Guardians at the Gate: Re-examining Audit Committee and Independent Director Scrutiny of Related-Party Transactions in the Post-2025 Framework

Related-party transactions sit at the intersection of legitimate commercial synergy and the single greatest vector for the expropriation of minority wealth. India's regulatory response has entrusted the gate to two custodians — the audit committee acting through its independent directors, and the general body of minority shareholders. The November 2025 recalibration of the materiality regime, while a welcome exercise in proportionality, quietly transfers a greater share of the scrutiny burden to precisely those gatekeepers whose effectiveness scholarship and enforcement history have repeatedly questioned. This article evaluates whether audit and independent-director scrutiny of related-party transactions is real or ritual, and argues that the Company Secretary is the indispensable fulcrum on which that scrutiny must now turn.

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INTRODUCTION

THE ENDURING GOVERNANCE PARADOX

Few instruments in company law are as ordinary and as dangerous as the related-party transaction (RPT). A group treasury arrangement, a shared-services contract with a sister concern, the sale of surplus land to a promoter entity each may be an efficient way of harnessing intra-group synergy, and each may equally be the conduit through which the wealth of public shareholders is quietly siphoned into private hands. The regulator's task has never been to prohibit such dealings; it has been to distinguish the legitimate from the abusive, and to do so through a structure of scrutiny that the market can trust.

That structure rests on the theme of this issue, trust and transparency as the foundations of sustainable growth. Investors commit capital to a listed entity on the faith that those in control will not help themselves at the collective expense. Where that faith fails, the cost is not merely private loss but a systemic erosion of confidence that raises the cost of capital for every issuer in the market. RPT regulation is, in this sense, a promise the market makes to itself: that conflicted transactions will pass through a gate manned by persons who owe their loyalty to the company rather than to its controllers.

The Indian framework entrusts that gate to two custodians. The audit committee, acting through its independent directors, provides ex-ante scrutiny of every RPT; the general body of minority shareholders, voting with related parties disenfranchised, provides an additional layer of approval for the most material transactions. Around both sits an apparatus of definition, disclosure and standardised information. The question this article asks and it is a question a practising Company Secretary confronts in every board cycle is a deceptively simple one: does the scrutiny actually work, and what does it now demand of us in the wake of the 2025 reforms?

THE FIDUCIARY FOUNDATIONS

RPT regulation in India is a two-tier construct. The **Companies Act, 2013** supplies the statutory floor applicable to all companies. Section 188 subjects specified categories of related-party contracts to Board and, beyond prescribed thresholds, shareholder approval, with interested members abstaining. Section 177 constitutes the audit committee and vests in it the approval and, where authorised, the omnibus approval of RPTs. Underpinning both is Section 166, which codifies the fiduciary duties of a director to act in good faith and in the interest of the company, and Section 149(6), which lays down the objective tests of independence.

The **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015** ("LODR") build the listing-specific superstructure. Regulation 23 governs RPTs; Regulation 18 prescribes the composition of the audit committee, a minimum of three members, at least two-thirds independent, chaired by an independent director; and Regulations 16 to 25 elaborate the qualifications, role and evaluation of independent directors. **Indian Accounting Standard (Ind AS) 24** supplies the accounting definition of a related party, which does not always coincide with the company-law or listing definitions, a divergence that is itself a compliance trap for the unwary.

The architectural fulcrum lies in a single design choice. Under Regulation 23, no related-party transaction may proceed without the prior approval of the audit committee, and only those members of the audit committee who are independent directors may approve it. The interested Management Director does not vote; the independent director alone opens or closes the gate. Frequently, an RPT is never even placed before the full board — the independent directors on the audit committee are, in practice, the last and only line of defence. Everything therefore depends on whether that defence is substantive or symbolic.

THE ARCHITECTURE OF SCRUTINY

The machinery of RPT oversight can be understood as four sequential controls, each of which the Company Secretary is responsible for operating.

- **Identification:** Before anything can be scrutinised it must first be recognised as an RPT. This turns on reconciling three overlapping definitions — the related-party concept in Section 2(76) of the Companies Act, the wider listing definition in Regulation 2(1)(zb) read with the transaction definition in Regulation 2(1)(zc), and the Ind AS 24 formulation. Post-2021, the LODR definition sweeps in transactions with any person or entity forming part of the promoter or promoter group, and, critically, transactions of subsidiaries.
- **Audit committee approval:** Every RPT requires prior approval of the audit committee, either transaction-by-transaction or through an omnibus approval subject to defined conditions and periodic review. This is the ex-ante conflict check.
- **Shareholder approval for material RPTs:** Transactions crossing the materiality threshold require the prior approval of shareholders by ordinary resolution, with all related parties — whether or not party to the particular transaction — barred from voting. In substance this operates as a "majority of the minority" safeguard, since only disinterested public shareholders decide.
- **Disclosure:** Listed entities must disclose RPTs to the stock exchanges on a half-yearly basis in the prescribed format, maintain a board-approved RPT policy on their website, and report material RPTs as material events where applicable. Disclosure converts private scrutiny into public accountability.

A significant refinement arrived through the RPT Industry Standards notified on 26 June 2025 and effective from 1 September 2025. Framed by the Industry Standards Forum in consultation with SEBI, these standardise the minimum information a management must place before the audit committee and shareholders when seeking approval, structured into defined parts covering the commercial rationale, valuation basis and material terms. Their purpose is to ensure that the gatekeeper is not asked to approve in the dark. Notably, the standards recalibrated the certifying language — moving from a confirmation of arm's-length pricing and the protection of public shareholders towards an affirmation that the transaction is in the interest of the listed entity — a subtle but consequential shift towards management judgement to which we return below.

THE 2025 RECALIBRATION: PROPORTIONALITY AND ITS PRICE

The most consequential recent development is the **SEBI (LODR) (Fifth Amendment) Regulations, 2025**, notified on 18 November 2025. For nearly a decade, a transaction was "material" — and thus required shareholder approval — if it exceeded the lower of ₹1,000 crore or ten percent of the listed entity's annual consolidated turnover. That flat benchmark was criticised as a one-size-fits-all rule: too blunt for a mega-conglomerate, for whom a ₹1,000 crore intra-group transfer might be trivial, and unremarkable for the routine dealings of the very largest issuers, who found themselves repeatedly seeking shareholder consent for operationally insignificant transactions.

The amendment replaces the fixed cap with a turnover-linked, slab-based scale codified in the newly inserted **Schedule XII**:

- For a listed entity with annual consolidated turnover up to ₹20,000 crore, an RPT is material if it exceeds 10% of that turnover (the earlier percentage test is retained).
- For turnover between ₹20,001 crore and ₹40,000 crore, the threshold is ₹2,000 crore plus 5% of the amount by which turnover exceeds ₹20,000 crore.
- For turnover above ₹40,000 crore, the threshold is ₹3,000 crore plus 2.5% of the excess over ₹40,000 crore, subject to an absolute ceiling of ₹5,000 crore.

The amendment also tightened subsidiary-level oversight: RPTs undertaken by a subsidiary to which the listed entity is not a party now require the prior approval of the listed entity's audit committee once they cross a ₹1 crore floor, tested against the lower of the subsidiary's standalone turnover metric or the parent's Schedule XII threshold — closing a loophole through which subsidiary transactions could escape parent-level scrutiny. Alongside, SEBI codified the validity of omnibus shareholder approvals within Regulation 23(4) — approvals granted at an annual general meeting remain valid until the next such meeting, and those granted at other general meetings lapse after one year — and relaxed the minimum-information burden for small-value RPTs not exceeding the lower of 1% of consolidated turnover or ₹10 crore.

The policy logic is sound. Materiality is inherently relative: a transaction that barely registers on the balance sheet of a large conglomerate may be decisive for a modestly sized company, and a governance system that inundates the audit committee and the shareholder body with approvals for trivial transfers dulls the very vigilance it is meant to sharpen. Proportionality, properly applied, concentrates scrutiny where the risk truly lies.

Yet the recalibration carries a price that deserves candid acknowledgement. Every rupee by which the materiality threshold rises is a transaction removed from the mandatory shareholder vote and left instead to the audit committee and its independent directors. In easing the quantitative net, SEBI has, deliberately, shifted a greater share of the qualitative burden onto the board's gatekeepers. Once fewer transactions are swept automatically into the shareholder-approval net, the responsibility for vigilance rests more heavily than ever on the audit committee and the independent directors who staff it. The reform is therefore only as protective as the gatekeeping it presupposes. That presupposition is exactly what the next section interrogates.

THE CENTRAL QUESTION: IS THE SCRUTINY REAL OR RITUAL?

Indian corporate governance has long been troubled by a gap between the form of independence and its function. The statutory tests of independence in Section 149(6) and Regulation 16 are among the most elaborate in the world; yet independence prescribed on paper does not guarantee independence exercised in the boardroom. Three structural realities strain the model.

- **Structural capture in appointment**

  The independent director who is expected to say "no" to the promoter is very often the person the promoter chose. Where the nomination and remuneration committee is influenced by the controlling shareholder, appointments can become exercises in comfort rather than challenge — a director selected to provide assurance to lenders or a networking presence rather than to exercise adversarial scrutiny. Empirical scholarship on Indian business groups has repeatedly found that independent directors are, on the evidence, an ineffective check on tunnelling behaviour, and that the independence of directors too often exists on paper rather than in the exercise of real challenge.

- **Information asymmetry**

  A gatekeeper can only scrutinise what is placed before it. The independent director on the audit committee typically depends on management for the rationale, the valuation and the comparables underpinning an RPT, and rarely commands an independent apparatus to test that information. When an RPT is routed to the audit committee alone and never reaches the full board, the concentration of dependence is complete. The RPT Industry Standards mitigate this by prescribing a floor of disclosure; but a floor is not a ceiling, and standardised formats risk becoming a box-ticking exercise unless the committee actively demands more.

- **The paradox restated**

  Set against this backdrop, the 2025 easing produces a paradox. By raising materiality thresholds so that fewer transactions require the disinterested shareholder vote, the reform reposes greater trust in the audit committee's independent directors — the gatekeepers whose effectiveness the historical and empirical record most seriously doubts. The shift in the certifying language, from arm's-length assurance towards a judgement that the transaction is "in the interest of the listed entity," compounds the concern by enlarging the space for management characterisation. Proportionality is the right principle; but it is safe only if the qualitative gate is genuinely robust. The reform has rationalised the question of *how much*; it has left largely unanswered the question of *how well*.

> Trust and transparency, the pillars on which sustainable growth is built, are secured not at the moment a threshold is crossed but in the seriousness with which the gate is manned. Rationalising the *how much* was the easier task; the enduring work of the profession is to guarantee the *how well.*

THE COMPANY SECRETARY AS THE FULCRUM OF EFFECTIVE SCRUTINY

If the independent director is the gatekeeper, the Company Secretary is the architect of the gate. As the Compliance Officer under Regulation 6 and the Secretary to the board and its committees, the Company Secretary is uniquely positioned to convert the statutory structure from a formal ritual into a functioning control. The post-2025 environment, which trusts more to committee judgement and less to automatic shareholder approval, makes that role more central, not less. Several practical levers are within the Company Secretary's grasp.

- **Rigorous identification:** Maintain a dynamic, continuously updated related-party master and a transaction-level RPT register that reconciles the divergent Companies Act, LODR and Ind AS 24 definitions and captures subsidiary transactions. A material RPT that escapes classification escapes the entire architecture; identification is therefore the single highest-leverage control the Company Secretary operates.

- **Elevating the quality of information:** Treat the RPT Industry Standards as a floor, not a ceiling. Ensure the audit committee receives the valuation methodology, arm's-length benchmarking, the commercial alternatives considered and the specific rationale — not a bare template. Where a valuation is provided by management, flag whether an independent valuation would be prudent.

- **Enabling genuine independent scrutiny:** Circulate agenda papers with real lead time, arrange pre-meeting briefings for independent directors, facilitate access to independent valuers and legal counsel at the company's cost, and provide for separate sessions of the independent directors where conflicts are acute. A gatekeeper starved of time and information cannot scrutinise; the Company Secretary controls both.

- **Instilling omnibus discipline:** Guard against omnibus approvals hardening into rubber stamps. Ensure they are confined to repetitive transactions of a defined nature, are subject to value ceilings, are reviewed at least quarterly, and are re-validated within the periods now codified in Regulation 23(4).

- **Safeguarding disclosure integrity:** Ensure timely and complete half-yearly RPT disclosures, an accurate website policy, and coherent linkages with the entity's material-event and sustainability reporting, so that the transparency the framework promises is actually delivered.

Beyond these mechanics lies the Company Secretary's role as the conscience-keeper of the boardroom. When commercial pressure to push a conflicted transaction through mounts, it is frequently the Company Secretary who must ensure the audit committee chair is squarely apprised of the risk and the record is honestly kept. That is an uncomfortable position; it is also the profession's highest value to the market.

THE WAY FORWARD: FROM FORMAL TO FUNCTIONAL GATEKEEPING

If the 2025 reforms have answered the quantitative question, the unfinished agenda is qualitative — strengthening the gate so that proportionality does not become permissiveness. Several measures merit consideration.

- **Independent information rights for gatekeepers:** Independent directors should have an explicit, resourced right to commission independent valuation and legal advice on material RPTs at the company's expense, supported by a secretariat that does not report to the management proposing the transaction.
- **Mandatory independent valuation for high-value RPTs:** For transactions above a defined threshold, a registered-valuer or independent-expert opinion should be a precondition to audit committee approval, reducing dependence on management's own numbers.
- **Protecting the Company Secretary's independence:** The gatekeeper's architect must herself be insulated. Tenure protections, a reporting line to the audit committee, and safeguards around removal would strengthen the Company Secretary's capacity to resist pressure.
- **Harnessing technology and analytics:** Continuous, data-driven monitoring — automated flagging of transactions with related entities, pattern analysis for round-tripping, and exception reporting — can surface RPTs that manual processes miss, a natural complement to the market's growing reliance on algorithmic governance tools.
- **Preserving transparency alongside proportionality:** As the mandatory-vote net loosens, qualitative disclosure should tighten: richer narrative reporting on the significant RPTs that no longer require a shareholder vote would keep the public informed even where their formal approval is no longer sought.
- **A cultural shift towards independence in spirit:** Ultimately no rule substitutes for a boardroom culture in which the independent director regards challenge as duty, and where rigorous board and committee evaluation has teeth. Regulation can compel presence; only culture compels diligence.

CONCLUSION

Related-party transactions will always test the promise that a listed company makes to its public shareholders. India has built an elaborate gate — audit committees staffed by independent directors, disinterested shareholder approval, standardised disclosure — and in 2025 it has sensibly recalibrated how wide that gate must swing, tying materiality to scale and sparing the market a clutter of trivial approvals. But the measure of the framework was never the number of transactions it caught; it is the quality of scrutiny it applies to the ones that matter. That quality depends on independent directors who are independent in function and not merely in form, on information that is complete rather than templated, and — critically — on the Company Secretary who identifies, informs, enables and, when necessary, insists. Trust and transparency, the pillars on which sustainable growth is built, are secured not at the moment a threshold is crossed but in the seriousness with which the gate is manned. Rationalising the *how much* was the easier task; the enduring work of the profession is to guarantee the *how well*.

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