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PROFESSIONAL ANALYSIS · CORPORATE, TAX & REGULATORY

Related Party Transactions

A comparative legal analysis under the Companies Act, SEBI LODR, Ind AS, Income-tax Act 2025, GST and allied commercial laws

Legal requirements, penalties and a structuring checklist

Companies Act, 2013 · s.188 | SEBI LODR · Fifth Amendment 2025 | Ind AS 24 / AS 18 | Income-tax Act, 2025 · TP | GST · Rule 28 | IBC · FEMA · Customs | Penalty schedule

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PROFESSIONAL ANALYSIS

TO	Our valued clients and associates
FROM	Dipen D Shah & Associates, Chartered Accountants
DATE	5 November 2026
SUBJECT	**Related party transactions: comparative legal requirements under the Companies Act, SEBI LODR, Ind AS / AS, Income-tax Act 2025, GST and allied laws, with penalties and structuring guidance**

CONTENTS

1 Executive summary
2 Who is a "related party"? — definitions compared
3 Companies Act, 2013
4 SEBI (LODR) Regulations, 2015 — Regulation 23
5 Accounting standards — Ind AS 24 and AS 18
6 Income-tax Act, 2025 (in force from 1 April 2026)
7 GST — CGST Act, 2017 and CGST Rules, 2017
8 Other commercial laws
9 Comparative matrix — one transaction, six laws
10 Structuring related party transactions — practitioner's checklist
11 Disclaimer

1 Executive summary

Indian law does not prohibit related party transactions (RPTs); it regulates them through four lenses that operate simultaneously and independently: **governance** (Companies Act, SEBI LODR), **disclosure** (Ind AS 24 / AS 18), **tax valuation** (Income-tax Act, 2025; GST; Customs) and **creditor/competition protection** (IBC, Competition Act, FEMA, RBI). Compliance with one lens never discharges another — a transaction approved by the Board as "arm's length" can still be re-priced by the Transfer Pricing Officer, re-valued under GST Rule 28, and avoided by a resolution professional under the IBC.

> Three position changes every practitioner must note as on 5 November 2026:
>
> 1. **Income-tax Act, 2025 is in force from 1 April 2026.** Section 40A(2) of the 1961 Act now sits in section 36, and transfer pricing (sections 92–92F) moves to sections 161–173. The substance — arm's length price, specified persons, the Rs 20 crore SDT threshold — is retained.
> 2. **SEBI LODR (Fifth Amendment) Regulations, 2025**, effective 18 December 2025 for RPT provisions, replaced the flat Rs 1,000 crore / 10% materiality test with a turnover-linked scale capped at Rs 5,000 crore.
> 3. **Corporate Laws (Amendment) Bill, 2026**, introduced on 23 March 2026 and referred to a Joint Parliamentary Committee, proposes changes to section 188, including disqualification of directors penalised for RPT defaults. It is not yet law.

2 Who is a "related party"? — definitions compared

The single biggest source of error is assuming one definition fits all laws. Each statute draws the circle differently, so the same counterparty can be related under one law and unrelated under another.

Law	Term used	Core test	Key thresholds / features
Companies Act, 2013 — s.2(76), s.2(77)	Related party	Listed relationships (closed list)	Director/KMP and relatives; firm or private company where director/manager/relative is partner, member or director; public company where director/manager is director **and** holds >2% with relatives; holding, subsidiary, associate, fellow subsidiary; director/KMP of holding company and relatives; persons on whose advice the board is accustomed to act
SEBI LODR — Reg. 2(1)(zb)	Related party	Companies Act **plus** Ind AS 24 **plus** shareholding test	Any promoter/promoter-group person holding ≥10%, and any person holding ≥10% (direct or beneficial) of equity, is deemed related; RPT definition also covers transactions of subsidiaries and transactions with unrelated parties whose purpose and effect is to benefit a related party
Ind AS 24	Related party	Control, joint control, significant influence, KMP — **substance over form**	Close members of family; post-employment benefit plans; entities providing KMP services; government-related entity partial exemption
AS 18 (non-Ind AS entities)	Related party	Control and significant influence	Narrower than Ind AS 24; relatives limited to spouse, son, daughter, brother, sister, father, mother who may influence or be influenced
Income-tax Act, 2025 — s.36 (old s.40A(2)(b))	Specified person	Relatives and **substantial interest**	Substantial interest = beneficial ownership of ≥20% of voting power or profits; covers directors, partners, members, relatives, and concerns in which they hold substantial interest
Income-tax Act, 2025 — s.162 (old s.92A)	Associated enterprise	Participation in management, control or capital	26% voting power; loans ≥51% of book value of assets; guarantee ≥10% of borrowings; appointment of >50% of board; dependence on IP/raw material; extended to SDT parties
CGST Act, 2017 — Explanation to s.15	Related person	Officer/director of each other; partners; employer–employee; 25% voting stake; control (direct/indirect) by third person; members of the same family	Also "distinct persons" under s.25(4)/(5) — branches with separate GSTINs — valued under the same Rule 28
Customs Valuation Rules, 2007 — Rule 2(2)	Related person	Similar to GST test; 5% voting stake	Import price accepted only if relationship did not influence price

Law	Term used	Core test	Key thresholds / features
IBC, 2016 — s.5(24), s.5(24A)	Related party	Wide: includes persons acting on instructions, shareholding/voting ≥20%, common directors, financial dependence	Used for voting exclusion in CoC (s.21), avoidance (s.43, 45) and eligibility (s.29A)

Practitioner's tip. Maintain one master related-party register that tags each counterparty against every applicable definition (CA 2013 / LODR / Ind AS / Tax-SP / Tax-AE / GST / IBC). Update it at least quarterly and at every change in shareholding, directorship or group structure.

3 Companies Act, 2013

Section 188 is an approval provision, not a prohibition. It applies to every company — private, public, listed or unlisted — and is supported by sections 177, 184, 185, 186, 189 and 134.

3.1 Transactions covered by section 188(1)

1. Sale, purchase or supply of goods or materials
2. Selling, disposing of or buying property of any kind
3. Leasing of property of any kind
4. Availing or rendering of services
5. Appointment of an agent for purchase or sale of goods, materials, services or property
6. Appointment of a related party to an office or place of profit in the company, its subsidiary or associate
7. Underwriting the subscription of securities or derivatives of the company

Loans, guarantees and investments are **not** in this list; they are governed by sections 185 and 186, but still require Audit Committee approval under s.177(4)(iv) and disclosure under Ind AS 24.

3.2 Approval architecture

Layer	Requirement	Reference
Audit Committee	Approval of **all** RPTs and subsequent modifications (not limited to s.188 list); omnibus approval permitted for repetitive transactions, valid one year; transactions not exceeding Rs 1 crore may be ratified within 3 months	s.177(4)(iv), Rule 6A of Meetings Rules
Board	Resolution passed at a **meeting** (not by circulation) for every s.188 transaction not in ordinary course or not at arm's length; interested director must not be present during discussion	s.188(1), Rule 15(1)–(2)
Shareholders	Prior **ordinary resolution** where Rule 15(3) threshold is crossed; related-party members cannot vote	First and fourth provisos to s.188(1)
Disclosure	Form AOC-2 in Board's report with justification; register in Form MBP-4; interest disclosure in MBP-1	s.134(3)(h), s.189, s.184

3.3 Rule 15(3) shareholder thresholds (aggregate per related party per FY, on last audited financials)

Nature of transaction	Shareholder approval if value exceeds
Sale, purchase or supply of goods/materials	10% of turnover
Selling or buying property	10% of net worth
Leasing of property	10% of turnover

Nature of transaction	Shareholder approval if value exceeds
Availing or rendering services	10% of turnover
Office or place of profit	Monthly remuneration of Rs 2.5 lakh
Underwriting	1% of net worth

3.4 Key exemptions

- **Ordinary course of business and arm's length** — both conditions must be satisfied; one alone is insufficient. The Board must still be satisfied, and the transaction remains subject to Audit Committee approval and Ind AS 24 disclosure.
- **Holding company and wholly-owned subsidiary** whose accounts are consolidated and placed before shareholders — shareholder approval not required.
- **Private companies** — by MCA notification dated 5 June 2015, the bar on related-party members voting does not apply.
- **Government companies** — partial exemptions under the 2015 notifications.

3.5 Penalties and consequences of non-compliance

Default	Provision	Penalty / consequence	On whom
RPT entered without Board or shareholder approval required by s.188	s.188(5)	Penalty of **Rs 25 lakh (listed company)** or **Rs 5 lakh (other company)**	Director or employee who entered into or authorised the contract
Same	s.188(3)	Contract **voidable** at option of Board/shareholders if not ratified within 3 months; director concerned to **indemnify** the company for loss	Contract; interested director
Same	s.164(1)(g)	Disqualification for 5 years where convicted of an offence dealing with RPTs under s.188. The Corporate Laws (Amendment) Bill, 2026 proposes to extend this to persons **penalised** under s.188	Director
Transaction ≤ Rs 1 crore not ratified by Audit Committee within 3 months	s.177(4) fourth proviso	Voidable at option of Audit Committee; if with a director's related party, director to indemnify	Contract; director
Failure by director to disclose interest	s.184(4)	Penalty of **Rs 1 lakh**; contract in which interested director participates is voidable at company's option (s.184(3))	Director; contract

Default	Provision	Penalty / consequence	On whom
Prohibited loan, guarantee or security to director or interested entity	s.185(4)	Company: fine **Rs 5 lakh – Rs 25 lakh**. Officer in default and the recipient director/person: imprisonment up to **6 months** or fine Rs 5 lakh – Rs 25 lakh, or both	Company, officers, recipient
Inter-corporate loan/guarantee/investment in breach of limits or below G-sec rate	s.186(13)	Company: fine **Rs 25,000 – Rs 5 lakh**. Officer: imprisonment up to **2 years** and fine Rs 25,000 – Rs 1 lakh	Company, officers
Register of contracts (MBP-4) not maintained	s.189(6)	Penalty **Rs 25,000** on company; **Rs 5,000** on every officer in default	Company, officers
AOC-2 / Board's report non-compliance	s.134(8)	Penalty **Rs 3 lakh** on company; **Rs 50,000** on every officer in default	Company, officers
Non-cash asset transaction with director without GM approval	s.192 read with s.450	Arrangement voidable; general penalty Rs 10,000 plus Rs 1,000 per day of continuing default (cap Rs 2 lakh company, Rs 50,000 officer)	Company, officers
Director acting in conflict / making undue gain	s.166(7)	Fine **Rs 1 lakh – Rs 5 lakh**; liability to account for the gain	Director

In addition, CARO 2020 requires the statutory auditor to report on compliance with sections 177 and 188 and on adequacy of disclosure in the financial statements.

4 SEBI (LODR) Regulations, 2015 — Regulation 23

For listed entities, LODR overlays — and in several respects overrides — section 188. There is **no ordinary-course or arm's-length exemption** from Audit Committee approval under LODR; that exemption exists only in the Companies Act.

4.1 Core requirements

- **Policy on materiality and dealing with RPTs**, reviewed at least once every three years and hosted on the website.
- **Prior Audit Committee approval** of all RPTs and subsequent material modifications; only **independent directors** on the committee vote. Omnibus approval valid for one year.
- **Prior shareholder approval** for material RPTs and material modifications; **all related parties are barred from voting in favour**, whether or not party to the transaction.
- Half-yearly RPT disclosure to exchanges in prescribed format along with financial results (Reg. 23(9)).
- **RPT Industry Standards** (SEBI circular, 26 June 2025) prescribe minimum information to be placed before the Audit Committee and shareholders, in formats developed by the Industry Standards Forum (ASSOCHAM, FICCI, CII), effective 1 September 2025.

4.2 Materiality — new scale under Schedule XII (effective 18 December 2025)

Annual consolidated turnover (last audited)	RPT is material if value exceeds
Up to Rs 20,000 crore	10% of consolidated turnover
Rs 20,000 – 40,000 crore	Rs 2,000 crore + 5% of turnover above Rs 20,000 crore
Above Rs 40,000 crore	Rs 3,000 crore + 2.5% of turnover above Rs 40,000 crore, capped at Rs 5,000 crore

The separate threshold of **5% of consolidated turnover for brand usage or royalty payments** continues unchanged.

4.3 Other changes under the Fifth Amendment and allied circulars

- **Subsidiary RPTs** (listed entity not a party): no listed-entity Audit Committee approval up to Rs 1 crore; above that, approval needed if value exceeds the lower of 10% of the subsidiary's standalone turnover (or 10% of paid-up capital plus securities premium for subsidiaries without one year of audited accounts) and the listed entity's Schedule XII threshold.
- **Omnibus shareholder approval** taken at an AGM is valid till the next AGM; taken at any other general meeting, for one year.
- **Holding–WOS exemption** under Reg. 23(5) applies only where the holding company is itself listed.
- **Retail purchase carve-out** extended to KMPs and relatives of directors/KMPs on terms uniformly offered.

- **Industry Standards relaxation (October 2025):** RPTs not exceeding the lower of 1% of consolidated turnover or Rs 10 crore need only reduced information; those up to Rs 1 crore are exempt from the minimum-information requirement.

4.4 Section 188 vs Regulation 23 — where they part ways

Point	Companies Act s.188	SEBI LODR Reg. 23
Applies to	All companies	Listed entities and their subsidiaries' RPTs
Transactions covered	Seven listed categories	Any transfer of resources, services or obligations, regardless of consideration
Ordinary course + arm's length	Exempt from Board/shareholder approval	**No exemption** from Audit Committee approval; relevant only to materiality analysis
Shareholder trigger	Rule 15 thresholds on standalone figures	Schedule XII scale on consolidated turnover
Who cannot vote	Members who are related parties to that contract	All related parties of the listed entity
Committee vote	Audit Committee	Only independent directors on the Audit Committee

4.5 Penalties and consequences of non-compliance

Default	Provision	Penalty / consequence	On whom
No prior Audit Committee or shareholder approval; non-disclosure or incorrect disclosure of RPTs	s.15HB, SEBI Act, 1992	Penalty of **Rs 1 lakh – Rs 1 crore** per adjudication	Company, directors, KMPs, company secretary
Serious or fraudulent RPTs (diversion of funds)	ss.11, 11B, 15HA SEBI Act; PFUTP Regulations	Directions including debarment from the market and from holding board positions, disgorgement, forensic audit	Promoters, directors, KMPs
Late or non-submission of half-yearly RPT disclosure	Reg. 23(9) with SEBI SOP on exchange fines	Exchange-levied fine per day of delay (Rs 5,000 per day under the SOP), escalating to freezing of promoter holdings and suspension of trading for continued default	Company, promoters

Illustrations: SEBI adjudication in 2022 levied Rs 1 crore on a listed company and Rs 25 lakh on each of three KMPs for RPT disclosure lapses (company's BSE filing); SEBI proceedings in 2026 against Zuari Agro Chemicals and its officers related to missing Audit Committee and shareholder approvals for FY 2020-21. Conversely, SAT has set aside penalties where the lapse was a single small transaction (Rs 17 lakh advance), showing that proportionality is examined.

5 Accounting standards — Ind AS 24 and AS 18

Accounting standards neither approve nor price an RPT; they require it to be **disclosed** so that users can judge its effect. Disclosure is mandatory even where no price is charged.

Aspect	Ind AS 24	AS 18
Applicability	Companies under Ind AS roadmap (listed, net worth ≥ Rs 250 crore, their group entities, voluntary adopters)	All other companies and non-corporate entities following ICAI AS
Basis	Substance of the relationship, not merely legal form	Control and significant influence
Family	"Close members of the family": those expected to influence or be influenced — children, spouse/domestic partner, their children, dependants	Relatives: spouse, son, daughter, brother, sister, father, mother who may influence or be influenced
Post-employment benefit plans	Related parties	Not specifically covered
Entities providing KMP services	Related parties (management-entity disclosure)	Not covered
KMP compensation	Break-up: short-term, post-employment, other long-term, termination, share-based	Aggregate remuneration
Government-related entities	Partial exemption, with alternative disclosures	State-controlled enterprises exempt from disclosing transactions with other state-controlled enterprises
Confidentiality exemption	Not available	Not available where statute requires disclosure
No transaction, only control	Disclose relationship and name of parent / ultimate controlling party	Disclose relationship where control exists

5.1 Minimum disclosures (both standards, broadly)

- Name of related party and nature of relationship
- Nature and amount of transactions, outstanding balances, terms and conditions, security, guarantees given or received
- Provisions for doubtful debts and amounts written off relating to related parties
- A statement that terms are "equivalent to arm's length" only if it can be **substantiated** (Ind AS 24.23)

5.2 Related measurement standards to watch

- **Ind AS 109** — interest-free or below-market loans to subsidiaries and financial guarantees given without fee must be fair valued; the difference is recognised as investment (by parent) or capital contribution, which also affects tax and GST positions.

- **Ind AS 103 / Appendix C** — business combinations under common control use pooling of interests at book values.
- **Ind AS 115** — consideration from related parties at non-market terms may need allocation and variable-consideration analysis.
- **SA 550 (Related Parties)** — auditor must identify related parties, evaluate undisclosed relationships, and examine significant transactions outside the normal course of business.

5.3 Penalties and consequences of non-compliance

Accounting standards carry no penalty of their own. Non-compliance is enforced through the Companies Act against those responsible for the financial statements, and through NFRA against the auditor.

Default	Provision	Penalty / consequence	On whom
Financial statements not complying with AS / Ind AS (including RPT disclosure)	s.129(7)	Imprisonment up to **1 year** or fine **Rs 50,000 – Rs 5 lakh**, or both	MD, WTD (finance), CFO, other responsible directors
Auditor fails to apply SA 550 or report under CARO	s.132(4) (NFRA)	Monetary penalty linked to audit fees and debarment of 6 months to 10 years	Auditor / audit firm

6 Income-tax Act, 2025 (in force from 1 April 2026)

The new Act renumbers but does not rewrite the RPT regime. For tax year 2026-27 onwards, cite the 2025 Act; for assessment, appeal and reassessment of earlier years, the 1961 Act continues to apply through the repeal-and-savings provision.

6.1 Section map: old vs new

Subject	Income-tax Act, 1961	Income-tax Act, 2025
Excessive/unreasonable payment to specified persons	s.40A(2)	s.36
Arm's length principle	s.92	s.161
Associated enterprise	s.92A	s.162
International transaction	s.92B	s.163
Specified domestic transaction	s.92BA	s.164
ALP methods	s.92C	s.165
Reference to TPO	s.92CA	s.166
Safe harbour / APA	s.92CB / 92CC	s.167 / 168
Documentation and accountant's report	s.92D / 92E (Form 3CEB)	s.171 / 172
Deemed dividend (loans to substantial shareholders)	s.2(22)(e)	s.2(40)

6.2 Specified persons — section 36 (old s.40A(2))

- The Assessing Officer may disallow any expenditure paid to a specified person to the extent it is **excessive or unreasonable** having regard to fair market value, legitimate business needs, or benefit derived.
- Only the excess is disallowed, not the whole payment; the onus to show excess lies on the AO, but contemporaneous benchmarking is the taxpayer's best defence.
- The Supreme Court in *CIT v. Glaxo SmithKline Asia (P) Ltd.* (2010) highlighted the absence of domestic TP rules, which led Parliament to introduce SDT in 2012. Since 2017, payments to specified persons are no longer SDT, so s.36 operates on its own without TP documentation.

6.3 Transfer pricing — sections 161 to 173

- **International transactions** with an AE: no monetary threshold; arm's length price mandatory, adjustment cannot reduce income or increase loss (s.161(4)).
- **Specified domestic transactions (s.164)**: covered only if aggregate value exceeds **Rs 20 crore in a tax year**; mainly inter-unit transfers and dealings with closely connected persons by undertakings enjoying profit-linked deductions or concessional regimes.

- Annual **accountant's report** under s.172 and contemporaneous documentation under s.171; heavy penalties continue for failure to maintain documents, report transactions, or furnish information.
- **Secondary adjustment**, interest limitation for debt from non-resident AEs (30% of EBITDA), safe harbour and APA (including rollback) are retained.

6.4 Other income-tax provisions that bite on RPTs

Provision (concept)	Risk in related party context
Deemed dividend — s.2(40) (old 2(22)(e))	Loan by a closely-held company to a shareholder holding ≥10% voting power, or to a concern in which he has ≥20% interest, is taxed as dividend to the extent of accumulated profits
Deemed consideration on transfer of land/building and unquoted shares (old ss.43CA, 50C, 50CA)	Group transfers below stamp duty value or FMV are taxed at deemed value in the transferor's hands
Receipt of property below FMV (old s.56(2)(x))	Recipient taxed on the shortfall; relatives exempt, but group companies are not relatives
Share premium above FMV (old s.56(2)(viib))	Abolished for issues from AY 2025-26; valuation reports still advisable for FEMA and Companies Act
Interest on borrowed funds lent interest-free (old s.36(1)(iii))	Disallowance unless commercial expediency is shown — *S.A. Builders Ltd. v. CIT* (SC, 2007)
Cash loans and repayments (old ss.269SS/269T)	Penalty equal to the amount for cash loans of Rs 20,000 or more, including between group entities
Clubbing of income (old ss.60–64)	Transfers to spouse or minor child without adequate consideration
GAAR	Arrangements lacking commercial substance with main purpose of tax benefit
Tax audit reporting	Payments to specified persons and deemed-dividend items must be reported by the tax auditor

6.5 Penalties and consequences of non-compliance

Default	Provision (old section)	Penalty / consequence
Excessive payment to specified person	s.36 (40A(2))	Disallowance of excess; penalty under s.439 (270A)
Under-reporting of income from disallowance or TP adjustment	s.439 (270A)	**50% of tax** on under-reported income; **200%** where it results from misreporting (e.g., suppression of facts, false entries, failure to record an international transaction)
Failure to keep or maintain TP documents, to report a transaction, or furnishing incorrect information	s.442 (271AA)	**2% of the value** of each such transaction; **Rs 5 lakh** for failure to furnish master-file information

Default	Provision (old section)	Penalty / consequence
Failure to furnish information or document to AO/TPO	s.457 (271G)	**2% of the value** of each international transaction or SDT, for each failure
Failure to furnish accountant's report on TP	Old s.271BA (retained in Chapter XXI)	Rs 1 lakh
Primary TP adjustment not repatriated	Secondary adjustment (old 92CE)	Excess money deemed an advance; notional interest taxed annually
Cash loans/deposits or repayments of Rs 20,000 or more between group entities	Old ss.271D / 271E (retained)	Penalty **equal to the amount** accepted or repaid
Loan to substantial shareholder / interested concern	s.2(40) (2(22)(e))	Taxed as dividend in recipient's hands; TDS default attracts interest, penalty and treatment as assessee in default

A reasonable-cause defence (old s.273B) continues; contemporaneous documentation is the practical basis for invoking it.

7 GST — CGST Act, 2017 and CGST Rules, 2017

Under GST, a relationship affects two things: whether a free transaction is a **supply** at all, and at what **value** tax is computed. GST is concerned with the correct tax on value, not with whether the price is commercially fair.

7.1 Supply without consideration — Schedule I, para 2

Supplies between related persons or distinct persons (s.25), made in the course or furtherance of business, are taxable **even without consideration**. Gifts by an employer to an employee up to Rs 50,000 per year are excluded.

7.2 Valuation — section 15 read with Rule 28

1. Transaction value under s.15(1) is accepted only where supplier and recipient are **not related** and price is the sole consideration.
2. For related or distinct persons, value is determined under Rule 28: open market value → value of like kind and quality → cost plus 10% (Rule 30) → residual method (Rule 31).
3. **Full-ITC proviso:** where the recipient is eligible for full input tax credit, the invoice value is deemed to be open market value. This makes most B2B intra-group pricing revenue-neutral.
4. Goods for further supply: at the option of the supplier, 90% of the price charged by the recipient to its unrelated customer.

7.3 Corporate guarantees — Rule 28(2)

- From 26 October 2023, a corporate guarantee given to a bank or financial institution on behalf of a **related person located in India** is valued at **1% per annum of the guarantee amount**, or actual consideration, whichever is higher.
- Circular 225/19/2024-GST (11 July 2024) clarified that the 1% applies per annum, rule 28(2) applies only to guarantees issued or renewed on or after 26 October 2023, and does not apply to exports of such service.
- By amendment effective 26 October 2023 (notified July 2024), where the recipient is eligible for **full ITC**, the invoice value is deemed open market value.
- Personal guarantees by directors to banks for company loans without consideration are generally not a taxable supply (Circular 204/16/2023-GST).

7.4 Other GST points for related parties

- **Employer–employee** relationship makes employees related persons; services by an employee in the course of employment are outside GST (Schedule III).
- **Cross-charge / ISD**: head office costs allocable to branches (distinct persons) must be distributed through ISD (mandatory from 1 April 2025) or cross-charged.
- **Secondment and shared services** within groups must be examined for import of services and reverse charge.

- **Time of supply** and **ITC conditions** (payment within 180 days, s.16(2)) apply fully to related-party invoices.
- **Valuation exposure** and **Rule 28 disputes** commonly arise where the recipient is exempt or ineligible for full ITC — banks, insurers, hospitals, educational institutions.

7.5 Contentious areas in practice

The Chamber's Journal (CTC, September 2024) identifies three recurring dispute areas in GST audits and investigations of related-party dealings.

Issue	Department's position	Taxpayer's defence / planning point
Corporate guarantee	Taxable supply valued at 1% p.a. under Rule 28(2)	Guarantee is a quasi-capital shareholder activity, not a service; validity of Rule 28(2) and Circular 204/2023 is under challenge in writ petitions, with interim stay in at least one case; full-ITC proviso applies prospectively from 26 October 2023
Brand name / trademark use by group entity	Right to use is a supply even without consideration	Open market value is rarely available for a unique brand; value under the residual method (Rule 31) using an arm's length royalty study; invoice value protected where recipient has full ITC
Secondment of employees from overseas group entity	Import of manpower supply under reverse charge — *CCE v. Northern Operating Systems Pvt. Ltd.* (SC, 2022)	Ruling is fact-specific; draft secondment agreements to show control, supervision and salary by the Indian entity; Circular 210/4/2024-GST allows value declared on self-invoice (or nil, if no invoice) to be deemed open market value where full ITC is available

Open interpretation issue: whether "eligible for full ITC" is tested transaction-wise or entity-wise. Entities making any exempt supplies (banks, NBFCs, real estate, healthcare) should assume the department will test it entity-wise.

7.6 Penalties and consequences of non-compliance

Default	Provision	Penalty / consequence
Short payment due to under-valuation of related-party supply	s.73 / s.74 (up to FY 2023-24); s.74A (FY 2024-25 onwards)	Differential tax with **18% interest** (s.50). Non-fraud: penalty **10% of tax or Rs 10,000, whichever is higher** (waived if paid within 60 days of notice). Fraud/suppression: penalty **100% of tax**, reduced to 15%, 25% or 50% for payment at earlier stages
Free supplies under Schedule I not invoiced	s.122 and above	Tax, interest and penalty as above; recipient's ITC exposed to challenge
ITC on related-party invoice not paid within 180 days	s.16(2) proviso	Reversal of ITC with interest; re-availed on payment

8 Other commercial laws

8.1 Other Companies Act provisions frequently missed

Section	What it regulates	Practical point
s.185	Loans, guarantees, security to directors and entities in which they are interested	Prohibited for directors; for interested entities, permitted only with special resolution and use for principal business; exemption for loans to WOS and guarantees for subsidiary's bank loans
s.186	Inter-corporate loans, guarantees, investments	Interest not below prevailing G-sec yield of comparable tenor; special resolution above 60% of capital+free reserves+premium or 100% of free reserves+premium
s.192	Non-cash assets acquired from or transferred to a director of company or holding company, or connected persons	**Prior general meeting approval**, with valuation by registered valuer — separate from s.188
s.197	Managerial remuneration	Interplays with s.188 office-or-place-of-profit for relatives
s.166	Directors' duties	Duty to avoid conflict and not to make undue gain; breach gives rise to liability even if s.188 is complied with

Penalties for defaults under these sections are set out with the other Companies Act penalties in section 3.5.

8.2 Insolvency and Bankruptcy Code, 2016

- **Look-back period doubles for related parties:** preferential transactions (s.43) and undervalued transactions (s.45) can be avoided if entered within **two years** before insolvency commencement for related parties, against one year for others.
- **Fraudulent transactions** (s.49 — defrauding creditors) have no look-back limit; **fraudulent or wrongful trading** (s.66) exposes directors personally.
- **Committee of Creditors:** a financial creditor who is a related party of the corporate debtor has no right of representation or vote (s.21(2) proviso).
- **Resolution applicant eligibility:** s.29A bars connected persons of disqualified promoters, which affects group restructuring and intra-group lending strategy.

Penalties and consequences

Default	Penalty / consequence
Preferential / undervalued related-party transaction within 2 years	NCLT may set aside, order refund and vest property back (ss.43–51)
Transaction defrauding creditors; fraudulent or wrongful trading	Officers: imprisonment **1–5 years** and fine **Rs 1 lakh – Rs 1 crore** (s.69); directors may be ordered to contribute to assets (s.66)

8.3 Customs Act, 1962 — Customs Valuation Rules, 2007

- Related-party import price is accepted only where the relationship has **not influenced the price** (Rule 3(3)), established through circumstances of sale or test values.
- Related-party imports are examined by the Special Valuation Branch procedure (as reorganised by CBIC Circular 5/2016); disclosure in the Bill of Entry is mandatory.
- **Conflict to manage:** a higher price helps customs but hurts income-tax, and a lower price does the reverse; a single, consistent TP policy defended under both laws is essential.

Penalties and consequences

Default	Penalty / consequence
Under-valuation of related-party import	Differential duty with interest (ss.28, 28AA); goods liable to confiscation (s.111(m)); penalty **equal to duty** in suppression cases (s.114A)

8.4 FEMA, 1999 and RBI regulations

- **Overseas Direct Investment Rules, 2022**: financial commitments to and transfers with overseas group entities must be at arm's length; guarantees and loans to foreign subsidiaries count towards the financial-commitment limit.
- **Pricing guidelines (NDI Rules, 2019)**: transfer of shares between resident and non-resident group entities must respect floor/ceiling fair value.
- **External Commercial Borrowings**: foreign equity holders are recognised lenders, subject to all-in-cost ceilings — interest above the ceiling is a FEMA breach and a TP issue simultaneously.
- **Banks and NBFCs**: s.20 of the Banking Regulation Act restricts loans to directors and their interested concerns; RBI scale-based regulation for NBFCs requires board-approved policy and limits on loans to directors, senior officers and their relatives.

Penalties and consequences

Default	Penalty / consequence
Non-arm's-length ODI, ECB above cost ceiling, pricing guideline breach	Penalty up to **3 times the sum involved** (or up to Rs 2 lakh where not quantifiable) and Rs 5,000 per day of continuing default (s.13); compounding available

8.5 Competition Act, 2002

- Intra-group combinations are largely exempt from CCI notification under Schedule I of the Combination Regulations.
- Agreements between parent and subsidiary forming a **single economic entity** are generally not anti-competitive agreements, but abuse of dominance (s.4) can still arise from preferential dealing with group entities.

Penalties and consequences

Default	Penalty / consequence
Abuse of dominance through preferential group dealing	Penalty up to **10% of average turnover** of the preceding three years (s.27)

8.6 General commercial and civil law

- **Indian Contract Act, 1872**: contracts procured by undue influence (s.16) are voidable; an agreement with an unlawful object (s.23) is void — relevant where an RPT defeats creditors or statute.
- **LLP Act, 2008 and Partnership Act, 1932**: no s.188 equivalent, but partners owe fiduciary duties and must account for personal profits from firm transactions (Partnership Act s.16; LLP Act s.30 and the LLP agreement).
- **Benami Transactions (Prohibition) Act, 1988**: property held in the name of relatives is benami unless it falls within the exceptions (e.g., spouse or child, paid from known sources).
- **Stamp duty**: intra-group conveyances attract full duty unless a specific state exemption applies — often the largest cash cost in a group restructuring.

Penalties and consequences

Law	Default	Penalty / consequence
Benami Act, 1988	Property held benami through relatives	Rigorous imprisonment **1–7 years** and fine up to **25% of fair market value**; confiscation (s.53)
Contract Act, 1872	Undue influence or unlawful object	Contract voidable (s.19A) or void (s.23); restitution

9 Comparative matrix — one transaction, six laws

The table reads across: for each question, what each law asks. Where the answer differs, the stricter law governs the design.

Question	Companies Act	SEBI LODR	Ind AS 24 / AS 18	Income-tax Act, 2025	GST	IBC
Objective	Protect company and minority from conflict	Protect public investors	Transparency to users	Protect tax base	Correct tax on value	Protect creditors
Relationship test	Closed list, s.2(76)	CA + Ind AS + 10% holders	Control / significant influence, substance	20% substantial interest (s.36); 26% / control (s.162)	25% voting, control, family, employment	Wide; 20% voting, control, instructions
Is arm's length the test?	Yes — exempts from Board/GM approval if also ordinary course	Relevant to justification, not an exemption	Disclose only if substantiated	Yes — central test	Open market value, unless full-ITC proviso	Undervalue and preference tests
Monetary threshold	Rule 15 (10% turnover / net worth etc.)	Schedule XII scale, cap Rs 5,000 crore	None — all material RPTs disclosed	None for international TP; Rs 20 crore for SDT	None	None
Who approves	Audit Committee → Board → shareholders	Independent directors on AC → shareholders	Not applicable	Not applicable (APA optional)	Not applicable	Adjudicating Authority on avoidance
Key document	AOC-2, MBP-4, Board/GM minutes	RPT policy, half-yearly disclosure, industry-standard information	Notes to accounts	TP study, accountant's report (s.172), tax audit	Invoice, valuation working, ISD/cross-charge	—
Consequence of failure	Voidable contract; penalty; CARO comment	SEBI action, exchange fines, shareholder litigation	Qualified audit opinion	Disallowance, TP adjustment, penalties	Tax, interest, penalty on short-valued supply	Transaction set aside; personal liability of directors
Look-back / time	Ratification within 3 months	Prior approval; omnibus valid one year / till next AGM	Each reporting period	Assessment and reassessment timelines	Demand limitation periods under s.73/74A	2 years for related parties (s.43, 45)

9.1 Classic conflicts between laws

Scenario	Conflict	Resolution approach
Higher price on import from foreign parent	Customs wants higher value; income-tax TP wants lower	One defensible TP policy; year-end adjustments disclosed to customs
Free corporate guarantee to Indian subsidiary	Ind AS 109 fair-values it; GST deems 1% p.a.; income-tax treats guarantee fee as international transaction where AE is foreign	Charge a documented fee; recipient with full ITC can invoice at a lower value
Interest-free loan to subsidiary	Ind AS 109 notional interest; s.186 requires G-sec-linked interest; income-tax interest disallowance risk	Charge interest at or above s.186 floor; document commercial expediency
Sale of property to director's company below market	s.188 / s.192 approval; old s.50C / s.56(2)(x) deemed value; IBC undervaluation risk	Registered valuer's report; price at or above stamp duty value
Transaction within ordinary course and at arm's length	Exempt under s.188 but still needs AC approval under s.177 and LODR	Never rely on the s.188 exemption alone in a listed group

9.2 Practical lessons from enforcement

- **Personal exposure is the norm.** Companies Act, SEBI and IBC penalties fall on directors, KMPs and the company secretary personally — not only on the company.
- **One lapse, many penalties.** A single unapproved, under-priced RPT can attract s.188(5), s.15HB, s.439 and s.74A simultaneously.
- **Documentation decides outcomes.** Tribunals have reduced or deleted penalties where contemporaneous approvals, valuation and benchmarking were on record.

10 Structuring related party transactions — practitioner's checklist

A well-structured RPT is one that a sceptical Audit Committee member, a TPO, a GST officer and a resolution professional would each accept. Work through the steps in order.

10.1 Before the transaction — identify and classify

- ☐ Map the counterparty against every definition in section 2 (CA, LODR, Ind AS/AS, tax SP, tax AE, GST, Customs, IBC)
- ☐ Aggregate all transactions with that party for the financial year — Companies Act, LODR and SDT thresholds are cumulative
- ☐ Test whether the transaction falls in s.188 categories, or under ss.185, 186 or 192 instead
- ☐ Confirm whether it is a material RPT under Schedule XII (listed) or crosses Rule 15 (all companies)
- ☐ Check sector regulator rules (RBI, IRDAI, SEBI intermediaries) and FEMA where a non-resident is involved

10.2 Pricing and substance

- ☐ Establish arm's length price with a contemporaneous benchmarking study — the same study should support CA, LODR, income-tax and customs positions
- ☐ For goods/services, use comparable uncontrolled prices or TNMM; for loans, use credit-rating-based interest; for guarantees, charge a fee (bank guarantee commission is a reference point, not automatic proof)
- ☐ Obtain registered valuer reports for property, shares and non-cash assets (s.192, s.188, deemed-value provisions, FEMA pricing)
- ☐ Ensure **commercial substance**: real need, capacity of the counterparty to deliver, evidence of services actually rendered (emails, reports, time sheets)
- ☐ Avoid circular or round-tripping structures — they attract GAAR, LODR "purpose and effect" test and IBC fraud provisions

10.3 Documentation and approval

- ☐ Written agreement with scope, pricing mechanism, payment terms, termination and dispute resolution
- ☐ Audit Committee note in line with SEBI Industry Standards (listed) — justification, valuation, alternatives considered, benefit to the company
- ☐ Board resolution at a meeting; interested directors absent; minutes record reasons for arm's length conclusion

- [ ] Shareholder resolution with full explanatory statement where thresholds are crossed; related parties excluded from voting
- [ ] Omnibus approvals: fix maximum value, pricing formula and validity period; track utilisation monthly

10.4 Tax and indirect-tax design

- [ ] Check s.36 (excessive payment) and TP (ss.161–173) exposure; consider safe harbour or APA for recurring large flows
- [ ] Ensure GST invoicing on free supplies between related/distinct persons; confirm recipient's ITC eligibility before relying on the invoice-value proviso
- [ ] Corporate guarantees: invoice at 1% p.a. (or higher actual) unless the recipient has full ITC
- [ ] Deduct TDS correctly on related-party payments; deemed-dividend exposure on loans from closely-held companies
- [ ] Align customs declared value with TP policy for related-party imports

10.5 After the transaction — monitor and report

- [ ] Actual vs approved value tracked; fresh approval before limits are exceeded
- [ ] Ind AS 24 / AS 18 disclosures, AOC-2, MBP-4, LODR half-yearly filings, accountant's report under s.172, tax-audit clauses all reconciled to one master register
- [ ] Annual review of RPT policy and of whether "ordinary course" still holds (frequency, materiality, nature of business)
- [ ] Assess financial stress of counterparties: in a distressed group, intra-group payments within two years may be reversed under IBC

10.6 Red flags that invite scrutiny

- Payments to entities with no employees or assets, or newly incorporated just before the contract
- Royalty or brand fees to promoter entities rising faster than revenue
- Year-end transactions reversed in the next period
- Loans to promoter group without interest, security or repayment schedule
- Service charges described only as "management support" without deliverables
- Different values for the same transaction in books, GST returns, customs declarations and TP report

11 Disclaimer

This note is a general professional analysis of the law as understood on 5 November 2026. It is not a legal opinion; facts of each case, sector regulations and subsequent amendments must be examined before any transaction is executed.

A related party transaction that is properly identified, priced on evidence, approved by the right body and disclosed in full will withstand scrutiny under every law discussed here. Most disputes arise not from the transaction itself but from a missing approval, an unsupported price or an inconsistent value across returns.

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For assistance with RPT policy drafting, Audit Committee notes, transfer pricing documentation, GST valuation or a compliance health-check of your related party transactions, please get in touch with us.