

RECOVERY

Prudential Norms

An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank.

Out of Order Status

An account should be treated as 'out of order' if the outstanding balance remains continuously in excess of the sanctioned limit/drawing power. In cases where the outstanding balance in the principal operating account is less than the sanctioned limit/drawing power, but there are no credits continuously for 90 days as on the date of Balance Sheet or credits are not enough to cover the interest debited during the same period, these accounts should be treated as 'out of order'.

A non performing asset (NPA) is a loan or an advance where;

1. Interest and / or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan (other than agriculture)
2. The account remains 'out of order' as indicated below, in respect of an overdraft/cash credit (OD/CC)
3. The bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted.
4. The instalment of principal or interest there on remains overdue for two crop seasons for short duration crops.
5. The instalment of principal or interest there on remains overdue for one crop season for long duration crops.
6. The amount of liquidity facility remains outstanding for more than 90 days, in respect of a securitisation transaction undertaken in terms of guidelines on securitisation dated February 1, 2006.
7. In respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.

Hence an account becomes NPA:

1. Term Loan: Interest and / or instalment of principal remaining overdue for a period of more than 90 days in respect of a term loan.
2. OD/OCC A/c out of order for more than 90 days
 - a) Outstanding balance above limit for 90 days
 - b) No credit for the last 90 days
 - c) Credit not sufficient to cover interest
 - d) No stock statements for the last 180 days
3. Regular credit limits not reviewed/renewed within 180 days from the due date; adhoc not regularised within 90 days
4. Bills purchased Bills if overdue for more than 90 days. Even if one bill is classified as NPA, the entire BP account and all other facilities of the borrower are to be classified as NPA.
5. Defaulted Guarantee or devolved LC when it become fund based and remain overdue for 90 days
6. Agriculture Loans STPL / MT-
 - a) Interest and / or instalment remains overdue
 - I. 2 crop seasons for short duration crops
 - II. 1 crop season for long duration crop, on the Standard Asset End Date
 - b) Other accounts like allied activities- Amount receivable remains overdue for more than 90 days.

Standard Asset End Date:

1. For short duration crops: Crop Period + Marketing Period + Two crop seasons = eg Paddy:
 $5+2+24 (12+12) = 31$ Months.
2. For long duration crops: Crop Period + Marketing Period + One crop season = eg Sugarcane:
 $18+2+18 = 38$ Months.

NPA Classification- exemptions

1. LOD/NSC/LIC/KVP
2. SHL/SVL & other staff loans where interest is payable after principal NPA only when instalments in default.
3. When account is re-phased/restructured before it slips to NPA category - SMA
4. Exemptions made as per RBI guidelines- Agriculture loans due to natural calamities.

Interest on NPA should be classified under MOI, without vouching.

Prudential norms application should be borrower wise and not facility or account wise, hence all credit facilities of a borrower is having uniform asset classification.

An asset may be straight away classified as Doubtful / Loss asset, depending upon the erosion in the value of securities or non-availability of security. If the realizable value of security is less than 50% of the value assess by the bank or accepted by RBI at the time of last inspection it should be classified as doubtful and if it is less 10% of the outstanding as loss asset.

Accounts classified as fraud should be classified as loss asset and full provision (100%) made irrespective of security and date of NPA.

Migration / Slipping of NPA account from one category to another (SS to D1, D1 to D3, D2 to D3) is purely based on age of NPA.

Upgradation of loan accounts classified as NPAs

If arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as nonperforming and may be classified as 'standard accounts.

Income Recognition

A)-Income Recognition Policy

1. As per RBI guidelines the policy of income recognition has to be objective and based on the record of recovery. Internationally income from nonperforming assets (NPA) is not recognized on accrual basis but is booked as income only when it is actually received. Therefore, in NPA accounts any type of income should not be charged and taken to Income Head. This will apply to Government guaranteed accounts also.
2. However, interest on advances against term deposits, NSCs, IVPs, KVPs and Life policies may be taken to income account on the due date, provided adequate margin is available in the accounts.
3. Fees and commissions earned as a result of renegotiations or rescheduling of outstanding debts should be recognized on an accrual basis over the period of time covered by the renegotiated or rescheduled extension of credit.

4. Interest Income in respect of Restructured Asset classified as standard asset will be recognized on accrual basis & that in respect of Restructured assets classified as non-performing assets will be recognized only on cash basis.
5. Interest realized on NPAs (after adjustment of principal) may be taken to income account provided the credits in the accounts towards interest are not out of fresh/ additional credit facilities sanctioned to the borrower concerned.

B)-Reversal of income

1. If any advance, including bills purchased and discounted, becomes NPA, the entire unrealized interest credited to income account in the past periods, should be reversed. This will apply to Government guaranteed accounts also.
2. In respect of NPAs, fees, commission and similar income that have accrued should cease to accrue in the current period and should be reversed with respect to past periods, if uncollected.
3. Leased Assets: The finance charge component of finance income {as defined in 'AS 19 Leases' issued by the Council of the Institute of Chartered Accountants of India (ICAI)} on the leased asset which has accrued and was credited to income account before the asset became non-performing, and remaining unrealized, should be reversed or provided for in the current accounting period.

General Principles and Prudential Norms for Restructured Advances:

Banks may restructure the accounts classified under 'standard', 'sub-standard' and 'doubtful' categories but Banks cannot reschedule/restructure/renegotiate borrowal accounts with retrospective effect. Normally, restructuring cannot take place unless alteration / changes in the original loan agreement are made with the formal consent / application of the debtor. However, the process of restructuring can be initiated by the bank in deserving cases subject to customer agreeing to the terms and conditions. No account will be taken up for restructuring by the banks unless the financial viability is established and there is a reasonable certainty of repayment from the borrower, as per the terms of restructuring package.

Restructuring of advances could take place in the following stages:

1. Before commencement of commercial production/operation;
2. After commencement of commercial production/operation but before the asset has been classified as 'sub-standard';
3. After commencement of commercial production/operation and the asset has been classified as 'substandard' or 'doubtful'.

The accounts classified as 'standard assets' should be immediately re-classified as 'sub-standard assets' upon restructuring where regulatory concessions are not available in areas like consumer and personal advances; advances classified as capital market exposures; and advances classified as commercial real estate exposures.

The non-performing assets, upon restructuring, would continue to have the same asset classification as prior to restructuring and slip into further lower asset classification categories as per extant asset classification norms with reference to the pre-restructuring repayment schedule.

Any additional finance may be treated as 'standard asset', up to a period of one year after the first interest/principal payment, whichever is earlier, falls due under the approved restructuring package.

In case a restructured asset, which is a standard asset on restructuring, is subjected to restructuring on a subsequent occasion, it should be classified as substandard.

Asset Classification of NPAs:

Sub Standard: A substandard asset would be one, which has remained NPA for a period less than or equal to 12 months.

Doubtful Assets: An asset would be classified as doubtful if it has remained in the substandard category for a period of 12 months

Loss Assets: A loss asset is one where loss has been identified by the bank or internal or external auditors or the RBI inspection but the amount has not been written off wholly.

Broadly speaking, classification of assets into above categories should be done taking into account the degree of well-defined credit weaknesses and the extent of dependence on collateral security for realisation of dues.

The classification of an asset as NPA should be based on the record of recovery. Bank should not classify an advance account as NPA merely due to the existence of some deficiencies which are temporary in nature such as non-availability of adequate drawing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of the limits on the due date, etc.

Provisioning for Standard Advances:

1. Direct Advances to Agriculture and SME: 0.25%
2. All other advances: 0.40%.
3. Commercial Real Estate Projects: 1.00%.
4. Commercial Real Estate Residential: 0.75 %
5. Housing Loans extended at teaser rates: 2%.
6. Any NPA account upgraded to standard: 2% for first year of up gradation.
7. Provision for delayed implementation of project infra: 0.40% till 2 years from DCCO (Date of commencement of commercial operation) and 2% from 3rd and 4th year.
8. Non infra: 0.40% upto 6 months from DCCO and 2% for the next 6 months.

Provisioning Norms for NPA Accounts:

Type of Asset	Provisions	
	Secured	Unsecured
Sub Standard	15 %	25 %
D1	25 %	100 %
D2	40 %	100 %
D3	100 %	100 %
Loss	100 %	100 %

Asset Classification

In case of restructuring, the accounts classified as 'standard' shall be immediately downgraded as nonperforming assets (NPAs), i.e., 'sub-standard' to begin with performing assets, upon restructuring, would continue to have the same asset classification as prior to restructuring. In both cases, the asset classification shall continue to be governed by the ageing criteria as per extant asset classification norms.

Provisioning Norms:

Normal Provisions: As per existing provisioning norms (for standard / NPA accounts).

Provision for diminution in the fair value of restructured advances: Reduction in the rate of interest and /or re-schedulement of the repayment of principal amount, as part of the restructuring, will result in diminution in the fair value of the advance. Such diminution in value is an economic loss for the bank and will have on the bank's market value of equity. It is therefore, necessary for banks to measure such diminution in the fair value of the advance and make provisions for it by debit to Profit & Loss Account in addition to the normal provisioning as per NPA guidelines. Sacrifice: The erosion in the fair value of the advance should be computed as the difference between the fair value of the loan before and after restructuring. Fair value of the loan before restructuring will be computed as the present value of cash flows representing the interest at the existing rate charged on the advance before restructuring and the principal, discounted at a rate equal to the actual interest rate charged to the borrower before restructuring. Fair value of the loss after restructuring will be computed as the present value of cash flows representing the interest at the rate charged on the advance on restructuring and the principal discounted at a rate equal to actual interest rate charged to the borrower before restructuring. Any change in BPLR/Base Rate / MCLR will be taken into account for future review of NPV of such account.

Conditions for Upgrade:

Standard accounts classified as NPA and NPA accounts retained in the same category on restructuring by the lenders may be upgraded only when all the outstanding loan / facilities in the account demonstrate 'satisfactory performance' (i.e. the payments in respect of borrower entity are not in default at any point of time) during the 'specified period'.

For the large accounts (i.e. accounts where the aggregate exposure of lenders is 1 billion and above) to qualify for an upgrade, in addition to demonstration of satisfactory performance, the credit facilities of the borrower shall also be rated as investment grade (BBB or better) as at the end of the 'specified period' by **CRAs accredited by the Reserve Bank** for the purpose of bank loan ratings. While accounts with aggregate exposure of 5 billion and above shall require two ratings, those below 5 billion shall require one rating. If the ratings are obtained from more than the required number of CRAs, all such ratings shall be investment grade to qualify for an upgrade.

In case satisfactory performance during the specified period is not demonstrated, the account shall, immediately on such default, be reclassified as per the repayment schedule that existed before the restructuring. Any future upgrade for such accounts shall be contingent on implementation of a fresh RP and demonstration of satisfactory performance thereafter.

Income Recognition Norms:

Interest income in respect of restructured accounts classified as 'standard assets' may be recognized on accrual basis and that in respect of the restructured accounts classified as 'non-performing assets' shall be recognised on cash basis. In the case of additional finance in accounts where the pre-restructuring facilities were classified as NPA, the interest income shall be recognised only on cash basis except when the restructuring is accompanied by a change in ownership. Conversion of Principal into Debt / Equity and Unpaid Interest into 'Funded Interest Term Loan' (FITL), Debt or Equity Instruments The FITL / debt / equity instruments created by conversion of part of principal / unpaid interest, as the case may be, will be placed in the same asset classification category in which the restructured advance has been classified.

Change in Ownership:

In case of change in ownership of the borrowing entities, credit facilities of the concerned borrowing entities may be continued/upgraded as 'standard' after the change in ownership is implemented, either under the IBC or under this framework.

Cases of frauds/wilful defaulters

Borrowers who have committed frauds/ malfeasance/ wilful default will remain ineligible for restructuring. However, in cases where the existing promoters are replaced by new promoters, and the borrower company is totally delinked from such erstwhile promoters/management, lenders may take a view on restructuring such accounts based on their viability, without prejudice to the continuance of criminal action against the erstwhile promoters/management.

Additional Finance:

Any additional finance approved under the RP (including any resolution plan approved by the Adjudicating Authority under IBC) may be treated as 'standard asset' during the specified period under the approved RP, provided the account performs satisfactorily during the specified period. If the restructured asset fails to perform satisfactorily during the specified period or does not qualify for upgradation at the end of the specified period, the additional finance shall be placed in the same asset classification category as the restructured debt.

Various Recovery Tools and Measures

Non-performing Assets are a drag on the Bank's profitability and affect the Bank in following ways:

1. The bank is not able to recognize interest income in respect of these assets.
2. In addition, the bank is required to make prescribed provisioning ranging from 15% to 100% of such NPAs from out of interest income earned by it from other good performing assets.
3. Besides impacting the profitability, large NPA position of the bank affects its balance sheet and present uncomfortable indices.

Thus, occurrence of these assets is to be avoided at any cost in the first place by effective monitoring of performing assets. Once the assets are stressed and the accounts slipped into NPA, concerted efforts need to be taken expeditiously for resolving the NPAs through all channels of recovery. NPAs can be reduced by upgradation of Assets/Recovery through host of measures.

1. Upgradation of accounts by recovering the overdue amount.
2. Rephasement/Restructuring/Rehabilitation of accounts wherever possible/ justified within the ambit of Bank's policy.
3. Recovery of amount through various recovery tools and measures.

Recovery strategy to be adopted varies from one account to another and account specific action needs to be adopted for desired result. Some of the commonly adopted measures are:

1. Lok Adalats
2. SARFAESI Action
3. Filing of suit / Recovery application before competent legal forum
4. Insolvency Laws / Laws on Liquidation
5. Invocation of personal guarantee
6. Classification and reporting as Wilful Defaulters
7. Compromise settlement / OTS
8. Engaging Recovery Agents for assisting in speedy recovery.
9. Utilising the services of Business Correspondents

Lok Adalat

Lok Adalats may be organized through the Legal Services Authorities both in suit filed accounts as well as non - suit filed accounts. The advantage of referring non-suit filed accounts is that Bank can save on Court fees and other expenses as the award passed by Lok Adalats is tantamount to a decree enabling Bank to file execution petition based on the award in instances of non-compliance. It is also clarified that Lok Adalats can be organized in all types of accounts whether it is secured/unsecured/small or high value/suit filed /non-suit filed, etc. In Principle approval from the respective OTS sanctioning authority for indicating Reference Recoverable Amount as per Policy should be obtained before referring the accounts to Lok Adalat.

Lok Adalat shall be attended by Zonal Office representative/s suitably equipped to exercise the powers of ZLCC such that maximum benefit shall be reaped. Likewise, wherever possible, Corporate Office representatives shall also attend the mega Lok Adalats suitably equipped with COLCC (GM) powers wherever warranted on a diligent basis.

Government of India in consultation with Reserve Bank of India has now decided that the monetary ceiling of cases to be referred to Lok Adalats, organised by Civil Courts shall stand enhanced to Rs. 20 lakhs. In view of this all proceedings pending before Civil Courts, wherein the total amount due upto the date of settlement is Rs. 20 lakhs or below, can be referred for settlement before Lok Adalats organised by State Legal Services Authorities, District Legal Services Authorities and Taluk Legal Services Authorities.

SARFAESI ACT

Action under SARFAESI Act

In order to strengthen and ensure quick recovery of bad debts the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act (SARFAESI Act) was enacted in 2002. The provision of the Act empowers the Bank to take possession of mortgaged securities without intervention of the Court and also to dispose it off for recovery of their bad debts. The SARFAESI Act has since been modified vide Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act,2016 notified on 16.08.2016 and by The Security Interest (Enforcement) (Amendment)Rules 2002 which was notified on 04.11.2016. The revised guidelines are also to be kept in mind while considering action under SARFAESI Act.

Coverage

Under the Act Banks/financial Institutions are given quasi- judicial powers to recover their dues by sale of charged assets without intervention of the Court. Action under SARFAESI Act can be initiated in the following:

1. The account must be NPA in the books of the Bank.
2. The amount outstanding (total dues) in the account should be more than Rs.1.00 lakh and should be more than 20% of the principal amount and interest thereon.
3. The secured asset should not be an Agricultural Land. However, it can be enforced where agricultural land given for mortgage is not used for agricultural activities. Field level functionaries should ascertain the use of land at the time of security enforcement and invoke SARFAESI action accordingly.
4. The account must be within the period of limitation and the documents are valid and enforceable.
5. The secured asset must not be under Bank's lien/pledge
6. SARFAESI action can be initiated even in suit filed cases and vice versa. there is no bar for simultaneous action.

Cases where SARFAESI action cannot be initiated

1. Non NPA accounts.
2. Personal assets of the borrower/guarantors not charged to the Bank.

3. Properties not liable for attachment/sale under Section 60 of CPC (except the security specifically charged with the debt recoverable under the Act)
4. If an application filed by the borrower company or by any person before the National Company Law Tribunal for initiating CIRP against the borrower and the same is admitted, there is a moratorium period from the date of admission of the application and no quasi-legal/legal action can be initiated against the borrowers/guarantors.

Appointment of Authorised Officers for the purpose of SARFAESI action

As per our Board approved Policy, all officers in the rank of Chief Manager and above can be appointed as Authorised Officers for initiating action under SARFAESI act. The AGM/CM posted in branches will automatically act as authorized for the NPAs account in their respective branches. ZO will appoint the authorized officers for other accounts in branches not headed by AGMs/CMs, from the available Chief Managers and above officers in the Zone. All the original papers should be maintained by the concerned branches and the Authorised Officer copies of all the related papers for ready reference and follow up and timely action.

Points to be noted while initiating SARFAESI action

1. Single Demand Notice under section 13(2) should be served on the borrowers/guarantors/mortgagors to the last available address with the Bank and in case of a company should be served on its Registered Office address.
2. If any objection/representation is received from the borrower/guarantor/mortgagor concerning the notice the same should be replied within 15 days of its receipt, as the same is mandatory under the Act. It should be ensured that the objection received is suitably disposed off and not pending at the time of taking possession under Section 13(4).
3. Symbolic possession of movable assets is not envisaged in the Act and hence only physical possession should be taken for movable assets.
4. In case of assets where physical possession is taken are perishable and will decay speedily the same should be sold immediately by the authorized officer.
5. Immediately on taking symbolic possession of the mortgaged property, Authorised Officer should take steps for obtaining physical possession of the properties by filing application with Chief Metropolitan Magistrate (CMM)/Chief Judicial Magistrate /District Magistrate (DM) as the case may be. This will enable receipt of more bids on sale and also for smooth transfer of property
6. After taking symbolic or physical possession of the secured assets, Authorised Officer to file Caveat in DRT/High Court having jurisdiction, for preventing any ex-parte order in appeal/SA filed or likely to be filed. Caveat filed is valid for 90 days and on expiry, if required, Bank can file another caveat before the concerned DRT/High Court.
7. In respect of properties of value Rs.100.00 lakhs and above 2 valuations have to be obtained and the higher of the 2 valuations should be considered for fixing Reserve Price.
8. Reserve Price will be fixed by Security Enforcement Committee (SEC) on the recommendations of AO concerned at Zonal Office. The SEC comprising the Zonal Manger and Senior Officials working in Zone Office preferably from Recovery, Legal, Expenditure, Premises, Inspection, and Administration in the Zonal Offices may be constituted with a minimum of three members. However, the Authorized Officer shall not be a member of SEC. The Department Head of Legal / Recovery Cell in Zonal Office shall be the Convener for this committee and shall ensure maintenance of all relevant records. Reserve Price is to be fixed depending upon the location, saleability, no. of sales, etc.

The SEC may consider the Reserve /upset price 10 to 25% less than the valuation, taking into account the realizable sale value of the assets at the given point of time, but shall not be less than the distress sale value given by the Approved Valuer or 75% of the market value whichever is higher. For the first sale generally market price will be the reserve price. If it is resale for want of bidders, reserve price to be suggested by SEC at 80% of distress sale value or 60% of market

value whichever is higher. Anything below that should be referred to Recovery Department, Corporate Office for fixation of the Reserve Price with acceptable reasons for recommending a lesser price. However, while fixing Reserve Price in case of resale, it should be ensured that the valuation report should be within 1 year.

9. Where resale of the property is undertaken, 15 days' notice is sufficient.
10. Recently, the amendments have been made to SARFAESI Act and rules which stipulate that Right of Redemption of the borrower/mortgagor is available only till the date of issuance, service, and publication of sale notice as the case may be and not thereafter.
11. The Authorised Officer before issuing Sale Certificate should ensure compliance to Income Tax and GST as applicable.
12. Only one Sale Certificate to be issued and there is no provision in SARFAESI Act for issuance of duplicate certificate.
13. In respect of multiple properties put on sale by fixing a single Reserve Price, only one sale certificate to be issued for the sale value detailing all the properties put on sale and not individual sale certificate.
14. Now, after the amendment any tenancy issues on the security which is brought for sale under SARFAESI Act will have to be agitated by the tenants before DRT only under Sec.17(4). Therefore, DRT has been conferred with the powers to look into the tenancy issues and adjudicate as to whether it is tenable, for the purpose of enforcement.

Benefits of action under SARFAESI Act

1. After completion of 60 days' notice period Bank can take possession of the secured properties and recover the dues by sale or lease or assignment of the assets.
2. Bank can also take over management of the business of the borrower and can appoint personnel for management of the business.
3. The notice under Section 13(2), on receipt of the same by the borrower/guarantor/mortgagor, will automatically bar them from alienating/transferring or dealing in any manner the assets charged to the Bank. SARFAESI action is time bound and should be implemented within the framework of SARFAESI Act/ Rules framed there under and the internal guidelines of the Bank. The time frame stipulated should be followed meticulously and completion should be ensured within 120 to 130 days.

Suit Filed Accounts:

Even in suit filed cases (including cases pending before DRTs), if the period of limitation is available based on loan documents/ last renewal / AOD (like in the instance of non-suit filed cases), then measures under the Act can be taken. In the case of non-suit filed accounts the following aspects have to be borne in mind:

1. If security is sufficient to cover the dues fully or there is nothing other than the security, bank may issue notice and proceed under the Act.
2. If security is not sufficient and recovery by proceeding against other assets, is necessary, bank would have to proceed under the Act before filing Suit / Recovery Application sufficiently early so that proceedings under the Act could be completed before the expiry of the period of limitation and bank could file Recovery Application / Suit thereafter for the balance within the limitation period.

Decreed Cases - The word 'Debt' has been defined to mean and include the same term as in 'DRT Act', Going by the same money due under a decree is 'Debt'. Therefore, even civil court decreed cases, RC issued cases and Lok Adalat Awards, we may treat the money due under such decrees as 'Debt' and the security interest has culminated in the decree and therefore SARFAESI action can be initiated within 12 years from date of Decree/RC, wherever mortgage interest is involved. Here, it has to be borne in mind that there is no distinction between a preliminary decree and a final decree for SARFAESI action and therefore even where preliminary decree is obtained, Bank may issue demand notice based on the same.

Exemptions:

The 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 CPC (Eg. Tools of artisans, personal belongings like wearing apparel, bedding etc., of judgement 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 judgement debtor etc.) and such other items as may be exempted under respective State Amendments. Pledge of movables

** Herein the important aspect to be borne in mind is that if the land is not used for agricultural purposes it will not fall under the exemption. Care should be taken to ensure that the exempted categories do not come under the ambit of such identified accounts.

Guarantor liability and pledge - By resorting to measures under the Act, the rights of Bank as secured creditor to proceed against the guarantors is not taken away. Similarly the right to sell the pledged goods under general law also subsist.

Consortium accounts and / or Joint Finance - In the case of financing by more than one secured creditors under consortium arrangement or joint financing, bank is not entitled to exercise the powers under Sec13 (4) of SARFAESI Act unless secured creditors representing not less than 60% in value of the amount outstanding (the total amount due to be payable) agree/consent for such action. This consent is required only at the stage of taking possession etc [Sec 13(4) measures] and not necessarily at the stage of issuance of Demand Notice.

Recovery Agents: -

Under SARFAESI Act, Bank is entitled to issue demand notice, take possession and effect sale of securities without intervention of Court or Tribunals. For this purpose, the Authorised Officer is at liberty to make use of the services of specialised agencies (Recovery Agents) in activities like taking possession, drawing inventory, making security arrangements, effecting sale, etc. Furthermore, even in other process of recovery like in the suit filing process, for the purpose of identifying other assets, to co-ordinate/liaison with Government Agencies, Municipal authorities, the registration authorities and Recovery Officer of DRT, Officials of the Court etc, the services of Recovery Agents would be of immense help. While empanelling Recovery Agents, it shall be ensured by them that Principle of Natural Justice and the guidelines laid down in Indian Bank Model Code for Collection of Dues and Repossession of Securities (CDRS Code) is adhered to. Our Bank has approved to entrust Agri Loans, Educational Loans, MSE Loans, SHG loans etc., with balance below Rs.10 lakh, to Business Correspondents / Self Help Groups / Community Bank Co-ordinators after empanelment of them as Recovery Agents.

Private Treaty: -

Amendments are made in SARFAESI Act which facilitate / encourage private treaty mode of sale by making it abundantly clear that the terms of sale through private treaty mode is only to be settled / decided between the secured creditor and the proposed purchaser and the borrower need not be involved, but the borrower / guarantor / mortgagor has to be notified of the sale process that bank intends to adopt through Private Treaty mode. Branch / Zonal Office can consider adopting private treaty mode, if the attempts of sale by bank through public mode of sale namely auction or tender process has failed twice or thrice, despite marketing efforts of the bank and Authorised Officer, with realistic Reserve Price of the property.

Insolvency & Bankruptcy Code:

Bank utilizes combination of various recovery tools in realizing NPAs. Now Insolvency and Bankruptcy Code (IBC) provides single umbrella legislation for Insolvency and bankruptcy issues of all types of borrowers. As on date only National Company Law Tribunals (NCLTs) have been notified to deal with Insolvency Resolution and Liquidation Process for Corporate Debtors. The vital IBC provisions having practical implications are as follows: Debt recovery tribunal (DRT) have jurisdiction for individuals, partnership firms, proprietary concerns and national company law tribunals (NCLTs) have jurisdiction for Companies and LLPs.

IBC Proceedings

1. Wherever possible CIRP process is to be initiated at NCLT against the corporate debtor before considering any OTS offer
2. **Pre-package (PPIRP) options should be explored for MSME units**

IBC Application may be filed by Financial Creditors (Banks and Financial Institutions) or Operational Creditors (Sundry creditors who give line of credit for supplies) or jointly by both. Insolvency Resolution Professionals (IRPs) registered with approved agencies of IBBI would be conducting the resolution process. In exercise of the powers conferred by the proviso to Section 4 of IBC, 2016, Government of India, Ministry of Corporate Affairs, vide Notification dated 24.03.2020 has specified Rs.1.00 Crore as the minimum amount of default, against Rs.1 lakh.

Since the provisions of limitation act are applicable to applications under IBC it may be filed within three years from the date of default.

NCLTs shall within 14 days of receipt of application, ascertain the existence of default, verify credentials of IRP and admit the application and if orders are not passed within such time, it shall record its reasons in writings. When it takes a view to reject the application, prior to doing the same, 7 days' notice to the applicant shall be given for rectification.

The entire resolution process (CIRP) is expected to be completed within 180 days which may be extended for reasons to be recorded in writing. This Application for extension shall be filed by RP, based on resolution passed at Committee of Creditors (CoC) by a vote of not less than 66% of voting shares. As per recent amendment, the entire process is to be completed mandatorily within 330 days including time spent on litigation.

During CIRP period NCLT shall declare moratorium which brings to standstill, initiation of any legal measures /SARFAESI action etc. The limitation for filing suit gets extended during moratorium period which is only against the borrower company. As against the Guarantor /corporate guarantor SARFAESI action/suit needs to be filed within the limitation period.

During moratorium, there is a standstill clause which does not permit for interim finance, altering share of capital structure, amending constitutional documents, change of management etc.

IRP shall exercise control over affairs of the borrower and even over powers of the board of directors. The officers and managers of the borrower shall extend cooperation to IRP.

IRP will issue a public announcement and call for claims from all Creditors within three days of appointment. IRP shall collate the claims and constitute a CoC and the first meeting shall be within seven days of its constitution, wherein the IRP can be confirmed as RP or can be replaced with another RP by a majority vote of 66%.

Resolution plan shall be submitted by Financial Creditors and/ or any other Resolution Applicant approved by CoC, by vote of not less than 66% of the financial creditors and same shall be approved by

NCLT. Once resolution plan fails or where there is no scope for effective resolution plan then it moves to liquidation procedure.

Under liquidation process, NCLT shall pass an order requiring corporate debtor / borrower to be liquidated and issue a public announcement to that effect.

Once liquidation order is passed; suit or other legal proceedings cannot be instituted or proceeded against Corporate Debtor. During liquidation process RP shall act as Liquidator too and exercise all powers of Board of Directors, Key Managerial Personnel (KMP) etc., from that date. Maximum time span for liquidation process is laid out to be 1 year.

Proceedings initiated by or against such corporate debtors and their guarantors, if any, which are pending at other forum shall also be transferred to NCLT concerned.

Recovery application filed against partnership firm, individuals, proprietorship concerns and its connected liquidation proceedings shall be conducted by DRT (not yet notified).

Financial creditors shall submit their claim to the liquidator within a period of 30 days from commencement of liquidation process, who shall after verification; either admit or reject the claim and communicate his decision to Corporate Debtor and Creditor within 7 days. Relinquishment of security if opted has to be done within 30 days.

Appeal against the orders of NCLT shall lie to NCLAT and from DRT to DRAT within 30 days of the order of lower forum. Further appeal from NCLAT shall lie to Supreme Court.

When the matter is before NCLT / NCLAT, no other Court or Tribunal can pass any injunction order.

IBC deals with waterfall mechanism, i.e. order of priority of secured creditor's viz -aviz. Government dues and other dues. The secured creditor dues rank prior to all dues, including Government dues.

Committee of General Managers is the Competent Authority for according approval of filing of applications under IBC.

Authorities to take decision on resolution mechanism: wherever there is scope for revival/rehabilitation/restructuring, the competent authorities who are empowered with the sanction of revival/rehabilitation and restructuring plans as per the Bank's Credit Policy in vogue shall be the Competent Authorities herein also. Wherever there are possibilities of OTS, the Competent Authorities who are empowered with the sanction of OTS and haircut/write off/ waiver as per the Bank's Recovery Policy in vogue will act as authorities to take a decision on case specific basis.

Zonal manager may nominate of officers of scale IV and above, as designated officer (DO), who will sign /file the IBC application. The committee of creditors meetings is to be duly represented by Bank officials as follows:

1. Branch Headed by GM/DGM/AGM-Branch Manager not below rank of Assistant General Manager or an executive /Senior Manager from concerned FGMO/ZO to be decided by FGM.
2. Branch Headed by Chief Manager or below- Branch Manager or an executive from FGMO/ZO concerned to be decided by FGM.

The Designated Officer and the Branch Manager shall update the Zonal Office / FGMO / Corporate Office (R&L) about the proceedings of CoC, minutes, proposed resolution plan and other incidental matters. The team at ZO/FGMO/CO will provide necessary inputs/guidance on such plans/information then and there to the Designated Officer.

Declaring as Wilful Defaulters:

RBI has evolved guidelines as regards classification of certain categories of borrowers as 'Willful Defaulters'. The main intent and purport of classification of a borrower as wilful defaulter would be to

have a credit discipline, help to disseminate credit information pertaining to willful defaulters and also insures that further Bank finance is not made available to them.

The identification of willful default, oriented on diversion of funds/siphoning of funds would have to be judgement of the lenders based on objective facts and circumstances of the case. Further the identification should also bear in mind the track record of the borrowers and should not be decided on isolated transaction/incidence and it should be intentional, deliberate and calculated.

Compromise Settlement / OTS:

Compromise Settlement or One Time Settlement has been found to be one of the quickest and easiest routes to resolve and recover our dues in most of NPAs. Compromise / Negotiated settlements may be considered in an account where exiting from the account by accepting a reasonable sacrifice is better option than to continue with the legal battles for uncertain period and for an uncertain result. In all cases where the advance is secured by tangible assets, the economics of the compromise proposal should be determined in such a manner that it is always advantageous to the Bank. Compromise proposals should be supported by /substantiated with justification as to the need for and circumstances that have led to opting for compromise mode of recovery and should be highlighted and discussed in detail.

Factors attribute for OTS option are:

1. Failure of unit due to commercial or technical reasons.
2. Government policies affecting functioning of the unit,
3. Court orders
4. Death of principal promoter
5. Non-availability / loss / depletion of securities etc.

Reference Recoverable Amount (RRA) is the basic amount which the Bank shall generally insist for accepting a compromise settlement from the borrower/guarantor etc. Factors like Availability of securities, its saleability, cost of realisation, net worth of the borrowers/guarantors etc. are to be taken into account before going for OTS.

Applicable interest rate to be applied for computing Notional Dues and as discounting rate for Net Present Value (NPV) purpose will be 10.25% simple.

No compromise proposal should be rejected at the Branch Manager's level. It should be referred to the next higher authority for decision.

An OTS can be offered by

1. Principal Borrower/s
2. Guarantor/s
3. Parent Company
4. Other interested parties like drawees of bills, legal heirs, purchaser of charged assets of the bank (subsequent buyers), tenants, etc.
5. At any case, an offer of OTS should be obtained in writing, with the OTS amount and terms of payment

OTS in SARFAESI applicable accounts

1. SARFAESI proceedings to be followed meticulously
2. It should be ensured that all efforts are made to put the mortgaged properties for sale at least once before entertaining any OTS request from customer
3. OTS to be negotiated in such a way that OTS amount offered is more than the NPV of securities

OTS Policy is applicable to: -

1. All NPA Accounts (including suit filed, decreed, fraud, wilful defaulter, non co-operative) as on 31.03.2021.
2. All fresh NPAs identified from 01/04/2021
3. All staff/retired staff loans/ related NPA accounts
4. BOT/NRR accounts

Fresh NPAs of 2021-22 which can be considered by Branch Managers of Scale IV branches and above and at Zonal Office level. Branch Managers of Scale IV & above branches, ZLSCC, ZLCC, FGM(CAC) are empowered to consider OTS in these cases from the subsequent quarter only since provisions are made as per IRAC Norms once in a quarter only.

OTS to be considered at Branches and Zonal Offices:

1. Compromise Settlement can be considered by sanctioning authorities at branches and Zonal Offices as per Discretionary Powers in respect of all NPAs.
2. Fresh NPAs of 2021-22 which can be considered by Branch Managers of Scale IV branches and above and at Zonal Office level. It is clarified that Branch Managers of Scale IV branches and above, ZLSCC and ZLCC are empowered to consider OTS in these cases from the next quarter only.
3. In respect of staff related / retired staff related accounts availed, with the permission of Competent Authority wherever applicable, general Policy guidelines will apply and OTS proposal may be considered by appropriate authority (The appropriate authority is OTS sanctioning authority as applicable to general public).

OTS to be considered only at Corporate Office:

OTS in respect of the following accounts can be considered only by Corporate Office level:

(1) One Time Settlement in Staff/Retired staff loans either direct or indirect can be considered by

1. COLCC (ED) subject to the discretionary powers specified in the Policy subject to the condition that no fraud is involved and where Real Balance is upto Rs.25 lakhs.
2. CAC subject to the discretionary powers specified in the Policy subject to the condition that no fraud is involved and where Real Balance is above Rs.25 lakhs and upto Rs.50 lakhs.
3. Accounts not covered under (a & b) above to be considered by MCB only.

(2) Cases involving Frauds / Malfeasance / Wilful default / Non-co-operative/ CBI / PIL: By MCB irrespective of sacrifice amount.

(3) Government Guaranteed Accounts: By MCB.

An account will be treated as fraud only after CO: FRMC classifies the same as such and report to RBI Similarly a borrower will be treated as willful defaulter/non-co-operative borrower, only after the Competent Authority approves such classification.

OTS in respect of Self-Liquidating Securities:

No OTS can be considered in the cases which are backed by self-liquidating securities like FDRs, Jewels, NSC/KVP/IVPs, LIC Policies etc. Surplus, if any left after adjusting the concerned loan accounts, should be appropriated towards other NPA accounts, if any, of the same party. If there are shortfall after adjustment of the proceeds as above, in such of those cases, OTS can be considered in the accounts treating the account as unsecured for the balance amount. If securities charged in these accounts turn out be fake or fraud is involved OTS in such cases should be taken up for consideration by COLCC(ED)

OTS in respect of Lok Adalat settled cases:

OTS can also be considered in respect of Lok Adalat settled accounts / OTS already sanctioned accounts, where the settled amount has not been fully paid.

OTS in respect of NPA accounts in Pooled Assets Category

The Provisions of Recovery Policy is also applicable to the NPA accounts in Pooled Assets category and OTS in respect of such accounts can be considered under the applicable settlement formulae.

Coverage of fresh NPAs under OTS Policy and Authorisation to ZLCC: OTS policy provisions are permitted to be applied only in respect of NPAs outstanding as at the end of previous Financial year i.e. (31st March 2021). However, considering the number of small loan fresh NPAs and Bank resorting to system-based identification of NPAs, once an account is identified as NPA, OTS policy provisions can be applied. Hence, OTS proposals in fresh NPA accounts can be considered by:

1. Officials in the rank of Scale IV and above heading a branch of a lower scale
2. Officials in lower scale heading Scale IV branches and above.
3. ZLCC
4. FGMCAC
5. Sanctioning Authorities at Corporate Office

OTS in respect of accounts where no provision is held should not be considered.

Official exercising the above powers should not use the discretion in respect of loans sanctioned by himself / herself earlier and such accounts will have to be referred to the next higher authority.

Terms of Payment

Normally, efforts should be made to recover the amount agreed within a maximum period of 90 days from the date of communication of sanction. No interest is to be charged for the above period of 90 days. Where, for reasons satisfactory to the bank, the amount has to be paid in instalments over a period of time it should not exceed 12 months payable in monthly / quarterly/half yearly/ instalments. The sanctioning authority may decide on this depending upon the merits of each case together with interest at One Year MCLR as on the last date of previous financial year (31st March 2021) + 2% (Simple) from the date of communication of OTS sanction by the Branch to the borrower up to the date of final payment on diminishing balance of OTS amount. However, the date of acceptance cannot be more than one month. In exceptional cases, based on merits of the cases, the sanctioning authorities from ZLCC and above may consider OTS proposals to be paid over a period not exceeding 36 months in monthly /quarterly/half yearly /annual installments with interest at One Year MCLR as on the last date of previous financial year (31st March 2021) + 2% (Simple) from the date of communication of OTS sanction by the Branch to the borrower

Account under Wilful Default:

As per RBI guidelines, stringent measures are required to be initiated against the Wilful Defaulters. However, the issue of compromise settlement in such cases of wilful defaults / frauds was examined by RBI and RBI has advised Banks through Indian Banks Association that compromise settlement with wilful defaulters / fraudulent borrowers can be entered into without prejudice to the criminal case against the borrower. Such cases of compromise settlement should be approved by MCB / Board of the Bank as per the guidelines. (IBA letter no. C&I / Misc/1435 dated May 14, 2007)

Therefore, OTS to wilful defaulters / fraudulent borrowers should be referred to Corporate Office to be considered at the level of MCB. Reference Recoverable Amount should be calculated on the same lines as in the case of other accounts as detailed above, in the case of wilful defaulters also.

Non-co-operative Borrowers:

In respect of borrowers classified as non-co-operative borrowers as per the extant guidelines of RBI, OTS sanctioning authority will be MCB only.

Fraudulent borrowers:

Such of those cases which are reported as frauds to RBI through CO: Inspection Department should only be classified under the appropriate category and full provision made.

OTS can be considered in respect of NPAs classified as fraud. This is with a view to avoid blocking of Banks funds in such accounts, while action under the laws of the land can be continued. The sanctioning authority in such cases will be COLCC(ED).

Resolution of NPA Accounts involving Criminal Cases:

OTS in PIL/CBI Cases: Only in respect of NPA accounts pertaining to PIL/CBI investigation cases, the subject is to be referred COLCC(ED). Resolution of NPAs pertaining to other criminal / ordinary police cases which are not reported to RBI by CO: FRMC are to be dealt with at the appropriate level in line with the powers delegated for OTS/Sacrifice.

OTS in cases classified as fraud where criminal action initiated either through Police or CBI or other Agencies: In such accounts the sanctioning authority for compromise proposals is from the level of COLCC (ED) and above at Corporate Office. However, recovery either through normal channel or through negotiated.

In the absence of 100% cash margin, securities charged / third party guarantees for the non-fund-based dues should be released only after adjustment / reversal of the NFB liabilities. If the guarantee / LC was originally issued as unsecured one, then 100% cash margin should be insisted upon.

SALE OF MOVABLE ASSETS UNDER THE HYPOTHECATION AGREEMENT- (outside SARFAESI Act)

The procedure for sale by secured movable assets under Hypothecation Agreement could be by obtaining quotations from parties or inviting tenders from public or holding auction/e-auction. The Borrower may be given 15 days prior Sale notice. If the sale is by public auction or by inviting tenders from public, then the sale Notice has to be published in a leading newspaper having sufficient circulation in that locality giving out details about the said account.

The procedure to be followed for sale under the hypothecation agreement is as follows: -

1. Valuation of the asset to be done on realistic basis. Reserve Price is to be fixed by the Zonal Manager.
2. After taking possession, service of sale notice to the Party(s) in the prescribed format for effecting sale.
3. Calling for quotes from parties or holding auction mode and highest bidder can be treated as the successful bidder.
4. Terms of Sale should be entered into with the successful bidder in an agreement to sell with specific terms mentioning sale price & manner of payment of sale consideration. If the Zonal Office thinks that the sale price is relatively high then the Zonal Office can take a considered decision to facilitate instalment payment but if the sale price is not too high then the sale price has to be remitted in one shot.
5. Once the entire sale consideration is received then sale deed has to be executed in the name of the purchaser and transfer of registration or other compliances wherever required has to be done in Borrower s favour as stipulated by the statutory authorities.
6. The sale deed need not be registered as it does not pertain to immovable property

A 'WILFUL DEFAULT' would be deemed to have occurred if any of the following events are noted:

1. The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.
2. The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
 - a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;

- b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;
 - c) transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities;
 - d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
 - e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
 - f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.
3. The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

The term 'siphoning of funds', referred to at paragraph above, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgment of the lenders based on objective facts and circumstances of the case.

4. The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank / lender.

NOTE: The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions / incidents. The default to be categorised as wilful must be intentional, deliberate and calculated

Illustrative List (not exhaustive) of Proof / Evidence / Supporting Documents for establishing the occurrence of Wilful Default:

1. Forensic Audit Report
2. Balance Sheet / Financial Reports to identify diversion of funds
3. Proof of sale / disposal of immovable assets without Banks consent.
4. Quarterly progress report in case of high value Project / Corporate loan
5. Periodic Stock & Book Debts Audit Report.
6. Statement of Accounts of our Bank and Other Banks.
7. Though Loan amount disbursed / availed to that extent Plant & Machinery not procured, Stocks / Book debts not available, Unit not established, Unit closed.
8. Regular inspection of borrower assets charged as security (Unit Visit Report)
9. Internal investigation / Inspection report, SNAP Audit, RBIA Audit etc
10. Staff Accountability Study Report, FRMC report, FIR Copy, if any
11. Other evidences as applicable.

Mechanism of Identification of Wilful Default:

The evidence of wilful default by the borrowing company and its promoter / whole time Director at the relevant time should be examined by a Committee (**Wilful Defaulter Screening Committee**) headed by

Executive Director and consisting of General Manager (Corporate Credit) and General Manager (R and L). Convener will be DGM(Recovery).

After the initial scrutiny by this Committee is over and they hold the prima facie view that there is scope for wilful default, a show cause notice shall be issued to the concerned Borrower / Promoter / Whole time Director, call for their submissions, consider the same and thereafter an order may be issued recording the fact of wilful default and reasons for the same. This Committee should give an opportunity of personal hearing, if it deems necessary. This discretion of the Committee to grant or deny personal hearing should be judiciously exercised, recording reasons in writing.

After considering the submission and/or personal hearing, an order recording the fact of wilful default and reasons for the same will have to be made, in instances fulfilling the criteria.

The order of this Committee should be placed for confirmation by another Committee (**Wilful Defaulter Review Committee**) headed by MD & CEO and consisting in addition, two independent Directors of the Bank.

The order of the Screening Committee shall become final, only after it is confirmed by this Review Committee.

Thereafter the names of the company, Promoter Directors, Whole Time Directors, and Guarantors (if applicable) would be reported to the Credit Information Companies viz

1. Experian Credit Information Company of India Pvt Ltd
2. Equifax Credit Information Services Private Ltd
3. CRIF High Mark Credit Information Services Private Ltd and
4. Credit Information Bureau (India) Ltd (CIBIL)

FORENSIC AUDIT:

Forensic Audit is an examination and evaluation of a firm's or individual's financial information for using as evidence in a court. A forensic audit can be conducted in order to prosecute a party for fraud, embezzlement or other financial claims. Forensic Auditing is a specialization within the field of auditing. Therefore, Forensic Auditing can be defined as the application of auditing skills to situations that have legal consequences. Forensic auditors often provide expert testimony during trial proceedings in the courts. Forensic auditing also refers to investigation of a fraud or presumptive fraud with a view to gathering evidence that could be presented in the court of law. Most large audit and accounting firms have a forensic department. Forensic Auditing can be used either by a corporate management or by statutory or other auditors to carry out general reviews of activities to highlight risks arising either out of fraud or from any other source with the purpose of initiating focused reviews of particular areas, targeting specific threats to the organization. The objective of the forensic audit is to find whether or not a fraud has taken place in the financial affairs of an organization. It involves examination of voluminous records and witnesses as permitted by law. Proper documentation is vital in substantiating the findings. The outcome shall focus on the following in case of frauds:

1. Proving the loss and the quantum of loss
2. Proving the responsibility for the loss
3. Proving the method / motive
4. Establishing guilt of person / persons
5. Identifying other beneficiaries

Forensic audit should compulsorily be conducted in respect of NPA accounts with Book Balance of Rs.50.00 crores and above and further action is to be initiated immediately wherever irregularities are observed. In respect of NPA accounts with Book Balance less than Rs.50.00 crores, need for forensic audit has to be examined by a Committee of GMs consisting of GM (R&L), GM (Credit) and GM (I/C), Convener is GM (R&L) and forensic audit is to be conducted on case to case basis, particularly in accounts wherein realizable value of securities is less than 50% of the loan amount.

Committees For Recovery

Settlement Advisory Committee:

A committee named "Settlement Advisory Committee" (SAC) is set up at Corporate Office for considering all the proposals for Compromise, Release of security, Sale of Assets to ARCs / Banks etc., that fall under the discretionary powers of COLCC (GM)/COLCC(ED) / CAC / MCB. The proposals falling under the power of above sanctioning authorities are considered / recommended by this committee. However, full write off proposals where there is no recovery will be placed directly to the concerned sanctioning authority.

Settlement Advisory Committee (SAC) meeting through Circulation: Generally SAC meetings are convened at monthly intervals. However, in instances where proposals are needed to be cleared in the eve of impending recovery, Board has approved the proposal of holding / conducting SAC meeting through circulation with a view to quicken the process of Recovery in exceptional cases. On approval, the proposal should be placed to the Sanctioning Authority as in other cases. Composition of the Committee is as under: 1. Retired High Court Judge - Chairman 2. Retired GM of a Public Sector Bank - Member 3. General Manager /DH (P & D) - Member 4. General Manager /DH (RBD/FI) - Member Convener: General Manager (R & L)/ DGM (R&L) in absence of GM (R&L) Minimum Quorum: Three. Chairman's presence is must.

Assets Sales Committee

Assets Sales Committee (ASC) has been constituted with General Managers at Corporate Office to consider and recommend sale of assets viz. borrowal accounts which have been classified as NPAs to Securitization Companies / Asset Reconstruction Companies / Other FIs and Banks either under assignment or otherwise. Asset Sales Committee (ASC) will comprise the following members:

1. General Manager (R & L)
2. General Manager (CR)
3. General Manager (P & D)
4. General Manager (RBD/FI)

Quorum: Three Conveners: DGM / AGM (R &L) Senior Most GM will be the Chairman

Appropriation of Recoveries in NPA A/cs:

Uniform Accounting policy for appropriation of amount recovered:

In the absence of a clear agreement between the Bank and the borrower for the purpose of appropriation of recoveries in NPAs (i.e., towards principal or interest due), the Bank will adopt a uniform accounting Policy and exercise the right of appropriation of recoveries in a uniform and consistent manner as follows: Any Recovery should be first appropriated to Book Balance (Principal) and then to Unpaid Legal Expenses (MLE), Unpaid Other Expenses (MOX) and thereafter to Unpaid Interest (MOI).

The above uniform accounting procedure should be adopted for all modes of recovery, including normal mode, Compromise, SARFAESI, and both for suit-filed and non-suit filed accounts. In respect of an account classified as NPA with retrospective effect, appropriation of recovery to principal to be made from the date of classification as NPA and not from the date of NPA When (i) recovery proceeds to be appropriated are in excess of the book balance and (ii) further recovery is expected in such NPA A/c, (out of further recovery proceedings), appropriation may be done by retaining a minimum Book Balance of Rs 1000/- in the NPA A/c. This will facilitate the branch to keep the account alive (instead of keeping the a/c with Zero balance) and pursue with further proceedings towards recovery of remaining dues under MLE/MOX/MOI. The minimum book balance should also be recovered at the time of closure of the account. In case of sale of properties, unless the full sale amount is realized, the part payment should not

normally be appropriated to loan account, to ward off difficulties in case the sale failed. In the case of restructured accounts whereas per sanction terms, interest is to be serviced immediately and the principal repayment to start at a later date, recovery of interest made in such accounts should be taken to income account and not to be treated as principal repayment.

Policy For SARFAESI Sale Through Private Treaty

Under SARFAESI Act and Rules framed there under, several amendments have been brought forth. SARFAESI Sale through private treaty mode as such, was recognized mode of sale under SARFAESI Act. Private Treaty is for all practical purposes a Resale, having exhausted public auction mode at least twice. There is an advantage in resorting to Private Treaty and thereby ensuring the success of the sale as it brings down the chances of sabotage by borrower, nullifies chances of Syndicate etc. Now this mode of sale is further strengthened and we have also got the clearance of competent authorities.

The procedural modalities of private treaty mode are:

The proposal for private treaty mode with the recommendation of Branch & Zonal Manager should be sent to General Manager (R&L) for approval.

1. The pricing, as laid down in the Act and Rules, is as agreed between the Bank and Probable bidder. However, a Reserve Price has to be fixed as per extant norms of resale i.e. 60% of Market value or 80% of Distress Sale value- based on the latest valuation, whichever is higher.
2. To ensure successful sale, meticulous filing of CMM/DM applications should be adopted to take physical possession and also to engage Recovery agents to do the base work and scout for bidders.
3. As per amended rules of SARFAESI Act, for resale 15 days notice will suffice.
4. The details of Reserve Price, date of sale etc., shall be enumerated in the resale notice also.
5. A sale notice for private treaty may be issued to borrower/guarantor/mortgagor, intimating that the bank is going to adopt private treaty mode of sale.(15 days prior notice only and not 30 days.) The format of the notice for Private Treaty is Annexure A of this chapter. This notice is not required to be published. Only if the borrower / guarantor/mortgagor is absconding / not traceable, it has to be published.
6. At the time of submitting offer for private treaty, 10% of the sale price may be taken from the proposed purchaser.
7. On the proposed date of sale, if Sale cannot be concluded by receiving the balance consideration and execution of a Sale certificate, then Agreement of Sale may be executed, by receiving another 25% of sale price. The agreement of Sale shall enumerate the other terms viz, the payment so far received, when the balance shall be paid, the manner and date before which payment has to be received etc. The format of the Agreement of Sale is Annexure B of this chapter.
8. Once the sale price is paid in full and Sale certificate as per statutory format shall be issued which shall be stamped and registered as per local laws, cost of which shall be borne by the purchaser. (The sale proceeds have to be appropriated towards the outstanding dues).
9. In instances, where there are more than one offer received in private treaty mode of sale, on the proposed date of sale, opportunity would be given among the offerers to make an inter-se increase in the offer. Whoever makes the highest offer will be declared as the successful bidder and sale would be concluded with such highest offerer. The highest offer will be declared as the successful bidder and sale would be concluded with such highest offerer.

E filing of cases/petitions by the Government:

The Secretary, Department of Legal Affairs (DLA), the Department of Financial Services (DFS), Ministry of Finance, Government of India has directed all the PSUs to strict compliance of mandatory e-filing of cases / petitions with effect from 01.01.2022.

Guidelines by RBI regarding SMA/NPA Accounts

1. The exact due dates for repayment of a loan, frequency of repayment, breakup between principal and interest, examples of SMA/NPA classification dates, etc. shall be clearly specified in the loan agreement and the borrower shall be apprised of the same at the time of loan sanction and also at the time of subsequent changes, if any, to the sanction terms/loan agreement till full repayment of the loan.
2. The borrower accounts shall be flagged as overdue by the lending institutions as part of their day-end processes for the due date, irrespective of the time of running such processes
3. The instructions on SMA classification of borrower accounts are applicable to all loans, including retail loans, irrespective of size of exposure of the lending institution.

An account shall be treated as 'out of order' if:

1. the outstanding balance in the CC/OD account remains continuously in excess of the sanctioned limit/drawing power for 90 days, or
2. the outstanding balance in the CC/OD account is less than the sanctioned limit/drawing power but there are no credits continuously for 90 days, or the outstanding balance in the CC/OD account is less than the sanctioned limit/drawing power but credits are not enough to cover the interest debited during the previous 90 days period.

NPA is borrower wise and not facility wise

1. All the facilities granted by a bank to a borrower and investment in all the securities issued by the borrower will have to be treated as NPA/NPI and not the particular facility/investment or part thereof which has become irregular.

Uniformity in the classification of the Assets

1. The classification of assets of banks has to be done on the basis of objective criteria which would ensure a uniform and consistent application of the norms. Also, the provisioning should be made on the basis of the classification of assets based on the period for which the asset has remained non-performing and the availability of security and the realisable value thereof.

A Non-Performing Asset (NPA) is a loan or an advance where:

1. interest and/ or instalment of principal remains overdue for a period of more than 90 days in respect of a term loan,
2. the account remains 'out of order' as indicated at paragraph 2.2 below, in respect of an Overdraft/Cash Credit (OD/CC),
3. the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted,
4. the instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops,
5. the instalment of principal or interest thereon remains overdue for one crop season for long duration crops,
6. the amount of liquidity facility remains outstanding for more than 90 days, in respect of a securitisation transaction undertaken in terms of the Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021.
7. in respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.

Out of Order

1. An account should be treated as 'out of order' if the outstanding balance remains continuously in excess of the sanctioned limit/drawing power for 90 days. In cases where the outstanding balance in the principal operating account is less than the sanctioned limit/drawing power, but there are no credits continuously for 90 days as on the date of Balance Sheet or credits are not enough to cover the interest debited during the same period, these accounts should be treated as 'out of order'.

Overdue

1. Any amount due to the bank under any credit facility is 'overdue' if it is not paid on the due date fixed by the bank

Look out circular

1. Look out circular is to be issued for all fraud / wilful defaulter / non-cooperative borrower where total outstanding balance (FB + NFB) of not less than Rs. 50.00 crores