Barclays Investments & Loans (India) Private Limited

# Fair Lending Practice - Policy for Penal Charges on Loans

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Contents

[Fair Lending Practice - Policy for Penal Charges on Loans 1](#_Toc155014751)

[1. Version History 3](#_Toc155014752)

[2. Purpose of this Policy document 3](#_Toc155014753)

[3. Procedure Ownership and Updates 3](#_Toc155014754)

[4. Policy Approval and Governance 3](#_Toc155014755)

[5. Applicability and Implementation 3](#_Toc155014756)

[6. Regulatory Coverage 4](#_Toc155014757)

[7. Internal Supervision and Review 5](#_Toc155014758)

[8. Scope and penal charges 5](#_Toc155014759)

[9. Annexures 6](#_Toc155014760)

# Version History

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| Date of Issue | Version No. | Reason for Change |
| February 15, 2024 | 1.0 | To incorporate regulatory provisions for penal charges further to the Reserve Bank of India regulation issued in 2023 |

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# Purpose of this Policy document

* 1. This Policy (“**Policy**”) documents the provisions for penal charges with regard to credit facilities offered by Barclays Investments & Loans (India) Private Limited ( “**BILIL**”), on the basis of Reserve Bank of India regulation, viz., Fair Lending Practice - Penal Charges in Loan Accounts, dated August 18, 2023 (RBI/2023-24/53 DoR.MCS.REC.28/01.01.001/2023-24) (“**Regulation**”[[1]](#footnote-1)), This Policy shall be read with the Current Policy and will prevail insofar as there is inconsistency and conflict between the two. The Regulation (including as may be amended) will prevail over the Policy insofar as the Policy is inconsistent with the Regulation.

# Procedure Ownership and Updates

* 1. The Policy is owned by the Credit Solutions Business Head in BILIL and will be updated at the earliest, as and when required.

# Policy Approval and Governance

* 1. The Policy will be circulated for adoption to BILIL’s Board of Directors in February 2023.
	2. The Policy will be in effect from April 01, 2024.

# Applicability and Implementation

* 1. The Policy applies to penal charge(s) BILIL as also referred as default charge(s), may levy with regard to credit facilities availed of by customers.

Note:

(a) Instructions on penal charges under the Regulation are applicable in case of securitisation and co-lending portfolios.

(b) As regards Non-Performing Assets, banks may be guided by para 3.2.3 of Reserve Bank of India’s [Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated April 1, 2023](https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=12472), as per which in respect of NPAs, fees, commission and similar income that have accrued should cease to accrue in the current period and should be reversed with respect to past periods, if uncollected.

Accordingly, in respect of NPA accounts, penal charges shall be reversed to the extent they remain uncollected for the specific purpose of non-recognition of income.

However, the same shall be part of the total liability of a borrower to the Bank, unless waived as per policy.

* 1. BILIL’s Operations department has the responsibility to implement the Policy in compliance with the Regulation.
	2. BILIL will incorporate appropriate clauses in contractual documents with customers substantively based on the form in the **Annexure 1**, and issue an amendatory provision for existing facilities on the basis of the from in Annexure 1**.**

# Regulatory Coverage

6.1. Reserve Bank of India Regulated Entities (REs) that are in scope under the Regulation (this includes BILIL as a non-banking financial company), are required to ensure reasonableness and transparency in disclosure of penal charges on loans[[2]](#footnote-2).

BILIL’s Policy with regard to penal charges, proceeds on the basis that:

1. the intent of levying penal charges is essentially to inculcate a sense of credit discipline. Such charges are not meant to be used as a revenue enhancement tool over and above the contracted rate of interest.
2. penalty, where charged by BILIL on borrowing customers for non-compliance with material terms and conditions of the loan contract by the borrower shall be treated as ‘**penal charges’**, and shall not be levied in the form of ‘**penal interest’** that is added to the rate of interest charged on the advances.
3. there shall be no capitalisation of penal charges i.e., no further interest computed on such charges. This does not affect the normal procedures BILIL applies for compounding of interest in the loan account.
4. there is no additional component to the rate of interest.
5. the quantum of penal charges applied by BILIL will be reasonable, and commensurate with the non-compliance of material terms and conditions of the loan contract, without being discriminatory within a particular loan/product category.

1. the penal charges in case of loans sanctioned to ‘individual borrowers, for purposes other than business’, shall not be higher than the penal charges applicable to non-individual borrowers for similar non-compliance with material terms and conditions.
2. the quantum and reason for penal charges shall be clearly disclosed by BILIL to the customers in the loan agreement and, where applicable, in BILIL’s most important terms & conditions.
3. the penal charges that are applicable are displayed on BILIL’s website under the link for Interest rates and Service Charges.
4. whenever reminders for non-compliance of material terms and conditions of loan are sent to borrowers, the applicable penal charges shall be communicated. Any instance of levy of penal charges and the reason therefore shall also be communicated.
	1. Regulatory Expectations – REs are required by the Regulation to formulate a transparent policy for penal charges with the approval of their Board of Directors (or equivalent)..

# Internal Supervision and Review

* 1. This Policy document shall be reviewed at least once every year, or sooner as may be required, and tabled before the Board of Directors of BILIL.

# Scope and penal charges

* 1. Scope: Penal or default charges will be applicable as follows:

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| **Facility category** | **Material terms for** **penal charge applicability** |
| All types of fund-based facilities | Overdue amounts (principal and interest); |

* 1. **Non-repayment of principal and/or interest amount on due date:**

Penal charges will be computed as 2% p.a. applied on the overdue amount for the delayed period i.e. from the due date up to the date of actual payment.

* 1. Penalty, if any, on the funded facility on account of non-repayment by the borrower within the due date will only be levied in the form of a penal charge and not penal interest, which will be described in the relevant facility document.
	2. Penal charges shall not be levied by BILIL as ‘penal interest’ and shall not be capitalized i.e. no further interest shall be computed on such charges. There shall be no additional component to the rate of interest applied by BILIL on a credit facility.
	3. BILIL’s lending terms and conditions appropriately provide for other actions which may be taken by BILIL at its discretion to inculcate a sense of credit discipline amongst borrowers; without having to levy charges which may be construed as a revenue enhancement tool.
	4. Whenever reminders are issued with regard to matters in which a penal charge is payable, the applicable penal charges shall be communicated. Any instance of levy of penal charges and the reason therefore shall also be communicated by BILIL.
	5. BILIL may waive penal charges if it is satisfied that the issue in question was caused by matters such as technical systems related errors and/or are demonstrably not deliberate, willful or negligent, with the reasoned approval of the relevant Business Heads or their respective delegates. Documentation for waivers, including in the context of Non-Performing Assets, will be maintained by BILIL’s Operations department.

Penal charges will not be levied on outstanding amounts of penal charges.

As regards Non-Performing Assets, penal charges shall be reversed to the extent they remain uncollected for the specific purpose of non-recognition of income. However, the same shall be part of the total liability of the borrower to BILIL, unless waived as per a BILIL’s policy

# Annexures

**Annexure 1:** Draft penal charges clause for BILIL – defined terms as used in the template/executed agreements/MITC will be used.

“**Penal charges**:

The Borrower agrees and accepts that:

1. BILIL will levy penal charge(s) as detailed below, with respect to the loan, for non compliance by the Borrower with the following terms and conditions, which the Borrower agrees and accepts are material to the loan contract:

[INCLUDE THE RELEVANT DETAIL AND THE DETAIL OF THE APPLICABLE PENAL CHARGE]

1. penal charge(s) the Bank will levy in applicable circumstances, are not in the form of penal interest or default interest, and a penal charge is not added by BILIL to the rate of interest BILIL charges on the loan, and that there is no additional component to the rate of interest BILIL charges the Borrower on the loan.
2. BILIL does not capitalize the penal charge. This does not affect the normal procedures BILIL applies for compounding of interest in the loan account.
3. given the nature and purpose of the loan, the quantum of the penal charge(s) that BILIL may apply in the applicable circumstances is reasonable, and is commensurate with the non-compliance by the Borrower with any or all of the material terms and conditions of the Agreement, and is not discriminatory within a particular loan/product category provided by BILIL to its customers.
4. the quantum and reason for the penal charge(s) are herein clearly disclosed by BILIL in this Agreement and, where applicable, in BILIL’s most important lending terms & conditions.
5. the applicable penal charge(s), as maybe amended by BILIL from time to time (with written notice to the Borrower of the amendments that are made by BILIL), are displayed on BILIL’s website under the link for the policy of Fair Lending Practice – Penal Charges in Credit Accounts.
6. whenever reminders for non-compliance of material terms and conditions of loan are sent to the Borrower, the applicable penal charge(s) will be communicated by BILIL. Any instance of levy of penal charges and the reason(s) therefore shall also be communicated by BILIL to the Borrower.”

**In existing contracts that have reference to penal/default interest, the following would be considered as an addition to the above**:

“All references in this Agreement to penal interest or default interest are of no effect as of, and from DATE, and penal charge(s) as referred to in clause [ ] above shall apply on and from DATE.”

**Annexure 2**: The Regulation.

 

1. RBI/2023-24/53 - DoR.MCS.REC.28/01.01.001/2023-24 - August 18, 2023. – **Annexure 3** [↑](#footnote-ref-1)
2. Not applicable to Credit Cards, External Commercial Borrowings, Trade Credits and Structured Obligations which are covered under product specific directions. [↑](#footnote-ref-2)