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ORIGINAL ARTICLE

Legal transplantation and related party transactions in emerging markets

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Abstract
Abusive transactions with related parties are more common in a concentrated ownership structure. Previous studies have debated that the fallout of concentrated corporate ownership (i.e. sizable corporate conglomerates and corporate enterprises owned by business families or the government of the state) is high in a relatively close market. Despite the adoption of the Anglo–US model in BRICS (Brazil, Russia, India, China, and South Africa) for improving transparency, accountability, and fairness, the rate of corporate failure involving abusive related party transactions has been high. This study examines differences in related party transactions (RPT) regulatory strategies among BRICS with respect to international standards (Anglo–US model) and local conditions. The study analyses to what extent BRICS nations have adopted the Anglo–US model by comparing the RPT regulatory framework with the convergence towards the Anglo–US model, divergence from the Anglo–US model, and unfolding of a new construct in BRICS. Overall, the study finds Brazilian and Russian RPT legislation the least convergent towards the Anglo–US model and RPT legislation in India, China, and South Africa fully convergent towards the Anglo–US model. BRICS have shown persistence or resistance towards the Anglo–US RPT legal transplantation. In certain aspects, BRICS have made a concerted effort to regulate abusive RPTs suitable to their local conditions. However, RPT legislation in BRICS nations has failed to address some major governance problems caused by concentrated ownership structures (monitoring of RPTs in pyramidal companies, same RPT thresholds for group and non-group companies, dominance of controlling shareholders on independent directors' appraisal of RPTs, and the lack of adequate disclosure requirements for RPTs).

Keywords Related party transactions · Ownership structures · Anglo–US model · Legal transplantation · BRICS

Introduction

Related party transactions[1] (RPTs) can affect the integrity of corporate transactions and the economy (Enriques 2015; Kim 2019; Puchniak et al. 2017). Challenges posed by RPTs to stakeholders' rights and enterprises' corporate governance transcend to market integrity in related jurisdictions and countries. The listed entities in emerging markets are dominated by controlling shareholders (controlled by the state and family) and have dual- or single-tiered boards with weak legal enforcement mechanisms and government agencies' interference (Soederberg 2003). Moreover, emerging markets encounter difficulties in adopting a different legal system (Lim 2018) because their specific cultural, economic, and political history shape the company law (Gordon and Roe 2004). The management lacks effective control over the company because of controlling shareholders (Shleifer and Vishny 1986). These factors lead to agency problems between controlling and minority shareholders (Gordon and Roe 2004). The controlling shareholders' expropriation of minority shareholders (Nagar et al. 2011) through RPTs is not uncommon.

Morgan Stanley Capital International's Environmental, Social, and Governance developed a rating system to determine the effectiveness of corporate governance based on the ownership structure of companies in BRICS (Brazil,

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[1] The International Accounting Standards 24 (IAS 24) define RPTs as "a transfer of resources, services, or obligations between a reporting entity and a related party, regardless of whether a price is charged".

Russia, India, China, and South Africa).[2] Among 26 emerging markets, BRICS markets scored between four and seven, which is substantially lower in terms of global parameters (Oberoi and Rao 2019). The score was calculated based on the following parameters: board composition, ownership and control structure, remuneration, and accounting. The report suggested that country-specific characteristics of emerging markets, such as shareholder–manager arrangement, voting rights, compensation incentives, and financial statement reliability, result in the dominance of controlling shareholders and low transparency in financial statements; these factors are disadvantageous to minority shareholders (abusive RPTs and complex ownership structures) and reduce the ratings.

BRICS comprise 43% of the world's population, accounting for 30% and 17% of the global gross domestic product and trade, respectively.[3] Because corporate governance in BRICS is a potential new economic block, it remains under constant scrutiny (Sydney 2015). Listed companies in BRICS have a concentrated ownership structure controlled by the family or state. The ownership structure in Brazil is highly concentrated and consists of family-owned business groups, state-owned entities, and affiliates (Rabelo and Vasconcelos 2002). In Russia, state-owned entities control pyramid corporate ownership structures by controlling golden shares,[4] issuing non-voting shares, and maintaining the single ownership of multiple companies (Abramov et al. 2017). The majority of Indian companies owned by business groups are controlled through pyramidal and cross-holding ownership structures (Sarkar 2010). Private investors and governments control listed entities in China through pyramid structures (Bradford et al. 2013; Fan et al. 2005). In South Africa, the majority of listed companies are controlled by groups with pyramidal ownership structures (Rossouw et al. 2002a, b). Controlling shareholders in concentrated ownership structures constantly monitor the management due to their substantial stake (Sarkar 2010). Furthermore, controlling shareholders are likely to efficiently use RPTs to maximise firm value (Anderson and Reeb 2003). However, approaches adopted by controlling shareholders may not occasionally be favourable for the company when their interests do not align with those of non-controlling shareholders (Sarkar 2010).

In the last two decades, BRICS have updated their corporate law and governance regulations to ensure transparency and accountability in corporate functioning. However, challenges are yet to be resolved, particularly those related to RPTs. Controlling shareholders tunnel out resources by purchasing inventory and assets at inflated prices, selling assets (Cheung et al. 2009) at lower prices, providing loans without security (Weinstein and Yafeh 1998), and repaying loans without adhering to the prescribed procedure. Moreover, misrepresentation in financial statements through the RPTs of a listed company is not uncommon (Doidge et al. 2009; Dyck and Zingales 2004). Although ownership structures in BRICS differ from those in the USA and the UK, legal strategies adopted by these countries to regulate RPTs are similar. Appointment of independent directors, incorporation of an audit committee for scrutinising RPTs, and splitting of the responsibility between the chairman and company executives (i.e. CEO, CFO, and managing directors) derived from Anglo-US model are some of the common strategies employed to regulate RPTs.

The Anglo–US model was implemented in the early 1990s to ensure effective corporate governance and protect minority rights. This model emphasises enhanced monitoring and disclosure to supervise and control the management and shareholders' dominance. Despite the adoption of the Anglo–US model in BRICS for improving transparency, accountability, and fairness, the rate of corporate failure has been high. In the aftermath of the recent corporate frauds involving RPTs, this study seeks to examine differences in RPTs regulatory strategies among BRICS with respect to international standards (Anglo–US model) and local conditions. The present study analyses legal strategies adopted in BRICS to prevent abusive RPTs. Moreover, the study seeks to examine to what extent BRICS nations have adopted Anglo–US model by comparing the RPT regulatory framework with the convergence towards the Anglo–US model, divergence from the Anglo–US model, and unfolding of a new construct in BRICS. Consequently, this study uncovers the partial transplantation of Anglo–US model in the RPT regulatory framework in BRICS, explores challenges encountered in regulating RPTs, and suggests regulatory reforms for RPTs in BRICS.

The remainder of the paper is organised as follows. Section II examines two major factors for prevalence of RPTs in BRICS: ownership structure and market conditions. Section III explains the similarities and differences between RPT regulations. Section IV analyses the transplantation of Anglo–US model in RPT regulatory framework in BRICS by examining the impact of the implementation of the Anglo–US regulatory framework of RPTs in terms of three

[2] Based on the econometric analysis by Goldman Sachs, the acronym BRIC before the induction of South Africa was coined in a publication entitled "The World needs Better Economics BRICs". The BRIC countries informally started the coordination of 2006 by conducting a working meeting with the foreign ministers of the four countries. Later, in September 2010, at the Sanya Summit, South Africa was inducted to become part of the group and henceforth it was named as BRICS (Bose and Kohli 2018).

[3] See "BRICS", accessed December 16, 2020, http://brics2016.gov.in/content/innerpage/about-usphp.php.The developed economies, the USA and the UK, always seek good opportunities to set companies in these countries, see (Bird 2006).

[4] A golden share gives its shareholder veto power in specific circumstances like alterations in companies memorandum of association.

parameters: convergence towards the Anglo–US model, divergence from the Anglo–US model, and unfolding of a new construct in BRICS. Section V explores challenges encountered in the implementation of Anglo–US RPT regulations. Section VI draws the conclusion.

Ownership structures and market conditions: prevalence of RPTs in BRICS

The prevalence of RPTs depends on various aspects, with the most crucial being ownership structure and market conditions (Kim 2019). The majority of listed companies in BRICS have a concentrated ownership structure, in which independent managers lack effective control over the company due to the presence of controlling shareholders (Shleifer and Vishny 1986). In BRICS, the agency problem between controlling and minority shareholders remains a major challenge in providing equal treatment to minority shareholders and preventing the expropriation of resources by controlling shareholders.[5]

Another major concern in emerging markets is the predominance of pyramids or business groups with relatively low investment (Fisman and Wang 2010). RPTs and minority shareholders' expropriation are two significant risks associated with the pyramid ownership structure. With underdeveloped economies and weaker legislation, emerging markets have begun fostering the pyramidal ownership structure because it contributes to stable financial performance, enables sharing of new technology, and participates in the international market (Claessens and Yurtoglu 2013). A pyramidal ownership structure adversely affects investors and the economy because controlling shareholders can expropriate resources for private benefits. From the perspective of corporate governance, non-transparency in pyramidal ownership and control structures encourages controlling shareholders to perform abusive RPTs for private benefits (Chernykh 2008).

The prevalence of RPTs is closely associated with market conditions, particularly in emerging markets. Because of underdeveloped domestic capital markets, firms in emerging markets engage in more intragroup transactions because external financing is not readily accessible (Khanna and Palepu 2000). However, obtaining data on these aspects and determining the prevalence of RPTs in the BRICS jurisdictions is difficult. In the following sections, we will discuss these aspects as encountered in each country before focusing on the RPT regulatory framework.

Brazil

In the 1940s and 1950s, the Brazilian business group "grupos" operated in retail trade, electrical energy, light industries, and civil construction. Because of private sector's financial constraints and reluctance in making large investments in capital-intensive industries, President Vargas's administration made efforts to diversify Brazil's industrial base in the 1940s and 1950s, establishing an iron-mining company (Vale), a steel-making company (Nacional), and a gas and oil company (Petrobras) (Colpan et al. 2010). After state-owned enterprises, family-controlled companies, affiliates, and pyramid ownership structures are prevalent in Brazil. In Brazil,[6] half of the companies have ultimate family owners who use pyramids in their ownership structures (Rabelo and Vasconcelos 2002). Brazil's capital market has undergone considerable development in the past two decades; however, the number of companies without a single controlling shareholder has grown only marginally (Crisóstomo et al. 2020).

Because of the prevalence of the pyramidal ownership structure (Aldrighi and Neto 2007) and weak institutional enforcement (Anderson 1999), the legal and institutional environment is characterised by the weak legal protection of minority shareholders (Crisóstomo et al. 2020). Furthermore, the weak institutional enforcement in Brazil has led to corruption, uncertainty, and inefficiency (Estrin and Prevezer2011).

A recent study on Brazilian listed companies indicated that the weaker corporate governance system enables controlling shareholders to extract private benefits (Crisóstomo et al. 2019). Controlling shareholders are more likely to result in the conflict and expropriation of minority shareholders in Brazilian public companies (Crisóstomo et al. 2020). Major corporate scandals in Brazil, including those of the Pan American Bank, Petrobras, and Odebrecht, involved RPTs. The Pan American Bank fraud involved RPTs where funds were drawn and paid to benefit managers (The World Bank 2012). Disclosure of

[5] The agency problem between controlling and minority shareholders results from Brazil's weak institutional enforcement and concentrated ownership structures (Anderson 1999). In Russia, agency conflict arises due to a high ownership concentration, weak investor protection norms, and non-transparency in ownership structures (Chernykh 2008). In India, the agency conflict between majority and minority shareholders is accompanied by the weak legal protection of minority shareholders (Sarkar and Sarkar 2000). The agency problem between controlling and minority shareholders subsists within state-owned entities and family-owned companies in China (Clarke 2003). The agency conflict between majority and minority shareholders in South Africa leads to expropriation by controlling shareholders due to significant control rights with a low equity stake (Morck et al. 1998).

[6] 41% of Brazilian listed companies are family controlled 27% have national private ownership and 17.6% are controlled by pension funds, see (Caixe and Krauter 2013).

RPTs performed at non-arm's length prices by the bank was not reported in the financial statements. In 2014, Petrobras (a listed state-owned company) kept fuel prices lower than those in international markets to combat inflation for the private political benefits of controlling shareholders. Petrobras' minority investors' resources were tunnelled to benefit Brazilian consumers for political purposes. Furthermore, the Brazilian government, a controlling shareholder of Petrobras, overpaid for oil exploration rights, which were detrimental to the listed company (Pargendler2012). Odebrecht, a Brazilian company, was implicated in the Lava Jato scandal, Brazil's investigation into Petrobras's corruption probe. In 2016, Odebrecht agreed to the world's largest leniency deal with US and Swiss authorities, admitting wrongdoing and paying $2.6 billion (£2.1 billion) in fines.

Russia

The ownership structure in Russia is highly concentrated because majority shareholders own 50% on average (Miwa and Ramseyer 2002). A significant economic reform implemented by Gorbachev in the late 1980s in Russia was privatisation[7] by converting state-controlled entities into joint-stock companies.[8] By the end of the 1980s, most of Russia's industrial assets belonged to the state. After privatisation in Russia, risks associated with corporate ownership structures were considerably increased due to weak enforcement. Corrupt officials and company insiders blocked future reforms after privatisation (Black et al. 1999). Furthermore, because of the lack of an effective corporate law framework, state controllers reinforced their dominance in companies. Russia's lack of protection for minority shareholders resulted in the consolidation of power in Russian corporations (Guriev and Rachinsky), leading to a high insider ownership concentration (i.e. oligarchic business groups).[9] The state enhanced its control by developing pyramid corporate ownership structures through the control of golden shares[10] and the single-agency ownership of multiple companies (Abramov et al. 2017). Because of such high capital concentration, controlling shareholders, including managers, expropriated resources for private benefits (Berezinets et al. 2014).

For years, Russian companies have used RPTs for stripping assets (Kossov and Lovyrev 2014). In terms of confronting abusive RPTs, many Russian investors remain disillusioned. RPTs are among the most pervasive violations of shareholders' rights, even in companies with significant state ownership. The shortcomings in the RPT legislation, that is, ambiguity in the definition of a related party, the lack of adequate disclosure of RPTs, and the lack of access to information on company transactions contributing to RPT abuse, were observed by the Russian Federation Supreme Commercial Court (*White Paper on Corporate Governance in Russia*, 2002). The Russian Federation Supreme Commercial Court[11] excluded the members of governance bodies (i.e. sole and joint executive bodies[12]) within the ambit of a related party because of the lack of a clear definition. Transactions with such members were excluded from the ambit of RPTs.

Transactions with offshore companies were excluded from the ambit of RPTs due to the lack of information on the beneficial owner. However, the Russian Federation Supreme Commercial Court attempted to solve the problem of RPT abuse by offshore companies by conferring the burden of proof that an offshore company is an independent entity in their relationship with a Russian corporation. Recently, in the National Bank Trust case,[13] controlling shareholders conducted a massive scandal by procuring the bank to loan approximately USD 1 billion to related parties (mostly offshore companies).

India

The majority of listed companies in India are promoter-owned entities or business groups controlled through pyramidal and cross-holding ownership structures (Sarkar 2010). Since the post-reform market, India's complex ownership structures (concentrated or dispersed) have been developed (Deb and Dube 2017), where companies may be legally independent but interconnected through formal or informal means (Khanna and Palepu 2000). In complex ownership structures, controllers can indirectly control companies' resources and transfer resources from a growing company to a poorly performing company within the business group (Kali and Sarkar 2011). The expropriation through RPTs

[7] To rationalise use of resources and size of entities for achieving overall productive capacity of the economy (Armen A. Alchian and Harold Demsetz 1972).

[8] "Presidential Decree ``On Organization Measures to Transform State Enterprises and Voluntary Associations of State Enterprises into Joint Stock Companies" from July 1, 1992".

[9] Oligarch means large individuals who controls sufficient resources through multi-layered and non-transparent ownership structures.

[10] Both public enterprises and governments can issue golden shares. At least 51 percent of the voting rights are controlled by one of these shares.

[11] Case No. A58-470/08.

[12] The Russian law mandates a two-tier board structure for public companies with a supervisory board (also referred to as the board of directors and executive bodies). Please refer to Section IV for further clarification.

[13] National Bank Trust v Yurov & others [2020] EWHC 100 (Comm).

by controlling shareholders is high in India because of the presence of concentrated and complex ownership structures (Morck and Yeung 2017). Group entities in India regularly engage in RPTs, such as cross-collateralisation, inter-corporate loans, and significant influence arrangements (SEBI Report of the Working Group on Related Party Transactions, 2020). An informal mechanism governs the Indian corporate governance system based on reputation, reciprocity, and trust. Therefore, companies face severe problems related to limited recourse in the legal system and corruption (Allen et al. 2005).

In 2009, a massive accounting scandal involving Satyam Computers Services Ltd (a public listed company) wobbled Indian corporate governance, which involved an aborted related party transaction with its real estate subsidiary, Matyas Infra (Afsharipour 2012). Recent high-profile corporate scandals in blue-chip companies in India, including IL&FS, Indigo Airlines, Fortis Health Care, and Religare Enterprise Limited, raised considerable concerns regarding abusive RPTs for manipulating earnings and looting companies and investors in India (Business Standard 2019). In Fortis Healthcare Ltd. ("SEBI | Order in the matter of Fortis Healthcare Limited", 2020) and Religare Enterprise Ltd. ("SEBI | Order in the matter of Religare Enterprises Limited", 2019), the Serious Fraud Investigation Office uncovered the amount of diversion to be more than 2000 crores. The Securities Exchange Board of India have passed an order against these two companies to recover 500 crores from the Singh Brothers for fund diversion to the promoter and promoter-related entities. A series of transactions have occurred between RHC Holding Private Limited (Holding Company) and these listed entities wherein loans worth 5482 crores were diverted to Dhillon Family members and entities, or their associates controlled by them. Routing of loans was observed from Fortis Healthcare Ltd. and Religare Enterprise Ltd. to RHC Holding Private Limited through unrelated entities to divert funds to related parties by circumventing the provisions of Clause 32 of the Listing Agreement and Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015".

China

After witnessing the success of Japanese and Korean business groups (Keiretsus and Chaebols) in the 1970s and 1980s, the Chinese government supported forming business groups and provided enterprises with more autonomy (Colpan et al. 2010). This policy was backed by economic reasoning that group firms[14] may perform better than non-group firms in less developed markets, such as China because transaction costs are higher when external markets are not well developed. The ownership structure in China is highly concentrated. According to the MSCI China Index, the majority of control held by the shareholder or shareholder group is more than 30% in 81.9% of constituents (Marshall 2015). Private investors and governments control the majority of listed entities in China through business groups (Bradford et al. 2013; Fan et al. 2005). RPTs among group companies help them reduce transaction costs and overcome difficulties in enforcing property rights and contracts essential for production (Fisman and Wang 2010; Khanna and Palepu 2000). However, controlling shareholders take advantage of RPTs within the group structure for expropriation.

Many studies in China have reported the usage of RPTs to tunnel out resources from listed entities by reallocating their resources to related entities (Huang et al. 2016; Jiang et al. 2010). RPTs are commonly used to transfer assets from a listed company to its parent company; this scenario is common in China for companies spun off from state-owned enterprises (Chen et al. 2009). The MSCI Corporate Governance Country Report in China cited the abuse[15] of RPTs as a major corporate governance concern. In May 2019, Beijing Dabeinong Technology Company suffered from various governance failures, that is, the absence of the majority of independent directors, multiple company executives on the board, and abusive RPTs by providing loans to Chairman Genhuo Shao (Genhuo held 41.25% of control) and related parties. Another accounting fraud involving abusive RPTs was unravelled in 2019; Luckin Coffee, a China-based company, manipulated sales using RPTs in three separate purchasing schemes. To settle the accounting fraud charges, the US Securities Exchange Commission fined 180 USD million (Chung 2021).

South Africa

In South Africa, the majority of listed companies are controlled by groups with pyramidal or complex ownership structures.[16] The pyramid ownership structure in mining companies is predominant in South Africa. In the mining sector, abusive RPTs are conducted by transferring mineral products to related parties at below-market prices and overpricing of the inbound transfer of goods from related parties.

[14] Business groups improve efficiency and communication, create long-term business relations, and reduce uncertainty.

[15] see (*MSCI CHINA THROUGH AN ESG LENS MSCI*, 2015).

[16] In fact, as at the end of 2002, 56.2% of the market capitalisation of JSE listings was controlled by four companies, see (Rossouw et al. 2002a, b).

Since the end of apartheid in 1994, the relationship between the strategy and structure has changed with the opening of the South African economy to international competition and liberalisation. Large groups have reduced their mining exposure, reduced product diversification, engaged in international expansion, and evolved towards governance structures similar to OECD norms. The emergence of concentrated ownership from the complex ownership structure in South Africa (Ntim et al. 2012) is associated with a lower expropriation level than that observed in Brazil, Russia, India, and China due to the robustness of the legal framework (Anderson and Reeb 2003). Before introducing the Kings Report on Corporate Governance (1994) in South Africa, expropriation by controlling shareholders was common. These unethical business practices caused difficulties for various statutes to protect minority shareholders legally. Due to its effectiveness, the King Report is widely regarded as a summary of best international practices for corporate ownership and control (Mugobo et al. 2016). Furthermore, listing restrictions are imposed on pyramid companies by JSE Listing requirements, where only first-stage pyramid companies are allowed to be listed.[17]

Recently, a major corporate scandal (Steinhoff) involving RPTs was uncovered in South Africa after its share price collapsed on December 5, 2017 (*Economist (UK)*, 2017). A forensic investigation by Price Waterhouse Coopers reported the involvement of former directors in the inflation of profits and assets over several years through fictitious transactions with related parties. RPTs were disguised as third-party transactions, whereas contra entries were posted as inter-corporate loans.

Regulatory framework of RPTs in BRICS

Pyramidal or cross-shareholding is a common feature of the ownership structure in BRICS. This ownership structure leverages upon the single enterprise model and weakens minority shareholders' protection provided by corporate law (Riyanto et al. 2004). Therefore, controlling shareholders in group companies successfully resist the legal protection provided to minority shareholders (Gourevitch and Shinn 2005).

The ability to conduct general meetings and class action litigation are protective measures that minority shareholders can undertake under the general corporate law statute. The limitations of the parent law can be overcome by strengthening the governance procedure within an organisation, changing the board structure, and improving disclosure and compliance requirements in listed entities.[18] For example, listing rules consider controlling shareholders and individuals with a significant influence in the company as related parties, whereas the parent law considers only directors as related parties.[19] Listing rules include internal regulatory tools, such as the approval of an independent audit committee, the ex-ante board, a majority of minority shareholders, the independent advisors' appraisal and the statement of the board on fairness, and external tools, such as mandatory, periodic, and immediate disclosure and public RPT announcements.

Four basic principles are followed during the development of RPT regulatory tools: use of a broad definition of related parties to capture conflicting transactions, bifurcation of transaction types within RPTs based on risks associated with listed entities, adoption of an efficient monitoring mechanism for RPTs, and promotion of an enhanced disclosure requirement for RPTs. The compliance of regulatory tools in BRICS is followed either voluntarily to fulfil corporate governance standards or as a mandatory model. Figure 1 presents the sources of the RPT regulatory framework in BRICS.

Table 1 presents the comparison findings among the substantive aspects of RPTs, including the definition of related parties and the ambit of RPTs in BRICS. The definition of related parties adopted by BRICS differs in terms of the inclusion of natural persons or entities. BRICS considers the directors of the company, subsidiary or holding company, or company within the same group, key managerial personnel, controlling shareholders, entities controlled by related parties, and affiliates of the above as related parties.

RPTs are defined in accordance with the International Accounting Standards 24 (IAS24; transfer of services, resources, or obligations) and include all incidental and

[17] Section 14 of JSE Limited Listing Requirements.

[18] In recent years, BRICS countries have adopted several RPT regulatory strategies to uphold minorities' rights and strengthen internal and external governance processes of corporations. The Brazilian Securities and Exchange Commission (CVM) adopted CVM Instruction No. 552 in 2014 to review information disclosed by listed entities whenever any transaction occurs between related parties. Major amendments were made in 2017 to the Russian Joint Stock Company Law for implementing a comprehensive monitoring and disclosure requirement of RPTs in Russian listed companies. The Securities Exchange Board of India amended SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, in 2018 by incorporating major Kotak Committee recommendations (Report of the Committee on Corporate Governance, 2017) on RPTs. In 2020, the Shenzhen Stock Exchange and Shanghai Stock Exchange issued guidelines on the disclosure requirements of RPTs in listed companies. The Johannesburg Stock Exchange Listings Requirements of South Africa introduced amendments in 2017 to broaden the scope of shareholders' approval in RPTs and prevent related parties taking advantage of their position.

[19] Section 188 of Companies Act, 2013 and Regulation 2(1)(zb) of SEBI (Listing Obligations and disclosure Requirements) Regulations, 2015 in India.

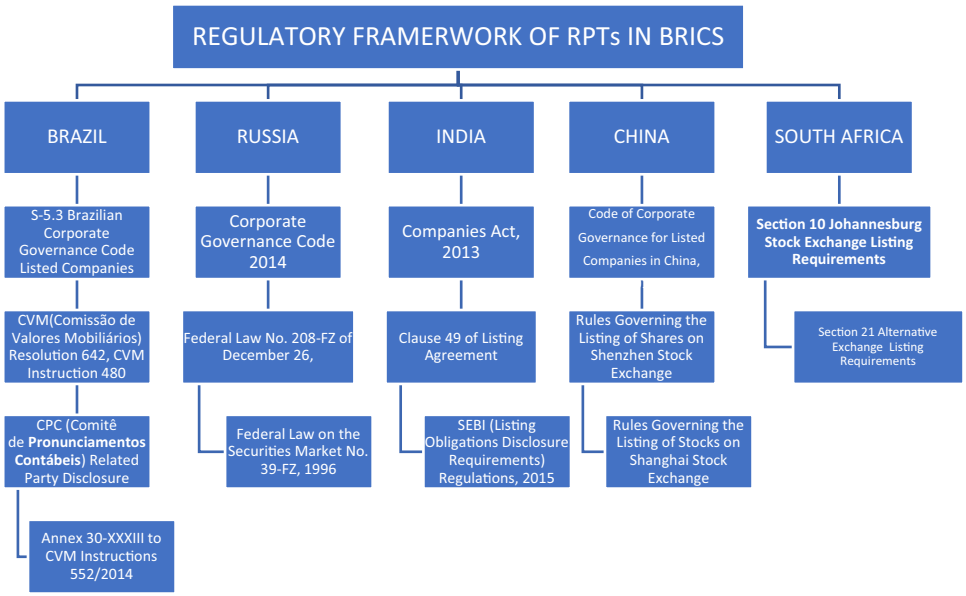

Fig. 1 Regulatory framework of RPTs in listed companies

Table 1 Definition of related parties and ambit of RPTs

	Brazil	Russia	India	China	South Africa
Definition of Related Parties					
Director or their Relatives	✓	✓	✓	✓	✓
Key Managerial Personnel or their Relative	✓	✗	✓	✓	✓
Controlling Shareholders	✓	✓	✓	✓	✓
Holding/Subsidiary /Associate Company	✓	✓	✓	✓	✓
Group Companies	✓	✗	✓	✓	✓
Entities controlled by Related Parties	✓	✓	✓	✓	✓
Ambit of RPTs					
International Accounting Standards 24 definition of RPT	✓	✗	✓	✓	✓
Numerical or Percentage Threshold of Material RPT	✓	✓	✓	✓	✓
Non-exemption of RPTs in Ordinary course of business from Audit/ Appraisal	✗	✗	✓	✗	✗
Prohibition of Loans to Directors or Controlling Shareholders	✓	✗	✗	✓	✓
Appraisal of RPT by Subsidiary of Listed Issuer	✓	✗	✗	✓	✓

ancillary transactions within the ambit of RPTs. In BRICS, the regulatory mechanism differs among varying types of RPTs based on risks associated with the listed issuer. RPTs are categorised into the following types: material,[20] exempted,[21] recurrent/routine,[22] and prohibited.[23]

Table 2 presents the comparison between the monitoring mechanism and disclosure requirements of RPTs in BRICS. The monitoring mechanism includes the approval of the board, shareholders, and audit committee; the abstention of interested directors; and the fairness statement by independent advisors.

The disclosure requirements for RPTs in BRICS include public announcements, immediate disclosure of RPTs,

[20] Determined based on the numerical or percentage threshold and are subject to stringent approval and disclosure requirements.

[21] Small RPTs, RPTs undertaken in the ordinary course of business, and RPTs between a listed entity and its subsidiaries are exempted from the monitoring mechanism to prevent unnecessary compliances.

[22] Routine RPTs are more common in emerging markets due to complex group structures. Regulatory hurdles for recurrent/routine RPTs are less than those for ad hoc RTPs.

[23] Prohibited RPTs include RPTs with directors or controlling shareholders that are per se prohibited to prevent corporate theft.

Table 2 Monitoring mechanism and disclosure requirements of RPTs

	Brazil	Russia	India	China	South Africa
Monitoring Mechanism of RPTs					
Board of Directors' Approval	✓	✓	✗	✓	✓
Abstention of Interested Directors	✗	✓	✓	✓	✓
Shareholders' Approval (Majority of Minority)	✗	✓	✓	✓	✓
Audit Committee Approval/Auditors Appraisal	✗	✗	✓	✓	✗
Fairness Statement by Independent Adviser	✗	✓	✗	✓	✓
Disclosure Requirements of RPTS					
Public Announcement	✗	✗	✗	✗	✓
Detailed Notice to Shareholders	✗	✗	✗	✓	✓
Immediate Disclosure	✗	✓	✓	✓	✓
Justification of RPTs	✓	✗	✗	✓	✓
Independent Directors'/Experts' fairness Opinion	✗	✗	✗	✓	✓

detailed notice to shareholders, justification of RPTs, and independent directors' or experts' fairness opinions.

The outcome of Anglo–US regulations on RPTs in BRICS

The Anglo–US model of corporate governance (Soederberg 2003; Chakrabarti and Megginson 2016) emphasises the predominance of individual shareholders' or institutional investors' interests. This model originates from the industrial revolution and marks the beginning of capitalism (Srinivasan 2006). The essential characteristics of this model include a dispersed ownership structure, single-tiered board structures, dominance of institutional investors, monitoring by independent directors, protection of minority rights, and non-interference of government agencies (Reed 2002). The Anglo–US model emphasises the enhanced protection of minority investors and foreign shareholders' rights, comprehensive disclosure of financial transactions, effective oversight of independent directors, regulation of the capital market, and establishment of a judicial system to rapidly enforce such rights.

The early 1990s and 2000s mark the beginning of implementing the Anglo–US corporate governance model in BRICS. Brazil followed the Anglo–US model by establishing the Brazilian Institute of Corporate Governance in 1995, followed by the adoption of corporate governance listing rules by the BOVESPA stock exchange in 2000 and Brazilian Corporation Law in 2001 (Oliveira et al. 2014). Russia transitioned from the German model to the Anglo–US model by establishing the Russian Federal Securities Commission in 1999 and implementing the Russian corporate governance code in 2001 (Puffer and McCarthy 2003). After liberalisation (during the 1990s), India gradually adopted the Anglo–US model to develop a market-oriented economy through the establishment of the Securities Exchange Board of India in 1992 and the promotion of corporate governance practices through Clause 49 of the Listing Agreement for listed companies in 2000 (Vincent 2015). China embraced the attributes of the Anglo–US model by establishing the China Securities Regulatory Commission in 1992 and implementing the corporate governance code for listed companies in 2006. The Anglo–US model of corporate governance was predominantly followed in South Africa. In 1994, the King Committee on Corporate Governance was the first to publish information on internal controls and corporate governance (Rossouw, et al. 2002a, b).

Foreign investments (Reed 2002) and international capital market (Aguilera et al. 2019) have pushed emerging markets[24] to modernise the corporate governance system (with minor changes under the surface) in BRICS. In terms of legal regulations, externally imposed standards failed to consider the unconventionality of each individual system (Puchniak et al. 2017). In this section, we explore the convergence, divergence, and new constructs of the four basic principles of the RPT regulatory framework in BRICS.

Definition of related parties

In this section, we analyse the RPT regulatory framework followed in BRICS based on the convergence towards the Anglo–US model. This model emphasises the protection of minority shareholders and equal treatment of shareholders. The convergence is explored on the basis of the effectiveness of RPT regulatory tools in protecting the rights of minority shareholders. Brazil, India, China, and South Africa have adopted broader and precise definitions of related parties to prevent expropriation. These countries consider controlling entities (holdings, subsidiaries, groups, or associate

[24] Emerging economies have adopted the framework from developed nations, especially the Anglo–US system (Young et al. 2008).

companies) and individuals (directors, controlling shareholders and their relatives, and key managerial personnel and their relatives) as related parties because of their considerable influence in the management of companies. A controlling entity or shareholder surpassing the investment threshold directly or indirectly through other entities is considered a related party. South Africa[25] (10%) and China[26] (5%) have adopted lower investment thresholds for determining controlling entities or shareholders as related parties (Sarra 2001). However, even when investments are low, controlling shareholders are required to disclose RPTs. These provisions impose obligations on controlling shareholders and are derived from the concept of the fiduciary duty of controlling shareholders in the USA (Dammann 2015). Furthermore, South Africa has imposed listing restrictions on pyramid companies (groups)[27] and has different criteria for classification.[28] Pyramid companies[29] can only be listed in South Africa if they[30] are formed due to partial unbundling or unbundling transactions. In addition, the Johannesburg Stock Exchange (JSE) Limited Listing Requirements prohibit the listing of second-stage new pyramids (another pyramid company of a pyramid company). Since 2000, conglomerates[31] have been unbundled in South Africa to ensure better transparency. Such restrictions are derived from the Anglo–US model to prevent tunnelling activities in pyramid structures.

The Anglo–US model follows the outsider model. Due to difference in ownership structures, regulatory tools related to various aspects are not adopted based on outsider model in BRICS. Related parties in a concentrated ownership structure exercise control either directly or indirectly through intermediaries. In addition, RPTs are controlled by key managerial personnel or the relatives of controlling shareholders (i.e. bulk shareholders) (Srinivasan 2013). India[32] (20%), Brazil[33] (50%), and Russia[34] (50%) have adopted higher investment thresholds based on their local conditions for defining controlling shareholders as related parties, unlike the dispersed ownership and lower thresholds emphasised in the Anglo–US model. In a concentrated ownership structure, shareholders with a small stake (below 20%) can exercise control over the company through dual-class share structures and cross-shareholding (Antônio et al. 2020). Therefore, in Brazil, India, and Russia, controlling shareholders as related parties exhibit divergence from transparency derived from the Anglo–US model. Furthermore, Russia does not consider key managerial personnel as a related party unless they are part of the board of directors or the management board. The Russian law mandates a two-tier board structure for public companies with a supervisory board (also referred to as the board of directors and executive bodies). The executive body consisting of department heads (chief executive officers), deputy general directors, vice presidents, and other individuals exercising management decisions are not considered a related party unless they are a member of governance bodies (board of directors or the management board) (Kossov and Lovyrev 2014). Transactions with individuals having significant influence can escape from scrutiny. Moreover, affiliated entities, such as group companies, associate companies, and joint ventures, are not considered related parties in Russia.[35]

BRICS have considered certain related parties based on domestic needs. In India, any individual or entity belonging to a promoter or promoter group as a related party, irrespective of their shareholding, is considered a related party. Therefore, transactions with controlling shareholders who are not part of the promoter or promoter group are not considered RPTs. Recently, the regulator in India has amended the definition of the related party to include any person or

[25] Any person entitled to exercise or control 10% or more of the votes of the shares of a listed company at general or annual general meetings. See Sect. 10.1 of JSE Limited Listing Requirements.

[26] Shareholders holding more than 5% interest either directly or indirectly in the listed company. Section 10.1.3 of Rules Governing the Listing of Shares on Shenzhen Stock Exchange & Shanghai Stock Exchange.

[27] Section 14 of JSE Limited Listing Requirements.

[28] "Classification of a listed company as a pyramid company where it (a) may exercise, or cause the exercise, of 50% or more of the total voting rights of the equity securities of a listed company ("listed controlled company") or (b) derives 75% or more of its total attributable income before tax from such listed controlled company, or the value of its shareholding in the listed controlled company represents 50% or more of its gross assets, with both measured, as far as possible, at fair value". See Sect. 14.4 of JSE Limited Listing Requirements.

[29] Pyramids lead to the expropriation of minority shareholders (Johnson et al. 2000; Buysschaert et al. 2004).

[30] "The listing of pyramid companies is prohibited by the JSE, unless such a pyramid company is formed by the unbundling or partial unbundling of transactions". See Chapter X of JSE Listing Requirements, s 14.6.

[31] By the end of 2000, only 3% of listed companies were pyramid companies. See Oman (2003)

[32] Regulation 2(zb) of SEBI (Listing Obligations Disclosure Requirements) Regulations 2015,

[33] Section 116 of Federal Law 6,404/76 (Brazil).

[34] "A person is considered a controlling person and potentially a related party if the person has the right to directly or indirectly dispose of more than 50% votes in the supreme management body of the controlled company or the right to appoint or elect the general director or more than 50% of the collegial management body of the controlled company on the basis of shareholding in the controlled company, shareholding agreement, and so on". See Article 81.1 of Federal law No. 208-FZ (Russia).

[35] "An entity directly or indirectly having more than 50% votes in the supreme management body of the controlled entity or has the right to appoint more than 50% of the collective management body of the controlled entity due to its participation in the controlled entity and/or based on simple partnership/ based on trust management etc". See Article 81.1 of Federal law No. 208-FZ (Russia).

entity who owns 20% or more shareholding[36] in the company as a related party. Similarly, China has adopted a general provision[37] where any individual or legal entity having a special relationship with a listed company can be a related party if determined by the China Securities Regulatory Commission, stock exchange, or the listed company itself. China[38] and South Africa[39] consider individuals or legal persons as deemed related parties (shadow related parties) if they have been related parties within the last 12 months preceding the date of RPTs.

Ambit of RPTs

The IAS24 adopted from the Anglo–US model[40] defines RPTs as the transfer of services and resources between a listed issuer and a related party irrespective of whether a price is charged. The definition of RPTs adopted in India[41] and Brazil[42] is convergent towards the IAS24. RPTs undertaken in the ordinary course of business and concluded at arm's length prices are particularly excluded from the definition of RPTs. Similarly, RPTs undertaken in the ordinary course of business are exempted from monitoring and disclosure requirements in Brazil. After defining RPTs, jurisdictions typically set material RPTs for approval and disclosure requirements based on the numerical value or percentage ratio of assets. The numerical value of material RPTs determines their impact on minority shareholders' interests (OECD 2012). Material RPTs based on the percentage ratio of total assets or turnover are evaluated based on the size of RPTs relative to that of the listed entity. Brazil[43] and India[44] consider both numerical and percentage ratios of assets for determining material RPTs. Brazil (1%), China (5%), and South Africa (5%) have adopted a lower threshold for the materiality percentage ratio for mandating the public disclosure of RPTs. Furthermore, RPTs with controlling shareholders[45] or directors are subject to stringent fairness scrutiny or complete prohibition in some jurisdictions to protect the interests of minority shareholders. China has prohibited[46] listed companies from offering loans to supervisors, directors, or senior officers. Moreover, companies and their affiliates in China are prohibited from providing debt guarantees to shareholders (Berkman et al. 2009). India[47] and South Africa[48] prohibit loans or security to directors. However, in emerging markets with weak enforcement mechanisms, a ban on RPTs would ineffectively protect the interests of minority shareholders (Enriques and Tröger 2018).

The definitions of RPTs in Russia[49] and South Africa[50] are narrower than the IAS24 definition, which includes an exhaustive list of RPTs. RPTs are monitored based on the size of transactions. Small transactions are exempted from approval requirements, whereas material RPTs are subjected to stringent approval and disclosure requirements. However, in Brazil, the corporate governance code[51] recommends listed companies to voluntarily define the different categories of RTPs.[52] This leads to differences among listed companies where companies have different threshold levels for approval requirements. Furthermore, the code does not prohibit companies from providing loans to controlling shareholders (Leal et al. 2015a). Only 8% of Brazilian listed companies forbid loans to controlling shareholders or related parties, and this prohibition is rarely observed in listed companies (Leal et al. 2015b). These practices of Brazilian companies encourage controlling shareholders to use subsidiaries to dispose of undervalued or purchase

[36] Regulation 2 (zb) of SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 with effect from April 2022.

[37] See s 10.1.3 (5) of Rules Governing the Listing of Shares on Shenzhen Stock Exchange & Shanghai Stock Exchange.

[38] See s 10.1.6 (2) of Rules Governing the Listing of Shares on Shenzhen Stock Exchange & Shanghai Stock Exchange.

[39] Section 10.1 (b)(iv) of JSE Limited Listing Requirements.

[40] According to the IASB, the financial statements have their roots in the Anglo-US accounting (Hossain and Reaz 2007).

[41] Regulation 24 of SEBI (LODR) Regulations, 2015.

[42] Annex 30-XXXIII of CVM Instruction 552/2014.

[43] More than R$50,000,000 or more than 1% of the company's total assets, whichever is lower.

[44] More than INR 1000 crore or 10% of the annual consolidated turnover of the listed entity whichever is lower.

[45] Loans to controlling shareholders have been used as a tool that results in the expropriation of minority shareholders (Jiang et al. 2010).

[46] Section 10.2.3 of Rules Governing the Listing of Shares on Shenzhen Stock Exchange & Shanghai Stock Exchange.

[47] Section 185 of Companies Act, 2013.

[48] Section 45 of Companies Act, 2008.

[49] Article 78 of Federal law No. 208-FZ (Russia).

[50] Excludes transactions related to the raising of finance and issue of securities. Section 10.1 (a) of JSE Limited Listing Requirements.

[51] Article 5.3 of Brazilian Corporate Governance Code—Listed Companies.

[52] For example, Suzano (listed company in Brazil) has defined the following types of RPTs:

a. Apart from exempted RPTs, financial statements must clearly and objectively disclose RPTs.

b. Apart from exempted RPTs, RPTs shall be reviewed by the governance group prior to be contracted.

c. RPTs exceeding fifty million Brazilian Reais (R$ 50,000,000.00) or 1% of the company's total assets must be approved by the board of directors;

d. Board of directors shall be informed of RPTs exceeding one million Brazilian Reais (R$ 1,000,000.00) in the aggregate if it involves an entity related to one of the members of the board of directors.

overvalued assets. Russia[53] (10%) and India[54] (10%) have adopted a higher threshold[55] for the materiality percentage ratio[56] to mandate the public disclosure of RPTs. Such a loosely regulated approach towards the scrutiny of RPTs exhibits divergence from the Anglo–US model.

The definition of RPTs adopted by BRICS is based on domestic conditions. Although RPTs undertaken in the ordinary course of business and concluded at arm's length prices are excluded from the definition of RPTs, those undertaken in the ordinary course of business may entail severe problems such as tunnelling (Johnson et al. 2000). Therefore, Russia, India, China, and South Africa do not exempt such RPTs from appraisals. In Russia, RPTs undertaken in the ordinary course of business are exempted only if similar transactions have been made over a longer period. India does not exempt RPTs undertaken in the ordinary course of business from the audit committee appraisal.[57] The JSE Limited Listing Requirements in South Africa partially exempt RPTs undertaken in the ordinary course of business from disclosure requirements in the circular and shareholder approval when the transaction value is equal to or less than 10% of the entity's market capitalisation.[58] Furthermore, whether RPTs fall within the ordinary course of business exemption vested by JSE Limited Listing Requirements should be determined. China imposes audit restrictions on recurrent RPTs[59] undertaken in the ordinary course of business. The Listing Requirements[60] in China mandate the disclosure of such transactions in the annual report; details of such agreement and shareholders' or board's considerations in case of the modification or renewal of the agreement of such transactions should be provided in the report. Recurrent RPT agreements are mandated to have pricing principles, transaction costs, gross transaction amounts, and payment terms.[61] Such economic evaluation of RPTs in China helps prevent abusive RPTs.

Intragroup RPTs provide greater benefits in emerging markets because of their advantages to companies involved (Fisman and Wang 2010). For example, a holding company may reduce risk by exporting RPTs to its subsidiaries. However, a group structure has its own set of risks and concerns. Major concerns regarding RPTs arising from the inherent conflict of interests in a group structure are the most common. In a concentrated ownership structure with weak protection of minority rights, the problem is exacerbated due to a higher likelihood of abuse in situations involving controlling shareholders. RPTs undertaken by the subsidiaries of listed issuers typically do not fall under scrutiny. However, they may lead to many abusive RPTs where controlling shareholders dispose of assets at an underrated value or purchase overpriced assets through subsidiaries (Kossov and Lovyrev 2014). Therefore, Brazil, China, and South Africa have adopted a unique approach for regulating RPTs by listed entities' subsidiaries. In the RPT regulatory framework, certain lenient approaches for RPTs are followed to reduce the compliance burden on companies. The JSE Listing requirements in South Africa provide different materiality thresholds for small RPTs[62] with less strict appraisal or audit requirements. In addition, Alternative Exchange (ALTx) listing requirements applicable to small- and medium-sized listed entities in South Africa provide a higher materiality threshold[63] of 10%, thus providing more flexibility from the cost, timing, and resource perspectives of their business.

Monitoring mechanism of RPTs

Internal regulatory tools have been adopted, including the approval of the board and shareholders, board's statement on fairness, and appraisal by auditors and independent advisors for monitoring RPTs. China, India, and South Africa mandate obtaining board's approval[64] due to expertise and low compliance costs for monitoring small RPTs (Kim 2019). To prevent conflict of interests, the abstention of related or interested directors[65] in the approval procedure is mandated in India, China, and South Africa because controlling

[53] Article 83(4) of Federal law No. 208-FZ (Russia).

[54] Shareholders holding more than 5% interest either directly or indirectly in the listed company. See Sect. 10.1.3 of Rules Governing the Listing of Shares on Shenzhen Stock Exchange & Shanghai Stock Exchange.

[55] High thresholds lead to the escape of RPTs from monitoring and disclosure requirements.

[56] More than R$50,000,000 or more than 1% of the company's total assets, whichever is lower.

[57] Regulation 23 of SEBI (Listing Obligation and Disclosure Requirements) Regulations 2015.

[58] Section 10.6 of JSE Limited Listing Requirements.

[59] Routine or recurrent RPTs loan provide greater benefits in developing countries. RPTs, even those conducted routinely among member firms, may entail substantial costs. The most severe problem with RPTs is the risk of tunnelling (Johnson et al. 2000).

[60] Section 10.2.12 of Rules Governing the Listing of Shares on Shenzhen Stock Exchange.

[61] Section 10.2.12 (2) of Rules Governing the Listing of Shares on Shenzhen Stock Exchange.

[62] Section 10.7 of JSE Limited Listing Requirements.

[63] Section 21 of JSE Limited Listing Requirements.

[64] Section 10.2.12 of Chapter X of Rules Governing the Listing of Shares on Shenzhen Stock Exchange (China), Sect. 188 of Companies Act, 2013(India) and Sect. 10.4 of JSE Limited Listing Requirements (South Africa).

[65] Section 188 of Companies Act, 2013(India), Sect. 10.2.1 of Chapter X of Rules Governing the Listing of Shares on Shenzhen Stock Exchange (China), and Sect. 10.4 of JSE Limited Listing Requirements (South Africa).

shareholders in concentrated ownership structures are part of the board of directors (Fleischer 2018). Furthermore, the mandatory approval of disinterested shareholders (the majority of minority shareholders) derived from the Anglo–US model is adopted in Russia,[66] India,[67] China,[68] and South Africa[69] for material or larger RPTs. The requirement of the approval of the majority of minority shareholders makes the entry of a fair RPT (a transaction in the company's best interest) more likely if they are well informed regarding transactions. Therefore, China[70] and South Africa[71] mandate the opinion of an independent director or advisor for examining risk factors associated with RPTs before receiving shareholders' approval.

The vetting of RPTs in BRICS is divergent from the Anglo–US model in various aspects. In Brazil, the approval of the board in RPTs is expected based on their fiduciary duties. No specific legal provisions exist regarding the board's role[72] in monitoring RPTs. Shareholder rights to approve material RPTs in Brazil are limited because most of the RPTs are approved at the board level (The World Bank 2012). The board or shareholder approval for material RPTs in Russia[73] is not required unless requested from the member of board, CEO, or shareholders holding at least 1% of voting shares. Furthermore, Russia[74] follows an ex-post litigation approach for material RPTs (judicial scrutiny) where any member of the supervisory board or its shareholders holding at least 1% of voting shares with a limitation period[75] of 1 year can challenge RPTs entered without the approval of the board or shareholders in Russia. These divergence from the Anglo–US model indicates that Brazil and Russia lack adequate monitoring mechanisms for scrutinising abusive RPTs.

BRICS have adopted different approval mechanisms based on their domestic conditions. In India, the promoters of listed entities influence the decision-making process of board members (Sarkar et al. 2006). Therefore, RPTs (both routine and non-routine) in listed companies, irrespective of being material or non-material, require the approval of an independent audit committee.[76] Recently, the regulator (the SEBI Working Group[77]) in India recommended enhancing the burden of monitoring RPTs in listed companies and their unlisted subsidiaries by an audit committee. India mandates obtaining shareholders' approval for material RPTs wherein all related parties are disqualified from participating in the voting process irrespective of whether such person or entity is interested in a particular RPT. China[78] mandates obtaining the approval of the board and shareholders if any guarantee is provided to a listed company's related party regardless of the guaranteed amount. South Africa mandates receiving shareholders' approval even for small RPTs with a percentage ratio of 0.25%–5%. However, the requirement for obtaining shareholders' approval can be waived if a positive fairness expert opinion is received.[79]

Listing regulations in South Africa confer fiduciary duties upon directors to furnish the fairness opinion[80] on RPTs after an independent advisor's approval. The monitoring requirements vary for small- and medium-sized companies listed on AltX in South Africa. In AltX listed companies, shareholders' approval[81] is required for RPTs with a percentage ratio of > 50%. Furthermore, shareholders' approval is not required for smaller RPTs with a percentage ratio of 10%–50% if a positive fairness expert opinion is obtained. However, if the independent advisor[82] finds such

[66] "If interested party transactions is 10% or more of the book value of the company's assets or transaction involves sale of more than 2% of ordinary shares or of privileged shares forming 2% of all shares of the company". See Article 83(4) of Federal law No. 208-FZ (Russia).

[67] In India, shareholders' approval is required for material RPTs whereby it disqualifies all related parties whether interested or not in any related party transactions to participate in the voting process.

[68] Section 10.2.2. of Rules Governing the Listing of Shares on Shenzhen Stock Exchange & Shanghai Stock Exchange.

[69] Section 10.4 of JSE Limited Listing Requirements.

[70] Section 10.2.9 of Chapter X of Rules Governing the Listing of Shares on Shenzhen Stock Exchange.

[71] Section 10.9. of JSE Limited Listing Requirements.

[72] Non-conflicted directors and shareholders, at the very least, may have to approve any significant RPTs according to one's opinion. This is unusual. Board approval is required by only approximately two-thirds of the companies that responded to the survey. Approximately half of the remaining companies did not have any special procedures for approving RPTs (Black et al. 2010).

[73] Article 83(1) of Federal law No. 208-FZ (Russia).

[74] Article 83(1) of Federal law No. 208-FZ (Russia).

[75] The limitation period has been interpreted in the plenum of the Supreme Court's Judgment that the limitation period starts from the date company's directors aware of such violation of the approval process or from the date when directors collude for such violations has knowledge about such abusive transactions or from the date companies' shareholders are aware of such disputed transaction's disclosure. See Resolution No. 27 of the Plenum of the Russian Supreme Court

Footnote 75 (continued)

dated 26 June 2018 was published with explanations of the rules for challenging major transactions and interested-party transactions.

[76] All RPTs in listed companies, irrespective of being material or non-material, require the approval of audit committees comprising a two-third of independent directors.

[77] Recently, the SEBI Working Group on RPTs recommended monitoring of RPTs of the listed issuer and its unlisted subsidiaries by audit committee. "SEBI Report of the Working Group on Related Party Transactions".

[78] Section 10.2.6 of Chapter X of Rules Governing the Listing of Shares on Shenzhen Stock Exchange.

[79] Section 10.7 of JSE Limited Listing Requirements.

[80] Section 10.4 of JSE Limited Listing Requirements.

[81] Section 21.12 of JSE Limited Listing Requirements.

[82] Section 10.7 of JSE Limited Listing Requirements.

transactions unfair, then the usual RPT requirements must be followed.

Disclosure requirements of RPTs

The timely disclosure of RPTs and ensuring transparency based on the Anglo–US model is the key to investors' protection and cost reduction for companies to access capital (Kossov and Lovyrev 2014). Brazil, Russia, and South Africa have adopted the IAS24 regulations for disclosing RPTs in financial statements. In addition to disclosure in financial statements, Brazil,[83] Russia,[84] China,[85] and South Africa[86] have mandated the immediate disclosure of material RPTs. Furthermore, for material RPTs, Brazil,[87] China,[88] and South Africa[89] are obligated to publicly announce the details of RPTs, including the description of related parties, companies' decisions describing participation, justifications of such transactions, pricing procedures, and decisions to transact with a related party instead of a third party. Such information can help in scrutinising an RPT.

Minimising the information asymmetry is a major challenge for regulators in a concentrated ownership structure (Wagenhofer 1990). The complex ownership structures of affiliates are used to prevent the disclosure of the principal owner.[90] The regulatory measures for RPTs, including obtaining approval and providing complete disclosure, cannot identify RPTs due to the lack of the disclosure of beneficial ownership in Russia (Oberoi and Rao 2019). The detailed disclosure[91] of RPTs is not mandated in India where cross-shareholdings and pyramid structures are commonly observed in family conglomerates (MSCI CORPORATE GOVERNANCE IN INDIA, 2017) for preserving family control at their various listed entities. Similarly, Brazil does not mandate the disclosure of RPTs[92] between listed issuers and directly or indirectly controlled companies. The disclosure requirements of RPTs in Brazil considerably vary among public companies (Lefort 2005). For example, in BM&FBOVESPA,[93] only 20.2% of the 100 most traded companies are governed by rules or policies for formal and detailed transactions with related parties. Such regulatory lapses lead to the underreporting of RPTs.

Stringent disclosure rules have been implemented in BRICS to address expropriation. Risky RPTs, such as loans and guarantees, have more stringent disclosure requirements than other less risky RPTs. Brazil mandates providing details regarding loans granted by listed companies, justifications for granting loans, financial conditions, and listed entities' indebtedness; analysing credit risks; and fixing interest rates.[94] Listed entities in South Africa are required to furnish additional information if transactions involve guarantees[95] or RPTs exceed RMB 3 million, accounting for more than 5% of the absolute value. Furthermore, listed companies and its subsidiaries are mandated to make a detailed ex-ante public announcement[96] before entering any RPT in South Africa.

Where has it gone wrong?

By comparing the RPT regulatory framework based on the convergence, divergence, and new constructs from the Anglo–US model adopted in BRICS, this study demonstrates the extent to which BRICS have adopted this corporate governance model. The combination of RPT regulatory tools and the degree of convergence towards the Anglo–US model vary in BRICS due to ownership complexities and market conditions.

In terms of the definition of related parties, Brazilian and Russian RPT legislations are the least convergent towards the Anglo–US Model. RPT legislations in India, China, and South Africa are nearly fully convergent towards the Anglo–US model. Furthermore, India, China, and South Africa have defined related parties based on local conditions.

[83] "Disclosure of reporting of material RPTs within 7 business days. If the transaction or set of related transactions, whose total value exceeds least of the following amounts: (a) R$ 50 million; or (b) 1% of the total assets of the issuer and at the discretion of the company's administration sets lesser thresholds than mentioned above". See Annex 30-XXXIII of CVM Instruction No. 552/2014.

[84] Russia adopts immediate ex-post disclosure requirements of RPTs within two days in their corporate event notice, within 45 days in quarterly reports and annual reports. Article 30.14 of Federal Law No. 39-FZ "On the Securities Market".

[85] Section 10.2.9 of Rules Governing the Listing of Shares on Shenzhen Stock Exchange.

[86] Section 10.4 of JSE Limited Listing Requirements.

[87] Article 2 of Annex 30-XXXIII to CVM Instruction No. 552/2014.

[88] Section 10.2.9 of Rules Governing the Listing of Shares on Shenzhen Stock Exchange.

[89] Section 10.4 of JSE Limited Listing Requirements.

[90] On the ownership registration by purchasing shares through foreign shell companies (Adachi 2010).

[91] The disclosure requirements of board decision-making process, audit committee opinion, any expert's opinion, and justifications of related party transactions.

[92] "The disclosure requirement does not apply to RPTs between the issuer and its subsidiaries, subsidiaries controlled by the issuer directly or indirectly, or remuneration paid to administrators". Annex 30-XXXIII of CVM Instruction No. 552/2014.

[93] Brazilian Stock Exchange.

[94] Article 2 of Annex 30-XXXIII to CVM Instruction No. 552/2014.

[95] Section 9.7 & 10.2.9 of JSE Limited Listing Requirements.

[96] "Name of the related party, nature, and extent of interest of such related party, description of the business, and rationale for the transactions should all be included in the public announcement". Sect. 10.4 of JSE Limited Listing Requirements.

India has adopted a liberal approach by excluding non-promoter controlling shareholders holding less than 20% from the ambit of related parties. However, China and South Africa have adopted a stringent approach by including shadow related parties as related parties.

In the ambit of RPTs, Indian and Russian RPT legislations are the least convergent towards the Anglo–US model. The RPT regulatory framework in Brazil, China, and South Africa is nearly fully convergent towards the Anglo–US model except that the categories of RPTs in Brazil are not defined. BRICS have adopted the definition of RPTs based on their local conditions. Russia, India, China, and South Africa have adopted a stringent approach to monitor RPTs undertaken in the ordinary course of business. Furthermore, Brazil, China, and South Africa have adopted a broader approach by including the RPTs of listed companies' subsidiaries in the ambit of RPTs. South Africa has adopted a unique approach in defining the threshold of RPTs according to large and small-/medium-sized listed companies.

The monitoring mechanism of RPTs focuses on effectiveness in preventing abusive RPTs and promoting efficient RPTs. In terms of the monitoring mechanism, Brazilian and Russian RPT legislations are the least convergent towards the Anglo–US model due to the lack of the requirement of shareholder's or board's approval in RPTs. However, the RPT regulatory framework in India, China, and South Africa is fully convergent towards the Anglo–US model. India, China, and South Africa have adopted different monitoring mechanisms based on their local conditions. India has adopted the most stringent approach involving monitoring all RPTs by an audit committee. China mandates a stringent approval mechanism in the case of guarantees by listed companies. South Africa has adopted different monitoring mechanisms for large- and small-/medium-sized listed companies.

In terms of the disclosure requirements of RPTs, RPT legislation in India is the least convergent towards the Anglo–US model. The Brazilian RPT legislation is nearly fully convergent towards the Anglo–US model except for the underreporting of RPTs in Brazilian listed entities. However, the RPT regulatory framework in Russia, China, and South Africa is fully convergent towards the Anglo–US model. South Africa and Brazil have adopted different disclosure requirements for RPTs involving loans and guarantees.

The comparisons drawn above indicate that BRICS have partially adopted the Anglo–US model to mitigate the risk of expropriation. This might be due to the fact that RPT regulations derived from the Anglo–US model are less likely to be effective due to differences in ownership structures and market conditions among BRICS. Furthermore, RPT legislation in BRICS have failed to address some major governance problems, primarily those related to minority shareholders caused by concentrated ownership structures.

First, the predominance of pyramids or complex shareholdings by controlling shareholders with relatively low investment might lead to expropriation in emerging markets due to lack of transparency in the identification of ultimate owners (Fisman and Wang 2010). The primary indicator of controlling shareholders is the ownership of capital. However, the identification of the actual ownership and control (Oberoi and Rao 2019) in multiple-class share structures, shareholders' agreements, special voting rules, cross-shareholdings, and group structures undermines the effectiveness of the RPT regulatory framework. Similarly, RPTs with controlling shareholders in India holding less than 20% of the equity stake but exercising the majority control (i.e. appointing the majority of directors and exercising voting rights in general meetings) would escape from scrutiny. Transactions with controlling shareholders with less than 50% of ownership and control in Brazil and Russia can escape from the scrutiny of RPT regulatory framework.

Second, RPT regulations in BRICS are limited to less complex ownership structures. A proportionate approach is not available for defining different material thresholds of RPTs in pyramid or complex ownership structures compared with a less complex structure. Similarly, in Italy, the threshold of material RPTs is 5%, but 2.5% for pyramid structures. Such material RPTs are required to be disclosed within 7 days along with the disclosure of their impact and terms on the listed entity. Furthermore, RPTs undertaken by the subsidiaries of a listed issuer are not scrutinised in BRICS. This can lead to many abusive RPTs where controlling shareholders can dispose of assets at an underrated value or purchase overpriced assets through subsidiaries (Kossov and Lovyrev 2014). The JSC Law in Russia and listing regulations in India are limited to the RPTs of listed entities. In Russia, controlling shareholders (Mikhail Khodorkovski) at Yukos could obtain requisite shareholders' votes for abusive RPTs through the subsidiary companies of listed entities (Black et al. 1999). Several listed companies in India were under the scanner of abusive RPTs through subsidiaries (Business Standard, 2019). The regulator (SEBI working group)[97] calibrating RPT norms advocated for a mandatory audit committee scrutiny of RPTs by subsidiaries of a listed entity. This has led companies in Russia and India to dispose of

[97] Also recommended to widen the ambit of RPTs to include transactions undertaken between a listed issuer or its subsidiaries with the related party of such listed issuer or its subsidiary. Curbing the gap in law companies can be made accountable if any transactions with an unrelated party have been undertaken where the purpose and effect is to benefit a related party of the listed entity or its beneficiaries. See "SEBI Report of the Working Group on Related Party Transactions". The definition of related party has been amended to include transactions of subsidiary of listed entity based on the recommendation of SEBI Report of the Working Group with effect from April 2022.

listed entities' assets through subsidiaries to related parties without approval or disclosure requirements.

Third, controlling shareholders appoint independent directors to monitor RPTs in BRICS. A previous study reported that implementing the Anglo–US model resulted in independent directors' failure to monitor controlling shareholders in emerging markets (Lin 2011). Independent directors can play an effective role in monitoring RPTs depending upon how independent they are from controlling shareholders and whether their decisions will be binding. Independent valuers should assist independent directors in determining the fair value and efficiency of such RPTs instead of approving transactions without justifications. Independent committees and appraisers monitoring RPTs will be facade if their role is not structured in a transparent manner. Furthermore, in Brazil and Russia, the board provides approval without an appraisal by independent experts, directors, or the audit committee. Brazil and Russia do not have the mandate for obtaining the board's appraisal or shareholders' approval in RPTs. A study (Schiehll and Santos 2004) conducted in Brazil reported that single controlling shareholders have few outside directors in listed companies. Thus, more conflicts of interest would be observed between controlling and minority shareholders, leading to the expropriation of resources. Russia adopted an ex-post litigation approach where minority shareholders holding 1% of shares can challenge RPTs without approval. However, the extent to which it can curb abusive RPTs in concentrated ownership structures where the majority shareholders own 50% on average remains unclear (Miwa and Ramseyer 2002).

Finally, the lack of the adequate disclosure requirements for RPTs is a major concern in BRICS. In concentrated ownership structures, minority shareholders depend on the disclosure of information to minimise information asymmetry (Wagenhofer 1990). The disclosure requirements of RPTs should encompass the decision making of the board and steps adopted by the board for ensuring the approval of fair RPTs, such as referring to an independent expert or valuer and the disclosure of such independent expert's report to shareholders for approving material RPTs. Market regulators should insist on better transparency in RPTs undertaken by companies. Furthermore, RPTs exempted from disclosure and monitoring requirements should be monitored by market regulators by examining the contractual terms of RPTs.

Conclusion

According to Berglöf and Claessens (2006), it is challenging to draw conclusions in the comparative legal framework among emerging economies due to significant cultural differences in BRICS economies, which contribute to significant changes in the regulatory framework.

Overall, it has been observed that Brazilian and Russian RPT legislations are the least convergent towards the Anglo–US model and RPT legislations in India, China, and South Africa are nearly fully convergent towards the Anglo–US model. Apart from convergence and divergence, BRICS have adopted new constructs in the RPT legal framework based on their local conditions. Brazil and Russia have adopted a lenient approach for monitoring RPTs by adopting a narrow definition of RPTs and the non-requirement of boards or shareholders' approval, exhibiting clear divergence from the Anglo–US model. Russia has adopted a cost-effective mechanism by adopting an ex-post litigation approach where minority shareholders holding 1% of shares can challenge RPTs passed without approval. In the absence of a stronger minority shareholders' rights protection regime in Russia, the extent to which abusive RPTs can be curbed remains unclear. The Indian RPT regulatory framework has undertaken concerted efforts through legislative reforms, particularly for the monitoring mechanism, by considering convergence and new constructs ranging from monitoring RPTs undertaken in the ordinary course of business, requiring an audit committee's appraisal of all RPTs, and excluding all related parties from the decision-making process. The RPT regulatory framework in China exhibits convergence and new constructs in both approval and disclosure mechanisms. China has adopted unique features of performing an audit or independent appraisal of material RPTs through independent intermediary institutions and disclosing details regarding shareholders' participation in RPTs. South Africa has adopted stringent disclosure requirements of RPTs that equal or exceeds those of most advanced countries and different regulatory frameworks for mid-cap and large-cap companies with considerable flexibility. Restrictions are imposed on the listing of pyramid companies in South Africa. The RPT regulatory framework in South Africa is among the best examples of emerging market jurisdictions in monitoring RPTs.

The study finds that BRICS have shown persistence or resistance towards the Anglo–US RPT legal transplantation given the dominance of business groups in the emerging markets, as well as the cultural and political differences in BRICS (Berglöf and Claessens 2006) that prevent an immediate change through legal transplantation. Wide variations exist in the RPT regulatory framework among BRICS in terms of the outcomes of the implementation of the Anglo-US model. This suggests that some of the governance practices derived from the Anglo-US Model will not work in these environments due to the unconventionality of each individual system (Puchniak et al. 2017) and therefore, different governance solutions might need to be implemented at the company level (Aguilera et al. 2019). In certain aspects, BRICS have made a concerted effort to regulate abusive RPTs suitable to their local conditions. BRICS nations have

adopted new constructs ranging from monitoring of RPTs undertaken in the ordinary course of business, requiring an audit committee's appraisal of all RPTs, excluding all related parties from the decision-making process, different threshold levels for large and mid-cap companies, independent expert's appraisal on specific RPTs, detailed justification of riskier RPTs (loans and guarantees), and immediate disclosure of material RPTs.

However, RPT legislation in BRICS have failed to address some major governance problems caused by concentrated ownership structures (monitoring of RPTs in pyramidal companies, same RPT thresholds for group and non-group companies, dominance of controlling shareholders on independent directors' appraisal of RPTs, and the lack of the adequate disclosure requirements for RPTs). This indicates that it is time for BRICS nations to think beyond the adoption of externally imposed norms derived from Anglo-US Model, and to revamp the RPT regulatory structure based on ownership structure and market conditions to prevent the risk of expropriation. Furthermore, RPTs exempted from disclosure and monitoring requirements should be monitored by market regulators by examining the contractual terms of RPTs undertaken in the ordinary course of business, the market value of RPTs, and their impact on listed companies.

Apart from the weak legal mechanism, emerging markets encounter challenges derived from weak enforcement institutions due to corrupt enforcement institutions (Acemoglu and Verdier 2000). Unless capital market regulators work as strong enforcement institutions in developing countries, the stringent regulatory framework would fail to prevent abusive RPTs.

This study has some limitations that should be addressed. The main limitation of this study is the lack of empirical analysis on listed companies in BRICS to explore differences in the enforcement mechanisms of RPTs.

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Declarations

Conflict of interest The corresponding author states that there is no conflict of interest.

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