

REVISED GUIDELINES ON EMPANELMENT OF VALUERS FOR VALUATION OF BANK'S OWN PROPERTIES AND THE PROPERTIES CHARGED AS PRIMARY/COLLATERAL SECURITIES

1. Empanelment of Valuers

1.1. Criteria for empanelment of Valuer for corporate loans

The Valuer must

- a) be professionally qualified to value assets. Preference will be given to a firm with accounting/engineering professionals depending upon the requirement.
- b) be registered with the Institute of Valuers, as also under Section 34 AB of the Wealth Tax Act.
- c) The registration of the firm of the valuer must be at least 5 years old.
- d) have at least 5 years experience in the valuation of assets for public sector banks. The firm working as the valuer with debt recovery tribunals and high courts will be preferred.
- e) have completed at least 10 assignments successfully with public sector banks.
- f) The firm of the valuer and the valuer(s)/associate valuer(s) each must have PANs.
- g) have thorough knowledge of the industry concerned and also the type of assets to be valued.
- h) The valuer against whom complaints have been registered with the CBI, Serious Fraud Investigation Cell and court(s) . and is blacklisted by any bank is not eligible.

The salient qualifications of valuers based on the guidelines given under section 34AB (Rule 8A) of the wealth Tax Act 1957 are as under:

❖ FOR IMMOVABLE PROPERTY:

(other than agricultural lands, plantations, forests, mines and quarries)

(A) He should be a graduate in civil engineering, architecture or town planning of a recognised university

OR

(B) be a post-graduate in valuation of real estate from a recognised university

OR

- (C) possess a qualification recognised by the Central Government for recruitment to superior services or posts under the Central Government in the field of civil engineering, architecture or town planning;

❖ **FOR AGRICULTURAL LANDS (other than plantations)**

- (A) He must be a graduate in agricultural science of a recognised university

OR

- (B) He must be a person formerly employed in a post under Government as a Collector, Deputy Collector, Settlement Officer, Land Valuation Officer, Superintendent of Land Records, Agricultural Officer, Registrar under the Registration Act, 1908 (16 of 1908), or any other officer of equivalent rank performing similar functions and must have retired or resigned from such employment after having rendered service in any one or more of the posts aforesaid for an aggregate period of not less than five years.

❖ **COFFEE PLANTATION, TEA PLANTATION, RUBBER PLANTATION or, as the case may be, CARDAMOM PLANTATION**

- (A) He must have, for a period of not less than five years, owned, or acted as manager of a coffee, tea, rubber or, as the case may be, cardamom plantation having an area under plantation of not less than four hectares in the case of a cardamom plantation or forty hectares in the case of any other plantation

OR

- (B) He must be a person formerly employed in a post under Government as a Collector, Deputy Collector, Settlement Officer, Land Valuation Officer, Superintendent of Land Records, Agricultural Officer, Registrar under the Registration Act, 1908 (16 of 1908), or any other officer of equivalent rank performing similar functions and must have retired or resigned from such

employment after having rendered service in any one or more of the posts aforesaid for an aggregate period of not less than five years, out of which not less than three years must have been in areas, wherein coffee, tea, rubber or, as the case may be, cardamom is extensively grown.

❖ **MINES AND QUARRIES:**

He must be a graduate in mining of a recognised university, or must possess a qualification recognised by the Central Government for recruitment to superior services or posts under the Central Government in the field of mining besides holding other qualifications and experience as per wealth tax act.

❖ **PLANT AND MACHINERY:**

(A) He must be a graduate in mechanical or electrical engineering of a recognised university

OR

(B) possess post-graduate degree in valuation of machinery and plant from a recognised university

OR

(C) possess a qualification recognised by the Central Government for recruitment to superior services or posts under the Central Government in the field of mechanical or electrical engineering besides holding other qualifications and experience as per wealth tax act.

1.2. Criteria for empanelment of Valuer for retail loans are as follows:

a) The minimum age of the valuer must be 25 years; there is no maximum age limit.

The empanelled valuer must be preferred if member of any one of the professional valuer bodies – Institution of Valuers, Institution of Surveyors, Institution of Government Approved Valuers, Practicing Valuers Association of India, The Indian

Institution of Valuers, Centre for Valuation Studies, Research and Training, Royal Institution of Chartered Surveyors, India Chapter, American Society of Appraisers, USA (ASA), Appraisal Institute, USA.

- b) The valuer must be a graduate in civil engineering/architecture/ town planning (or equivalent) with work experience of 5 years in the field of valuation after completing the degree.
- c) The valuer must have completed the 6-month long prescribed course in valuation within a period of 5 years from the date of empanelment.
- d) In case the valuer has a diploma in the aforementioned disciplines, he must have work experience of 8 years in the field of valuation after completing the diploma.
- e) In case the valuer has passed the valuation examination, he must have 2 years of relevant work experience.
- f) In case the valuer is a chartered/professional member of the Royal Institution of Chartered Surveyors or American Society of Appraisers or Appraisal Institute, no work experience is required. Training is an integral component of the process to become a member of these organisations.

Work Experience Criteria Common For Both Corporate Loans and Retail Loans :

The valuers for both Corporate Loans and Retail Loans must have an experience of valuation of similar type of assets as mentioned below:

Category of value	Work experience in undertaking valuations	Value of property for assignment of valuation work
A	10 years and above	No Limit
B	More than 5 years and less than 10 years	Up to Rs. 25 crore
C	Up to 5 years	Up to Rs. 1 crore*

*In case of metropolitan cities, the limit shall be INR 3 crore.

It has been decided that empanelment for Category A & B valuers as defined above shall be done at Head Office level AND

The empanelment for Category C valuers i.e., for valuation of property of value upto Rs.1 crore (Rs.3 crore in case of metropolitan city) shall be done at FGM Office by FGMLCC.

1.3. Empanelment procedure

It has been decided that the proposals received at the Zonal Offices shall be submitted to Law Department, Head Office / Respective FGM Office with recommendation from ZLCC in case of both Corporate and Retail loans.

A valuer against whom complaints have been registered with the CBI, Serious Fraud Investigation Cell and court(s), and is blacklisted by any bank should not be considered.

The undertaking/Affidavit as stipulated in Annexure-C to this circular should be furnished by the applicant valuer. The ZLCC should also verify the fact from RBI/IBA/Bank sites and submit confirmation while recommending the request for empanelment.

In case the valuation is being done by a firm or Company or another body recognized under law, the above criteria shall be applicable to the authorized persons who are putting their signatures on the valuation report on behalf of the firm/company etc. An undertaking shall also be obtained from the firm/company etc to the effect that the valuation report is being furnished on its behalf by its authorized official and is binding on the firm/company. **(Applicable for both Retail and Corporate Loans)**

ii An Empanelment Committee at Head Office will be constituted for empanelment of valuers (under Category A and B) comprising of six General Managers. The members of the committee will be GM (Premises), GM (Credit Monitoring), GM (Law), GM (Inspection), GM (Credit) and GM (F&A). The eligible valuers will submit the application for empanelment to zonal offices, which will send the same to the Law Department, Head Office with recommendation from ZLCC in case of both Corporate and Retail Loans. The Law Department upon receipt of applications from zonal offices, after scrutiny/verification place before the Empanelment Committee for its approval. On approval, the department will inform the zones for conveying the empanelment to valuers or otherwise. The department will also dispose them off to the zones. SARFAESI

valuers will continue to be selected as per the extant procedure being followed by the Bank and approved by the Bank.

- ❑ The committee meetings will have a quorum of 3 members.
- ❑ The meeting will be conducted at least once in every quarter or as and when necessary.
- ❑ The Bank will receive applications throughout the year from valuers seeking empanelment.
- ❑ All such applications will be received in the prescribed format (as per the enclosed formats in Annexure – A/B/C).
- ❑ The application format will always be available on the website for easy download.
- ❑ As and when needed, the number of valuers required will be empanelled; once empanelled, the valuer will remain on the panel for 5 years unless and until she/he is removed or dismissed.
- ❑ All applications need to be accompanied by relevant documents to substantiate the educational qualifications and experience, etc.
- ❑ A list of all empanelled valuer will be available on the website of the Bank.

Further, since empanelment of C categories of valuers, will henceforth be done at FGM Office, for empanelment of valuers in C Category, Zonal Offices will submit such proposals to their respective FGM Offices. After scrutiny/verification, the FGMLCC will empanel the category C valuers and advise to zones for conveying to the valuers or otherwise. The FGMO will also submit the list on quarterly basis to Head Office, Law Department for hosting on Banks website.

1.4. Duration of Empanelment

The duration of empanelment will be for 5 years.

1.5. Independence and objectivity

All valuers empanelled by Bank must act with independence, integrity and objectivity. They must undertake all valuation works with an independent mind and not be influenced by anybody. The empanelled valuer must not be related to any personnel in the Bank in the department/division dealing with the valuation work.

2. Performance Review of Valuers

- 2.1.** The quality of service provided by the valuers will be reviewed annually by ZLCC or as and when felt necessary.
- 2.2.** The review reports containing inter-alia suggestions / recommendations/continuation/removal etc will be sent by the Zones to Law Department at Head Office in case of Category A and B valuers and FGM office for category C valuers.
- 2.3.** The Law Department will examine the review reports and further submit them with its views to the Empanelment Committee for taking final decision in this regard.
- 2.4.** In case of Category C valuers, the review report shall be submitted to respective FGM Office. The FGMLCC shall act as empanelment committee at FGM office.

3. De-Empanelment of Valuers

Details of procedural guidelines issued by Vigilance department for reporting the names of Third Party Entities viz., empanelled Lawyers, Approved Valuers, Chartered Accountants etc.involvement in frauds/gross negligence to IBA for inclusion in the Cautionary List are enclosed as Annexure – D. Any change in this regard as brought out by Vigilance department will be followed. The cases of fraud /gross negligence for all categories of valuers i.e., A, B & C shall be sent to Head Office, Law Department for taking necessary action including reporting to IBA.

4. Other Guidelines

- 4.1.** All appointments/empanelment of valuers will be done in accordance with the provisions of this document and its amendments from time to time.
- 4.2.** Each Branch shall maintain a register of valuers and record of valuation of properties got conducted by them in the branch, indicating the date on which request sent by the branch to valuer, name of the valuer, details of the borrower, details of the properties subjected to valuation, date on which valuation of report received, value of property and the amount of fees paid.

4.3. No security deposits or any other indemnity money will be taken from the valuers as security for the professional services they provide.

4.4. Professional fees/payments to the valuers need to be paid by the Bank within 45 days of the submission of the valuation report and its acceptance by the Bank.

4.5. All procedures as outlined in this document have to be followed by the Bank.

APPLICATION FOR EMPANELMENT OF VALUERS WITH BANK

To

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Date:

Dear Madam/Sir,

I am a valuer of immovable properties (land and buildings/ plant and machinery) and desire to apply to your organization for empanelment. My particulars are given below:

Name:.....

Sex:.....Date of Birth:.....Age:.....

Address:.....

.....
.....

Tel No:.....Mobile:.....

E-Mail:.....Fax:.....

Educational/Professional Qualifications:

S.No.	University/Institute/ Examining Body	Qualification	Date of Award

Number of years of experience in the field of valuation:.....

(Attach evidence in the form of reference letters/copies of valuation reports/any other evidence)

Name and address of previous employer (if applicable):

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.....

Details of previous empanelment, if any, with dates/duration:

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Membership of Professional Valuer Association (name and membership number):

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Registration with CBDT under Wealth Tax Act (Regn. No. and date):

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.....

Permanent Account Number (PAN) of Income Tax Department:.....

References: 1).....

2).....

3).....

The above information about me is true to the best of my knowledge and if found incorrect, I will be fully responsible for the consequences.

Enclosed: Attested photocopies of all certificates/documents of proof

Signature:.....

Name:.....

FORMATS OF TERMS OF ENGAGEMENT FOR EMPANELMENT OF VALUERS

Empanelled valuers shall be engaged by the Bank on the following terms:

Commencement of Work – the valuer shall commence the valuation work after a letter of appointment is issued to the valuer by the Bank

Duties of the Valuer – the valuer shall perform his duties as described in the above Handbook

Assistance by Bank officials – the valuer shall be provided support as described in the above Handbook

Confidentiality and Non Disclosure – the valuer shall maintain confidentiality of the work being undertaken and shall not disclose information to any other person other than the person who has issued the appointment letter to the valuer

The valuer shall ensure that the employees of his organization also follow the policy of confidentiality and non disclosure

The valuer shall complete the assignment within the stipulated time period as agreed to in the Appointment Letter. In case the valuer takes up the assignment but does not deliver the valuation report in a reasonable amount of time even after three reminders, the Bank shall take necessary steps to recommend the case for adjudication by the conflict resolution committee and in the meanwhile, appoint another valuer to undertake the assignment

In case the valuer takes up the assignment but is not in a position to deliver due to any genuine reason, hardship or contingency, the valuer shall inform the Bank of the same and some extension of time may be given to the valuer to complete the assignment

The valuer shall not sub-contract the work to any other valuer but shall carry out the work himself

All communications between the Bank and the valuer shall be in writing/e-mail

Any disagreement/dispute which cannot be resolved amicably between the Bank and the valuer shall be referred to the conflict resolution committee of the Bank. Such a referral can be made either by the Bank or the valuer.

**FORMATS OF UNDERTAKING/AFFIDAVIT TO BE SUBMITTED BY THE VALUERS FOR
EMPANELMENT**

UNDERTAKING

I,son/daughter of
..... do hereby solemnly affirm and state that

I am a citizen of India

I have not been removed/dismissed from service/employment earlier

I have not been convicted of any offence and sentenced to a term of imprisonment

I have not been found guilty of misconduct in professional capacity

I am not an undischarged insolvent

I have not been convicted of an offence connected with any proceeding under the
Income Tax Act 1961, Wealth Tax Act 1957 or Gift Tax Act 1958 and

My PAN Card number/Service Tax number as applicable is

I have read and understood the “Handbook on Policy, Standards and Procedures for
Real Estate Valuation by Banks and HFIs in India 2010” of the IBA and fulfil all the
conditions of Criteria for Empanelment as listed therein

I undertake to keep you informed of any events or happenings which would make me
ineligible for empanelment as a valuer

I have not concealed or suppressed any material information, facts and records and I
have made a complete and full disclosure

Dated:

Signature.....

Name.....

Address.....

.....

Implementation of Guidelines for reporting of names of Third Party Entities viz. empanelled Lawyers, Approved Valuers, Chartered Accountants etc. involved in frauds/gross negligence to IBA for inclusion in the Cautionary List

While reviewing emerging trends in fraud cases in the Indian Banking System, RBI observed that there is increasing trend in cases of frauds, especially those pertaining to retail loans. One striking feature noticed by RBI was that, in large number of cases, the third party entities have played a questionable role affecting the credit sanction/disbursement process at the Banks. The study of fraud cases has revealed that the Third Party Entities such as *Builders, Warehouse /cold storage owners, Motor/Tractor dealers, Travel agents etc.* provided misleading / distorted inputs or fake /manipulated documents / statements in collusion with the borrowers to influence credit decisions/ disbursements. The RBI advised that, in such cases, while the Banks are cautioned about the borrowers, the TPEs, by virtue of their status, are neither held accountable nor these are identified as potential source of risk for the Bank.

Likewise, Advocates, Valuers, Chartered Accountants etc. have also been found to have facilitated frauds by providing /certifying fake documents/ submitting incorrect or false information/legal opinion on financial statements or immovable properties offered to bank as securities. The RBI has observed that, while in certain circumstances, the acts of omission/commission by the *Third Party Entities* can be termed as bonafide omissions only, but in numerous other cases, these acts are the result of gross/criminal negligence or even thoughtful malafide acts on the part of the TPEs in return for an illegal financial gain in the shape of disproportionate fee collected by them from borrowers. Even after establishment of their involvement in frauds, these professionals continue to appear on the panel of other Banks and continue to provide/certify false information or fake documents or incorrect/distorted opinions or reports, based on which the Banks continue to rely and take crucial credit decisions. In the prevailing environment, in order to pre-warn and caution the member banks about the unscrupulous & fraudulent deeds of the TPEs, the RBI issued the following directions for immediate compliance by the Banks:

- ❑ The Banks should build up internal database on such third parties in a systematic manner and resort to mutually exchange the data on an ongoing basis.
- ❑ The Banks should, hereafter, report to Indian Banks Association (IBA) the details of TPEs, including professionals, involved in frauds/gross negligence.
- ❑ Before reporting the names of TPEs to IBA, the Banks should satisfy themselves about the involvement of TPEs concerned in Frauds/criminal negligence and also provide the TPEs an opportunity of being heard/ to explain their position or defence.
- ❑ Based on such reporting, IBA will prepare caution list of such TPEs which will be communicated among all banks to exercise due care while dealing with them.

The detailed procedural guidelines in this regard are enclosed **Annexure- IA to IE**].

SETTING-UP FORUM FOR CONSIDERING DE-EMPANELLEMENT OF TPEs

1.1 Composition of Forum

A Forum comprising 6 General Managers i.e. GM (Law), GM (Retail Credit), GM (Credit Monitoring), GM (Inspection & Audit), GM (Premises) & GM & CVO will be set up to evaluate the role of **third party entities** involved in fraud/loss to the bank. The GM (Law) would act as co-ordinator and the members will not act as Investigators in any of the case placed before the Forum for evaluation. An Officer of Law Department will act as **Link officer** who will assist the Co-ordinator in convening meetings, sending communications from Forum to user-departments and performing various related jobs.

1.2 Quorum

The Forum meetings will have a quorum of **4 members** whereas the **presence of CVO & GM [Cr. Monitoring] is compulsory.**

1.3 Periodicity of meetings

- (a) The meeting of the Forum will be convened as and when the department which had used the services of TPE/empanelled TPE, submits fraud /loss event investigation report containing evidence-based conclusion about the involvement of concerned TPE in the perpetration of fraud.
- (b) The meeting of the Forum will be convened by the co-ordinator within 10 working days after submission of the evidence-based Investigation Report by the concerned department.
- (c) The proceedings of the meeting will be recorded and kept in file properly so that immediate retrieval at future date is possible.

1.4 Receipt of Investigation Report/Details on the role of TPE by the User-department.

Generally, the Investigation reports, indicating involvement/ gross negligence on the part of TPEs culminating in loss to the bank, is first received by Vigilance Department, Head Office. Therefore, based on the findings of the Investigation Report, Vigilance Department will advise the details of role / acts of involvement /professional misconduct/gross negligence on the part of TPE to the concerned user-department. Alternately, the user-department may also receive Investigation Reports from Zonal Offices or they may suo moto cause an investigation on the involvement/ conduct /gross negligence of the TPE on receipt of any complaint/information by them from any source.

1.5 ***Functions of the Forum***

- (a) To receive investigation reports/ or reporting from the concerned user department containing the details of involvement of TPEs /professional misconduct/gross negligence resulting in frauds /loss to the bank,
- (b) To direct the concerned user-department to seek explanation, in writing, from the TPE concerned on his/her involvement in fraud/professional misconduct/gross negligence so as to provide an opportunity to the TPE concerned to present his/her case against the allegations.
- (c) To discuss and evaluate the responses received from the TPEs and to seek further clarifications, if required.
- (d) To decide on the involvement /professional misconduct /gross negligence or otherwise of the TPEs in the frauds.
- (e) To recommend inclusion of the name of the TPE in the '**cautionary list**' and forward the recommendations to the concerned user-department for their onward reporting to IBA.

{* It is not feasible to provide for a personal hearing to the TPE to defend his action considering logistics involved. However, the Forum may take a case specific view in the matter depending on the gravity of the case}

2.1 ***Process of evaluation of involvement of TPE and reporting to IBA***

- (a) The Investigation Reports should clearly define in each case whether the TPE concerned contributed to the credit evaluation process and whether his/her contribution was bonafide or malafide or whether there was gross negligence on the part of TPE concerned. The report should contain details of the TPE and the extent of his/her involvement in the fraud/ professional misconduct/gross negligence.
- (b) The Investigation Report, in normal course, is forwarded to the Vigilance Department by the Zonal Office or any other authority. Hence, Vigilance Department will advise the details of the role of the TPE concerned in the involvement of fraud or his/ her professional misconduct /gross negligence culminating in loss to the bank, to the user-department concerned.
- (c) The user-department may also receive Investigation Report from Zonal Offices or other authorities or it may cause suo moto Investigation in the matter on the basis of complaint/communication received by it.
- (d) On examination of details of the role of TPE, received from Vigilance Department, HO /Investigation Report from other authorities, it will report the

matter alongwith the details /Investigation Report to the Forum for their consideration of the name of TPE concerned for **inclusion in the cautionary list at IBA.**

- (e) The Forum will examine the Investigation Report / details of the role of TPE in the fraud/gross negligence causing loss to the bank.
- (f) The Forum will take a considered view on the desirability of inclusion of the name of TPE in the caution list when isolated cases of negligence /gross negligence on the part of the TPE is reported. It may not be fair to report the name of the TPE for inclusion in the cautionary list for an isolated instance of negligence when malafide intentions are not involved/established/perceived.
- (g) If in the opinion of the Forum, the intentions of the TPE concerned were malafide or grossly negligent, the Forum will ask the concerned user-department to write to the TPE concerned for seeking explanation for his /her action or professional conduct.
- (h) The TPE concerned will be asked by the user-department to submit his/her reply / explanation within 30 days of receipt of the letter by the TPE concerned.
- (i) If the TPE submits his/her reply explaining his/her action & professional conduct to the concerned user-department, it will be forwarded by the concerned user-department to the Forum alongwith their comments.
- (j) Immediately on receipt of the reply /explanation of the TPE concerned alongwith the comments of the concerned user-department, the co-ordinator will convene a meeting of the **Forum** and will examine and discuss the reply / explanation submitted by the TPE concerned on the allegations.
- (k) After the examination of the reply/explanation of the TPE concerned, if the members of the Forum feel that the explanation tendered by the TPE is logical and acceptable, they will convey the same to the concerned user-department. A record of the entire proceedings will be kept by the Forum. Thereafter, the user-department will send a letter to the TPE concerned conveying the findings of the Forum.
- (l) If the members of the Forum do not find the explanation as acceptable, based on the evidences on record, they will **recommend the name of the TPE concerned for inclusion in the cautionary list of IBA** and would accordingly advise the user-department concerned to report the name of the TPE to IBA for inclusion in the cautionary list.
- (m) Accordingly, the user-department concerned will report the name of the TPE concerned to IBA in the format prescribed by IBA (**Annexure-IF**) under intimation to the Forum in token of compliance of their advice. The decision will also be conveyed to the TPE concerned by the user-department in the form of written communication.
- (n) The Forum will keep a record of all the references received/final decision and the compliance of the decision /advices by the user-departments concerned.
- (o) The action on the part of the bank informing the names of TPEs for inclusion in

the cautionary list of IBA, will be independent of the possibility of the bank raising the matter with the regulatory bodies of the professional / expert TPEs concerned (e.g. Institute of Chartered Accountants of India, Bar Council of India etc.) and also filing FIRs, if required, against them.

- (p) After reporting the names of the TPE concerned to IBA for inclusion in the cautionary list, the user department concerned, maintaining the centralised database of TPEs, will effect necessary updating.

Reporting names of TPEs to IBA for inclusion in Cautionary List

Definition of Third Party Entities (TPE)

Third Party Entities are the individuals or group of individuals, whether incorporated or not, used by bank or its customers / agents, for their product /service / expertise, based on which these entities sell products / provide services/give opinions / certify the accuracy of statements / valuation of assets / ownership of assets etc. Based on the documents / opinion /certification given, bank takes a decision to enter into a financial transaction with the customers. The transaction could be related to any service the bank provides to its customers. Examples of the TPEs could be builders, warehouse / cold storage owners, tractor / car dealers, equipment sellers, travel agents, lawyers, chartered accountants, property valuers etc.

Identification of Third Party Entities and creation of a database

Various departments in the bank are using the services of TPEs as discussed hereinabove. It is, therefore, advised that **centralised data-base** of all such third party entities should be maintained by the concerned user-department with full detail like **name of agency, names of partners/ proprietor/directors, registration number if applicable, address and Permanent Account Number (PAN)**. Whenever any user-department intends to use the services of a TPE, it should first refer to the database. Also, whenever a new TPE is to be engaged by any department, it is to be done after cross-checking with the database of TPEs. This exercise is to be done over and above the due diligence that the concerned user-department will follow while appointing /empanelling the TPE concerned as per the standard process. As soon as a TPE is appointed /enlisted, the database of TPEs should accordingly be updated.

Engagement of services of TPEs

Engagement of services of TPEs could be in two ways i.e. (a) on a retainership basis & (b) on a ad-hoc or one-off basis.

- (i) When a TPE is engaged by bank on a retainership basis, the terms of the contract should clearly state that the bank has a right to evaluate the role of a TPE in the event of fraud in a transaction where the bank has relied on the opinion or certification or services of TPE. If the bank finds the involvement of the TPE in a fraud or gross negligence of TPE in rendering service, the bank has the right to include the name of the TPE in the **'cautionary list' and circulate the same to other banks through Indian Banks' Association (IBA)**.

- (ii) When the bank or customer is using the services of a TPE on one-off /ad-hoc basis, the bank, before accepting the certification/ valuation/ service or product document of the TPE, will inform the TPE in writing that in the event of a fraud in a transaction, where bank has relied on the opinion or certification or documentation of the TPE, if the bank finds the involvement of the TPE in the fraud or gross negligence of TPE in rendering the service, the bank has the right to include the name of the TPE in a '**cautionary list**' and circulate the same to other banks through IBA.
- (iii) For TPEs who are already on retainership with the bank, a letter shall be sent by the concerned user-department to the TPE stating that the bank has the right to evaluate the role of the TPE concerned in the event a fraud is reported in a transaction where the bank has relied on the opinion or certification or services of the TPE. If the TPE has any objection to this arrangement and conveys the same to the bank, the retainership arrangement may be reviewed.

The clauses to be added in communication addressed to TPE concerned in the matter of aforesaid three situations are provided in annexure-ID.

- (iv) For TPEs who do not have a direct relationship with the bank, but with whom the customer has entered into relationship on the basis of which the bank has funded the customer, the bank will write a letter to the TPE concerned informing him/her about the new guidelines of the RBI which gives the right to the bank to include the TPE in the cautionary list in the event of any involvement of the TPE in any fraud affecting the bank and its customer. Examples of such TPEs could be builders. Auto/tractor/car/farm-equipment/machinery/ consumer durable dealers, etc.

The format of the letter to be sent to the TPE concerned is given in annexure-IE.

Action to be taken on receipt of Cautionary List from IBA

- (i) Each bank will receive cautionary lists from IBA containing details of TPEs included in the caution list as reported by member banks.
- (ii) On receipt of the **cautionary list**, Vigilance Department will send copies of the same to the concerned user-department (s).
- (iii) On receipt of the list, the user department concerned will check the names with the bank's database and add the names of TPEs to the database of cautionary list, if names are not existing already.
- (iv) If there are TPEs in the list sent by IBA whose services the bank is already using, then the user-department concerned maintaining the TPE database would review the work done by the TPEs concerned and would take action for de-empanelling them.
- (v) User – department may also decide to exercise caution against any future engagements with the TPEs concerned.

- (vi) If for any reason, any department in the bank wants to continue the relationship with the TPE, despite being in the caution list, a decision may be taken by the concerned user-department with due intimation to the empowered forum of the bank.

Reconciliation of Third Party Entity Cautionary List

- (i) The concerned user-departments maintaining database & **cautionary list** will reconcile the **comprehensive cautionary list** incorporating all the TPEs received from IBA.
- (ii) A confirmation will also be given by the bank to IBA after reconciling the cautionary list.

Action to be taken by the Bank against the action taken by the TPEs or his/her Professional Body against the bank

- (i) In the event of a TPE or the Professional Body of the TPE seeking legal recourse against such action by the bank, the bank and IBA shall jointly engage with the same to defend such action.
- (ii) In the event of the bank receiving a direction from a legal authority seeking to remove the name of the TPE from the Cautionary List, the concerned bank may decide to appeal against such direction or comply with the same.
- (iii) If the bank decides to comply, the bank will inform IBA which will notify the other banks of the removal of the name from TPE cautionary list.

Highlights of the RBI communication vide circular DBS.CO.FrMC.BC. No. 3/23.08.001/2008-09 dated 16th March, 2009 addressed to Scheduled Commercial Banks.

- A recent analysis of frauds undertaken by the RBI showed that there is an increasing trend in fraud cases especially those pertaining to retail loans such as housing loans, commodity financing against warehouse receipts, loans for purchase of agricultural implements from dealers, vehicle loans and credit card cases.
- A common feature observed by RBI in most of these cases was the questionable role played by third party entities such as builders, warehouse/cold storage owners, tractor/car dealers, travel agents, etc.
- Similarly, advice tendered by professionals like Chartered Accountants, Valuers, Architects, Advocates, etc. plays a crucial role in ascertaining the progress in house construction, validity /marketability of the title of the properties, etc. RBI has observed that these professionals seem to have colluded with the fraudsters by giving fake/questionable certificates.
- RBI has ,therefore, asked banks to build up an internal database on such third party entities in a systematic manner and resort to mutual exchange of the data on an ongoing basis.
- Before sharing the data, however, RBI has highlighted that banks need to satisfy themselves of the involvement of third party entities concerned and provide them with an opportunity of being heard. The bank needs to follow documented processes for the same and matter should be suitably recorded.
- On the basis of reporting of such TPEs by banks, IBA would prepare caution lists of third party entities and circulate the same among the banks, which they could use while dealing with such entities.

**Clause to be added in communication addressed to TPE
with whom the bank has direct contractual relationship**

- (i) **While including the TPE as a retainer for providing professional advice / service on a regular basis:**

“ Your opinion / certification would be an input for our decision making. Therefore, we would like to state that in the event your opinion / certification turns out to be untrue and factually incorrect causing loss to the bank, we may seek such clarifications as may be required to investigate the matter and fix the responsibility. In the event, it is established that there was gross negligence on your part or you had colluded with our customer in causing pecuniary damage / loss to the bank , we may recommend your name for including in the caution list being maintained by the IBA for circulation amongst member banks.”

- (ii) **While including the TPE as a retainer for providing professional advice / service on a one-off / ad-hoc basis:**

“Kindly note that your opinion / certification is being utilized by the bank in
..... (mention here the specific purpose for which the advice / service of the TPE is being utilized). Therefore, we would like to state that in the event your opinion / certification turns out to be untrue and factually incorrect causing loss to the bank, we may seek such clarifications as may be required to investigate the matter and fix the responsibility. In the event it is established that there was gross negligence on your part or you had colluded with above party in causing pecuniary damage / loss to the bank, we may recommend your name for including in the caution list being maintained by the IBA for circulation amongst member banks.”

- (iii) **Communication to be sent to a TPE who is already empanelled by the banks and advice / services are being utilized by the bank:**

“Please refer to our letter NO.dated.....appointing you as(indicate nature of engagement / empanellment). Your opinions / certifications are being used as an input for our decision making from time to time. We would like to state that in the event your opinion / certification turns out to be untrue and factually incorrect causing loss to the bank, we may seek such clarifications as may be required to investigate the matter and fix the responsibility. In the event, it is established that there was gross negligence on your part or you had colluded with our customer in causing pecuniary damage / loss to the bank we may recommend your name for including in the caution list being maintained by the IBA for circulation amongst member banks as per advice received from the RBI.”

Letter to be issued by the bank to the Other TPEs viz. builders/warehouse /cold storage owners / tractors/Car dealers / equipment sellers / travel agents etc.

M/s. / Mr. / Mrs. / Ms.....
Address:.....
.....

Dear Sir (s) / Madam (s),

We are in the process of considering loan to M/s. / Mr. / Mrs. / Ms..... for purchasing..... (Please give details).

We note that the above persons is acquiring the house / vehicle / equipment / from you. We would like to state that in the event the property / items covering the transaction is not as per the terms of sale agreement or it is established that both the borrower and yourselves colluded in causing loss / potential loss to the bank, we may seek such clarifications as may be needed to investigate the matter. In the event it is established that you had colluded with our customer in causing pecuniary damage / loss to the bank, we may recommend your name for including in the caution list being maintained by the IBA for circulation amongst member banks as per advice received from the RBI.

Yours faithfully,

(Authorised signatory)

(On Bank's Letter Head)

To

The Chief Executive,
Indian Banks' Association,

Confidential

Dear Sir,

Third Party Entities involved in frauds

The following names of third party entities are being reported to the IBA in accordance with the guidelines issued by the RBI vide DBS. CO.FrMC.BC. No. 3/23.08.001/2008-09 dated March 16th March, 2009:

S. No.	Name of Third Party Entity	Registered Office Address	Registration Number	Names of Proprietors / Partners / Directors	Main line of Business	Line of Business in which the Bank had used the TPE	Reasons for putting the name in the cautionary List

We confirm that the above name(s) are being reported after following necessary procedures as detailed in the above mentioned RBI circular and procedural guidelines issued by IBA in this regard. Necessary communications were sent to the parties concerned and they were given fair opportunity to explain their position / justify their action.

Yours faithfully,

(Authorised Signatory)