

Second Draft

All Scheduled Commercial Banks
(Excluding RRBs)

Dear Sir,

Mid-Term Review of the Annual Policy for the year 2007- 08 – Recovery Agents engaged by banks

Please refer to the paragraph 172 and 173 of the mid-term review of the Annual Policy for the year 2007-08, a copy of which is enclosed. In view of the rise in the number of disputes and litigations against banks for engaging recovery agents in the recent past, it is felt that the adverse publicity would result in serious reputational risk for the banking sector as a whole. A need has arisen, therefore, to review the policy, practice, and procedure involved in the engagement of recovery agents by banks in India. In this backdrop, Reserve Bank issued draft guidelines which were placed on the web-site for comments of all concerned. Based on the feedback received from a wide spectrum of banks / individuals / organizations, the draft guidelines have been suitably revised and the second draft of the guidelines are as follows:

Engagement of Recovery Agents

2. Banks are advised to take into account the following specific considerations while engaging recovery agents:

(i) 'Agent' in these guidelines would include agencies engaged by the bank and their agents/ employees, as well as bank's own employees.

(ii) Banks should have a due diligence process in place for engagement of recovery agents, which should be so structured to cover, among others, individuals involved in the recovery process. The due diligence process should generally conform to the guidelines issued by RBI on outsourcing of financial services vide circular DBOD.No.BP.40/ 21.04.158/ 2006-07 dated November 3, 2006. Further, banks should ensure that the agents engaged by them in the recovery process carry out, on a periodic basis, verification of the antecedents of their employees, which may include through police verification, as a matter of abundant caution.

(iii) To ensure due notice and appropriate authorization, banks should inform the borrower the details of recovery agents while forwarding default cases to the recovery agents. Further, since in some of the cases, the borrower might not have received the details about recovery agents due to refusal / non-availability / avoidance and to ensure identification, it would be appropriate if the agent also carries a copy of the notice and the authorization letter from the bank along with the identity card issued to him by the bank or the agency firm / company. Further, where the recovery agent is changed by the bank during the recovery process, in addition to the bank notifying the borrower of the change, the new agent should carry the notice and the authorization letter along with his identity card.

(iv) The notice and the authorization letter should, among other details, also include the telephone numbers of the relevant recovery agents. Banks should ensure that there is a tape recording of the content / text of the calls made by recovery agents to the customers, and vice-versa.

(v) The up to date details of the recovery agents engaged by banks may also be posted on the bank's website.

(vi) Each bank should have a mechanism whereby the borrowers' grievances with regard to the recovery process can be addressed. The details of the mechanism should also be furnished to the borrower while advising the details of the recovery agent as at item (ii) above.

(vii) Where a grievance/ complaint has been lodged, banks should not forward cases to recovery agents till they have finally disposed of any grievance / complaint lodged by the concerned borrower. However, where the bank is convinced, with appropriate proof, that the borrower is continuously making frivolous / vexatious complaints, it may continue with the recovery proceedings through the Recovery Agents even if a grievance / complaint is pending with them. In cases where the subject matter of the borrower's dues might be *sub judice*, banks should exercise utmost caution, as appropriate, in referring the matter to the recovery agents, depending on the circumstances.

Incentives to Recovery Agents

(viii) It is understood that some banks set very stiff recovery targets or offer high incentives to recovery agents. These have, in turn, induced the recovery agents to use intimidatory and questionable methods for recovery of dues. Banks are, therefore, advised to ensure that the contracts with the recovery agents do not induce adoption of uncivilized, unlawful and questionable behaviour or recovery process.

Methods followed by Recovery Agents

(ix) A reference is invited to (a) Circular DBOD.Leg.No.BC.104/ 09.07.007 /2002-03 dated May 5, 2003 regarding Guidelines on Fair Practices Code for Lenders (b) Circular DBOD.No.BP. 40/ 21.04.158/ 2006-07 dated November 3, 2006 regarding outsourcing of financial services and (c) Master Circular DBOD.FSD.BC.17/ 24.01.11/2007-08 dated July 2, 2007 on Credit Card Operations. Further, a reference is also invited to paragraph 6 of the "Code of Bank's Commitment to Customers" (BCSBI Code) pertaining to collection of dues. Banks are advised to strictly adhere to the guidelines / code mentioned above during the loan recovery process.

Training for Recovery Agents

(x) In terms of Para 5.7.1 of our Circular DBOD.NO.BP. 40/ 21.04.158/ 2006-07 dated November 3, 2006, on guidelines on managing risks and code of conduct in outsourcing of financial services by banks, banks were advised that they should ensure that, among others, the recovery agents are properly trained to handle with care and sensitivity, their responsibilities, in particular aspects like hours of calling, privacy of customer information etc.

(xi) Reserve Bank has requested the Indian Banks' Association to formulate, in consultation with Indian Institute of Banking and Finance (IIBF), a certificate course for Direct Sales Agents / Direct Marketing Agents / Recovery Agents with minimum 100 hours of training. Once the above course is introduced by IIBF, banks should ensure that over a period of one year all their Recovery Agents undergo the above training and obtain the certificate from the above institute. Further, the service providers engaged by banks should also employ only such personnel who have undergone the above training and obtained the certificate from the IIBF. Keeping in view the fact that a large number of agents throughout the country may have to be trained, other institutes/ bank's own training colleges may provide the training to the recovery agents by having a tie-up arrangement with Indian Institute of Banking and Finance so that there is uniformity in the standards of training. However, every agent will have to pass the examination conducted by IIBF all over India.

Taking possession of property mortgaged / hypothecated to banks

(xii) In a recent case which came up before the Honourable Supreme Court, the Honourable Court observed that we are governed by rule of law in the country and the recovery of loans or seizure of vehicles could be done only through legal means. In this connection it may be mentioned that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Security Interest (Enforcement) Rules, 2002 framed thereunder have laid down well defined procedures not only for enforcing security interest but also for auctioning the movable and immovable property after enforcing the security interest. It is, therefore, desirable that banks rely only on legal remedies available under the relevant statutes while enforcing security interest without intervention of the Courts.

(xiii) Where banks have incorporated a re-possession clause in the contract with the borrower and rely on such re-possession clause for enforcing their rights, they should ensure that the re-possession clause is legally valid, comply with the provisions of the Indian Contract Act in letter and spirit, and ensure that such repossession clause is clearly brought to the notice of the borrower at the time of execution of the contract. The terms and conditions of the contract should be strictly in terms of the Recovery Policy and should contain provisions regarding (a) notice period before taking possession (b) circumstances under which the notice period can be waived (c) the procedure for taking possession of the security (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property.

Use of forum of Lok Adalats

(xiv) The Honourable Supreme Court also observed that loans, personal loans, credit card loans and housing loans with less than Rs.10 lakh can be referred to Lok Adalats. In this connection, banks' attention is invited to Circular DBOD.No.Leg.BC.21/09.06.002/2004-05 dated August 3, 2004 wherein they were advised to use the forum of Lok Adalats organized by Civil Courts for recovery of loans. Banks are encouraged to use the forum of Lok Adalats for recovery of personal loans, credit card loans or housing loans with less than Rs.10 lakh as suggested by the Honourable Supreme Court.

Utilisation of credit counsellors

(xv) Banks should have in place an appropriate mechanism to utilise the services of the credit counsellors for providing suitable counselling to the borrowers where it becomes aware that the case of a particular borrower deserves sympathetic consideration.

Complaints against the bank / its recovery agents

3. Banks, as principals, are responsible for the actions of their agents. Hence, they should ensure that their agents engaged for recovery of their dues should strictly adhere to the above guidelines and instructions, including the BCSBI Code, while engaged in the process of recovery of dues.

4. Complaints received by Reserve Bank regarding violation of the above guidelines and adoption of abusive practices followed by banks' recovery agents would be viewed seriously. Reserve Bank may consider imposing a ban on a bank from engaging recovery agents in a particular area, either jurisdictional or functional, for a limited period. In case of persistent breach of above guidelines, Reserve Bank may consider extending the period of ban or the area of ban. Similar supervisory action could be attracted when the High Courts or the Supreme Court pass strictures or impose penalties against any bank or its Directors/ Officers/ agents with regard to policy, practice and procedure related to the recovery process.

Periodical Review

5. Banks engaging recovery agents are advised to undertake a periodical review of the mechanism to learn from experience, to effect improvements, and to bring to the notice of the Reserve Bank of India suggestions for improvement in the guidelines.