



Collections & Recovery Policy

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1. Introduction

The Collections & Recovery Policy of ESAF Small Finance Bank (hereafter referred as “the SFB” or “ESAF”) shall aim at making the recovery process faster, so that Gross NPA level is maintained as per the risk appetite of the SFB.

It is essential for a sound NPA management system to have functionality allowing for quick identification of non-performing advances, their containment at minimum levels and ensuring that their impingement on financials of the Bank are minimum.

1.1. Objectives & Principles

The quality and performances of advances have a direct bearing on the profitability of ESAF. Despite an efficient credit appraisal, disbursement and monitoring mechanism, problems can still arise due to various factors and give scope for Non-Performing Assets (NPA). These factors may be internal or external.

Key objectives of the policy are:

- ▶ The Policy is aimed at strengthening the management and recovery of NPAs and proactive initiatives to closely monitor existing accounts
- ▶ The Policy continues to lay stress on the present system of early identification and reporting of all existing and potential problem loans in preventing the incidence of NPAs.
- ▶ The Loan Review Mechanism to be triggered on detection of early warning signals to ensure an effective and quicker response for correction
- ▶ The Policy emphasizes a broad approach, including critical parameters to be taken into account, towards the collection, recovery and resolution of loans through rehabilitation, compromise settlements etc.
- ▶ The Policy also proposes an approach for cleansing of our NPA portfolio through judicious write-offs
- ▶ The Policy aims at improving internal efficiency of the recovery machinery and thus enhance the profitability of the bank

Following are the guiding principles for this policy:

- ▶ ESAF's recovery procedure will be based on legal and acceptable practices
- ▶ ESAF will treat its defaulters with respect and dignity while being focussed on recovery
- ▶ ESAF will follow only ethical practices and will not resort to unduly coercive tactics in the process of recovery of NPAs.
- ▶ ESAF will not initiate any legal or recovery measures including repossession of the security without giving due notice to the borrower in writing. ESAF will follow all such procedures as required under law for recovery/repossession of the security.
- ▶ Repossession of security will be only at recovery of dues and not to deprive the borrower of the security. Repossession, valuation and realization of security will be always done in a fair and transparent manner.

1.2. Policy Review & Approval process

The Policy would be reviewed and updated at least on an annual basis by the Head-Credit with a sign off from the Head-Risk and Compliance and the MD & CEO. The reviewed and updated policy would be submitted to Risk Management Committee of the Board (“RMCB”) for recommendation and approval of the Board. The minutes of meeting of the committee and the Board would be documented.

2. Key Definitions

Default

Default is considered to have occurred when an asset is classified as non-performing asset ('NPA'). All defaults will be recorded in accordance with the reference definition of default detailed in the Credit Risk Management Policy.¹

Non-performing assets

An asset, including a leased asset, becomes non-performing when it ceases to generate income for the Bank. A "Non-performing Asset" (NPA) ²a loan or an advance where:

- ▶ Interest and/or instalment of principal remain overdue for a period of more than 90 days in respect of a Term Loan,
- ▶ The account remains 'out of order', in respect of an Overdraft/Cash Credit (OD/CC),
- ▶ The bill remains overdue for a period of more than 90 days in the case of Bills purchased and discounted,
- ▶ The instalment of principal or interest thereon remains overdue for two crop seasons for Short duration crops,
- ▶ The instalment of principal or interest thereon remains overdue for one crop season for Long duration crops.
- ▶ 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.
- ▶ 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.

Any amount to be received remains overdue for a period of more than 90 days in respect of other accounts.

'Out of Order' status³

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'.

¹ Refer to the "Credit Risk" definition in ESAFs Credit Risk Management Policy.

Definition as per the RBI guidance note on credit risk management - DBOD. No. BP. 520 /21.04.103/2002-03

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/32083.pdf>

²Refer Master Circular – Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

https://rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9908

³Refer Master Circular – Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

https://rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9908

'Overdue'⁴

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.

3. Collections

3.1. Introduction

The Collections & Recovery policy of ESAF is built around dignity and respect to customers. Bank will not follow policies that are unduly coercive in collection of dues. The policy is built on courtesy, fair treatment and persuasion. ESAF believes in following fair practices with regard to collection of dues and thereby fostering customer confidence and long-term relationship.

The repayment schedule for any loan sanctioned by ESAF will be fixed taking into account paying capacity and cash flow pattern of the borrower. ESAF will keep the customer informed of the method of calculation of interest and how the Equated Monthly Instalments (EMI) or payments through any other mode of repayment will be appropriated against interest and principal due from the customers. ESAF would expect the customers to adhere to the repayment schedule agreed to and approach ESAF for assistance and guidance in case of genuine difficulty in meeting repayment obligations.

3.2. Collection Mechanisms

The guidelines related to the Collection mechanisms for loan products offered by ESAF are as stated below:

3.2.1. Giving notice to borrowers

While written communications, telephonic reminders or visits by ESAF's representatives to the borrowers place or residence will be used as loan follow up measures, ESAF will not initiate any legal or other recovery measures including repossession of the secured assets without giving due notice in writing. Any genuine difficulties expressed/ disputes raised by the customer will be considered by ESAF before initiating recovery measures. Bank will follow all such procedures as required under law for recovery / repossession of secured assets

3.2.2. Repossession of Secured assets

Repossession of secured assets is aimed at recovery of dues and not to deprive the borrower of the secured assets. The recovery process through repossession of secured assets will involve repossession, valuation of secured assets and realisation of secured assets through appropriate means. All these would be carried out in a fair and transparent manner. Repossession will be done only after issuing the notice as detailed above. Due process of law will be followed while taking repossession of the secured assets. ESAF will take all reasonable care for ensuring the safety and security of the secured assets after taking custody, in the ordinary course of the business and necessary cost will be charged to borrower.

3.2.3. Valuation & sale of secured assets

Valuation and sale of secured assets repossessed by ESAF will be carried out as per law and in a fair and transparent manner. ESAF will have right to recover from the borrower the balance due if any, after sale of secured assets. Excess amount if any, obtained on sale of the secured assets shall be paid to the person entitled thereto in accordance with his rights and interests, after meeting all the

⁴Refer Master Circular – Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

https://rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9908

related expenses, provided ESAF is not having any other claims against the customer. Bank's right to general lien and its implications will be made clear to the borrower while executing the loan documents.

In the case of hypothecated assets after taking possession if no payment is forthcoming, a sale notice of 7 days' time to respond will be sent to the borrower. Thereafter ESAF will arrange for sale of the hypothecated assets in such manner as deemed fit by ESAF. In respect of cases under SARFAESI Act as per the provisions of the Act, 30 days' notice of sale will be sent. When public auction or by tender is envisaged, the same will be published in two leading newspapers out of which one is in local vernacular paper.

3.2.4. Opportunity for the borrower to take back the secured assets

As indicated earlier in the policy document, ESAF will resort to repossession of secured assets only for the purpose of realisation of its dues as the last resort and not with intention of depriving the borrower of the secured assets. Accordingly ESAF will be willing to consider handing over possession of secured assets to the borrower after repossession and before concluding sale transaction of the secured assets, provided ESAF dues are cleared in full. If satisfied with the genuineness of borrower's inability to pay the loan instalments as per the schedule, which resulted in the repossession of secured assets, ESAF may consider handing over the secured assets after receiving the instalments in arrears. However this would be subject to giving an undertaking by the borrower to repay the remaining instalments / dues in future and to maintain the loan account as performing asset until closure of the account as per the terms of the loan agreements(s) to the satisfaction of ESAF.

If the amounts are repaid, either as stipulated by ESA For dues settled as agreed to, possession of seized assets will be handed back to the borrower within 7 days after date of permission from the competent authority of ESAF or Court/DRT concerned if recovery proceedings are filed and pending before such forums.

3.3. Product-Specific Collection Guidelines

3.3.1. Retail & MSME loans

An Officer to represent ESAF in collection or/ and secured assets repossession would follow the guidelines set out below:

- ▶ The customer would be contacted ordinarily at the place of his / her choice and in the absence of any specified place, at the place of his / her residence and if unavailable at his / her residence, at the place of business / occupation.
- ▶ Identity and authority of persons authorised to represent bank for follow up and recovery of dues would be made known to the borrowers at the first instance. ESAF staff or any person authorised to represent the bank in collection of dues or / and secured assets, repossession will identify himself / herself and display the authority letter issued by ESAF upon request.
- ▶ ESAF would respect privacy of its borrowers.
- ▶ ESAF is committed to ensure that all written and verbal communication with its borrowers will be in simple business language and bank will adopt civil manners for interaction with borrowers.
- ▶ Normally ESAF's representatives will contact the borrower between 0700 hrs and 1900 hrs, unless the special circumstance of his / her business or occupation requires ESAF to contact at a different time.
- ▶ Borrower's request to avoid calls at a particular time or at a particular place would be honoured as far as possible.
- ▶ ESAF will document the efforts made for the recovery of dues and the copies of communication set to customers, if any, will be kept on record.
- ▶ Inappropriate occasions such as bereavement in the family or such other calamitous occasions will be avoided for making calls / visits to collect dues.

3.3.2. Micro Banking Loans⁵

Collections are divided into 3 categories for group loans:

Regular Collection

Regular Collection is the amount collected as per the instalments (principal& interest) of the day against a borrower at the Sangam meeting by the Officer.

Advance Collection

Advance collection is the amount collected over and above the actual instalment in the Collection sheet against a borrower at the Sangam meeting.

Late/Overdue Collection

If an instalment / due amount is not received on the assigned day then it becomes Overdue. Overdue collections are undertaken in two ways:

▶ **At the Sangam Meeting**

During the normal instalment collection process in the Sangam meeting, the overdue amount is also collected as per demand reflected in the Collection Sheet.

▶ **Outside the Sangam Meetings**

The Officer shall follow up with the overdue clients by visiting their place before or after the Sangam meetings along with the other Sangam Office bearers.

⁵Refer to the ESAF Operational Manual

4. Recovery & Resolution Mechanism

4.1. Introduction

Continuous and focused follow-up on daily basis is the underlying principle for good recovery and also for identifying genuine problems of the borrowal units so that timely assistance can be extended to correct any temporary mis match of the cash flow/ review of repayment schedule etc.

- ▶ Endeavour should be to prevent the asset from becoming NPA rather than applying remedial measures at post NPA stage.
- ▶ Timely restructuring / rehabilitation in deserving cases should be ensured.
- ▶ Bank shall introduce MIS to monitor overdue and rephrased accounts closely.
- ▶ Bank may opt for One Time Settlement where chances of entire recovery are remote / time consuming.
- ▶ Bank may consider Sale of NPA assets to ARCs/Banks/FIs.
- ▶ Bank will enforce the provisions of identifying and declaring Willful defaulters in accordance with R.B.I guidelines⁶. General consistency in approach is expected while dealing with Willful defaulters.

Approach for recovery should be practical and non-prejudiced. Fair treatment and persuasion are the basic principles of recovery mechanism. Enforcement of security be undertaken only where restructure / rehabilitation has failed or impossible

The recovery mechanisms for retail products like LAP, Micro Housing Loans, Home improvement loans, loan against term deposits will be as mentioned in section 4.4 of this policy

The recovery mechanisms for MSMEs will include Rectification & Restructuring and in case these options are seen as not feasible, due recovery options will be resorted to as stated in section 4.4 of this policy

4.2. Engagement of Recovery Agents⁷

ESAF may utilize the services of recovery agents for collection of dues and repossession of securities. Recovery agents will be appointed as per regulatory guidelines⁸ issued in this regard. In this respect:

- ▶ The name and address of all Recovery Agents on ESAF's approved panel will be placed on their website for information.
- ▶ Only recovery agents from the approved panels will be engaged by ESAF.
- ▶ In case bank engages service of such recovery/enforcement/seizure agent for any recovery case, the identity of the agent will be disclosed to the borrower.
- ▶ The recovery agents engaged by ESAF will be required to follow a code of conduct covering their dealings with customers.

⁶Master Circular on Willful Defaulters

https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9044

⁷"Agent" in this Policy would include agencies engaged by the SFB and the agents / employees of the concerned agencies.

⁸RBI Circular on Recovery Agents engaged by Banks

<https://www.rbi.org.in/commonman/English/Scripts/Notification.aspx?id=347>

4.3. Invoking the Provisions of SARFAESI Act

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)⁹ are applicable for only secured loans, and if invoked promptly and followed up diligently, act as a powerful deterrent to errant borrowers.

The moment a SARFAESI proposal is approved; Authorised Officer (AO) shall be identified who should assume ownership of the account. It is the responsibility of the AO to ensure that the time frame mentioned above, for taking the SARFAESI proceedings forward are strictly adhered to.

The following actions shall be initiated once the SARFAESI Act is invoked:

- Demand notice should be issued after the account being classified as NPA
- If, after issuance of the demand notice, the borrower raises any objection, the AO may make changes or modifications in the demand notice and serve a revised notice within 7 days from the date of receipt of the objection.
- If the amount mentioned in the demand notice is not received within the time frame specified therein, the AO shall take necessary action to take possession of the security.
- After taking possession, and before sale, the AO shall obtain the estimated value of the security
- The AO shall serve to the borrower a notice of 30 days for sale of the security.
- The entire process has to be taken to its logical end within a maximum period of 6 months

A proper monitoring mechanism should be put in place at all Controlling Offices for monitoring this aspect. Instances of non-adherence to the stipulated time schedule should be immediately identified and corrective action taken. Under no circumstances should action be deferred based on mere promise of payment or payment of token amount.

Wherever warranted, Caveats should be filed to avoid grant of stay by DRT/ Courts. Every pressure should be brought on the borrower to bring him to the negotiating table. Wherever Courts have stayed the SARFAESI proceedings, steps should be taken to get the stays vacated by engaging the services of leading Advocates.

4.3.1. Identification of Non-Wilful Individual Default of ESAF¹⁰

The SFB shall view sympathetically all genuine cases of non-wilful defaults due to sickness in the family, seasonal variation in the family income, sudden cash needs, late payment of salary, slowdown in business etc. Regional Managers shall be delegated powers to allow time up to 30 days to regularize such Accounts.

The decision for re-phasing of the loan account will be taken centrally by the Credit Committee¹¹

In exceptional cases and deserving cases, the total term of the loan shall be extended by the Head Micro Banking and Head Retail Assets.

4.3.2. Identification of Wilful Defaulters of ESAF

As per the scheme framed by RBI with effect from 01.04.1999¹², banks/FIs are required to submit the list of suit filed accounts of wilful defaulters of Rs.25 lac and above as at end of every quarter to

⁹<http://www.drat.tn.nic.in/Docu/Securitisation-Act.pdf>

¹⁰Refer to ESAF Recovery Policy on Stressed Asset

¹¹Credit Committee shall comprise of Head Credit, Heads of Business, Head-Risk & Compliance, CFO, CEO & MD

¹² RBI Master Circular on Wilful Defaulter

https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9044

CIBIL and/or any other credit information company of which it is a member and the quarterly list of wilful defaulters of Rs.25 lac and above where suit has not been filed to RBI.

However, ESAF SFB shall classify wilful defaulters irrespective of the amount outstanding, for internal purposes.

For the purpose of determining future course of action in an account, the guiding principle will be the intention of the borrowers concerned. On this score, all NPA borrowers may be grouped in the following broad categories:

- ▶ Willful defaults broadly cover the following:
- ▶ Deliberate non-payment of the dues despite adequate cash flow and good net worth;
- ▶ Siphoning off of funds to the detriment of the defaulting unit;
- ▶ Assets financed either not been purchased or been sold and proceeds have mis-utilised;
- ▶ Misrepresentation/falsification of records;
- ▶ Disposal/removal of securities without bank's knowledge;
- ▶ Fraudulent transactions by the borrower.

The term "willful default" has been revised in accordance with RBI guidelines¹³ as under:

A "willful default" would be deemed to have occurred if any of the following events is noted:

The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.

- ▶ The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- ▶ 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 utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

As and when any borrowal account with an outstanding balance of `25 lac and more is classified as NPA or on occurrence of any of the events noted above in an existing NPA account, Area Manager and Branch Manager shall examine whether same is a case of wilful default in terms of RBI guidelines and in case of wilful default, take prompt steps to get the borrower classified as a wilful defaulter, as per the procedure laid down hereunder.

1. The proposal for classification of wilful defaulters shall be forwarded by branch/controlling office to Credit Department at Head Office substantiating the reasons and also supported by documentary proof.
2. The Head Office should examine and obtain legal opinion as to whether there is prima facie case warranting criminal prosecution under penal law and forward their recommendation to Credit Department
3. The matter shall be examined from the legal angle and placed to the ERC¹⁴ who shall be responsible for the identification of Wilful Defaulters
4. If in the opinion of the ERC, the case is fit for prosecution, sanction shall be accorded for initiating criminal proceedings
5. It should be ensured that penal provisions are used effectively and determinedly but after careful consideration and due caution.
6. The decision taken on classification of wilful defaulters should be well documented and supported by requisite evidence. The decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.

¹³Refer RBI Master Circular on Wilful Defaulter

¹⁴The ERC shall be responsible for executing the roles and responsibilities of the Wilful Defaulters Identification Committee in ESAF SFB

7. Reporting of willful defaulters to authorities like RBI/ CIBIL etc., shall be done as per the RBI/CIBIL etc., guidelines in this regard.
8. All other SFBs operating in the area shall be notified.
9. The SFB shall proceed legally after assessing the chances of recovery.

The system of dissemination of credit information pertaining to wilful defaulters was put in place for cautioning banks and FIs, so as to ensure that further finance is not made available to them.

Hence, the above scheme is a very important tool which can be effectively used against the wilful defaulters of ESAF, to bring pressure on them to settle their dues.

4.4. Tools for Recovery

The repayment record of borrowers shall be monitored both with regard to payment of interest and repayment of principal. Whenever a borrower defaults or is likely to default, rigorous follow-up shall be made for the collection of dues / arrears. When default occurs, oral and written communications are to be sent to the borrower to regularise their accounts within a specified period. In case the assistance is secured by a guarantee (personal or corporate), steps shall be taken to recover dues from the guarantor.

ESAF shall use any of the following broad methods for management of problem accounts:

1. Restructuring, rephasing and rehabilitation
2. Settlements / compromise
3. Legal Action & recovery
4. Write-off

4.4.1. Restructuring, Rephasing & Rehabilitation

This represents those accounts where the borrower is willing to repay his dues to ESAF but does not have the capacity/funds to do so right away. In such cases, the branch should examine the causes of sickness and recommend support proposed to the borrower. The first focus of NPA management in such cases will be possible up gradation of the loan, by rehabilitation of the borrower's business.

The rehabilitation option will be examined in cases where there is prima facie scope for restoring viability of the business. The action plan will be put in place in such cases where it is possible to bring the unit back into good health by extending minimum additional funds and marginal concessions by which the unit will be able to meet its obligations fully within a maximum period of 5-7 years.

A view on rehabilitation/ restructuring will be taken after due consultation with the consortium banks if the borrower is financed under a consortium.

The approach will generally be adopted provided ESAF is satisfied that:

- ▶ Eligibility criteria and regulatory guidelines with respect to restructuring are fulfilled
- ▶ The loan has become an NPA due to factors other than lack of integrity on the part of the promoters.
- ▶ Genuineness of the obligor and viability of the proposal is established
- ▶ There is prima facie case for considering such a proposal.

The following steps can be taken to rehabilitate the unit so that it may gain enough strength to service the borrowings over a period of time:

- ▶ Reschedule of interest and/or instalments.
- ▶ Making available need based minimum additional funds. ESAF will explore taking additional securities for this purpose.
- ▶ In cases where the credit requirements of a borrower are being met by a number of institutions under consortium/multiple banking arrangements, ESAF shall be in continuous touch with other lenders to the SFB and shall keep a close watch over their contemplated actions.

4.4.1.1. Corrective Action Plan for MSMEs¹⁵

Rectification- This approach will be adopted by ESAF after:

- ▶ Obtaining a commitment, specifying actions and timelines, from the borrower to regularise the account so that the account comes out of the SME status or does not slip into the NPA category.
- ▶ The commitment should be supported with identifiable cash flows within the required period and without involving any loss or sacrifice on the part of the existing lenders
- ▶ The process should ideally be borrower driven but in certain exceptional cases the Committee¹⁶ may consider providing need based additional finance intended only for meeting unavoidable increased working capital requirement.
- ▶ Such additional finance should be regularised within a maximum period of 6 months
- ▶ Repeated rectification with funding within a year, will be treated as restructuring
- ▶ No additional finance to be sanctioned where the account has been reported as fraud by any lender

Restructuring- This approach will be adopted by ESAF:

- ▶ Only if the assets reported belong to the Standard, Special Mention Account or Sub Standard category and the borrower is not a wilful defaulter¹⁷. However the Committee may review the reasons for classification of the borrower as a wilful defaulter and satisfy itself that the borrower is in a position to rectify the wilful default. The decision to restructure such cases shall have the approval of the Board of the concerned SFB within the Committee who has classified the borrower as wilful defaulter
- ▶ If there is commitment from the promoters for extending their personal guarantee along with their net worth statement supported by copies of legal titles to assets
- ▶ It should be noted that any deviation from the commitment by the borrowers affecting the security of recoverability of the loan may be treated as a valid factor for initiating recovery process
- ▶ Cases of Frauds and Malfeasance remain ineligible for restructuring. However, in cases of fraud / malfeasance where the existing promoters are replaced by new promoters and the borrower company is totally delinked from such erstwhile promoters / management, banks and the Committee may take a view on restructuring of such accounts based on their viability, without prejudice to the continuance of criminal action against the erstwhile promoters / management. Further, such accounts may also be eligible for asset classification benefits available on refinancing after change in ownership, if such change in ownership is carried out under guidelines contained in circular on "Prudential Norms on Change in Ownership of Borrowing Entities (Outside Strategic Debt Restructuring Scheme)"¹⁸.
- ▶ The restructuring package shall stipulate the timeline during which certain viability milestones such as improvement in certain financial ratios may be achieved
- ▶ The restructuring package shall stipulate the timeline during which certain viability milestones such as improvement in certain financial ratios after a period of 6 months may be achieved

4.4.2. Settlement/Compromise

¹⁵ Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs)
https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?id=10304

¹⁶ Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs)
¹⁷ Master Circular on Wilful Defaulters

https://www.rbi.org.in/Scripts/BS_ViewMasCircularDetails.aspx?id=9044

¹⁸ Prudential Norms on Change in Ownership of Borrowing Entities (Outside Strategic Debt Restructuring Scheme)
<https://rbi.org.in/Scripts/NotificationUser.aspx?id=10039&Mode=0>

Compromise settlement refers to a negotiated settlement where a borrower offers to pay and ESAF agrees to accept in full and final settlement of its dues an amount less than the total amount due to them under the relative loan contract. This settlement invariably involves a certain sacrifice by way of write off and/or waiver of a portion of its dues on a one-time basis.

All settlement / compromise decisions would be approved by the designated approval authorities as per the Delegation of Authority of ESAF SFB.

The Policy recognizes that it is not possible to lay down precise guidelines which can be followed uniformly in case of all compromise offers as each offer is unique in the context of circumstances necessitating its consideration as a recovery option.

The Policy however, lays down the following principles which are to be kept in view while considering compromise offers

- ▶ Bank may take up a compromise settlement / OTS proposal for consideration, irrespective of the present stage and status of the recovery proceedings.
- ▶ Any compromise will be a negotiated settlement under which ESAF will endeavour to recover its dues to the maximum extent possible, with minimum sacrifice. However it is recognised that amicable settlements are possible only in a win-win situation and sacrifice is a part of settlement.
- ▶ The last status of the activity of the borrowing entity which seeks a compromise will be taken into reckoning at the very first stage of the negotiation.
- ▶ As far as possible, an initial deposit of a reasonable amount should be taken from the borrower as evidence of his intention to pursue the compromise settlement with ESAF.
- ▶ In case the borrower has other group companies, influence of these companies or the parent company may be used for a better settlement and/or for getting additional security, pending realization of the entire amount of compromise.
- ▶ It will be the endeavour of ESAF to get the entire compromise amount within the stipulated period from the date of settlement. In the event of a One Time Settlement, in cases where the borrower is unable to pay the entire lump sum, Bank shall recover at least 25% of the settlement amount upfront. The balance shall be recovered in instalments within a period of one year together with interest at the existing Prime Lending Rate from the date of settlement up to the date of final payment.¹⁹
- ▶ At the time of One Time Settlement negotiation when OTS amount is proposed to be paid in instalments seriousness and preparedness of the borrower to honour OTS commitments shall be looked into.
- ▶ In the case of suit filed account if need be and if practical, the terms and conditions of settlement should be finalized and consent decree from the court should be obtained.
- ▶ It is recognised that the OTS amount normally will not be less than the realisable value of securities. While considering the realisable value due consideration will be given to various factors like forced sale value, early realization of money, sale ability of the property, type, effort and cost involved & yield in the account.
- ▶ Normally no Compromise Settlement will be made with wilful defaulters. However, it is recognized that, sometimes business prudence requires compromise settlement in the case of wilful defaulters also, which will be considered on a case to case basis.
- ▶ In case of non-receipt of the committed compromise amount as per the terms of the settlement, the recovery proceedings already initiated before the settlement shall be continued.
- ▶ The grid below shows the OTS approval matrix for varying loan amounts:

¹⁹Refer RBI Guidelines on One-Time Settlement Scheme for SME Accounts, RBI/2005-06/153 RPCD.PLNFS. BC.No.39 / 06.02.31/ 2005-06 dated September 3, 2005

Amount (INR)	Approved by
Loan amount < 1 lakh	Head Credit
Loan amount >= 1 lakh	Credit Committee ²⁰

- ▶ In the case of sacrifice of undebited Interest the same may be calculated at SFBs prevailing Base Rate (Simple) or the contracted rate/interest claim in the plaint/decreed rate (simple) whichever is less.
- ▶ In compromise settlements/write off the amount of sacrifice will be determined with reference to balance/dues as on the 'settlement date' which shall be indicated in the compromise settlement/write off proposals.
- ▶ In case of compromise settlements normally the amount of settlement shall be at least equal to the net balance or an amount close to the Forced sale value of the immovable property securities whichever is less. Any deviation in this regard shall be with the permission of the RMCB
- ▶ Wherever OTS amount is funded by other Banks/Financial Institutions/NBFCs/SC/RC, ESAF may assign the debt/ securities in their favour. In such cases, the guidelines framed for sale of financial assets will not apply.

4.4.3. Legal Action & Recovery

Legal action will be initiated only as a last resort against the borrower / guarantor wherever exit, restructuring and rehabilitation or settlement / compromise have been exhausted or are not possible. Wherever possible action for enforcement of security under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest ("SARFAESI") Act, 2002²¹ should be taken.

All legal actions / recovery actions shall be approved by the designated approval authorities as per the Delegation of Authority of the SFB. In cases of wilful default, (e.g. diversion and siphoning of funds), fraud and malfeasance on the part of the borrower, legal action may be the first and only option for recovery, as any other option of recovery would not be appropriate.

In the event where the Parties are unable to settle amicably, the dispute shall be settled by arbitration pursuant to the Arbitration and Conciliation Act, 2015²², as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly. The place of arbitration shall be at Thrissur or (the place where the agreement will be executed) and the language of arbitration shall be common to both parties.

The list of arbitrators and the arbitration process shall be as specified in the loan agreement documents of ESAF SFB.

The following steps can be initiated in respect of such borrowers.

Guidelines on seizure / repossession of assets hypothecated to ESAF

All assets hypothecated to ESAF may be seized / repossessed subject to the following:

- Assets hypothecated to ESAF under all NPA borrowal accounts may be seized / repossessed provided such seizure / repossession is legally permitted within the state.

²⁰Composition of the Credit Committee: Head Credit, Heads of Business, Head-Risk & Compliance, CFO, CEO & MD

²¹Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
<http://www.drat.tn.nic.in/Docu/Securitisation-Act.pdf>

²²Refer to the Arbitration and Conciliation Ordinance, 2015
<http://lawmin.nic.in/la/Arbitration.pdf>

- A Notice indicating the proposed action should be served to the borrower giving him minimum 15 days and maximum of 60 days of time to regularize / close the account and only on failure of the borrower, the action should follow.
- Hypothecated assets should be seized within 30 days after the expiry of the notice period if the account is not closed.
- Within 30 days of taking possession of the assets if the borrower does not come for regularization/closure/settling the dues, valuation of the assets seized shall be obtained through ESAF's approved valuer.
- Arrangement to dispose off the assets seized shall be made within 90 days of the taking possession of such assets upon failure of the borrower to clear the dues and getting the assets released.
- Assistance of professional seizing agents may be availed for the purpose of seizure and safe keeping of the assets seized. All such agents will have to be duly approved by the Recovery Department before their services are utilized. Any complaint against the seizing agents will be looked into by the Recovery Department immediately and corrective action including deletion of such seizing agents from the approved list in extreme cases will be taken.

In addition to the above following actions will also be initiated

- Reporting the borrower/directors as wilful defaulter to RBI after following prescribed procedure.
- Exercise right of general lien and set off, in respect of all accounts of borrower at any of the branches, before initiating legal proceedings but after giving due notice to the concerned.
- The guarantors may be pressurized to expedite repayment of the dues. Separate meetings with guarantors can be arranged for this purpose where repercussions of legal actions upon them and need for their putting pressure upon borrowers for repayment/regularization may be explained at length.
- Initiating criminal action against borrowers wherever it is found that the borrower has been fraudulent in his dealings with ESAF and there is a case of misrepresentation and/or diversion, cheating, criminal breach of trust, using forged documents, dishonest or fraudulent removal or concealment of property etc.
- In all cases where legal action in civil courts/DRTs is contemplated the recovery process shall be initiated immediately in case limitation period is expiring or after reaching a conclusion that rehabilitation and other avenues of recovery have been exhausted. In case it is observed that the borrower is trying to dispose off the securities or the value of securities is eroding for some other reasons, to protect ESAF's interest and prevent dilution of securities, suits should be filed against the borrower/guarantors forthwith.
- Simultaneous with filing of suits, efforts would be made, through process of law, for forcing the borrower/guarantor to declare all their assets on oath and towards obtaining the injunction/garnishee against disposal of assets/receivables and for realization of available securities and impounding the passports of the borrower/directors/guarantors. Necessary application for this purpose shall be filed with DRT/competent courts. Attempts shall also be made for obtaining interim decrees on the basis of admission of debt at any stage by the borrower.
- Wherever feasible, winding up petition shall be filed against the companies as a measure of recovery of money as well as for putting pressure upon the defaulting borrowers.
- SFBs may also consider filing of Insolvency Petitions against individual borrower/guarantor.
- The status of each suit filed account at branches will be reviewed by the Cluster Manager at quarterly intervals, in consultation with the advocates concerned. Quarterly reports on all such accounts will be submitted to the Head office. For the purpose of close monitoring, branch Heads or their representative will attend Court/DRT proceedings regularly and also maintain close liaison

with the advocates, so that the cases may be disposed off expeditiously and unnecessary delays avoided.

4.4.4. Write off/Waiving of Legal action

If the borrower has no means to pay and SFB is sure that the dues are irrecoverable, SFB shall waive legal action and write off the amount.

Waiver of legal action/write off can be permitted only when the authorized functionary is satisfied that the borrower has no tangible security or any attachable assets, has no adequate income of repayment and no useful purpose will be served by resorting to legal recourse. However initiation of Revenue Recovery measures (wherever applicable) shall be a precondition to waiver of legal action.

All write offs to be approved by the RMCB and ratified by the Board.

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Annexure 1: Roles & Responsibilities of Recovery Agents

- Recovery Agency shall assist the SFB in recovery of dues either by direct recovery or seizure & disposal of secured assets or facilitating a negotiated settlement between the borrower and the Bank by adopting legally permissible means of recovery.
- Agents would be provided with an Identity card for proper identification and shall limit his role of recovery of dues from the NPA accounts specifically entrusted to them. Any action beyond limits of law shall be at Recovery Agents' sole risk and responsibility.
- Taking possession, drawing inventory, making security arrangements.
- Identifying bidders to participate in sale, effecting sale.
- Co-ordinate/liaison with Government Agencies, Municipal Authorities, Registration Authorities.
- Ascertain particulars of legal heirs of deceased borrower, guarantor, mortgagor and their addresses etc.
- In accounts where the legal proceedings are taken, their services can be utilised for identifying other assets (Non-EM Properties) of the borrowers/guarantors for getting them attached and bringing for sale, liaison with Recovery Officers of DRT, Officials of Courts etc.
- Representatives proposed to be identified as Agent, should have undergone necessary training and obtained the said certificate from IIBF as per RBI guidelines.
- Agency shall have all the infrastructure for recording the conversations with the borrowers
- Recoveries are to be accepted by cheques and drafts drawn in favour of the SFB only
- Recovery Agency shall keep all the affairs of entrusted borrowers highly confidential.
- The Agency shall not have any right to sub-delegate or appoint any sub-agent.
- The arrangement of placing Recovery Agents' name on the panel does not amount to any employment and create no obligation of any kind on the SFB.
- The Recovery Agency Firm / Company should carry out verification of the antecedents including pre-employment Police verification of all their staff engaged in the recovery process. The Agency should carry-out Re-verification of the antecedents of their employees who are undertaking the task of recovery of dues after every two years.
- The Recovery Agents shall strictly adhere to the Bank's Model Code of Conduct for Collection of dues and Repossession of Secured Assets.

Annexure 2:References to Key RBI Circulars

No.	Circular	Issue Date
(i)	Circular - Guidance Note on Credit Risk Management	September 20, 2001
(ii)	Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances	July 1, 2015
(iii)	Master Circular on Wilful Defaulters	January 7, 2015
(iv)	Circular on Recovery Agents engaged by Banks	April 24, 2008
(v)	Framework for Revitalizing Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP)	February 26, 2014
(vi)	Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs)	March 17, 2016
(vii)	Prudential Norms on Change in Ownership of Borrowing Entities (Outside Strategic Debt Restructuring Scheme)	September 24, 2015
(viii)	Operating Guidelines for Small Finance Banks	October 6,2016

Annexure 3: Abbreviations

No.	Abbreviation	Description
1.	NPA	Non-Performing Assets
2.	CEO	Chief Executive Officer
3.	SFB	Small Finance Bank
4.	ESAF SFB	ESAF Small Finance Bank
5.	JLG	Joint Liability Group
6.	EMI	Easy Monthly Instalment
7.	ARC	Asset Reconstruction Company
8.	FI	Financial Institutions
9.	DRT	Debt Recovery Tribunal
10.	CMS	Cash Management Services
11.	ARCIL	Asset Reconstruction Company (India) Limited
12.	SMA	Special Mention Account
13.	CAP	Corrective Action Plan
14.	OTS	One Time Settlement