

## 2 day course on “Secured Lending Law and Loan Recovery, With Special Emphasis on SARFAESI Act”

Organised by: Vinod Kothari Consultants Pvt. Ltd

### USP of the Course

- ✚ Comprehensive coverage on secured lending including discussion on prevailing practices among banks – loan assignments, pledges, etc.
- ✚ Full-blown discussion on nuances of SARFAESI Act including alternatives such as DRT proceedings, winding up, asset backed lending transactions, etc.
- ✚ Plenty of case law including most recent Supreme Court and high court rulings on powers of lenders
- ✚ Knotty questions of priorities, conflict of laws etc. put in simple and lucid language
- ✚ Debt restructuring and resolution compared with enforcement action
- ✚ International flavour to entire discussion – comparison with international best practices on loan recovery acclaimed speaker – Vinod Kothari



# Course Outline

## Day 1

### **1. Basic law of secured lending:**

- a. Meaning of security interests
- b. Different forms of security interest
  - i. Against movable and immovable property
  - ii. Possessory and non-possessory security interest
  - iii. Mortgage and charges (first & second charge, its release)
  - iv. Conditional sales
- c. Creation of security interests
- d. Perfection of security interests
- e. Guarantees and third-party security interests
- f. Overview of security interest laws globally and emerging trends
- g. Priority of charges and conflict of special laws

### **2. Credit and security interest evaluation:**

- a. Credit evaluation of a funding proposal
- b. Basics of evaluation and analysis of financial statements
- c. Evaluation of the asset
- d. Two critical ratios – loan to value ratio and debt service coverage
- e. Movement of LTV ratio over time
- f. Assessing residual value of the security interest

### **3. Different forms of funding transactions:**

- a. Asset-backed lending business – loans against tangible assets – cars, equipment, plant and machinery, real estate
  - i. Creation of security interests and precautions
- b. Loans against financial assets (shares and securities)

- i. Essential rules of pledging and procedures in case of physical and demat securities
  - ii. Restrictions on loans against shares by SEBI and stock exchanges
  - iii. Rights of a pawnee under contracts law and Depositories Act
- c. Project finance:
  - i. Creation of floating charges and enforcement
  - ii. Restrictive covenants in case of project finance
  - iii. Relevance of special purpose vehicles
- d. Venture finance
  - i. Legal aspects of venture capital funding by venture capital funds
  - ii. Venture funding by NBFC
  - iii. Essential features of venture capital documentation – shareholders’ agreement

#### **4. Evaluation of Lender’s options**

- a. Choosing from out of a slew of measures
  - i. Enforce
  - ii. Restructure
  - iii. Settle
- b. Making a prudent choice from out of slew of measures
  - i. Workouts and debt restructuring
  - ii. Enforcement of security interest – self-help vs judicial
  - iii. Winding up applications
  - iv. SARFAESI Act action
  - v. Enforcement of security interest
  - vi. DRT action
- c. International practices

#### **5. Assignment of loans and loan sales**

- a. Assignment of loans to banks, ARCs and other entities
  - i. RBI guidelines and common law



- b. Assignments under common law, sec 130 of TP Act, SARFAESI Act compared
- c. Stamp duty implications of assignment
  - i. Legal assignments
  - ii. Inchoate assignments
  - iii. Equitable assignments

## **Day 2**

### **1. Self-help enforcement of security interests**

- a. When is self-help repossession available, and for what sort of assets should it be exercised
- b. Recovery agents
- c. RBI guidelines on recovery agents
- d. Precautions to keep while taking recovery action
- e. List of Dos and DONTs
- f. Vicarious responsibilities of the lender on recovery action
- g. Special rights of Financial Institutions on recovery of assets

### **2. Formal and informal workouts**

- a. Formal workouts
  - i. SICA/ BIFR/ NCLT
- b. Informal workouts
  - i. Corporate debt restructuring
  - ii. Structured debt restructuring
- c. Principles of debt restructuring

### **3. Winding up and insolvency proceedings**

- a. Priorities in winding up
- b. Making efficient use of winding up proceedings

### **4. SARFAESI Act**

- a. Pre-requisites for action
- b. Serving of proper notice u/s 13 (2)
- c. Precautions to take while proceeding u/s 13 (4)
- d. Sale of assets and precautions to take before selling
- e. Guidelines issued by RBI for takeover/change of management
- f. Case-studies covering practical aspects of SARFAESI Act

## **5. Resolution of debt through asset reconstruction companies**

- a. Limitations on the business of ARCs
- b. Purchase of loans by ARCs and trusts under trusteeship of ARCs
- c. Law on resolution of loans by ARCs
- d. International practices with examples from Malaysia, Korea, Thailand, etc.

## **6. Miscellaneous discussion points**

- a. Declaration of borrowers /promoters as fraud by banks
- b. Action against borrowers / promoters under Companies Act 2013
- c. Declaration of borrowers / promoters as willful defaulters
- d. Challenges / difficulties in implementing SARFAESI
- e. Overview on Bankruptcy Act

## About the organisers

Vinod Kothari Consultants Private Limited (VKCPL) is a premiere consulting and training entity in the field of structured finance. VKCPL has been into the very thick core of structured finance in India. Apart from India, VKCPL has carried out transaction advisory services in several other countries as well like Jordan, Indonesia, Sri Lanka, Egypt, Philippines to name a few.

As far as the training experience is concerned, the team has an established track record for over 20 years. With more than 500 workshops, focusing on leasing, securitisation, credit-derivatives, factoring etc., we have addressed scores of industry events and conferences. In terms of variety of audience, we have handled both public and private groups. From investors and asset managers in Australia, to rating managers in Malaysia, to a leading law firm in India, to Income Tax departments in South Africa, to students in several institutions, we have dealt with different groups and different situations. In most of the cases, our trainings and workshops have been rated “excellent” by the participants. Our past workshops and trainings can be viewed at [www.vinodkothari.com](http://www.vinodkothari.com).

Besides trainings and workshops, VKCPL has been instrumental in conducting industry forums on a large scale, on specialized areas to bring together stakeholders together and provide a platform for relevant discussion and wide networking. So far, it has organized The Affordable Housing Finance Summit in 2013, The Securitisation Summit in the years 2012, 2013, 2014, 2015 & 2016 (by the name of The 5th Securitisation Summit), The Infrastructure & Asset Finance Summit in 2012 and the Regional Microfinance Summit in April 2010 with participation of over 100 people. All of these conferences witnessed coming together of high profile executives, speakers, sponsors, co-sponsors, panelists, supporters and participants too.

The details of the same can be viewed at [www.vinodkothari.com](http://www.vinodkothari.com).

