

Ref No.KSFC/HO/ED(F)/743/2008-09

Date : 12.08.2008

CIRCULAR No.820

Sub : Willful defaulters and action there against.
-:o:O:o:-

The SIDBI has issued a circular vide FI No.4/2008-09 dated 04.07.2008 and enclosed the modified definition on the term “willful default”. A copy of the same is enclosed herewith. In this regard, the Board in its meeting held on 31.07.2008 took note of the revised definition of “willful default” and the guidelines issued by RBI and SIDBI to tackle the willful defaulters. The Board after discussion accorded approval for adoption of the guidelines issued by SIDBI in the matter.

The contents of this circular shall be brought to the notice of all the concerned in your office / department.

Sd/-
EXECUTIVE DIRECTOR (F)

To :

All BMs
All ZMs / DGMs of Super 'A' Branches / IA cells
All Principal Officers / Section Heads in HO
All General Managers
Library

ED(O) - for information
MD - for kind information.

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA
SME Development Centre, C-11, G-Block,
Bandra – Kurla Complex, Bandra (E), Mumbai – 400 051.

Ref.No.SIDBI/1914/DFID/SFCs

July 4, 2008

The Chairman / MDs of SFCs

Circular FI No.4/2008-09

Madam / Dear Sir,

Willful defaulters and action thereagaist.

Please refer to our Circular No.2/2003-04 dated May 27, 2003 on the above subject wherein a term 'willful default' has been defined. We now advise that in pursuant to the Hon'ble Supreme Court's Order relating to writ petition Civil No.291 of 1998 titled Common Cause (A registered Society) Vs Union of India & Anr., RBI has redefined the term 'willful default' in suppression of its earlier definition, as given in Annexure.

2. Further, we also invite your attention to para 5 of Bank's aforesaid Circular dated May 27, 2003 and reiterate that no additional facilities should be granted by any bank / FI to the listed willful 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 for floating new ventures, for a period of five years from the date of name of the defaulter is published in the list of willful defaulters by the RBI.

3. These instructions will come into force with immediate effect.

4. SFCs are advised to place this Circular at the next meeting of the Board of Directors for information.

Please acknowledge receipt.

Yours faithfully,

Sd/-,
(K.Sathianandan)
General Manager

Encl : Annexure.

Modified para 1 of the SIDBI Circular No.2/2003-04 dated May 27, 2003

It has been decided to redefine the term 'willful default', in super session of the definition / illustrations contained in the above Circular, as follows:

1. Definitions

A willful 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 utilized 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 utilized 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 obligation 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.
