

First Notes



SEBI notified amendments to related party transactions

24 December 2021

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Introduction

Corporates in India currently comply with the Indian Accounting Standards (Ind AS) and the Companies Act, 2013 (2013 Act) with respect to Related Parties Transactions (RPTs). Additionally, the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) provide regulatory framework for the listed entities to comply in case of RPTs.

In order to strengthen the regulatory norms in relation to RPTs undertaken by the listed entities in India, SEBI constituted a working group in November 2019 to review the provisions pertaining to RPTs. The working group submitted its report to SEBI on 22 January 2020. The SEBI had, subsequently issued the report for the public comments.

On 28 September 2021, SEBI, in its board meeting, *inter alia*, considered and approved amendments to the Listing Regulations on RPTs. Recently, on 9 November 2021 the SEBI notified these amendments through the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021 (the amendment). The amendments mainly pertain to the following areas:



(Source: KPMG in India's analysis, 2021 read with SEBI (Listing Obligations and Disclosure Requirement) (Sixth Amendment) Regulations, 2021)

Effective date

These amendments will be applicable in a phased manner, with certain amendments coming into effect from 1 April 2023 and remaining amendments will come into effect from 1 April 2022.

Subsequently, on 22 November 2021, SEBI issued a circular specifying the disclosure obligations of listed entities in relation to RPTs (i.e., information to be placed before the audit committee and the shareholders for consideration of RPTs, and the format for disclosure of RPTs to stock exchanges on a six-monthly basis has also been provided). The provisions of this circular are effective from 1 April 2022.

In this issue of First Notes, we aim to provide an overview of the key amendments made by SEBI in the Listing Regulations relating to related parties and RPTs.

Overview of the amendments

A. Definition of related parties and RPTs

Amendment to definition of related parties

Before amendment

As per the Listing Regulations, 'related party' includes:

- A 'related party' as defined under Section 2(76) of the 2013 Act and the applicable accounting standards or Ind AS, and
- Any person or entity belonging to the promoter or promoter group of the listed entity and holding 20 per cent or more of the shareholding of the listed entity.

Post amendment

The definition of related party has been amended, and would include:

- A 'related party' as defined under Section 2(76) of the 2013 Act and the applicable accounting standards or Ind AS,
- Any person or entity forming part of the 'promoter' or promoter group' of the listed entity (effective from 1 April 2022)
- Any person or any entity, holding equity shares in the listed entity either directly or on a beneficial interest basis as prescribed under Section 89 the 2013 Act at any time during the immediately preceding financial year:
 - i. 20 per cent or more, or (effective from 1 April 2022)
 - ii. 10 per cent or more (effective from 1 April 2023).

Amendment to definition of a RPT

Background

The Listing Regulations currently define a 'related party transaction' as any transfer of resources, services or obligations between a listed entity and a related party regardless of whether a price is charged.

Amendment

The definition of the RPTs has been replaced by the following:

RPT means a transaction involving a transaction of resources, services or obligations between:

- 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 (effective from 1 April 2022)
- 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 (effective from 1 April 2023).

The above transactions would be considered as RPTs regardless of whether a price has been charged.

Additionally, the following transactions are excluded from the definition of RPTs:

- a. The issue of specified securities on a preferential basis subject to compliance of the requirements under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- b. Corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding such as payment of dividend, subdivision or consolidation of securities, issuance of securities by way of a rights issue or a bonus issue and buy-back of securities
- c. Acceptance of fixed deposits by banks/Non-Banking Finance Companies (NBFCs) at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of RPTs every six months to the stock exchange(s), in the specified format
- d. Units issued by mutual funds which are listed on a recognised stock exchange. (Effective 1 April 2022)

B. Audit committee's approval

Audit committee's approval mechanism

Background

Currently, Listing Regulations require prior approval of the audit committee for all RPTs.

Post amendment

The amendment now requires prior approval of the audit committee of the listed entity for the following circumstances:

- All RPTs and **subsequent material modifications** and audit committee needs to define material modifications and disclose it as part of the policy on materiality of RPTs and on dealing with RPTs¹ (effective from 1 April 2022)
- A RPT to which the subsidiary of a listed entity is a party, but the listed entity is not a party if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds threshold of:
 - a. 10 per cent of the annual consolidated turnover in accordance with the last audited financial statements of the listed entity (effective from 1 April 2022)
 - b. 10 per cent of the annual standalone turnover in accordance with the last audited financial statements of the subsidiary (effective from 1 April 2023).

Additionally, an audit committee's approval would not be required if the listed subsidiary is subject to compliance with Regulation 23 and Regulation 15(2) of the Listing Regulations. Furthermore, the amendments clarify that for RPTs of unlisted subsidiaries of a listed subsidiary, prior approval of the audit committee of the listed subsidiary would suffice.

Information to be reviewed by the audit committee for approval of RPTs

Amendment

The SEBI, vide a circular dated 22 November 2021 has prescribed the information to be placed before the audit committee for approval of a proposed RPT. This circular is applicable from 1 April 2022 and following is the information to be provided:

- a. **Details of transaction:** The following particulars pertaining to the transaction should be disclosed:
 - i. Type, **material terms** and particulars of the proposed transaction
 - ii. **Tenure** of the proposed transaction (particular tenure should be specified)
 - iii. **Value** of the proposed transaction.
- b. **Details of the related party:** Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise).
- c. **Transaction value as a percentage of turnover:**
 - i. The percentage of the **listed entity's annual consolidated turnover**, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the **subsidiary's annual turnover** on a standalone basis should be additionally provided)
 - ii. Percentage of the **counter-party's annual consolidated turnover** that is represented by the value of the proposed RPT on a voluntary basis.
- d. **Transaction relating to loans, Inter-Corporate Deposits (ICDs), advances or investments:** If the transaction relates to loans, ICDs, advances or investments made or given by the listed entity or its subsidiary, the following disclosures are required to be made:
 - i. Details of the **source of funds** in connection with the proposed transaction
 - ii. Where any **financial indebtedness** is incurred to make or give loans, ICDs, advances or investments, the following details should be disclosed:
 - Nature of indebtedness
 - Cost of funds, and

¹Listed entities are required to maintain policies on materiality of RPTs and on dealing with RPTs under Regulation 23(1) of the Listing Regulations.

B. Audit committee's approval (cont.)

- Tenure
- iii. **Applicable terms**, including:
- Covenants
 - Tenure
 - Interest rate
 - Repayment schedule
 - Whether secured or unsecured; if secured, the nature of security and
- iv. The **purpose for which the funds will be utilised** by the ultimate beneficiary of such funds pursuant to the RPT.
- e. **Justification for RPT:** Justification as to why the RPT is in the interest of the listed entity².
- f. **Valuation/other report:** A copy of the valuation report or external party report, if any such report has been relied upon.
- g. **Other information:** Any other information that may be relevant.

The circular also requires the audit committee to review the status of long-term (more than one year) or recurring RPTs on an annual basis.

C. Materiality threshold and shareholders' approval for RPTs

Approval mechanism for shareholders

Background

Currently, Listing Regulations require approval of shareholders for RPTs which individually or taken together with previous transactions during a financial year exceeds 10 per cent of the annual consolidated turnover of the listed entity (materiality threshold) in accordance with the last audited financial statements of the listed entity.

Amendment

The amendment has revised the materiality threshold and approval mechanism for RPTs, as given below:

Prior approval of shareholders

The amendment now requires prior approval of the shareholders of a listed entity for all material RPTs and subsequent material modifications of such transactions (effective 1 April 2022).

However, prior approval of the shareholders would not be required if the transaction is entered into by a listed subsidiary of the listed entity, and the subsidiary is subject to compliance with Regulation 23³ and Regulation 15(2)⁴ of the Listing Regulations. Furthermore, SEBI has clarified that for RPTs of unlisted subsidiaries of a listed subsidiary, prior approval of the shareholders of the listed subsidiary would suffice.

Materiality threshold

The materiality threshold for determining 'material' RPTs has been amended for listed entities. Accordingly, a RPT would be considered material, if the transaction entered into individually or taken together with previous transactions during a financial year, exceeds INR1,000 crore or 10 per cent of the consolidated annual turnover of the listed entity as per last audited financial statements of the listed entity, whichever is lower (effective from 1 April 2022).

²As justification, the management could for instance, provide the prices at which transaction of a similar nature as the proposed RPT have been undertaken with unrelated parties, or comparative quotes and if the entity is not able to source comparative quotes externally, the reasons thereof should be provided to the audit committee. The audit committee may also request management for an analysis of the RPT specifying, for example, the deviation from market prices and standard commercial terms.

³Provisions pertaining to RPTs.

⁴Provisions pertaining to applicability of corporate governance regulations.

C. Materiality threshold and shareholders' approval for RPTs (cont.)

Information to be provided to shareholders for consideration of RPTs

Amendment

The SEBI, vide a circular dated 22 November 2021 has prescribed the information to be included in the notice being sent to the shareholders, seeking approval for any proposed RPT, in addition to the existing requirements under the 2013 Act. Those are as follows:

- A summary of the information provided by the management of the listed entity to the audit committee as specified in 'Information to be reviewed by the audit committee for approval of RPTs' in section 'B. Audit committee's approval' of this note.
- **Justification for a RPT:** Justification as to why the proposed transaction is in the interest of the listed entity.
- **Transaction relating to loans, ICDs, advances or investments:** Where the transaction relates to any loans, ICDs, advances or investments made or given by the listed entity or its subsidiary, the details specified under point 'd' of 'Information to be reviewed by the audit committee for approval of RPTs' is required to be provided.

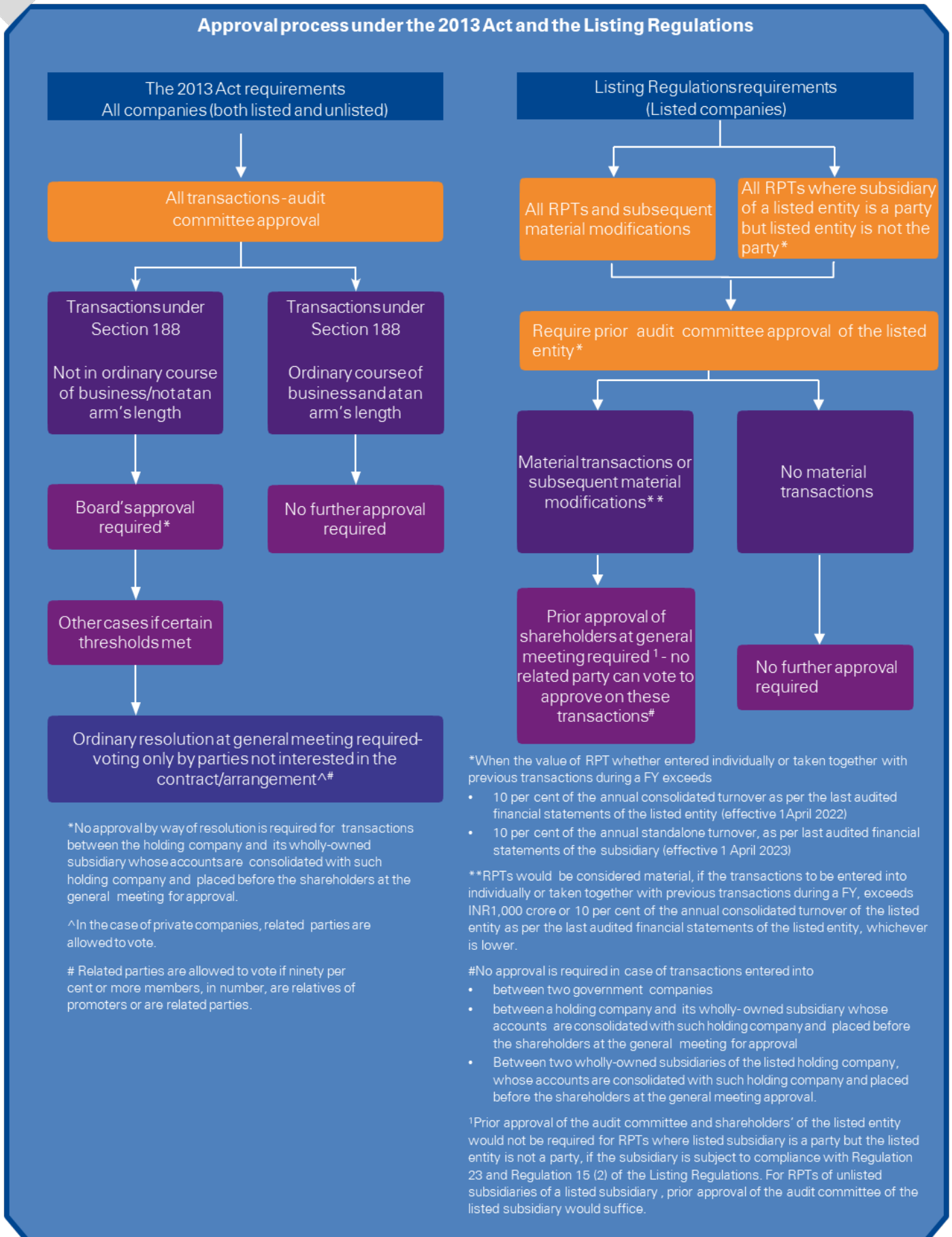
Note: Listed banks/NBFCs are not required to disclose the source of funds and cost of funds.

- **Valuation/other report available to shareholders:** A statement that valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction would be made available through the registered email address of the shareholders.
- **Percentage of turnover:** Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis.
- **Other information:** Any other information that may be relevant.

The provisions of this circular are applicable from 1 April 2022.



The process for approvals of RPTs has been summarised in the flow chart below:



C. Materiality threshold and shareholders' approval for RPTs (cont.)

Transactions exempt from audit committee's and shareholders' approval

Background

Currently, Listing Regulations exempt transactions between two government companies, and between a holding company and its wholly owned-subsiary from the requirements of shareholders' and audit committee's approval.

Amendment

The amendments have now extended this exemption to transactions between two wholly-owned subsidiaries of the listed holding company whose accounts are consolidated with such a holding company and placed before the shareholders at the general meeting for approval (effective 1 April 2022).

D. Enhanced disclosures

Statement providing half-yearly disclosures of RPTs

Background

Currently, the Listing Regulations requires listed entities to disclose RPTs on a half yearly basis within 30 days from the date of publication of the standalone and consolidated financial results, in the format specified by the accounting standards for annual results and submit this to the stock exchanges and publish the same on its website. The High Value Debt Entities (HVDLE) are required to submit these disclosures along with the standalone financial results for the half year (this provision is applicable for HVDLE on a 'comply or explain' basis till 31 March 2023, and on a mandatory basis from 1 April 2023).

Amendment

As per the amendment, listed entities will now be required to provide the RPT disclosures every six months in the format specified by SEBI as per the following timelines:

1. Within 15 days from the date of publication of the standalone and consolidated financial results (effective 1 April 2022)
2. On the date of publication of its standalone and consolidated financial results (effective 1 April 2023).

The High Value Debt Listed Entities (HVDLE), are required to submit these disclosures along with the standalone financial results for the half year⁵.

Format for related party disclosures

SEBI, vide a circular dated 22 November 2021 has prescribed the format for reporting of RPTs to stock exchange (the format has been given in the annexure to this first note). The provisions of this circular are applicable from 1 April 2022.

Through this circular, SEBI has clarified the following with regard to submitting the related party disclosures to stock exchanges:

- **Periodicity of reporting:** RPT disclosures are required to be submitted every six months by issuers of specified securities, therefore, for companies with financial year ending 31 March, the disclosures will be submitted for six months ended 30 September and 31 March each year. For companies with financial years ending in other months, the six months period will apply accordingly.
- **Manner of reporting:** With regard to reporting of RPT, the following clarifications have been provided:
 - **All transactions** undertaken during the six-months period are required to be reported
 - Opening and closing balances, including commitments should be disclosed for **existing RPTs** even if there is no new RPT during the reporting period
 - Transactions undertaken between **members of consolidated entity** (between listed entity and its subsidiary or between subsidiaries) may be reported once
 - Each RPT with a single party should be disclosed separately on a **gross basis** (i.e., no clubbing or netting of transactions of the same type). However, transactions with the same counterparty of the same type may be aggregated for the reporting period⁶. For instance, sale and purchase transactions, loans advanced to and received from the same party should be shown separately on an aggregate basis (without any netting off).

⁵ This is applicable on a 'comply or explain' basis from 8 September 2021 to 31 March 2023, and on mandatory basis from 1 April 2023.

⁶ This aggregation requirement is similar to the requirement currently followed by entities while preparing related party disclosures for financial statements.

D. Enhanced disclosures (cont.)

- **Banks/NBFCs:** Transactions such as acceptance of fixed deposits by banks/NBFCs undertaken with related parties, at the terms uniformly applicable/offered to all shareholders/public should **also be reported**. The circular also provides an exemption to provide the disclosures with respect to RPT involving loans, ICDs, advances or investments made or given.

Disclosures to be provided in the annual report

Background

Schedule V of the Listing Regulations specifies additional disclosures required to be provided by listed entities (both, issuers of specified securities and issuers of non-convertible securities) in their annual report. This, *inter alia*, includes related party disclosures (prescribed in part A of Schedule V) and disclosures pertaining to corporate governance report (prescribed in part C of Schedule V).

Amendment

As per the amendments, the related party disclosures as prescribed in part A of schedule V will be applicable only to issuers of non-convertible securities. SEBI, vide its circular dated 22 November 2021 has issued a format for disclosure of RPTs, required to be submitted every six months.

Additionally, listed entities and its subsidiaries are required to provide disclosures of loans and advances in the nature of loans advanced to firms/companies in which directors are interested by name and amount. However, this requirement will not be applicable to listed banks.

Our comments



The amendments issued by SEBI aims to widen the gamut of related parties and strengthen the related approval and disclosure processes to assist the audit committee and shareholders to make informed decisions with respect to RPTs.

Like the recent amendments to the Listing Regulations with effect from 8 September 2021, the new framework for RPTs is also applicable to HVDLEs on a 'comply or explain' basis upto 31 March 2023 and on a mandatory basis with effect from 1 April 2023.

Some of the key considerations with regard to the amendments are:

Definition of related parties

- **Threshold of shareholding for promoter/promoter group removed:** In India, businesses are often structured as intrinsically linked group entities that operate as a single economic unit. Such group entities often engage in RPTs such as sales and purchase arrangement, inter-corporate loans, cross collateralisation and significant influence arrangements, which can raise concerns from a corporate governance perspective. In such cases control over an entity does not depend only on shareholding, and promoters may exercise control and influence decision making on the group as a whole. Therefore, the new RPT framework makes inclusion of promoters and promoter group entities (irrespective of their shareholding in the listed entity) mandatory in the definition of a related party. This is likely to enable greater transparency of such transactions and better vigilance by the audit committee.
- **Any person holding 20 percent or more/10 per cent or more:** Persons/entities that are not part of the promoter or promoter group, may exercise influence over the decisions of the listed entity by virtue of their shareholding. This requirement gets further stringent effective 1 April 2023, when persons/entities with a shareholding of 10 per cent or more in a listed entity will get covered in the definition of 'related party'.

Basis this requirement, it appears that institutional investors including banks, insurance companies and other investment companies with a holding of 20 per cent or more (from 1 April 2022) or 10 per cent or more (from 1 April 2023) in a listed company would be considered as related parties. Accordingly, even routine transactions with these entities may need appropriate approvals and disclosures. SEBI should provide more clarity on this matter.

However, it is important to consider that in the amended definition, only the shareholders with a holding of 20 per cent or more (from 1 April 2022) or 10 per cent or more (from 1 April 2023) would be considered as 'related parties', and entities controlled by them would not be considered for such classification. Further, it appears that

Our comments (cont.)



shareholding of persons/entities would be considered on an individual basis, unless two or more persons/entities are acting in concert, in which case it would require careful and detailed evaluation while identifying related parties. SEBI should provide further clarification on this matter.

Shareholders (entities/persons) will be covered in the related party definition if their shareholding at anytime during the preceding financial year exceeds the prescribed threshold. SEBI has prescribed a static reference date of the preceding financial year to identify related parties. However, in case certain persons/entities meet the related party threshold during the year i.e., due to increase in their shareholding. As listed entities submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities on a quarterly basis and considering the spirit of these amendments, in a situation of increase of shareholding during the year, the listed companies are encouraged to seek necessary related party approvals.

Currently, related parties are defined under the 2013 Act, Indian Accounting Standard (Ind AS), and the Listing Regulations. The definition of related party in these three documents is not aligned. Moreover, the definition of related parties under the Listing Regulations has a much wider ambit as compared to the other documents, this is given in the table below:

As per 2013 Act	As per Ind AS	As per Listing Regulations
<p>As per Section 2(76) of the 2013 Act, a related party means:</p> <p>a) A director or his relative</p> <p>b) A Key Managerial Personnel (KMP) or his relative</p> <p>c) A firm, in which a director, manager or his relative is a partner</p> <p>d) A private company in which a director or manager or his relative is a member or director</p> <p>e) A public company in which a director or manager or his relative is a director and holds along with his relatives, more than two per cent of its paid-up share capital</p> <p>f) 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</p> <p>g) Any person on whose advice, directions or instructions a director or manager is accustomed to act</p> <p>h) Any company which is:</p> <p>i. A holding, subsidiary or an associate company of such company or</p> <p>ii. A subsidiary of a holding company to which it is also a subsidiary</p> <p>iii. An investing company or the venturer of the company</p> <p>i) A director other than an independent director or KMP of the holding company or his relative.</p>	<p>As per Ind AS 24, a related party is a person or entity that is related to the entity that is preparing its financial statements including following:</p> <p>a) A person or a close member of that person's family is related to a reporting entity if that person:</p> <p>i. Has control or joint control of the reporting entity</p> <p>ii. Has significant influence over the reporting entity or</p> <p>iii. Is a member of the KMP of the reporting entity or of a parent of the reporting entity.</p> <p>b) An entity is related to a reporting entity in the following scenario:</p> <p>i. The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others)</p> <p>ii. One entity is an associate or Joint Venture (JV) of the other entity (or an associate or JV of a member of a group of which the other entity is a member)</p> <p>iii. Both entities are JVs of the same third party.</p> <p>iv. One entity is a JV of a third entity, and the other entity is an associate of the third entity</p> <p>v. The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.</p> <p>vi. The entity is controlled or jointly controlled by a person identified in (a)</p> <p>vii. A person identified in (a)(i) has significant influence over the entity or is a member of the KMP of the entity (or of a parent of the entity)</p> <p>viii. The entity, or any member of a group of which it is a part, provides KMP services to the reporting entity or to the parent of the reporting entity.</p>	<p>As per Regulation 2(zb) of the Listing Regulations, a related party means:</p> <p>a) A 'related party' as defined under Section 2(76) of the 2013 Act and the applicable accounting standards or Ind AS,</p> <p>b) Any person or entity forming part of the 'promoter' or promoter group' of the listed entity (effective from 1 April 2022)</p> <p>c) Any person or any entity, holding equity shares in the listed entity either directly or on a beneficial interest basis as prescribed under section 89 the 2013 Act at any time during the immediately preceding financial year:</p> <p>i. 20 per cent or more, or (effective from 1 April 2022)</p> <p>ii. 10 per cent or more (effective from 1 April 2023).</p>

Our comments (cont.)



Definition of RPTs

- **Scope of RPTs has been enlarged:** It was observed by the regulators that recently, certain innovative structures have been used to avoid classification of transactions as RPTs and thus, avoid the associated regulatory compliance and disclosure requirements. For instance, use of complex structures, transactions undertaken by a listed entity with seemingly unrelated parties intended to benefit related parties and instances of loans being given to an unrelated party which in turn gives such loan to a related party. Accordingly, SEBI amended the definition of RPTs to strengthen it and broaden it to include transactions which are undertaken, whether directly or indirectly, with the intention of benefitting related parties. Currently, RPTs are defined under the 2013 Act, Ind AS, and the Listing Regulations. The definition of RPTs in these three documents is not aligned. Moreover, the definition of RPTs under the Listing regulations has a much wider ambit as compared to the other documents, this is given in the table below:

As per 2013 Act	As per Ind AS	As per Listing Regulations
<p>While a definition of RPT is not specifically provided in the 2013 Act, Section 188 of the 2013 Act enlists certain contracts or arrangements that would constitute an RPT as given below:</p> <ul style="list-style-type: none"> • Sale, purchase or supply of any goods or materials • Selling or otherwise disposing of, or buying, property of any kind • Leasing of property of any kind • Availing or rendering of any services • Appointment of any agent for purchase or sale of goods, materials, services or property • Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company and • Underwriting the subscription of any securities or derivatives thereof, of the company. 	<p>An RPT is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.</p>	<p>An RPT means a transaction involving a transfer of resources, services or obligations between:</p> <ul style="list-style-type: none"> • 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 (effective 1 April 2022) • 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, (effective 1 April 2023) <p>regardless of whether a price is charged.</p> <p>Additionally, certain transactions are specifically excluded from the purview of RPT.</p>

- **Transactions that indirectly benefit related parties will be considered as RPT:** As per the amendment, a transaction between a listed entity or any of its subsidiaries, and any other person or entity, the purpose and effect of which is to benefit a related party of the listed entity or its subsidiary would be considered as an RPT (with effect from 1 April 2023). This has widened the landscape of RPTs and has increased the compliance burden on companies to identify related parties and RPTs. With the definition of 'related parties' now widening, management and audit committees as part of their oversight role will now need to strengthen the processes to detect any such transaction undertaken with seemingly unrelated parties and apply judgement to determine the transactions that ultimately benefit a related party of the entity or of any of its subsidiary and maintain proper documentation to this effect.

Approval process

- **Determining and approving material modifications to RPT:** Currently, Section 177 of the 2013 Act requires audit committees of the companies to approve subsequent modifications to RPT. The current provisions of the Listing Regulations do not require audit committee approvals for such RPT modifications. The amendments to the Listing Regulations have now harmonised the requirements of the Listing Regulations, with those prescribed in the 2013 Act. Accordingly, as per the amendments, as audit committees of the companies define what constitutes a 'material modification' of a RPT and include it in its policy on dealing with RPT as prescribed under Regulation 23(1). Further, prior approvals of the audit committee and shareholders (in case of a material RPT) will be required before any material modification is made to an RPT.

Our comments (cont.)



- **Prior approval of audit committee and onus on Independent Directors (IDs) increases:** Prior approval of an audit committee of a listed entity would be mandatory for transactions carried out between a listed entity, any of its subsidiary (whether the subsidiary is based in India or outside India) and a related party of the listed entity or its subsidiaries (whether these are based in or outside India). An audit committee approval would also be required for any transaction between a listed entity, its subsidiaries and any other person or entity if its purpose and effect is to benefit a related party of the listed entity or any of its subsidiaries. Additionally, all subsequent material modifications to RPTs will require prior approval of an audit committee.

This means that the onus on IDs has increased. With effect from 1 January 2022, members of the audit committee who are IDs are entrusted to approve RPTs. Therefore, IDs will have to spend a significant portion of their time in determining and reviewing 'related party relationships' and RPTs. The scope of RPTs has now increased, as it will include transactions between:

Entity	Transactions*
Listed entity	Transactions with related party of the listed entity
Listed entity	Transactions with related party of any of the subsidiary of the listed entity
Subsidiary of the listed entity	Transaction with related party of the listed entity
Subsidiary of the listed entity	Transactions with related party of any of the subsidiary of the listed entity
Listed entity	Any person/entity where the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries
Subsidiary of the listed entity	Any person/entity where the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries.

This increased scope of RPTs will require greater scrutiny of transactions on an overall basis.

As mentioned earlier, this will further entail to certain practical challenges, for example, companies would need to establish a process to identify such parties in all their subsidiaries, identify transactions entered into with them, and understand if the purpose of any transactions is to benefit a related party, especially in a complex structure where a listed entity may have number of subsidiaries. Consequently, a company's management, its board including audit committee and independent directors need to look deeper into transactions that traditionally would not have been classified as RPTs taking into account the end beneficiary of the transactions.

Management of companies would need to satisfy the IDs that all related parties and RPTs have been identified and provide sufficient information and explanation with regard to these transactions, which will enable IDs to provide timely approvals.

Further, for entities that obtain omnibus approvals of the audit committee for RPTs, the approval is generally obtained for a period of one financial year. With the amendments to the definition of related party and RPT getting effective 1 April 2022, there may be certain new transactions which will now be covered within the ambit of RPT. Entities should plan to obtain an omnibus approval for such 'new' transactions from their audit committees prior to 1 April 2022.

- **Change in the threshold for approval of the RPTs:** As per the amendment, the threshold for RPTs requiring a prior approval of the audit committee has been changed. The following table highlights the new thresholds:

Applicability date	Threshold
With effect from 1 April 2022	The value of the transaction individually or taken together with previous transactions entered in the financial year exceeds 10 per cent of the consolidated turnover of the listed entity.
With effect from 1 April 2023	The value of the transactions individually or taken together with previous transactions entered in the financial year exceed 10 per cent of the standalone turnover of the subsidiary.

The new threshold of 10 per cent of the stand alone turnover of subsidiary could be fairly low in comparison to consolidated turnover in certain situations. This is likely to increase the number of transactions to be approved by an audit committee.

*Transactions between the holding company and a wholly owned subsidiary whose accounts are consolidated with the holding company, and transactions between two wholly owned subsidiaries, whose accounts are consolidated with the holding company will not require approval of the audit committee or the shareholders.

Our comments (cont.)



- **Prior approval of shareholders:** As per the amendment, prior approval of shareholders is required for material RPTs and material modifications to such RPTs. Thus, entities will now need to identify and plan the RPTs during a period and take approval from shareholders before entering into such transactions. Listed companies may need to hold additional meetings (extraordinary general meetings) to get approvals of shareholders for new transactions that fall in the ambit of related parties.

Disclosures

- **Harmonisation of time period for submission of RPT disclosures:** Currently, equity listed entities are required to submit disclosures of RPTs to the stock exchange on a half yearly basis within 30 days from submission of their standalone and consolidated financial results. However, HVDLEs are required to submit these disclosures for the half year at the time of submission of their standalone financial results (on a comply or explain basis upto 31 March 2023 and on a mandatory basis from 1 April 2023).

Since the details of RPTs are available to entities at the time of submission of the quarterly financial results, SEBI has harmonised the time period for submission of disclosure requirements between equity listed entities and HVDLEs in a phased manner. Accordingly, equity listed entities will be required to submit disclosures of the RPTs on a half yearly basis, within 15 days from the date of submission of their standalone and consolidated financial results with effect from 1 April 2022, and with the standalone and consolidated financial results with effect from 1 April 2023.

Additionally, in order to ensure consistency of the disclosures, SEBI has, vide a circular dated 22 November 2021 prescribed a format in which these disclosures need to be submitted.

- **Submission of information to board of directors, shareholders and audit committee under the 2013 Act and Listing Regulations:** Currently, Rule 15 of the Companies (Meetings of the Board and its Powers) Rules, 2014 prescribes information to be presented to the board of directors and shareholders when obtaining approval for transactions covered under Section 188(1) of the 2013 Act. However, the 2013 Act does not prescribe the information to be presented to the audit committee for consideration of RPTs. The circular dated 22 November 2021 issued by SEBI now prescribes the information to be presented before the audit committee and the shareholders when obtaining their approval under the Listing Regulations. This circular includes a comprehensive list of documents and information as compared to that prescribed under the 2013 Act. Companies would thus need to ensure they meet the information requirements of both regulations.
- **Disclosures for RPTs exempt from approval process:** The Listing Regulations provide exemptions from obtaining approvals from the audit committee and shareholders for transactions between a listed entity and its wholly owned subsidiary and transactions between two wholly owned subsidiaries (effective 1 April 2022). However, it is pertinent to note that disclosures of these transactions will be required to be given in the financial statements, in accordance with Ind AS, and to stock exchanges in accordance with SEBI provisions.

The bottom line

Despite stringent norms on related parties and RPTs over the years, it continues to be an area of concern from a corporate governance perspective. SEBI rightly continues to take measures to strengthen regulations around this area. The current move on making the listed entities responsible for monitoring and approving RPTs is a welcome move considering the spirit of the legislation.

Companies would need to understand these new requirements as they kick in from 1 April 2022 and accordingly, plan for their implementation.



⁷ Except for transactions specifically exempt from the approval process.

Annexure: Format for submission of RPT disclosures to the stock exchange every six months

Additional disclosure of RPTs- applicable only in case the RPT 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.																
Sr. no.	Details of the party (listed entity/subsidiary) entering into the transactions		Details of the counterparty			Type of RPT	Value of the RPT as approved by the audit committee	Value of transaction during the reporting period	In case monies are due to either party as a result of the transaction		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)	Cost	Tenure	Nature (loan/advance/inter-corporate deposit/investment)	Interest Rate (%)	Tenure

Notes:

- 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 RPTs even if there is no new RPT during the reporting period.
- Each type of RPT (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.
- In case of a multi-year RPT:
 - The aggregate value of such RPT as approved by the audit committee shall be disclosed in the column 'Value of the RPT as approved by the audit committee'.
 - The value of the RPT undertaken in the reporting period shall be reported in the column 'Value of RPT during the reporting period'.
- 'Cost' refers to the cost of borrowed funds for the listed entity.
- PAN will not be displayed on the website of the stock exchange(s).

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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

Missed an issue of Accounting and Auditing Update or First Notes?



Issue no. 65 – December 2021

The topics covered in this issue are:

- SEBI issued FAQs on Listing Regulations
- Practical perspectives for issuers of non-convertible securities
- Regulatory updates.



The International Sustainability Standards Board

7 December 2021

On 3 November 2021, the International Financial Reporting Standards (IFRS) Foundation announced the formation of the new International Sustainability Standards Board (ISSB). The ISSB will develop a comprehensive global baseline of high – quality sustainability disclosure standards which are focussed on enterprise value. The ISSB will focus on meeting the sustainability information needs of investors for assessing enterprise value and making investment decisions. The standards will help investors understand how companies are responding to ESG issues, like climate, diversity etc. to inform capital allocation decisions.

This issue of First Notes aims to provide an overview of the ISSB and the work plan laid out by the Technical Readiness Working Group (TRWG) for consideration by the ISSB. After starting its work, the ISSB is expected to consult publicly on any proposals informed by the TRWG's recommendations. The ISSB's work will be subject to the IFRS Foundation's due process.



Voices on Reporting

Special session on some accounting issues for certain start-up companies

On 16 December 2021, KPMG in India organised a VOR webinar to discuss some key issues under Ind AS relevant for start-up companies. The issues mainly relates to:

- Gross vs net presentation of revenues (consideration payable to end user)
- Accounting for Compulsorily Convertible Preference Shares (CCPS).

To access the recording and presentation of the webinar, please click [here](#).

Feedback/queries can be sent to aaupdate@kpmg.com

Previous editions are available to download from: home.kpmg/in

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