

FIDC

Finance Industry Development Council

(A body incorporated as a Self Regulatory Organisation for Registered NBFCs – AFCs)

March 31, 2009

To
The Governor,
Reserve Bank of India,
MUMBAI.

Respected Sir,

Reg.: **Draft Guidelines on Recovery Agents engaged by NBFCs**

Some of the leading NBFCs have been contacted by RBI's Regional offices in different parts of the country, forwarding the Draft Guidelines on Recovery Agents engaged by NBFCs and seeking their feedback on the same.

1. These guidelines are an exact copy of the guidelines issued by RBI for banks, vide Circular dt. April 24, 2008.
2. Subsequent to the RBI Circular mentioned above, Finance Industry Development Council (FIDC) had made several representations both in writing and in person to senior RBI officers at your Central Office in Mumbai including the Executive Director.
3. Ministry of Finance had also convened two meetings to discuss the issues relating to Repossession only. Finance Industry Development Council (FIDC), Indian Banks Association (IBA), Society of Indian Automobile Manufacturers (SIAM), Reserve Bank of India (RBI) and Ministry of Consumer Affairs were invited to these meetings.

It was unanimously decided that separate guidelines for Repossession shall be prepared jointly by FIDC, IBA and SIAM.

The above said draft guidelines now circulated by RBI have totally ignored all that has been discussed and agreed to in the above said representations and meetings. As such, these guidelines come as a great surprise and disappointment to us.

II. Distinguish Between “Recovery” and “Repossession”

1. The basic and immediate need is to distinguish between “Recovery” in case of unsecured lending like Personal Loans & Credit Cards and “Repossession” of Assets in case of secured assets-backed lending.

2. Recovery Agents Vs. Repossession Agents

| S.No. | Recovery Agents | Repossession Agents |
|-------|---|--|
| 1 | Engaged to “Recover” unsecured loans like personal loans, credit cards etc. | Engaged to “Repossess” assets financed in case of default |
| 2 | Adopt pressure tactics on the customer since there is no underlying security | Focused on taking possession of the asset which is the prime security |
| 3 | Often cause harassment to the borrower by calling at odd hours and use of unethical methods | May not contact the borrower and simply take back the asset as soon as it is traced, as per the terms of the agreement |
| 4 | Start approaching the borrower at the first instance of default | Repossession is the last recourse resorted to only after other options fail and there is a default of at least 3 EMIs |
| 5 | The borrower may not be aware/informed of the default | The borrower is an “informed defaulter” to whom reminders, notices etc. have been sent |

3. NBFC- AFCs have been engaged in asset-backed lending for the last 50 years without facing any major problems. All the problems relating to unethical and unacceptable behaviour of Recovery Agents are recent, linked largely to unsecured lending.
4. Repossession is a deterrent to default and is an important tool for recovery for NBFC- AFCs in the absence of coverage under SARFAESI Act and Debt Recovery Tribunal (DRTs).

The nature of activity being different there should be separate guidelines for Repossession Agents.

III. Supreme Court Order on Repossession

1. Hon'ble Supreme Court passed an order in February 2007 where they clearly upheld the Right to Repossess assets put by using legal means. Unfortunately this order was misinterpreted by the Police Authorities and blown out of proportion by the media.

This led to a situation where the practice of repossession of moveable assets like vehicles using repossession agencies was practically banned.

2. The legal means to undertake repossession can be:
 - a. Obtaining a Court Order for the same OR
 - b. Repossession of Assets by engaging people who are recognized by the law and by following an acceptable procedure for the same.

Option a) is impractical considering the enormity of the back log of pending cases before the various courts all over the country which makes it almost impossible to obtain court orders immediately thereby defeating the very purpose.

Option b) is what seems to be the most practical and achievable considering the ground realities.

As such, we need to evolve a system of Regulation of Repossession Agencies and their activities. For, this a system of licensing the Repossession Agencies and the agents along with their training has to be developed.

IV. Key Issues/Suggestions for Guidelines on Repossession of Assets

Criteria for Repossession Agents

1. Any individual agent engaged by the NBFCs for Repossession should have undergone a certificate course for Repossession Agents with minimum of 100 hours training. (Institutes like Indian Institute of Banking & Finance (IIBF) in consultation with Indian Banks Association (IBA) & Finance Industry Development Council (FIDC) should undertake the training for Repossession Agents on the lines of the training provided for Bank's Recovery Agents).
2. The Repossession Agents engaged by NBFCs should preferably be holding a valid Passport (Passport is the only Identity document which is issued after Police verification).

Engagement of Repossession Agents

NBFCs should be advised to take into account the following specific considerations while engaging Repossession Agents

1. NBFCs should have a due diligence process in place for engagement of Repossession Agents. Further, NBFCs should comply to the requirements of "Know Your Customer (KYC)" Guidelines for Repossession Agents similar to what is being followed for their customers.
2. The details/ documents obtained by the NBFCs from the Repossession Agents in compliance to KYC norms must be submitted to the concerned (Local) Police Station for verification.
3. NBFCs should sign a clear agreement with the Repossession Agents conforming to the criteria state above and also laying down the measures/ precautions to be taken in the process of Repossession

Process of Repossession of Assets Financed by NBFCs

1. NBFCs must ensure that the borrower is an "informed defaulter".

"Informed Defaulter" shall be a borrower to whom the NBFC has financed the asset and:

- a) To whom the NBFC has sent reminders/notice by registered post or telegram informing him/her of the default
 - b) To whom at least two notices have been sent by Registered Post informing him/her of the "Intent" of the NBFC to terminate the agreement and repossess the asset.
 - c) However, the criteria mentioned in Para 1b above may be waived under special circumstances where, there is a strong possibility of alienation or misappropriation of the asset. Documentary evidence supporting this should be made available by the NBFC.
2. In the event of the borrower failing to surrender the asset as mentioned in the above said public notice, the NBFC may repossess the asset.
 3. Post repossession the NBFC and/or the repossession agent should immediately intimate the concerned Police Station. The same may also be lodged with the centralized Police Control Room by dialing 100.
 4. The NBFC should then issue a notice to the defaulting borrower informing him of the repossession and giving him a final opportunity to repay the entire amount due as per the terms of the agreement and take back the possession of the asset.
 5. In the event of the borrower failing to comply to para 4 above, the NBFC may proceed to sell the repossessed asset giving due notice to the borrower following the due process.
 6. The NBFC should ensure that the repossessed asset is sold at a fair market value and the excess sale proceeds, if any, should be refunded to the borrower.

Borrower's Responsibilities

1. The very need to initiate repossession proceedings against the borrower arises out of the default on the part of the borrower to repay as per the terms of the agreement. Prudence demands that any such guidelines cannot be considered complete without fixing the borrower's responsibilities.
2. In the event of default and the borrower becoming an "informed defaulter" as defined earlier, it should be his/her duty to surrender the asset to the financier in up kept condition.

3. In the event of the failure on the part of such a borrower to surrender the asset, and the financier repossessing the asset as per these guidelines, no complaint of theft / robbery against the financier should be lodged.

We hereby seek your immediate intervention in this important matter and request you to kindly Re-draft these guidelines so as to have separate guidelines for Repossession. For this, RBI should consider the representations made by FIDC and also the outcome of the discussion being held with the Ministry of Finance where FIDC, IBA and SIAM are jointly preparing Guidelines for Repossession.

Regards,

Thanking you,

Yours faithfully,

For **FINANCE INDUSTRY DEVELOPMENT COUNCIL**



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