



भारतीय रिज़र्व बैंक

RESERVE BANK OF INDIA

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DBOD.No.DL.BC. 16 /20.16.003/2004-05

July 23, 2004

All Scheduled Commercial Banks and
All Notified All-India Financial Institutions

Dear Sir,

**Checking of wilful defaults and measures
against Wilful Defaulters**

Please refer to paragraph 7(b) of our circular DBOD.No.DL(W).BC. 110/20.16.003/ 2001-02 dated 30th May 2002 in terms of which banks/Financial Institutions (FIs) were advised to initiate various steps in order to check wilful defaults.

2. In terms of the above guidelines, banks / FIs were advised that they should not depend entirely on the certificate issued by the Chartered Accountants for ensuring end-use of funds and to supplement supervision through diligence on their own part. Banks and FIs were also advised that ensuring end-use of funds should form part of their loan policy document and that they should put in place appropriate systems and measures therefor.

3. Besides, banks / FIs are also required to initiate the following measures against wilful defaulters:

- a) No additional facilities should be granted by banks / FIs.
- b) Entrepreneurs / promoters of companies, where diversion of funds, siphoning of funds, misrepresentation, falsification of accounts and fraudulent transactions have been identified by banks / FIs, should be debarred from institutional finance from banks / FIs, Government owned NBFCs, investment institutions, etc. for floating new ventures for a period of 5 years from the date the name of wilful defaulter is disseminated in the list of wilful defaulters by RBI.

भारतीय रिज़र्व बैंक, मुंबई, महाराष्ट्र, भारत

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- c) Initiate legal proceedings and foreclosure for recovery of dues expeditiously, wherever warranted, against the borrowers / guarantors.
- d) Initiate criminal proceedings against wilful defaulters wherever necessary.
- e) Banks/FIs should adopt a proactive approach for a change of management of the wilfully defaulting borrower unit, wherever possible.
- f) Incorporate a covenant in the loan agreement with the borrowing companies stipulating that they should not induct a person who is a director on the Board of a company which has been identified as a wilful defaulter and that in case, such a person is found to be on the Board of the borrower company, it would take expeditious and effective steps for removal of the person from its Board.

4. We have once again examined comprehensively, the issues relating to checking 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.

5. We agree with the recommendation of the JPC 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.



6. In this connection 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, 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.

7. 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.

8. Banks are requested to inform the Reserve Bank about the actions taken.

9. Reserve Bank will review the working of the mechanism proposed in para 7 after one year with a view to improving the mechanisms and systems in this regard.

Yours faithfully,

(C.R. Muralidharan)
Chief General Manager-in-Charge