Clause 49 of Listing Agreement On Corporate Governance

By CS Divesh Goyal

SEBI has made Amendments to Clause 49 of the Equity Listing Agreement pertaining to corporate governance vide circular dated April 17, 2014. This master circular will Supersede All Other Earlier Circulars issued by SEBI on Clauses 35B and 49 of the Equity Listing Agreement. The main object to review the provisions of the Listing Agreement is to align with the provisions of the Companies Act, 2013. The article highlights important changes in the corporate governance Norms.

NOTE:

- The rules notified there under would be applicable for every company or a class of Companies (both listed and unlisted) as may be provided therein.
- The revised Clause 49 would be **APPLICABLE TO ALL LISTED COMPANIES** w.e.f. **October 01, 2014**.
- The provisions of Clause 49(VI)(C) as given in Part-B shall be applicable to **Top 100 listed companies** by market capitalization as at the end of the immediate previous financial year.

- For *other listed entities, the Clause 49 will **apply to the extent** that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities.
- The Clause 49 is **not applicable to Mutual Funds**.

* Other Entity mean Body corporate and regulations under other statutes (e.g. banks, financial institutions, insurance companies etc.)

Clause 49 (VII) as given in Part-B shall be applicable to all **PROSPECTIVE Transactions**.

- **All EXISTING** Material related party contracts & arrangements as on 17th April, 2014, which will continue **beyond 31st March 2015**, Sshall require Shareholder Approval in the First GM held after 01st October, 2014. But companies may get approval of share holder even Before 01st Oct, 2014.

MONITORING CELL: Formed by the Stock Exchanges.

- To monitor the compliance of Clause 49 for all listed companies.
- To ascertain the adequacy and accuracy of disclosures in the quarterly compliance reports received from the companies.
- Shall submit a consolidated compliance report to **SEBI within 60 days** from the end of each quarter.

CLAUSE 35B:

- The issuer agrees to provide e-voting facility to its shareholders, in respect of **All Shareholders' Resolutions**, to be passed at General Meetings **OR** through Postal Ballot.

  * Earlier e-voting facility was provided only for resolutions passed through Postal Ballot.

CLAUSE 49:

II. Board of Directors:

A. Composition of Board of Directors:

I. BOD should have optimum combination of Executive and Non- Executive Director

- At least **50% of directors** should be **Non- Executive Director**
- At least A *WOMEN Director.
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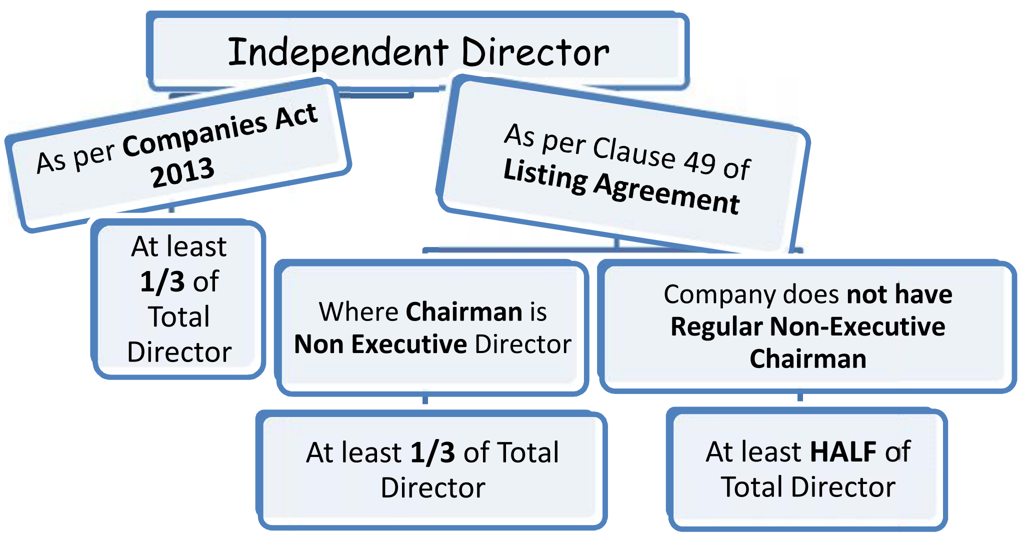
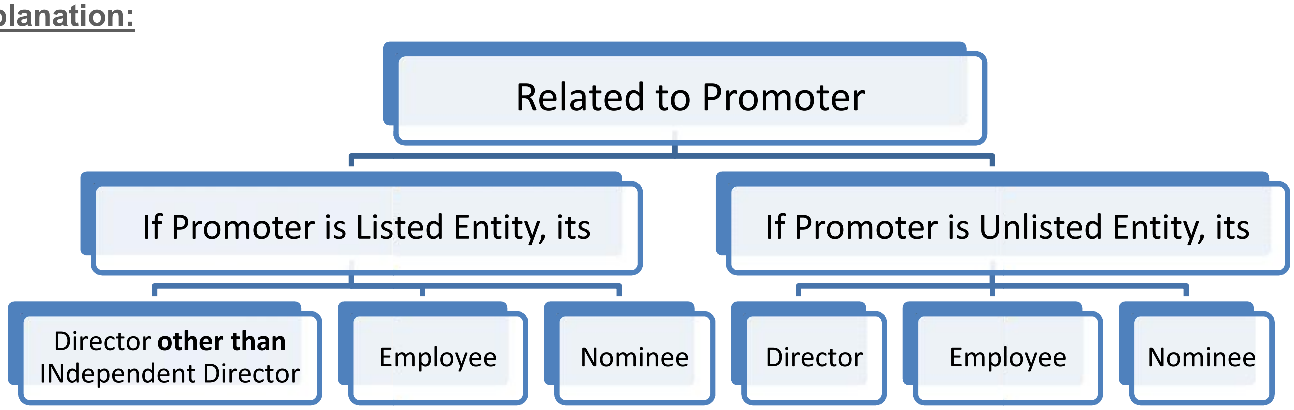
B. INDEPENDENT DIRECTOR:



Note: Provided that if The Regular Non Executive Chairman is Relating To Promoter or person occupying the position at the board level or one lever below the **board AT LEAST HALF of total directors should be Independent**.

Explanation:



Qualification of Independent Director:

All Qualification are As per section 149 (6) of Companies Act, 2013 except the following:

1. Should attain age of 21 years
2. Who, neither himself nor any of his relatives is a material supplier, service provider or customer or a lessor or lessee of the company.

Limit of Directorship

- As Independent Director
  - Not More than 7 listed Companies
  - Not More than 3 Listed Companies if a person is already a WTD in any Listed Company

TENURE OF INDEPENDENT DIRECTOR:

Maximum Tenure

- As per Companies Act 2013
  - Two Consecutive Terms of 5 Years each
    - For Second term of 5 Years Special Resolution is required
- As per clause 49 Listing Agreement
  - Two Consecutive Terms of 5Years each
    - For Second Term of 5 Years Special Resolution is required

Explanation:

- As per Companies Act, 2013, any tenure of an Independent Director on the date of commencement of this Act **shall not be counted as term**.
- As per Clause 49 of Listing Agreement any person who has **already served as an Independent Director for five years or more** as on October 1, 2014 shall be eligible for appointment, on completion of his present term for **one more term of upto 5 years only**.
- Cooling period of 3 years is provided under both Companies Act, 2013 and Clause 49 of Listing Agreement. During the said 3 years, the independent director shall not be appointed in or be associated with the Company in any other capacity, either directly or indirectly.

Formal Letter of Appointment:

- Company shall issue a formal letter of appointment to independent directors as provided in Schedule IV of Companies Act, 2013.
- Letter of appointment along with the detailed profile of independent director shall be **disclosed** on the **websites of the company.**

- Letter of appointment along with the detailed profile of independent director shall be **disclosed** to the Stock Exchanges **not later than 1 working day** from the date of such appointment.

Separate Meeting of Independent Directors:

- The independent directors of the company **shall hold at least one meeting in a year**, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.

C. Remuneration to Non Executive Director:

All Fees/ compensation paid to Non-Executive Director, including Independent Director Shall be fixed by

- Board of Directors and shall require previous approval of Share holders in GM.
- The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year.
- No Share holder approval is required for payment of sitting fees as per section 198 (5) of companies Act, 2013.
- * Independent Director shall not be entitled to stock options.

A Director Shall not be a

Member in more than 10 committees

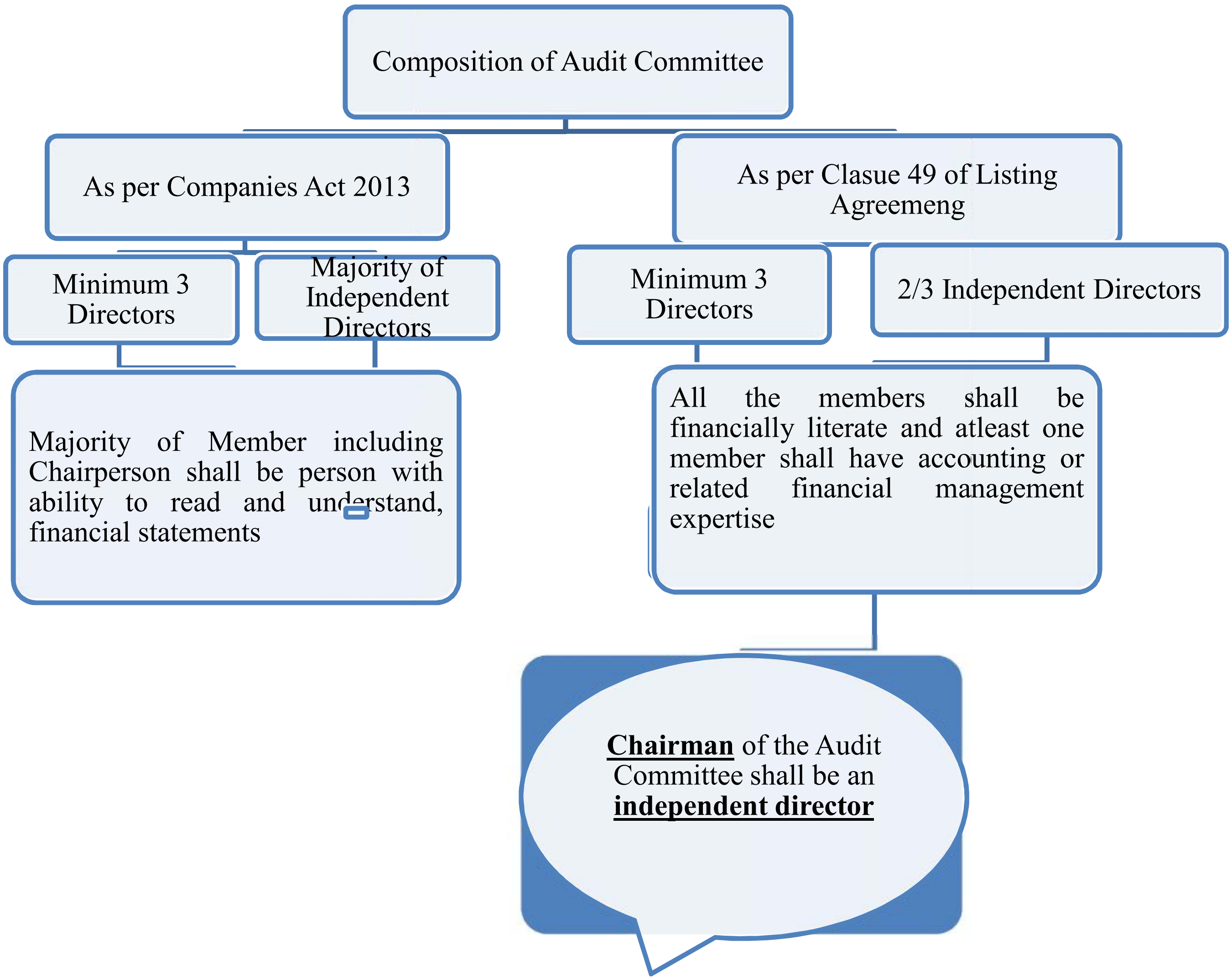
Chairman in more than 5 Committees

For Reckoning the Limit
only Audit Committee and Stakeholder's Relationship Committee is considered

- For the purpose of considering the limit of companies Private Company & Foreign Company & Section-8 company are **excluded.**

Audit Committee.

AUDIT COMMITTEE:

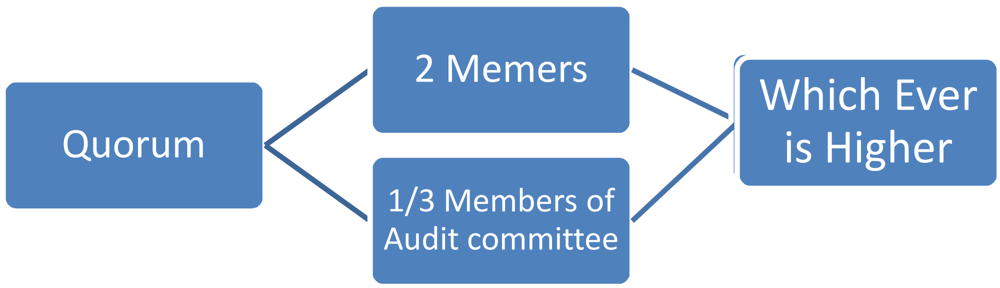


Note:

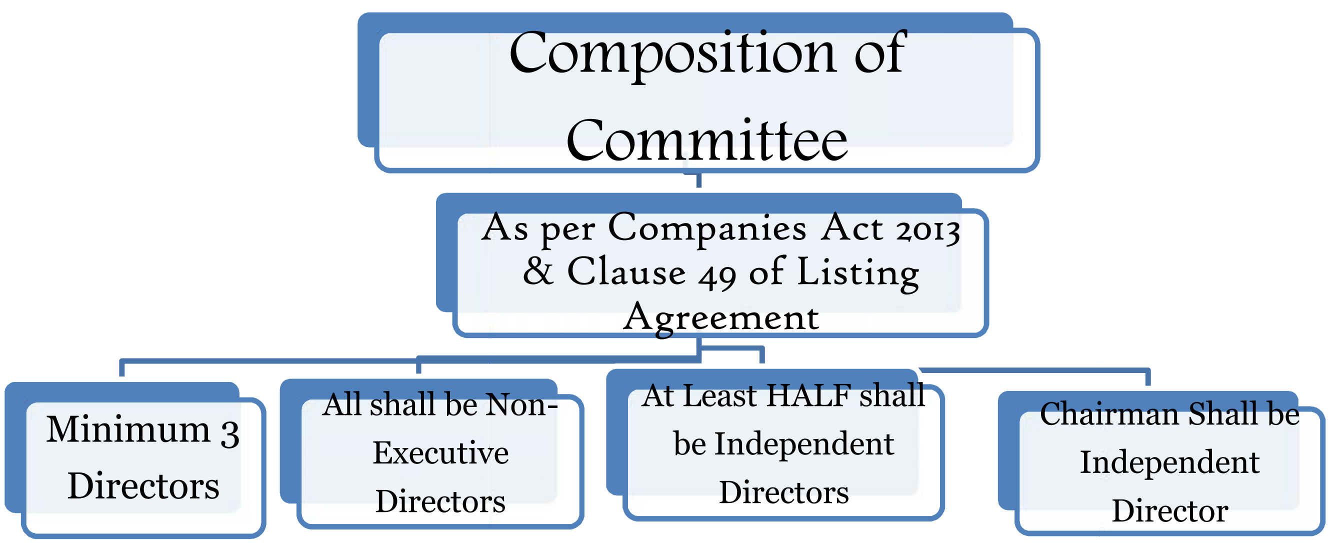
- Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.

Meeting of Audit Committee:

- Audit Committee should meet at least four times in a year.
- Maximum Gap between 2 Meetings is 4 Months.
- Minimum **2** Directors **must** be present.



NOMINATION AND REMUNERATION COMMITTEE



Note: The Chairman of the nomination and remuneration committee could be present at the Annual General Meeting, to answer the shareholders' queries.

SUBSIDIARY COMPANIES

- **Atleast 1** Independent Director of the holding company **shall be** director in material non-listed Indian subsidiary company.

- The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.

- The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company.

- A subsidiary shall be considered material in the following cases –

  Investment in the subsidiary exceeds 20% of its consolidated net worth as per the audited balance sheet of the previous financial year;

  Or

  Subsidiary has generated 20% of the consolidated income of the Company during the previous financial year

- **Without passing a SR** in the meeting of share holders, NO company shall dispose of shares in Its Material Subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) **to less than 50% or cease the exercise of control over the subsidiary.**

- Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary shall require prior approval of shareholders by way of special resolution.

Note:

- Provision of this rule will not apply on both companies **if both are listed**. Provisions apply only when Holding is listed and Subsidiary is unlisted.
- Situation where both companies are listed companies, provision apply on both companies if they have other unlisted subsidiaries.

RELATED PARTY TRANSACTIONS

Meaning of Related Party Transaction:

- A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

- A 'Related Party' is a **PERSON** or **ENTITY** that is related to the company. Parties are considered to be related if one party has the **ability to control the other party** or **exercise significant influence over the other party**, directly or indirectly, in making financial and/or operating decisions and includes the following:

A **person** or a **close member** of that person's family is related to a company, **if that person**:

- Is a related party under **Section 2(76)** of the Companies Act, 2013;
- Has control or joint control or **significant influence** over the company;
- is a **key management personnel** of the company OR of a parent of the company

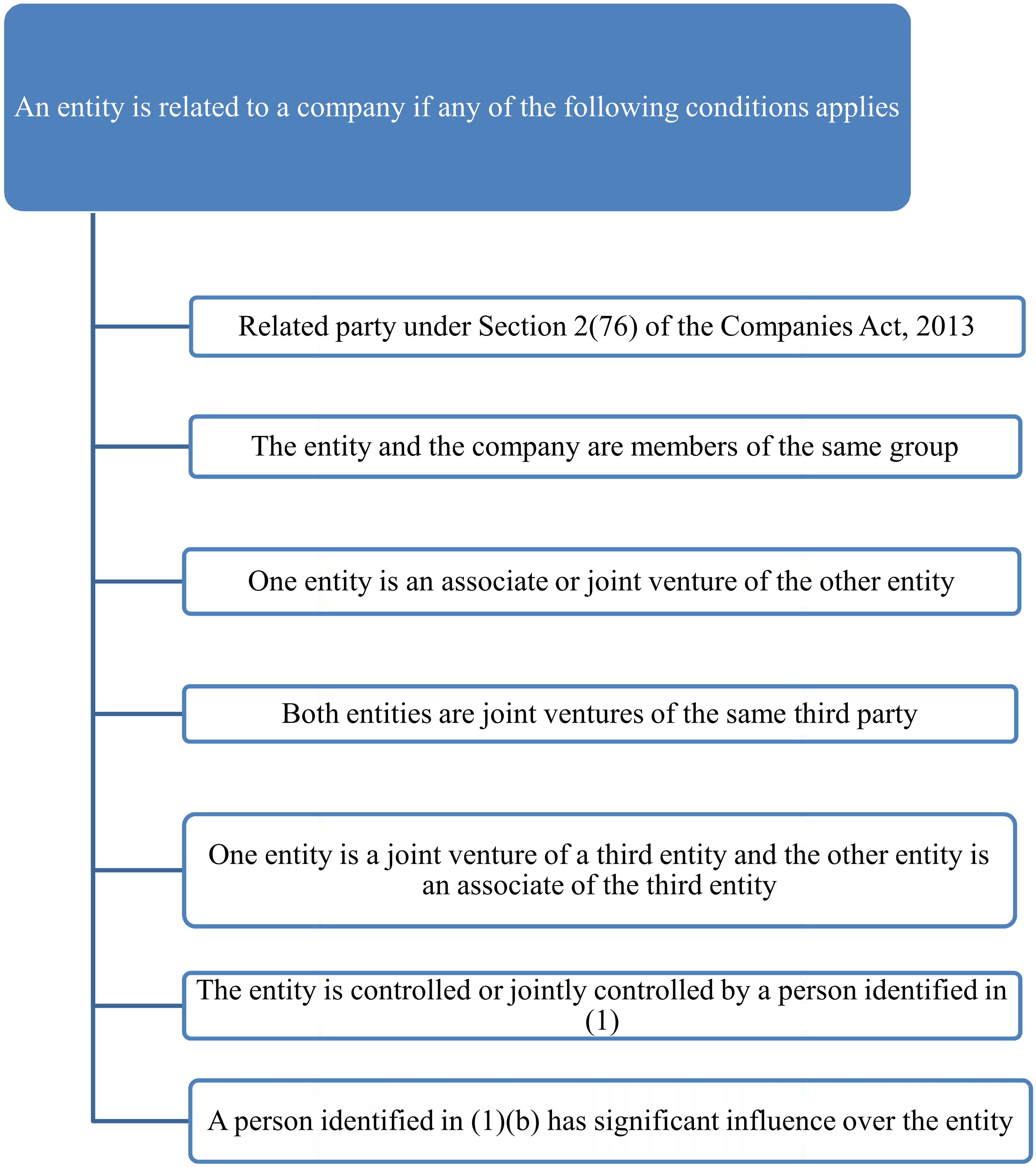
Material Related Party Transaction: if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year

Exceeds 5% percent of the annual turnover
OR
20% percent of the net worth of the company

as per the last audited financial statements of the company, **whichever is higher.**

- All Related Party Transactions shall require prior Approval Of The Audit Committee.

- All <u>material Related Party Transactions</u> shall require **<u>Approval Of The Shareholders</u>** through **Special Resolution** and the related parties shall abstain from voting on such resolutions.



Disclosures of Related Party Transactions:

1. Company shall disclose policy of dealing with related party Transactions on its
   - Website AND
   - In the Annual Report
2. Details of Material Related Party Transaction shall be disclosed quarterly along with the compliance report on Corporate Governance.

Thanx & Regards,

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