

LEGAL

DOCUMENTATION AND LEGAL ASPECTS

What is a document?

Sec 3 of the Indian Evidence Act and Sec 3(18) of General clauses Act defines a document as 'any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of these means intended to be used or which may be used for the purpose of recording that matter'.

According to Sec 2 (14) of Indian Stamp Act, the document includes every document by which any right or liability is or proposed to be recorded.

What is documentation?

The execution of documents in proper form and according to the law is known as 'Documentation'. It means the whole process of obtaining the signature of borrowers on the necessary documents after proper stamping and registration thereof wherever necessary and complying with other connected formalities therewith.

Documentation - Why?

The documentation is a must as documents are useful for

- Identification of borrower
- identification of security
- recording the transaction as written evidence
- creation of charge on security
- settlement of terms and condition
- prevention of fresh charge on security
- deciding the period of limitation
- settlement of rights and remedies of the lending banker against the borrower
- filing suits and enforcing claim

Requisites of Documentation

The document should

- contain correct name(s) of party(ies)
- contain proper recital or narration
- be properly stamped
- be current and legally enforceable
- contain the amount of loan / facility, interest and overdue interest, if any, chargeable, give description of security if any
- describe how consideration has passed on
- give terms of repayment
- give major / Important terms and conditions mutually 'agreed upon
- give place and date of execution
- be duly registered wherever required, with the appropriate authority

Type of documents

The nature and type of documents depend upon the type of borrower availing the facilities, type of security to be offered, type of facility being availed and the type of charge to be created for the facility. The details are as follows:

Types of Borrowers

Borrower	Document
Sole proprietary concern	Letter of Proprietorship
Partnership Firm	Partnership Deed
Joint Hindu Family, Society/Club/ Association	Karta Form
Joint Stock Companies	<ul style="list-style-type: none"> ✓ Resolution of the Governing Body Certificate of Incorporation ✓ Certificate of Commencement of Business Copy of Board's Resolution ✓ Memorandum & Articles of Association

Type of Securities

- Hypothecation Agreement of Crop/ Livestock/ goods/ vehicles/ Machineries/ Book
- Debts Pledge of goods (indigenous/imported)/Govt. Securities (NSC)/Shares etc.
- Letter of lien on Deposits
- Assignment of LIC Policies

Types of facility

Demand loans	Demand Promissory Note
Cash Credit/Overdraft	Letter of continuity
Term Loan	Term Loan Agreement

Types of Charge

- Hypothecation
- Pledge
- Lien / Set off
- Assignment
- Mortgage

In order to make the documents legally valid and enforceable in the court of law, the documents should not only be executed correctly and properly but also to be executed by persons who have legal capacity and are competent to enter into legal contract.

Minors, Lunatics, Insolvents are not competent to contract and are not eligible for executing the documents

In case of individual borrowers, the documents should be executed by them in their personal

capacity singly

In case of individuals borrowing jointly with others then the documents should be executed by them jointly and severally

In case of Joint Hindu Family Karta is not empowered, then all male adult members of the Joint Family should sign and on behalf of minor members (Males), the guardians should sign.

Earlier disqualification has been removed by the Hindu succession (Amendment) Act 2005, there is no reason why Hindu women should be denied the position of Karta. If a male member of a HUF, by virtue of his being the first born eldest, can be a Karta so can be a female member can be a Karta. If Karta is a senior citizen, the HUF accounts will not earn additional interest for Senior citizens

In case of Partnership Firm, all the partners of the Firm should execute the document in their twin capacities i.e., both in their personal capacity and in their capacity as partners of the firm

In case of Companies, the duly authorized persons as per Company's Board Resolution or under power of attorney can execute the document

What is defective documentation?

Defective documentation may also invalidate and/or affect the lenders rights. The following are some of the common instances of defective documentation:

- Inappropriate documents (i.e., documents not relevant to the type of advance and the type of securities offered etc.)
- Incomplete set of documents
- Documents not properly filled in/partially filled in/incorrectly filled in/not filled in at all
- Documents unstamped or inadequately stamped or improperly stamped documents with stamps affixed after date of execution of documents
- Unauthenticated corrections / overwriting's / erasures / cancellations / insertions
- Documents executed by persons / agents having no authority to execute such documents
- Documents executed by persons incompetent to contract i.e., who have no legal capacity to contract / borrow, etc.
- Documents not executed properly by the authorised persons, as per bye-laws, articles of association / resolutions, etc.

Who is called an “executant” of a document?

The party executing a document is known as an "Executants". The Executants should be competent to contract.

What is a power of attorney?

A Power of Attorney is a document which empowers a specific person to act on behalf of the person who is executing the same, by which a person is authorized to appear and act on behalf of a person who is executing the power of attorney. A power of attorney may also be given by a person to another to appear before any Court, Tribunal or Authority or before a Co-operative Society or any Body or Association. The person who is given the powers is called a "Constituted Attorney".

Types of Power of Attorney?

There are two types of Power of Attorney, namely:

- **General Power of Attorney**

This type of a Power of Attorney gives general powers to the person in whose favor the

document is executed. The Constituted Attorney is authorized to perform all kinds of acts and to execute any document on behalf of the person who has so executed that document.

- **Special Power of Attorney**

Such a Power of Attorney gives the person, power/s only for specified act/s or transactions. In this case the power has to be strictly adhered to and the Constituted Attorney cannot do anything for which he is not duly empowered by the Power of Attorney.

- **Necessity of a Power of Attorney?**

It is generally executed when a person wants to authorize someone to carry out any activity which he would have undertaken if he would be personally capable of doing the same. It is an authorization, which confers powers akin to that of the principal on the person for a temporary period of time.

Precaution to be taken while Execution of a Power of Attorney?

(WHEN POWER OF ATTORNEY IS EXECUTED IN INDIA)

- The PoA should be executed on non-judicial stamp paper of the requisite value as per the stamp duty prevalent in the respective state.
- Each page of the Power of Attorney and wherever the blanks are filled in should be signed by the principal/ the grantor. Notarization of power of attorney is not mandatory; however, in such instances, care should be taken to verify that the power of attorney has been executed in the presence of at least two witnesses & that the names and residential addresses and signatures of the witnesses are also clearly specified / made in the power of attorney.

(WHEN POWER OF ATTORNEY IS EXECUTED OUTSIDE INDIA)

- The Power of Attorney should be first typed on a plain sheet of paper.
- The signature(s) of the principal / grantor should be attested by any authorized official of the Indian Embassy / Indian Consulate / Trade Commissioner of India / Notary Public in the country where the principal / grantor resides.
- The Power of Attorney should be then sent to India and stamped. The Constituted Attorney should sign the Power of Attorney on the last page in the presence of a Notary Public / signature of the Constituted Attorney should be witnessed by two persons as stated above.

INDIAN STAMP ACT AND LAW OF LIMITATION

Applicability of Stamp Act?

The Stamp Act 1899 extends to whole of India.

State Governments can amend the Act or enact a new act and prescribe the rate of stamp duty for instruments other than those in the Union List. In respect of other documents requiring stamp duty the value of the stamp duty varies from State to State.

What are the Different kinds of stamps?

1. Revenue Stamps
2. Special adhesive stamps
3. Embossed/Engraved Stamps
4. Non-judicial Stamp Paper

Important Points to be noted:

- Documents are to be duly stamped to make them valid and legally enforceable at times of need. As per Sec 2(11) of the Indian Stamp Act 1899, a document is deemed to be duly stamped if it bears an adhesive stamp or impressed stamp of not less than the proper amount

and that such stamp has been affixed or used in accordance with the law for the time being in force in India.

- Sec 17: Documents must bear the current stamp and must be stamped before or at the time of execution.
- Every adhesive stamp affixed on documents is required to be cancelled as per Sec 12 of the Indian Stamp Act.

Registration of Loan Documents:

The law relating to registration of documents is contained in Registration Act 1908. Under Sec 17 of the Act the following documents require compulsory registration.

- A Mortgage deed
- Lease of immovable property where the period of lease is one year or more
- A sale deed in respect of a property
- An assignment of some right, title or interest in a property made through a deed
- Registration should be done at the Registrar of Assurances (Sub Registrar) under whose jurisdiction the property falls (Sec 28/29)
- Sec 23 of the act states that all documents which are required to be registered should be presented at the office of Registrar or Sub Registrar within 4 months from date of execution.

Period of Limitation:

The schedule to the Limitation Act 1963 specifies the period of Limitation as the time from which period begins to run. There is a legal relation between the document and the Limitation Act. The law of limitation bars the judicial remedy once the period of limitation expires. Therefore, it is of paramount importance for bankers to keep the documents alive.

Nature of Document/Charge		Limitation Period
(i)	Demand Promissory Note;	3 years from the date of execution
(ii)	Bill of Exchange / Promissory note	
a)	Payable at sight	3 years from the date of presentation of bill
b)	Payable at a fixed time after date	3 years from the date of bill/note
(iii)	Agreements and loan Payable in installments	3 years from the date on which the relative installments fall due
(iv)	Mortgage	
(a)	Money repayable on demand and no installment repayments are agreed to	12 years from date of mortgage deed
(b)	Repayable in installments for recovery of defaulted installment	12 years from the date on which the relative Installments fall due
(c)	In case of default of any installment of Principal or interest the whole of the Mortgage amount becomes payable	12 years from the date of default
(d)	Personal liability of mortgagor	3 years from the date of DPN / Acknowledgement of debt

When a document can be revived or its limitation period can be extended?

- Renewal of document
- Obtaining acknowledgements of debt
- Part payment before the expiry of limitation period either by himself or his duly authorised agent.
- Document is thus an important primary source of evidence for the lending banker. Hence it is of prime importance to complete and comply with all the legal formalities correctly during execution of documents, its stamping, its subsequent registration (if any) etc. as per legal provisions laid down in respective Acts so that such documents shall be admitted in the Court of Law as enforceable evidences for claiming the rights and remedies of lending banker at times of need.

FREQUENTLY ASKED QUESTIONS ON SARFAESI

What is SARFAESI?

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act)

Where it is applicable?

Under the Act, Banks as a secured creditor by issuing demand notice (60 days time) can take possession and sell/ transfer the properties which were offered as security by way of mortgage, hypothecation etc.,

Which accounts are eligible for SARFAESI?

The loan a/c should be classified as an NPA by the Bank, and the total dues payable by borrower to bank / to be recovered by the Bank should be above Rs. 1.00 lakh and the a/c should be secured by way of hypothecation/mortgage etc.

Is the Limitation Act applicable for accounts coming under SARFAESI?

Yes. Claim should be made within the period of limitation prescribed under Limitation Act 1963. That is, when the demand notice is issued under SARFAESI Act, Limitation should be available, based on loan documents / last renewal / Acknowledgement of Debt (D-11).

What are the exemptions under SARFAESI Act?

This act is not applicable to:

- Security interest created in **Agricultural land.
- Security interest created for securing repayment of any financial asset not exceeding Rs 1.00 lakh
- Assets in which the Amount due is less than 20% of the principal amount and interest thereon
- Lien on any goods, money or security, creation of security in air crafts or vessels, conditional sale, hire purchase or lease or any other contract in which no security interest has been created.
- Rights of unpaid seller
- Properties not liable to attachment under Section 60 (1) of civil procedure code (CPC) (Eg. Tools of artisans, personal belongings like wearing apparel, bedding etc., of judgment debtor, stipends and gratuities allowed to pensioners of Government or of Local Authority, wages of labourers and domestic servants, all monies payable under LIC Policy of the judgment debtor)

etc.,) and such other items as may be exempted under respective State Amendments.

- Pledge of movables

Sanction to initiate action under the Act - Branches are required to obtain sanction from appropriate authorities to initiate action under the Act. For initiation of SARFAESI action, it is the Zonal Manager who has to give necessary clearance / permission.

Suit filing sanction: After SARFAESI action is completed, if still balance amount is to be recovered through suit filing mode, then necessary permission from appropriate suit filing sanctioning authority to be taken. Likewise, even after initiation of SARFAESI action and before it could be concluded, if limitation is likely to get time barred, branch may take necessary permission from appropriate suit filing sanctioning authorities and do the needful to file suit within limitation period.

Supplementary Notices under SARFAESI Act:

If the secured asset is a debt (due to the borrower) and not secured by a Negotiable Instrument, notices shall be sent to (1) the borrower prohibiting him from recovering such debt and (2) prohibiting the debtor of the borrower from making payment to the borrower, and directing him to make payment to the Bank.;

If the secured asset is a share in a body Corporate, notice shall be sent to (i) the borrower directing him to transfer the share to the Bank and (ii) the Body Corporate restraining the Body Corporate from transferring such shares to any other person. Copy of such notice is also to be sent to Registrar/Share transfers Agent of such Body Corporate.

If the secured asset is any other movable property not in possession of the borrower (except those deposited in court etc), notice shall be sent to the borrower or any person in possession, to hand over the same to the Authorised officer and Authorised officer shall take custody in case of their failure to hand over. The method of taking possession and preservation etc of such movables is the same as applicable generally (enumerated hereunder).

If the secured assets are movables other than those mentioned above the Authorised Officer shall take possession of the same by taking possession of documents evidencing title to the same.

These supplementary notices may be sent simultaneously along with the Demand Notice.

Sec.13 (3A) provisions and its implications:

If there are any objection / representation received from the borrower / guarantor / mortgagor, for the demand notice, the same has to be looked into and a suitable reply be given within seven days of receipt of the same, with reasons also indicating that the objections / representation is rejected and only after sending a reply, Bank can proceed with the next step of taking possession.

This is a mandatory provision and cannot be dispensed with.

Upgradation of account:

Once demand notice is issued and SARFAESI action is set to roll, if any payment is received as a consequence of which the account is upgraded in the books of the Bank as per applicable guidelines, Bank cannot fall back upon the earlier issued demand notice in the event of the account becoming an NPA again at a subsequent point of time. It has to issue fresh demand notice to take forward the recovery mechanism through SARFAESI.

Section 13(4) measures:

If the borrower / guarantor / mortgagor, fail to discharge the liability within 60days' time as stipulated in the notice, under Section 13 (4) of the Act, Bank can take recourse to one or more of the following measures to recover the secured debt.

Take possession of the secured assets including the right to transfer by way of lease, assignment or sale for realizing the secured assets.

Take over the management of the business of the borrower (substantial part of business of the borrower should be held as security for the debt), including the right to transfer by way of lease, assignment or sale for realizing the secured asset.

Appoint any person (as Manager) to manage the secured asset (possession of which was taken over)

Require any person in writing who acquired secured asset and from whom money is due or may become due to the borrower / guarantor to pay the Bank so much of the money as is sufficient to pay the secured debt.

Documents required under SARFAESI:

e-Form CHG-1 or e-Form CHG-9 is required to be filed for application of

- Registration of creation
- Modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [SARFAESI]
- The documents in this context are as follows:
 - i. Particulars of charge
 - ii. Certificate of registration
 - iii. An Instrument created for the charge
 - iv. Copy of the instrument- creating or modifying the charge
 - v. Hypothecation Deed
 - vi. Sanction Letter

In case of any e-Form to be digitally signed, either of the following is required-

- DSC of the charge holder
- Director Identification Number [DIN] of the Director
- Permanent Account Number [PAN] of the manager, CEO, CFO
- Membership Number of the Company Secretary

Whether sanction to initiate SARFAESI action is to be obtained ?

Branches are required to obtain sanction for initiation of SARFAESI action and it is the Zonal Manager who has to give necessary clearance / permission.

Who can be nominated as Authorized Officer ?

As per security interest (enforcement) Rules, an Officer not less than a Chief Manager are to be the Authorised Officers (AO). The Zonal Manager will nominate the Authorised Officer for each account.

What is the role of Authorised Officer ?

Rights by the Bank as secured creditor under SARFAESI Act has to be done through an "Authorized Officer" from the stage of issuance of Demand Notice and up to the stage of issuance of sale certificate in favour of the successful bidder. All steps under SARFAESI Act are done by the bank through the Authorised Officer (AO) only.

Who can issue Demand Notice under SARFAESI Act ?

The Authorised officer nominated by Zonal Office should issue Demand Notice.

What is the period of Demand Notice and from when the period starts?

The period stipulated in Demand Notice is 60 days and for calculation of time the period starts from the date of Acknowledgement of Notice by all the Borrowers /Guarantor / mortgagors

If the demand notice is acknowledged on different dates, from which date 60 days period will start?

The 60 days period starts from the last date of receipt by borrower/ guarantor /mortgagor

What is to be done if the notice is not received by the borrowers or guarantor?

If the notice is not received or not delivered for any reasons, paper publication is to be done in 2 local newspapers including one in vernacular language where the parties resides.

What is the next step after the expiry of 60 days of notice?

After the expiry of 60 days from the last date of acknowledgement of demand notice, the AO has to take physical possession of the property mortgaged to the Bank.

Within how many days of taking possession, notice is to be published?

Within 7 Days from the date of possession including the possession date, paper publication has to be published in 2 newspapers; one among them is in vernacular language where the parties resides.

What is to be done if the AO anticipates resistance/law & order problem etc.?

AO is at liberty to approach Chief Metropolitan Magistrate (CMM) or the Chief Judicial Magistrate (CJM) with an application seeking assistance in taking possession / control under SARFAESI act.

What is the purpose of CAVEAT?

CAVEAT means: - Give the other side notice and to follow principles of natural justice. The purpose of caveat is to ensure that no ex-parte orders are passed by DRT in any Securitisation appeal without hearing the bank /secured creditor.

When do we have to file CAVEAT?

Immediately after taking possession, i.e on the date of publication of possession notice in news paper. Bank should file caveat before DRT and High Courts (wherever it is accepted) to avoid ex-parte orders.

What is the validity of CAVEAT filed at DRT? And what is to be done after the expiry of Caveat?

The CAVEAT will be in force for 90 days from the date of filing CAVEAT. Care should be taken to

ensure that another caveat is filed after the validity period of 90 days to keep it alive.

What is reserve price and who will fix the Reserve Price?

R.P is the sale price for which the security will be sold in public auction. Security Enforcement Committee (SEC) shall fix the Reserve Price based on the proposal submitted by the AO and BM after analysis the value of property (DSV, MV, RSV) and mode of sale recommended within two days from the date of receipt of valuation report of the property.

Who are the members of SEC?

Security Enforcement Committee (SEC) comprising the Zonal Manager, Heads of the Departments - Recovery, Legal, Expenditure, Premises, Inspection, and administration may be constituted at Zonal Offices, with a minimum of three members.

Can AO be the member of SEC?

No

How does SEC fix the Reserve Price?

The SEC may consider the Reserve/upset price even 10 to 25% less than the valuation, taking into account the realizable value of the assets at the given point of time but shall not be less than the distress value given by the Approved Valuer or 75% of the market value whichever is higher.

How does SEC fix EMD?

SEC shall fix the EMD of movable assets and immovable assets offered as securities in such a manner that it shall be 10% of the reserve price subject to a maximum of Rs.50 lacs and a minimum of Rs.10,000/-.

What is to be done if the sale is not successful?

In case the sale is not successful for want of bidders and/or on default of the purchaser to deposit the purchase price in time, the property could be brought for resale after observing guidelines for fixing the upset price, EMD, other procedural aspects, etc. and after obtaining permission from the appropriate authority

What is the Reserve Price for the property under RESALE?

If it is a Resale for want of bidders, Reserve price to be suggested by the SEC at 80% of distress sale value or 60% of the market value whichever is higher with the permission of SEC. In the accounts brought for sale where auction failed earlier, the Reserve Price to be reduced by 10% on the Reserve Price fixed for the previous auction or Reserve Price fixed as per latest valuation of Security obtained whichever is less, provided the previous sale happened more than a year earlier.

Within how many days from the date of physical possession, publication of sale notice is to be made?

Sale notice should be published in two local newspapers including one vernacular is to be done within 7 days after issuing sale notice to the parties (B/G/M)

How many days of gap should be maintained for the publication of sale notice to auction date?

There should be clear 30 days from the date of publication of sale notice to the date of sale Who are the

service providers for e auction ?

1. MSTC 2. .C 1 India Pvt Ltd 3. Matex Pvt Ltd 4. E procurement Technologies Pvt Ltd.

What will be normal terms of payment for Successful bidder and within how many days the successful bidder has to comply with the norms?

Once the bidder is declared as successful bidder he/she/they has /have to pay 15 % of sale price(not reserve price) immediately and balance of 75% to be payable within 15 days

What is other procedure after full payment has been received from successful bidders?

Once sale price is paid, sale certificate has to be issued and then AO will get it registered in the Sub-Registrar Office where the property is situated (within 4 months from the date of sale certificate issued). Purchaser has to bear Stamp duty (Registration charges and expenses).

In case of surplus / short fall for loan outstanding vs. total sale proceeds, what are the steps to be followed by bank?

Once entire sale price is paid the same has to be appropriated towards the loan dues and balance if any should be returned to the borrower/guarantor concerned. If sale proceeds are not sufficient to cover loan dues, the bank has to file a suit /recovery application at DRT for recovery of dues.

CJM/CMM has to pass the order for taking possession within how many days?

CJM/CMM has to pass order for taking possession of the secured assets within 30 days. He is allowed to extend the period by another 30 days but he will have to record reasons for the same.

Is it necessary for the lender to classify the loan a/c as NPA before SARFAESI initiation?

Under section 13(2) buyer need not classify NPA in case he has raised funds through debt securities. Upon default, he can enforce under this section.

Upto what date the earlier dues can be paid?

Under Section 13(8) earlier dues could be paid till sale or transfer. Now it can be paid till the date of auction/publication of notice. The time period for the borrower to make the payment has been reduced considerably

According sanction to institute Suits/initiate Recovery Proceedings (combined entity):

Authority	Monetary Limit /Claim amount (revised)
ZLCC (AGM) - where AGM's are Zonal Managers and ZLSCC (AGM) where AGMs are Deputy Zonal Managers	Where the claim does not exceed Rs.50.00 Crores in each case
ZLCC- where the Zones are headed by DGMs.	Where the claim does not exceed Rs. 100.00 Crores in each case

FGMCAC	Where the claim does not exceed Rs.250.00 Crores in each case In respect of SAM branches and LCBs / MCBs, Accounts, permission for Suit filing where the claim amount is up to Rs.250.00 Crores is empowered.
COLCC (GM)	Where the claim does not exceed Rs.500.00 Crores in each case***
COLCC (ED)	Unlimited Powers.

The proposals seeking for permission to file suit/to file appeal/review petition or not to file appeal/review petition from Corporate Office level shall be routed through the respective FGMOs and FGMOs shall forward their views/comments/recommendations to Corporate Office.

Conditions:

- Power to sanction filing of suit/recovery application shall not be exercised by an authority, if loan was sanctioned by the same individual authority
- Before according sanction to file suit/initiate recovery proceedings, the sanctioning authority has to get satisfied that all possible steps for recovery; otherwise, then by filing suit/initiating recovery proceedings have been taken. If the loan sanctioning authority is of a higher grade than the authority according sanction to file suit etc., the loan sanctioning authority shall be appraised of the sanction accorded for filing suit etc.
- Sanction to file or not to file appeal / review/ revision against Suits /Recovery applications / other proceedings filed by the Bank.
- The authorities empowered to sanction filing of suits, recovery applications and other proceedings depending on the monetary limit enumerated in clause I are empowered to take a decision whether to file appeal, review or revision in all legal proceedings initiated by the Bank. Even in respect of cases of SAMV Branches, powers are vested with the authority enumerated in clause I above.
- The field level functionaries may be guided on the same, to exercise the sanctions in accordance with their delegated powers. ADV 112/2020-21 Dt 31/08/2020

Common Mistakes in the Process of Recovery under SARFAESI Act:

- Delay in serving Demand Notice after the account has been slipped to NPA, even after AO is nominated.
- Not ensuring the correct address of the borrower/mortgagor/guarantor before serving Demand Notice.
- Demand notice is not complete in all respects.
- Mistakes in notice like Balance Outstanding, MOI, MOX, Date of NPA, Date of D- 11, Schedule

of Property etc.

- Date of serving, acknowledgement, due date for symbolic possession not diarized and followed
- Evidence not created for having taken symbolic possession.
- Market Value of the property not properly ascertained before recommending to SEC
- Delay in paper publication after symbolic possession.
- No proper marketing/advertising about the property under sale for finding bidders.
- Not sending notice to SRO of the concerned locality.
- Not contacting borrowers after the notice is served.
- Not keeping the documents live.
- Taking possession only on the basis of acknowledgement received from one of the parties i.e. Borrower or Mortgagor or Guarantor
- Delay in taking actual possession.
- Not approaching CJM/CMM of eviction in case the house is let out.
- Not obtaining caveat without anticipating that the borrower may approach court for stay.

Introduction of PARTH (Portal for Asset Resolution through Hot Chase). ADV 91 30/07/2020

A new **Portal for Asset Resolution Through Hot Chase (PARTH)** is being made functional to record all firsthand information of all SARFAESI, DRT, Civil Suit, NCLT accounts and to generate various reports on various parameters.

Navigation:-

Helpdesk Menu -> Desk Officer -> Credit -> PARTH Link - <http://10.121.150.145:5140/>

Branch users can access data for their particular branch only. Similarly, ZOs and FGMs can access data for their particular ZO/FGM. Corporate Office user can access the entire data.

Roles & Responsibilities of Law Officers ADV 153 09/10/20

Law Officers: Legal Arm of the Bank

Law Officers (Officers/Managers/Senior Managers/Chief Managers) act as the legal representatives of the Bank in all facets of legal matters concerning to Bank providing legal support to resolve the legal issue and are an important part in the operations of the Bank. It is observed that the Bank is getting limited success in recovering huge bad loans of the Bank through legal measures due to tardy progress of the cases in various courts/tribunals.

In this context, it is felt necessary to define the Roles and Responsibilities of the Law Officers of the Bank for their effective and efficacious functioning and delivering the results.

Roles & Responsibilities of Law Officers at Zonal Office:

- Approval of Bank Guarantees, where the BG is not as per Bank's Standard format.

- Vetting of Documents/Formats/Legal Notice/FIR, wherever required/referred, where there is no Bank's format or not as per Bank's format.
- To vet reply to queries on legal matters. To give legal opinion regarding any legal procedural lapse or operational flaw in the Bank involving the Legal Risks.
- Vetting of drafts of pleadings, Plaint, Written Submission etc and issuance of comprehensive instructions/briefs to the dealing Branch / counsel.
- Preparation and submission of periodical data of Suit Filed Cases (Civil Cases and DRT) as mandated by Head Office in the prescribed format.
- To handle/monitor all court cases from filing of the case to the final order of the court and monitoring the court cases/legal matters on day to day basis with the concerned advocates. Ensuring that appropriate Execution proceedings are filed in Decreed / RC issued cases.
- Providing guidance to Authorized Officers/Recovery Department and the branch concerned regarding legal intricacies involved in the SARFAESI cases. Assisting the Recovery department / Authorized Officer in invoking, monitoring of SARFAESI action, to meet the timeline strictly in completing the SARFAESI action till recovery of Bank's dues is warranted.
- Ensuring that any appeal / cases filed by / against the Bank are followed meticulously and there is no delay / adjournment from bank side.
- Preparation and submission of periodical SARFAESI data in assistance with Recovery Department as mandated by Head Office/Corporate Office in the prescribed format.
- Follow up with advocate/Recovery Agent for timely filing of CMM/DM application/petitions and obtaining the necessary orders for Physical possession on the Secured assets under SARFAESI Act.
- Providing relevant case related data/details to Recovery Department at Zonal Office for timely updation in PARTH.
- To prepare periodical statistical data on legal matters and submission of returns/statements to concerned authorities including statement on Contingent Liabilities. After every quarter, consolidated statement with respect to the Contingent Liabilities of the Bank is to be sent to Head Office, Legal Department well within time as prescribed by the Department from time to time.
- Settlement of Claim of deceased Depositor as per the extant policy and time line for recognition and communication to the Branch within 15 days as stipulated by RBI.
- Preparation and submission of periodical data of Death Claim Cases as mandated by Head Office in the prescribed format for submission to the Board for each quarter.
- Monitoring of Death Claim Settlement Tracker and Guiding the Branches to expedite settlement of Death claim and ensuring that no claims of Branches / Zonal Powers are pending.
- Scrutiny of and placing the proposal with respect to empanelment of advocates. Also reviews of performance of advocates to expedite the cases filed by bank and submitting the report to HO. Maintenance of data relating to Panel Advocates. Periodical updating the data relating to Advocates in the respective portal. Submission of periodical data of Advocates as mandated by Head Office in the prescribed format. Conducting periodical review of
- Panel Advocates and the reports are to be submitted to FGMO, HO/Legal Department.
- To assist Branch/ZO in NCLT referred cases.

- Any other legal/ industrial relation matter assigned by the Bank including advising on legal issues to other departments upon reference.
- Monitoring of suits filed against the Bank in different forums i.e High Court, Civil Courts, Consumer Forums, DRT/DRAT etc. Law Officers are required to provide legal guidance to the field functionaries for responding the Statements/Replies/Rejoinders & other pleadings have to be filed in time. Concerned branches should keep the Law Officers duly informed of the developments in the cases at the right earnest.
- To keep liaison with the State Legal Services Authority/DLSA for organizing Lok Adalats / National Lok Adalat and to assist Recovery Department in this regard.
- Preparation and submission of periodical data of Lok Adalat/National Lok Adalat as mandated by Head Office in the prescribed format in co-ordination with Recovery Department at ZO.

Roles & Responsibilities of Law Officers at FGMO:

In addition to the above, the following are also to be ensured by Law Officer at FGMO.

- In Case there is no legal Officer at Zone, the Guarantee / vetting of documents shall be undertaken by Law Officer at FGMO. In the absence of Law Officer at ZO and FGMO, the matter may be referred to Head Office, Legal Department for necessary guidance /approval.
- Wherever necessary document approval / vetting for ZO / Large Corporate Branch and SAMV Branches are warranted in the geographical jurisdiction of FGMO, the same shall be vetted by the Law Officer at FGMO. Where only substantial legal issue is involved and further guidance is required, those matters only can be referred to HO Legal Department along with comments of law officer concerned.
- Ensuring their respective Zone is submitting all Legal / Recovery related legal statements /Data in time to HO and adhering to HO time schedule.
- Law Officers posted at FGMOs are responsible for effective monitoring of the cases / litigation matters under the span of their control till the logical conclusion and recovery of NPA accounts through legal measures. In the Zonal Office where no law officer is posted, the law officer (of FGMO) shall ensure necessary legal steps in all the matters in coordination with the officer assigned with legal work in the respective zone.

Roles & Responsibilities of Law Officers at SAMV Branches:

- Law Officers will be Nodal Officers for the concerned DRTs. As Nodal Officers, they are required to perform their duties adopting a proactive approach and there should not be any occasion of laxity on their part in monitoring DRT cases and maintaining liaison with the DRT officials.
- Liaising with DRTs and reporting the feedback to the concerned Zone/Branch with a view to ensure prompt and effective handling of cases by these Zones/Branches.
- To monitor / verify / from DRT Staff / Registry / proceedings that in Securitization application (SA) / Execution matters / matters before Recovery Officer, the documents viz. copy of demand notice, postal receipt, charge receipt, proof of affixation, evidence of publication, securities details etc., are being filed in time and unnecessary adjournments are not being taken for non-supply of such documents and report all such matter, where compliance is delayed, to concerned Zonal office / Branch for immediate compliance.
- To handle / monitor all DRT / NCLT cases from filing of the case to the final order of the court and monitoring the court cases / legal matters on day to day basis with the concerned advocates.

- Ensuring that any appeal / cases pertaining to SAM branch filed by / against the Bank before any forum of law are followed meticulously and there is no delay / adjournment from bank side.
- Providing relevant case related data / details to the branch for timely updation in PARTH.
- Providing guidance to Authorised Officers/SAM branch regarding legal intricacies involved in the SARFAESI / NCLT / DRT cases. Recovery of loans through enforcement of various actions under SARFAESI Act / IBC. Assisting the Branch/ Authorised Officer in invoking, monitoring and implementation of SARFAESI action / IBC action, to meet the time line strictly as provided under respective law/code ADV 189 13/11/2020.

Legal Scrutiny Report Inclusion of Additional Clause-RERD Act, 2016:

- Whether RERD Act, 2016 (Real Estate Regulation & Development) is Applicable?
- If so, Whether Registration was done by the Developer / Promoter as per RERD Act, 2016?
- Whether dedicated / Escrow account was opened by Developer / Promoter as per RERD Act, 2016?
- Whether all the applicable provisions were complied with? ADV 181 03/11/2020

Introduction of new menu in CBS – Waiver of Legal Action (WLA) :

It is mandatory on branches to renew the cover documents within the prescribed time or else the documents will get time barred. To keep control over the limitation period of loan documents, a monthly report is being pushed to all branches as “DPN_remaning_dpn25.txt - DPN remaining without renewal between 30 to 36 months from the Dt. of Execution for the month ended ___ - AUH - 1A” As of now, those accounts in which Waiver of Legal Action has been permitted is also reflected in the above report, which does not reflect the actual position of Time Barred DPNs (TBDPNs) in a branch. To overcome this, a new menu has been introduced in CBS, the navigation of which is as follows – Common Processing - > Overdue/NPA - > Overdue / NPA Waiver of Legal Action n the first Screen 3 fields viz. (1) Account No., (2) Function – Create / Amend / Enquire / Delete and (3) System – Loan / Deposit, are provided. (Create-is for new entry, Amend-is to correct the entered details, Enquire-is to view the details updated, Delete is to remove the wrongly entered details and to amend the correct data as and when required) After filling the relevant details in the above fields and transmitting, the second screen will open. In the second screen we have to select / fill (1) Sanctioning authority of Waiver of Legal Action (AGM-ZM, DGM-ZM, GM-ZM, ZLCC, FGM and Corporate Office) from the drop-down boxes, (2) Date of sanction and (3) Sanction Reference No. (All the three fields are mandatory). After transmitting, a queue will be generated, which is to be authorised. “Every fortnight a report at Branch, ZO and CO level will be generated by CDC under heading – Protested bill – NSF- WLA.” All the Branches are requested to update the WLA details correctly and verify both the reports for its correctness. Since Waiver of Legal Action report is being generated separately, please ensure that the report on ‘DPNs remaining not renewed’ shows accurate details.

Importance of Central Registry.

- Sec: 20 of SARFAESI Act provides for setting up of a Central Registry for the purpose of registration of transactions of securitization, wherein all kinds of security interest created, be it by way of mortgage, hypothecation, assignment or otherwise are to be registered irrespective of the type of borrowers.
- “The objective of setting up a Central Registry is to prevent frauds in loan cases involving multiple lending from different banks on the same immovable property”. RBI.

- The Central Registry of Securitization, Asset Reconstruction and Security Interest of India (CERSAI cersai.org.in), a Government Company, licensed under Sec.25 of the Companies Act, 1956 has been incorporated for the purpose of operating and maintaining the Central Registry under the SARFAESI Act 2002.
- With existence of a Central Registry, it would be virtually impossible for a borrower to raise loans twice against the same property or raise loans using forged documents.
- Initially transactions relating to Securitization and Reconstruction of financial assets and those relating to Mortgage of deposit of title deeds are to be registered with the Central Registry. The records maintained by the Central Registry will be available for search by any lender or any other person desirous of dealing with property.
- Registration of charges to be done irrespective of whether the branch is a notified one or not.
- The particulars of every transaction should be filed with the Central Registrar within a period of 30 days from the date of such transaction.
- In case there is a delay in filing the transaction an application in specific form stating the reasons for the delay should be filed within 30 days of the expiry date of the 30 days original filing date with payment of additional fees.
- Branches have to furnish the EM Creation or Extension of EM details to the Zonal Offices who in turn will submit the details online to the Central Registry.
- Branches to ensure that the details furnished to the Zonal Offices are uploaded to the Central Registry and they get the Asset ID Number generated by the system on uploading the data by the ZO to the Central Registry to ensure that the data is uploaded.
- EM of agricultural lands need not be filed with the Central Registry. Cersai Registry is also applicable to Hypothecated assets

Other Important points under CERSAI

- The provisions of this chapter are extended to all creditors except secured creditors for creation, modification or satisfaction of any security interest.
- All creditors including secured creditors may file particulars of transactions with central registry.
- Creditors other than secured creditors not eligible to exercise right of enforcement of securities under this Act.
- Government and its authorities which have claims of recovery of tax or order of attachment, it has to be registered with Central Registry.
- Any person having order of attachment against the borrower shall file such order with Central registry.
- Such registration will be deemed to be public notice from the date of filing with the Central Registry.
- Secured creditor and creditors holding order of attachment shall have priority over all subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or license of such property or attachment order subsequent to such registration.
- Exception- nothing mentioned above applies to transactions carried on in ordinary course of business.
- No secured creditor shall be allowed to exercise right of enforcement of securities under chapter III unless the security interest created has been registered with the Central Registry.
- Secured creditor to have priority over other debts, revenues, taxes, cesses and other rated payable to government and local authority.

- In cases where the proceeding is under IB Code, the priority will be according to the code

In compliance of RBI observations on implementation of automated collateral management system, following details required to be entered in CBS system henceforth.

- Details of CERSAI ID,
- Security ID,
- CERSAI Registration date.
- Geo tagging reference No.
- Geo tagging date.
- Sale deed No.
- Sale deed date.
- Sale deed amount.
- Name of the Lawyer, Legal opinion date
- EM Value
- Date of EM
- Name of the valuer, Area of EM Property with units.
- MOD Value, MOD date.
- Extn. of EM details, Supplementary MOD details.

Penalties under SARFAESI / CERSAI

- Failure to comply with RBI directions Adjudicating authority to serve notice and give reasonable opportunity to other party to represent. Any penalty imposed has to be paid within 30 days and the Adjudicating authority has the power to cancel the registration of ARC.
- Appeal against the penalty can be made within 30 days Appellate Authority.
- RBI to appoint Appellate Authority.
- Recovery of Penalties Penalty is a recoverable sum and if it is not paid in 30 days, the following actions can be taken by RBI
 - a. Debit the current account.
 - b. Liquidate the securities held to the person in default in the books of RBI.
 - c. Notice to debtor of the person in default of payment of penalty and demand payment.
 - d. Such notice will be binding on the person upon whom it is issued.
 - e. Any claim arising after the date of issuance of notice will be void.
 - f. Where person upon whom notice is served issued a statement on oath that the amount or part of the amount is actually not due, RBI cannot claim such amount.
 - g. In case such statement is found to be false, he will be personally liable to pay to RBI such amount as mentioned in notice or the amount actually owed to the other person, whichever is less.
 - h. RBI can enforce the recoverable sum through Principal Civil court having jurisdiction in the area where the registered office or the head office or the principal place of business of the person in default or the usual place of residence of such person is situated as if the notice issued by the Reserve Bank were a decree of court.

SETTLEMENT OF CLAIM:

Settlement of claims in respect of deceased depositor's account – CHECKLIST:

- Branch has to check up whether any nomination is registered and if so the nominee to be informed about nomination.
- Blank claim forms to be provided to legal heirs who comes to Branch seeking advice.
- Time is to be spent to educate Legal heirs to fill the form correctly without leaving any lanks No claim shall be delayed or denied for want of Legal Heir certificate.
- No succession certificate /Court order should be insisted in a routine manner.
- All columns should be filled in with details (or) at least NIL and to be witnessed by 2 persons, preferably account holders of the branch, who can also attest the photo identity.
- Should be signed by all claimants in English or in language in which claim form is printed. If signed in other language should be notarized by Notary Public / Magistrate.
- Signature Tamilnadu English or Tamil; Other languages Magistrate / Notary Public to sign. If signed from abroad Consulate / Notary attorney.

Vouching letters from two independent persons - 2 different, responsible persons like Doctor / Teacher / Magistrate / Gazette Officer etc. who know the family for several years and they should give their name and address on the top of the vouching letter (respectable persons preferably account holders of the Bank) and they should mention their account numbers Names of all claimants mentioning relationship, occupation and present address to be mentioned

- It is to be mentioned whether the claim is by Inheritance /Will /Succession certificate or Probate and if not by inheritance, proper proof to be enclosed
- Consent letter to be signed properly by all claimants other than the one authorised to receive, along with respective address, Photo copies of Death certificate, legal heir ship certificate and any other certificate enclosed should be attested by branch official with the noting 'verified with the originals' and any other certificate When it is based on a Will, it is advisable to get consent of other Legal representatives / Legal heirs Age of the deceased depositor should tally with that given in the Death certificate / Legal heir ship certificate
- Complete address of the depositor as on date of death to be given Status to be filled up properly and not showed as NIL.
- Religion should be filled indicating the correct religion of the deceased depositor and in case of Mohammaden 'Sunni' or 'Shia' to be additionally mentioned.

Manager has to certify the following:

- The particulars mentioned in Col.No.3 (a) are correct.
- Details of deposits claimed with nos. and balance, Jewel Loan a/c nos. with details of Gross Weight, Net Weight and value have to be mentioned.
- Details of documents held in the case of release of EM property.
- Locker No. with details of arrears of rent, if any.
- There is no nomination registered in the deposits in the case of deposits where nomination is not registered.
- There are no direct/indirect liabilities of the deceased depositor/claimants. If there are liabilities the same have to be mentioned by furnishing their details and the particulars of the overdue position if any.
- The persons who have signed the vouching letters are known to the bank.
- If the loan accounts are closed the same has to be mentioned. In case JL, the person who has repaid the account should be mentioned.
- Branch Manager's specific recommendations in whose favour claim has to be recognized should be in page No.5 of Claim form itself

Scale Designation	Revised power sanction
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Branch Managers in Scale I	Rs 1.00 Lac
Branch Managers in Scale II	Rs.2.00 Lacs
Branch Managers in Scale III	Rs 7.50 Lacs
Branch Managers in Scale IV / Dy.ZM	Rs.15.00 Lacs
Branch Managers in Scale V / Dy.ZM	Rs.30.00 Lacs
ZM in Scale VI & Above Where the claim value is more than Rs 30.00 Lacs of Scale V branch /ZM the claim has to be forwarded to DGM(Law) DGM R&L CO Legal Dept	Full Powers

In settling claim in respect of the account standing in the name of deceased depositors, the photograph of all claimants attested by respectable persons known to the branch shall be insisted where the value of the claim is above Rs.10000/-.

Death Claim Monitoring System:

To track status of pending death claims at various levels, BOARD has directed to develop an online tracking system and now the same has been made online under the title “DEATH CLAIM MONITORING SYSTEM” which is an in-house application. Branches are advised to register the death claim applications in the portal without fail whenever the death claim application is received.