

# Related Parties –Provisions & Disclosure Requirements for Unlisted / Listed Companies”

**Alok K Saksena**

**Partner**

**Desai Saksena & Associates**

**Chartered Accountants**

# Definition: Related Party

- **Section 2(76) :-“Related party”, with reference to a company, means—**
  - (i) a director or his relative;
  - (ii) (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 is a member or director;
  - (v) a public company in which a director or manager 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 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;
- (ix) such other person as may be prescribed;

# Amendments Propose in Companies Amendments Bills 2016

## Section 2(76)

The Committee, recommended that “ Section 2(76)(viii) be amended to substitute Company with Body Corporate and should also include investing company or the venture of a company in sub clause(viii) (A) thereof ”

*In sub clause (76) for sub clause (viii) the following sub clause shall be substituted, namely:-*

*(viii) Any body corporate which is:-*

- A) A holding, subsidiary or an associate company of such company;*
- B) a subsidiary of a holding company to which it is also a subsidiary;*  
*or*
- C) An investing company or the venturer of a company*

# Related Party

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graph TD; RP[Related Party] --- S26[Section 2(6) Associate]; RP --- S227[Section 2(27) Holding Company]; RP --- S287[Section 2(87) Subsidiary Company]; RP --- S17[Section (17) Control]; S277[Section 2(77) Relative];
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Section  
2(6)  
Associate

Section  
2(27)  
Holding  
Company

Section  
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Company

Section  
(17)  
Control

Section 2(77)  
Relative

# Relative :-

## Section 2(77) & Rule 4 of Definition Details Rules, 2014

As per Section 2(77) of Act, a person shall be treated as a “Relative” to another if (i) they are member of HUF (ii) they are husband and wife (iii), they are related to each other in any of the following manner:-

1. Father (including step-father)
2. Mother (including step-mother)
3. Son (including step-son)
4. Son's wife
5. Daughter (including step-daughter)
6. Daughter's husband
7. Brother (including step-brother)
8. Sister (including step-sister)

# Section 2(6): Associate Company

“**Associate company**”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, “*significant influence*” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

## ➤ **Amendment Proposed in Companies Amendments Bills 2016 in Section 2(6)**

Section 2(6) of the Act Defines the term Associate Company, in relation to *another company, to mean a company in which the other company has a significant influence, but is not a subsidiary company of the company having such influence, and also includes a **joint Venture** company. “Significant influence” to mean control of at least twenty per cent of the total Share Capital, or of business decisions under an agreement. The Term “**Total Share Capital**” has been defined in Rule 2(1) (r) of the Companies (Specification of Definitions Details) Rules, 2014, to means the Aggregate of (a) Paid – up equity Share Capital; and (b) convertible preference share capital. The term includes joint venture. However, there is no definition of term joint venture.*

The Committee has proposed amendment in the term “Significant Influence” replacing “Total Share Capital” with Total Voting Power”

It also proposed that the Term Joint Venture may be assigned the meaning as under InsAS 28

In clause (6), for the Explanation, the following explanation shall be substituted namely:-

Explanation-For the Purpose of this clause-

- a) The expression “significant influence” means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
- b) the expression “Joint venture” means a joint arrangement whereby parties that have joint control of the arrangement have rights to the net assets of the arrangement

## Section 2(46) : Holding Company

“Holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies

## Section 2(87) : Subsidiary Company

“subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) **controls** the composition of the Board of Directors; or
  - (ii) exercises or **controls** more than one-half of the total share Capital either at its own or together with one or more of its subsidiary companies :
- **Provided** that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
  - **Explanation.**—For the purposes of this clause,—
    - (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
    - (b) (the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
    - (c) the expression “company” includes any body corporate;
    - (d) “layer” in relation to a holding company means its subsidiary or subsidiaries.

# Continued .....

- **Amendment Proposed in Companies Amendments Bills 2016 in Section 2(87)**
- *a) in sub clause (ii) , Total Share Capital , the word Total Voting Power shall be substitute*
- *b) the proviso shall be omitted (Limit on layers of subsidiaries)*
- *c) in the explanation item d shall be omitted*

## Section 2(27) : Control

“**Control**” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner

## Section 188 - Related Party Transactions

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 [*See Rule 15*], 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 not exceeding such sums, as may be prescribed [*See Rule 15*], 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

**[In Case of Private Companies second proviso to section 188(1) shall not apply: Notification no. GSR 464(E), dated 5-6-2015]**

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 provision 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

3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a [\*\*\*] resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorized by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

4) Without prejudice to anything contained in *sub-section (3)*, it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

5) Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall,—

- i) in case of ***listed company***, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/- or with both; ***and***
- ii) in case of any other company, be punishable with fine which shall not be less than Rs. 25,000/- or which may extend to Rs. 5,00,000/-.

## **Amendment Proposed in Companies Amendments Bills 2016 in Section 188:-**

i) *in sub section(1) after second proviso, the following proviso shall be inserted, namely:-*

*“Provided also that nothing contained in second proviso shall apply to a company in which ninety per cent or more members, in numbers, are relatives of promoters or are related parties”*

ii) *In sub section(3), for the words shall be “voidable at the option of the Board”, the words “shall be voidable at the option of the Board, or as the case may be of the Shareholders” shall be substituted*

Comments:-

The third Proviso is being inserted for closely held public companies and joint venture companies

## **Definition :-**

**“Ordinary Course of Business”** would mean Transaction in the usual course of Business

**“Arm 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.

### **“Goods”**

Goods means every kind of Movable Property as per Sale of Good Act, 1930, other than actionable claims and money, and includes stock & shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the Contract of Sale

## ***“Service”***

The Section 65B(44) of Finance Act, 2012 defines “Service”, (for the purpose of levy of Service Tax) as follows:

(44) Service means any activity carried out by a person for another for consideration, and includes detailed service, but shall not include

(A) An activity which constitutes merely:

(i) a transfer of title in goods or immovable property, by way of sale, gift, or in any other manner, or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of Clause (29A) of Article 366 of Constitution or;

(iii) a transaction in money or actionable claim;

## ***Property:-***

***Property include Movable Property and Immovable Property.***

The General Clauses Act, 1897 defines "movable property" to mean "property of every description except immovable property". The expression "immovable property" is defined to "include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth".

# Section 184 Disclosure of Interest by Director

- (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 beshall 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:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(5) Nothing in this section—

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) 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.

## **Rule 15 Contract or arrangement with a related party Companies (Meetings of Board and its Powers) Rules, 2014**

A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:—

(1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose—

(a) the name of the related party and nature of relationship;

(b) the nature, duration of the contract and particulars of the contract or arrangement;

(c) the material terms of the contract or arrangement including the value, if any;

d) any advance paid or received for the contract or arrangement, if any;

e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;

f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and

g) any other information relevant or important for the Board to take a decision on the proposed transaction.

(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 <sup>2</sup>[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 mentioned below—*

*(i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent of the turnover of the company or rupees one hundred crore, whichever is lower, 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, exceeding ten per cent of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;*

*(iii) leasing of property of any kind exceeding ten per cent of the net worth of the company or ten per cent of turnover of the company or rupees one hundred crore, whichever is lower, 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, exceeding ten per cent of the turnover of the company or rupees fifty crore, whichever is lower, 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-clauses (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 half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or

(c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent 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 a wholly owned subsidiary, the <sup>3</sup>[resolution] passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.*

*(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:—*

*(a) name of the related party;*

*(b) name of the director or key managerial personnel who is related, if any;*

*(c) nature of relationship;*

*(d) nature, material terms, monetary value and particulars of the contract or arrangement;*

*(e) any other information relevant or important for the members to take a decision on the proposed resolution. ]*

# Listed Companies

## Related Parties and Transactions

- It will be noted the Related Parties and Transactions are in sync with companies Act, 2013
- The only substantial difference is in voting powers of Related Parties & the Role of minority or Non Related Shareholders

# Chart explaining Related Parties in case of Listed Companies

Regarding related party transactions	Companies Act 2013	Clause 49 of the Listing Agreement
Shareholder approval requirement if:	If transaction is not at arm's length, or is not in the ordinary course of business, and exceeds materiality threshold	If the transactions crosses the materiality threshold
Materiality threshold is:	<p>1. For buying/selling goods: 10% of turnover or Rs.10 mn which ever is lower</p> <p>2 For buying/selling property: 10% of networth or Rs.10 mn which ever is lower</p> <p>3 For leasing property: 10% of turnover or 10% of networth or Rs.10mn which ever is lower</p>	10% of turnover

**4. Availing/rendering services: 10% of turnover or Rs.5 mn whichever ever is lower**  
**5. Office of profit: exceeding Rs.2.5 p.m.**  
**6. Underwriting securities: exceeding 1% of networth**

**Transactions that do not need shareholder approval are:**

- 1. Arm's length and in the ordinary course of business**
- 2. Transactions with wholly owned subsidiaries**
- 3. Transactions which do not cross the materiality threshold**  
**In that case Board of Directors will approve and interested Director will not participate and vote in those transactions in case of a Listed Companies**

- 1. Transactions between government companies**
- 2. Transactions with wholly owned subsidiaries**
- 3. Transactions which do not cross the materiality threshold**

**Shareholders that cannot vote are:**

**Only interested parties for the specific related party transaction. All other related parties may vote.**

**All related parties, independent of whether they are directly interested in the transaction / resolution.**

**Resolutions can be passed if:**

**More than 50% of non-interested shareholders (which may include related parties) vote to pass the resolution.**

**75% of minority shareholders (not including related parties) vote to pass the resolution.**

## Chart explaining Related Parties in case of Private Companies and closely held Public Companies

Regarding related party transactions	Private Companies	Closely held Public Companies
Shareholder approval requirement if:	If transaction is not at arm's length, or is not in the ordinary course of business, and exceeds materiality threshold	If transaction is not at arm's length, or is not in the ordinary course of business, and exceeds materiality threshold
Materiality threshold is:	<p>1. For buying/selling goods: 10% of turnover or Rs.10 mn which ever is lower</p> <p>2 For buying/selling property: 10% of networth or Rs.10 mn which ever is lower</p>	<p>1. For buying/selling goods: 10% of turnover or Rs.10 mn which ever is lower</p> <p>2 For buying/selling property: 10% of networth or Rs.10 mn which ever is lower</p>

**3 For leasing property: 10% of turnover or 10% of networth or Rs.10mn which ever is lower**

**4Availing/rendering services: 10% of turnover or Rs.5 mn which ever is lower**

**5. Office of profit: exceeding Rs.2.5 p.m.**

**6. Underwriting securities: exceeding 1% of networth**

**3 For leasing property: 10% of turnover or 10% of networth or Rs.10mn which ever is lower**

**4Availing/rendering services: 10% of turnover or Rs.5 mn**

**5. Office of profit: exceeding Rs.2.5 p.m.**

**6.**

**Underwriting securities: exceeding 1% of networth**

**Transactions that do not need shareholder approval are:**

- 1. Arm's length and in the ordinary course of business**
- 2. Transactions with wholly owned subsidiaries**
- 3. Transactions which do not cross the materiality threshold**

**In that case Board of Directors will approve and interested Director will not participate and vote in those transactions in case of a Private Limited Companies . Where all directors are interested the transaction will have to be approved by shareholders by ordinary resolution.**

- 1. Arm's length and in the ordinary course of business**
- 2. Transactions with wholly owned subsidiaries**
- 3. Transactions which do not cross the materiality threshold**

**In that case Board of Directors will approve and interested Director will not participate and vote in those transactions in case of a Closely Held Public Companies . Where all directors are interested the transaction will have to be approved by shareholders by ordinary resolution.**

<p><b>Shareholders that can or can not vote are:</b></p>	<p><b>All interested parties can vote at the Shareholders meetings and get the transaction approved .</b></p>	<p><b>Only interested parties for the specific related party transaction. All other related parties may vote. In case all Shareholders are interested the transaction can not be approved until &amp; unless the third proviso to Section 188(1) is inserted as proposed by Companies Amendment Bill, 2016</b></p>
<p><b>Resolutions can be passed if:</b></p>	<p><b>More than 50% of all Interested Shareholders or Non Interested shareholders vote in favor .</b></p>	<p><b>More than 50% of non-interested shareholders (which may include related parties who are not directly interested) vote to pass the resolution.</b></p>

**Pursuant to *clause (h) of sub-section (3) of section 134 of the Act and Rule 8(2) of the Companies (Accounts) Rules, 2014.***

1. Details of contracts or arrangements or transactions not at arm's length basis:
  - a) Name(s) of the related party and nature of relationship
  - b) Nature of contracts/arrangement/transactions
  - c) Duration of the contracts/ arrangements/transactions
  - d) Salient terms of the contracts or arrangements or transactions including the value, if any:
  - e) Justification for entering into such contracts or arrangements or transactions
  - f) Date(s) of approval by the Board, if any:
  - g) Amount paid as advances, if any:
2. Date on which the special resolution was passed in general meeting as required under first proviso to section 188
  - a) Name(s) of the related party and nature of relationship
  - b) Nature of contracts/arrangement/transactions
  - c) Duration of the contracts/ arrangements/transactions
  - d) Salient terms of the contracts or arrangements or transactions including the value, if any:
  - e) Date(s) of approval by the Board, if any:
  - f) Amount paid as advances, if any:



Thank you