

**Mukand Ltd.**

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CIN : L99999MH1937PLC002726

21<sup>st</sup> December, 2018

To,  
The Manager,  
Listing Compliance Department  
**BSE Ltd.**  
Phiroze Jeejeebhoy Towers  
Dalal Street, Mumbai- 400 001

Kind Attention: Mr.Prasann Bhatt

Dear Sir,

**Reg.: Requirements for in principle approval to Scheme of Amalgamation ("Scheme") amongst Adore Traders & Realtors Private Limited ("Adore") with Mukand Global Finance Limited ("MGFL") and then amalgamation of MGFL & Mukand Engineers Limited ("MEL") with Mukand Limited ("Mukand").**

**Ref.: (i) Our Application Letter dated September 3, 2018 for approval of Scheme ("Application") and  
(ii) Your email dated 19<sup>th</sup> December, 2018**

We refer to our Application submitted on 4<sup>th</sup> September, 2018 and your email dated 19<sup>th</sup> December, 2018 in relation to the Scheme.

In this regard, please find below our response to the points referred in the above mentioned email:

1. In the matter of Mr. Naresh Chandra Sharma, the company has not clarified whether his name has been excluded from the category of Willful defaulter. Kindly submit your proper reply as soon as possible.

**Reply:-**

- 1.1. Name of Mr. Naresh Chandra Sharma, Independent Director of Mukand Limited as of 19<sup>th</sup> December, 2018 has not been excluded from the list of the willful defaulter.

However, in terms of the Master Circular on Wilful Defaulters RBI/2015-16/100 and RBI/2014-15/73 issued by RBI dated 1<sup>st</sup> July, 2015 and 1<sup>st</sup> July, 2014 respectively, it has been clarified that in view of the limited role of non-promoter / non-wholetime directors (Nominee and Independent directors) in the management of a company's debt contracts, their names shall now be excluded from the list of Wilful Defaulters, except in the rarest circumstances as stated therein. Thus in view of above mentioned master circulars Mr. Naresh Chandra Sharma who is a non-promoter / non-wholetime (Independent) Director of PSL Limited, will be excluded from the category of willful defaulter. Copy of the said circulars is attached herewith as **Annexure - 1a & 1b.**



Hope, the above clarifies the issue and in case you require any additional information, documents or details or clarification on any matter in this regard, we will be pleased to provide the same upon hearing from you.

Kindly acknowledge the receipt of the above and please issue No Objection Certificate/Observation Letter towards the proposed Scheme of Amalgamation at the earliest.

Thanking you,

Yours faithfully,  
For **Mukand Limited**



K.J. Mallya  
Company Secretary





भारतीय रिजर्व बैंक

**RESERVE BANK OF INDIA**

www.rbi.org.in

RBI/2014-15/73

DBR.No.CID.BC.57/20.16.003/2014-15

July 1, 2014

(Updated up to January 07, 2015)

- i) All Scheduled Commercial Banks (excluding RRBs and LABs) and
- ii) All India Notified Financial Institutions

Dear Sir / Madam

### **Master Circular on Wilful Defaulters**

RBI has been receiving references from banks and other agencies seeking clarification as well as posing certain issues concerning the various guidelines contained in the current Master Circular on Wilful Defaulters. These references have been examined and the Master Circular has been modified accordingly. A copy of the same is attached.

2. While quite a few of the modifications in the guidelines are definitional and clarificatory in nature, certain substantive changes have been made to bring in greater transparency and accountability in the due process required to be adopted for identification of Wilful Defaulters (paragraph 2.5(d) and 3). Further, in view of the limited role of non-promoter/non-whole time directors (Nominee and Independent directors) in the management of a company's debt contracts, their names shall now be excluded from the list of Wilful Defaulters, except in the rarest circumstances which also have been specified at paragraph 3 of the Master Circular.

3. The modifications to the Master Circular have been furnished separately in the Annex.

Yours faithfully,

(Sudarshan Sen)

Chief General Manager-in-Charge

**Modifications to Master Circular on 'Wilful Defaulters'**

- (i) The meanings of terms 'Lender' and 'Unit' have been clarified at paragraph 2.1 as per the circular dated September 9, 2014 on Guidelines on Wilful Defaulters.
- (ii) Paragraph 2.2.1(c) has been changed as below:  
Transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities
- (iii) Paragraph 2.5(d) has been changed as below:  
A covenant in the loan agreements with the companies in which the banks/FIs have significant stake, should be incorporated by the banks/FIs to the effect that the borrowing company should not induct on its board a person whose name appears in the list of Wilful Defaulters and that in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board. It would be imperative on the part of the banks and FIs to put in place a transparent mechanism for the entire process so that the penal provisions are not misused and the scope of such discretionary powers are kept to the barest minimum. It should also be ensured that a solitary or isolated instance is not made the basis for imposing the penal action.
- (iv) Paragraph 2.6 on guarantees furnished by individuals, group companies and non-group companies have been modified as per the circular 'Guidelines on Wilful Defaulters – Clarification regarding Guarantor, Lender and Unit' dated September 9, 2014.
- (v) Paragraph 3 on 'Grievances Redressal Mechanism' would now be titled 'Mechanism for identification of Wilful Defaulters' and read as below:  
The transparent mechanism referred to in paragraph 2.5(d) above should generally include the following:
  - (a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director and consisting of two other senior officers of the rank of GM/DGM.
  - (b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the

promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

(c) The Order of the Committee should be reviewed by another Committee headed by the Chairman / CEO and MD and consisting, in addition, of two independent directors of the Bank and the Order shall become final only after it is confirmed by the said Review Committee.

(d) As regard a non-promoter/non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:

- (i) Whole-time director
- (ii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iii) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance.

Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that

- I. he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the Minutes of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes, or,
- II. the wilful default had taken place with his consent or connivance.

A similar process as detailed in sub paras (a) to (c) above should be followed when identifying a non-promoter/non-whole time director as a wilful defaulter.

**(vi)** Paragraph 5.1 on 'Need for ensuring Accuracy' with respect to reporting would read as below:

RBI / Credit Information Companies disseminate information on non-suit filed and suit filed accounts respectively of Wilful Defaulters, as reported to them by the banks / FIs and therefore, the responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions.

- (vii)** Paragraph 5.2 has now been titled 'Position regarding guarantors' and contains instructions issued vide the circular dated September 9, 2014. Position regarding Independent and Nominee Directors has now been incorporated in paragraph 3.
- (viii)** Remark (e) against field 11 of Annex 1 is deleted as it is no longer required.

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## Master Circular on 'Wilful Defaulters'

### Purpose:

To put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them.

### Application:

To all scheduled commercial banks (excluding RRBs and LABs) and All India Notified Financial Institutions.

### Structure:

1	Introduction
2	Guidelines issued on wilful defaulters on May 30, 2002
2.1	Definition of Wilful Default
2.2	Diversion and siphoning of funds
2.3	Cut-off limits
2.4	End-use of Funds
2.5	Penal measures
2.6	Guarantees furnished by individuals, group companies & non-group companies
2.7	Role of Auditors
2.8	Role of Internal Audit / Inspection
2.9	Reporting to RBI / Credit Information Companies
3	Mechanism for identification of Wilful defaulters
4	Criminal Action against Wilful Defaulters
4.1	J P C recommendations
4.2	Monitoring of End Use
4.3	Criminal Action by Banks / FIs
5	Reporting
5.1	Need for Ensuring Accuracy
5.2	Position regarding Guarantors
5.3	Government Undertakings
5.4	Inclusion of Director Identification Number (DIN)
6	Annex 1 - Reporting Format
	Annex 2 - List of Circulars consolidated

### 1. Introduction

Pursuant to the instructions of the Central Vigilance Commission for collection of information on wilful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs, a scheme was framed by RBI with effect from 1st April 1999 under which the banks and notified All India Financial Institutions were required

to submit to RBI the details of the wilful defaulters. Wilful default broadly covered the following:

- a) Deliberate non-payment of the dues despite adequate cash flow and good networth;
- b) Siphoning off of funds to the detriment of the defaulting unit;
- c) Assets financed either not been purchased or been sold and proceeds have been misutilised;
- d) Misrepresentation / falsification of records;
- e) Disposal / removal of securities without bank's knowledge;
- f) Fraudulent transactions by the borrower.

Accordingly, banks and FIs started reporting all cases of wilful defaults, which occurred or were detected after 31st March 1999 on a quarterly basis. It covered all non-performing borrowal accounts with outstandings (funded facilities and such non-funded facilities which are converted into funded facilities) aggregating Rs.25 lakhs and above identified as wilful default by a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs. Banks/FIs were advised that they should examine all cases of wilful defaults of Rs 1.00 crore and above for filing of suits and also consider criminal action wherever instances of cheating/fraud by the defaulting borrowers were detected. In case of consortium/multiple lending, banks and FIs were advised that they report wilful defaults to other participating/financing banks also. Cases of wilful defaults at overseas branches are required to be reported if such disclosure is permitted under the laws of the host country.

## **2. Guidelines issued on wilful defaulters**

Further, considering the concerns expressed over the persistence of wilful default in the financial system in the 8th Report of the Parliament's Standing Committee on Finance on Financial Institutions, the Reserve Bank of India, in consultation with the Government of India, constituted in May 2001 a Working Group on Wilful Defaulters (WGWD) under the Chairmanship of Shri S. S. Kohli, the then Chairman of the Indian Banks' Association, for examining some of the recommendations of the Committee. The Group submitted its report in November 2001. The recommendations of the



WGWD were further examined by an In House Working Group constituted by the Reserve Bank. Accordingly, the Scheme was further revised by RBI on May 30, 2002.

The above scheme was in addition to the Scheme of Disclosure of Information on Defaulting Borrowers of banks and FIs introduced in April 1994, vide RBI Circular DBOD.No.BC/CIS/47/20.16.002/94 dated 23 April 1994.

## **2.1 Definition of wilful default**

The term 'lender' appearing in the circular covers all banks/FIs to which any amount is due, provided it is arising on account of any banking transaction, including off balance sheet transactions such as derivatives, guarantee and Letter of Credit.

The term 'unit' appearing therein has to be taken to include individuals, juristic persons and all other forms of business enterprises, whether incorporated or not. In case of business enterprises (other than companies), banks/FIs may also report (in the Director column) the names of those persons who are in charge and responsible for the management of the affairs of the business enterprise.

The term "wilful default" has been redefined in supersession of the earlier definition as under:

A "wilful default" would be deemed to have occurred if any of the following events is noted:-

(a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.

(b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

(c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

(d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender.

## **2.2 Diversion and siphoning of funds**

The terms “diversion of funds” and “siphoning of funds” should construe to mean the following:-

2.2.1 Diversion of funds, referred to at para 2.1(b) above, would be construed to include any one of the undernoted occurrences:

(a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;

(b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;

(c) transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities;

(d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;

(e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;

(f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

2.2.2 Siphoning of funds, referred to at para 2.1(c) above, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes un-related to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgement of the lenders based on objective facts and circumstances of the case.

The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/incidents. The default to be categorised as wilful must be intentional, deliberate and calculated.

### **2.3 Cut-off limits**

While the penal measures indicated at para 2.5 below would normally be attracted by all the borrowers identified as wilful defaulters or the promoters involved in diversion / siphoning of funds, keeping in view the present limit of Rs. 25 lakh fixed by the Central Vigilance Commission for reporting of cases of wilful default by the banks/FIs to RBI, any wilful defaulter with an outstanding balance of Rs. 25 lakh or more, would attract the penal measures stipulated at para 2.5 below. This limit of Rs. 25 lakh may also be applied for the purpose of taking cognisance of the instances of 'siphoning' / 'diversion' of funds.

### **2.4 End-use of Funds**

In cases of project financing, the banks / FIs seek to ensure end use of funds by, *inter alia*, obtaining certification from the Chartered Accountants for the purpose. In case of short-term corporate / clean loans, such an approach ought to be supplemented by 'due diligence' on the part of lenders themselves, and to the extent possible, such loans should be limited to only those borrowers whose integrity and reliability are above board. The banks and FIs, therefore, should not depend entirely on the certificates issued by the Chartered Accountants but strengthen their internal controls and the credit risk management system to enhance the quality of their loan portfolio.

Needless to say, ensuring end-use of funds by the banks and the FIs should form a part of their loan policy document for which appropriate measures should be put in place. The following are some of the illustrative measures that could be taken by the lenders for monitoring and ensuring end-use of funds:

- (a) Meaningful scrutiny of quarterly progress reports / operating statements / balance sheets of the borrowers;
- (b) Regular inspection of borrowers' assets charged to the lenders as security;

(c) Periodical scrutiny of borrowers' books of accounts and the no-lien accounts maintained with other banks;

(d) Periodical visits to the assisted units;

(e) System of periodical stock audit, in case of working capital finance;

(f) Periodical comprehensive management audit of the 'Credit' function of the lenders, so as to identify the systemic-weaknesses in the credit-administration.

(It may be kept in mind that this list of measures is only illustrative and by no means exhaustive.)

## **2.5 Penal measures**

In order to prevent the access to the capital markets by the wilful defaulters, a copy of the list of wilful defaulters (non-suit filed accounts) and list of wilful defaulters (suit filed accounts) are forwarded to SEBI by RBI and Credit Information Bureau (India) Ltd. (CIBIL) respectively.

The following measures should be initiated by the banks and FIs against the wilful defaulters identified as per the definition indicated at paragraph 2.1 above:

a) No additional facilities should be granted by any bank / FI to the listed wilful defaulters. In addition, the entrepreneurs / promoters of companies where banks / FIs have identified siphoning / diversion of funds, misrepresentation, falsification of accounts and fraudulent transactions should be debarred from institutional finance from the scheduled commercial banks, Development Financial Institutions, Government owned NBFCs, investment institutions etc. for floating new ventures for a period of 5 years from the date the name of the wilful defaulter is published in the list of wilful defaulters by the RBI.

b) The legal process, wherever warranted, against the borrowers / guarantors and foreclosure of recovery of dues should be initiated expeditiously. The lenders may initiate criminal proceedings against wilful defaulters, wherever necessary.

c) Wherever possible, the banks and FIs should adopt a proactive approach for a change of management of the wilfully defaulting borrower unit.

d) A covenant in the loan agreements with the companies in which the banks/FIs have significant stake, should be incorporated by the banks/FIs to the effect that the borrowing company should not induct on its board a person whose name appears in the list of Wilful Defaulters and that in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board. It would be imperative on the part of the banks and FIs to put in place a transparent mechanism for the entire process so that the penal provisions are not misused and the scope of such discretionary powers are kept to the barest minimum. It should also be ensured that a solitary or isolated instance is not made the basis for imposing the penal action.

## **2.6 Guarantees furnished by individuals, group companies & non-group companies**

While dealing with wilful default of a single borrowing company in a Group, the banks /FIs should consider the track record of the individual company, with reference to its repayment performance to its lenders. However, in cases where guarantees furnished by the companies within the Group on behalf of the wilfully defaulting units are not honoured when invoked by the banks /FIs, such Group companies should also be reckoned as wilful defaulters.

In connection with the guarantors, banks have raised queries regarding inclusion of names of guarantors who are either individuals (not being directors of the company) or non-group corporates in the list of wilful defaulters. It is advised that in terms of Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. Therefore, when a default is made in making repayment by the principal debtor, the banker will be able to proceed against the guarantor/surety even without exhausting the remedies against the principal debtor. As such, where a banker has made a claim on the guarantor on account of the default made by the principal debtor, the liability of the guarantor is immediate. In case the said guarantor refuses to comply with the demand made by the creditor/banker, despite having sufficient means to make payment of the dues, such guarantor would also be treated as a wilful defaulter. It is clarified that this treatment of non-group corporate and individual guarantors would apply only prospectively and not to cases where guarantees were taken prior to this circular. Banks/FIs may ensure that this position is made known to all prospective guarantors at the time of accepting guarantees.

## **2.7 Role of auditors**

In case any falsification of accounts on the part of the borrowers is observed by the banks / FIs, and if it is observed that the auditors were negligent or deficient in conducting the audit, they should lodge a formal complaint against the auditors of the borrowers with the Institute of Chartered Accountants of India (ICAI) to enable the ICAI to examine and fix accountability of the auditors. Pending disciplinary action by ICAI, the complaints may also be forwarded to the RBI (Department of Banking Supervision, Central Office) and IBA for records. IBA would circulate the names of the CA firms against whom many complaints have been received amongst all banks who should consider this aspect before assigning any work to them. RBI would also share such information with other financial sector regulators/Ministry of Corporate Affairs (MCA) / Comptroller and Auditor General (CAG).

With a view to monitoring the end-use of funds, if the lenders desire a specific certification from the borrowers' auditors regarding diversion / siphoning of funds by the borrower, the lender should award a separate mandate to the auditors for the purpose. To facilitate such certification by the auditors the banks and FIs will also need to ensure that appropriate covenants in the loan agreements are incorporated to enable award of such a mandate by the lenders to the borrowers / auditors.

In addition to the above, banks are advised that with a view to ensuring proper end-use of funds and preventing diversion/siphoning of funds by the borrowers, lenders could consider engaging their own auditors for such specific certification purpose without relying on certification given by borrower's auditors. However, this cannot substitute bank's basic minimum own diligence in the matter.

## **2.8 Role of Internal Audit / Inspection**

The aspect of diversion of funds by the borrowers should be adequately looked into while conducting internal audit / inspection of their offices / branches and periodical reviews on cases of wilful defaults should be submitted to the Audit Committee of the bank.

## **2.9 Reporting to RBI / Credit Information Companies**

(a) Banks/FIs should submit the list of suit-filed accounts of wilful defaulters of Rs.25 lakh and above as at end-March, June, September and December every year to a

credit information company which has obtained certificate of registration from RBI in terms of Section 5 of the Credit Information Companies (Regulation) Act, 2005 and of which it is a member. Reserve Bank of India has, in exercise of the powers conferred by the Act and the Rules and Regulations framed thereunder, granted Certificate of Registration to (i) Experian Credit Information Company of India Private Limited, (ii) Equifax Credit Information Services Private Limited, (iii) CRIF High Mark Credit Information Services Private Limited and (iv) Credit Information Bureau (India) Limited (CIBIL) to commence/carry on the business of credit information. Credit Information Companies (CICs) have also been advised to disseminate the information pertaining to suit filed accounts of Wilful Defaulters on their respective websites.

(b) Banks / FIs should, however, submit the quarterly list of wilful defaulters where suits have not been filed only to RBI in the format given in Annex 1.

(c) In order to make the current system of banks/FIs reporting names of suit filed accounts and non-suit filed accounts of Wilful Defaulters and its availability to the banks by CICs / RBI as current as possible, banks / FIs are advised to forward data on wilful defaulters to the CICs/Reserve Bank at the earliest but not later than a month from the reporting date.

d) After examining the recommendations of the Committee to Recommend Data Format for Furnishing of Credit Information to Credit Information Companies (Chairman: Shri. Aditya Puri) it has been decided to implement the following measures with regard to reporting and dissemination of information on wilful defaulters:

- a. Banks/FIs may continue to furnish the data on wilful defaulters (non-suit filed accounts) of Rs. 25 lakhs and above for the quarter ending June 30, 2014 and September 30, 2014 to RBI in the existing format.
- b. In terms of Credit Information Companies (Regulation) Act, 2005, banks/FIs are advised to furnish the aforementioned data in respect of wilful defaulters (non-suit filed accounts) of Rs. 25 lakhs and above for the quarter ending December 31, 2014 to CICs and not to RBI. Thereafter, banks/FIs may continue to furnish data in respect of wilful defaulters to CICs on a monthly or

a more frequent basis. This would enable such information to be available to the banks/FIs on a near real time basis.

#### Explanation

In this connection, it is clarified that banks need not report cases where

- (i) outstanding amount falls below Rs.25 lakh and
- (ii) in respect of cases where banks have agreed for a compromise settlement and the borrower has fully paid the compromised amount.

### **3. Mechanism for identification of Wilful Defaulters**

The transparent mechanism referred to in paragraph 2.5(d) above should generally include the following:

- (a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director and consisting of two other senior officers of the rank of GM/DGM.
- (b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.
- (c) The Order of the Committee should be reviewed by another Committee headed by the Chairman / CEO and MD and consisting, in addition, of two independent directors of the Bank and the Order shall become final only after it is confirmed by the said Review Committee.
- (d) As regard a non-promoter/non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:

- (i) Whole-time director



(ii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iii) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance.

Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that

I. he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the Minutes of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes, or,

II. the wilful default had taken place with his consent or connivance.

A similar process as detailed in sub paras (a) to (c) above should be followed when identifying a non-promoter/non-whole time director as a wilful defaulter.

#### **4. Criminal Action against Wilful Defaulters**

##### **4.1 J.P.C. Recommendations**

Reserve Bank examined, the issues relating to restraining wilful defaults in consultation with the Standing Technical Advisory Committee on Financial Regulation in the context of the following recommendations of the JPC and in particular, on the need for initiating criminal action against concerned borrowers, viz.

a. It is essential that offences of breach of trust or cheating construed to have been committed in the case of loans should be clearly defined under the existing statutes governing the banks, providing for criminal action in all cases where the borrowers divert the funds with malafide intentions.

b. It is essential that banks closely monitor the end-use of funds and obtain certificates from the borrowers certifying that the funds have been used for the purpose for which these were obtained.

c. Wrong certification should attract criminal action against the borrower.

## **4.2 Monitoring of End Use**

Banks / FIs should closely monitor the end-use of funds and obtain certificates from borrowers certifying that the funds are utilised for the purpose for which they were obtained. In case of wrong certification by the borrowers, banks / FIs may consider appropriate legal proceedings, including criminal action wherever necessary, against the borrowers.

## **4.3 Criminal Action by Banks / FIs**

It is essential to recognise that there is scope even under the existing legislations to initiate criminal action against wilful defaulters depending upon the facts and circumstances of the case under the provisions of Sections 403 and 415 of the Indian Penal Code (IPC) 1860. Banks / FIs are, therefore, advised to seriously and promptly consider initiating criminal action against wilful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with our instructions and the recommendations of JPC.

It should also be ensured that the penal provisions are used effectively and determinedly but after careful consideration and due caution. Towards this end, banks / FIs are advised to put in place a transparent mechanism, with the approval of their Board, for initiating criminal proceedings based on the facts of individual case.

## **5. Reporting**

### **5.1 Need for Ensuring Accuracy**

RBI / Credit Information Companies disseminate information on non-suit filed and suit filed accounts respectively of Wilful Defaulters, as reported to them by the banks / FIs and therefore, the responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions.

### **5.2 Position regarding Guarantors**

Banks/FIs may take due care to follow the provisions set out in paragraph 3 of the Master Circular on Wilful Defaulters dated July 1, 2014 in identifying and reporting instances of wilful default in respect of guarantors also. While reporting such names

to RBI, banks/FIs may include “Guar” in brackets i.e. (Guar) against the name of the guarantor and report the same in the Director column.

### **5.3 Government Undertakings**

In the case of Government undertakings, it should be ensured that the names of directors are not to be reported. Instead, a legend "Government of ----- undertaking" should be added.

### **5.4 Inclusion of Director Identification Number (DIN)**

Ministry of Corporate Affairs had introduced the concept of a Director Identification Number (DIN) with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006. In order to ensure that directors are correctly identified and in no case, persons whose names appear to be similar to the names of directors appearing in the list of wilful defaulters, are wrongfully denied credit facilities on such grounds, banks/FIs have been advised to include the Director Identification Number (DIN) as one of the fields in the data submitted by them to Reserve Bank of India / Credit Information Companies.

It is reiterated that while carrying out the credit appraisal, banks should verify as to whether the names of any of the directors of the companies appear in the list of defaulters/ wilful defaulters by way of reference to DIN/PAN etc. Further, in case of any doubt arising on account of identical names, banks should use independent sources for confirmation of the identity of directors rather than seeking declaration from the borrowing company.

\*\*\*\*

**Annex 1**  
**(Refer Para 2.9)**

**Format for submission of data on cases of wilful default (non-suit filed accounts) of Rs.25 lakh & above to RBI on quarterly basis:**

The banks/FIs are required to submit data of wilful defaulters (non-suit filed accounts) in Compact Disks (CDs) to RBI on quarterly basis, using the following structure (with the same field names):

Field	Field Name	Type	Width	Description	Remarks
1	SCTG	Numeric	1	Category of bank/FI	Number 1/2/4/6/8 should be fed 1 SBI and its associate banks 2 Nationalised banks 4 Foreign banks 6 Private Sector Banks 8 Financial Institutions
2	BKNM	Character	40	Name of bank/FI	Name of the bank/FI
3	BKBR	Character	30	Branch name	Name of the branch
4	STATE	Character	15	Name of state	Name of state in which branch is situated
5	SRNO	Numeric	4	Serial No.	Serial No.
6	PRTY	Character	45	Name of Party	The legal name
7	REGADDR	Character	96	Registered address	Registered Office address
8	OSAMT	Numeric	6	Outstanding amount in Rs. lakhs (Rounded off)	
9	SUIT	Character	4	Suit filed or not	Type 'SUIT' in case suit is filed. For other cases this field should be kept blank.
10	OTHER_BK	Character	40	Name of other banks/ FIs	The names of other banks/FIs from whom the party has availed credit facility should be indicated. The names may be fed in abbreviated form e.g. BOB for Bank of Baroda, SBI for State Bank of India etc.

11	DIR1	Character	40	Name of director	<p>(a) Full name of Director should be indicated.</p> <p>(b) In case of Government companies the legend "Govt. of _____undertaking" alone should be mentioned.</p> <p>(c) Against the names of nominee directors of banks/ FIs/ Central Govt./ State Govt., abbreviation 'Nom' should be indicated in the brackets.</p> <p>(d) Against the name of independent directors, abbreviation 'Ind' should be indicated in the brackets.</p>
12	DIN_DIR1	Numeric	8	Director Identification Number of DIR1	8 digit Director Identification Number of the Director at DIR1
13	DIR2	Character	40	Name of director	As in DIR1
14	DIN_DIR2	Numeric	8	Director Identification Number of DIR2	8 digit Director Identification Number of the Director at DIR2
15	DIR3	Character	40	Name of director	As in DIR1
16	DIN_DIR3	Numeric	8	Director Identification Number of DIR3	8 digit Director Identification Number of the Director at DIR3
17	DIR4	Character	40	Name of director	As in DIR1
18	DIN_DIR4	Numeric	8	Director Identification Number of DIR4	8 digit Director Identification Number of the Director at DIR4
19	DIR5	Character	40	Name of director	As in DIR1
20	DIN_DIR5	Numeric	8	Director Identification Number of DIR5	8 digit Director Identification Number of the Director at DIR5
21	DIR6	Character	40	Name of director	As in DIR1

22	DIN_DIR6	Numeric	8	Director Identification Number of DIR6	8 digit Director Identification Number of the Director at DIR6
23	DIR7	Character	40	Name of director	As in DIR1
24	DIN_DIR7	Numeric	8	Director Identification Number of DIR7	8 digit Director Identification Number of the Director at DIR7
25	DIR8	Character	40	Name of director	As in DIR1
26	DIN_DIR8	Numeric	8	Director Identification Number of DIR8	8 digit Director Identification Number of the Director at DIR8
27	DIR9	Character	40	Name of director	As in DIR1
28	DIN_DIR9	Numeric	8	Director Identification Number of DIR9	8 digit Director Identification Number of the Director at DIR9
29	DIR10	Character	40	Name of director	As in DIR1
30	DIN_DIR10	Numeric	8	Director Identification Number of DIR10	8 digit Director Identification Number of the Director at DIR10
31	DIR11	Character	40	Name of director	As in DIR1
32	DIN_DIR11	Numeric	8	Director Identification Number of DIR11	8 digit Director Identification Number of the Director at DIR11
33	DIR12	Character	40	Name of director	As in DIR1
34	DIN_DIR12	Numeric	8	Director Identification Number of DIR12	8 digit Director Identification Number of the Director at DIR12
35	DIR13	Character	40	Name of director	As in DIR1
36	DIN_DIR13	Numeric	8	Director Identification Number of DIR13	8 digit Director Identification Number of the Director at DIR13
37	DIR14	Character	40	Name of director	As in DIR1
38	DIN_DIR14	Numeric	8	Director Identification Number of DIR14	8 digit Director Identification Number of the Director at DIR14
<b>Total bytes</b>			<b>953</b>		

(1) If total numbers of directors exceed 14, the name of additional directors may be entered in blank spaces available in the other directors' columns.

(2) The data / information should be submitted in the above format in **Compact disks as .dbf file only**. While submitting the CD, the banks/FIs should ensure that:

- the CD is readable and is not corrupted / virus-affected.
- the CD is labelled properly indicating name of the bank, name of the list and period to which the list belongs, and the name of list indicated on label and in the letter are same.
- the name and width of each of the fields and order of the fields is strictly as per the above format.
- records with outstanding amount of less than Rs.25 lakh have not been included.
- no suit-filed account has been included.
- use of following types of words have been avoided (as the fields can not be properly indexed) : 'M/s', 'Mr', 'Shri' etc.
- the words 'Mrs', 'Smt', 'Dr' etc. have been fed at the end of name of the person, if applicable.
- Except for field "SUIT" and some of the fields from DIR1 To DIR 14, as applicable, information is completely filled in and columns are not kept blank.

(3) In case of 'Nil' data, there is no need to send any CD and the position can be conveyed through a letter/fax.

(4) A certificate signed by a sufficiently senior official stating that 'the list of wilful defaulters has been correctly compiled after duly verifying the details thereof and RBI's instructions in this regard have been strictly followed' is sent along with the CD.

## Annex 2

### List of Circulars consolidated by the Master Circular

Sr. No.	Circular No.	Date	Subject	Para No.
1.	DBOD.No.DL(W). BC. 12/20.16.002(1)/98-99	20.02.1999	Collection and Dissemination of Information on Cases of Wilful Default of Rs.25 lakh and above	1
2.	DBOD.No.DL.BC. 46/20.16.002/98-99	10.05.1999	Disclosure of information regarding defaulting borrowers - Lists of Defaulters/ Suit filed accounts and Data on Wilful Default	Annex 1
3.	DBOD.No.DL(W).BC 161/20.16.002/99-2000	01.04.2000	Collection and Dissemination of information on defaulting borrowers of banks and Financial Institutions	5 and Annex 1
4.	<a href="#">DBOD.No.DL.BC.54/20.16.001/2001-02</a>	22.12.2001	Collection and dissemination of information on defaulters	5
5.	<a href="#">DBOD.No.DL(W).BC.110/20.16.003(1)/2001-02</a>	30.05.2002	Wilful defaulters and action thereagainst	2, 2.1 to 2.8
6.	<a href="#">DBOD.No.DL.BC.111/20.16.001/2001-02</a>	04.06.2002	Submission of Credit Information to Credit Information Bureau (CIB)	2.9
7.	DBOD.No.DL(W).BC5820. 16.003/2002-03	11.01.2003	Wilful defaulters and Diversion of funds - Action thereagainst	2.1, 2.2
8.	<a href="#">DBOD.No.DL.BC.7/20.16.003/2003-04</a>	29.07.2003	Wilful Defaulters and action thereagainst	3
9.	<a href="#">DBOD.No.DL.BC.95/20.16.002/2003-04</a>	17.06.2004	Annual Policy Statement for the year 2004-05 - Dissemination of Credit Information - Role of CIBIL	2.9
10.	<a href="#">DBOD.No.DL.BC.94/20.16.003/2003-04</a>	17.06.2004	Annual Policy Statement: 2004-05 - Wilful Defaulters – Clarification on Process	3



11.	<a href="#">DBOD.No.DL.BC.16/20.16.003/2004-05</a>	23.07.2004	Checking of wilful defaults and measures against Wilful Defaulters	4
12.	<a href="#">DBOD No.DL(W)BC.87/20.16.003/2007-08</a>	28.05.2008	Wilful Defaulters and action thereagainst	2.1
13.	Mail-Box Clarification	17.04.2008	Reporting of accounts under compromise settlement	2.9
14.	DBOD No.DL12738/20.16.001/2008-09	03.02.2009	Submission of information about List of Defaulters (non-suit filed accounts) / Wilful Defaulters (non-suit filed accounts) on Compact Disks.	Annex 1
15.	<a href="#">DBOD.No.DL.15214/20.16.042/2009-10</a>	04.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Experian Credit Information Company of India Private Limited	2.9
16.	<a href="#">DBOD.No.DL.BC.83/20.16.042/2009-10</a>	31.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Equifax Credit Information Services Private Limited	2.9
17.	DBOD.No.DL.BC.110/20.16.046/2009-10	11.06.2010	Submission of data to Credit Information Companies – Format of data to be submitted by Credit Institutions	2.9
18.	DBOD No.CID.BC.40/20.16.046/2010-11	21.09.2010	Submission of credit data to Credit Information Companies – Inclusion of Director Identification Number (DIN)	5.4 and Annex1
19.	<a href="#">DBOD.No.CID.BC.64/20.16.042/2010-11</a>	01.12.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – High Mark Credit Information	2.9

			Services Private Limited	
20.	<a href="#">DBOD.No.CID.BC.30/20.16.042/2011-12</a>	05.09.2011	Submission of Credit Information to credit Information Companies – Defaulters of Rs. 1 Crore and above and Wilful Defaulters of Rs. 25 lakh and above- Dissemination of Credit Information of suit filed accounts.	2.9
21.	<a href="#">DBOD.No.CID.BC.84/20.16.042/2011-12</a>	05.03.2012	Grant of 'Certificate of Registration' – For carrying on the business of credit information – Credit Information Bureau (India) Limited	2.9
22	<a href="#">DBOD.BP.BC.No.97/21.04.132/2013-14</a>	26.02.2014	Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum and Corrective Action Plan	2.9
23	<a href="#">DBOD.BP.BC.No.98/21.04.132/2013-14</a>	26.02.2014	Framework for Revitalising Distressed Assets in the Economy- Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures	2.7, 5.4
24	<a href="#">DBOD.CID.BC.128/20.16.003/2013-14</a>	27.6.2014	Defaulters of Rs. 1 crore and above (non-suit filed accounts) and Wilful Defaulters of Rs. 25 lakhs and above (non-suit filed accounts) – Changes in reporting to RBI/CICs	2.9
25	<a href="#">DBOD.No.CID.41/20.16.003/2014-15</a>	09.09.2014	Guidelines on Wilful Defaulters – Clarification regarding Guarantor, Lender and Unit	2.1, 2.6 and 5.2



भारतीय रिज़र्व बैंक

**RESERVE BANK OF INDIA**

[www.rbi.org.in](http://www.rbi.org.in)

RBI/2015-16/100

DBR.No.CID.BC.22/20.16.003/2015-16

July 1, 2015

- i) All Scheduled Commercial Banks (excluding RRBs ) and
- ii) All India Notified Financial Institutions

Dear Sir / Madam

**Master Circular on Wilful Defaulters**

Please refer to the [Master Circular no. DBR.No.CID.BC.57/20.16.003/2014-15 dated July 1, 2014](#) consolidating instructions/guidelines issued to banks/FIs till June 30, 2014 and updated as on January 7, 2015 on matters related to wilful defaulters.

- 2. This Master Circular consolidates instructions on the above matters up to June 30, 2015.

Yours faithfully,

(Sudha Damodar)  
Chief General Manager

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बैंकिंग विनियमन विभाग, केंद्रीय कार्यालय, 13 मंजिल, केंद्रीय कार्यालय भवन, शहीद भगत सिंह मार्ग, मुम्बई 400001  
Department of Banking Regulation, 13<sup>th</sup> floor, Central Office Building, Mumbai 400001  
Tel No: 22661602, 22601000 Fax No: 022-2270 5670, 2260 5671, 5691 2270, 2260 5692

हिंदी आसान है, इसका प्रयोग बढ़ाइए

## **Master Circular on 'Wilful Defaulters'**

### **Purpose:**

To put in place a system to disseminate credit information pertaining to willful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them.

**Application:** To all Scheduled Commercial banks (excluding RRBs) and All India Notified Financial Institutions.

### **Structure:**

- 1 Introduction
- 2 Guidelines on Wilful Defaulters
  - 2.1 Definitions of Lender, Unit and Wilful Default
  - 2.2 Diversion and siphoning of funds
  - 2.3 Cut-off Limits
  - 2.4 End-use of Funds
  - 2.5 Penal Measures
  - 2.6 Guarantees furnished by individuals, group companies & non-group companies
  - 2.7 Role of Auditors
  - 2.8 Role of Internal Audit / Inspection
  - 2.9 Reporting to Credit Information Companies
- 3 Mechanism for identification of Wilful defaulters
- 4 Criminal Action against Wilful Defaulters
  - 4.1 JPC recommendations
  - 4.2(i) Monitoring End-Use of Funds
  - 4.2(ii) Criminal Action by Banks / FIs
- 5 Reporting
  - 5.1 Need for Ensuring Accuracy
  - 5.2 Position regarding Guarantors
  - 5.3 Government Undertakings
  - 5.4 Inclusion of Director Identification Number (DIN)
- 6 Annex 1 - Reporting Format  
Annex 2 - List of Circulars consolidated

## **1. Introduction**

Pursuant to the instructions of the Central Vigilance Commission for collection of information on wilful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs, a scheme was framed by RBI with effect from 1st April 1999 under which the banks and notified All India Financial Institutions were required to submit to RBI the details of the wilful defaulters. The scheme was modified in May 2002, based on recommendations of Working Group on wilful defaulters, which was also revised from time to time as per the recommendations of the Committee on Data Format for Furnishing of Credit Information to Credit Information Companies and various feedbacks received from different stakeholders.

## **2. Guidelines on Wilful Defaulters**

### **2.1 Definitions of 'Lender', 'Unit' and 'wilful default'**

2.1.1 Lender: The term 'lender' covers all banks / FIs to which any amount is due, provided it is arising on account of any banking transaction, including off balance sheet transactions such as derivatives, guarantees and letters of credit.

2.1.2 Unit: The term 'unit' includes individuals, juristic persons and all other forms of business enterprises, whether incorporated or not. In case of business enterprises (other than companies), banks / FIs may also report (in the Director column of Annex 1) the names of those persons who are in charge and responsible for the management of the affairs of the business enterprise.

2.1.3 Wilful Default: A 'wilful default' would be deemed to have occurred if any of the following events is noted:

- (a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.
- (b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- (c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised

for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

- (d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank / lender.

The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions / incidents. The default to be categorised as wilful must be intentional, deliberate and calculated.

## **2.2 Diversion and siphoning of funds**

**2.2.1 Diversion of Funds:** The term 'diversion of funds' referred to at paragraph 2.1.3(b) above, should be construed to include any one of the undernoted occurrences:

- (a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;
- (b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;
- (c) transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities;
- (d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
- (e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
- (f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

**2.2.2 Siphoning of Funds:** The term 'siphoning of funds', referred to at paragraph 2.1.3(c) above, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a

particular instance amounts to siphoning of funds would have to be a judgment of the lenders based on objective facts and circumstances of the case.

### **2.3 Cut-off Limits**

While the penal measures indicated at paragraph 2.5 below would normally be attracted by all the borrowers identified as wilful defaulters or the promoters involved in diversion / siphoning of funds, keeping in view the present limit of Rs.25 lakh fixed by the Central Vigilance Commission for reporting of cases of wilful default by the banks / FIs to RBI, any wilful defaulter with an outstanding balance of Rs.25 lakh or more, would attract the penal measures stipulated at paragraph 2.5 below. This limit of Rs.25 lakh may also be applied for the purpose of taking cognisance of the instances of siphoning / diversion of funds.

### **2.4 End-Use of Funds**

In cases of project financing, the banks / FIs seek to ensure end use of funds by, *inter alia*, obtaining certification from the Chartered Accountants for the purpose. In case of short-term corporate / clean loans, such an approach ought to be supplemented by 'due diligence' on the part of lenders themselves, and to the extent possible, such loans should be limited to only those borrowers whose integrity and reliability are above board. The banks and FIs, therefore, should not depend entirely on the certificates issued by the Chartered Accountants but strengthen their internal controls and the credit risk management system to enhance the quality of their loan portfolio.

The requirement and related appropriate measures in ensuring end-use of funds by the banks and FIs should form a part of their loan policy document.. The following are some of the illustrative measures that could be taken by the lenders for monitoring and ensuring end-use of funds:

(a) Meaningful scrutiny of quarterly progress reports / operating statements / balance sheets of the borrowers;

(b) Regular inspection of borrowers' assets charged to the lenders as security;

- (c) Periodical scrutiny of borrowers' books of accounts and the 'no-lien' accounts maintained with other banks;
- (d) Periodical visits to the assisted units;
- (e) System of periodical stock audit, in case of working capital finance;
- (f) Periodical comprehensive management audit of the 'credit' function of the lenders, so as to identify the systemic-weaknesses in their credit administration.

(It may be kept in mind that this list of measures is only illustrative and by no means exhaustive.)

## **2.5 Penal Measures**

The following measures should be initiated by the banks and FIs against the wilful defaulters identified as per the definition indicated at paragraph 2.1.3 above:

- a. No additional facilities should be granted by any bank / FI to the listed wilful defaulters. In addition, such companies (including their entrepreneurs / promoters) where banks / FIs have identified siphoning / diversion of funds, misrepresentation, falsification of accounts and fraudulent transactions should be debarred from institutional finance from the scheduled commercial banks, Financial Institutions, NBFCs, for floating new ventures for a period of 5 years from the date of removal of their name from the list of wilful defaulters as published/disseminated by RBI/CICs.
- b. The legal process, wherever warranted, against the borrowers / guarantors and foreclosure for recovery of dues should be initiated expeditiously. The lenders may initiate criminal proceedings against wilful defaulters, wherever necessary.
- c. Wherever possible, the banks and FIs should adopt a proactive approach for a change of management of the wilfully defaulting borrower unit.
- d. A covenant in the loan agreements, with the companies to which the banks / FIs have given funded / non-funded credit facility, should be incorporated by the banks / FIs to the effect that the borrowing company should not induct on its board a person whose name appears in the list of Wilful Defaulters and



that in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board.

It would be imperative on the part of the banks and FIs to put in place a transparent mechanism for the entire process so that the penal provisions are not misused and the scope of such discretionary powers are kept to the barest minimum. It should also be ensured that a solitary or isolated instance is not made the basis for imposing the penal action.

## **2.6 Guarantees furnished by individuals, group companies & non-group companies**

While dealing with wilful default of a single borrowing company in a Group, the banks / FIs should consider the track record of the individual company, with reference to its repayment performance to its lenders. However, in cases where guarantees furnished by the companies within the Group on behalf of the wilfully defaulting units are not honoured when invoked by the banks / FIs, such Group companies should also be reckoned as wilful defaulters.

In connection with the guarantors, in terms of Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. Therefore, when a default is made in making repayment by the principal debtor, the banker will be able to proceed against the guarantor / surety even without exhausting the remedies against the principal debtor. As such, where a banker has made a claim on the guarantor on account of the default made by the principal debtor, the liability of the guarantor is immediate. In case the said guarantor refuses to comply with the demand made by the creditor / banker, despite having sufficient means to make payment of the dues, such guarantor would also be treated as a wilful defaulter. This treatment of non-group corporate and individual guarantors was made applicable with effect from September 9, 2014 and not to cases where guarantees were taken prior to this date. Banks/FIs may ensure that this position is made known to all guarantors at the time of accepting guarantees.

## **2.7 Role of auditors**

In case any falsification of accounts on the part of the borrowers is observed by the banks / FIs, and if it is observed that the auditors were negligent or deficient in conducting the audit, they should lodge a formal complaint against the auditors of the borrowers with the Institute of Chartered Accountants of India (ICAI) to enable the ICAI to examine and fix accountability of the auditors. Pending disciplinary action by ICAI, the complaints may also be forwarded to the RBI (Department of Banking Supervision, Central Office) and IBA for records. IBA would circulate the names of the CA firms, against whom many complaints have been received, amongst all banks who should consider this aspect before assigning any work to them. RBI would also share such information with other financial sector regulators / Ministry of Corporate Affairs (MCA) / Comptroller and Auditor General (CAG).

With a view to monitoring the end-use of funds, if the lenders desire a specific certification from the borrowers' auditors regarding diversion / siphoning of funds by the borrower, the lender should award a separate mandate to the auditors for the purpose. To facilitate such certification by the auditors, the banks and FIs will also need to ensure that appropriate covenants in the loan agreements are incorporated to enable award of such a mandate by the lenders to the borrowers / auditors.

In addition to the above, banks are advised that with a view to ensuring proper end-use of funds and preventing diversion / siphoning of funds by the borrowers, lenders could consider engaging their own auditors for such specific certification purpose without relying on certification given by borrower's auditors. However, this cannot substitute a bank's basic minimum own diligence in the matter.

## **2.8 Role of Internal Audit / Inspection**

The aspect of diversion of funds by the borrowers should be adequately looked into while conducting internal audit / inspection of their offices / branches and periodical reviews on cases of wilful defaults should be submitted to the Audit Committee of the bank.

## **2.9 Reporting to Credit Information Companies**

- (a) Reserve Bank of India has, in exercise of the powers conferred by Section 5 of the Credit Information Companies (Regulations) Act, 2005 and the Rules

and Regulations framed thereunder, granted Certificate of Registration to (i) Experian Credit Information Company of India Private Limited, (ii) Equifax Credit Information Services Private Limited, (iii) CRIF High Mark Credit Information Services Private Limited and (iv) Credit Information Bureau (India) Limited (CIBIL) to commence/carry on the business of credit information.

- (b) Banks / FIs should submit the list of suit-filed accounts and non suit filed accounts of wilful defaulters of Rs.25 lakh and above on a monthly or more frequent basis to all the four Credit Information Companies. This would enable such information to be available to the banks / FIs on a near real time basis.

### Explanation

In this connection, it is clarified that banks need not report cases where

- (i) outstanding amount falls below Rs.25 lakh and
- (ii) in respect of cases where banks have agreed for a compromise settlement and the borrower has fully paid the compromised amount.
- (c) Credit Information Companies (CICs) have also been advised to disseminate the information pertaining to suit filed accounts of wilful defaulters on their respective websites.

### **3. Mechanism for identification of Wilful Defaulters**

The mechanism referred to in paragraph 2.5 above should generally include the following:

- (a) The evidence of wilful default on the part of the borrowing company and its promoter / whole-time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM / DGM.
- (b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter / whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter / whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

(c) The Order of the Committee should be reviewed by another Committee headed by the Chairman / Chairman & Managing Director or the Managing Director & Chief Executive Officer / CEOs and consisting, in addition, to two independent directors / non-executive directors of the bank and the Order shall become final only after it is confirmed by the said Review Committee. However, if the Identification Committee does not pass an Order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions.

(d) As regard a non-promoter / non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:

(i) whole-time director

(ii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iii) every director, in respect of a contravention of any of the provisions of Companies Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance.

Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that:

I. he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the minutes of meeting of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes; or,

II. the wilful default had taken place with his consent or connivance.

The above exception will however not apply to a promoter director even if not a whole time director.

(iv) As a one-time measure, Banks / FIs, while reporting details of wilful defaulters to the Credit Information Companies may thus remove the names of non-whole time directors (nominee directors / independent directors) in respect of whom they already do not have information about their complicity in the default / wilful default of the borrowing company. However, the names of promoter directors, even if not whole time

directors, on the board of the wilful defaulting companies cannot be removed from the existing list of wilful defaulters.

(e) A similar process as detailed in sub-paragraphs (a) to (c) above should be followed when identifying a non-promoter / non-whole time director as a wilful defaulter.

#### **4. Criminal Action against Wilful Defaulters**

##### **4.1 JPC Recommendations**

Reserve Bank examined, the issues relating to restraining wilful defaults in consultation with the Standing Technical Advisory Committee on Financial Regulation in the context of the following recommendations of the JPC and in particular, on the need for initiating criminal action against concerned borrowers, viz.

a. It is essential that offences of breach of trust or cheating construed to have been committed in the case of loans should be clearly defined under the existing statutes governing the banks, providing for criminal action in all cases where the borrowers divert the funds with malafide intentions.

b. It is essential that banks closely monitor the end-use of funds and obtain certificates from the borrowers certifying that the funds have been used for the purpose for which these were obtained.

c. Wrong certification should attract criminal action against the borrower.

**4.2** Accordingly, banks / FIs are advised, as under:

##### **(i) Monitoring End-Use of Funds**

In reference to Para 2.4 of this circular, it is advised that banks / FIs should closely monitor the end-use of funds and obtain certificates from borrowers certifying that the funds are utilised for the purpose for which they were obtained. In case of wrong certification by the borrowers, banks / FIs may consider appropriate legal proceedings, including criminal action wherever necessary, against the borrowers.

## **(ii) Criminal Action by Banks / FIs**

It is essential to recognise that there is scope even under the existing legislations to initiate criminal action against wilful defaulters depending upon the facts and circumstances of the case under the provisions of Sections 403 and 415 of the Indian Penal Code (IPC), 1860. Banks / FIs are, therefore, advised to seriously and promptly consider initiating criminal action against wilful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with our instructions and the recommendations of JPC.

It should also be ensured that the penal provisions are used effectively and determinedly but after careful consideration and due caution. Towards this end, banks / FIs are advised to put in place a transparent mechanism, with the approval of their Board, for initiating criminal proceedings based on the facts of individual case.

## **5. Reporting**

### **5.1 Need for Ensuring Accuracy**

Credit Information Companies disseminate information on non-suit filed and suit filed accounts respectively of Wilful Defaulters, as reported to them by the banks / FIs and therefore, the responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions. Banks / FIs may also ensure the facts about directors, wherever possible, by cross-checking with Registrar of Companies.

### **5.2 Position regarding Guarantors**

Banks / FIs may take due care to follow the provisions set out in paragraph 3 of the this circular in identifying and reporting instances of wilful default in respect of guarantors also. While reporting such names to RBI, banks/FIs may include 'Guar' in brackets i.e. (Guar) against the name of the guarantor and report the same in the Director column.

### **5.3 Government Undertakings**

In the case of Government undertakings, it should be ensured that the names of directors are not reported. Instead, a legend 'Government of ----- undertaking' should be added.

### **5.4 Inclusion of Director Identification Number (DIN)**

Ministry of Corporate Affairs had introduced the concept of a Director Identification Number (DIN) with the insertion of Sections 266A to 266G in the Companies (Amendment) Act, 2006. In order to ensure that directors are correctly identified and in no case, persons whose names appear to be similar to the names of directors appearing in the list of wilful defaulters, are wrongfully denied credit facilities on such grounds, banks / FIs have been advised to include the Director Identification Number (DIN) as one of the fields in the data submitted by them to Credit Information Companies.

It is reiterated that while carrying out the credit appraisal, banks should verify as to whether the names of any of the directors of the companies appear in the list of defaulters / wilful defaulters by way of reference to DIN / PAN etc. Further, in case of any doubt arising on account of identical names, banks should use independent sources for confirmation of the identity of directors rather than seeking declaration from the borrowing company.

\*\*\*\*

**Annex 1**  
**(Refer Para 2.9)**

**Format for submission of data on cases of wilful default (non-suit filed accounts) of Rs.25 lakh & above to all four CICs on monthly or more frequent basis:**

The banks / FIs are required to submit data of wilful defaulters (non-suit filed accounts) on FTP Platform and/or in Compact Disks (CDs) to all four CICs on monthly or more frequent basis, using the following structure (with the same field names):

Field	Field Name	Type	Width	Description	Remarks
1	SCTG	Numeric	1	Category of bank/FI	Number 1/2/4/6/8 should be fed 1 SBI and its associate banks 2 Nationalised banks 4 Foreign banks 6 Private Sector Banks 8 Financial Institutions
2	BKNM	Character	40	Name of bank/FI	Name of the bank/FI
3	BKBR	Character	30	Branch name	Name of the branch
4	STATE	Character	15	Name of state	Name of state in which branch is situated
5	SRNO	Numeric	4	Serial No.	Serial No.
6	PRTY	Character	45	Name of Party	The legal name
7	REGADDR	Character	96	Registered address	Registered Office address
8	OSAMT	Numeric	6	Outstanding amount in Rs. lakhs (Rounded off)	
9	SUIT	Character	4	Suit filed or not	Type 'SUIT' in case suit is filed. For other cases this field should be kept blank.
10	OTHER_BK	Character	40	Name of other banks/ FIs	The names of other banks/FIs from whom the party has availed credit facility should be indicated. The names may be fed in abbreviated form e.g. BOB for Bank of Baroda, SBI for State Bank of India etc.



11	DIR1	Character	40	Name of director	<p>(a) Full name of Director should be indicated.</p> <p>(b) In case of Government companies the legend "Govt. of _____undertaking" alone should be mentioned.</p> <p>(c) Against the names of nominee directors of banks/ FIs/ Central Govt./ State Govt., abbreviation 'Nom' should be indicated in the brackets.</p> <p>(d) Against the name of independent directors, abbreviation 'Ind' should be indicated in the brackets.</p>
12	DIN_DIR1	Numeric	8	Director Identification Number of DIR1	8 digit Director Identification Number of the Director at DIR1
13	DIR2	Character	40	Name of director	As in DIR1
14	DIN_DIR2	Numeric	8	Director Identification Number of DIR2	8 digit Director Identification Number of the Director at DIR2
15	DIR3	Character	40	Name of director	As in DIR1
16	DIN_DIR3	Numeric	8	Director Identification Number of DIR3	8 digit Director Identification Number of the Director at DIR3
17	DIR4	Character	40	Name of director	As in DIR1
18	DIN_DIR4	Numeric	8	Director Identification Number of DIR4	8 digit Director Identification Number of the Director at DIR4
19	DIR5	Character	40	Name of director	As in DIR1
20	DIN_DIR5	Numeric	8	Director Identification Number of DIR5	8 digit Director Identification Number of the Director at DIR5
21	DIR6	Character	40	Name of director	As in DIR1

22	DIN_DIR6	Numeric	8	Director Identification Number of DIR6	8 digit Director Identification Number of the Director at DIR6
23	DIR7	Character	40	Name of director	As in DIR1
24	DIN_DIR7	Numeric	8	Director Identification Number of DIR7	8 digit Director Identification Number of the Director at DIR7
25	DIR8	Character	40	Name of director	As in DIR1
26	DIN_DIR8	Numeric	8	Director Identification Number of DIR8	8 digit Director Identification Number of the Director at DIR8
27	DIR9	Character	40	Name of director	As in DIR1
28	DIN_DIR9	Numeric	8	Director Identification Number of DIR9	8 digit Director Identification Number of the Director at DIR9
29	DIR10	Character	40	Name of director	As in DIR1
30	DIN_DIR10	Numeric	8	Director Identification Number of DIR10	8 digit Director Identification Number of the Director at DIR10
31	DIR11	Character	40	Name of director	As in DIR1
32	DIN_DIR11	Numeric	8	Director Identification Number of DIR11	8 digit Director Identification Number of the Director at DIR11
33	DIR12	Character	40	Name of director	As in DIR1
34	DIN_DIR12	Numeric	8	Director Identification Number of DIR12	8 digit Director Identification Number of the Director at DIR12
35	DIR13	Character	40	Name of director	As in DIR1
36	DIN_DIR13	Numeric	8	Director Identification Number of DIR13	8 digit Director Identification Number of the Director at DIR13
37	DIR14	Character	40	Name of director	As in DIR1
38	DIN_DIR14	Numeric	8	Director Identification Number of DIR14	8 digit Director Identification Number of the Director at DIR14
<b>Total bytes</b>			<b>953</b>		

(1) If total numbers of directors exceed 14, the name of additional directors may be entered in blank spaces available in the other directors' columns.

(2) The data / information should be submitted in the above format on **FTP Platform / CD**. While submitting the CD, the banks/FIs should ensure that:

- the CD is readable and is not corrupted / virus-affected.
- the CD is labelled properly indicating name of the bank, name of the list and period to which the list belongs, and the name of list indicated on label and in the letter are same.
- the name and width of each of the fields and order of the fields is strictly as per the above format.
- records with outstanding amount of less than Rs.25 lakh have not been included.
- no suit-filed account has been included.
- use of following types of words have been avoided (as the fields can not be properly indexed) : 'M/s', 'Mr', 'Shri' etc.
- the words 'Mrs', 'Smt', 'Dr' etc. have been fed at the end of name of the person, if applicable.
- Except for field "SUIT" and some of the fields from DIR1 To DIR 14, as applicable, information is completely filled in and columns are not kept blank.

(3) In case of 'Nil' data, there is no need to send any CD and the position can be conveyed through a letter/fax.

(4) A certificate signed by a sufficiently senior official stating that 'the list of wilful defaulters has been correctly compiled after duly verifying the details thereof and RBI's instructions in this regard have been strictly followed' is sent along with the CD.

**(5) The technical working group comprising of member banks, IBA and CICs, which is headed by CIBIL, will be deciding a new format subsequently.**

## Annex 2

### List of Circulars consolidated by the Master Circular

Sr. No.	Circular No.	Date	Subject	Para No.
1.	DBOD.No.DL(W).BC.12/20.16.002(1)/98-99	20.02.1999	Collection and Dissemination of Information on Cases of Wilful Default of Rs.25 lakh and above	1
2.	DBOD.No.DL.BC.46/20.16.002/98-99	10.05.1999	Disclosure of information regarding defaulting borrowers - Lists of Defaulters/ Suit filed accounts and Data on Wilful Default	Annex 1
3.	DBOD.No.DL(W).BC 161/20.16.002/99-2000	01.04.2000	Collection and Dissemination of information on defaulting borrowers of banks and Financial Institutions	5 and Annex 1
4.	<a href="#">DBOD.No.DL.BC.54/20.16.001/2001-02</a>	22.12.2001	Collection and dissemination of information on defaulters	5
5.	<a href="#">DBOD.No.DL(W).BC.110/20.16.003(1)/2001-02</a>	30.05.2002	Wilful defaulters and action there against	2, 2.1 to 2.8
6.	<a href="#">DBOD.No.DL.BC.111/20.16.001/2001-02</a>	04.06.2002	Submission of Credit Information to Credit Information Bureau (CIB)	2.9
7.	DBOD.No.DL(W).BC.58/20.16.003/2002-03	11.01.2003	Wilful defaulters and Diversion of funds - Action there against	2.1, 2.2
8.	<a href="#">DBOD.No.DL.BC.7/20.16.003/2003-04</a>	29.07.2003	Wilful Defaulters and action there against	3
9.	<a href="#">DBOD.No.DL.BC.95/20.16.002/2003-04</a>	17.06.2004	Annual Policy Statement for the year 2004-05 - Dissemination of Credit Information - Role of CIBIL	2.9
10.	<a href="#">DBOD.No.DL.BC.94/20.16.003/2003-04</a>	17.06.2004	Annual Policy Statement: 2004-05 - Wilful Defaulters – Clarification on Process	3

11.	<a href="#">DBOD.No.DL.BC.16/20.16.003/2004-05</a>	23.07.2004	Checking of wilful defaults and measures against Wilful Defaulters	4
12.	<a href="#">DBOD No.DL(W)BC.87/20.16.003/2007-08</a>	28.05.2008	Wilful Defaulters and action there against	2.1
13.	Mail-Box Clarification	17.04.2008	Reporting of accounts under compromise settlement	2.9
14.	DBOD No.DL 12738/20.16.001/2008-09	03.02.2009	Submission of information about List of Defaulters (non-suit filed accounts) / Wilful Defaulters (non-suit filed accounts) on Compact Disks.	Annex 1
15.	<a href="#">DBOD.No.DL.15214/20.16.042/2009-10</a>	04.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Experian Credit Information Company of India Private Limited	2.9
16.	<a href="#">DBOD.No.DL.BC.83/20.16.042/2009-10</a>	31.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Equifax Credit Information Services Private Limited	2.9
17.	DBOD.No.DL.BC.110/20.16.046/2009-10	11.06.2010	Submission of data to Credit Information Companies – Format of data to be submitted by Credit Institutions	2.9
18.	DBOD No.CID.BC.40/20.16.046/2010-11	21.09.2010	Submission of credit data to Credit Information Companies – Inclusion of Director Identification Number (DIN)	5.4 and Annex1
19.	<a href="#">DBOD.No.CID.BC.64/20.16.042/2010-11</a>	01.12.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – High Mark Credit Information	2.9

			Services Private Limited	
20.	<a href="#">DBOD.No.CID.BC.30/20.16.042/2011-12</a>	05.09.2011	Submission of Credit Information to credit Information Companies – Defaulters of Rs.1 Crore and above and Wilful Defaulters of Rs.25 lakh and above- Dissemination of Credit Information of suit filed accounts.	2.9
21.	<a href="#">DBOD.No.CID.BC.84/20.16.042/2011-12</a>	05.03.2012	Grant of 'Certificate of Registration' – For carrying on the business of credit information – Credit Information Bureau (India) Limited	2.9
22	<a href="#">DBOD.BP.BC.No.97/21.04.132/2013-14</a>	26.02.2014	Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum and Corrective Action Plan	2.9
23	<a href="#">DBOD.BP.BC.No.98/21.04.132/2013-14</a>	26.02.2014	Framework for Revitalising Distressed Assets in the Economy- Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures	2.7, 5.4
24	<a href="#">DBOD.CID.BC.128/20.16.003/2013-14</a>	27.6.2014	Defaulters of Rs.1 crore and above (non-suit filed accounts) and Wilful Defaulters of Rs.25 lakhs and above (non-suit filed accounts) – Changes in reporting to RBI/CICs	2.9
25	<a href="#">DBOD.No.CID.41/20.16.003/2014-15</a>	09.09.2014	Guidelines on Wilful Defaulters – Clarification regarding Guarantor, Lender and Unit	2.1, 2.6 and 5.2
26	DBR.No.CID.BC.60/20.16.056/2014-15	15.01.2015	Membership of CICs	2.5 and Annex I
27	<a href="#">DBR.No.CID.BC.90/20.16.003/2014-15</a>	23.04.2015	Collection and Dissemination of Information on Wilful	3

			Defaulters	
28	Mail box clarification	05.06.2015	Wilful defaulters-setting up of the Review Committee	3
29	Mail box clarification	05.06.2015	Defaulters/Wilful Defaulters – Removal of the names of Non-whole time directors for already classified and reported accounts.	3