



Guidelines on Foreclosure and Write-off of Non-performing Loans 2021

1. Preliminary

Considering that the conventional recovery measures of Non-Performing Loans (NPLs) do not yield desired results for the Financial Service Providers (FSPs) as the FSPs quite often face time-consuming and costly multiple litigations, resolution of NPLs through rehabilitation, foreclosure and write-off are accepted as viable solutions to the problems due to immediate availability of liquidity for re-utilization, which otherwise is blocked.

Accordingly, in pursuance to Section 210 of the Financial Services Act of Bhutan 2011, the Royal Monetary Authority of Bhutan hereby adopts the Guidelines on Foreclosure and Write-off of Non-Performing Loans 2021 in order to provide uniform guidelines to the FSPs in foreclosing and/or writing-off of NPLs as per the provisions of the Guidelines and Standard Operation Procedures (SoPs) of FSPs.

2. Short title, commencement and extent

These Guidelines shall:

- a) Be called “Guidelines on Foreclosure and Write-off of Non-performing Loans 2021”
- b) Come into force on 4th May 2021; and
- c) Apply to all Financial Service Providers (FSPs) licensed or registered as per the Financial Services Act of Bhutan 2011 or amendment thereof.

3. Purpose

The main purpose of these Guidelines is to provide broad uniform guidelines to the FSPs for foreclosing and writing off of NPLs in a timely manner across the financial sector and enable the FSPs to promulgate their own Standard Operation Procedure (SoP) on foreclosure and write-off within the timeline/s specified by the Authority.

4. Objectives

The objectives of these Guidelines are to:

- 4.1 Decongest the books of accounts of the FSPs by foreclosing and/or writing off NPLs;
- 4.2 Reach amicable settlements by protecting the interest of the FSPs and the borrowers through timely actions; and
- 4.3 Provide guidance to the FSPs to make their own internal SoPs on the foreclosure and write-off of NPLs.

5. Guidelines for Foreclosure of NPLs

Process of Foreclosure

Part I : Pre-litigation Foreclosure

- 5.1 When a loan account becomes or is likely to become Non-Performing, an FSP shall follow up with borrower to upgrade or maintain the account as performing. This recovery process shall involve follow-up and negotiations with borrowers such as granting time extension or rehabilitating or restructuring the NPLs in line with the Prudential Requirements or any directives issued by the Authority.
- 5.2 If a borrower is untraceable, an FSP shall adopt exhaustive measures in locating the borrower at its level as per its SoP on tracing NPL borrowers endorsed by the Authority.
- 5.3 In accordance with the provisions of the Guidelines for Segregation of NPLs into Viable and Non-viable Loans 2021, an FSP will segregate the NPLs into viable and non-viable NPLs and shall rehabilitate the viable NPLs only.
- 5.4 An FSP shall ensure all follow-ups and negotiations with a borrower are properly documented with supporting evidences.
- 5.5 If a borrower fails to upgrade the NPL to a performing status through the follow-up and negotiation within the timeframe defined by an FSP, an FSP shall initiate foreclosure process for the recovery of the loan outstanding.
- 5.6 An FSP may choose to foreclose the NPL through out-of-court settlement to prevent the cost of court litigation and other judicial constraints.
- 5.7 An FSP shall review and verify the loans documents for any issue of cross-collateralization, secondary charges, *paripasu* charges against the securities or when the borrower is a common borrower among the FSPs before filing a recovery suit in the court of law.
- 5.8 If any issue rises from the above, the same shall be resolved between the FSP and borrower before moving forward to the next step.
- 5.9 An FSP and non-willful defaulter may choose to enter into negotiation for:
 - 5.9.1 Voluntary surrender of the loan security by the borrower for full or partial settlement of the loan outstanding;
 - 5.9.2 Both the FSP and borrower shall have the right to enter into negotiation for voluntarily surrender or takeover of the loan outstanding;

5.9.3 In the event an FSP agrees to accept the security for full settlement of the loan outstanding, the FSP shall enter into a negotiated settlement with the borrower/mortgagor and proceed to foreclose the NPL and the NPL account shall be closed after taking over of the property; and/or

5.9.4 Transfer the NPL to a third party by taking over of the security or business from the borrower.

5 Part II: Foreclosure through Court

6.1 When an FSP does not foresee any viability in the pre-litigation foreclosure or fails to reach a settlement through a negotiation with the borrower during the pre-litigation foreclosure, an FSP shall initiate recovery proceedings in the court of law for the foreclosure of NPL.

6.2 If an FSP is unable to trace the borrowers/mortgagors despite all reasonable efforts as per the provisions of the Guidelines and SoP, an FSP shall file the recovery suit for seeking assistance from the court of law.

6.3 An FSP shall stipulate the time frame in its SoP to file their recovery suits against the NPL borrower.

6.4 During the judicial proceedings if a borrower pleads before the court for out-of-court settlement through negotiation, an FSP may with the leave of the court negotiate with the borrower for the foreclosure of the NPL in question.

6.5 If a borrower is untraceable and the FSP is not able to resolve at its level, an FSP may register cases against the borrower and request the court to issue summon order, direct to carry out announcement in the media and issue arrest warrants against untraceable borrower as per the procedures of the court.

6.6 If a borrower is still untraceable after exhausting the steps stipulated under Section 6.5, an FSP may request the court to declare the borrower missing and issue default judgement for the FSP to take over the security or to enforce the rights of an FSP to claim its loan outstanding upon tracing the borrower.

7 Part III: Post-Litigation Foreclosure

7.1 An FSP shall implement the judgement strictly to the extent possible.

7.2 An FSP shall freeze the interest once the physical possession of the loan security is taken over by the FSP.

7.3 An FSP shall exercise the power of sale of the secured property through the public auction or private sale in accordance with the judgment and/or re-enforcement order of the court as per the provisions of the Guidelines and SoP of FSP.

7.4 The security against an NPL shall be first sold through the public auction/s and subsequently through the private sale in negotiation with the

borrower/mortgagor in writing if an FSP fails to dispose the security in the public auctions as specified hereunder.

- 7.5 Within two years from the date of court order, an FSP shall carry out a minimum of three public auctions to dispose the security if the same cannot be disposed in the first and second public auctions by revising the Reserve Price on each occasion.
- 7.6 An FSP may dispose the security through a private sale if the same cannot be sold despite conducting three public auctions.
- 7.7 If an FSP cannot dispose the security through the public auction and subsequently through the private sale, an FSP may purchase/takeover the security in full or partial settlement of the balance loan outstanding.
- 7.8 In line with the provisions of the Asset Transfer NPL Guidelines 2021, an FSP shall transfer the NPL and loan loss provision for 3 years and comply with the procedures stipulated therein.
- 7.9 In case the proceeds from the sale of security is insufficient to liquidate the loan outstanding, an FSP may file a recovery suit for the deficit loan amount in accordance with the relevant provisions of the Movable and Immovable Property Act 1999 and/or amendment thereof.
- 7.10 If an FSP is not able to recover deficit the loan amount through the recovery suit, an FSP shall write off the balance loan outstanding as per the provisions of the guidelines and its SoP.

8 Part IV: Write-off of NPLs

- 8.1 Write-off means removing NPLs from the balance sheet of the FSPs as per the procedures and provisions of the Guidelines and the SoPs of FSPs.
- 8.2 A write-off can occur after all measures and legal efforts to recover the NPL have been fully exhausted.
- 8.3 A write-off does not necessarily constitute an FSP is forfeiting its legal right to claim its dues in the future, unless the court has ordered otherwise.
- 8.4 The Credit Information Bureau (CIB) shall maintain the loan write-off history for the borrower, until the loan outstanding is liquidated.
- 8.5 An FSP shall disclose the write off on the related parties carried out by its Board to its Annual General Meeting (AGM) and then submit to the Authority for information.
- 8.6 An FSP shall maintain internal controls and oversight to ensure that the process of write-off under the guidelines and SoP are managed and monitored properly.

8.7 An FSP is required to ensure that the loans written off are properly audited by the internal auditors and the statutory auditors and disclosed in the annual report.

8.8 An FSP shall furnish information on write off cases, as and when required by the RMA.

9 Criteria for write-off

9.1 An FSP shall write-off the NPL deficit as per the decisions of the competent authorities (Courts and Boards of FSPs) based on the following conditions:

9.1.1 **Absconded:**

Absconded means a person who had left or abandoned the country without the knowledge of the Royal Government for reasons of corruption charges either due to corrupt reasons or after having committed anti-national activities or the crime against the State or Tsawa Sum with sole intent for avoiding judicial process, and whose census has been deleted from the RGoB records based on the reports of respective local governments. The final list of absconded borrowers shall be confirmed in writing by the Department of Law & Order, MoHCA to the FSPs and Authority.

9.1.2 **Untraceable/missing:**

Untraceable/missing means a borrower has been at large and an FSP's recovery procedures and efforts have been fully exhausted through media announcement, issue of arrest warrant by the Court and the police has confirmed in writing that the said borrower is untraceable/missing from Bhutan. The respective Boards of FSPs shall confirm and approve the final list of untraceable/missing borrowers and share the same with the Authority.

9.1.3 **Bankrupt:**

Bankrupt means that the court through a judgment has declared any person/ any legal entity bankrupt as per the Bankruptcy Act of Bhutan 1999 or amendment thereof.

9.1.4 **Deceased:**

Deceased means a borrower who is dead and the same is confirmed through the death certificate issued by the hospital, Department of Civil Registration and Census, or local government authority concerned or any other agencies authorized to issue the death certificate. The decease has not left behind any security or property in his name to liquidate the NPL. The respective Boards of FSPs shall confirm and endorse the final list of deceased borrowers to the Authority.

9.1.5 **Imprisonment:**

Imprisonment means a borrower has been imprisoned by the court of law either for in lieu of non-repayment of loan/s or for commission of an offence, where he does not have any source to repay the loan/s. The respective Boards of FSPs shall confirm and endorse the final list of imprisoned borrowers (without any means to repay the NPL) to the Authority.

9.1.6 NPL is under loss category for more than two years;

9.1.7 Any other NPL that has been transferred to Asset Pending Foreclosure under the NPL Asset Transfer Framework;

9.1.8 A borrower has no means to repay the loan or/and an FSP does not foresee any loan recovery in future as determined by the FSPs/Boards; and

9.1.9 An FSP has exhausted all measures to recover the NPL or the Board has passed the resolution to write off the NPL after finding recovery is not possible.

10. Write-off Limit

10.1.1 Based on the recommendations of Committee(s) constituted in the FSPs, NPL write-off limit shall be decided/approved by the Boards of FSPs as per the provisions laid down in the SoPs.

10.1.2 The Authority shall annually verify if an FSP has carried out the write-off as per the provisions of the SoPs and Guidelines.

10.1.3 An FSP shall submit a report of every write-off to the Authority for information.

10.2 Prudence Requirement and Accounting Treatment

10.2.1 All NPLs written-off shall be expensed the balance loan outstanding through Profit and Loss/ Income Statement with adjustment against the provisions and interest-in-suspense kept aside or against interest income in case of under provisioned NPLs.

10.2.2 Once the NPL is written off, an FSP shall maintain a list of NPLs written off and submit to the Authority as a part of regulatory returns.

10.2.3 In case the borrower resumes servicing its loan obligations or the NPL is recovered through sale or from the borrower, the recovered amount shall be written back into the books of an FSP through the profit and loss/ income statement.

10.2.4 However, in case of the borrower resuming the loan obligations, the account shall be classified as non-performing category based on its earlier loan classification bucket. The repayment of the loan obligation shall be

in probation of 6 months before it can be classified as performing under standard category.

11. Definitions

- 11.1 **Authority:** means as defined in the RMA Act of Bhutan 2010 or amendment thereof.
- 11.2 **Financial Service Providers (FSPs):** means an individual or an entity who/which is given the registration certificates or licenses by the Authority to provide the financial services to the public.
- 11.3 **Foreclosure:** means a legal process by which an FSP attempts to recover or liquidate the loan balance outstanding from a defaulting borrower, either through the court order or through out-of-court settlement in full or partial settlement of the NPLs as approved by the Boards of FSPs.
- 11.4 **Non-Performing Loan (NPL):** means the loan repayment obligations which are overdue more than 90 days as prescribed in the Prudential Regulations of the RMA.
- 11.5 **Security:** means property (collateral or immovable) pledged as the security against a loan as stipulated in the Movable and Immovable Property Act of Bhutan 1999 or amendment thereof.
- 11.6 **Write-off:** means removing NPLs from the balance sheet of the FSPs as per the provisions of the Guidelines and SoPs of FSPs.

12. General Provisions

12.1 Rules of Construction

Unless the context clearly otherwise requires, wherever used in the Guidelines, the singular includes the plural.

12.2 Interpretation

The Authority shall have the power to interpret any provision under this Guideline and its interpretation shall be final and binding upon all parties.

12.3 Transitional period

These guidelines shall come into force within a period of three months from the date of issue of the guidelines.

12.4 Amendment

The additions, changes, or repeal of any provision of these Guidelines shall be made by the Board based on the recommendation of the Management.
