

RELATED PARTY TRANSACTION

Related Party 2(76) read with Rule 1.3

Related Party Transaction

- ❖ Director or his relative
- ❖ KMP or his relative
- ❖ A Firm, in which director, manager or his relative is partner
- ❖ A Private Company, in which director, manager is director or member
- ❖ A Public Company, in which director or manager is a director and holds more than 2% of paid-up share capital with relatives.
- ❖ Any Body Corporate whose BOD, MD or manager is accustomed to act in accordance with advice, directions or instructions of a director or manager;
- ❖ Any Person on whose advice, direction or instructions a director or manager accustomed to act
- ❖ Any Company which is holding, subsidiary or an associate or **subsidiary of holding company to which it is also subsidiary**
- ❖ a director or key managerial personnel of the holding, company or his relative with reference to a company;

RELATIVE 2(77) read with rule 1.4]

Related Party Transaction

a person shall be deemed to be the relative of another, if he or she is related to another in the following manner:

- (1) they are members of a Hindu Undivided Family
- (2) they are husband and wife; or
- (3) Father (including step-father)
- (4) Mother (including step-mother)
- (5) Son (including step-son)
- (6) Son's wife
- (7) Daughter
- (8) Daughter's husband
- (9) Brother (including step-brother)
- (10) Sister (including step-sister)

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE

COMPANIES ACT, 2013

COMPANIES ACT, 1956

Related Party Transaction sec 188(combination of sec 297, 294 & 314 of old act)

No Related Party Transactions can be undertaken except taking approval of Board in meeting for the following :-

- ✓ Sale, purchase, 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 agents for purchase or sale of goods, materials, services or property
- ✓ Appointment of any related party to any office or place of profit in the Company or its Subsidiary Company or Associate Company.
- ✓ Contract for underwriting the subscription of securities or derivatives thereof.

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

❖ Approval of Central Government is required for Companies whose Paid up capital exceeds one Crore Rupees for entering into transactions for sale, purchase, supply of goods and services or underwriting the subscription of shares or debenture of Company.

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE	COMPANIES ACT, 2013	COMPANIES ACT, 1956
<p>Related Party Transaction sec 188(combination of sec 297, 294 & 314 of old act)</p>	<p>❖ Contract or arrangement or transactions as prescribed below require prior approval of the company by way a special resolution:</p> <p>→ contract or arrangement with any related party enter into by a company having a paid-up share capital of ten crore rupees or more;</p> <p>→sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding 25% of the annual turnover as mentioned in Clause (a) and (e) of section 188(1)</p> <p>→selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding 10% of net worth as</p>	<p>❖Approval of Central Government is required for Companies whose Paid up capital exceeds one Crore Rupees for entering into transactions for sale, purchase, supply of goods and services or underwriting the subscription of shares or debenture of Company.</p>

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE	COMPANIES ACT, 2013	COMPANIES ACT, 1956
<p>Related Party Transaction sec 188(combination of sec 297, 294 & 314 of old act)</p>	<p>→leasing of property of any kind exceeding 10% of the net worth or exceeding 10% of turnover as mentioned in clause (c) of section 188(1)</p> <p>→availing or rendering of any services directly or through appointment of agents exceeding 10% of the net worth as mentioned in clause (d) and (e) of section 188(1)</p> <p>→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 section 188(1)</p> <p>→remuneration for underwriting the subscription of any securities or derivatives thereof of the company</p>	<p>❖Approval of Central Government is required for Companies whose Paid up capital exceeds one Crore Rupees for entering into transactions for sale, purchase, supply of goods and services or underwriting the subscription of shares or debenture of Company.</p>

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE

COMPANIES ACT, 2013

COMPANIES ACT, 1956

Related Party Transaction sec 188 (combination of sec 297, 294 & 314 of old act)

In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party

Exception :

Transaction in ordinary course of business on arm length basis

Transaction between holding company and wholly owned subsidiary, resolution passed by holding company will be sufficient.

❖ Approval of Government is required for Companies whose capital exceeds Rs. 100 Crores for entering into transactions for purchase, supply and services or for the subscription of debenture of Company

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE	COMPANIES ACT, 2013	COMPANIES ACT, 1956
Loan to Directors	<ul style="list-style-type: none">➤ This section applies to all companies including private companies. ➤ Definition of Relative – the list of people that qualify as relatives under the Companies Act and these Rules is far shorter.	<ul style="list-style-type: none">❖ As per sub-section (2), this section is not applicable to private company. ❖ The relative include a long list as provided under schedule (IA)❖ The below mentioned relatives are not included:<ul style="list-style-type: none">❖ Daughter's son❖ Daughter's son's wife❖ Daughter's daughter❖ Daughter's daughter's husband❖ Brother's wife❖ Sister's husband.

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE	COMPANIES ACT, 2013	COMPANIES ACT, 1956
Loan to Directors	<p>➤ This section is a charging section, whereas the operational provisions of this section are provided under section 186 as loan and investment by company. Section 186 mentioned procedure for how loan and investment to be given by the company.</p>	<p>❖ This section is restrictive in nature as it provides that no company can directly give any loan to or give any guarantee or provide any security in connection with a loan by a public company as well as contain a procedure under sub-section (1).</p>

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE	COMPANIES ACT, 2013	COMPANIES ACT, 1956
Loan to Directors	<p>Exemption</p> <p>This section does not apply to: Loan to Managing Director or whole-time directors as a part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by members by special resolution</p>	<p>(a) any loan made, guarantee given or security provided -</p> <p>(i) by a private company unless it is a subsidiary of a public company, or</p> <p>(ii) by a banking company ;</p> <p>2[(b) any loan made by a holding company to its subsidiary company;</p> <p>(c) any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company.</p>

RELATED PARTY TRANSACTION

BASIS OF DIFFERENCE	COMPANIES ACT, 2013	COMPANIES ACT, 1956
Loan to Directors	<p>Exemption</p> <p>The section starts with “save as otherwise provided under the act” which implies that provision of this section will have an overriding effect or we could say that other section has to be complied in accordance with provision of this section. However, the entire act does not contain any other provision regulating giving of loan to director or any other person in which such director is interested.</p>	<p>Section starts as “ save as otherwise provided in sub-section (2), which means that no company can give loan or provide security or give any guarantee in accordance under sub-section (1) unless the approval of Central government has been obtained, however sub-section (1) to be read with sub- section (2), which prevail over the applicability of section 295.</p>

BASIS OF DIFFERENCE

COMPANIES ACT, 2013

Loan to Directors

No company shall, **directly or indirectly, advance any loan**, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

nothing contained in this sub-section shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or

gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

BASIS OF DIFFERENCE

COMPANIES ACT, 2013

Loan to Directors

the expression “to any other person in whom director is interested” means—

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

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

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

(d) any body corporate at a general meeting of which not 25 % of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

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

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

BASIS OF DIFFERENCE

COMPANIES ACT, 2013

Loan to Directors

Exempted provided under Rule 10

- ❖ Any loan made by a holding company to its wholly owned subsidiary company or;
- ❖ any guarantee given or security provided by a holding company in respect of **any loan made** to its wholly owned subsidiary company is under this section;
- ❖ Any guarantee given or security provided by a holding company in respect of **loan made by any bank or financial institution** to its subsidiary company is exempted from the requirements under this section:

such loans made under sub-rule (1) and (2) are utilised by the subsidiary company for its principle business activities.

*Understanding is the first step to acceptance, and
only with acceptance can there be recovery*

Thank you

Thanks

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