

RELATED PARTY TRANSACTIONS: JOURNEY FROM COMPANIES ACT, 1956 AND LISTING AGREEMENT TO COMPANIES ACT, 2013 AND SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

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ABSTRACT

This Article outline the journey of Indian Corporate Sector with respect to Related Party Transactions (“RPTs”) from the era of Companies Act, 1956 (1 of 1956), hereinafter referred as “**Act 1956**” and Listing Agreement with the Stock Exchanges to the Companies Act, 2013 (18 of 2013), hereinafter referred as “**Act 2013**” and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR**”) to understand the difference between the repealed legislations and current legislations. This Article also outline in brief the relevant provisions related to RPTs prescribed under the Act 1956 and Listing Agreement with the Stock Exchanges and current Act 2013 and LODR to understand the present law and procedure involved therein. This Article will also help to understand how the provisions relating to RPTs were indirectly present under the Act 1956 and directly through Accounting Standard issued by Institute of Chartered Accountants of India (‘ICAI’) and Listing Agreement with the Stock Exchanges and how the indirect provisions relating to RPTs saw the light of the day in the form of Act 2013 and became more robust under the LODR and new Accounting Standard.

I. Introduction

The word Related Party comprises of two words “**Related**” and “**Party**”. Thus, according to the plain English, to become a Related Party, two essential conditions must be satisfied i.e. (i) someone should be “Related” and such someone must be “Party”. One can say that the word Related is derived from the word ‘relation’ or ‘connection’ or ‘connectivity’ in the context of a Corporation or Company or Board Corporate (‘collectively referred as “**Body Corporate**”). The other essential element is that the someone who is ‘Related’ must be a ‘Party’, whether individual or artificial. Thus, any party who is related to the Board Corporate by any means, whether directly or indirectly, can be classified or identified as “**Related Party**”.

Now in the context of the applicable laws which regulates the Indian Corporate Sector, let us see

who may be related to the Body Corporate. It could be a:

- (a) Director; or
- (b) Shareholder or Member; or
- (c) Manager; or
- (d) Chief Financial Officer or Company Secretary; or
- (e) Relative of persons mention at ‘a’ to ‘d’ above; or
- (f) Company in which Persons ‘a’ to ‘e’ above is a Director or Shareholder or Manager; or
- (g) Firm in which Persons ‘a’ to ‘e’ above is a Partner; or
- (h) Holding, Subsidiary, Fellow Subsidiary or Associate of the Body Corporate; or
- (i) Any person on whose advice, directions or instructions, a Director or Manager is accustomed to act; or

- (j) Any Body Corporate whose Board of Directors, Managing Director or Manager is accustomed to act in accordance with the advice, directions or instructions of a Director or Manager.

II. Whether Related Party was defined under the Act 1956?

It is interesting to note that the concept of Related Party was neither defined nor explained under the Act 1956. So, the question arises how Act 1956 used to regulate or control the RPTs?

Act 1956 was enacted in the year 1956 which was ultimately repealed gradually in the year 2013 to 2014 by the Act 2013. In the year 1956, the organised business community in the form of Private Corporate Sector was controlled by few handful of Promoters of the reputed Groups like TATA, JK Organisation, Birla, Shriram etc. and the complexities in the business were few. Probably, the business was carried on at that time though single entity with unrelated parties and / or with straight or less complex structures. No offshore entities were created by the Indian Corporate Sector for either doing business outside India or routing of the funds in India, partially due to tighter or stricter foreign exchange laws. At the same time, the contribution to India's GDP by Indian Private Corporate Sector was limited due to stricter or tighter license regime of Government of India. Moreover, hardly any scam or financial fraud was unearthed by the Government and last but the least, the Promoters were either not or less greedy. Hence, the need of defining and regulating the RPTs was not felt by the Regulators. At the same time, the discussion on Corporate Governance practices or principles started post New Economic Policy announced in 1991 by the then Finance Minister, Hon'ble Dr. Manmohan Singh under the leadership of late Hon'ble Prime Minister Mr. P.V. Narasimha Rao. The Liberation, Privatisation and Globalisation Policy ('LPG Policy') announced in 1991 resulted in the expansion of the Indian Private Corporate Sector, both in Indian and in Foreign markets. However, the LPG Policy also came with its own challenges with created ideas of Indian

Promoters to use the connected persons to do the business in India and abroad. These ideas also start giving birth to financial scams or white collar crimes, which attracted the attention of Regulators and Investors, both locally and internationally. To control these crimes as well as to raise the ethical standards of doing business in India, the discussion on sound principles or practices of Corporate Governance started and the Investors and Regulators expect from the Corporate Sector to be more transparent and ethical while doing the business with connected or unconnected parties and comply the law in letter and spirit.

III. How to trace the inference of RPTs in the Act 1956?

As we have discussed in Para II above, the concept of RPTs was not present in the Act 1956. However, one may note that the Act 1956 instead of RPTs, regulates the "Interested Party Transactions" ("IPTs"), that too in a stricter manner. One may say that IPTs gave birth to RPTs.

To understand the concept of IPTs, one need to analyse the provisions of Sections 269 read with 309 & Schedule XII, 295, 297, 299, 300 and 314 of the Act 1956, relevant extracts of which are reproduced hereunder:

***288* 269. APPOINTMENT OF MANAGING OR WHOLE-TIME DIRECTOR OR MANAGER TO REQUIRE GOVERNMENT APPROVAL ONLY IN CERTAIN CASES**

"(1) On and from the commencement of the Companies (Amendment) Act, 1988, every public company, or a private company which is a subsidiary of a public company, having a paid-up share capital of such sum as may be prescribed²⁸⁹, shall have a managing or whole-time director or a manager.

(2) On and from the commencement of the Companies (Amendment) Act, 1988, no

²⁸⁸ Section 266 of the Companies Act, 1956 (1 of 1956)

²⁸⁹ Rule 10A of General Rules & Forms, as inserted by Second Amendment Rules, 1990 w.e.f 17-4-1990 lays down Rs. 5 Crore of paid-up share capital as the criteria for compulsory appointment of managerial personnel

appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government unless such appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said Parts being subject to the provisions of Part III of that Schedule) and a return in the prescribed form is filed within ninety days from the date of such appointment.

Explanation. - In this section "appointment" includes reappointment and "whole-time director" includes a director in the whole-time employment of the company."

Note: Schedule XII to the Act 1956 contains provisions regarding conditions to be fulfilled for the appointment of a Managing Director or Whole-time Director or a Manager ('Managerial Personnel'), limits of remuneration payable to Managerial Personnel by the companies having profits or no profits (loss) or inadequate profits, remuneration payable to a managerial person in two companies and other incidental matters thereto.

²⁹⁰309. REMUNERATION OF DIRECTORS

"(1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 198 and this section, either by the articles of the company, or by a resolution or, if the articles so required, by a special resolution, passed by the company in general meeting and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity.

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if -

(a) the services rendered are of a professional nature, and

(b) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession.

(2) *****.

(3) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.

(4) A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration - either

(a) by way of a monthly, quarterly or annual payment with the approval of the Central Government ; or

(b) by way of commission if the company by special resolution authorises such payment.

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed -

(i) one per cent of the net profits of the company, if the company has a managing or whole-time director or a manager ;

(ii) three per cent of the net profits of the company, in any other case.

Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent

²⁹⁰ Section 309 of the Companies Act, 1956 (1 of 1956)

or, as the case may be, three per cent of its net profits.

(5) *****

(6) No director of a company who is in receipt of any commission from the company and who is either in the whole time employment of the company or a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company.

(7) *****

(8) *****

(9) *****.”

²⁹¹295. LOANS TO DIRECTORS, ETC.

“(1) Save as otherwise provided in sub-section (2), no company (hereinafter in this section referred to as “the lending company”) without obtaining the previous approval of the Central Government in that behalf shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, -

(a) any director of the lending company or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors together ; or

(e) any body corporate, the Board of directors, managing director, [***] or manager whereof is accustomed to act in accordance with the directions or

instructions of the Board, or of any director or directors, of the lending company.

(2) *****

(3) *****

²⁹²297. BOARD'S SANCTION TO BE REQUIRED FOR CERTAIN CONTRACTS IN WHICH PARTICULAR DIRECTORS ARE INTERESTED

(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company -

(a) for the sale, purchase or supply of any goods, materials or services; or

(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company.

Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.

(2) *****

(3) *****.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise;

and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) *****.

²⁹¹ Section 295 of the Companies Act, 1956 (1 of 1956)

²⁹² Section 297 of the Companies Act, 1956 (1 of 1956)

(6) *****.

²⁹³299. DISCLOSURE OF INTERESTS BY DIRECTOR

“(1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of directors.

(2) (a) In the case of a proposed contract or arrangement, the disclosure required to be made by a director under subsection (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, or if the director was not, at the date of that meeting, concerned or interested in the proposed contract or arrangement, at the first meeting of the Board held after he becomes so concerned or interested.

(b) In the case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

(3) *****

(4) *****

(5) *****

(6) Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company.”

²⁹⁴300. INTERESTED DIRECTOR NOT TO PARTICIPATE OR VOTE IN BOARD'S PROCEEDINGS

“(1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement ; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote ; and if he does vote, his vote shall be void.

(2) ***** ”

²⁹⁵314. DIRECTOR, ETC., NOT TO HOLD OFFICE OR PLACE OF PROFIT

“(1) Except with the consent of the company accorded by a special resolution, -

(a) no director of a company shall hold any office or place of profit, and

(b) no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of such sum as may be prescribed, except that of managing director or manager, banker or trustee for the holders of debentures of the company, -

(i) under the company; or

(ii) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company or its holding company.

Provided further that where a relative of a director or a firm in which such relative is a partner; is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained

²⁹³ Section 299 of the Companies Act, 1956 (1 of 1956)

²⁹⁴ Section 300 of the Companies Act, 1956 (1 of 1956)

²⁹⁵ Section 314 of the Companies Act, 1956 (1 of 1956)

either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later.

Explanation. – For the purpose of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution.

(1A) Nothing in sub-section (1) shall apply where a relative of a director or a firm in which such relative is a partner holds any office or place of profit under the company or a subsidiary thereof having been appointed to such office or place before such director becomes a director of the company.

(1B) Notwithstanding anything contained in sub-section (1), –

(a) no partner or relative of a director or manager,

(b) no firm in which such director or manager, or relative of either, is a partner,

(c) no private company of which such a director or manager, or relative of either, is a director or member, shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than such sum as may be prescribed²⁹⁶, except with the prior consent of the company by a special resolution and the approval of the Central Government.

(2) *****

(2A) Every individual, firm, private company or other body corporate proposed to be appointed to any office or place of profit to which this section applies shall, before or at the

time of such appointment, declare in writing whether he or it is or is not connected with a director of the company in any of the ways referred to in sub-section (1).

(2B) *****.

(3) Any office or place shall be deemed to be an office or place of profit under the company within the meaning of this section, –

(a) in case the office or place is held by a director, if the director holding it obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise ;

(b) in case the 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 obtains from the company anything by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.”

IV. Summary of the provisions of Act 1956

It may be noted that all the provisions discussed above nowhere mentions about RPTs, instead prescribe the provisions to regulate the appointment of or transactions with Director/ Managing Director/ Whole-time Director/ Manager (hereinafter referred as “Managerial Personnel”) or their relatives or with the firms in which such Managerial Personnel or their relatives are Partners or Private/ Public companies in which such Managerial Personnel or their relatives are Director or Members, as the case may be. Further, these provisions also prescribe the procedure and approvals to be obtained from the Board, Shareholders and Central Government in certain cases for giving Loans to Directors, payment of remuneration to Managerial Personnel and appointment of the Directors or their relatives at office or place of profit, disclosure of interest by Directors while

²⁹⁶ Sub-rule (2) of rule 10C of General Rules & Forms prescribes a sum being not less than Rs. 2,50,000 for the purpose of the clause

entering into contracts with them or their relatives or the firms / companies in which they hold any interest and consequently not participating in the relevant agenda item at the Board Meeting.

V. Accounting Standard (AS) 18

As per Section 211(3A) of Act 1956, every profit and loss account and the balance sheet of the company shall comply with the accounting standards.

As per Section 211 (3C) of Act 1956, the expression "accounting standards" means the standards of accounting recommended by the ICAI.

The concept of RPTs was introduced into Indian legislations through AS 18 issued by ICAI. AS 18 to be applied in reporting related party relationships and transactions between a reporting enterprise and its related parties in the Financial Statements of a Company. Para 3 of AS 18 prescribe the following:

²⁹⁷"This Standard deals only with related party relationships described in (a) to (e) below.

(a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);

(b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;

(c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;

(d) key management personnel and relatives of such personnel; and

(e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise."

Para 10.1 and 10.2 of AS 18 prescribe the following:

²⁹⁸"10.1 Related party - parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

10.2 Related party transaction - a transfer of resources or obligations between related parties, regardless of whether or not a price is charged."

VI. Listing Agreement with the Stock Exchanges

The companies whose Shares and / or Debentures are listed on the Stock Exchanges were in addition to the Act 1956, required to comply the provisions of the erstwhile Listing Agreement entered into with the Stock Exchanges. As per website Wikipedia (last visited on 6th April 2023), SEBI constituted a Committee in late 2002 to assess the adequacy of the then corporate governance practices and to suggest improvements therein. Based on the recommendations of this committee, SEBI issued a modified Clause 49 of the Listing Agreement on 29th October 2004 which came into operation on 1st January 2006. Clause 49 suitably pushed forward the original intent of protecting the interests of investors through enhanced governance practices and disclosures which include improvement in the quality and quantity of disclosures to the Stakeholders and consolidation of the roles and responsibilities of the audit committee in all matters relating to internal controls and financial reporting. The Clause 49 was a step

²⁹⁷ Para 3 of AS 18 issued by ICAI

²⁹⁸ Para 10.1 and 10.2 of AS 18 issued by ICAI

towards the realm of global best practices (and sometimes, even beyond).

Clause 32 and 49 of the Listing Agreement contained the provisions relating to, *inter alia*, RPTs, the relevant extracts of which are reproduced hereunder:

Clause	Provisions
32(b)	"The companies shall be required to make disclosures in compliance with the Accounting Standard on "Related Party Disclosures" in the annual reports."
49(II)(D)(4)(f)	"The role of Audit Committee of the Board of Directors of the Company shall include review, with the management, the annual financial statements before submission to the board for approval, with particular reference to, <i>inter alia</i> , disclosure of any "Related Party Transactions" ."
49(II)(E)(2)	"The Audit Committee of the Board of Directors of the Company shall mandatorily review, <i>inter alia</i> , Statement of significant "Related Party Transactions" (as defined by the audit committee), submitted by the Management."
49(IV)(A)	<u>"Basis of related party transactions"</u> i. A statement in summary form of transactions with related parties in the ordinary course of business shall be placed periodically before the audit committee. ii. Details of material individual transactions with related parties which are not in the normal course of business

Clause	Provisions
	shall be placed before the audit committee. iii. Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the audit committee, together with Management's justification for the same."
Annexure I C	"Suggested list of items to be included in the Report on Corporate Governance (forming part of the Annual Report) of the companies, include "Disclosures on materially significant related party transactions" that may have potential conflict with the interests of company at large."

VII. Summary of the provisions of AS 18 and the Listing Agreement

As per AS 18, all the companies while preparing their Financial Statements for the year are required to report related party relationships and transactions between a reporting enterprise and its related parties. AS 18 defines the Related Party and the RPTs.

Clause 32 and 49 of the Listing Agreement with the Stock Exchanges mandates the listed companies to make disclosures in compliance with the AS on RPTs in their annual reports. The Audit Committee to review periodically the Statement of **RPTs**, details of material individual transactions with Related Parties which are not either in the normal course of business or an arm's length basis together with Management's justification for the same.

VIII. Conclusion

It may be seen that prior to introduction of the Act 2013 and LODR, the provisions pertaining to RPTs were present indirectly in the form of IPTs

only in the Act 1956 and directly in AS 18 and Listing Agreement with the Stock Exchanges.

IX. RPTs provision in the Act 2013 and LODR

As we have seen above that the birth of RPTs was given by AS18 and Listing Agreement with the Stock Exchanges. However, for the first time in the Companies Act regulating the Indian Corporate Sector, it was formally introduced in the **Act 2013**, relevant provisions of which are reproduced hereunder:

Section 2(76) of the Act 2013 defines Related Party as under:

²⁹⁹“related party”, with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager and holds is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

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

(B) a subsidiary of a holding company to which it is also a subsidiary;

(C) an investing company or the venturer of the company.

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(ix) such other person as may be prescribed;

For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.”

Section 177 of the Act 2013 defines the role and responsibilities of the Audit Committee with reference RPTs, relevant extracts of which are reproduced hereunder:

177. Audit Committee.

³⁰⁰(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—

- (iv) approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;

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

²⁹⁹ Section 2(76) of the Companies Act (18 of 2013)

³⁰⁰ Section 177 of the Companies Act 2013 (18 of 2013)

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."

Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 prescribes the mechanism of Omnibus Approval for Related Party Transactions on Annual Basis.

Section 184 of Act 2013 prescribes the provisions relating to Disclosure of Interest by Director, which are reproduced hereunder:

³⁰¹(1) *Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.*

(2) *Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—*

(a) *with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or*

(b) *with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting."*

Section 185 of the Act 2013 prescribe the provisions relating to Loan to Directors, etc. which are reproduced hereunder:

³⁰²(1) *No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,-*

(a) *any director of company, or of a company which is its holding company or any partner or relative of any such director; or*

(b) *any firm in which any such director or relative is a partner.*

(2) *A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that:-*

(a) ******; and*

(b) ******.*

Explanation.-For the purposes of this subsection, the expression "any person in whom any of the director of the company is interested" means:-

(a) *any private company of which any such director is a director or member;*

(b) *any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such Directors, together; or*

(c) *any body corporate, the Board of Directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or Directors, of the lending company."*

³⁰¹ Section 184 of the Companies Act 2013 (18 of 2013)

³⁰² Section 185 of the Companies Act 2013 (18 of 2013)

Section 188 of the Act 2013 prescribes the provisions related to RPTs, which are reproduced hereunder:

³⁰³(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution:

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:|

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis:

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation.— In this sub-section,—

(a) the expression "office or place of profit" means any office or place—

(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;

(b) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement."

Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 prescribes the thresholds limits for taking the Board and

³⁰³ Section 188 of the Companies Act 2013 (18 of 2013)

Shareholders' approval for RPTs, which are reproduced hereunder:

³⁰⁴Contract or Arrangement With a Related Party

(1) *****.

(2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement-

(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,-

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mention below-

(i) sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more] of the turnover of the company, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188:

(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent more of net worth of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

(iii) leasing of property any kind 6[amounting to ten percent or more of the turnover of the company, as mentioned in clause (c) of sub-section (1) of section 188:

(iv) availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation.- It is hereby clarified that the limits specified in sub-clause (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

(b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188.

(c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one percent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.- (1) The turnover or net worth referred in the above sub-rules shall be computed on the basis of the audited financial statement of the preceding financial year.

(2) In case of wholly owned subsidiary, the resolution is passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company.

(3) *****."

Section 134 of the Act 2013 prescribes the provisions relating to disclosure of RPTs as part of the Board's Report, relevant extract of which is reproduced hereunder:

³⁰⁵134. Financial Statement, Board's Report, etc.

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors. which shall include-

(h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;"

³⁰⁶**Rule 8** of the Companies (Accounts) Rules, 2014 prescribes the provisions for disclosure of

³⁰⁴ Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014

³⁰⁵ Section 134 of the Companies Act, 2013 (18 of 2013)

³⁰⁶ Rule 8 of the Companies (Accounts) Rules, 2014

RPTs in the Board's Report, relevant extract of which is reproduced hereunder:

"Matters to be Included in Board's Report

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2."

Section 196 of the Act 2013 prescribes the provisions relating to appointment of managing director, whole-time director or manager, relevant extracts of which are reproduced hereunder:

³⁰⁷*"(1) No company shall appoint or employ at the same time a managing director and a manager.*

(2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

*(3) *****.*

(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions Specified in Part I of that Schedule.

*(5) *****."*

Note: Similar to Schedule XII to the Act 1956, Schedule V too contains provisions regarding conditions to be fulfilled for the appointment of a Managing Director or Whole-time Director or a Manager ('Managerial Personnel'), limits of remuneration payable to Managerial Personnel (including Non-executive Directors) by the

companies having profits or no profits (loss) or inadequate profits, remuneration payable to a managerial person in two companies and other incidental matters thereto.

Section 197 of the Act 2013 prescribes the provisions relating to overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits, relevant extracts of which are reproduced hereunder:

³⁰⁸*"(1) The total managerial remuneration payable by a public company to its Directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the Directors shall not be deducted from the gross profits:*

Provided that the company in general meeting may, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting, by a special resolution-

(i) the remuneration payable to anyone managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such Directors and manager taken together;

(ii) the remuneration payable to Directors who are neither managing Directors nor whole-time Directors shall not exceed,-

(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent. of the net profits in any other case.

³⁰⁷ Section 196 of the Companies Act, 2013 (18 of 2013)

³⁰⁸ Section 197 of the Companies Act, 2013 (18 of 2013)

(2) The percentages aforesaid shall be exclusive of any fees payable to Directors under sub-section (5).

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its Directors, including any managing or whole-time director or manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to Directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.

(4) The remuneration payable to the Directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if-

(a) the services rendered are of a professional nature; and

(b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178. or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

(5) *****

(6) *****

(7) [Omitted]

(8) *****.

(9) *****.

(10) *****.

(11) *****.

(12) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

(13) *****.

(14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

(15) *****.

(16) *****.

(17) *****."

Rule 4 and 5 of the Companies (Appointment & Remuneration of managerial Personnel) Rules, 2014 prescribes the provisions relating to payment of Sitting Fees and Disclosure in Board's Report, which are reproduced hereunder:

³⁰⁹ **4. Sitting Fees**

A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof.

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

³⁰⁹ Rule 4 and 5 of the Companies (Appointment & Remuneration of managerial Personnel) Rules, 2014

5. Disclosure in Board's Report

(1) Every listed company shall disclose in the Board's report-

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;

(ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;

(iii) the percentage increase in the median remuneration of employees in the financial year;

(iv) the number of permanent employees on the rolls of company;

(v) [Omitted]

(vi) [Omitted]

(vii) [Omitted]

(viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;

(ix) [Omitted]

(x) [Omitted]

(xi) [Omitted]

(xii) affirmation that the remuneration is as per the remuneration policy of the company.

Explanation.- For the purposes of this rule.- (i) the expression "median" means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one;

(ii) if there is an even number of observations, the median shall be the average of the two middle values.

(2) *****.

(3) *****."

As per Section 133 of the Act 2013 read with relevant Companies Accounting Standard Rules, certain specified class of companies are required to comply the Ind AS and the remaining class of companies (residuary companies) are required to comply the AS, while preparing their Financial Statements. The relevant IndAS for RPTs is IndAS 24, which contains more exhaustive definition of Related party and Related Party relationships, compared to AS18.

Section 203 of the Act 2013 prescribes the provisions of Appointment of KMPs, which are reproduced hereunder:

³¹⁰(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) company secretary; and

(iii) Chief Financial Officer :

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this subsection shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

³¹⁰ Section 203 of the Companies Act, 2013 (18 of 2013)

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the Directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the Directors then in India.

(4) *****.

(5) *****."

Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the thresholds limits for appointment of KMP, which are reproduced hereunder-

³¹¹*"Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.*

Rule 8A Appointment of Company Secretaries in Companies Not Covered Under Rule 8

Every private company which has a paid up share capital of ten crore rupees or more shall have a whole -time company secretary."

X. Summary (Act 2013 and AS)

Corporate sector has witnessed a sea change in the Act 2013 with reference to regulations for dealing with RPTs, compared to Act 1956. This is attributable due to the fact that lot of developments in law as well as Corporate Governance practices have taken place since 1956 till 2013. Also, the corporate world has witnessed various white-collar crimes, particularly in promoter driven companies like Satyam, etc. Due to loopholes in the existing laws and lack of adequate enforcement mechanism on account of non-availability of RPTs data, corporate world was witnessing the practices of diverting or siphoning off the

investors' hard money to few greedy Promoters or companies established in 'tax heaven' countries. Therefore, in comparison to Act 1956, Act 2013 contains more exhaustive and detailed procedure for dealing with RPTs to curb the malpractices prevalent in the corporate world. Resultantly, Act 2013 defines the Related Party which was defined earlier only in the AS18. Act 2013 introduced the provisions related to approval of transactions with Related Parties and Related Party Transactions by the Audit Committee, Board and Shareholders, as the case may be, with certain exceptions and disclosure of RPTs, etc. in the Board's Report. The transactions with Related Party and RPTs are different concepts as the former includes all the transactions with Related Party such as Loans, Investments, etc. whereas RPTs contains the specific transactions as prescribed under Section 188 of the Act 2013 which is narrower in scope compared to the former. The basic philosophy of the Act 2013 is 'comply and disclose' instead 'comply and approve' which is evident from the fact that no Central Government's approval is required for RPTs (akin to Interested Party Transactions as prescribed in Act 1956). Also, certain specified transactions with Related Parties are exempt from approval of the Audit Committee, Board and Shareholders too, which support the objective of Government of India's mission 'Ease of Doing Business'. Act 2013 prescribes the mechanism of obtaining Omnibus Approval from the Audit Committee once in a year in respect of RPTs which are repetitive in nature, instead of going to the Audit Committee for approval every time before undertaking the routine RPTs. The other provisions of the Act 2013 mentioned above relating to disclosure of interest by Directors in respect of the RPTs (in which they are interested), Loans to Directors, etc., appointment of managing director, whole-time director or manager ("KMPs") and payment of remuneration to them (including non-executive directors) are generally and substantially the same as prescribed in the Act 1956, with the exception that approval of Central

³¹¹ **Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014**

Government for Loans to Directors, appointment of KMPs (except in few cases) & payment of remuneration to them and appointment at office or place of profit has been done away with. Further, flexibility has been provided to the companies to pay remuneration to all its Directors (including non-executive directors) in case of loss or inadequacy of profits which was either not there or less in limits in the Act 1956. The Act 2013 prescribes the detailed disclosure to be given in the Board's Report regarding compensation paid to the Directors vis-à-vis employees of the Company. As a step towards strengthening the corporate governance practices in the Indian industry, the Regulator introduced the provision that the concerned Related Party in respect of transaction with such Related Party shall not vote to approve the Resolution in the General Meeting which was limited to Board Meeting only in the Act 1956.

Act 2013 mandates certain class of companies to comply with IndAS 24 for disclosure of Related Party, relationship with Related Party and RPTs, which is more exhaustive compared to AS18.

XI. LODR

As mentioned in Para VI above, every company whose Shares and / or Debentures are listed on the Stock Exchanges, shall in addition to the Act 2013, also need to comply the provisions of LODR (akin to Listing Agreement with Stock Exchanges). The relevant provision of LODR related to RPTs are reproduced hereunder:

Regulation 2(1) of LODR defines the Related Party and RPTs which are reproduced hereunder:

³¹²“(zb) “related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:

Provided that:

(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or

(b) any person or any entity, holding equity shares:

(i) of twenty per cent or more; or

(ii) 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; shall be deemed to be a related party.

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

(zc) “related party transaction” means a transaction involving a 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; 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.

Provided that the following shall not be a related party transaction:

(a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;

(b) the following corporate actions by the listed entity which are uniformly

³¹² Regulation 2(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

applicable/offered to all shareholders in proportion to their shareholding:

- i. payment of dividend;
- ii. subdivision or consolidation of securities;
- iii. issuance of securities by way of a rights issue or a bonus issue; and
- iv. buy-back of securities.

(c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the Board:

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);”

Regulation 18(3) read with Schedule II (Corporate Governance), Part C, Para A of LODR contains the role of Audit Committee with reference to RPTs, the relevant extract of which is reproduced hereunder:

³¹³“A. The role of the audit committee shall include the following:

(4) reviewing, with the management, the annual financial statements and auditor’s report thereon before submission to the board for approval, with particular reference to:

(f) disclosure of any related party transactions;

(8) approval or any subsequent modification of transactions of the listed entity with related parties;”

Regulation 23 of LODR contains the exhaustive provisions related to RPTs which are reproduced hereunder:

³¹⁴“**Related party transactions**

(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly.

Provided that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

(2) All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity.

Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.

Provided further that:

(a) the audit committee of a listed entity shall define “material modifications” and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;

(b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity;

³¹³ Regulation 18 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

³¹⁴ Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

(c) with effect from April 1, 2023, a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary;

(d) prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to in (d) above, the prior approval of the audit committee of the listed subsidiary shall suffice.

(3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

(a) *****;

(b) *****;

(c) *****;

(d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.

(e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

(4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions

whether the entity is a related party to the particular transaction or not.

Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.

Provided further that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved;

(5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:

(a) transactions entered into between two government companies;

(b) transactions entered into between a holding company and its wholly owned subsidiary 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 wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

(6) *****.

(7) [***]

(8) *****.

(9) The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website:

Provided that a 'high value debt listed entity' shall submit such disclosures along with its standalone financial results for the half year.

Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023."

To implement the above provisions of Regulation 23 of LODR, SEBI has issued a Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023, which contains provisions regarding disclosures to be made to the Audit Committee and Shareholders while seeking their approval under the aforesaid Regulation. The Circular also contains the format of disclosure of RPTs to be made to the Stock Exchanges on half-yearly basis.

Regulation 34 and 54(f) read Schedule V (Annual Report), Part C(10)(a) contains the provision for disclosure of RPTs in the Corporate Governance Report, forming part of the Annual Report, which is reproduced hereunder:

³¹⁵"(10) Other Disclosures:

(a) disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large"

XII. Summary

The listed entities too have witnessed a sea change in the regulations with reference to RPTs prescribed in the then Listing Agreement vis-à-vis current LODR for the reasons explained in the Summary of Act 2013 mentioned above. SEBI has constituted various committees since 2013 to suggest the changes to be made for regulating

the RPTs and consequentially, Working Papers were released by SEBI from time to time inviting comments from the Industry on the changes proposed in the Regulations governing the RPTs. With the aim of strengthening regulatory norms in relation to RPTs undertaken by listed entities in India, the then SEBI's Chairman, Mr. Ajay Tyagi constituted Working Group on RPTs on 4th November 2019 to make recommendations on the issues relating to definition of "related party" and "related party transactions", thresholds for classification of "related party transactions" as material, process followed by Audit Committee for approval of RPTs. review the provisions relating to ROTs in the LODR vis-à-vis the IndAS and the Act 2013, specify a format for periodic disclosure of RPTs by listed entities, recommendations for strengthening the monitoring and enforcement of regulatory norms related to RPTs and any other matter, as the Working Group deems fit pertaining to RPTs.

The Working Group submitted its Report dated 22nd January 2020 to SEBI and consequently, the latest changes in the Regulations pertaining to RPTs were made in LODR through SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, with effect from 1st April 2022.

(Source: Report of the Working Group on Related party Transactions available on SEBI's Website: www.sebi.gov.in; last visited on 7th April 2024)

Similar to Act 2013, LODR also defines the role of Audit Committee with reference to RPTs, Related Party and RPTs. It also contains the provisions for obtaining Omnibus Approval of the Audit Committee and specific approval of Shareholders (in certain cases) for RPTs. At the same time, similar to Act 2013, LODR too contains provisions for exemptions from approval of the Audit Committee and Shareholders for transactions entered into with specified Related Parties. Thus, too a great extent, the provisions regulating the RPTs are aligned between the Act 2013 and LODR.

³¹⁵ Regulation 34 and 54(f) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015



RPTs have always remained a key monitoring agenda for regulators, given the nuances in how it is used for the personal gains of people in control or say Promoters of the Company. The revised RPT regime brought in by the SEBI undoubtedly will give more teeth to the capital market regulator to monitor such transactions. However, to ensure the holistic implementation of the RPT regime, the Industry is facing interpretational and practical challenges too which should be addressed by the Regulators.

