

RBI notifies revised framework for resolution of stressed assets and withdrawal of existing resolution mechanisms

February 14, 2018

In brief

The Reserve Bank of India (RBI) has issued a notification dated 12 February 2018 outlining the revised framework for resolution of stressed assets substituting the existing framework with a harmonised and simplified generic framework.

In detail

Some of the key highlights of the above notification are outlined below.

Applicability

The revised framework is applicable to all Scheduled Commercial Banks (excluding Regional Rural Banks) and All-India Financial Institutions (i.e., Export-Import (Exim) Bank of India, National Bank for Agriculture and Rural Development, National Housing Bank and Small Industries Development Bank of India.

Withdrawal of existing resolution schemes with immediate effect

The notification withdraws (with immediate effect) the extant schemes/ mechanism/ instructions issued by RBI:

- Framework for revitalising distressed assets
- Corporate debt restructuring scheme

- Flexible structuring of existing long term project loans
- Strategic Debt Restructuring Scheme (SDR) and change in ownership outside SDR
- Scheme for Sustainable Structuring of Stressed Assets (S4A)
- Joint Lenders' Forum mechanism

(Some parts of the above schemes have been retained, as indicated in the RBI notification.)

Resolution Plan (RP) for stressed assets:

1. *When to initiate?*
 - As soon as there is a default in the borrower entity's account with any lender, all lenders – singly or jointly – shall initiate steps to cure the default.
 - Default has been defined as – 'non-payment of debt

when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.'

2. Implementation by when?

- Accounts with aggregate exposure of lenders at INR 20 billion and above

RP should be implemented within below timelines:

- For default existing as on 01 March 2018 – 180 days from 01 March 2018 (i.e., by 27 August 2018)
- For default arising after 01 March 2018 – 180 days from the date of first default

- Accounts with aggregate exposure of lenders below INR 20 billion but INR 1 billion or above

The notification states that

RBI will announce timelines for such accounts over a 2 year period.

3. What can be comprised in RP?

- The resolution plan may involve any actions/ plans/ reorganisation including:
 - Regularisation of the account by payment of all over dues by the borrower entity
 - Sale of the exposures to other entities/ investors
 - Change in ownership
 - Restructuring (Restructuring has been defined as – ‘an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty, grants concessions to the borrower.’)

4. How to finalise and implement RP?

A. Independent Credit Evaluation

- RPs involving restructuring/ change in ownership in respect of ‘large’ accounts (i.e., accounts where the aggregate exposure of lenders is INR 1 billion and above) would require independent credit evaluation (ICE) of the residual debt by credit rating agencies (CRAs) specifically authorised by RBI for this purpose.
- In case of exposure of INR 5 billion and above two ICEs would be required.
- Only the RPs which receive a credit rating of RP4 or better can be implemented.

B. When can RP be said to have been implemented?

- A RP in respect of borrower entities to whom the lenders continue to have credit exposure, shall be deemed to

be “implemented” only if the following conditions are met:

- a. The borrower entity is no longer in default with any of the lenders;
- b. If the resolution involves restructuring; then
 - i. All related documentation is completed by all lenders; and
 - ii. The new capital structure and/ or changes in the terms or conditions of the existing loans get duly reflected in the books of all the lenders and the borrower.

C. Post-implementation of RP

- In respect of accounts with aggregate exposure of all lenders is INR 20 billion or above, where restructuring/ change in ownership is implemented, the account should not be in default at any point of time during the below ‘specified period’ –
 - period from the date of implementation of RP up to the date by which at least 20% of the outstanding principal debt and interest capitalisation sanctioned as part of the restructuring, if any, is repaid; or
 - 1 year from the commencement of the first payment of interest or principal (whichever is later) with longest period of moratorium under the terms of RP; or
 - whichever is later.
- In case of any default during the above period, the lenders (singly or jointly) should file an application for insolvency under Insolvency and Bankruptcy Code, 2016 (IBC)

within 15 days from the date of such default.

5. *Reporting and disclosures by Lenders*

- Identification as Special Mention Account (SMA-O/ 1/ 2) to continue.
- Lenders to report to Central Repository of Information on Large Credits (CRILC) regarding borrowers in default having an aggregate exposure of INR 50 million or above on a weekly basis (effective week ending February 23 2018).
- CRILC-Main Report will now be required to be submitted on a monthly basis effective 01 April, 2018 (it was quarterly hitherto).
- Banks should make appropriate disclosures in their financial statements, under “Notes on Accounts,” relating to resolution plans implemented. RBI would issue detailed guidelines in this regard separately.

6. *Norms applicable to restructuring*

The notification also lays down various norms applicable on ‘restructuring’ of stressed assets. Some of the key points are as under –

A. *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.

B. Regulatory exemptions

- Acquisition of shares due to conversion of debt to equity during a restructuring process will be exempted from regulatory ceilings/ restrictions on capital market exposures, investment in para-banking activities and intra-group exposure. However, these will be subject to reporting to the RBI.
- Exemptions granted under the SEBI Regulations to continue as hitherto.

C. Applicability of section 29A of IBC

Banks should conduct necessary due diligence to clearly establish that the acquirer is not a person disqualified in terms of section 29A of the IBC. (Section 29A of IBC prohibits, *inter-alia*, promoters to submit a resolution plan under IBC)

D. Excluded restructurings

- Restructuring in respect of projects under implementation involving deferment of date of commencement of commercial

operations, would continue to be covered under existing guidelines.

- The revival and rehabilitation of Micro Small and Medium Enterprises as defined under 'The Micro, Small and Medium Enterprises Development Act, 2006' would continue to be guided by the existing instructions.

7. Other points

- The notification states that any failure on the part of lenders in meeting the prescribed timelines or any actions by lenders with an intent to conceal the actual status of accounts or evergreen the stressed accounts, will be subjected to stringent supervisory/ enforcement actions by RBI, including:
 - Higher provisioning on such accounts
 - Monetary penalties
 - Directions to the banks to file insolvency application under IBC
- The notification contains an Appendix which outlines a non-exhaustive indicative list of signs of financial difficulty.

- Annexure 2 to the notification contains list of ICE symbols (i.e., RP1, RP2 etc.) in Annexure 2 that can be provided by CRAs to RPs.

The takeaways

With the issue of the above notification, the RBI has directed the lenders to resolve the accounts of non-performing assets (especially the large ones) in a time-bound manner. The above notification not only provides greater flexibility to banks regarding the resolution of stressed assets but also lays down various checks and balances to ensure effective implementation. There may be some teething constraints initially given that there is an immediate overhaul of entire resolution framework. However, over a long term, the above approach should result in win-win situation for all stakeholders.

Please click [here](#) to read the complete notification.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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