



नेपाल कानून आयोग Nepal Law Commission

Banks and Financial Institutions Act, 2063 (2006)

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An Act Made to Amend and Consolidate Legislation Relating to Banks and Financial Institutions

Preamble:Whereas, it is expedient to amend and consolidate forthwith the prevailing legislation relating to banks and financial institutions and make it timely in order to promote the trust of the general public in the overall banking and financial system of the country and protect and promote the rights and interests of depositors, provide quality and reliable banking and financial intermediary services to the general public through healthy competition among banks and financial institutions, minimize risks relating to the banking and financial sector, boost and consolidate the economy of the State of Nepal by liberalizing the banking and financial sectors and make necessary legal provisions relating to the establishment, operation, management and regulation of banks and financial institutions;

Now, therefore, be it enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063(2006).

CHAPTER- 1

CHAPTER- 1

Preliminary

1. Short title, extension and commencement:

- (1) This Act may be called “Banks and Financial Institutions Act, 2063(2006).”
- (2) It shall be deemed to have come into force on 16 Shrawan 2063 (1 August 2006).
- (3) It shall extend to the whole of the State of Nepal and also apply to all offices opened anywhere outside the State of Nepal by banks or financial institutions.

2. Definitions : In this Act, unless the subject or the context otherwise requires,-

- (a) “Rastra Bank” means the Nepal Rastra Bank established under the Nepal Rastra Bank Act, 2058 (2002);
- (b) “bank” means a corporate body incorporated to carry on financial transactions as referred to in Sub-section (1) of Section
- (c) “financial institution” means a corporate body incorporated to carry on the transactions as referred to in Sub-section (2), (3) or
- (4) of Section 47, and this term also includes a development bank, finance company or micro-finance development bank;
- (d) “memorandum of association” means the memorandum of association of a bank or financial institution, and this term also includes the statute of a corporate body;
- (e) “articles of association” means the articles of association of a bank or financial institution;
- (f) “promoter” means a person who, having consented to subscribe at least one share, signs the memorandum of association and the articles of association for the establishment of a bank or financial institution pursuant to this Act;
- (g) “share” means a division of the share capital of a bank or financial institution;
- (h) “shareholder” means a person having ownership in a share of a bank or financial institution;
- (i) “prospectus” means a prospectus to be published by a bank or financial institution pursuant to Section 6;
- (j) “Board” means the Board of Directors of a bank or financial institution to be formed

pursuant to Section 12;

(k) "chairperson" means the chairperson of the Board;

(l) "director" means a member of the Board, and this term also includes the chairperson and an alternate director;

(m) "officer" means the director, chief executive, secretary and employees of a bank or financial institution, and this term also includes a person who acts as an advisor, auditor and liquidator of the licensed institution;

(n) "license" means the license issued by the Rastra Bank to a bank or financial institution to carry on financial transactions, pursuant to this Act;

(o) "licensed institution" means a bank or financial institution which has obtained the license to carry on financial transactions pursuant to this Act;

(p) "financial transactions" means such transactions referred to in Section 47 as may be carried on by a bank or financial institution;

(q) "capital" means the authorized capital, issued capital or paid up capital of a bank or financial institution as referred to in Section 40;

(r) "capital fund" means the total of the primary and supplementary capital of a bank or financial institution, and this term includes any other fund of the institution as prescribed as such by the Nepal Rastra Bank from time to time;

(s) "primary capital" means the funds of a bank or financial institution listed under such headings as the paid-up capital, share premium, non-redeemable preference shares, general reserve fund and accumulated profit and loss, and this term also includes such other funds listed under other headings as may be prescribed as primary capital by the Rastra Bank from time to time;

(t) "supplementary capital" means the funds of a bank or financial institution kept under such headings as may be prescribed by the Rastra Bank from time to time;

(u) "risk-weighted assets" means the total assets calculated by multiplying the amounts coming under each heading of on- balance sheet and off-balance sheet operations of a bank or financial institution by the risk-weight prescribed by the Rastra Bank;

(v) "liquid assets" means the cash balances of a bank or financial institution, the balances held by a bank or financial institution in the current account, the balances maintained by a bank or financial institution in the Rastra Bank and such assets of a bank or financial institution prescribed as liquid assets by the Rastra Bank from time to time;

(w) "deposits" means amounts deposited in current, savings or fixed accounts of a bank or financial institution, and this term also includes such amounts as a bank or financial institution accepts through such various financial instruments as prescribed by the

Rastra Bank;

(x) "current account" means an account of funds deposited with a bank or financial institution as may be withdrawn at any time on demand;

(y) "saving account" means an account of funds deposited with a bank or financial institution for purposes of saving;

(z) "fixed account" means an account of funds deposited with a bank or financial institution for a specified term;

(aa) "credit" means a direct or indirect commitment to supply funds, and in return therefor, the right to recover the invested funds, and payment of interest or other charges on such credit, re-finance issued against the security of a credit or investment, restructuring and renewal of a credit, security issued for the repayment of such credit and other commitment made for such repayment, and this term also includes any credit in whatever form;

(bb) "currency" means any kind of currency notes, postal orders, postal notes, money orders, cheques, drafts, travelers cheques, letters of credit, bills of exchange, promissory notes and credit cards, and this term also includes similar other monetary instruments as may be prescribed by the Rastra Bank upon a public notification, as required;

(cc) "foreign currency" means any currency other than the Nepalese currency, and this term also includes special rights to draw funds (Special Drawing Rights) from the International Monetary Fund, the Asian Currency Unit, the European Currency Unit and such other instruments as may be prescribed by the Rastra Bank upon a public notification, as required;

(dd) "foreign exchange" means a foreign currency, deposits, credits and balances of all types which are paid or received in a foreign currency, foreign securities and cheques, drafts, travelers cheques, electronic fund transfers, credit cards, letters of credit, bills of exchange and promissory notes which are in international circulation and are or can be paid in a foreign currency, and this term also includes any other such monetary instruments as may be prescribed by the Rastra Bank upon a public notification, as required;

(ee) "convertible foreign currencies" means any foreign currencies as may be designated as convertible foreign currencies by the Rastra Bank upon a public notification, as required;

(ff) "electronic fund transfer" means the business of accepting deposits, making payments and transferring funds through telephones, telex, computers or magnetic tapes or similar other electronic equipment; and this expression includes transactions to

be carried on through automated teller machines and cash dispensing machines, as well as those to be carried on through charge cards, debit cards and credit cards;

(gg) "letter of credit" means a letter written by one bank or financial institution to another bank or financial institution authorizing the latter to accept cheques, drafts, hundis or bills of exchange of any specified person within the limit of the amount specified therein;

(hh) "negotiation" means the business of transferring a negotiable instrument to any person on the condition that the receiver may become the bearer thereof;

(ii) "negotiable instrument" means promissory notes, bills of exchange or cheques;

(jj) "bill of exchange" means a signed document issued by one person to another directing the latter to pay the specified sum of money unconditionally to any specified person mentioned in the bill or to the person designated by him or her or to the bearer, on the specified date or after the specified period or on demand;

(kk) "promissory note" means a document containing a signed pledge to pay a specified sum of money unconditionally to any specified person mentioned in the note or to the person designated by him or her or to the bearer of the note on the specified date or after the specified date or on demand;

(ll) "off-balance sheet transactions" means transactions relating to letters of credit, letters of guarantee, letters of acceptance, commitments, swaps, options and forward foreign exchange transactions for which a bank or financial institution may be required to bear liability and similar other transactions;

(mm) "chief executive" means the executive chairperson, chief executive officer, executive director, managing director, managing manager, executive manager, or general manager of a bank or financial institution; and this expression also includes any other officer working as the chief executive of a bank or financial institution;

(nn) "office" means the central office of a bank or financial institution, and this term also includes the regional, branch, sub-branch, depot, area, representative, liaison and any other office whatsoever of a bank or financial institution;

(oo) "financial interest" means a situation where ten per cent or more of the total paid-up capital of any firm, company or corporate body is held by any promoter or director, shareholder holding one per cent or more of the shares or the executive director or any member of his or her family or any individual, firm, company or corporate body empowered to nominate a director, whether singly or taken together; and such shall be deemed to be a situation where such promoter or director or shareholder holding one per cent or more of the shares or the chief executive or family member of such person has financial interests in such company or corporate body;

(pp) "family" means the concerned person's husband or wife, son, daughter, adopted

son, adopted daughter, father, mother, step- mother and elder brother, younger brother, elder sister and younger sister to be maintained by him or her;
(qq) “prescribed” or “as prescribed” means prescribed or as prescribed in the rules or bye-laws framed under this Act.

CHAPTER 2

CHAPTER 2

Provisions relating to Incorporation of Banks or Financial Institutions, and Securities Thereof

3. Incorporation of bank or financial institution :

(1) A person who is desirous of incorporating a bank or financial institution to carry on financial transactions pursuant to this Act may do so by getting such bank or financial institution registered as a public limited company in accordance with the laws in force.

(2) The authority empowered under the laws in force to register a company pursuant to Sub-section (1) shall register the same subject to Section 4.

4. Approval to be obtained to incorporate bank or financial institution :

(1) For the purpose of incorporating a bank or financial institution under Section 3, the concerned person shall, before making an application for the registration of the bank or financial institution pursuant to the laws in force, make an application, accompanied by the following documents and the fee prescribed by the Rastra Bank, to the Rastra Bank for prior approval:

(a) Memorandum of association of the proposed bank or financial institution;

(b) Articles of association of the proposed bank or financial institution;

(c) Feasibility study report of the proposed bank or financial institution;

(d) Personal details of the promoters in the form prescribed by the Rastra Bank;

(e) A certified copy of the agreement, if any, entered into between the promoters prior to the incorporation a bank or financial institution in relation to the incorporation of the bank or financial institution;

(f) Evidence of tax clearance by the promoters up to the fiscal year immediately

preceding the making of application pursuant to this Section;

(g) Such other particulars and documents as may be prescribed by the Rastra Bank in relation to the incorporation of a bank or financial institution.

(2) If an application is made for prior approval pursuant to Sub-section (1), the Rastra Bank shall, if it finds appropriate to grant approval upon the examination of the submitted documents, grant its approval to incorporate such bank or financial institution within one hundred twenty days after the making of application, with or without prescribing any conditions. If there exists a ground for refusing to grant such approval, information thereof, accompanied by the reason for such refusal, shall be given to the applicant.

(3) If any foreign bank or financial institution makes an application under Sub-section (1) for the incorporation, under this Act, of a bank or financial institution in joint investment with a corporate body incorporated in the State of Nepal or with a citizen, or as a subsidiary company subscribing cent per cent shares of the foreign bank or financial institution, the Rastra Bank shall grant approval for the incorporation of such bank or financial institution pursuant to Sub-section (1).

5. Power to refuse to grant approval :

(1) The Rastra Bank may refuse to grant prior approval for the incorporation of a bank or financial institution in any of the following circumstances:

(a) If the name of the proposed bank or financial institution is identical with the name of any bank or financial institution which has already been registered and is still in existence;

(b) If the name of the proposed bank or financial institution or the financial transactions to be carried on by it appears to be improper or undesirable in view of public interest, decency, etiquette, religion, nationalities or communities;

(c) If the objectives of the proposed bank or financial institution are contrary to the laws in force;

(d) If the incorporation of the bank or financial institution seems to be technically inappropriate;

(e) If a study of the feasibility study report, particulars and documents and information on other infrastructures submitted by the proposed bank or financial institution does not provide a ground to believe that it can carry on financial transactions in a healthy and competitive manner;

- (f) If application for the registration of the memorandum of association and articles of association has not been made in the names of all promoter members of the proposed bank or financial institution;
 - (g) If all promoters of the proposed bank or financial bank or financial institution have not signed the memorandum of association and articles of association, also setting out their names and addresses, in the presence of any one witness, and the name and address of the witness has not been set out;
 - (h) If every promoter of the proposed bank or financial institution has not agreed to subscribe at least one share of that bank or financial institution;
 - (i) If every promoter of the proposed bank or financial institution has not clearly specified the number of shares to be subscribed by him or her while affixing his or her signature on the memorandum of association;
 - (j) If the fees required to be paid and the documents to be submitted pursuant to Section 4 have not been paid or submitted;
 - (k) If any condition prescribed by the Rastra Bank is not fulfilled.
- (2) If the Rastra Bank refuses to register the memorandum of association and articles of association of the proposed bank or financial institution in any of the circumstances referred to in Sub-section (1), it shall give a notice thereof to the applicant.

6. Prospectus :

- (1) Before publicly issuing its securities, every bank or financial institution shall obtain approval of the Securities Board in relation to the registration of the prospectus in accordance with the laws in force relating to securities and have the prospectus registered with the Rastra Bank. Until the prospectus is so registered, the bank or financial institution, or anybody acting on behalf of such bank or financial institution shall not publish the prospectus of such bank or financial institution.
- (2) The procedures required to be fulfilled while publishing a prospectus pursuant to Sub-section (1) and the matters to be mentioned in the prospectus shall be as mentioned in the laws in force relating to securities.
- (3) The bank or financial institution shall, subject to the laws in force relating to securities, make an application in writing to the Securities Board for the approval of the Securities Board for the purpose of registration of its prospectus.
- (4) The Rastra Bank shall not register a prospectus until it receives information in writing that approval has been given by the Securities Board in relation to the registration of the prospectus.

(5) If any person intends to inspect the prospectus, the bank or financial institution shall allow such person to inspect the prospectus, without collecting any fee or charge.

7. Allotment of shares :

(1) Every bank or financial institution shall set aside at least thirty per cent of its total issued capital for subscription by the general public. The bank or financial institution may set aside a maximum of five per cent of the shares so set aside for its employees. Provided that the shares in such percentage as prescribed by the Rastra Bank in the case of a bank or financial institution incorporated in joint venture with a foreign bank or financial institution shall be sold and allotted to the general public.

(2) While inviting application from the general public for the subscription of its shares, every bank or financial institution shall demand payment of cent percent amount of the face value of its shares along with application.

8. Dealing in securities :

(1) While issuing its securities for subscription by the general public, every bank or financial institution do all acts such as the sale, allotment, and recovery of amounts, of such securities in accordance with the laws in force relating to securities.

(2) Every bank or financial institution shall file with the Rastra Bank and the Securities Board a copy of an agreement made by it on the dealing of securities through any institution dealing in securities, within seven days after the date of making of such agreement.

9. Prohibition on selling or pledging shares and debentures :

(1) Notwithstanding anything contained in the laws in force, the promoter of a bank or financial institution shall not be entitled to sell or pledge any share registered in his or her name for at least five years from the date of commencement of financial transactions. Provided that if there arises a special circumstance due to the emergence of any obstruction or hindrance in the operation of a bank or financial institution, nothing in this Sub-section shall be deemed to prevent the granting of permission by the Rastra Bank to the promoters to sell shares between or among them.

(2) If the promoter of a bank or financial institution wishes to sell or pledge the shares held in his or her name after five years from the date of commencement of financial

transactions by the bank or financial institution, he or she may sell or pledge such shares, subject to the conditions prescribed by the Rastra Bank.

10. Prohibition on purchase by bank or financial institution of its own shares :

(1) No bank or financial institution shall purchase its own shares (buy-back) or lend moneys against security of its own shares.

(2) Notwithstanding anything contained in Sub-section (1), in the following circumstances, a bank or financial institution may, with the approval of the Rastra Bank, so buy back its shares out of its free reserves available for being distributed as dividends not exceeding the percentage prescribed by the Rastra Bank:

(a) If the shares issued by the bank or financial institution are fully paid up;

(b) If the shares issued by the bank or financial institution have already been listed in the Securities Board;

(c) If the buy-back of shares is authorized by the articles of association of the concerned bank or financial institution;

(d) If a special resolution has been adopted at the general meeting of the concerned bank or financial institution authorizing the buy-back;

(e) If the ratio of the debt owed by the bank or financial institution is not more than twice the capital and general reserve fund after such buy-back of shares;

Explanation: For the purposes of this Clause , “debt” means all amounts of secured or unsecured debts borrowed by the bank or financial institution.

(f) If the value of shares to be bought back by a bank or financial institution is not more than twenty percent of the total paid up capital and general reserve fund of that bank or financial institution;

(g) If the buy-back of shares is not in contravention of the directives issued from time to time by the Rastra Bank in this respect.

(3) Any bank or financial institution shall make an application, setting out the following matters, to the Rastra Bank to obtain approval of the Rastra Bank for the purposes of Sub-section (2); and if such application is made and, based on the matters received, it appears appropriate to give approval to the bank or financial institution to purchase its own shares, the Rastra Bank may give approval for the same:

(a) The reason and necessity for the buy-back of shares;

(b) A statement of the evaluation of possible impacts on the financial situation of the bank or financial institution as a result of the buy-back of shares;

(c) The class and number of shares intended to be bought back;

- (d) The maximum or minimum amount required to buy back shares as referred to in Clause (c), and source of such amount;
 - (e) The time limit for the buy-back of shares;
 - (f) The mode of the buy-back of shares;
 - (g) Such other necessary matters as specified by the Rastra Bank and as required to be disclosed under the laws in force, in respect of the buy-back of shares.
- (4) On receipt of the approval pursuant to Sub-section (3), the concerned bank or financial institution may buy back its shares in any of the following manners, within six months after the date of receipt of such approval or twelve months of the adoption of a special resolution at the general meeting, whichever occurs later:
- (a) Purchasing from the stock exchange;
 - (b) Purchasing from the concerned employees of the bank or financial institution the shares allotted to them pursuant to this Act;
 - (c) Purchasing from the existing shareholders on a proportionate basis.
- (5) If a bank or financial institution buys back its own shares pursuant to Sub-section (4), it shall file with the Rastra Bank a return containing the number of shares bought back, amount paid for the same and other necessary details within thirty days of the date of such buy-back.
- (6) There shall be established a separate capital redemption reserve fund, to which a sum equal to the nominal value of the shares bought back pursuant to Sub-section (4) shall be transferred; and the amount of such fund shall be maintained as if it were the paid-up capital.
- (7) If a bank or financial institution buys back its shares pursuant to Sub-section (4), it shall cancel the shares so bought back within one hundred twenty days of the date of such buy-back.
- (8) Other conditions where a bank or financial institution cannot buy back its shares and other terms required to be complied with in the buying back of its shares shall be as prescribed by the Rastra Bank.

11. Restriction on dealing in securities :

- (1) No director, chief executive, auditor or secretary of a bank or financial institution, or any person directly involved in the management and accounting functions of a bank or financial institution shall sell, purchase or pledge, gift or exchange, or cause to be purchased, pledged, gifted or exchanged, the securities of the concerned bank or financial institution or those of its subsidiary company under his or her own name or in

the name of his or her family or in the name of any firm, company or body controlled by him or her or by his or her family control while he or she holds such office or until at least one year from the date of his or her retirement from that office. Provided that this restriction shall not be applicable in the case of the newly issued shares.

(2) If any person does any act in contravention of Sub-section

(1), the concerned bank or financial institution shall forfeit such securities.

(3) The Board may sell and dispose of the securities forfeited pursuant to Sub-section

(2) in such manner as it may think appropriate

Chapter 3

Chapter 3

Provisions Concerning Board of Directors and Chief Executive of Banks or Financial Institutions

12. Formation of Board of Director s:

(1) Every bank or financial institution shall have a Board of Directors. The Board shall consist of not less than five and not more than nine Directors.

(2) Subject to Sub-section (1), there shall be appointed to the Board a professional director from the list of professional experts maintained by the Rastra Bank pursuant to Section 13. The Director to be so appointed shall not be required to have subscribed any share of the concerned bank or financial institution.

(3) A director chosen by the directors from among themselves by a majority decision shall be the chairperson of the Board of Directors.

13. List of professional experts to be maintained :

(1) For the purposes of Sub-section (2) of Section 12, the Rastra Bank shall maintain a list of professional experts on the basis of the following qualification and experience:

(a) Having obtained at least master's degree in management, banking, finance, money, economics, commerce, trade, administration, commercial law or having accounting or commercial law or a chartered accountancy degree and gained at least five years of

experience in the executive level of the banking and finance field.

Explanation: For the purposes of this Clause , “executive level” means the post of first class officer of the Government of Nepal, Rastra Bank, bank or financial institution or the post of senior manager of any bank or financial institution or the post of reader in a recognized university or a post there above.

(b) Not being disqualified under Section 18.

(2) The Rastra Bank shall each year update the list of professional experts maintained under Sub-section (1) and publish in a newspaper of national circulation for the public information.

14. Functions, duties and powers of Board :

(1) All functions to be performed and all powers to be exercised by the bank or financial institution, other than those to be performed by the general meeting of shareholders, shall be performed and exercised by the Board, subject to this Act, laws in force and the memorandum of association and articles of association.

(2) The Board may frame necessary bye-laws in order to systematically perform the functions required to be performed by it under Sub-section (1).

(3) Except as otherwise provided in the memorandum of association and articles of association, the Board of Directors may appoint any director from amongst themselves or any officer of the bank or financial institution as its representative and so delegate to him or her any or all of its powers, inter alia, to make correspondences or sign negotiable instruments, cheques etc. on behalf of the bank or financial institution that such powers are to be exercised individually or jointly.

15. Delegation of authority :

(1) The Board may delegate any of its powers to the chairperson, any director, a sub-committee formed pursuant to Section 16, chief executive or any person, firm, company or body acting as the chief executive on the condition that such powers shall be exercised under its supervision or direction.

(2) The chairperson, director, sub-committee formed pursuant to Section 16, chief executive or any person, firm, company or body acting as the chief executive may assign the powers delegated to them pursuant to Sub-section (1) to their employees under their own responsibility.

16. Power to form sub-committees :

- (1) The Board may, as required, form one or more sub-committees for any specific purpose.
- (2) The functions, duties, powers and rules of procedure of any sub-committee formed pursuant to Sub-section (1) and the remuneration or allowances receivable for attending its meetings shall be as prescribed by the Board.

17. Appointment of directors :

- (1) The directors of a bank or financial institution shall be appointed by the general meeting of the bank or financial institution, subject to Section 18 and the articles of association. Provided that,-
 - (a) Until the first annual general meeting of the bank or financial institution is held, directors shall be appointed by the promoters.
 - (b) In the event of any vacancy in the post of a director prior to the holding of the annual general meeting, the Board may appoint a director for the remainder of term.
 - (c) In the case of a bank or financial institution in which a corporate body holds shares, the concerned corporate body may appoint director(s) in a number proportionate to the value of the shares held by it.
- (2) While appointing director in proportion to the shares of the bank or financial institution held by it, a body corporate, foreign bank or financial institution may also appoint alternate director authorizing him/her or them to work during the absence of the director.
- (3) The professional expert director as referred to in Sub- section (2) of Section 12 shall be appointed by the Board of Directors.

18. Disqualification of directors :

- (1) Any of the following persons shall not be eligible to be elected or nominated to the office of, or to continue to hold the office of, a director:
 - (a) Who is below 21 years of age;
 - (b) Who is of unsound mind or insane;
 - (c) Who is a declared insolvent;
 - (d) Who has been blacklisted in connection with any transaction with any bank or

financial institution, and a period of at least three years has not lapsed after his or her name has been removed from that list;

(e) Who is a director of any bank or financial institution or any financial institution carrying on the transactions relating to any kind of deposits or an employee serving in such institution or a serving auditor or advisor of any other bank or financial institution;

(f) Who is a partner in any kind of contract agreement with the concerned bank or financial institution;

(g) Who has acquired membership of the Stock Exchange to act as a securities dealer;

(h) Who has not subscribed the minimum number of shares required to be subscribed to be eligible for appointment as a director pursuant to the articles of association of the bank or financial institution;

(i) Who is a serving employee of the Government of Nepal, Rastra Bank or bank or financial institution; Provided that this provision shall not be applicable to the nomination of any person made by the Government of Nepal as a director of any bank or financial institution of which shares have been purchased by it, or to the nomination of any person made by any bank or financial institution as a director of any other bank or financial

institution of which shares have been purchased by it;

(j) In the case of a person who has been relieved of or retired from the service of the Rastra Bank after serving in the post of Governor, Deputy-Governor or Special Class employee, at least one year from the date of such relief or retirement from the service has not elapsed;

(k) Who, having a liability to pay tax pursuant to the laws in force, has failed to pay the same;

(l) Who is convicted by a court of an offense involving moral turpitude and sentenced in respect thereof, and a period of five years has not elapsed from the expiry of the sentence;

(n) Who is convicted by a court of an offense of corruption or cheating;

(o) A period of five years has not lapsed after the date on which the Rastra Bank has taken action against him or her for failure to observe a direction of the Rastra Bank or the date of suspension or dissolution after taking management by the Rastra Bank under its control.

(2) No person shall continue to hold the office of a director in any of the following circumstances:

(a) If he or she suffers from any disqualification for appointment to the post of director as mentioned in sub- section (1);

- (b) If the general meeting passes a resolution to remove him or her from the office of director;
- (c) If the resignation tendered by the director is accepted;
- (d) If he or she is held by a court to have done any act involving dishonesty or ulterior motive in the activities of the bank or financial institution;
- (e) If he or she does any act prohibited by this Act from being done by a director.

19. Qualification of Director : A person has to possess the following qualification in order to be eligible for appointment as director:

- (a) Not being disqualified under Section 18;
- (b) Having acquired at least a bachelor's degree in any subject or having gained at least five years of experience in any institution relating to governmental or banking or financial or corporate sector. Provided that:
 - (a) The said qualification shall not be necessary for a director who is elected from amongst the general public shareholders.
 - (b) The qualification of the directors of Class "D" licensed institutions shall be as prescribed by the Rastra Bank from time to time.

20. Tenure of office of Director :

- (1) The tenure of office of a director of a bank or financial institution shall be as provided in its articles of association, but not exceeding four years. Provided that:
 - (a) The Director appointed pursuant to Clause s (a) and (b) of the proviso to Section 17 shall hold his or her office only until the annual general meeting is held.
 - (b) The tenure of office of a director appointed to the office of any director which has fallen vacant before the expiry of his/her tenure of office shall be only the remainder of the tenure of office of that director whose office has so fallen vacant and in whose place he or she is appointed.
- (2) A person retired from the office of director on expiry of his or her tenure of office shall be eligible for reappointment to the office of director.

21. Remuneration and facilities of director s:

- (1) The meeting allowance to be receivable by the directors for attending a meeting, their remuneration and remuneration and other facilities to be paid to them while carrying on the transactions of the bank or financial institution shall be as specified in

the articles of association.

(2) If any director is found to have obtained any facility other than that mentioned in Sub-section (1), that director shall be deemed to have committed an offense under this Act, and the amount obtained by him or her in consideration of such facility shall be recovered from him or her.

22. Disclosure by directors :

(1) Every director shall, no later than seven days after assuming the office of director, disclose in writing to the bank or financial institution the following matters:

(a) If he or she or any of his or her family members has entered into or going to enter into any kind of contract with the concerned bank or financial institution, details thereof;

(b) If he or she has any kind of interest in the appointment of the chief executive, managing director, secretary, auditor and general manager, details thereof;

(c) Particulars of such shares or debentures in the concerned bank or financial institution or in its holding or subsidiary company as subscribed by him or her or by his or her family;

(d) If he or she is a director of any company, details thereof;

(e) If any member of his or her family is working as an officer of the bank or financial institution, details thereof;

(f) Such other details prescribed by the Rastra Bank as required to be disclosed by the director to the Board.

(2) In making disclosure pursuant to Sub-section (1), a copy of the written agreement, if any, concluded between the director or his or her family member shall be submitted, and failing such agreement, substantial and necessary matters concerning the transaction or financial interest or involvement shall be set out.

(3) The information provided by a director pursuant to Sub-section (1) shall be forwarded to the Rastra Bank within seven days; and upon receipt of such information, the Rastra Bank shall record the same in a separate register maintained for this purpose.

23. Meetings of Board :

(1) Meetings of the Board shall be held at least 12 times in a year. Provided that the interval between any two meetings shall not exceed two months.

(2) The chairperson shall call a meeting at any time when at least two-third of the

directors request for the same in writing.

(3) Meetings of the Board shall be presided over by the chairperson. In the absence of the chairperson , the meeting shall be presided over by a director selected by a majority of the directors from amongst themselves.

(4) No meeting of the Board shall be held unless it is attended by at least fifty one percent of the total number of directors who are entitled to attend and vote in a meeting.

(5) The decision of a majority in the meeting of the Board shall be binding, and, only in the event of a tie, the chairperson may exercise the casting vote.

(6) A director who has any personal interest in any resolution to be discussed at a meeting shall not be entitled to take part in that meeting.

(7) Minutes regarding the names of directors present in the meeting of board of directors, the subjects discussed and the decisions taken thereon shall be recorded in a separate book, and such minute book shall be signed by all directors present in the meeting. Provided that, if any director puts forward any opinion opposed to or differing from the decision in the course of discussions on any subject in a meeting, he or she may mention the same in the minute book.

24. Responsibilities and duties of directors :

(1) No director shall do any thing to derive personal benefit through the bank or financial institution or in the course of performing the functions of the bank or financial institution .

(2) If any person who is appointed as a director has any personal or financial interest in the business of the bank or financial institution or in an agreement or involvement with the bank or financial institution, such person shall, prior to assuming the duties of his or her office, disclose such matter to the Board.

(3) If any director is found to have derived a personal benefit in the course of business of the bank or financial institution, the bank or financial institution shall recover that amount from such director.

(3) The bank or financial institution shall not be responsible for any action taken or function performed by any person working as its director by acting beyond his or her jurisdiction.

(5) If any person carries on any transaction with any director or representative even while knowing or having reasons to believe that the director or representative is carrying on the transaction to serve his or her personal interests or to cause any loss or damage to the bank or financial institution, such person shall not be entitled to make any claim against the bank or financial institution in relation to such transaction.

(6) No director shall interfere with the routine business relating to the management of the bank or financial institution.

(7) Every director of the bank or financial institution shall comply with such directives issued by the Rastra Bank from time to time as required to be complied with by the directors of the bank or financial institution.

25. Register of directors : Every bank or financial institution shall maintain a separate register recording the personal details of its directors, and forward details thereof and alteration of directors, if any, to the Rastra Bank no later than fifteen days.

26. Appointment and conditions of service of chief executive :

(1) The Board shall appoint the chief executive of the bank or financial institution, subject to this Act and the memorandum of association and articles of association.

(2) While making appointment of the chief executive, a qualified person shall be appointed from amongst the persons who have done at least bachelor's degree in any subject and have gained at least five years of experience of the office of director or of the executive level in banking, financial or corporate sector.

Explanation: For the purposes of this sub-section, the expression "executive level" means any officer level post of any governmental, banking, financial, corporate sector or of any international financial institution, organization or any post which is equivalent to or higher than such officer level post.

(3) The chief executive shall be the chief administrator of the bank or financial institution.

(4) The tenure of office of the chief executive shall be a maximum of four years; and he or she may be re-appointed.

(5) The remuneration and other conditions of service of the chief executive shall be as prescribed by the Board.

27. Functions, duties and powers of chief executive :

(1) The functions, duties and powers of the chief executive shall be as follows:

(a) To implement the decisions of the Board and supervise and control the activities and transactions of the bank or financial institution, subject to this Act and the memorandum of association and articles of association;

(b) To prepare annual budgets and action plans of the bank or financial institution and

present them before the Board for approval;

(c) To manage necessary human resources, subject to the personnel bye-laws of the bank or financial institution;

(d) To implement, or cause to be implemented, the decisions of the Board and the General Meeting, and the directives of the Rastra Bank;

(e) To present on time all such particulars, documents, decisions, etc. as are required to be submitted by the bank or financial institution to the Rastra Bank or any other body, subject to this Act and the memorandum of association and articles of association;

(f) To perform such other functions as may be prescribed in relation to the operation of the bank or financial institution.

(2) The Executive Chief shall be accountable to the Board for all of his or her functions

Chapter 4

Chapter 4

Provisions relating to License

28. Prohibition on carrying on financial transactions by any one other than bank or financial institution : No one other than a bank or financial institution incorporated pursuant to this Act shall carry on the financial transactions referred to in this Act. Provided that nothing herein shall be deemed to prevent any body corporate, other than a bank or financial institution, which has been established under the laws in force and licensed under the Nepal Rastra Bank Act, 2058 (2002) to accept deposits and extend credit, from carrying on such transaction.

(2) No person shall use the name of a bank or financial institution for the purpose of carrying on the financial transactions, without obtaining the approval of the Rastra Bank.

(3) Notwithstanding anything contained in Sub-section (1) or (2), any bank or financial institution which has obtained approval to carry on the financial transactions pursuant to the laws in force at the commencement of this Act may carry on the financial transactions using the name existing at the time of obtaining the approval to carry on such transactions.

(4) Notwithstanding anything contained elsewhere in this Act, class "B", class "C" and class "D" licensed institutions shall be entitled to use the names development bank,

finance company and micro- finance development bank, respectively.

(5) The conditions required to be observed by the banks and financial institutions which have obtained approval pursuant to Sub- section (3) in the course of carrying financial transactions shall be as prescribed by the Rastra Bank.

29. Application to be made for license to carry on financial transactions :(1) A bank or financial institution desirous of carrying on financial transactions pursuant to this Act shall make an application to the Rastra Bank for a license, in the format prescribed by the Rastra Bank.

(2) The bank or financial institution shall also attach the following particulars and documents and the license fee prescribed by the Rastra Bank with the application to be made pursuant to Sub- section (1):

(a) A copy of the memorandum of association, articles of association of the bank or financial institution and the certificate of registration of the bank or financial institution;

(b) Particulars of an office building equipped with all infrastructures required by the bank or financial institution to carry on financial transactions, or, if such building is to rented, a copy of the lease agreement and the particulars of the building to be rented;

(c) Personal details of the chief executive and other executive level officers of the bank or financial institution, and the organizational structure of the bank or financial institution;

(d) Bye-laws relating to conditions of service and facilities of the employees of the bank or financial institution;

(e) Credit policy of the bank or financial institution;

(f) Financial administration bye-laws of the bank or financial institution;

(g) By-laws relating to write-off of loans;

(h) Document proving that the amount of shares which the promoter of the bank or financial institution has undertaken to subscribe has been paid and deposited with the Rastra Bank;

(i) Such other particulars and documents as may be prescribed by the Rastra Bank from time to time.

(3) A bank or financial institution which makes an application to the Rastra Bank for a license to carry on financial transactions shall also mention the following matters in the application:

(a) Matter that the minimum capital as prescribed by the Rastra Bank from time to time shall be maintained until the financial transactions is carried on;

(b) Matter that there have been prepared infrastructures required for the operation of the bank or financial institution and there exist adequate grounds for providing services and facilities in a manner satisfactory to the Rastra Bank;

(c) Matter that the rights and interests of depositors shall be protected as a result of the carry on of financial transactions on a regular basis pursuant to the bye-laws and provisions relating to the carry on of transactions proposed by the bank or financial institution for carrying on the financial transactions;

(d) Consent given to comply with the terms and conditions prescribed by the Rastra Bank for carrying on the financial transactions.

30. License to be issued to carry on financial transactions:

(1) If an application is received pursuant to Section 29, the Rastra Bank may, if it is satisfied after making necessary enquiries and investigations into the following matters, in addition to the physical infrastructures required for the operation of the bank or financial institution, issue to the bank or financial institution a license of any one of the classes to carry on financial transactions, on the basis of the classification of banks or financial institutions as referred to in Section 31:

(a) If it considers that the issuance of the license to carry on financial transactions shall ensure a healthy competition and make effective the transactions relating to financial intermediation and thus serve the interests of depositors;

(b) If it considers that the bank or financial institution is competent to carry on financial transactions, subject to this Act or the rules or bye-laws framed under this Act or the orders or directives issued thereunder, and the memorandum of association and articles of association;

(c) If, based on the application and the attached particulars and documents attached with the application made for the license pursuant to Sub-section (2) of Section 29, there are adequate grounds to believe that the bank or financial institution is competent to carry on the financial transactions.

31. Classification of licensed institutions :

(1) The Rastra Bank shall classify the licensed institutions into "A", "B", "C" and "D" classes on the basis of the minimum paid-up capital required for the license to be issued pursuant to Section 30 to carry on the financial transactions pursuant to Section 47, and issue the license to the concerned bank or financial institution accordingly.

(2) The minimum paid-up capital of the licensed institutions classified under Sub-section (1) shall be as prescribed by the Rastra Bank.

32. Power to refuse to issue license to carry on financial transactions :

(1) Notwithstanding anything contained in Section 30, the Rastra Bank may, in any of the following circumstances, refuse to issue a license to any bank or financial institution to carry on the financial transactions:

(a) If, in view of the existing condition and potentiality of the banking or financial sector, it does not appear appropriate to grant a license to additional bank or financial institution to carry on the financial transactions;

(b) If, in the light of the situation mentioned in Clause (a), for the protection of the interests of depositors, it does not appear just and appropriate to issue a license to carry on the financial transactions;

(c) If it does not appear that the details or requirements referred to in Sections 29 and 30 have been completed.

(2) If there exists a situation where the license to carry on the financial transactions cannot be issued to any bank or financial institution pursuant to Sub-section (1), the Rastra Bank shall give a notice thereof, accompanied by the reason for the same, to the concerned bank or financial institution within one hundred twenty days from the date of application. If the Rastra Bank has requested for any additional details within that period, such notice shall be given within ninety days from the date of receipt of such details.

33. Power of Rastra Bank to prescribe conditions :

(1) While issuing a license to carry on the financial transactions pursuant to Section 30, the Rastra Bank may prescribe necessary conditions, in view of the condition of the existing banks and financial institutions, healthy operation of the financial transactions and the interests of depositors. It shall be the duty of the concerned bank or financial institution to comply with such conditions.

(2) The Rastra Bank may make necessary changes and alterations in the conditions prescribed pursuant to Sub-section (1), in view of the condition of the banks and financial institutions, healthy operation of the financial transactions and the interests of depositors.

34. Special provisions relating to opening of office by foreign bank or financial institution
:

(1) If any foreign bank or financial institution intends to open its office in the State of Nepal, it shall make an application to the Rastra Bank, along with the fee and details as prescribed by the Rastra Bank.

(2) Notwithstanding anything contained elsewhere in this Act, also taking into account the existing competition in the banking sector, contribution that the foreign bank or financial institution can make to the banking development of the State of Nepal and the prestige and reputation of the concerned foreign bank or financial institution, the Rastra Bank may, on receipt of an application under Sub-section (1), issue a license to such foreign bank or financial institution to establish its office and carry on the financial transactions in the State of Nepal.

(3) While issuing a license pursuant Sub-section (2), the Rastra Bank may prescribe necessary conditions, and it shall be the duty of the concerned foreign bank or financial institution to comply with the conditions so prescribed.

(4) The provisions of this Act shall be applicable to the foreign banks or financial institutions, which are incorporated by obtaining the license pursuant to Sub-section (2), in relation to the financial transactions. Provided that the functions and activities of a representative or liaison office of a foreign bank or financial institution shall be as prescribed by the Rastra Bank.

(5) No foreign bank or financial institution which has obtained approval to open its office and carry on the financial transactions in the State of Nepal pursuant to this Section shall be granted approval to open another bank or financial institution in joint venture in the State of Nepal.

35. Suspension and cancellation of license:

(1) If any licensed institution does an act in contravention of the Nepal Rastra Bank Act, 2058 (2002) or this Act or the rules or bye-laws framed thereunder or fails to comply with the orders or directives issued by the Rastra Bank or fails to do any act required to be done by it taking into account the interests of depositors, the Rastra Bank may, specifying a certain period, suspend the license obtained by the licensed institution to carry on the financial transactions pursuant to this Act, or fully or partially withhold or freeze the business of the bank or financial institution or of any of its offices.

(2) The Rastra Bank may cancel the license obtained by a licensed institution to carry

on the financial transactions pursuant to this Act in any of the following circumstances:

- (a) If the concerned licensed bank or financial institution requests for the cancellation of its license;
- (b) If it fails to carry on the financial transactions within six months from the date of receipt of the license;
- (c) If it stops carrying on the financial transactions since more than one month ago continuously;
- (d) If it carries on the financial transactions in such a manner as to be contrary to the rights and interests of depositors;
- (e) If it violates the Nepal Rastra Bank Act, 2058 (2002) or this Act or the rules and bye-laws framed thereunder;
- (f) If it violates the conditions prescribed by the Rastra Bank;
- (g) If it fails to comply with the orders or directives issued by the Rastra Bank;
- (h) If it becomes insolvent;
- (i) If the bank or financial institution is found to have obtained the license by submitting false details;
- (j) If the licensed institution is amalgamated with another bank or financial institution.

(3) If any bank or financial institution duly makes an application for the cancellation of its license pursuant to Clause (a) of Sub-section (2), the Rastra Bank shall make a decision thereon within forty-five days from the date of such application.

(4) A notice in writing of the decision referred to in Sub-section (3) and the grounds of such decision shall be provided to the concerned bank or financial institution.

(5) If a decision is made to cancel a license pursuant to this Section, the Rastra Bank shall publish a public notice thereof.

36. Conversion of licensed institution of lower class into licensed institution of higher class : (1) Any licensed institution of a lower class which meets the following conditions may, with the approval of the Rastra Bank, be converted into a licensed institution of a higher class:

- (a) If it has the capital prescribed by the Rastra Bank for a licensed institution of such higher class;
- (b) If it has been able to earn profits since five consecutive years;
- (c) If its total non-performing loan is within the limit prescribed by the Rastra Bank;
- (d) If it has met all conditions as prescribed by the Rastra

Bank.

(2) If, on receipt of the approval referred to in Sub-section (1), the concerned licensed institution is required to amend its memorandum of association and articles of association to carry on the financial transactions of higher class, it shall amend the same in accordance with the laws in force and make an application to the Rastra Bank under this Act to obtain the license of higher class.

37. Conversion of licensed institution of higher class into licensed institution of lower class : (1) If any licensed institution fails to meet any of the following conditions, the Rastra Bank may make a decision to convert it into a Class "B" licensed institution if it is a Class "A" licensed institution, and into a Class "C" licensed institution if it is a Class "B" licensed institution:

(a) If it has failed to raise the capital as prescribed within the period prescribed by the Rastra Bank;

(b) If it has been incurring loss since five consecutive years;

(c) If it has been subjected to action for frequent violations of the directives issued by the Rastra Bank;

(d) If it has failed to maintain a risk-bearing fund as prescribed by the Rastra Bank.

(2) The Rastra Bank shall, prior to taking action against any bank or financial institution pursuant to Sub-section (1), give a reasonable opportunity to the concerned bank or financial institution to furnish its explanations against such action.

(3) If any licensed bank or financial institution of a higher class intends to be converted into a licensed bank or financial institution of a lower class and makes an application to the Rastra Bank for approval, and if the Rastra Bank gives its approval after making necessary inquiries, such bank or financial institution shall be converted into a licensed bank or financial institution of a lower class.

38. Liquid assets required to be maintained : A licensed institution which collects deposits or supplies credits shall maintain the liquid assets as prescribed by the Rastra Bank.

39. List of licensed Institutions to be published :

(1) The Rastra Bank shall publish a list of the licensed institutions carrying on the financial transactions in a newspaper of national circulation in every three months of a

fiscal year.

(2) The list referred to in Sub-section (1) shall be published in such a manner as to show separately, inter alia, the date of commencement of the financial transactions by such institutions and the particulars of the paid-up capital of each institution

Chapter 5

Chapter 5

Provisions relating to Capital

40. Capital to be maintained :

(1) The minimum authorized capital, issued capital and paid-up capital of the licensed institutions shall be as prescribed by the Rastra Bank from time to time.

(2) Every licensed institution existing at the time of commencement of this Act shall maintain the capital structure referred to in Sub-section (1) within the period prescribed by the Rastra Bank.

(3) No licensed institution which fails to maintain the capital structure referred to in Sub-section (1) within the period mentioned in Sub-section (2) shall declare or distribute dividends until it maintains such capital.

41. Capital to be increased : (1) The Rastra Bank may, if it so deems appropriate, give a directive to any licensed institution to increase its authorized capital, issued capital and paid-up capital existing for the time being.

(2) If the Rastra Bank gives a directive pursuant to Sub-section (1), the concerned licensed institution shall increase its authorized capital, issued capital and paid-up capital.

42. Capital fund :

(1) Every licensed institution shall maintain a capital fund in the ratio prescribed by the Rastra Bank on the basis of its total assets or total risk-weighted assets.

(2) If any bank or financial institution fails to maintain the capital fund as referred to in Sub-section (1), the Board shall give information thereof to the Rastra Bank within thirty

five days. The information so given shall also be accompanied by, inter alia, the reasons for the failure to maintain the capital fund and the plan or program prepared by the Board to increase the capital fund and restore it to its previous condition.

(3) On receipt of the information referred to in Sub-section

(2), if the Rastra Bank considers the plan or program submitted by the Board to be reasonable, it may give a directive to the concerned bank or financial institution to implement such plan or program; and if any amendment or alteration is to be made in the proposed plan or program, it may give a directive, accompanied by the reasons for such amendment or alteration, to the concerned bank or financial institution to amend or alter such plan or program and implement the same.

(4) If any bank or financial institution fails to meet the obligation referred to in this Section or if it does not appear that it can do so immediately, the Rastra Bank may take action referred to in Section 37 against such bank or financial institution.

(5) Notwithstanding anything contained elsewhere in this Section, if it is found that the concerned bank or financial institution has failed to maintain its capital fund as provided for in Sub-section (1) by the reason of the failure of the Board of Directors to comply with the directives given by the Rastra Bank from time to time or by the reason of malice, recklessness or mala fide intention of the director or chief executive, the Rastra Bank may punish such director or chief executive with a fine equal to the amount involved; and if such act of the director or chief executive is found to have caused any loss or damage as a result of the failure to maintain the capital fund, the Rastra Bank, the concerned bank or financial institution or any shareholder holding up to five per cent of the paid-up capital of such bank or financial institution may either individually or collectively file a petition with the court against such director or chief executive for the recovery of that amount, in accordance with laws in force.

43. Risk-bearing fund : A licensed institution shall maintain a risk-bearing fund in the proportion prescribed by the Rastra Bank in such a manner that it can cover the liability relating to its total assets and off-balance sheet transactions.

44. General reserve fund :

(1) A licensed institution must maintain a general reserve fund. At least twenty per cent of the net profits of each year shall be kept on being credited to such fund until the

amount of such fund doubles the paid-up capital.

(2) The amount credited to the reserve fund of a licensed institution under Sub-section (1) may not be invested or transferred to any other head without the prior approval of the Rastra Bank.

45. Exchange equalization fund :

(1) A licensed institution which has obtained the license to carry on foreign exchange transactions shall make necessary accounts adjustments in the profit and loss account of the revaluation profits earned as a result of fluctuations in the exchange rates of foreign currencies, other than the Indian currency, every year at the end of the same fiscal year. While making such accounts adjustment in the profit and loss account, if revaluation earning has been made in any fiscal year, at least twenty five per cent of such profits shall be credited to the exchange equalization fund. Provided that in the case of revaluation profit-loss resulting from fluctuation in the exchange rate of the Indian currency, it shall be as prescribed by the Rastra Bank. (2) No amount credited to the exchange equalization fund pursuant to Sub-section (1) shall, without the approval of the Rastra Bank, be spent or transferred for any purpose other than the adjustment of loss resulting from the devaluation of foreign currencies.

46. Restriction on distribution of dividends :

(1) No licensed institution shall declare or distribute dividends to its shareholders until it has recovered all of its preliminary expenses and the losses sustained by it until the previous year, it sets aside such amount as required to be set aside for the capital fund, risk-bearing fund and general reserve fund pursuant to Section 44 and the shares set aside for subscription by the general public are sold and fully paid-up. (2) A licensed institution shall obtain the approval of the Rastra Bank prior to declaring and distributing dividends.

Chapter 6

Chapter 6

Provisions relating to Operation of Financial Transactions

47. Financial transactions which licensed institutions may carry on:

(1) Subject to this Act and the memorandum of association and articles of association, a Class "A" licensed institution may carry on the following financial transactions:

- (a) Accepting deposits with or without interest, and refund such deposits;
- (b) Supplying credit as prescribed by the Rastra Bank;
- (c) Dealing in foreign exchange, subject to the laws in force;
- (d) Supplying credit for hire-purchase, hypothecation, leasing, housing and service business;
- (e) Engaging in merchant banking business, subject to the directives of the Rastra Bank;
- (f) Making arrangements for jointly supplying credits on the basis of co-financing in collaboration with other licensed institutions in accordance with the mutual agreement entered into for the division of the collateral *pari passu*;
- (g) Issuing guarantees on behalf of its customers, having such customers execute necessary bonds in consideration thereof, obtaining security, and acquire their movable or immovable assets as collateral or on mortgage, or the assets of third persons as collateral;
- (h) Supplying credit against the guarantee provided by any native or foreign bank or financial institution;
- (i) Issuing, accepting, paying, discounting or purchasing and selling letters of credit, bills of exchange, promissory notes, cheques, travelers cheques, drafts or other financial instruments;
- (j) Accepting deposits, making payments and transfer funds through telephones, telex, fax, computers or magnetic tapes or similar other electronic means or equipment, subject to the directives issued by the Rastra Bank;
- (k) Issuing and accepting credit cards, debit cards, charge cards and other financial instruments, as well, and appointing agents to discharge functions relating thereto, subject to the directives issued by the Rastra Bank;
- (l) Accepting, making payments and supplying credit through automated teller machines and cash dispensing machines;
- (m) Providing overdraft to persons whom it trusts;
- (n) Supplying a fresh credit in lump sum or by installment against the security of the same movable or immovable assets which have already been furnished with it or with

any other licensed institution as security, to the extent covered by the total value of such security;

(o) Acting as an agent of the Rastra Bank on the conditions prescribed by the Rastra Bank, and carrying on governmental and other transactions on behalf of the Government of Nepal;

(p) Remitting or transmitting funds to different places within or outside the State of Nepal through bills of exchange, cheques or other financial instruments, purchasing and selling gold and silver bullion, shares, debentures, bonds, etc., and recovering dividends accruing on shares and interest on promissory notes, debentures, bonds, etc.;

(q) Acting as a commission agent of its customers, taking custody of and arranging for the sale or purchase of shares, debentures or securities, collecting interest, dividends etc. accruing from shares, debentures or securities, remitting or transmitting such interests or dividends to places within or outside the State of Nepal;

(r) Purchasing, selling or accepting bonds issued by the Government of Nepal or the Rastra Bank;

(s) Arranging for safe deposit vaults;

(t) Carrying on off-balance sheet transactions on such conditions as may be prescribed by the Rastra Bank;

(u) Supplying credits not exceeding the amount prescribed by the Rastra Bank, against individual or collective guarantee, for the economic upliftment of the destitute class, low-income families, victims of natural calamities and inhabitants in any area of the country;

(v) Exchanging with the Rastra Bank or any other licensed institutions particulars of, information or notices on debtors or customers who have obtained credits from it or other licensed institutions;

(w) Providing guarantee for the supply of credit to its customers by any other licensed institution;

(x) Mobilizing capital through shares, debentures, bonds, loan-bonds, saving-bonds or other financial instruments within the limit prescribed by the Rastra Bank;

(y) Obtaining refinance credit from the Rastra Bank as per necessity, or obtaining or supplying credits to or from other licensed institutions;

(z) Doing, or causing to be done, study, research and survey work relating to the establishment, operation and evaluation of projects, and providing training, consultancy and other information;

(aa) Supplying funds received from the Government of Nepal or other native or foreign agencies as credits for the promotion of projects, or managing such credits;

- (bb) Prescribing conditions, as required, in order to protect its interests while supplying credits to any persons or institutions or doing any transaction with them;
- (cc) Obtaining credits by pledging its movable or immovable assets as collateral;
- (dd) Writing off credits, subject to the bye-laws framed by the Board;
- (ee) Properly managing or selling its assets;
- (ff) Performing such other functions as may be prescribed by the Rastra Bank.

(2) Subject to this Act and the memorandum of association and articles of association, a Class "B" licensed institution may carry on the following financial transactions:

- (a) Subject to the limit prescribed by the Rastra Bank, accepting deposits with or without interest, and refund such deposits;
- (b) Supplying credit, other than hypothecation credit, as prescribed;
- (c) Dealing in foreign exchange, subject to the laws in force and the directives given by the Rastra Bank;
- (d) Supplying credit for hire-purchase, leasing, housing and service business;
- (e) Engaging in merchant banking business, subject to the directives given by the Rastra Bank;
- (f) Making arrangements for jointly supplying credits on the basis of co-financing in collaboration with other licensed institutions in accordance with the mutual agreement entered into for the division of the collateral pari passu;
- (g) Supplying credits against the guarantee of any native bank or financial institution;
- (h) Issuing guarantees on behalf of its customers, having such customers execute necessary bonds in consideration thereof, obtaining security, and acquiring their movable or immovable assets as collateral or on mortgage, or the assets of third persons as collateral;
- (i) Issuing, accepting, paying, discounting or purchasing and selling bills of exchange, promissory notes, cheques, travelers cheques, drafts or hundies;
- (j) Accepting deposits, making payments and supplying credit through automated teller machines and cash dispensing machines;
- (k) Providing overdraft to persons whom it trusts;
- (l) Obtaining credit against the security of its movable and immovable property;
- (m) Supplying a fresh credit in lump sum or by installment against the security of the same movable or immovable property which has already been furnished with, it to the extent covered by the total value of such security or supplying a fresh credit in lump sum or by installment against the security of the same movable or immovable property which has already been furnished with any other licensed institution as security, to the extent covered by the total value of such security;

- (n) To issue and accept letters of credit, subject to the conditions prescribed by the Rastra Bank;
- (o) Transmitting funds within the State of Nepal through bills of exchange, cheques or other financial instruments, purchasing and selling shares, debentures, bonds, etc., and recovering dividends accruing on shares and interest on promissory notes, debentures, bonds, etc.;
- (p) Acting as a commission agent of its customers, taking custody of and arranging for the sale or purchase of shares, debentures or securities, collecting interests, dividends, profits etc. accruing from shares, debentures or securities;
- (q) Purchasing, selling or accepting bonds issued by the Government of Nepal or the Rastra Bank;
- (r) Arranging for safe deposit vaults;
- (s) Carrying on off-balance sheet transactions on such conditions as may be prescribed by the Rastra Bank;
- (t) Supplying credits not exceeding the amount prescribed by the Rastra Bank, against individual or collective guarantee, for the economic upliftment of the destitute class, low-income families, victims of natural calamities and inhabitants in any area of the country;
- (u) Exchanging with the Rastra Bank or any other licensed institutions particulars of, information or notices on debtors or customers who have obtained credits from it or other licensed institutions;
- (v) Providing guarantee for the supply of credit to its customers by any other licensed institution;
- (w) Mobilizing capital through shares, debentures, bonds, loan-bonds, saving-bonds or other financial instruments within the limit prescribed by the Rastra Bank;
- (x) Obtaining refinance credit from the Rastra Bank as per necessity, or obtaining or supplying credits to or from other licensed institutions;
- (y) Supplying funds received from the Government of Nepal or other native or foreign agencies as credits for the promotion of projects, or managing such credits;
- (z) Doing, or causing to be done, study, research and survey work relating to the establishment, operation and evaluation of projects, and providing training, consultancy and other information;
- (aa) Writing off credits, subject to the bye-laws framed by the Board;
- (bb) Prescribing conditions, as required, in order to protect its interests while supplying credits to any persons or institutions or doing any transaction with them;
- (cc) Supplying installment or hire-purchase credit to any person, firm, company or

institution for motor vehicles, machinery, tools, equipment, durable household goods or similar other movable property;

(dd) Operating projects such as purchase of lands and construction of buildings for land development and residential purposes, and selling and managing, or cause to be sold and managed, such lands and buildings;

(ee) Performing such other functions as may be prescribed by the Rastra Bank.

(3) Subject to this Act and the memorandum of association and articles of association, a Class "C" licensed institution may carry on the following financial transactions:

(a) Subject to the limit prescribed by the Rastra Bank, accepting deposits with or without interest, and refund such deposits;

(b) Supplying credit, other than hypothecation credit, as prescribed;

(c) Supplying credit for hire-purchase, leasing, housing and service business;

(d) Carrying on merchant banking business;

(e) Writing off credit, subject to the bye-laws made by the Board;

(f) Supplying credits jointly, on the basis of co-financing in collaboration with other licensed institutions in accordance with the mutual agreement entered into for the division of the collateral pari passu;

(g) Supplying credits against the guarantee of any native bank or financial institution;

(h) Obtaining credit against the security of its movable and immovable assets;

(i) Supplying a fresh credit in lump sum or by installment against the security of the same movable or immovable property which has already been furnished with, it to the extent covered by the total value of such security or supplying a fresh credit in lump sum or by installment against the security of the same movable or immovable property which has already been furnished with any other licensed institution as security, to the extent covered by the total value of such security;

(j) Making proper arrangements of its assets, sell or rent the same;

(k) Issuing, accepting, paying, discounting or purchasing and selling bills of exchange, promissory notes, cheques, travelers cheques, drafts or other financial instruments;

(l) Purchasing and selling the Indian rupees;

(m) Supplying credits not exceeding the amount prescribed by the Rastra Bank, against individual or collective guarantee, for the economic upliftment of the destitute class, low-income families, victims of natural calamities and inhabitants in any area of the country;

(n) Exchanging with the Rastra Bank or any other licensed institutions particulars of, information or notices on debtors or customers who have obtained credit or any kind of facility from it and other licensed institutions;

(o) Supplying installment or hire-purchase credit to any person, firm, company or

institution for motor vehicles, machinery, tools, equipment, durable household goods or similar other movable property;

(p) Supplying credit to any person, firm, company or institution for purchasing a residential building or warehouse or purchasing land for constructing such residential building or warehouse;

(q) Supplying credit (leasing finance) to any person, firm, company or institution for hiring a motor vehicle, machine, tools, equipment, durable household good or similar movable property, or renting such movable property;

(r) Prescribing conditions, as required, in order to protect its interests while supplying credits to any persons or institutions or doing any transaction with them;

(s) Issuing guarantees on behalf of its customers, having such customers execute necessary bonds in consideration thereof, obtaining security, and acquiring their movable or immovable properties as collateral or on mortgage, or the assets of third persons as collateral;

(t) Acting as a commission agent of its customers, taking custody of, and arranging for the sale or purchase of, shares, debentures or securities, and collecting interests, dividends, profits, etc. accruing from shares, debentures or securities;

(u) Operating projects such as purchase of lands and construction of buildings for land development and residential purposes, and selling and managing, or causing to be sold and managed, such lands and buildings;

(v) Performing such other functions as may be prescribed by the Rastra Bank.

(4) Subject to the directives given by the Rastra Bank, a Class "D" licensed institution may carry on the following transactions:

(a) Supplying credit as prescribed;

(b) Supplying micro-credit, with or without any movable or immovable property as the collateral or security, for operating any micro-enterprise to any group or members thereof who have regularly saved for the period prescribed by the Rastra Bank and maintained the prescribed saving;

(c) Obtaining loans or grants from any licensed institution or native or foreign organization, and use such loans or grants for the supply of micro-credit or for making the same effective; Provided that approval of the Rastra Bank shall be obtained prior to obtaining loans or grants from any foreign organization.

(d) Prior to supplying micro-credits, evaluating the schemes for which micro-credits have been requested and determining whether they are feasible;

(e) Engaging in micro-enterprises of such type as may improve the economic condition of low-income persons;

- (f) Holding symposia on micro-enterprises, providing assistance and training in the formulation of schemes, providing technical know-how and mobilizing technical assistance, as required;
- (g) Providing necessary services to a group in respect of the mobilization of micro-credit;
- (h) Taking necessary action towards the timely realization of micro-credits;
- (i) Monitoring whether micro-credits have been properly utilized, and, if they are found not to have been properly utilized, issuing necessary directives;
- (j) Subject to the limit prescribed by the Rastra Bank, accepting deposits with or without interest, and refund such deposits;
- (k) Obtaining credits by pledging its movable and immovable assets as collateral, and properly managing the assets;
- (l) Writing off credits, subject to the bye-laws framed by the Board;
- (m) Exchanging with the Rastra Bank or any other licensed institutions particulars of, information or notices on debtors or customers who have obtained credit or any kind of facility from it and other licensed institutions;
- (n) Performing such other functions as may be prescribed by the Rastra Bank.

48. Activities prohibited for being carried out by licensed institutions :

(1) No licensed institution shall carry out, or cause to be carried out, the following activities:

(a) Purchasing or selling goods for commercial purpose, or purchasing any immovable property except when it is required for its own use;

Provided that this Clause shall not be deemed to prevent the licensed institutions of Classes "B" and "D" from purchasing, selling, distributing and managing lands and buildings in connection with carrying on their business transactions subject to Section 47.

(b) Advancing credit against the security of its own shares;

(c) Supplying credit or facility to any promoters, directors, persons who have subscribed one per cent or more of its shares, chief executive or any family member of such persons or to any firms, companies or institutions which are entitled to nominate or appoint directors;

(d) Supplying any type of credit or facility to any promoters, directors, persons who have subscribed one per cent or more of its shares, chief executive or any family member of such persons or managing agent or any firms, companies or institutions which are

entitled to nominate or appoint directors or any firms, companies or institutions in which the institution has a financial interest;

(e) Supplying credit or facility in an amount exceeding such percentage of its capital fund as may be prescribed by the Rastra Bank to a single customer, company and companies or partnership firms of a single group; Explanation: The expression “companies or partnership firms of a single group” means a group of such companies or partnership firms as may be prescribed by the Rastra Bank from time to time.

(f) Supplying any type of credit to any person, firm, company or institution against the guarantee given by the promoters, directors or chief executive;

(g) Making investment in the securities of those licensed institutions which have obtained permission from the Rastra Bank to carry on the financial transactions of Classes “A”, “B” and “C”;

(h) Making investment of an amount exceeding the limit prescribed by the Rastra Bank in the share capital of any other institution;

(i) Indulging with other licensed institutions to mutually create any type of monopoly or any other type of controlled practice in the financial transactions;

(j) Doing any kind of act which is capable of creating an artificial obstruction in the competitive environment of the financial sector, with the intention of deriving undue advantage;

(k) Doing such other acts prohibited from being done by a licensed institution as may be prescribed by the Rastra Bank.

(2) Notwithstanding anything contained in Clause s (c) and

(d) of Sub-section (1) or elsewhere in this Act, nothing shall be deemed to bar the supplying of credit against loan-bonds or fixed deposit receipts issued by the Government of Nepal or the Rastra Bank or the providing of credit facility or advance under the provisions made the employee facilities to any promoter, director, chief executive or shareholder holding more than one percent of its shares in cases if such chief executive or shareholder is holding any post of such licensed institution.

(3) No licensed institution shall, for the purpose of saving any person who makes deposits in an account of the funds earned by that in an illegal manner from legal action, provide any kind of assistance to such person to hide, convert, pay or transfer such funds or to hide or lie about the origin or source thereof or to do any thing for that purpose. If any licensed institution receives information about the commission of such act or suspects that any such act has been done, it shall forthwith provide particulars

thereof to the Rastra Bank or to any other concerned body responsible for controlling deflection of currency.

- November 1, 2018 in [Banks and Financial Institutions Act, 2063 \(2006\)](#)

- [1 Comment](#)

Chapter-7

Chapter-7

Regulation, Inspection and Supervision

49. Power of Rastra Bank to regulate :

(1) The Rastra Bank shall have full powers to regulate and systematize the functions and activities of licensed institutions.

(2) The Rastra Bank may frame Rules and Bye-laws on such matters it may consider necessary and issue necessary orders, directives, notices and circulars in connection with carrying out regulation operations pursuant to Sub-section (1); and it shall be the duty of the licensed institutions concerned to comply with such Rules, orders, directives, notices and circulars.

50. Banking or financial system and credit control : The Rastra Bank may issue directives to the licensed institutions from time to time in relation to the banking or financial system, currency and credit. It shall be the duty of the licensed institutions to comply with such directives.

51. Power of Rastra Bank to issue directives in relation to interest rates :

(1) The rates of interest to be paid on deposits and to be charged on credits by the licensed institutions shall be as prescribed by the Rastra Bank.

(2) Notwithstanding anything contained in Sub-section (1), the Rastra Bank may, if it so deems necessary in order to carry on, or cause to be carried on, the financial transactions in a competitive manner, delegate the power to fix such interest rates to the licensed institutions.

52. Power of Rastra Bank to inspect and supervise :

(1) The Rastra Bank may inspect and supervise, or cause to be inspected and supervised, any office of a licensed institution at any time. The Rastra Bank may carry out such inspection and supervision operations by deputing any of its officers or any expert designated by it to the concerned office (on-site) or by requisitioning detailed statements and information to be furnished to it (off-site).

(2) It shall be the duty of the licensed institution concerned or the concerned officer of such licensed institution to provide, and allow inspection or examination of, such records, data, particulars, information, programs created through electronic media, statements and financial control system or any other necessary document as demanded by the officer or expert or the Rastra Bank carrying out inspection and supervision pursuant to Sub-section (1) to, and by, such officer, expert or the Rastra Bank within such time as specified by such officer, expert or the Rastra Bank.

(3) The Rastra Bank or the officer carrying out inspection and supervision pursuant to this Section may cause any officer or employee of the licensed institution concerned to make deposition in writing in respect of any acts and actions considered necessary in the course of such inspection and supervision.

(4) If the officer carrying out inspection and supervision pursuant to this Section so deems necessary in the course of such inspection and supervision, he or she may affix his or her seal on the treasuries, accounts, records, books, ledgers and other documents of the licensed institution concerned as well as on the warehouses pledged to it as security and cause the licensed institution concerned to hold the same under its custody.

(5) The Rastra Bank or the officer carrying out inspection and supervision may give necessary directives to the licensed institution concerned in respect of the matters considered necessary in the course of carrying out inspection and supervision. It shall be the duty of the licensed institution concerned to comply with the directives so given by the Rastra Bank or the officer carrying out inspection and supervision. The officer carrying out inspection and supervision shall, as soon as possible, provide the Rastra Bank with the information of the directives so given.

53. Inspections to be made by foreign banks or financial institutions :

(1) A foreign bank or financial institution may, with the approval of the Rastra Bank under this Act, inspect its office established in the State of Nepal, subject to such

conditions as may be prescribed by the Rastra Bank.

(2) A copy of the report of inspection made by a foreign bank financial institution pursuant to Sub-section (1) shall be submitted to the Rastra Bank.

54. Control over licensed institutions :

(1) Notwithstanding anything contained elsewhere in this Act, if the Rastra Bank is satisfied that a licensed institution has violated the Nepal Rastra Bank Act, 2058 (2002), this Act or the rules or bye-laws framed hereunder or the orders or directives issued hereunder or is satisfied, on the basis of the inspection and supervision report of the Rastra Bank, that a licensed institution has failed or is likely to fail to perform the obligations required to be performed by the licensed institution or that a bank or financial institution has not been operated smoothly or has done any thing contrary to the interests of its shareholders or depositors, the Rastra Bank may suspend the Board of Directors of such licensed institution and take such licensed institution under its control.

(2) After taking any licensed institution under its control pursuant to Sub-section (1), the Rastra Bank may either itself carry out the management of such licensed institution or cause such management to be carried out by any appropriate person, firm, company or institution appointed by it.

(3) The Rastra Bank shall, within one year after the management of a licensed institution has been carried out by itself or through any other person, firm, company or institution pursuant to Sub-section (2), perform, or cause to be performed, a financial and management audit, of such institution and publicly publish a report thereof.

(4) If the Rastra Bank is satisfied, from the report referred to in Sub-section (3), that the financial institution concerned has become incapable of performing the liabilities required to be performed by it or that such institution has reached a stage if it cannot be operated smoothly, the Rastra Bank may make an application to the Appellate Court for the cancellation of registration of such licensed institution.

(5) If the Rastra Bank is satisfied, from the report referred to in Sub-section (3), that the financial institution concerned has become capable of performing the liabilities required to be performed by it or that such institution has reached a stage if it can be operated smoothly, the Rastra Bank may take the following action:

(a) To remove the suspension of the Board of Directors of the licensed institution made pursuant to Sub-section (1) and again hand over the management of the institution to

that Board, or

(b) To dismiss the Board of Directors of the licensed institution which has been suspended pursuant to Sub-section (1), form a new Board of Directors from amongst the shareholders of the licensed institution, and hand over the management of that institution to the new Board, or

(c) To call a general meeting of the licensed institution, get a new Board of Directors formed by the meeting, and hand over the management of the licensed to the Board , or

(d) To take any such other action as the Rastra Bank thinks proper.

(6) Prior to taking a licensed institution under its control pursuant to Sub-section (1), the Rastra Bank shall give an opportunity to the concerned licensed institution to defend itself, by providing it with a time-limit not exceeding 15 days, according to the situation.

(7) The licensed institution concerned shall bear all expenses incurred by the Rastra Bank in every act and action done and taken by it after taking such institution under its control pursuant to this Section.

(8) The Rastra Bank shall give information on having taken\ any licensed institution under its control pursuant to Sub-section (1) to the Government of Nepal.

55. Returns to be submitted : A licensed institution shall submit to the Rastra Bank the following particulars as prescribed by the Rastra Bank on a regular basis:

(a) On-balance sheet and off-balance sheet transactions, and the accounts and statements of income and expenditure related thereto;

(b) Particulars relating the conditions or restrictions imposed in relation to all types of on-balance sheet and off-balance sheet transactions;

(c) Particulars concerning the situation in relation to foreign currencies, exchange rates (SPOT), forward exchange rates or similar other instruments, and other processes of electronic or other payment systems;

(d) Such other particulars and documents as may be prescribed by the Rastra Bank.

Chapter 8

Chapter 8

Provisions Relating to Supply and Recovery of Credits

56. Credit to be supplied :

(1) A licensed institution shall supply credit as prescribed by the Rastra Bank, subject to the directives given by the Rastra Bank and the credit policy determined by the Board.

(2) While supplying credit, a licensed institution shall obtain any movable or immovable property acceptable to it as a security or an appropriate guarantee in a manner to safeguard its interests.

(3) A licensed institution shall write to the concerned office to so withhold any property which it has taken up as the security against a credit pursuant to this Section that such property cannot be registered in the name of or transferred to any person in any manner whatsoever.

(4) When requested by a licensed institution to withhold registration or transmission pursuant to Sub-section (3), the concerned office shall withhold the registration or transmission thereof.

(5) The Rastra Bank may give necessary directive to the licensed institution to disburse credits for such class and in such area as prioritized for the economic upliftment of the persons belonging to a low-income and indigent class and of the inhabitants residing in any specific geographical region.

57. Provisions relating to recovery of credit :

(1) If any person, firm, company or institution fails to abide by the terms of the credit agreement or any terms and covenants made with a licensed institution or fails to repay credit to the licensed institution within the time-limit stipulated in the deed, or if the licensed institution finds through investigations that the borrower has not used the credit amount for the purpose for which it has been supplied or has misappropriated or misused it, the licensed institution may, notwithstanding anything contained in the concerned deed or in the laws in force, recover its principal and interest by auctioning or otherwise disposing of any property pledged to it, or any collateral or security deposited with it, by the borrower.

(2) If a person, firm, company or institution borrowing credit relinquishes in any manner the title to the property pledged to the licensed institution as a collateral or security or if the value of such collateral or security declines for any other reason, the licensed institution may, notwithstanding anything contained in the laws in force, ask the concerned person, firm, company or institution to furnish additional collateral or security within a period as prescribed by it. If the concerned person, firm,

company or institution fails to furnish additional collateral or security within the time-limit prescribed by the licensed institution or if the principal and interest cannot be recovered from the collateral or security pledged, the licensed institution may, in accordance with the laws in force, recover its principal and interest from any other movable and immovable property owned by the borrower or to which the borrower has title.

(3) The amount of principal and interest due to the licensed institution and the expenses incurred in auction or other disposal of a property made pursuant to this Section shall be deducted from the proceeds of such auction or disposal, and the balance, if any, shall be refunded to the concerned person, firm, company or institution.

(4) The licensed institution shall write to the concerned office for registration or transmission of the assets auctioned by it pursuant to this Section in the name of the person who has taken over it on such auction in accordance with the laws in force.

(5) When so requested by the licensed institution for registration or transmission pursuant to Sub-section (4), the concerned office shall make registration or transmission notwithstanding anything contained in the laws in force.

(6) If no one offers a bid in an auction sale, by a licensed institution under this Section, of the movable and immovable property pledged as the collateral or security, the licensed institution shall take over the ownership of such property as prescribed.

(7) The licensed institution shall write to the concerned office for registration or transmission of the property of which ownership has been taken over by such institution pursuant to Sub-section in its name. When so requested, the concerned office shall make registration or transmission of such property in the name of such licensed institution notwithstanding anything contained in the laws in force.

(8) If the previous owner of the property taken over by a licensed institution or any person in an auction refuses to allow its possession and use and the licensed institution or that person requests to have the same available for possession and use according to the laws in force, the appropriate body of the Government of Nepal shall render necessary assistance.

(9) No licensed institution shall hold up action for the recovery of credit which has not been written off pursuant to Clause (dd) of Sub-section (1) of, Clause (aa) of Sub-section (2) of, Clause (e) of Sub-section (3) of, and Clause (l) of Sub-section (4) of, Section

47. If any person, firm, company or institution has failed to repay the credit borrowed from a licensed institution within the repayment period of the credit deed, and while taking action pursuant to this Section for the recovery of such credit, the licensed institution concerned shall write to the Credit Information Center Limited to

include such person, firm, company or institution in the black list in accordance with the laws in force.

(11) If a credit cannot be recovered even while taking action for the recovery of such credit against any person, firm, company or institution pursuant to this Section, the licensed institution concerned may, for the purpose of recovering such credit also from any other property of the borrowing person, firm, company or institution situated abroad, institute action for the recovery of credit including the withholding of property in accordance with the laws in force.

(12) If a credit cannot be recovered even upon taking all actions on recovery of credit pursuant to Clause s (1) to (8), the licensed institution may make a request to the Rastra Bank for necessary provision to withhold and seize the passport of the borrower person and to deprive such borrower from any facilities to be provided by the State. On receipt of such request, the Rastra Bank shall forward the matter, accompanied by its opinion, to the Government of Nepal for necessary action.

Chapter- 9

Chapter- 9

Provisions Relating to Accounts, Records, Returns and Reports

58. Accounts and records to be maintained accurately :

(1) A licensed institution shall maintain its accounts, ledgers, records, and books of accounts truly and correctly.

(2) The accounts to be maintained pursuant to Sub-section (1) shall be so maintained according to the universally accepted principles based upon the double entry system as to clearly reflect the actual condition of the transactions of the licensed institution.

(3) Save as otherwise permitted by the Rastra Bank, the accounts to be maintained pursuant to Sub-section (1) shall be maintained at its registered office.

59. Balance sheet, profit and loss account and audit :

- (1) A licensed institution shall prepare its balance sheet, profit and loss account, cash flow statement and other financial statements, as well, in such format and in accordance with such procedure as may be prescribed by the Rastra Bank.
- (2) A licensed institution shall, no later than five months after the expiry of a financial year, prepare its balance sheet, profit and loss account, cash flow statement and other financial statements, as well, in such format and in accordance with such procedure as may be prescribed by the Rastra Bank and have them audited. Such financial statements shall be signed by at least two directors, the chief executive and the auditor.
- (3) If any licensed institution which has failed to have its accounts audited within the period referred to in Sub-section (2) makes a request, accompanied by a reasonable reason, for an extension of the period for audit, the Rastra Bank may extend a period of not more than three months.
- (4) The Rastra Bank may appoint an auditor to audit the accounts of a licensed institution which fails to have its accounts audited even within the period referred to in Sub-section (3).
- (5) The auditor appointed pursuant to Sub-section (4) shall submit a report of audit performed by him or her to the concerned licensed institution and the Rastra Bank.
- (6) The auditor appointed pursuant to Sub-section (4) shall receive such remuneration as prescribed by the Rastra Bank. It shall be the duty of the concerned licensed institution to pay to the auditor so appointed the remuneration prescribed by the Rastra Bank.

60. Appointment of auditor :

- (1) The general meeting of a bank or financial institution shall appoint an auditor.
- (2) The general meeting shall appoint an auditor pursuant to Sub-section (1) from amongst the auditors included in the list of auditors approved by the Rastra Bank. Provided that the general meeting shall not appoint the same auditor for more than three consecutive times.
- (3) While appointing an auditor from amongst the auditors included in the list of auditors approved by the Rastra Bank, the general meeting shall appoint a chartered accountant in the case of a licensed institution of Class "A" or "B" or "C", and a chartered accountant or a registered auditor in the case of a licensed institution= of Class "D".
- (4) The Rastra Bank may, at any time, remove any auditor who fails to fulfill his or her duty from the list of auditors entitled to audit the accounts of licensed institutions.

61. Disqualification for appointment as auditor : Any of the following persons or any firm or company in which such person is a promoter or partner shall not be eligible to be appointed as an auditor of a licensed institution and shall cease to hold the office of auditor even though such person is already appointed:

- (a) A director of the licensed institution or his or her family member;
- (b) An employee of the licensed institution;
- (c) A person working as a partner of any director or employee of the licensed institution;
- (d) A debtor of the licensed institution;
- (e) A person who has been punished in an offense relating to audit, and a period of five years has not lapsed after he or she has served the punishment;
- (f) A person who is insolvent;
- (g) A person, firm, company or institution having subscribed one percent or more of the shares in the licensed institution;
- (h) A person who has been punished by the court for a criminal offense involving moral turpitude, and a period of five years has not lapsed after he or she has served the punishment;
- (i) A person who has been punished by a court for an offense relating to corruption or cheating;
- (j) A person who is not included in the list of auditors\ approved by the Rastra Bank.

62. Returns to be submitted : A licensed institution shall, at all times, provide all such accounts, records, books, ledgers and other statements as demanded by the auditor in the course of performing audit. In addition, the officer responsible for providing such returns shall also furnish forthwith accurate replies to the queries made by the auditor

63. Functions, duties and powers of auditor :

- (1) The functions, duties and powers of an auditor appointed pursuant to Section 60 shall be as provided in the laws in force.
- (2) In addition to the matters prescribed by the laws in force, the auditor shall clearly mention the following matters in his or her report:
 - (a) Whether or not replies to the queries asked by him or her were given;
 - (b) Whether or not the balance sheet, profit and loss account, cash flow statement and other financial statements, as well, have been prepared in such format and in accordance with such procedure as prescribed by the Rastra Bank, and whether or not they correspond to the accounts, records, books and ledgers maintained by the

institution;

(c) Whether or not the accounts, records, books and ledgers have been maintained accurately in accordance with the laws in force;

(d) Whether or not any officer of the licensed institution has done any act contrary to the laws in force or committed any irregularity or caused any loss or damage to the licensed institution;

(e) Whether or not the transactions of the licensed institution have been carried on in a satisfactory manner;

(f) Whether or not the capital fund and the risk-bearing fund have been maintained adequately;

(g) Whether or not credits have been written off as prescribed;

(h) Whether or not action has been taken in accordance with the directives given by the Rastra Bank;

(i) Whether or not action has been taken to protect the interests of depositors and investors;

(j) Whether or not the returns received from the offices of the licensed institution were adequate for the purpose of audit;

(k) Other matters, which, in his or her opinion, should be made known to the shareholders;

(l) Such other matters prescribed by the Rastra Bank as required to be mentioned by an auditor in his or her report, and

(m) Necessary suggestions.

64. Report to be forwarded :

(1) The auditor shall forward a report of audit performed by him or her to the concerned licensed institution and the Rastra Bank.

(2) While forwarding the audit report to the Rastra Bank pursuant to Sub-section (1), the auditor shall also attach therewith other reports related with the audit of the licensed institution as well as such documents as prescribed by the Rastra Bank.

65. In the event of vacancy in office of auditor : If the office of an auditor appointed pursuant to Section 60 falls vacant because of his or her death or resignation or for any other reason, the Board may appoint another auditor to the vacant office for the remainder of term of the predecessor by fulfilling the procedures laid down in the said

Section. The appointment of an auditor so made shall be endorsed by the annual general meeting to be held immediately thereafter.

66. Auditor to certify: The auditor shall mark the accounts, records, books and ledgers audited by him or her by affixing his or her signature thereon and also mentioning therein the date on which he or she audited them.

67. Remuneration of auditor : The remuneration of the auditor shall be as prescribed by the general meeting if he or she has been appointed by the general meeting, and by the Board if he or she has been appointed by the Board.

Chapter-10

Chapter-10

Provisions Relating to Merger of Licensed Institutions

68. Merger of licensed institutions : A licensed institution may, by fulfilling the procedures referred to in this Act, be merged with another licensed institution in accordance with the laws in force.

69. Application to be made for merger of licensed institutions with each other :

(1) If any licensed institution wishes to be merged with or merging another licensed institution, both the merging and merged licensed institutions shall adopt a special resolution to that effect in their respective general meetings and make a joint application, setting out the following matters, to the Rastra Bank for approval:

(a) Audit report of the last fiscal year of the merging licensed institution, along with its audited balance sheet, profit and loss account, cash flow statement and other financial statements;

(b) A copy of the written consent of the creditors of both the merging and merged licensed institutions to merge or to be merged;

(c) Valuation of the movable and immovable properties of, and actual details of the assets and liabilities of, the merging licensed institution;

(d) A copy of the decision as to the employees of the merging licensed institution;

(e) Such other necessary matters as prescribed by the Rastra Bank in relation to the merger of the licensed institutions.

(2) If an application is made for approval pursuant to Sub-section (1), the Rastra Bank shall examine the documents and returns attached with the application and decide whether or not to grant approval for the merger of the licensed institutions with each other and give information thereof to the concerned licensed institutions within forty five days, and within a period of additional fifteen days if the Rastra Bank has demanded any returns or documents in the course of making decision.

(3) Notwithstanding anything contained elsewhere in this Act,= the Rastra Bank shall not grant approval for the merger of any two or more than two licensed institutions if it sees that the merger of such licensed institutions is likely to create an environment of unhealthy competition or to give rise to the monopoly or controlled practices of any licensed institution in the financial sector.

(4) On receipt of an approval from the Rastra Bank for merger pursuant to Sub-section (2), all the assets and liabilities of the merging licensed institution shall be transferred to the merged licensed institution.

(5) The Rastra Bank shall maintain records of the merged licensed institutions.

(6) The Rastra Bank may issue necessary directives in relation to other procedures relating to the merger of licensed institutions.

(7) The Rastra Bank shall publish in a newspaper of national circulation at least once within thirty days after the date of decision a notice containing the particulars of the decision made by it in relation to the merger of any licensed institution for the information of the general public.

Chapter-11

Chapter-11

Provisions Relating to Offenses and Punishment

70. Acts to be deemed as offenses : Commission of any of the following acts shall be deemed to be a commission of an offense under this Act:

(a) Carrying on the financial transactions without obtaining a license under this Act or in contravention of the conditions of the license or accepting deposits or

supplying credit or issuing debentures or other financial instruments in violation of this Act or the orders or directives issued under this Act or paying or obtaining interest in contravention of the term prescribed by the Rastra Bank or dealing in foreign exchange in contravention of this Act or the laws in force or the orders or directives issued under this Act;

(b) Failure of any officer who is responsible for maintaining the secrecy of the financial transactions, accounts, records, ledgers, books and other accounts related documents of the licensed institution pursuant to this Act or the orders or directives issued under this Act to maintain such secrecy;

(c) Violation by any one of this Act or any order or directive issued under this Act, other than that mentioned in Clause (a) or (b).

71. Punishment :

(1) Any person who commits any of the following offenses shall be punished as follows:

(a) Any person who carries on the financial transactions without obtaining a license under this Act shall be punished with a fine not exceeding three hundred per cent of the amount involved in the transactions or with imprisonment for a term not exceeding three years or with both punishments, along with the confiscation of the amount involved in the said transactions.

(b) Any person who deals in foreign exchange in contravention of this Act or any other laws in force shall be punished with a fine not exceeding three hundred per cent of the amount involved in the offense or with imprisonment for a term not exceeding three years or with both punishments.

(c) Any person who accepts deposits or supplies credit or issues debentures or other financial instruments in contravention of this Act or the order or directive issued under this Act or pays or obtains interest in contravention of the term prescribed by the Rastra Bank shall be punished with a fine not exceeding two hundred per cent of the amount involved in the offense or with imprisonment for a term not exceeding two years or with both punishments.

(d) If any officer who is responsible for maintaining the secrecy of the financial transactions, accounts, records, ledgers, books and other accounts related documents of a licensed institution pursuant to this Act or the order or directive issued under this Act fails to maintain such secrecy, such officer shall be punished with a fine not exceeding five hundred thousand rupees or with imprisonment for a term not exceeding one year or with both punishments.

- (e) Any person who commits the offense referred to in Clause (c) of Section 70 shall be punished with a fine equal to the amount involved in the offense or with imprisonment for a term not exceeding one year or with both punishment, along with the confiscation of the amount involved in the offense.
- (f) If it is not possible to confiscate, and determine the figure of, the amount involved in an act and action done and taken by any person in contravention of this Act, such person shall be punished with a fine not exceeding one million rupees or with imprisonment for a term not exceeding one year or with both punishment, according to the gravity of the offense.
- (2) If any licensed institution or any other person, firm, company, or institution commits any offense referred to in Section 70, the concerned officer of such licensed person, firm, company or institution who commits such offense shall be subjected to the punishment as referred to in this Section.
- (3) Any licensed institution or any other person, firm, company or institution that attempts to commit any offense referred to in Section 70 or aids and abets in the commission of such offense in any manner shall be subjected to punishment which is not more than half the punishment referred to in Sub-section (1).

72. Government of Nepal to be plaintiff : Any case relating to the offense referred to in Section 70 shall be filed, with the Government of Nepal being the plaintiff, and such case shall be deemed to have been included in Schedule 1 of the Government Cases Act, 2049 (1993).

73. Rastra Bank to give information : If the Rastra Bank learns from any source that any person has committed any of the offenses referred to in Section 70, the Rastra Bank shall write to the Government of Nepal or concerned body for necessary action.

74. Punishment for violation of regulation of Rastra Bank : (1) If any licensed institution violates any order or directive issued by the Rastra Bank under the Nepal Rastra Bank Act, 2058 (2002) or this Act or the Rules or Bye-laws framed there under the Rastra Bank may impose the following punishment on such licensed institution, according to the gravity of the violation of regulation:

- (a) To warn, or give warning in writing;
- (b) To get the Board of Directors to sign a bond for taking reformatory measures;
- (c) To issue written order to end repeated violations, remain away therefrom and take reformatory measures;

- (d) To restrain the licensed institution from distributing dividends to its shareholders or issuing bonus shares or from doing both of these acts;
- (e) To restrain the licensed institution from accepting deposits or advancing credits or from doing both of these acts;
- (f) To impose a full or partial restriction on the transactions of the licensed institution;
- (j) To suspend or cancel the license of the licensed institution;
- (k) To file an application with the Appellate Court for the dissolution of the licensed institution.

(2) Notwithstanding anything contained in Sub-section (1), in the event of the failure of a licensed institution to submit such documents, returns, data or records as demanded by the Rastra Bank or its officer carrying out inspection and supervision under the Nepal Rastra Bank Act, (2002) or this Act or the Rules or Bye-laws framed thereunder, within the time prescribed by the Rastra Bank or its officer carrying out such inspection and supervision, the Rastra Bank may punish such licensed institution with a fine ranging from ten thousand rupees to fifty thousand rupees, based on the classification of the licensed institution.

(3) If the licensed institution fails to pay the fine imposed under Sub-section (2) within three days, the Rastra Bank may realize it by debiting it from the account of such licensed institution with the Rastra Bank.

(4) If any officer of a licensed institution violates the Nepal Rastra Bank Act, 2058(2002) or this Act or the Rules or Bye-laws framed thereunder or any order or directive issued by the Rastra Bank thereunder or acts contrary to the interests of depositors or investors or fails to submit such documents, returns, data or records as demanded by the Rastra Bank or its officer carrying out inspection and supervision, within the time prescribed by the Rastra Bank or its officer carrying out such inspection and supervision, the Rastra Bank may punish such officer with punishment as follows, according to the gravity of the violation of such order or directive:

- (a) To warn or admonish him or her.
- (b) To suspend him or her.
- (c) To impose on him or her a fine not exceeding five hundred thousand rupees.
- (d) To order the Board of Directors of the concerned licensed institution to withhold all facilities including his or her salary and allowances.
- (e) To order the Board of Directors of the concerned licensed institution to remove him or her from the office of director if he or she is a director or to retire him or her from the service if he or she is an officer, notwithstanding anything contained in the laws relating to the conditions of service of such employee.

(5) While imposing punishment on any person under this Section, such person shall not be deprived of a reasonable opportunity to defend him or her. Provided that while imposing punishment under Clause s (a), (b), (c) and (d) of Sub-section (1), Sub-section (2) and Clause s (a) and (b) of Sub-section (4), it shall not be necessary to provide an opportunity for defense.

75. Appeal :

(1) Any licensed institution or any officer of that institution who is not satisfied with any punishment imposed by the Rastra Bank under Section 74 may make an appeal to the Appellate Court within thirty five days from the date of receipt of the order of such punishment.

(2) While making an appeal pursuant to Sub-section (1), a deposit in a sum that is fifty per cent of the fine, if any, imposed, shall be furnished with the Rastra Bank.

Chapter-11

Provisions Relating to Offenses and Punishment

70. Acts to be deemed as offenses : Commission of any of the following acts shall be deemed to be a commission of an offense under this Act:

(a) Carrying on the financial transactions without obtaining a license under this Act or in contravention of the conditions of the license or accepting deposits or supplying credit or issuing debentures or other financial instruments in violation of this Act or the orders or directives issued under this Act or paying or obtaining interest in contravention of the term prescribed by the Rastra Bank or dealing in foreign exchange in contravention of this Act or the laws in force or the orders or directives issued under this Act;

(b) Failure of any officer who is responsible for maintaining the secrecy of the financial transactions, accounts, records, ledgers, books and other accounts related documents of the licensed institution pursuant to this Act or the orders or directives issued under this Act to maintain such secrecy;

(c) Violation by any one of this Act or any order or directive issued under this Act, other than that mentioned in Clause (a) or (b).

71. Punishment :

(1) Any person who commits any of the following offenses shall be punished as follows:

(a) Any person who carries on the financial transactions without obtaining a license under this Act shall be punished with a fine not exceeding three hundred per cent of the amount involved in the transactions or with imprisonment for a term not exceeding three years or with both punishments, along with the confiscation of the amount involved in the said transactions.

(b) Any person who deals in foreign exchange in contravention of this Act or any other laws in force shall be punished with a fine not exceeding three hundred per cent of the amount involved in the offense or with imprisonment for a term not exceeding three years or with both punishments.

(c) Any person who accepts deposits or supplies credit or issues debentures or other financial instruments in contravention of this Act or the order or directive issued under this Act or pays or obtains interest in contravention of the term prescribed by the Rastra Bank shall be punished with a fine not exceeding two hundred per cent of the amount involved in the offense or with imprisonment for a term not exceeding two years or with both punishments.

(d) If any officer who is responsible for maintaining the secrecy of the financial transactions, accounts, records, ledgers, books and other accounts related documents of a licensed institution pursuant to this Act or the order or directive issued under this Act fails to maintain such secrecy, such officer shall be punished with a fine not exceeding five hundred thousand rupees or with imprisonment for a term not exceeding one year or with both punishments.

(e) Any person who commits the offense referred to in Clause

(c) of Section 70 shall be punished with a fine equal to the amount involved in the offense or with imprisonment for a term not exceeding one year or with both punishment, along with the confiscation of the amount involved in the offense.

(f) If it is not possible to confiscate, and determine the figure of, the amount involved in an act and action done and taken by any person in contravention of this Act, such person shall be punished with a fine not exceeding one million rupees or with imprisonment for a term not exceeding one year or with both punishment, according to the gravity of the offense.

(2) If any licensed institution or any other person, firm, company, or institution commits any offense referred to in Section 70, the concerned officer of such licensed person, firm, company or institution who commits such offense shall be subjected to the

punishment as referred to in this Section.

(3) Any licensed institution or any other person, firm, company or institution that attempts to commit any offense referred to in Section 70 or aids and abets in the commission of such offense in any manner shall be subjected to punishment which is not more than half the punishment referred to in Sub-section (1).

72. Government of Nepal to be plaintiff : Any case relating to the offense referred to in Section 70 shall be filed, with the Government of Nepal being the plaintiff, and such case shall be deemed to have been included in Schedule 1 of the Government Cases Act, 2049 (1993).

73. Rastra Bank to give information : If the Rastra Bank learns from any source that any person has committed any of the offenses referred to in Section 70, the Rastra Bank shall write to the Government of Nepal or concerned body for necessary action.

74. Punishment for violation of regulation of Rastra Bank : (1) If any licensed institution violates any order or directive issued by the Rastra Bank under the Nepal Rastra Bank Act, 2058 (2002) or this Act or the Rules or Bye-laws framed there under the Rastra Bank may impose the following punishment on such licensed institution, according to the gravity of the violation of regulation:

- (a) To warn, or give warning in writing;
- (b) To get the Board of Directors to sign a bond for taking reformatory measures;
- (c) To issue written order to end repeated violations, remain away therefrom and take reformatory measures;
- (d) To restrain the licensed institution from distributing dividends to its shareholders or issuing bonus shares or from doing both of these acts;
- (e) To restrain the licensed institution from accepting deposits or advancing credits or from doing both of these acts;
- (f) To impose a full or partial restriction on the transactions of the licensed institution;
- (j) To suspend or cancel the license of the licensed institution;
- (k) To file an application with the Appellate Court for the dissolution of the licensed institution.

(2) Notwithstanding anything contained in Sub-section (1), in the event of the failure of a licensed institution to submit such documents, returns, data or records as demanded by the Rastra Bank or its officer carrying out inspection and supervision under the Nepal Rastra Bank Act, (2002) or this Act or the Rules or Bye-laws framed thereunder, within

the time prescribed by the Rastra Bank or its officer carrying out such inspection and supervision, the Rastra Bank may punish such licensed institution with a fine ranging from ten thousand rupees to fifty thousand rupees, based on the classification of the licensed institution.

(3) If the licensed institution fails to pay the fine imposed under Sub-section (2) within three days, the Rastra Bank may realize it by debiting it from the account of such licensed institution with the Rastra Bank.

(4) If any officer of a licensed institution violates the Nepal Rastra Bank Act, 2058(2002) or this Act or the Rules or Bye-laws framed thereunder or any order or directive issued by the Rastra Bank thereunder or acts contrary to the interests of depositors or investors or fails to submit such documents, returns, data or records as demanded by the Rastra Bank or its officer carrying out inspection and supervision, within the time prescribed by the Rastra Bank or its officer carrying out such inspection and supervision, the Rastra Bank may punish such officer with punishment as follows, according to the gravity of the violation of such order or directive:

(a) To warn or admonish him or her.

(b) To suspend him or her.

(c) To impose on him or her a fine not exceeding five hundred thousand rupees.

(d) To order the Board of Directors of the concerned licensed institution to withhold all facilities including his or her salary and allowances.

(e) To order the Board of Directors of the concerned licensed institution to remove him or her from the office of director if he or she is a director or to retire him or her from the service if he or she is an officer, notwithstanding anything contained in the laws relating to the conditions of service of such employee.

(5) While imposing punishment on any person under this Section, such person shall not be deprived of a reasonable opportunity to defend him or her. Provided that while imposing punishment under Clause s (a), (b), (c) and (d) of Sub-section (1), Sub-section (2) and Clause s (a) and (b) of Sub-section (4), it shall not be necessary to provide an opportunity for defense.

75. Appeal :

(1) Any licensed institution or any officer of that institution who is not satisfied with any punishment imposed by the Rastra Bank under Section 74 may make an appeal to the Appellate Court within thirty five days from the date of receipt of the order of such punishment.

(2) While making an appeal pursuant to Sub-section (1), a deposit in a sum that is fifty per cent of the fine, if any, imposed, shall be furnished with the Rastra Bank.

Chapter-12

Chapter-12

Miscellaneous

76. Permission to be obtained for voluntary liquidation :

(1) A licensed institution shall not voluntarily liquidate itself without obtaining prior approval of the Rastra Bank.

(2) If an application for voluntary liquidation is made by a licensed institution pursuant to Sub-section (1), the Rastra Bank may, if, upon making necessary inquiries, it is satisfied that the licensed institution is in a position to fully settle its loans and liabilities, give permission to the licensed institution to undergo voluntary liquidation, subject to the conditions prescribed by the Rastra Bank.

77. Order of priority in settlement of liabilities on liquidation of licensed institution :
Notwithstanding anything contained in the laws in force, liabilities shall be settled according to the following order of priority in the course of carrying out liquidation or insolvency of a licensed institution in any manner:

- (a) Expenses incurred in liquidation.
- (b) Payments outstanding to depositors on saving accounts.
- (c) Payments outstanding to depositors on fixed accounts.
- (d) Payments outstanding to other depositors.
- (e) Taxes, fees and other charges payable according to the laws in force.
- (f) Credit obtained from the Rastra Bank.
- (g) Salary, allowances, provident fund, gratuity and other amounts outstanding to employees.
- (h) Other credits obtained by the licensed institution.
- (i) Shareholders.

78. Arbitration/mediation: In the event of any dispute between the licensed institutions, the Rastra Bank shall arbitrate/mediate the same. A decision given by the Rastra Bank in respect of such arbitration/mediation shall be final.

79. Secrecy to be maintained :

(1) Notwithstanding anything contained in the laws in force, the relationship between a licensed institution and its customers and information pertaining to its accounts, records, books, ledgers and statements shall not be disclosed to any person other than the concerned person.

(2) Notwithstanding anything contained in Sub-section (1), if such information is provided in any of the following circumstances, the secrecy shall not be deemed to have been violated:

(a) If it is provided to the Rastra Bank pursuant to the Nepal Rastra Bank Act, 2058 (2002) or this Act or the Rules or Bye-laws framed thereunder or the orders or directives issued thereunder;

(b) If it is provided to a court in connection with any lawsuit or any other legal action;

(c) If it is provided to the legally authorized official making inquiries and investigations or prosecution, in connection with such inquiries and investigations or prosecution;

(d) If it is provided to the auditor in connection with audit;

(e) If it is mentioned in the audit report by the auditor;

(f) If it is provided to the enquiry committee or the investigation officer authorized by the laws in force, in the course of enquiries;

(g) If banking information is exchanged between two or more countries on the basis of a bilateral or multilateral treaty;

(h) If it is provided in the course of exchanging credit between the licensed institutions;

(i) If, in the course of investigation of any case of specific nature, the Government of Nepal, Ministry of Finance, has made a request, accompanied by the reason therefor, for providing the details of the account of the licensed institution or any details of the account of any person, firm, company or institution maintained with the licensed institution, and if the Rastra Bank has given direction for the same.

(3) The Government of Nepal, court, Rastra Bank, enquiry committee, investigating or prosecuting official, auditor or inspector or any other person appointed under this Act shall not divulge the secrecy of any information or particulars received under Sub-section (2).

(4) The directors, chief executive, employees, auditor and advisors of a licensed

institution shall not divulge the secrecy of the accounts, records, books, ledgers and any other information of the licensed institution the secrecy of which is required to be maintained in such a manner as to undermine the relationship between the licensed institution and its customers.

80. Power to give directive to freeze accounts :

(1) In the course of carrying out the investigation of any type of crime or maintaining the national interests by controlling national or international terrorist activities or organized crimes, the Rastra Bank may, at any time, give directive to a licensed institution to freeze any account opened with the licensed institution in the name of any person, firm, company or institution in such a manner as to prevent the withdrawal or transfer of funds in any way from that account.

(2) It shall be the duty of the concerned licensed institution to comply with the directive given by the Rastra Bank pursuant to Sub-section (1).

81. Claim or title to deposits :

(1) Claims of any person other than the actual depositor to deposits made with a licensed institution shall not be entertained. In the event of the death of the depositor, the person willed by him or her, if any, and if such beneficiary also dies or if no person has been willed by the depositor, the surviving person from amongst his or her relatives, in the following order, shall have first title to such deposits:

(a) Husband or wife living in a joint family;

(b) Son or daughter, or adopted son or adopted daughter, living in a joint family;

(c) Father, mother, grand-son, or grand-daughter from the son's side living in a joint family;

(d) Husband or wife, son, unmarried daughter, father or mother who is living separately;

(e) Grand-father or grand-mother of the father's side, brother or unmarried sister, living in a joint family;

(f) Nephew, niece, or step-mother living in an undivided family, or a grand-son or unmarried grand-daughter from the son's side who is living separately;

(g) Uncle, widowed aunt, sister-in-law (elder or younger brother's wife), or grand-daughter-in-law living in a joint family;

(h) Brothers living separately;

(i) Married sisters, grand-father, grand-mother, widowed daughter-in-law, grand-

daughter-in-law, or nephew who are living separately.

(2) If there is no one in the order of priority referred to in Sub-section (1), the heir shall have the title to such deposit, and if there is not even an heir, the deposit shall accrue to the Government of Nepal.

(3) Notwithstanding anything contained in the laws in force, no amount deposited with a licensed institution shall be handed over to anyone without the approval of the person who has the title thereto under Sub-section (1).

82. Particulars of unclaimed deposits or dividends :

(1) A licensed institution shall submit to the Rastra Bank particulars of deposit accounts which have remained unoperated, and of those the title to which have not been claimed under this Act for ten years, within the first month of each fiscal year.

(2) A licensed institution shall submit to the Rastra Bank particulars of dividends payable to shareholders or their heirs who have failed to claim payment thereof even within five years from the date of declaration of the dividends, within the first month of each fiscal year.

(3) A licensed institution shall publish at least one time in a newspaper of national circulation particulars of the accounts which have remained unoperated or deposits or dividends which have not been claimed or distributed as mentioned in Sub-section (1) or (2).

83. Recovery from or confiscation of deposits : If any business or transaction is carried on by pledging as collateral or security the amount deposited with a licensed institution, or if amounts are deposited with a licensed institution with misappropriated funds belonging to the governmental body or any body fully owned by the Government of Nepal, or with funds obtained by committing any action which is deemed to be an offense under the laws in force, or with funds collected through any activity relating to terrorism or organized crime, the such deposits may be confiscated or such collateral or security or misappropriated or other funds may be recovered from such deposits in accordance with the laws in force.

84. Management expenses: The management and establishment expenses of a bank or financial institution shall not exceed the limit prescribed by the Rastra Bank.

85. Power to remove difficulties : If there arises any difficulty in the enforcement of any provision contained in this Act, the Rastra Bank may, with the approval of the Government of Nepal, issue necessary orders to remove such difficulty.

86. Exemptions and facilities :

(1) Notwithstanding anything contained in the laws in force, any deed of credit not exceeding one million rupees supplied by a licensed institution to any citizen of Nepal or any institution established in accordance with the laws in force for agriculture, cottage and small scale industry, irrigation, hydro-power generation and for any other enterprise as specified by the Government of Nepal shall not be required to be registered.

(2) Subject to Sub-section (2) of Section 51, the rates of interest payable to and chargeable by a licensed institution on credits or deposits and the procedures of collecting such interest shall be as prescribed by the licensed institution. Provided that the licensed institution shall comply with the directives issued by the Rastra Bank from time to time in respect of such rates of interest and the procedures of collecting such interest.

(3) The repayment period of the credit to be supplied or obtained by and of deposits to be accepted by a licensed institution shall be as prescribed by the licensed institution.

(4) No revenue stamp fee shall be charged on any kind of document related with the licensed institution.

87. Not to be liable for act done in good faith :

(1) The officers of a licensed institution shall not be held individually or collectively liable for any act or action done or taken in good faith under the Nepal Rastra Bank Act, 2058(2002), this Act or the Rules or Bye-laws framed hereunder or the orders or directives issued thereunder. Provided that they shall be held individually liable for any consequence of any act done with malicious recklessness or mala fide intention.

(2) If any kind of lawsuit is filed against a licensed institution in relation to any loss or damage caused or likely to be caused by any act done or purported to be done in good faith for the compliance with the Nepal Rastra Bank Act, 2058(2002), this Act or the Rules or Bye- laws framed hereunder or the orders or directives issued thereunder, the concerned licensed institution shall bear the expenses of such lawsuit. Provided that no licensed institution shall bear the expenses of

any lawsuit filed in connection with the consequence of any act done with malicious recklessness or mala fide intention.

88. Oath-taking :

(1) Any officer appointed for the first time in a licensed institution shall, prior to assuming the duties of his or her office, take an oath of secrecy and honesty as prescribed.

(2) No officer of a licensed institution shall disclose to any unauthorized person any information or notice known to him or her in the course of discharging his or her duties.

89. Acts and actions not to be invalidated : No act and action done and taken by a director or the Board shall be invalidated only for the reason that there has been any irregularity in the appointment of the director or in the formation of the Board or any vacancy in the office of director.

90. Power to frame Rules : The Rastra Bank may frame necessary Rules for implementing the objectives of this Act; and such Rules shall come into force after being approved by the Government of Nepal.

91. Power to frame Bye-laws :

(1) A licensed institution may frame Bye-laws for systematically operating its business and implementing the objectives of this Act. Such bye-laws shall come into force after being approved by the Rastra Bank.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), a licensed institution may frame Bye-laws on any or all of the following matters:

(a) Rules of procedure of the meetings of Board and the general meeting;

(b) Delegation of powers by the Board to any director or employee;

(c) Appointment, promotion, transfer, dismissal, salary, allowance, gratuity, pension, leave, carry on, discipline and conditions of service of the employees of the licensed institution, and formation of such service;

(d) Conditions of contracts to be made on behalf of the licensed institution;

(e) Matters relating to financial administration of the licensed institution;

(f) Procedures for using the seal of the licensed institution;

(g) Such other functions as required to be performed by the licensed institution pursuant to this Act.

92. Laws in force to govern : The matters contained in this Act and the Rules, Bye-laws, orders or directives issued hereunder shall be governed by this Act and the Rules or directives, and the other matters shall be governed by the laws in force. Provided that the matters contained the Nepal Rastra Bank Act, 2058(2002) shall be governed by that Act.

93. Repeal and saving :

(1) The following Acts are hereby repealed:

(a) The Agricultural Development Bank Act, 2024 (1967);

(b) The Commercial Bank Act, 2031 (1974);

(c) The Finance Company Act, 2042 (1985);

(d) The Nepal Industrial Development Corporation Act, 2046 (1990); and

(e) The Development Bank Act, 2052 (1996).

(2) Any acts done and actions taken under the Acts repealed pursuant to Sub-section (1) shall be deemed to have been done and taken under this Act.

(3) Notwithstanding anything contained in the Act Relating to Recovery of Loans of Banks and Financial Institutions, 2058 (2001), the provisions contained in Section 3 of that Act shall apply to the cases on the recovery of loans of banks of financial institutions incorporated pursuant to this Act.

94. Effect of inoperativeness of the Banks and Financial Institutions Ordinance, 2062(2005): With the Banks and Financial Institutions Ordinance, 2062 (2005) being inoperative, unless a different intention appears, the inoperativeness shall not:

(a) revive anything not in force or existing at the time at which the Ordinance became inoperative;

(b) affect the matter in operation as per the Ordinance or anything duly done or any punishment suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the Ordinance;

(d) affect any penalty, punishment or forfeiture incurred under the Ordinance;

(e) affect any action or remedy made or taken in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid; and any such legal proceeding or remedy may be instituted, continued or enforced as if the Ordinance were in force.