

DISCLOSURE NORMS:

1. The disclosure norms for Related Party Transactions are provided under Section 184 of the 2013 Act. It is very similar in approach to Section 299 of the 1956 Act and both lay down the disclosures by requiring *"Disclosure of interest by director"*.
2. Section 184(2) of the 2013 Act requires every director who is directly or indirectly concerned or interested in any contract to disclose the nature of such interest and to also refrain from participation in such meeting. This was similarly also present under Section 299(1) of the 1956 Act.
3. Although Section 184(1) of the 2013 Act requires a director to disclose at the first Board Meeting any such concern or interest and of any change in disclosure earlier made, however, an added requirement is that after every financial year the interest must be disclosed in the first meeting held. The 1956 Act provided for the concept of notice which expired after the end of the financial year and was supposed to be renewed in the last month of the year when it would expire.
4. The Proviso to Section 184(2) of the 2013 Act seems to have been borrowed from Section 299(2) of the 1956 Act and requires every director who was not concerned or interested to disclose the concern or interest at the first meeting pursuant to such taking place.
5. Clause (3) of 299 under the 1956 Act speaks about a notice constituting as a sufficient measure to determine interest where a Director is a member of a firm and requires it to be renewed annually. Under Section 184 or 188 of the 2013 Act there is no such requirement prescribed in specific reference to the same.
6. The penal provisions for non adherence to the Section varies under both the Acts, with increased stringency under the 2013 Act. This is further explained under the last heading *"Penalties for Non Compliance"*.

EXEMPTIONS TO RELATED PARTY TRANSACTION:

1. The provision for related party transactions does not apply to transactions undertaken by a company in the ordinary course of its business which are at arm's length price¹. Thus, the criteria here used to identify, is business transactions in ordinary course of business. However, any transaction in ordinary course of business, which is not at Arm's length is not exempted from the applicability of the section. In such cases it is important to note that the burden of proof is on the company that the transaction is on Arm's Length Price.

¹"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"*.

The 1956 Act under Section 297(2), however, laid down the exception as per which any such purchase which is made for cash at the prevailing market price is exempted from the application of this section. The Section also exempted any kind of trade between the Company and such related persons regularly trading or doing business provided that the contracts do not exceed Rs. 5,000/- in aggregate in any year. Further, for banking or insurance company transaction in the ordinary course of business with such related persons are also exempted.

2. Section 2(76) (v) of the 2013 Act exempts contracts or arrangements where the directors hold not more than 2% of the share capital. This provision has been borrowed from Clause (6) of Section 299 of the 1956 Act.
3. The 1956 Act under 297(3) also has a provision similar to the 2013 Act wherein such contract can be entered into pursuant to which the consent of the Board can be obtained at a meeting within three months of the date on which the contract was entered into. This was, however, granted only in case of urgent necessity under the 1956 Act which is no more a requirement under Section 188(3) of the 2013 Act making the norm less stringent prior to entering into contracts.

PENALTIES FOR NON COMPLIANCE:

1. Section 188(5) of the 2013 Act stipulates that any director or any other employee of a listed company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/-, or with both. Section 188(5) of the 2013 Act further stipulates that any director or any other employee of any other company than a listed company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/-.
2. The company can also proceed against a director or employee who had entered into such contract or arrangement in contravention of the provisions of section 188 of the 2013 Act for recovery of any loss sustained by it as a result of 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, as the case may be, 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 authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

4. Also in case of failure to disclose interest by a director, which has resulted in a related party transaction, the said director, under Section 184(4) of the 2013 Act, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with.