

**Kerala State Backward Classes Development Corporation Limited**  
**(Govt. of Kerala undertaking )**

"SENTINEL", 2nd Floor, TC 27/588(7) & (8), Pattoor, Vanchiyoer PO

Thiruvananthapuram, Kerala - 695035

## **Policy for Wilful Defaulter**

1. **Title :** *This policy will be called as 'Policy for Wilful Defaulter'.*
2. **Preamble:** *This policy is issued in light of RBI Master Direction dated 30.07.2024 with a view to report the details of Wilful Defaults of Rs.25 lakhs and above to RBI and other respective regulatory authorities.*
3. **Purpose / Objectives of Policy :** *The policy is prepared keeping in view of the following purposes :-*
  - a) *To define and identify the Wilful Defaulter as envisaged by RBI.*
  - b) *To define the Mechanism for identification of Wilful Defaulter.*
  - c) *To initiate appropriate action against Wilful Defaulter including penal measures, legal process etc as envisaged by RBI.*
  - d) *To confirm the end use of funds and prevent or to have timely detection of diversion of funds or siphoning of funds or dilution of security etc.*
  - e) *To adhere the proper and timely reporting of Wilful Defaulter to RBI and CICs.*
4. **Definitions:**
  - a) **“Lender”** *means the Bank / financial institution to whom any amount is due from the unit (borrower). i.e. the lender will be KSBCDC Ltd.*
  - b) **“Borrower”** *means one who has availed credit facility from a lender.*
  - c) **“Credit Facility”** *means any fund based or non-fund-based facility, including off-balance sheet items like derivatives, guarantees and letters of credit, which a lender has extended to the borrower.*
  - d) **“Wilful Default”**
    - i) *by a borrower shall be deemed to have occurred when the borrower defaults in meeting payment/ repayment obligations to the lender and any one or more of the following features are noticed:*
      - A. *the borrower has the capacity to honor the said obligations;*
      - B. *the borrower has diverted the funds availed under the credit facility from lender;*
      - C. *the borrower has siphoned off the funds availed under the credit facility from lender;*
      - D. *the borrower has disposed of immovable or movable assets provided for the purpose of securing the credit facility without the approval of the lender;*
      - E. *the borrower has pledged collateral that is already encumbered by an existing loan from another bank or financial institution, or the collateral is currently involved in legal proceedings or subject to attachment by a court of law.*
      - F. *the borrower or the promoter has failed in its commitment to the lender to infuse equity despite having the ability to infuse the equity, although the lender has provided loans or certain concessions to the borrower based on this commitment and other covenants and conditions.*

- ii) *by a guarantor shall be deemed to have occurred if the guarantor does not honor the guarantee when invoked by the lender, despite having sufficient means to make payment of the dues or has disposed of immovable or movable assets provided for the purpose of securing the credit facility, without the approval of the lender or has failed in commitment to the lender to infuse equity despite having the ability to infuse the equity, although the lender has provided loans or certain concessions to the borrower based on this commitment.*
- e) **“Wilful Defaulter”** means
1. *a borrower or a guarantor(Surety) who has committed wilful default and the outstanding amount is ₹25 lakh and above, or as may be notified by Reserve Bank of India from time to time, and*
  2. *where the borrower or a guarantor committing the wilful default is a company, its promoters and the director (s), subject to the provisions of para 4(1) (c) below. In case of entity (other than companies), persons who are in charge and responsible for the management of the affairs of the entity.*
- f) **“Large Defaulter”** means a defaulter with an outstanding amount of ₹1 crore and above, and –
- *where suit has been filed; or*
  - *whose account has been classified as doubtful or loss (in accordance with the instructions issued by the Reserve Bank from time to time).*
- g) **“Diversion Of Funds”** means and includes the under- noted occurrences:
- *utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction of credit facility;*
  - *deploying funds availed using credit facility for the creation of assets other than those for which the credit was sanctioned;*
  - *transferring funds availed using credit facility to the subsidiaries/group companies or other entities, by whatever modality, without approval of the lender/all the lenders in the consortium;*
  - *routing of funds through any lender other than the lender or members of consortium without prior written permission of the lender or all the lenders of consortium;*
  - *investing funds availed using credit facility in other companies/entities byway of acquiring equities/debt instruments without the approval of lender or all the lenders of consortium; and*
  - *shortfall in the deployment of funds vis-à-vis the amounts disbursed/ drawn under the credit facility and the difference not being accounted for.*
- h) **“Siphoning Of Funds”** shall be construed to have occurred if any funds availed using credit facility from lenders are utilized for purposes unrelated to the operations of the borrower

5. **Exclusions:**

- *Loan Accounts wherein the amount due is less than Rs.25 lakhs*
- *Any account included in List of Wilful Defaulters (LWD), where the lender has entered into a compromise settlement with the borrower,*

*shall be removed from the LWD only when the borrower has fully paid the compromise amount.*

- *Till such time as only part payment is made, name of the borrower shall not be removed from the LWD even if the outstanding amount becomes less than the threshold of ₹25 lakh or any amount as notified by Reserve Bank of India from time to time.*
- *The compromise settlement with the wilful defaulter shall be in terms of the Board approved policy of the lender. Such policy shall include guidelines on staff accountability examination, reporting of the compromise/ settlement to the board, higher upfront payment if any, etc.*
- *The compromise settlement shall be without prejudice to the continuation of criminal proceedings against the wilful defaulter.*

## **6. Mechanism for identification of Wilful Defaulters:**

*Following procedure will be followed for identification of a Wilful Defaulter.*

### **A) Primary Scrutiny**

*All the Branch Managers shall review the defaulters list of the respective branches periodically to identify wilful defaulters. The identification will be done based on the following criteria.*

- *The total outstanding balance including principal, interest, penal interest and other charges and including unapplied interest, if any, exceeds Rs.25.00 lakhs.*
- *History of frequent and recurring defaults in the Loan account.*
- *Ability of the borrower to repay the loan judged on the basis of field visit, Income Tax Returns, Net-Worth Certificate, transactions on other bank accounts, market reputation, market information etc.*
- *Not using the borrowed funds for the purpose for which given as per apparent tenure.*
- *Removal of security and / or collateral security without knowledge of the lender.*
- *Diversion / Siphoning of fund.*
- *Other banks / financial institutes declaring the borrower as wilful defaulter.*
- *Disposal of immovable or movable assets provided for the purpose of securing the credit facility without the approval of the lender.*

*The Branch Managers will prepare a note on the Primary Scrutiny to categorize the borrower as Wilful Defaulter. The note will contain the details of lending, defaults, facts evidencing that the borrower is able to pay the default, other facts as to removal security or diversion or siphoning of funds etc. Branch Managers will put forth the said note before the Identification Committee for examination and recommendations.*

**B) Identification Committee**

*The Identification Committee will consist of:-*

- *an officer not more than one rank below the MD as chairperson; and*
- *two senior officials, not more than two ranks below the chairperson of the committee, as members.*

*The Committee will have its meeting at least once in every quarter and If the Identification Committee is satisfied that an event of wilful default has occurred based on the evidence put forth by the Branch Managers, it shall issue a show-cause notice to borrower/ guarantor/ promoter/director/ persons who are in charge and responsible for the management of the affairs of the entity, and call for the submissions from them within 21 days of issuance of show cause notice. KSBCDC Ltd shall disclose to them all materials information on which show cause notice is based.*

*The said show cause notice may be served by hand delivery or email or by registered post or any other means of communication on the address of the respective borrower as per KSBCDC's record. Supporting Documents evidence the issue of show cause will be taken on record.*

*If no written say or intention of personal hearing is received from the borrower, the Identification Committee will make the recommendation to declare the borrower as wilful defaulter to Review Committee.*

*If any request for Personal Hearing is received, it will arrange accordingly on suitable date. The Identification Committee will hear the oral representation and keep record of it.*

*If any written submission is received, the Identification Committee will assess the written submission based on the facts and figures stated in it. After considering the submissions and where satisfied, the Identification Committee shall make a proposal to the Review Committee for classification as a wilful defaulter by explaining the reasons in writing.*

*If after assessing the written say and / or the personal hearing, the Identification Committee forms the opinion that borrower would not qualify for being declared as wilful defaulter; Identification Committee will suspend the process of declaration. Identification Committee satisfies about the representation given in written say and is of the opinion that Borrower should not be declared a Wilful Defaulter, the Identification Committee may withdraw the recommendation for such declaration.*

*The borrower/ guarantor/ promoter/ director/ persons who are in charge and responsible for the management of the affairs of the entity shall thereafter be suitably advised about the proposal to classify them as wilful defaulter along with the reasons there for.*

*An opportunity shall be provided to borrower/ guarantor/ promoter/*

*director/persons who are in charge and responsible for the management of the affairs of the entity for making a written representation to Review Committee within 15days of such a proposal from the Identification Committee.*

### **C. Review Committee**

*The Review Committee will consist of:-*

- *the MD as chairperson; and*
- *two independent directors or non-executive directors or equivalent officials serving as members.*

*The proposal of the Identification Committee along with the written representation received shall be considered by the Review Committee.*

*The Review Committee will review in their quarterly meetings or the meeting called for the purpose, the recommendation given by the Identification Committee to declare the respective borrower as wilful defaulter. The Review Committee will review the decision of the Identification Committee on the basis of the criteria's stated above as well other circumstantial facts, recorded hearing of the defaulter etc.*

*The Review Committee shall provide an opportunity for a personal hearing also to the borrower/ guarantor/ promoter/ director/ persons who are in charge and responsible for the management of the affairs of the entity. However, if the opportunity is not availed or if the personal hearing is not attended by the borrower/ guarantor/ promoter/ director/ persons who are in charge and responsible for the management of the affairs of the entity, the Review Committee shall, after assessing the facts or material on record, including written representation, if any, consider the proposal of the Identification Committee and take a decision.*

*As the above classification process is an in-house proceeding, the borrower/ guarantor/ promoter/ director/ persons in charge and responsible for the management of affairs shall not have the right to be represented by a lawyer.*

*The Review Committee shall pass a reasoned order and the same shall be communicated to the wilful defaulter.*

*Recommendation of the Identification Committee to declare the borrower as Wilful Defaulter will be applicable only when the said order is reviewed and confirmed by the Review Committee.*

*The Review Committee will enjoy only the review powers and the committee on its own without the recommendation of the Identification Committee will not declare any borrower as the wilful defaulter.*

*The lender shall examine the 'wilful default' aspect in all Non-Performing Assets (NPA) accounts with outstanding amount of ₹25 lakh and above or as may be notified by Reserve Bank of India from time to time. If wilful default is observed in the internal preliminary screening, the lenders shall complete the process of classification/declaring the borrower as a wilful defaulter by following the mechanism set out above, within six (6) months of the account being classified as Non-Performing Assets (NPA) [in accordance with the instructions regarding asset classification issued by the Reserve Bank from time to time].*

**7. Specific measures against wilful defaulters:**

**1. Initiation of Criminal proceedings by the lenders**

*Based on the facts and circumstances of each case, Review Committee can examine whether initiation of criminal proceedings against wilful defaulters under the provisions of the applicable law, is warranted. In cases where criminal proceedings have been initiated, removal of the name of a wilful defaulter from the List of Wilful Defaulters (LWD) shall be without prejudice to the continuation of criminal proceedings against the wilful defaulter.*

**2. Publishing of photographs of wilful defaulters**

*Based on the facts and circumstances of each case, Review Committee can examine whether the photographs of persons classified and declared as wilful defaulter shall be published or not. The review committee may refer to the board approved policy that clearly sets out the criteria based on which the photographs of persons classified and declared as wilful defaulter shall be published.*

**3. Penal and other measures against wilful defaulters**

*Based on the facts and circumstances of each case, Review Committee may implement penal measures listed below.*

- 1. No additional credit facility shall be granted by any lender to a wilful defaulter or any entity with which a wilful defaulter is associated.*
- 2. The bar on additional credit facility to a wilful defaulter or any entity with which a wilful defaulter is associated shall be effective for a period of one (1) year after the name of wilful defaulter has been removed from the List of Wilful Defaulters (LWD).*
- 3. No credit facility shall be granted by any lender for floating of new ventures to a wilful defaulter or any entity with which a wilful defaulter is associated for a period of five (5) years after the name of wilful defaulter has been removed from the LWD.*
- 4. The lender shall, wherever warranted, initiate legal action against the borrowers/guarantors for foreclosure/ recovery of dues expeditiously.*
- 5. Wilful defaulters or any entity with which a wilful defaulter is*

*associated shall not be eligible for restructuring of credit facility. Subsequent to removal of the name of wilful defaulter from the LWD, the wilful defaulter or any entity with which a wilful defaulter is associated shall be eligible for restructuring, subject to the provision contained in point no.(2) Above.*

***Provided:***

- *If the wilful defaulter is a company, another company will be deemed to be associated with it, if that company is –*
  - \* *a 'subsidiary company' as defined under clause 2 (87) of the Companies Act, 2013*
  - \* *falls within the definition of a 'joint venture' or an 'associate company' under clause (6) of section 2 of the Companies Act, 2013.*
- *If the wilful defaulter is a natural person, all entities in which he is associated as promoter, or director, or as one in charge and responsible for the management of the affairs of the entity shall be deemed to be associated.*
- *If the wilful defaulter is a NGO/CDS, the trustees, president, secretary and the persons who are in charge and responsible for the management of the affairs of such NGO/CDS and all entities in which such persons are associated as promoter, or director, or as one in charge and responsible for the management of the affairs of the entity shall be deemed to be associated.*
- *The penal provisions mentioned above, shall cease to be applicable on the associated entities when they are no longer associated with the wilful defaulters.*
- *In cases where the existing promoters are replaced by new promoters, and the borrower company is totally delinked from such erstwhile promoters/ management, lenders may take a view on restructuring such accounts based on their viability, without prejudice to the continuance of criminal proceedings against the erstwhile promoters/ management.*

***4. Incorporation of covenant***

1. *The lender shall incorporate a covenant in the agreement while extending credit facility to a borrower that it shall not induct a person whose name appears in the LWD on its board or as a person in charge and responsible for the management of the affairs of the entity.*
2. *In case such a person is found to be on its board or as a person in charge and responsible for the management of the affairs of the entity, the borrower would take expeditious and effective steps for removal of such a person from the board or from being in charge of*



*its management*

3. *Under no circumstances shall a lender renew/ enhance/ provide fresh credit facilities or restructure existing facilities provided to such a borrower so long as the name of its promoter and/or the director (s) and/or the person in charge and responsible for the management of the affairs of the entity remains in the LWD.*

**8. *Treatment of accounts where resolution is done under Insolvency and Bankruptcy Code (IBC)/ Resolution framework guidelines issued by the Reserve Bank***

*In case an account which is included in LWD and has subsequently undergone liquidation or where the resolution [either under IBC or under the Prudential Framework for Resolution of Stressed Assets dated June 7, 2019 (as amended from time to time) issued by the Reserve Bank] results in a change in the management and control of the entity/ business enterprise, the name of such a borrower or guarantor who were classified as wilful defaulter [which includes in case of a company, its promoters and the director (s), and in case of entity (other than companies), persons who are in charge and responsible for the management of the affairs of the entity], shall be removed from the LWD after implementation of the resolution plan under IBC or aforesaid prudential framework.*

*The penal measures as detailed in Para 7(3) shall not be applicable to such entities/ business enterprises after implementation of the resolution plan under IBC or aforesaid prudential framework.*

*The penal measures detailed in Para 7(3) (ii) and (iii) shall continue to apply to the erstwhile promoter(s)/ director(s)/ guarantor(s)/ persons who were in charge and responsible for the management of the affairs of the entity/ business enterprise, and to the entities they are associated as a promoter or director or as one in charge and responsible for its management.*

**9. *Reporting of Wilful Defaulters and Large Defaulters***

- A. *KSBCDC Ltd shall submit information in Annex I to all credit information companies (CICs) in respect of the large defaulters at monthly intervals –*
  - a. *a list of suit filed accounts of large defaulters; and*
  - b. *a list of non-suit filed accounts of large defaulters whose account has been classified as doubtful or loss (in accordance with the instructions issued by the Reserve Bank from time to time)*

*For calculating the threshold of 1 crore, the unapplied interest, if any, shall also be included. In the case of suit-filed accounts, the threshold shall relate to the amount for which the suits have been filed.*

*The term 'suit filed accounts' shall mean those accounts in respect of which all entities regulated by Reserve Bank have approached courts or tribunals (including under Insolvency and Bankruptcy Code, 2016) for recovery of*

*their dues, and proceedings are pending. Accounts shall be treated as suit filed if any application, appeal or execution is pending in continuation of the original recovery proceedings.*

*Suit filed accounts shall be deemed to include accounts in which SARFAESI proceedings or any other proceedings for recovery of the dues from the borrower or any other person liable to make payment of a debt under Acts governing co-operative societies are initiated and pending, and shall include the account of a debtor against whom resolution or liquidation proceedings have been initiated and are continuing.*

- B. KSBCDC Ltd shall submit at monthly intervals, information in Annex II to all CICs in respect of the wilful defaulters as defined in para 3.1. (u) of these directions:*
- a. a list of wilful defaulters (LWD) in respect of suit filed accounts*
  - b. a LWD in respect of non-suit filed accounts*

**10. *Reporting to other Banks / Financial Institutions / Association of Banks / Association Financial Institutions***

*KSBCDC Ltd shall report to other Banks / Financial Institutions / Association of Banks / Association Financial Institutions with a view to debar the borrower from making further finance from Banks / financial institutions.*

*The reporting will be done only when the Identification Committee makes the special recommendation for such debar and the said recommendation is reviewed & confirmed by the Review Committee and on the cases and when the said committee satisfies with valid reasons that the borrower may have the mala fide intention of deceiving the other banks / financial institutions.*

**11. *Reporting about negligence or deficiency on part of auditors***

*In cases where the negligence or deficiency on part of auditors employed by the Bank for audit/ specific certification work is observed, the reporting of such negligence & complaint against the auditors may be made to Institute of Chartered Accountants of India (ICAI) and RBI, DoS, Central Office, Ministry of Corporate Affairs (MCA), Comptroller and Auditor General (CAG).*

**12. *Reporting to Audit Committee of Board (ACB)***

*Information about findings of the Identification Committee, Review Committee, Reporting of Wilful Defaults, Diversion, Siphoning of Funds , reviews and updates on wilful defaults, penal actions initiated etc will be reported to Audit Committee of Board (ACB) in next coming meeting. The said information will be also placed before BoD through ACB.*

### **13. Preventive Measures**

- **Credit Appraisal**

*While carrying out credit appraisal, KSBCDC Ltd shall verify as to whether the name of the person or any of the directors of a company/ guarantors/persons/trustees/president/secretary and the persons who are in charge of the management of affairs of the entity appears in the list of large defaulters/ LWD by way of reference to DIN/ PAN, etc*

- **Monitoring End Use of Funds**

*KSBCDC Ltd shall closely monitor the end-use of funds and obtain certificates from borrowers certifying that the funds have been utilized for the purpose for which they were obtained. In case of the wrong certification by the borrowers, KSBCDC Ltd shall consider initiating appropriate legal proceedings, including criminal proceedings wherever necessary, against the borrowers.*

*The requirements and related appropriate measures in ensuring the end-use of funds by the lenders shall form a part of their loan policy document. End Use of Funds can be ascertained by the following methods:-*

- *Obtaining certificates from Chartered Accountants*
- *Obtaining certificates by KSBCDC Ltd. 's own auditors for specific certification*
- *Strengthened Internal Control and Credit Risk Management System*
- *Scrutiny of progress reports / operating statements / balance sheets of the borrower on periodic basis*
- *Periodic inspection of borrower's assets provided as security*
- *Periodic visits to borrower's unit*

### **14. Powers of Board of Directors (BoD)**

- *BoD shall have the power to constitute/reconstitute Identification Committee and Review Committee*
- *BoD may delegate the power of reporting of wilful default on behalf of KSBCDC Ltd to Recovery Department.*
- *BoD shall review this policy annually and necessary changes, if any, will be made in the policy after such review.*

### **15. Enclosures**

*Captioned RBI Master Direction on Treatment of Wilful Defaulters and Large Defaulters dated 30<sup>th</sup> July 2024.*

### **16. Annexure**

*Annex I and Annex 2.*