

**Deputy General Manager
Policy and Development
Corporation Finance Department**

SEBI/HO/CFD/CFD-PoD-2/P/OW/2024/32136/1

October 11, 2024

Bajaj Finserv Limited

6th Floor, Bajaj Finserv Corporate Office,
Off Pune – Ahmednagar Road, Viman Nagar, Pune - 411014

Kind attention: Ms. Uma Shende, Company Secretary

Madam,

Subject: Request for informal guidance by way of an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003, with respect to Regulation 23 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

1. This is with reference to your letter dated July 27, 2024 seeking informal guidance by way of an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("Informal Guidance Scheme") in connection with Regulation 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations" or "LODR") and your subsequent email dated August 12, 2024 providing clarification in this matter.
2. In your letter and email under reference, you have, *inter-alia*, represented as under:
 - 2.1. Bajaj Finserv Limited ("BFS") is a company listed on NSE and BSE. Bajaj Allianz General Insurance Company Limited ("BAGIC") is the unlisted general insurance company in which BFS holds 74% of the paid-up equity share capital and Allianz SE holds the remaining 26% paid-up share capital. BAGIC is a material unlisted subsidiary of BFS. Allianz SE is not a related party of BFS but it is a related party of BAGIC.
 - 2.2. In the ordinary course of its business, BAGIC, in conformity with the provisions of the IRDAI (general insurance – reinsurance) regulations, has entered into a Treaty with Allianz SE for re-insurance.



2.3. Considering the legislative history, Regulation 23(1) of the LODR Regulations has been framed and amended, from time to time, keeping in view only the listed entity and its transactions. Therefore, the words "transaction with the related party" in the said regulation suggests that the transaction must be with the related party/ies of the listed entity and would not include a transaction between a subsidiary of listed entity and a party, which is not a related party of the listed entity.

2.4. Two distinct thresholds are carved out in Regulation 23(2) for the approval of the Audit Committee for related party transaction: a) for transactions of subsidiary companies and b) with reference to the transactions of listed entity. Therefore, it appears that the ₹1,000 crores limit under Regulation 23(1) of the LODR Regulations is with reference to the transactions of listed entity.

2.5. In view of Regulation 3(1) of the LODR Regulations, SEBI's legislative restrictions do not permit regulating related party transactions of the unlisted subsidiaries with its unlisted related parties. Therefore, related parties have to be related parties of listed entity.

2.6. In view of the above, you have sought guidance on the following queries:

(a) *Whether the numerical threshold provided in proviso to regulation 23(1) of the Listing Regulations (Rs. 1,000 crores or 10% of consolidated turnover whichever is lower), applies to a transaction/contract between a subsidiary and an entity which is not a related party of the listed entity but a related party of the subsidiary?*

(b) *If the answer to (a) above is that the numerical threshold applies to a transaction/contract between a subsidiary and its related party which is not a related party of the listed holding company,*

(i) *whether the requirement for such transaction requires approval of the shareholders of the holding Company (in which none of the related parties can vote)?*

(ii) *if the value of the transaction does not exceed 10% of the standalone turnover of the subsidiary but exceeds the threshold of Rs. 1,000 crores under regulation 23(1), would that require approval of shareholders of the listed holding company but the approval of the audit committee of the listed holding company as prescribed under regulation 23(2) is not required?*

(c) *Conventionally a re-insurance treaty comprises of three main components i.e., premium ceded, commission to be received and claims. Whilst premium and commission are determined upfront, the*

same is not the case with the claim, as it is contingent and cannot be foreseen, and the treaty is settled on a net settlement basis at a periodical interval. Given this nature of the Treaty, what would be the value of the Treaty in respect of the reinsurance contract for this purpose? Would it be only the expected premium income for the reinsurer or would it be the claim amount that may be payable by the reinsurer (which is uncertain, not known in advance and, in some cases like Motor Third Party contracts, has no limit) or would it be the net settlement amount as per the contract (premium less commission less claim amount, if any?).

The purpose of referring the query is to seek clarification on whether the net settlement amount as per the treaty in the financial year is to be considered for the purpose of the limits under Reg. 23(2) of LODR, read with SEBI Master circular dated 11 July 2023 - Section III-B for Disclosure and other obligations of listed entities in relation to Related Party Transactions. There is no transfer of obligation from the insurance company to the reinsurer as far as payment of claims to the policyholder under the insurance policy.

(d) *Whether the unlisted subsidiary has to identify related party as per the definition provided in regulation 2(zb) or as per their applicable laws, given that Listing Regulations are not applicable to them as per Regulation 3 of the Listing Regulations?"*

3. We have considered the submissions made by you in your letter and email under reference. Without necessarily agreeing with your analysis, we are issuing this interpretive letter as under:

3.1. The relevant legal provisions are reproduced below:

(a) Regulation 2(1)(zb) of LODR:

“related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:.....”

(b) Section 2(76) of the Companies Act, 2013

*“related party”, with reference to a company, means—
[.....]*

(viii) any body corporate which is—

*(A) a holding, subsidiary or an associate company of such company;
(B) a subsidiary of a holding company to which it is also a subsidiary;
or
(C) an investing company or the venturer of the company.*

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate; (ix) such other person as may be prescribed;”

(c) Section 2(6) of the Companies Act, 2013

““associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purpose of this clause,—

(a) the expression “significant influence” means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;”

(d) Regulation 2(1)(zc) of LODR:

““related party transaction” means a transaction involving a transfer of resources, services or obligations between:

(i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or

(ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract:....”

(e) Regulation 23 of LODR:

“Related party transactions.

23. (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:

Provided that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

[.....]

(2) All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity:

.....
Provided further that:

(a)

(b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity;

(c) with effect from April 1, 2023, a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary;

(d) prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

[.....]

(4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:

Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary....”

3.2. Response to the query at para 2.6 (a) above: While the proviso to sub-regulation (1) of Regulation 23 of LODR provides the threshold for considering 'transaction with a related party' as material, the main part of the sub-regulation requires listed entities to formulate a policy on materiality of 'related party transactions' and on dealing with 'related party transactions'. Reading the proviso together with the main part of the sub-

regulation, it is clear that the said sub-regulation refers to the materiality of 'related party transactions'. As per Regulation 2(1)(zc) of LODR, the definition of 'related party transaction' includes a transaction/ contract between listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand. Hence, the materiality threshold specified in proviso to Regulation 23(1) of LODR (₹1,000 crores or 10% of consolidated turnover, whichever is lower) is applicable to a transaction/ contract between subsidiary of listed entity with another entity which is its related party but not related party to the listed entity.

- 3.3. **Response to the query at para 2.6 (b)(i) above:** Regulation 23(4) of LODR requires prior approval of shareholders of the listed entity for '*all material related party transactions*'. Hence, the transaction/ contract between an unlisted subsidiary of listed entity with its related party, if material as per Regulation 23(1) of LODR, shall require approval of the shareholders of listed holding company.
- 3.4. Response to the query at para 2.6 (b)(ii) above is not being provided in terms of paragraph 8 (viii) of the Informal Guidance Scheme due to policy concerns.
- 3.5. **Response to the query at para 2.6 (c) above:** As per Regulation 2(1)(zc) of LODR, related party transaction *inter alia* means a transaction involving a '*transfer of resources, services or obligations*'. The transaction(s) under the re-insurance treaty between BAGIC and Allianz SE involves transfer of resources as net settlement amount. Hence, the net settlement amount under the re-insurance treaty in a financial year, taken together with previous transactions during the financial year, should be considered for the purpose of determining the value of transaction for Regulation 23(2) of LODR.
- 3.6. **Response to the query at para 2.6 (d) above:** Unlisted subsidiaries of the listed entities are required to identify the 'related party' and 'related party transaction' as per the provisions of the LODR Regulations. Further, in terms of Regulation 2(1)(zc) of LODR, transactions between subsidiary of listed entity with the related party of such subsidiary or its holding listed entity are covered within the ambit of 'related party transaction'.

4. The above position is based on the information furnished in your letter and email under reference. Different facts or conditions might lead to a different result. This letter expresses the Department's view and does not express a decision of the Board on the question referred.

5. You may also note that the above views are expressed only with respect to the clarification sought in your letter and email under reference with respect to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,



Raj Kumar Das