

## **Related Party Transactions- public companies ONLY or entity that public company controls**

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- Permission mechanism for conflicts of interest
- Intention: to protect public company shareholders
- Need for member's approval 50% of votes s208(1)(a)(i) {related party receiving benefit cannot vote **s244(1)(a)**} unless exemptions apply:
- **Who is the giver of financial benefit? S208**
  - Public company directly provides benefit OR
  - Given by entity that public company controls
    - ❖ Controlling entity owns significant decision-making in controlled entity **s50AA(1)**
    - ❖ Holding entity owns 50% or more of shares in subsidiary **s46**
- **Has financial benefit been given to a related party?**
  - Related parties **s288 (1) -(4) only**
    - ❖ Entity that controls the public company s228(1)
    - ❖ Directors of the public company **s228(2)(a)** and their spouses s228(2)(d)
    - ❖ Parents s228(3)(a) and children s228(3)(b) of directors and spouses
    - ❖ Entities controlled by other related parties s228(4)
- **Has financial benefit been given?**
  - Even if consideration is adequate (public company gets its money's worth), it is still considered a giving of financial benefit **s229(1)**
    - ❖ i.e. if related parties paid in securities (shares) and paid more than in full, it is a financial benefit
    - ❖ examples of financial benefit **s229(2)**
      - giving a benefit indirectly through 1 or more interposed entities **s229(2)(a)**
      - giving benefit by making informal, oral agreement or one that has no binding force **s229(2)(b)**
      - giving financial benefit that does not involve money (i.e. conferring a financial advantage) **s229(2)(c)**
    - ❖ Examples of financial benefits to a related party **s229(3)**
      - Giving or providing the related party finance or property **s229(3)(a)**
      - Buying an asset from or selling an asset to the related party **s229(3)(b)**
      - Leasing an asset from or to the related party **s229(3)(c)**
      - Supplying services to or receiving services from the related party **s229(3)(d)**
      - Issuing securities or granting an option to the related party **s229(3)(e)**
      - Taking up or releasing an obligation of the related party **s229(3)(f)**
- **Do exemptions apply?**
  - Exemptions:
    - ❖ arms' length terms **S210**: dealings at a distance/market value, less favourable to related party
    - ❖ reasonable remuneration for officers **s211**
    - ❖ legal costs (indemnities, exemptions and insurance premiums) for officers **s212**
    - ❖ small loans (up to \$5k) for directors **s213**
    - ❖ benefits given to or by closely held subsidiaries **s214**
    - ❖ benefits given to members and act does not discriminate unfairly against other members **s215**
    - ❖ benefits given pursuant to a court order **s216**

- Consequences for breach
  - Civil penalty provision **s209(2)**
  - Criminal provision- again, prove recklessness and dishonesty **s209(3)**