CDR. No ./ Policy/ 2009-10 June 3, 2009

All the members of CDR System

Dear Sir/Madam,

CDR Master Circular – Updated on March 31, 2009

CDR Core Group at its meeting held on April 21, 2009, approved an updated Master Circular incorporating all revised RBI guidelines relating to restructuring under CDR Mechanism as also all policy decisions taken by CDR Core Group till March 31, 2009. A copy of updated Master Circular is enclosed for your information and records. The Master Circular has been placed on the CDR website (http://www.cdrindia.org)

2. The updated Master Circular will be applicable to all existing as well as future cases under CDR System. However, any subsequent institutions/ guidelines issued by RBI or policy decision taken by Core Group subsequent to March 31, 2009 shall supercede the relevant contents in this Master Circular and the same will be suitably incorporated at the time of next updation of Master Circular.

Yours faithfully,

(D. K. Kambale)
Chief General Manager

Table of Contents

CDR MASTER CIRCULAR

1. MEMBERSHIP OF CDR SYSTEM

CDR Mechanism can be joined by all the banks and financial institutions. It can also be joined by Non Banking Finance Companies (NBFCs), Asset reconstruction Companies (ARCs), State Level Institutions (SLIs) and Co-Operative Banks on transaction-specific basis.

2. TIME FRAME FOR PROCESSING AND IMPLEMENTATION OF RESTRUCTURING SCHEMES

2.1 The Flash Reports and Final Restructuring Proposals should be circulated ten days before and Review / Status Notes, seven days before the meeting of the CDR Empowered Group (EG) to the Nodal Officers of all participating lenders.

2.2 The Final Restructuring Proposal should be submitted to the CDR EG at the earliest after clearance of the Flash Report so that the final package may be approved by CDR EG within a period of 60 days from the date of admission of the Flash Report, except for large and complicated cases, to be decided by CDR EG, for which the time frame would be 90 days. If the final decision on a particular case is not taken within the stipulated time frame i.e. 60/90 days, as the case may be, the restructuring proposal would automatically be treated as closed unless extension of time beyond 60/90 days is specially sought by the Referring Institution (up to a maximum limit of 180 days) and the same is permitted by the CDR Core Group. Such closed cases would be considered for re-entry in the CDR system only with the permission of the Core Group.

2.3 A time span of 45 days from the date of issue of Letter of Approval (LOA) by CDR Cell will be available to individual lenders for sanctioning the approved CDR package and further 45 days to lenders for its implementation. However as

per RBI guidelines, approved CDR package should be implemented within 120 days from the date of issuance of LOA. This may be considered as outer time limit for the implementation of approved CDR package**.**

2.4 Any delay in sanction and implementation of the restructuring package will be construed as an event of non-compliance and in terms of the Inter-Creditor Agreement, non-complying lenders might be called upon to pay compensation as might be determined by the CDR Core Group.

2.5 All cases for which CDR Core Group has given in-principle approval for Re-entry, Rework, entry of BIFR cases or cases of Wilful Defaulters should be finalised and referred to CDR EG within 60 days of approval by CDR Core Group.

2.6 Time frame for the execution of MRA/TRA: To avoid undue delay in execution of MRA and TRA, following time frame is prescribed:

i. On approval of the restructuring package, Monitoring Institution (MI) should immediately circulate draft MRA incorporating necessary modifications in terms of restructuring package, without waiting for the sanction letter from individual members.

ii. Lenders should convey their observations/suggestions within three weeks of receipt of draft MRA from MI. If no communication is received from lender(s) within three weeks, it may be treated as if the lender has no objection to the draft MRA.

iii. Thereafter, MI should incorporate relevant suggestions/modifications to the draft MRA and fix the date of execution of MRA within a week's time.

iv. Similarly, TRA Bank should circulate the draft TRA incorporating necessary modifications in terms of restructuring package and circulate the same to the lenders on receipt of letter of approval from CDR cell.

v. The lenders shall convey their suggestions/modifications within three weeks of receipt of draft TRA. If no communication is received from lender(s) within three weeks; it may be treated as if the lender has no objection to the draft TRA.

vi. Thereafter, TRA banks should incorporate relevant suggestions/modifications to the draft TRA and fix the date for execution of TRA within a week's time.

3. FINANCIAL VIABILITY PARAMETERS BENCHMARK LEVELS

3.1 In order to have standardization/uniformity in assessment of viability of cases referred to CDR, all restructuring packages brought before CDR EG should incorporate a section on financial viability covering the financial parameters referred to in **Annexure I.** However, it may be mentioned that CDR-EG has powers to decide acceptable levels on a case-to-case basis.

3.2 In Section / Chapter XI of the Final Restructuring Proposal wherein "Profitability Projections & Viability" are discussed, an additional paragraph should be included indicating the following viability parameters:

(i) Break Even Point (operating and cash) (BEP)

(ii) Return on Capital Employed (ROCE)

(iii) Internal Rate of Return (IRR)

(iv) Cost of Capital

(v) Loan Life Ratio (LLR)

3.3 The guidelines contained in Annexure I should be kept in view while calculating the above financial parameters. Also, the viability parameters should be compared with the industry averages and suitable comments should be incorporated in the Final Restructuring Package. Additionally, capacity utilization, price realization per unit and Profit before Interest, Depreciation, and Tax (PBIDT) of the borrower-corporate should be compared with the relative

industry averages. In the event the indicators are not in consonance with the viability benchmarks or industry averages, suitable qualitative comments should be incorporated justifying the variations.

3.4 Any Final Restructuring Proposal without the above aspects will not be taken up for discussion at the CDR EG.

4. CATEGORY I & II UNDER CDR SYSTEM

4.1 **Category I**

The Category I CDR system is applicable to accounts, which are classified as 'standard' and 'sub-standard'. There may be a situation where a small portion of debt by a bank might be classified as doubtful. In that situation, if the account has been classified as 'standard'/ 'substandard' in the books of at least 90% of lenders (by value), the same would be treated as standard/ substandard, only for the purpose of judging the account as eligible for CDR, in the books of the remaining 10% of lenders.

4.2 Category II

There have been instances where the projects have been found to be viable by the lenders but the accounts could not be taken up for restructuring under the CDR system as they fell under 'doubtful' category. Hence, second category of CDR would be there for cases where the accounts have been classified as 'doubtful' in the books of the lenders, and if a minimum of 75% of creditors (by value) and 60% creditors (by number) satisfy themselves of the viability of the account and consent for such restructuring, subject to the following conditions:

(i) It will not be binding on the creditors to take up additional financing worked out under the debt restructuring package and the decision to lend or not to lend will depend on each bank/FI separately. In other words, under the second

category of the CDR mechanism, the existing loans will only be restructured and it would be up to the promoter to firm up additional financing arrangement with new or existing creditors individually.

(ii) All other norms under the CDR mechanism such as the standstill clause, asset classification status during the pendency of restructuring under CDR, etc., will continue to be applicable to this category also.

5. BIFR CASES: ELIGIBILITY CRITERIA

5.1 In terms of RBI guidelines on CDR Mechanism, corporates with aggregate outstanding exposure of Rs.10 crore and above are eligible for restructuring under CDR System. The guidelines also allow restructuring of large-value BIFR cases for restructuring under the CDR system if specially recommended by the CDR Core Group. As per the Core Group decision, one of the eligibility criteria for taking up BIFR cases for restructuring under CDR Mechanism is minimum cut-off limit of Rs.15 crore of aggregate outstanding exposure of Banks/FIs. The exposure would exclude equity and preference shares subscribed to by FIs/Banks. Details of eligibility criteria, financial parameters, etc. to be complied with in respect of BIFR cases are given in **Annexure II.**

5.2 In case regulatory benefits are to be availed for such BIFR cases, then regular financial parameters applicable to normal cases would be applicable to such BIFR cases also, in addition to the stipulation that Profit After Tax should be positive in 5 years.

6. CASES OF WILFUL DEFAULTERS: ELIGIBILITY CRITERIA

6.1 RBI in its guidelines on CDR Mechanism has stipulated as under:

While corporates indulging in frauds and malfeasance even in a single bank will continue to remain ineligible for restructuring under CDR mechanism as hitherto, the Core Group may review the reasons for classification of the borrower as wilful defaulter specially in old cases where the manner of classification of a borrower as a wilful defaulter was not transparent and satisfy itself that the borrower is in a position to rectify the wilful default provided he is granted an opportunity under the CDR mechanism. Such exceptional cases may be admitted for restructuring with the approval of the Core Group only. The Core Group may ensure that cases involving frauds or diversion of funds with malafide intent are not covered.

6.2 In view of the above, details of eligibility criteria to be followed in respect of cases of wilful defaulters etc. are given in **Annexure III.**

7. BORROWER CLASSIFICATION FOR STIPULATION OF STANDARD TERMS AND CONDITIONS

7.1 It is observed that borrower-Corporates get into a stress situation because of various external and internal factors. The restructuring schemes are accordingly formulated envisaging various actions on the part of the borrowers and participating lenders. Based on experience and various features of the borrower-corporates and their promoters/sponsors, the borrower-corporates are categorized into four Classes for the purpose of stipulation of standard terms & conditions under the CDR Mechanism. The classification is as under:

Borrower Class 'A': Corporates affected by external factors pertaining economy and Industry.

Borrower Class 'B': Corporates/promoters affected by external factors and also having weak resources, inadequate vision, and not having support of professional management.

Borrower Class 'C': Over-ambitious promoters; and borrower-corporates which diverted funds to related/unrelated fields with/without lenders' permission.

Borrower Class 'D': Financially undisciplined borrower-corporates.

7.2 The classification of each borrower-corporate shall be decided at the meeting of the CDR Empowered Group (EG), whereat the Final Restructuring Proposal is approved. The standard terms and conditions applicable to different classes of borrowers are set out in **Annexure - IV.**

7.3 The Referring Institution should incorporate all applicable standard terms & conditions in the restructuring package, besides special conditions deemed necessary in specific cases. In case it is felt that a particular condition need not be stipulated or should be suitably modified in a particular case, appropriate justification should be given in the Final Report. In case changes in standard condition are envisaged after approval of the final restructuring proposal, then the same may be referred to CDR EG for approval and subsequent modification of LOA.

7.4 As per the Debtor-Creditor Agreement (DCA) signed between the lenders and the borrower for CDR purpose, it is obligatory on the part of the borrower to abide by the terms of the package once it is approved by the CDR EG with super-majority. In order to ensure transparency, better compliance and expeditious implementation of the package, it is necessary that the borrower is fully aware of terms and conditions of the package as also special conditions stipulated therein. Therefore, in all Final Restructuring Proposals, in Section/Chapter 10, Borrowers'

comments/aspects of disagreement on the terms and conditions of the package should be incorporated. The said information would facilitate discussion with the promoters / borrowers, during the CDR EG Meeting, with a view to arriving at a final decision on issues where there are disagreements.

8. MONITORING MECHANISM

8.1 Effective monitoring of the progress of implementation of restructuring schemes is critical to the success of CDR Mechanism. Accordingly, a Monitoring Mechanism has been evolved as part of the CDR System. The Mechanism comprises Monitoring Institution (Referring Institution), Monitoring Committee (MC) and external agencies of repute to complement monitoring efforts and also to carry out work of Lenders' Engineer/ Concurrent Audit/ Special Audit/ Valuation etc.

8.2 CDR EG shall constitute an MC to oversee the implementation of the approved Restructuring Scheme. The MC shall generally comprise one term lender, one working capital bank, one minority lender and the CDR Cell. MC is a recommendatory body and does not have authorisation to accord any approval.

8.3 All outstanding matters should be brought by the Monitoring Institution to MC meetings for discussion / resolution so that at the EG meetings, a final view/ consensus may be arrived at expeditiously. The Lender who makes the reference to CDR system or any other Bank/Financial Institution as per the decision of CDR Empowered Group is called a Monitoring Institution. CDR Empowered Group can also consider appointment of transaction specific member as Monitoring Institution on a case-to-case basis.

8.4 MC shall report the progress of implementation of the approved Restructuring Scheme to the CDR Cell on a monthly basis. In case of any difficulty in implementation of the approved Restructuring Scheme, MC may approach the

CDR EG for necessary direction and/or guidance. In case of any dispute between the lenders, the MC and the Borrower in respect of implementation of the approved Restructuring Scheme, the decision of the CDR EG shall be final and binding on the parties to that dispute. The CDR Core Group may evolve appropriate procedure for monitoring of implementation of the Approved Restructuring Schemes.

8.5 Following operating practices are to be observed for smooth conduct of MC meetings.

(i) Till such time a restructuring package is sanctioned and fully implemented by all lenders, the MC meetings should be convened by the Monitoring Institution generally once in a month and thereafter, at least once every three months. At least one MC meeting every year should be held at the company's plant.

(ii) MC should monitor sanction, implementation and compliance of terms and conditions of the package in a time-bound manner by lenders / borrower-corporates/ promoters.

(iii) MC should monitor the progress and operational performance of the borrower-corporate as per CDR package.

(iv) MC should ensure completion of documentation such as MRA, TRA, security creation etc.

(v) MC should ensure reconciliation of various figures and work out recompense amount.

(vi) MC should discuss the outstanding issues between lenders / borrower-corporates/ promoters and suggest remedial steps for their resolution.

vii) MC should discuss and make recommendation on any other issue as may be brought up by lenders / CDR EG.

(viii) MC should make recommendations on various proposals presented by borrower-corporate including review of conditions / compliances / modifications.

(xi) MC should make recommendations on appointment of Concurrent Auditor/ special agencies/ valuers etc.

(x) The promoters/company officials and, if considered necessary, the Concurrent Auditors, Lenders' Engineers also should be invited to the MC meetings as special invitees.

(xi) Whenever larger issues such as those relating to sharing of charge, Working Capital tie-up, expansion/ modernization, etc are to be discussed, then all participating lenders to the borrower-corporate including consortium members should be invited to the MC meetings.

(xii) In cases where transfer / assignment of debt has been made by CDR members in favour of non-CDR entities viz. Asset Reconstruction Companies, NBFCs, investor funds etc, unless they have joined in CDR system on transaction specific basis, then such entities should also be invited to MC meetings. This would enable the existing members and such new entities to understand each other's requirements and would foster greater co-operation so essential for the success of the CDR packages.

(xiii) Any proposal for One Time Settlement, partial prepayment to CDR members/ non-CDR entities etc. should be referred by the borrower-corporate to MC for discussion and recommendation to CDR EG for approval. Only on receipt of CDR EG's approval, such settlements should be done.

(xiv) Minutes of the MC meetings should be circulated to all CDR members having exposure in the particular case. Besides, copies of the Minutes should also be forwarded to nodal officers of all such CDR members.

(xv) All expenses for conduct of MC meetings are to be borne by the borrower-corporate and stipulation to this effect should be included in CDR LOAs. In

respect of past cases, the Monitoring Institutions should advise the concerned borrower-corporates accordingly.

(xvi) CDR Cell can also convene Monitoring Committee meeting, where a meeting of Monitoring Committee is not held for more than three months and even after two-three reminders to Monitoring Institution, there is no prompt response and especially when there is any issue required to be discussed amongst the MC members/lenders. CDR Cell shall recover the expenses incurred in this regard from Monitoring Institution/company.

(xvii) Fee Structure

In order to compensate the Referring Institution (RI), Monitoring Institution (MI) and TRA Bank for the work done/ being done by them, RI might recover one-time fee for preparation of restructuring package, MI might recover annual fee for monitoring functions and TRA Bank might recover annual fee for operating the TRA, w.e.f. April 1, 2005, based on size of debt as under:

Sr. No	**Size of CDR debt involved** (Rs. crore)	**One-time Fee for RI for preparation of Restructuring Package** (Rs. lakh)	**Fee for MI** (Rs. lakh per annum)	**Fee for TRA Bank** (Rs. lakh per annum)
1.	Up to 100	5	2 (3)*	5
2.	101-500	15	5 (7.50)*	7.50
3.	501-1000	50	10 (15)**	10
4.	Above 1000	100	15 (22.50)**	20

* if there are more than 5 CDR lenders

** if there are more than 10 CDR lenders

(xviii) The CDR package could be treated as implemented by a lender if the following conditions are fulfilled:

- `The package was sanctioned by the lender(s) concerned and effect had been given in the books of account of the lender(s);
- Promoters' contribution to the extent envisaged in the package had been brought in; and
- MRA was executed binding the lender(s) and the company for compliance of all terms and conditions of the approved package.

9. SHARING OF SECURITIES

9.1 As regards sharing of securities between Term Lenders and Working Capital Lenders, the following approach should be adopted:

(i) WCTL and FITL shall be secured by pari passu charge on the fixed assets. However, *CDR* EG shall have flexibility in deciding on this aspect on a case-to-case basis and 100% agreement of all members would be required for variation, if any.

(ii) Sharing of securities with unsecured lenders may be considered by CDR EG on a case-to-case basis and should be restricted only to CDR members. Sharing in respect of cases where security has been stipulated but not created for want of NOC, etc. shall be considered by CDR EG.

(iii) Lenders having exclusive charge on a specific asset cannot be forced to share their charge on the said security with other lenders. This would, however, be subject to extant RBI policy in this regard. RBI's present policy in this regard is that the lender having an exclusive charge on any asset cannot be forced to share the said security with the other lenders on a pro rata basis, when the asset has not been acquired by using the funds lent by other lenders.

9.2 In order to facilitate expeditious creation of security including pooling of security, the following procedures shall be adopted:

(i) Independent Security Agency may be appointed.

(ii) No Objection Certificate (NOC) on behalf of CDR members, for creation of security, shall be issued by CDR Cell.

(iii) Other formalities necessary for creation of charge shall be completed by the lead financial institution and the lead bank.

(iv) Pledge Agreement, Deed of Hypothecation etc. to be obtained from the concerned borrowers in prescribed formats shall be communicated to the borrowers by the lead financial institution / lead bank.

(v) Assistance of Concurrent Auditor / Valuation Agency may be taken for the purpose of creation of security, and issues arising thereof may be sorted out by the Monitoring Committee on priority.

(vi) The entire process of creation of charge should be completed within 90 days from the date of Letter of Approval (LOA) issued by CDR Cell. Delay on the part of any lender shall attract provisions applicable to non-compliant lenders as per the ICA.

(vii) Creation of security being critical part of implementation of package, the same should normally be completed within three months from the date of LOA. In case the same is not completed/likely to be completed within the said period, Master Restructuring Agreement (MRA) should be executed with specific time line for completion. MRA should also contain a clause on lenders agreement regarding action to be taken for non-compliance.

(viii) While security creation is important for implementation of CDR packages, continuity of a viable CDR package also needs to be ensured by lenders, while insisting on sharing the security.

(ix) Security Trustee/agent can also be appointed for carrying out the task of security creation on behalf of lenders as per the approved CDR package. The other related conditions can also be stipulated to smoothen the process of appointment of security trustee/agent, such as 'Power of Attorney/letter of authority by the borrower to security agent/trustee for creation security in terms of approved CDR package', 'recovering all the charges for appointment of the security agent/trustee and fees for services rendered from the borrower' and 'to execute inter-se Agreement between the lenders and the company apart from security trustee Deed'.

10. CONVERSION OF DEBT / SACRIFICES INTO EQUITY

10.1 In order to discourage prolonged restructuring periods as also requests by the borrowers to extend the repayment periods further due to various reasons, a standard clause to enable the lenders to convert a part of the amount of principal outstanding beyond seven years from the date of restructuring into equity should be stipulated as under. This would also provide an opportunity for the lenders to share the upside.

(i) Lenders shall have the right to convert up to 20% of the loan outstanding (interest-bearing term loan, WCTL and FITL) beyond seven years into equity at any time after seven years from the date of Letter of Approval issued by CDR Cell.

(ii) Such conversion shall be as per the guidelines issued by Securities & Exchange Board of India (SEBI) from time-to-time/ or as per the applicable loan covenants.

(iii) As regards zero coupon FITL remaining outstanding beyond seven years, the conversion right shall be applicable to the entire amount.

(iv) In the event all lenders or any of the lenders exercise their right to sell the shares issued in terms of the conversion clause, the first right of refusal to buy back the shares shall lie with the promoters. In such case also the conversion would be as per SEBI guidelines or applicable loan covenants.

As CDR deals with only corporate debt, any change in the terms of existing preference share capital into other equity / equity related instruments will not normally affect the CDR package. EG may give approval for such proposals from time-to-time, and this may not be treated as rework of the existing package.

(v) Normally, there shall not be any restriction on sale of equity shares acquired by lenders through conversion option except point iv above.

10.2 Having regard to the merits of converting part of the dues/sacrifices into equity and general experience of share prices of CDR cases, banks might consider conversion into equity on a case-to-case basis adopting the following approach.

(i) Conversion into equity will not be compulsory and lenders will have the option to take suitable debt instruments in lieu of equity, keeping in view their internal policy guidelines.

(ii) Such instruments shall have zero/nominal interest, shall be subordinated in security vis-à-vis secured assistance, and repaid only after repayment of existing loans and other assistance as per the CDR package.

(iii) The zero/nominal interest rate on such instruments shall be reviewed after three years from the date of Letter of Approval issued by CDR Cell and thereafter once every three years having regard to the profitability of the company. In the event a decision is taken to charge higher rate of interest, borrowers may be allowed to prepay the zero/nominal coupon instrument, if they so desire.

(iv) Conversion of the defaulted amount or outstanding amount of long term zero/nominal interest instrument into equity shall be in terms of SEBI guidelines/loan covenants, as may be applicable.

11. ADDITIONAL FINANCE AND SHARING THEREOF

11.1 The RBI guidelines on CDR Mechanism make it mandatory that additional finance is shared pro-rata by all lenders in Category-I CDR cases. Keeping in view the fact that the issue of additional finance involves end-use of funds, sources of finance and priority status for Term Loan and Working Capital, the following stipulations are made:

(i) The sources of additional finance should be tied up on pro-rata (outstanding of CDR lenders) basis, net of promoters' contribution and debt which promoters commit to arrange from other lenders (both CDR and non-CDR).

(ii) As regards end-use of funds, only the essential expenditure should be covered which, inter-alia, includes capital expenditure on balancing equipment, marginal expansion / modernization, de-bottlenecking, meeting cash losses, VRS /Statutory payments, clearance of pressing creditors and long term margin for fresh WC etc. These are essential for achieving the projected cash flow for viability of a package.

(iii) As regards enhancement in WC limits, such quantum should be assessed and included in the package for the first year only. Thereafter, normal enhancement on commercial terms without CDR should be possible. As such enhancement is to be shared by all CDR lenders, it should preferably be given in the form of short-term loan. Subsequently, when the operations stabilize, the company might tie up regular WC limits and replace / repay such short-term loans. In case consortium is willing to consider enhancement at the time of the package itself then such portion could be kept outside CDR. Since sharing of additional finance is mandatory only in respect of Category-I CDR cases, sharing of such additional finance would continue to be voluntary in respect of Category-II CDR cases.

(iv) Assessment of Need Based Working Capital and factoring of the same in Final Restructuring Package: The guiding principles for assessing and factoring of Need Based Working Capital (WC) in the Final Restructuring Package are as under:

(a) At the time of admission of the Flash Report, the company should submit CMA data to lead working capital banker (or the banker having highest exposure in WC limits in case of multiple banking arrangement) for expediting the assessment of WC limits before preparation of the Final Report.

(b) The assessment of WC should not be delayed on account of the non-availability of the latest audited financials. If latest audited statements are not available, WC should be based on provisional/unaudited financials.

(c) WC limits so assessed should be incorporated in the Final Report and should extended by all the CDR lenders in proportion to their outstanding as on the date of reference to CDR mechanism.

(d) In case of multiple banking arrangements, it should be mandatory to form consortium at the time of CDR stage itself.

(e) The lender should sanction their share of WC limits without waiting for sanction of the share of WC limits by other lenders.

(f) In respect of release of WC limits, a definite time frame should be decided for tie-up of funds by all the lenders as per package.

(g) In case enhancement in WC limits by a lender is not possible on account of prudential exposure norms, an alternate tie-up arrangement should be decided at the time of Final Report itself.

(h) Where asset classification is subsequently upgraded on account of satisfactory performance, the lead WC lender (or individual WC lenders under multiple banking arrangements) should reassess/release the WC requirement (sharing of the same being decided by WC consortium/CDR

EG) within a period of three months after the up-gradation of the account. The lender may consider sanction of enhanced WC limits even at market related rate.

(i) The other Commercial Banks, which had extended only Term Loans, may be persuaded to share enhanced WC requirement, to the extent possible. Alternatively, they may be persuaded to provide short-term loan/corporate loan to shore up Networking Capital.

(j) The WC lenders while sanctioning their share of WC limits should not add any conditions beyond the conditions deliberated and approved by CDR EG.

(k) On carving out of WCTL, the WC limits should not be restored to earlier limits, but should be sanctioned/released as per the fresh assessment of WC.

It may be noted that in case there arises any conflict between these guiding principles and RBI Guidelines, RBI guidelines shall prevail.

(v) Priority should be given to additional finance provider, both the TL/WCTL over the existing lenders in TRA as per CDR policy on priority. If additional finance involves enhancement in regular WC limits, the same could be given in the form of short term loan (STL) by institutions / lenders such as IFCI, IDFC, etc., which are not in a position to offer regular WC limits due to the nature of their business. However, redemption of such STL would be done by the company by arranging for replacement finance.

(vi) Security support to WCTL / FITL of banks by way of per-passu first charge on fixed assets should be made available as per current CDR guidelines. However, EG may be given flexibility on deciding of the same on case-to-case basis with 100% agreement of all members for variation, if any.

(vii) In case of additional exposure in the form of non-fund based facilities as enhancement for the first year, the same would be shared by all CDR lenders involved in the package, on pro-rata or risk and revenue sharing basis.

(viii) In Category-I CDR cases, the lender, (outside the minimum 75% of value and 60% in number) for any internal reason, does not wish to commit additional finance, then such creditor can either (a) arrange for its share of additional finance, to be provided by a new or existing lender, or (b) agree to the deferment of the first year's interest due to it after the CDR package becomes effective. The first year's deferred interest as mentioned above, without compounding, will be payable with the last installment of the principal due to the creditor.

11.2 Actual Working capital (WC) irregularity as on Cut-off date only should be carved out by the respective banks into Working Capital Term Loan (WCTL) and not on pro-rata basis. Individual aberration pertaining to WC irregularity subsequent to Cut-off date, would be dealt with by the individual bank separately. In respect of WC irregularity due to LC devolvement on account of specific reasons, CDR Empowered would take a view based on the extant guidelines.

11.3 The approach for priority for additional finance under CDR would be as under:

(i) Superior status will be accorded to any fresh assistance extended to the corporate as part of the package towards minimum required capital expenditure, pressing creditors, VRS, etc.

(ii) Existing term loans, WCTL and FITL sharing block assets will have co-terminus repayment schedule.

(iii) In the case of WCTL and FITL (past & future) of working capital, priority claim will be limited to the extent of fresh working capital exposure envisaged at the time of approval of the package. In case fresh sanction/ release of WC is more than WCTL component then priority will be limited to WCTL/ FITL component.

(iv) Unutilized sanction of working capital will not qualify for preferential claim.

(v) Any enhancement in WC pursuant to CDR package as a part of need-based assessment will be considered as additional finance and enjoy priority as mentioned above. Further, WC servicing will have priority in TRA as per the waterfall mechanism in case pooling of fixed/ current assets is not envisaged. Wherever such pooling is involved, the cash flow will be shared equitably.

(vi) There have been cases of expansion/ modernization and plans of future capital expenditure not envisaged in the original package. These plans are normally in the nature of improving viability, stabilizing the cash flow, making the corporate more competitive and overall reducing the risk for lenders. Some such schemes involve application of existing cash accruals as margin for capital expenditure with the approval of EG. Whenever Category-II CDR cases, where sharing of additional assistance is not mandatory, come up with expansion plans then negotiated priority in cash flow in favour of new lenders may be justifiable to attract them. EG may, therefore, consider giving priority on a case-to-case basis and, if justified, on the basis of its need for continuing viability of the package and improving possibility of acceleration of payments, etc. The EG may also take into consideration the need for attracting new set of lenders, specially for Category- II CDR cases.

(vii) Replacement financing raised by companies for OTS with existing lenders would qualify the new lenders to step in the shoes of the existing lenders. Accordingly, if original lenders' debt did not have priority status then the new lenders also will not get it. EG may, therefore, accord priority status in cash flow in different ways in different circumstances specially where dealing with BIFR/ doubtful cases or cases where fresh investment by strategic / stressed funds is envisaged.

12. PAYMENT PARITY

12.1 The extent of recovery of dues from the borrowers before the date of reference to CDR has been a contentious issue. While lenders who are not able to recover as much as others, generally demand that the package be prepared in such a way that parity was brought about with such lenders who had recovered higher dues before the date of reference to CDR, the lenders who had recovered higher dues, feel that this would act as a disincentive for efficient recoveries by some lenders. Taking into account the fact that it would not be practicable to re-open the issue of past recoveries made by some lenders and to bring all lenders at par before restructuring, any disproportionate recoveries after the date of reference only shall be corrected in such a way that all the lenders are at par.

13. TRA: TREATMENT FOR INTEREST ON WC AND TERM LOAN (TL / WCTL / FITL) – TREATMENT IN TRA

13.1 Extent of recovery of dues from the cash flow in the TRA has been an issue between the lenders. Interest on the working capital is paid first as the same is treated as part of operational expenses. In normal times, both WC lenders and term lenders get their interest payments. However, in case of shortfall in cash flow, the term lenders do not get any payment. In order to take care of such concerns, the following approach should be adopted:

(i) In all existing and future cases, where pooling of security covering TL / WCTL / FITL and entire WC (FB / NFB limits) is being implemented / will be implemented and security will be shared pari passu on all fixed assets and current assets, then cash flow shall be shared equitably for payment of interest on WC and TL/WCTL/FITL.

(ii) In all existing and future cases, where such pooling of security is not envisaged (i.e. WC- FB / NFB- is secured by current assets and TL / WCTL / FITL is secured by fixed assets separately), the present system i.e. priority for payment of interest on WC, followed by interest on TL / WCTL / FITL in TRA waterfall, shall continue.

14 PRUDENTIAL & ACCOUNTING ISSUES

14.1 As per RBI guidelines, the regulatory concession in asset classification and provisioning will be available if there is compliance of six conditions stipulated in RBI guidelines viz.

i. The dues to the bank are 'fully secured'. The condition of being fully secured by tangible security will not be applicable in the infrastructure projects, provided the cash flows generated from these projects are adequate for repayment of advance, the financing banks have in place an appropriate mechanism to escrow the cash flows, and also have a clear and legal first claim on these cash flows.

Fully secured: When the amounts due to a bank (present value of principal and interest receivable as per restructured loan terms) are fully covered by the value of security, duly charged in its favour in respect of those dues, the bank's dues are considered to be fully secured. While assessing the realisable value of security, primary as well as collateral securities would be reckoned, provided such securities are tangible securities and are not in intangible form like guarantee etc., of the promoter / others. However, for this purpose the bank guarantees, State Government Guarantees and Central Government Guarantees will be treated on par with tangible security.

ii. The unit becomes viable in 10 years, if it is engaged in infrastructure activities and in 7 years in the case of other units.

iii. The repayment period of the restructured advance including moratorium period, if any, doesn't not exceed 15 years in the case of infrastructure advances and 10 years in the case of other advances.

iv. Promoter's sacrifice and additional funds brought by them should be minimum of 15% of the banks' sacrifice.

v. Personal Guarantee is offered by the promoter except when the unit is affected by the external factors pertaining to the economy and industry,

vi. The restructuring under consideration is not a repeated restructuring.

Repeatedly restructured accounts: When a bank restructures an account a second (or more) time(s), the account will be considered as a 'repeatedly restructured account'. However, if the second restructuring takes place after the period upto which the concessions were extended under the terms of the first restructuring, that account shall not be reckoned as a 'repeatedly restructured account'.

14.2 Promoters' sacrifice would be governed by the following guiding principles:

(i) Sacrifices of lenders, as also promoters should be computed from the cut-off date in the package.

(ii) Promoters' sacrifices should be 15% of sacrifices of CDR lenders only.

(iii) 15% of waivers made by the lenders should be brought up-front by the promoters.

(iv) 15% of economic sacrifices of lenders should also preferably be brought by the promoters up-front and in any case not later than one year. However, under special circumstances, CDR EG may give time up to three years. If the promoters bring the funds over a period exceeding one year then NPV as on date should be taken for reckoning 15% of sacrifices of lenders. Rate of discounting should be the same as that applied for calculating NPV of lenders' sacrifices.

(v) Reduction in value of equity from the face value of equity capital owing to de-rating would be treated as sacrifice.

(vi) Dilution of equity shareholding will not be treated as sacrifice.

(vii) Promoters' contribution could be also by way of unsecured loans arranged by promoters. However, such unsecured loans should be subordinated to CDR lenders' dues for payment of interest and repayment of principal. Rate of interest and other terms on such unsecured loans should be approved by CDR EG.

(viii) Conversion of unsecured loans from the promoters/ promoting companies into equity should not normally be considered as sacrifice because of difference in nature of instrument and possibility of equity appreciation in future. EG may, however, review this aspect keeping in view RBI guidelines on valuation.

14.3 Personal Guarantee should cover the entire debt under CDR. However, EG shall negotiate on case-to-case basis the terms with the promoters regarding quantum, period, events of default and release mechanism.

15. PREPAYMENT OF RESTRUCTURED DEBT AND EXIT FROM THE CDR SYSTEM

15.1 Some of the corporates whose liabilities are restructured under the CDR Mechanism, may turn around faster than envisaged and may be in a position to contract loans from outside the existing CDR lenders at lower rates and may be in a position to prepay the existing debts in part or full. The following criteria should, therefore, be adopted for prepayment under CDR:

(i) Prepayment of debt in part or full shall be on the basis of mutual agreement and subject to approval of CDR EG.

(ii) In case of part-prepayment, the same shall be made to all lenders and in respect of all loans (including WCTL, FITL) on pro-rata basis, irrespective of the interest rate.

(iii) Prepayment in any other manner, charging of prepayment premium and invoking of recompense clause shall be subject to approval of the CDR EG.

15.2 For all existing cases (wherever permitted under the package/loan covenants) and all new cases under CDR, prepayment premium should be stipulated /charged based on the following criteria:

(i) Prepayment premium should be a minimum of 1% and maximum of 2% of the amount prepaid.

(ii) Prepayment premium should not be charged if (a) there is OTS / Negotiated Settlement (NS); or (b) it is at the instance of lenders pursuant to acceleration clause (unless LOA specifically stipulates it).

16. RECOMPENSE CLAUSE

16.1 Ordinarily, every package under the CDR involves waivers and scarifies on the part of lenders. It is also the practice under CDR to stipulate a standard Recompense clause in the restructuring package. The guidelines issued by RBI clearly envisage the right of recompense based on the certain performance criteria.

For the purpose of the guidelines, 'Recompense' means recouping, whether fully or partially, the sacrifice made by the lenders as also waivers/concessions/relieves given by the CDR Lenders to the borrower pursuant to the approved CDR package.

16.2 **Elements eligible in computation of recompense:**

The following items of waivers and sacrifices pursuant to the restructuring package will be eligible for computation of recompense amount:

16.2.1 Principal Amount: The Amount of waiver granted to a borrower in the repayment of the principal amount to a lender.

16.2.2 Interest: Any reduction in the applicable rate of interest payable by the borrower to the lender. Interest reduction will be reckoned by the difference in the rate of interest based on the average BPLR plus the appropriate term premium and credit risk premium for the concerned Borrower of four major lenders (all, if the number of lenders is less than four) prevailing as at the end of each financial year (including broken period, if any) after the cut off date or the document rate, whichever is lower, AND the interest rate as per the restructuring package. The computation of recompense on interest sacrifice would be on compounding basis.

16.2.3 Commission: Any reduction in the commission or other charges/ fees charged to the borrower.

16.2.4 Debentures: Debentures will include all kinds of debentures that are restructured under the CDR package. The waiver or sacrifice in the rate of interest including extension of time for redemption of the instruments shall be taken into account.

16.2.5 Preference Shares: Any reduction in the rate of dividend or postponement in redemption.

16.2.6 New loans provided under the package: A new loan (term loan or working capital facility) extended to the borrower, provided it is advanced at a rate of interest, which is concessional (i.e. below the applicable rate of interest on advances to the borrower).

16.3 Elements ineligible in computation of recompense:

The following items shall not be taken into computation of recompense amount:

16.3.1 One-time Settlement (OTS) / Negotiated Settlement: The lender opting for One-Time Settlement or Negotiated Settlement under the package

16.3.2 Conversion into equity or equity related instruments: If any portion of the loan or facility was converted into equity or equity related instruments, the converted portion shall not be taken into account for computation of the recompense amount. However, in this case, from the cut off date till conversion takes place and the shares are allotted, the lender can claim recompense. If any other dues are converted into equity, the non-convertible portion (koka Portion) shall not be eligible for recompense.

16.3.3 Sacrifices and waivers prior to the cut off date: Any loss on account of sacrifice or waiver suffered by any lender prior to the cut off date (unless the same is pursuant to the restructuring package). *(As per Circular dated October 30th 2007 CDR 852/2007-08, it may be noted that the revised guidelines on Recompense Policy will be applicable to the waivers/sacrifices made by the lenders pursuant to the restructuring package approved under CDR system. In respect of waivers/sacrifices made by the lenders*

prior to the approval of restructuring package/cut off date and if the same is not covered under the restructuring package, the lenders may claim recompense from the lenders outside the purview of CDR system. However it may also be noted that in case the borrower has settled the recompense as per the revised guidelines and complied with the conditions required for exit of the case from CDR system, the lenders cannot compel/insist on continuance of the case under CDR mechanism on the plea that recompense for its past waivers/sacrifices prior to approval of the package /cut off date has not been settled by the borrower. In that case, the lender can individually take up with borrower for settlement of its claim for recompense for it's past waivers/sacrifices outside CDR system.)

16.3.4 Additional finance: Additional finance (Term Loan/ Working Capital) provided by lenders otherwise than under the package.

16.3.5 Refinancing / Rollover Lenders: The amount of fresh funds advanced by the lenders to pay off the existing loans. In case of roll over, the lender would be eligible to recover recompense upto the date of refinancing or roll over of such debt.

16.3.6 Financing Capex: Any fresh funds advanced by any lender for meeting capital expenditure not envisaged under the CDR package

16.3.7 Penal interest and Liquidated damages: Waiver of penal interest and liquidated damages by any lender or waivers and sacrifices in respect of them on account of conversion into any instrument or otherwise.

16.3.8 Foreign Currency Loan: The converted portion of foreign currency loan in case any CDR lender converts Rupee Term Loan into any foreign currency Loan pursuant to CDR package.

16.3.9 Lending at market rates: Any existing loan/advance or fresh loan/advance provided to the borrower at market rates, Market rate for the purposes of this sub-paragraph means the rate acceptable to CDR EG at which the borrower is in a position to raise resources for its requirements.

16.4 Trigger events for payment of Recompense Clause:

The payment of recompense amount gets triggered in the following circumstances:

(A) Mandatory:

16.4.1 Exit: The exit of the borrower from the CDR mechanism either voluntarily or at the end of the restructuring period.

16.4.2 Performance: If the performance of the borrower in any whole financial year is in excess of twenty-five percent of the EBIDTA as per CDR projections. The surplus amount shall be utilized for payment of recompense amount or if inadequate for distribution to all lenders, the same shall be kept separately in Recompense Reserve Account in the Trust and Retention Account or any other interest bearing account till distribution.

16.4.3 Declaration of dividend: If the borrower declares dividend in any financial year in excess of ten percent on annualised basis. The payment of recompense amount shall be equal to the dividend rate multiplied by total recompense payable or the surplus available with the borrower, which ever is lower. The recompense amount shall be payable prior to distribution of dividend.

B) Optional:

16.4.4 Capex: If the borrower desires to incur any capital expenditure other than modernization / expansion necessary for sustained viability of the unit out of borrowed funds (other than internal accruals /equity /preference capital) not envisaged in the CDR package.

C) Exceptional:

16.4.5 BIFR Cases: In respect of BIFR cases under CDR, the recompense amount shall be collected only after the year in which the net worth becomes positive.

16.5 Methodology:

16.5.1 On the occurrence of any of the trigger events, the referring/monitoring institution shall convene a meeting of the Monitoring Committee to determine the quantum of the recompense amount payable by the borrower till the trigger date. The Monitoring Committee shall also determine the amount available with the borrower for payment of the recompense, which shall be based on the performance criteria.

The lenders collecting the recompense amount upon happening of the trigger events shall not be eligible to claim or recover any further amount from the borrower by way of recompense up to that date. In that event, the lender shall be entitled to claim recompense subsequent to the trigger event till final exit or expiry of restructuring period.

16.5.2 In case of voluntary exit from CDR, it may be difficult to ascertain the future performance of the borrower. In these cases it is also not prudent to retain the right to collect the recompense amount till the date of expiry of the restructuring period. In such cases, the borrower shall pay the recompense amount determined as per these guidelines till the date of exit disregarding the performance criteria i.e. full recompense amount.

16.5.3 CDR EG shall decide the percentage of recompense amount and time frame within which the recompense amount becomes payable by the borrower.

16.5.4 If the borrower delays the payment of recompense amount beyond the time frame decided by CDR EG, it shall be liable to pay interest at the BPLR of the lender concerned.

16.5.5 Once the recompense amount to be collected by the banks/FIs is conveyed to the borrower no change shall be made before its collection.

16.5.6 Lenders shall have a right to defer the payment of the recompense to a future date, but not beyond the exit/ restructuring period.

16.6 Savings

16.6.1 These guidelines supercede the previous guidelines issued on this subject.

16.6.2 The cases settled in the past on the extant policy shall not be reopened.

16.6.3 These guidelines shall apply to all cases pending for determination of recompense amount.

16.7 Provisioning Requirements for Future Economic Sacrifice

In case of Sub-standard/Doubtful Assets restructured under CDR mechanism, the lenders need to maintain the provisions in their books for the future economic sacrifices. The provision requirement for future economic sacrifices based as under:

a) A Bank, having 100 % provision against a facility, need not make any additional provision in lieu of sacrifice in the element of interest after restructuring.

b) If a bank is holding less than 100 % provision against a facility, the maximum additional portion in lieu of the interest sacrifice after restructuring should be restricted to the difference between the outstanding amount and the existing provisions held.

After second restructuring of a facility, the provisions required to be made both as per the revised asset classification of the facility and for the sacrifice in the element of interest consequent upon second restructuring. However, in these cases also, the total provision would be restricted to 100% of outstanding amount**.**

17. OTS / ASSIGNMENT OF DEBTS

17.1 One Time Settlements (OTS) / Negotiated Settlements (NS)

17.1.1 OTS / NS generally involve an element of waivers / scarifies for the lenders in respect of their outstanding debt and basically means offers given by the borrowers based on certain resource-raising programme including equity issue, strategic investment, venture capital, international offering etc.

17.1.2 Such OTS should preferably be completed within three years' time without affecting other CDR payments.

17.1.3 17.1.3 EG may allow use of part of internal accruals for OTS on case-to-case basis if such terms are attractive from other lenders' point of view specially with respect to asset coverage, improving margin for WC, improved rating due to better balance sheet etc.

17.1.4 OTS for WC Banks should be available for both WC & TL. However, WC banks, if they so desire, might continue with WC facility. On completion of OTS, existing security (incl. collateral security) charged to the outgoing CDR lenders, as also non-CDR lenders should be given to the remaining CDR lenders. In such cases the company may request for release of collateral which might be considered by CDR EG based on conduct of the account / compliances of CDR package etc. and the company should not transfer / assign / encumber them without the prior approval of CDR EG.

17.1.5 As regards any security available with outgoing non-CDR lenders, company should undertake that pursuant to OTS payment such security would first be offered to CDR lenders and on completion of OTS a specific request to EG could be made for its release.

17.1.6 There have been proposals where replacement financing is being arranged from NBFCs, venture capital or External Commercial Borrowings. In such cases, the new lenders will step into the shoes of the outgoing lenders and, therefore,

would get same security structure and rights and obligations available under CDR package. Such new lenders would get priority to the extent the debt so arranged is utilized to meet additional fund requirement as per the CDR package. However, the remaining debt arranged for replacing the existing lenders may not be given priority. In cases where debt level in a borrower account is very high, EG on a case-to-case basis, may approve limited priority to such new lender provided replacement debt is on better terms or there are other considerations such as settlement / legal issues with non-CDR lenders, etc. As far as possible such priority should be avoided.

17.1.7 OTS payments should be made out of TRA.

17.1.8 CDR EG should be informed of the terms of OTS to CDR members as also non-CDR entities.

17.1.9 A lender shall not be compelled to accept OTS on the basis of a super-majority decision.

17.1.10 During OTS payment, the case would compulsorily remain under CDR and security position would not be disturbed. This would be subject to eligibility criteria under CDR being complied and if exit of case is not envisaged.

17.1.11 As every lender under CDR has a right to exit or accept OTS as per the stipulated guidelines, such right need not be separately mentioned in LOA issued by CDR Cell and any such proposal shall be approved by EG on merits.

17.1.12 On the basis of intended OTS or proposed exit from CDR, no lender should withhold sanction of the approved CDR package and sharing of security, including pooling of security, if it is part of original package. In case the incoming new lender is not comfortable then Inter-Lender Agreement covering critical areas such as management control, invocation of pledge of shares, shareholding pattern and action in case of default need to be finalized. This is particularly relevant for clear understanding regarding co-existence of the two sets of lenders for the success of the package.

17.2 ASSIGNMENT OF DEBT

17.2.1 Assignment of debt means transfer of debt at the option of individual lenders.

17.2.2 Lender may transfer or assign, in part or the whole of its outstanding Financial Assistance. However, if any Reference is made or any Restructuring Scheme is under preparation and / or implementation, such transfer or assignment shall be subject to following:

(a) The Lender (Transferor) giving a prior notice to the CDR Cell of the proposed transfer.

(b) The Transferor informing the intended transferee in writing of the current status of the Restructuring Scheme including any previously decided issues not subject to renegotiation. Transfer should take place before reference /admission of the case in CDR or only after four months from the date of issuance of LOA by CDR Cell i.e. after implementation of the package.

(c) On assignment, the transferee needs to give an undertaking to abide by the package. The transferee would get the same security / rights under the package as were available to the transferor / assignor.

(d) In all cases, TRA should be executed in a time-bound manner with transferee as per CDR package.

(e) In case of non-CDR members who are eligible but not joined CDR system so far should get themselves admitted in the CDR System and issue a letter of accession to this Agreement i.e. to execute transaction specific ICA or join the system in the form Part A or Part B provided in Schedule-II, as may be required.

In case the assignment is in favor of a non-CDR member who at present is not eligible to become a member of CDR. In addition to the clause (a) to (d) as stated in Para 17.2.2, the following would be applicable:

(i) Any lender can assign/transfer debt to any entity who is, at present, not eligible to join CDR.

(ii) It would be preferable if the incoming new entity executes MRA as well, if applicable.

18. REVOCATION OF RESTRUCTURING SCHEME / LEGAL ACTION FOR RECOVERY

18.1 Any CDR lender before initiating action for revocation of restructuring scheme / legal action for recovery in respect of CDR cases must inform the CDR EG about the proposed action and if there is no response from the CDR EG within a period of 60 days or if the limitation period is about to expire (whichever is earlier), the concerned lender may initiate action independently. However, for the sake of good order, the concerned lender must give adequate notice to other participating lenders as well as CDR Cell indicating the likely date of expiry of the limitation period.

19. RE-WORKOUT / RE-ENTRY IN CDR

19.1 As per the revised RBI guidelines, regulatory benefits would be available to CDR cases only if restructuring is done under CDR for the first time. RBI has advised the following policy guidelines applicable on second restructuring/re-workout

19.2 Interest rate reduction

19.2.1 Reduction in rate of interest should be treated as second restructuring for the purpose of application of prudential norms, even if it is occasioned by decline in the cash flows of the borrowing unit done to some policy amendment made by Government.

19.2.2 Realignment of interest rates in line with current interest rate regime and market forces in cases of improved past performance would not be treated as second restructuring, provided, it is objectively accounted for and reflected in the improved rating of the borrower indicated as under:

a) Where Interest rate fixed on the restructured loan is lined to BPLR:

In case of restructured accounts where interest is linked to BPLR, original difference between the risk premium justified by the rating and the premium actually charged may be maintained where reduction of rate is warranted. For instance, if the rate justified by the risk rating was BPLR + 5% and the borrower was charged BPLR + 2% after first restructuring, the concession given is 3%. Now suppose the improvement in prospects of the industry to which the unit belongs improves the credit score of the borrower and the rating improves with the result that the risk premium justified by the rating is reduced to 4%. In that case, the bank may lower the rate to BPLR + 1%, to maintain the level of concession given by the bank/pass on the benefit of industry wide reduction in the rate of interest to the borrower.

However, to qualify for above treatment, reduction in the rate should be effected through revision in rating of the borrower as suggested above, not independent of it as this would be necessary to distinguish the reduction justified by industry wide reduction in the rate of interest from any arbitrary reduction in the nature of further concession.

b) Where rate of interest on the restructured loan is fixed:

In cases where rate of interest on restructured accounts is fixed, the benefit of reduction in rate of interest without attracting provisions of restructuring can be passed on to the borrower by notionally converting the fixed rate being charged as per first restructuring into BPLR + risk premium and applying the framework suggested above.

19.2.3 Re- schedulement of debt

All cases involving reschedulement / rephasement should be treated as second restructuring, if such reschedulement / rephasement results in reduction in the present value of the loan (principal + interest cash flows), irrespective of whether the terminal date is postponed or not. If the modification does not result in reduction in the present value of principal + interest cash flows, it need not be treated as a second restructuring, provided the advance continues to be fully secured.

19.2.4 Other variations

Any changes in the terms of restructuring which do not result in reduction in the present value of the loan (principal plus interest cash flows) or the advance being rendered partially / fully unsecured need not be treated as second restructuring.

19.3 Considering the downturn in sugar industry, some policy guidelines of second restructuring are relaxed by RBI. It is advised that the restructuring of fresh

credit facilities granted to a borrower would not be considered "repeated restructuring" in the following circumstances:

a) Where a debt restructured under CDR mechanism in the past stands fully repaid/settled, as per the terms of restructuring under CDR mechanism;
b) Where the debt restructured earlier under CDR mechanism is not the subject matter of second or subsequent restructuring and is also being duly serviced as per the terms of the restructuring package.

20. EXIT OF CASES FROM CDR SYSTEM

20.1 As per the current policy, only after the entire CDR debt is either refinanced or replaced by the existing / new lenders on fresh terms and the payment of recompense and prepayment premium is made/ settled as per CDR guidelines, the borrowers can exit from CDR. Keeping in the view the considerable interest evinced by stressed funds/ private equity funds to invest in CDR companies, settle the lenders (fully / partly), get the company exited from CDR and benefit from the upside, appropriate guidelines for the same have been evolved. The following criteria and procedure are required to be followed for exit of cases from the CDR System: -

20.2 **Criteria for Exit**

20.2.1 The case may exit from CDR if the following criteria are met:

(i) Package is fully implemented by lenders and security creation, compliance by promoters / borrower-corporate in terms of bringing promoters' contribution, issuance of equity to lenders, derating, necessary BIFR / statutory approvals and tie-up of additional finance / WC, as per the package, have taken place.

(ii) Operational performance of borrower-corporate is better than or is in line with EBIDTA projections under CDR for two consecutive years.

(iii) Payment track record of borrower-corporate is generally regular, as per CDR package for two consecutive years.

(iv) Minimum period of three years from the date of LOA is over.

(v) Borrower-corporate seeking exit from CDR has agreed to make payment of recompense amount as well as prepayment premium as per CDR guidelines or has settled payment terms with individual lenders.

(vi) In case the above parameters are met, the quantum of repayment would not be the criteria for exit.

However, in case 100% of the lenders decide in favour of exit of a particular case, the above criteria would not apply.

CDR EG may relax the criteria of consecutive two years' performance mentioned at (ii) and (iii) above, as also minimum period of three years if the CDR lenders so decide.

20.3 **Procedure for Exit**

The procedure for consideration of exit would be as under:

(i) The company may exit from CDR at the end of five years after a performance review.

(ii) Lenders/ borrowers may make the reference for exit after three years in line with CDR guidelines.

(iii) Prepayment premium as per CDR guidelines would be applicable in all cases, whether prepayment is made in cash or it was by way of refinancing / roll–over by other lenders or some lenders.

(iv) On full repayment / refinance, the company may exit at any time, subject to crystallization / payment of recompense amount / prepayment premium as per CDR guidelines.

(v) At the time of exit from CDR, prepayment premium as per CDR guidelines, corresponding to the quantum of CDR debt being prepaid in cash should be collected.

21. DECISION PROCESS IN CDR SYSTEM

21.1 A decision of the CDR Empowered Group relating to prima facie feasibility and/or final approval of a Restructuring Scheme shall be taken by a Super-Majority Vote at a duly convened meeting, after giving reasonable notice, to the Lenders and to the Eligible Borrower.

21.2 In case any change/alteration/modification to the Approved Restructuring Scheme is required, the Referring Lender/CDR Cell shall refer the same to the CDR Empowered Group and the decision of the CDR Empowered Group relating to such changes/alteration/modification shall be taken by a Super-Majority Vote at a duly convened meeting, after giving reasonable notice, to the Lenders and to the Eligible Borrower. Provided that in case of one time settlement proposals, decision taken on the basis of Super-Majority Vote shall not compel the Lender which had not agreed to the proposal.

21.3 The Standing Members in the CDR Empowered Group will not have any voting rights in respect of the matter specified in section 21.1 or section 21.2 unless the institution they represent is also a Lender to the Eligible Borrower.

[Super-majority Vote as above mentioned is defined as follows:

"Super-Majority Vote" shall mean votes cast in favour of a proposal by not less than sixty percent (60%) of number of Lenders and holding not less than seventy-five percent (75%) of the aggregate Principal Outstanding Financial Assistance.]

- Lenders not having mandate at the time of CDR EG meeting could furnish their stand shortly after the meeting but not later than the next meeting and their stand if received by then should be taken into account for voting, and
- Lenders not furnishing their stand before the next CDR EG meeting should be excluded from voting.
- In certain matters like right of recompense, pre-payment premium, sharing of securities etc. (for original CDR debts) in which only the original CDR lenders' interests were required to be protected, the exposure of new lenders in the account should not be included for counting 75% by value and 60% by number of members for super majority vote, since after considering the voting power of new lender(s), the decisions in the above matters would get affected. In all other matters, exposure of all the CDR lenders, as at the end of previous quarter, should be taken for the purpose of voting.

21.4 Communication of Decision of CDR Empowered Group (EG):

To avoid delay in communication of decision of CDR Empowered Group after approval of restructuring package, following procedure is considered for the issuance of Letter of Approval (LOA):

i. CDR cell shall issue LOA/convey the decision of CDR EG to the lenders on approval of the minutes of CDR EG by the Chairman of CDR EG, with a statement that LOA/decision of CDR EG is subject to confirmation of minutes at the ensuing CDR EG meeting and any modification taken place at the time of confirmation minutes would be advised separately.

ii. On confirmation of minutes of CDR EG, the amendments, if any, in the LOA/decision of CDR EG would be conveyed to the lenders and final LOA/letter conveying decision of CDR EG would be issued to the lenders and the company.

iii. In case LOA/decision of CDR EG consists of refinancing of debt/settlement from the funds of private strategic investors, the date of issuance of final LOA/decision of CDR EG to the company after confirmation of minutes of CDR EG, may be treated as the reference date for the purpose of outer time limit for refinancing/settlement of debt as stipulated in CDR EG decision.

21.5 In some cases, implementation of debt restructuring package and compliance of terms and conditions under the package like creation of security, opening of TRA account etc are delayed on account of large number of lenders, especially lenders having exposure less than 2% or so. Generally such lenders are either absent or do not have mandate at CDR EG meeting which delays in arriving at decisions due to the no availability of super majority 60% by number. Where the total number of lenders is more than ten, settlement/payment of dues to the lenders having small exposures less than 2% may be considered, if the cash flows of the company permits the same and or if funds could be arranged by the company for the purpose. By reducing the number of lenders, implementation of the package

could be smoother and compliances of terms and conditions including security creation could be expedited.

21.6 The transaction-specific members are also permitted to attend that part of CDR Empowered meeting pertaining to its case and also providing agenda/minutes of CDR Empowered Group Meetings pertaining to the case specific.

Annexure – I

FINANCIAL VIABILITY PARAMETERS

(To be included in Final Restructuring Proposals)

1. Return on Capital Employed

1.1 The Return on Capital Employed (ROCE) reflects the earning capacity of assets deployed. ROCE is expressed as a percentage of total earnings (return) net of depreciation to the total capital employed. 'Total Earnings' is PBT plus total interest plus lease rentals.

1.2 'Capital Employed' is the aggregate of net fixed assets excluding capital work in progress, lease rentals payable, investments, and total current assets less creditors and provisions.

1.3 Normally, intangible assets are excluded for calculation of ROCE. Having regard to the fact that stressed standard assets as well as sub-standard and doubtful assets are considered for restructuring, it may be possible that fixed assets in such cases might be depreciated to a large extent due to accounting practices although the facilities might not have been utilized. Similarly, interest on loans accrued and fallen due but not paid, might have been used to finance cash losses. In other words, the fund is reinvested in the project. These normally get reflected in accumulated loss, which is treated as intangible asset. Therefore, while working out the total capital employed, suitable adjustment may be made for unabsorbed depreciation and unserviced interest to lenders.

1.4 A minimum ROCE equivalent to 5 year G-Sec *plus* 2% may be considered as adequate.

2. Debt Service Coverage Ratio

2.1 The Debt Service Coverage Ratio (DSCR) represents the debt servicing capability of the borrower. In the normal course, DSCR is the ratio of gross cash available to meet the debt-servicing requirement. Gross cash available is the sum of gross cash accrual plus interest on term debt plus lease rentals. Debt servicing requirement is sum of repayment of term debt, interest on term debt plus lease rent payable.

2.2 Gross cash accrual may not be considered as a true representation of available cash flow to service debt as gross cash accrual does not take into account the actual cash available after netting out the variation in stocks/inventory position. [It has to be acknowledged that 'interest and principal cannot be serviced out of earnings, which is an accounting concept'.] Debt servicing has to be made in cash. Many transactions and accounting entries can affect earnings, but not cash. Therefore, for calculation of DSCR, actual cash available with the borrower should be taken into consideration and accordingly the DSCR calculation for restructured assets should be as under:

$$\text{DSCR} = \frac{\text{ACF + total interest excluding interest on WCL + lease rentals}}{\text{Repayment of loans + interest excluding interest on WCL + lease rentals}}$$

Available Cash Flow (ACF) will be net cash position during the year (total gross profit plus outside funds if any available less total requirement including build-up of inventory/debtor / normal capital expenditure etc.) repayment of public deposits should be included for calculation of DSCR.

2.3 The adjusted Debt Service Coverage Ratio (DSCR) should be >1.25 within the 7 years period in which the unit should become viable and on year-to-year basis DSCR to be above 1. The normal DSCR for 10 years repayment period should be around 1.33:1.

3. Gap between Internal Rate of Return and Cost of Capital

3.1 The Internal Rate of Return (IRR) is computed as the post-tax return on capital employed during the project life based on discounted (net) cash flow method. Cash outflows each year would include capital expenditure on the project and increase in gross working capital. Cash inflows each year would include inflows from the operations of the project each year, recovery of working capital in the last year of project life and residual value of capital assets in the last year of project life.

3.2 While the above definition may be relevant for project finance, for restructured cases, the investment would have already taken place and the fixed assets would have depreciated to a large extent for such existing cases. While the year of restructuring could be considered as the zero year, aggregate of net fixed assets, net working capital and investments could be treated as total assets deployed. Cash inflows would have the same definition as for project finance. Project life should be considered as 15 years irrespective of the vintage of the facilities but depending on economic life.

3.3 Cost of capital is the post-tax weighted average cost of the funds employed. Since the basic purpose of the restructuring exercise is to recover the lenders' dues, it is felt that zero cost could be assigned to equity funds (equity and reserves). Cost to be assigned to the debt would be the actual cost proposed in the restructuring package. Calculation of tax shield for the purpose of working out the effective cost of debt funds will be as per usual institutional guidelines.

3.4 The benchmark gap between Internal Rate of Return and Average Cost of Funds should be at least one percent.

4. Extent of Sacrifice

4.1 Waivers and sacrifices in a stressed asset which approaches lenders for restructuring would depend on the state of affairs and the viability of the borrower-corporate as well as the possibility of its revival/survival. Since the basic objective of the restructuring exercise is to recover the lenders' dues and ensure productive use of assets, the extent of sacrifice would be a function of the quantum of loan, past payment record, interest rates charged and booked to profit in the past, as also alternative avenues available for recovery. Considering the very low probability of recovering the entire amount of dues through legal and other routes, the chances of recovering the dues might be better in a restructuring exercise, which also helps other stake-holders such as labour, equity holders, the exchequer and the economy in general.

4.2 In this background, it is very difficult to evolve a benchmark for the extent of sacrifices. Going by CDR experience, the sacrifice on the part of lenders would be waiver of liquidated damages and in some cases compound interest. Waiver of simple interest and principal should be resorted to in deserving cases only. Economic sacrifices in the form of reduction in interest/coupon rate should be avoided. While the thrust of the restructuring exercise should be on recovering the maximum possible amount from the borrowers, conversion of a part of the sacrifice into equity or any other instrument should also be explored. This would be beneficial from the point of view of sharing the upside when the fortunes of the company improve pursuant to restructuring.

5 Other Financial Parameters

5.1 Break-Even Analysis

5.1.1 Break-even analysis should be carried out. Operating and cash break-even points should be worked out and they should be comparable with the industry norms.

5.2 Gross Profit Margin

5.2.1 Gross Profit or Earnings Before Interest, Depreciation, and Tax (EBIDTA) is considered a good measure to compare the performance of a corporate in relation to the industry. Gross Profit Margin (GPM) for the industry as a whole, to which the company belongs, is available in published documents/databases (like 'Cris-Infac', 'Prowess' or similar database ventures). Wide variation, if any, of company's GPM from the industry average would be required to be explained with qualitative information.

5.2.2 While GPM is considered as a good indicator of the reasonableness of the assumptions underlying the profitability projections, it is necessary that various elements of profitability estimates such as capacity utilization, price trend and price realization per unit, cost structure, etc. should be comparable to those of the operating units in the same industry. It is also suggested that the company's past performance for say last 3-5 years and future projections for next 5 years should be given in the restructuring package on the same worksheet to have comparison of sales, sales realization, cost components, GP, GPM, interest cost, etc.

5.3 Loan Life Ratio

5.3.1 Loan life ratio (LLR) is a concept, which is used internationally in project financing activity. The ratio is based on the available cash flow and present value principle.

$$\text{LLR} = \frac{\text{Present value of total ACF during the loan life period (including int.+ prin.)}}{\text{Maximum amount of loan}}$$

5.3.2 The discounting factor may be the average yield expected by the lenders on the total liabilities, or alternatively, the benchmark ROCE. This ratio is similar to the DSCR based on the modified method (Actual Cash Flow method). In project financing, sometimes LLR is used to arrive at the amount of loan that could be given to a corporate. On the same analogy, LLR can be used to arrive at sustainable debt in a restructuring exercise as also the yield. A benchmark LLR of 1.4, which would give a cushion of 40% to the amount of loan to be serviced, may be considered adequate.

Annexure- II

BIFR CASES: ELIGIBILITY CRITERIA, FINANCIAL VIABILITY PARAMETERS, AND PROCEDURAL ASPECTS

1. ELIGIBILITY CRITERIA

1.1 BIFR cases which could be included under CDR

1.1.1 Case registered with BIFR but yet to come up for hearing.

1.1.2 BIFR has declared the case as sick and ordered workout of DRS.

1.1.3 Corporates not having major issues (legal/concurrent) with statutory authorities and State/Central Government agencies and there is a possibility of such issues getting addressed within three months.

1.2 BIFR cases which should not be considered under CDR

1.2.1 Cases for which Special Investigative Audit (SIA) has been recommended by BIFR.

1.2.2 Cases where sickness is being contested by way of appeal to AAIFR.

1.2.3 Cases where Appeal against the decision of BIFR has been filed by any one of the parties with AAIFR/Court.

2. FINANCIAL VIABILITY PARAMETERS

2.1 The restructuring scheme should enable the company's net worth to turn positive in a time span of not more than 3-4 years.

2.2 Adjusted DSCR (including cash outflow on account of increase in WC, normal capex etc.) should be around 1.25 and normal DSCR minimum 1.33:1.

2.3 Reasonable promoters' contribution of generally around 5-10% of the cost of the scheme should be envisaged in the restructuring proposal. Promoters'

contribution should, preferably, be by way of inflow of funds from outside or sales of surplus land/assets.

2.4 The Corporate's EBIDTA should become positive in two years and it earns net profit within 4-5 years.

2.5 In case regulatory benefits are to be availed for such BIFR cases, then regular financial parameters applicable to normal cases would be applicable, in addition to the stipulation that PAT should be positive in 4-5 years.

3. PROCEDURAL ASPECTS

3.1 The referring institution should prepare the Flash Report in the CDR format for submission to the CDR Core Group. It should also indicate the compliance position of the stipulated eligibility criteria. In case of any variation / relaxation, suitable justification should be given for Core Group's deliberation in the overall interest of all concerned.

3.2 The objective of considering the scheme under CDR should be to sort out issues between FIs/Banks expeditiously so that the scheme can be put in place within 45/60/90 days. As such, proposals involving consent/approvals from non-CDR members/Government agencies, which are critical for the viability of the company, may not be encouraged.

3.3 If the scheme envisages sale of assets it should be backed by credible valuation and offers from suitable interested parties so that the scheme can be implemented at the earliest. Such conditions should be acceptable to the corporate / promoter before the case is referred to CDR.

3.4 The Flash Report in the prescribed format should be submitted to CDR EG for approving admission of the case to CDR and usual procedure should be adopted thereafter.

3.5 Restructuring under CDR system will be subject to standard terms and conditions and special conditions as may be stipulated depending on CDR

category of the case and the type and nature of the borrower/promoter. The terms and conditions should be discussed with the company/promoter in advance and the same should be acceptable to them.

3.6 The approval of the restructuring scheme will be subject to final clearance of the scheme by BIFR. After issuance of LOA by the CDR Cell, the scheme should be submitted to BIFR by the referring institution/OA so that BIFR approval can be obtained at the earliest and the scheme is implemented.

3.7 The participating FIs/Banks should obtain approval from their competent authorities within a period of 45 days from the date of issuance of LOA by CDR Cell without waiting for BIFR approval.

3.8 Lenders might implement CDR package after the same is filed with BIFR for approval.

3.9 Lead / Referring Institution / Operating Agency should file the CDR package with BIFR for approval u/s 17(2) or 17(3) based on LOA issued by CDR Cell, without waiting for sanction by individual lenders.

3.10 An application should be made by the Referring Institution on behalf of lenders u/s 19A to BIFR agreeing to an arrangement for continuing operations or suggesting a scheme for financial reconstruction soon after approval of the package by CDR EG.

3.11 In terms of SICA, BIFR is expected to give its decision u/s 19A within 60 days. If BIFR approval u/s 19A is available, the lenders including working capital banks should release need-based working capital. However, the lenders shall not be compelled if BIFR approval is not in place. CDR EG may consider any deviation in the procedure on a case-to-case basis. There would also be priority in cash flow for such additional funding for working capital lenders as per CDR guidelines.

Annexure- III

CASES OF WILFUL DEFAULTERS: ELIGIBILITY CRITERIA, FINANCIAL VIABILITY PARAMETERS PROCEDURAL ASPECTS

1. RBI DEFINITION OF WILFUL DEFAULT

1.1 RBI in its guidelines (issued on May 30, 2002) for reporting the names of borrower-corporates as wilful defaulters has defined the following action of the borrower-corporates as wilful defaults.

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

(ii) 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.

(iii) 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.

2. CLARIFICATION ON PROCESS OF DECLARATION AS WILFUL DEFAULTER

2.1 Subsequently, on June 17, 2004, RBI issued a clarification on process to be adopted for finalizing such reporting to RBI/CIBIL which included the following:

2.1.1 Identification of default as 'wilful' based on the above definition through a Committee consisting of three GMs/ DGMs.

2.1.2 Decision to classify the borrower as wilful defaulter to be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided at the concerned bank/FI.

2.1.3 Thereafter, Borrower to be suitably advised about the proposal to classify it as wilful defaulter along with the reasons thereof. The concerned borrower to be provided reasonable time (say 15 days) for making representation against decision, if it so desires, to the Committee headed by the Chairman & Managing Director.

2.1.4 Final declaration as 'wilful defaulter' to be made after a view is taken by the Committee on representation and the borrower to be suitably advised. Decision taken on classification as 'wilful defaulter' to be well documented and supported by requisite evidence.

2.1.5 A grievance redressal mechanism to be created for giving a hearing to borrowers who represent that they have been wrongly classified as wilful defaulters. The grievance redressal mechanism to be headed by Chairman & Managing Director and include two other Senior Officials.

3. RBI vide its circular no RBI/2004-05/63 dated July 23, 2004 advised Banks / FIs to initiate the measures against wilful defaulters as indicated in the circular.

4. CASES OF WILFUL DEFAULTER NOT ELIGIBLE UNDER CDR

4.1 Cases of reported siphoning of funds or misfeasance, fraud, etc. (as one of the reasons for wilful default) are prima-facie not eligible to be covered under CDR.

4.2 However, the Referring Institution may in consultation with the borrowers, ascertain the facts from the statutory auditors, stock auditor and concurrent auditor or get Special Investigative Audit conducted in this regard and convince itself that such incidence, if any, is not affecting the interest of the lenders on a long-term basis. However, if after due diligence, it is felt that such promoters are not dependable for long term relationship, then in such cases, OTS or change in

management would be required to address the issue of wilful default. If both are not possible, such cases should be kept out of CDR.

5. PROCEDURE FOR REFERRING CASES OF WILFUL DEFAULTERS TO CDR

5.1 Before referring any case, the referring institution should check the lists of wilful defaulters, which are maintained and updated by RBI/ CIBIL from time-to-time based on reporting by FIs/ banks, to verify whether any FI/ bank has reported the company as wilful defaulter.

5.2 If it is listed as a case of wilful defaulter with RBI/CIBIL, the Referring Institution should ascertain from the concerned lenders the reasons for reporting the borrower as a wilful defaulter and the remedial action proposed, either through correspondence or by convening a joint meeting.

5.3 The objective should be only to collect the relevant information and not to sit in judgment whether the action of the concerned lender(s) of reporting as wilful defaulter was correct or not. The remedy for addressing the issue of wilful default in a particular case should generally be found based on discussions with other participating FIs /banks and the borrowers.

5.4 As regards non-CDR members, it may be difficult to obtain particulars about reasons for reporting a case as wilful defaulter as also the procedure followed and the remedial measures suggested by such lenders. In such cases, information may be collected from the borrower and corroborated by facts gathered through actual discussion with non-CDR members. Since the exact nature of the remedy to address concerns of such members cannot be crystallized without the approval of their competent authorities, the Referring Institution may have to make a reasonable judgment for preparing the scheme with special bucket (if absolutely essential) for addressing the wilful default status for CDR members. However, it would be desirable that they fall in line with the CDR package

without any special bucket. In case additional cash flows are required for settlement with such lenders, the promoters should arrange the same.

5.5 The Referring Institution should prepare the Flash Report in the CDR format for submission to the CDR Core Group, also indicating details of reporting as Wilful Defaulter, gist of discussions at joint lender's meetings, justification for considering the case of wilful defaulter under CDR, time schedule for referring the Flash Report to CDR EG and finalising the restructuring package etc.

5.6 In case the reason for reporting as wilful defaulter is diversion of funds, use of debt for purposes other than intended, use of long-term funds for short-term purposes or vice-versa or from one group company to other etc., then following course of action may be adopted.

(a) If the funds have been utilized by the group company / associates and subsidiary company or company under the same management, then such funds may be brought back in a time-bound manner to the TRA of the main company.

(b) In case such funds were used for some other purposes such as investment, stock market operations, meeting capital expenditure, meeting cash losses, making payments to other lenders, etc., it may be difficult to bring back such funds. In such situations, promoters may have to come up with alternative proposals including bringing funds from their other sources. As mentioned above, if based on investigate audit, super-majority of lenders feel that it is a case of siphoning of funds, then in such a case remedy is only to get the funds back from promoters' other sources. However, in such situations, continuing with the same management need to be looked into.

(c) In any case, under both situations (a or b above), the objective is to get the funds back into the company's TRA in a time-bound manner. The funds could also be brought back by way of sale of assets or investments. If such assets are created in other group company, then lenders of the concerned company may have to agree for it.

(d) As promoters are the common thread for such past actions, the responsibility for finding a remedy for wilful default should lie with the promoters and they must give a suitable undertaking for the same.

(e) After considering the proposal for bringing back diverted funds into the TRA, decision regarding redistribution thereof may be left to CDR EG.

5.7 In cases where change in management, strategic investment, venture capital funds with professional management etc. are envisaged, it may not be possible to complete the process at the stage of Core Group discussion or at the stage of Flash or Final Restructuring proposal. Therefore, some time-bound programme may be drawn for completion of such tasks and incorporated in LOA with suitable enabling clauses so that it does not amount to second restructuring. Such commitment from the company/ existing promoters could be included in the Note for Core Group deliberations.

5.8 Once the Core Group accords in-principle clearance to admission of a particular case of wilful defaulter, the Flash Report in the stipulated format should be submitted to CDR EG for approving admission to CDR and usual procedure should be adopted thereafter.

5.9 After implementation of the approved package, the concerned lenders should withdraw the name from the list of willful defaulters.

5.10 It is also felt that super-majority vote cannot be used to force some lenders to withdraw the company's name from the list of wilful defaulters.

5.11 There are some existing CDR cases approved before the RBI clarification on considering cases of wilful defaulter under CDR. In such cases; names of the corporate borrowers have not been withdrawn from the list of wilful defaulter as yet. The concerned lenders should withdraw such names forthwith.

Annexure – IV

A. STANDARD CONDITIONS TO BE STIPULATED IN ALL CDR CASES INCLUDING BORROWER CLASS – 'A'

1. CDR lenders shall appoint at the sole cost and expense of the Borrower a Concurrent Auditor during the currency of the package, to review the operations of the company on a periodic basis, monitoring the operations of TRA and any other work that may be assigned by the lenders.
2. The Borrower shall not incur any capital expenditure save and except those permitted in terms of the CDR package without prior approval of CDR EG.
3. The Borrower shall not sell any of its fixed assets / investments save and except those as permitted in terms of the CDR package, without prior recommendation of Monitoring Committee and approval of CDR EG. However, the Borrower shall sell its non-core assets, wherever applicable and an 'Asset Sale Committee' would be set up with the approval of CDR EG for sale of such assets.
4. The Borrower shall procure and furnish an Undertaking from the promoters (the terms and the conditions of which shall be in a form and manner acceptable to CDR lenders) to bring additional funds by way of debt/ equity/ preference capital or any other instrument for meeting any cash flow shortage to service lenders' debt / interest, if required by CDR EG.
5. The Promoters/Borrower would arrange to furnish additional collateral security, if required by CDR EG.
6. The Borrower/ CDR Lenders shall file Consent Terms, in respect of any pending dispute or litigation before debt recovery tribunal/courts where recovery application/suit is pending.
7. CDR Lenders, with the approval of CDR EG, shall have the right to revoke the CDR package in case the Borrower commits an event of default, as described in the existing loan agreement or in the MRA or any Facility Agreement. The CDR

lender has to inform CDR EG within seven days of the event of default and proposed course of action on the same. CDR EG would give a decision on the same within 60 days, if not then individual lenders are permitted to take action at their discretion.

8. The Company shall not declare any dividend on its equity shares without prior consent of lenders/ CDR EG.
9. The CDR Lenders, with the approval of CDR-EG, shall have the right to renegotiate the terms of restructuring including accelerating the repayment schedule in the event of better performance by the Borrower vis-à-vis projections. Under such circumstances the company shall clear dues as per accelerated repayment schedule without demur.
10. The Borrower shall not escrow its future cash flow (except discounting of bills in the normal course of business) or create any charge or lien or interest thereon of whatsoever nature except as provided in CDR package, without the approval of CDR-EG.
11. The CDR Lenders, with the approval of CDR EG, shall have the right to recompense the reliefs / sacrifices/waivers extended by respective CDR Lenders as per CDR guidelines.
12. CDR Lenders, with the approval of CDR EG, shall have a right to reset the rate of the term loan/s after every 3 years (or shorter period as decided by CDR EG) and working capital interest rate every year.
13. The company shall broad base its Board of Directors and strengthen Management set up by inducting outside professionals to the satisfaction of Lenders.
14. All participating CDR lenders shall be entitled to retain or appoint nominees on the Board of Directors of the company during the currency of their assistance.

15. CDR Lenders shall have a right to convert entire / part of defaulted interest and entire / part of defaulted principal into equity as per SEBI pricing formula in the event of default. However, in the case of those CDR Lenders who already have default conversion rights, the same would be governed by existing loan covenants. The company / promoters shall take necessary steps and obtain all requisite / necessary / statutory / other approvals for such allotment of equity shares or a part of it in terms of their existing loan agreements.
16. (a) In case of debt outstanding beyond seven years from the date of LOA, the CDR Lenders shall have a right to convert into equity upto 20% of such outstanding (as on the date of conversion) as per SEBI guidelines/ loan covenants whichever is applicable.

    (b) As regards zero coupon FITL remaining outstanding beyond 7 years, if any, such conversion right of lenders would be applicable to the entire amount and the conversion shall be as per SEBI guidelines.

    In the event the lenders or any of the lenders exercises its right to sell the shares issued in terms of the conversion clause as (a) or (b) above, the first right of refusal to buy back the shares would be offered to the promoters.
17. The Borrower shall furnish an undertaking to create negative lien on property, shares, etc. in the form and manner and as may be advised by the CDR Lenders.
18. In the event of the Borrower committing default on the repayment of installment of the loan or payment of interest on the due dates, the lenders shall have an unqualified right to disclose the name of the company and its directors to the Reserve Bank of India (RBI)/ Credit Information Bureau of India (CIBIL). The company shall give its consent to lenders or RBI/CIBIL to publish its name and the names of its Directors as defaulters in such manner and through such medium as lenders/RBI/CIBIL in their absolute discretion may think fit.
19. CDR Lenders, with the approval of CDR EG, shall establish Trust & Retention Account (TRA) and enter into a Trust & Retention Account Agreement. The

Borrower would ensure submission of quarterly / annual cash flows to all CDR lenders.

20. The lender/s will have the option to accelerate repayments in the event of better performance than projected and the company will have a right to prepay. However, in the event of prepayment at the option of the company, prepayment premium shall be charged as per CDR guidelines.
21. The company shall agree to furnish written undertakings not to sell /mortgage/transfer/alienate in any manner the assets and properties of the company during the currency of the loans without prior approval of CDR EG.
22. Individual lenders shall have right to assign / hypothecate / transfer their outstanding to any Asset Reconstruction company / Bank / or any other entity, in terms of CDR guidelines.
23. In the case of any future induction of private equity / ECB / Venture capital funds / any other source, the charging of prepayment premium will be governed by the CDR guidelines and decision of EG. Normally, prepayment will be on pro-rata basis amongst different debt instruments. However, any changes thereof as may be requested by the company could be considered and recommended by Monitoring Committee and approved by CDR EG.
24. Any OTS or settlement the company may enter with non-CDR members will be subject to prior recommendation of Monitoring Committee and prior approval of CDR EG. NPV of such settlements should be, as far as possible, less than the NPV calculated on the basis of CDR package agreed by lenders.
25. The company shall keep the lenders informed of any legal proceedings, the outcome of which would have a material impact on the debt servicing capability of the company. In consultation with the lenders, it shall take such remedial actions, as may be required in the best interest of the company and the lenders.
26. The company shall not effect any change in management set up without prior permission from CDR EG.

27. The company/promoters shall undertake to comply with the conditions as per revised RBI guidelines on CDR dated November 10, 2005 and may amended from time to time. As per the CDR guidelines, the approved package will be sanctioned in 45 days from the date of CDR LOA and would be implemented within 4 months from the date of CDR LOA so as to adhere to RBI guidelines. In this regard, the company may refer to critical conditions stipulated in the package relating to creation of security, promoters compliances, setting up of TRA, giving effect to the package in the books of lenders etc. These compliances form a part of the implementation of the package. For the remaining stipulations, lenders may review the position at the end of three months and execute Master Restructuring Agreement between all CDR lenders/borrower, if required. In any case, all endeavours should be made to comply with critical conditions at the earliest, within three months of the LOA.
28. Towards implementation of the package within 4 months from the date of this letter, company/promoters are requested to extend full co-operation and active support in ensuring compliance of critical condition mentioned above. Company/promoters are advised to resolve all outstanding issues with lenders covering reconciliation of figures, preparation of MRA/TRA, appointment of Legal Counsel etc.
29. Save as aforesaid all other terms and conditions of the earlier loan agreements entered into between the company and the institutions shall apply mutatis-mutandis, to the extent not contrary to the terms of CDR package.
30. The borrower cannot open/maintain any account or avail any type of banking services/facilities from any bank (s) other than Banks/FIs from whom the borrower is enjoying credit facilities. Any deviation in this regard needs to approved by CDR Empowered Group

B. **ADDITIONAL CONDITIONS FOR BORROWER CLASS – 'B'**
(IN ADDITION TO STANDARD CONDITIONS STIPULATED FOR BORROWER CLASS 'A')

1. The Borrower shall procure and furnish an unconditional and irrevocable Corporate Guarantee of Group companies, if so stipulated by CDR EG.
2. The Borrower shall furnish an unconditional and irrevocable guarantee of its Promoters in the form and manner acceptable to CDR EG.
3. The Promoters shall pledge either their entire promoters' holding or at least 51% of paid-up capital of the company, whichever is lower in favour of the Lenders with voting rights including the shareholding of the domestic lenders in demat form.

   In case, after restructuring of the Equity Shares or issuance of fresh Equity Shares or equivalent instrument in the nature of Equity Shares carrying a voting right to Promoters or Strategic Investors/ Stressed Fund /Equity Fund, then such fresh Equity Shares issued to Promoters would also be pledged in favour of the lenders to the extent feasible, in such a way that minimum 51% of expanded equity capital is covered by way of pledge and investment by lenders together.

   The extent of pledge of shares would be duly considered by CDR EG on case-to-case basis.
4. The Promoters of the Borrower Company shall raise additional contribution by way of equity / and/or unsecured (subordinate) loans on terms and conditions stipulated by / acceptable to CDR EG.
5. The Borrower shall arrange to bring back funds / investments diverted by the Borrower in the associate Companies, if applicable in the case within a time frame, and as stipulated by EG.

C. ADDITIONAL CONDITIONS FOR BORROWER CLASS – 'C'
(IN ADDITION TO STANDARD CONDITIONS STIPULATED UNDER A & B)

1. The Borrower shall appoint a Whole-time Director (Finance) as and when stipulated by CDR EG within the guidelines of corporate governance.
2. Company shall write down its equity, as stipulated by CDR EG.
3. The Borrower shall assign /mortgage its brand(s) to the CDR lenders, as stipulated by CDR EG.

D. ADDITIONAL CONDITIONS FOR BORROWER CLASS – 'D'
(IN ADDITION TO STANDARD CONDITIONS STIPULATED UNDER A, B& C)

1. CDR Lenders, with the approval of CDR EG, shall have a right to appoint lenders' engineer / monitoring agency / Lenders' Counsel.
2. The Borrower /promoters would arrange for induction of a strategic investor / co-promoter, if required by the approval CDR EG.
3. CDR Lenders, with the approval of CDR EG, shall have a right to appoint an independent Chairman / professional CEO.

****