

***Declaration and Payment of Dividend
Related Party Transactions***

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Declaration and Payment of Dividend

Section 123 of the Companies Act, 2013:

Dividend can be declared only out of:

- i. **Profits** for the current year
- ii. Profits for the **previous** years
- iii. Both

No requirement for mandatory transfer to reserves under CA 2013.

Dividend also possible from Free Reserves subject to conditions.

Interim Dividend can also be declared. However, if there is a loss in the current financial year, then Interim Dividend will be capped at average dividend for the last three years?

No declaration of dividend if there is failure to repay public deposits (sec 73 and 74).

Provided that in computing 'profits' any amount representing **unrealised gains, notional gains or revaluation of assets** and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability **at fair value** shall be excluded (w.e.f. 2018)

Declaration and Payment of Dividend

Declaration of dividend from reserves: (Companies (Declaration And Payment Of Dividend) Rules, 2014)

In case of absence in current year profits, dividend can be declared from earlier free reserves, subject to:

1. Not exceeding rate being the average of last three years
2. Not exceeding 10% of the sum of PUC + FR
3. The balance of reserves after withdrawal shall not fall below 15% of paid up share capital

The above does not apply to declaration of dividend from Surplus in Profit & Loss account

Declaration and Payment of Dividend

Process:

1. Board to recommend dividend
2. Members to approve dividend (in case of final dividend)
3. Amount to deposited in separate bank account within 5 days of the declaration
4. Dividend to be in cash only
5. If dividend not claimed with 30 days, then within 7 days transfer to Unpaid Dividend Account – special bank account opened with a scheduled bank
6. Within 90 days of making the transfer to Unpaid Dividend Account upload a statement on the website mentioning details of name, address and unpaid amount
7. Post 7 years transfer the unpaid sums to IEPF.
8. 'Shares' on which dividend remains consecutively outstanding for 7 years to be transferred to IEPF.

Finance Bill, 2020 abolished dividend distribution tax. But introduced TDS on dividend @10% on dividend payments more than INR 5,000\-

Declaration and Payment of Dividend

Whether dividend can be paid to Preference Shareholders?

Do preference shares have a preference in liquidation or a preference also on dividend?

Whether dividend can be declared out of Securities Premium?

Whether dividend can be declared out of Capital Reserve?

What will be the proportion of dividend in case of partly-paid shares?

Whether transfer to Unpaid Dividend Account needs to be done within 7 days of BM or AGM?

Declaration and Payment of Dividend

Can a section 8 company declare dividend?

Whether company can declare dividend and adjust the partly-paid share outstanding from members?

DVR have differential voting rights. Can there be differential dividend rights?

Can right to dividend be waived-off?

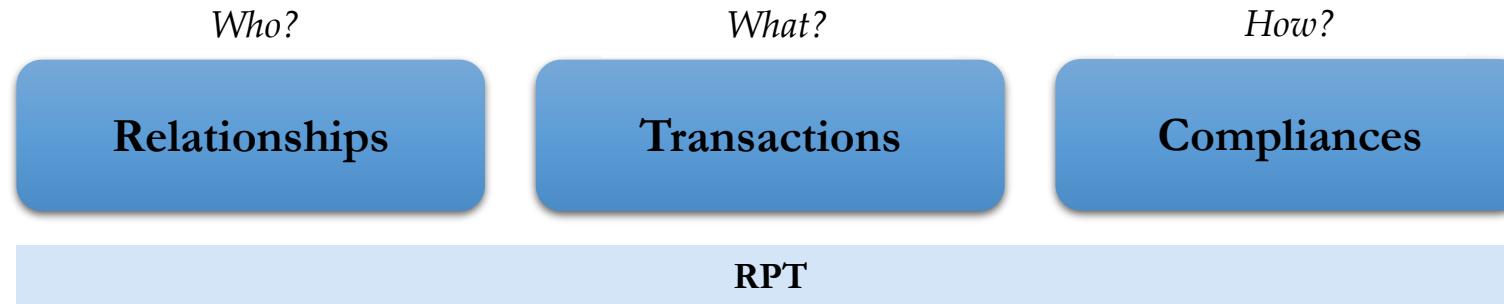
Is it necessary that interim dividend also should first be paid to preference shareholders?

Can interim dividend be paid out of Free Reserves of previous years?

Related Party Transactions

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RPT Regime in India



Taxation:

1. Income Tax Act
 1. Direct Tax
 2. Transfer Pricing
2. Goods and Services Tax
3. Customs Provisions

Commercial:

1. Companies Act, 2013
2. IND AS-24 and AS-18
3. SEBI (Listing Obligations and Disclosure) Regulations
4. Insolvency and Bankruptcy Code
5. SEBI Takeover Code \ Insider Trading Code
6. CCI

So who are Related Parties?

AS – 18:

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.

CA 2013 - No principle-based definition.

IND AS – 18 - No principle-based definition.

SEBI LODR - No principle-based definition.

Identifying Relationships

Who is a Relative?

Companies Act, 2013 - Sec 2(77):

- (1) Husband, wife, members of HUF
- (2) Father
- (3) Mother
- (4) Son
- (5) Son's wife
- (6) Daughter
- (7) Daughter's husband
- (8) Brother
- (9) Sister

Including **Step-Mother, Father, Brother and Sister.**

SEBI LODR:

Companies Act coverage

Identifying Relationships

Who is a Relative?

AS – 18:

- Spouse,
- son, daughter,
- brother, sister,
- father and mother,

who may be expected to influence, or be influenced by, that individual in his/her dealings with the reporting enterprise.

IND AS – 24:

Family members who may be expected to influence, or be influenced by, that person in their dealings with the entity including:

- (a) children, spouse or domestic partner, brother, sister, father and mother;
- (b) children of that person's spouse or domestic partner; and
- (c) dependants of that person or that person's spouse or domestic partner.

Identifying Relationships

Who are Related Parties?

CA 2013 – Sec 2(76) covers:

- (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 is a director AND 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.
- (viii) any company which is— (A) a holding, subsidiary or an associate company; or (B) a subsidiary of a holding company to which it is also a subsidiary;
- (ix) a director or key managerial personnel of the holding company or his relative (other than Independent Director)

Key managerial personnel:

- (i) the CEO or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer;

SEBI LODR:

CA 2013 + Applicable accounting standards + Belonging to Promoter \ Promoters group and holding more than 20% of the shares

Identifying Relationships

Who are Related Parties?

AS – 18 covers...

Only with the below related party relationships:

- (a) control, or are controlled by, or are under common control with, the reporting enterprise;*
- (b) associates and joint ventures and the co-venture;*
- (c) individuals owning, an interest in the voting power that gives them **control or significant influence**, and relatives of any such individual;*
- (d) **key management personnel** and relatives;*
- (e) enterprises over which any person described in (c) or (d) is able to exercise significant influence.*

...and further excludes:

two companies simply because they have a director in common

- (i) a single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business*
- (ii) providers of finance;*
- (iii) trade unions;*
- (iv) public utilities;*
- (v) government departments and sponsored bodies.*

KMP are those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise.

Identifying Relationships

Who are Related Parties?

IND AS - 24 covers...

(a) A person or a close member of that person's family is related if:

- (i) has control or joint control of the reporting entity;
- (ii) has significant influence over the reporting entity; or
- (iii) is a member of the **key management personnel** of the reporting entity or of a parent.

(b) **Members of the same group** (parent, subsidiary and fellow subsidiary).

(c) Associate or joint venture of the entity or other member of the group.

(iii) Both entities are joint ventures of the same third party.

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

(v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity.

(vi) The entity is controlled or jointly controlled by a person identified in (a).

(vii) A person identified in **(a)(i)** has significant influence over the entity or is a member of the key management personnel (or of a parent of the entity).

(viii) The entity, or any member of a group, provides key management personnel services to it or to the parent.

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

Identified Transactions

Which Transactions are covered?

Section 188 RPT are **only**:

- (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.*

Audit committee approval is required for 'ALL' RPT transactions.

If Audit committee does not approve a transaction (**other than those covered under 188**), it shall make its recommendations to the board.

Omnibus resolution can be passed by Audit Committee on an annual basis.

No audit committee approval required for transactions between holding company and Wholly-owned subsidiary (**other than for transactions covered under 188**)

Compliances

Companies Act

Board Resolution	Members Resolution
<i>a. Sale, purchase or supply of any goods or materials</i>	Transaction value 10% or more of annual turnover or 100 cr., whichever is lower
<i>b. Selling or otherwise disposing of, or buying, property of any kind</i>	Transaction value 10% or more of net-worth or 100 cr., whichever is lower
<i>c. Leasing of property of any kind</i>	Transaction value more than 10% or more of annual turnover or 100 cr., whichever is lower
<i>d. Availing or rendering of any services</i>	Transaction value more than 10% or more of annual turnover or 50 cr., whichever is lower
<i>e. Appointment of any agent</i>	Transaction value more than 10% or more of annual turnover or 50 cr., whichever is lower
<i>f. Appointment to any office or place of profit</i>	Monthly remuneration exceeding INR 2,50,000 \-
<i>g. Underwriting the subscription</i>	Transaction value more than 1% of net-worth.

Identified Transactions

Which Transactions are covered?

AS – 18:

- a **transfer of resources** or obligations between related parties, regardless of whether or not a price is charged.

Illustrative List:

1. purchases or sales of goods (finished or unfinished);
2. purchases or sales of fixed assets;
3. rendering or receiving of services;
4. agency arrangements;
5. leasing or hire purchase arrangements;
6. transfer of research and development;
7. licence agreements;
8. finance (including loans and equity contributions in cash or in kind);
9. guarantees and collaterals; and
10. management contracts including for deputation of employees.

IND AS – 24:

- 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.

Illustrative List apart from AS-18 also includes:

- (1) transfers under finance arrangements (including loans **and equity contributions** in cash or in kind);
- (2) commitments to do something if a particular event occurs or does not occur in the future, including **executory contracts*** (recognised and unrecognised);
- (3) settlement of liabilities on behalf of the entity or by the entity on behalf of that related party.

Compliances

Sliding scale of compliances in relation to RPT

Banned – Section 185, Section 29A	<i>Loans to Directors, Ineligibility to become a Resolution Applicant</i>
Regulatory Approval	<i>Managerial Remuneration, Advance Pricing Arrangements</i>
Adjustment and allowances	<i>Minimum rate of interest to be charged, cap of remuneration, thin capitalization, caps of royalty payments, etc.</i>
Independent Certification -	<i>Transfer Pricing Audit, Statutory Audit, Board Certification for Arms' length, Secretarial Audit</i>
Shareholder Approval	<i>Linked to Quantum, Ordinary course, Arms' Length, Majority-of-Minority</i>
Approval of TCG	<i>Linked to Quantum, Ordinary course, Arms' Length</i>
Disclosure	<i>Annual Report, Half-yearly SE disclosure, Website Disclosure, Board Report disclosures</i>

Compliances

Mapping Key Compliances

Companies Act

Approval of Audit Committee under section 177
Approval of the Board under section 188
Approval of members under section 188
Disclosure in Boards Report under section 134
Maintain register under of transactions
CARO report by auditors to confirm compliance with section 177 and 188
Compliance with accounting standards in relation to Related Party Transactions

Accounting Standards

Disclose transactions with RPs
Disclose outstanding balances with RPs
Disclose nature of relationship with the RPs
Mention names of the RPs with whom transactions have been conducted

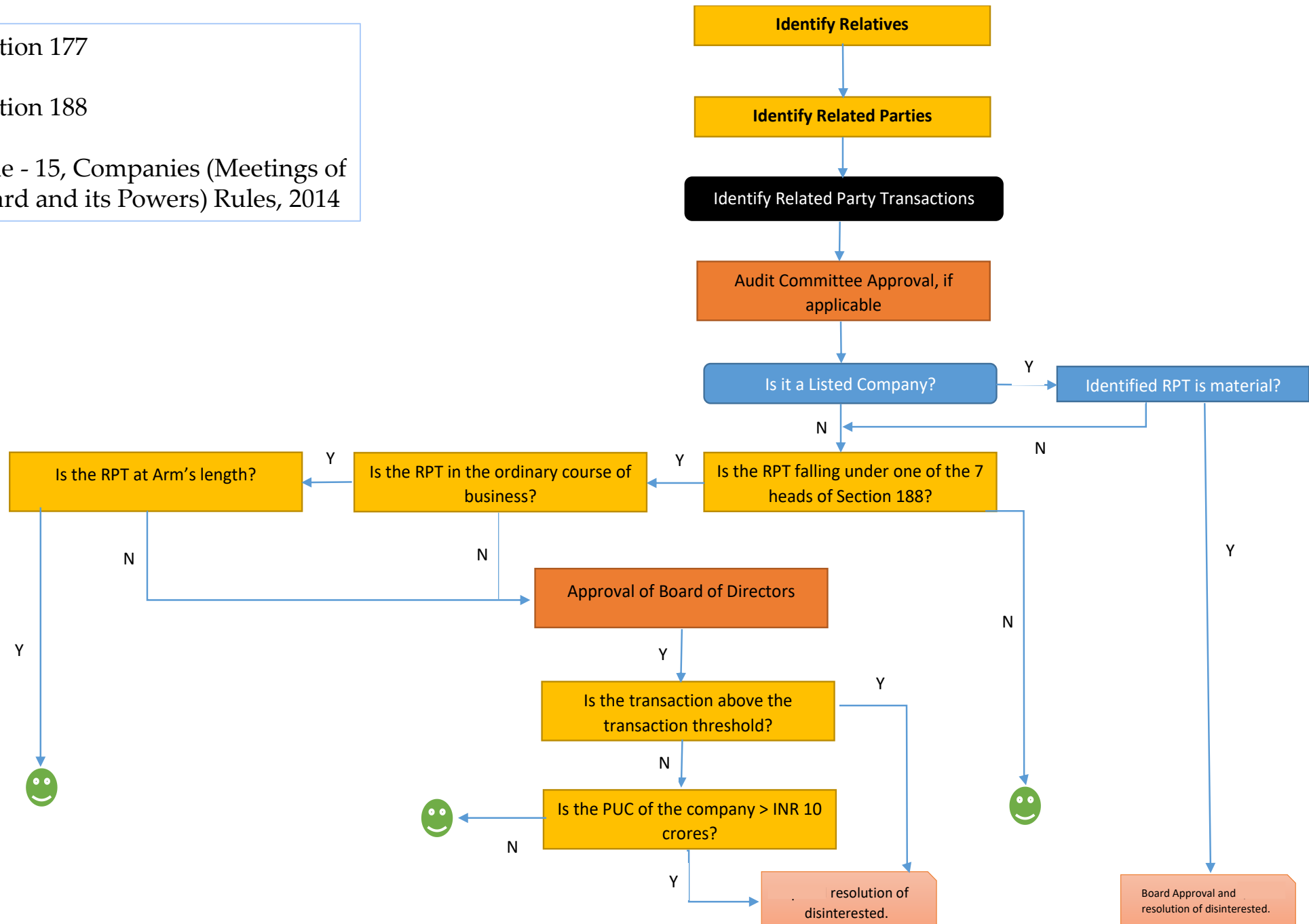
SEBI LODR

Companies to have RPT Policy and Materiality Policy (10% of consolidated turnover)
*Material transactions require shareholder resolution, **no RPT can vote in favour***
Schemes with related parties require majority of minority approval
Royalty threshold at 5% of consolidated sales
RPT disclosures on a half-yearly basis

Section 177

Section 188

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



Thank You

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