or other member of key management personnel in common
- Two ventures who share joint control over a joint venture
- Providers of finance, trade unions, public utilities, departments & agencies of a government that does not control, jointly control or significantly influence the reporting entity, simply by virtue of their normal dealings with an entity (even though they may affect the freedom of action of an entity or participate in its decision-making process)
- A customer, supplier, franchiser, distributor, or general agent with whom entity transacts a significant volume of business merely by virtue of resulting economic dependence

## RPT

A related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, **regardless of whether a price is charged**

# Related party – CA 13, AS 18, Ind AS 24 & SEBI LODR – 1/3

Particulars	Whether related party under CA, 13	Whether related party under AS 18	Whether related party under Ind AS 24	Whether related party under SEBI LODR
Director or relative	Yes	If only common, then No. If the director can affect policies, then Yes.	Yes. If the director or relative has control or joint control over the reporting entity or has significant influence over the reporting entity.	Yes
KMP or relative	Yes. KMP defined to mean CEO / MD / Manager, CS, WTD, CFO & such other officer designated as KMP by the Board	Yes. KMP defined to include persons with authority and responsibility for planning, controlling the activities of the entity	Yes. KMP defined to include persons with authority and responsibility for planning, directing and controlling activities, directly or indirectly, including any director of the entity.	Yes
Director (other than independent director), KMP and his relatives of holding company	Yes	No	No	Yes
Firm in which director, manager or his relative is a partner	Yes	No	No	Yes
Private company in which director or manager or his relative is a member or director	Yes	No	No	Yes

# Related party – CA 13, AS 18, Ind AS 24 & SEBI LODR – 2/3

Particulars	Whether related party under CA, 13	Whether related party under AS 18	Whether related party under Ind AS 24	Whether related party under SEBI LODR
Public company with common director and holds along with relatives 2% of paid up capital	Yes	No	No	Yes
BoD accustomed to act in accordance with directions of director or manager	Yes	Yes	Yes	Yes
Holding company, subsidiary or associate	Yes	Yes	Yes	Yes
Fellow subsidiary	Yes	Yes	Yes	Yes
Joint venture	Yes	Yes	Yes	Yes
Fellow associate	No	Yes, if an individual controls or exercises significant influence over both the enterprises.	Yes, if an individual controls or exercises significant influence over both the enterprises	Yes
Two Joint Ventures	No	No such clause	Co-ventures have been excluded from the definition of Related Party Transaction.	No

# Related party – CA 13, AS 18, Ind AS 24 & SEBI LODR – 3/3

Particulars	Whether related party under CA, 13	Whether related party under AS 18	Whether related party under Ind AS 24	Whether related party under SEBI LODR
Two entities having common KMP or a member of KMP of one entity has significant influence over another entity	No	No such clause	No	No
A person on whose advice a director or manager accustomed to act	Yes	Yes. In case of individual, there must be an interest in the voting power that gives them control or significant influence. Relatives of such individuals shall also be related party.	Yes. In case of individual , there must be an interest in the voting power that gives them control or significant influence. Relatives of such individuals shall also be related party.	Yes
Any person or entity forming a part of the promoter or promoter group of the listed entity	No	No such clause	No such clause	Yes
Any person or any entity, holding equity shares of ten per cent or more, with effect from April 1, 2023 in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year	No	No such clause	No such clause	Yes

# Disclosures & Audit

Companies Act, 2013 ,SEBI LODR & AS ...

# Director / KMP disclosure

Director/KMP shall ensure that a notice of any potential RPT is delivered well in advance to the Audit Committee and Board



Form MBP 1 : Disclosure of Interest given by the Director at the First Meeting of Board every FY

## **Section 184 (1) General Disclosure:**

- Definition of related party & Rule 3 of Companies (Specification of definitions details) Rules, 2014, identifies interest through KMP of the Company or its holding company. Hence, KMP shall also disclose his interest.
- Board resolution taking note of disclosure of director's interest & shareholding is required to be passed at the first Board meeting every FY and at the first board meeting held after such change.

## **Specific Disclosure:**

- Section 184 (2) requires director to disclose his direct or indirect concern or interest in any proposed contract or arrangement to be entered into:
  - a. with a body corporate in which he individually or with other directors holds more than 2% shareholding
  - b. or is a promoter, manager or CEO of that body corporate or
  - c. with a firm or other entity in which such director is a partner, owner or member
- Such interested director shall not participate in the discussion during the Board meeting
- If he becomes interested subsequently, he/she shall disclose the same to the Board immediately or at the next board meeting

# CA 2013 Registers & Board Agenda

## Noting of the contract/arrangement:

Enter the details of RPTs in the Register of Contract as prescribed under Section 189 of the Act & place the same before the next Board meeting for signature of all directors present at the meeting.

## The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose:

1. the name of the RP and nature of relationship;
2. the nature, duration of the contract and particulars of the contract or arrangement;
3. the material terms of the contract or arrangement including the value, if any;
4. any advance paid or received for the contract or arrangement, if any;
5. the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
6. whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
7. any other information relevant or important for the Board to take a decision on the proposed transaction.

# CA 2013 Meeting notice & Board's report

**Explanatory statement to the notice of general meeting shall contain the following particulars:**

- Name of the related party;
- Name of the director or key managerial personnel who is related, if any;
- Nature of relationship;
- Nature, material terms, monetary value and particulars of the contract or arrangements;
- Any other information relevant or important for the members to take a decision on the proposed resolution.

**Disclosure in the Board's Report (in Form AOC-2) which *inter alia* includes:**

- Disclosure of RPT which are entered into not on arm's length basis;
- Material RPT which are entered into on arm's length basis;
- Justification for entering into a contract or arrangement

1. Policy on dealing with RPTs: to be disclosed on website and a web link thereto shall be provided in the annual report
2. Listed entity shall submit RPT disclosures to the stock exchanges every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023
3. RPT disclosures shall be published on website
4. Listed entity shall make disclosures in annual report in compliance with AS on RPT disclosures. Disclosure requirements shall be in compliance with Regulation 34 (3) and 53 (f) of LODR Regulations
5. Disclosures in annual report of transactions with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results
6. Disclosures in annual report on materially significant related party transactions that may have potential conflict with the interests of listed entity at large

# Disclosure – AS 18 (1/2)

Particulars	Holding Company	Subsidiaries	Fellow Subsidiaries	Associates	KMP	Relatives of KMP	Total
Purchase of Goods							
Sale of Goods							
Purchase of Fixed Assets							
Sale of Fixed Assets							
Rendering of Services							
Receiving of Services							
Agency arrangements							
Leasing or HP arrangements							
Transfer of R&D							
Licence Agreements							
Finance (including loans and Equity contributions in cash / kind)							
Guarantees and collaterals							
Management contracts including for deputation of employees							

## Disclosure – AS 18 (2/2)

<b>Note : Name of related parties and description of relationship</b>		
1	Holding Company	A Ltd
2	Subsidiaries	B Ltd. And C (P) Ltd
3	Fellow Subsidiaries	D Ltd and Q Ltd
4	Associates	X Ltd, Y Ltd and Z (P) Ltd
5	KMP	Mr. Y and Mr. Z
6	Relatives of KMP	Mrs. Y (wife of Mr. Y), Mr. F (father of Mr. Z)

# Disclosure – IND AS 24 (1/2)

RPT disclosures shall include:

- a. Amount of the transaction
- b. Amount of outstanding balances, including commitments
- c. Provision for doubtful debts related to amount of outstanding balances
- d. Expense recognized during the period in respect of bad or doubtful debts due shall be made separately for each of the following categories:
  - the parent;
  - entities with joint control or significant influence over, the entity;
  - subsidiaries;
  - associates;
  - joint ventures in which the entity is a joint venturer;
  - key management personnel of the entity or its parent;
  - other related parties

# Disclosure – IND AS 24 (2/2)

All entities shall disclose

- Relationships between a parent and its subsidiaries shall be disclosed irrespective of whether there have been transactions between them

An entity shall disclose KMP compensation in total & for each category

- Short-term employee benefits;
- Post-employment benefits;
- Other long-term benefits;
- Termination benefits; and
- Share-based payment.

## Statutory Auditor

- Financial Reporting Framework (AS 18 / Ind AS 24) requires adequate disclosure of RPTs to enable users of financial statements to understand their nature and actual or potential effects in the financial statements
- SA 550 deals with auditors' responsibilities regarding related party relationships and transactions when performing an audit of financial statements
- Auditors shall inspect the following for indications of the existence of RPTs that the management has not previously disclosed to the auditor:
  - Bank, legal and third-party confirmations obtained as part of the audit procedure;
  - Minutes of the meeting of shareholders and of those charged with governance &
  - Such other records or documents as the auditor considers necessary in the circumstances of the entity

## Secretarial Auditor

- Secretarial Auditor of the Company shall evaluate the statutory compliance and confirm in Form No. MR 3 regarding RPTs;
- Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and submit a secretarial compliance report as per Reg 24A of SEBI LODR. Compliance with all the applicable statutory provisions including RPTs shall be covered in the audit;
- Auditor shall:
  - i. Obtain third party confirmation regarding information related to related parties;
  - ii. Evaluate audit evidence to arrive at the conclusion &
  - iii. Document the audit evidence in working papers, including the basis and extent of planning, work performed and the findings of audit.

## Cost Auditor

- Companies (Cost Records and Audit) Rules, 2014 requires companies to disclose the particulars relating to items of cost in the books of accounts which *inter alia* deals with RPTs
- Details of RPTs are required to be provided in respect of each related party and each product/service for the company as a whole in item no.5 of Part D of the Cost Audit Report
- Determine normal price of RPTs. Basis to determine normal price includes:
  - ❖ Comparable uncontrolled price method
  - ❖ Resale Price Method
  - ❖ Cost plus Method
  - ❖ Profit Split Method
  - ❖ Transactional Net Margin Method
  - ❖ Any other method as may be specified

## Standard on Internal Audit (SIA) 18 – Related Parties

- To establish standard and provide guidance on the procedures to be followed by the internal auditor in ensuring that **related party activities** of the entity are properly **captured through internal controls**.
- The internal auditor is the appropriate resource for assessing what management has implemented with regard to related party information by **evaluating relevant internal controls**, and informing the management about the **deficiencies detected with suggestions for improvement**.
- The internal auditor shall perform the **internal audit procedures** and related activities to obtain information relevant to evaluating internal controls associated with **related party relationships and transactions**.

## Internal Auditor

Internal auditor shall inspect the following for indications of the **existence of related party relationships or transactions**:

- Bank and legal confirmations obtained;
- Minutes of shareholders meetings & those charged with governance;
- Such other records or documents as the internal auditor considers necessary in the circumstances of the entity, for example-
  - a) Entity income tax returns,
  - b) Information supplied to statutory and regulatory authorities,
  - c) Shareholder registers, statements of conflicts of interest, records of entity's investments, contracts and agreements with key management,
  - d) Specific invoices and correspondence from the entity's professional advisors,
  - e) Life insurance policies, significant contracts, documents associated with the entity's filings with securities regulator.



**None gets punished for RPT; the punishment is for poor governance practice.**

M P Vijay Kumar

**THANK  
YOU!**



**M P Vijay Kumar**

**STAY SAFE. STAY HEALTHY. STAY ACCOUNTABLE**