



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER
DDHS – POD 1

Review of framework for borrowings by Large Corporates

How to Respond:

We are asking for comments on the Consultation paper (CP) by August 31, 2023.

The comments/ suggestions may be provided to the following email ids:

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By Post to the following address:

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August 2023

1. Introduction:

- 1.1. With an objective to deepen the bond market, the Union Budget 2018-19 included a proposal that entities may be mandated to meet a certain percentage of their funding requirements from capital markets through issuance of corporate bonds. Specifically, the Union Government in the budget of 2018-2019, *inter-alia*, made the following announcement:

“SEBI will also consider mandating, beginning with large corporates to meet about one-fourth of their financing needs from the debt market.”

- 1.2. In line with the budget announcement, a consultation paper inviting public comments on “*framework for enhanced market borrowings by large corporates*” was issued by SEBI in July, 2018. After taking into account the public comments, a circular for “*Fund raising by issuance of debt securities by Large Entities*” was issued by SEBI in November 2018, which is now incorporated under chapter XII of the Master Circular¹ (*hereinafter referred to as ‘LC chapter’*) mandating Large Corporates to raise at least 25% of their incremental borrowings during a financial year (FY) by issuing debt securities. This measure was envisaged to assist in deepening the corporate bond market in India.

¹ SEBI Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated July 07, 2023

2. Extant regulatory provisions for Large Corporates:

2.1. Regulation 50B of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021 (*hereinafter referred to as 'NCS Regulations'*) read with LC Chapter deals with the requirements for Large Corporates (*hereinafter referred to as 'LC'*).

2.2. A summary of the provisions contained in the LC chapter are given as under:

2.2.1. Definition of LC:

As per para 1.2 of the LC chapter, LCs are defined as:

"all listed entities (except for Scheduled Commercial Banks), which as on last day of the FY (i.e. March 31 or December 31):

- a) have their specified securities or debt securities or non-convertible redeemable preference shares, listed on a recognized stock exchange(s) in terms of SEBI LODR Regulations, 2015; and*
- b) have an outstanding long term borrowing of Rs. 100 crore or above, where outstanding long-term borrowings shall mean any outstanding borrowing with original maturity of more than one year and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies); and*
- c) have a credit rating of "AA and above", where credit rating shall be of the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in; and in case, where an issuer has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered for the purpose of applicability of this framework."*

2.2.2. Mandatory borrowings from debt market

A listed entity, fulfilling the criteria as specified at paragraph 1.2 above, shall be considered as a LC and such LC shall raise not less than 25% of its incremental borrowings, during the financial year subsequent to the financial year in which it is identified as a LC, by way of issuance of debt securities², as defined under NCS Regulations.

For the purposes of this Chapter, the expression "*incremental borrowings*" shall mean any borrowing done during a particular financial year, of original

² As per regulation 2(1)(k) of the NCS Regulations, "*debt securities*" means non-convertible debt securities with a fixed maturity period which create or acknowledge indebtedness and includes debentures, bonds or any other security whether constituting a charge on the assets/properties or not, but excludes security receipts, securitized debt instruments, money market instruments regulated by the Reserve Bank of India, and bonds issued by the Government or such other bodies as may be specified by the Board;

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maturity of more than one year, irrespective of whether such borrowing is for refinancing/ repayment of existing debt or otherwise and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies).

2.2.3. **Applicability of the LC Chapter:**

2.2.3.1. For FY 2019-20 and FY 2020-21, the requirement of raising minimum 25% the incremental borrowings by LCs through issuance of debt securities was applicable annually on a comply or explain basis.

2.2.3.2. For FY 2021-22 onwards, the requirement of raising minimum 25% of incremental borrowings through issuance of debt securities in a FY was to be met over a contiguous block of two years. Thus, the mandatory compliance for FY 2021-22 would be required to be met over the block of two years *i.e.* by March 31, 2023.

2.2.3.3. SEBI vide circular dated March 31, 2023, extended the contiguous block of two years to three years from FY 2021-22 onwards, to enable LCs to comply with the said requirement.

2.2.4. **Provision w.r.t non-compliance**

If at the end of three years, there is a shortfall in the requisite borrowing (*i.e.* the actual borrowing through debt securities is less than 25% of the incremental borrowings), a monetary penalty/ fine of 0.2% of the shortfall in the borrowed amount shall be levied and the same shall be paid to the Stock Exchanges.

2.2.5. **Disclosure requirements**

2.2.5.1. A listed entity, identified as a LC shall *inter-alia* make the following disclosures to the stock exchanges where its securities are listed:

(a) Within 30 days from the beginning of the FY, disclose the fact that they are identified as a LC in the format as specified in the annex to the LC Chapter.

(b) Within 45 days of the end of the FY, the details of the incremental borrowings done during the FY the format as specified in the annex to LC Chapter.

2.2.5.2. The disclosures made is to be certified both by the Company Secretary and the Chief Financial Officer of the LC and shall also form part of audited annual financial results of the entity.

3. Need for review and Data analysis:

- 3.1. SEBI has been monitoring compliance by the LCs with the provisions of the LC chapter. SEBI is in receipt of representations from various stakeholders including entities that have been identified as LCs. A summary of such representations is as under:
- 3.1.1. Raising funds from Banks and Financial Institutions is a cost effective option as compared to raising of funds from debt securities. In most of such cases, meeting with the requirement of 25% of incremental borrowing through debt securities has become costlier due to tightening liquidity and hikes in the benchmark rate.
- 3.1.2. In case of certain industries – like the textile industry, for example – the Central and various State Governments provide special packages/ incentives to have access to timely and adequate capital at internationally comparable rates by providing interest subsidy benefits on the term loans raised for the new capital investments. However, such Interest Subsidy Benefits are not available when funds are raised through debt securities. Due to non-availability of such benefits, the borrowing cost through issuance of debt securities is high which impacts the viability of the project, thus impacting its feasibility.
- 3.1.3. For companies, such as those in the power sector, where tariffs are regulated, the cost of debt has a major bearing on tariff rates. A higher cost of debt would translate to higher tariff. Availability of credit at a lower cost is crucial in computation of such tariffs to final consumers.
- 3.2. Thus, in sum, LCs are of the opinion that the decision to borrow funds at the best prevailing rate, as per market conditions, may be best left to the entity concerned.
- 3.3. It is also suggested by the industry players to increase the minimum threshold of Rs. 100 Crores with respect to long-term outstanding borrowing for being brought under the framework of LC.
- 3.4. **Data Analysis**
- 3.4.1. Data regarding the details of LCs who were unable to raise 25% of their incremental borrowings through issuance of debt securities for FY 2020, FY 2021 and FY 2022 was sought from the Stock Exchanges. Analysis of the data is given below:

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Sr. No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22
1.	Total no. of Companies identified as LCs	232	233	231
2.	Out of 1 above, No. of LCs having incremental borrowings	130	148	150
3.	Amount of Incremental borrowings (in Rs. crore)	8,81,316	11,53,959	13,63,119
4.	Out of 2 above, No of LCs having shortfall	56	38	50
5.	Amount of Shortfall (in Rs. crore) (X)	21,426	12,267	55,050
6.	Penalty @ 0.2% of the shortfall (in Rs. crore) - 0.2%* (X)	43	25	110

3.4.2. It can be observed from the above table that though LCs have made efforts to comply with the LC chapter, around one-third of the identified LCs did not raise the minimum 25% of their incremental borrowing through issuance of debt securities in FY 2021-22.

3.5. It is also noted that investors such as insurers, pension and provident funds (PF) including the EPFO, NPS Trust and other exempt PF trusts are all required to invest a particular percentage of their incremental receipts in corporate bonds. Such investors are long term investors and require deployment with growing corpus. Hence, lack of supply of issuances can adversely affect such investors and deprive their constituents of opportunities for investment and due returns thereof. Excessive reliance on the banking system or external commercial borrowings by the LCs may also not be desirable. Hence, it is important for LCs to consider and continue to raise borrowings by way of issuance of debt securities.

4. Discussions in the Working Group and Corporate Bond and Securitisation Advisory Committee (CoBoSAC)

- 4.1. SEBI constituted a working group from the industry to review the framework for LCs. The working group comprised the following persons:
- a) Ms. Savitri Parekh (CS and Compliance officer, Reliance Industries Ltd)
 - b) Mr. Narayan Shankar (Vice president and CS, Mahindra and Mahindra Limited)
 - c) Ms. Geetika Anand (Joint President, CS and Compliance Officer, Hindalco Industries limited)
 - d) Ms. Rakhi Dua (AGM (F), IRFC Limited)
 - e) Ms. Savita Kodain (Deputy CS, L&T Finance Limited)
 - f) Ms. Vallari Gupte (CS, CEAT Limited)
 - g) Mr. Vinod Chandrasekharan (General Manager (Finance), NABARD)
 - h) Ms. Anchal Dhir (Partner, Cyril Amarchand Mangaldas, representing FICCI)
- 4.2. The terms of reference for the committee, *inter-alia*, were to discuss and provide recommendations on relevant changes to the existing framework for LCs. The working group recommended a revised framework for LCs considering modification in the definition of LC, incremental borrowings, outstanding long-term borrowings, need for removal of penal provisions for non-compliance, etc.
- 4.3. The recommendations of the committee were also placed before the CoBoSAC in its meeting held on July 25, 2023. After taking into account the discussions of the committee on the recommendations of the working group and internal discussions at SEBI, the framework for LCs is proposed to be revised as given in para 5 below.

5. Proposal:

The changes suggested to the existing framework for mandatory borrowings by LCs are as follows:

5.1. Increase in the threshold of outstanding long-term borrowings

5.1.1. **Extant regulatory provisions:** Currently, the threshold for the criteria of outstanding long term borrowings for the purpose of identifying any entity as LC is Rs. 100 crore or above.

5.1.2. **Proposal:** The threshold for the outstanding long term borrowings is proposed to be increased to Rs.500 crore or above, which is in line with the present threshold for an entity to be called as '*high value debt listed entity*'.

5.1.3. **Rationale:** It was felt that the threshold should be aligned with the threshold of "*high value debt listed entity*" to have uniformity in the Regulations. This would also be a breather for companies with outstanding long term borrowings of less than Rs.500 crores to prepare themselves for compliance with these provisions once the framework becomes applicable to them.

5.2. Expansion in definition of outstanding long-term borrowings and incremental borrowings:

5.2.1. **Extant regulatory provisions:** Currently, the term '*outstanding long-term borrowings*' and '*incremental borrowings*' excludes external commercial borrowings and inter-corporate borrowings between a parent and subsidiaries.

5.2.2. **Proposal:** It is proposed that the term "*incremental borrowings*" may be replaced with "*qualified borrowings*". Further, in addition to the specified exclusions, the following are proposed to be excluded from the definition of the term '*outstanding long-term borrowings*' and '*incremental borrowings* (now to be referred as *qualified borrowings*)':

- a) Inter-Corporate Borrowings between its holding company and/or subsidiary and /or associate companies;
- b) Grants, deposits or any other funds received as per the guidelines or directions of Government of India; and
- c) Borrowings arising on account of interest capitalization.

5.2.3. **Rationale:** The said exclusion is proposed to be extended to inter-corporate borrowings between a LC and its associate companies as there is a significant influence in case of associate companies as per provisions of Companies Act,

2013. Further, grants, deposits or any other funds received as per the guidelines or directions of Government of India, may be excluded as they are provided to the LC, to be used for a specific purpose determined by the Government and could be used without any discretion available to the recipient LC. Furthermore, borrowings arising on account of interest capitalization are not borrowings from the market in the true sense.

5.3. **Removal of requirement of credit rating as a criterion for identifying an entity as LC**

5.3.1. **Extant regulatory provisions:** Currently, the framework is applicable for all listed entities having a credit rating of "AA and above", where credit rating shall be of the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in; and in case, where an issuer has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered for the purpose of applicability of LC framework.

5.3.2. **Proposal:** Requirement of rating as a criterion for identifying any entity as LC may be removed.

5.3.3. **Rationale:** Since, the threshold of long-term outstanding borrowings as an identifying criterion is proposed to be increased from Rs. 100 Crores to 500 Crores, most of the entities with long-term outstanding borrowings of Rs. 500 Cr or above would fall under the bracket of credit rating of 'AA and above'. Further, the definition of "high value debt listed entity" also doesn't entail any credit rating criterion. Thus, it is suggested to remove the criteria of credit rating.

5.4. **Removal of provision for penalty in the event of non-compliance by the LC**

5.4.1. **Extant regulatory provisions:** Presently, if at the end of three years, there is a shortfall in the requisite borrowing (i.e. the actual borrowing through debt securities is less than 25% of the incremental borrowings), a monetary penalty/ fine of 0.2% of the shortfall in the borrowed amount is levied and payable to the Stock Exchanges.

5.4.2. **Proposal:** The provision of levying penalty is proposed to be removed. Instead of levying penalty, it is proposed that in case of shortfall or surplus (as the case may be) in the actual borrowings when compared to the specified level of borrowings (25%) by way of issuance of debt securities, additional or lower contribution respectively to the core Settlement Guarantee Fund³ (SGF) of the Limited Purpose Clearing Corporation (LPCC) shall be made by the LC.

³ SEBI circular 'Contribution by eligible Issuers of debt securities to the Settlement Guarantee Fund of the Limited Purpose Clearing Corporation for repo transactions in debt securities' dated April 13, 2023

- 5.4.3. **Rationale:** Imposition of penalty for failure to achieve specified level of borrowings (25%) is proposed to be removed keeping in mind the spirit of ease of doing business. Instead of levy of penalty, an incentive and disincentive structure in relating to contribution to the core SGF of LPCC is proposed.

In order to encourage LCs to raise funds by way of issuance of debt securities, incentives in the form of reduction in annual listing fees and credit in the form of reduction in the contribution to core SGF of LPCC is proposed. As far as the disincentive mechanism is concerned, the additional contribution envisaged in case of a shortfall in borrowings is proposed to be pegged at a much reduced scale compared to the current level of penalty; further, the same is also proposed to be without linking the same to tenure of the bond issuance. It is noted that if the issuance of the debt securities had been made by the LC as required, contribution to core SGF would have consequently been made otherwise. The same are explained in detail in the paras 5.6 and 5.7.

5.5. **Removal of block period of three years and making it applicable on annual basis:**

- 5.5.1. **Extant regulatory provisions:** From FY2022 onwards, the requirement of mandatory borrowing by a LC in a FY has to be met over a contiguous block of three years.
- 5.5.2. **Proposal:** In order to ease the manner of computation and simplify the process of reckoning the specified level of borrowing (25%), it proposed that the requirement of specified level of borrowing (25%) by a LC shall be made applicable on an annual basis. Accordingly, a listed entity identified as a LC, as of FY "T-1", shall have to fulfill such requirement of specified level of borrowing (25%) for FY "T" in FY "T" itself.
- 5.5.3. **Rationale:** The proposed approach of compliance on an annual basis simplifies the manner of reckoning the specified level of borrowing (25%) by way of issuance of debt securities as it is required to be achieved in the present financial year. This would eliminate the need of multi-year tracking by LCs, thereby easing and simplifying the manner of computation.

5.6. **Incentives for achieving surplus in the actual borrowings when compared to specified level of borrowings (25%) by way of issuance of debt securities**

In order to encourage entities to raise funds through debt market and incentivize LCs who exceed the requirement of specified level of borrowings (25%), the following are proposed:

- 5.6.1. To reduce the annual listing fees payable to the Stock Exchanges by LCs as per the table given below:

Table I: Computation of quantum of % of reduction in annual listing fees payable to the Stock Exchanges by LCs

Sl. no.	% of surplus borrowing in FY "T"	% of reduction in annual listing fees payable to the Stock Exchanges by the LC for FY "T" for the new debt securities issued and listed in FY "T"
1.	0-15	2% of annual listing fees
2.	16-30	4% of annual listing fees
3.	31-50	6% of annual listing fees
4.	51-75	8% of annual listing fees
5.	Above 75	10% of annual listing fees

- 5.6.2. Credit in the form of reduction in contribution to the Core SGF by the LC: the quantum of such credit shall be computed as per the following tables:

Table II: Computation of % of credit

Sl. no.	% of surplus borrowing	Quantum of credit
1.	0-15%	0.01%
2.	16-30%	0.02%
3.	31-50%	0.03%
4.	51-75%	0.04%
5.	above 75%	0.05%

Table III: Manner of computation of credit

Sl. no.	Particulars	Amount (in Rs. Crores)
1.	Borrowings that should have been made from the debt market by the LC for FY "T" (A)	X
2.	Actual borrowings in FY "T" (B)	Y

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3.	Surplus borrowings (Y-X) (C)	Z
4.	% of surplus borrowing	(C/A)*100
5.	Quantum of credit	% of surplus borrowing as per the above table (multiplied by) Z

It is proposed that a credit of such reduction in contribution to the core SGF will be provided to the LC which can be set off against any future contribution to the core SGF made by such LC.

5.7. Disincentive in the form of additional contribution to the core SGF in case of shortfall in the actual borrowings when compared to specified level of borrowings (25%) by way of issuance of debt securities

5.7.1. If the LC had made issuances upto the specified level of borrowings (25%) by way of issuance of debt securities, contribution to the Core SGF corresponding to such issuances would have been made by the LC. Keeping in mind this fact, it is felt that in case of shortfall in the actual borrowings when compared to the specified level of borrowings (25%) and with dispensing of the penalty, an additional contribution to core SGF should be made by the LC in the following manner:

- a) An amount equivalent to 0.5 basis points of such shortfall shall be made by the LC to the core SGF; and
- b) An amount calculated as a % of such shortfall as per the following table:

Table IV: Computation of % of additional contribution

Sl. no.	% of shortfall in the actual borrowings	Quantum of % additional contribution
1.	0-15%	0.01 %
2.	16-30%	0.02%
3.	31-50%	0.03%
4.	51-75%	0.04%
5.	above 75%	0.05%

Table V: Manner of computation

Sl. no.	Particulars	Amount (in Rs. Crores)
1.	Borrowings that should have been made from the debt market by the LC for FY "T" (A)	X
2.	Actual borrowings in FY "T" (B)	Y
3.	Shortfall in borrowings (X-Y) (C)	Z
4	% of shortfall in borrowing	(C/A)*100
4.	Quantum of additional contribution (as per the above table)	% of shortfall in borrowing as per the above table (multiplied by) Z

For ease of reference, an illustration is provided in **Annex-I**.

6. Public Comments:

The comments/ suggestions on the queries sought may be provided by **August 31, 2023** 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.	Particulars/ Issues	Proposals/ Suggestions	Rationale

Issued on: August 10, 2023

Annex – I: Illustration

Sr. No.	Particulars	FY 2024-25	FY 2025-26	FY 2026-27
1	Outstanding Long-term borrowing as on March 31 st of previous FY (in Rs Cr)	500	600	900
2	Whether the LC framework applicable?	Yes	Yes	Yes
3	Incremental Borrowing in the current FY (in Rs. Cr)	600	500	300
4	Borrowing required to be made through debt securities in the current FY (25% of incremental borrowings) (A) (in Rs. Cr)	150	125	75
6	Actual borrowings done through debt securities in the current FY (B) (in Rs. Cr)	100	125	135
7	Shortfall/ surplus (A-B) (in Rs. Cr)	50 (D)	0	60 (S)
8	Compliance status	No	Yes	Yes
9	% of surplus/ (shortfall) in actual borrowing (A-B)/A*100	(33%)	0	80%
10	Reduction in annual listing fees payable to Stock Exchanges by LC	NA	NA	10% of annual listing fees (incentive)
11	Additional/less Contribution to SGF (% contribution)*(A-B)/100 (in Rs.)	(0.5 Bps+0.03%) * 50, which is (0.00005+0.0003) * 50, which is (0.035%) * 50	0	(0.0005*60), which is (0.05%) * 60
		1, 75 000 (additional contribution - Disincentive)		3,00,000 (Reduction in contribution-Incentive)
12	Penalty on the shortfall under the existing LC Framework	(0.2%)*50, which is (0.002*50)		NA
		10, 00, 000 (penalty)		