

April 4, 2024
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 last 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.

As an example of the need to make decisions on an individual basis, Suruga Bank's approach to so-called "break-even properties"¹ is explained as follows in a document published in November 2023.

- A break-even property is one that has a high possibility of securing positive real estate income even if scheduled repayments continue as per the loan agreement with Suruga Bank. As such, we believe that, in principle, there is no justifiable reason to suspend loan repayments for an extended period of time.

The following is an explanation of our response to these break-even properties and the status of our efforts in accordance with the three policies mentioned above.

Overview of the Apaman Issue

In May 2019, the "Report (Investigation of All Investment Real Estate Loans)" (hereinafter, the "Investigation") was published² 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.

Currently, as of the end of February 2024, organizational negotiations on 845 properties³ (approximately 2.2% 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 ratio⁴ of 99.54%.

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

¹ 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.

² www.surugabank.co.jp/surugabank/common/english/info/pdf/190515_4_a_en.pdf

³ Due to voluntary sales and other factors, from the end of September 2022 to the end of February this year, 83 properties were no longer in organizational negotiations.

⁴ The figures are as of December 31, 2023. Figures as of the end of March 2024 will be provided soon.

Status of Response to Break-even Properties

As explained in the materials released in November 2023, Suruga Bank has prepared a document requesting debtors who own such break-even properties to resume scheduled repayments, consider reducing their repayment obligations through voluntary sale of properties, and to contact us if there are any specific circumstances that make it difficult to make scheduled repayments. This document will be sent to all debtors who own break-even properties through the debtor's attorney.

- Reference Material 2: Template of document (example)

Status of Response to Other Matters

With regard to our first policy to propose a plan for early settlement, 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 inflated⁵ 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 of responsibility. These talks with the SI Defense Team have made some progress, but differences of opinion remain.

Suruga Bank will continue to respond with all sincerity to negotiations involving the courts, and even if settlement or mediation 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.

Next, with regard to our second policy to reduce obligations on debtors by assisting with negotiated sales, there have been cases through various proposals and consultations in which measures to assist with negotiated sale have been applied resulting in the sale of such properties. As noted in the above information letter (addressed to debtors who own break-even properties), we offer consultation and in-depth support in cases where the value of the property is not enough to repay the loan even if private sale proceeds are used, such as in the preparation of a repayment plan after the sale proceeds have been appropriated⁶.

Finally, with regard to our third policy to make decisions on an individual basis, we have previously explained that with respect to fairness with debtors where individual rulings or settlements have been made, it is difficult for the Bank to decide on a blanket settlement, or a one-size-fits-all solution, from the perspective of fairness with such cases where judicial rulings and settlements have already been reached depending on individual circumstances.

By September of last year, rulings had been made in four Apaman loan cases, and since then, two new rulings have been made. In none of these cases has the Bank been found liable for damages.

- Reference Material 3: Examples of court decisions regarding Apaman loans and Suruga

⁵ The term "inflated" here broadly means that the falsified rent roll led to the “mistake” of thinking that the property in question was more profitable than it actually was, resulting in a higher price than if the “mistake” had not occurred.

⁶ 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.

Bank's liability for damages

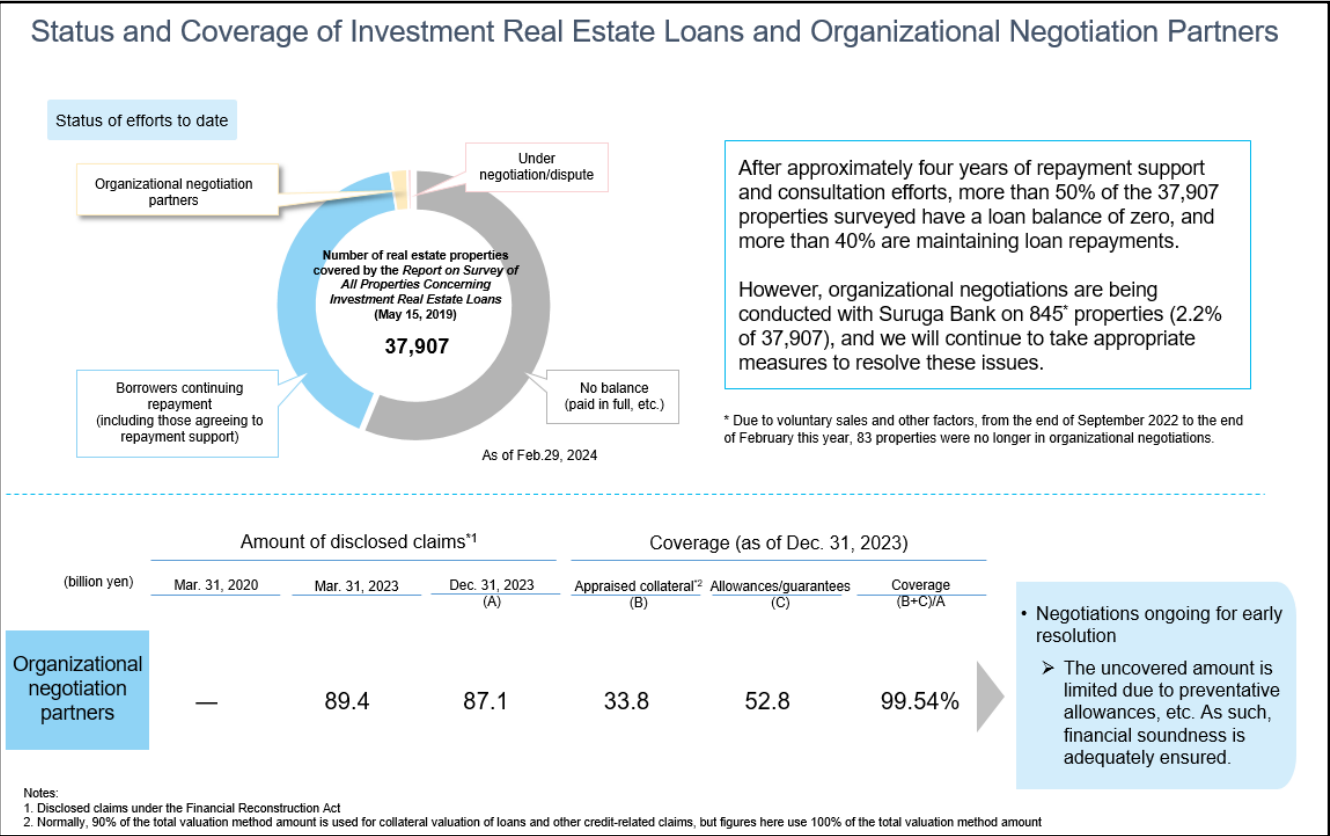
Future Actions

We will continue to do our utmost to resolve the issue as soon as possible in accordance with the three policies we announced in April last year.

In particular, we believe that it is essential to take prompt measures with our second policy 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 future real estate market conditions.

For this reason, we offer the maximum level of support possible to all Organizational Negotiation Debtors. We will do our utmost to bring relief as soon as possible to the many Organizational Negotiation Debtors by quickly reducing their debt obligations, providing 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

Mar. 2024¹⁾

XXX-XXXX²⁾

XXXX, XXXX, XXXX-ku, XXXX²⁾

1-7-1 Nihonbashi Muromachi, Chuo-ku, Tokyo
103-8689²⁾

Suruga Bank, Ltd.²⁾

¹⁾ https://www.surugabank.co.jp/surugabank/investors/irinfo/2023/pdf/231122_sankou.pdf
²⁾ Please refer to the above website link. 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.²⁾

Suruga Bank sincerely apologizes for the long period of uncertainty with regard to negotiations concerning loans for investment properties other than shared houses that have been ongoing for some time. Since we are not able to contact you directly regarding this matter, we appreciate your understanding that this letter has been sent to you by way of your attorney.²⁾

Our response to the negotiations concerning loans for investment real estate other than shared housing (hereinafter, the "Apaman Issue") has been explained in a document posted on the Bank's website (dated November 22, 2023).¹⁾ As stated in that document, we strongly hope to resolve the Apaman Issue as soon as possible. We have therefore been working with representative attorneys to propose various means to resolve the issue. We are sending this letter to you to reaffirm how we intend to handle your dealings with Suruga Bank, including debt relief and additional support.²⁾

With regard to the real estate purchased with financing from us in connection with the Apaman Issue (hereinafter, the "Property"), based on data already provided by you, we have deemed that the Property falls under the category of so-called "break-even properties"²⁾ when considered in light of general apartment management and rental business conditions. Consequently, we believe that you are in a position to be able to make scheduled repayments for the Property. However, you have failed to make any scheduled repayments for an extended period of time. We are sending this letter to you to urge you to consider repaying the loan, in part because any scheduled repayments missed will increase the amount you will have to pay in late payment charges.²⁾

● If however, there are any special circumstances that make it difficult for you to make scheduled repayments (e.g., the property has been unprofitable for a long period of time due to excessive property repair costs, etc.), please contact our Office to Support Customer Owners of Share Houses and Others in cooperation with your attorney.²⁾

Or if you are considering reducing your debt obligations by selling the Property, please contact our Office to Support Customer Owners of Share Houses and Others in cooperation with your attorney. Suruga Bank is proactively proposing various measures to customers who choose to voluntarily sell real estate related to the Apaman Issue to help them reduce their debt obligations. Please refer to the attached sheet for specific details of such measures.²⁾

Office to Support Customer Owners of Share Houses and Others²⁾
1-7-1 Nihonbashi Muromachi, Chuo-ku, Tokyo²⁾
Toll free: 0120-010-636²⁾
Lines open: 09:00-17:00²⁾
(Monday through Friday, excluding Saturdays, Sundays, national holidays, and year-end and New Year holidays)²⁾

Reference Materials 2

Attachment: Measures to reduce debt obligations through voluntary sale of Property¹⁾

- ① Support to customers for voluntary sale²⁾
 - We will provide necessary documents and (except in some areas) introduce real estate agents.³⁾
- ② Partial waiver of overdue interest and damages after voluntary sale⁴⁾
 - As a specific measure for a partial waiver, we will discuss an obligation for you to pay, in addition to the proceeds from the voluntary sale, 70% of the rental income earned during the time loan repayments were missed, whereby any amount in excess of this will be waived up to an amount equal to overdue interest and damages.⁵⁾
 - If there are understood to be any special individual circumstances, we will also be happy to discuss the amount equivalent to the real estate balance.⁶⁾
 - Please refer to Case A below as an example.⁷⁾
- ③ Consultation on repayment of outstanding debt after voluntary sale⁸⁾
 - As a specific measure for a repayment plan of the outstanding debt (after partial waiver as set out in (2) above), we will discuss with you with respect to 0% interest over a 35 year term, or 1% interest over the same term as the original contract.⁹⁾
 - Please refer to Case B below as an example.¹⁰⁾
- ④ Consultation on repayment of outstanding debt through individual repayment plan¹¹⁾
 - If repayment of the outstanding debt is unlikely even after implementing (3) above, we will consult with the borrower to create an individual repayment plan based on the individual's circumstances (e.g., amount that could be repaid, assets, etc.).¹²⁾

Points of Note¹³⁾

As a general rule, the customers to whom we propose the aforementioned debt reduction measures are limited to the following:¹⁴⁾

- Customers who, in light of circumstances, such as the partial cut in principal announced in May 2019 but not yet resolved, applied for civil mediation to the court by the end of August 2021 but not yet resolved, or customers who have conducted voluntary sales since April 2023 when the Bank proposed the aforementioned debt reduction measures to the SI Defense Team¹⁵⁾

Please note that we do not promise to implement any of these debt reduction measures in the future. These measures are only being proposed at this time for those customers who have been able to promptly execute a voluntary sale.¹⁶⁾

Consultation examples to reduce debt obligations through voluntary sale of Property¹⁾

Case A: Example of debt reduction measure (2) - Partial waiver of overdue interest and damages after voluntary sale²⁾

Initial situation³⁾

Repayment funds ⁴⁾		Repayment amount ⁵⁾	
Proceeds from sale ⁶⁾	¥20,000,000 ⁷⁾	Loan balance ⁸⁾	¥22,000,000 ⁹⁾
		Overdue interest and damages ¹⁰⁾	¥7,500,000 ¹¹⁾
Total ¹²⁾	¥20,000,000 ¹³⁾	Total ¹⁴⁾	¥29,500,000 ¹⁵⁾

- The funds for repayment (¥20,000,000) are ¥9,500,000 short of the repayment amount (¥29,500,000 yen) required to proceed with the sale (pay off the loan), making it difficult to proceed with the voluntary sale.¹⁶⁾



Situation after consultation¹⁷⁾

Repayment funds ¹⁸⁾		Repayment amount ¹⁹⁾	
Proceeds from sale ²⁰⁾	¥20,000,000 ²¹⁾	Loan balance ²²⁾	¥22,000,000 ²³⁾
70% of rental income earned during time repayments missed ²⁴⁾	¥2,500,000 ²⁵⁾	Overdue interest and damages ²⁶⁾	¥7,500,000 ²⁷⁾
		Partial waiver of interest and damages ²⁸⁾	(¥7,000,000) ²⁹⁾
Total ³⁰⁾	¥22,500,000 ³¹⁾	Total ³²⁾	¥22,500,000 ³³⁾

- This is an example which shows that 70% of the rental income (¥2,500,000) earned during the time repayments were missed is allocated to fund repayment of the loan. A portion of the interest and damages is also waived meaning that the voluntary sale can proceed to completion.³⁴⁾

Case B: Example of debt reduction measure (3) - Consultation on repayment of outstanding debt after voluntary sale¹⁾

Repayment funds ²⁾		Repayment amount ³⁾	
Proceeds from sale ⁴⁾	¥18,000,000 ⁵⁾	Loan balance ⁶⁾	¥22,000,000 ⁷⁾
70% of rental income earned during time repayments missed ⁸⁾	¥2,500,000 ⁹⁾	Overdue interest and damages ¹⁰⁾	¥7,500,000 ¹¹⁾
		Waiver of interest and damages ¹²⁾	(¥7,500,000) ¹³⁾
Total ¹⁴⁾	¥20,500,000 ¹⁵⁾	Total ¹⁶⁾	¥22,000,000 ¹⁷⁾

- 70% of the rental income (¥2,500,000) earned during the time repayments were missed is allocated to fund repayment of the loan. But even if the interest and damages (¥7,500,000) accrued during missed repayments is waived in full, there are still insufficient funds to repay the loan (outstanding debt = ¥1,500,000)¹⁸⁾



Debt reduction measure option (i)¹⁹⁾

Outstanding debt ²⁰⁾	Applicable interest rate ²¹⁾	Loan term ²²⁾	Monthly repayment ²³⁾
¥1,500,000 ²⁴⁾	1.0% ²⁵⁾	20 years ²⁶⁾	Approx. ¥6,900 ²⁷⁾
	* 3.5% in original contract ²⁸⁾	* Same as original contract ²⁹⁾	

Debt reduction measure option (ii)³⁰⁾

Outstanding debt ³¹⁾	Applicable interest rate ³²⁾	Loan term ³³⁾	Monthly repayment ³⁴⁾
¥1,500,000 ³⁵⁾	0% ³⁶⁾	35 years ³⁷⁾	Approx. ¥3,600 ³⁸⁾

- In addition to these two options, another option includes the lump-sum repayment of outstanding debt, showing that this is an example of a consultation in which a repayment plan is considered based on a customer's individual circumstances.³⁹⁾

- The above two cases (A and B) are examples only. Suruga Bank may not be able to provide you with such measures to reduce your debt obligations. Customers who wish to take advantage of any of Suruga Bank's debt reduction measures will be required to agree with our terms and conditions. Please contact the Office to Support Customer Owners of Share Houses and Others for more details.⁴⁰⁾

Reference Materials 3

No.	Judgment Date (Confirmed)	Jurisdiction	Points of Issue	Court Decision	Judgment
1	2021/6/2	Tokyo High Court	<p>·Can the following acts by the real estate agent be considered a tort liability?</p> <p>(1) Inducing a customer to enter into a sales contract by giving false explanations about the value of the property or income and expenditure of the property</p> <p>(2) Making the plaintiff take out a loan for more than the purchase price</p> <p>without being made fully aware of the amount to be borrowed</p> <p>·If the Bank was involved in falsifying screening documents, can it be said that the plaintiff is not responsible for repaying the loan based on the principle of good faith?</p>	<p>·Tort liability due to fraud by the real estate agent not recognized</p> <p>(1) The sale price was not unreasonably high, and there were no false statements about the property's income and expenses (the sales contract and loan agreement are fundamentally legally separate and independent contracts, so the validity of a sales contract does not immediately affect the validity of a loan agreement)</p> <p>(2) The loan agreement is genuine and in accordance with the intentions of plaintiff</p> <p>·The Bank was neither aware of nor involved in the falsification of screening documents. (The investigation report by the Third Party Committee does not necessarily reflect that the Bank was aware of or involved in any falsification)</p>	<p>Claim dismissed</p> <p>(Final judgment)</p>
2	2021/10/7	Tokyo High Court	<p>·Assuming illegal acts by the real estate agent (falsification of screening documents, etc.), is the Bank's vicarious liability recognized or is joint tort liability recognized?</p> <p>·Does the Bank have an obligation to check customer's creditworthiness,</p> <p>for instance, checking documents that confirm customer's own funds, etc., at time of loan screening?</p>	<p>·Since the real estate agent is not found to be liable in tort, the Bank's vicarious liability or joint tort liability is not recognized based on this assumption</p> <p>·In general, when a bank makes a loan, it is not obligated to point out to the prospective borrower that there had been any forgery or falsification, unless the bank was aware of the forgery or falsification, or could have been aware of it having taken all reasonable care</p>	<p>Claim dismissed</p> <p>(Final judgment)</p>
3	2021/11/16	Tokyo District Court	<p>·Does the Bank have the following duty of care and can it be held jointly liable in tort?</p> <p>(1) Duty of care to check documents confirming customer funds, etc.</p> <p>(whether the Bank was aware of the frequent occurrence of falsification or fabrication of documents confirming customer funds, etc.)</p> <p>(2) Obligation to confirm real estate collateral valuation and explanation of valuation method</p>	<p>·The Bank does not have the following duty of care and cannot be held liable in tort</p> <p>(1) It is not recognized that there was a common understanding at the Bank that incidents such as falsification or fabrication of documents confirming customer funds, etc., were occurring frequently.</p> <p>The reason why banks ask for documents to verify a customer's financial resources is to determine the customer's ability to repay the loan and to mitigate credit risk. There is no obligation to verify the original documents with the customer.</p> <p>(2) Banks are only required to know the collateral value of the real estate for the possibility of non-repayment of loan.</p> <p>The Bank is not obliged to confirm the real estate collateral valuation or to explain the valuation method</p>	<p>Claim dismissed</p> <p>(Final judgment)</p>
4	2022/7/7	Tokyo High Court	<p>·Is the Bank liable in joint tort on the grounds that it knew or could have known of the real estate agent's illegal acts (falsification of screening documents, etc.)?</p> <p>·Even if the Bank was unaware of the real estate agent's intent, can it be found to have negligently aided and abetted the real estate agent's illegal acts?</p>	<p>·Although the real estate agent's actions cannot avoid being ruled out as unfairly infringing on the plaintiff's rights, there is not enough evidence to prove that the Bank was aware of or knew of any intent of illegal action, and therefore no joint tort liability can be found</p> <p>·There is no reason to believe that the Bank negligently aided and abetted the real estate agent's actions.</p>	<p>Claim dismissed</p> <p>(Final judgment)</p>

5	2024/1/24	Tokyo District Court	<p>·Did a Bank employee instruct or knowingly and tacitly approve the real estate agent's (seller) falsification of the customer's bank balance or income (falsification)?</p> <p>·Even if the Bank employee was unaware of any fraudulent activity, if the Bank overlooked the fraudulent activity when executing the loan, was the bank guilty of illegal conduct toward its customer?</p> <p>·Is the Bank legally obligated to confirm that there is a reasonable basis for the seller's real estate agent to enter into a sales contract rather than a brokerage contract for the acquisition of real estate for investment?</p>	<p>·There is no evidence to suggest that Bank employees ordered or tacitly approved any fraudulent activity</p> <p>·If the loan was made merely because the Bank employees overlooked the fraudulent activities, there is no tort for breach of duty of care to the customer in relation to a customer who admits that he/she was aware of and cooperated with some part of the fraudulent activity</p> <p>·There is no reason to believe that a financial institution that receives a loan application has a legal obligation to confirm whether or not there is a rational basis for a sales contract rather than a brokerage contract</p>	<p>Claim dismissed</p> <p>(Final judgment)</p>
6	2024/2/28	Nagoya District Court	<p>·Did the Bank collude with the seller, a real estate agent, to conclude a sales contract with the purchase price exceeding the market value?</p> <p>·Does the Bank have an obligation to explain to its customers the contents of the contract and the purpose for which the loan proceeds will be used, as well as a duty of care and protection to ensure no unexpected damage, based on the principle of good faith?</p>	<p>·The price listed in the valuation report of the property submitted by the plaintiff as evidence does not represent the only appropriate market value equivalent, and it is not found that the plaintiff was induced to enter into a sales contract for a sales price higher than the market value equivalent in this case.</p> <p>·The fact that (i) a sales contract in which the purchase price was falsified and (ii) a forged internet banking balance statement were used in the screening of the conclusion of the loan agreement is not considered a circumstance that would lead to an inference of collusion between the Bank and the real estate agent.</p> <p>·Unless there are special circumstances, the financial institution that financed the sale and purchase is not liable in tort with regard to the conclusion of the sale and purchase contract.</p> <p>In this case, there are no circumstances sufficient to find that the defendant is liable in tort.</p>	<p>Claim dismissed</p> <p>(Final judgment)</p>