Handbook
On

Corporate Debt Restructuring

resurgentindia

Preface

The world is a global village. This saying was propagated a few years ago. The truth of this saying is starkly evident today when we look at the global economy and its ripple effect on our economy. The world is in such a situation that we cannot wish away the economic woes being faced by other countries across the globe. Whatever economic problems are evident in other countries are bound to have an effect on other countries as well – only the severity of the effect may vary from country to country.

Having said that it is evident that our economy is also feeling the effects of the global economic woes. The last time around because of the strong and timely steps taken by the Reserve Bank of India as well as the Government of India the effect of the economic travails were reduced to a large extent – both for the economy as also for industry at large. This time around also proactive steps are being taken by all concerned. However the fallout is inevitable in as much as the debt servicing capacity of corporates gets adversely affected. This leads to a situation where they are not in

a position to service the debts which in turn forces the borrowers and their lenders to finds ways and means to ease this stress. Corporate Debt Restructuring (CDR) is one such step.

Everyone is aware about the magnitude CDR is assuming. The numbers are huge but it should not be inferred that the figure under CDR would add to the Non-Performing Assets (NPA) of banks. Past experience shows that only a small percentage of accounts under CDR would slip to NPA category. Notwithstanding this it was felt that the issue should be discussed and deliberated to get a holistic view of the whole process.

In this handbook we have tried to pen down few of the important issues in the CDR mechanism. There are other issues also details of which can be accessed for the website of RBI as well as the CDR site (www.rbi.org.in and www.cdrindia.org). I am quite hopeful that all of us would gain further insight into the CDR mechanism.

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A Overview

The global financial crisis has distressed the corporate sector in a number of countries, affected both by a tightening of credit and weaker consumer demand. One of the most daunting challenges faced by economic policy makers is the large scale corporate restructuring. The objectives of large-scale corporate restructuring are in essence to restructure viable corporations and liquidate nonviable ones, restore the health of the financial sector, and create the conditions for long-term economic growth.

Aggressive hikes in benchmark interest rates, severe slowdown in the global economic growth and significant fall in the exchange rate of the Indian rupee has adversely impacted the debt servicing capability of Indian Corporates and is reflected by the rise in non-performing assets (NPAs) levels. An even bigger concern is the rising threat of loans getting restructured as high inflation and interest rates impact demand and reduce the pricing power of the corporates. FY12 saw a massive spurt in restructured loans, both at an absolute level and as a percentage of total credit, as corporate cash flows have been affected drastically.

This brought in an era of Corporate Debt Restructuring (CDR). It seeks to recognize impairment by allowing the reorganization of outstanding debt obligations by lessening the interest rates and rescheduling the instalments by extending the term of repayment. This enables increase in the ability of the borrower to meet debt obligations by letting the lender waive in part or convert a part of debt into equity.

The restructured standard assets at the end of March 2012 have increased by 46 per cent to `1,55,000 crore and are poised to go

According to the CDR Cell, during fiscal 2012 banks have restructured ` 64,500 crore—an increase of 156% over the previous year. This makes restructuring the highest since its launch in 2001. It has helped revive the macro-economic conditions for both the banks by promptly recognizing and providing for the impairment of their non-performing assets well in time.

The borrowers are also able to reduce their interest and principal debt burdens by providing for sufficient breathing space to genuinely viable units to enable them to bring about a turnaround without having to resort to tedious DRT and court procedures or end in winding up proceedings.

From an economic point of view, CDR can be described as a proactive measure to not let companies land into a troublesome financial situation from where they cannot make a recovery. It can be explained as a voluntary and non-regulatory method for organizations to deal with their dues. This is done by increasing the time needed to pay the debts back and bringing down the rates. This also lets the company add to its capability to pay its debts. In some cases, the lenders forego certain amounts of the debt amount in lieu of equity acquisition in the company.

Need for Corporate Debt Restructuring

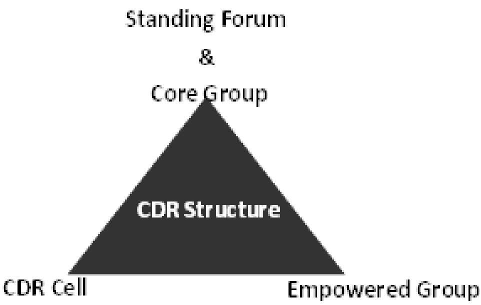
Banks have to face various difficulties while restructuring their large exposures specially which are involving more than one lender, under consortium / multiple banking arrangements. In the background of these difficulties, need for such a specialized institutional mechanism arose. If a restructuring involve a single bank, it becomes easier for the banks to negotiate the terms of restructuring of their own exposure with the customers but where a restructuring involved multiple lenders, banks find it difficult to co-ordinate their individual negotiation and monitoring efforts with the other banks involved.

Keeping in mind the above facts, Reserve Bank of India put in place the scheme of CDR in August 2001 based on the mechanism prevalent in countries which were already seized of the matter e.g. U.K., Thailand, Korea, Malaysia etc. These guidelines were finalized after extensive discussion between Government of India, Reserve Bank, Banks and FIs.

The main objective of the CDR framework was to ensure timely and transparent mechanism for restructuring the corporate debts of viable entities facing problems, outside the purview of BIFR, DRT and other legal proceedings, for the benefit of all concerned.

Structure:

CDR mechanism has three tier structures



1. **CDR Standing Forum and its Core Group**

   It is a representative general body of all financial institutions and banks participating in CDR mechanism, which will lay down policies and guidelines, and monitor the progress of corporate debt restructuring.

   It is a self-empowered body which lays down policies and guidelines to be followed by the CDR Empowered Group and CDR Cell for debt restructuring and ensures their smooth functioning and adherence to the prescribed time schedules for debt restructuring. The CDR Standing Forum comprise of Chairman & Managing Directors of all banks and financial institutions and Executive Director of RBI. Since institutions like UTI, GIC, LIC may have assumed exposures on certain borrowers; these institutions also participate in the CDR mechanism. The Forum elects its Chairman for a period of one year.CDR Standing Forum meets once in every six months to review and monitor the progress of corporate debt restructuring mechanism.

   A CDR Core Group is carved out of the CDR Standing Forum to assist the Standing Forum in convening the meetings and taking decisions relating to policy, on behalf of the Standing Forum. The CDR Core Group lays down the policies and guidelines to be followed by the CDR Empowered Group and CDR Cell for debt restructuring. The CDR Core Group also lays down guidelines to ensure that over-optimistic projections are not assumed while preparing/ approving restructuring proposals especially with regard to capacity utilization, price of products, profit margin, demand, availability of raw materials, input-output ratio and likely impact of imports / international cost competitiveness.

2. CDR Empowered Group

The individual cases of corporate debt restructuring are decided by the CDR Empowered Group, consisting of ED level representatives of financial institutions and banks who have an exposure to the concerned company. Voting will be in proportion to the exposure of the lenders only.

The group considers the preliminary report of all cases of requests of restructuring, submitted to it by the CDR Cell. After the Empowered Group decides that restructuring of the company is prima-facie feasible and the enterprise is potentially viable in terms of the policies and guidelines evolved by Standing Forum, the detailed restructuring package will be worked out by the CDR Cell in conjunction with the Lead Institution.

3. CDR Cell

The CDR Cell initially scrutinize the proposals received from borrowers / lenders, by calling for proposed rehabilitation plan and other information and put up the matter before the CDR Empowered Group. If found feasible, CDR Cell will proceed to prepare detailed rehabilitation plan with the help of lenders and, if necessary, experts to be engaged from outside. If not found prima facie feasible, the lenders may start action for recovery of their dues.

CDR Mechanism can be joined by all the banks and financial institutions. It can also be joined by Non Banking Finance Companies (NBFCs), Asset reconstruction Companies (ARCs), State Level Institutions (SLIs) and Co-Operative Banks.

CDR Structure

Standing Forum & Core Group

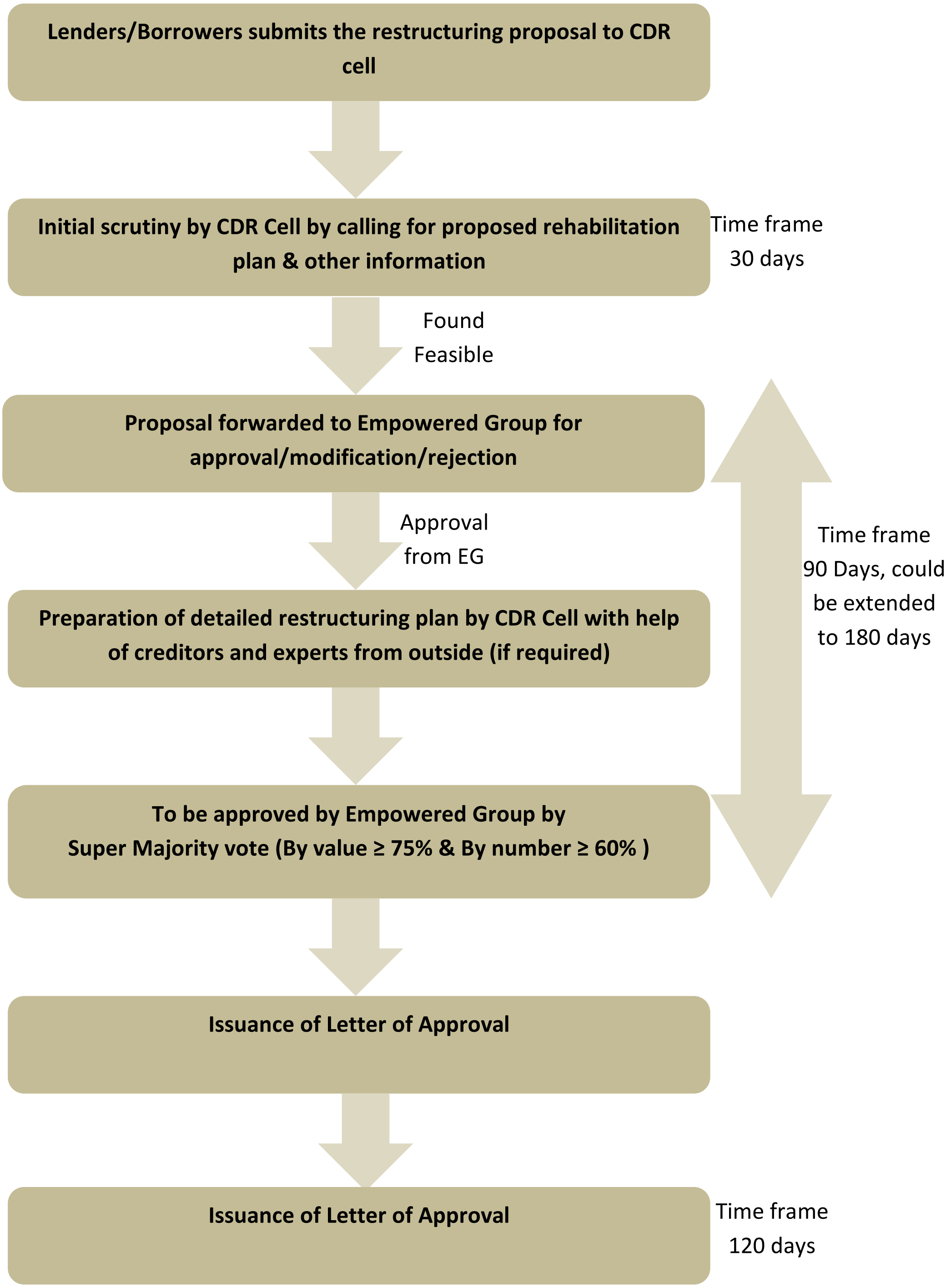
- Lays down policies & guidelines to be followed by EG and CDR Cell for debt restructuring
- Comprise of MD and Chairman of Banks & FIs along with Executive Director of RBI.

Empowered Group (EG)

- Comprise of ED level representative of Banks & FIs who have exposure in the concerned company
- Decides whether the restructuring is feasible or not and potentially viable.

CDR Cell

- Initial scrutiny of proposal
- Prepares detail restructuring plan if feasibility approved by EG.


Lenders/Borrowers submits the restructuring proposal to CDR cell
Initial scrutiny by CDR Cell by calling for proposed rehabilitation plan & other information
Time frame 30 days
Found Feasible
Proposal forwarded to Empowered Group for approval/modification/rejection
Approval from EG
Time frame 90 Days, could be extended to 180 days
Preparation of detailed restructuring plan by CDR Cell with help of creditors and experts from outside (if required)
To be approved by Empowered Group by Super Majority vote (By value ≥ 75% & By number ≥ 60%)
Issuance of Letter of Approval
Issuance of Letter of Approval
Time frame 120 days

Eligibility Criteria

- The scheme will not apply to accounts involving only one financial institution or one bank. The CDR mechanism will cover only multiple banking accounts / syndication / consortium accounts with outstanding exposure of ` 10 crore and above by banks and institutions.

- The accounts may be eligible for consideration under the CDR mechanism provided; the initiative to resolve the case under the CDR mechanism is taken by at least 75% of the lenders by value and 60% by number of creditors.

- BIFR cases are not eligible for restructuring under the CDR mechanism. However, large value BIFR cases may be eligible for restructuring under the CDR mechanism if specifically recommended by the CDR Core Group.

Legal Basis

- CDR, a non-statutory mechanism, is a voluntary system based on Debtor-Creditor Agreement (DCA) and Inter-Creditor Agreement (ICA).

- The Debtor-Creditor Agreement (DCA) and the Inter-Creditor Agreement (ICA) provides the legal basis to the CDR mechanism. The debtors have to accede to the DCA, either at the time of original loan documentation (for future cases) or at the time of reference to Corporate

Debt Restructuring Cell. The ICA signed by the creditors will be initially valid for a period of 3 years and subject to renewal for further periods of 3 years thereafter.

- Lenders and other third parties who have not joined the CDR mechanism, could join CDR mechanism of a particular corporate by signing transaction to transaction ICA, wherever they have exposure to such corporate, if permitted by RBI. RBI has now permitted transaction to transaction membership to ARCs, NBFCs, State Level Institutions and Co-operative Banks.

Eligibility of Category I & II under CDR Mechanism

Category I

The Category I CDR mechanism is applicable to accounts, which are classified as 'standard' and 'sub-standard'. There may be a situation where a small portion of debt by a bank might be classified as doubtful. In that situation, if the account has been classified as ‘standard’/ ‘substandard’ in the books of at least 90% of lenders (by value), the same would be treated as standard/ substandard, only for the purpose of judging the account as eligible for CDR, in the books of the remaining 10% of lenders.

Category II

There have been instances where the projects have been found to be viable by the lenders but the accounts could not be taken up for restructuring under the CDR mechanism as they fell under ‘doubtful’ category. Hence, second category of CDR would be there for cases where the accounts have been classified as ‘doubtful’ in the books of the lenders, and if a minimum of 75% of creditors (by value) and 60% creditors (by number) satisfy themselves of the viability of the account and consent for such restructuring, subject to the following conditions:

- It will not be binding on the creditors to take up additional financing worked out under the debt restructuring package and the decision to lend or not to lend will depend on each bank/FI separately. In other words, under the second category of the CDR mechanism, the existing loans will only be restructured and it would be up to the promoter to firm up additional financing arrangement with new or existing creditors individually

- All other norms under the CDR mechanism such as the standstill clause, asset classification status during the pendency of restructuring under CDR, etc., will continue to be applicable to this category also.

BIFR Cases: Eligibility Criteria

In terms of RBI guidelines on CDR Mechanism, corporates with aggregate outstanding exposure of `10 crore and above are eligible for restructuring under CDR Mechanism. The guidelines also allow restructuring of large-value BIFR cases for restructuring under the CDR mechanism if specially recommended by the CDR Core Group. As per the Core Group decision, one of the eligibility criteria for taking up BIFR cases for restructuring under CDR Mechanism is minimum cut-off limit of `15 crore of aggregate outstanding exposure of Banks/FIs. The exposure would exclude equity and preference shares subscribed to by FIs/Banks. Details of eligibility criteria, financial parameters, etc. to be complied with in respect of BIFR cases are given in Annexure I.

In case regulatory benefits are to be availed for such BIFR cases, then regular financial parameters applicable to normal cases would be applicable to such BIFR cases also, in addition to the stipulation that Profit after Tax should be positive in 5 years.

Case of Wilful Defaulters-Eligibility Criteria

While corporates indulging in frauds and malfeasance even in a single bank will continue to remain ineligible for restructuring under CDR mechanism as hitherto, the Core Group may review the reasons for classification of the borrower as wilful defaulter specially in old cases where the manner of classification of a borrower as a wilful defaulter was not transparent and satisfy itself that the borrower is in a position to rectify the wilful default provided he is granted an opportunity under the CDR mechanism. Such exceptional cases may be admitted for restructuring with the approval of the Core Group only. The Core Group may ensure that cases involving frauds or diversion of funds with malafide intent are not covered.

In view of the above, details of eligibility criteria to be followed in respect of cases of wilful defaulters etc. are given in Annexure II.

Borrower Classification for Stipulation of Standard Terms & Conditions

It is observed that borrower-Corporates get into a stress situation because of various external and internal factors. The restructuring schemes are accordingly formulated envisaging various actions on the part of the borrowers and participating lenders. Based on experience and various features of the borrower-corporates and their promoters/sponsors, the borrower-corporates are categorized into four Classes for the purpose of stipulation of standard terms & conditions under the CDR Mechanism. The classification is as under:

1. Borrower Class ‘A’: Corporates affected by external factors pertaining to economy and Industry.

2. Borrower Class 'B': Corporates/promoters affected by external factors and also having weak resources, inadequate vision, and not having support of professional management.

3. Borrower Class 'C': Over-ambitious promoters; and borrower-corporates which diverted funds to related/unrelated fields with/without lenders' permission.

4. Borrower Class ‘D’: Financially undisciplined borrower-corporates.

   The classification of each borrower-corporate shall be decided at the meeting of the CDR Empowered Group (EG), whereat the Final Restructuring Proposal is approved.

Decision Process in CDR Mechanism

A decision of the CDR Empowered Group relating to prima facie feasibility and/or final approval of a Restructuring Scheme shall be taken by a Super-Majority Vote at a duly convened meeting, after giving reasonable notice, to the Lenders and to the eligible Borrower.

In case any change/alteration/modification to the Approved Restructuring Scheme is required, the Referring Lender/CDR Cell shall refer the same to the CDR Empowered Group and the decision of the CDR Empowered Group relating to such changes/alteration/modification shall be taken by a Super-Majority Vote at a duly convened meeting, after giving reasonable notice, to the Lenders and to the Eligible Borrower.

[Super-majority Vote as above mentioned is defined as follows: "Super-Majority Vote" shall mean votes cast in favour of a proposal by not less than sixty percent (60%) of number of Lenders and holding not less than seventy-five percent (75%) of the aggregate Principal Outstanding Financial Assistance.]

Lenders not having mandate at the time of CDR EG meeting could furnish their stand shortly after the meeting but not later than the next meeting and their stand if received by then should be taken into account for voting, and

- Lenders not furnishing their stand before the next CDR EG meeting should be excluded from voting.

- In certain matters like right of recompense, pre-payment premium, sharing of securities etc. (for original CDR debts) in which only the original CDR lenders' interests were required to be protected, the exposure of new lenders in the account should not be included for counting 75% by value and 60% by number of members for super majority vote, since after considering the voting power of new lender(s), the decisions in the above matters would get affected. In all other matters, exposure of all the CDR lenders, as at the end of previous quarter, should be taken for the purpose of voting.

Communication of Decision of CDR Empowered Group (EG):

To avoid delay in communication of decision of CDR Empowered Group after approval of restructuring package, following procedure is considered for the issuance of Letter of Approval (LOA):

I. CDR cell shall issue LOA/convey the decision of CDR EG to the lenders on approval of the minutes of CDR EG by the Chairman of CDR EG.

II. On confirmation of minutes of CDR EG, the amendments, if any, in the LOA/decision of CDR EG would be conveyed to the lenders and final LOA/letter conveying decision of CDR EG would be issued to the lenders and the company.

III. In case LOA/decision of CDR EG consists of refinancing of debt/settlement from the funds of private strategic investors, the date of issuance of final LOA/decision of CDR EG to the company after confirmation of minutes of CDR EG, may be treated as the reference date for the purpose of outer time limit for refinancing/settlement of debt as stipulated in CDR EG decision.

Financial Viability Parameters

The viability parameters should be compared with the industry averages and suitable comments should be incorporated in the Final Restructuring Package. Additionally, capacity utilization, price realization per unit and Profit before Interest, Depreciation, and Tax (PBIDT) of the borrower-corporate should be compared with the relative industry averages. In the event the indicators are not in consonance with the viability benchmarks or industry averages, suitable qualitative comments should be incorporated justifying the variations.

- ROCE = 5 yr. G Sec + 2 %
- For 7 yrs. DSCR > 1.25, Year to year >1, For 10 yrs. > 1.33
- Avg. Cost of Capital – IRR ≥ 1%
- Gross Profit Margin should be comparable to Industry average

I. Return on Capital Employed (ROCE) – Minimum ROCE equivalent to 5 year G-Sec plus 2% may be considered as adequate

II. Debt Service Coverage Ratio (DSCR) - The adjusted DSCR should be >1.25 within the 7 years period in which the unit should become viable and on year-to-year basis DSCR to be above 1. The normal DSCR for 10 years repayment period should be around 1.33:1.

III. Gap between Internal Rate of Return (IRR) and Cost of Capital – The benchmark gap between IRR and Average Cost of Funds should be at least 1%.

IV. Extent of Sacrifice – The sacrifice on the part of lenders would be waiver of liquidated damages and in some cases compound interest. Waiver of simple interest and principal should be resorted to in deserving

- Waiver of simple interest and principal should be resorted
- Benchmark Loan Life Ratio (LLR) of 1.4

cases only. Economic sacrifices in the form of reduction in interest/coupon rate should be avoided. While the thrust of the restructuring exercise should be on recovering the maximum possible amount from the borrowers, conversion of a part of the sacrifice into equity or any other instrument should also be explored. This would be beneficial from the point of view of sharing the upside when the fortunes of the company improve pursuant to restructuring.

V. Break-Even Analysis – Operating and cash break-even points should be worked out and they should be comparable with the industry norms.

VI. Gross Profit Margin (GPM) - GPM is considered as a good indicator of the reasonableness of the assumptions underlying the profitability projections, it is necessary that various elements of profitability estimates such as capacity utilization, price trend and price realization per unit, cost structure, etc. should be comparable to those of the operating units in the same industry. Wide variation, if any, of company's GPM from the industry average would be required to be explained with qualitative information.

VII. Loan Life Ratio (LLR) – Benchmark LLR of 1.4, which would give a cushion of 40% to the amount of loan to be serviced, may be considered adequate.

Time Frame for Processing and Implementation of Restructuring Schemes

The Flash Reports and Final Restructuring Proposals should be circulated ten days before and Review Status Notes, seven days before the meeting of the CDR Empowered Group (EG) to the Nodal Officers of all participating lenders.

The Final Restructuring Proposal should be submitted to the CDR EG at the earliest after clearance of the Flash Report so that the final package may be approved by CDR EG within a period of 60 days from the date of admission of the Flash Report, except for large and complicated cases, to be decided by CDR EG, for which the time frame would be 90 days. If the final decision on a particular case is not taken within the stipulated time frame i.e. 60/90 days, as the case may be, the restructuring proposal would automatically be treated as closed unless extension of time beyond 60/90 days is specially sought by the Referring Institution (up to a maximum limit of 180 days) and the same is permitted by the CDR Core Group. Such closed cases would be considered for re-entry in the CDR mechanism only with the permission of the Core Group.

- A time span of 45 days from the date of issue of Letter of Approval (LOA) by CDR Cell will be available to individual lenders for sanctioning the approved CDR package and further 45 days to lenders for its implementation. However as per RBI guidelines, approved CDR package should be implemented within 120 days from the date of issuance of LOA. This may be considered as outer time limit for the implementation of approved CDR package.

- Any delay in sanction and implementation of the restructuring package will be construed as an event of non-compliance and in terms of the Inter-Creditor Agreement, non-complying lenders might be called upon to pay compensation as might be determined by the CDR Core Group.

- All cases for which CDR Core Group has given in-principle approval for Re-entry, Rework, entry of BIFR cases or cases of Wilful Defaulters should be finalised and referred to CDR EG within 60 days of approval by CDR Core Group.

- Time frame for the execution of MRA/TRA: To avoid undue delay in execution of MRA and TRA, following time frame is prescribed:

I. On approval of the restructuring package, Monitoring Institution (MI) should immediately circulate draft MRA incorporating necessary modifications in terms of restructuring package, without waiting for the sanction letter from individual members.

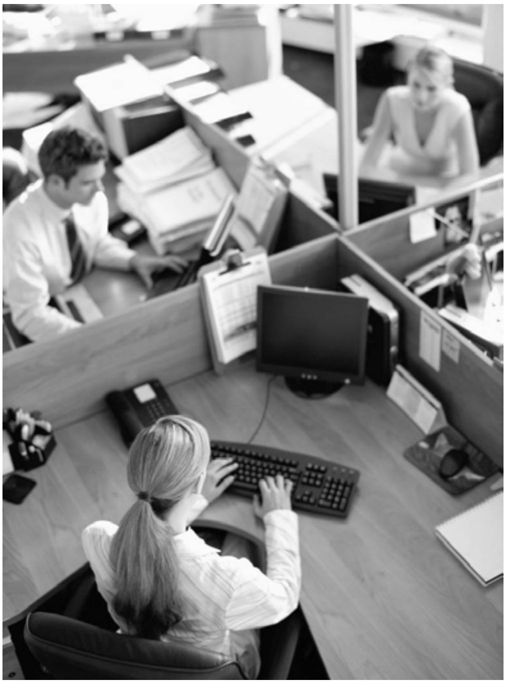
II. Lenders should convey their observations/suggestions within three weeks of receipt of draft MRA from MI. If no communication is received from lender(s) within three weeks, it may be treated as if the lender has no objection to the draft MRA.

III. Thereafter, MI should incorporate relevant suggestions/modifications to the draft MRA and fix the date of execution of MRA within a week's time.

IV. Similarly, TRA Bank should circulate the draft TRA incorporating necessary modifications in terms of restructuring package and circulate the same to the lenders on receipt of letter of approval from CDR cell.

V. The lenders shall convey their suggestions/modifications within three weeks of receipt of draft TRA. If no communication is received from lender(s) within three weeks; it may be treated as if the lender has no objection to the draft TRA.

VI. Thereafter, TRA banks should incorporate relevant suggestions/modifications to the draft TRA and fix the date for execution of TRA within a week's time.



Monitoring Mechanism

Effective monitoring of the progress of implementation of restructuring schemes is critical to the success of CDR Mechanism. Accordingly, a Monitoring Mechanism has been evolved as part of the CDR Mechanism. The Mechanism comprises Monitoring Institution (Referring Institution), Monitoring Committee (MC) and external agencies of repute to complement monitoring efforts and also to carry out work of Lenders' Engineer/ Concurrent Audit/ Special Audit/ Valuation etc.

CDR EG shall constitute an MC to oversee the implementation of the approved Restructuring Scheme. The MC shall generally comprise one term lender, one working capital bank, one minority lender and the CDR Cell. MC is a recommendatory body and does not have authorisation to accord any approval.

All outstanding matters should be brought by the Monitoring Institution to MC meetings for discussion / resolution so that at the EG meetings, a final view/ consensus may be arrived at expeditiously. The Lender who makes the reference to CDR mechanism or any other Bank/Financial Institution as per the decision of CDR Empowered Group is called a Monitoring Institution. CDR Empowered Group can also consider appointment of transaction specific member as Monitoring Institution on a case-to-case basis.

MC shall report the progress of implementation of the approved Restructuring Scheme to the CDR Cell on a monthly basis. In case of any difficulty in implementation of the approved Restructuring Scheme, MC may approach the CDR EG for necessary direction and/or guidance. In case of any dispute between the lenders, the MC and the Borrower in respect of implementation of the approved Restructuring Scheme, the decision of the CDR EG shall be final and binding on the parties to that dispute. The CDR Core Group may evolve appropriate procedure for monitoring of implementation of the Approved Restructuring Schemes.

Following operating practices are to be observed for smooth conduct of MC meetings.

I. Till such time a restructuring package is sanctioned and fully implemented by all lenders, the MC meetings should be convened by the Monitoring Institution generally once in a month and thereafter, at least once every three months. At least one MC meeting every year should be held at the company's plant.

II. MC should monitor sanction, implementation and compliance of terms and conditions of the package in a time-bound manner by lenders / borrower-corporates/ promoters.

III. MC should monitor the progress and operational performance of the borrower-corporate as per CDR package.

IV. MC should ensure completion of documentation such as MRA, TRA, security creation etc.

V. MC should ensure reconciliation of various figures and work out recompense amount.

VI. MC should discuss the outstanding issues between lenders / borrower-corporates/ promoters and suggest remedial steps for their resolution.

VII. MC should discuss and make recommendation on any other issue as may be brought up by lenders / CDR EG.

VIII. MC should make recommendations on various proposals presented by borrower-corporate including review of conditions / compliances / modifications.

IX. MC should make recommendations on appointment of Concurrent Auditor/ special agencies/ valuers etc.

X. The promoters/company officials and, if considered necessary, the Concurrent Auditors, Lenders' Engineers also should be invited to the MC meetings as special invitees.

XI. Whenever larger issues such as those relating to sharing of charge, Working Capital tie-up, expansion/ modernization, etc are to be discussed, then all participating lenders to the borrower-corporate including consortium members should be invited to the MC meetings.

XII. In cases where transfer / assignment of debt has been made by CDR members in favour of non-CDR entities viz. Asset Reconstruction Companies, NBFCs, investor funds etc, unless they have joined in CDR system on transaction specific basis, then such entities should also be invited to MC meetings. This would enable the existing members and such new entities to understand each other’s requirements and would foster greater co-operation so essential for the success of the CDR packages.

XIII. Any proposal for One Time Settlement, partial prepayment to CDR members/ non-CDR entities etc. should be referred by the borrower-corporate to MC for discussion and recommendation to CDR EG for approval. Only on receipt of CDR EG's approval, such settlements should be done.

XIV. Minutes of the MC meetings should be circulated to all CDR members having exposure in the particular case. Besides, copies of the Minutes should also be forwarded to nodal officers of all such CDR members.

XV. All expenses for conduct of MC meetings are to be borne by the borrower-corporate and stipulation to this effect should be included in CDR LOAs. In respect of past cases, the Monitoring Institutions should advise the concerned borrower-corporates accordingly.

XVI. CDR Cell can also convene Monitoring Committee meeting, where a meeting of Monitoring Committee is not held for more than three months and even after two-three reminders to Monitoring Institution, there is no prompt response and especially when there is any issue required to be discussed amongst the MC members/lenders. CDR Cell shall recover the expenses incurred in this regard from Monitoring Institution/company.

Fee Structure

w.e.f. April 1, 2005, based on size of debt as under:

Sr. No	Size of CDR debt (` Cr.)	One-time Fee for RI for prep. of Restr. Package(` lakh)	Fee for MI (` Lakh/ annum)	Fee for TRA Bank (` Lakh/ annum)
1.	Up to 100	5	2 (3)*	5
2.	101-500	15	5 (7.50)*	7.50
3.	501-1000	50	10 (15) **	10
4.	Above 1000	100	15 (22.50)**	20

* if there are more than 5 CDR lenders

** if there are more than 10 CDR lenders

The CDR package could be treated as implemented by a lender if the following conditions are fulfilled:

- The package was sanctioned by the lender(s) concerned and effect had been given in the books of account of the lender(s);
- Promoters' contribution to the extent envisaged in the package had been brought in; and
- MRA was executed binding the lender(s) and the company for compliance of all terms and conditions of the approved package.

SHARING OF SECURITIES

As regards sharing of securities between Term Lenders and Working Capital Lenders, the following approach should be adopted:

- Working Capital Term Loan (WCTL) and Funded Interest Term Loan (FITL) shall be secured by Pari-Passu charge on the fixed assets. However, CDR EG shall have flexibility in deciding on this aspect on a case-to-case basis

- Sharing of securities with unsecured lenders may be considered by CDR EG on a case-to-case basis and should be restricted only to CDR members.

- Lenders having exclusive charge on a specific asset cannot be forced to share their charge on the said security with other lenders when the asset has not been acquired by using the funds lent by other lenders.

In order to facilitate expeditious creation of security including pooling of security, the following procedures shall be adopted:

I. Independent Security Agency may be appointed.

II. No Objection Certificate (NOC) on behalf of CDR members, for creation of security, shall be issued by CDR Cell.

III. Other formalities necessary for creation of charge shall be completed by the lead financial institution and the lead bank.

IV. Pledge Agreement, Deed of Hypothecation etc. to be obtained from the concerned borrowers in prescribed formats

V. Assistance of Concurrent Auditor / Valuation Agency may be taken for the purpose of creation of security.

VI. The entire process of creation of charge should be completed within 90 days from the date of Letter of Approval (LOA) issued by CDR Cell.

VII. While security creation is important for implementation of CDR packages, continuity of a viable CDR package also needs to be ensured by lenders, while insisting on sharing the security.

VIII. Security Trustee/agent can also be appointed for carrying out the task of security creation. The other related conditions can also be stipulated such as 'Power of Attorney/letter of authority by the borrower tec.

Conversion of Debt / Sacrifices Into Equity

I. Lenders shall have the right to convert up to 20% of the loan outstanding beyond seven years into equity at any time after seven years from the date of Letter of Approval issued by CDR Cell.

II. Such conversion shall be as per the guidelines issued by Securities & Exchange Board of India (SEBI) from time-to-time/ or as per the applicable loan covenants.

III. As regards zero coupon FITL remaining outstanding beyond seven years, the conversion right shall be applicable to the entire amount.

IV. In the event all lenders or any of the lenders exercise their right to sell the shares issued in terms of the conversion clause, the first right of refusal to buy back the shares shall lie with the promoters. In such case also the conversion would be as per SEBI guidelines or applicable loan covenants.

V. Normally, there shall not be any restriction on sale of equity shares acquired by lenders through conversion option except point (IV) above.

Exit of Cases from CDR Mechanism

The case may exit from CDR if the following criteria are met:

I. Package is fully implemented by lenders and security creation, compliance by promoters / borrower-corporate in terms of bringing promoters' contribution, issuance of equity to lenders, derating, necessary BIFR / statutory approvals and tie-up of additional finance / WC, as per the package, have taken place.

II. Operational performance of borrower-corporate is better than or is in line with EBIDTA projections under CDR for two consecutive years.

III. Payment track record of borrower-corporate is generally regular, as per CDR package for two consecutive years.

IV. Minimum period of three years from the date of LOA is over.

V. Borrower-corporate seeking exit from CDR has agreed to make payment of recompense amount as well as prepayment premium as per CDR guidelines or has settled payment terms with individual lenders.

VI. In case the above parameters are met, the quantum of repayment would not be the criteria for exit.

VII. However, in case 100% of the lenders decide in favour of exit of a particular case, the above criteria would not apply. CDR EG may relax the criteria of consecutive two years' performance mentioned at (II) and (III) above, as also minimum period of three years if the CDR lenders so decide.

Procedure for Exit

The procedure for consideration of exit would be as under:

I. The company may exit from CDR at the end of five years after a performance review.

II. Lenders/ borrowers may make the reference for exit after three years in line with CDR guidelines.

III. Prepayment premium as per CDR guidelines would be applicable in all cases, whether prepayment is made in cash or it was by way of refinancing / roll–over by other lenders or some lenders.

IV. On full repayment / refinance, the company may exit at any time, subject to crystallization / payment of recompense amount / prepayment premium as per CDR guidelines.

V. At the time of exit from CDR, prepayment premium as per CDR guidelines, corresponding to the quantum of CDR debt being prepaid in cash should be collected.

VI. The Reserve Bank of India (RBI) has revised its corporate debt restructuring (CDR) guidelines by giving lenders the option to exit from the package by selling their exposures to either existing or fresh lenders at an appropriate price to be decided mutually. The move is seen giving foreign and private banks a big breather as these banks were not comfortable with a "mandatory CDR".

As per RBI guidelines, there are also provisions relating to Payment Parity, Additional Finance and Sharing thereof, TRA: Treatment For Interest on WC And Term Loan (TL / WCTL / FITL) – Treatment in TRA, Prudential & Accounting Issues, Recompense Clause, OTS/Assignment of Debts, Revocation of Restructuring Scheme/Legal Action for Recovery, Re-workout of CDR Packages.

Annexure-I

BIFR cases:

1. Eligibility criteria

   I. BIFR cases which could be included under CDR

      i. Case registered with BIFR but yet to come up for hearing.

      ii. BIFR has declared the case as sick and ordered workout of DRS.

      iii. Corporates not having major issues (legal/ concurrent) with statutory authorities and State/Central Government agencies and there is a possibility of such issues getting addressed within three months

   II. BIFR cases which should not be considered under CDR

      i. Cases for which Special Investigative Audit (SIA) has been recommended by BIFR.

      ii. Cases where sickness is being contested by way of appeal to AAIFR.

      iii. Cases where Appeal against the decision of BIFR has been filed by any one of the parties with AAIFR/Court.

2. Financial viability parameters

   I. The restructuring scheme should enable the company's net worth to turn positive in a time span of not more than 3-4 years.

   II. Adjusted DSCR (including cash outflow on account of increase in WC, normal capex etc.) should be around 1.25 and normal DSCR minimum 1.33:1.

   III. Reasonable promoters' contribution of generally around 5-10% of the cost of the scheme should be envisaged in the restructuring proposal. Promoters' contribution should, preferably, be by way of inflow of funds from outside or sales of surplus land/assets.

   IV. The Corporate's EBIDTA should become positive in two years and it earns net profit within 4-5 years.

V. In case regulatory benefits are to be availed for such BIFR cases, then regular financial parameters applicable to normal cases would be applicable, in addition to the stipulation that PAT should be positive in 4-5 years.

3. Procedural Aspects

I. The referring institution should prepare the Flash Report in the CDR format for submission to the CDR Core Group. It should also indicate the compliance position of the stipulated eligibility criteria. In case of any variation / relaxation, suitable justification should be given for Core Group's deliberation in the overall interest of all concerned.

II. The objective of considering the scheme under CDR should be to sort out issues between FIs/Banks expeditiously so that the scheme can be put in place within 45/60/90 days. As such, proposals involving consent/approvals from non-CDR members/Government agencies, which are critical for the viability of the company, may not be encouraged.

III. If the scheme envisages sale of assets it should be backed by credible valuation and offers from suitable interested parties so that the scheme can be implemented at the earliest. Such conditions should be acceptable to the corporate / promoter before the case is referred to CDR.

IV. The Flash Report in the prescribed format should be submitted to CDR EG for approving admission of the case to CDR and usual procedure should be adopted thereafter.

V. Restructuring under CDR mechanism will be subject to standard terms and conditions and special conditions as may be stipulated depending on CDR category of the case and the type and nature of the borrower/promoter. The terms and conditions should be discussed with the company/promoter in advance and the same should be acceptable to them.

VI. The approval of the restructuring scheme will be subject to final clearance of the scheme by BIFR. After issuance of LOA by the CDR Cell, the scheme should be submitted to BIFR by the referring institution/OA so that BIFR approval can be obtained at the earliest and the scheme is implemented.

VII. The participating FIs/Banks should obtain approval from their competent authorities within a period of 45 days from the date of issuance of LOA by CDR Cell without waiting for BIFR approval.

VIII. Lenders might implement CDR package after the same is filed with BIFR for approval.

IX. Lead / Referring Institution / Operating Agency should file the CDR package with BIFR for approval u/s 17(2) or 17(3) based on LOA issued by CDR Cell, without waiting for sanction by individual lenders.

X. An application should be made by the Referring Institution on behalf of lenders u/s 19A to BIFR agreeing to an arrangement for continuing operations or suggesting a scheme for financial reconstruction soon after approval of the package by CDR EG.

XI. In terms of SICA, BIFR is expected to give its decision u/s 19A within 60 days. If BIFR approval u/s 19A is available, the lenders including working capital banks should release need-based working capital. However, the lenders shall not be compelled if BIFR approval is not in place. CDR EG may consider any deviation in the procedure on a case-to-case basis. There would also be priority in cash flow for such additional funding for working capital lenders as per CDR guidelines.

Annexure- II

CASES OF WILFUL DEFAULTERS: ELIGIBILITY CRITERIA,

FINANCIAL VIABILITY PARAMETERS PROCEDURAL ASPECTS

1. RBI definition of wilful default

   RBI in its guidelines (issued on May 30, 2002) for reporting the names of borrower-corporates as wilful defaulters has defined the following action of the borrower-corporates as wilful defaults

   - The unit has defaulted in meeting its payment/ repayment obligations to the lender even when it has the capacity to honour the said obligations.

   - The unit has defaulted in meeting its payment/ repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

   - The unit has defaulted in meeting its payment/ repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

2. Clarification on process of declaration as wilful defaulter

   Subsequently, on June 17, 2004, RBI issued a clarification on process to be adopted for finalizing such reporting to RBI/CIBIL which included the following:

   - Identification of default as 'wilful' based on the above definition through a

   - Committee consisting of three GMs/ DGMs.

   - Decision to classify the borrower as wilful defaulter to be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided at the concerned bank/FI.

- Thereafter, Borrower to be suitably advised about the proposal to classify it as wilful defaulter along with the reasons thereof. The concerned borrower to be provided reasonable time (say 15 days) for making representation against decision, if it so desires, to the Committee headed by the Chairman & Managing Director.

- Final declaration as 'wilful defaulter' to be made after a view is taken by the Committee on representation and the borrower to be suitably advised. Decision taken on classification as 'wilful defaulter' to be well documented and supported by requisite evidence.

- A grievance redressal mechanism to be created for giving a hearing to borrowers who represent that they have been wrongly classified as wilful defaulters. The grievance redressal mechanism to be headed by Chairman & Managing Director and include two other Senior Officials.

3. RBI vide its circular no RBI/2004-05/63 dated July 23, 2004 advised Banks / FIs to initiate the measures against wilful defaulters as indicated in the circular.

4. Cases of wilful defaulter not eligible under CDR

   Cases of reported siphoning of funds or misfeasance, fraud, etc. (as one of the reasons for wilful default) are prima-facie not eligible to be covered under CDR.

   However, the Referring Institution may in consultation with the borrowers, ascertain the facts from the statutory auditors, stock auditor and concurrent auditor or get Special Investigative Audit conducted in this regard and convince itself that such incidence, if any, is not affecting the interest of the lenders on a long-term basis. However, if after due diligence, it is felt that such promoters are not dependable for long term relationship, then in such cases, OTS or change in management would be required to address the issue of wilful default. If both are not possible, such cases should be kept out of CDR.

5. Procedure for referring cases of wilful defaulters to CDR

   Before referring any case, the referring institution should check the lists of wilful defaulters, which are maintained and updated by RBI/ CIBIL from time-to-time based on reporting by FIs/ banks, to verify whether any FI/ bank has reported the company as wilful defaulter.

If it is listed as a case of wilful defaulter with RBI/CIBIL, the Referring Institution should ascertain from the concerned lenders the reasons for reporting the borrower as a wilful defaulter and the remedial action proposed, either through correspondence or by convening a joint meeting.

The objective should be only to collect the relevant information and not to sit in judgment whether the action of the concerned lender(s) of reporting as wilful defaulter was correct or not. The remedy for addressing the issue of wilful default in a particular case should generally be found based on discussions with other participating FIs /banks and the borrowers.

As regards non-CDR members, it may be difficult to obtain particulars about reasons for reporting a case as wilful defaulter as also the procedure followed and the remedial measures suggested by such lenders. In such cases, information may be collected from the borrower and corroborated by facts gathered through actual discussion with non-CDR members. Since the exact nature of the remedy to address concerns of such members cannot be crystallized without the approval of their competent authorities, the Referring Institution may have to make a reasonable judgment for preparing the scheme with special bucket (if absolutely essential) for addressing the wilful default status for CDR members. However, it would be desirable that they fall in line with the CDR package without any special bucket. In case additional cash flows are required for settlement with such lenders, the promoters should arrange the same.

The Referring Institution should prepare the Flash Report in the CDR format for submission to the CDR Core Group, also indicating details of reporting as Wilful Defaulter, gist of discussions at joint lender’s meetings, justification for considering the case of wilful defaulter under CDR, time schedule for referring the Flash Report to CDR EG and finalising the restructuring package etc.

In case the reason for reporting as wilful defaulter is diversion of funds, use of debt for purposes other than intended, use of long-term funds for short-term purposes or vice-versa or from one group company to other etc., then following course of action may be adopted.

- If the funds have been utilized by the group company / associates and subsidiary company or company under the same management, then such funds may be brought back in a time-bound manner to the TRA of the main company.

- In case such funds were used for some other purposes such as investment, stock market operations, meeting capital expenditure, meeting cash losses, making payments to other lenders, etc., it may be difficult to bring back such funds. In such situations, promoters may have to come up with alternative proposals including bringing funds from their other sources. As mentioned above, if based on investigate audit, super-majority of lenders feel that it is a case of siphoning of funds, then in such a case remedy is only to get the funds back from promoters' other sources. However, in such situations, continuing with the same management need to be looked into.

- In any case, under both situations (a or b above), the objective is to get the funds back into the company's TRA in a time-bound manner. The funds could also be brought back by way of sale of assets or investments. If such assets are created in other group company, then lenders of the concerned company may have to agree for it.

- As promoters are the common thread for such past actions, the responsibility for finding a remedy for wilful default should lie with the promoters and they must give a suitable undertaking for the same.

- After considering the proposal for bringing back diverted funds into the TRA, decision regarding redistribution thereof may be left to CDR EG.

In cases where change in management, strategic investment, venture capital funds with professional management etc. are envisaged, it may not be possible to complete the process at the stage of Core Group discussion or at the stage of Flash or Final Restructuring proposal. Therefore, some time-bound programme may be drawn for completion of such tasks and incorporated in LOA with suitable enabling clauses so that it does not amount to second restructuring. Such commitment from the company/ existing promoters could be included in the Note for Core Group deliberations.

Once the Core Group accords in-principle clearance to admission of a particular case of wilful defaulter, the Flash Report in the stipulated format should be submitted to CDR EG for approving admission to CDR and usual procedure should be adopted thereafter.

After implementation of the approved package, the concerned lenders should withdraw the name from the list of willful defaulters.

It is also felt that super-majority vote cannot be used to force some lenders to withdraw the company's name from the list of wilful defaulters.

There are some existing CDR cases approved before the RBI clarification on considering cases of wilful defaulter under CDR. In such cases; names of the corporate borrowers have not been withdrawn from the list of wilful defaulter as yet. The concerned lenders should withdraw such names forthwith.

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