

November 22, 2023
Suruga Bank

Introduction

In response to the organizational negotiation of loans for investment real estate other than shared housing (hereinafter, the “Apaman Issue”), Suruga Bank announced in April of this year three policies with the strong desire that this issue will be resolved as quickly as possible. The three policies are: (1) propose a plan for early settlement, (2) reduce obligations on debtors by assisting with negotiated sales, and (3) make decisions on an individual basis.

The following is an explanation of the status of our efforts in accordance with these policies.

Overview of the Apaman Issue

In May 2019, the “Report (Investigation of All Investment Real Estate Loans)” (hereinafter, the “Investigation”) was published¹ revealing the full extent of the problems in the Bank's real estate investment-related lending. In light of the fact that the Investigation uncovered falsification or forgery of screening documents in approximately 20% of the total number of investment real estate loans granted (on 37,907 properties, including shared housing), the bank has offered consultations and provided extensive repayment support, by for example, cutting a portion of the principal of these debts. Through these efforts, more than 40% of the 37,907 properties surveyed have a loan balance of zero, and more than 50% are maintaining loan repayments.

Meanwhile, organizational negotiations on 864 properties (approximately 2.3% of the 37,907 properties) are currently ongoing with the Bank and the Suruga Bank Victims Defense Team (hereinafter, the “SI Defence Team”). In some cases, debtors (hereinafter, the "Organizational Negotiation Debtors") have been withholding rental income earned on these properties and have stopped paying principal or interest to the Bank for an extended period of time. To ensure financial soundness, Suruga Bank has appropriately recorded allowances for these liabilities with a coverage ratio of 99.32%.

- Reference Materials 1: Status and coverage of investment real estate loans and organizational negotiation partners

1. Early settlement proposal

The proposal for an early settlement refers to the idea that the Bank will actively cooperate in clarifying the loan circumstances in an effort to achieve an early resolution for certain types of cases where the Bank is likely to be found liable in tort in a lawsuit.

Based on this approach, Suruga Bank proposed an Early Resolution Framework to the SI Defense Team in May 2022. The Early Resolution Framework proposes a three stage process. The first stage is to consider the issue of inflated property valuations, the second is to consider whether it is highly likely that Suruga Bank and its employees were involved in falsifying rent rolls presented to debtors, and the third is to consider the calculation of a settlement figure based on the amount of damage and the degree

¹ www.surugabank.co.jp/surugabank/common/english/info/pdf/190515_4_a_en.pdf

of responsibility.

Although the SI Defense Team do not necessarily agree with the Early Resolution Framework put forward by Suruga Bank, 24 properties have been presented to us by way of trial, and as such, we have been discussing and applying the Early Resolution Framework to these individual cases. Of these 24 properties, eight have been identified as subject to the criteria in the first stage of the framework, and of these, two have been confirmed as eligible under the criteria in the second stage at the current time. We are now beginning the third stage of the consultation process.

Although some progress has been made toward reaching an agreement on the Early Resolution Framework, there is difference of opinion between Suruga Bank and the SI Defense Team as to whether or not properties other than the two mentioned above are covered by the framework.

- Reference Materials 2: Basic concept of the Early Resolution Framework

To resolve the differences in opinion between Suruga Bank and the SI Defense Team regarding the Apaman Issue, including the above points, the SI Defense Team filed a petition for mediation with the Tokyo District Court in February 2022. Since then, negotiations involving the court alone have taken place 11 times. This shows that Suruga Bank is taking the mediation talks very seriously while negotiations are still ongoing.

Even if settlement or mediation, which requires two-way consensus building, is unsuccessful, in attempting to resolve issues other than settlement or mediation, Suruga Bank will fundamentally refer to the Early Resolution Framework that it has proposed, and will continue to take the stance of “actively cooperating to clarify the loan circumstances in an effort to achieve an early resolution for certain types of cases where the Bank is likely to be found liable in tort in a lawsuit,” thereby making every effort to resolve the issue as quickly as possible.

2. Reduce obligations on debtors by assisting with negotiated sales

While the Early Resolution Framework described above targets “certain types of cases where the Bank is likely to be found liable in tort in a lawsuit,” our second policy (to reduce obligations on debtors by assisting with negotiated sales) is intended to reduce obligations on Organizational Negotiation Debtors who are struggling to repay their loans, regardless of whether the Bank is liable in tort or not.

As a result of this policy, we have so far been able to provide real estate sale prices (first appraisals) from companies introduced by Suruga Bank² for 262 properties owned by Organizational Negotiation Debtors represented by the SI Defense Team. In addition, due to these efforts to introduce companies as well as debtors' own private sales, 64 properties were removed from organizational negotiations between the end of September 2022 and the end of September this year.

As a result of comparing the appraised price, there are cases where the value of the property is not enough to repay the loan even if private sale proceeds are used. However, Suruga Bank can provide additional support in such cases, for example, by creating a repayment plan after the sale proceeds have been appropriated³. In this way, Suruga Bank is prepared to actively support the repayment of debts in cases where the Organizational Negotiation Debtors themselves wish to repay the debt and

² The companies introduced are completely neutral in that there is no capital relationship with Suruga Bank, nor do we actively recommend that the debtor uses the services of the company in question.

³ In the case of Organizational Negotiation Debtors who have been withholding rental income earned on their properties and have stopped paying principal or interest to the Bank, we request that approximately 70% of the amount withheld (after deduction of appropriate and necessary expenses) be added to their repayment.

can prepare documents for negotiated sale, etc. Consequently, Suruga Bank would like to promptly provide consultations and support to as many Organizational Negotiation Debtors as possible to find a path to early resolution according to individual circumstances.

3. Decisions on an individual basis

Decisions on an individual basis are based on the idea that each organizational negotiation has its own individual circumstances, and so it is necessary to make decisions on a case-by-case basis regarding whether or not the Bank is obligated to compensate for damages, or compensate for a proportion thereof.

However, we understand that the SI Defense Team continues to insist on a substantial blanket settlement agreement which Suruga Bank finds difficult to accept. As explained in April of this year, here are the reasons why we believe that decisions on a case-by-case basis are necessary.

- i. The results of the Investigation found that there was no wrongdoing in about 80% (29,333 properties) of the Apaman loans (36,260 properties), therefore it cannot be assumed that the Bank committed unlawful acts in all cases.
- ii. In the Apaman Issue, the circumstances of the parties involved differ depending on each individual case. For example, there was a report that a real estate agent falsified documents at the request of the Bank and deceived property owners. However, Suruga Bank has also seen cases where a real estate agent falsified documents deceiving both the owner and the Bank, and cases⁴ where the owner and real estate agent jointly falsified documents to obtain a larger loan from the Bank.
- iii. Fairness with debtors with whom individual lawsuits and settlements have been made is also an issue. It is difficult for the Bank to decide on a blanket settlement, or a one-size-fits-all solution, from the perspective of fairness, when judicial rulings and settlements, etc. have already been reached⁵ depending on individual circumstances.

As a result of further close examination, we estimate that about 40% of the properties⁶ are so-called "break-even properties"⁷. In these "break-even properties," it is highly likely that positive real estate income can be secured even if scheduled repayments continue as per the loan agreement with Suruga Bank. And since the possibility of damage caused by an inflated price is considered to be limited, we

⁴ When Suruga Bank presented this explanation in April of this year, an objection (SI Defense Team Statement) was made stating that this description does not apply to cases which the SI Defense Team represents. Excerpt from the SI Defense Team Statement: It is claimed that there are also cases where Suruga Bank was defrauded by real estate agents and debtors. This description may give the reader the impression that "there are cases like this among the cases accepted by the SI Defense Team."

Regarding this objection, Suruga Bank is aware that "cases in which a debtor and a real estate agent jointly falsified documents" also exist in cases handled by the SI Defense Team. For example, so-called "front money" whereby a real estate company temporarily transfers funds to the debtor's account to make it appear as if the debtor has his/her own funds for purchasing investment real estate is an example of a case in which the debtor and real estate agent jointly falsify documents. And there are also some cases such as with double sales contracts, whereby the debtor stamps both the real estate sales contract presented to the Bank with an inflated price and the real estate sales contract with the actual price that was separately exchanged between the real estate agent and the debtor. Such a case shows that both the debtor and the real estate agent are likely to have been involved.

⁵ Rulings have been made in four Apaman loan cases, but in none of them has the Bank's liability for damages been recognized. Moreover, 18 settlements have been reached through alternative dispute resolution or other means.

⁶ A "break-even property" is defined as a property that is estimated to be in positive territory when 70% of its rental income is considered as real estate income after deducting costs, and the loan payment (interest and scheduled repayment paid to Suruga Bank) is deducted from the income.

⁷ Estimated calculation for 638 Organizational Negotiation Debtor properties with which we have knowledge of rent rolls, etc., and for which property income and expenditure can be estimated.

believe that there are doubts as to whether there is a legitimate reason to suspend loan repayments for an extended period of time.

While there are such "break-even properties," Suruga Bank also recognizes that there is a high probability that in some cases, such as with the two properties identified in the Early Resolution Framework mentioned above, the Bank is likely to be found liable in tort in a lawsuit. The Bank therefore believes that in such cases compensation should be awarded.

Thus, each case that is being organizationally negotiated has its own individual circumstances, and so a one-size-fits-all solution, or blanket settlement, would not be fair or just. Suruga Bank believes that it is the Bank's responsibility to resolve issues as quickly as possible, based on individual considerations rather than across-the-board. The Bank therefore asks for understanding with regard to this policy.

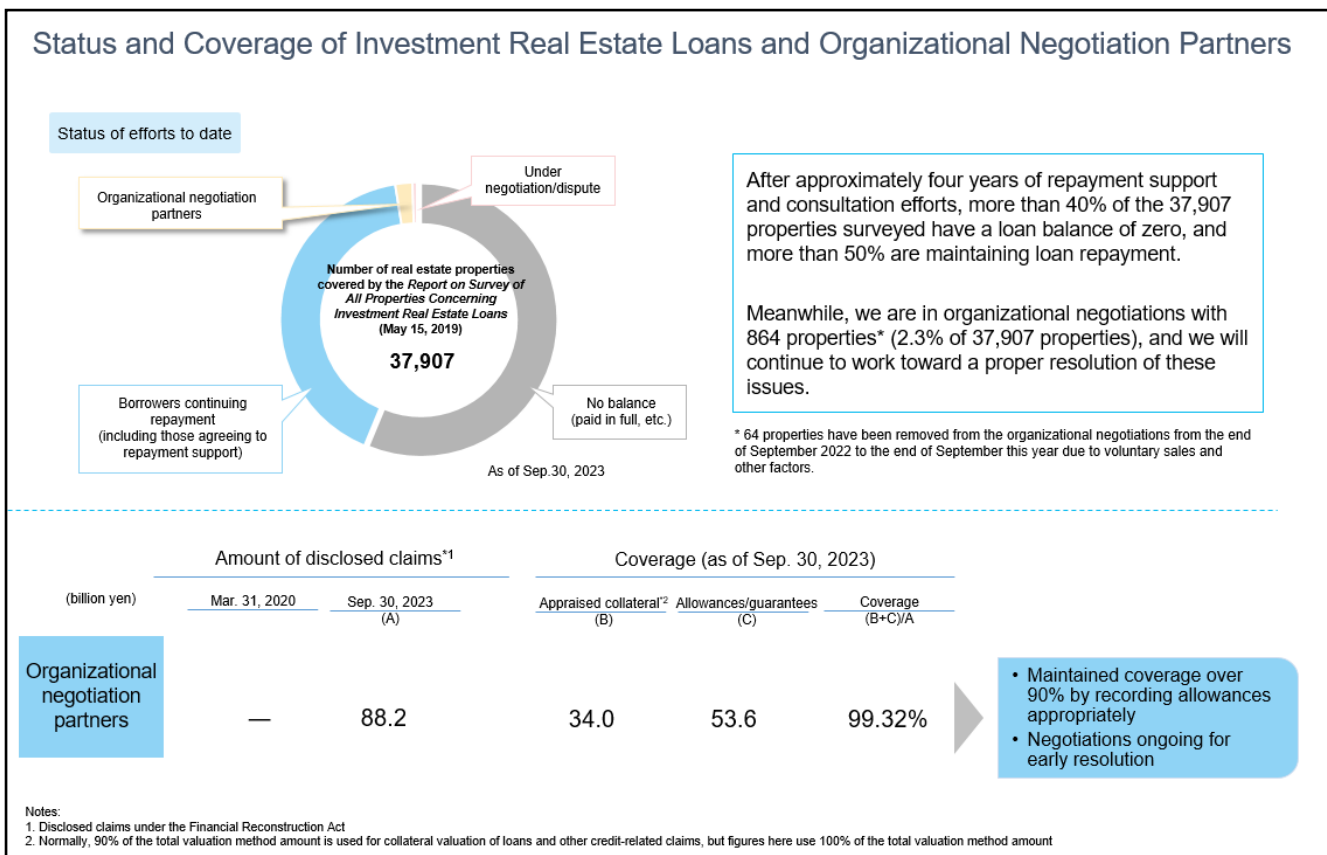
Future Actions

We will continue to do our utmost to support and cooperate with Organizational Negotiation Debtors in accordance with the three policies we announced in April of this year, and will aggressively pursue early resolution.

In particular, we believe that it is essential to take prompt measures to reduce obligations on debtors by assisting with negotiated sales, given the urgent need to reduce the burden on Organizational Negotiation Debtors who are struggling to make repayments, and to those who may not be able to achieve the expected sales price depending on real estate market conditions.

For this reason, we have begun to offer the maximum level of support possible to all Organizational Negotiation Debtors. We will do our utmost to assist and cooperate with the majority of Organizational Negotiation Debtors to bring them relief as soon as possible by quickly reducing their debt obligations, providing additional assistance in the form of repayment plans, and creating a path to resolving individual issues on a case-by-case basis.

Reference Materials 1



Reference Materials 2

