

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)

As per this Act, "Securitization" means acquisition of financial assets by any Securitization Company or Reconstruction Company from any originator, whether by way of raising of funds by such Securitization Company or a Reconstruction Company from qualified institutional buyers by way of issue of security receipts representing undivided interest in such financial assets or otherwise.

The Securitization Act is expected to bring about a sea change in the activities of the banking system, which is expected to be carried out on a war footing. A Bank's lending activity, as we know, has four basic functions; originating the loan - means making the loan, Funding; it means the loan appears as an asset on the balance sheet, Servicing; it means collecting the payments of interest and principal, and Monitoring; it means conducting periodic surveillance to ensure that the borrower maintains the financial ability to repay the interest and loan.

Securitized lending introduces the possibility of selling assets on a bigger scale and eliminating the need for funding and monitoring. The securitized lending function has only three steps: originate, sell, and service. This change from a four-step process to a three-step function has been described as the fragmentation or separation of traditional lending.

The Act deals with three important aspects.

- 1. Enforcement of Security Interest by secured creditor (Banks/Financial Institutions) where secured interest means right, title and interest of any kind whatsoever upon property, created in favor of any secured creditor and includes any charge, hypothecation, assignment other than those specified below.**
- 2. Transfer of Non-Performing Assets (NPA) to Asset Reconstruction Company, which will then dispose off those assets and realize the proceeds.**
- 3. To provide a legal framework for securitization of assets.**

The provisions of the Act facilitate the following:

- 1. The registration and regulation of securitization companies or reconstruction companies by the Reserve Bank of India.**
- 2. It helps in securitization of financial assets of Banks and Financial Institutions with or without the benefit of underlying securities.**

3. It makes easy the transferability of financial assets by the Securitization Company or Reconstruction Company to acquire financial assets of Banks and Financial Institutions by issue of debentures or bonds or any other security in the nature of a debenture.

4. This Act gives the powers to the Securitization Companies or Reconstruction Companies to raise funds by issue of security receipts to qualified institutional buyers and allows the Securitization Company or Reconstruction Company registered with the Reserve Bank of India to be declared as a public Financial Institution for the purpose of Section 4A of the Companies Act, 1956.

5. The Act allows reconstruction of financial assets acquired by exercising powers of enforcement of securities or change of management or other powers, which are proposed to be conferred on the Banks and Financial Institutions.

6. The Act authorizes Banks and Financial Institutions to take possession of securities given for financial assistance and sell or lease the same or take over management in the event of default, i.e., classification of the borrower's account as non-performing asset in accordance with the directions given or under guidelines issued by the Reserve Bank of India from time to time.

7. The Act defines 'security interest' as any type of security including mortgage and charge on immovable properties for due repayment of any financial assistance given by any Bank or Financial Institution.

8. It allows the secured creditor to exercise the rights by one or more of its officers authorized in this behalf in accordance with the rules made by the Central Government.

9. It allows for an appeal to the concerned Debts Recovery Tribunal against the action of any Bank or Financial Institution and a second appeal to the Appellate Debts Recovery Tribunal.

10. It provides for the setting up or causing to be set-up a Central Registry by the Central Government for the purpose of registration of transactions relating to securitization, asset reconstruction and creation of security interest.

11. Application of the proposed legislation initially to Banks and Financial Institutions and empowerment of the Central Government to extend the application of the proposed legislation to non-banking financial companies and other entities.

12. Non-application of the proposed legislation to security interests in agricultural lands, loans not exceeding Rs.1 lakh and cases where the borrower repays 80 percent of the loan.