



Rules and Regulations on Foreclosure and Write-off of Non-Performing Loans 2022

Contents

PART A: Background and Objective	3
Part B: Title, Extent and Commencement	3
PART C: Process of Foreclosure	3
PART D: Write-off of NPLs	6
PART E: Definitions and General Provisions	8

PART A: Background and Objective

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 restructuring, 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 pursuant to Section 202 of the Financial Services Act of Bhutan 2011, the Royal Monetary Authority of Bhutan hereby adopts the Rules and Regulations on Foreclosure and Write-off of Non-Performing Loans 2022 to provide a regulatory framework to the FSPs in foreclosing and/or writing-off of NPLs as per the provisions of these Rules and Regulations and the Guidelines (SoPs) of FSPs.

The objectives of these Rules and Regulations are to:

1. Reach amicable settlements by protecting the interest of the FSPs and the borrowers through timely actions/interventions
2. Decongest the books of accounts of the FSPs by foreclosing and/or writing off NPLs;

Part B: Title, Extent and Commencement

These Rules and Regulations shall:

3. Be called “Rules and Regulations on Foreclosure and Write-off of Non-performing Loans 2022 ”;
4. Come into force on 01st May 2022; and
5. Apply to Non-Performing Loans of all Financial Service Providers (FSPs).

PART C: Process of Foreclosure

C1. Pre-litigation Foreclosure

6. When a loan account becomes or shows signs of account becoming NPL such as but not limited to loans overdue by more than 31 days or behind an agreed schedule of payment or any events that will likely impair the borrower’s repayment capacity, the FSP shall follow up with the borrower to upgrade or maintain the account as performing. Depending on the nature of the NPL, the recovery process shall be carried out as per FSP’s policies, procedures and manuals which should be in line with the following:

- 6.1 Rules and Regulations on Debt Restructuring for Financial Service Providers;
- 6.2 SoP on Out of Court Settlement, 2021

- 6.3 SoP on tracing untraceable NPL borrowers; or
- 6.4 Any other relevant directives issued by the Authority from time to time.
7. An FSP shall ensure all follow-ups and negotiations with a borrower are properly documented with supporting evidence.
8. If a borrower fails to upgrade the NPL to a performing status through the follow-up and negotiation the FSP shall initiate foreclosure process for the recovery of the loan outstanding.
9. An FSP shall review and verify the loan documents for any issue of cross-collateralization, secondary charges, **paripasu** charges against the collateral/mortgage or when the borrower is a common borrower among the FSPs.
10. If any issue arises from Section 9 above, the same shall be resolved between the FSP and borrower before moving forward to the next step.
11. An FSP and non-willful defaulter may choose to enter into negotiation for:
- 11.1 Voluntary surrender of the loan security by the borrower for full or partial settlement of the loan outstanding;
- 11.2 Both the FSP and borrower shall have the right to enter into negotiation for voluntary surrender or takeover of the loan collateral/mortgage
- 11.3 In the event 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
- 11.4 Transfer the NPL to a third party by taking over the security or business from the borrower.
12. The FSP shall freeze the interest once the physical possession of the loan collateral/mortgage is taken over by the FSP or based on the court order.

C2. Foreclosure through Court

13. When an FSP does not foresee any viability 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 collateral/mortgage within 180 days from the day of the loan account becoming non-performing loan.
14. An FSP shall stipulate the timeline in its Guidelines within which a recovery suit shall be filed against the NPL borrower.
15. 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.

16. If a borrower is untraceable for a period of three months despite all reasonable efforts as per their SoP and the FSP is not able to resolve at its level, the FSP may register cases against the borrower and request the court to issue a summon order, direct to carry out the announcement in the media and issue arrest warrants against the untraceable borrower as per the procedures of the court.
17. If a borrower is still untraceable after exhausting the steps stipulated under Section 15, the FSP may, within a period of one month, request the court to declare the borrower missing and issue default judgment for the FSP to take over the collateral/mortgage or to enforce the rights of the FSP to claim its loan outstanding.

C3. Post-Litigation Foreclosure

18. The FSP shall implement the judgment strictly to the extent possible.
19. The FSP shall exercise the power of sale of the collateral/mortgage 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.
20. The collateral/mortgage shall be disposed through the public auction or private sale through consent of the mortgagor or borrower.
21. If the FSP cannot dispose of the collateral/mortgage through the public auction or through the private sale, the FSP may purchase/take over the collateral/mortgage in full or partial settlement of the loan outstanding as per the OREO policy/policy on treatment of foreclosed assets.
22. In case the proceeds from the sale of collateral/mortgage is insufficient to liquidate the loan outstanding, the FSP may file a recovery suit for the deficit loan amount in accordance with Section 52(2) of the Movable and Immovable Property Act of Bhutan 1999 and/or amendment thereof. The FSPs may write off the deficit amount as per loan write off provisions of these rules and regulations.
23. In case the proceeds from the sale of collateral/mortgage is in excess of the balance outstanding, the excess/ surplus proceeds from the sale of collateral/mortgage shall be refunded to the borrower based on the procedures laid in Section 52(1) of Moveable and Immoveable Property Act of Bhutan 1999 or any amendments thereto.
24. If the FSP is not able to recover the NPL amount through the recovery suit, the FSP shall write off the balance loan outstanding as per the provisions of these rules and regulations and its guideline.

PART D: Write-off of NPLs

25. Write-off means removing NPLs from the balance sheet by taking a charge against the profit and loss account of the FSPs.
26. The loans written-off shall be recorded as an off-balance sheet and FSPs shall continue to pursue recovery or closure of the NPL.
27. A loan write-off does not forfeit the legal right of the FSPs to recover its loan outstanding in the future.
28. All loans that have been 100% provisioned and in loss category (loan default by more than 365 days) shall be written-off from the balance sheet of FSPs within a time period of 180 days.
29. The interest and late fees as per the loan agreement shall continue to accrue on the loans written-off. The FSPs may compute interest and late fee at the end during the loan recovery/closure.
30. The FSPs shall maintain a proper record and all the relevant documentary evidence of the written-off loans.
31. The FSPs shall form a dedicated Recovery Unit/Division/assign to existing divisions to pursue recovery of the written-off loans with clear strategy and targets set by Management and approved by their Board.
32. The FSPs shall continue submitting the details of the loan written-off to the Credit Information Bureau (CIB) until the loan outstanding is liquidated/closed.
33. The FSP shall submit a detailed report on the loans written-off to the Authority for information as part of existing monthly returns.
34. The FSP shall maintain proper internal controls and oversight to ensure that the operational risk such as process of write-off under these rules and regulations and guidelines are carried out prudently.
35. The 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.
36. The FSP shall seek Authority's written approval before writing off any loans granted to its related parties. The write off of loans to related parties shall be carried out at an arm's length basis.

D1. Prudent Requirement and Accounting Treatment of NPLs Written-off

37. All NPLs written-off shall expense the balance loan outstanding through Profit and Loss/ Income Statement with adjustment against the provisions and interest-in-suspense kept aside.
38. In case the borrower resumes servicing its loan obligations or the NPL is recovered through the sale of collateral/mortgage or from the borrower, the recovered amount shall be written back into the books of the FSP through the profit and loss/ income statement.
39. In the case of a borrower resuming the loan obligations, the account shall be classified as non-performing category based on its earlier loan classification bucket for a period of 6 months before it can be classified as performing under standard category.

D2. Conditions to waive the right to recover the NPLs

40. If the FSP does not foresee any recovery of loans written-off, the FSP may waive the right to pursue further recovery.
41. The FSPs may directly waive off if the loan amount is materially insignificant which are not economical to pursue further recovery.
42. The FSP shall seek Authority's written approval before waiving any loan or advance granted to its related parties.
43. The FSP may waive the right to recover written-off loans as per the decisions of the competent authorities (Courts or Boards of FSPs), subject to fulfillment of the following conditions corresponding to the respective categories of borrowers:

43.1 **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.

43.2. **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 deceased has not left behind any security or property in his name or guarantor to liquidate the NPL. The respective Boards of FSPs shall confirm and endorse the final list of deceased borrowers.

43.3. **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 depending on the imprisonment term, 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.

43.4 Those NPLs for which the FSPs have exhausted all measures to recover the NPL or the Board has passed the resolution to waive the right to recover the NPL after assessing that the recovery of NPL is not possible.

44. Based on the recommendations of Committee(s) constituted in the FSPs, the right to waive the recovery of NPL shall be decided/approved by the Boards of FSPs as per the provisions laid down in the rules and regulations and their guidelines

45. The Authority shall annually verify if an FSPs have carried out the write-off and waive-off of the rights to recover NPLs as per these rules and regulations and their guidelines.

46. The FSP shall submit a list of waived NPLs to the CIB to ensure that NPLs waived are included in the borrower's credit report.

47. The borrower whose loan has been waived shall be barred from getting another loan or can not stand as guarantor from any FSP for next 10 years. However, this restriction shall not apply to section 6.2 of these rules and regulations.

PART E: Definitions and General Provisions

48.1 **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.

48.2 **Authority:** means as defined in the RMA Act of Bhutan 2010 or amendment thereof.

48.3 **Collateral or mortgage:** means movable and immovable properties pledged as the security against loans as stipulated in the Movable and Immovable Property Act of Bhutan 1999 or amendment thereof.

- 48.4 **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.
- 48.5 **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.
- 48.6 **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.
- 48.7 **Out-of-Court Settlement:** means an agreement between FSPs and borrowers to amicably resolve the NPLs without going to court as litigations are costly and time-consuming and waste resources for both the parties. Out-of-court settlement can occur during pre-litigation and during litigation with the leave of the court.
- 48.8 **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
- 48.9 **Write-off:** means removing NPLs from the balance sheet of the FSPs in line with these rules and regulations and Guidelines of FSPs. The loans written-off shall be recorded as an off-balance sheet and FSPs shall continue to pursue recovery or closure of written off loans.

49. General Provisions

- 49.1 **Rules of Construction:** Unless the context clearly otherwise requires, wherever used in the Guidelines, the singular includes the plural.
- 49.2 **Interpretation:** The Authority shall have the power to interpret any provision under these rules and regulations and its interpretation shall be final and binding upon all parties.
- 49.3 **Transitional period:** These rules and regulations shall come into force within a period of three months from the date of issue of these rules and regulations.
- 49.4 **Amendment:** The additions, changes, or repeal of any provision of these rules and regulations shall be made by the Board based on the recommendation of the Management.

49.5 **Penalty for violation of these rules and regulations:** The Authority shall impose appropriate corrective actions followed by penalties on the FSPs if any provision of these rules and regulations are violated.
