POLICY FOR CHANGE & TAKEOVER OF MANAGEMENT

CHANGE IN OR TAKEOVER OF MANAGEMENT OF BUSINESS OF THE BORROWER

Under SARFAESI Act, one of the strategy to realize the debt is to change the management or takeover the management of the business of borrower by the Asset Reconstruction Company (**"ARC"**). The Reserve Bank of India has issued guidelines to ensure fairness, transparency, non-discrimination, and non-arbitrariness in the action of the ARC and to build in a system of check and balance while effecting change in or takeover of the management of the business of the borrower by ARC under Section 9(a) of SARFAESI Act, 2002.

2. ARC shall utilize such method of realization after complying with the manner of takeover of the management in accordance with the provisions of Section 15 of the SARFAESI Act, 2002. On realization of dues in full, the ARC shall restore the management of the business to the borrower as provided in Section 15(4) of the SARFAESI Act.

3. Reserve Bank of India's directions / guidelines issued to ARCs in the matter of asset reconstruction and matters related thereto, inter-alia stipulate that ARCs shall formulate a Board-approved policy regarding change in or takeover of the management of the business of the borrower and borrower shall be made aware of such policy framed by the ARC.

For the purpose of this policy, the "change in management" would mean effecting change by the borrower at the instance of ARC in the person who has responsibility for the whole or substantially whole of the management of the business of the borrower and / or other relevant personnel.

And the "Takeover of management" would mean taking over of the responsibility for the management of the business of the borrower with or without effecting change in management personnel of the borrower by the ARC.

Pegasus Assets Reconstruction Pvt. Ltd. ("**Pegasus**" or "**Company**") has framed the following policy regarding change in or takeover of management of the borrower in accordance with Reserve Bank of India Directions/Guidelines.

Eligibility Conditions for Change in or Takeover of Management of business of the Borrower:

(1) Where the amount due to Pegasus from the borrower is not less than 25% of the total assets owned by the borrower; and

(2) Where the borrower is financed by more than one secured creditor (including Pegasus), holding not less than 60% of the outstanding security receipts agree to such action.

'Total Assets' here means total assets as disclosed in its latest audited Balance Sheet immediately preceding the date of taking action.

Pegasus may resort to change in or takeover of the management of the business of the borrower for the purpose of realization of its dues from the borrower subject to the provisions of RBI guidelines. The manner of change or takeover shall be in accordance with the provisions of Section 15 of the SARFAESI Act. On realization of its dues in full, Pegasus shall in accordance with extant RBI Guidelines restore the management of the business to the borrower as provided in Section 15(4) of the SARFAESI Act.

Grounds for effecting change in or takeover of management

Subject to the eligibility conditions above, change in management or takeover of the management of business of the borrower may be effected on any of the following grounds:

(i) the borrower defaults in repayment of the amount due under the relevant loan agreement/s in the following circumstances:

a) non-payment of dues despite adequate cash flow and availability of other resources, or

b) routing of transactions through banks which are not lenders/ consortium members so as to avoid payment of dues, or

c) siphoning off funds to the detriment of the defaulting unit, or misrepresentation/ falsification of records pertaining to the transactions with the Company.

For the purpose of this paragraph, the default by the borrower must be deliberate and calculated as detailed above. The Company shall keep in view the track record of the borrower and the decision regarding such defaults by the borrower should not be based on isolated transactions/ incidents which are not material.

(ii) the Company is satisfied that the management of the business of the borrower is acting in a manner adversely affecting the interest of the creditors (including the Company) or is failing to take necessary action to avoid any event which would adversely affect the interest of the creditors;

(iii) the Company is satisfied that the management of the business of the borrower is not competent to run the business resulting in losses / non-repayment of dues to the Company or there is a lack of professional management of the business of the borrower or the key managerial personnel of the business of the borrower have not been appointed for more than one year from the date of such vacancy which would adversely affect the financial health of the business of the borrower or the interests of the Company as a secured creditor;

(iv) the borrower has without the prior approval of the secured creditors (including the Company), sold, disposed of, charged, encumbered or alienated 10% or more (in aggregate) of its assets secured to the Company;

(v) there are reasonable grounds to believe that the borrower would be unable to pay its debts as per terms of repayment accepted by the borrower;

(vi) the borrower has entered into any arrangement or compromise with other creditors without the consent of the Company which adversely affects the interest of the Company or the borrower has committed any act of insolvency;

(vii) the borrower discontinues or threatens to discontinue any of its businesses constituting 10% or more of its turnover;

(viii) all or a significant part of the assets of the borrower required for or essential for its business or operations are damaged due to the actions of the borrower,

(ix) the general nature or scope of the business, operations, management, control or ownership of the business of the borrower are altered to an extent, which in the opinion of the Company materially affect the ability of the borrower to repay the loan;

(x) the Company is satisfied that serious dispute/s have arisen among the promoters or directors or partners of the business of the borrower, which could materially affect the ability of the borrower to repay the loan;

(xi) failure of the borrower to acquire the assets for which the loan has been availed and utilization of the funds borrowed for other than stated purposes or disposal of the financed assets and misuse or misappropriation of the proceeds;

(xii) fraudulent transactions by the borrower in respect of the assets secured to the creditor/s.

A) When the management of business of a borrower is to be taken over, the Company shall ensure prior to such action as under:

(i) The Company is in a condition to operate optimally without significant capital investment generating reasonable cashflow to service its liabilities including debt obligations
(ii) Existing outstanding statutory liabilities required to be paid off at the time of such action does not require substantial funds
(iii) All statutory clearances/approvals are in place for starting/continuing the operations/business
(iv) No criminal proceedings are pending against the Company
(v) The Company preferably does not have any Financial Guarantee/Commitment obligations.

B) In all such cases where the Company decides to change in or takeover the management of the business of borrower, the Company shall appoint an Independent Advisory Committee ("**IAC**").

C) The IAC shall consist of professionals having technical / finance / legal background. The IAC members shall not be connected with the affairs of the Company in any manner and should not receive any pecuniary benefit from the Company except for services rendered for acting as member of the IAC. The IAC shall assess the financial position of the borrower, time frame available for recovery of the debt from the borrower, future prospects of the business of the borrower, and on the basis of which shall recommend the change in or takeover of the management for effective running of the business of the borrower leading to recovery of the dues.

D) The Board of Directors including at least two independent directors should deliberate on the recommendations of the IAC and consider the various options available for the recovery of dues before deciding whether under the existing circumstances the change in or takeover of the management of the business of the borrower is necessary and the decision shall be specifically included in the minutes.

E) A due diligence exercise shall be carried by the Company and record the details of the exercise, including the findings on the circumstances which had led to default in repayment of the dues by the borrower and why the decision to change in or takeover of the management of the business of the borrower has become necessary.

F) The Company shall identify suitable personnel/ agencies to run the business taken over of the borrower by formulating a plan for operating and managing the business of the borrower effectively and profitably so that the dues of the Company may be realized from the borrower within the time frame.

G) Such plan shall include procedure to be adopted at the time of restoration of the management of the business to the borrower, borrower's rights and liabilities at the time of change in or takeover of management by the Company and at the time of restoration of management back to the borrower, rights and liabilities of the new management taking over management of the business of the borrower at the behest of the Company. It should be clarified to the new management that the scope of their role is limited to recovery of dues of the Company by managing the affairs of the business of the borrower in a prudent manner.

H) The Company shall report all cases, where it has taken action to cause change in or takeover of the management of the business of the borrower for realisation of its dues from the borrower, to the Department of Supervision of the Reserve Bank of India.

I) **Delegation of authority to consider cases of change in or takeover of management**:

The Committee of Directors for Resolution shall be empowered to appoint members of the IAC on case-to-case basis and shall place the report / recommendations of IAC to Board of Directors for their consideration along with its recommendations. If the case is found suitable for change in or takeover of management by the Board of Directors, the Committee of Directors for Resolution will be the Competent Authority to take all further actions required including appointment of agency for due-diligence and suitable personnel / agency for managing the affairs of the business of borrower to effectively recover the dues from the borrower under this measure.

J) The process of change or takeover of management of the Borrower Company shall involve

a. After the approval of the Board for change/takeover of management, a notice of 60 days shall be issued to the borrower for change/takeover of management and call for objections, if any.

b. The objections, if any, submitted by the borrower shall be initially considered by the IAC and thereafter the objections along with the recommendations of the IAC shall be submitted to the Board of the Company. The Board shall pass a reasoned order within a period of 30 days from the date of expiry of the notice period, indicating the decision of the Company regarding the change in or takeover of the management of the business of the borrower which shall be communicated to the borrower.

c. Publication of notice in a newspaper in English and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated.

d. In case where the borrower is a company as defined in the Companies Act, 1956, on publication of notice, all persons holding office as directors of the company immediately before the publication of the notice shall be deemed to have vacated their offices. Deserving candidates acting as Independent Director may be reappointed subject to approval of the Board and regulatory approvals.

e. Where Borrower is not a company, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice shall be deemed to have vacated their offices

f. Any contract of management between the borrower and any director or manager or person thereof holding office as such shall be terminated immediately after publication of the notice.
g. When the management of the borrower is taken over by the Company and subject to newspaper publication of the notice, the Company shall appoint as many persons as it thinks fit-- (a) in a case in which the borrower is a company as defined in Companies Act, 1956, to be the directors of that borrower company in accordance with the provisions of that Act; or (b) in any other case, to be the administrator of the business of the borrower.

h. As per the regulatory guidelines/provisions, where the management of the business of a borrower has been taken over, on realisation of debt in full, management of the business of the borrower shall be restored to the shareholders/promoters of borrower entity.

Any deviation from this policy will have to be approved by the Board. The policy will be reviewed annually.