

Presentation
on
SEBI
(Listing Obligations and Disclosure Requirements)
Regulations, 2015
on
Related Party Transactions
at
National Conference on Company Law & Corporate Governance
on
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by
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Background ...

❑ Why amendment to SEBI LODR ?

- Under Companies Act 2013, shareholders approval is required only if –
 - transaction is not at arm's length, or
 - not in the ordinary course of business and the transactions meet certain thresholds as prescribed
- As per existing LODR, all material related party transactions (exceeding 10% of the annual consolidated turnover of the listed entity) require approval of the shareholder.
- Thus, many related party transactions were not required to be approved by the shareholders either as per LODR or Companies Act;
- Accordingly, the definition of Related Parties, Related Party Transactions and approval mechanism have been strengthened to include transactions which may be undertaken with the intention of benefitting related parties.
- SEBI has amended the definition of 'RPT' under Regulation 2(1)(zc) of the LODR, to cover transactions undertaken at the subsidiary level, which were previously escaping regulatory scrutiny.

...Background

January 22, 2020	<u>Report of the Working Group on Related Party Transactions</u>
August 03, 2021	<u>SEBI LODR (3rd Amendment) Regulations, 2021</u> (<i>effective January 1, 2022</i>)
September 28, 2021	<u>Approval for amendments by SEBI Board Meeting based on Report of the Working Group</u>
November 9, 2021	<u>Amendment as notified</u> – SEBI LODR (6 th amendment), Regulations, 2021 (effective April 1, 2022 unless otherwise specified)
March 30, 2022	<u>Clarification and guidance for smooth implementation</u>
April 8, 2022	<u>Clarification for omnibus approval</u>

Definitions – Regulation 2(zb) – Related Party...

Existing

“related party” means a related party as defined under –

- Section 2(76) of the Companies Act, 2013, or
- under the applicable accounting standards:

Revised

“related party” means a related party as defined under –

- Section 2(76) of the Companies Act, 2013, or
- under the applicable accounting standards:

...Definitions – Regulation 2(zb) – Related Party...

Existing	Revised
<ul style="list-style-type: none">○ Provided that any person or entity belonging to the <u>promoter or promoter group</u> of the listed entity <u>and holding 20% or more</u> of shareholding in the listed entity shall be <u>deemed to be a related party.</u>	<p><i>“Provided that :</i></p> <ul style="list-style-type: none">○ <i>any person or entity forming a part of <u>the promoter or promoter group</u> of the listed entity; or</i>○ <i>any person or any entity, holding equity shares:</i><ul style="list-style-type: none">• <i>of <u>twenty per cent</u> or more; or</i>• <i>of <u>ten per cent</u> or more, with effect from April 1, 2023;</i>○ <i>in the listed entity either <u>directly</u> or <u>on a beneficial interest basis</u> as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;</i>○ <i>shall be <u>deemed to be a related party:</u>”</i>

...Definitions – Regulation 2(zb) – Related Party...

Existing	Revised
<p>Provided that this definition shall not be applicable for the units issued by Mutual Funds which are listed on a recognised stock exchange(s);</p>	<p>Provided that this definition shall not be applicable for the units issued by Mutual Funds which are listed on a recognised stock exchange(s);</p>

...Definitions – Regulation 2(zb) – Related Party

- *Beneficial interest basis to take*
 - Shareholders as per register of members
 - Declared beneficial owners as per Section 89 of CA 13

Definitions 2(zc) – Related Party Transactions...

Existing	Revised
<p>“related party transaction” means</p> <ul style="list-style-type: none">○ a transfer of resources, services or obligations between a listed entity and a related party, 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:<p>Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);</p>	<p>“related party transaction” means a transaction involving a transfer of resources, services or obligations between:</p> <p>(i) <i>a listed entity <u>or any of its subsidiaries on one hand</u> and a related party of the listed entity or any of its subsidiaries on the other hand; or</i></p> <p>(ii) <i>a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, <u>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;</u></i></p>

...Definitions - 2(zc) – Related Party Transactions...

Existing	Revised
	<p>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:</p> <p>Provided that the following <u>shall not</u> be a related party transaction:</p> <p><i>(a) the <u>issue of specified securities on a preferential basis</u>, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;</i></p>

...Definitions - 2(zc) – Related Party Transactions...

Existing	Revised
	<p><i>(b) the following <u>corporate actions</u> by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:</i></p> <ul style="list-style-type: none"><i>i. payment of dividend;</i><i>ii. subdivision or consolidation of securities;</i><i>iii. issuance of securities by way of a rights issue or a bonus issue; and</i><i>iv. buy- back of securities.</i>

...Definitions - 2(zc) – Related Party Transactions...

Existing	Revised
	<p data-bbox="1039 318 1856 818"><i>(c) <u>acceptance of fixed deposits</u> 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:</i></p> <p data-bbox="1039 832 1856 1046">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)</p>

...Definitions 2(zc) – Related Party Transactions...

- “Related party transaction” means a transaction entered between
 - Listed entity and Related Party (“RP”) of Listed entity
 - Listed entity and RP of subsidiary
 - Subsidiary and RP of Listed entity
 - Subsidiary and RP of subsidiary
 - Listed Entity and any other person/entity (Third person) and due to such transaction benefit to the RP of Listed entity or RP of subsidiary.
 - Subsidiary and any other person/entity (Third person) and due to such transaction benefit to the RP of Listed entity or RP of subsidiary
- The value applies to all transactions with a related party and not group of transactions – group of transactions relevant under the Companies Act, 2013
- If the transaction happens first and then the related party is established – as a matter of good governance, it should be ratified by Audit Committee and the shareholders
- It applies to all related parties whether located in India or anywhere in the world

The phrase “Purpose and Effect”

- To evaluate the purpose and effect of transaction
- To exclude
 - If the purpose is there, but the effect is not there
 - If the effect is there, but the purpose is not there
 - Obviously, if neither the purpose nor the effect is there
 - Purpose and effect – Those in Governance have good knowledge of the business and structure would be able to identify such transaction

Regulation 23(1) – Explanation – Material RTP for approval of shareholder

Existing	Revised
<p>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 ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.</p>	<p>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, <i>exceeds rupees <u>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.</u></i></p>

Regulation 23(2) – Prior approval of the Audit Committee...

Existing	Revised
<ul style="list-style-type: none">■ All related party transactions shall require prior approval of the audit committee.■ Audit committee can provide omnibus approval	<ul style="list-style-type: none">■ <i>All related party transactions <u>and subsequent modifications</u> shall require prior approval of the audit committee <u>of the listed entity</u>.</i>■ <i>Provided that only those members of the audit committee who <u>are independent directors</u> shall approve related party transactions.</i>■ Audit committee can provide omnibus approval

...Proviso Regulation 23(2) - Prior approval of the Audit Committee...

Existing	Revised
-	<p><i>“Provided further that:</i></p> <p><i>(a) the audit committee of a listed entity shall <u>define “material modifications” and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;</u></i></p> <p><i>(b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, <u>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;</u></i></p>

...Proviso Regulation 23(2) - Prior approval of the Audit Committee

Existing	Revised
-	<p><i>(c) <u>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;</u></i></p>

...Proviso Regulation 23(2) - Prior approval of the Audit Committee

Existing	Revised
-	<p><i>(d) prior approval of the audit committee of the listed entity <u>shall not be required</u> 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</i></p> <p><i>- regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.</i></p> <p><i>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.</i></p>

Regulation 23(4) - Prior approval of shareholders

Existing

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties ~~shall abstain from voting on related party shall~~ vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

Revised

(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.

Regulation 23(4) - Prior approval of shareholders

Existing

Revised

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.”

Regulation 23(7) – Related parties note to vote

Existing	Revised
<p>For the purpose of this regulation, all entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a related party or not.</p>	<p><i>This has been omitted.</i></p>

Regulation 23(9) -

Existing

~~The listed entity shall submit within 30 days from the date of publication of results for the half year, disclosure of related party transactions on a consolidated basis in the format specified in relevant accounting standards and publish on its website.~~

Revised

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 further that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results:

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.”

Exclusions under the definition of RPTs

New Provisions:

- Following **shall not** be treated as RPT:
 - issue of specified securities on **preferential basis**, subject to compliance of the requirements under the ICDR Regulations.
 - Issue of non convertible securities is not excluded
 - **Corporate actions** (uniformly offered) viz:
 - payment of dividend
 - subdivision or consolidation of securities
 - rights issue or bonus issue of securities
 - buy-back of securities
 - acceptance of fixed deposits by banks/ NBFCs at the terms uniformly acceptable/offered to all shareholders/ public,
 - subject to disclosure of the same along with disclosure of RPT every 6 months to SE(s)
 - format to be prescribed by SEBI

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

Material modification and subsequent approval

❑ What is termed as a material modification?

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

❑ Who is to determine the material modifications?

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

Modification under CA, 2013

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

Material modification under LODR

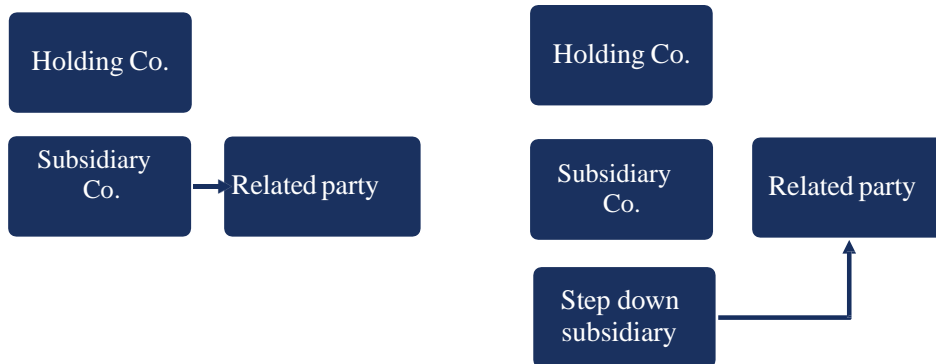
- Prior approval reqd. in case of material modification;
- In case of material RPT, any material modification would require approval of shareholder's also

Instances of Material Modifications

- Whether due to modification
 - Is there increase/ decrease in obligation beyond threshold determined?
Say, 10% of value of transaction
 - Significant terms and conditions
- The contract turns no longer arm's length

Enhanced role of audit committee and shareholders approval

Audit Committee Approval

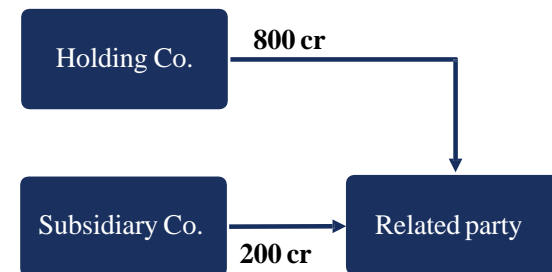


Material RPT in respect of subsidiary shall mean-

Transaction value exceeds:

- 10% of the consolidated turnover as per the last audited financial statements of the listed entity;
- 10% of the standalone turnover as per the last audited financial statements of the subsidiary [w.e.f. April 1, 2023]

Shareholders Approval



Threshold of materiality

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

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

} lower

Approvals required

- All RPTs require approval of audit committee [prior approval under LODR & ratification under CA, 2013];
- All material modifications will require prior approval of audit committee;
- Shift from post facto approval of shareholders to **prior approval**;
- All material RPTs and subsequent material modifications will require prior approval of shareholders

Disclosure before Members

- A summary of the information provided by the management of the listed entity to the audit committee;
- Justification for why the proposed transaction is in the interest of the listed entity;
- Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary, the details specified under point 4(f) above; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
- A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
- Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
- Any other information that may be relevant.

Format for disclosure to Stock Exchange | Reg 23(9)

Format for disclosure of related party transactions every six months (see Note 4)

											Additional disclosure of related party transactions - applicable only in case the related party transaction relates to loans, inter-corporate deposits, advances or investments made or given by the listed entity/subsidiary. These details need to be disclosed only once, during the reporting period when such transaction was undertaken.					
S. No	Details of the party (listed entity /subsidiary) entering into the transaction		Details of the counterparty			Type of related party transaction (see Note 5)	Value of the related party transaction as approved by the audit committee (see Note 6a)	Value of transaction during the reporting period (see Note 6b)	In case monies are due to either party as a result of the transaction (see Note 1)		In case any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments			Details of the loans, inter-corporate deposits, advances or investments		
	Name	PAN	Name	PAN	Relationship of the counterparty with the listed entity or its subsidiary				Opening balance	Closing balance	Nature of indebtedness (loan/ issuance of debt/ any other etc.)	Cost (see Note 7)	Tenure	Nature (loan/ advance/ inter-corporate deposit/ investment)	Interest Rate (%)	Tenure
Total (of Note 6b)																

Notes

1. The details in this format are required to be provided for all transactions undertaken during the reporting period. However, opening and closing balances, including commitments, to be disclosed for existing related party transactions even if there is no new related party transaction during the reporting period.
2. Where a transaction is undertaken between members of the consolidated entity (between the listed entity and its subsidiary or between subsidiaries), it may be reported once.
3. Listed banks shall not be required to provide the disclosures with respect to related party transactions involving loans, inter-corporate deposits, advances or investments made or given by the listed banks.
4. For companies with financial year ending March 31, this information has to be provided for six months ended September 30 and six months ended March 31. Companies with financial years ending in other months, the six months period shall apply accordingly.
5. Each type of related party transaction (for e.g. sale of goods/services, purchase of goods/services or whether it involves a loan, inter-corporate deposit, advance or investment) with a single party shall be disclosed separately and there should be no clubbing or netting of transactions of same type. However, transactions with the same counterparty of the same type may be aggregated for the reporting period. For instance, sale transactions with the same party may be aggregated for the reporting period and purchase transactions may also be disclosed in a similar manner. There should be no netting off for sale and purchase transactions. Similarly, loans advanced to and received from the same counterparty should be disclosed separately, without any netting off.
6. In case of a multi-year related party transaction:
 1. The aggregate value of such related party transaction as approved by the audit committee shall be disclosed in the column “Value of the related party transaction as approved by the audit committee”.
 2. The value of the related party transaction undertaken in the reporting period shall be reported in the column “Value of related party transaction during the reporting period”.
7. “Cost” refers to the cost of borrowed funds of the listed entity.
8. PAN will not be displayed on the website of the Stock Exchange(s).
9. Transactions such as acceptance of fixed deposits by banks/NBFCs, undertaken with related parties, at the terms uniformly applicable /offered to all shareholders/ public shall also be reported.

Impact on Related Party Transactions due to Recent amendments under LODR

S. No.	Name of the Related Party	Reason for being Related Party	Broad description of type of transaction	Present Level of Approval		Remarks – Impact due to LODR
				Under the Companies Act, 2013	Under SEBI LODR	
1.	XYZ Industries Limited	Common Directors and Directors who are members	Sale of Goods	Prior Approval of Audit Committee is obtained	Prior Approval of Audit Committee is obtained	Required approval is there

Action Points...

- To amend the RPT policy;
- To revisit the list of RPs;
- To revisit the list of RPTs;
- Identify transactions currently being undertaken with each of the parties as per the revised RP list;
- Procure RP list from subsidiaries to check identification of RPTs as per amended definition;
- Furnish list of RPs of listed entity to every subsidiary and procure information on the nature and quantum of ongoing transactions of the subsidiaries with the RPs of the listed entities;
- Devising a mechanism to ensure RPT probe based on purpose and effect;
- To identify if there are any ongoing RPTs of the listed entity with its RP that are below 10% of annual consolidated turnover, however, above ` 1000 crores;
- To procure details of ongoing RPTs between
 - subsidiary and its RP and
 - subsidiary and RP of the listed entity

in order to ascertain if any of the above aggregates to either 10% of the annual consolidated turnover of the listed entity or ` 1000 crore.

Action Points

- Audit Committee to determine and define threshold for material modification.
- Basis the definition of material modification, to ascertain if there has been any material modification in the RPTs already approved by shareholders, requiring prior approval.
- Approval of existing transactions:
 - RP not covered by definition earlier
 - RPT not covered by definition earlier
 - Threshold limit of ` 1000 crore crossing in FY 22-23

Clarification of March 30, 2022

This clarification is based on representations received :

- For RPT approved by the Audit Committee and shareholders prior to April 1, 2022, there is no requirement to seek fresh approval from the shareholders;
- However, an approved RPT prior to April 1, 2022 which continues beyond such date and becomes material as per revised materiality threshold shall be placed before the shareholders in the first general meeting held after April 1, 2022;
- RPT for which Audit Committee has granted omnibus approval are continue to be placed before the shareholders if it is material in terms of Regulation 23(1).

Clarification of April 8, 2022

Clarification on the period of validity of the omnibus approval where the transactions are material and shareholder's approval is also required –

- It has been specified that shareholder's approval for omnibus RPT's approved in an AGM shall be valid upto the date of the next AGM for a period not exceeding 15 months.
- In case of omnibus approval for material RPT's obtained from shareholders in general meetings other than AGM, the validity of such omnibus approval shall not exceed 1 year.

Representation by CII

Materiality thresholds for seeking shareholder's approval - the absolute numerical threshold of ₹ 1,000 crores be omitted

Transactions with subsidiary companies and between subsidiary companies –

- (a) Exemption provided for RPT's between holding company and its wholly owned subsidiaries whose accounts are consolidated and placed before the shareholders at the general meeting for approval may be extended to RPT's between holding and subsidiary companies whether wholly owned or otherwise
- (b) Exemption provided for RPT's between two wholly owned subsidiaries of listed holding company whose accounts are consolidated and placed before the shareholders at the general meeting for approval unless individual/non-body corporate promoters, directors or KMP's of ultimate listed holding company of such subsidiary are interested in the transaction.

Representation by CII

Requirement to take approval for transactions between two foreign subsidiaries of the listed Indian holding company may amount to violation of autonomy of the Board of the foreign subsidiary and could be against the basic principles of international law:

a specific carve out may be made for RPT's entered into by the foreign subsidiaries of the listed entity and such transactions may not be subject to the approval of Audit Committee and of shareholders of the listed holding Co. in India.

Related party owing to Ownership - Mere ownership without control in the day-to-day operations of the company or connect to the promoter may not be a ground for considering such person/entity as related party.





Thank you!