



## Compliances with Companies Act, 2013 by Private Limited Companies – Updates on Related Party Transactions - Part IX

This update focusses on the changes that the law pertaining to related party transactions has undergone since our last update on the same subject<sup>1</sup>.

### *Revision in Related Party Transaction thresholds*

The Companies (Meetings of Board and its Powers) Rules, 2014 was amended vide [notification](#) dated August 14, 2014 by the MCA. Pursuant to this notification, the focus of the MCA has shifted from corporates have a certain share capital to the transaction itself. The MCA has done away with compliance for companies having a paid up share capital of over INR 10 crores and revised the thresholds to ensure that only the big transactions are caught in the net of related party transactions. The table below highlights the revised thresholds for which approval of the shareholders by way of special resolution has been mandated:

<b>Transaction</b>	<b>Previous thresholds</b>	<b>Revised thresholds</b>
Sale, purchase or supply of any goods or materials directly or through appointment of agents.	Exceeding 25% of annual turnover.	<i>Exceeding 10% of annual turnover or INR 100 Crore (whichever is lower).</i>
Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents.	Exceeding 10% of net worth.	<i>Exceeding 10% of net worth or INR 100 Crore (whichever is lower).</i>
Leasing of property of any kind.	Exceeding 10% of annual turnover or exceeding 10% of net worth.	<i>Exceeding 10% of net worth or 10% of annual turnover or INR 100 Crore (whichever is lower).</i>
Availing or rendering of any services directly or through appointment of agents.	Exceeding 10% of net worth	<i>Exceeding 10 % of annual turnover or INR 50 Crore (whichever is lower).</i>
Appointment to any office or place of profit in the company, its subsidiary company or associate company.	Monthly remuneration exceeding INR 2.5 lakhs	<i>No change.</i>
Remuneration for underwriting the subscription of any securities or derivative.	Exceeding 1% of net worth	<i>No change.</i>

<sup>1</sup> Please see our Update No. II, in relation to Related Party Transactions, which can be downloaded in a PDF format [here](#).



### *Modifications to definition of a Related Party vis-à-vis Directors*

The MCA vide the [Companies \(Removal of Difficulties\) Fifth Order, 2014](#) dated July 9, 2014 has amended the definition of a 'related party' to provide that 'related party' in the context of a company means a public company in which a director or manager is a director **and** holds along with his relatives, more than 2% of its paid-up share capital. Previously, the word 'or holds' appeared in place of 'and holds'. This would be a big breather for every director and the company as it reduces the gamut of transactions that could fall within the purview of Section 188.

Also, vide the [Companies \(Specification of definitions details\) Amendment Rules, 2014](#) dated July 17, 2014; the MCA excluded Independent Directors of a holding company from being a related party.

### *Clarifications and grandfathering provisions*

The MCA also issued a [circular](#) on July 17, 2014 *inter alia* making the following clarifications:

1. The second proviso to Sub-Section (1) of Section 188 states “*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.*” It is clarified by the circular that a related party ineligible to vote on a special resolution to approve the contract or arrangement in terms of second proviso to section 188 (1) shall be construed with reference only to the contract or arrangement for which the said special resolution is being passed.
2. Transactions arising out of compromises, arrangements and amalgamations will not attract the requirements of section 188 of the Companies Act 2013.
3. Contracts which were entered into by companies before April 1, 2014 after complying with the provisions of Section 297 of the previous Companies Act, will not require fresh approval until the expiry of original term of such contracts; however any modifications to such contracts on or after April 1, 2014 would fall under the new requirements.

### *Conclusion*

The amendments issued by the MCA are perceived to be majorly in the favour of smaller companies, as larger companies are most likely to be hit by the revised thresholds more often considering the scale of their business transactions. Given the furore over the complexities of related party transactions, the current amendments as well as the clarifications and grandfathering provisions go a long way in reducing the onerous nature of the provisions.