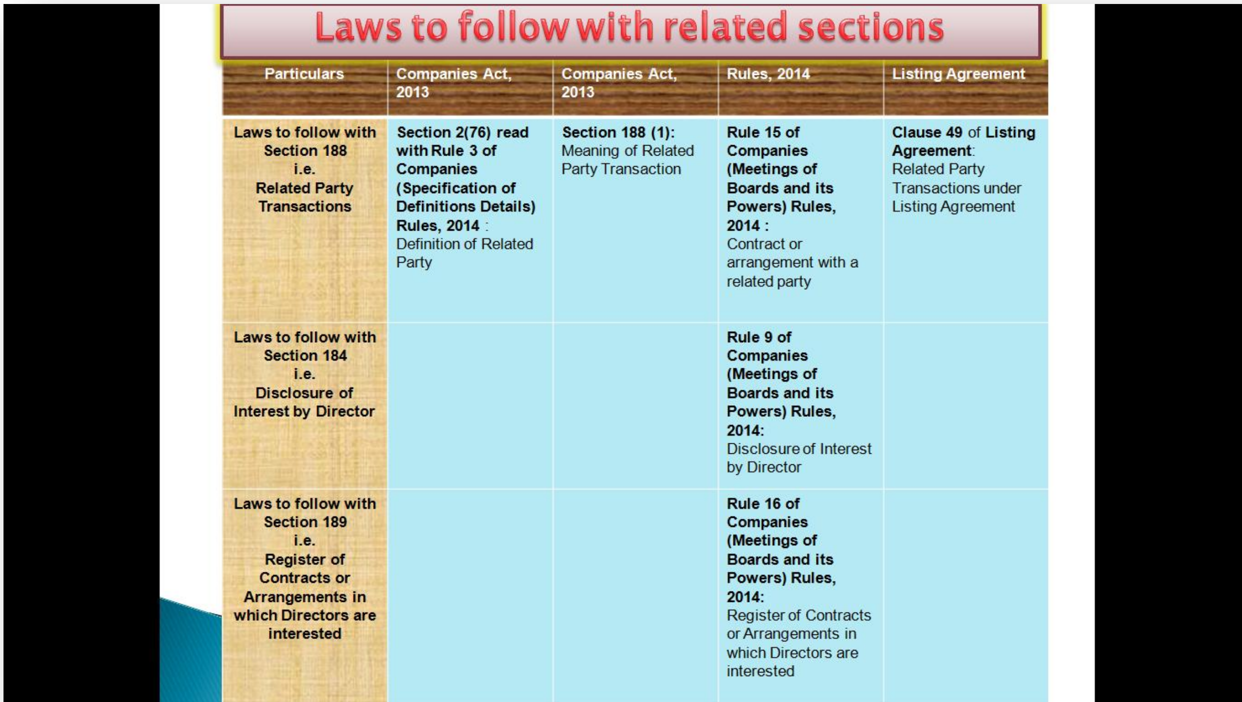

RELATED
PARTY
TRANSACTIONS

Let’s see first the various laws to follows with sections applicable to Related Party Transactions by this table:



Laws to follow with related sections

Particulars	Companies Act, 2013	Companies Act, 2013	Rules, 2014	Listing Agreement
Laws to follow with Section 188 i.e. Related Party Transactions	**Section 2(76) read with Rule 3 of Companies (Specification of Definitions Details) Rules, 2014** : Definition of Related Party	**Section 188 (1):** Meaning of Related Party Transaction	**Rule 15 of Companies (Meetings of Boards and its Powers) Rules, 2014 :** Contract or arrangement with a related party	**Clause 49** of **Listing Agreement**: Related Party Transactions under Listing Agreement
Laws to follow with Section 184 i.e. Disclosure of Interest by Director			**Rule 9 of Companies (Meetings of Boards and its Powers) Rules, 2014:** Disclosure of Interest by Director	
Laws to follow with Section 189 i.e. Register of Contracts or Arrangements in which Directors are interested			**Rule 16 of Companies (Meetings of Boards and its Powers) Rules, 2014:** Register of Contracts or Arrangements in which Directors are interested	

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, 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:

See Rule 15.2 of Companies (Meetings of Board and its Powers) Rules, 2014

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, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that 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:

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.

***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 special 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 twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and

(*ii*) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Companies (Meetings of Boards and its Powers) Rules, 2014

Rule 15 Contract or arrangement with a related party

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 special resolution

(i) a company having a paid-up share capital of ten crore rupees or more shall not enter into a contract or arrangement with any related party; or

(ii) 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 agents exceeding twenty five percent of the annual turnover 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 agents exceeding ten percent of net worth 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 percent of the net worth or exceeding ten percent of turnover as mentioned in clause (c) of sub-section (1) of section 188;

(iv) availing or rendering of any services directly or through appointment of agents exceeding ten percent of the net worth as mentioned in clause (d) and clause (e) of sub-section (1) of section 188;

(b) 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) remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent 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 on the basis of the Audited Financial Statement of the preceding Financial year.

(2) 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.

(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.

Section 2 (*76*) Related party-

"Related party", with reference to a company, means—

(*i*) a director or his relative

(*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;

See Difference:

Relative is included in (iii) while no such in (iv) (*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 or 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;

Section (*77*) Relative

''Relative'' with reference to any person, means any one who is related to another, if—

(*i*) they are members of a Hindu Undivided Family;

(*ii*) they are husband and wife; or

(*iii*) one person is related to the other in such manner as may be prescribed;

Definition of Relative u/s. 2(77) read with Rule Companies (Specification of Definitions Details) Rules, 2014:

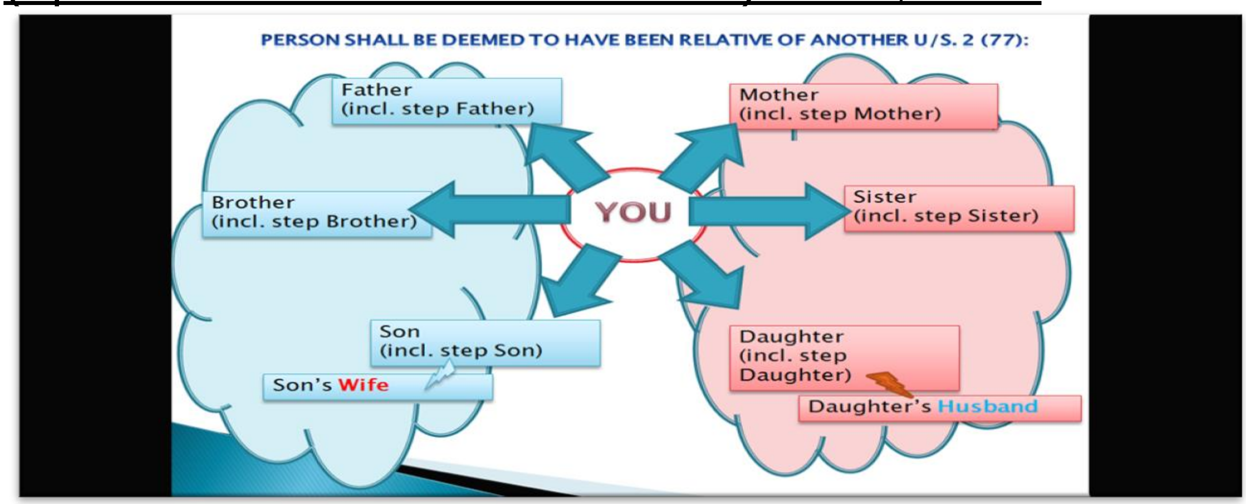
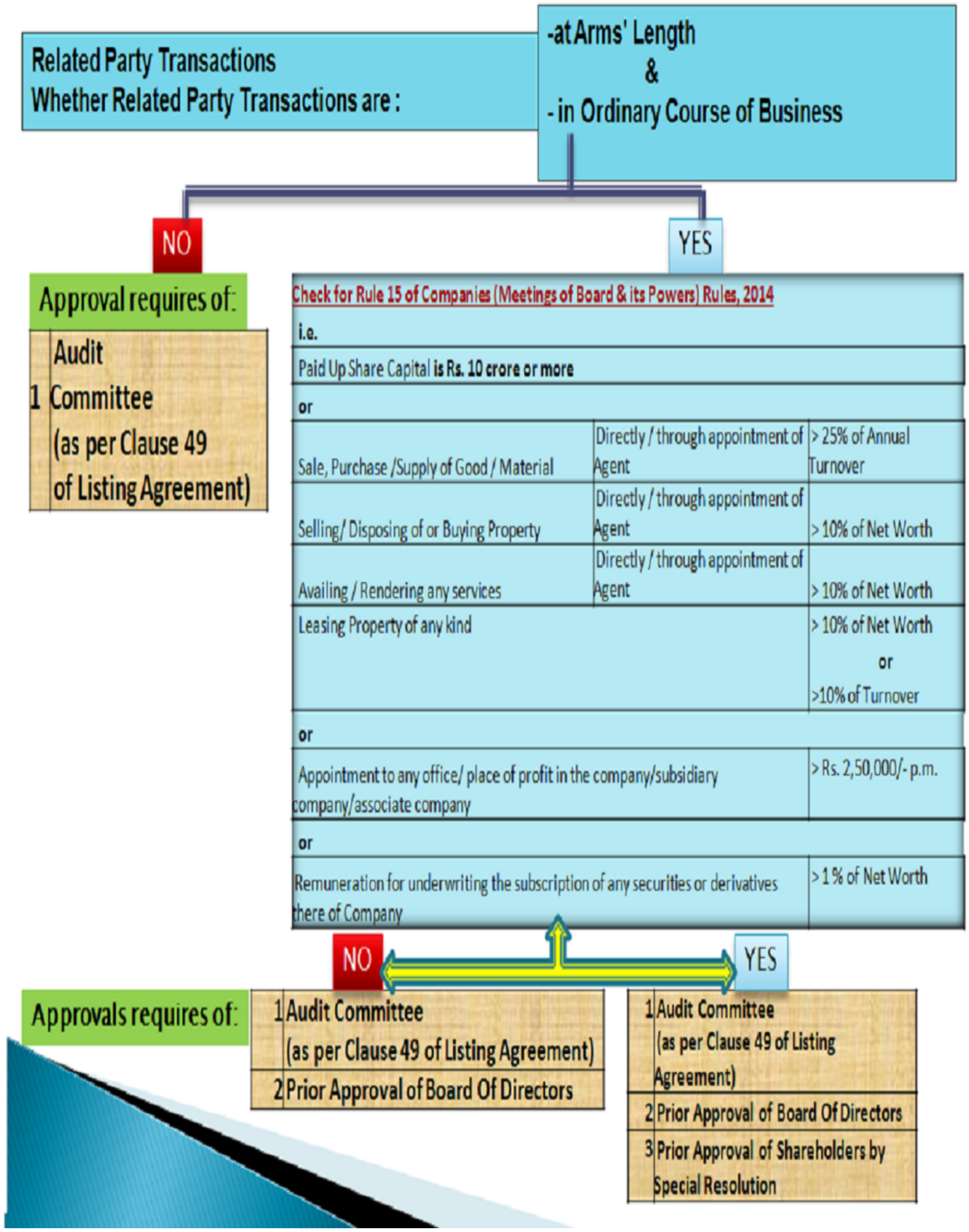


Table to remember easily:



Section 184 Disclosure of Interest by Director

(1) Every director shall disclose his concern or interest

-in any company/companies/bodies corporate (including shareholding interest) -in any firms/other association of individuals	**which shall include the shareholding, in such manner as may be prescribed**

at the first meeting of the Board in which he participates as a director
at the first meeting of the Board in every financial year
at the first Board meeting held after such change - whenever there is any change in the disclosures already made

as may be prescribed means – Rule 9 of <u>Companies (Meetings of Boards and its Powers) Rules, 2014</u> i.e. **<u>Disclosures by a director of his interest</u>**

Every director shall disclose his concern or interest

-in any company/companies/bodies corporate (including shareholding interest) -in any firms/other association of individuals	-by giving a notice -in writing **-in Form MBP 1**

It shall be the **duty of the director giving notice of interest** to cause it to be disclosed at the meeting held immediately after the date of the notice.

All notices shall be **<u>kept at</u>** the **registered office**

- such notices shall be **<u>preserved</u>** for a **period of 8 years** from the end of the financial year to which it relates	-shall be kept in the **<u>custody</u>** of the **CS of the company** or any other **person authorized by the Board** for the purpose.

(*2*) Every director of a company who is in any way

<table>
<tr><td colspan="2">whether directly or indirectly</td></tr>
<tr><td colspan="2">concerned or interested</td></tr>
<tr><td colspan="2">in a contract or arrangement / proposed contract or arrangement</td></tr>
<tr><td colspan="2">entered into or to be entered into—</td></tr>
<tr><td>(*a*) with a body corporate
in which
such director
<table>
<tr><td colspan="2">is a promoter/manager/CEO</td><td>of that body corporate</td></tr>
<tr><td colspan="3">Or</td></tr>
<tr><td>such director in association with any other director,</td><td>holds > 2% of shareholding</td><td>of that body corporate</td></tr>
</table></td><td>-shall disclose the nature of his interest at the Board Meeting in which contract/arrangement is discussed. But he can not participate in such meeting.</td></tr>
<tr><td>(*b*) with a firm or other entity
in which
such director
is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest</td><td>-shall disclose the nature of his interest at the Board Meeting in which contract/arrangement is discussed. But he can not participate in such meeting.</td></tr>
</table>

Provided that or Proviso to Section 184(2)

where any director who is not so concerned or interested at the time of entering into such contract or arrangement

But he becomes concerned or interested **after** the contract or arrangement is entered into by the company	he shall **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*) <u>A Contract without disclosure</u>

A contract or arrangement entered into by the company	**without disclosure** in the contract or arrangement	shall be **voidable** at the option of the company.

(*4*) Penal Provision to Director only

(a) Imprisonment upto 1 year	**(b)** Fine from Rs. 50,000/- to Rs.5,00,000/-	**(c)** Both **(a)** and **(b)**

Further, as per **Section 167** if he-

-contravenes any provisions of Section 184 Or -fails to disclose his interest in any contract/arrangement in which he is directly or indirectly interested	-the office of director shall become vacant

(*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.

Section 189. Register of Contracts or Arrangements in which Directors are interested

(*1*) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (*2*) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

(*2*) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (*1*) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

(*3*) The register referred to in sub-section (*1*) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken there from, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.

(*4*) The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

(*5*) Nothing contained in sub-section (*1*) shall apply to any contract or arrangement—

> **(*a*)** for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or
>
> **(*b*)** by a banking company for the collection of bills in the ordinary course of its business.

(*6*) Every director who fails to comply with the provisions of this section and the rules made there under shall be liable to a penalty of twenty-five thousand rupees.

Companies (Meetings of Boards and its Powers) Rules, 2014

Rule 16 Register of contracts or arrangements in which directors are interested

(1) Every company shall maintain one or more registers in Form MBP 4, and shall enter therein the particulars of—

> **(a)** company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under sub-section (1) of section 184:
>
> **Provided that** the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent or less of the paid-up share capital would not be required to be entered in the register;
>
> **(b)** contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and
>
> **(c)** contracts or arrangements with a related party with respect to transactions to which section 188 applies.

(2) The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

(3) The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

(4) The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page.

Miscellaneous Notes: Related Party Definition in Table Form

Inside the Company People	**Outside the Company Entities**	**Person inside the company in outside entity**	**Hold Position at Outside the Company Entities**
-Director / his Relative -KMP / his Relative	-a Firm	-Director / his Relative -Manager / his Relative	Partner
	-a Private Company	-Director -Manager	-Member/Director
	-a Public Company	-Director -Manager	-Director Or Holding >2% of Paid Up Share Capital of that Public Company
	-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		
-any person on whose advice, directions or instructions a director or manager is accustomed to act: **Provided that** nothing shall apply to the advice, directions or instructions given in a professional capacity	-any person on whose advice, directions or instructions a director or manager is accustomed to act: **Provided that** nothing shall apply to the advice, directions or instructions given in a professional capacity		
	-Any Company which is a holding, subsidiary or an associate company of such company		
	-Any Company which is a subsidiary of a holding company to which it is also a subsidiary		