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Re: Report of the Working Group on Related Party Transactions

Glass Lewis appreciates the opportunity to comment on the Report submitted by the Working Group (the “Group”) of the Securities and Exchange Board of India (“SEBI”), which was formed to evaluate Issues related to Related Party Transactions (“RPTs”).

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,300 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis’ web-based vote management system, Viewpoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and recordkeep, audit, report and disclose their proxy votes.

From its offices in North America, Europe and Australia, Glass Lewis’ 360+ person team provides research and voting services to institutional investors globally that collectively manage more than US\$35 trillion. Glass Lewis is a portfolio company of the Ontario Teachers’ Pension Plan Board (“OTPP”) and Alberta Investment Management Corp. (“AIMCo”). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis’ business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

The responses provided below are not meant to be exhaustive but are designed to address what Glass Lewis sees as the main issues and concerns raised in the Consultation Paper. Thank you in advance for your

consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

/s/

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Enclosure

Sr. No.	Recommendation	Comment	Rationale for the comment	Revisions to the recommendations
(1)	Proposed Regulation 2(zb)(ii)	Glass Lewis welcomes the proposed expansion of scope to related parties. However, we believe that the shareholding threshold for the definition of a related party should be lowered.	In comparing similar thresholds across several different markets in the Asia-Pacific region as defined in their respective exchange listing rules, Glass Lewis observes that major shareholding thresholds for purposes of defining related parties appear to coalesce around 10% shareholding. In particular, a 10% threshold is used by several markets including Australia ¹ , Hong Kong ² , Thailand ³ , and Malaysia ⁴ . As such, Glass Lewis believes India should consider a similar threshold	Glass Lewis believes that threshold for consideration as a related party should be further revised to those persons and/or entities deemed to be interested in 10% or more of a company's issued share capital.

¹ Australia: [ASX Listing Rules](#)

- (1) Rule 10.1: An entity...must ensure [it does not agree to] dispose of a substantial asset to...[Rule 10.1.3] A person who is...a substantial (10%+) holder in the entity
- (2) Rule 10.11: ...an entity must not issue...equity securities to...[Rule 10.11.3] A person who is...a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity.

² Hong Kong: Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong

- (1) [Rule 1.01, "substantial shareholder"](#) in relation to a company means a person (including a holder of depositary receipts) who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of the company; and
- (2) [Rule 14A.07\(1\), A "connected person"](#) is a director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries.

³ Thailand: [Disclosure of Information and Other Acts of Listed Companies Concerning the Connected Transactions, 2003](#)

- (1) "major shareholder" means a shareholder who directly or indirectly holds shares in any juristic person in a total amount exceeding 10 per cent of the paid-up capital of that juristic person. Such shareholding shall also include the shares held by related persons; and
- (2) "connected person" means the following: 4. major shareholder

⁴ Malaysia: Bursa Malaysia Listing Requirements

- (3) [Paragraph 10.1](#): "...A "related party" of a listed issuer (not being a special purpose acquisition company) is: (ii) a major shareholder, and includes any person who [has an interest in]:
 - a. 10% or more of the aggregate of the nominal amounts of all the voting shares in the corporation;
 - b. 5% or more of the aggregate of the nominal amounts of all the voting shares in the corporation where such person is the largest shareholder of the corporation [or persons connected theretofore].

			of 10% as it has become a common practice among other regional and peer markets.	
(2)	Proposed Amendment to Regulation 23(1)	Glass Lewis is of the view that, in addition to the thresholds for materiality on aggregate RPTs in a financial year, there must also be a treatment of materiality thresholds on individual RPTs involving directors	From our understanding, the rationale behind regulating RPTs is to mitigate the possible abuse of RPTs by related parties for personal enrichment at the expense of shareholder value. While Glass Lewis welcomes the introduction of defined materiality of RPTs, we believe that in the spirit of reducing potential abuse of RPTs by directors, further definitions of materiality must apply to individual RPTs involving directors around the provision of services. While director independence is outside the terms of reference of the Working Group, Glass Lewis believes there is an important corporate governance intersection between RPTs and director independence. Accordingly, other regional markets, such as Singapore ⁵ , Malaysia ⁶ ,	Glass Lewis recommends the introduction of defined materiality thresholds in relation to professional service and business RPTs for individual directors. This would replace the existing rules that stipulate a director may provide professional services, provided the amount not exceed 10% of the gross turnover of the firm they may work for. In this case, the current regulation is inadequate as the size of transacting firms may vary greatly, which can allow for transaction sizes to also vary

⁵ [SGX Practice Guidance 2](#) relating to director independence notes that the nominating committee and board of a company, when considering director independence, should note whether a director (or immediate family member), currently or recently provided or received significant payments or material services, in aggregate over any financial year, in excess of S\$50,000 in the case of services provided personally, or in excess of S\$200,000 in the case of services provided by companies where the director serves as an executive officer, director or is a substantial shareholder (with 5% or more stake)

⁶ [Bursa Malaysia Practice Note 13](#) (Requirements for Directors and Signatory of Statutory Declaration of Accounts), paragraph 4.1, in relation to paragraph (f) from Chapter 1 of the Bursa Malaysia Listing Regulations (as defined in the Practice Note), notes that a person may be disqualified from being an independent director if they (a) had personally provided professional advisory services to the said Corporation within the last 2 years; or (b) is presently a partner, director (except as an independent director) or major shareholder, of a firm or corporation (“Entity”) which has provided professional advisory services to the said Corporation within the last 2 years, and the consideration in aggregate is more than 5% of the gross revenue on a consolidated basis (where applicable) of the said Director or the Entity or RM1 million, whichever is the higher.

			and Thailand ⁷ , have either set practical guidance or listing rules that clearly define limits on transactions involving directors, especially at what point a director should not be considered independent.	greatly. We recommend that SEBI look at a comparison to other peer markets for creating specific transaction limits.
(3)	Proposed Amendment to Regulation 23(2)	Glass Lewis recognizes proposed Regulation 23(2) seeks to set clear boundaries on the purview of the audit committee when reviewing RPTs. However, we believe that related to our recommendation that the threshold for material RPTs be reduced, likewise, we believe that the threshold for audit committee consideration should be reduced, in addition to a	Glass Lewis welcomes this new regulation, as it seeks to clearly define a schedule for how RPTs will be considered by the audit committee. However, as per our comment on proposed Regulation 2(zb)(ii), we believe that the threshold for RPTs to be considered material warranting shareholder approval should be brought down from 20% to 10%, a level consistent with other regional markets. As such, given that the proposed level for audit committee consideration was half that of the materiality threshold, we believe this should also be brought down in proportion, from 10% to 5%. In addition, as utilized in Malaysia, we believe it would be in shareholders' interests for RPTs above a certain threshold ⁸ to be immediately disclosed as an announcement to the market.	Glass Lewis recommends that the threshold for RPTs that would be required to be considered by the audit committee to be reduced to 5%, while companies should also be required to submit an announcement to the relevant stock exchanges in relation to such RPTs.

⁷ The Stock Exchange of Thailand's [regulations relating to independent directors and audit committee](#) stipulates that one of the qualifications of an independent director is that they are "[n]ot currently providing or never provided professional services, legal consulting, nor financial consulting services to the company with a fee more than THB 2 million per year."

⁸ [Paragraph 10.08\(1\)](#) of the Bursa Malaysia Listing Requirements states that issuers must announce transactions where they exceed .25% or more of the relevant percentage ratios, unless the value of the transaction is less than RM500,000 or is a recurrent related party transaction.

		requirement for a market announcement.		
(4)	Proposed Amendment to Regulation 23(4)	Glass Lewis welcomes the amendment to this regulation, which extends the requirement for material RPT shareholder approval for material modifications. However, we believe that the mandate of such approval should be of a fixed term and that there should be a requirement for the appointment of independent financial advisers to review material RPTs.	<p>Glass Lewis believes that the new proposed amendments around shareholder approval for RPTs are a positive step for the accountability of listed entities to shareholders. However, unless there are statutory limits on the tenure of such approvals, we believe that there exists the possibility that listed entities may receive mandates to conduct material RPTs for an indefinite period of time, which may be detrimental to shareholder value and in contravention of the spirit in which the regulations have been drafted.</p> <p>Glass Lewis further believes that material RPTs, whether recurring or not, should require the review of independent financial advisers to ensure the transactions are indeed in the ordinary course of business, are at an arms-length basis and in the interest of shareholders.</p> <p>Glass Lewis has observed the practice of such statutory limits for continuing or recurrent transactions in markets such as Hong Kong⁹,</p>	Glass Lewis recommends the introduction of statutory limits on the tenure of material RPTs approved by shareholders. Such limits would discourage companies from seeking carte blanche approval to continue material RPTs and periodically allow shareholders to review such transactions, as is practiced in other markets. This would also allow shareholders to evaluate whether the transactions are in the best interest of a company and its shareholders alike. In this case, Glass Lewis believes that SEBI should consider either the introduction of a general shareholder mandate for material RPTs, renewable annually, or set to a maximum of three years, with the accompaniment of a report from an independent financial adviser.

⁹ [HKEX Listing Rule 14A.52](#) states that the period for the agreement for continuing connected transaction “must not exceed three years except in special circumstances where the nature of the transaction requires a longer period”. In the latter case an independent financial adviser must provide an explanation for the necessity of a longer period. Rule 14A.39 requires that connected transactions that require shareholder approval also require the appointment of an independent financial adviser.

			Malaysia ¹⁰ , and Singapore ¹¹ . In addition, those markets also have requirements for independent financial advice.	
(6)	Schedule II, Part C, Clause B (2)(a)	Glass Lewis believes that, in the case of professional services transactions, disclosure of the types of services should be specified (legal, consulting, financial, accounting, etc.)	Glass Lewis views professional services between related parties, and especially non-executive directors, as a potential conflict of interest. In the case of non-executive directors, we believe that they may be forced to weigh their interests in relation to shareholder interests when making board decisions. In addition, a company's decision regarding where to turn for the best products and services may be compromised when doing business with directors or related parties. As such, it would be in shareholders' interests to know the exact nature of the services provided.	Glass Lewis recommends that RPT disclosure include a clear distinction of the type of professional service provided, if applicable to the transaction. Moreover, the disclosure should also include the length of time the transactions may have been ongoing, provided the transactions are not a one-off occurrence.
(7)	Schedule II, Part C, Clause B (2)(b)	Glass Lewis welcomes the introduction of clear disclosure guidelines for companies seeking shareholder approval of RPTs. However, we	In the event of a listed issuer seeking shareholder approval for material related party transactions, Glass Lewis believes that it is in shareholders' best interests to be made aware of those natural persons who may be the ultimate beneficiaries of such transactions. In particular, we believe the	Glass Lewis recommends the identification of natural persons, or otherwise relevant bodies corporate, that are the ultimate parties to the transaction and the nature of their relationship with the

¹⁰ [Paragraph 10.09\(2\)\(b\)](#) of the Bursa Malaysia Listing Requirements states that the shareholder mandate for recurrent material related party transactions is subject to annual renewal. Paragraph 10.08(2)(c) requires, for material related party transactions, the appointment of an independent corporate finance adviser.

¹¹ [Rule 920\(2\)](#) of the SGX Rulebook states that issuers may seek general mandates to engage in material interested party transactions from shareholders, however this mandate will only be effective for up to one year. Rule 920(1)(b) notes that issuers seeking a general mandate from shareholders for recurrent transactions should include in their circular to shareholders "(v) the independent financial adviser's opinion on whether the methods or procedures in (iv) are sufficient to ensure that the transactions will be carried out on normal commercial terms and will not be prejudicial to the interests of the issuer and its minority shareholders; [and] (vi) an opinion from the audit committee if it takes a different view to the independent financial adviser".

		believe that it is in shareholders' interests for the identity and possible relation of the ultimate beneficiaries of the RPTs may be.	burden of disclosure must be upon listed issuers to clearly disclose the beneficial ownership structure of any relevant bodies corporate in which such natural persons may have interests. Glass Lewis believes this is especially pertinent where transactions involving directors of a company.	listed issuer, included in the disclosure of RPTS. Glass Lewis believes that giving a clear picture of this relation would allow a better assessment of whether such a transaction is in shareholders' best interests.
(8)	Proposed Amendment to Schedule V, Clause C(10)	Glass Lewis is encouraged by the proposal to improve disclosure around RPTs. However, we believe that the regulations could be both be strengthened and streamlined if all RPTs, as well as corporate guarantees, were required to be disclosed in the Annual Report.	In the view of Glass Lewis, standards for disclosure as required by Indian company law and market regulation are respectable, and the Working Group proposed amendments work to lift those standards with respect to RPTs. However, given the high level of disclosure to the market and shareholders required around the approval of RPTs, we fail to see why this cannot this information is not required to be collected and centrally disclosed in the Annual Report, one of the primary documents shareholders seek out for information from listed issuers. In addition, we do not believe this would prove to be an additional administrative burden given that this information would have already been disclosed in the half-yearly, discretionary and general meeting announcements. We believe collating this information in a single location would have efficiency benefits for shareholders. Further, we believe that in addition to transactions,	Glass Lewis recommends the proposed amendment to the regulation be extended to include not just loans and advances, but all RPTs, and in addition include guarantees the company may have provided and/or received, such as guarantees from promoters.

			corporate guarantees between related parties should be included in this disclosure, as we believe it gives a broader picture to shareholders of the economic relations between these parties.	
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