

# Sec 297, 299 and 301

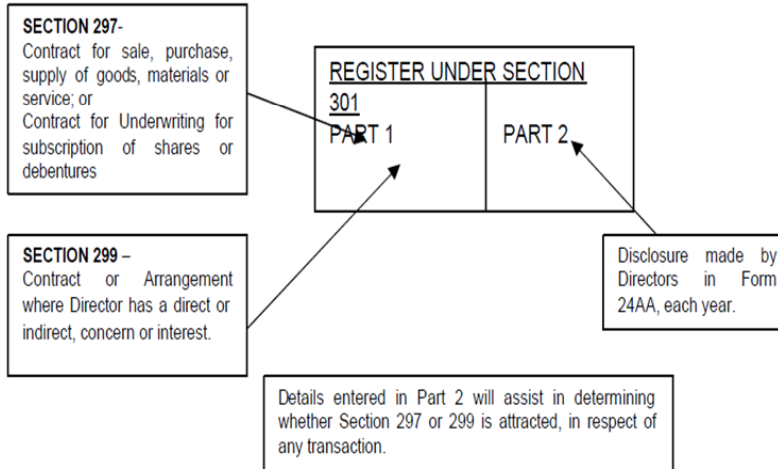
Presented by:  
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## Sections

- 297 - Board's sanction to be required for certain contracts in which particular directors are interested
- 299 - Disclosure of interests by director
- 301 - Register of contracts, companies and firms in which directors are interested

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## How are these 3 related....



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## Section 297...

Director

Relative

- Consent is required when the other party is –
  - director of the Company;
  - any relative of any director of the Company;
  - any partnership firm in which any director is partner;
  - any partnership firm in which any relative of any director is partner;
  - any partner of the partnership firm in which any director is partner;
  - any partner of the partnership firm in which any relative of any director is partner; or
  - any private company in which any director of the Company is a member; or
  - any private company in which any director of the Company is a director.

Partnership firm

Other partners

Private Company

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## Section 297 ...

- Exclusion:
  - Contract by a Public Company with another Public Company
  - Contract with a Private Company in which a relative of a Director is a Director
  - Contract with a Private Company in which a relative of a Director is a Member
  - Contract with a Private Company in which a Partner of the Director is a Director
  - Contract with a Private Company in which a Partner of the Director is a Member
- It does not cover matters relating to loans to/from, or lease of immovable property to/from, etc.

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## Other mandates...

- **Previous approval** of CG required where the paid up capital  $\geq$  Rs. One Crore
  - Provision not applicable for contacts entered prior to the date of crossing Rs. One Crore, and subsisting after that date.

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## Other mandates...

- Consent of BOD may be given:
  - either before OR
  - after entering into a contract in circumstances of urgent necessity, but **within three months** of the date of which the contract was entered into
- Cannot be a general consent but **transaction specific**
- Consent by a resolution passed at its meeting only. **Cannot** be accorded **by a circular resolution** or in any other manner
- **If consent is not accorded** to any contract, then anything done in pursuance of the contract shall be **voidable** at the option of the Board

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## Exempted contracts

- Contract for payment in cash at prevailing market price
  - Cheque is to be treated as equivalent of cash payment
  - Not applicable to service contracts
  - Prevailing market price of the seller
- The contract in which the company or the director / relative/ firm/ partner / private company **regularly trades or does business** and the value of such goods / materials or the cost of the services does not exceed Rs. 5,000/- in aggregate in any year, materials or services;
- Banking or insurance company - any transaction in the ordinary course of business

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## Section 299 ...

- Applicability – All companies and all directors. It also applies to directors nominated by Government
- General Notice of Interest [Section 299 (3)]
  - It is not effective, unless the director concerned either gives it at a meeting of the Board or takes reasonable steps to secure that it is brought up and read at the next meeting of the Board after it is given.
- The Notice in **Form No. 24AA** is also required to be given **afresh year after year** (Director/ Shareholder/ Member/ Partner)
- Once a director has given general notice of interest, it is not necessary for him to once again disclose his interest when the matter comes up before the Board

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## Section 299 ...

- Not applicable if any one or more directors together holds 2% or less of the paid-up share capital in the other company. [Section 299 (6)]
  - It should be verified on the date on which the contract is entered into
  - Preference shares must be included

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## CARO reporting ...

- Under COMPANIES (AUDITOR'S REPORT) ORDER, 2003, the Auditors are required to report on *“Whether the transactions of purchase of goods and materials and sale of goods, materials and services, made in pursuance of contracts, arrangements entered in the register(s) maintained under Section 301(1) of the Companies Act, 1956 and aggregating during the year to Rs. 5,00,000 (Rupees Five Lacs) or more in respect of each party have been made at prices which are reasonable having regard to prevailing market prices for such goods, material, or services or the prices at which the transactions for similar goods or services have been made with other parties.”*

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## Finally....

- Contract whether written or oral
- 'Materiality' not material
- **Companies should be Indian Companies:**
  - Foreign Company is a Body Corporate defined in Section 2(7)
  - Section 297 applicable only to Company as defined in Section 3
  - Note: Section 299 will be applicable!!!
- **Contract with a HUF:**
  - mischief of Section 297 and is not exempt from its provisions,
  - under Section 6(a) a person is considered to be a relative of another if they are members of a Hindu Undivided Family

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## Case Studies

- Mr. D, is a Director in A PLC and B PLC, holding 5% and 2.1% of the paid-up share capital, respectively. If A PLC enters into a transaction with B PLC, are the provisions of Section 299 attracted?
- Mr. D, is a Director in A PLC and B PLC, holding 5% and 1.9% of the paid-up share capital, respectively.

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*Thank you*



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