

RFC

**Procedures
And
Guidelines**

Legal & Documentation

LD

(Legal & Documentation)

PROCEDURE FOR EXECUTION OF DOCUMENTS - EXAMINATION OF TITLE DOCUMENTS ETC.

TITLE DOCUMENTS ETC.

This Chapter prescribes the procedure to be adopted in the Head Office/ Branches in regard to execution of loan and subsidy documents. In this chapter the following terms (unless the context justifies anything otherwise) have the meaning as indicated below:-

Documentation Cell:

Implies 'Law Section' in Head office and 'Cell' dealing with execution of documents at Branch Office.

Disbursement Cell:

Refers to Finance (Disbursement) Section in Head Office and "Cell" dealing with disbursement of loan at Branch Office

Loan Cell:

Refers to 'Loans Section' in Head Office and 'Cell' dealing with appraisal of loan applications at Branch Office

Accounts Cell:

Refers to Accounts Section in Head Office and 'Cell' dealing with maintaining of Accounts Books at Branch Office

PLACE FOR EXECUTION OF LOAN DOCUMENTS

1.1 Execution of loan documents will be carried out as under

In Head Office : All Joint finance cases

In Branches : All cases except Joint Finance Cases

In DICs : Loans upto Rs.50.000/-

FUNCTIONS OF THE DOCUMENTATION CELL

2.1 Documentation Cell is responsible for performing following functions:

(a) Documentation work

Examination of title document of the properties offered as security and getting the documents of loan executed.

(b) Court cases & legal work

For giving legal opinion in cases referred to it by the other cells and Branches and attending court cases filed by or against Corporation.

PROCEDURE RELATING TO DOCUMENTATION

- 3.1** Soon after issue of sanction letter to the party by Loans Section, loan file is being forwarded to the Documentation Cell for compliance of terms & conditions of the sanction letter and execution of documents.
- 3.2** Documentation Cell soon after receipt of loan file, will issue a letter to the loanee concerned asking it to submit acceptance of terms & conditions of sanction letter and also to deposit service charges (if not deposited) and to comply with the requirement, of letter of sanction (Proforma RFC: Legal- 1)

SUMMONING OF TITLE DEEDS

- 4.1** Simultaneously another letter will be issued to the concerned Regional Manager RIICO/Dy. Director (Infra) for sending the original lease deed with regard to land allotted to the loanee for creation of equitable mortgage (Proforma RFC: Legal -2)
- 4.2** In case of 'land' other than in RIICO/State Government Industrial Area, entrepreneur is required to submit Photostat copies of the sale deed or any other title documents along with vendor's title deeds of its immovable property on which industry will be set up (Loanee may also be asked to bring the original title deeds for verification)
- 4.3** In case where mining lease is to be mortgaged by way of primary security or collateral security. a letter should be issued to the Mining Engineer/Asstt. Mining Engineer of the concerned area for sending the original mining lease deed for creation of equitable mortgage by deposit of original mining lease deed (Proforma RFC: Legal -2-A).
- 4.4** After receipt of original mining lease from Mining Engineer/Asstt. Mining Engineer. Mines & Geology Department and after execution of documents for mortgaging the lease deed (equitable mortgage by deposit of original mining lease and undertaking in Proforma RFC: Legal-2-B) be sent to Mining Engineer/Asstt. Mining Engineer for payment of dead rent during the period or takes over of mining lease by Corporation."
- 4.5** At the time of execution of documents for mortgaging the mining lease by the borrower/guarantor/mortgagor a letter of authority for transfer of mining lease In favour of the Corporation or such other company/person be taken for the compliance of provisions of Rule-37 (2) of Mineral Concession Rules, 1986 or Rule 15(1) of Rajasthan Minor Mineral Concession Rules, 1986(Proforma RFC: Legal 2-C).

TITLE EXAMINATION

- 5.1** Examination of title of land of the loanee is a very important task, which the Documentation Cell has to perform.
- 5.2** In cases of Government land the problem would generally be a simple one. In case of land allotted by the Government/Government Agency, the only points to be verified are:
 - (i) The lease deed of land is in the Borrower's name and the same should be reregistered with the concerned Sub Registrar.

- (ii) That the measurement of the land is in accordance with the scheme approved by the Corporation.
- (iii) That the purpose of lease should be the same for which the loan has been sanctioned by the Corporation.
- (iv) That the borrower i.e. Lessee has got the power of assignment/mortgage the land in favour of RFC or any other financial institutions for the security of financial assistance granted by the aforesaid institutions.

Note: If no such clause is available in the lease deed, the Documentation Cell will confirm from the lessor through a letter that lessor has no objection to the assignment or mortgage of the land for the purpose of the particular industry for which the borrower has approached the RFC for loan.

5.2A Title examination for the land converted under the Rajasthan Land Revenue (Conversion of agricultural into non-agricultural land) Rules, 1961 Rule 2-B

- (i) The amendment made in the Rajasthan Land Revenue (Conversion of agricultural into non-agricultural land) Rules, 1961 in the year 1978 has been examined and after consideration, it is found that no lease deed required for the land which has been converted under rule 2-B of the said rules which is reproduced as under:-

2.B "Use of Agricultural land, for setting up of small industry"- whenever any person holding any land for the purpose of agricultural, wishes to use it or a part thereof for the purpose of constructing of a factory or a mill or for setting up of a small industry, he shall be able to do so subject to the following conditions:

- (1) The area so used shall not be more than 500 Sq. mtrs or 2% of the holding whichever is higher.
 - (2) For all conversions for putting agricultural land to the aforesaid purpose, the premium and urban assessment as provided hereinafter in these Rules shall be payable. On such payment the land shall be deemed to have been converted automatically and shall be so entered in the revenue record.
 - (3) The facility provided in condition No.2 shall not be available for lands situated within the municipal limits of town or city.
 - (4) In case of town or cities having a population of one Lakh or more, the facility shall not be available within a distance of 8 miles of the municipal boundary.
 - (5) In case the land is so used by a person who has obtained the same in verification of clause(a) of Section 42 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955), he shall have to seek exemption under the third proviso to section 42(a) of the said Act.
- (ii) Simultaneously the amendment in rule 3 has also been made and by this amendment land which is to be converted under the provisions of rule 2-B has been excluded from the procedure to be adapted for conversion of agricultural into non-agricultural land for the land which is not more than 500 sq. metres or 2% of the holding whichever is higher. In view of this amendment, the procedure for conversion of land and execution of lease deed as provided under rule 5 has not been made applicable to the cases which are to be used for setting up small industries by a holder of agricultural land.

(iii) Now the question that arises is that if no lease deed is executed in cases where the agricultural land has been converted into non-agricultural purposes under rule 2.-B then what will be the document for creation of equitable mortgage for the security of loan. After careful consideration and examination, it has been decided that the facility of equitable mortgage to all such entrepreneurs who are setting up their industry over the land which has been converted under the provisions of rule 2-B can be extended by taking into deposition the under mentioned documents:

- 1 Original sale deed or any other title document by which agricultural land has been transferred by the owner of the agricultural land in favour of the purchaser (loanee).
- 2 When the sale deed of agricultural land is not there, the certified copy of mutation entry having the endorsement of conversion of land into non agricultural land for setting up a small industry in the name of a loanee may be taken.
- 3 Original receipt of conversion amount deposited. Certified true copy of transfer entry in revenue record i.e. Namantarankaran Panjikaran.

(iv) It is further prescribed that while accepting the equitable mortgage on deposition of aforesaid documents, the Branch Manager is required to examine & ensure the case on following points:-

- 1 The Branch Manager or his authorized officer be deputed to inspect the site to ascertain the correct situation of agricultural land so convened and also he may see that the portion of agricultural land should be such area of total holding on which uninterrupted entry is possible i.e. the entry to the land so converted should be nearer to the main road from where the entry is free from any obstacle or objection and if the situation is not in accordance with required manner then the borrower may be advised to get the land converted which is nearer to the main road and entry to such land is uninterrupted. More specifically, the land should not be converted in the middle of the total holding to avoid any dispute by the borrower himself, in case any recovery action is taken by the Corporation.
- 2 It may be ensured that the automatic conversion order is supported by a map of land indicating the specific marking of portion of land converted for industrial use, duly approved and certified by the Tehsildar.

It is further clarified that where the agricultural land is in the joint names or is purchased in the joint names then the conversion of land under these rules should be only the portion of land permissible under these rules and should be in joint name but the conversion of land after sub- division by the joint holders of the agricultural land into industrial land should not be accepted. It is further clarified that if the Joint holders want to set up individual units in their name after sub division of agricultural land then they may be advised to get the land converted under the Rajasthan Industrial Area (Allotment) Rules, 1959.

- 3 Soon after the creation of equitable mortgage the Branch Manager shall inform the Revenue Authorities and the Joint Director, DIC by a registered letter that land converted for industrial use out of Khasra No --- -----vide conversion order dated----- has been mortgaged with the Corporation for the security of its loan and should not be reconverted for agricultural use or transferred during the currency of Corporations' loan.

5.2B

(a) While accepting the equitable mortgage in the cases where the agricultural land has been converted for non agricultural purposes under the Conversion Rules of 1992 shall take into deposition the following documents:

i) Original Registered Sale Deed or any title documents by which agricultural land has been transferred by the owner of the agricultural land in favour of the purchaser (Loanee).

ii) Certified true copy of Jamabandi and mutation depicting transfer of agricultural land.

or

In case the land is transferred by way of partition, certified true copy of order of partition passed by SDO of AC's Court and Jamabandi and Mutation giving effect to partition, Map depicting demarcation of partition in Revenue Map

or

In case the agricultural land is acquired through inheritance, certified copy of Mutation entry and the Jamabandi depicting inheritance.

iii) Original copy of conversion order issued by the prescribed authority in Form "B" to the applicant (Khatedar Tenant) along with the trace map of the convened land showing four boundaries and area of the land of which conversion has been made duly signed by the prescribed authority.

iv) Original receipt of conversion amount deposited.

b) It is further prescribed that while accepting the equitable mortgage on deposition of aforesaid documents, the branch should also ensure as under:

i) The Branch Manager or his authorized Officer be deputed to inspect the site to ascertain the correct situation of agricultural land so converted and also he may see that the portion of agricultural land should be such area of total holding on which uninterrupted entry is possible i.e. the entry to the land so converted should be nearer to the main road from where the entry is free from any obstacle or objection and if the situation is not in accordance with required manner then the borrower may be advised to get the land convened which is nearer to the main road and entry to such land is uninterrupted. More specifically, the land should not be converted in the middle of the total holding to avoid any dispute by the borrower himself, in case any recovery action is taken by the Corporation.

ii) It may be ensured that the conversion order is supported by a map of land indicating the specific marking of portion of land converted for industrial use duly approved and certified by the Prescribed Authority.

iii) We must obtain certified copies of Jamabandi & Mutation of the period prior to conversion as well as after the conversion. It

may happen that the agricultural land is in the name of more than one person and the land is conveyed in the name of all but the loan application is presented by one of them.

EXPLANATION

(a) "In case of Sole Proprietary concern we can accept the land which is conveyed in the name of sole proprietor of the concern without insisting for inserting the name & style of unit in which he is carrying on business by obtaining loan from us."

(b) "In cases where land is conveyed in the individual name and unit is being set up by Partnership Firm or the Company or the Co-operative Societies as the case may be in such cases land so conveyed shall be transferred by executing Transfer Deed/Sale Deed, duly executed in favour of proposed borrower, because under the said Rules, the prescribed authority is not authorized to modify the conversion order in the name of the Partnership Firm, Company or the Co-operative Societies, as after its conversion, the land is treated as free hold land and same can be transferred without permission of the prescribed authority under the Rules. Therefore in the cases where the conversion order is in the in different name then in the applicant's name, the Branch Manager should advise the party to get the land transferred in the name of the concern who has applied for loan."

iv) "Soon after the creation of equitable mortgage, the Branch Manager shall send the Regd. AD letter to the Revenue Authority for making endorsement of mortgage in 'Red Ink' in the special column of Jamabandi and keep a copy of such letter alongwith loan documents for record. Thereafter action for disbursement of loan may be taken."

v) The Branch Manager while accepting equitable mortgage of land which had been converted under the aforesaid rules, may also ensure that land is being used for the purpose for which it has been converted within the period of two years from the date of issue of conversion order as prescribed under Rule 13 of aforesaid Rules.

c) For compliance of point No. (iv) the orders had already been issued by the Dy. Secretary, Revenue Govt. of Rajasthan vide their letter No. 6(6)/Rev/6/92/6 dated 12.05.1993 instructing all the Revenue Authorities to make entry of the mortgage created by the Corporation (copy marked as Annexure 'D' as per PG Circular No. 546 dated 7/12/1993). A draft letter to be sent by the Manager(Br.) to the Revenue Authorities for our endorsement as marked as Annexure 'E' as per PG Circular No.546 dated 7/12/1993.

d) It is also clarified that the aforesaid rules of 1992 are applicable to the lands which have been converted in the rural areas only, and, therefore, if in any case land is converted for industrial purposes in the urban areas, it will not be governed by the conversion Rules of 1992 and, in such cases, the borrower be advised to obtain lease deed for the converted land which is to be converted under the different existing rules for urban areas.

5.2C While accepting the equitable mortgage on deposition of title deeds for the industrial land situated on the boundary line of the road and converted under the various rules of the Rajasthan Land Revenue Act 1956 the branch should ensure as under:-

The Branch Manager or his authorized officer be deputed to inspect the site to ascertain the correct situation of agricultural land so converted and also he may see that the portion of agricultural land should be such area of total holding on which uninterrupted entry is possible i.e the entry to the land so converted should be nearer to the main road from where the entry is free from any obstacle or objection and if the situation is not in accordance with required manner then the borrower may be advised to surrender a strip of his agricultural land to the State Govt, to declare the same as public way in the revenue record which will be used for the way to their industrial unit from the main road and obtain certified copy of the revenue record alongwith the site map of the land showing the position of public way so that uninterrupted entry to the industrial unit may be ensured.

5.3 Private Land: In case of private land, the Documentation Cell shall examine title to the land of the borrower along with the chain of vendor's title deeds and shall examine the same from the initial stage to the last stage and will verify the vendors title in each case.

5.4 Joint Ownership Land: In case of Joint Ownership land, either both the owners should be the loanee or the co-owner should make a relinquishment deed or transfer deed duly registered with Sub Registrar in favour of the borrower. The original title deeds of the land along with original vendor's title deeds should be taken in deposition at the time of creation of equitable mortgagee and must be kept in safe custody of the Corporation.

5.5 Land Owned by a Partner: There are cases where the land of the firm is owned by one of the partners in a partnership firm. In that case an affidavit may be taken for transferring the said property in common pool of the firm (Proforma No. RFC: Leg-3).

5.5A Examination of Pattas for the land granted by Gram Panchayat:

In cases where the borrower has offered the security of an immovable property i.e. Abadi Land acquired under pattas granted by Gram Panchayat, the Panchayat Patta may be examined keeping in view the following points:-

- i) That the patta has been issued under the signature of the Sarpanch and in his absence under the signatures of Up-Sarpanch and two other Panches of the Gram Panchayat;
- ii) That such a patta contains the exact location of the land, its total area, four boundaries and a site plan of land is also attached with it;
- iii) That in cases where the borrower is holding old panchayat patta for land granted by Gram Panchayat without consideration or free of cost in case of SC/ST and/or where consideration is not exceeding Rs.99/- and is on a printed format without stamp, such a patta can be accepted for creation of Equitable Mortgage for security of our loan and if such a consideration is Rs.100/- or more, then the patta should always be on a requisite stamp paper and should be registered one, because any documents of which consideration exceeds Rs. 99/- requires compulsory registration u/s 17 of the Indian Registration Act, 1908;

- iv) That a certified true copy of the Resolution passed by the Gram Panchayat for allotment of such a patta as stated in the patta itself, should be obtained;
- v) That in case of a patta granted in favour of an SC/ST, the allottee be required to obtain written permission of the Gram Panchayat for mortgaging the land to the Corporation for obtaining financial assistance or mortgaging it by way of collateral security to the Corporation.

Note: To avoid any complication with regard to issue of patta by the Panchayat, it is advisable that whenever such pattas are accepted for creation of Equitable Mortgage for the security of loan by way of original security or by way of collateral security, the Branch Manager should always either get the clarification from the concerned Gram Panchayat with regard to the allotment of patta or if practicable, this fact may also be got confirmed by deputing some person from Branch Office.

5.5B EXAMINATION OF TITLE OF LAND SITUATED IN THE STATE OF HARYANA OFFERED FOR COLLATERAL SECURITY

1 In the State of Haryana the immovable properties broadly falls in three categories i.e.

(i) Lands situated within the Municipal Limits (Urban Area); **(ii)** lands situated in villages (Rural Area); and **(iii)** the lands and buildings situated in the industries estate developed by the Haryana State Industrial Development Corporation (HSIDC) and Haryana Urban Development Authority (HUDA) or Department of Industries. In case of collateral security, we are concerned for lands falling in first two categories for which we have to take/examine the following documents:

a) Where land is situated in Urban Areas;

- i) Regd. Sale Deed;
- ii) Certified extract of Municipal Assessment Register for last 5 years;
- iii) Certified copies of Khasra & Khatauni, if land is situated in semi-urban area (for last 12 years for khasra and last 5 year for khatauni);
- iv) Search Report from approved Advocate for a period of 12 years showing that property is free from all encumbrances along with other relevant papers connected therewith like Jamabandies, Mutations, Court Decrees, Lease Deed, Relinquishment of Lease etc,

b) Where land is situated In Rural Area:-

- i) Regd. Sale Deed;
- ii) Copies of Khasra & Khatauni showing the mutation of the seller/vendor (for last 12 years for khasra and last 5 years for khatauni);
- iii) Village map to verify the approach;

- iv) Search Report from an Advocate for a period of 12 years showing that property is free from all encumbrances;
- v) Mutation in favour of seller and purchaser giving details of the land like khasra Nos. corresponding with the sale deed/jamabandi in case only a part of khasra no. has been purchased, it should be clearly demarcated on Patwari's shizra and copy of his map should be placed on concerned file.

Rural Area in Haryana are of two categories i.e. Rural Abadi (within Lal Dora) and Revenue Paying Land, it is very difficult to establish or investigate the title of Rural Abadi i.e. Lal Dora Land, therefore, except for the cases where land has been purchased before 12 years and original copies of the registered Sale Deed/Title Deed of the vender are available; such lands are not to be accepted in security. The Revenue Paying Land can be accepted in collateral security on submission of documents indicated above.

2. If on examination of these documents the title is established in favour of the party offering the assets the Manager (Branch)/officer dealing with the work relating to documentation should ensure that :-

- a) The Advocate who has furnished the search report is the practicing Advocate approved by the Haryana Financial Corporation;
- b) The site of the property has been inspected and verified by an officer preferably of technical discipline of the Corporation; &
- c) Valuation report has been obtained from an valuer of Haryana, approved by the Haryana Financial Corporation.

3. DOCUMENTATION

- a) Where original title documents of the property i.e. registered sale deed along with other relevant documents of the immovable property are available, we can create equitable mortgage by deposit of original title deeds.
- b) However, where the original sale deed or other relevant documents are not available with the borrower/mortgagor- guarantor but the title is established, immovable property offered for collateral security should be mortgaged by a registered Mortgage Deed in the proforma of Deed of Additional Security (a draft of which is given in the Appendix-'A' of the PG Circular No. 582 dated 7/10/1994) of which stamp-duty will be paid by the borrower as per the law in force of State of Haryana. This deed of mortgage should be registered with the Sub-Registrar concerned of the State of Haryana, where the immovable property is situated, for which the officer authorized for documentation vide notification dated 24/10/2000 may be authorised to visit the office of the Sub-Registrar concerned.

- c) After creation of mortgage necessary entry in the revenue record through the Patwari/Tehsildar concerned is required to be made. For this borrower may be asked to submit a certified copy of mutation entry/revenue record, duly signed by the Tehsildar/other competent revenue authority having endorsement of mortgage in our favour on the above mortgaged land/property.

4. RECOVERY

During the course of operation of any A/c with collateral security of such property if necessity arises to initiate recovery proceedings against such property, the Branch Manager is authorized to file an application under section 31(1) (aa) or make requisition under section 32 G of the SFCs Act to the Competent Authority.

- 5.6 After examination of title documents of the properties offered in security the officer shall record the following certificate:

“I have examined the title documents of the properties offered in security by the borrower /guarantor and found them in order and marketable.”

EXAMINATION REGARDING CONSTITUTION OF THE BORROWING CONCERN

- 6.1 If the borrower is partnership firm, it will submit the photostat copies of Firm Registration Certificate and Deed of Partnership and if needed Supplementary Partnership Deed as per proforma number (RFC Legal-11D)
- 6.2 In case the borrower is a company, it will submit a copy of the Certificate of Incorporation and also a copy of the Memorandum and Articles of Association and if the company is a public limited company, certificate of Commencement of Business may also be called.
- 6.3 In case the borrower is a Co-operative Society, it will submit the following documents/papers:
- i) Certified true copy of Certificate of Incorporation/Registration of the Co-operative Society issued by Registrar Co-operative Societies;
 - ii) Certified true copy of the bye-laws of the Co-operative Society, duly certified by the Registrar, Co-operative Societies; and
 - iii) Certificate of borrowing limit issued by the Registrar, Co-operative Societies. It has to be ensured from this certificate that the amount of loan which has been sanctioned by the Corporation to the said Society is fully covered by the borrowing limit granted to it by the Registrar, Co-operative Societies. Please also ask the party to submit a certificate of present borrowing, duly signed by the president of the society.
- 6.4 While examining the bye-laws of the society, it should also be ensured that the object clause of the society covers the transaction/purpose for which the loan has been sanctioned to the society. If such a purpose is not covered under the bye-laws of the society then society may be advised to get their main object clause amended for inclusion of the said transaction/purpose in the object clause. Such an amendment in the bye law should be duly certified by the Registrar, Co-operative Societies.

6.5 Society may also be advised to submit a copy of Resolution, duly passed in the meeting of the General Body of the Society for the purpose of execution of loan document and for mortgaging & hypothecation of the assets of the Society for the security of loan and subsidy sanctioned by the Corporation and also for affixing the common seal of the society (if necessary on the said loan documents).

Note: Please also ensure-

- a) that such Resolution should be passed by the General Body of the Society in accordance with its bye-laws and three persons i.e. President, Secretary and another office bearer of the Society should be authorized to execute the loan and subsidy documents on behalf of the Society;
- b) that the loan documents are executed only after receipt of the aforesaid documents from the Co-operative Society and that too after examination;
- c) that documents of personal guarantee is also taken from the members as per the terms of sanction. The Guarantee Deed can be executed either by the Guarantor in person or through his attorney authorized by the Special/General Power of Attorney of such member Guarantor(s).

SECURING COMPLIANCE OF OTHER TERMS & CONDITIONS OF SANCTIONS

7.1 After examination of title deeds of the land and compliance of other conditions, it is also to be seen that the borrower has submitted other documents/papers as per terms and conditions of Annexure 'A' & 'B' of the sanction letter as under:

A Undertakings:

- a) Undertakings for unsecured loan amount as per conditions of the sanction letter (suggested proforma No. RFC: Leg-4 & 4-A).
- b) Undertaking as per condition No. 8 of Annexure 'A' of sanction letter. (In the case of proprietorship and partnership Proforma No. RFC: Leg-5 and in the case of company as per Proforma No. RFC: Leg-6 & Leg-7).

Note: All the above undertakings should be on non-judicial stamp papers of Rs.100/- each in the name of its executant and should be duly attested by Notary Public.

B Personal Guarantee

Where the loan is sanctioned on the condition that Promoter-Directors or some third person(s) shall furnish their personal guarantee, the guarantee deed shall be taken in the form (Proforma No. RFC: Leg-8) in case the guarantor (s) is unable to personally execute the guarantee then it can be executed by his attorney. The attorney so appointed should be the Director of the Company only. The power of Attorney may be taken in the form of (Proforma No. RFC: Leg-9).

For accepting personal guarantee of a person having immovable properties, the loanee should be asked to submit the photo state copy of original title documents of the property, which is owned and possessed by such guarantor(s) and after ascertaining the ownership and the value of the property we may accept the personal guarantee of such guarantor(s) and keep one copy of the said original title documents for record. There is no bar for accepting the personal guarantee of a

person, who owns and possesses the agricultural land and is a record khatedar for such land in the revenue records. In such cases while accepting the personal guarantee of an agriculturist, may advise the party to submit following documents:

Photostat copy of the sale deed or any other document by which the agricultural land has been acquired / devolved to the guarantor.

Certified true copy of "Namantarankaran Panjika" by which the land has been transferred in the name of the guarantor.

"In case the guarantor is having sufficient immovable property and does not have title deeds of the property, the same can be accepted if the Branch Manager is satisfied that the guarantor is the actual owner of the property. In such a case the Branch Manager may accept guarantee on the basis of an affidavit in the prescribed proforma. The yardsticks for accepting such a guarantee will be tax receipts for the property, the bills of electricity & water in the name of guarantor as certificates from the Local Authority and inquiry from the neighbors of the guarantor. The guarantee on the basis of such an affidavit should only be considered when the B.M. is satisfied regarding ownership of the property and details of the property given in the affidavit are verified by the Branch Office."

C Collateral Security

- a) In cases where the condition of collateral security has been put in sanction letter, the documentation cell should ask the party to submit the original title deeds of the person who is giving the collateral security for the security of our loan. The procedure and documents for such cases is the same as that of equitable mortgage. There is not much of difference between collateral security and the equitable mortgage.

Therefore, the documentation cell should ask the party to submit the title documents of the immovable property along with the chain of vendor's title documents.

- b) The examination of above documents shall also be done in the similar manner as has been done for the cases of equitable mortgage.

D. Special Power of Attorney

In case of partnership firm if all the partners are unable to come for execution of loan documents, the partners who are unable to come can authorize anyone of the partner by a special power of attorney to execute the documents on their behalf as per suggested proforma no RFC:-Leg-10.

E. Board Resolution

- i) In case of a company, documents will be executed by the authorized Director(s) in terms of Articles of Association of the Company (suggested proforma of resolution as Proforma. RFC: Lcg-11). This resolution needs to be passed in a duly convened meeting of the Board of Directors as required u/s 292 of the Companies Act, 1956.

- ii) In case the Articles of Association of the company are silent about the mode of execution of documents and affixation of common seal, in that case provisions of Table 'A' of the Companies Act, 1956 will apply and the resolution authorizing two Directors and Secretary or any other officer of the company should be got passed.
- iii) In case the company is a public limited company, in such case documentation Cell shall advise the company to submit certified copies of resolution as under:
 - a) Resolution in terms of section 293(i)(a) of Companies Act, 1956 for mortgaging or charging the entire movable and immovable properties to the Corporation for availing of term loan /subsidy.
 - b) Resolution in terms of section 293(i)(d) of Companies Act.1956 for borrowing the money supported by CA certificate.
 - c) **Note:-**
 - i) The proforma of above resolutions are as per Proforma No. RFC: Leg-11 A, B&C.
 - ii) The above resolutions should be passed at extra ordinary general meeting of the members of company.

VALIDITY OF SANCTION FOR EXECUTION OF DOCUMENTS

8.1 For the purpose of execution of loan documents, the sanction shall be valid for a period of three months and if the loan documents are not executed within a period of three months from the date of communication of sanction, the sanction would lapse automatically. However, if the circumstances so warrant, this sanction can be revalidated by the delegated authority as indicated below irrespective of loan amount:

S. No.	Extension in validity period of sanction (after expiry of three months)	Approving Authority
1	For extension of validity for 3 months (beyond 3 months upto 6 months)	Branch Manager/ Sanctioning Authority
2	For extension for 3 months (beyond 6 months upto 9 months)	DGM(Operations)/ Sanctioning Authority
3	Further extension beyond 9 months	ED/ Sanctioning Authority

However, before considering the cases for extension or while forwarding such cases to HO, the Branch Manager shall ensure that the service charges have been deposited by the party. Also while forwarding such proposals to HO. the Branch Manager should indicate

the valid/convincing reasons, effective steps taken by the promoters in implementation of the project, impact of time/cost over-run, if any.

8.2 Extension in validity period will be considered keeping in view of following facts:

Reasons for extension should be genuine and beyond the reach of loanee.

Service charges will be paid by the loanee to the Corporation in advance.

8.3 In case documents are not executed within the validity period or extended period, it would be presumed that the loanee is not serious about the project, but before sending the case for cancellation, a registered notice should be issued to loanee. (Suggested proforma No. RFC: Leg-12)

8.4 If even after this notice, there is no response from the concern. Documentation Cell should record the fact on the loan file and place this case before Project Monitoring Committee for consideration and cancellation of loan.

LOAN DOCUMENTS AND STAMP DUTY

9.1 The documentation Cell will get the loan documents executed from the loanee concern on the prescribed formats of loan documents for the type of loan facility granted to it. The formats of loan documents and stamp duty (in the form of special adhesive/Non-judicial stamp papers) to be used are indicated below:

A) For loans other than Transport & Composite Loans

i)	Loan Agreement	Rs. 100/-
ii)	Unattested Deed of Hypothecation (being security documents)	0.1% of the loan amount
iii)	Trust Letter	Rs. 60/-
iv)	Affidavit	Rs. 10/-
v)	Power of Attorney	Rs. 50/-
vi)	Deed of Guarantee	Rs. 100/-
vii)	Declaration & Undertaking for deposition of title deeds	Rs. 110/-

B) For Transport Loan

i)	Unattested Deed of Hypothecation (being security documents)	0.1% of the loan amount
ii)	Trust Receipt	Rs. 60/-
iii)	Irrevocable Power of Attorney	Rs. 50/-
iv)	Deed of Guarantee	Rs. 100/-
v)	Promissory Note	Rs. 2/- Revenue Stamp
vi)	Affidavit (from loanee)	Rs. 10/-
vii)	Two Affidavits (from Guarantors)	Rs. 10/-

C) For Composite Loan

i)	Loan Agreement	Rs. 100/-
ii)	Unattested Deed of Hypothecation (being security documents)	0.1% of the loan amount
iii)	Affidavit	Rs. 10/-
iv)	Declaration & Undertaking for deposition of title deeds	Rs. 110/-

D) Documents of Second Charge:

i)	Tripartite/Inter-se Agreement	Rs. 100/-
ii)	Power of Attorney	Rs. 50/-
iii)	Affidavit	Rs. 10/-

iv) Declaration & Undertaking for deposition of title deeds Rs. 110/-

9.2 In addition to above the stamp-duty on following documents have also been revised as indicated against them:

i)	Partnership Deed	Rs. 500/-
ii)	Dissolution Deed	Rs. 500/-
iii)	Undertaking	Rs. 100/-
iv)	Declaration	Rs. 10/-
v)	Unattested Bond (being security documents)	0.1% of the loan amount
vi)	Agreement to Sell	Rs. 100/-
vii)	Special Power of Attorney	Rs. 30/-
viii)	General Power of Attorney	Rs. 50/-
ix)	Notarial Stamp	Rs. 5/-

A) Deed of Hypothecation, Trust Letter and Bond should not be witnessed and attested and if these documents are attested & witnessed then ad valorem stamp-duty is payable on them.

B) It has also been decided to dispense with letter of deposition of title deeds and a declaration and undertaking is taken on a stamp paper of Rs. 110/- in the prescribed format.

C) The format of memorandum entry for mortgage by deposit of title deed shall be got typed on white paper of good quality and be pasted in Register R-9 (Memorandum Register) instead of writing by hand. Formats of declaration and undertaking and Memorandum Entry are prescribed vide PG Circular no. 722 dated 12/6/1997.

D) The officer accepting deposition of title deeds shall sign the entry pasted in the Register R-9 on each page and by the officer in whose presence deposition was made.

Caution:

Deed of Hypothecation Trust Letter & Bond should not be witnessed and attested and if these documents are attested & witnessed then ad valorem stamp-duty is payable on them.

- 9.3** In case of pari passu charge (joint finance cases) are normally executed at Head Office only for which the above Proforma are to be modified (on account of pari passu charge instead of second charge) as per Proforma used for joint finance cases with RICO or any other financial Institutions or Bank.

Note: In case of printed formats of documents special adhesive stamps are to be used; otherwise Non-Judicial Stamp papers are to be used.

CREATION OF EQUITABLE MORTGAGE BY DEPOSIT OF TITLE DOCUMENTS

- 10.1** Equitable mortgage by deposit of original title documents can be created at places notified by the State Government u/s 58(F) of the Transfer of Property Act, 1882 (List of places so notified is given in Annexure-'I'). Precaution is to be taken that equitable mortgage is created by accepting deeds/the original title documents in deposition only at notified places by the authorized officer of the Corporation.

Caution:

As equitable mortgage is created by depositing the original title documents of land in the same way it can be presumed that mortgage is redeemed, if by chance the original documents go back in the hands of the borrower. Hence utmost precautions to be taken that these documents do not go in any circumstance, in the hands of the loanee till the loan is repaid in full and mortgage is redeemed.

Following procedure may be adopted for creation of Equitable Mortgage in the Assets financing Cases:-

- a) We may have equitable mortgage by deposit of constituted title deeds i.e the original agreement to Sell alongwith Declaration & Undertaking for security of the loan and after the share of borrower required over and above loan of RFC is paid by the borrower to the builder, the balance sale price be paid through Account Payee Cheque to the builder directly on behalf of the borrower by Corporation.
- b) The cheque for loan provided by RFC is required to be paid to the builder, shall be delivered through the borrower in the office of the Sub-Registrar at the time of registration of the Sale Deed.
- c) In the Sale Deed the stipulation may be made about the payment of the amount made through cheque against the loan by the Corporation subject to mortgage created vide Loan Agreement dated_____.
- d) The receipt to be issued by the Sub-Registrar for the Registered Sale Deed should be got issued in the name of Branch Manager so that same may be collected by him directly from the office of Sub-Registrar on registration of documents
- e) The Branch Manager will ensure that the original Sale Deed is collected from the office of Sub-Registrar without delay and equitable mortgage is again created by depositing the Sale Deed alongwith the Agreement to Sell

which was deposited prior to issue of the cheque.

MEMORANDUM OF EQUITABLE MORTGAGE

- 11.1** When an equitable mortgage of properties is created by a loanee in favour of the Corporation a memorandum of equitable mortgage is to be written date wise in the register maintained for the purpose (Proforma No. RFC: Leg-13)
- 11.2** In case of creation of second charge/ pari-passu charge over the assets of assisted units the memorandum of equitable mortgage by way of second charge/pari passu charge is to be written chronologically in the register (R-9) maintained for the purpose (as per Proforma No. RFC: Leg-25 and RFC: Leg -26 respectively).

Progress Register:

- 12.1** The officer dealing with execution of documents will maintain a progress register for making day-to-day entries in the Register (R-7).
- 12.2** a) The documentation cell shall also maintain register for internal control/ check in respect of documents executed by loanee concern as under:-
- | | | |
|-----|--|---------------------------------|
| i) | Register of envelopes containing documents executed | Register No. R-7A(non printed) |
| ii) | Alphabetical list of envelopes containing documents executed | As per proforma No. RFC: Leg-27 |
- b) List showing almirah no., key numbers and name of officers with whom these keys are kept shall also be prepared and kept in the custody of Branch Manager himself.

AUTHORIZED SIGNATORIES ON BEHALF OF CORPORATION

- 13.1** On behalf of the Corporation documents will be signed by authorized officer who shall accept the original title documents in deposit for creation of equitable mortgage for the loans granted by the Corporation. The details of such authorized officers are as under:-

Power of Execution

Powers for signing Area litigation papers

Head Office

Executive Director/General Manager/GM-Cum-Secretary/ Dy.G.M(Law)/Manager(Law)/	To sign, execute & accept equitable mortgage on behalf of the Corporation - Mortgage	To sign plaints, written statements, Vakalatnama, Affidavit and all other	Throughout the State and outside the
--	--	---	--------------------------------------

Dy.Manager(Law)	Deeds, Guarantee Deeds and all other documents connected with the authorized business of Corporation and subsidy of Rs. 60.00 lacs and beyond.	documents/papers related to the legal proceedings by and against the Corporation.	State
-----------------	--	---	-------

Branch Office:

Manager(Br.)/Dy.Manager (Br.)	All loan cases except joint finance cases irrespective of any loan amount.	..do..	Area of Branch.
Dy.Manager(Law)	..do	..do	..do
Dy.Manager dealing with execution in branch	..do.. (upto Rs. 40.00 lacs)	..do..	..do..
Asstt.Manager(I/C of Branch)	..do.. (Upto Rs. 5.00 lacs)	..do..	..do..
Dy.Manager/Asstt.Manager functioning as Dy.Director Credit in DIC	..do.. (Upto Rs. 50,000/-)	..do..	Area of Branch/ DIC

Zonal Office:

General Manager(Zones)/ Manager(Law)/Dy.Manager (Law) posted in Zonal Office	To sign, execute & accept equitable mortgage on behalf of the Corporation - Mortgage Deeds, Guarantee Deeds and all other documents connected with the authorized business of Corporation and subsidy.	To sign plaints, written statements, Vakalatnama, Affidavit and all other documents/papers related to the legal proceedings by and against the Corporation.	Throughout Area of the Zone
--	--	---	-----------------------------

Notes: The execution of documents by the Manager /Dy. Manager (In charge Branch) shall be undertaken only after title examination and the compliance of conditions of sanction are examined and confirmed by the Dy. Manager (Law)/Asstt. Manager(Law) working in the Branch.

- 1) Notification authorizing RFC officers in terms of Regulation No. 53 of RFC General Regulations, 1958 has been published in Rajasthan Gazette a copy of it is given at Annexure - II.
- 2) The DGM at the Regions and the GM (WZ), Jodhpur are also authorized to execute the documents, however they will exercise this power as per administrative instructions issued from time to time.

AUTHORITY FOR DOCUMENTATION ON BEHALF OF BORROWER

14.1 In case of partnership firm documents will be executed by all the partners or by any one partner who is duly authorized to execute the documents on behalf of other partners by a special power of attorney as referred under para 7.1 (D)

above.

- 14.2** In case of private/public limited company the documents will be executed by the authorized Director (s) as per Board resolution referred under para 7.1(E) above.

NORMS OF AFFIXING COMMON SEAL AND REGISTRATION OF CHARGE

- 15.1** The Article of Association of Company may be examined with regard to the provision for undertaking the business for which loan has been granted, borrowing powers and for affixing the common seal of the Company. Strict compliance of the same should be watched at the time of execution of documents.
- 15.2** After completion of execution of documents in company cases the documentation cell shall transfer the loan file to disbursement cell with the remark that first disbursement of loan not more than 50% of the loan be allowed to the company and second disbursement may be allowed only after the company has submitted to the Corporation a copy of the return u/s 125 of the Companies Act, 1956 in form No. 8 along with the copy of receipt of filing fee deposited with the Registrar of Companies concerned. The last 10% of the loan may be allowed to the company only after the company has submitted a certified copies/photo copy of Form No. 8 certified by the Registrar of Companies concerned for the Registration of charge to the Corporation.
- 15.3** In company cases the officer concerned of Documentation Cell will prepare all the loan documents alongwith Form No. 8 and at the time of execution of loan documents the Corporation's officer and the authorized director of the Company as per the resolution shall duly sign the Form No. 8 through Digital Signature Certificate (DSC) and a copy of the same will be kept in record by the Corporation and soft copy of form no. 8 will be handed over to the Company for filing the same with the Registrar of Companies (ROC) for filing the return with ROC concerned.
- 15.4** In the cases where the assets of the borrower unit are being sold by the Corporation either on deferred payment basis or transferred on mutual consent basis to a purchaser company, the officer dealing with the documentation work and the authorized director of the Company in accordance with its resolution will sign Form No. 8 through Digital Signature Certificate (DSC) for creation of first charge of the Corporation and a copy of the same will be kept in record by the Corporation and soft copy of Form no. 8 will be handed over to the Company for filing the same with the Registrar of Companies (ROC) concerned and necessary entries of the registration of charge will be made in R-7.
- 15.5** After filing the return with ROC, it should be ensured that original Charge Registration Certificate issued by ROC be also got collected and kept in safe custody.
- 15.6** In case if in any Branch no officer is authorized to sign through DSC, the Form no. 8 and other ROC related forms may be got signed from any authorized officer of any nearby BO.

EXECUTION OF LOAN AND SUBSIDY DOCUMENTS

- 16.1** The Documentation Cell after the completion of the formalities by loanee will get the loan documents executed by the loanee.
- 16.2** The Documentation Cell will also keep in view that where-ever loanee is entitled for Central/State subsidy; in that case Documentation Cell will get the loan documents executed without mentioning the subsidy amount in the loan documents. Subsidy documents will be executed separately according to the terms and conditions or subsidy sanction letter and as per terms and conditions of subsidy scheme under which subsidy is sanctioned to the borrower.
- 16.3** The Documentation Cell after getting the loan documents executed will record a certificate on the loan file that the loanee has complied with all the formalities of the sanction letter and will forward the loan file to Disbursement Cell for taking action for disbursement of loan.

DOCUMENTS REQUIRED AFTER SANCTION OF SUBSIDY

- 17.0** Now we are not creating charge over the subsidy amount, therefore, there is no need to mention the subsidy amount in the standard format of set of loan documents. The borrower will execute subsidy documents only after sanction of subsidy according to the subsidy scheme and conditions of sanction of subsidy.

NUMBER OF COPIES OF LOAN/SUBSIDY DOCUMENTS

- 18.1** The Documentation Cell will get the loan/subsidy documents executed in four copies (5 copies in case of company) to be used as under:
1. Original Copy will be kept in the envelope of original documents.
 2. Second Copy will be kept as office copy on loan file.
 3. Third Copy will be kept on subsidy file of the loanee (in cases where subsidy is admissible).
 4. Fourth Copy will be given to the loanee for his record.
 5. Fifth Copy will be given to loanee for filing return Under Section 125 of Companies Act for Registration of Charge (in case of public/private limited company only).

SAFE CUSTODY OF DOCUMENTS

- 19.1** One set of documents executed by loanee will be placed on the loan file of the loanee which will be used, for disbursement of loan and follow-up.

19.2 Original loan documents and other documents i.e. title deeds taken in deposit for creation of equitable mortgage, undertakings etc. should be placed in a separate envelope to be kept intact. Each envelope will be numbered and placed date-wise in the almirah provided for this purpose along with a list of documents (suggested Proforma No. RFC:Leg-14) copy of the list will also be kept in a separate file for reference purpose.

19.3 Original documents will be kept under the double lock system and the keys will remain in the custody of under mentioned officers:-

	FIRST KEY	SECOND KEY
Head Office	DM(Law)	DM(Law)/AM(Law) dealing with documentation work
Branch Office	DM(Law)/AM(Law) Officer dealing with documentation work	DM(Fin.)/AM(Fin.) looking after the Disb. Work.
Sub-Office	Dy.Manager/Asstt.Manager Incharge of Sub- Office	
DIC Office	Dy.Manager/Asstt.Manager functioning as Asstt/Dy. Director in DIC.	

19.4 The documentation Cell after getting the loan documents executed will record a certificate on the loan file that the loanee has complied with all the formalities of the sanction letter and will forward the loan file to Disbursement Cell for taking action for disbursement of loan to loanee.

19.5 Entry of these envelopes will also be made showing the Sr. No. of envelope, date of first execution and name of concern in non printed registrar (R-7A). A separate alphabetical list of these envelopes showing the name of party, date of first execution and envelope number will also be prepared (as per proforma No. RFC/Leg.26) one copy of which will be kept (alongwith R-7A) in the almirah of envelope and another copy in documentation Sec. of branch office/head office.

19.6 A non printed Registrar (R-7B) for movement of envelope will also be maintained for the purpose in which movement of envelopes of documents executed is to be recorded and this movement shall take place with the approval of Branch Manager/Manager(Law)/DGM(Law) at head office.

Note: In case only one officer is posted at Branch/Sub Office/DIC, he will keep both keys with him.

RELEASE OF CHARGE & RETURN OF LOAN DOCUMENTS

20.1 Loan documents will be released and returned to party duly discharged along with title documents on receipt of letter of advise from the Accounts Cell of the Head Office/Branch about full payment and closure of Loan Account.

- 20.2** Account Cell, while reporting about full payment of the loan will also indicate that no charge for subsidy is required to be retained in the form of letter of advice to be issued by the Accounts Cell (suggested Proforma No. RFC:Leg-15).
- 20.3** Original loan documents duly discharged along with title documents of the borrower, if any. will ordinarily be sent by Registered Insured Parcel or will be delivered through the Branch Manager or in the Head Office personally. Where the title documents is lease agreement of the State Government/RIICO, the same will not be given to the borrower along with mortgage documents but will be directly returned by Registered post or personally in reference to letter with which the same had been received by the Corporation from State Government /RIICO (by way of a letter as per proforma No. RFC: Leg-16 and Leg-17 respectively).
- 20.4** If in any case the documents of second charge have also been executed than the same will not be released and returned to the party but will directly be sent to the 2nd charge holder for keeping me same with them for their charge. Where the title deed is lease agreement of the State Government/RIICO, the same will be sent to second charge holder under intimation to the lessor.
- 20.5** In cases where the unit is sold in deficit u/s 29 of SFCs Act, 1951, we have to deliver the original title deeds of property sold including the original lease deed of plot of land in question to the purchaser subject to following conditions:-
1. The Branch Manager shall ensure before delivery of original title deeds to purchaser that he has paid the entire sale consideration as per approval of sale or Agreement to Sell, and their all accounts have been closed.
 2. To retain a clear and readable photo copy of Lease Deed/any other title deed which are being returned to the purchaser in record so that same may be used as and when required for initiation of legal action against original borrower for recovery of deficit amount.
 3. Take an Undertaking from purchaser concern that as and when Corporation require the production of original Lease Deed or other title deeds in any court for recovery of deficit amount from original borrower then the same shall be made available to Corporation.

REGISTER OF RELEASE OF DOCUMENTS

- 21.1** After the loan has been repaid documents will be released to the party after making necessary entries in the register of release of documents (Register no. R/8) Entries will also be made in the register (R/8A Non-printed) when any document is taken out for any purpose. Similarly, entry will also be made when it is again kept in the envelope.
- 21.2** The original loan documents duly discharged along with title documents of the borrower should ordinarily be sent by Registered Insured Parcel or should be delivered through the Manager/Dy. Manager (Branch) or at the Head Office personally on identification to the person entitled there to. Receipt obtained for the same should also be kept in the envelope.

**REGARDING NOTIFICATION FOR PLACES NOTIFIED BY THE
STATE GOVERNMENT U/S 58(f) OF THE TRANSFER OF
PROPERTY ACT, 1882**

- 1.** Cities and Towns of Ajmer, Alwar, Bhilwara, Bikaner. Sriganganagar, Jaipur , Jodhpur, Kola. Pali and Udaipur (Notification No. F7 (I) JUD/62 dated 28th May, 1962 published in Rajasthan Rajya Patra Part -1 (B) dated 31st June. 1962 at Page 29.
- 2.** Cities and towns of Barmer. Bundi, Banswara, Bharatpur, Churu. Dungarpur, Jhunjhunu, Jhalawar, Jaisalmer. Jalore, Nagaur. Sirohi, Sawaimadhopur, Sikar and Tonk (under Notification No. 7(1) JUD/79 dated 16th August 1979).
- 3.** Chittorgarh (under Notification No. F7(1)JUD/779 dated 15th December, 1979).
- 4.** The Cities and towns Balotra and Makarana (under Notification No. F-7(I) JUD/83 dated 25th February. 1983).
- 5.** All the Municipal Head Quarters and Panchayat Samiti Head Quaters of the Stale of Rajasthan vide Notification number F-7(1) Nyay/79 dated 15.12.83.
- 6.** Bhiwadi (Distt Alwar) vide Government Notification No. 7(1) Nyay/79 dated 2nd March 1989.

ANNEXURE-II

(As per PG Circular No. 916 dt. 01/05/2001)

NOTIFICATION

अधिसूचना

जयपुर, अक्टूबर 24, 2000

संख्या आर/एफ/सी/एफ/ला-2/बीसी/जन/32- राजस्थान वित्त निगम का संचालक मण्डल (इस सम्बन्ध में समय-समय पर जारी किये गये पूर्व आदेशों को निरस्त करते हुये) "राजस्थान वित्त निगम के सामान्य उप नियम" के नियम संख्या - 53 तथा "दी स्टेट फाइनेन्शियल कारपोरेशन्स अधिनियम, 1951" की धारा-31 के तहत निगम के अधिकारियों को निम्न कार्यों हेतु विशेष रूप से अधिकृत करता है :-

S.No.	Designation of Officer	Nature and extent of Authorization	Area
1	2	3	4
1.	Executive Director/General Manager/ GM-Cum-Secretary/ Dy.Gen.Manager(Law)/ Manager (Law)/ Dy.Manager(Law)/ Asstt. Manager (Law) at Head Office	To sign, execute & accept equitable mortgage on behalf of the Corporation - Mortgage Deeds, Guarantee Deeds and all other documents connected with the authorized business of Corporation and subsidy of Rs. 60.00 lacs and beyond. To sign plaints, written statements, Vakalatnama, Affidavit and all other documents/papers related to the legal proceedings by and against the Corporation.	Throughout the State and outside the State
2.	Dy.Gen.Manager(Region)/Dy.Manager (Law)/ Asstt. Manager (Law) at Region	..do..	Throughout the Region
3.	Manager(Branch.)/Dy.Manager (Branch.) Asstt.Manager(In Charge of the Branch) or Dy.Manager(Law) or Dy.Manager dealing with execution Asstt. Manager(Law) or Asstt.Manager dealing with execution	..do..	Area of Branch
4.	Dy.Manager/Asstt.Manager functioning as Dy. Director Credit in DIC	..do..	Area of Branch/DIC

संचालक मण्डल की आज्ञा से,
एस.एन. तिवारी
महाप्रबन्धक एवं सचिव

(Legal & Documentation)

LITIGATION MATTERS

This chapter prescribes the procedure to be adopted in litigation matters.

Recovery under the provisions of SFCs Act 1951

The Corporation effects the recovery under the various provisions of SFCs Act., 1951 that are as under:

a) Under Section 29

The Corporation has right to take over possession of the mortgaged assets and can realize its dues *by* sale or lease of the mortgaged property of the industrial concern.

b) Under Section 31 read with Section 32

The Corporation, after issuing notice u/s 30 of SFCs Act, can apply to the District Judge, within the limit of whose jurisdiction, the industrial concern carries on the whole or a substantial part of its business for any one or more relief as described under the clause (a), (aa), (b) & (c).

- i) **Section 31(1)(a)** Under this section, application is made by the authorized officer of the Corporation before the District Judge concerned for order for sale of the property pledged, mortgaged, hypothecated or assigned to the financial Corporation as security for loan or advance.
- ii) Application is also made along with the above application under the provisions of section 31(1) (c) requesting the Distt. Judge for an ad-interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment's from the premises of the industrial concern.

c) Recovery of dues. Under Section 31(1)(aa) of SFCs Act, 1951 from guarantors and mortgagor-guarantors (through Court)

Action under this section can be taken for recovery of dues in the following situations as may be decided by the competent authority:

- i) Where the Corporation had sold the assets of industrial concern under the provisions of Section 29 of the Act and after sale if there is shortfall in such cases, an application u/s 31(1)(aa) may be filed before the District Judge of the concerned area against the Guarantors, if guarantee has been taken or against the Mortgagor-Guarantor, if Collateral security has been taken.

- ii) If in any case it has been decided that where the mortgaged assets were taken over u/s 29 of the Act and the same had not been sold for any reason whatsoever, in such cases also, the guarantee or collateral security by Guarantor-Mortgagor can be enforced by filing an application u/s 31(1)(aa) for recovery of entire dues of the Corporation.

While filing application u/s 31(1)(aa), an application u/s 32 (1A) may also be filed for issue of show-cause notice to the surety (guarantor/mortgagor-guarantor) by the District Judge for enforcing the same.

A draft of application under section 31(1)(aa) and under section 32(1A) for which the guidelines had already been circulated, which may suitably be amended in each case under consultation with our advocate.

d) Under Section 32-G

The Corporation is also empowered to recover dues as an arrear of land revenue under the provisions of Rajasthan Land Revenue Act, 1956 and procedure prescribed by the State Government.

e) Stamp Duty

A Court fees of Rs. 2/- shall be affixed on the application to be filed u/s 31(1) / 31(1) (aa) as it is a miscellaneous application as prescribed court fees under the Rajasthan Court Fee and Suit Valuation Act.

f) Enforcement of security of Mortgagor-Guarantor U/S 29 while taking over of possession

The Corporation can take over possession of the property of the mortgagor-guarantor also u/s 29 of SFCs Act and may get the dues realized by sale of property.

g) Cases filed/to be filed by the Corporation

In the event of default by the borrower unit/guarantors when decision is taken by the competent authority to initiate legal action for recovery, following steps need to be taken:

- i) An application is to be filed by the authorized officer of the Corporation. Notification of authorization is to be annexed with the application.
- ii) Upto date statement of account is to be enclosed with the application which should bear following certificate under the seal and signatures of the Branch Manager:

"Certified that it is a true copy of the entries made in the usual and ordinary course of business in the Registers/Ledgers which is/are on of the ordinary books of the Corporation and the said Register/Ledger is/are still in the custody of the Corporation and the copy is prepared from the original by mechanical or other process."

- iii) All the papers mentioned in the application are required to prove the case of the Corporation need to be enclosed with the application.
- iv) Before filing application, the limitation may be verified by the Branch. The jurisdiction in our cases rest with the District Judge of the area.
- v) In case, if the application filed u/s 31(1)(a) which is supported with the application of 31(1)(c) in which an ad-interim injunction is requested, this order of injunction is to be passed by the court without issuing notice to the opposite party and it is mandatory on the part of the court to issue such injection order on the application of the Corporation.

h) Service of summons

Quick service of summons is to be ensured by the OIC by taking following steps :

- i) In the first instance, he must have the correct address of the defendants/non-applicants and he should try for service of summons by taking them as 'Dasti' for local limits.
- ii) The second mode for service of summons can be through Registered A.D. as per provisions of Order 5 Rule 19 of CPC.
- iii) Even if we fail to serve summons, OIC may request the court through advocate to allow us to get the summon published in newspaper through an advertisement as provided under Order 5 Rule 20 of CPC. The cost of such publication is to be debited in the mortgagor's expense account.

i) Evidence

- i) The officer who is required to record his evidence in the case, should ensure that he discuss the case a day before with the OIC and the advocate. He should get himself acquainted and refresh himself about the facts of the case and should discuss the advocate the expected questions and the statement which are required to be given to prove the case of the Corporation on the basis of the record available on the court file.

- ii) To prove our contention and pleadings on record, the annexure should be got exhibited so that the same may be read in view of the provisions of the Evidence Act.
- iii) Efforts should be made that the Corporation takes no adjournment. If opposite party takes adjournment, we should press for heavy cost. In addition to the papers which are required to be exhibited by the evidence on the facts of the case, following documents should invariably be exhibited in the evidence:
 - i) Authority of the officer for filing suit application i.e. notification issued on this behalf by the Corporation.
 - ii) Statement of account bearing certificate u/s 44 of SFCs Act duly dated, signed and sealed by the Branch Manager.
 - iii) Copy of the legal notice, sanction letter, documents executed, guarantee deed, details of mortgaged property, amount sanctioned, disbursed amount, interest rate, possession report, etc.

j) Appeals

- i) If the order is passed by the Hon'ble Court which is detrimental to the interest of the Corporation., the OIC should obtain opinion of the advocate with grounds on which appeals is required to be preferred.
- ii) Appeal should be filed within limitation period.
- iii) For preparation of appeal, following documents are required:-
 - i) Certified copy of order/judgement against which appeal is recommended.
 - ii) Complete file of the advocate who has contested the case in lower court.
 - iii) Opinion of the advocate along with the grounds on which appeal can be filed.
 - iv) Relevant record of the Branch Office pertaining to the case.
 - v) Statement of loan account duly certified u/s 44 of the SFCs Act, signed and sealed by the Branch Manager.
 - vi) A self-contained note on the background of the case along with date-wise events of the case and also comments and recommendations should be discussed and provided to the advocate filing the appeal.

k) Follow-up of court cases

Soon after either on receipt of the summons or otherwise it comes to the knowledge of the Branch, an OIC and the advocate to contest the case, may be appointed immediately to ensure that the case does not remain unattended.

l) Duties of Officers In-charge (OIC)

The duty of the OIC besides official duties and responsibilities includes inter-alia, the following acts immediately after his appointment as OIC:-

- i)** Make such enquiry in the facts of the case as may be necessary.
- ii)** Collect all the relevant files, documents, rules, notifications from the concerned section at Head Office/Branch Office.
- iii)** Prepare a report answering para wise all the points raised in the plaint/petition and giving such additional information as is likely to strengthen the case.
- iv)** Contact the advocate with the said report and material.
- v)** Get prepared suitable written statement/reply in consultation with advocate and file in court and send a copy duly signed by OIC and the advocate at Head Office.
- vi)** Assist the advocate in preparation and conducting of the case and always keep himself aware with the dates fixed in the case, its stage and progress.
- vii)** Attend the court along with advocate on the each date of hearing.
- viii)** Appraise Litigation Section in Head Office as well as the Section/Branch concerned of the development in the court on the date of hearing in the Performa prescribed.
- ix)** Keep record of amount spent by way of legal fee. fee to advocate and other allied expenses including expenses incurred on traveling etc.
- x)** Send the certified copy of the order/ judgment along with his report and opinion of the advocate for further action to be taken. It should be ensured that no time is wasted in applying and obtaining certified copies, making report, obtaining opinion and in communication.
- xi)** In case of transfer of the OIC, he/she shall hand over the brief of the case and also relevant record to the successor and the successor shall be deemed to be OIC of the case.

- xii)** In case he/she is also appointed OIC on behalf of the State Govt., he/she should keep informed the State Govt, and Govt. Advocate of the development and take similar action as he/she is expected to do as OIC of RFC.
- xiii)** To sign complaints, written statements, vakalatnamas affidavit and all other documents/papers relating to legal proceedings if he/she is the authorized officer for the purpose otherwise get the same signed from the officer authorized for the purpose.
- xiv)** The OIC shall be responsible for pursuing the case effectively and ensuring that timely action is taken
- xv)** As soon as the case is decided, the OIC shall intimate the decision to the DGM (LAW)/DGM (FR) and the Branch Manager and will also obtain certified copy of order/judgment from the court concerned and shall forward the same along with comments and opinion of Advocate, if decided against the Corporation without any further delay.

The OIC will render himself liable for disciplinary action if he/she is found negligent or careless in any way in discharging his aforesaid duties.

m) Appointment of Advocate

The appointment of advocate for conducting the case will be as under:-

- i) In High Court cases, an Advocate will be appointed out of the panel of lawyers approved from time to time.
- ii) In the court of District Judge and below an Advocate will be appointed at Branch level Out of the list of panel of lawyers approved by Head Office.

NOTE:- If the OIC/Branch Manager/DGM(Branch)/DGM (LAW)/ GMs considering the importance of the case, decides that some senior and specialized lawyer may be engaged to safeguard the interest of the Corporation, he should submit proposal to ED/CMD for consideration and approval.

n) Fees to Advocates:

The fees to advocates for conducting/defending court cases filed by or against the Corporation will be payable on the basis of nature of the case as under:-

S. No.	Type of Case	Name of Court	Amount involved in application (Rs.)	Limit of Fees (Rs.)
1.	Application u/s 31 of the SFCs Act	Civil Court	a) Upto 5 Lacs b) Above 5 Lacs	2000/- 4000/-
2.	Execution of Decree	..do..	a) Upto 5 Lacs b) Above 5 Lacs	1000/- 2000/-
3.	T.I. & Suit	Munsif Magistrate		1000/-
4.	Misc.Suit/Appeal	CJM/ADJ/DJ		2500/-
5.	Criminal Case	Lower Court		1500/-
6.	Application/Revision/Writ Petition/Appeal	High Court Jodhpur & Jaipur		4500/-
7.	SLP	Supreme Court		On negotiation basis. However presently 3300/- per appearance
8.	Application/Suit	DRT, Jaipur		3300/-
9.	Application/Suit	Labour Court		1500/-
10	Application	Distt. Consumer Forum		1500/-
11	Application/	State		3300/-
.	Appeal	Commission		
12	Application/	Revenue Appellate		1500/-
.	Appeal	Authority, Ajmer		
13	Application/	Revenue Board,		2500/-
.	Revision/Appeal	Ajmer		

NOTES:

- i) In addition to above fees, clerkage @ 10% of the fee admissible shall be paid.
- ii) Expenditure incurred shall be paid on actual basis.
- iii) 50% of fee & clerkage shall be payable after filing reply & balance 50% shall be paid only when case is finally decided and certified copy of court order alongwith comments of Advocates for further action which includes filing of appeal/revision is received by the Corporation.

- iv) The fee for the cases contested out of State of Rajasthan shall be paid as per present/existing system/negotiable basis.
- v) Any relaxation in the above fees would require prior written approval of CMD.

o) **Authority for approval of fees:**

Authority for approval of fees of Advocates will be as under:-

a) Manager/Dy.Manager/Incharge is authorized to pass and pay the fees as per above norms up to the level of Court of Distt. Judge, Revenue Appellate Authority & Revenue Board, Ajmer excluding cases pending before Hon'ble Supreme Court, High Court, DRT & State Commission.

b) The payment of the revised fees shall be applicable on the fresh cases only with effect from 16.11.2004. No enhanced fee is to be paid in existing cases.

c) The Fee, which also includes legal advice in the cases of Supreme Court, High Court and DRT shall be approved and paid as under:-

DGM(Law)	Upto	Rs. 3300 + 10% Clerkage + actual expenditure
DGM, Jodhpur	Upto	Rs. 4500 + 10% Clerkage + actual expenditure
GM(P&A)/ED	Upto	Rs. 4500 + 10% Clerkage + actual expenditure
CMD	Above Rs. 4500	+ 10% Clerkage + actual expenditure

