

VINOD KOTHARI & COMPANY

Practicing Company Secretaries

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Comments on the consultation paper on Review of Corporate Governance norms for High Value Debt Listed Entity

Name of the person/ entity proposing comments: Vinod Kothari and Company

Name of the organization: Vinod Kothari and Company, Practicing Company Secretaries

Contact details: corplaw@vinodkothari.com

Category: Public (corporate advisors and secretarial auditors of listed entities)

Sr no	Pertains to point no.	Issues	Proposals/ Suggestions	Rationale
1.	2.2.1 (d) & (e) (1)	Manner of determining the requirement to withdraw material RPT proposals should not be based only on the number of responses received.	If ‘objections’ are received from the debenture holders holding 75% or more in value (of the total outstanding debentures), only then the need to withdraw the agenda should get triggered. That is, the base for arriving at the threshold of 75% should be “total value of the listed outstanding debentures of the company” and NOT “value held by debentureholders who have sent their response”. See also, further comments from the angle of	<p>Where a debenture holder does not have any objection, it will not necessarily write or email of ‘no-objection’ to the listed entity.</p> <p>The ones who intend to object may only end up responding to the listed entity. However, the objection needs to be viewed in terms of magnitude of their invested amount vis-a-vis total listed debentures of the listed entity. Otherwise, the decision making process will be extremely lopsided as few of the debenture holders will have the right to impact transactions.</p> <p>This is also evident from the illustration given by SEBI where debenture holders accounting for 37.5% of the total outstanding value of debentures are blocking the material RPT, even where remaining 62.5% have not-objectioned.</p>

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			related party. Further, if there is no objection received from any debenture holder, the same should be regarded as deemed consent.	
2.	2.2.1 (d) & (e) (1)	Clarity on eligibility to vote where the debenture holder is also a related party should be inserted.	Where the debenture holder is a related party, then it shall not vote to approve such resolutions, irrespective of whether such debenture holder is a party to the transaction or not.	Rationale for exclusion of related party debentureholders - First, the principle applied in case of shareholder approval should also apply to debenture holder approval. Second, in these cases, the related shareholders would be more than 90% of the total shareholders. Hence, while obtaining approval from debentureholders, related party debentureholders should not be allowed to influence the decision-making at this level. Such related party debentureholders should be excluded both from numerator and denominator while calculating the threshold of 75%.
3.	2.2.1 (f)	Convening of general meeting at shorter notice	If the HVDLEs intend to convene meetings at shorter notice, then so long as the process of obtaining non-objection is taken and certificate is ensured in the first 10 days, it can hold the meeting at shorter notice.	Most HVDLEs are closely held entities and don't have to comply with e-voting requirements. Considering that the closely held HVDLEs consist of private/ public companies, it is suggested to clarify that such HVDLEs may hold general meeting at a shorter notice in accordance with provisions of

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				Companies Act, 2013 subject to adhering to the timelines till furnishing of PCS certificate to the shareholders.
4.	SEBI Circular dated November 22, 2021	Review of list of information to be given while seeking shareholders' approval for Material RPT, specific to impact on debenture holders.	The list of information to be furnished to shareholders as per SEBI Circular of November 22, 2021 (also applicable to HVDLEs), needs to be amended to have some specific disclosures for comfort of debenture holders, that may also be specified.	The intent is to provide adequate disclosure so that the debentureholders are adequately informed at the time of decision-making, and there is minimum scope for the debenture holders to object. Accordingly, specific disclosure, if any, relevant for the debenture holders should be inserted in the SEBI Circular.

For Vinod Kothari & Company

Vinita Nair
Senior Partner