

**I. RESTRICTIONS ON RELATED PARTY TRANSACTIONS:**

Any contract with a Related Party as described above comes within the purview of a “Related Party Transaction” for the purpose of Section 188 of the 2013 Act. These are prohibited from being entered into without the consent of the Board of Directors. These may consist of either of the following<sup>1</sup>:

- 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.*

The Proviso to Section 188 of the 2013 Act bars any member of the company from voting on a special resolution, to approve any contract or arrangement, if such member is a related party. It is similar to Section 300 of the 1956 Act, which lays down the prohibition of an interested director to participate in Board proceedings. However, Section 300 of the 1956 Act further contains certain exceptions to the application of this Section which is discussed later on. This is missing from the 2013 Act and hence, related party transaction is being brought in within its ambit and in turn such directors are being excluded from voting.

Section 314 of the 1956 Act states that Directors, etc. not to hold office of profit. It is an elaborate provision which lays down the prohibition from holding an office of profit by a Director along with certain restrictions. It further lays down the exception to the application of the Section. The Section also specifies conditions wherein the provision is enabled and penalties on non compliance of these provisions. The procedure for declaration under the Section is also stated. Section 314 (3) of the 1956 Act is the basis for formation of Clause (f)<sup>2</sup> under Section 188 of the 2013 Act. The latter prohibits related party's appointment to any office or place of profit in the company, its subsidiary or an associate company. The Explanation to the term ‘office or place of profit’ in the new legislation clarifies the intent of the provision. It is borrowed from Section 314 of the 1956 Act. Office of Profit under both the legislations mean any office or place where the director or individual other than a director or by any firm, private company or other body corporate receives anything over and above the entitled remuneration by way of salary, fee commission, perquisite, rent free accommodation etc.

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<sup>1</sup>Section 188(1)

<sup>2</sup> It prohibits a company from entering into a contract or an arrangement without the consent of the Board of Directors given by a resolution in relation to any related party's appointment to any office or place of profit in the company, its subsidiary company or associate company.