

Latest Update on SARFAESI Act 2023

RBI directs banks to display details of borrowers whose assets are taken under the SARFAESI Act, Gives Six months deadline

October 11, 2023: In a recent order to the nationalised banks, the RBI or the Reserve Bank of India has directed the Regulated Entities (REs) to display the details of the borrowers online. These are the borrowers whose secured assets have been taken into possession by the lenders under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The RBI has given a six-month deadline to the creditors and banks. Within the next six months, the lenders will have to publish the first such list online.

Information to be shared

The RBI has asked the banks to share details like the borrower's name, guarantor's name, borrower's address, guarantor's address, asset classification, outstanding amount, date of asset classification, details of the security possessed and the Title holder of the security possessed.

SARFAESI Act

or Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was formulated with an intent to empower banks to recover Non-Performing Assets (NPAs) without the intervention of a court. SARFAESI Act 2002 is a milestone in the recovery of NPAs.

The existing legal framework related to banking laws sometimes fails to cater to the ever-changing exigencies of the financial sector. This lack of a robust law was compensated by the formulation of the SARFAESI Act. The SARFAESI Act 2002 has helped a lot in recovering the defaulting loans and reducing the levels of non-performing assets (NPAs) in banks and other financial institutions.

Narasimham Committee and Andhyarujina Committee were constituted by the Central Government for the purpose of examining the overall reforms in the banking sector and determining the changes in the prevailing legal system for banks.

These committees suggested forming new legislation for securitization and empowering the financial institutions for the possession of the securities and selling them in due course without any court's intervention, and the recommendations materialized in the form of the SARFAESI Act.

Also Read: Indian Succession Act 1925

What is Sarfaesi Act, 2002, and where is it applicable?

SARFAESI Act is a law that allows Indian banks and financial institutions to sell or auction the assets/properties of credit defaulters without any intervention from the courts.

Under the SARFAESI Act, a Central Registry of Securitisation Asset Reconstruction and Security Interest (CERSAI) is also constituted. CERSAI is a completely online central registry of security interests. CERSAI was created to check the frauds, where multiple loans are taken from different banks using the same assets as collateral.

The latest amendment of Sarfaesi Act, 2002 states that "an act of regulating securitization and reconstruction of various financial assets and enforcement of security interest and in providing for a central database of security interests that are specifically created on the rights of property, and for those matters connected therewith or incidental thereto."

This SARFAESI Act deals with the below-mentioned aspects:

Registration and regulation of Asset Reconstruction Companies (ARCs) by the Reserve Bank of India (RBI).

Facilitating the securitization of the several financial assets of the financial institutions and banks or without the benefit of any underlying securities.

Promoting the seamless transferability of financial assets by means of ARC for acquiring financial assets of financial institutions and banks through the issuance of bonds or debenture or some other security which acts as a debenture.

SARFAESI Act is also responsible for Entrusting the Asset Reconstruction Companies (ARCs) for raising funds by issuing security receipts to the set of qualified buyers.

Facilitating the overall reconstruction of several financial assets that are acquired while exercising necessary powers for enforcing the securities or changing of management or any other power that are proposed to be conferred on the financial institutions and banks.

Defining the 'security interest' to be a kind of security that includes mortgage and charge on the immovable properties that are given for due repayment of any financial assistance given by any financial institution or bank.

SARFAESI Act enables the classification of the borrower's account as a non-performing asset in accordance with the different directions that are given or under the guidelines being issued by the Reserve Bank of India (RBI) from time to time.

The officers who are authorized would exercise the different rights of a secured creditor on this particular behalf in accordance with the rules that are being set by the Central Government of India.

The Central Government of India may set up or cause to be set up a Central Registry for the purpose of registering transactions that relate to securitization, asset reconstruction, and creation of the security interest.

An appeal against the action of any financial institution or bank to the concerned Debts Recovery Tribunal and a second appeal to the Appellate Debts Recovery Tribunal.

Non-application of the several legislation to security interests in agricultural lands, loans that are lesser than Rs. 1 lakh, and cases where 80 % of the loans are being repaid by the borrower.

SARFAESI Act paves the way for applying the proposed legislation to the financial institutions and banks and empowerment of the Central Government for extending the application of the legislation to the financial companies under the non-banking sector and also other entities.

Also Read: [Land Acquisition Act 2013](#)

What are the objectives of the SARFAESI Act, 2002?

The major objectives of the Sarfaesi act 2002 are as follows:

Rapid or efficient recovery of the NPAs - non-performing assets of the financial institutions and banks.

Allows financial institutions and banks to auction the residential and commercial properties when a borrower becomes a defaulter and does not repay his/her loan.

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What are the necessary documents required in the Sarfaesi Act, 2002?

E-Form CHG-9 or e-Form CHG-1 is required to be filed for the application of:

Registration or creation

Modification of charge that includes particular of the modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act 2002). The documents that are required in this particular context are as follows:

Details of charges

Registration Certificate

An instrument that is created for the charge

A copy of the instrument that creates or modifies the charge

Hypothecation Deed

Sanction Letter

In those cases when e-Form is digitally signed, any of the following are required:

DSC of the charge holder

Director Identification Number (DIN) of the Director

PAN of the CEO, CFO, Manager

The Company Secretary's Membership Number

Formation of SARFAESI Act, 2002

The SARFAESI Act, 2002 was formulated for:

Regulating securitization and reconstruction of financial assets

Enforcing the security interest for

Matters that are connected therewith or incidental thereto.

SARFAESI Act was extended to the entire India. Sarfaesi act 2002 rules are enforced for amending the four following laws:

Reconstruction and securitization of Financial Assets and Enforcement of Security Interest Act, 2002.

The recovery of the debts due to the Banks and Financial Institutions Act, 1993 (RDDBFI).

Depositories Act, 1996 and for those matters that are connected therewith or incidental thereto.

Indian Stamp Act, 1899.

SARFAESI Act 2002: Applicability

SARFAESI Act is mainly applicable in the following cases:-

Asset reconstruction company registration

Resolution of disputes

Measures of asset reconstruction

Acquisition of interest or rights in financial asset

Why is the Sarfaesi Act 2002 important?

The cooperative banks were not initially covered under the definition of banks for which the SARFAESI Act was applicable. In the year 2003, a major notification was issued for bringing the cooperative banks within the class of banks entitled to using the SARFAESI Act .

In the year 2013, the Indian government amended this Act for including the cooperative banks formally under the definition of banks that are eligible to use this Act.

After that, there have been petitions that were filed for questioning the authority of the notification and the power of Parliament for amending the SARFAESI Act , 2002. On 5th May 2002, the Supreme Court had resolved this particular matter by ruling in favor of the operational cooperative banks invoking the SARFAESI Act .

This particular move has considerably helped the cooperative banks in avoiding inordinate delays in recovering the bad loans that are involved in the civil courts and cooperative tribunals.

The Indian Banking System now has 1,544 urban cooperative banks and 96,248 rural cooperative banks with substantial deposits from retail investors.

Considering their size, for the purpose of seamless functioning of the cooperative banks, speedy recovery of the default loans is very critical.

You can download the SARFAESI ACT PDF by clicking [here](#).

Latest Updates: SARFAESI Act 2002

Banks free to repossession property: Punjab and Haryana High Court has announced that banks can repossess the property if they are facing large scale loan defaults. The repossession can be done as per various sections of the SARFAESI Act 2002.

“This court has not granted any stay on the proceedings to be undertaken by the banks/financial institutions, under Sections 13 and 14 of the SARFAESI Act. It is further clarified that this court has also not granted any kind of interim stay in respect of the steps to be taken by the banks/financial institutions for recovering the amount on account of car loans and gold loans. Also HC has passed an interim order, on April 28, 2021, that said that ‘any bank or financial institution shall not take action for auction in respect of any property of any citizen or person or party or anybody corporate till June 30, 2021’. It has now, however, clarified that ‘the object and purpose of passing the interim order was only to stay the auction proceedings in respect of residential accommodations’.”

Conclusively, in accordance with the Sarfaesi Act 2002 , the registration and regulation of securitization companies or reconstruction companies is done by RBI. These companies are authorized to raise funds by issuing security receipts to qualified institutional buyers (QIBs), empowering banks and FIs to take possession of securities given for financial assistance and sell or lease the same to take over management in the event of default.

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Frequently asked questions

What are the salient features of the Sarfaesi Act, 2002?

As per the Sarfaesi Act, 2002, the creditors are being conferred the right of seizing the secured assets and selling them off for recovering the dues promptly, bypassing the costly and time-consuming legal procedure through the courts.

What is the set limit of the Sarfaesi Act, 2002 ?

The Ministry of Finance has announced a budget that lowered the maximum loan size eligibility for debt recovery by NBFCs under the Sarfaesi Act, 2002 to be 20 lacs from the previous value of Rs. 50 lacs.

Which loans are not covered under Sarfaesi Act, 2002?

The Sarfaesi Act is not applicable for money/security that is issued under the India Contract Act or the Sale of Goods Act, 1930. Any nature of the conditional sale, lease, or hire-purchase in which no security interest has been created. Any rights of the unpaid seller under Section 47 of the Sale of Goods Act, 1930 are also not covered under this Act.

When can Sarfaes Act be initiated?

Under the Sarfaesi Act, a lender has the right to take possession of the property or mortgaged assets after a notice of 60 days. Sarfaesi Act is applicable in the case of home loans, loans against property, and loans against collateral for MSMEs.

Who has the power to issue a Sarfaesi notice ?

In case a borrower is unable to repay his/her loan for a period of six months consecutively, the lender bank has the legal right of sending a notice to him and then asking him to clear all the dues within 60 days.

How do the banks misuse the Sarfaesi Act at times?

The assets that are financed have either not been sold, and the proceeds have been mutualized. The falsification/misrepresentation of records, removal/disposal of securities without the knowledge of the bank, fraudulent transaction by the fraudulent transactions by the borrower.

Which properties are Sarfaesi compliant?

The Sarfaesi Act applies to any immovable property, including agricultural land as well.

What is the full form of the Sarfaesi Act, 2002 ?

The full-form of Sarfaesi Act, 2002 is Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002.