



Consultation paper on review of Corporate Governance norms for a High Value
Debt Listed Entity

1. **Background:**

- 1.1. SEBI introduced Corporate Governance requirements for listed entities to improve transparency in their functioning and ensure enhanced disclosures to investors. Regulations 16 to 27 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) deal with corporate governance requirements for listed entities. They, *inter-alia*, relate to the composition of Board of Directors, minimum number of meetings to be held per year, code of conduct, submission of compliance certificate, framing and implementing risk management plan for listed entities, constitution of various specialized committees, vigil mechanism, stipulations related to Related Party Transactions (RPTs), etc.
- 1.2. Vide notification dated September 07, 2022, LODR Regulations were amended, wherein, the corporate governance norms were made applicable to High Value Debt Listed Entity (HVDLE), i.e. a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of Rupees Five Hundred Crore and above. Such HVDLEs were determined as on March 31, 2021. The LODR regulations further states that in case an entity triggers the specified threshold during the course of the year, it shall ensure compliance with the provisions of corporate governance norms within 6 months from the date of such trigger. The said provisions were made applicable on a '*comply or explain*' basis until March 31, 2023 and on a mandatory basis thereafter.

2. Approval of RPTs

2.1. Need for Review

2.1.1. Regulation 23 of LODR Regulations (pertaining to RPTs), *inter-alia*, provides as follows (emphasis supplied):

*“(4) All material related party transactions¹ and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require approval of the shareholders through resolution **and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:***

Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.”

2.1.2. SEBI is in receipt of representations/ exemption requests from HVDLEs, regarding challenges faced by them in complying with the aforesaid provision of regulation 23(4) of the LODR Regulations. Entities have represented that their shareholding is wholly/ substantially held by one or a few shareholders, which are related parties. When these HVDLEs enter into RPTs, they are required to obtain the approval of majority of the shareholders who are not related parties. Such shareholders, who are not related parties, either hold a negligible portion of the equity or none at all, in which case the entity will not be able to transact such RPTs because of ‘*impossibility of compliance*’ with the provisions of LODR Regulations. Some HVDLEs have represented that

¹ Proviso to Regulation 23(1) of LODR provides that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

SEBI may like to consider the third proviso to Section 188(1) of the Companies Act, 2013 which states as under:

“Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties”

2.1.3. Data was sought from Stock Exchange(s) to understand the depth of the problem relating to ‘*impossibility of compliance*’. Stock Exchange(s), as advised by SEBI, sought data from HVDLEs as on March 31, 2022. Responses were received from 138 HVDLEs. When data regarding the shareholding pattern of such HVDLEs was analysed, the following was observed:

Table: 1 – Analysis of shareholding pattern of 138 HVDLEs who have responded:

Sr. No	Particulars of HVDLEs where	No. of HVDLEs
1	All shareholders are related parties	93
2	90% to 99% of the shareholders are related parties	11
3	Less than 90% of the shareholders are related parties	34

2.1.4. From the above table the following can be inferred:

- Cases at point 1– where all the shareholders are related parties, there is no non-related shareholder to approve the RPTs.
- Cases at point 2 – where 90% to 99% of the shareholders are related parties, the remaining non-related shareholders are very negligible to consider and approve/ disapprove the RPTs.
- Cases at point 3 – where less than 90% of the shareholders are related parties, the adherence to specified requirements is possible.

2.1.5. Thus, there is a need felt to address the issues faced by HVDLEs at point (a) and (b) above. This consultation paper attempts to propose a solution for the same.

2.2. Proposal

2.2.1. For HVDLEs mentioned in point (1) and (2) of Table 1 i.e. where 90% or more shareholders in number are related parties, the following course of action is suggested:

- a. **Applicability:** The said proposal shall be applicable to HVDLEs having:
 - i. only listed non-convertible debt securities; and
 - ii. 90% or more of the shareholders in number are related parties.
- b. **Notice to debenture holders:** Where a General Meeting (GM) is to be conducted, in which an agenda item relating to RPTs is proposed to be placed for approval by shareholders, the company shall send² a copy of such agenda item to the debenture holders holding listed non-convertible debt securities. (hereinafter referred to as '*debenture holders*' in this Consultation Paper)
- c. **Response from debenture holders:** Debenture holders shall submit their objection, if any, in writing or through electronic mode to the Company within 7 days from the date of the dispatch of the agenda item. Towards this, the company, shall indicate a dedicated functional email-id to which the responses shall be sent by the debenture holders in the format given at **Annex-I.**
- d. **Scrutiny of a Practicing Company Secretary (PCS):**
 - i. To ensure independent scrutiny of the responses received from the debenture holders, the company shall get the responses scrutinized by

² In the same manner that annual report or notice of AGM is sent to shareholders

a PCS and obtain a certificate from a PCS with respect to the responses received in the aforesaid dedicated functional email ID within 3 days from the last day by which responses from the debenture holders are to be received. The PCS shall indicate the following in the certificate:

- Total number of responses received from debenture holders;
- Number of no-objections received from debenture holders; and
- Number of objections received from debenture holders;

- ii. If no response is received from the debenture holders, the PCS shall provide a certificate to that effect.
- iii. This certificate shall be disseminated promptly on the website of the company, the website of the Stock Exchanges, the website of the Debenture Trustee and sent by email to the shareholders and to the debenture holders.

e. Procedure to be followed by Board of Directors (BoD):

- i. If 'objections' are received from the debenture holders holding 75% or more in value, based on the number of responses received, then the BoD shall ensure that the agenda item pertaining to RPTs is withdrawn.

The same is illustrated by way of an example under:

Sr.No	Particulars	Amount (Rs. Cr.)
1.	Total value of listed outstanding debentures held by the Company	1000
2.	Value of the outstanding listed debentures held by the debenture holders who have sent their responses on RPT	500
3.	75 % of value mentioned in point (2)	375

Thus, in the above example, if the debenture holders having outstanding value of Rs. 375 crores object to the proposed RPTs, the same shall not be placed for approval by the shareholders in the GM.

- ii. It is pertinent to mention that in case where no response from any debenture holder is received, then on the basis of the certificate of the PCS, it will be presumed that debenture holders do not have any objection and the proposal of such RPTs shall be placed before the shareholders in the GM for approval.
 - iii. If 'objections' are received from the debenture holders holding 75% or more in value, based on the number of responses received, the Company, while dispatching the certificate of PCS to the shareholders, shall indicate to the shareholders that the proposed agenda item on RPT(s) is withdrawn.
- f. **Approval by the Shareholders:** All shareholders, including the shareholders who are related parties, can vote on such RPTs as indicated in the third proviso to Section 188(1) of the Companies Act, 2013 (re-produced at para 2.1.2 above). The timeline as specified in the above proposal is given below for ease of reference:

S.No.	Event	Latest by
1	Dispatch of notice of GM to Shareholders	T
2	Dispatch of copy of agenda item with respect to RPT to debenture holders	T
3	Submission of responses from debenture holders	T+7
4	Scrutiny by Practicing Company Secretary (PCS)	T+10
5	Dissemination of certificate from PCS	T+11
6	E-voting starts (assuming 3 days)	T+18
7	Day of GM	T+21

3. Rationale for the above proposal:

3.1. It is observed that one common factor in major corporate wrongdoings was that they were allegedly carried out by persons with the ability to influence the decisions of the company. Shell or apparently unrelated companies, controlled directly or indirectly, by such persons were purportedly used to siphon off large sums of money through the use of certain innovative structures, thereby circumventing the regulatory framework of RPTs. Apart from the use of circular transactions, companies appear to have diluted or circumvented the requirements under their policy on RPTs by procuring approvals for continuous lending to group companies. Hence, there is an imperative need to ensure that RPTs of all listed entities are regulated.

3.2. Similar provisions under the Companies Act, 2013

Section 186 of the Companies Act, 2013 on '*Loan and investment by a company*', *inter-alia* provides for the prior approval of Public Financial Institutions (PFIs) in cases any investment, loan, guarantee or security is given by the company subject to terms and conditions. The relevant extract of the provision is re-produced below (emphasis supplied):

“(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under subsection (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

*(5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and **the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.***

3.3. While Section 71(2) of the Companies Act 2013 prohibits debenture holders from having voting rights, it nevertheless, contains an explicit provision for the protection of the interest of the PFIs in case any investment, loan, guarantee or security is given by the company exceeding the specified thresholds. The logic of protection of PFIs holds good for debenture holders also, since they are also in a way, lenders to the company

4. **Review of continuity of applicability of corporate governance norms for HVDLEs (regulation 16 to 27 of LODR Regulations)**

4.1. **Need for review:**

4.1.1. Regulation 3(3) of LODR Regulations provides the following:

“The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15”

4.1.2. However, for entities having listed specified securities³, second proviso to regulation 15(2)(a) of LODR Regulations provides as follows:

“Provided further that once the above regulations become applicable to a listed entity, they shall continue to remain applicable till such time the equity share capital

³ As per regulation 2(1)(zl) of LODR Regulations ‘specified securities’ means ‘equity shares’ and ‘convertible securities’ as defined under clause (eee) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018

or the net-worth of such entity reduces and remains below the specified threshold for a period of three consecutive financial years.”

4.1.3. Currently, LODR Regulations provides that the corporate governance norms shall continue to apply to a HVDLE even when the outstanding amount of listed non-convertible debt securities falls below the specified threshold of Rs. 500 crores. But there is no specified period for which a HVDLE shall continue to comply with such provisions, once the outstanding amount of listed non-convertible debt securities falls below the specified threshold of Rs. 500 crores.

4.2. **Proposal:**

In view of the above, provisions similar to those, that are applicable for an entity having listed specified securities as specified in regulation 15(2)(a) of LODR Regulations, it is proposed that once the regulations become applicable to a HVDLE, they shall continue to remain applicable till such time the outstanding value of listed non-convertible debt securities of such entity reduces and remains below the specified threshold for a period of three consecutive financial years. Outstanding amount may be re-viewed on the last day of every financial year (i.e. cut-off date).

5. Public Comments

Public comments are invited for the revised proposal pertaining to corporate governance norms for HVDLE. The comments/ suggestions may be provided as per the format given below:

Name of the person/ entity proposing comments:			
Name of the organization (if applicable):			
Contact details:			
Category: whether market intermediary/ participant (mention type/ category) or public (investor, academician etc.)			
Sr. No.	Issues	Proposals/ Suggestions	Rationale

Kindly mention the subject of the communication as, “**Comments on Consultation paper on Review of Corporate Governance norms for High Value Debt Listed Entity**”.

Comments as per aforesaid format may be sent to the following, latest by February 22, 2023 (within 15 days from date of publication of this consultation paper on SEBI website) through the following modes:

- a. By email to: pradeepr@sebi.gov.in; kirand@sebi.gov.in and akanshag@sebi.gov.in; and or
- b. By post to the following address:
Pradeep Ramakrishnan,
General Manager,
Department of Debt & Hybrid Securities
Securities and Exchange Board of India,
SEBI Bhavan, C4-A, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400051

Issued on: **February 08, 2023**

Annex-I**Format of response to be provided by the debenture holders**

Name of the Debenture Holder	
List of listed ISINs invested in	
No. of cumulative listed debentures held (across all ISINs)	
Cumulative value (in Rs. Crore) of outstanding listed debentures held (across all ISINs)	
Whether there is any objection to the proposed RPT (item wise)	YES/ NO