

Debenture Issuance: Recent developments and applicable compliances

Prepared for ICSI-WIRC for program dated January 12, 2023

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- Vinod Kothari and Company, company secretaries, is a firm with over 30 years of vintage
 - Based out of Kolkata, New Delhi, Mumbai and Bangalore
- We are a team of qualified company secretaries, chartered accountants and lawyers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Outline

- **Introduction to Debentures & State of Indian Bond Market**
 - Comparison of debentures with other forms of borrowings/securities
 - Types of Debentures
 - Modes of Issuance
 - Regulatory Framework
- **Recent amendments, immediate actionable**
 - Large Corporate Borrower Framework;
 - Timelines for listing privately placed debentures
 - Revised framework for EBP
 - ISIN Restriction
 - Security and Covenant Monitoring using DLT
 - High Value Debt Listed Entities
 - Scheme of Arrangement
 - Other Recent Amendments



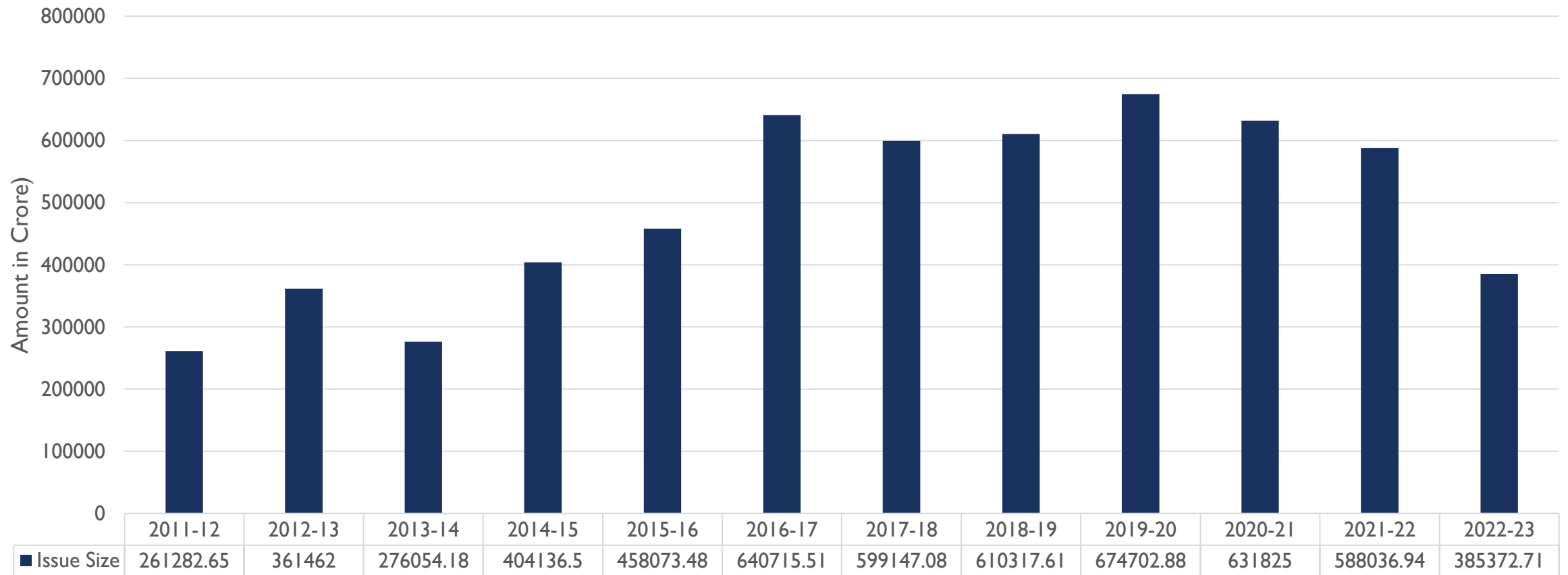
Introduction to Debentures & State of Indian Bond Market



Definition

- **Companies Act, 2013 defines “debenture” as-**
 - **"Debenture"** includes debenture stock, bonds or **any other instrument** of a company evidencing a debt, whether constituting a charge on the assets of the company or not;
 - **Provided that—**
 - the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
 - such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,
shall not be treated as debenture.
- **SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021**
 - **“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;

Private Placement of Debentures

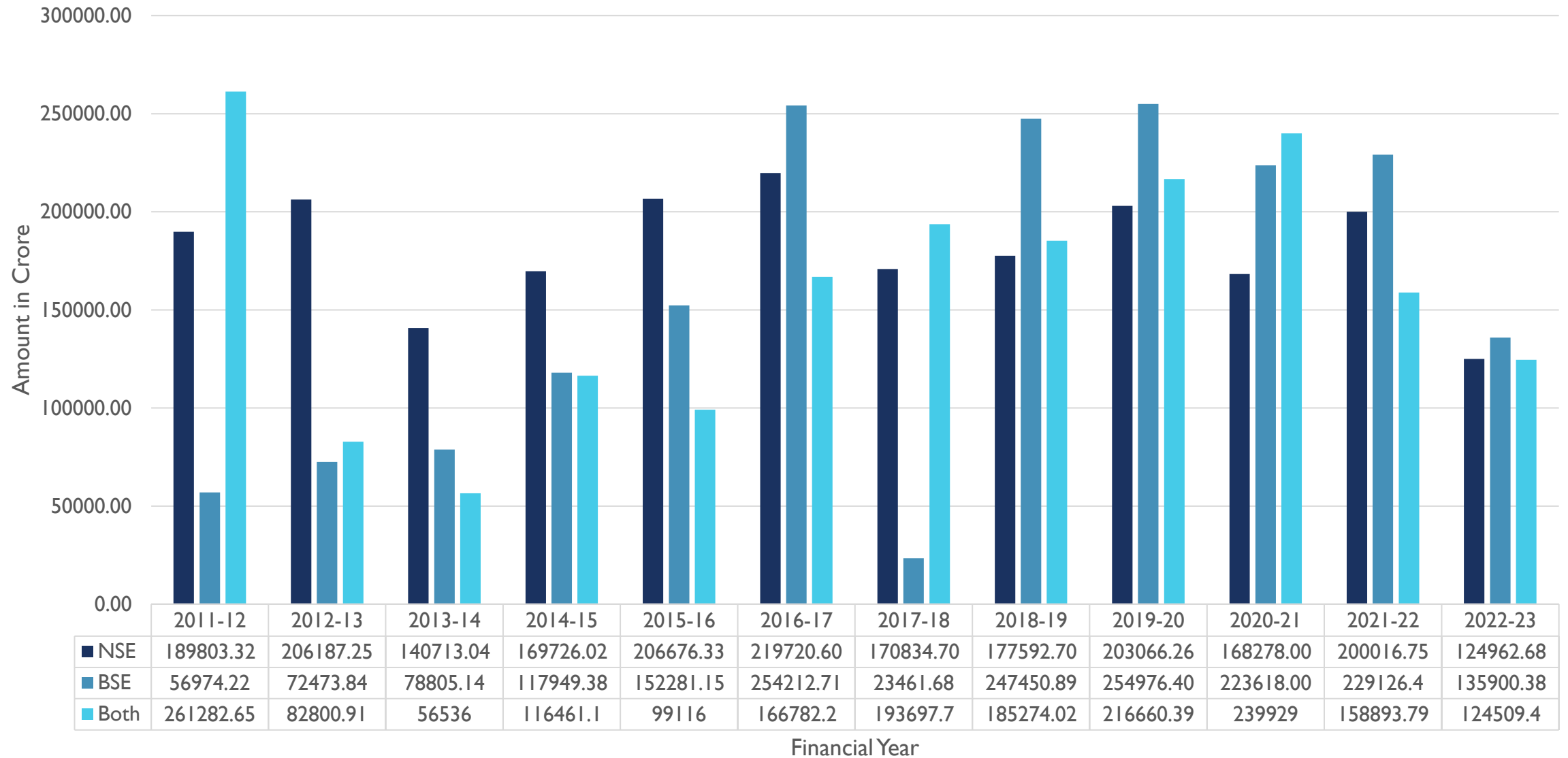


Financial Year

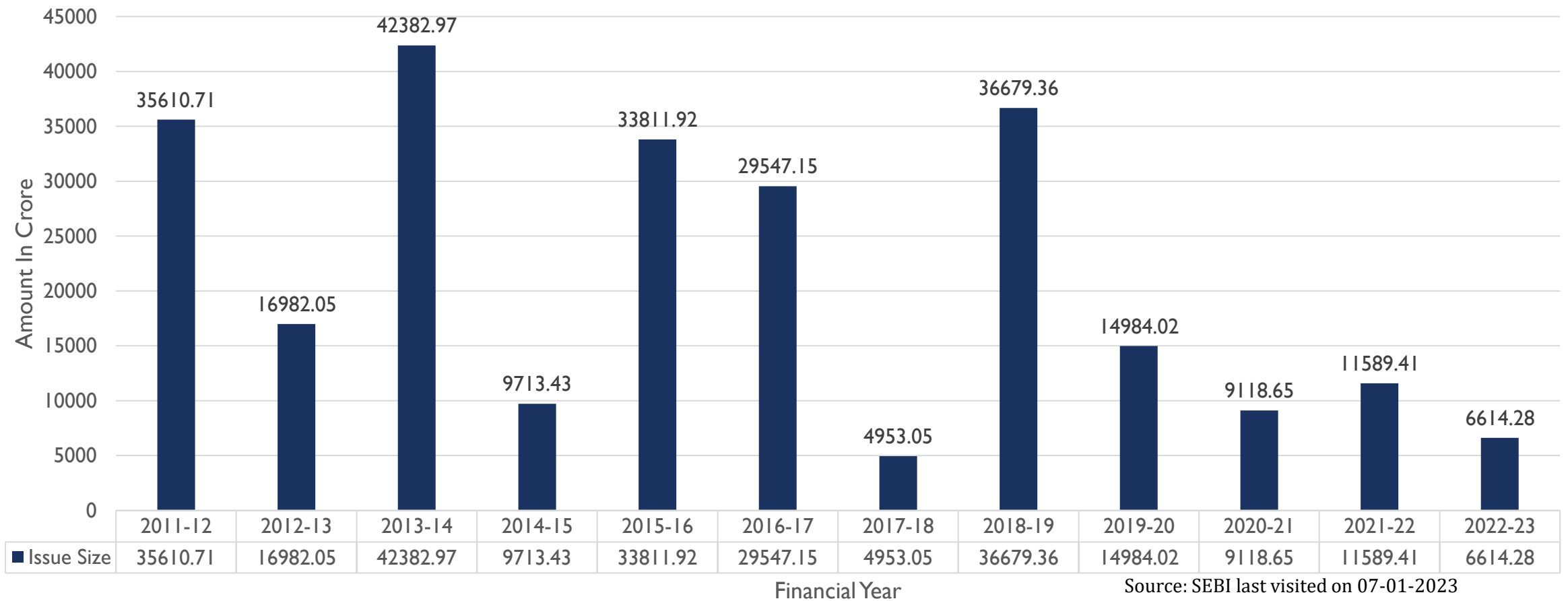
Source: SEBI last visited on 07-01-2023

Figures for FY 2022-23 reflects issuance till November, 2022.

Split between listed on BSE, NSE and Both

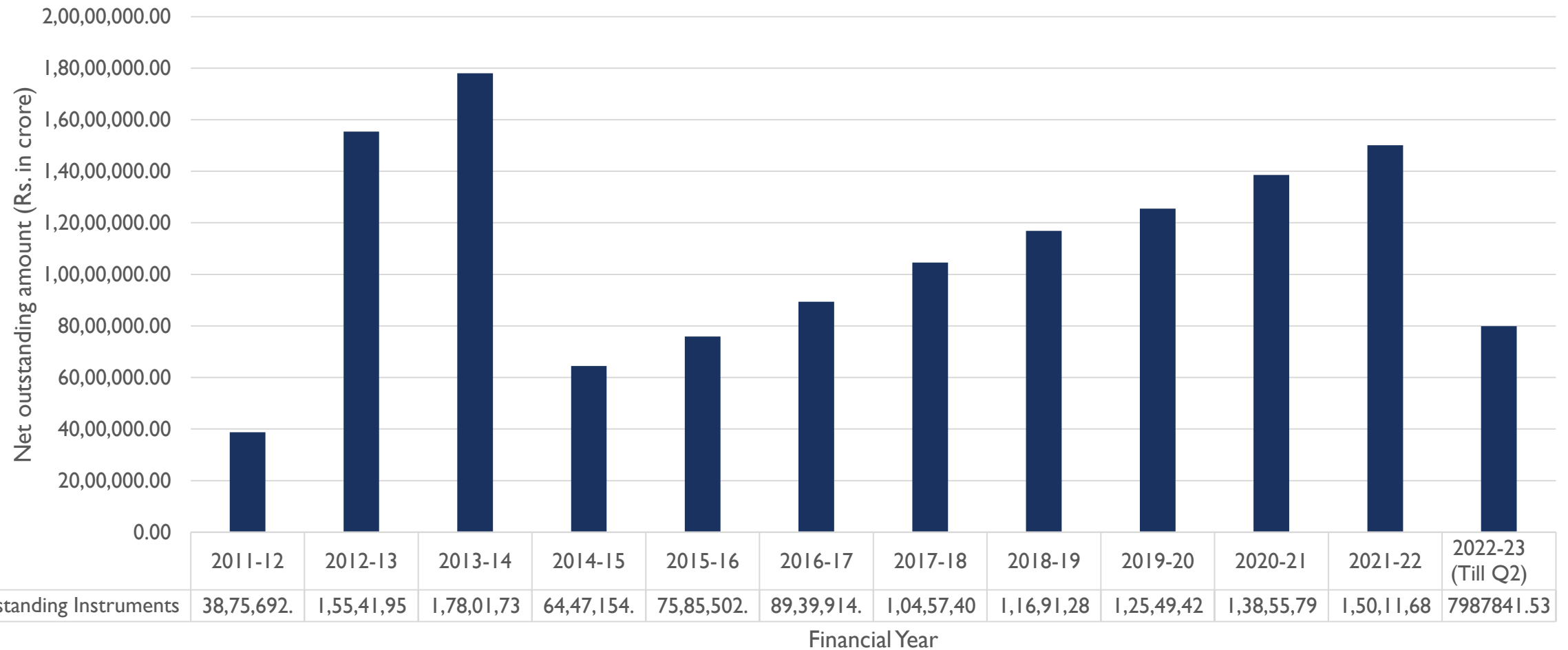


Public Issue of Debentures



Figures for FY 2022-23 reflects issuance till November, 2022.

Outstanding corporate bonds



Source: SEBI last visited on 22-02-2021

Issuers in Bond market

Issuers in Corporate Bond Market

Corporates

**Banks and Financial
Institutions**

**Public Sector Units
(PSUs)**

Local Bodies

Debentures v/s Bonds

- **Section 2(10A) of the Indian Stamp Act, 1899 defines “debentures” as –**

- **“debenture” includes—**

- Debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;
 - bonds in the nature of debenture issued by any incorporated company or body corporate;
 - certificate of deposit, commercial usance bill, **commercial paper** and such other debt instrument of original or initial maturity upto one year as the Reserve Bank of India may specify from time to time;
 - **securitised debt instruments; and**
 - any other debt instruments specified by the Securities and Exchange Board of India from time to time.

- **Section 2(5) of the Indian Stamp Act, 1899 defines “bonds” as -**

- **“Bond” includes—**

- any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
 - any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
 - any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;

but does not include a debenture;

Comparison with other forms of borrowing/ securities

■ **Debenture v/s Commercial Paper**

- Nature
- Issuance
- Listing
- Coupon
- Creation of security interest
- Tenure
- Early redemption (call/ put).

■ **Debenture v/s PTCs**

- Nature
- Nature of investment
- Listing
- Creation of security interest

■ **Debenture v/s Preference Shares**

- Nature
- Issuance
- Listing
- Return
- Creation of security interest
- Redemption

■ **Debenture v/s Loans**

- Nature
- Issuance
- Listing
- Transferability
- Creation of security interest

Debentures when not considered as deposit

- **Companies Act, 2013 defines “debenture” as-**
 - **“Deposits”** includes any receipt of money by way of deposit or loan or in any other form, by a company, **but does not include:**
 - Amount raised by issue of secured or compulsorily convertible bond/debentures
 - Secured by first charge or pari-passu with first charge on any assets referred to in Schedule III of the Act, 2013 excluding intangible assets .
 - Compulsorily convertible into shares within 10 years.
 - Amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by SEBI.
 - Any amount received from foreign entities, subject to FEMA provisions.
 - Any amount received from another Company
- Provisions of the rules do not apply to Banking Company, NBFCs and HFCs registered with RBI.

Debentures when not considered as deposit –for NBFCs, HFC

- **Definition of deposit as per RBI Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016**
- **“Public deposit”** means a deposit as defined under section 45-I(bb) of the Reserve Bank of India Act, 1934 (2 of 1934), **excluding the following:**
- any amount raised by the issue of bonds or debentures
 - secured by
 - mortgage of any immovable property of the company; or
 - by any other asset; or
 - amount of such bonds or debentures shall not exceed the market value of such immovable property/other assets;
 - compulsorily convertible into equity in the company.
- Any amount raised by issuance of NCDs with a **maturity** more than **one year** and having the minimum subscription per investor at **Rs.1 crore and above**, and issued in accordance with the guidelines issued by the Bank as in force from time to time in respect of such non-convertible debentures.
- any amount received as hybrid debt or subordinated debt the minimum maturity period of which is not less than sixty months provided there is no option for recall by the issuer within the period;
- any amount received from a Company;
- In case of HFCs, additionally, any amount received from NHB and Public Housing Agency shall be exempted from the definition of public deposits.

Types of Debentures

- **Based on:**

- Tenure
- Seniority
- Creation of security
- Nature of guarantee
- Convertibility
- Ratings
- Coupon rate
- Rate of interest
- Option to redeem
- End use

Green Bonds/Climate Bonds

- Green Bonds/ Climate Bonds – for projects/assets under any of the following category:
 - Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology etc.
 - Clean transportation including mass/public transportation etc.
 - Sustainable water management including clean and/or drinking water, water recycling etc
 - Climate change adaptation.
 - Energy efficiency including efficient and green buildings etc.
 - Sustainable waste management including recycling, waste to energy, efficient disposal of wastage etc.
 - Sustainable land use including sustainable forestry and agriculture, afforestation etc.
 - Biodiversity conservation.

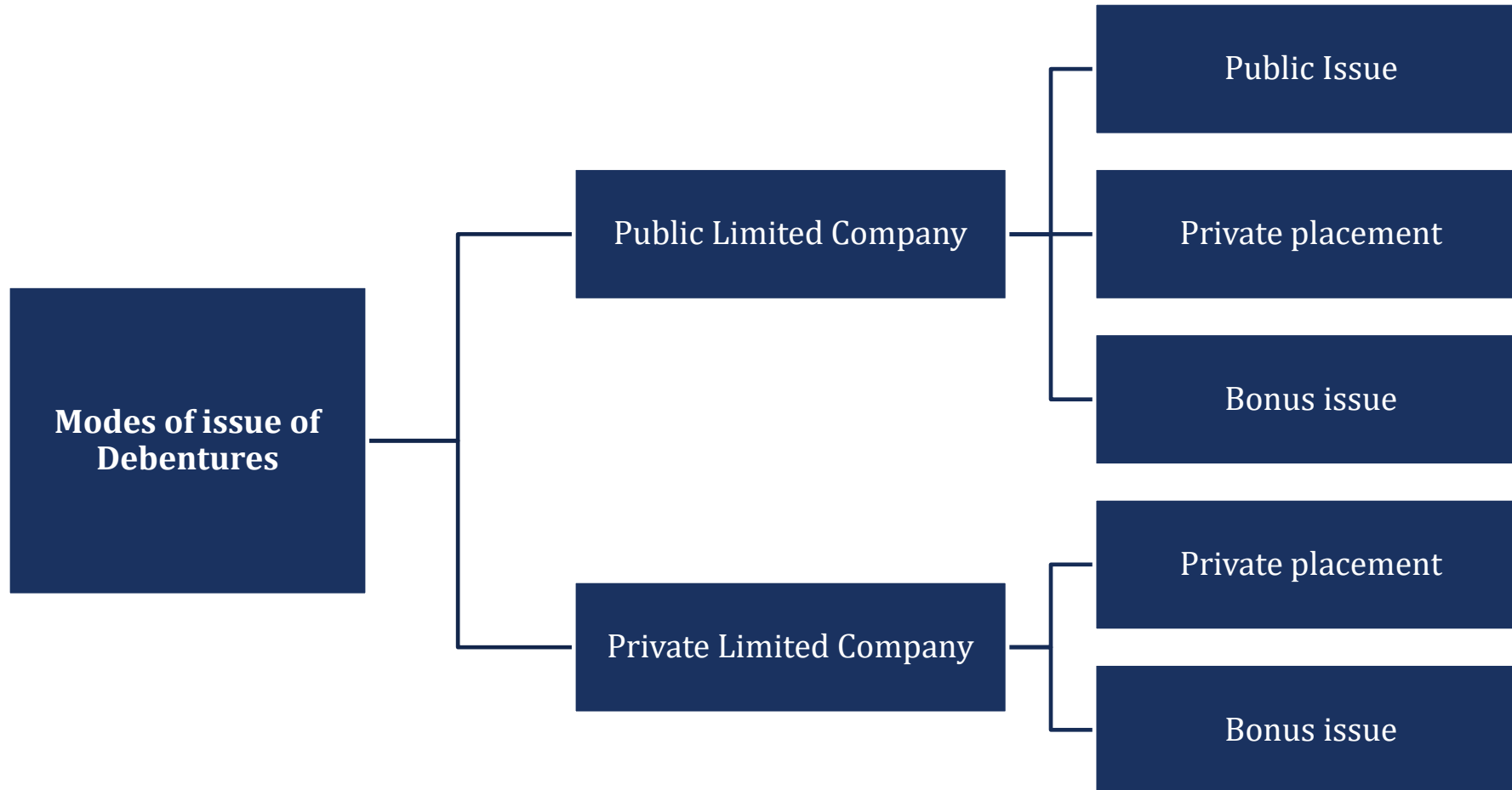
End use restrictions for External Commercial Borrowings (ECB)

- Real Estate activities.
- Investment in capital market
- Equity investment
- Working capital purposes/general corporate purpose, except where availed:
 - From foreign equity holder with minimum average maturity period (MAMP) of 5 years.
 - Raised with MAMP of 10 years.
- Repayment of rupee loans, except in case of:
 - ECB with minimum MAMP of 7 years availed for repayment rupee loans availed domestically for capital expenditure or on-lending by NBFCs for the same purpose
- ECB with minimum MAMP of 10 years availed for repayment rupee loans availed domestically for purpose other than capital expenditure or on-lending by NBFCs for the same purpose.
- On-lending to entities for above activities, except in case of:
 - ECB raised by NBFCs for following purpose subject to meeting MAMP requirements:
 - Working capital or general corporate purpose;
 - Repayment of Rupee loans availed domestically for capital expenditure
 - Repayment of Rupee loans availed domestically for purposes other than capital expenditure



Modes of Issuance of Debentures & Regulatory framework

Modes of Issuance of Debentures



Regulatory Framework

- **Companies Act, 2013**

- Section 23,
- Section 29 r/w Rule 9A of PAS Rules
- Section 42 r/w Rule 14 of PAS Rules
- Section 71 r/w Rule 18 of SHA Rules
- Sections 179, 180

- **SEBI Regulations**

- SEBI (Issue and Listing of Non Convertible Securities) Regulations, 2021
 - SEBI Operational Circular dated August 10, 2021
- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
 - SEBI Operational Circular dated July 29, 2022
- SEBI (Debenture Trustees) Regulations, 1993

- **FEMA**

- FEMA (Non-Debt Instruments) Rules, 2019
- FEMA (Debt Instrument) Regulations, 2019
- FEMA (Borrowing and Lending) Regulations, 2018

- **RBI**

- RBI Master Directions for NBFC - SI
 - Directions on Raising Money through Private Placement of Non-Convertible Debentures (NCDs) by NBFCs, HFCs
- RBI Master Circular on Basel III Norms.



RECENT AMENDMENTS, IMMEDIATE ACTIONABLE





Large Corporate Borrowers Framework

BACKGROUND

Government of India made an announcement for **proposing a framework** towards mandatory issuance of debt securities by large corporates

FY 18- 19
Budget Speech

SEBI *vide* its Circular titled as, "Fund raising by issuance of Debt Securities by Large Entities" **notified framework** for LCB, applicable w.e.f. 01.04.2019

November 26, 2018

From FY-22, LCB Framework became **applicable on 'comply or pay penalty'**

April 01, 2021

July 20, 2018

SEBI came-up with a **Consultation Paper** regarding the draft framework for LCB and invited **public comments** on the same

April 01, 2019

LCB Framework became **applicable for the first time**. For the 1st two years i.e. FY-20 and FY-21, applicability was on COREX basis.

Highlights - Large Corporate Borrower (LCB) Framework

SEBI vide its Circular dated 26th November 2018, came up with a circular, mandating the 'Large Corporates' to raise at least 25% of their incremental borrowings by way of issuance of debt securities.

❑ When will the framework become applicable?

- Applicability from FY 19-20/ CY 2020 and onwards
- For the first two FYs/ CYs, compliance requirement was on annual basis.
- From FY22, compliance requirement has to be met over a block of 2 FYs.

❑ Who is a Large Corporate Borrower (LCB)?

- A listed entity, meeting the trigger conditions, (discussed later)

❑ What is Incremental Borrowing (IB)?

- Any borrowing done during a particular FY/ CY, of original maturity of more than one year.
- Irrespective of whether such borrowing is for refinancing/ repayment of existing debt or otherwise.
- ECB and inter-corporate borrowings between parent and subsidiary are **excluded**

❑ What type of securities are to be issued?

- Debt securities, as defined under SEBI NCS Regulations, 2021 which includes:
 - Non -convertible debt securities with a fixed maturity period;
 - With or without constituting a charge on the assets/ properties.

Consequences of non-compliance

- For the first 2 years (FY-20 and FY-21 or CY 20 and CY 21) - furnish explanation for shortfall in mandatory bond issuance
- For block commencing from FY 22 - Penalty for shortfall.

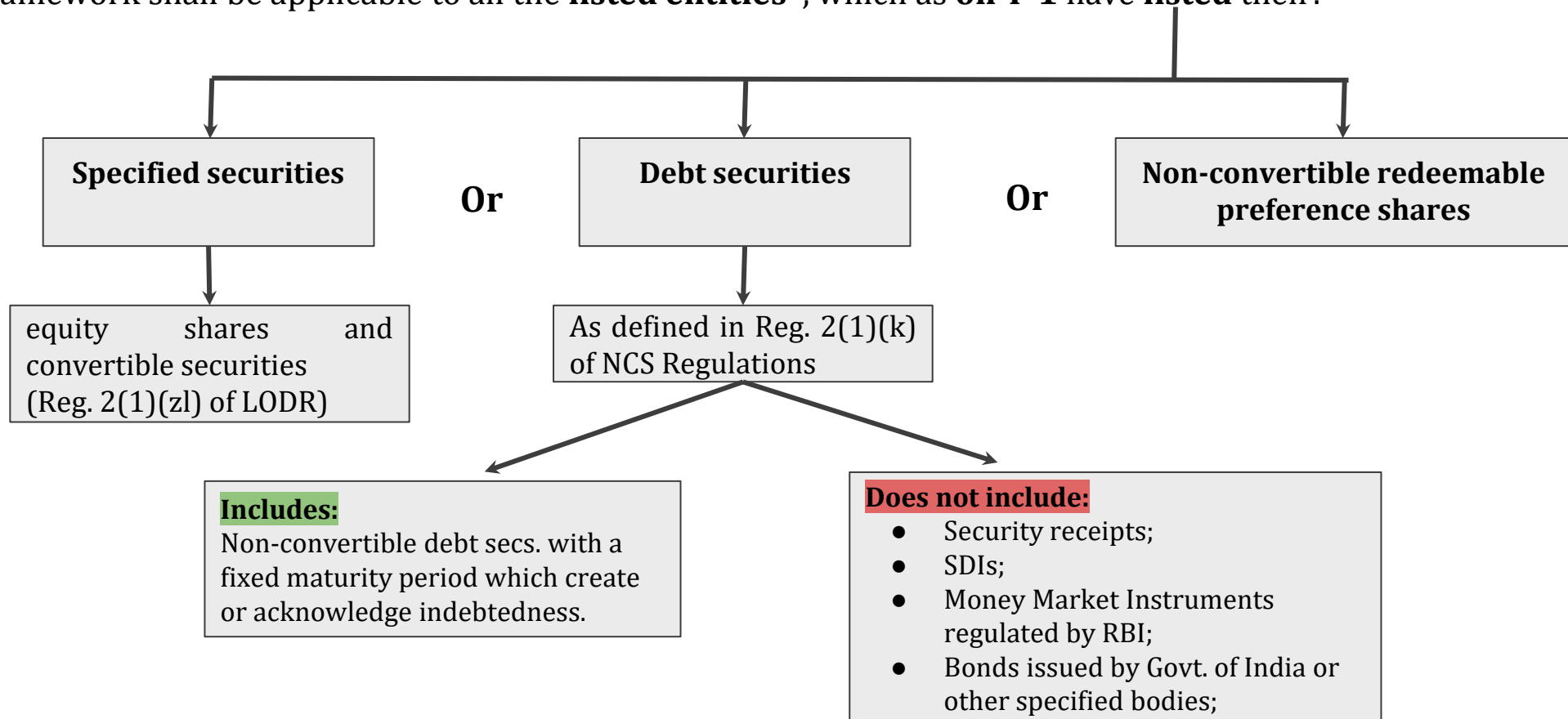
Cumulative trigger conditions for the applicability of LCB Framework

POINT OF CHECKING APPLICABILITY & TIME PERIOD FOR IB

	T-1	T	T+1
Meaning	Last day of the previous FY, preceding the FY, for which the applicability of the Framework is to be checked	FY for which the compliance has to be made with the Framework	The FY succeeding the FY during which the LCB Framework was applicable
Example	Last day of FY 21 i.e. 31.03.2021 is T-1 for FY 2021-22	Entire FY 2021-22 is T	Entire FY 22-23 is T+1 for FY 2021-22
Purpose	To determine applicability for T by fulfilling 3 cumulative conditions are as on T-1	To determine the quantum of IB, done during T	To comply with the debt issuance requirement in addition to T, if there is any shortfall during T
Illustration	As on 31.03.2021, issuer was fulfilling all the 3 cumulative conditions. Hence, identified as a LC for T.	IB during T - Rs. 100 cr. Now, the issuer has to mandatorily issue debt secs. of at least Rs. 25 cr. during T and T+1	During T, issuer issued debt secs. for Rs. 15 cr. Issuer shall issue debt secs. of Rs. 10 cr. during T+1, otherwise non-compliance for T

1ST TRIGGER CONDITION - TYPE OF ENTITY

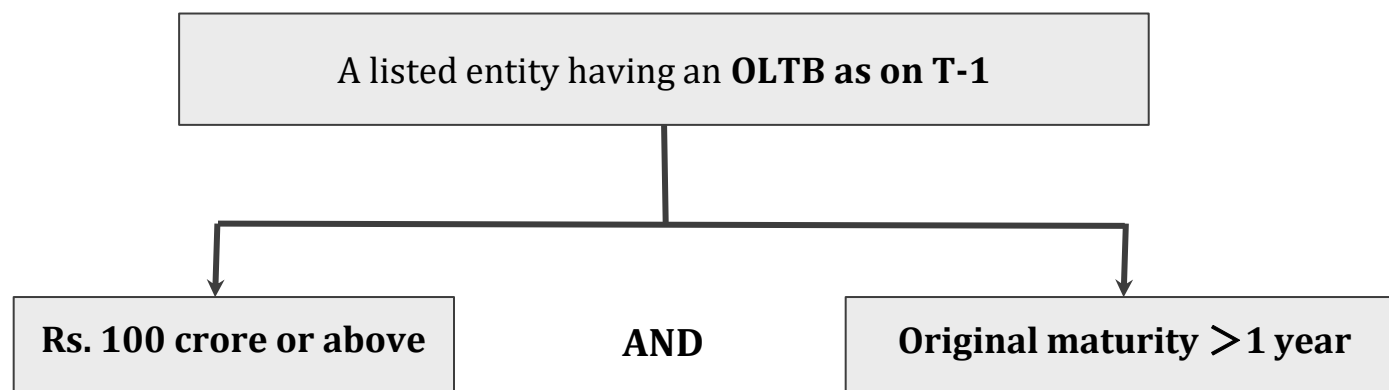
- ❑ The Framework shall be applicable to all the **listed entities***, which as **on T-1** have **listed** their:



* This framework does not applies to **Scheduled Commercial Banks**

2ND TRIGGER CONDITION - OUTSTANDING LONG TERM BORROWING (OLTB)

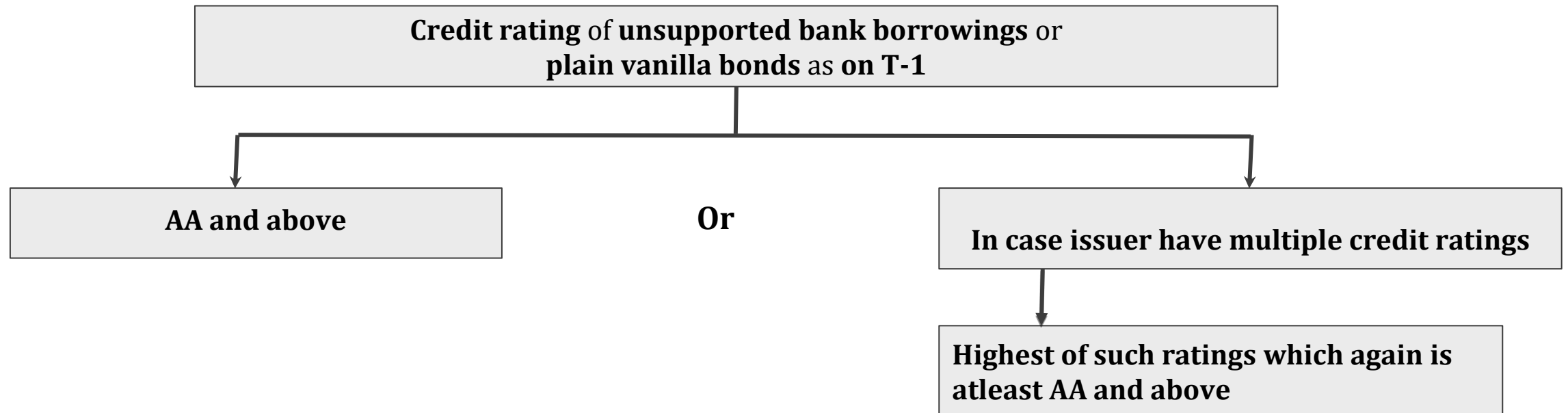
- ❑ The Framework shall be applicable to all the **listed entities as mentioned in the prev. slide**, which as **on T-1** have:



- ❑ **External commercial borrowings** and **inter-corporate borrowings between a parent and subsidiary(ies)** are **excluded** for the purpose of OLTB. ✕

3RD TRIGGER CONDITION - CREDIT RATING

- ❑ The Framework shall be applicable to all the **listed entities as mentioned in the prev slides**, which as **on T-1** have



- ❑ What constitutes '**unsupported bank borrowings**'?
 - Borrowing not supported by any guarantee from a 3rd party to uplift its credibility / is not structured
 - It does not mean 'unsecured borrowings'
- ❑ Will a **rating of AA-** fall under the applicability condition?
 - AA rating has three notches i.e. AA-, AA and AA+
 - AA- is certainly a notch below AA
 - Therefore, reference to "AA or above" does not include AA-

COMPLIANCE REQUIREMENTS FOR AN LCB

- ❑ The two major **compliance requirements** for an entity identified as a LCB on T-1 are:

Raise at least **25% of its incremental borrowings** during a FY by way of **issuance of debt securities**

- ❑ Meaning of **Incremental Borrowings**:

- Any fresh borrowing done during T; and
- having a original maturity > 1 year
- does not include ECB and inter-corp. borrowing between holding and subsidiary(ies)

Disclosure requirements

Beginning of the FY

W/n 30 days disclosing fact that they have been identified as an LCB.

Format as provided at [Annex-XII-A](#)

End of the FY

W/n 45 days disclosing the **details of IB** done during the FY (T)

Format as provided at [Annex-XII-B2](#)

ILLUSTRATION

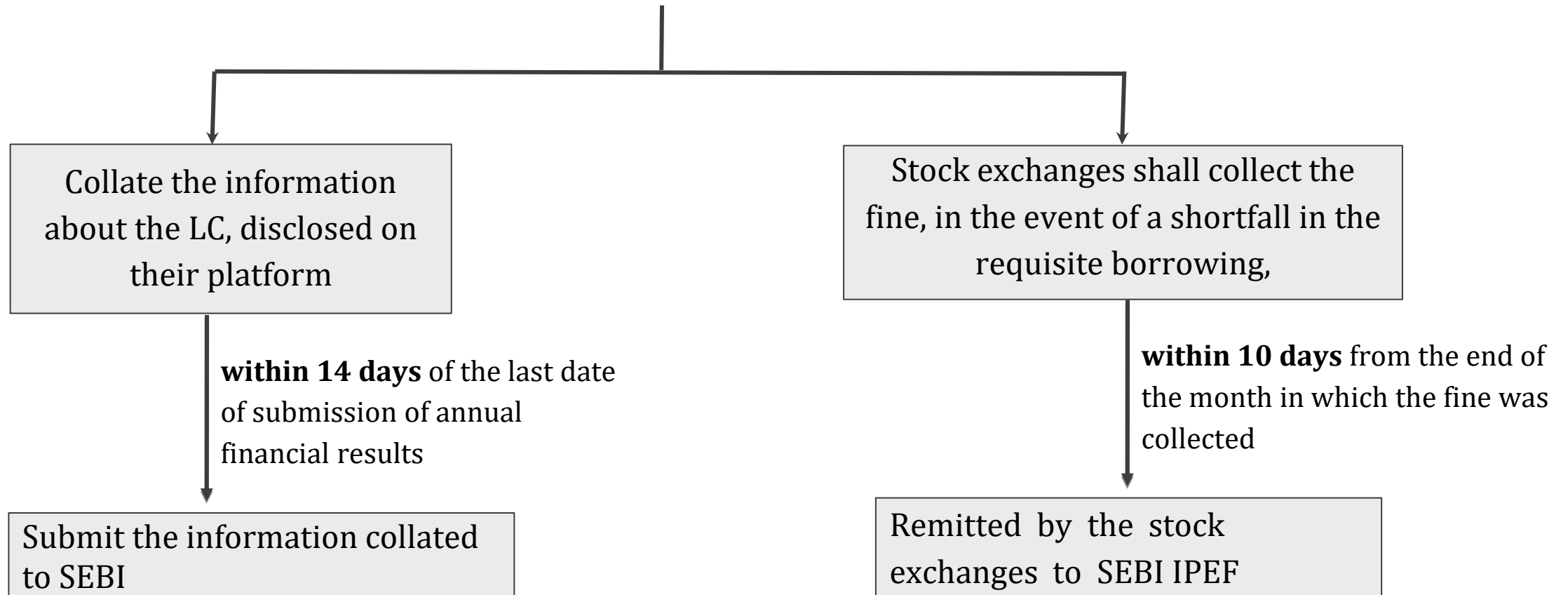
FY	Outstanding borrowings as on the last day of FY (in crores)	Whether LCB for the relevant FY?	Incremental borrowings during the FY (in crores)	Amount required to be raised through debt markets	Amount actually raised through debt markets	Shortfall	Penalty for shortfall
2019	120	-		-	-	-	
2020	200	Yes	100	25	20	5	Reason to be recorded
2021	80	Yes	0	0	0	Nil	NA
2022	120	No	40	0	20	NA	NA
2023	150	Yes	50	12.5	10	2.5	NA (see note 1)
2024	200	Yes	120	(2.5 + 30) = 32.5 (see note 2)	1.5	31	Rs. 20,000 (see note 3)

Notes -

1. The incremental borrowings through debt securities can be achieved within the 2-years' block, i.e., FY 2023 and FY 2024. Therefore, the shortfall will be carried over to FY 2024 and fine will not be levied for FY 2023.
2. For FY 2024, 25% of the incremental borrowings for that financial year including the shortfall of previous financial year of the same block will be required to be raised through debt markets.
3. **Fine will be levied @0.20% of the shortfall amount for FY 2023.** The shortfall of FY 2024 can be carried over to the next 2-years' block and can be met within FY 2025.

RESPONSIBILITIES OF STOCK EXCHANGES

- ❑ Stock exchanges shall have **following responsibilities** under the Framework



Timelines for listing of privately placed debentures – Till Dec 31, 2022

Sl. No	Details of Activities	Due Date
1	Closure of Issue	T day
2	Receipt of Funds	To be completed by T+2 working day
3	Allotment of Securities	
4	Issuer to make listing application to stock exchange(s)	To be completed by T+4 working day
5	Listing permission from stock exchange(s)	

Revised Timelines for Issuances made on or after Jan 01, 2023 – 1/2

Category	Timeline (Working day)	Nature of Activity	
		EBP	Non-EBP
In-principle approval	Prior to T-2/ T-5 (EBP); Prior to T (Non-EBP)	In-principle approval from SEs- Prior to the date of providing PM & Term sheet to EBP(s)	In-principle approval from SEs- prior to issue open date.
Bidding announcement	On or before T-1	Bidding start time & close time to be provided to the EBP	Open and close date to be disclosed in PM
Day of bidding/ Issue period	T	<ul style="list-style-type: none"> Bidding on EBP. Provisional allocation pay-in obligations to bidders 	Final allotment to investor to finalize on closure date.
ISIN allocation/ assignment/ confirmation by Depository	On or before T+1	Receipt of ISIN from depository to be ensured by issuer prior to pay-in	Receipt of ISIN from depository to be ensured by issuer prior to pay-in

‘T’ – Being the day of bidding/Issue Period

Revised Timelines for Issuances made on or after Jan 01, 2023 – 2/2

Category	Timeline (Working day)	Nature of Activity	
		EBP	Non-EBP
Settlement	On or before T+1/ T+2 (as per settlement cycle chosen by Issuer) (EBP)	<ul style="list-style-type: none"> • Pay-in by bidders, • Communication of receipt by issuer, • Final allocation • Payment of stamp duty. 	<ul style="list-style-type: none"> • Receipt of funds by issuer, • finalization of allotment, • payment of stamp duty, • Filing of corporate action by RTA.
	On or before T+2 (Non-EBP)	<ul style="list-style-type: none"> • Filing of corporate action by RTA. • Credit of securities to investors • pay out to Issuer • Issue of credit confirmation by depository to issuer 	<ul style="list-style-type: none"> • Credit of securities to investors, • pay out to Issuer, • Issue of credit confirmation by depository to issuer.
Listing	On or before T+3	<ul style="list-style-type: none"> • Make application of listing • Confirmation of listing permission by SEs • ISIN activation by depository 	<ul style="list-style-type: none"> • Make application of listing • Confirmation of listing permission by SEs • ISIN activation by depository



Revised framework for Electronic Book Provider Platform

EBP Framework : An overview – 1/2

■ Platforms

- BSE – BSE Bond
- NSE – NSE EBP

■ Eligible participants/ bidders

- Qualified Institutional Buyers (QIBs) as defined in SEBI ICDR;
- Non-QIB who/which has been authorised by the issuer, to participate in particular issue.
- Req'd. to enroll with EBP as onetime exercise. KYC to be done in the manner prescribed.
 - For QIBs – by EBP
 - For non- QIBs bidding directly – by issuer
 - For non-QIBs bidding through arrange – by arranger.

■ Issuer obligations

- Ensure compliance with applicable law, including CA, 2013;
- Provide placement memorandum and term sheet at least 2 WD before issue opening date, with req'd. disclosures;
- Disclosure details of allotment after closure of issue;

■ Applicability

- Private placement of NCS
 - Single issue, inclusive of green shoe option;
 - Shelf issue, consisting of multiple tranches, in a financial year;
 - Subsequent issue, in a financial year,
 - That aggregates to or exceeds Rs. 100 crore.
- Private placement of NCDs/ NCRPS by issuers who are in existence for less than 3 years
 - The issue is made on the EBP platform irrespective of the issue size; and
 - The issue is open for subscription only to QIBs
- issuance of PDIs, PNCPs, PCPS, RNCPS, and instruments of similar nature which are essentially non-equity regulatory instruments, forming part of a bank's or NBFC's capital
 - The issue is made on the EBP platform irrespective of the issue size

EBP Framework : An overview – 2/2

■ Bidding process

- Bidding on EBP platform can take place between 9 am to 5 pm on SE working days
- Period of bidding window decided by issuer. Should be open atleast for 1 hour.
- Bidding announcement to be done by issuer
 - Atleast 1 WD before initiating the bidding process.
 - Details of bid opening and closing time, with other details.
 - Can be changed by issuer, maximum 2 times.
 - To be done atleast 1 day before bidding date.
- Participants to enter bids, may place multiple.
 - Cancellation, modification permitted during bidding period.
- Bids are disclosed on EBP Platform
 - Open bidding – on real time basis. Except bidder name.
 - Closed bidding – disseminated after the closure.

■ Allotment and settlement parameter

- Discussed in next slide.

■ Pay-in obligations

- To be done from the account of bidder to whom allocation to be made.
 - The funds pay-in by the successful bidders will be made only from the bank account(s), which have been provided/ updated in the EBP system.
- Manner of pay-in to be given by Issuer in the PM
- In case of non-fulfillment by allottees
 - be debarred from accessing the bidding platform across all EBPs for a period of thirty days from the date of such default.
 - For arranger - refer next slide.
- RTA, to reconcile the information received from escrow bank and then intimate to the issuer about receipt of funds, give instruction for corporate action, instruct for release of funds

■ Withdrawal of issue

- Bids not received upto base issue size, bidder defaulted, cut-off yield higher than estimated cut-off yield disclosed to EBP.
- Otherwise, debarred from accessing platform for a period of 7 days.

SEBI rationalizes issuances on Electronic Book Platform ('EBP') – Limits | Bidding Process | Anchor Investor | Basis of Allotment. w.e.f. January 01, 2023

- ❑ Limit for Mandatory issuance on EBP reduced to **Rs. 50 crore from Rs. 100 crore.** *(made stringent)*
- ❑ Limit for Greenshoe portion *(new)*
 - ❑ Cannot exceed **5 times the base issue size.**
- ❑ Additional disclosure on Interest rate parameters to be made in Placement Memorandum ('PP') and term sheet *(new)*
 - Zero Coupon,
 - Fixed Coupon,
 - Floating coupon.
- ❑ System-related confirmation by Eligible participants *(new)*
 - Not using software algorithms, bots, or automation tools for placing bids.
- ❑ No preferential access to any bidder on a selective basis
 - EBP has to ensure the same.
- ❑ Limits for bids upto which can be made through arrangers' modified
 - **5% of base issue size** or;
 - **100 crore** *(earlier 15 crores); whichever is lower.*
 - Arranger to ensure while bidding on behalf of multiple participants.
- ❑ New term introduced – **Client bid**
 - Bids entered on behalf of eligible participants by the arranger.
 - Disclosure norms for the arranger e.r.t. proprietary bids or client bid or consolidated bid remains the same
- ❑ Bidding time and period *(new)*
 - List of eligible participants to be provided to the EBP by the issuer at least one hour before the bidding start time.
- ❑ Basis of entering bid
 - Price (in INR)
 - Coupon (in %) in 4 decimal places. *(same was disclosed in basis points earlier)*
 - Spread in basis points *(new)*

SEBI rationalizes issuances on Electronic Book Platform ('EBP') – Limits | Bidding Process | Anchor Investor | Basis of Allotment. w.e.f. January 01, 2023

❑ Bidding Process

- **Coupon Specified by issuer** - The face value and coupon remaining constant, bids/ quotes shall be placed by the bidders in terms of price.
- **Coupon/ spread discovered during bidding** - The face value remaining constant, bids/ quotes shall be placed by the bidders in terms of coupon/ spread.

❑ Modification of Bids during the last 10 mins of the bidding period allowed for:

- Downward revision of coupon/spread; *(new)* or
- Upward modification of price; and/ or *(new)*
- Upward revision in terms of bid size.

❑ Basis of allotment modified

- Refer next slide.
- Earlier was based on first on “yield priority” basis.

❑ Reservation for anchor portion permitted *(new)*

- No bidding for the anchor portion on the EBP.
- Total allocation cannot exceed 30 % of the base issue size.
- Disclosure requirement - Details of Anchor Investor, quantum allocated
- Eligible for bidding in the non-anchor portion.
 - If identified as an eligible participant by the issuer.

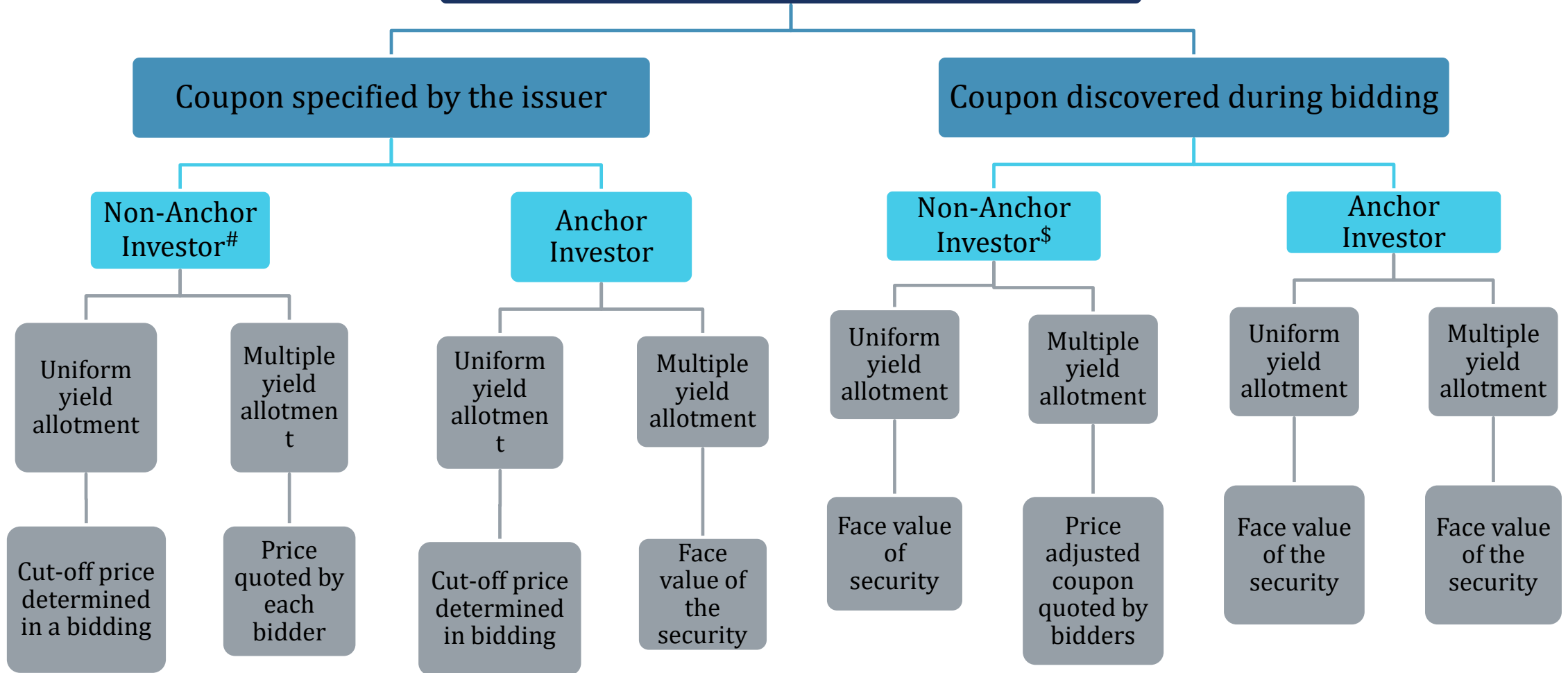
❑ Grounds for debarment of arranger across all EBPs. *(new)*

- In case of 3 instances of non-fulfillment of pay-in obligations by clients, debarment for a period of 7 days from the date of such 3rd or subsequent default.

❑ Measures introduced to avoid “fat finger” errors by eligible participants *(new)*

- EBP to provide facility to define limits/ range within which quotes to be placed.

Allotment and Settlement Amount



Bids shall be arranged as per 'price time priority'.

\$ bids shall be arranged as per 'yield time priority'.



ISIN Restriction

SEBI further caps limit for ISINs to reduce fragmentation and boost liquidity (1/2)

SEBI, vide [circular](#) dated October 31, 2022, has further capped the number of ISINs for debt securities issued on private placement basis maturing in a given financial year. The position may remain unchanged for large issuers of NCDs.

- The revised cap will be **effective from April 01, 2023**.
- The present limits, as introduced on June 30, 2017, were included in Chapter VIII of the [operational circular](#) dated August 10, 2021.

Particulars	Existing limit	Revised limit
Maximum ISINs maturing in a financial year	17	14
Further bifurcation of ISINs:		
i. Maximum ISINs for plain vanilla debt securities	12	9
ii. Additional limit in case of breach of a aforesaid limit if total o/s amount across the 9 ISINs maturing in a given FY reaches Rs. 15,000 Cr	N.A.	3
iii. Maximum ISIN for structured/MLDs are issued	5	5
Maximum ISINs for the issuance of capital gains tax securities by the authorized issuers under section 54EC of the Income Tax Act, 1961 on private placement basis	12	6
Maximum ISINs, if only structured/MLDs are issued	12	9*
*Additional 3 ISIN in case the conditions stated above is satisfied.		
The newly capped limits shall not be applicable to ISINs utilised for issuance of debt securities upto March 31, 2023 and maturing in later years.		

SEBI further caps limit for ISINs to reduce fragmentation and boost liquidity (2/2)

The operability of this circular for an issuer with respect to ISINs (plain vanilla debt securities) issued prior to and from March 01, 2023 is illustrated as under:

Date of Issuance of listed debt securities	Year of maturity (cited as an example)	No. of ISINs already maturing in the FY (cited as an example)	Value of listed debt securities outstanding (in INR)	Applicability of this circular
Up to March 31, 2023	FY 2024-25	11	Any amount	Since the issuance is within March 31, 2023, the existing limit of 12 ISINs will apply.
April 01, 2023	FY 2025-26	7	Less than Rs. 15000 crore	Revised limits specified in this circular shall apply . Issuers will have only 2 more ISINs.
April 01, 2023 onwards	FY 2026-27	9	Less than Rs. 15000 crore	Revised limits specified in this circular shall apply . As the limit of 9 ISIN has been exhausted, no fresh ISIN will be allotted.
April 01, 2023 onwards	FY 2026-27	9	Equal to or more than Rs. 15000 crore	Issuer eligible for additional 3 ISINs and can make fresh issuance.



Security and Covenant Monitoring using Distributed Ledger Technology

Distributed Ledger Technology (1/2)

■ Background

- SEBI vide Circulars dated *November 3, 2020, August 13, 2021 & March 29, 2022* Stipulated a process for independent 'due diligence' by DTs on assets of an Issuer company for the purpose of creation of security and 'periodical monitoring' of security cover.
- Depositories **shall create, host, maintain & disseminate** the system for security & covenant monitoring.

■ Applicability

- **New issuances – On or after April 1, 2022**
- **Existing issuances – On or before January 31, 2023 & DTs to verify by February 28, 2023**

■ Brief of the process:

■ A. Recording of information w.r.t. assets secured

- Issuer to record details of the proposed security creation including asset details, etc as per Annex A1 of [SEBI Circular dated August 13, 2021](#)
- In case of duplicate entries, DLT system to provide an alert to the Issuer & the DT
- System generated Unique Identifier (Asset ID) shall be allotted for each asset as per format provided in Annex I of [SEBI Circular dated March 29, 2022](#)

■ B. Recording of charge registration details

- Details of charge created to be uploaded along with relevant supporting documents as per Annex A2 of [SEBI Circular dated August 13, 2021](#)
- Charge created to be registered with Sub-registrar, Registrar of Companies, CERSAI, Depository, etc., as applicable, **within 30 days of creation of such charge**
- DT to validate details of charge and issue Due Diligence Certificate
- Any changes in recorded information to be made only after approval of DT and to be recorded on the system

■ C. Recording of covenants

- Issuer to enter details of covenants of the issuance including title of security, further borrowing/encumbrances, financial covenants, etc and upload DTD as per SEBI Circular dated August 13, 2021
- DTs to validate covenants within 7 working days of signing the DTD.

Distributed Ledger Technology (2/2)

■ D. Periodic monitoring of security cover & other covenants ■

- Half yearly certificate by the statutory auditor specifying extent of security cover & to be uploaded on the system within 45 days/ 60 days as per Regulation 54 of SEBI Listing Regulations
- In case security cover falls below the prescribed limit, same to be updated immediately on the system & shall result in a 'trigger event'.
- Alert of the trigger event shall be sent to concerned stakeholders.

■ E. Information pertaining to interest & principal payment

- Issuer to record information pertaining to interest & principal payment at the time of ISIN creation ;
- Status of payment to be updated **within 1 working day of due date of payment** as per Annex A3 of [SEBI Circular dated August 13, 2021](#)

■ F. Redemption of NCS

- Issuer to initiate release of charges along-with the relevant documents in the system

■ G. Credit Rating information

- Issuer to upload information related to credit rating at the time of ISIN creation
- CRAs to access the platform & validate the information uploaded
- Any subsequent rating actions to be recorded by the Issuer within 1 working day of the press release



High Value Debt Listed Entities

Applicability of LODR Regulations on 'High Value' Debt Listed Entities

'High Value' Debt Listed Entities (HVDLEs)

Entities with listed non-convertible debt securities ('NCDs') with outstanding principal value of Rs. 500 crore or more as on **March 31, 2021**.

Timeline for compliance

For HVDLEs as on March 31, 2021

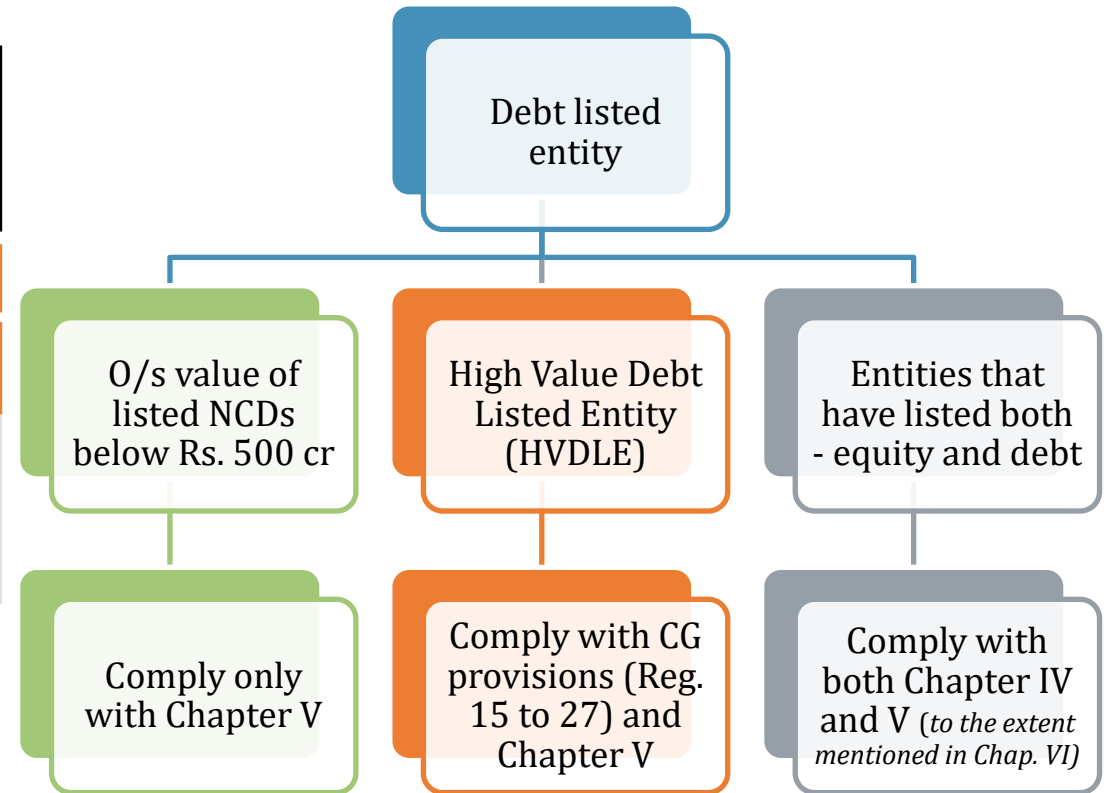
- On comply or explain (Corex) basis till March 31, 2023.
- Mandatory from April 01, 2023 and onwards.

For listed entities that become HVDLEs subsequently

- Within 6 months from the date when the listed entity becomes HVDLEs. However, shall be on Corex basis till March 31, 2023.

Corex basis means that although provisions are mandatory from April 01, 2023, HVDLEs should endeavour to comply with them and disclose the level of compliance / reasons for non-compliance in the quarterly CG reports.

As per Reg. 3(3), once these regulations are applicable, they shall continue to apply even if outstanding listed debt of HVDLE falls below the threshold of Rs. 500 crore.



In case of REITs, INViTs that are HVDLE, CG provisions to be complied by Board of the Manager or Investment Manager of the REIT or INViT respectively.

Immediate actionable for HVDLEs (1/3)

❑ Change in Board Composition :

- The HVDLEs will have to comply with Regulation 17, resulting in transformation of the board composition, which includes the following:
 - There shall be at least one woman director and not less than 50% of the board shall comprise of NEDs;
 - Where the Chairperson of the board is a NED- at least 1/3rd of the board shall comprise of IDs and where the listed entity does not have a regular NED as Chairperson – at least ½ of the board shall comprise of IDs
 - In case of appointment of director, shareholder approval shall be taken in the next AGM or within 3 months of such appointment (whichever is earlier). (BSE *vide* its circular dated April 08, 2022, has clarified that the above mentioned requirement shall be applicable for appointments made on or after January 01, 2022.)

❑ Appointment of Independent Directors

❑ Board meeting :

- Board to meet for a minimum of 4 times in a year and the intervening gap between two meetings should not be more than 120 days.
- CEO, CFO to give a compliance certificate to Board, in format as mention in Part B of schedule II.

❑ Committees:

- All mandatory committees for a listed entity have to be constituted viz; AC, NRC, SRC;
- Among the non mandatory committee, such listed entity has to mandatorily constitute RMC
- Refer next slide.

❑ D & O Insurance :

- Board has to undertake D & O Insurance for all the Independent Directors on the board.

❑ Secretarial Audit u/r 24A :

- Such listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit report;
- The secretarial audit report shall be annexed to the annual report;
- The report shall be filed with the stock exchange(s) within 60 days from the end of each financial year;
- The secretarial audit report shall now include comments on compliance with Regulation 17 to 27.

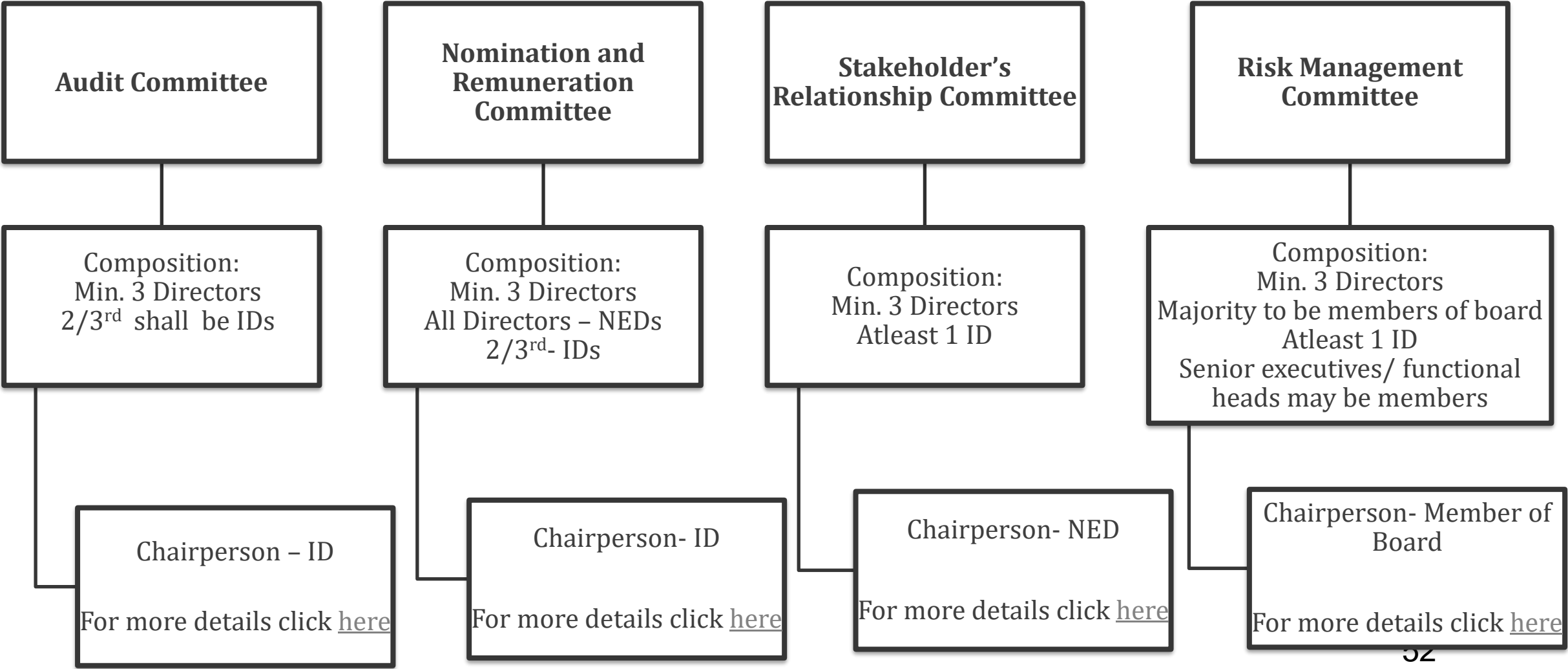
❑ RPTs:

- AC approval as per revised mechanism for all RPTs;
- Half yearly disclosure - disclosures on RPT along with the standalone financial results for the half year in format prescribed by SEBI.

❑ Corporate Governance requirements with respect to subsidiary of listed entity :

- An independent director on the board of listed entity to be on the board of such material subsidiary;
- Role of Audit Committee enhanced to include review of the investments made by unlisted subsidiary (whether material / not).
- Minutes of Board meeting of unlisted subsidiary to be placed before the Board of the company.

Committees of the Board for HVDLE



Definition of Related Party Transaction (RPT)

➤ Amended Provisions

“Related Party Transactions” means:

- A transaction involving
- transfer of resources, services or obligations between
 - a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or
 - a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand,
 - the **purpose and effect** of which is to benefit a related party of the listed entity or any of its subsidiaries, [w.e.f. April 1, 2023]
- regardless of whether a price is charged; and
- a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract

➤ Exclusion from the ambit of RPT:

- Following **shall not** be treated as RPT:
 - issue of **specified securities on preferential basis**, subject to compliance of the requirements under the ICDR Regulations.
 - Issue of non convertible securities is not excluded
 - **Corporate actions** (uniformly offered) viz:
 - payment of dividend
 - subdivision or consolidation of securities
 - rights issue or bonus issue of securities
 - buy-back of securities
- acceptance of fixed deposits by banks/ NBFCs at the terms uniformly acceptable/offered to all shareholders/public,
 - subject to disclosure of the same along with disclosure of RPT every 6 months to SE(s)
 - format to be prescribed by SEBI

Information to be placed before Audit Committee for prior approval of RPTs

- Type, material terms and particulars of the proposed transaction;
- Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
- Tenure of the proposed transaction (particular tenure shall be specified);
- Value of the proposed transaction;
- The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);
- A copy of the valuation or other external party report, if any such report has been relied upon;
- Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;
- If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
 - details of the source of funds in connection with the proposed transaction;
 - where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments,
 - nature of indebtedness;
 - cost of funds[#]; and
 - tenure;
 - applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and
 - the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.
- Justification as to why the RPT is in the interest of the listed entity;
- Any other information that may be relevant

Prior approval from shareholders for material RPTs

- Prior approval of shareholders required for –
 - Material RPTs
 - Subsequent material modifications in RPTs
- Threshold of materiality: If the transaction(s) to be entered into individually / taken together with previous transactions during a FY exceeds:
 - Rs. 1000 crore; OR
 - 10% of the annual consolidated turnover of the listed entity } **lower**
 - Whether the transactions entered into by listed entity and one or more subsidiaries with the same related party are required to be aggregated at listed holding company's level to calculate the materiality thresholds?
- Exemption from shareholder's approval
 - Transaction between WOS and holding company;
 - Transaction between two WOS.
 - No such exemption under Section 188.
- Ratification by shareholders
 - No specific provision.
 - Shareholders have power to ratify, however, will violate Reg. 23 (4)
- Related parties not to vote to approve the RPTs
 - HVDLEs are closely held companies, unlikely to have unrelated shareholders
 - no carve-out provided for them under LODR
- Explain and not Comply?
 - SEBI Informal Guidance in the matter of India Infradebt Limited
 - Carve out under S. 188 of CA, 2013 not available.
 - ninety per cent. or more members, in number, are relatives of promoters or are related parties:

Actionable arising out of RPT provisions for HVDLEs

1. Identification of RPs

- HVD to revisit list of related parties of the HVD
 - List is wider than that provided under Companies Act

2. Identification of RPTs

- As the meaning of RPT is wider now, certain further information is required w.r.t. RPs
 - If HVD has a listed parent entity
 - If HVD have subsidiaries

3. Frame RPT policy

- Including criteria for regarding a 'material modification'

4. Prior approval of AC for FY 23-24 RPTs

- Validly constituted Audit Committee in terms of Reg 18
 - Only ID members should vote to approve RPTs
- All RPTs by HVD to be placed before AC
 - with its own RP, RP of parent listed entity or RP of subsidiaries
- All RPTs by subsidiaries of HVD with own RP or RP of HVD or RP of other subsidiaries
 - Only if significant under Reg. 23 (2), if HVD is not a party

- Information as per SEBI Circular of November 22, 2021 applicable to HVDLEs.

- As per SEBI Circular dated January 7, 2022

5. Identifying Material RPTs for FY 23-24

- for transactions by HVD or any of its subsidiary with RP of HVD or RP of subsidiaries exceeding the thresholds
 - 1000 crore or 10% of annual consolidated turnover of HVD, whichever is lower.
- Obtain prior approval of shareholders of HVD.
 - In case of closely held companies, Explain and not comply.

6. Disclosure of RPTs on half yearly basis

- In the format prescribed by SEBI
 - SEBI Circular dated January 7, 2022
- Along with standalone financial results for HY
- publish the same on its website

Obligations with respect to Independent Directors – Reg 25

Same as in CA, 2013:

- Tenure of ID (i.e. two terms of upto 5 consecutive years).
- ID of a listed entity cannot have an alternate director.
- At least 1 meeting of ID in a FY, without the presence of non- IDs and members of the management to review the performance of non-IDs, Board and the chairperson and to assess the flow of information.
- Liability of ID is limited to such acts by the entity which had occurred:
 - with his knowledge, attributable through processes of Board, and
 - with his consent or connivance or
 - where he had not acted diligently w.r.t LODR the provisions contained in these regulations

Appointment of ID

The appointment / re-appointment / removal of an ID shall be subject to a special resolution. *(CA, 2013 requires special resolution only for reappointment ID and his/her removal during second term.)*

Declaration of Independence

- ID shall be required to give declaration in line with LODR as the same seems broader than the requirements under CA, 2013.
- Further, LODR mandates Board to assess veracity of the same.

D&O Insurance shall to be obtained for all IDs *(CA, 2013 required such disclosure in letter of appointment)*

Vacancy due to Resignation / removal

ID who resigns or is removed shall be replaced by a ID at the earliest but not later than the immediate next Board Meeting or 3 months, whichever is later:

This timeline will be reduced to 3 months from date of such vacancy w.e.f. January 1, 2022.

HVDLEs shall not be required to fill the vacancy of ID if requirement of IDs in the Board is fulfilled without filling the vacancy.

Familiarization program for IDs

HVDE shall familiarise its ID through various programmes about HVDE, which shall provide for

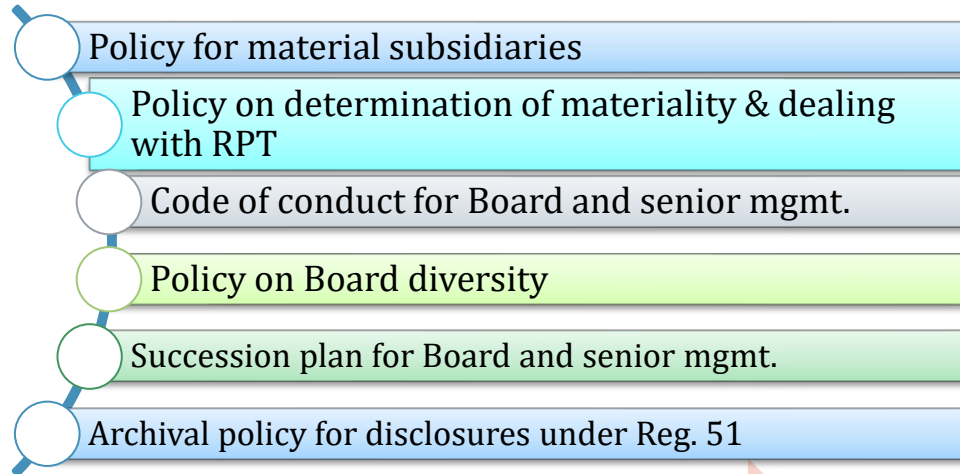
- (a) nature of the industry in which the HVDLE operates;
- (b) business model of the HVDLE;
- (c) roles, rights, responsibilities of IDs; and
- (d) any other relevant information.

Restriction on appointment of ID as WTD/ED

In case an ID has resigned from a HVDLE, he/she shall not be appointed as an executive / WTD on the board of the HVDLE, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an ID.

Policies, Secretarial audit, Obligations of Directors, KMPs and SMPs

HVDLEs will have to formulate the following policies



Secretarial Audit

Under LODR, all listed entities are required to undertake Secretarial Audit.

(Under CA, 2013, it was applicable to listed companies, Public companies with paid-up capital \geq Rs. 50 crore; or turnover \geq Rs. 250 crore and companies having o/s bank/ PFI borrowings \geq Rs. 100 crore.)

Additionally, a secretarial compliance report to be submitted to SE as per format specified in [SEBI Circular dated February 8, 2019](#)

Limit on Directorships and committee memberships:

- Maximum directorships of a person – 7 equity listed entities.
- If a person is WTD / MD in any listed entity – he may serve as ID in 3 equity listed entities.
- Maximum memberships – 10 committees (Audit Committee+ SRC)
- Maximum chairmanships – 5 committees (Audit Committee+ SRC)
(**Consider** positions held in all public companies. **Exclude** – Section 8 company, HVDLE, foreign company, private company)

Agreement for compensation or profit sharing in connection with dealings in the securities of such listed entity by any employee, KMP, Director, Promoter with any shareholder or third party –

- Prior approval of Board + Public Shareholders.

Obligations of senior management / Directors:

- Every director shall notify about the changes in his/her committee positions as and when they take place.
- All Directors and senior mgmt. shall annually affirm compliance with the code of conduct.
- Senior mgmt. shall disclose all material, financial and commercial transactions where they have personal interest that may have a potential conflict with the interest of the listed entity.
 - conflict of interest relates to dealing in the shares of listed entity, commercial dealings with bodies, which have shareholding of management and their relatives etc.

Quarterly compliance report on CG (Reg. 27)

Quarterly (Annex I)

Annually (Annex II)

6 months ended (Annex III)

Half-yearly (Annex IV)

- **Composition of Board and Committees** including details of directors viz. PAN, DIN, date of appointment & cessation, tenure, DoB, no. of directorships / committee memberships, etc.
- **Details w.r.t. meetings of Board & Committees** viz. date, quorum, gap between meetings, etc.
- **Details w.r.t RPTs** viz. approvals obtained and review of RPT.
- **Affirmations** w.r.t. compliance of composition & meetings of Board & committees.

- **Disclosure on website:**
 - In terms of Reg. 46
 - Materiality policy
 - Dividend distribution policy
- **Affirmations with the CG requirements relating to:**
 - Board and its committees;
 - RPTs and omnibus approval;
 - Subsidiaries;
 - Annual Secretarial Compliance report;
 - Independent Directors – meeting, familiarisation;
 - D&O insurance;
 - Obligations of senior management;
 - Shareholding of NEDs;
 - Material subsidiary Policy.

Affirmations w.r.t. the following:

- Disclosure of annual report on website.
- Presence of Chairperson of the following at the AGM:
 - Audit Committee
 - NRC
 - SRC
- Whether 'CG Report' is disclosed in Annual Report?

- **Disclosure of aggregate & o/s Loans / guarantees / comfort letters / securities etc. to:**
 - Promoters, Promoter group;
 - Directors & KMPs (relatives) or entities controlled by them.
- **Affirmation stating that the above transactions are in the economic interest of the company.**

*As per **BSE & NSE** circular dated October 01, 2021, HVDLE is required to submit only Annexure I on quarterly basis. Annexure II, III and IV is not applicable.*

SEBI on January 22, 2020 issued a circular providing fines for non-compliance with provisions of LODR Regulations. The fines for non-compliance of various regulations of LODR are as follows:

Regulation	Fine/action
Regulation 6(1) Non-compliance with requirement to appoint a CS as the compliance officer	₹ 1,000 per day
Regulation 7(1) Non-compliance with requirement to appoint STA	₹ 1,000 per day
Regulation 13(1) Failure to ensure that adequate steps are taken for expeditious redressal of investor complaints	₹ 1,000 per day
Regulation 13(3) Non-submission of the statement on shareholder complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances	₹ 1,000 per day
Regulation 17(1) Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director	₹ 5,000 per day
Regulation 17(1A) Non-compliance with the requirements pertaining to appointment or continuation of Non-executive director who has attained the age of seventy five years	₹ 2,000 per day
Regulation 17(2) Non-compliance with the requirements pertaining to the number of Board meetings	₹ 10,000 per instance

Regulation	Fine/action
Regulation 17(2A) Non-compliance with the requirements pertaining to quorum of Board meetings.	₹ 10,000 per instance
Regulation 18(1) Non-compliance with the constitution of audit committee	₹ 2,000 per day
Regulation 19(1)/ 19(2) Non-compliance with requirement to appoint STA	₹ 2,000 per day
Regulation 20(2) / (2A) Non-compliance with the constitution of stakeholder relationship committee	₹ 2,000 per day
Regulation 21(2) Non-compliance with the constitution of risk management committee	₹ 2,000 per day
Regulation 23 (9) Non-compliance with disclosure of related party transactions on consolidated basis.	₹ 5,000 per day
Regulation 24A Non-compliance with submission of secretarial compliance report	₹ 2,000 per day
Regulation 27(2) Non-submission of the Corporate governance compliance report within the period provided under this regulation	₹ 2,000 per day



Scheme of Arrangement

Schemes of Arrangements by Debt listed entities to undergo stock exchange pre-scrutiny SEBI Circular dated 17.11.2022

Applicability of Circular	On whom?	NCD/NCRPS listed entities intending to undertake/involved in <u>scheme of arrangement</u>
	From when?	Immediate effect (17.11.2022)
	Provisions inserted	Regulation 59A & Regulation 94A in SEBI LODR Regulations, 2015

What are schemes of arrangement?

Either a corporate restructuring (say, reduction of capital, compromise with creditors), or corporate entity related events, such as merger or demerger which are approved pursuant to the order of NCLT.

New specific requirements-

- The new regime is a regulation that was not applicable to debt listed entities
- Earlier regime was limited to equity listed

Report from BOD commenting on-

- (i) Impact of scheme on NCDs/NCRPS holders;
- (ii) Exit offer to dissenting holders, if any;

Auditor's Certificate certifying payment/repayment capability of resulting entity

Post approval of NCLT, Listing of NCDs/ NCRPS issued pursuant to the scheme of arrangement and trading commencement within 60 days

Schemes of Arrangements by Debt listed entities to undergo stock exchange pre-scrutiny SEBI Circular dated 17.11.2022

Broad steps involved in undertaking a scheme of arrangement

Submitting draft scheme of arrangement with SE along with prescribed documents and hosting the same on website of LE (X Days)

(X+10) days ↓

Submission of a report on complaints/ comments received by the entity on the draft scheme of arrangement

(X+30+7)days ↓

Receipt of NOC from SE

(X+30+7)days+6 months ↓

Filing of application with NCLT

Requisite timeline ↓

Receipt of order of NCLT

Areas of concern

1. Pre-scrutiny by Stock Exchanges before submitting the Scheme to NCLT
2. In case of involvement of unlisted cos, accuracy and adequacy of disclosures shall be certified by the SEBI registered Merchant Banker after following due diligence process
3. In case of scheme of arrangement between listed and unlisted cos, the listed company is also required to submit a valuation report on behalf of unlisted company, from a Registered Valuer

Other recent amendments

Reduction in denomination of debt securities

- [SEBI Circular dated October 28, 2022](#)
- **Minimum face value** of an NCD **issued** as well as the **trading lot** of such NCDs reduced to **Rs. 1 lakh per debenture**
 - either on stock exchange or OTC basis
 - Earlier limit: Rs. 10 Lakhs per debenture
- Applicable for issuances on private placement basis through **new ISINs on or after Jan 01, 2023.**
 - **New issuances/ re-issuances through existing ISINs even after Jan 01, 2023?**

Regulation of Online Bond Trading Platforms

- [Consultation Paper dated July 21, 2022](#)
- Amendment by [SEBI Circular dated November 14, 2022](#)
- **What are online bond trading platforms?**
 - Unregulated online platforms offering services relating to dealing and transfer of listed/ unlisted securities between investors (mostly non-institutional)
 - Secondary market for these bonds
 - **Definition under NCS Regulations:**
 - *online bond platform” means any electronic system, other than a recognised stock exchange or an electronic book provider platform, on which the debt securities which are listed or proposed to be listed, are offered and transacted.*
- **Amendments**
 - Mandatory registration as stock brokers
 - If trading of listed/ to-be-listed securities
 - **What if only unlisted securities?**

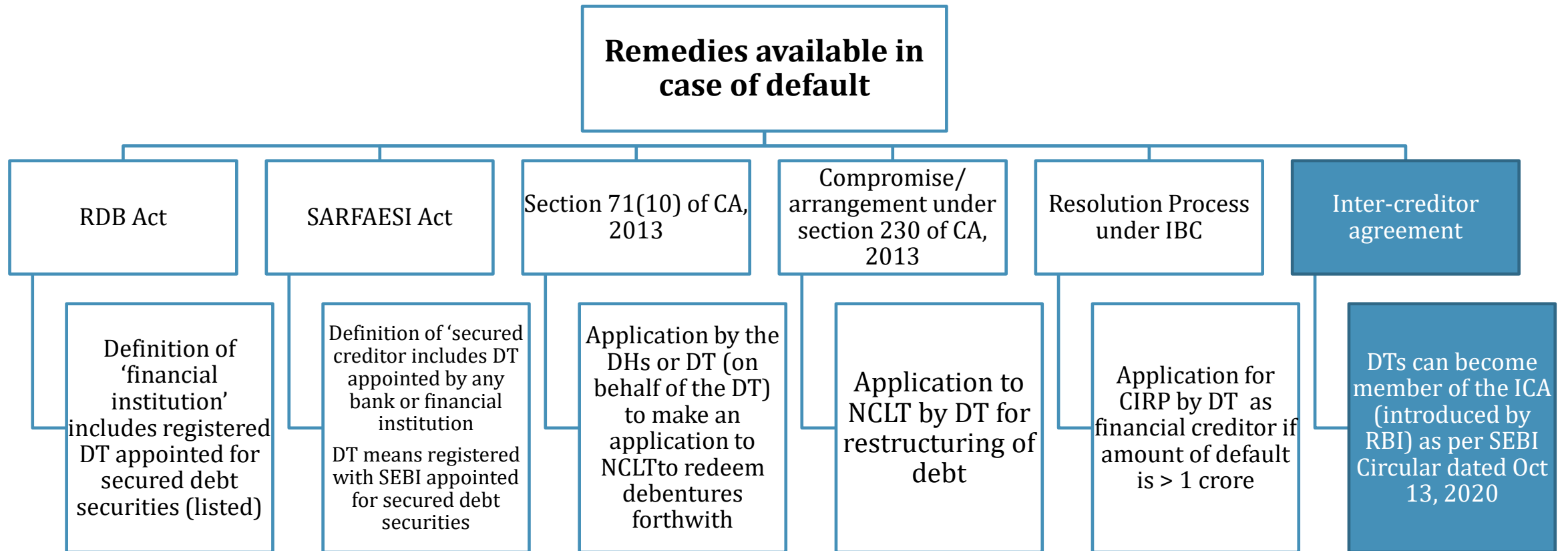
Other recent amendments

Additional participation on the 'Request for Quote' Platform

- **What is an RFQ Platform?**
 - Trade execution platform for inviting and/ or giving quotes on an electronic platform
 - Direct participation model where all participants trade in their own account
 - BSE and NSE have launched RFQ platforms
 - Initiator requests other participants for a quote in corporate bonds, SDIs CPs etc. with desired yield, value, settlement date, and other parameters
 - Provides users a range of options to seek a quote and to respond to a quote
- **Eligible participants:**
 - All regulated entities, listed corporates, Institutional Investors as defined under SEBI ICDR Regulations,
 - All India Financial Institutions
 - MF and PMS to mandatorily undertake at least 10% of their total secondary market trades (in value) per month, in corporate bonds through RFQ
- Amendment by SEBI Circular dated Oct 19, 2022
 - Now stock brokers registered under the debt segment of the Stock Exchange to place/ seek bids on the RFQ platform on behalf of clients
 - to facilitate wider market participation in the corporate bond market
 - Therefore, retail participants who were not allowed earlier can participate through stock brokers.
 - Stock brokers can also bid in proprietary capacity

SC RULING:

REMEDIES AVAILABLE WITH THE DHS IN CASE OF DEFAULT





SC RULING: *SEBI V. RAJKUMAR NAGPAL AND OTHERS*, ORDER DATED AUGUST 30, 2022

Joining the ICA by the DHs – An option not a mandate

- ICA introduced by RBI's PFRSA in June 2019
 - RP to be implemented by lenders by entering into an ICA.
 - Decision agreed by 75% lenders (in value) and 60% in number shall be binding on all lenders i.e. even non-consenting lenders
 - ICA is to provide for protection of dissenting lenders rights, incl. payment of not less than the liquidation value to the dissenters
 - Applicable to lenders as defined. Other investors such as debenture holders not included
- Regulation 15(7) of DT Regs: DTs **may** enter into ICA subject to:
 - approval of DHs; and
 - Conditions specified by SEBI
- SEBI's Circular on 'Standardisation of procedure to be followed by Debenture Trustees in case of 'Default' by Issuers of listed debt securities' dated October 13, 2020
 - Process for entering into ICA
- **As per SC:**
 - Reg. 15(7) of DT Regs facilitative in character
 - SEBI Circular provides option to DHs to be a part of ICA by way of collective decision
 - Such collective decision to be arrived by following modalities as per SEBI Circular.
 - If DHs do not wish to be a part of ICA, they may consciously decide, as SEBI Circular requires positive consent by requisite majority to enter into an ICA.
 - If such majority consent is not received DT cannot sign ICA.
 - SEBI Circular will apply only if the DHs want to become part of the ICA.



SC Ruling in *SEBI v. Rajkumar Nagpal and Others*

Dissenting investors can be bound by statute only; contracts cannot bind dissenters

- SC discussed 3 routes for DHs to arrive at a decision:
 - Section 230 of CA, 2013: Requisite extraordinary majority + sanction of the NCLT
 - SEBI Circular for ICA
 - **Section 62 of the Contract Act, 1872**
 - *Parties to a contract may agree to substitute, rescind or alter the original contract, and then such original contract need not be performed.*
- In the first two options:
 - Collective decision of majority to bind the dissenting DHs
- Section 62 of the Contract Act
 - Contractual
 - Intending DHs can voluntarily enter into a contract in terms of section 62
 - However, shall only bind the consenting parties.
- Therefore, contractual compromises which do not fall either:
 - under section 230 of CA, 2013
 - or SEBI ICA Circular
- cannot bind dissenting DHs