



भारतीय प्रतिभूति और विनिमय बोर्ड  
Securities and Exchange Board of India

# INDIA-OECD CORPORATE GOVERNANCE POLICY DIALOGUE

RELATED PARTY TRANSACTIONS AND MINORITY  
SHAREHOLDER PROTECTION  
Steps to Implementation

## AGENDA

New Delhi, India

5 March 2013

In partnership with the Government of Japan





## **Context**

In 2011, India and the OECD launched, with the financial support of the Government of Japan, a bilateral dialogue to deepen policy discussions between the OECD and key decision-makers in India. The Securities and Exchange Board of India (SEBI) is the main partner, with the Ministry of Corporate Affairs, stock exchange and professional associations also participating. The first phase of the programme focuses on designing policies that improve monitoring and prevention of abusive related party transactions in India. India also participated in the OECD Corporate Governance Committee's Peer Review on Related Party Transactions and Minority Shareholder Rights, and contributed to the Guide on Fighting Abusive Related Party Transactions in Asia through the Asian Roundtable on Corporate Governance.

The meeting on 14-15 December 2011 in Mumbai identified areas for improvement and provided initial recommendations to support the policy design of reforms. Discussions focused on means to combat abusive related party transactions and inadequate minority shareholder protection. The Committee's peer review served as the basis for discussion. The following issues need to be addressed to prevent abusive related party transactions: Legal redress and enforcement could be improved; Shareholders could be more engaged and active; Disclosure of company groups could be improved; and Independent directors could be more effective.

## **Goal of this meeting**

On the basis of the Mumbai discussions, a report was prepared by SEBI on how to implement the peer review recommendations on related party transactions and minority shareholder protection. The final draft report, which is provided to this meeting for discussion and agreement, is the result of extensive consultation, commentary and discussion by a group of policy-makers and practitioners from India and the OECD. The objective is to build consensus around the main objectives and outcomes of the key implementation steps.

This meeting, which is supported by the Japanese government, will focus on how to support (i) the design of a solid disclosure, approval and monitoring framework for RPTs in listed companies in India as well as (ii) the design of effective enforcement mechanisms for abusive RPTs. Particular attention will be given to : 1) disclosure arrangements that are relevant to the appropriate control of related party transactions; 2) ex ante protection such as shareholder approval arrangements; 3) the role of the board and independent directors; and 4) ex post enforcement.

This meeting will also identify priorities for future work in the context of the bilateral programme.

## **Guidance for moderators, speakers, commentators and participants**

Moderators are invited to encourage open discussion among all participants, to maintain the focus on the theme of their session and to be strict in managing time. The objective is to encourage the exchange of views and experience on these complex issues among all participants. Speakers should help frame the discussion by providing an analysis of the issues discussed. Panelists are expected to comment on the main presentation and highlight the main challenges related to the specific theme, provide some elements to answer the related questions, and illustrate with their country experience. These initial presentations should last no more than 15 minutes each. If power point presentations are used, please limit the number to 8 and circulate descriptive documentation in advance. Participants are invited to provide their views and discuss the issues raised in the agenda. All participants are encouraged to actively and openly participate in discussions to provide valuable inputs to meet the objectives of the discussion.

5 March 2013

9.00 – 9:30	<b>Registration</b>
9:30 – 10:30	<b>Inaugural Session</b>
10:30 – 11:00	<b>Coffee/Tea Break</b>
11:00 – 13:00	<b>Session 1 : Defining and identifying abusive RPTs</b>
13:00 – 14:30	<b>Lunch</b>
14:30 – 16:00	<b>Session 2: Disclosure and approvals</b>
16:00 – 16:30	<b>Coffee/Tea Break</b>
16:30 – 18:00	<b>Session 3: Ex-post enforcement</b>
18:00 – 18:10	<b>Concluding Remarks</b>
19:00	<b>Dinner</b>

## Agenda - Discussion Points

### INAUGURAL SESSION

#### Lighting of the Lamp

#### Welcoming Remarks:

SEBI

Mr. Prashant Saran, Whole Time Member, SEBI

OECD

Mr. Richard Boucher, Deputy Secretary-General, OECD

### Session 1: Defining and identifying abusive RPTs

#### Defining RPTs

Related Party Transactions (RPTs) are observed to be one of the most widely used modes through which controlling shareholders exploit the rights of minority shareholders. A comprehensive definition of the term 'Related Party' is considered as one of the basic steps in the regulation of Related Party Transactions. The legal definition of 'related parties' should refer to ownership and control; it should also be broad enough to capture relevant transactions that present a risk of potential abuse. The definition should be sufficiently harmonised with respect to different bodies of law such as company law, listing rules and accounting standards to avoid misunderstanding and an excessive regulatory burden, in order to most effectively underpin better implementation and enforcement.

- What are the main weaknesses in the current definition of related parties in India? How can these shortcomings be overcome, taking legal traditions, administrative capacity and ownership structures into account?
- Do the definitions under Indian AS-24/ IAS-24, and Companies Bill 2012 address the concerns? What are the loopholes /shortcomings in these definitions?

#### Identifying abusive RPTs

- What mechanisms can be used to identify potentially abusive RPTs? Should the approach focus specifically on regulating abusive RPTs or be part of a broader regulatory framework covering all RPTs?
- What may be the practical difficulties in implementing a regulatory framework that focuses only on potentially abusive RPTs? Should different mechanisms of control be required for RPTs according to thresholds, materiality, one-off and recurring transactions?
- If controls are too excessive, would this hinder timely decision making? How to strike the right balance between the cost of compliance and benefits?

## **The role of controlling shareholders to tackle abusive RPTs**

Controlling shareholders, better known as promoters in India, owe a fiduciary responsibility to minority shareholders and the company as a whole. There are a number of cases where the controlling shareholders have used their private benefits of control to the detriment of the company, mostly through abusive RPTs.

- In this regard, could identifying specific fiduciary responsibilities of controlling shareholders help prevent abusive RPTs? What is the experience globally?
- What is the feasibility of mandating a relationship agreement between the company and controlling shareholder specifying the duties and responsibilities of controlling shareholders? What are the risks?

**Moderator:** **Mr. T. V. Mohandas Pai**, Chairman, Manipal Universal Learning

**Speakers:** **Mr. P. R. Ramesh**, Chairman, Deloitte, Haskins & Sells

**Ms. Véronique Bruneau Bayard**, Directrice du Pôle Conseil en gouvernance, Labrador Conseil, France

**Panelists:** **Mr. LEE Kha loon**, Senior Policy Director, Standards and Financial Market Integrity, CFA Institute, Malaysia

**Mr. Asish K. Bhattacharyya**, Head, School of Corporate Governance and Public Policy, IICA

## **Session 2: Disclosure and Approvals**

### **Disclosure**

RPTs are common, especially for firms affiliated to company groups. But it is not easy to identify and collect information on transactions taking place within business groups. This makes it challenging to ascertain if an RPT is value enhancing or destroying for non-controlling shareholders. An often discussed method of monitoring RPTs is disclosure to shareholders and the board.

- What information needs to be disclosed, to the board and to shareholders – only materiality and whether or not, directors or key executives are related parties? What should be the frequency of disclosure? Should companies formulate and publish a policy on RPTs?
- What can be the practical difficulties in implementing and adhering to such disclosure requirements?

Internal control processes play an important role in revealing abusive RPTs. In order to prevent abusive RPTs, disclosure and transparency practices, auditors, directors, regulatory authorities need to play a collective role.

- How can Audit Committees play an active role in preventing abusive RPTs? Are the provisions in the Companies Bill 2012 empowering audit committees to approve or modify transactions with related parties, scrutinize inter-corporate loans and investments and value undertakings or assets of the company, necessary and/or sufficient in this regard?
- Further, the Companies Bill gives Audit Committees the authority to investigate into any matter falling under its domain and the power to obtain professional advice from external sources and have full access to information contained in the records of the company. Are these powers practically exercisable?

### **Approvals**

The board has the central responsibility for approving RPTs, with independent directors playing a critical role. However, in India 40% of posts for independent directors are concentrated within a single business group, with many seeing themselves as advisors to the controller. A check and balance for independent directors is to allow disinterested shareholders to vote. As suggested by SEBI, Clause-188 of the Companies Bill, 2012 contains a provision prohibiting interested shareholders from voting on Related Party Transaction approvals. SEBI is also considering incorporating a similar requirement in the Listing Agreement. In this regard, the practical difficulties that may arise in obtaining the 'majority of the minority', safeguards against abuse by the minority and the criteria for identifying 'interested shareholders' may require further elaboration.

- What kinds of RPTs (e.g. dilution, sales/purchases, one-off, etc) should require shareholder approval?
- How can the materiality and threshold limit for approval/disclosure be determined? Should this be adapted to different types of companies?
- What other challenges might implementation involve? Should continuous RPTs require renewed approvals beyond a specified term, by whom? If yes, what shall be the ideal period for which such approval is valid?
- Should RPTs involving large amounts require an Independent experts report and the same be disclosed to the shareholders?

**Moderator:**            **Mr. Bill Palmer**, Director Asia, Institute of Chartered Accountants Australia

**Speaker:**             **Mr. Nawshir Mirza**, Independent Director in various companies

**Panelists:**            **Mr. Mordechai Yamin**, Senior Advisor to the Chairman, Corporate Finance Department, Israel Securities Authority.  
**Mr. Prithvi Haldea**, Chairman & Managing Director, PRIME Database



### Session 3: Ex-post enforcement

Effective enforcement of corporate governance norms is not only a concern for Indian regulators; it is also a challenge globally. The Companies Bill 2012 provides for the establishment of special courts for the speedy trial of offences under the Companies Act. Further, the Companies Bill also provides for class action suits and re-imbursement of expenses incurred in class action/derivative suits from the Investor Education and Protection Fund of the Ministry of Corporate Affairs.

- How can the roles of the institutions responsible for supervision and enforcement of RPT rules be clarified?
- What enforcement actions should be taken against abusive RPTs? How far should monitoring and comprehensive inspections by SEBI/Stock Exchanges/other agencies go in a 'disclosure based regime promoting self-regulation'?
- Is annulment of abusive RPTs a feasible and effective measure? Should there be an explicit provision for disgorgement of undue profits made through abusive RPTs? What are the other measures to strengthen enforcement?
- What is the role of private sector enforcement in preventing abusive RPTs? What steps may be required to create incentives for private sector enforcement?

What are the challenges to enforce the relevant RPT provisions of the proposed Bill? For example, how far would the following measures enhance enforcement?

- (a) Corporate governance ratings by the Credit Rating Agencies that might more specifically review RPTs
- (b) What about review by Stock Exchanges/ SEBI/ any other agency for verifying the compliance made by the companies, and
- (c) Imposing penalties on the Company/its Board of Directors/Compliance Officer/Key Managerial Persons for non-compliance either in spirit or letter of the law?

**Moderator:** Ms. Fianna Jurdant, Senior Policy Analyst, OECD  
**Speakers:** Mr. Amit Tandon, founder, Managing Director, Institutional Investor Advisory Services India Limited  
**Panelist:** Mr. Byoungsoo Ahn, Public Prosecutor, Commercial Legal Affairs Division, Ministry of Justice, Korea  
Mr. Suhail Nathani, Partner at Economic Laws Practice

### Concluding Remarks - SEBI