

November 12, 2024
Suruga Bank Ltd.

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 2023 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 response 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.

As of the end of September 2024, organizational negotiations on 807 properties (approximately 2.1% 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 under the agreed terms for an extended period of time.² To ensure financial soundness, Suruga Bank has appropriately recorded allowances for these liabilities with a coverage ratio of 99.76%.

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

1. Early settlement proposal

With regard to our first policy to propose a plan for early settlement, Suruga Bank proposed an Early Resolution Framework to the SI Defence Team in May 2022. The Early Resolution Framework proposes a three stage process. The first stage is to consider the issue of inflated³ 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.

¹ https://www.surugabank.co.jp/surugabank/kojin/topics/pdf/190515_4_a.pdf

² Due to voluntary sales and other factors, from the end of September 2022 to the end of September this year, 124 properties were no longer in organizational negotiations.

³ 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.

However, even now, almost three years since the SI Defence Team filed for mediation⁴, there are still differences of opinion on some basic points. For example, Suruga Bank has insisted on the need to make decisions on an individual basis⁵, but the SI Defense Team has effectively demanded a blanket settlement, something which we have not been able to come to agreement on.

We will continue to respond in good faith to negotiations involving the courts, and in light of the situation where differences of opinion between the two parties have remained unresolved for an extended period of time, we are communicating to the SI Defense Team our proposal to the effect that even for individual cases that are not under specific consideration, we would like to receive all the necessary information from those debtors who wish to seek early resolution in accordance with our proposed framework.

Through these efforts, Suruga Bank 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

Regarding the second policy, "Reducing Obligations on Debtors by Assisting with Negotiated Sales," as individually communicated in writing to the relevant debtors, we have requested discussions toward the resumption of scheduled repayments and have presented all possible options (measures to reduce repayment burdens) available to us. Specifically, we have proposed the following support measures:

- Partial waiver of overdue interest and damages after voluntary sale
- Consultation on repayment of outstanding debt after applying proceeds from a voluntary sale, such as zero-interest loans with a repayment period of up to 35 years⁶
- Support for achieving positive cash flow through individual consultations for debtors facing difficulty in making scheduled repayments due to property cash flow deficits, such as interest rate reductions with a lower limit of 1.15% and lump-sum payment of a portion of the principal at the final maturity date
- If repayment of the outstanding debt is unlikely even after implementing the above support

⁴ The SI Defense Team filed a petition for mediation with the Tokyo District Court in February 2022, but since then, negotiations involving the court alone have taken place 21 times.

⁵Reasons why we believe that decisions on an individual basis are necessary (summary of materials published in April 2023):

(1) In the results of all investigations, no fraud was found in approximately 80% of Apaman loans, so we cannot assume that Suruga Bank committed illegal acts in all cases; (2) The circumstances of the parties involved differ depending on the individual case (For example, there was a report of a real estate agent falsifying documents at the request of the Bank, deceiving property owners. However, Suruga Bank has also seen cases where a real estate agent falsified documents deceiving both the owner and the Bank, and cases where the owner and real estate agent jointly falsified documents to obtain a larger loan from the Bank); and (3) Fairness with debtors with whom individual lawsuits and settlements have already been made (judicial rulings and settlements have already been reached in accord with individual circumstances, so from the perspective of fairness, it is difficult for Suruga Bank to opt for a blanket resolution).

As of September 2024, rulings have been made in eight Apaman loan cases, but in none of them has the Bank's liability for damages been recognized. Please refer to Reference Materials 2.

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.

measures, 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.)

- Individual consultations in cases where property cash flow is unclear or there are special circumstances

Through these various proposals and consultations, the number of cases resolved individually—such as through agreements on repayment of outstanding debt via voluntary sales or the resumption of repayments—has been increasing. From the end of September 2022 to the end of September this year, 124 properties were no longer in organizational negotiations.

3. Decisions on an individual basis

Regarding our third policy, as an example of the need to make decisions on an individual basis, Suruga Bank's approach to so-called positive cash flow properties 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 term “real estate income”⁷ here refers to the amount obtained when 30% of the rental income from the property is deemed as necessary expenses, and those necessary expenses and loan payments (interest and scheduled repayments paid to Suruga Bank) are deducted from the rental income. The expenses ratio for a single apartment building, which includes management fees, utilities for common areas, property tax, city planning tax, and refurbishment costs when empty, is generally said to be around 15–20%, but Suruga Bank conservatively assumes an expenses ratio of 30% when calculating “real estate income”.

As such, we have repeatedly requested discussions toward the resumption of scheduled repayments and have presented all possible options (measures to reduce repayment burdens) while encouraging debtors to notify us of any special circumstances. However, for some debtors who have not made scheduled repayments for an extended period and have not responded to requests for dialogue toward repayment resumption, we have been left with no choice but to take legal action and file for payment demands.

- Reference Materials 3: Background leading to the use of measures such as payment demands

The first round of payment demands targeted 14 properties. These properties were selected because scheduled repayments had not been made for an extended period, the debtors did not respond or agree to requests for individual dialogue toward repayment resumption, and it was determined that our liability for damages is unlikely to be recognized.

Going forward, for properties other than these 14, we will individually assess whether there are “legitimate reasons for suspending debt payments” based on the evidence submitted to the court by debtors within the deadlines set during the mediation process. If deemed necessary, we intend to proceed with filing for payment demands and other measures in a sequential manner.

⁷ In response to a question regarding the definition of “real estate income” for single-building income-generating properties (apartments), we have provided an explanation that further expands on our previous disclosures.

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 2023. 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: Status and coverage of investment real estate loans and organizational negotiation partners

Status and Coverage of Investment Real Estate Loans and Organizational Negotiation Partners

Status of efforts to date



After approximately five years of repayment support and consultation efforts, around 60% of the 37,907 properties surveyed have a loan balance of zero, and around 40% are maintaining loan repayments.

However, organizational negotiations are being conducted with Suruga Bank on 807* properties (2.1% of 37,907), and we will continue to take appropriate measures to resolve these issues.

* Due to voluntary sales and other factors, from the end of September 2022 to the end of September this year, 124 properties were no longer in organizational negotiations.

(billion yen)	Amount of disclosed claims*1			Coverage (as of Sep. 30, 2024)		
	Mar. 31, 2023	Mar. 31, 2024	Sep. 30, 2024 (A)	Appraised collateral*2 (B)	Allowances/guarantees (C)	Coverage (B+C)/A
Organizational negotiation partners	89.4	87.3	84.9	32.9	51.8	99.76%

• Negotiations ongoing for early resolution

➤ The uncovered amount is limited due to preventative allowances, etc. As such, financial soundness is adequately ensured.

Notes:

1. Disclosed claims under the Financial Reconstruction Act.

2. Normally, 90% of the total valuation method amount is used for collateral valuation of loans and other credit-related claims, but figures here use 100% of the total valuation method amount.

Reference Materials 2: Examples of court decisions regarding Apaman loans and Suruga Bank's liability for damages

No.	Judgment Date	Jurisdiction	Points of Issue	Court Decision	Judgment
1	2021/6/2	Tokyo High Court	<ul style="list-style-type: none"> Can the following acts by the real estate agent be considered a tort liability? <ul style="list-style-type: none"> (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 (2) Making the plaintiff take out a loan for more than the purchase price without being made fully aware of the amount to be borrowed 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? 	<ul style="list-style-type: none"> Tort liability due to fraud by the real estate agent not recognized <ul style="list-style-type: none"> (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) (2) The loan agreement is genuine and in accordance with the intentions of plaintiff The Bank was not 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 document falsification) 	Claim dismissed (Final judgment)
2	2021/10/7	Tokyo High Court	<ul style="list-style-type: none"> 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? Does the Bank have an obligation to check customer's creditworthiness, for instance, checking documents that confirm customer's own funds, etc., at time of loan screening? 	<ul style="list-style-type: none"> 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 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 	Claim dismissed (Final judgment)
3	2021/11/16	Tokyo District Court	<ul style="list-style-type: none"> Does the Bank have the following duty of care and can it be held jointly liable in tort? <ul style="list-style-type: none"> (1) Duty of care to check documents confirming customer funds, etc. (whether the Bank was aware of the frequent occurrence of falsification or fabrication of documents confirming customer funds, etc.) (2) Obligation to confirm real estate collateral valuation and explanation of valuation method 	<ul style="list-style-type: none"> The Bank does not have the following duty of care and cannot be held liable in tort <ul style="list-style-type: none"> (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. 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. (2) Banks are only required to know the collateral value of the real estate for the possibility of non-repayment of loan. The Bank is not obliged to confirm the real estate collateral valuation or to explain the valuation method 	Claim dismissed (Final judgment)
4	2022/7/7	Tokyo High Court	<ul style="list-style-type: none"> 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.)? 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? 	<ul style="list-style-type: none"> 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 There is no reason to believe that the Bank negligently aided and abetted the real estate agent's actions. 	Claim dismissed (Final judgment)
5	2024/1/24	Tokyo District Court	<ul style="list-style-type: none"> 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)? 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? Is the Bank legally obligated to confirm that there is a reasonable basis for the seller, a real estate agent, to enter into a sales contract rather than a brokerage contract for the acquisition of real estate for investment? 	<ul style="list-style-type: none"> There is no evidence to suggest that Bank employees ordered or tacitly approved any fraudulent activity 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 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 the customer for a sales contract rather than a brokerage contract 	Claim dismissed (Final judgment)
6	2024/2/28	Nagoya District Court	<ul style="list-style-type: none"> Did the Bank collude with the seller, a real estate agent, to conclude a sales contract with the purchase price exceeding the market value? 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? 	<ul style="list-style-type: none"> 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. 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. 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. In this case, there are no circumstances sufficient to find that the defendant is liable in tort. 	Claim dismissed (Final judgment)
7	2024/3/21	Tokyo High Court	<ul style="list-style-type: none"> Can any joint tort involving fraud be established when a real estate agent deceives a plaintiff into purchasing real estate? Can any joint tort be established based on the bank's assistance? Does the real estate agent bear joint tort liability for breaching the duty to explain defects or other issues related to the property? Can it be established that damages equivalent to the difference between the loan amount and the value of the property arose due to fraudulent loans caused by the intentional or negligent actions of the bank staff, and whether the bank staff bears joint tort liability for aiding in the fraudulent loans? 	<ul style="list-style-type: none"> There is insufficient evidence to establish that the real estate agent fabricated a false rent roll, and therefore, it cannot be recognized that they misrepresented the profitability of the property to solicit investment. As a result, joint tort liability is not established. It cannot be established that the bank instructed the real estate agent to falsify the rent roll or was aware of the fraudulent rent roll. Therefore, joint tort liability based on the bank's assistance is not recognized. There is insufficient evidence to establish that defects or other issues with the property existed at the time of the contract. Therefore, the real estate agent's breach of the duty to explain is not recognized. Even if alterations were made to assets or income and irregularities occurred in the bank's loan procedures, it cannot be concluded that such actions resulted in damages equivalent to the difference between the loan amount and the property's value. Additionally, the bank staff does not bear joint tort liability for aiding in such actions. 	Claim dismissed (Final judgment)
8	2024/3/22	Tokyo District Court	<ul style="list-style-type: none"> Does the bank and its staff have a duty to explain to customers the authenticity of loan assessment documents and the disparity between the property's sale price and loan amount compared to market value? And if so, does failing to fulfill this duty constitute a violation of the customer's right to self-determination, thereby incurring liability for tort? 	<ul style="list-style-type: none"> The purpose of the bank's loan assessment process is to mitigate the risk of default. Therefore, it is not readily considered that the bank has a duty to thoroughly verify the accuracy of documents submitted by customers or to explain the details of such verification. It cannot be concluded that the bank staff knowingly condoned the falsification of documents or that they could have easily detected such falsifications. The decision of whether to purchase a property and, if so, at what price is typically made at the buyer's own discretion and responsibility. Therefore, it is difficult to interpret that the bank has a duty to investigate whether the sale price is appropriate or to explain this to the customer. There is no sufficient and reliable evidence to establish that the property purchased by the customer deviated from market value. 	Claim dismissed (Final judgment)

Reference Materials 3: Background leading to the use of measures such as payment demands

July 2021: We received a consultation request letter from the SI Defense Team, along with a unilateral notification of repayment suspension; however, we responded that we cannot accept the suspension of repayments.

- We repeatedly explained the reasons why we cannot accept repayment suspensions, namely that in each individual case, claims of improper conduct and resulting damages, as well as mutual agreement, are prerequisites for any suspension of repayments. Without going through this process, we cannot uniformly defer repayment obligations.

November 2023: We published a document stating that it is particularly difficult for us to overlook repayment suspensions for positive cash flow properties among the properties currently under repayment suspension.

- Excerpt from the published document: In these positive cash flow 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 believe that there are doubts as to whether there is a legitimate reason to suspend loan repayments for an extended period of time.

From April 2024: We once again published a document and sequentially issued individual notices to the relevant debtors to ensure awareness. The following is a summary of the information provided:

- Request for resumption of scheduled repayments
- Request for contact and consultation with us in case of special circumstances that make it difficult to make scheduled repayments
- Request to consider and consult on repayment burden reduction measures (as outlined in our published documents), among other matters

July 2024: We once again published a document, clearly reinforcing our stance that it is extremely difficult to allow the suspension of debt payments. At the same time, we strongly requested the resumption of scheduled repayments and other related actions.

- Excerpt from the published document: We hope you will understand that we are doing our best to resolve the Apaman issue as quickly as possible by providing repayment advice based on individual circumstances and by proposing measures to reduce repayment obligations to the greatest extent possible, regardless of whether the property is producing income or not.

If however, despite these proposals, you do not respond to our communication to resume repayments, we will be forced to go back to the principles stipulated by law and file our claim that as a bank, it is extremely difficult for us to allow you to miss repayments for an extended period of time.

August 2024: We filed a lawsuit against representatives of the Victims Alliance of Suruga Bank's

Illegal Loans (hereinafter referred to as the “SI Victims Alliance”) seeking an injunction to stop certain demonstration activities and claiming damages.

- Excerpt from the published document: Regarding the so-called “Apaman Issue,” although we have been engaging in discussions with the SI Victims Alliance through court mediation, the defendants in this case have been persistently engaging in personal attacks that threaten the mental and physical well-being of our employees—actions that can hardly be described as legitimate protest activities.

We place great importance on our duty to protect the mental and physical well-being of our employees and have repeatedly requested to stop actions involving slander or defamation against our employees cease. However, no improvement has been observed. In light of this situation, we have been left with no choice but to file this lawsuit to put a stop to the “persistent personal attacks that cross the line and threaten the mental and physical well-being of our employees” and to protect their safety.

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