



REVISITING RELATED PARTY TRANSACTIONS IN INDIA: ALIGNING GOVERNANCE PRINCIPLES WITH GLOBAL BEST PRACTICES

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Abstract

Regulating corporate affairs is crucial for an emerging global economy like India. The Related Party Transaction (RPT) is a key aspect of corporate governance. Despite the Comprehensive regulations, various problems and lacunae persist in the laws related to RPTs in India, which has also been recognized in the SEBI Working Committee Report, which has recommended various suggestions for enhanced transparency. The objective of the study is to examine the Regulatory framework related to RPT in India. Furthermore, the study incorporates global experiences regarding RPT and learning best practices to regulate it in India. The study is strictly doctrinal in nature and based on the analysis of secondary data. The study found corporate governance principles as a panacea to all the problems related to RPT in India, and compliance coupled with strong legislation can be a basis to ensure fully functional Regulatory laws. This paper, after comparatively analyzing several Countries, found that Hong Kong and Singapore, despite not having Strong laws, have performed better in terms of Reporting and Compliance, the secret being the incorporation of corporate governance in the legislation.

Keywords: *Related Party Transaction, Regulatory Framework, Solution, Global Experience, India.*

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I Introduction

THE Indian economy was liberalised in 1991, and hence it started facing the complexities of the Global trade and corporate system. India, being a member of the Commonwealth countries, is forced to recognise and adopt the practices which are common in the US and UK so as to make itself competitive, lucrative, and welcoming for foreign Investors. India, being still a developing economy, needs that money to fuel its economic growth¹. That's why it also came to realise the importance of a stringent and robust corporate governance framework, and one such issue was Related Party Transactions (RPTs). The RPT is such a kind of arrangement between the contracting party where the persons engaging in the contract on behalf of the company have some kind of prior connection or have a mutual interest. This form of contract is often used for wealth tunnelling by the officials of the company, and this is the reason everyone is very cryptic about such arrangements. The Corporate governance mechanism is considered to be essential for the regulation of RPT, though it is not always mandatorily enforced. Nevertheless, some companies themselves try to adopt good practices so as to achieve the highest level of transparency and fairness. One such example is Companies establishing robust channels for verification of each transaction by segregating the parties involved in the transaction and persons verifying and approving the transaction for fairness in the corporate regime². The role of corporate governance is important for the

¹ Dan W. Puchniak & Umakanth Varottil, Related Party Transactions in Commonwealth Asia: Complicating the Comparative Paradigm, 17 *Berkeley Business Law Journal* 1 (2020).

² Asia roundtable on corporate governance : fighting abusive related party transactions in Asia - workshop on implementation, World Bank, (2010), available at: <https://documents1.worldbank.org/curated/en/78875148343>

regulation of RPT, the proactive disclosures, the Audit Committee, active shareholder participation, and Vigil independent director in the company, is an important aspect of good corporate governance, which can reduce the occurrence of RPT itself or negate the possibility of oppressive RPTs³. Although it cannot be said with utmost certainty that corporate governance is the panacea for all the problems pertaining to RPT⁴. Some legislative measures should also be taken with the view of protecting the right of the minority shareholder, such as mandatory shareholder resolution for validating RPT if its worth is more than Rs. 1000 crore or ten percent of annual revenue⁵. However, it is pertinent to note that not all RPT can be said to be oppressive and prejudicial to the interest of the company, shareholders at all times; sometimes it is a beneficial arrangement as it gets the work done at less cost or could get the companies into a beneficial position. However, it is also an ardent truth that every RPT is not a beneficial agreement. It becomes the means for the majority shareholders to take out the benefit of their connection in business transactions for their personal greed. Hence, it is important to strike the right balance in the legislation, offering a greater degree of freedom to do business and enter into arrangements without diluting the mechanism to curb wealth tunnelling through oppressive RPTs⁶. This

7131291/pdf/111533-WP-Asia-roundtable-on-corporate-governance-46435512.pdf (last visited on September 5, 2025).

³ Moataz El-Helaly, Related-party transactions: a review of the regulation, governance and auditing literature, 33 *Managerial Auditing Journal* 779 (2018).

⁴ Rajarshi Tripathi, Pragya Shukla and Nancy Patel, "Analysis of the corporate governance framework In India and the implementation of the Companies Act, 2013" 5 *Indian Journal of Law and Legal Research* 1 (2023).

⁵ Regulation 23(1) of SEBI (Listing Obligations & Disclosure Requirements) Regulation, 2015.

⁶ Luca Enriques & Tobias Tröger, The Law and (Some) Finance of Related Party Transactions: An Introduction, ECGI Working Paper Series in Law, 9, Law Working Paper Number 411/2018, University of Oxford and ECGI (2018), available at: http://ssrn.com/abstract_id=3214101 (last visited on September 10, 2025).

paper also examines the regulatory framework related to RPT and suggests requisite suggestions as per the available remedies for a quick fix. The legislators should also try to learn from global practices and incorporate such principles for better regulation of RPT.

II Regulatory Framework Governing RPTs in India

RPT was also recognized in the Companies Act, 1956, but such regulations and corporate governance principles were measly helpful in oversight and safeguarding the shareholders' rights. It is pertinent to note that corporate fraud through RPT was not uncommon and quite rampant in the corporate world around the globe. The many debacles in Corporate History, and especially the big corporate tyranny in Enron, did alert everyone but Indian legislators and it was not before 2015 when SEBI LODR Regulation came into the picture. This Regulation, put forward countermeasures which may look stringent as per global standards, but those were not sufficient to mitigate all the loopholes. The Regulators, after 2013, became more active and put forward some multi-layered, sophisticated disclosure requirements that need to be followed while dealing with related parties. The Statute of Companies Act 2013 defined "Related Party" and "Arm's length"⁷ transactions in order to curb RPTs.

2.1 The Companies Act, 2013

The Companies Act, 2013, defines "who will be considered a Related party" in Section 2(76)⁸ which says a related party in reference to the

⁷ The Companies Act, 2013 (Act 18 of 2013), s. 188(1).

⁸ *Id.*, s. 2(76).

company is someone who has some degree of relation with the members of the transacting company

- Director, key managerial person of the Company, or their relatives, or partner.
- A firm in which there is some interest of the director, managerial person, or their relative.
- A private Company, wherein a director, manager, or his relative has some sort of direct nexus either as a member or director.
- A public company where the director or managers, or their relatives, along with them, hold more than 2 percent of its paid-up Share Capital.
- Any corporate body having its BOD or managers or managing director is accustomed to act upon the advice of the manager or director, or managing director.
- Any corporation which is a subsidiary or holding company of the transacting company.

Another keyword which has been defined in the Act is 'Who are relatives' under section 2(77)⁹ which enlists Members of the Hindu Undivided family, their spouses, and persons who are closely blood related to one another as is prescribed in Companies (Specifications of definitions details) Rules, 2014¹⁰. The Act also brings forth a concept of "Interested Director" which basically means that in any way, either himself or through his acquaintance, the director is interested in any contract or arrangement of the company, whether it is entered into by or on behalf of

⁹ *Supra* note 7, s. 2(77)

¹⁰ Companies (Specifications of definitions details) Rules, 2014, rule 4.

the company. The concept is based on the Resource Dependence theory and Corporate Governance principle, which focuses on resource maximisation without exploiting any relation¹¹.

The Companies Act, 2013, regulates the RPT under section 188¹² which provides that any RPT whose value is in the prescribed limits of Rule 15 of the Companies (Meeting of Board and its Powers Rules, 2014)¹³ and which is not at arm's length shall be subjected to the consent of the Board of Directors in the form of a Resolution in a duly convened meeting, but the director concerned shall not be present in the meeting. This section also prescribes the form of contract which needs the board's consent, such as sale, purchase, lease, or supply of goods, property, or rendering services, or appointing of agents for such purposes; and even appointment of a related party as any officeholder in the company or for any underwriting purposes shall be subject to the board's approval¹⁴.

If the value of the RPT is of more than the prescribed thresholds, then in Board's report BOD should justifying their actions and transactions for shareholder's approval in EGM and if they ratify such proposals then, the consent form of the BOD and Shareholders shall be filed to the registrar of the company within 30 days in the E-Form MGT-14 and in it is not ratified within 3 months, such contract will be void. It also enforces liability on the directors authorising the contract for the loss caused to the company, and the company may also file suit and proceed against

¹¹ Enakshi Jha & Shantanu Dey, Related Party Transactions under the Companies Act 2013: Taking a Step Forward in an Adapting Regulatory Environment, 1 *Journal on Governance* 1026 (2014).

¹² *Supra* note 7, s. 188.

¹³ Companies (Meeting of Board and its Powers Rules, 2014, rule 15.

¹⁴ *Id.*

such director for the loss caused to the company¹⁵. If any transaction of such nature has been ratified by the director or employee where parties are related and such information has not been revealed to the board and shareholders then in such case, a penalty up to 5 lakh rupees shall be imposed on that director or employee in case of private company and if such company is listed company, then prescribed fine can be up to twenty-five lakh rupees¹⁶.

Section 188 does not apply in circumstances where the contract or arrangement is an “arm’s length transaction”¹⁷ and in the “ordinary course of business”¹⁸. It also does not apply when such an arrangement is between wholly owned subsidiaries and their parent company, which files its consolidated accounts. Moreover, any transaction that may arise due to arrangement, compromise, or amalgamation between the companies does not require compliance with the provision, which was issued by the Ministry of Corporate Affairs as a clarification¹⁹.

Section 177²⁰ The Companies Act, 2013, also provides a check system on RPT because every transaction of the company is audited and reviewed by the Audit committee, which is full of independent directors, and they are the first gatekeepers of the Company’s sound finances.

¹⁵ Deepanshu Verma, Related Party Transactions: The Regulatory Framework and Changing Landscape in View of Promoter Driven Companies in India, 3 *Indian Journal of Legal Research* 1 (2021).

¹⁶ Subs. by Act 29 of 2020, s. 39, for certain words (w.e.f. 21-12-2020), The Companies (Amendment) Act, 2020.

¹⁷ *Supra* note 7.

¹⁸ *Id.*, Proviso.

¹⁹ Clarifications on matters relating to Related Party Transactions, MCA General Circular No. 30/2014 [F.NO.1/32/2013-CL-V(PT.)], 17/07/2014.

²⁰ *Supra* note 7, s.177(4)(iv).

2.2 SEBI Listing Obligations and Disclosure Requirements (LODR) Regulation, 2015

Regulation 2(zb) of SEBI LODR regulation²¹ deems that any person or relating to promoter or its listed entity holding 20 percent or more of shareholding of the listed company shall be called as related party, although the working committee is recommending to widen the definition by deeming that any person or entity either directly or indirectly (even their relatives) who holds 20 percent in the listed entity shall come under the definition of related party and so as for promoters, the working committee is recommending to make the provisions even more stringent by declaring that any person or entity from promoter or its group holding any amount of shares in the listed company shall be considered related party²².

Regulation 23 of SEBI LODR Regulation, 2015 mandates every listed company to devise a plan and policy on dealing with RPT with a clear threshold limit, which shall be approved by the BOD and reviewed every 3 years. It also provides that every transaction is material if it is more than ten percent of the consolidated annual turnover of the listed company or 1000 crore, whichever is lower, as per the latest audited financial statement. Any transactions or payments which is related to royalty or fees for using the brand name or trademark exceeding five percent of the consolidated annual turnover shall also be material. All the transactions which have been defined as “material” in Regulation 23 shall be put for approval before the Shareholders through ordinary

²¹ SEBI LODR Regulation, 2015, regulation 2(zb)

²² Review of regulatory provisions on Related Party Transactions, SEBI working committee report (27/01/2020), *available at*: https://www.sebi.gov.in/reports-and-statistics/reports/jan-2020/report-of-the-working-group-on-related-party-transactions_45805.html (last visited on July 11, 2025).

resolution, but it is pertinent to note that all such members who are parties to such transactions are disenfranchised both at AGM & EGM.

2.3 Indian Accounting Standards

2.3.1 Accounting Standard (AS) 18:

This standard applies to establish disclosure requirements for RPT & transactions between related parties and reporting enterprises. AS 18 defines RPT in terms of “control”²³ and “significant influence”²⁴. It lays down a framework for the determination of disclosure and the establishment of control or influence over the transacting parties²⁵. It also includes RPT in terms of the transfer of resources or obligation between related parties, whether a charge is paid or not for such transfer. It also asks the reporting enterprise to disclose the particulars of the transaction, namely name of the parties, the relation between parties, the nature of the transaction, volume of the transaction and payment, the amounts written as debt, or any necessary information²⁶.

2.3.2 Indian Accounting Standard (Ind AS) 24:

This Accounting standard aims to contain the disclosures which provide details of financial position that has been affected by the RPT, outstanding balances or commitments between the parties, it mandates the subsidiaries to disclose their parent company (ultimate controlling

²³ Accounting Standard – 18, Para 10.3.

²⁴ *Id.*, Para 10.4.

²⁵ *Id.*, Para 21.

²⁶ *Id.*, Para 24.

body)²⁷, its key personnel compensation²⁸, nature of RPT, as well as outstanding balances or commitments.

III Challenges Relating to Oppressive RPTs In India

- **Lack of transparency and overburdened Regulatory Authority:** Every RPT shall be ratified by the board of the company, which shall also reflect in the board report, although its efficacy is questionable, as there is a lack of resources for the regulatory body to cross-check every other transaction and disclosure report filed by the companies.
- **Misuse of 'Arm's length' exemption in a transaction:** The arm's length basis transaction is considered to be such transaction where there is no substantial control or influence over the one transacting company on other to get wrongful gain but it has been left to Board of the companies to decide any transaction to be on arm's length basis, under section 188 of the Companies Act. Such discretion gives the board to rethink the benefit of the particular transaction for the company, but at the same time, it is not possible to dig into every connection of the members, and hence it paves a way for favourable contracts between the parties that serve their interest but against the interest of the company.
- **Disguised RPT in Corporate restructuring:** In the corporate world, companies often resort to corporate restructuring to achieve synergy, but under the guise of such restructuring, RPT often is

²⁷ Indian Accounting Standard (Ind AS) 24 Related Party Disclosures, Para 13.

²⁸ *Id.*, Para 17.

swept under the carpet because at that time, both companies and regulators have more attention towards the success of such restructuring, and hence it leads to various fraudulent RPTs going unnoticed.

- **Threshold being too high under SEBI LODR Regulations, 2015:**

The threshold related to RPT in the existing regulation is ten percent of the Consolidated annual turnover of the company or Rs. 1000 crore whichever is lower is held to be material and shall be ratified by shareholders but this threshold is too ginormous and if a big corporate house who has such gigantic annual turnovers are engaged in a transaction with a small company (unlisted companies because there is no such prescribed limit), they may engulf a whole company of good size due to this too high prescribed limit.. Moreover, a financial year in India starts from April, but if the number of transactions amounts to 20 percent of the turnover or 2000 crore can be exhibited during the period of February to April presents a bypass to the regulation, and this anomalous lacuna needs to be cured²⁹.

- **Domination of big four Auditing Companies:** The Role of auditors in curbing RPT cannot be ignored, The Audit committee and the Statutory auditors are often found engaged in the some corporate fraud and the big names in this domain is the big 4 auditing companies which are dominating the auditing market, it is not like

²⁹ Kirthana Singh Khurana, *Related Party Transactions in India - the Need for a Regulatory Revamp*, 59. 64 in *Changing Paradigm of Corporate and Commercial Laws* (Prof. (Dr.) Yogendra Kumar Srivastava & Dr. Ankit Singh, Taxmann Publications, 1st ed., 2021), available at: <https://ssrn.com/abstract=4448064> or <http://dx.doi.org/10.2139/ssrn.4448064> (last visited on September 19,2025).

only those four are in the auditing business but they are holding a big chunk of market share and indomitable in India and around the world, they hold a whopping 75 percent market share in all the listed companies in India³⁰. India has 12 firms listed in PCAOB, but they lack the big pool of resources and the networking that those big auditing giants have³¹. These situations have led to a bigger problem where auditors are somehow also involved in corporate fraud, like in the case of corporate governance failure in Satyam Computers. PwC was the auditing company for Satyam Computers for ten long years and still could not find anything suspicious, but another company reported it in mere months. It is impossible to ignore all such coincidences.

- **Disenfranchisement of voting rights of the “Related Party”:** The SEBI LODR Regulation 2015 prohibits the interested party in the transaction from exercising their votes in the shareholder’s meeting to ratify any resolution that may be in their benefit, but if we see this from a different viewpoint, the regulation imposes a duty upon the shareholders to ratify such fraudulent transaction. This disenfranchisement in some sort creates a legal dilemma and will oust the voting rights of financial investors and even government entities³², (In case of Joint Venture, there are only two major

³⁰ K.R. Srivats, *Companies accounting for 75% m-cap are audited by Big 4*, The Hindu Businessline, (19/09/2021), available at: <https://www.thehindubusinessline.com/economy/big-four-audit-firms-dominate-indias-landscape/article36551445.ece> (last visited on September 19, 2025).

³¹ Manu Kaushik, *Big-Four’s dominance has regulator worried*, The Financial Express, (07/03/2024), available at: <https://www.financialexpress.com/business/industry-big-fours-dominance-has-regulator-worried-3416175/> (last visited on September 19, 2025).

³² Bharat Vasani & Varun Kannan, RPT Regulations – Some Suggestions for SEBI’s consideration, Cyril Amarchand Mangaldas, available at:

shareholders, and if they are both related parties, then in such a case, both will not be able to vote), and The very provision to ratify such an RPT with shareholders will lose any meaning. Moreover, only related parties are barred from voting, but their relatives who are also shareholders can exercise their rights until it was cured in 2015, but this problem persists in the Unlisted Company, where the SEBI LODR Regulation, 2015 does not apply.

- **Detailed and Complicated reporting & Monitoring:** Companies often lack clarity in reporting. While RPTs are required in annual reports, they are commonly overlooked amid excessive information in the Annual Report. Oversight rests with auditor committees that typically follow promoters' directives, as independent directors often lack authority and remain influenced by controlling shareholders.
- **Inapplicability of SEBI LODR Regulation on Unlisted Companies:** In India, some corporations are big enough to be regulated even though they are not listed, as they indulge themselves in public money through loans from public financial institutions and also, they a huge amount of population and hence to secure jobs, it is in the public policy to regulate RPT in those unlisted companies as well on par with listed company. Sometimes, these unlisted companies are hoax companies and are primarily formed to misappropriate Corporate funds.

IV Global Experiences to Curb Oppressive RPTs

India, being a developing economy, is decently regulated, and it can be understood from the global ranking of India in the RPT Index, which was 20th in 2018³³ but despite the very stringent regulations, the Indian laws are not performing as its East Asian counterparts. It is still required to embody different approaches for solving the legal problems and better regulation of RPTs, and hence it is necessary to study the good in major economies and their legal system to learn new principles which are helpful in solving our problems.³⁴

The European Commission put a proposal to add Article 9C in the Shareholders' Rights Directive, which would deploy three main types to stop abusive RPT, which are disclosure, an Independent opinion of a third party, and Majority of Minority (MOM)³⁵ approval.³⁶ The Proposal only left the RPT transaction, which is below 1% of the asset, to be unregulated unless the contract is being done with the same parties and the value of the transactions reaches 5% within 12 months, but such transactions need to be disclosed to the public. Moreover, the Independent party will diagnose all the aspects of the transaction, such as the reasonability of the transaction, effect on the minority

³³ *Supra* 3.

³⁴ European Parliament and Council, *Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies*, Article 9C, 24.

³⁵ The MOM approval is basically taking the approval of minority shareholders in the general meeting in which majority of the minority shareholder approve such transactions.

³⁶ Luca Enriques, *Related Party Transactions: Policy Options and Real-World Challenges (With a Critique of the European Commission Proposal)*, ECGI Working Paper Series in Law, 28, Law Working Paper Number 267/2014, University of Oxford and ECGI (2014), available at: <https://ssrn.com/abstract=2505188> or <http://dx.doi.org/10.2139/ssrn.2505188> (last visited on September 13, 2025).

shareholders, etc., and furthermore, if the RPT crosses the 5% mark, then it shall be presented to the shareholders for approval, and voting shall be done before the conclusion of the Transaction.

Apart from that, Article 14B provides for penalties which shall be as per the will and decision of the member states³⁷. A complete ban on the RPT is also one of the methods to stop self-dealing but such draconian measures will have an effect on the company and ultimately losing its profits as most company directors in this world are connected to one way or another which may resulting in disruption in getting raw materials, losing consumers (Some companies sell their products or services directly to the Companies), losing investors and credit crunch etc.

The Indonesian corporate regime mostly relies on Corporate Governance rather than stringent legal procedures to curb tunnelling³⁸. It also made it compulsory for state-owned companies to make a self-assessment for their corporate governance. Following this, they have prescribed five principles of corporate governance (i.e., Transparency, Accountability, Fairness, Openness & Independence) to score themselves, and the lower scores indicate that companies acknowledge that they have not complied with the corporate governance and will pursue their steps in that direction³⁹. The lower the score of corporate governance, the bigger the scope of implementation of corporate governance principles, as they

³⁷ *Supra* 34.

³⁸ *Supra* 3.

³⁹ W Hapsari, W. Yadiati, H. Suharman & D. Rosdini, Do the Implementation of Self-Assessment Corporate Governance Increase Firm Performance?, 21 *Academy of Strategic Management Journal* 1 (2022),

believe that weak corporate governance furnishes higher chances of RPT⁴⁰.

In the US, they focus on merging the subsidiaries of the company in order to do better policing of RPT, and for that purpose, they offer great tax incentives. The taxation System of the US is so designed to discourage tunnelling through the creation of unnecessary subsidiaries. The company's profits are taxed multiple times, and this acts as an incentive for the company to go for a merger. The creation of such subsidiaries impacts synergy and puts an unnecessary burden of unwanted tax and corporate hassle.⁴¹ The second thing which the US has put into the trust is to make regulations stringent which makes Takeovers very difficult, such as Mandatory Bid Rule⁴² or Appraisal Rights⁴³ and the objective here is to prevent minority shareholders from falling into the feets of exploitative controllers, which further escalates the chances of RPT. Moreover, it has also incorporated generous Discovery rules and Specialized Courts for finding oppressive RPTs. The Judicial fairness review is also one of the safeguards for RPT, and some doctrines are used to determine the liability of the accused, such as the business judgment rule, duty of care, etc. Moreover, the companies have a corporate governance committee to supervise and monitor corporate governance principles.

⁴⁰ A.R Harahap, E.P Kurniawati & A.M Naufa, The Corporate Governance Implementation and Related Party Transactions in Indonesia, 3 *jurnal perspektif akuntansi* 1, 7 (2020).

⁴¹ Jens Dammann, Related Party Transactions and Intragroup Transactions, University of Texas Law, Law and Econ Research Paper No. e583, (2018), available at: <https://ssrn.com/abstract=3231895> or <http://dx.doi.org/10.2139/ssrn.3231895> (last visited on September 24, 2015).

⁴² This rule puts a mandate on the person acquiring the controlling stake to offer to buy every share at an equitable price, however in the US, the acquiring person can put restrictions on the amount of the share he is going to buy.

⁴³ Appraisal rights allow the minority shareholder to get the equitable value of their shares through Judicial concourse.

The Hong Kong Regulators adopted an interesting policy to curb RPT, which is to appoint one-third of the board to be independent directors⁴⁴ and the interesting part is that it is not mandatory, but based on “Comply or Explain”⁴⁵ In principle, the intention behind increasing the number of independent directors on the board is to increase their representation in various committees of the board, although the rule is not mandatory, but it has a high compliance rate.⁴⁶ Moreover, it is also mandatory to disclose the detailed information of a contract or arrangement, such as the identity of the parties and the date of the transaction, terms, and consideration for the transaction, which shall be publicly announced and shall also be included in the annual return. It is also mandated that the independent director should form a committee to provide an honest and fair review of the RPT and its consequences on the finances of the company, which shall be done with the help of prudence of the outside financial advisor⁴⁷.

The Singaporean Corporate governance model is also similar to Hong Kong as both of them are highly influenced by British common law but Singapore even went a step ahead and mandated that if the Chairman or

⁴⁴ Code on Corporate Governance Practices, Appendix 14 to the Main Board Listing Rules, 2004 (Hong Kong), *available at*: [https://www.hkex.com.hk/-/media/hkex-market/listing/rules-and-guidance/listing-rules-contingency/amendments-to-main-board-listing-rules/2004/update-no-82/amendment-to-main-board-listing-rules/main-board_app14\(code\)](https://www.hkex.com.hk/-/media/hkex-market/listing/rules-and-guidance/listing-rules-contingency/amendments-to-main-board-listing-rules/2004/update-no-82/amendment-to-main-board-listing-rules/main-board_app14(code)) (last visited on September 24, 2025).

⁴⁵ Comply or explain principle means that the companies are given a freedom to comply with rules by incorporating principles of corporate governance within their company and they are not mandatory but if they are not complying, they have to explain why they haven't. Apart from this, big corporate houses are also required to file the reports every year on how they applied those principles. This Approach allows small companies to refrain from adopting burdensome measures and it is also easy for the regulator to report every company.

⁴⁶ C. Chen, W.W Yee & Z. Wei, Board Independence as Panacea to Tunnelling? An Empirical Study of Related Party Transactions in Hong Kong and Singapore, 15 *Journal of Empirical Legal Studies* 987, 995 (2018).

⁴⁷ *Supra* 2, See also, Ami Galani & Nathan Rehn, Related Party Transactions: Empowering Boards and Minority Shareholders to Prevent Abuses, 22 *National Law School of India Review* 29 (2010).

CEO is the same person or his family members, or Chairman is not an independent director then in such a case, half of the board should consist of the independent director. Apart from that, one interesting thing to note is that the term for RPT in Singapore is “Interested person transaction,” which has a wider scope than RPT defined in India, and helps in regulation more elaborately⁴⁸. For Example, The Code on Corporate Governance 2012 even makes it more stringent; it started deeming the director as not an independent director if he has worked in the company for 9 years or has any relationship with such director who has 10 percent shareholding in the company. It means even the independent director may be an interested person in the RPT.

V Suggestions to Address Challenges Relating to Oppressive RPTs

- The definition of the word “**related party**” needs to be widened to cover “any persons who is shareholder of the company not just person in BOD or managerial positions or their relatives” and shall also include anyone who are in close connection with ‘interested person in the transaction’ either in terms of blood relation or emotional bond or creates a financial nexus or even some sort of beneficial relation⁴⁹. This must be done to bridge the gap between the definition provided in the company law and the SEBI LODR Regulation 2015. The Term Related Party can be

⁴⁸ M.U.B.A Razak, *The Role of Independent Directors in Monitoring Related Party Transaction (RPT) in Malaysia, Thailand and Singapore*, Proceedings of the International Law Conference - Law, Technology and the Imperative of Change in the 21st Century 417, 420 (2018), available at: <https://www.scitepress.org/PublishedPapers/2018/100534/100534.pdf> (last visited on September 24, 2025).

⁴⁹ The working committee report of SEBI recommended widening the meaning, but it shall further try to incorporate other types of relations that a person accumulates during their lifetime.

substituted with “Interested Party” for the inclusion of more persons who are actually related on the surface⁵⁰.

- The government shall supply more manpower to SEBI to cater to the needs of the organisation, and the organisation shall also fill up its vacancies faster, as they are under tremendous work pressure⁵¹. The Body, being the Apex regulator for various things, shall have ample resources at its disposal to cross-check all the discrepancies in reports filed by the Companies to regulate the fraudulent RPTs properly.
- The determination of any transaction on Arm's length basis shall not be left solely on the Board; it shall be revalidated by the third party (Auditor) or a committee that will mainly consist of Independent Directors or any other policy which the Board may devise. The Arm's length basis is measured by the methods prescribed in the Income Tax Act, 1961⁵², SEBI should mandate the statutory auditor and the Audit committee to determine any transaction on an Arm's length basis, with one of the most suitable methods provided in Section 92C of the Act⁵³.

⁵⁰ Dr. Sonali Ahuja Dua, Rising Shareholder Activism and Corporate Response in India, 8 *IMPACT: International Journal of Research in Business Management* 1 (2020). The Government of India and its fully owned entity shall not be considered as a Related Party where it is an investor or shareholder.

⁵¹ Ashish Rukhaiyar, *Why Securities Appellate Tribunal needs to sort out its vacancy issues*, Business Today magazine, (28/05/2023), available at: <https://www.businesstoday.in/magazine/the-buzz/story/why-securities-appellate-tribunal-needs-to-sort-out-its-vacancy-issues-380769-2023-05-10> (last visited on September 24, 2025).

⁵² The Computational method for arm's length transaction has been prescribed in Section 92C of the Income Tax, Act, 1961.

⁵³ *Supra* 9.

- Threshold for RPTs under SEBI LODR Regulation, 2015 should be lowered so that most of the RPTs should fall within the purview of Shareholders' ratification, and even Unlisted Companies should have a similar regulation, which cannot be regulated by SEBI under LODR regulation, as it lacks *locus standi*. It must be done by framing the Companies Rules to regulate RPTs in Unlisted Companies.
- The Government & PCAOB shall support good domestic Companies by formulating policies that offer financial perks, government clientele, lucrative tax benefits, while utilising a big pool of human resources available through ICAI, ICSI, or ICMAI.
- The disenfranchisement of the voting rights of the related parties seems to be one of the multi-layered protections for RPT, but in some places it creates an anomalous position which can be cured by allowing them voting rights in exceptional circumstances, which itself can be enumerated by providing that in an exhaustive list.
- The Audit Committee shall consists of more than three fourth representation of the Independent directors so that the shareholders who have stronghold in the company cannot exert their will on the Committee, it is also desirable that major shareholders in BOD should not be given entry in Audit Committee, only such shareholders shall be allowed who holds the least amount of share and is part of the board and this change can definitely prevent fraudulent RPTs. The Appointment of independent directors shall be changed, and

SEBI has recently mooted for dual process of Appointment of Independent directors in this regard, in which minority shareholders have been given more say⁵⁴. This can help get a good set of independent directors who have more integrity and less interest in the Company, which can further stop fraudulent RPTs⁵⁵.

- Companies (Amendment) Act, 2020, regarding Shareholders' approval by Special resolution changed to ordinary resolution, and it decriminalised the offences relating to RPT if the procedure under section 188 is not followed. Such an amendment needs to be rolled back to uphold the rights of minority shareholders and better accountability of the responsible directors & employees.
- It shall be mandated to the company by the SEBI to disclose and publish every RPT on their website every quarter and file such details with the Stock Exchanges⁵⁶.
- India can make MOM approval mandatory for RPT, and the Rs 1000 crore for the test of materiality is too high for the Indian Standards; this should be lowered.

⁵⁴ *Review of Regulatory provisions related to Independent Directors*, SEBI working committee report (01/03/2021) available at: https://www.sebi.gov.in/sebi_data/meetingfiles/jul-2021/1626155485805_1.pdf (last visited on September 24, 2025).

⁵⁵ *Sebi moots dual approval process for appointment of independent directors*, mint, (01/03/2021) available at: <https://www.livemint.com/news/india/sebi-moots-dual-approval-process-for-appointment-of-independent-directors-11614613260284.html> (last visited on September 24, 2025).

⁵⁶ Padmini Srinivasan, *An Analysis of Related-Party Transactions in India*, 20, Working Paper Number 402, Indian Institute of Management Bangalore (2013).

- The Companies should be mandated to make self-assessment test justifying the level of corporate governance measures they have taken which shall be done on the parameters which can be either set by the Ministry of Corporate affairs or the Company itself, or the they can measure their performance on the parameters of five principles of corporate governance showcasing their level of commitments in the transparency to curb RPT.
- The Central government can bring the legislation and policies to discourage unnecessary subsidiaries, such as imposing tax on creating subsidiaries or incentives for mergers to put better transparency, and to also establish a specialized court for the investigation & disposal of such matters.
- It shall be mandated that the designation of both the CEO and the chairman cannot be held by the same person or their Related Parties, and either of the two must be an independent director. This will offer a next level of transparency and a hierarchy of openness & Accountability, which will not only curb the RPT but will also be able to increase its efficiency.

VI Conclusion

The RPT in India is well regulated, even though wealth tunnelling is more often found in corporate space. That's why this paper analyses the existing laws and formulates suggestions to tackle such problems. The Corporate governance mechanism, coupled with sanctions, has the best answer to oppressive RPTs. The Corporate governance principles try to

maintain discipline, transparency, independence, fairness, responsibility, and Accountability in the institution in every aspect of the corporate world, including RPT. In conclusion, the research underscores the necessity of robust corporate governance mechanisms to effectively regulate RPTs. This paper finally concludes with all the suggestions to the problem that has been found above, while incorporating valuable insights into best practices that can be adopted to strengthen the regulation of RPTs in India. It also calls for enhanced regulatory measures, greater shareholder engagement, and the adoption of global best practices to ensure the integrity and transparency of related party transactions in India.