

COMPREHENDING 'RELATED PARTIES' UNDER COMPANIES ACT, 2013

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Section 2(76) of Companies Act, 2013 ('Act') deals with the definition of 'Related Party'. The reference of 'related party' is there in numerous provisions of the Act, like: Disqualification of Directors (u/s 164), Related Party Transactions (u/s 188), including references in Companies (Management and Administration) Rules, 2014.

In determining whether a transaction is related party transaction or not, it is necessary to first recognize whether the transacting company has entered into a 'prescribed transaction' with the 'related party'. If the transaction is not with the 'related party', then it is irrelevant to check whether the transaction is prescribed or whether the transaction is at arms' length or whether the transaction is in the ordinary course of business. Section 2(76) read with Section 2(77) and Rule 3 of Companies (Specification of Definitions Details) Rules, 2014, will assist a professional in determining whether a party is a 'related party' for ensuring appropriate compliance under the Companies Act.

Discussion on the legal provisions of 'related party':

Section 2(76) provides the list of 'related parties' in relation to the company. Section 2(77) relates to the definition of 'relative', with reference to any person, means anyone who is related to another, if:

- (1) They are members of a Hindu Undivided Family;
- (2) They are husband and wife; or

- (3) One person is related to the other in such manner as may be prescribed.

Rule 4 of Companies (Specification of Definitions Details) Rules, 2014 provides for list of relatives of another in terms of subsection (77) of Section 2 of the Act. A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:

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

Section 2(76) of the Act provides for the list of 'related parties', however upon the meaningful bifurcation of the same, following are the detailed 'related parties' (company is referred to as 'company PQR' for reference purpose):

- (1) Director of a company PQR,
- (2) Relative of any director of company PQR,
- (3) Key Managerial Personnel of company PQR,
- (4) Relative of Key Managerial Personnel of company PQR.
- (5) Firm in which any director of company PQR is a partner,
- (6) Firm in which manager of company PQR is a partner,

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| <p>(7) Firm in which relative of any director of company PQR is a partner,</p> <p>(8) Firm in which any relative of manager of company PQR is a partner.</p> <p>(9) Private company in which any director of company PQR is a member.</p> <p>(10) Private company in which any director of company PQR is a director.</p> <p>(11) Private company in which the manager of company PQR is a member.</p> <p>(12) Private company in which the manager of company PQR is a director.</p> <p>(13) Private company in which relative of any director of company PQR is a member.</p> <p>(14) Private company in which relative of any director of company PQR is a director.</p> <p>(15) Private company in which relative of manager of company is member.</p> <p>(16) Private company in which relative of manager is a director,</p> <p>(17) Public company in which any director of company PQR is a director and holds along with his relatives more than 2% of its paid up share capital,</p> <p>(18) Public company in which manager of company PQR is a director and holds along with his relatives more than 2% of its paid up share capital,</p> <p>(19) A body corporate whose Board of Directors, Managing Director or Manager is accustomed to act in accordance with the advice, directions or instructions (except in professional capacity) of any director of company PQR,</p> <p>(20) A body corporate whose board of directors, Managing Director or Manager is accustomed to act in accordance with the advice, directions or instructions (except in</p> | <p>professional capacity) of any manager of company PQR,</p> <p>(21) A person on whose advice, directions and instructions (except in professional capacity) any director of company PQR is accustomed to act,</p> <p>(22) A person on whose advice, directions and instructions (except in professional capacity) any manager of company PQR is accustomed to act,</p> <p>(23) Holding Company of Company PQR</p> <p>(24) Subsidiary Company of Company PQR</p> <p>(25) Associate company of Company PQR</p> <p>(26) Another subsidiary of company (holding company) of which company PQR is also a subsidiary,</p> <p>(27) Such other person as may be prescribed.</p> <p>With respect to the clause (ix) of sub-section (76) of Section 2 ('such other person as may be prescribed'), following are the 'related parties', prescribed in Rule 3 of Companies (Specification of Definitions Details) Rules, 2014:</p> <p>(1) Director (other than the independent director) of holding company of company PQR</p> <p>(2) Relative of director (other than the independent director) of holding company of company PQR.</p> <p>(3) Key Managerial Personnel of the holding company of company PQR.</p> <p>(4) Relative of Key Managerial Personnel of the holding company of company PQR.</p> |
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'Related Parties' for Private Companies:

MCA issued Notification [No. GSR 464(E) [F.NO.1/1/2014-CL-V]] dated June 5, 2015, where in certain reliefs / exemptions have been provided to private companies from compliance of certain provisions. Vide the

subject Notification, in relation to private company, the entities specified in Section 2(76)(viii) of the Act would not be considered 'related parties' under Section 188 of the Act. Therefore, the relationship between a private company (i.e. transacting company) with following parties will not be considered as 'related party':

- (a) Holding company,
- (b) Subsidiary company,
- (c) Associate company,
- (d) Subsidiary of a holding company to which it is also a subsidiary company.

The private company, which is a transacting company, is exempt from the compliance of provisions of Section 188 of Companies Act, 2013, as the above mentioned parties are not 'related parties'. Therefore, it is not statutorily required to obtain board approval, audit committee approval or shareholders approval. At the same time, it is not necessary to confirm if the transaction is the arms' length basis or in the ordinary course of business. However, if the other company, with whom

the transaction takes place (Holding Company, Subsidiary Company, Associate Company, Subsidiary of holding company to which it is also a subsidiary company) is a public company, then such other company is required to comply with provisions of Companies Act, 2013.

Conclusion:

As discussed earlier, it is of utmost importance to determine whether a party is 'related party' under the Companies Act, 2013. If the answer to the question is affirmative, then the company is required to determine whether the 'transaction' is a 'prescribed transaction' and then whether the transaction is in the ordinary course of business or at arms' length basis. Accordingly, the approval level will be ascertained (i.e. Board approval, Audit Committee approval or shareholders' approval). However, if the answer to the question is negative, then the company is not required to comply with the provisions of the Companies Act, 2013 relating to Related Party Transactions.

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