

IBA finalises revised inter-creditor agreement

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In keeping with the Reserve Bank of India's (RBI) 'Prudential Framework for Resolution of Stressed Assets', the Indian Banks' Association (IBA) has put together an inter-creditor agreement (ICA) incorporating details relating to meetings of lenders, voting matters, payment to dissenting lenders and additional funding.

As per the RBI framework, in cases where a resolution plan (RP) is to be implemented, all lenders have to enter into an ICA during the 30-day review period (given to lenders after the first default to decide on the resolution strategy and implementation) to provide for ground rules for finalisation and implementation of the RP with respect to borrowers with credit facilities from more than one lender.

A revised ICA was necessitated after the RBI put together its framework as a replacement to the defunct February 12 circular on the 'Revised Framework for Resolution of Stressed Assets', which was struck down by the Supreme Court in April.

Lenders' coordination

When it comes to lenders' meetings, the ICA says that the lead lender should provide periodic updates to others in relation to formulation and preparation of the RP.

The lead and other lenders should work in a manner that achieves resolution of the borrower's account, for which they should consult, cooperate and coordinate with each other.

The lead lender may convene a meeting of lenders as and when it considers necessary, and if a request to that effect is made by lenders whose share (as of the commencement of the review period) in the aggregate outstanding amounts to at least 33 per cent (by value).

When it comes to voting by lenders, the lead lender must place the proposed valuation methodology to compute the resolution value and the proposed RP for vote before lenders.

If any lender abstains from voting on any matter, they shall be deemed to have voted against it by the lead lender.

Every lender shall ensure that in any meeting of lenders, it is represented by persons who are competent and authorised to take decisions on the spot, without deferring them for internal approval.

After the voting has been concluded, the lead lender shall announce the decision taken on items along with the names of lenders who voted for or against, or abstained from voting on the matter.

The RP shall provide for payment due to the dissenting lenders, which should not be less than the liquidation value. Such payment shall be made in accordance with the terms of the approved RP.

Any additional funding proposed during the resolution process or the implementation of the RP shall be on terms as approved by the majority lenders.

The lead lender shall, along with RP, provide the liquidation value due to each lender as computed by the appointed registered valuer(s).

During the resolution process and implementation of the RP — that has been approved by the majority lenders in accordance with ICA and the regulatory framework — the lenders (including any dissenting lender) should agree that they shall not initiate any legal action or proceedings (even those under the IBC), which may jeopardise the successful implementation of the RP, against the borrower or any other person.

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