



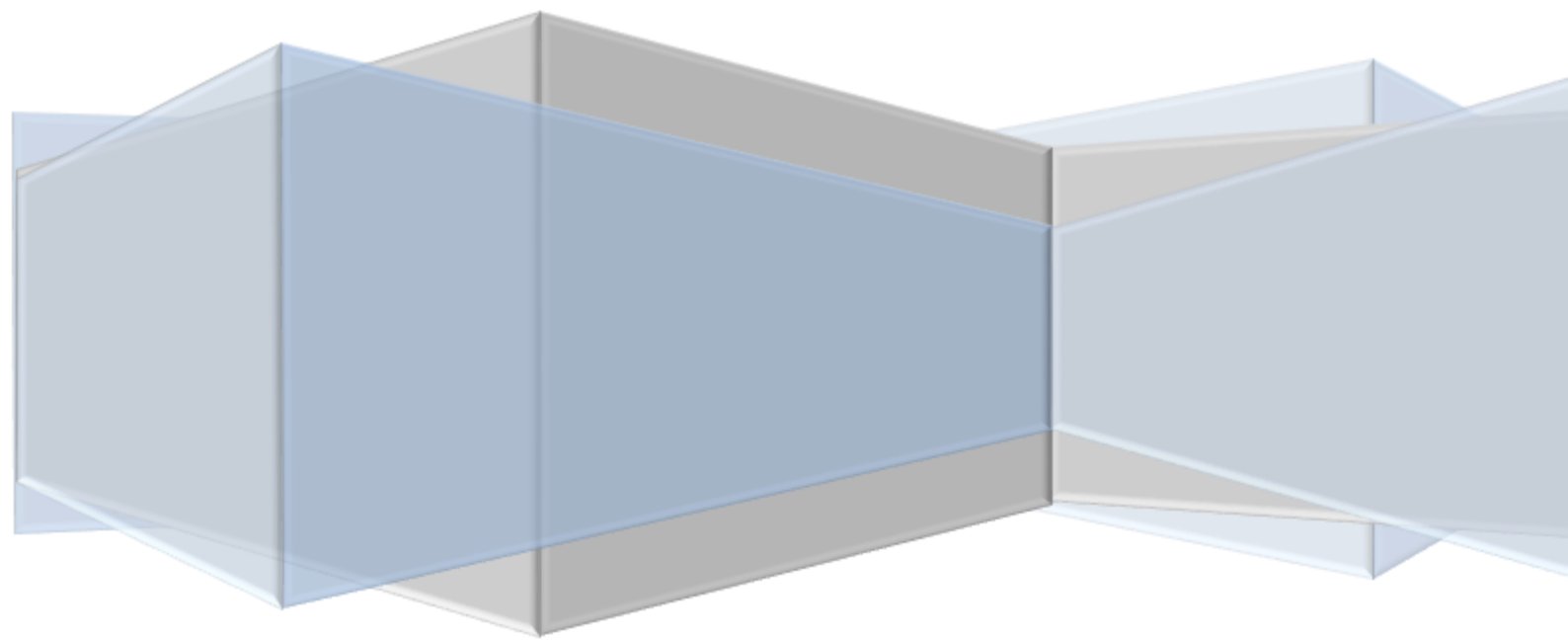
STATE BANK OF PAKISTAN

BANKING POLICY & REGULATIONS

DEPARTMENT

GUIDELINES - TRANSFER AND ASSIGNMENT OF NON- PERFORMING ASSETS TO THE CORPORATE RESTRUCTURING COMPANIES

Revised vide BPRD Circular Letter No 40 of 2020



THE TEAM

Sr. No	NAME	DESIGNATION
1	Syed Irfan Ali	Executive Director, Banking Policy & Regulations Group
2	Mr. Muhammad Akhtar Javed	Director, Banking Policy & Regulations Department
3	Mr. Muhammad Saleem	Additional Director, Banking Policy & Regulations Department
4	Mr. Shah Nawaz	Senior Joint Director, Banking Policy & Regulations Department
5	Mr. Zohaib Pasha	Joint Director, Banking Policy & Regulations Department

For queries, please contact muhd.saleem@sbp.org.pk and / or zohaib.pasha@sbp.org.pk

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I. INTRODUCTION

The Corporate Restructuring Companies Act, 2016¹, (herein after called **the Act**), provides overarching legal framework for the establishment and regulation of Corporate Restructuring Companies (CRCs) in Pakistan. The CRCs established under the Act and licensed by the Securities and Exchange Commission of Pakistan can, *inter alia*, acquire, buy, hold, manage, restructure and resolve Non-Performing Assets (NPAs) of Financial Institutions and restructure, reorganize, revive and liquidate the commercially or financially distressed companies and their businesses.

2. The Commission has now granted license to a company enabling it to operate as the first CRC in Pakistan. In order to regulate the Transfer and Assignment of NPAs from Banks/DFIs [herein after called **Financial Institutions (FIs)**] to the CRCs, it has been decided to provide minimum Guidelines to the FIs.

3. The FIs, whilst engaging with the CRCs, are required to ensure that Transfer and Assignment of NPAs is conducted in a fair, transparent, prudent manner and on an arm's length basis in accordance with the Act, relevant Laws, Rules, Regulatory Instructions, as amended from time to time, and FIs' internal policies and procedure manual.

II. POLICY FRAMEWORK

The FIs should develop a Policy for the Transfer and Assignment of NPAs to the CRCs or the appointment of the CRCs as an Agent, under an Agency Agreement, for recovery of NPAs. Such Policy can be either an independent document or a part of the Credit Risk Management Policy or any other relevant policy of the FI. The Policy should, *inter alia*, prescribe guidance on the types of NPAs eligible for the Transfer and Assignment to the CRCs or appointment of the CRCs as an Agent of the FIs for the recovery of NPAs, process and technique for determining the value of NPAs, general terms and conditions for the Transfer and Assignment of NPAs to the CRCs, general terms and conditions for appointing CRCs as Agent under an Agency Agreement, classification, provisioning and accounting treatment of financial instruments² received from the CRCs as consideration etc.

2. The technique, specified for the valuation of NPAs, should be transparent, consistent and provide reasonable estimate of realizable fair value of the NPAs.

3. The Policy shall also prescribe the parameters for maintenance of historical data of NPAs - including written-off NPAs wherein right to recovery remains with the FIs, - exceeding Rs50 million. The aforesaid historical data of NPAs, shall include, at minimum, the data elements specified in *Annexure-I* of these Guidelines.

¹ **The Act** has been amended vide Corporate Restructuring Companies (Amendment) Ordinance, 2020. The ordinance has been circulated with the Banks/DFIs vide BPRD Circular Letter No. 34 of 2020.

² **Financial instruments** mean, amongst others, Security Receipts, Deferred Payment Notes, Bonds, Commitment or other instruments with similar features received by the FIs against the Transfer and Assignment of NPAs to the CRCs.

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4. The FI shall, at least on quarterly basis, present the overall performance of the Special Asset Management Group [SAMG] to its Board Risk Management Committee [BMRC]. The overall performance evaluation criteria shall be approved either by Board or by the BRMC³.

III. EXPOSURE LIMITS

The single obligor and group exposure limits, prescribed under Regulation R-1 of Prudential Regulations for Corporate / Commercial Banking, shall not be applicable, on account of, Transfer and Assignment of NPAs to the CRCs until such time specified otherwise by State Bank of Pakistan.

2. The Para 2 of Regulation R-1 of Prudential Regulations for Corporate / Commercial Banking shall not be applicable to the exposure of the FIs on the CRCs, until such time specified otherwise by State Bank of Pakistan.

IV. TRANSFER AND ASSIGNMENT OF NON-PERFORMING ASSETS

The Transfer and Assignment of NPAs from FIs to the CRCs should be a true-sale, on non-recourse basis, with all the risks & rewards of the NPAs transferred and assigned to the CRCs and such NPAs shall stand derecognized from the books of the FIs.

2. The FIs will record the financial instrument, received from the CRCs as consideration, on account of, Transfer and Assignment of NPAs, at the fair value.

3. The FIs will, however, in cases where the Transfer and Assignment of NPAs is at a value higher than Net Book Value (NBV), reverse the excess provision to P&L Statement of the year in which actual amount, in the form of upfront full / partial cash consideration, is received from the CRCs or to the extent the financial instrument received as consideration is fully / partially redeemed.

4. The losses, if any, arising from Transfer and Assignment of NPAs at lower than NBV should be recognized in Profit & Loss (P&L) Statement of such period. The FIs are, however, permitted, until such time specified otherwise by State Bank of Pakistan, to recognize such losses in following phased manner, in a period not exceeding the five years.

Particular	Year 1	Year 2	Year 3	Year 4	Year 5
Year-wise	10 percent	15 percent	20 percent	25 percent	30 percent
Cumulative	10 percent	25 percent	45 percent	70 percent	100 percent

³ The evaluation criteria, amongst others, will include the (a) year-wise recovery yield, cash and non-cash, separately for on-balance sheet and written-off [where right to recovery remains] NPAs portfolio, (b) the recovery costs for the NPA portfolio, including the operating expenses of a functional Special Assets Management Group, (c) average time [*in-years*] involved in the recovery of Corporate and Commercial NPAs portfolio, (d) time value of money &/opportunity costs [e.g. net present value of NPA portfolio and segments within like Corporate / Commercial / Retail NPAs], and (e) performance of FIs legal team in pursuing the recovery cases in the Banking Courts.

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Whereas, the amount of losses not charged into P&L will be placed into Other Comprehensive Income (OCI)⁴, will not be available for dividends and proper disclosure thereof be provided in the Notes to the periodic financial statements. Moreover, the financial instruments, at each subsequent reporting date, will be re-measured / revalued, as per relevant International Financial Reporting Standards, and the gains / losses, if any, arising due to such re-measurement / revaluation will be taken to OCI and will also not be available for dividends until full / partial redemption. The FIs may, at their own discretion, recognize the losses / provision expense⁵ earlier.

5. In certain cases, wherein FIs Transfer and Assign the NPAs at initial value with an arrangement to share any amount exceeding the initial value on pre-agreed proportion, provided such an arrangement is consistent with the de-recognition of NPAs by the transferring and assigning FIs, in such cases the excess recoverable amount and profit/mark-up thereon, if any, will be recognized on actual recovery basis.

6. The FIs may also Transfer and Assign to the CRCs such NPAs, which had already been written-off for book cleaning or on commercial consideration, but the FIs yet hold the right to recovery against the obligors. In such cases, the FIs shall recognize appropriate contra liability⁶ equivalent to the value of financial instruments received as consideration thereof.

7. The FIs, by virtue of such Transfer and Assignment of NPAs to the CRCs, wherein, FIs do not pass-on any write-off/waiver or financial relief to the obligor; such Transfer and Assignment should not require reporting of write-off/waiver or financial relief against the obligor in the e-CIB or private Credit Bureau as complete interests concerning the NPA and obligor thereto are transferred to CRCs.

8. The FIs may, also seek the services of external resources, for estimating the value of the NPAs for Transfer and Assignment to CRCs. The FIs are, however, encouraged to take adequate steps to develop such skills in-house simultaneously.

V. APPOINTMENT OF CORPORATE RESTRUCTURING COMPANY AS RECOVERY AGENT UNDER AN AGENCY AGREEMENT

The FIs may, under an Agency Agreement executed in terms of Section 6B of Corporate Restructuring Companies (Amendment) Ordinance, 2020, appoint a CRC as an Agent for recovery of NPAs, including written-off NPAs wherein the FIs hold the right to recovery, subject to the terms & conditions of the Agency Agreement. The Agency Agreement will, however, not result in the Transfer of the NPAs to the CRCs.

⁴ The losses, arising due to transfer and assignment of NPAs to CRCs at lower than Net Book Value, and placed in Other Comprehensive income will not be taken into account for determining Capital Adequacy Ratio under the relevant instructions issued by State Bank of Pakistan.

⁵ The losses arising due to Transfer and Assignment of NPAs at lower than NBV and provisions / impairment, if any, due to subsequent re-measurement / revaluation of financial instruments received from CRC as consideration.

⁶ The internal Policy or Procedure Manual prepared thereunder may provide necessary guidance on the Accounting Treatment.

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2. The Agency Agreement should be of specific tenure and thereafter it may either be extended, on mutually agreed terms & conditions, or terminated.

VI. FINANCIAL INSTRUMENTS - CONSIDERATION FOR TRANSFER AND ASSIGNMENT OF NON-PERFORMING ASSETS

The FIs may accept the consideration, for Transfer and Assignment of NPAs to the CRCs, in the form of cash and/or financial instruments e.g. Security Receipt, Deferred Payment Notes, Bond etc. and such instruments will be classified as “**Investment**” in the books of the FIs.

2. The financial instruments will qualify as counterparty exposure⁷ of the FI on the CRC under Para 16 [**Exposure**] of Part-A of Prudential Regulations for Corporate/Commercial Banking.

3. The FIs, whilst negotiating terms and conditions of Transfer and Assignment of NPAs to CRCs should ensure to protect their financial and legal interests.

VII. EXCHANGE OF INFORMATION

The FIs, to enable CRCs perform the requisite due diligence of NPAs, prior to Transfer and Assignment of the NPAs or the appointment of the CRCs as an Agent under the Agency Agreement, exchange information, on confidential basis, relating to an obligor.

VIII. DISCLOSURE REQUIREMENTS

The FIs, that Transfer and Assign the NPAs to the CRCs, should provide disclosure - in the manner prescribed below - in the notes to the annual audited financial statements:

- i. **Details of NPAs Transferred and Assigned / Given under Agency Arrangement to the CRCs during the Year:**
 - a. Number of NPAs transferred and assigned,
 - b. Number of NPAs given under the Agency Arrangement,
 - c. Aggregate gross amount and NBV of Transferred and Assigned NPAs;
 - d. Aggregate gross amount and NBV of NPAs given under Agency Arrangement,
 - e. Aggregate value of consideration received as cash and financial instruments;
 - f. Aggregate consideration realized for the NPAs Transferred and Assigned in prior periods and NPAs given under Agency Arrangement;
 - g. Aggregate gain / loss over NBV.
- ii. **Details of outstanding financial instruments received from CRCs**
 - a. Book value of outstanding financial instruments received from CRC in Current Year and Corresponding Year.

⁷ The financial instrument, for counterparty exposure calculation under Regulation R-1 of Prudential Regulations for Corporate/Commercial Banking, will have 100 percent weight.

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ANNEXURE-I

Minimum data on NPAs exceeding Rs50 million⁸, to be maintained by the FIs

- i. Name of obligor⁹.
- ii. Name of the Group of the obligor.
- iii. E-CIB Code of the obligor.
- iv. Category of obligor [Corporate / Commercial / SME / Agriculture / Consumer].
- v. Finance facility-wise outstanding amount.
- vi. Finance facility-wise mark-up outstanding amount.
- vii. Other amount outstanding.
- viii. Total outstanding amount against the obligor.
- ix. Status of business operations of the obligor [Fully / Partially Operational / Closed].
- x. Date of initial classification.
- xi. Finance facility-wise classification category.
- xii. Finance facility-wise provision amount maintained.
- xiii. Finance facility-wise / common security structure.
- xiv. Market value and forced Sale Value of collateral on the basis of latest available valuation report.
- xv. Date of latest available valuation report.
- xvi. Name of evaluating company.
- xvii. Number of times rescheduling / restructuring allowed after initial classification.
- xviii. Brief description of terms of each rescheduling / restructuring.
- xix. Year and amount of additional finance facilities allowed after initial classification.
- xx. Date of filing of recovery suit, if any.
- xxi. Date of decree, if any.
- xxii. Amount of decree.
- xxiii. Status of execution of decree.
- xxiv. Year wise amount of cash and non-cash recoveries made.
- xxv. Year wise amount of recovery expenses incurred [direct expenses and indirect allocated expenses including expenses of a functional SAMG].
- xxvi. Net Present Value of NPA Portfolio [including for sub-segments e.g. corporate/commercial/SMEs etc.]
- xxvii. Average Recovery Yield after initial classification.

⁸ The prescribed threshold, going forward, will be reduced gradually. It is expected that the FIs will have a database system, which is proportionate with the NPA portfolio of the FI; and allows the Board Risk Management Committee and relevant Management Committees to take meaningful decisions, w.r.t recovery and resolution of NPA portfolio, on the basis of MIS generated.

⁹ In case of Proprietorship / Partnership, the name(s) and CNIC number(s) of the Proprietor(s) and Partner(s) should be maintained. Whereas, in case of private / public limited companies, the name(s) and CNIC number(s) of Director(s) should be maintained.