

Standing Operating Procedure (SoP) for the Adjudication of Banking Cases 2022

1. The Court shall, irrespective of expiry or non-expiry of loan term, freeze the interest on the day of rendering the judgment as per section 21 (1)¹ of MIPA.
2. The court shall expeditiously render summary judgment as per section 151² of the CCPC if admitted by the parties of having taken the loan over which there is no dispute on the mortgage or collateral property.
3. In the event that the defaulting party could not be found and the mortgage or collateral belongs to the third party, the third party should be summoned to the court during the proceeding for confirmation of mortgage.
4. The court shall render a default or ex parte judgment based on the valid loan agreement when the defaulting party could not be found after issuance of summon order, arrest warrant and announcement in the media. The arrest warrant must be issued together with the judgment as per section 41³ of the CCPC to arrest the defaulting party in future as and when he or she is found to hold the same accountable.
5. Upon expiry of time extension in the ex-parte judgment, the court shall then issue seizure order to seize the mortgage or collateral belonging to third party.
6. The Financial Institutions are fully empowered as per section 49(1)(a)⁴ of MIPA 1999 to seize or take possession of the mortgaged property of its own or when the mortgage or collateral is surrendered to Financial Institutions by the property owner voluntarily to take possession of the property. The Financial Institutions are also empowered to auction the mortgage or collateral subsequently as per section 51(1)⁵ of MIPA 1999.

¹Interest on an obligation under a loan, security or mortgage agreement continues to accrue at the rate specified in the agreement until such time as a judgment has been delivered and satisfied.

²The party to the suit can request for a summary judgment to dispose off a case when no real legal or factual dispute exists.

³Where a party fails to answer a Court-issued Service of Process or Summons, the Court may issue an order to the police to produce the party before it.

⁴(1) Possession upon default.- Upon default under a security agreement, (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral without first obtaining a Court order, provided the taking of possession does not involve violent confrontation or breach of the peace.

⁵(1) Disposal of collateral.- Upon default under a security agreement, the secured party may dispose off any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to, (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and (b) the satisfaction of the obligation secured by the security interest of the party making the disposition, and the surplus, if any, shall be dealt with in accordance with Section 52.

The Court shall issue *thram* transfer or ownership transfer order as per section 80⁶ of Land Act of Bhutan 2007 after legally scrutinizing and confirming the documents that the due process has been followed during time of Seizure and Auction and there is no further dispute on it.

7. During the process of adjudication, if the court finds lapses on the part of bank officials, the Court shall direct the authority of the concerned financial institution to take administrative actions. However, if the lapses relates to criminal offence, it shall be referred to RBP or ACC for investigation and prosecution.
8. The court shall grant time extension in its judgment:
 - i. For a maximum period of 3 months if the amount of loan is Nu. 20, 000000(Two Million) and below.
 - ii. For a maximum period of 6 months if the amount of loan is more than Nu. 2000000(Two Million) but less than Nu. 10, 000000(Ten Million).
 - iii. For a maximum period of 1 year if the amount of loan is Nu. 10, 000000(Ten Million) and above.

⁶In the event of default of a mortgage on land, the Commission Secretariat shall, in accordance with the order of the court, transfer the ownership of land in the name of a person entitled to the land.