

Secured Lending & Enforcement of Security Interests with emphasis on SARFAESI Rules

Mumbai,
24th – 25th June, 2011

Faculty: Vinod Kothari

Highlights:

- Full blown discussion on recent Sarfaesi Rules on central registry and its implications
- Comprehensive coverage on secured lending including discussion on prevailing practices among banks – loan assignments, pledges, etc.
- Full-blown discussion on nuances of SARFAESI Act including alternatives such as DRT proceedings, winding up, asset backed lending transactions, etc
- Plenty of case law including most recent Supreme Court and high court rulings on powers of lenders
- Knotty questions of priorities, conflict of laws etc put in simple and lucid language
- Debt restructuring and resolution compared with enforcement action
- International flavour to entire discussion – comparison with international best practices on loan recovery
acclaimed speaker – Vinod Kothari

Why this course?

Secured lending for both commercial and personal finance is increasing. Commensurate with the growth of secured lending, problem loans are increasing, forcing the lender to find answers to some very serious questions – should the loan be restructured? Should it be settled? Or should the bank go ahead with security interest enforcement? In case of the latter, should the lender use the SARFAESI Act, or RDB Act, or do self-help repossession?

On repossession practices, particularly with the help of recovery agents, there have been sharp observations from courts all over the country, including the Supreme court, and the RBI framed guidelines on recovery action.

Essentially, half the strength of a loan lies in analysing the repayment capability of the client and fixing terms which are practical. In circumstances, restructuring and workout may prove to be a more paying solution than recovery – so the lender is always faced with the tough task of choosing from the slew of measures available.

The complex law of security interests is not unique to India – there are international experiences to share.

In the Budget for the financial year 2011-12, the Finance Minister, indicated the need for setting up the Central Registry to have a check on the fraudulent practices in loans and mortgages. In this regard the Central Registry was operationalised from 31st March, 2011 and The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011 were notified. This workshop intends to discuss the rules thread-bare and bring to light its implications on banks and financial institutions.

This workshop is intended to provide a platform for sharing local and international experience and knowledge regarding secured lending and the remedies of the lender. In addition, the workshop also intends to provide a practical guide to loan restructuring and loan recovery.

For whom

- Banks and financial institutions
- Non-banking financial companies
- Regulators of lending institutions
- Lawyers and law professionals
- Recovery agents

Date and Venue details

Date: 24th – 25th June, 2011

Venue: TBA, Mumbai

Time: 9:30 a.m. to 5:30 p.m.

On the first day, participants are expected to report at 9 am for registration.

Your Investment

The fee for this non-residential course is Rs 20000/- (USD 750) per participant.

Course fee includes:

- Tuition fees, Course Material
- Lunch and snacks during the breaks

Fees along with the Registration Form should be mailed with cheques payable to Vinod Kothari Consultants Private Limited and may be mailed as per details annexed.

Bookings can be cancelled by written intimation at least 3 days before the Course date, when a refund of fees after a 20% deduction on account of administrative charges shall be made. No refund is possible for cancellation thereafter or for no shows. We generally do not encourage proxies. We surely do not allow one person taking a part of the course and another person taking the other part.

About the Faculty



Vinod Kothari is the faculty for the present course.

Vinod Kothari is specialized on security interest, securitization, asset reconstruction and related areas. He is the author of *Securitisation, Asset Reconstruction and Enforcement of Security Interests*, third edition 2010, published by Wadhwa and Company.

Vinod Kothari was a member of the Asian Development Bank's advisory team to advise Govt of India on security interest laws, especially the

amendment of the SARFAESI Act.

Vinod Kothari also teaches corporate insolvency law as a guest faculty.

Vinod Kothari is also internationally recognised as author, trainer and consultant on specialised financial subjects, viz., securitisation, credit derivatives, accounting for financial instruments. As such, he lectures all over the world. The locations where he has lectured on these subjects include New York, Washington, London, Milan, Frankfurt, Luxembourg, Singapore, Hong Kong, Sydney, Colombia (South America), South Africa, Malaysia, Jordan, Dubai, Kuwait, Turkey, Egypt, Sri Lanka, Bangladesh, etc.

Author of Books:

- **Securitisation, Asset Reconstruction and Enforcement of Security Interests, 2010 Third edition:** This book is a detailed commentary on the law by the same name enacted in India. Besides a thorough and incisive commentary on the law, the book contains generic chapters dealing in detail with the law of enforcement of security interests in global context.
- **Editor - Guide to the Companies Act, 1956, A. Ramaiya, 17th Edition, 2010**
- **Credit Derivatives and Structured Credit Trading, 2009 edition:** This is one of the very few comprehensive texts on credit derivatives and is read all over the World.
- **Introduction to Securitisation by Frank J. Fabozzi and Vinod Kothari, July 2008** outlines the basics of securitization, addressing applications for this technology to mortgages, collateralized debt obligations, future flows, credit cards, and auto loans. The authors present a comprehensive overview of the topic with experience they have gathered through years of interaction with practitioners and graduate students around the world. This book contains coverage of such key topics as: structuring agency MBS deals and non-agency deals, credit enhancements and sizing, using interest rate derivatives in securitization transactions, asset classes securitized, operational risk factors, implications for financial markets, valuation of MBSs and ABSs, and applying securitization technology to CDOs.
- **Securitisation: The Financial Instrument of the Future, Third edition 2006:** Published by Wiley, this highly popular book runs over nearly 1000 pages, and is an internationally-read publication. The book has received rave reviews from readers and reviewers all over. The book explains securitisation techniques in lucid details and includes comprehensive coverage on multi-faceted issues relating to securitisation and international case studies to illustrate different aspects of securitisation.
- **Lease Financing and Hire purchase (4Th edition, 1996):** This book, first published in 1985, is widely recognised as the bible on leasing in the continent and has been the most popular text on the subject for last 15 years. The book runs over 2000 pages and has elaborate contents on leasing, hire purchase and similar credit agreements.
- Author of 3 Chapters in Handbook of Finance, (editor Frank Fabozzi), published by Wiley, USA

Lecturing:

- Regular speaker at professional institutes,
- Visiting faculty at Indian Institute of Management, Joka, Calcutta for several years. Currently, offering a course on structured finance, rated as one of the most popular courses (last term had 130 registrations).
- Guest faculty at National University for Juridical Sciences: the subject taught here are insolvency and credit interest enforcement laws in India and other countries. The course included a comparative study of the insolvency and creditors' rights in USA, UK and Australia.

Positions:

- Has been retained by the Asian Development Bank, Manila for two important projects: to advise the Govt. of India on reforming secured lending law in India; and to develop securitisation-related legal framework in the Asian region.
- Is the Director of Association of Leasing and Financial Services Cos., a body of over 500 top leasing companies in India and is editor of its Newsletter Fin-n-lease.
- Is the former Chairman of the Institute of Company Secretaries of India.
- Is the Executive Director of the Asian Securitisation Forum
- Is the Director on the Board of Ispat Industries Limited

Course Outline

Day 1

1. Basic law of secured lending:
 - a. Meaning of security interest
 - b. Different forms of security interest
 - i. Against movable and immovable property
 - ii. Possessory and non possessory security interest
 - iii. Mortgage and charges
 - iv. Conditional sales
 - c. Creation of security interest
 - d. Perfection of security interest
 - e. Guarantees and third-party security interests
 - f. Overview of security interest laws globally and emerging trends
2. Credit and security interest evaluation:
 - a. Credit evaluation of a funding proposal
 - b. Basics of evaluation and analysis of financial statements
 - c. Evaluation of the asset
 - d. Two critical ratios – loan to value ratio and debt service coverage
 - e. Movement of LTV ratio over time
 - f. Assessing residual value of the security interest
3. Evaluation of Lender's options
 - a. Choosing from out of a slew of measures
 - i. Enforce
 - ii. Restructure
 - iii. Settle
 - b. Making a prudent choice from out of slew of measures
 - i. Workouts and debt restructuring
 - ii. Enforcement of security interest – self help vs judicial
 - iii. Winding up applications
 - iv. SARFAESI Act action
 - v. Enforcement of security interest
 - vi. DRT action
 - c. Central Registry Rules
 - d. International practices
4. Self-help enforcement of security interests
 - a. When is self-help repossession available, and for what sort of assets should it be exercised
 - b. Recovery agents
 - c. RBI guidelines on recovery agents
 - d. Precautions to keep while taking recovery action
 - e. List of Dos and DONTs
 - f. Vicarious responsibilities of the lender on recovery action
5. Formal and informal workouts
 - a. Formal workouts
 - i. SICA/ BIFR/ NCLT
 - b. Informal workouts
 - i. Corporate debt restructuring

- c. Principles of debt restructuring

Day 2

1. SARFAESI Act

- a. Choosing the SARFAESI Act remedy
 - i. Is it the first or the last choice?
 - ii. Selecting assets to enforce the remedy
- b. Pre-requisites for action
- c. Serving of proper notice u/s 13 (2)
- d. Precautions to take while proceeding u/s 13 (4)
- e. Sale of assets and precautions to take before selling

2. Repossession and liquidation of collateral under of SARFAESI Act: Implementation issues

- a. Procedural steps in repossession action
- b. Procedural steps in sale of assets

- i. Ensuring transparency of the sale process
- ii. Common allegations against sale of assets

- c. Cases and experience on implementation of SARFAESI Act proceedings.

3. Resolution of assets through Asset reconstruction companies

- a. The trust mechanism and direct purchase mechanism
- b. Understanding the law, Regulations and RBI guidelines on sale of NPLs to ARCs
- c. The scope and limits of the powers of ARCs

4. Change in or Takeover of management by SC/ RC Guidelines, 2010

- a. Where all is takeover legally permissible
- b. Where all is takeover desirable
- c. International experience

About the Organisers

Vinod Kothari Consultants Pvt Ltd.

As imparter of training on leasing, securitisation, structured finance, credit derivatives, etc., its success is almost peerless. From the nerve-center of World financial markets to developing economies, it has been at variety of places, and has addressed variety of groups – bankers, investment bankers, regulators, lawyers, rating agencies, investors, students, etc. All the past workshops have received an overwhelming response drawing participants from different countries

Registration Details

Send your check for the participation fees along with the following details to the address mentioned below. Registration shall be confirmed on the realization of the check.

NAME:

DESIGNATION:

COMPANY NAME:

CONTACT DETAILS:

E-MAIL:

Contact Us:

Nidhi Bothra/ Bijoyeta Chakrabarty

Krishna Room No. 1012

224 AJC Bose Road

Kolkata- 700 017 (India)

Phone 91-33- 22817715/ 22811276

Fax 91-33-2281276

Email: bijoyeta@vinodkothari.com or

nidhi@vinodkothari.com