Consultation Document

Setting up of an Asset Management Company in Mauritius

The Bank of Mauritius has today released this Consultation Document on the Setting up of an Asset Management Company in Mauritius.

The Bank of Mauritius invites both oral and written submissions on the document, which must be made not later than 16 February 2016. Written submissions should be addressed to amc@bom.mu. Members of the public wishing to make oral submissions should contact the Bank of Mauritius on 202 3907 or 202 3918 during office hours.

8 January 2016

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Executive Summary

1 The Bank of Mauritius [Bank] is established under the Bank of Mauritius Act (Act). One of its mandates is to promote the soundness and stability of the financial system of Mauritius.

2. As at end-December 2004, the level of non-performing loans (NPLs) in Mauritius was around 7.2 per cent of total credit facilities extended by banks. With the setting up of the Mauritius Credit Information Bureau (MCIB) in 2005, the verification of customers' credit profiles from the MCIB database prior to the granting of any credit facility became mandatory. This contributed to a marked improvement in the NPL ratio which came down to about 3.8 per cent in 2008. Weak economic conditions and reckless lending in the ensuing years led to a deterioration of the NPL ratio of the banking sector to 7.8 per cent as at end-June 2015. High NPL levels weaken banks' balance sheets. They add to the operational cost of banks and higher service charge for customers.

3. Whenever borrowers are unable to repay their debts, lending institutions have, as a measure of last resort, recourse to Sale by Levy for the realization of security given in the form of immovable property. It has been observed that the Sale by Levy process has benefited neither lending institutions nor borrowers. Representatives of banks have acknowledged that sale of assets fetched at most only about 20 to 25 per cent of their market value. In some cases, the Sale by Levy process could take as long as three to five years to be eventually completed.

4. In 2007, the Borrower Protection Act (BPA) was introduced to safeguard the interest of borrowers having availed of credit facilities not exceeding Rs2.0 million. The main objective of the BPA is to provide, inter alia, a "fairer" resolution of credit agreements not exceeding Rs2 million. The requirements imposed under the BPA, however, together with the lengthy judicial process at the Master's Court, impacted on the pace of NPL resolution. As at end-June 2015, 779 cases were pending at the level of the Commissioner for the Protection of Borrowers, for an aggregate amount of Rs487 million. The BPA is perceived to be less effective than desired.

5. Further, whenever legal action is taken for recovery of NPLs, borrowers generally incur costs of about 17 per cent of the sale proceeds of assets given as security. This compounds the burden of distressed borrowers.

6. In view of the rising trend in NPLs and the impediments of the Sale by Levy process for both banks and borrowers, the Bank decided to explore the possibility of setting up an Asset Management Company (AMC) in Mauritius with the objective of resolving the problem of NPLs in the balance sheets of banks. The AMC will provide an effective mechanism for the disposal of foreclosed assets by replacing the current system

of Sale by Levy for such assets by private contracts. Positive externalities of the AMC will be a reduction in the number of court cases on NPL resolution and extraction of higher value for borrowers from the sale of the foreclosed assets.

7. A Working Group (WG) was accordingly set up by the Bank in August 2015 with the purpose of examining the possibility of setting up an AMC in Mauritius to address the above concerns.

8. The WG was chaired by Mr Deenesh Ghurburrun, Assistant Director-Supervision and comprised two other staff members of the Bank, namely, Mr Mardayah Kona Yerukunondu, Assistant Secretary-Legal and Mrs Rajshri Jutton-Gopy, Chief-Legal Services. In order to equip the WG with multidisciplinary expertise, the Bank sought assistance from four external members with in-depth understanding of the banking sector, court procedures, and Sale by Levy processes. The following professionals were appointed as members of the WG:

- Me Clarel Benoit, Barrister-at-Law, Legal Adviser of the Bank
- Me Gunness Ramdewar, Senior Attorney, Attorney of the Bank
- Mr Mario Hennequin, Banking and Finance Consultant
- Mr Pravind Samboo, Head of Risk Control Unit, Corporate Credit at Barclays Bank Mauritius Limited

9. The WG met on nine occasions.

10. The WG sought the views of Chief Executive Officers (CEOs) of banks with respect to the project. All banks, except one, are in favour of this initiative and hold the view that the key considerations for the setting up of the AMC should include, *inter-alia*, the legal framework and operating model, the shareholding structure of the AMC and the pricing mechanism to be adopted by the AMC for the purchase of NPLs. They agree that this initiative would go a long way towards improving the quality of balance sheets of banks.

11. The WG also examined the various types of AMCs that are in operation worldwide.

12. After discussions and analysis of the information that was made available to it, the WG submitted a report (Report) which contains the rationale for the setting up of an AMC, the process and structure to be adopted, the functions and powers of the AMC, the pricing mechanism for acquisition and disposal of assets and the rules applicable to banks with regard to NPL transfers. This Consultation Document draws heavily from the findings and recommendations of the Report.

13 The main objective of the AMC will be to acquire, in a phased manner, the NPLs which have been secured by residential and commercial property. In so doing, the AMC would protect and possibly enhance the value of those assets. The AMC will also relieve distressed banks of their NPLs, thus enabling them to continue to function on a sound footing.

14 The AMC will need to be commercially viable to ensure its sustainability and some highlights regarding its establishment are as follows:

(a) Banks should exhaust all feasible recovery solutions before transferring any asset to the AMC.

(b) The stated capital of the AMC will be Rs1.0 billion with an initial paid-up capital of Rs500 million. The Bank of Mauritius will subscribe up to 60 per cent of the capital and the remaining will be subscribed by commercial banks and other institutions.

(c) The AMC will have its own board of directors, comprising representatives of the shareholders and independent directors.

(d) The AMC will have to be backed by an appropriate legal and regulatory framework. Appropriate laws will have to be enacted to that effect and other laws amended, where appropriate.

(e) The AMC will be empowered to make rules with respect to the following:

i. NPL transfers from institutions to the AMC;
ii. Rules in respect of borrowers who have given their asset(s) as security to more than one bank;
iii. Asset Disposal, AMC Costs and Distribution Rules;
iv. Valuation Methodology; and
v. The Due Diligence Process prior to acquisition of NPLs.

8 January 2016

I. Introduction

1. The financial strength of an economy is determined, amongst other things, by the soundness and stability of its financial sector.

2. The level of NPLs has an adverse impact on the soundness of the financial sector. A credit facility is usually classified as non-performing when payments of interest and/or principal are past due for 90 days or more. The conditions that motivate a bank to classify a facility as non-performing include *inter-alia*:

(a) significant financial difficulty of the borrower;

(b) an actual breach of credit agreement, such as a default or delinquency in respect of interest or principal payments;

(c) granting by the lender to the borrower, for economic or legal reasons relating to the borrower's financial difficulty, of a concession that the lender would not otherwise consider;

(d) a high probability of bankruptcy or other financial re-organization of the borrower;

(e) recognition of an impairment loss on the relevant asset in a prior financial reporting period;

(f) the disappearance of an active market for that financial asset due to financial difficulties; or

(g) a historical pattern of collections of accounts receivable that indicates that the entire face amount of a portfolio of accounts receivable will not be collected.

3. For proper credit risk management by banks, the Bank has issued, among others, the Guideline on Credit Risk Management and the Guideline on Credit Impairment Measurement and Income Recognition.

(a) The Guideline on Credit Risk Management recognizes that mismanagement of credit can pose a serious threat to the soundness of a financial institution, and this may impact on the interests of depositors and other stakeholders. Prudential credit risk management is, therefore, of utmost importance. The Guideline emphasizes the responsibility and accountability of the board of directors and management in credit risk management and outlines the policies

and procedures to be adopted for managing credit risk in a financial institution.

(b) The Guideline on Credit Impairment Measurement and Income Recognition outlines the procedures for classification of facilities as non-performing and the relative provisions to be set aside.

4. Whilst the supervisory framework implemented by the Bank advocates proper risk management of credit, it needs to be supplemented by an efficient framework for the resolution of NPLs.

5. There are three pieces of legislation relevant to security: the Civil Code, the Sale of Immovable Property Act and the Borrower Protection Act 2007.

(a) The Civil Code

The Civil Code provides for two types of "*sûretés*" – "*sûretés réelles*" and "*sûretés personnelles*". For the purposes of this Consultation Document, our focus is on the "*sûretés réelles immobilières*", namely *hypothèques, sûretés fixes et flottantes,* which are usually taken on immovable property(ies) of customers as guarantee for loans.

The document constituting a *hypothèque* is made by way of a notarial deed.

Banks and other institutions are empowered to execute fixed and floating charges (*sûretés fixes et flottantes),* introduced in the Civil Code in 1983. There is growing concern that lending institutions may have made an abuse in the execution of fixed and floating charges in view of their dominant position vis-à-vis the borrower.

The Law Reform Commission of Mauritius has, in August 2012, issued a Report on "Droit des Sûretés". The Law Reform Commission reviewed the provisions of the Civil Code on "*sûretés"* and, after taking into account the evolution of the practice in Mauritius and developments that occurred in France, recommended changes to the current framework which dates back to 1983.

(b) The Sale of Immovable Property Act 1864

The Sale by Levy procedures are governed by the Sale of Immovable Property Act 1864 and are set out in Annex A.

(c) The Borrower Protection Act

The Borrower Protection Act 2007 [BPA] was passed by the National Assembly on 24 January 2007 with, *inter-alia*, the following objects –

i. regulate credit agreements for a sum not exceeding 2 million rupees;

ii. provide for the establishment of the Office of the Commissioner for the Protection of Borrowers with powers to, *inter-alia*, receive and investigate complaints in respect of credit agreements and conduct hearings as may be necessary; and

iii. replace the current system of sale by levy by providing that henceforth the sale of an immovable property given as security in respect of a credit agreement shall be effected by private contract under the supervision of the Commissioner or by way of sealed offers.

Section 20 of the BPA prescribes the methods of sale of mortgaged property where the Commissioner is satisfied that all possible means of doing otherwise than as provided for in the BPA have been exhausted.

The Commissioner has powers to authorize the borrower or the guarantor, if any, to sell, under his supervision within such time as he may determine, the mortgaged property by private contract. The Commissioner has to be satisfied that the price offered reflects the market value of the property, as recommended by the Chief Government Valuer in writing.

If the property is not sold within the allowed period and the price offered does not reflect the market value of the property or there is no potential buyer, the sale of the property will be proceeded to by calling for sealed offers. The Commissioner may, on the recommendation of the Chief Government Valuer, approve the sale of the property to the highest bidder.

The distribution of the proceeds of the sale of an immovable property under the Act is governed by the provisions of the Sale of Immovable Property Act.

An overview of the BPA is provided at Annex B.

II. Problem Identification

Commissions of Inquiry

1. Two Commissions of Inquiry have been instituted with respect to Sale by Levy in 2004 and 2012. In 2004, the *Commission of Inquiry on Sale by Levy* was chaired by Sir Victor Glover, GOSK and in 2012, the *Commission of Inquiry on Processes/Practices for Granting of Loans Secured on Immovable Property and Sale by Levy* was chaired by Ms W V Rangan.

2. The 2004 Report highlighted that, in addition to being complicated and costly, the Sale by Levy process was a source of hardship to debtors. Both Commissions noted in their reports that the procedure is quite lengthy and complex, and the system of Sale by Levy should be revamped.

3. The Commission of Inquiry of 2012 recommended that the provisions of the Sale of Immovable Property Act be replaced by a new regime for *"saisie immobilière"* inspired mainly by the rules laid down by *«l'Acte Uniforme de l'OHADA du 10 avril 1998 portant organisation des procédures simplifiées de recouvrement et des voies d'exécution » (Articles 249 to 251, 253 to 323)* and some of the rules of the French *"décret du 27 Juillet 2006 relatif aux procédures de saisie immobilière et de distribution" (Articles 77 to 79)*.

4. The 2012 Report observed that the law on Sale by Levy was outdated and presented "serious lacunas". It also identified the following problems:

(a) There are insufficient particulars of the debt in the Commandement and Memorandum of Seizure;

(b) The description that is required to be given of the property is insufficient;

(c) It is the usher drawing up the Memorandum of Seizure who is given the responsibility, under our law, to ascribe a value to the property seized;

(d) The price at which the bidding should start is so low that the system has attracted unscrupulous persons as bidders; and

(e) There is also evidence that the out-bidding process may have been used to blackmail debtors or purchasers.

Other issues identified

5. The number of cases referred to the authorities for "Sale by Levy" has been growing constantly over the last four years with the number of outstanding cases increasing from 480 at end-2011 to 776 at end-2014, although, on average, around 402 cases are disposed of annually.

6. Banks' CEOs expressed concern on the difficulties encountered regarding cases referred to under the BPA, which was perceived as an impediment to the orderly resolution of NPLs. Information provided by banks indicates that, at end-June 2015, the number of cases referred to the Commissioner for the Protection of Borrowers which were under consideration at the level of the Commissioner stood at 779 for an aggregate amount of Rs487 million. Four banks accounted for 90 per cent of the cases.

7. Banks have been inscribing fixed and/or floating charges on assets of individuals. Floating charges have the effect of binding present and future assets of an individual, which may eventually be seized in case of default.

8. Further, in cases of Judicial sale, where the bank is acquiring the borrower's property, additional acquisition costs, ranging from 5 to 10 per cent, are incurred by the bank. Concurrently, the borrower loses about 17 per cent of the sale proceeds in the form of legal and other disposal costs.

9. In terms of the Report on *"Droit des Sûretés"* issued by the Law Reform Commission of Mauritius in August 2012, there were cases where the charges inscribed on properties were not proportionate to the relevant debts.

10. The Bank met the CEOs of all banks individually to obtain their views on the implementation of an Asset Management Company in Mauritius. The majority of CEOs agreed that the current NPL resolution system which operates within the BPA- and the Sale by Levy-driven legal framework has many weaknesses which include the following:

(a) The BPA has made it very difficult for banks to enforce the security in respect of credit facilities granted to customers. Bank CEOs were of the view that the law should either be reviewed or repealed and replaced by more modern laws.

(b) Both banks and borrowers are unable to get a fair deal when assets are sold under the present system of "Sale by levy". In many instances, banks have bought those assets with the aim of selling them at a later stage and by so doing, have ended up holding non-banking assets in their books. In practice,

disposal of these assets takes a minimum of two to three years and presents difficulties in fetching a fair sale value. Moreover, it ties up banks' liquidity until such time that these assets are actually disposed of.

(c) Assets sold through the "Sale by Levy" system often fetch only about 20 to 25 per cent of their market value, thus causing losses to both borrowers and lenders. A few CEOs have highlighted that there may be collusion to drive down the sale price of distressed assets.

(d) On average, it takes around three to five years to resolve NPL cases. A few banks estimated that the cost of resolving NPLs could account for 2 or 3 per cent of their total expenses.

11. In light of the above mentioned weaknesses, the Bank proposed the setting up of an AMC which would provide a cost-effective system for a quicker resolution of NPLs, to the benefit of both borrowers and financial institutions. CEOs concurred with the Bank on the matter and advised that the following factors should be taken on board for the set-up of the AMC:

(a) The legislative framework and operating model;

(b) The shareholding structure;

(c) The regulatory framework, if any;

(d) The pricing mechanism for acquisition of eligible assets from banks;

(e) The eligibility criteria for purchase of NPLs by the AMC; and

(f) The timing and modalities of asset transfers from banks to the AMC.

12. CEOs also expressed the view that there should be consultation with the banking industry on the project.

III. Asset Management Companies, their Advantages and Disadvantages

A. What is an AMC?

1. AMCs specialize in taking over impaired assets from lending institutions to clean up their clogged balance sheets and release both the capital locked up in NPLs and provisions set aside for financing normal economic activities.

2. Country experiences show that AMCs have also been set up for a number of other reasons which include the following :

(a) the resolution of insolvent and non-viable financial institutions;

(b) the restructuring of distressed but viable financial institutions; and

(c) the privatization of government-owned and government-intervened banks.

B. Advantages of AMC

3. While loan workouts are part and parcel of normal banking business, it is advocated that the handling of bad loans and assets require skills than are not normally available in a bank. The combined expertise of real estate specialists, liquidation practitioners, and professionals with insights into a wide range of industrial sectors turns out to be essential.

4. As specialized bodies, AMCs have industry visibility and credibility that give them access to sector expertise and knowledge, which banks and other lenders do not normally have. They are better resourced for their asset recovery mandate.

5. AMCs can contain systemic risk latent in the banking system at times when there is an upsurge of NPLs at industry level.

6. AMCs offer the advantage of doing away with lengthy and costly court proceedings which are to the detriment of both lenders and borrowers.

C. Disadvantages of AMCs

7. AMCs which are not properly regulated could pose a moral hazard and encourage lax lending practices.

8. In the absence of a proper pricing mechanism, there could be an abuse on the discount applied for taking over NPLs. This would raise the average cost of borrowing and the risk of default, resulting in the good book subsidising the bad book.

9. The introduction of AMCs may result in a transfer of expertise on recovery matters from banks to the AMCs, which may undermine banks' capacity in recovery.

D. Why does Mauritius need an AMC?

10. The BPA has not met its objective for the protection of borrowers who have mortgaged their residential properties.

11. The proposal for the replacement of the Sale by Levy process with the sale by private contract or by way of sealed offers of the immovable property has not materialised.

12. The Sale by Levy system has many weaknesses and, as stated in the two Commission of Inquiry reports mentioned in this document, the procedures in place are lengthy, complex and costly. Borrowers are invariably those who lose when their assets are disposed of through this system.

13. Increases in NPLs adversely impact the Mauritian financial system with the banking industry being the most hit as its core lending activity gets restrained. Further, when driven by economic sector under-performance, NPL concentration levels can also induce a liquidity crisis within banks and trigger ripple effects across the whole banking system.

14. The risk profile of banks is largely determined by the quality of their lending books, the size and evolution of NPLs and provisions for doubtful debts. The pace at which asset impairment reduces repayment inflows has an impact on liquidity and profitability of banks.

15. The rise in NPL levels across the banking system from 3.8 per cent in 2008 to 7.8 per cent in 2015 partly reflects a sustained and generalized deterioration in lending quality, despite the application of prudential norms.

16. While persistent NPLs in the banking sector may pose a threat to financial stability, remedial action at the level of individual banks may be thwarted in the short term by the fact that common security may have been offered by borrowers for availing facilities from more than one bank. Under financial pressure, distressed borrowers often concentrate their banking activities with their initial lenders, which

normally hold priority security rankings. This may impede the ability of subsequent lenders to realize the security.

17. Thus, in periods of economic slowdown, banks with lower security rankings may be hit more severely by loan impairment. Those banks eventually raise provisions which, as a result, impact negatively on capital. To protect profit margins, those banks may have recourse to higher pricing of loans, thereby subjecting non-delinquent customers to an implicit subsidization of the delinquent book.

18. In response to the above challenges, the set-up of an AMC will contribute to keep in check the threat to financial stability arising from increasing NPL levels.

19. The AMC will provide an effective means of resolving some of the problems entailed by the BPA.

IV. Models of AMC

1. There are basically two models for AMCs, namely the centralized model, where one agency is responsible for the restructuring of debts, and the decentralized model where banks take responsibility for debt restructuring and workout.

A. Centralized model

2. The centralized model allows for a consolidation of skills and resources and may be more efficient in recovering maximum possible value. With a substantial pool of assets at its command, a centralized AMC may also help with the securitization of assets.

3. Banks can focus on their core day-to-day activities by removing distressed loans completely from their balance sheet.

4. A centralized model also provides uniformity of workout practices and facilitates monitoring and supervision.

5. Under this model, an AMC may be given special legal powers to expedite loan recovery and bank restructuring.

6. A potential drawback of this model is that in cases of mismanagement, there may be a deterioration of payment discipline and an erosion of asset values. Furthermore, the AMC may be subject to political pressure, particularly when it carries a sizeable portion of banking sector assets.

7. Large privately-held centralized AMCs are rare inasmuch as it is usually difficult to find private investors willing to assume its ownership. There could be heavy implications in the absence of state guarantees covering the future value of the asset portfolio.

B. Decentralized model

8. The proponents of the decentralized workout of NPLs argue that

(a) Banks are better placed to resolve NPLs as they have the loan files and some institutional knowledge of the borrower.

(b) Leaving problem assets on banks' balance sheets may provide better incentives for banks to avoid further losses by improving loan approval and monitoring procedures.

(c) Banks can provide new loans in the context of debt restructuring.

9. For a decentralized debt workout to be successful, there should be limited or no ownership links of the banks with the corporates, as otherwise the same party would be both the debtor and the creditor.

10. Such a workout may, therefore, be achieved by establishing an internal workout-dedicated unit that operates as a separately capitalized subsidiary of the bank.

11. The primary risk associated with such AMCs resides in the fact that they may be used for "window-dressing" if assets are transferred at book value or above market value.

V. Recommendations of the Working Group

1. The Working Group recommends the setting up of an AMC in Mauritius under the centralized model to achieve the following objectives:

(a) To protect the vulnerable class of society which the BPA was intended to protect in the first place, and promote financial stability by taking over from banks, in a phased manner, NPLs secured by residential and/or commercial properties. This will serve the added objective of cleaning up the balance sheets of banks and improving their liquidity position;

(b) To eliminate the need for banks to have recourse to Sale by Levy proceedings (in the case of borrowers whose NPLs are secured by residential and/or commercial properties) which have, up to now, been detrimental to both borrowers and lenders;

(c) To set up a system of recovery that would provide relief to banks from the problems encountered in the process prescribed by the BPA;

(d) To stabilize the level of NPLs in the banking sector and prevent the size of NPLs to reach systemic proportions; and

(e) To enable both lenders and borrowers to have a fair deal upon realization of assets held as security.

Indicative framework for the AMC

(i) Model & Corporate Structure

(a) The WG proposes the creation of an AMC as a subsidiary of the Bank with powers to form special purpose vehicles (SPVs) for its different lines of business.

(b) The main objective of the AMC is to acquire NPLs from banks that are secured by residential/commercial properties. The AMC should be empowered to dispose of these properties through sale by private contract or by way of sealed offers. The AMC may, for this purpose, have recourse to institutions doing business in the real estate sector.

(c) The AMC will have to be commercially viable in order to ensure its sustainability.

(d) The AMC may issue debt securities or borrow outright from financial institutions, local or external, and other institutions as may be required for the performance of its functions should the capital of the AMC not be sufficient to fund the acquisition of NPLs.

(e) The AMC will carry out a valuation of residential/commercial properties and may delegate, under its control, the actual purchase and management of these properties to an asset manager.

(f) The AMC would also be vested with powers to create SPVs for the purpose of acquiring NPLs from distressed banks. This will enable a more cost-effective restructuring of problem banks.

(ii) Funding

The stated capital of the AMC will be Rs1 billion, and the initial amount paid as capital will be Rs500 million, 60 per cent of which will be subscribed and held by the Bank of Mauritius and the remainder by banks and other institutions.

(iii) Governance

(a) In a report[1] issued in March 2015, the IMF stated that "the governance framework for the AMC should aim to balance the need for operational independence and accountability."

(b) To achieve this objective, a strong framework reflecting the commercial orientation of the AMC is needed.

(c) Operational independence at the level of the AMC must be complemented with arrangements ensuring transparency and accountability to the AMC's shareholders and the stakeholders.

(d) The AMC will have its own board of directors comprising representatives of shareholders and independent directors. The board of directors would

i. be constituted of knowledgeable and experienced members with full powers to set policies and procedures, review internal procedures

[1] "*Operational Aspects of Establishing an Asset Management Company in Hungary*"

and management proposals independently of policy-making bodies. The board would include members with relevant specialized knowledge and market experience

ii. have the responsibility of putting in place sub-committees of the board and an appropriate organization structure.

(e) The AMC may be either self-managed with the appointment of qualified officers or its management may be outsourced.

(f) The AMC should

i. have a separate budget and staffing, with independence to set remuneration policies;

ii. prepare and publish quarterly accounts as well as audited financial statements reporting on its operations, including its SPVs (where applicable);

iii. have in place adequate internal audit and risk management functions; and

iv. establish processes for managing media and public relations.

(iv) Regulatory framework

The setting up of an AMC is predicated on the operation of a robust enabling and supporting legislative and regulatory framework, the creation of which will require changes in the law and the issuance of relevant guidelines by the Bank of Mauritius.

Some of the areas calling for specific coverage are as follows:

a. Due diligence to prevent abusive transfer of assets by banks

It will be the duty of the banks to exhaust all feasible solutions, including those contained in the BPA, before transferring any asset to the AMC.

The AMC due diligence team must, prior to the asset take-over, ensure that there are no deficiencies in the credit facility documentation (e.g. incomplete/inaccurate/fraudulent documentation) that could undermine the legality of the asset disposal by the AMC.

Banks will also have to provide the AMC with an asset-specific due diligence certificate for this purpose at the time of asset transfer.

b. Confidentiality

The affairs of banks being subject to strict confidentiality requirements under the banking laws, appropriate exemptions would be required to allow them to provide customer information to the AMC. The AMC would also need to adhere to confidentiality requirements.

c. Documentation

NPLs being transferred must be duly documented, that is, backed by proper facility and security documentation.

d. Transferability of assets

Banks must ensure that their facility/security documentation includes a suitable proviso for transferability of the assets to the AMC. If this is not currently the case, an amendment to legal provisions should be envisaged.

e. Transfer process, legal exemptions and other incentives

The AMC should be exempted from the payment of registration duties, and other taxes as the transfer of assets held as security to the AMC will involve payment of registration and other fees to the Registrar General and the Conservator of Mortgages. Amendments to the Registration Duty Act (and other related laws) may have to be envisaged for any exemption from registration duty.

(v) Rules applicable to banks once the AMC comes into existence

a. NPL transfers from institutions to the AMC

The transfer value of the NPLs to be taken over by the AMC will be computed by applying a discount rate to the balance of capital outstanding as at the date on which the facility was first recognized as impaired.

The AMC will not charge any penalty on NPLs. However, to be sustainable, the AMC will continue to accrue interest on the value of NPLs transferred to it at the rates set in the relevant credit agreements until NPL resolution is

achieved through the disposal of charged property or otherwise by the asset manager.

b. Rules in respect of borrowers who have given their asset(s) as security to more than one bank

Where different financial institutions have extended credit facilities to the same borrowers against the same security with different ranking of charges, and the credit facilities have been classified as NPLs by one or more of the lenders, the financial institutions should agree among themselves on the most suitable way in which the matter can be resolved in the best mutual interests of both the borrower and the respective lenders. Alternatively, the AMC may consider to acquire assets with first rank charge.

c. Time frame for acquisition of NPLs

NPLs secured by residential and/or commercial properties will be acquired by the AMC in a phased manner as follows:

Year 1 and Year 2:	acquire NPLs of individuals and corporates up to Rs5.0 million and Rs25.0 million respectively.
Year 3 and Year 4:	acquire NPLs of individuals and corporates up to Rs10 million and Rs50 million respectively.
After Year 4:	acquire all NPLs of borrowers irrespective of the amount of the credit facilities.

d. Valuation Methodology

The transfer value of the NPLs will take into consideration several factors including the requirements of the Bank of Mauritius Guideline on Credit Impairment Measurement and Income Recognition for the valuation of assets.

e. Due Diligence Process prior to the AMC's Acquisition of NPLs

Before the acquisition of NPLs by the AMC, the following steps will have to be completed:

- Provision by the participating institution of an asset information list to enable the valuation of the security;

- Physical identification of the asset by the AMC;

- Determination of the current market valuation and long-term economic value of all underlying properties and assets by external valuers appointed and paid by the participating institution; and

- Purchase of the assets within a reasonable time of the AMC's confirmation of the acquisition.

f. Asset Disposal, AMC Costs and Distribution Rules

Upon disposal of the assets, the AMC will recoup all its expenses from the sales proceeds, settle the outstanding balance of the borrower and provide any surplus to him.

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Annex A: Sale by Levy Procedure under the Sale of Immovable Property Act

When the creditor's attorney receives instructions from his client to proceed with the sale of the property given in guarantee, the law prescribes the following:

(a) Notification to the debtor that, if he fails to pay the amount claimed, a seizure will be effected on his immovable property;

(b) It is not necessary to copy or to specify in extenso in the "commandement" the title ("titre") by virtue of which the seizure is to be made;

(c) It is sufficient to mention and describe the title, by stating –

(i) the date of the title;
(ii) where the title is a notarial deed, the name of the notary;
(iii) the amount of the sum due; and
(iv) the nature of the claim;

(d) The "commandement" is to be served on each debtor at his domicile;

(e) The Usher serving the "commandement" shall, within 48 hours after service, obtain on the original –

(i) where service is in the district of Port Louis, the visa of the "ministère public";

(ii) where service is effected in a country district, the visa of the district clerk;

(f) Where the title in virtue of which the seizure is effected is a fixed or a floating charge, the attorney may proceed directly with the power to seize;

(g) The attorney prepares the power to seize and sends it to the client to be duly signed;

(h) When the power to seize is returned by the client, it is left with the usher so that he may effect the seizure;

(i) The usher effects the seizure of the immovable property and draws up a memorandum of seizure on which he is required to assume the role of an expert and place a value on the property;

(j) The seizure must be notified to the execution debtor;

(k) Where the execution debtor is domiciled in the district where the property seized is situated, the usher shall, at the time of the seizure, leave a copy of his memorandum of seizure with the debtor in person or at his domicile;

(l) Where the execution debtor is domiciled in another district or resides at a distance of more than 6 miles from the property seized, the usher shall within 8 days after the registration of the seizure, serve a copy of his memorandum of seizure on the debtor in person or at his domicile;

(m) The memorandum of seizure shall be transcribed at the Mortgage Office within 15 days after its notification and at the same time mention of the notification and of the mode in which it has been made shall be inserted in the margin of the transcription;

(n) Within 30 days of the transcription of the memorandum of seizure, the execution creditor shall deposit at the Master's Office the memorandum of charges ("cahier des charges") which shall contain –

(i) a reference to –

(A) the title by virtue of which the seizure has been made;

(B) the usher's memorandum of seizure, including the return of service;

(C) any procedure, judgments, or orders which may have been rendered or made in the course of the proceedings;

(ii) the description of the property as specified in the memorandum of seizure;

(iii) the conditions under which the property is to be sold, one of which has invariably been, for some unknown reason, that the purchaser shall forthwith deposit one-fourth of the purchase price;

(iv) a "mise-à-prix" on the part of the seizing creditor;

(v) the transcription reference, and the date of the title deed in respect of the execution debtor;

(o) The Master shall, at the foot of the memorandum of charges, fix the day for the reading of the memorandum;

(p) Searches are to be made at the Registration Office to find out who are the inscribed creditors;

(q) Within 8 days of filing the memorandum of charges, notice shall be served on the execution debtor in person or at his domicile;

(r) The notice shall -

(i) call upon the execution debtor -

(A) to examine the memorandum of charges and make on it such observations as he thinks fit;

(B) to be present at the time of the reading of the memorandum of charges when a day shall be fixed for the final adjudication;

(ii) specify the day, hour and place appointed for the reading;

(s) A similar notice shall be served within the period specified above on all inscribed creditors, who have taken their inscriptions before the date of the deposit of the memorandum of charges, at the respective domiciles elected by them in their inscriptions;

(t) Where among the inscribed creditors there is a creditor who holds a vendor's privilege duly inscribed, a similar notice shall be served on him at the domicile elected by him in his inscription;

(u) The notice shall inform the creditor that, unless he commences his action in cancellation of sale, and makes a declaration of having done so at the foot of the memorandum of charges before the day fixed for the adjudication, he shall be definitely foreclosed, qua the adjudicatee, from having the cancellation decreed;

(v) Within 8 days after service of the last of the notices specified above, an entry shall be made in the margin of the transcription of the seizure to the effect that the notices have been served;

(w) The originals of the notices specified above shall, within 15 days from the date of entry specified above, be filed in the Master's Office and annexed to the memorandum of charges;

(x) The reading of the memorandum of charges shall take place before the Master at a public sitting to be held on a day which is not less than 10 nor more than 30 days after the filing of the memorandum of charges;

(y) The day for the sale and adjudication shall be fixed by the Master immediately after the reading of the memorandum of charges – not less than 6 weeks after the day of the reading;

(z) Within 14 days after the reading of the memorandum of charges, the attorney in charge of the sale shall publish in the Gazette and in 3 daily newspapers a notice -

(i) announcing the day of when the property shall be put up for sale and adjudication;
(ii) calling on all the parties who have a right to take inscription of legal mortgage on the property to exercise their right before the transcription of the title deed of the adjudicatee;

(aa) Similar notices shall again be published in the Gazette and in 3 daily newspapers not less than 12 days before the day fixed for the sale and adjudication of the property;

(ab) The duly taxed bill of costs shall be filed in the Master's Office 24 hours before the sale; and

(ac) The sale takes place.

When a property has been sold, any person other than the purchaser and the debtor may make an outbidding and the biddings thereafter continue on the basis of that fresh bid. Should the first or the subsequent purchaser fail to comply with any of the conditions of the sale, the property is put up again for sale by way of "*folle enchère"*, meaning that the biddings can start at any price. Eventually there will be an adjudication of the property. Finally comes the attribution of price, that is, the Master's Order directing how the purchase price is to be shared out.

Annex B - The Borrower Protection Act 2007

1. The Borrower Protection Act 2007 was passed by the National Assembly on 24 January 2007. The object of the Act is to –

(a) regulate credit agreements for a sum not exceeding 2 million rupees;

(b) provide for the establishment of the Office of the Commissioner for the Protection of Borrowers with powers to, *inter alia*, receive and investigate complaints in respect of credit agreements and to conduct hearings as may be necessary; and

(c) replace the current system of sale by levy by providing that henceforth the sale of an immovable property given as security in respect of a credit agreement shall be effected by private contract under the supervision of the Commissioner or by way of sealed offers.

2. The Act also provides for -

(a) prudential measures to safeguard the interests of the borrower and of the lender;

(b) the need to have the consent of both spouses where the matrimonial home is given as security under a credit agreement;

(c) the rescheduling of debt on grounds of hardship which affects the capacity of the borrower to repay the debt;

(d) the review of extortionate terms in credit agreements; and for matters related thereto.

3. In the Act –

"Credit facility" means lending of money to a borrower; or financing the acquisition of a movable or immovable property, by a lending institution for a sum not exceeding Rs2 million but does not include lending or advancing of money by a bank for a period not exceeding twelve months.

"lender" means any lending institution which grants a credit facility;

"lending institution" includes the following :

(i) A bank under the Banking Act, except for its loans under the Housing Empowerment Scheme approved by the Minister of Finance and for its leasing activities;

(ii) Development Bank of Mauritius Ltd;
(iii) Employees' Welfare Fund;
(iv) An insurance company under the Insurance Act
(v) Mauritius Housing Company Ltd, except for its loans for the financing of the construction of housing units by a housing development trust or any other non-profit vehicle under the Finance and Audit (National Habitat Fund) Regulations 2014;
(vi) National Housing Development Company Ltd.
(vii) A moneylender

4. According to section 6(1) of the Act, the Commissioner shall-

(a) ensure that proper and adequate information is given to borrowers concerning the proper ways and means of obtaining a credit facility;

(b) promote public understanding of credit facilities, including awareness of the benefits and risks associated with them;

(c) ensure that the terms and conditions of a credit agreement referred to him are not extortionate;

(d) strive to strike a fair balance between the rights and obligations of borrowers and of lenders;

(e) deal with complaints received from borrowers; and

(f) cause investigations to be conducted and, where appropriate, convene hearings.

5. Before granting a credit facility to any person, every lender shall, according to section 9(1) of the Act, -

(a) take all reasonable steps to verify that the person or his guarantor, if any, have or are likely to have, the means to repay the amount;

(b) cause the credit agreement to be read out to the person and to the guarantor, if any;

(c) ascertain whether the person and the guarantor, if any, understand sufficiently the language in which the credit agreement is drawn up;

(d) where the person or the guarantor does not sufficiently understand the language of the credit agreement, cause to be explained the contents of the agreement to that person or to the guarantor in a language which that person understands; and

(e) give a copy of the proposed credit agreement to the person and the guarantor, if any.

6. Section 10(1) of the Act requires any person applying for a credit facility to disclose the following information in writing so as to enable a lender to assess his capacity to repay.

(a) all other outstanding credit facilities already granted to him and details of any other liabilities, terms of repayment, amount still outstanding, or any instalments in arrear;

(b) his average monthly expenses;

(c) particulars of his monthly income; and

(d) such other relevant information which the lender reasonably requires of that person.

7. Section 10 of the Act also requires a borrower to immediately notify his lender in writing of the particulars of any subsequent credit facility which he obtains from any other lending institution.

8. Furthermore, where a borrower is unable to pay any instalment in due time, he shall immediately send a written notification to the lender and the guarantor, if any, informing him of his inability to pay, give reasons therefor and seek the concurrence of the lender regarding arrangements for the payment of the instalment in default.

9. According to section 11 of the Act, the credit agreement must contain in a summary at the beginning or the end of the document the particulars relating to –

(i) the names, occupation and place of residence or business of the parties;
(ii) the amount of the credit facility and the terms of its repayment, specifying the rate of annual interest chargeable, the periodicity of repayment, the instalment repayable, the amount of interest and the penalty on default payment; and
(iii) the immovable property, if any, to be given as security for the performance by the borrower of his obligations.

10. The credit agreement must not contain any provisions for any charge by way of penalty except for a penalty by way of interest on default payment. The rate of the penalty shall not exceed 5 per cent and shall be calculated on the default instalment excluding the interest payable thereon.

11. The credit agreement shall not impose on the borrower an obligation to pay fees to a law practitioner.

12. Section 11(e) of the Act further provides that a loan may only be recalled on the ground that the borrower has failed to –

    (i) effect payment of the instalment due-

        (A) where repayment of the loan is effected on a monthly basis, for a period of 3 months following the first default; or

        (B) in any other case, for a period of 6 months following the first default; or

    (ii) fulfill any other obligation under the credit agreement.

13. A lending institution can only accept the matrimonial home as security where both spouses give their consent thereto.

14. In order to afford protection to borrowers, the Act provides that a borrower may request to reschedule his debt in accordance with section 14, if he is unable to meet his obligations under a credit agreement as a result of illness, injury, loss of employment, death of working spouse or other reasonable cause of hardship, which affects his capacity to repay the debt.

15. Section 15(1) of the Act enables a borrower to apply to the Commissioner for an order to reschedule the debt where the lender does not agree to a revision of the terms of a credit agreement or the borrower is not agreeable to the revised terms made pursuant to section 14 of the Act.

16. The Act also provides for the protection of immovable property offered as security. In this connection, section 17 obliges the lender not to issue execution on the security without first reporting the matter to the Commissioner who may determine what, in his opinion, is the most suitable way to avoid the seizure and sale of the immovable property, after enquiring into the matter and, in particular, the financial situation of the borrower and hearing the parties. In this regard, the Commissioner may order-

    (i) the temporary suspension of the periodicity or amount of any payment to be made;

    (ii) where he is of opinion that the credit agreement is extortionate having regard to all the circumstances of the case, the waiving or write off of any interest charged; or

    (iii) a rescheduling of the periodicity or amount of the payments; and

he may hold a conciliation sitting between the parties, draw up any scheme or arrangement agreed upon and determine that the implementation of such scheme or arrangement be subject to his supervision.

17. According to section 18 of the Act, where a borrower considers that his credit agreement is extortionate, he may report the matter to the Commissioner who shall carry out an enquiry and hear the parties. Where the Commissioner is satisfied that the credit agreement is extortionate, he may make an order directing the lender to: amend the terms and conditions of the credit agreement, repay to the borrower any excess amount paid, indemnify the borrower or any other person prejudiced by the agreement in such sum and on such terms as may be imposed by him or make such other order as he thinks fit.

18. A credit agreement is extortionate where it requires the borrower to make payments which are exorbitant or otherwise contravenes ordinary principles of fair dealing.

19. Section 20 of the Act prescribes the methods of sale of mortgaged property where the Commissioner is satisfied that all possible means of doing otherwise than as provided for in sections 14,15, 17 and 18 of the Act have been exhausted. In the first instance, the Commissioner shall authorize the borrower or the guarantor, if any, to sell, within such time as he may determine, the mortgaged property by private contract. The sale by private contract shall be under the supervision of the Commissioner and he shall be satisfied that the price offered reflects the market value of the property, as recommended by the Chief Government Valuer in writing.

20. If the property is not sold within the allowed period, the price offered does not reflect the market value of the property or there is no potential buyer, then the Commissioner may proceed with sale of the property by calling for sealed offers in such manner as may be prescribed. The Commissioner may, on the recommendation of the Chief Government Valuer, approve the sale of the property to the highest bidder.

21. The distribution of the proceeds of the sale of an immovable property under the Act shall be governed by the provisions of the Sale of Immovable Property Act.

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