Beyond Approval: RPT Definitions, Compliance Gray Areas and the Independent Director's Diligence Standard

Related party transaction compliance rarely starts with the definitions. Most listed companies go straight to the process approvals, disclosures, filings without pausing over what the words in Regulations 2(1)(zb) and 2(1)(zc) of SEBI LODR actually say. This article works through those words. What does the Ind AS 24 importation genuinely add beyond what the Companies Act already covers? How far does the promoter group definition reach into the promoter's personal portfolio? Why does "'at any point of time" demand more than quarterly monitoring? On the transaction side, it looks at obligations, zero price transfers, and where the corporate action carve-out's proportionality condition can quietly fail. Operational gray areas in day-to-day compliance follow from the mid-contract RPT trigger to the Schedule XII denominator problem after a mid-year acquisition. The article closes with a SEBI adjudication order that says something worth sitting with, accepting a management commissioned expert opinion without asking whether the expert was told everything is not diligence. For independent directors approving RPTs, and for Company Secretaries building the agenda pack that is the takeaway.

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INTRODUCTION

Ask any Company Secretary what RPT compliance involves and the answer comes quickly Audit Committee approval, Board resolution, omnibus for repetitive items, AOC-2 in the Board's report, Regulation 23(9) filing before the deadline. The process is well understood, and overall, reasonably followed. What gets less attention is the text itself, what the definitions in Regulations 2(1)(zb) and 2(1)(zc) of SEBI LODR actually mean when read carefully and where reading them carefully throws up questions that deserve a closer look. This article flags a few of those areas and some provisions raise interpretive questions where a clarificatory nudge from the regulator would go a long way.

WHO IS A "RELATED PARTY"

The definition is reproduced below because the gray areas arise from its precise language and are best understood against the text itself.

Regulation 2(1)(zb) — SEBI 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: Provided that: (a) any person or entity forming a part of the or promoter group of the listed entity or (b) any person or any entity, holding equity shares: (i) of twenty percent or more; or (ii) of ten per cent or more, with effect from April 1, 2023; in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year; shall be deemed to be a related party. Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s)

A. Ind AS 24 as a Definition Source

The phrase *"applicable accounting standards"* in Regulation 2(1)(zb) brings Ind AS 24 - Related Party Disclosures into the definition. Before getting to what that importation adds, it is worth being clear about what the Companies Act 2013 already covers, because this is sometimes missed.

Section 2(76)(viii) already includes associate companies as related parties. Section 2(6) defines an associate through significant influence — either control of at least twenty percent of total voting power, or participation in business decisions under an agreement. That second limb matters: it has no shareholding floor. A company over which another entity participates in business decisions is a related party under the Companies Act regardless of how small the stake is. So the significant influence concept is not something that Ind AS 24 introduces — the Companies Act is already there.

What Ind AS 24 paragraph 9 genuinely adds is a different thing entirely it extends the definition to entities connected to Key management personnel[1]("KMP") in a personal capacity. Section 2(76) builds the related-party universe around directors and managers. Ind AS 24 goes further any entity over which a KMP personally exercises control, joint control or significant influence becomes a related party of the listed company. A CFO who holds a controlling stake in a firm that supplies services to the listed entity, a Company Secretary whose family trust has influence over a counterparty these are connections that Section 2(76) may not catch cleanly. Ind AS 24 does.

This is the distinctive contribution of the Ind AS 24 importation. Where KMP numbers are large, each one carries with them a related-party shadow that most compliance registers have not mapped out.

B. The Promoter Group's reach into the Promoter's Personal Portfolio

The first proviso to Regulation 2(1)(zb) includes entities *"forming part to the promoter or promoter group"* of the listed entity. The promoter group is defined under SEBI's ICDR Regulations specifically Regulation 2(1)(pp) of ICDR 2018 and that definition includes *"...(iv)(a) any body corporate in which twenty percent or more of the equity share capital is held by the promoter or an immediate relative of the promoter..."*

It extends to any company in which the promoter personally holds more than twenty percent including minority personal investments with no management connection to the listed entity, no common directors and no overlap of business activities. If the promoter of a listed technology company holds 24% in a hospitality chain as a personal investment the same would qualify as a related party under LODR Regulation 2(1)(zb) every contract with it, requires Audit Committee approval and features in the Regulation 23(9) filing.

Promoters acquire and divest portfolio positions regularly, each acquisition above twenty percent adds an entity to the related party universe without any alert, any system flag or any process trigger.

C. Ten percent at any time

The first proviso to Regulation 2(1)(zb) uses three words *"at any time"* — that most listed companies need evaluation. The provision says a person holding ten percent or more at any point during the preceding financial year is deemed a related party for the current year. Not at year-end or on a quarterly date. At any point.

Here is where it gets practical. Suppose a promoter announces a buyback. The total outstanding shares fall. An institutional investor who held 9.6% before the buyback now holds 10.2% not because they bought a single additional share, but simply because the denominator shrank. The crossing happens in, say August. By the June-end filing they were at 9.6%. By the September end filing they are back at 9.8% because other investors have sold off. The August crossing never appears in any filed document.

Under the plain text of the regulation, that investor is a related party of the listed entity for the entire following financial year. Now the consequence, that investor votes on a material RPT resolution at the AGM. They should have been excluded. They were not identified as a related party because the crossing was invisible to the company it happened between quarterly filings, in a depository record the company did not access. The resolution may be vulnerable to challenge on a post-hoc SEBI inspection.

The only reliable way to catch this is to access the depository's daily or weekly beneficial ownership data specifically for investors sitting in the 8% to 12% range around the threshold. Quarterly filing snapshots are not enough.

WHAT COUNTS AS A TRANSACTION?

Regulation 2(1)(zc) defines what must happen between the listed entity and those parties to constitute an RPT. The definition is reproduced below in its material parts.

Regulation 2(1)(zc) — Key Provisions

A "related party transaction" means a transaction involving a transfer of resources, services or obligations between 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, regardless of whether a price is charged.

It shall include transactions between a listed entity or any of its subsidiaries with any other person or entity: (i) the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries.

It shall not include: (i) issue of specified securities on a preferential basis, subject to SEBI ICDR compliance; (ii) corporate actions uniformly applicable to all shareholders in proportion to their shareholding dividend, rights issue, bonus issue, subdivision, buyback; (iii) acceptance of fixed deposits by banks/NBFCs at terms uniformly applicable to all shareholders/public.

A. "Obligations" and "Regardless of Whether a Price Is Charged": The Unmapped Categories

Resources and services are familiar enough. *"Obligations"* is the word that tends to slip past unnoticed and it is capable of capturing a substantial class of arrangements.

An obligation is a binding duty or liability. Think about what that means for common arrangements, a corporate guarantee given by the listed entity for a related party's borrowings, a letter of comfort to a lender confirming the listed entity will support a subsidiary's financial position, a non-compete that restricts the listed entity's own activities for the commercial benefit of a promoter connected acquirer, an indemnity extended to a related party for losses from a commercial deal. None of these have an invoice or is flagged in any system. But each one involves the listed entity assuming something a liability, a constraint, a commitment for the direct benefit of a related party. Under Regulation 2(1)(zc), that is an RPT.

The phrase *"regardless of whether a price is charged"* makes it clear that an arrangement does not escape the RPT framework simply because nothing was billed or invoiced. If a resource moves from the listed entity to a related party even informally, even without any written arrangement it remains a transfer, and it remains an RPT.

Consider a common situation: a senior finance manager from the listed entity is deputed to the promoter's new venture for several months to set up its accounting systems. The listed entity continues paying his salary in full. No reimbursement is sought, no agreement exists. The listed entity has transferred a resource the manager's time and expertise to a related party at nil cost. That is an RPT. Also, if a promoter-family trust that lists the company's registered office as its own address, without paying any rent, is occupying a company asset.

B. The Corporate Action Carve-Out and the Proportionality Condition

Regulation 2(1)(zc)(b)(ii) excludes corporate actions *"uniformly applicable/offered to all shareholders in proportion to their shareholding."* But the word *"proportion"* does a lot of work here and several common scenarios quietly break the condition.

Take a rights issue. The exclusion applies when rights are offered proportionately. But if the listed entity's own subsidiary holds shares in the listed entity and does not take up its entitlement and the promoter group subscribes to both its own entitlement and the lapsed portion from the subsidiary the promoter's final allotment is higher than a strictly proportionate participation would have produced. The offer was proportionate. The subscription was not. The surplus allotment to the promoter may fall outside the carve out.

The buyback route raises the same issue. A tender offer buyback where the promoter group tenders a larger proportion of their holding than public shareholders is not a proportionate corporate action in the regulation's terms.

> Most of what this article covers sits in the plain text of the regulation the words "at any point of time," "regardless of whether a price is charged," "obligations," "in proportion to their shareholding."

COMPLIANCE GRAY AREAS: *BEYOND THE AUDIT CHECKLIST*

The definition creates the perimeter. Inside the perimeter, few operational situations produce the wrong outcome even when the approval architecture is otherwise functioning normally. Secretarial audits cover a lot of ground approvals, filings, disclosures and many firms go well beyond the minimum. But there are areas where, with a little more focus, the audit process can go further than it typically does. Few of the most consequential are examined below.

The Mid-Contract RPT Trigger

Section 188(1) of the Companies Act 2013[2] speaks to the point of *"entering into a contract"*. What it does not address is the situation where a contract that was completely clean when signed becomes an RPT mid-term because the counterparty's promoter later gets appointed as a director of the listed company. Under Section 2(76)(v), a company in which a director holds more than two percent is a related party from the date of appointment. The existing contract, untouched and unmodified, is now an RPT. No one entered into anything new.

The statute does not say what to do next. The most sensible reading consistent with the Audit Committee (AC) oversight mandate under Regulation 18(3) is that the transaction should go before the AC at the earliest opportunity after the appointment, the Regulation 23(9)[3] register should be updated from that date, and an omnibus should be obtained for whatever remains of the contract term. Whether a fresh Section 188 Board approval is strictly required for an already existing contract is genuinely uncertain and MCA guidance on this point would be helpful.

Practically, one simple protocol addresses this, when new director joins run their material shareholdings against the vendor and contractor master on the day of appointment. It is not complicated. It just needs to be built into the process.

Regulation 23(2)(b) and the Prior Approval

Regulation 23(2)(b)[4] requires that transactions entered into by unlisted subsidiaries of the listed entity with a party related to the listed entity shall require prior approval of the listed entity's Audit Committee(AC) where listed entity is not a party. *"Prior"* is unambiguous, the AC must approve before the transaction is executed. The regulation contains no ratification mechanism and specifies no consequence for the failure to obtain prior approval.

The structural difficulty is straightforward, a subsidiary has its own board with independent obligations to its shareholders. In a commercial urgency a time-sensitive procurement, a lease that must be signed, a service agreement with a narrow execution window the subsidiary's board will act. By virtue of this regulation, the subsidiary's board is subordinated to the listed entity's AC schedule.

If the subsidiary enters a transaction with a related party before the listed entity's AC approves it, the contract is legally valid at the subsidiary level. But the listed entity has violated Regulation 23(2)(b). SEBI may clarify whether post-execution ratification by the listed entity's AC satisfies the "prior approval" requirement.

ESOP Trusts and the Control Hidden in the Trust Deed

Many listed companies implement ESOP schemes through an Employee Benefit Trust the company establishes a trust, which acquires shares from the market and holds them for employee distribution. The company lends money to the trust for share acquisition. There is a possibility of this typically never appears in the RPT tracker. The reason may be an assumption that the ESOP Trust is an employee welfare vehicle, not a related party.

Ind AS 24 paragraph 9 defines a related party to include any entity over which the reporting entity or any of its KMP has control including through contractual rights rather than ownership. A trust deed that gives for instance KMP or the promoter the power to appoint or remove trustees, direct investment decisions, or govern distributions gives that person control over the trust under Ind AS 24 sense. Hence the trust can be concluded as a related party. In practice, a loan from the listed entity to the trust is an RPT requiring Section 188 Board approval, Section 185 analysis (loan to an entity in which the Director is interested), Audit Committee review under LODR and Ind AS 24 Note disclosure. The trust's employee-welfare purpose does not override the control-based related-party characterisation.

The Schedule XII Denominator after a mid-year acquisition

Schedule XII[5] fixes the materiality threshold using the previous year's audited consolidated turnover. That number is set at the beginning of the year and does not move regardless of what happens to the business in the months that follow.

Take a listed company with Rs. 800 crore in last year's consolidated turnover. Its Schedule XII threshold for the current year is Rs. 80 crore. In July, it completes a significant acquisition. The group's actual scale is now Rs. 2,500 crore. The threshold, however, is still Rs. 80 crore the denominator is last year's figure and it does not adjust.

The listed entity continues transacting with its existing promoter-group supplier throughout the year. By October, those transactions have reached Rs. 78 crore apparently just within the threshold. Management looking at a group that now generates Rs. 2,500 crore, treats Rs. 78 crore as clearly immaterial. No shareholder approval is planned. By year-end, a further Rs. 8 crore has been booked. Annual aggregate Rs. 86 crore. The threshold still Rs. 80 crore is breached. Shareholder approval was never sought.

After any significant acquisition, re-run the threshold arithmetic on the old denominator before approving further transactions with each related party. It is a small step that avoids a large problem.

INDEPENDENT DIRECTOR'S DILIGENCE STANDARD

Pursuant to Section 149(12) of the Act, an independent director is held liable only in respect of acts of the company which occurred with their knowledge attributable through Board processes and with their consent or connivance or where they had not acted diligently. When an independent director votes at an Audit Committee meeting to approve a related party transaction, they are present and participating. The question of whether they *"knew"* does not arise. The only question arises is whether they have acted diligently.

What diligence actually requires in the context of RPT oversight is something Regulation 18(3) of SEBI LODR spells out read with Schedule II Part C to the LODR which states that the AC's role includes oversight of the listed entity's financial reporting process to ensure that the financial statement is *"correct, sufficient and credible"*. These are specified obligations and the enforcement record shows that independent directors are held to them even when the information management gave them was selective or incomplete.

SEBI Adjudication Order No. Order/AA/RK/2022-23/20965-20973 | In the matter of Bombay Dyeing and Manufacturing Company Limited | Dated: October 31, 2022

Background

Bombay Dyeing and Manufacturing Company Limited (BDMCL)(Listed), a Wadia Group company was engaged in real estate, polyester, and textiles. Scal Services Limited was an unlisted company whose entire shareholding was held directly and through a web of Wadia group entities by BDMCL. Between FY 2011-12 and FY 2017-18, BDMCL entered eleven MoUs with Scal for sale of flats in two Mumbai real estate projects. On the strength of these MoUs, BDMCL recognised revenue of Rs. 2,492.94 crore and profits of Rs. 1,302.20 crore transactions the Adjudicating Officer found to be non-genuine. The five Noticees Mr. R.A. Shah, Mr. S.S. Kelkar, Mr. S. Ragothaman, Mr. S.M. Palia, and Mr. Ishaat Hussain were independent directors and Audit Committee members of BDMCL throughout the investigation period. Mr. N.D. Gupta was a Chartered Accountant whose opinion on whether Scal qualified as a related party under AS-18[6] was obtained by BDMCL and relied upon by the Noticees.

Para 73 — The Audit Committee's Powers

'I note that the Audit Committee, under the erstwhile Clause 49 of the Listing Agreement and LODR Regulations, 2015 has been equipped with the powers to seek information from any employee, obtain outside legal or other professional advice, secure attendance of outsiders with relevant expertise, if it considers necessary.'

Para 74 — Failure to Question the Trigger Event

'I note that Noticees did not seek any explanation and did not provide any specific reason with respect to reduction in shareholding in Scal by BDMCL especially one day prior to entering into the MoUs with Scal which was the trigger point for the scheme being orchestrated by BDMCL to inflate its sales and revenue.'

Para 75-76 — Failure to Apply Independent Mind to Expert Opinion

"'However, as noted above, BDMCL had not disclosed all the relevant information to the Chartered Accountant firm to give a true and correct view of whether Scal was an associate. The Noticees being Independent Directors and members of the Audit Committee of BDMCL should have realized the same and not relied on the Opinion of the Chartered Accountant firm without applying their mind."

"The Noticees being Independent Directors and members of the Audit Committee of BDMCL, right from the beginning of the Investigation Period, should have realized the same and not relied on the Opinion of Mr. N. D. Gupta without applying their mind."

Para 85 — Finding on Failure of Oversight

"I note that the Noticees had an important role to play as members of the Audit Committee and as a sub-group of the Board of Directors. The Noticees were required to monitor the disclosures and accuracy of the same as a monitor of the process. As a result of the Noticees' failure to discharge their function as members of the audit committee, BDMCL was able to inflate its sales and profits with respect to its real estate segment to the tune of Rs. 2,492.94 crores and Rs. 1,302.20 crores respectively. In view of the above, I find that the Noticees have failed in its duty to exercise oversight of BDMCL's financial reporting process and disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible."

Three things stand out from this order for anyone who sits on an Audit Committee.

First: The AC had powers it did not use. Paragraph 73 records that the Audit Committee was equipped with the power to seek information from any employee, obtain independent professional advice and bring in outside expertise. The AO's point is not that these powers exist, it is that having them and not using them was itself part of the diligence lapse.

Second: The Noticees did not ask the obvious question. Paragraph 74 notes that BDMCL reduced its shareholding in Scal the day before entering into the very MoUs through which sales and profits were inflated. The Noticees did not seek any explanation for this. That timing was the trigger point, as the AO put it, for the entire scheme. An Audit Committee member reviewing the accounts should have noticed and asked.

Third: And most directly relevant to the RPT classification question — the Noticees relied on Mr. N.D. Gupta's opinion that Scal was not an associate or related party under AS-18. The AO rejected this at paragraphs 75 and 76. BDMCL had not disclosed all the relevant information to the Chartered Accountant firm to give a true and correct view of whether Scal was an associate. On that basis, the AO found that the Noticees should have realized the same and not relied on the opinion of Mr. N.D. Gupta without applying their mind.

There is one more aspect worth noting. For FY 2012-13 and FY 2013-14, BDMCL had itself shown Scal as an associate company in its related-party disclosures. From FY 2014-15, that description changed to "group company", a phrase the Noticees, in their own defence submissions, said was used *"for lack of a better phrase"(Para 47).* The AO found that BDMCL ought to have shown Scal as a related party from FY 2014-15 onwards, which it failed to do*(Para 55).* The Noticees, as Audit Committee members, reviewed the annual accounts throughout this entire period (*Para 72*). The AO's conclusion *(Para 85)* was that they had failed in their duty to exercise oversight of BDMCL's financial reporting process and disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

From the Company Secretary perspective,

The implications of this order operate at two levels.

First Level: The first is what goes before the Audit Committee. Under the Revised RPT Industry Standards[7] the CEO and CFO are required to certify that the terms of the proposed RPT are in the interest of the listed entity but that certification is the starting point for the AC's inquiry, not its conclusion.

When a management note lands before the Audit Committee saying a counterparty is unrelated or a price is arm's length, that note is a conclusion. It is not the facts behind it. The Company Secretary who puts that note on the agenda and stops there has, in effect, handed the independent directors a verdict without the evidence backing it. The Bombay Dyeing order says something simple about this that the Noticees took an expert opinion at face value without asking whether the expert had been told everything.

Before the AC meets, the agenda pack should carry the underlying information the basis on which the pricing was arrived at, the facts about the counterparty's relationship with the company, the material the management or expert actually worked from. The AC members can then form their own view. Without that, what they are doing is approving a conclusion someone else reached, not exercising oversight of the transaction itself.

Second Level: This level is what the minutes record. Minutes that record only *"the committee reviewed and approved"* provide no evidence that the AC applied independent judgment. Minutes that record the specific questions raised, the information sought from management, and the committee's own analysis of whether the characterisation is supported by the facts before it these are the minutes that demonstrate the diligence standard was met. The Company Secretary who drafts them determines whether the record reflects oversight or ratification.

CONCLUSION

Most of what this article covers sits in the plain text of the regulation the words "at any point of time," "regardless of whether a price is charged," "obligations," "in proportion to their shareholding." The next time the related-party register is being updated or an agenda pack is going to the Audit Committee, it is worth going back to the actual provision and asking whether the process reflects what the words say.

REFERENCES:

i. *Key management personnel (KMP) is defined under Section 2(51) of the Companies Act 2013 to include the Chief Executive Officer, Managing Director, Whole-time Director, Chief Financial Officer, Company Secretary and such other officer…. as the Board may decide.*

ii. *Section 188(1), Companies Act 2013, read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules 2014.*

iii. *Regulation 23(9) SEBI LODR requires a listed entity to submit to the stock exchanges disclosures of related party transactions on half yearly basis*

iv. *Regulation 23(2), Substituted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2025 w.e.f. 19.12.2025*

v. *Inserted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2025 w.e.f. 19.12.2025. (Materiality slabs: up to Rs. 20,000 crore consolidated turnover — threshold is 10% of turnover; Rs. 20,000 to 40,000 crore — Rs. 2,000 crore plus 5% of excess; above Rs. 40,000 crore — Rs. 3,000 crore plus 2.5% of excess, capped at Rs. 5,000 crore, whichever is lower)*

vi. *AS-18 — Accounting Standard 18, Related Party Disclosures, issued by the Institute of Chartered Accountants of India under the erstwhile Indian GAAP framework*

vii. *Revised Industry Standards on Minimum Information to be Provided to the Audit Committee and Shareholders for Approval of Related Party Transactions, Industry Standards Forum, June 26, 2025; SEBI Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/135, October 13, 2025*