

Nepal Rastra Bank Act, 2058 (2002)

Date of Authentication and Publication

17 Magh 2058 (January 30, 2002)

Amending Act

1. Nepal Rastra Bank (First Amendment) Act, 2063BS (2006)⁺
2. Republic Strengthening and some Nepal Laws Amendment Act, 2066 BS (2010)[•]
3. Nepal Rastra Bank (Second Amendment) Act, 2073 BS (2016)

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Act No.15 of the year of 2058 (2002)

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An Act to Provide for Establishment of Nepal Rastra Bank to carry out the Functions of the Central Bank

Preamble: Whereas, it is expedient to establish a Nepal Rastra Bank to function as the Central Bank [™]..... [□]to maintain stability of price and balance of payment and stability of the entire financial sector to support sustainable development, of[■]Nepal,

Now, therefore, be it enacted by Parliament in the first year of reign of His Majesty the King Gyanendra Bir Bikram Shah Dev.

Chapter-1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called "Nepal Rastra Bank Act, 2058 (2002)".

(2) This Act shall come into force immediately.

2. **Definition:** Unless the subject or context otherwise requires, in this Act,

(a) "Bank" means the Nepal Rastra Bank established under Section 3.

(b) "Board" means the Board of Directors of the Bank constituted under Section 14.

⁺ Sub Section (2) of Section 1 provides that this Act is deemed to be commenced from September 9, 2006

[•] This Act commenced from May 28, 2008.

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

[™] Deleted By Second Amendment

[□] Added By Second Amendment

- (c) "**Director**" means a member of the Board and this expression also includes the Governor and Deputy Governors.
- (d) "**Governor**" means the Governor of the Bank appointed under Section 15.
- (e) "**Deputy Governor**" means the Deputy Governor of the Bank appointed under Section 16.
- (f) "**Commercial Bank**" means a commercial bank established under the prevailing laws.
- (g) "**Financial Institution**" means a financial institution established under the prevailing laws with the objectives of providing loans for agricultural cooperative, industrial or any other specific economic purpose or of collecting deposits from the general public and this term also includes an institution prescribed as financial institution by Government of Nepal upon publishing notice in the Nepal Gazette.
- (h) "**Money**" means all types of currency notes, postal orders, postal notes, money orders, cheques, drafts, traveler's cheques, letters of credit, bills of exchange, promissory notes and credit cards and this term also includes similar types of monetary instruments as the Bank may prescribe, as per the requirement, through the publication and transmission of public notice.
- (i) "**Currency Note**" means the bank note in circulation in the form of cash and this expression also includes coin.
- (j) "**Foreign Currency**" means the currency other than the Nepalese currency and this term includes the special drawing rights on the International Monetary Fund, the Asian Currency Units, the European Currency Units and other instruments as the Bank may prescribe, as per the requirement, by publication and transmission of public notice.
- (k) "**Nepalese Currency**" means the currency of Nepalese rupee denomination.

- (l) "**Convertible Foreign Currency**" means the foreign currency, which has been prescribed by the Bank as convertible foreign currency, as per the requirement, by publication and transmission of public notice.
- (m) "**Foreign Exchange**" means foreign currency, all types of deposits, credits, stocks, foreign securities payable in foreign currencies and the cheques, drafts, traveller's cheques, electronic fund transfer, credit cards, letters of credit, bills of exchange, promissory notes in international circulation payable in foreign currencies; and this expression also includes whatsoever, type of other monetary instrument as the Bank may prescribe, as per the requirement, by publication and transmission of public notice.
- (n) "**Foreign Exchange Transaction**" means the acts of purchase and sale of foreign exchange or the acts of borrowing, giving credits, and of accepting or providing foreign exchange in any manner whatsoever, and this expression also includes the act of granting approval for foreign exchange by the Bank.
- (o) "**License holder**" means an individual, firm, company or institution that has obtained license from the Bank for foreign exchange transaction.
- (p) "**Letter of credit**" means an instrument issued by a bank to another bank instructing to accept cheque, draft, hundi or bill of exchange drawn by specified person up to the limit of specified amount.
- (q) "**Securities**" means share, stock bond, debenture, debenture stocks issued by any corporate body or a certificate of unit saving scheme or collective saving scheme (mutual fund) or transferable certificate of deposit issued by a corporate body in accordance with laws, and this expression also include the securities or receipt of deposit (pledge) of such securities, and interest in securities prescribed by Government of Nepal upon publishing notification in the Nepal Gazette.

- (r) "**Negotiation**" means the act of transferring an instrument to any person having the right to hold negotiable instruments enabling him/her to become a bearer.
- (s) "**Negotiable Bill of Exchange**" means letter of credit, bill of exchange or cheques.
- (t) "**Bill of Exchange**" means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.
- (u) "**Promissory note**" means an instrument signed by a person with an undertaking to pay, without any condition, a fixed amount to any particular person referred to in such instrument or to the person ordered by such person or to the bearer of such instrument on a fixed date or on demand.
- (v) "**Cheque**" means a bill of exchange drawn on any bank ordering it to make payment on demand.
- (w) "**Credit**" means a direct or indirect promise to invest money and the right to recover such amount of investment in return and the interest of such credit or payment of other charges, the refinance given against the security of credit or investment restructuring and renewal of credit, the guarantee made for repayment of credit or any other promise for such repayment, and this expression also includes any type of debt.
- (x) "**Account**" means the record, registers and books to be maintained as per prevailing laws to keep the record of transactions, and this expression also includes other documents to prove the said transactions.
- (y) "**Credit security,**" means any bill of exchange of indebtedness and any other instrument equivalent to such instruments of indebtedness, whether in certified or in book entry form.

- (z) "**Monetary liability**" means the bank notes and coins in circulation existing in the balance sheet of the Bank.
- (z) "**International Account Standard**" means the account standard of international level.
- (aa) "**Employee**" means a person holding a post in the Bank an individual presently employed in any post of the Bank.
- (aa1) "**Court**" means the Commercial Bench of the High Court prescribed by the Government of Nepal by publishing notice in the Nepal Gazette after obtaining consultation of the Supreme Court.
- (aa2) "**Special Administration Team**" means the Special Administration Team formed as per Section 88 B.
- (ab) "**Prescribed**" or "**as prescribed**" mean prescribed or as prescribed in the Rules or Bye-laws framed under this Act.

Chapter - 2

Establishment, Objectives and Functions, Duties and Powers

3. **Establishment of the Bank:** (1) There shall be a Central Bank established in the name as NEPAL RASTRA BANK in order to carry out the functions of Central Bank.
- (2) The Nepal Rastra Bank established under the Nepal Rastra Bank Act, 2012 (1955) shall be deemed to have been established under this Act.
- (3) The Bank shall be an autonomous and corporate body with perpetual succession.
- (4) There shall be a separate seal for transaction of business of the Bank.
- (5) The Bank may, subject to this Act, acquire, utilize, retain, sell and otherwise dispose of or manage movable and immovable property.

(6) The Bank may sue in its name and the Bank may also be sued in the same name.

(7) The Central office of the Bank shall be located at Kathmandu and the Bank may open branch, sub-branch and other offices at any place within and outside [■]Nepal and appoint agent or representative as per its requirement.

4. **Objectives of the Bank:** (1) The objectives of the Bank shall be as follows:-

- (a) To formulate necessary monetary and foreign exchange policies in order to maintain the stability of price and balance of payment for [™].....[□]economic stability and sustainable development of economy, and manage it;
- (b) To increase the access of the financial service and increase the public confidence towards the banking and financial system by maintaining stability of the banking and financial sectors,
- (c) To develop a secure, healthy and efficient system of payment;
- (d) [™].....
- (e) [™]....

(2) The Bank shall, without any prejudice to the objectives referred to in Sub-section (1), extend co-operation in the implementation of the economic policies of Government of Nepal.

5. **Functions, Duties and Powers of the Bank:** (1) In order to achieve the objectives referred to in Section 4, the functions, duties and powers of the Bank shall be as follows:

- (a) To issue bank notes and coins;

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

[™] Deleted By Second Amendment

[□] Added By Second Amendment

- (b) To formulate necessary monetary policies in order to maintain price stability and to implement or cause to implement them;
- (c) To formulate foreign exchange policies and to implement or cause to implement them;
- (d) To determine the system of foreign exchange rate;
- (e) To manage and operate foreign exchange reserve;
- (f) To issue license to commercial banks and financial institutions to carry on banking and financial business and to regulate, inspect, supervise and monitor such transactions;
- (g) To act as a banker, advisor and financial agent of Government of Nepal;
- (h) To act as the banker of commercial banks and financial institutions and to function as the lender of the last resort;
- (i) To establish and promote the system of payment, clearing and settlement and to regulate these activities; and
- (i1) To operate open market transaction through necessary instruments for liquidity management,
- (j) To implement or cause to implement any other necessary functions which the Bank has to carry out in order to achieve the objectives of the Bank under this Act;

(2) While exercising the powers conferred by this Act or any other prevailing law, the Bank shall have power to carry out other functions and take actions, which are incidental thereto Act.

(3) No one shall violate powers conferred on the Bank under this

6. **Prior Right of the Bank:** (1) For the purpose of recovering any loan, which the Bank has given to any borrower or any other type of claim of the Bank against any borrower, the Bank shall have prior right of security over cash deposited in an account in the name of such borrower at the Bank or in any commercial bank or financial institution or against any

other movable and immovable property owned by the borrower for the purpose of recovering such loan.

(2) The Bank shall recover its loan by taking into its custody the cash or movable or immovable property having its prior right and selling such property as prescribed.

7. **Functions not to be Carried out by the Bank:** (1) Except otherwise provided for in this Act, the Bank shall not carry out the following functions:-

- (a) Providing any loan, accepting any type of deposit or making any type of financial gift;
- (b) Purchasing shares of any commercial bank, financial institution, public corporation or a company or acquiring any type of proprietary right in any financial, commercial, agricultural, industrial or other institution;
- (c) Carrying out any type trade; and
- (d) Acquiring right over movable and immovable property by way of purchase, lease or in any manner whatsoever.

Provided that the Bank may acquire such property as required for carrying out its function or for achieving its objectives.

(2) Notwithstanding anything contained in Sub-section (1), the Bank may carry out the following functions: -

- (a) To provide loan to and invest in the shares of the institutions which carry out the functions helpful in carrying out the function of the Bank or in attaining its objectives, not exceeding ten percent of the total capital of such institutions.

Explanation: For the purpose of this Clause, "institutions which carry out the functions which[⊗]are helpful in carrying out the functions of the Bank or in attaining its objectives" means any

institutions, companies which are exclusively engaged in evaluating, managing, protecting the security, restructuring and transferring the securities of commercial banks or of financial institutions, carry out the function of credit rating, exchange of credit information, process and transmit data, print financial instruments, clearing payments, liquidate property, produce bank notes and coins and act as trustee and any other institution or companies established for carrying out similar function and prescribed by the Bank.

(b) To provide loan to its own employees.

8. **Privileges and Facilities to the Bank:** Notwithstanding anything contained in the prevailing laws, the Bank shall be entitled to the following privileges and facilities: -

- (a) Exemption from all types of taxes, fees and charges on the incomes, capital transactions, houses, land, assets etc.;
- (b) No requirement for the payment of registration fee for registration of the deeds of loan or refinance to be given by the Bank;
- (c) No requirement of revenue stamps on any of the documents relating to the Bank;
- (d) There would be no tax, fee, charge, duty on the export and import of bank notes, coins, gold, silver and the paper, metal, chemicals, and other materials to be used for printing bank notes and minting coins.

9. **Relation between Government of Nepal and the Bank:** Any contact by Government of Nepal with the Bank and by the Bank with Government of Nepal under this Act, shall be made through the Ministry of Finance.

10. Coordination with Public Bodies: (1) The Bank may, in order to achieve its objectives, make necessary coordination with public bodies or their agencies or their organs.

(2) The Bank shall, on the request made by Government of Nepal, provide necessary information on the balance of payment, banking and financial matters.

(3) Government of Nepal, public bodies and the private sector shall, in the event of request made by the Bank, provide necessary information on economic and financial matters.

11. International Cooperation and Relationship: (1) The Bank shall represent Nepal [■]in international organizations and associations on the matters within the jurisdiction of working areas of the Bank such as monetary policy, foreign exchange policy, and the balance of payment, bank supervision and other related matters.

(2) The Bank may provide the services of banking and payment to foreign government, foreign central banks, foreign bank and international organizations, or associations, and obtain similar type of facilities from them.

(3) The Bank shall take part in international organizations or associations working for the financial and economic stability through international monetary cooperation.

(4) The Bank, while taking part in international organizations or association as a representative of [■]Nepal, shall assume the responsibility and undertake the functions to be carried out on behalf of the country.

12. Flow of Public Information: The Bank shall publish and transmit, on regular basis, the information on the data based analysis conducted by it on macro economy, development of financial market, monetary circulation, price stability, balance of payment and foreign exchange etc.

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

13. **Operation of Accounts:** The Bank may open and operate account for Government of Nepal and other governmental bodies, commercial banks and financial institutions, public corporations, foreign diplomatic missions, foreign central banks, foreign banks and international organization, associations. The procedures for opening and operating such accounts shall be as prescribed by the Bank.

Provided that, the Bank shall not operate account for any individual, industry and political organization.

Chapter -3

Formation and Functions, Duties and Powers of Board

14. **Formation of the Board: There shall be a Board of Directors in the Bank consisting of the following members:-**

- | | | |
|-----|---|--------------|
| (a) | Governor | -Chairperson |
| (b) | Secretary, Ministry of Finance | -Member |
| (c) | Two Deputy Governors | -Member |
| (d) | Three Directors appointed by the
Government of Nepal from amongst the
persons renowned in the fields of Economic,
Monitory, Banking, Finance and
Commercial Law | -Member |

15. **Appointment of the Governor:** (1) Government of Nepal, the Council of Ministers shall appoint Governor on the basis of the recommendation of the Recommendation Committee formed pursuant to Sub-section (2).

(2) Government of Nepal, the Council of Ministers shall, for the appointment of Governor, form a Recommendation Committee as follows:-

- | | | |
|-----|--|--------------|
| (a) | Minister of Finance | -Chairperson |
| (b) | One person from among the former Governors | - Member |

(c) One person designated by Government of Nepal from amongst the persons renowned in the fields of Economic, Monetary, Banking,

Finance and Commercial Law. -Member

(3) While making recommendation for the appointment of Governor, the committee formed pursuant to Sub-section (2), shall recommend to Government of Nepal, the Council of Ministers the names of three persons renowned in the field of economic, monetary, banking, finance, commerce, management, commercial law and from among the Deputy Governors.

(4) Government of Nepal, the Council of Ministers shall, out of the names recommended pursuant to Sub-section (3), appoint one person to the Office of Governor.

16. Appointment of the Deputy Governor: (1) Government of Nepal, the Council of Ministers shall, on the recommendation of the Governor, appoint Deputy Governor.

(2) The Governor shall, while making recommendation for appointment of Deputy Governor pursuant to Sub-section (1), recommend names, double in number of the post falling vacant from among the special class officers of the Bank on the basis of their performance and capability.

(3) Person appointed in the post of Deputy Governor under this Section shall be deemed to have been automatically retired from the service of the Bank.

17. Appointment of the Directors: (1) Government of Nepal, the Council of Ministers shall appoint Directors.

(2) Government of Nepal, the Council of Ministers shall, while appointing Directors, appoint them each representing different sectors from amongst the persons renowned in economic, monetary, banking, financial, commercial, management and commercial law sectors.

18. Tenure of Office of the Directors: (1) The tenure of Office of the Governor, Deputy Governor and Directors shall be of five years.

(2) Government of Nepal may, reappoint the retiring Governor for one term and the retiring Directors for any term, if it is deemed necessary.

19. Remuneration and other Benefits to the Directors: The remuneration and other benefits of the Governor, Deputy Governor and Directors shall be as prescribed by the Board.

20. Qualifications of the Directors: In order to be appointed to the post of Governor, Deputy Governor and Directors, a person shall have to meet the following qualifications:-

- (a) A Nepalese citizen;
- (b) Having higher moral character;
- (c) Having work experience in economic, monetary, banking, financial and ^{*} commercial law sectors after having attained at least master's degree in economics, monetary, banking, finance, commerce, management, public administration, statistics, mathematics and law.

Explanation:- For the purpose of this Clause, "work experience" means the experience of works in the post of special class of Government of Nepal or of the Bank or in the post of a university Professor or in the post of Executive Chief of class 'A' of a commercial bank or of a financial institution or in the equivalent post or in the post higher than those in terms of the order of protocol.

- (d) Not disqualified under Section 21.

21. Disqualification of the Directors: None of the following persons shall be eligible for appointment to the Office of the Governor, Deputy Governor and Director:-

- (a) Member or official of a political party, or
- (b) The person blacklisted in relation to transaction with a commercial bank or financial institution, or

^{*} Amended by First Amendment.

- (c) An official currently engaged in any commercial bank or financial institution, or
- (d) A person having five percent or more shares or voting right in a Commercial Bank or financial institution, or
- (e) A person rendered bankrupt for being unable to pay debts to creditors, or
- (f) A insane person, or
- (g) A person convicted by a court in an offence involving moral turpitude.

22. Grounds for Removable of the Directors from Office: (1)

Government of Nepal, the Council of Ministers shall remove the Governor, Deputy Governor and Director on conditions stipulated under Sub-section (5).

Provided that Government of Nepal shall not deprive the concerned person from a reasonable opportunity to defend himself/herself prior to remove him/her from his/her office.

(2) Government of Nepal shall, remove the Governor from his office pursuant to Sub-section (1), on the recommendation of an inquiry committee constituted under Section 23.

(3) While removing a Director or Deputy Governor pursuant to Sub-section (1), Government of Nepal shall cause to conduct an inquiry by committee and remove him/her from the office on the basis of the recommendation made by the committee.

(4) Once Government of Nepal initiates the process for removing the Governor, Deputy Governor and Director pursuant to Sub-section (1), they shall be deemed to have been *ipso facto* suspended from the office.

(5) The Governor, Deputy Governor and Director shall be removed from the office on any of the following grounds:-

- (a) If one is disqualified to become a Director pursuant to

Section 21; or

- (b) The lack of capability to implement or cause to implement the functions which the Bank has to carry out in order to achieve the objectives of the Bank under this Act; or
- (c) If one has committed any act causing loss and damage to the banking and financial system of the country; or
- (d) If one is found to have acted dishonestly or with *mala fide* intention in any transaction related to the business of the Bank; or
- (e) If professional license is revoked or prohibited from carrying out any profession rendering disqualified to be engaged in any trade or profession on the ground of gross misconduct; or
- (f) If one is absent for more than three consecutive meeting of Board without a genuine reason;

(6) Except on the grounds referred to in Sub-section (5), no Governor, Deputy Governor and Director shall be removed from office.

23. Constitution, Functions and Duties of Inquiry Committee: (1) Government of Nepal shall, prior to removing the Governor from office under Sub-section (2) of Section 22, constitute an Inquiry Committee consisted as follows, and remove the Governor from the Office on the basis of the recommendation of such committee:-

- (a) The person designated by Government of Nepal from amongst the retired Justices of the Supreme Court - Chairperson;
- (b) Two persons designated by Government of Nepal from amongst renowned persons belonging to economic, monetary, banking, financial, commercial or management sectors - Member

(2) The Inquiry Committee may, prior to submission of its recommendation to Government of Nepal along with its findings, record the statement and conduct inquiry with, the concerned person.

(3) The Inquiry Committee may fix its procedure to be followed in connection with the inquiry.

(4) The Inquiry Committee shall submit its recommendation along with its findings to Government of Nepal within one month.

24. **Resignation by Director:** The Governor, Deputy Governor or Director may resign from his/her office by tendering a written resignation to Government of Nepal.
25. **Public Notification of Governor's Appointment:** Government of Nepal shall, normally one month prior to the vacancy in office of the Governor, make appointment to the office of Governor in accordance with this Act and issue and transmit public notice of such appointment.
26. **Fulfillment of Vacant Office:** In cases the office of the Governor, Deputy Governor and Director falls vacant before expiry of the tenure of office, Government of Nepal shall, appoint appropriate person to such office for the remaining term of office pursuant to the provisions made under this Act.
27. **Acting Governor:** Government of Nepal shall designate the Senior Deputy Governor of the Bank as Acting Governor to discharge the functions of the Governor in cases where the Governor dies or resigns from office, falls sick, goes on leave or is unable to discharge his/her duties due to any reason.
28. **Meeting of the Board:** (1) The Governor shall preside over the meeting of the Board.

(2) The meeting of the Board shall be held as per the requirement of the Bank. Provided that the Board meets at least once in a month.

(3) The Governor shall call the meeting of the Board. Provided that in case of a written request from three Directors of the Board to call the meeting of the Board, the Governor shall call the meeting of the Board.

(4) The Board may frame a separate Bye-law with regard to the procedures for calling the meeting of the Board, conducting the meeting, voting, keeping minutes and for other matters.

(5) The presence of at least three Directors and of the person presiding over the meeting of the Board shall constitute the quorum for the meeting of the Board.

Provided that out of the three Directors present in the meeting at least one director should be the director appointed under Clause (d) of Section 14.

(6) The decision of the majority shall be the decision of the Board. In the event of a tie of votes for and against a resolution, the person presiding over the meeting shall exercise a decisive vote.

29. Functions, Duties and Powers of the Board: The functions, duties and powers of the Board shall be as follows:

- (a) To frame monetary and foreign exchange policies;
- (b) To take necessary decisions with regard to the denominations of bank notes and coins, the figures, size, metal, materials for printing notes, and other materials; and to frame appropriate policies with regard to their issue;
- (c) To frame necessary policies for causing the supervision and inspection of commercial banks and financial institutions and banking and financial arrangement.
- (d) To approve Rules and Bye-laws of the Bank and to frame policies applicable to the operation and management of the Bank;
- (e) To frame policies with regard to the appointment, promotion, transfer, dismissal, remuneration, pension, gratuity, provident fund, leave, code of conduct and other terms and conditions relating to the service of the employees of the Bank;

- (f) To approve the annual programs and budget of the Bank and the annual auditing of accounts, and to submit its report to Government of Nepal for information;
- (g) To approve the annual report on the activities of the Bank;
- (h) To frame necessary policy for the issue of license to commercial banks and financial institutions and for revoking such license;
- (i) To approve the limit of the loan to be provided to Government of Nepal by the Bank;
- (j) To fix the amount, limit and terms and conditions of the loan and refinance which the Bank provides to the commercial banks and financial institutions;
- (k) To make decision with regard to the Bank's membership to international organizations, associations;
- (l) To frame policy for the mobilization and investment of Bank's financial resource;
- (m) To submit proposal to Government of Nepal along with the reasons there for if it is necessary to make amendment to this Act;
- (n) To take decision on all other matters excluding the matters which are within the authority of Governor under this Act; and
- (o) To delegate the powers vested on the Board to the Governor or the subcommittee constituted by the Board with or without fixing the time limit.

30. Functions, Duties and Powers of the Governor: (1) The functions, duties and powers of the Governor shall be as follows:-

- (a) To implement the decisions made by the Board;
- (b) To operate and manage the Bank;
- (c) To systematize the functions to be carried out by the Bank;
- (d) To represent and cause to represent on behalf of the Bank in international organizations and associations;
- (e) To implement and cause to implement the policies relating to monetary and foreign exchange matters;
- (f) To formulate necessary policy on rates of interest for deposits and loan with commercial banks and financial institutions;
- (g) To formulate necessary policies with regard to the rates of interest to be paid by commercial banks and financial institution on deposit and loan or the rate of interest to be charged by them on deposits and loan;
- (h) To formulate necessary policies relating to liquidity to be maintained by commercial banks and financial institutions;
- (i) To make necessary arrangement with regard to the basis, amount, methods, conditions and duration of compulsory deposit to be maintained by commercial banks and financial institutions, and its use;
- (j) To fix the terms and conditions relating to adequacy of the capital fund of commercial banks and financial institutions;
- (k) To take decision with regard to the procedures and terms and conditions to be followed while purchasing and selling gold and other precious metals;
- (l) To fix the charge on the services to be provided by the Bank;

- (m) To take decision for opening and closing branch offices and other offices of the Bank as may be necessary;
- (n) To establish and close the agency of the Bank;
- (o) To make necessary arrangement for development and operation of information system of the Bank;
- (p) To make necessary arrangement for supervision of commercial banks and financial institutions;
- (q) To take decision with regard to revocation of the license provided to commercial banks and financial institutions;
- (r) To take decisions on any other matters subject to the powers delegated by the Board of Directors;

(2) The powers to be exercised by the Governor of a Central Bank in accordance with international practice shall be vested in the Governor.

31. **Delegation of Powers:** The Governor may, in order to conduct the business of the Bank in a smooth manner, delegate authority invested with him/her under this Act to the Deputy Governor or other employees of the Bank.

32. **Prohibition on Vested Personal Interests:** (1) After appointment to the office of Governor, Deputy Governor or Director shall, in each six months, should disclose, as prescribed to the Board about any direct or indirect commercial interest of himself/himself or of his/her family members.

(2) Where any resolution involving personal interest of the Governor, Deputy Governor or Director, shall disclose to the Board about his personal interest on any matter to be discussed in the meeting of the Board, prior to the beginning of discussion on such matters. No such Director shall take part in that meeting.

(3) ^v.....

(4) The Governor and Deputy Governor should make public the details of property held in his/her name and in the name of his/her family members within one month from the date of appointment and retirement.

33. Management Committee: (1) There shall be a Management Committee, to remain under the Board to be chaired by the Governor in order to conduct the business of the Bank in a smooth manner. The two Deputy Governors shall be other members of the Management Committee, and one senior officer of the Bank designated by the Governor shall act as the member-secretary of the committee.

(2) The functions, duties and powers of the Management Committee formed pursuant to Sub-section (1) shall be as prescribed.

(3) Notwithstanding anything contained in Sub-section (1), the Governor may invite any of the officers to take part in the meeting of the Management Committee.

(4) The Committee shall, in connection with discharging its functions, evaluate the country's monetary and financial condition on a periodic basis. For this purpose, the Management Committee shall, at least once in a month, submit a report to the Board on the Bank's administration and operation, operation of monetary and other regulatory policies, the soundness of the banking system of the country, condition of money, capital and foreign exchange market, implementation of such policies and impact they may have and situation on the banking system, and on the significant events.

⊙ **34. Audit Committee :** The Board shall constitute an Audit Committee as follows, which will be accountable to the Board :-

- (A) One Director designated by the Board - Coordinator
- (B) One subject expert designated by the Board - Member
- (C) Chief of Internal Audit Department of the Bank- Member

35. Functions, Duties and Powers of the Audit Committee: (1) The functions, duties and powers of the Audit Committee shall be as follows:-

- (a) To submit its report and recommendations to the Board on accounts, budget and audit procedures and control system of the Bank;
- (b) To ascertain whether or not the audit and preparation of periodic balance sheet and other documents of the Bank have been carried out properly;
- (c) To supervise the implementation of the appropriate risk management adopted by the Bank;
- (d) To audit managerial and performance of works of the Bank in order to be assured that the prevailing laws applicable to the Bank have been fully complied with;
- (e) To frame bye-law for auditing of the Bank in accordance with the prevailing laws and international auditing standard and to submit it to the Board for approval.

(2) The Audit Committee shall, while submitting the report and recommendations to the Board pursuant to Clause (a) of Sub-section (1), furnish the information thereof to the Governor.

36. Employees of the Bank: (1) The Board shall appoint necessary employees in order to conduct the business of the Bank in a smooth manner.

(2) The terms and conditions, remuneration and other benefits payable to the employees appointed pursuant to Sub-section (1) shall be as prescribed.

37. Professional Code of Conduct and Official Responsibility: (1) The Governor and Deputy Governor shall, so long in office, fully devote his/her professional service to the Bank. Except nominated by the Bank they shall not be entitled to assume any type of office or accept job in or render services to anyone else with or without remuneration.

Provided that this Sub-section shall not restrict to render services by assuming any post in any non-profit making organizations such as Medical Association, Engineers Association, Bar Association, Bankers Association,

Chartered Accountants Association and in any other trade and professional organization.

(2) The Governor, Deputy Governor or Director shall have to provide highest priority to the interests of the Bank while discharging their official duties.

(3) The Governor, Deputy Governor or Director shall not accept, personally or through any person having any commercial, financial relationship with him, any type of gift or loan in a manner that may cause undue influence of any type in discharging his duties.

38. Confidentiality: (1) No Governor, Deputy Governor or Director or employees, Advisor, Auditor, Agent or Representative of the Bank shall be allowed to be engaged in the following acts and activities:-

- (a) To divulge any published or unpublished confidential information or notice that came to his knowledge while exercising his official duty to any other person; or
- (b) To use such information or notice for personal gain.

(2) Notwithstanding anything-contained in Sub-section (1), any published or unpublished information in one's knowledge may be divulged on the following grounds in the manner prescribed by the Bank:-

- (a) Providing such information while discharging one's duties in public, while assisting law enforcement agencies, as per the order of the court or of the authorized officer;
- (b) Providing such information, in connection with discharge of his/her duties, to the external Auditor of the Bank and the employees of international financial institutions; and
- (c) Providing such information in connection with legal actions for the sake of the Bank's interests.

Chapter - 4

Financial Provisions

39. Capital of the Bank: (1) The Capital of the Bank shall be ④five billion rupees.

(2) The Capital of the Bank shall be received from Government of Nepal and this Capital shall not be transferred or any burden of debt be placed upon it.

(3) Government of Nepal may alter the capital referred to in Sub-section (1). Government of Nepal shall have consultation with the Bank while altering the capital.

④40. Computation of net profit and loss: (1) The Bank shall prepare the account of its profit and loss in each fiscal year.

(2) While preparing the account of profit and loss as per Sub-Section (1), it shall be prepared as per Nepal accounting standard.

(3) Notwithstanding whatever has been written in Sub-Section (2), in connection to the sectors, which have not been included into Nepal accounting standard, international accounting standard shall have to be taken as a basis.

(4) While preparing the account of profit and loss, net profit shall have to be made sure by deducting bad or doubtful debts and cutting depreciation of property upon making adjustment of the profit made by the Bank, loss sustained or yet to be sustained and net valuation profit or loss.

④41. Allocation of net profit : (1) If the Bank makes net profit in any fiscal year, allocation and use of such profit shall have to be made as follows :-

- (a) The amount equal to revaluation profit from the net profit shall have to be separated and kept in revaluation reserve fund.
- (b) Five percent distributable amount of the net profit remained after separating the amount as per Section (a), shall have to be kept in monetary liability fund; the amount fixed by the Board so as not to be reduced from ten percent in general reserve fund; five percent amount in financial stability fund and the amount as fixed by the Board shall have to be kept in net accumulated savings fund.
- (c) After the amount is appropriated as per Section (b), the Board shall have to submit the rest of the amount remained after appropriating the amount to other funds from the rest of the saving to the Government of Nepal.
- (d) While allocating the amount in the general reserve fund, an additional amount shall have to be appropriated to cover up to the capital expenses as well referred to in the annual budget of the Bank.

(2) The amount of general reserve fund and accumulated savings fund can be used for the sake of increasing the capital of the Bank as well.

(3) Regarding the amount, except what is allocated to the funds as per Sub-Section (1) and (2), it shall be as per the provision made in the Rule.

● **42. Allocation of net loss :** (1) If loss of the Bank exceeds in comparison to the profit in any fiscal year, the surplus net loss amount shall have to be allocated as follows :-

- (a) If revaluation profit is also included in the net loss, revaluation profit shall have to be kept in revaluation reserve fund.

- (b) If revaluation loss is also included in the net loss, revaluation loss shall have to be written as loss in revaluation reserve fund. If revaluation loss exceeds the amount remained in revaluation reserve fund, the surplus loss amount shall be written as loss in the following fund and account in a sequence of priority:-
- (1) In accumulated savings fund, up to the amount deposited in accumulated savings fund,
 - (2) In general reserve fund, if loss amount remains after the adjustment in the accumulated savings fund as per Sub-section (1), and
 - (3) In capital account, if loss amount remains after adjustment in accumulated savings fund and general reserve fund as per Sub-section (1) and (2).
- (c) The operation except for the revaluation profit as per Section (A) and revaluation loss as per Section (B), as well as other loss shall have to be written as loss in accumulated savings fund.
- (d) If loss amount is more than the amount remained as deposit in accumulated savings fund, the surplus loss amount shall have to be written in following fund and account as loss in a sequence of priority :-
- (1) In general reserve fund, up to the amount deposited in general reserve fund,
 - (2) In capital account, if loss amount remains after the adjustment in the general reserve fund as per Sub-section (1),

(2) The Government of Nepal shall bear the loss that could not be adjusted while allocating loss as per Sub-Section (1).

43. Annual Budget: The Board shall, prior to the beginning of each fiscal year, approve the estimated budget of incomes and expenditures and the

programs for the coming fiscal year. The Board may evaluate and amend the approved budget in each three months on the basis of actual position and the matters that can be estimated. Such budget shall be sent to Government of Nepal for information.

Chapter - 5

Monetary Functions and Operation of Open Market

44. **Monetary Policy:** The Bank shall have full powers to formulate, implement and cause to implement monetary policy of Nepal.[■]
- ©45. **Operation of open market transaction:** (1) After forging agreement, the Bank shall operate the open market transaction so as to immediately purchase or sell the debenture issued on behalf of the Government of Nepal or the debenture issued or fixed by the Bank, or to purchase or sell later.
- (2) While operating open market transaction as per Sub-Section (1), the Bank can also carry out the work of short-term liquidity management by forging repurchase agreement or reverse repurchase agreement upon the security of the debentures of the Government of Nepal or the letter of credit issued by the Bank itself.
- (3) The Bank can issue other appropriate instruments for the sake of the operation of the open market transaction."
46. **Compulsory Deposit of Commercial Banks and Financial Institutions:** (1) The Bank shall issue directives to the commercial banks and financial institutions to maintain compulsory reserve with the Bank in proportion to the deposits accumulated with them, borrowed fund or other liability prescribed by the Bank. It shall be the duty of commercial banks and financial institutions to maintain the compulsory deposit in the Bank as prescribed by the Bank.

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

© Amended by Second Amendment

(2) While computing the compulsory deposit of commercial banks and financial institutions, the Bank shall compute on the basis of daily average of deposit by prescribing the duration.

47. **Failure to Maintain Compulsory Deposit:** In cases where any commercial bank or financial institution fails to maintain the compulsory deposit prescribed by the Bank, the Bank shall impose a fine on bank or financial institution for the period of such failure. While imposing the fine, the amount of fine shall not be more than three times of the maximum of the bank rate prescribed by the Bank.

48. **Discount Operation:** (1) The Bank may conduct discount transaction on the following negotiable instruments submitted by the commercial bank and financial institutions who maintain their accounts with the Bank:-

- (a) A promissory note or bill of exchange signed by at least two parties including a commercial bank payable in Nepal [■]within six months.
- (b) Debt bond issued by Government of Nepal or the Bank payable within Nepal [■]and within six months from the date of acquisition by the Bank.

(2) The discount rates, terms and conditions and procedure of operating discount transaction shall be as prescribed by the Bank.

49. **Loan and Refinance to Commercial Banks and Financial Institutions:** (1) The Bank may, subject to the terms and conditions prescribed by it, make available loan and refinance to commercial banks and financial institutions for a maximum period of [©]one year against the security of the following assets:-

- (a) International negotiable instrument referred to in Clause (e) of Sub-section (1) of Section 66;
- (b) The debt bond issued by Government of Nepal payable within Nepal;

- (c) The deposits accumulated in the Bank or the gold and precious metals, which the Bank may transact under this Act;
- (d) The bill of exchange or the promissory notes referred to in Sub-section (1) of Section 48;
- (e) Other securities as prescribed.

(2) Notwithstanding anything contained in Sub-section (1) of the Bank may provide any type of credit to a commercial bank and financial institution for a maximum period of one year in cases where Government of Nepal has, for the sake of public interest and welfare, deemed it appropriate to provide loan and has requested the Bank therefor and Government of Nepal has given a guarantee of securities of prevailing market rate for such loan or in extraordinary circumstances where the Bank has to work as a lender of the last resort.

□ (3) The credit offered as per Sub-Section (1) or (2) can be renewed for additional one year upon remaining under the conditions as per prescribed.

50. **Discount Rate and Rate of Interest for Refinance:** The Bank shall fix the discount rate and the rate of interest for refinance from time to time. The Bank shall publish and transmit the notice of discount rate and interest rate of refinance for the information of all concerned.

Chapter 6

Monetary Unit, Banknote and Coins

51. **Monetary Unit:** (1) The Rupee shall be the monetary unit of Nepal [□] and such Rupee shall be divided in one hundred Paisa.

(2) The Rupee referred to in Sub-section (1) shall be a legal tender within Nepal [□] and Government of Nepal shall provide guarantee for such Rupee.

□ Added By Second Amendment

□ Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

52. Power to Issue Banknotes and Coins: (1) The Bank shall have monopoly over the issue of banknotes and coins in Nepal. Such notes and coins shall be legal tenders in [■]Nepal.

(2) The Bank shall issue notes pursuant to Sub-section (1), only against the security, and the liability of such issued notes shall be equal to the value of property kept as security. At least fifty percent of the property to be kept as security shall be one or more of gold, silver, foreign currency, foreign securities, and foreign bills of exchange and the remaining percentage shall be one or more of the coins (Mohar Double or coins of higher denomination) the Debt Bond issued by Government of Nepal, the promissory note or bills of exchange payable in Nepal within a maximum of eighteen months from the date of repayment by bank.

Provided that with the permission of the Government of Nepal the ratio of property kept as security may be at least forty percent one or more of gold, silver, foreign currency, foreign securities, and foreign bills of exchange and the remaining percentage shall be one or more of the coins (Mohar Double or coins of higher denomination) the Debt Bond issued by Government of Nepal, the promissory note or bills of exchange payable in Nepal within a maximum of eighteen months from the date of repayment by bank.

(3) For the purpose of Sub-section (2), the valuation of property shall be made as follows:-

- (a) The price of gold at the rate fixed by Government of Nepal on the recommendation of the Board;
- (b) The price of silver at the rate deemed appropriate by the Board;
- (c) The foreign currencies at the exchange rate fixed by the Bank;
- (d) The Debt Bond issued by Government of Nepal, the foreign securities and Bills of Exchange at the rate deemed appropriate by the Board on the basis of market rates;

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

(e) Coins at the rate of face value.

(4) The Bank shall issue the bank notes of various denominations as may be necessary. While issuing banknotes in this way, the figures appearing in the notes, size and denominations shall be as approved by Government of Nepal and the figures, internal security arrangements, the materials for printing banknotes and other materials shall be as decided by the Board.

(5) Government of Nepal may, in consultation with the Board, declare that banknote of any denomination shall cease to be legal tender in any place other than the prescribed place or office having published a notification in the Nepal Gazette.

(6) The Bank shall not reissue the notes, which are torn, defaced or excessively soiled.

(7) The Bank may, with the approval of Government of Nepal, mint and bring into circulation the coins of whatever metal or mixture of metals or bring into circulation having minted them in Mint on special occasions. The Bank may, if it deems appropriate, cause such coins minted in any foreign Mint.

Provided that, if coins minted once with the approval are to be re-minted, no approval of Government of Nepal shall be required.

(8) The Bank may, with the approval of Government of Nepal, mint the coins sent for minting by a foreign government.

(9) The Bank shall be responsible for payment of the banknotes issued by the Bank and the banknotes issued by Government of Nepal prior to the establishment of the Bank.

(10) No liability other than the liability referred to in Sub-section (9) shall be borne from the property given as security for issuance of banknotes.

53. Bank notes and Coins to be all Acceptable: The banknotes and coins issued by the Bank having made them legal tender shall be all acceptable to

the extent of the amount of face value for repayment of all types of public or private debts within Nepal. [■]

54. Measurement, Weights and Size of Coins: The face value, measurement, weight, size and other features of the coins to be issued by the Bank under this Act shall be prescribed by the Board.

55. Issuance of Currency and Security: Matters relating to printing of banknotes and minting coins, providing security to the not issued banknotes and coins, keeping them in appropriate manner and the matter of safe keeping or destroying the old banknotes or coins which are not in circulation, plate and die shall be as prescribed.

56. Provisions on Exchange of Currency: The Bank shall, without any fee or charge, change a banknote or coin with legal tender in [■]Nepal with the banknotes or coins of same denomination or of different denominations of the equal value.

57. Soiled or Counterfeit Currency: (1) The Bank may withdraw, destroy or replace the soiled currency with other banknote or coin.

(2) Notwithstanding anything contained in Sub-section (1), the Bank may deny to replace the banknote or coin the design of which has been deleted, or which is torn, defaced or more than fifty percent of its portion has been destroyed.

(3) The Bank may withdraw or destroy such banknotes or with or without compensation to the owner of the banknotes or coins referred to in Sub-section (1).

(4) No owner of the lost or stolen banknotes or coins shall be entitled to a reimbursement from the Bank. The Bank may forfeit without any compensation, the coins or notes the outer appearance of which is changed, or which is counterfeit coins or fake note.

Explanation: For the purpose of this Section, "Counterfeit coin" means a duplicate coin minted copying the coin issued by the Bank or a counterfeit coin or prepared by melting or manipulating or a coin prepared

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

by cutting and breaking into two or more places a coin issued by the Bank or the coin the figures, letters and signs in which have been defaced.

58. Provisions Relating to Currency Inventory and Issuance of

Currency: The Bank shall carry out the functions relating currency stock and issue of currency and regularly supply the banknotes or coins in order to meet the demand of currency.

59. Account of Issued Currency:

The Bank shall maintain account of the entire banknotes [■] in circulation showing them separately as monetary liability. Such liability shall not include the bank notes[•] in stock or not in circulation.

60. Currency Recall or Withdrawal:

(1) The Bank may recall the bank notes and coins in circulation within [■]Nepal by issuing in exchange there for other bank notes and coins in equivalent amount. The Bank shall publish and transmit public notice clearly specifying the period during which the bank notes or coins must be presented for exchange and where they are to be so presented.

(2) Notwithstanding anything contained in Section 53, upon expiry of the time prescribed pursuant to Sub-section (1), bank notes and coins to be exchanged shall cease to be a legal tender.

(3) The Bank may cut, break or demolish or destroy in any manner whatsoever, the banknotes and coins withdrawn from circulation and the currency with defect, as prescribed.

61. Reproduction and Counterfeiting of Currency:

(1) No one shall commit or cause to commit any of the following acts:- (a) To forge, counterfeit or alter banknotes and coin in circulation as legal tender in [■]Nepal or any cheques or payment card or to do any other act relating to it or to assist in any of such acts;

(b) To possess, transport or issue any banknote or coin or cheque or payment card with the knowledge that such

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

[•] Deleted by Second Amendment

banknote or coin, cheque or payment card was falsely made, forged, counterfeited or altered or to assist in such acts in any manner;

- (c) To possess, transport any sheet of metal, stone, paper, die or any other material or substance with the knowledge that it was destined to be used in falsely making, forging, counterfeiting or altering any banknote or coin, cheque or payment card or to assist in any of such acts.

(2) Any reproduction of banknotes, coins, checks, securities or payment cards, denominated in Rupee, and the creation of any objects that by their design imitate any such banknote, coin, check, security or payment card, shall require the prior written authorization of the Bank.

(3) The Bank may take appropriate action to prevent the issue of fake note or counterfeit currency or duplicate cheque or payment. The Bank may issue necessary order, directives or notices while taking such actions.

Chapter - 7

Foreign Exchange Policy, Regulation and Reserve

- 62. **Foreign Exchange Policy**: The Bank shall have full authority to formulate, implement and cause to implement foreign exchange policy of [■]Nepal.
- 63. **Management of Foreign Exchange**: The Bank shall manage the foreign exchange. The Bank shall have the following powers for such management: -
 - (a) To issue license under this Act or any other prevailing laws to the persons willing to deal in foreign exchange transaction;
 - (b) To frame Rules and Bye-laws and to issue necessary order, directives or circulars in order to regulate

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

dealings in the foreign exchange transaction by the foreign exchange dealer;

- (c) To inspect, supervise and monitor the foreign exchange dealer;
- (d) To set the bases, limitations and terms and conditions for the transaction of the foreign exchange dealer; and
- (e) To prescribe the system of determining the foreign exchange rates of the Nepalese currency.

64. Particulars of Foreign Exchanges Transaction: (1) The Bank shall cause the license-holder to submit to the Bank the detailed particular of exchange of foreign currency and of the transaction relating to it. The duration for submitting such particulars, the format and other documents relating to it shall be as prescribed by Bank from time to time.

(2) It shall be the duty of the concerned license holder to submit the particulars referred to in Sub-section (1) and the documents prescribed by the Bank.

65. Dealing in Foreign Exchanges: (1) The Bank may purchase and sell foreign exchanges, gold and precious metals.

(2) The purchase and sale to be made by the Bank pursuant to Sub-section (1) shall be effected through the spot, advance exchange rate, swap, option or the similar types of other instruments, cash or negotiable instrument.

(3) The Bank may, for the purpose of Sub-section (1) of Section 66, purchase or sell foreign exchange. It may affect such purchase and sale also on the basis of spot, advance exchange rate, swap, option or similar types of other of instruments.

(4) The Bank shall deal in foreign exchange after fixing its buying and selling rates. The basis, limitations and conditions of such dealing shall be as prescribed by the Bank.

66. Foreign Exchange Reserve: (1) The Bank shall mobilize the foreign exchanges reserve. Such reserve shall be denominated in the respective foreign exchange and such reserve shall consist of the following assets:-

- (a) Gold and other precious metals held by or for the account of the Bank;
- (b) Foreign currencies held by or for the account of the Bank;
- (c) Foreign currencies held in the accounts of the Bank on the books of a foreign central bank or other foreign banks;
- (d) Special drawing rights (SDR) held by the Bank at the International Monetary Fund;
- (e) Bill of exchange, promissory note, certificate of deposit, bonds, and other debt instrument payable in convertible foreign currencies issued by any debtor or liability holder and held by the Bank;
- (f) Any forward purchase or repurchase agreements of the Bank concluded with or guaranteed by foreign central banks or public international financial institutions, and any futures and option contracts of the Bank providing for payment in freely convertible foreign currency.

(2) While selecting the assets referred to in Sub-section (1), due consideration should be given to the Bank's capital and liquidity to maximize earnings.

(3) The Bank shall maintain international reserve at a level, which shall be adequate for the execution of monetary and exchange rate policies and for the prompt settlement of the international transaction.

(4) If international reserves have declined or, in the opinion of Bank, are in danger of declining to such an extent as to jeopardize the execution of the monetary or exchange rate policies in the prompt settlement of the

country's international transactions, the Bank shall submit to Government of Nepal a report on the international reserves position and the causes which have led or may lead to such a decline, together with such recommendations as it considers necessary to remedy the situation.

(5) Until such time as, the situation referred in Sub-section (4) has been rectified, the Bank shall make further such report and recommendations to Government of Nepal.

(6) The Bank shall hold the foreign exchange reserve referred to in Sub-section (1) in its balance sheet.

67. Issuance of Debt Bond Against Gold and Foreign Currency: (1) The Bank may, having obtained approval from Government of Nepal, issue one or more types of debt bond denominated in gold or foreign currency for certain purpose.

(2) The types, duration, payment of principal and interest and other matters of the debt bond to be issued pursuant to Sub-section (1) shall be as prescribed by the Bank.

68. International Clearing and Payment Agreements: The Bank may, either for its own account or for government account and by the order of Government of Nepal, enter into clearing and payment agreements with public or private central clearing unions domiciled abroad. The Bank may, in order to implement the objectives of such agreement, enter into other necessary agreements.

Chapter - 8

Relation with Government of Nepal

69. Banker, Advisor and Financial Agent: (1) The Bank shall be the banker and financial advisor of Government of [■]Nepal and a financial agent of Nepal.

(2) Government of Nepal shall consult the Bank on any matters that are within the jurisdiction of its competence. It shall be the duty of the Bank to advise on matter consulted by the Government of Nepal.

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

(3) Government of Nepal shall, while preparing annual budget, consult the Bank on the domestic debt including overdrafts.

(4) The Bank shall submit a pre-budget review report to Government of Nepal each year on the economic and financial matters.

70. Consultation and Information Relating to External Debt:

(1) Government of Nepal may consult the Bank while taking loan from external sectors.

(2) The consultation referred to in Sub-section (1) shall include the subjects such as amount of loan, the terms and conditions of the loan and the repayment of loan.

(3) Government of Nepal shall inform the Bank when external loans have been received.

(4) Government of Nepal shall consult the Bank while granting approval to private and public institutions to raise loan-creating liability in foreign exchange.

(5) Government of Nepal, public institution or private sector shall inform the Bank about the agreements concluded having creating liability in foreign exchange.

71. Deposit Collection: (1) The Bank shall accept the deposits of Government of Nepal or other bodies prescribed by Government of Nepal.

(2) While accepting deposits pursuant to Sub-section (1), the Bank shall receive and disburse monies, keep accounts therein, and provide banking services related thereto.

(3) The Bank may authorize commercial banks and other financial institutions to conduct the transaction as referred to in Sub-section (2) subject to the terms and conditions prescribed by the Bank.

72. Functions of Fiscal Agent: The Bank shall, subject to the terms and conditions stipulated in the agreement entered into with Government of Nepal, act as fiscal agent of Government of Nepal on the following matters:-

- (a) Marketing, purchase and sell of debt bonds issued by Government of Nepal and to act as registrar and transfer agent therefor;
- (b) Payment of the principal, interest and other fees of the debt bonds referred to in Sub-section (a);
- (c) Other necessary functions to be carried out as the agent.

73. Bank may ask for Particulars, Statistics and Documents: (1) The Bank may ask for the particulars, statistics and documents necessary for conduct of its business from the concerned bodies.

(2) It shall be the duty of the concerned bodies to provide the Bank with the particulars, statistics and documents asked for under Sub-section (1).

74. Consultation on the Matter of Law Reform: (1) The Bank may be consulted on any proposals by the concerned entities for legislation with respect to matters that relate to Bank objectives or that otherwise are within its fields of competence, including monetary policy and its operations, credit, the balance of payments, foreign exchange, and banking, before they are submitted for amendment or legislative action.

(2) It shall be the duty of the Bank to provide opinion sought pursuant to Sub Section (1).

(3) The Bank shall have powers to submit proposals to Government of Nepal for enacting new law or amending the existing laws on the subjects relating to the objectives of the Bank or area of its competence such as monetary policies and its operation, credit, balance of payment, foreign exchange and banking.

75. Credit to Government of Nepal and Purchase of Government Debt Bonds: (1) Except otherwise provided in this Act, the Bank shall not provide any type of financial assistance to Government of Nepal or an institution under the full or substantial or partial ownership of Government of Nepal.

(2) Subject to the limits specified in this Section, the Bank may extend credit to Government of Nepal with a condition to repay within one hundred eighty days.

(3) Notwithstanding anything contained in Sub-section (2), the Bank may extend a special credit of long term to Government of Nepal only on account of subscription and similar payments resulting from or incidental to the membership of Nepal with international organization.

(4) The Bank shall disburse credit to be extended to Government of Nepal or an institution under full or substantial or partial ownership of Government of Nepal only in Nepalese rupees. Such credit shall be certified by negotiable debt bond issued by Government of Nepal and delivered to the Bank. Such debt security should have the maturity corresponding to the maturity of the extension of credit and should bear the interest at market rate. There must be a written agreement executed between Government of Nepal and the Bank. Such agreement should clearly stipulate the principal amount of the loan or limit on a line of credit, the maturity, and the applicable rates of interest and other charges.

Explanation: For the purpose of this Section, "Negotiable Debt Bond" means the debt bond issued in the form of promissory note.

(5) At no time the amount of overdraft provided by the Bank to Government of Nepal shall be more than five percent of the revenue income of Government of Nepal in the proceeding fiscal year. While computing such revenue income, the amount of borrowing, grants or any other form of financial assistance or income received from the sale of property shall not be included.

(6) Government of Nepal shall make the payment of the overdraft referred to in Sub-section (5) within one hundred eighty days at the prevailing interest rate either in the form of cash or marketable debt bond.

(7) The total amount of debt bond purchased by the Bank from Government of Nepal and taken into its ownership shall not be more than ten percent of the revenue income of the proceeding fiscal year.

(8) In the following circumstances, the debt bond issued by Government of Nepal and purchased by the Bank shall not be treated as the credit extended under Sub-section (7):-

- (a) If the purchase is made in the secondary market for the operation of open market consistent with the monetary policy of the Bank;
- (b) If the purchase is made in the primary market, when it is necessary in the opinion of the Bank, to maintain stability in the market at the time of primary issue of such securities and such securities are divested within 60 days of purchase.
- (c) The debt bond purchased by the Bank from Government of Nepal and retained in its ownership prior to the commencement of Sub-section (7).

Chapter - 9

Regulation, Inspection and Supervision of the Banks

- 76. Bank's Approval Required for Accepting Deposits or Giving Credits:** (1) Any person, firm, company or institution shall, in order to accept any type of deposit or to provide loan, obtain approval from the Bank as may be prescribed.
- (2) The Bank, while giving approval referred to in Sub-section (1), may subject the approval to the terms and conditions prescribed by the Bank and it shall be the duty of the concerned person, firm, company or institution to abide by such terms and conditions.
- 77. Restriction on Rate of Interest:** An individual, firm, company or organization authorized to accept deposit or to provide loan pursuant to prevailing laws, shall fix the rate of interest payable on deposit and to be charged on loan subject to arrangement prescribed by the Bank in the matter of rate of interest from time to time.

78. License to be Obtained from Bank: (1) Commercial Banks and financial institutions shall, in order to conduct banking and financial transaction, obtain license from the Bank as prescribed.

(2) While issuing license pursuant to Sub-section (1), the Bank may fix necessary terms and conditions and it shall be the duty of the licensed bank and financial institution to abide by such terms and conditions.

79. Regulatory Powers of Bank: (1) The Bank shall have full powers to regulate the functions and activities of commercial banks and financial institutions.

(2) For the purpose of the regulation under Sub-section (1), the Bank may frame rules and bye-laws on the matters which the Bank deems appropriate and issue necessary order, directives and circular and it shall be the duty of the concerned commercial bank and financial institution to abide by such Rules, Bye-laws, order, directives and circular. (3) The Bank shall issue appropriate directives to commercial banks and require them to submit the following particulars:-

- (a) Its balance sheet accounts, off balance sheet commitments, statement of income and expenditures and their ratio among accounts or items.
- (b) Prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, or of credit or investments, forms of commitments of a risk-bearing nature which are not matching as to maturity of assets and liabilities and off-balance-sheet items, foreign currency, spot or advance rate of interest, swap, option or similar instruments or access to the payments system through electronic or other means.
- (c) Other particulars and documents prescribed by the Bank.

(4) Bank may issue necessary directives to commercial banks on the following matters and require to submit particulars on the following subjects:-

- (a) Books and accounts, profit and loss account, balance sheet and off-balance-sheet transaction and commitment, statement of income and expenses and their ratio among accounts or items.
- (b) Prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, loan and investment in excess of the ceiling prescribed by the Bank, risk bearing commitment, position of foreign exchange, payment and electronic and other means of payment.(c) Other particulars and documents prescribed by the Bank.

▫(4a) For the purpose of preventing financial investment in the money laundering and terrorist activities, the Bank can give necessary directives to the commercial banks and financial institutions regarding providing financial information unit established as per existing law relating to money laundering prevention, knowing the customers and classifying and managing the risk of the customers, the description of the limit including money transfer, deposit, or doubtful transaction.

(5) The Bank shall have the following powers with regard to commercial banks and financial institutions:-

- (a) To enforce authority and responsibility granted under this Act and any other Act enacted for licensing, supervising and regulating commercial banks and financial institutions and to revoke the license of commercial banks and financial institutions and to take over or to provide in trusteeship the commercial

banks or financial institutions which have been declared insolvent or are on the verge of insolvency;

(b) To investigate or inspect, or supervise or to cause to investigate, inspect or supervise by any official of the Bank or the person designated by the Bank the books and accounts, records, documents or register of commercial banks or financial institutions in order to find whether or not any commercial bank or financial institution has conducted business and transaction in accordance with the provision made under this Act or the Rules, Bye-laws framed thereunder and an order or directive issued thereunder;

(c) To issue order to the member of the Board of Directors, official or employee of any commercial bank or financial institution to provide necessary information about the bank or institution in cases where it is necessary to inspect and supervise the transaction of such bank or financial institution.

80. Banking and Financial System and Credit Control: The Bank may issue directives from time to time to commercial banks and financial institutions on banking financial system, currency and credit. It shall be the duty of commercial banks and financial institutions to abide by such directives.

81. Credit to Prescribed Sectors: (1) Commercial banks and financial institutions shall advance credit to the sectors prescribed by the Bank from time to time for a prescribed period and in the manner prescribed by the Bank.

(2) In cases where any commercial bank or financial institution does not advance the credit pursuant to Sub-section (1) or advance credit less than prescribed amount, the Bank may recover as fine an amount equal to the interest which a commercial bank or financial institution would have

charged for the amount of credit not advanced or advanced less than the prescribed amount from the concerned commercial bank or financial institution.

82. Information to be Furnished to Bank: (1) Commercial Bank and financial institution shall furnish the particulars of its transaction and financial position to the Bank as prescribed by the Bank.

(2) The Bank may publish the particulars made available pursuant to Sub-section (1).

83. Approval Required to Issue Debentures and Financial Instruments: (1) Commercial banks and financial institutions shall, while issuing any type of debenture or financial instruments, obtain a prior approval of the Bank.

(2) While giving approval referred to in Sub-section (1), the Bank may prescribe necessary terms and conditions and it shall be the duty of the concerned commercial bank and financial institution to abide by such terms and conditions.

84. Inspection and Supervision: (1) The Board shall frame and implement inspection and supervision bye-law confirming to international standard for inspection and supervision of the commercial banks and financial institutions licensed by the Bank.

(2) The Bank may, at any time, inspect and supervise or cause to inspect and supervise any of the offices of commercial banks or financial institutions. Such inspection and supervision may be carried out by the deputed official of the Bank or an expert designated by the Bank at the office of the commercial bank or financial institution or by asking the concerned institution to submit detailed particulars and information to the Bank itself.

(3) It shall be the duty of the concerned commercial bank and financial institution or Directors, officials or employees of such commercial bank and financial institution to make available the statement, data, record, information, particulars necessary for computer and auditing and other programs and particulars developed through the electric system and

financial control system or necessary other documents to such official, expert or the Bank or to enable such official or expert to review or to examine them within the time prescribed by such officer or expert.

(4) The inspecting and supervising official or the Bank under this Section may cause to record written statements of any Director, official or employee of the commercial banks or financial institutions with regard to the functions and proceedings which are deemed necessary in course of inspection and supervision.

(5) The Bank or the inspecting and supervising official may issue necessary directives to the commercial bank or financial institution on the matters deemed necessary while inspecting and supervising. It shall be the duty of the concerned commercial bank or financial institution to abide by the directives issued by the Bank or by the inspecting or supervising official. The inspecting or supervising official shall inform the Bank as soon as possible about the directives so given.

⊙ (6) The official or the expert who carries out inspection and supervision as per this Section shall have to submit the report of the inspection and supervision carried out by him/her to the Governor within the stipulated deadline.

(7) The report submitted pursuant to Sub-section (6) should be submitted in the next meeting of the Board.

(8) The Board may, after making appropriate decision on matters contained in the report submitted pursuant to Sub-section (7), issue appropriate directions to the Governor about the actions to be taken in the matter. It shall be the responsibility of the Governor to implement or cause to implement such directions.

85. Exchange of Mutual Cooperation: (1) The Bank may, in order to supervise commercial banks and financial institutions under its supervisory jurisdiction, exchange cooperation with concerned foreign supervisory authority on reciprocal basis.

(2) The Bank may exchange the notices or information received for carrying out supervision pursuant to Sub-section (1) with the foreign supervisory authority provided that such authority undertakes to respect the confidentiality of the information so received.

(3) The Bank may exchange mutual cooperation with other institutions regulating the policies relating to financial system to promote financial system.

86. [Ⓞ]

[Ⓞ]86A. **Commercial Banks and Financial Institutions to Provide Information to the Bank:** Commercial bank or financial institution shall inform to the bank within fifteen days about the situation of insolvency or state of dissolution under the prevailing law or incapability to pay the debt or materially unable to discharge any or all liabilities by any commercial bank or financial institution.

[Ⓞ]86B. **Commercial Bank and Financial Institution Deemed to be Problematic:** Bank shall declare any commercial bank or financial institution problematic by providing written notice to it when bank is convinced that the following conditions are prevailing in any commercial bank or financial institution on the basis of information received under Section 86A or from the report of inspection and supervision conducted under Section 84 or from any other means.

(a) In case any action against the interest of the depositors, shareholders, creditors, or general public is evident,

(b) In case of not fulfillment of any financial liabilities or not having probability to do that or not payment of due amount,

(c) In case of insolvency or going to be insolvent or facing material financial difficulties,

[Ⓞ] Deleted By Second Amendment

[Ⓞ] Added by First Amendment.

- (d) In case of non-compliance with or breach of this Act, prevailing law related to bank and financial institution, other prevailing law, terms of license or regulation, directives or order of bank,
- (e) In case it is evident that the license has been obtained on the basis of submitting false, fraudulent, wrong document or data,
- (f) In case of inability to maintain the capital fund as per this Act, prevailing law related to bank and financial institution and directives issued by the bank at time to time,
- (g) In case of the initiation of legal proceedings for liquidation [□]or resolution or insolvency of any commercial bank or financial institution under the prevailing law,
- (h) In case of undue delay in the process of voluntary liquidation where such proceeding has been initiated,
- (i) For the commercial bank or financial institution established with the joint venture of the foreign commercial bank or financial institution, while such foreign commercial bank or financial institution is insolvent or liquidator is appointed for the liquidation or the license of such commercial bank or financial institution is terminated under the provision of the law of respective country or transaction is banned either fully or partially or where it is evident that operation of banking transaction is done in association with such commercial bank or financial institution, or

- (j) If the bank is convinced that commercial bank or financial institution is unable to pay its due or can make negative effect in its liability or duties, which it has to perform.

86C. Bank to Take Action Against Problematic Commercial Bank or

Financial Institution: (1) Notwithstanding anything contained in the Companies Act or other prevailing law, the bank can take any or all of the following actions [Ⓜ].....[□] by taking up management of such commercial bank or financial institution under its control or against the Board of Directors of the commercial bank or financial institution concerned which is declared problematic under the provision of Section 86B.

- (a) To increase the paid up capital by issuing new shares or by receiving due amount of issued capital.
- (b) To suspend the right to vote or other rights of shareholder.
- (c) To stop payment of dividend or any other amount to the shareholders to increase the capital.
- (d) To determine limitation to the amount of bonus, salary, compensation and other expenses for the director and other high level management officials.
- (e) To make necessary arrangement for the corporate governance, internal control and risk management of commercial bank or financial institution.
- (f) To prohibit or make limitation in collection of deposit, credit supply or investment .
- (g) To maintain sufficient capital and high proportion of liquidity or prohibit business transaction or determination of other necessary terms.

[Ⓜ] Added by First Amendment.

[Ⓜ] Deleted By Second Amendment

[□] Added By Second Amendment

- (h) To limit transaction of the commercial bank or financial institution or prohibit sale of property or expansion of branch office or close any domestic or international branch.
- (i) To maintain necessary arrangement for reduction of risk of the properties which are materially doubtful or securities without proper evaluation or other properties
- (J) To prohibit any action carried out illegally by breaching the prevailing law and regulation of the bank that is against the interest of commercial bank or financial institution.
- (K) To prohibit from doing some specific business among the businesses allowed to commercial bank or financial institution for specific time.
- (l) To receive prior approval of the bank for major capital expenditure, substantial commitments having major liabilities or for the expenditure of contingent liabilities.
- (m) To issue order to remove from the post to single or more director or manager or employee as per the necessity.
- (n) Bank can remove the director or manager or employee in case of not discharge of the order made under Clause (m) by respective commercial bank or financial institution.
- (o) To suspend board of director of the commercial bank or financial institution and takeover the management of such commercial bank or financial institution in self control or operate the management and transaction of such commercial bank or financial institution by appointed official.

Clarification: “Appointed Officer” means any person, firm, company or organization appointed by the bank for the management and operation of transaction of the commercial bank or financial institution which is in the control of bank under the provision of this Clause.

- (p) To order commercial bank or financial institution, which is listed in Stock Exchange for the application of de-listing.
- (q) To prohibit payment of interest and principal for time bond auxiliary loan without having securities of commercial bank or financial institution.
- (r) To take any other action as bank feels necessity and proper.

(2) While removing the directors, managers or employee of the commercial bank or financial institution from their post as per the order of Clause (n) or to suspend the board of director of commercial bank or financial institution by taking the charge of management under Clause (o) of Sub-section (1) reasonable opportunity of hearing shall be provided to the director, manager or employee or board of directors of the commercial bank or financial institution before.

Provided that if such opportunity of hearing can makes negative effect to the interest of the commercial bank or financial institution or its depositors, shareholders, creditors or general public, no provision of prevailing law can debarred to remove immediately to the director, manager or employee from their post or to suspend the board of directors by providing opportunity to hearing after such decision.

(3) During the hearing of the action under the proviso of the Sub-section (2) if such action does not seems reasonable bank can annul, change or make necessary decision to the order under Clause (n) or (o) of Sub-section (2).

(4) Respective commercial bank or financial institution have to bear all the expenditure while bank take the control of management of any commercial bank or financial institution under the provision of Clause (o) of Sub-section (1) and makes arrangement for the management and operation of transaction.

(5) The order of the bank issued under Sub-section (1) Clause (o) shall generally remain valid for two years from the date of issue unless it is not renewed by the bank.

(6) In case of control of any commercial bank or financial institution by the bank under the provision of Clause (o) of Sub-section (1), the preliminary and annual report prepared by the bank or the officer appointed by the bank shall be submitted to the government of Nepal.

(7) In case of necessity bank can revoke or nullify its order issued under the provision of Clause (m), (n), (o) and (p) of Sub-section (1) by issuing another order. Such order shall contain the basis and reason and other necessary information regarding the need of issuing such order.

(8) The directors, managers, or employees removed by the bank under the provision of the Clause (n) of Sub-section (1) are not allowed to work or involve in transaction in the same commercial bank or financial institution as director, manager or employee or any other post of any commercial bank or financial institution or any other way being involved directly or indirectly.

(9) The directors, managers, or employees removed by the bank under the provision of the Clause (n) of Sub-section (1) or suspended member of board of directors under the provision of Clause (o) are not allowed to receive or claim any remuneration or compensation under the provision of prevailing law or agreement held directly or indirectly from the date of such order.

(10) Determination of the capital and valuation of assets and liabilities of any problematic commercial bank or financial institution shall be based on the basis, process and standard determined by the bank.

86 D. Effect of the Control of the Bank to any Commercial Bank

or Financial Institution: (1) While bank takes control of any commercial bank or financial institution by issuing order under the provision of the Clause (o) of Sub-section (1) of Section 86C, for the management and operation of transaction respective commercial bank or financial institution; the directors, manager and employees of such commercial bank or financial institution have to provide the assets, material goods and all transaction and its report and other necessary cooperation and facilities to the bank or the official appointed by the bank.

(2) While bank takes control of any commercial bank or financial institution by issuing order under the provision of the Clause (o) of Sub-section (1) of Section 86C, the official appointed by the bank for the management and operation of transaction of such commercial bank or financial institution, being within the limitation of order issued by the bank have to manage and operate such commercial bank or financial institution in the name of such commercial bank or financial institution by taking control of the property and transaction unless the bank decide otherwise for such order.

(3) Notwithstanding any provision contained in the prevailing law, the appointed official for management and operation of any commercial bank or financial institution which is in the control of the bank, can exercise all the rights conferred to such commercial bank or financial institution, its board of directors, shareholders or manager by prevailing law, memorandum and article association of such commercial bank or financial institution and such official can exercise the act assigned for the general meeting or special general meeting or any rights by any other way of such commercial bank or financial institution.

(4) Till the date of validity of the order issued by the bank to take the control of any commercial bank or financial institution, no director, manager or employee removed under the provision of Clause (n) of the Sub-section (1) of Section 86C and suspended director under the Clause (o) of such commercial bank or financial institution, can be involve in the

management or take any remuneration or facility from such commercial bank or financial institution during the period of being problematic without written permission of the bank or the official appointed for the management and operation of such commercial bank or financial institution.

86E. The Reformative Measures and Power to be Used by the Bank or the Official Appointed by the Bank:

(1) Whatever may be mentioned in the Companies Act or other prevailing law, the bank itself or with the prior approval of the bank the official appointed by the bank can initiate one or more than one of the following actions for the purpose of restructuring of any problematic commercial bank or financial institution which is under the control of the bank by order issued under the provision of Clause (o) of Sub-section (1) of the Section 86C:

- (a) To cancel or suspend any transaction operating within or outside Nepal.
- (b) To sell the assets of such commercial bank or financial institution to any other commercial bank or financial institution in terms and conditions determined by the bank.
- (c) To terminate the employment of the employees working in such commercial bank or financial institution and to appoint new employees in their place as per necessity.
- (d) To merge such commercial bank or financial institution with other commercial bank or financial institution or arrange to transfer the assets and liabilities of such commercial bank or financial institution partially or whole to any other commercial bank or financial institution or any other body.
- (e) To increase the capital, being based on the standard determined by the bank, by selling the

share to other person to reduce the participation of the present shareholders or to restructure such commercial bank or financial institution by reshuffling the board of directors.

- (f) To reduce the capital reflecting the actual price of real assets of such commercial bank or financial institution under the provision of Section 86H and determine the face value of the shares in the proportion of reduced capital.(g) To do necessary managerial restructure or corporate restructure by closing the branches and transactions which are not properly running for the protection of the interest of the depositors, shareholders, creditors and general public.
- (h) To implement or cause to implement other measures determined by the bank to make competitive for the problematic commercial bank or financial institution.

(2) The reasonable opportunity of hearing should be provided to any commercial bank or financial institution before taking any decision under Clause (f) or (g) of sub Section (1).

Provided that, if the bank feels that prior opportunity of hearing can make negative effect to the interest of its depositors, shareholders, creditors or general public, the bank can provide the opportunity of hearing as soon as possible after making such decision and if the bank satisfied with the reason and basis presented during the time of hearing it can change or repeal the decision as per necessity.

86F. Power of the Bank for Corrective Action: (1) Bank has to publish in public the report of management auditing or auditing within one year of the control of the commercial bank or financial institution which

⁸⁶ Added by First Amendment.

declared problematic under the provision of Clause (o) of Sub-Section (1) of Section 86C either conducted itself or by others.

(2) Whatever may be mentioned in the Companies Act or any other prevailing law, on the basis of the management auditing or auditing report under Sub-section (1) if bank convinced that the controlled commercial bank or financial institution can operate properly it can carry out following corrective actions as per necessity:-

- (a) Issue order to manage and operate the transaction to the board of director by releasing the suspension order issued under the provision of Clause (o) Sub-Section (1) of Section 86C,
- (b) Assign the management and operation of transaction to the new board of director formed among the shareholders of such commercial bank or financial institution by removing suspended board of director under the provision of Clause (o) of Sub-section (1) of Section 86C,
- (c) Call or cause to call the general meeting of the shareholders of such commercial bank or financial institution to elect the new board of director for the management and operation of transaction after removing suspended board of director under the provision of Clause (o) of Sub-section (1) of Section 86C, or
- (d) Carry out any other corrective measures, which the bank thinks appropriate.

⊙ (3) By remaining under the standard fixed on the ground of assessment of the management or audit report or the report of official appointed by the Bank as per Sub-Section (1), the Bank can give order as per necessary by publishing public notice for any shareholder to sell, distribute and transfer the ownership of the share remained on

his/her name to any person deemed appropriate by the Bank so as to obtain payment of the price determined by the committee formed by getting the representatives of the Nepal Security Board and Institute of Chartered Accountants of Nepal as well as other external experts involved.

(4) Bank can confiscate the shares which are not sold, distributed and transferred because of any reason under Clause (a) of Sub-section (3), and bank can sell, distribute and transfer such share any manner which it think proper to anybody with the advice of the committee constituted under Clause (a) of Sub-section (3).

(5) Bank may provide reasonable opportunity of hearing to the stakeholder about the proposed issue before taking any decision against any commercial bank or financial institution under Sub-section (3).

Provided that, if the bank feels that prior opportunity of hearing can make negative effect to the interest of such commercial bank or financial institution, its depositors, shareholders, creditors or general public, the bank can provide opportunity of hearing as soon as possible after making such decision and if the bank satisfied with the reason and basis presented during the time of hearing it can change or repeal the decision as per necessity.

Ⓒ86 G. **Can be subject of Resolution:** While taking action upon any problematic commercial bank or financial institution as per Section 86 C. or adopting reformative measure as per Section 86 E. or carrying out remedial work as per Section 86 F. as well, if the Bank believes in the matter that such commercial bank or financial institution is not able to fulfill the liability to be fulfilled or has fallen into the condition of not being able to operate properly, the Bank can take decision to subject such commercial bank or financial institution of the process of clearing and settlement.

Ⓒ86H. **Decreasing the Capital of Problematic Commercial Bank or Financial Institution:** (1) Whatever may be mentioned in the Companies

Ⓒ Amended by Second Amendment

Ⓒ Added by First Amendment.

Act or other prevailing law or memorandum and article of association of the problematic commercial bank or financial institution, after taking such commercial bank or financial institution in its control under the provision of the Clause (o) of the Sub-section (1) of the Section 86C, in case there is reduction of the paid up capital of such commercial bank or financial institution or the due amount was not paid by the shareholders or liabilities is not recoverable by the assets of such commercial bank or financial institution, bank can decrease the share capital of such commercial bank or financial institution in limit of reduction of the share capital or liabilities which is not coverable by the assets.

Provided that, before decrease of share capital the bank has to publish minimum two notice of this effect in national daily.

(2) [Ⓞ] ...

(3) Before issuing the notice under Sub-section (1) the bank has to provide thirty days time for those shareholders who has due amount of the price of paid up share. Bank can initiate the process of cancellation of share of those shareholders who did not pay the due amount after such notice, and bank can determine the minimum price for the share of the commercial bank or financial institution which is insolvent or [Ⓜ]in resolution process or in the process of dissolution.

(4) In case of decrease of the share capital of any commercial bank or financial institution under Sub-section (1) or cancellation of share under Sub-section (3) it may be *ipso facto* considered that amendment in the memorandum and article of association such commercial bank or financial institution is made accordingly.

[Ⓜ]**86 I. Right to Appeal Against the Order of the Bank:** (1) Only the representative of shareholders of the commercial bank or financial institution can appeal to the committee within fifteen days against the action, order, decision or Proceedings of the bank or the official appointed

[Ⓞ] Deleted By Second Amendment

[Ⓜ] Added By Second Amendment

[Ⓜ] Added by First Amendment.

by the bank, under Section 86C, 86D, 86E, 86f and 86h, if not satisfied with such action, order, decision or proceedings.

Clarification: For the purpose of this Section "shareholders representative" means representative elected among the shareholders having minimum twenty five percent of prevailing share.

(2) No appeal will be entertained without having the representation of twenty five percent of prevailing shares within the time of Sub-section (1.)

(3) In case of the appeal under the provision of Sub-section (1), the committee has to approve, review or cancel the action, order, decision or proceedings done by the bank or the official appointed by the bank, within thirty days of receipt of such appeal by giving related proof, basis and reasons.

(4) Bank may provide information about the decision made under Sub-section (3) within fifteen days of such decision to the respective representative of the shareholders.

(5) The action, order, decision or Proceedings of the bank or the official appointed by the bank shall remain continue unless the committee under Sub-section (3) cancel it.

(6) The decision of the committee under Sub-section (3) on the appeal of the shareholders representative shall be final.

86J. ☞

86K. ☞

86L. ☞

86M. ☞ ...

86N. ☞

87. **Establishment of Information Network:** (1) The Bank shall, in order to promote banking and financial system of [■]Nepal, establish and operate information network as prescribed.

88. **Establishment of Credit Information Center:** (1) The Bank shall establish or cause to establish one credit information Center for the following purposes:-

- (a) To obtain information on the flow of credit from commercial banks and financial institutions in order to ensure fairness and appropriateness in credit flow;
- (b) To require the exchange of the information received pursuant Clause (a) amongst the commercial banks and financial institutions for the purpose referred to in that Sub-Section;
- (c) To require to send the name-list of the debtors not repaying the loan in time or misusing the loan to the Center;
- (d) To require to obtain on compulsory basis the information from the Center prior to making investment or advancing loan of an amount more than the limit prescribed by the Bank;
- (e) To have the name-list received pursuant to Clause (c) blacklisted by the Center upon confirmation and to take necessary action in this regard; and
- (f) To submit report to the Bank, on the exchange of information among the commercial bank and financial institution and use such information while making loan investment on the basis of inspection, supervision and monitoring.

(2) The Bank shall regulate and manage the functions referred to in

[■] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

Sub-section (1) as specified.

□ **Chapter-9 A.**
Provisions relating to resolution

88A. Power of the bank to carry out work of resolution : (1) On any of the following conditions, the Bank can further the work of resolution by taking up any commercial bank or financial institution under its control :-

- (a) If its liability of payment cannot be made fully or partially,
- (b) If there is condition of not being able to fulfill the liabilities to be paid, on the ground of supervisory analysis, within ninety days from the date of the completion of the work relating to such analysis,
- (c) If liability exceeds the net assets,
- (d) If sustained loss that cannot be covered up even by all kinds of capital and funds prescribed by the Bank,
- (e) If the Bank makes decision to take to the process of resolution as per Section 86 G.

(2) Only the bank shall have the power to carry out, or get the resolution carried out, of the claim of the depositor and secured creditor remained upon any commercial bank or financial institution.

(3) Total expenses incurred while carrying out work relating to resolution of the commercial bank or financial institution shall have to be borne out of the amount received after selling out the properties of the commercial bank or financial institution concerned.

88 B. Provision relating to the formation of the Special Administration Team : (1) If decision is made to further the work of resolution of any commercial bank or financial institution as per Section 88 A., the Bank can further the work of resolution by forming Special Administration Team comprised of maximum three persons from

among the persons having qualifications as per prescribed for this purpose, and by taking up the concerned commercial bank or financial institution under its control through this.

(2) If the work of all or any member of Special Administration Team is not satisfactory, the Bank can dismiss him/her from the post as per prescribed.

(3) Before dismissing him/her from the post as per Sub-Section (2), he/she shall have to be given the opportunity of hearing by being allowed reasonable time.

(4) If the Bank dismisses the member of the Special Administration Team before accomplishing the work relating to resolution, it can appoint another person having the qualification for that post as per prescribed.

(5) The remuneration of the member of Special Administration Team shall be as per prescribed so as to be associated with work performance.

88C. Function, duty and power of Special Administration Team : (1)

Special Administration Team shall have the total power, which is allowed to be exercised by the general meeting, Board of Directors, Chief Executive Officer and other lien on posts of the commercial bank or financial institution concerned.

(2) By remaining under the Sub-Section (1), the Special Administration Team shall have the following power regarding to manage the movable and immovable assets, to carry out resolution of any property and liability of the commercial bank or financial institution concerned and to operate such commercial bank and financial institution :-

- (a) To sell all or partial share of the commercial bank or financial institution remained to be sold to new person,

- (b) To allow any institution the responsibility to carry out operation of transaction and to carry out particular work that can be operated regularly with systematic perspective, or to establish separate bridge institution or unit for some period for the sake of carrying out such operation,
- (c) To sell any or all transactions or properties of the commercial bank or financial institution concerned or any subsidiary company of such commercial bank or financial institution,
- (d) To sell the properties or rights of the commercial bank or financial institution concerned, which remain under any other persons or institutions.

(3) Regarding the commercial bank or financial institution remained under the process of resolution, Special Administration Team shall have other powers as follows :-

- (a) To get the documents, which the Special Administration Team deems necessary to further the act and action of resolution, submitted by the person concerned,
- (b) To transfer, or get the ownership of the shares or other instruments issued by the commercial bank or financial institution concerned, transferred,
- (c) To transfer certain power, properties or liabilities of the commercial bank or financial institution concerned to another person,
- (d) To revoke the shares or other instruments issued by the commercial bank or financial institution concerned,
- (e) To alienate the shares issued by the commercial bank or financial institution concerned or the shares

or other ownership owned by any or all of its shareholders to the name of any other person on the ground as per prescribed,

- (f) To issue preference shares or other instruments relating to capital,
- (g) To move all the steps seen necessary to protect and take care of the properties of the commercial bank or financial institution concerned.

(4) While carrying out the work relating to resolution of the commercial bank or financial institution as per this Section, Special Administration Team does not need to carry out the following works :-

- (a) To obtain prior approval of any persons of public or private sectors including the shareholders, depositors or creditors of the commercial bank or financial institution, which is under the process of resolution,
- (b) To notify any person, firm, company or institution except mentioned otherwise in this Chapter.

(5) Special Administration Team shall have to accomplish within one year of the commencement of the work relating to resolution as per this Act.

Provided that, if any work related to resolution being carried out by the Special Administration Team cannot be accomplished within the stipulated time, the Bank can extend the tenure of the Special Administration Team on the ground of necessity and justification.

(6) Special Administration Team can carry out any or all of the following works on behalf of the commercial bank or financial institution concerned:-

- (a) To continue other works and actions being carried out by commercial bank or financial institution

except for collecting the deposit and providing any credits,

- (b) To postpone or halt any works and actions being carried out by the commercial bank or financial institution,
- (c) To obtain loan by mortgaging or not mortgaging property of the commercial bank or financial institution,
- (d) To prevent the payment of the liability of the commercial bank or financial institution or to determine limit for this,
- (e) To appoint or dismiss the lien on post, the staff or the professional consultants necessary for the sake of commercial bank or financial institution,
- (f) To summon assembly of the depositors and creditors for the purpose of holding discussion and making decision on the issue deemed necessary by the Special Administration Team,
- (g) To make legal defense on the name of commercial bank or financial institution, or
- (h) To carry out or get other necessary works related to resolution carried out.

(7) Special Administration Team shall have full power to access and control over the commercial bank or financial institution concerned and its subsidiary company office, account book, record, property and information technology system.

(8) If Special Administration Team deems appropriate to merge all or major property of the commercial bank or financial institution, which remains under its control, into any other commercial bank or finance company, or to merge into each other by acquiring the property of any other commercial bank or financial institution,

application along with proposal regarding this shall have to be furnished to the Bank as per existing law. After receiving the application along with the proposal thus, the Bank shall have to make decision regarding accepting or refusing such application.

(9) By preparing the account of the estimated expenses to be spent on the process of resolution out of the amount available on the ground of financial condition of the commercial bank or financial institution, and the amount that may be needed for the sake of other expenses as per existing law, management should be arranged to return or pay the amount for such liability at a time or on installment out of the amount that can be available to pay for the liability of the deposit that has been matured. While paying as such, the depositors and creditors of the same grade shall have to be treated equally.

(10) The procedure relating to the determination of the validity of the claim laid by the depositor and creditor upon the commercial bank or financial institution concerned, payment of the claim, determination of liability and returning of the personal property of the client shall be as per prescribed.

(11) Notwithstanding whatever matter has been written in existing law, while selling the property of the commercial bank or financial institution, the Special Administration Team can sell by adopting transparent and professional perspective with more than one ways of auction, sealed bid, negotiation and so on, after determining minimum price on the ground prescribed.

(12) Special Administration Team shall have to submit to the Bank, from time to time as per prescribed, the description along with the financial account of the commercial bank or financial institution, the plan of the sale of the property of such institution and its perspective regarding this, prior estimation of the liability of such institution or the mode of payment of this, actual transfer of the property and estimation of the liability.

(13) If the Special Administration Team deems necessary to issue new share of the commercial bank or financial institution concerned, sell the property, unify the properties for the sake of securitization, to manage to make prior estimation of the liability or to manage such works, Special Administration Team can bestow responsibility to anybody or company, which has been established to carry out works relating to the management of the property as per existing law, to carry out such works. It can also transfer power to such body or company to sell the passive credit, the property, which is hard to be evaluated, and liability of the commercial bank or financial institution concerned.

88 D. Power to be automatically suspended during the period of

resolution : (1) The power of the Directors, Chief Executive Officer and other lien on post of the commercial bank or financial institution, which is under the process of resolution, shall be held *ip so facto* suspended during the period of resolution.

(2) Despite whatever matter has been written in Sub-Section (1), Special Administration Team can depute all or any of the Directors, Chief Executive Officer and other lien on posts for the work relating to resolution by releasing the suspension for the sake of carrying out works prescribed by it.

(3) The Special Administration Team can dismiss the person at any time, who does not abide by the directives given to get deputed for the work as per Sub-Section (2) at any time.

(4) The person dismissed as per Sub-Section (3) shall not obtain any remuneration and facility from such bank or financial institution.

88 E. Notice and registration of the work relating to resolution : (1)

Special Administration Team shall have to provide every office of the commercial bank or financial institution with the notice along with following description within two days from the commencement of the works relating to resolution :-

- (a) Date and time of the works commenced after taking the commercial bank or financial institution concerned under its control,
- (b) Description of the revoked authority and responsibility of the previously authorized person, who used to carry out economic transaction of the commercial bank or financial institution concerned or manage it or give directives relating to it.
- (c) Method, time and venue for the depositor to present their claim on their deposit remained in the commercial bank or financial institution concerned, and their claim remained exceeding the insurance and secured amount prescribed,
- (d) Method, time and venue to re-obtain their deposit insured and secured by the depositors, and
- (e) Method, time and venue to present his/her claim to be obtained by the secured creditor from the commercial bank or financial institution.

(2) The notice along with the description as per Sub-Section (1) shall have to be published publicly so that the stakeholders of the commercial bank or financial institution concerned can get information. Such notice shall have to be published in national daily newspaper by publishing it every week until four weeks.

(3) Special Administration Team shall have to send the information relating to the condition of the commercial bank or financial institution that is subjected to the process of resolution, and the change made in authorized person of such commercial bank or financial institution and in his/her authority to the Bank, Company Registrar's Office, Stock Exchange Market concerned and the institution established to secure deposit as per existing law and other bodies concerned as well.

88 F. New balance sheet to be Prepared : (1) Special Administration Team shall have to prepare new balance sheet on the following grounds so as to reveal actual condition of the commercial bank or financial institution that is subjected to the process of the resolution as per Section 88 A :-

(a) On the ground of the net price of the property to be obtained,

(b) By adjusting the price of the liability to be distributed on the ground of priority as per Section 88 I,

(2) While preparing new balance sheet as per Sub-Section (1), the method to determine liability shall be as per prescribed.

(3) The balance sheet prepared as per Sub-Section (1) and detailed account relating to it shall have to be submitted to the Bank as per prescribed.

88 G. Recommendation may be made for improving financial condition of the commercial bank or financial institution : (1) If it is seen that negative effect shall be incurred in overall financial stability or system while accomplishing the process of resolution commenced regarding any commercial bank or financial institution as per this Chapter, Special Administration Team shall have to submit the report, along with the steps to be moved in future, by mentioning such description, including the condition of the properties and liability of such institution so as not to let such condition be created.

(2) After receiving the report as per Sub-Section (1), if negative effect is seen to occur in entire financial stability and system while carrying out resolution of such commercial bank or financial institution by the Bank, and if it is seen that financial condition can be improved when the Government of Nepal invests in such commercial bank or financial institution, the Bank shall recommend such description, along with its opinion, before the Government of Nepal.

(3) If financial condition of any commercial bank or financial institution is improved after investing by the Government of Nepal in such commercial bank or financial institution upon the recommendation of the Bank as per Sub-Section (2), the Government of Nepal shall have to recover its invested amount within maximum of five years from the date of improvement by selling to the private sector through bid.

88H. Bridge Institution or Unit may be Established : (1) If it is seen appropriate to operate work relating to resolution by establishing or fixing bridge institution or unit as per Section (b) of Sub-Section (2) of Section 88 C., Special Administration Team can request to the Bank. If such request seems to be reasonable, the Bank can grant permission to carry out work relating to resolution by establishing or fixing such bridge institution or unit.

(2) It is deemed that the institution or unit established as per Sub-Section (1) shall have the power, liability property of the commercial bank or financial institution concerned and the membership of any payment, clearing or settlement system as well.

(3) The shareholders, creditors or any other persons of the institution or unit established as per Sub-Section (1) shall not have any kind of right on the property or power of the commercial bank or financial institution concerned.

(4) The function, duty and power of the bridge institution or unit and remuneration and facilities to be obtained by the lien on post of such institution or unit shall be as per prescribed by the Bank.

(5) None of the following matters shall be needed for the sake of transferring the property and liability of the commercial bank or financial institution concerned into the bridge institution or unit or any other institution :-

(a) Obtaining consent of the creditor or any affiliated party,

(b) Fulfilling the process prescribed by existing law relating to company and stock, or

(c) Fulfilling the process prescribed in any contract in which the commercial bank or financial institution is a party.

88 I. Sequence of priority of payment : (1) After evaluating the amount received from the sale of the property of the commercial bank or financial institution remained under the process of resolution by depositor, creditor and Special Administration Team, the work of payment and allocating amount for the other persons seen to be paid shall have to be done on the ground of priority as follows :-

(a) Necessary expenses incurred in the process of resolution including the expenses spent by the Bank and Special Administration Team for the sake of implementation of the provision of this Act, expenses for the remuneration and facility of the staff, fee of the professional employed for the work regarding this and other related expenses,

(b) The amount up to insurance security held as per existing law so as not to exceed the limit of the total claimed amount of the depositor or the amount equal to the payment if that has been made for the depositor by the institution established as per law that carries out insurance security,

(c) The deposit remained after payment as per Section (b),

(d) Approved claim of the persons valid as insured creditors as per law.

(2) If the amount of approved claim of any grade is insufficient to be paid off while paying as per the sequence of priority mentioned in Sub-Section (1), the amount shall have to be proportionately distributed to the claimants of the equal grades.

(3) While paying to the depositors or secured creditors for the claim, payment should be made equally without discriminating on any ground such as nationality, place of domicile or jurisdiction.

(4) The approved claim of the secured creditors, who submit claim on time, shall have to be paid, by keeping in the first priority, if the amount received from the sale of the property remained in security covers up. The claim that is not covered up by such security shall be equal to the claim of other creditors.

(5) For the purpose of bearing liability relating to economic compensation that can be incurred as per Sub-Section (4) of Section 88 L., Special Administration Team shall have to deposit two percent amount out of the amount received from the sale of the property of such commercial bank or financial institution, by setting up separate account.

(6) The amount remained after allocating the amount as per Sub-Section (5) upon paying to the depositors and secured creditors, the tax, charge, fee to be paid and submitted as per existing law shall have to be proportionately distributed by the liquidator appointed as per Sub-Section (3) of Section 88 O. to the other creditor or approved claimants and shareholders or that commercial bank or financial institution, or the persons having ownership by other ways on the ground of priority prescribed as per existing law.

88 J. Effect after Special Administration Team takes bank or financial

institution under control : (1) After the Special Administration Team takes any commercial bank or financial institution under its control, any work of maintaining rights upon the properties of such institution regarding the claim of the depositors and creditors and any dues of which payment could not be obtained as per Section 88 I shall be automatically postponed.

(2) Notwithstanding whatever matter has been written in Sub-Section (1), the works relating to transaction and transfer of property

with the person involved with clearing, payment and settlement, and the acts and matters not related to the process of resolution shall not be deemed to be postponed.

(3) Except for the right of any liability or security upon commercial bank or financial institution six months before Special Administration Team is formed for the purpose of taking any commercial bank or financial institution into the process of resolution, it shall not be deemed that right shall be created for anyone upon any property, liability or security of such commercial bank or financial institution.

(4) Notwithstanding whatever matter has been written in Sub-Section (3), any kind of liability or security created by Special Administration Team upon the property of the commercial bank or financial institution, on which the process of resolution is undergoing, shall not be deemed to have been prevented.

(5) After the formation of the Special Administration Team, all the rights of the owners of the commercial bank or financial institution concerned or the persons having any other kinds of ownership shall be held *ip so facto* passive until the process of resolution is complete.

(6) In connection to the commercial bank or financial institution remained on the process of resolution upon forming Special Administration Team, the provisions remained in the existing law relating to stock shall not be applied.

88 K. Actions prior to the commencement of the action relating to resolution to be inactive : (1) Special Administration Team can inactivate the transaction which affects in the properties of the commercial bank or financial institution or the transfer related to the third party in the following conditions :-

(a) The transactions carried out or agreements forged before the commencement of the process of resolution so as to

become against the welfare of the depositors or creditors of the commercial banks or financial institutions concerned,

(b) Any transfers made for any shareholders, Directors, lien on posts or their relatives by the commercial bank or financial institution without any price until before five years from the date of the commencement of the process of resolution,

(c) Any transfers made for any third party by the commercial bank or financial institution without any price before three years from the date of the commencement of the process of resolution,

(d) The transactions concluded in such a way of receiving lesser outcome by the commercial bank or financial institution or providing more outcome to the other party comparatively until before three years from the date of the commencement of the process of resolution,

(e) Any acts done so as to become against the welfare or affect the rights of the depositors of the commercial bank or financial institution until five years before, from the date of the commencement of the process of resolution,

(f) Transfer of property having on the name of creditor with the purpose of giving benefit to any person for the loan to be paid by the commercial bank or financial institution concerned or with the purpose to increase the amount to be received by the creditor in the process of liquidation until the six months before, from the date of the commencement of the process of resolution.

Provided that, the provision of this Section shall not be attracted regarding the payment for the deposit made not exceeding the amount covered up by each deposit insurance and security.

(2) Special Administration Team can revoke the transaction made with the director, lien on post of the commercial bank or financial institution or his/her close relative, till one year before the

date of the commencement of the process of resolution, so as to become against the welfare of the depositor and the creditor of the institution, or can recover the amount for this.

(3) Notwithstanding whatever matters have been written in Sub-Sections (1) and (2), Special Administration Team shall not revoke the transaction, which was made by the commercial bank or financial institution in course of its general transaction or in which appropriate and sufficient price was exchanged, or on which payment was not made until before such institution underwent resolution.

(4) The person who obtains property from the transaction or transfer as per Sub-Section (1) and (2) shall have to return such property immediately. If the person, who has obtained the property, no longer possesses such property shall have to deposit the amount equal to the price of such property in the commercial bank or financial institution concerned. In connection to the person who carries out such transaction with any wrong intention, who does not immediately return the property or the price equal to it to the commercial bank or financial institution concerned after the transaction has been revoked, claim shall be fixed upon him/her as equal as the secured creditor.

(5) In connection to any property, which has been unnaturally transferred to any person for less price from the commercial bank or the financial institution concerned, and which has been transferred to the third person even from such person, Special Administration Team can take it back by paying for investment cost of it.

(6) While operating the process of resolution, Special Administration Team can send by writing to the body concerned to transfer any kind of movable or immovable property or rights. When the Special Administration Team sends by writing thus, the body concerned shall have to get such movable or immovable property or rights alienated or transferred on the name of the commercial bank or financial institution.

(7) When Special Administration Team is on the process upon being formed for the sake of resolution for any commercial bank or financial institution, no one is supposed to interrupt or get other goods and service such as electricity, water, telephone, house and land, means of vehicle provided prior to this interrupted, simply because of not obtaining the amount for such goods and service. In connection to the payment for the goods and service obtained thus, Special Administration Team shall have to pay the service provider concerned with the arrears fixed before undertaking the process of resolution.

88 L. Other provisions relating to resolution : (1) Notwithstanding whatever matter has been written in existing law, regarding all the claims related to the commercial bank or financial institution, which is under the process of resolution, shall be as per this Act.

(2) No one is supposed to bar, obstruct, interrupt or interfere or get the right to access and control of the Special Administration Team barred, obstructed, interrupted or interfered. If anybody commits or gets such works committed, Special Administration Team can request the administration or the police concerned for necessary help. If requested as such, the body concerned shall have to help to maintain access and control of the Special Administration Team upon the office, property, record, and account book and information technology system by managing essential security.

(3) If Special Administration Team submits the report to the Bank, or if the Special Administration Team is dissolved due to any reason, any party, who has been in loss by the act and action carried out by the Special Administration Team or the Bank as per this Chapter, can furnish application to the court within sixty days from the date of dissolution for the sake of compensation.

(4) The court can get economic compensation paid to the party in loss on the following conditions:-

(a) If any act carried out or action taken place by surpassing jurisdiction in course of resolution,

(b) If the process of resolution is not accomplished as per this Act,

(c) While carrying out act and taking action of resolution, if it is done without sufficient ground and reason.

(5) While exercising the power obtained as per this Act, Special Administration Team shall have to exercise in transparent and justified manner so that it shall benefit the depositors and other claimants.

(6) In course of the process of resolution, the remuneration and facility to be obtained by the person who represents the Bank or Special Administration Team or the person who helps him/her, shall be as per determined by the Bank.

(7) No depositor, shareholder or creditor shall be allowed to file lawsuit of any kinds against any works performed to help in the process of resolution by the Directors or lien on posts of the commercial bank or financial institution concerned in course of implementing the decision of the Bank or Special Administration Team.

(8) Notwithstanding whatever matter has been written in existing law, the Bank can obtain the information and description related to any commercial bank or financial institution regarding the process of resolution of such institution from any person, firm, company or institution of government or private sector. If the Bank gives order, the major managerial information, the description of including the place where the technology of any commercial bank or financial institution is located, and sensitive and major works performed by such institution shall have to be submitted to the Bank. To provide any information sought by the Bank thus shall be the duty of the person, firm, company or institution concerned.

88 M. Final description of the work relating to resolution to be

submitted : (1) After Special Administration Team concludes the work relating to resolution, or after the tenure of such Group is over, or within fifteen days of the dissolution of such Group due to any reason, it shall have to submit the report to the Bank, along with the description relating to the work and action accomplished by it and account of profit and loss of the commercial bank or financial institution concerned, source of financial transaction and its utility, after preparing and getting it tested, and including it as well. Necessary recommendation shall have to be included in such report regarding the steps to be moved in the future in the context of such institution by the Bank.

(2) After the report is received as per Sub-Section (1), the Bank shall have to make necessary decision, by considering including the recommendation mentioned in such report, on the issue of arranging the operation of management as per Section 88 G or furnishing application to the court for the sake of liquidation of such commercial bank or financial institution as per Section 88 O.

88 N. Exchange of Reciprocal Assistance : (1) In course of moving

forward the process of resolution of any commercial bank or financial institution upon obtaining prior approval of the Bank, Special Administration Team can request the related body of foreign country for the sake of help as per necessary.

(2) By obtaining prior approval of the Bank regarding the process of resolution of any commercial bank or financial institution, Special Administration Team can help in the act and action being performed in another country, or can move forward the necessary action to validate the act and action being performed by authorized body of another country on the ground of reciprocity. Claimants shall have to be treated equally while extending such assistance, or validating such act and action.

(3) Except in the condition that confidentiality shall have to be maintained and sensitive data shall have to be protected, Special Administration Team can exchange information, upon obtaining prior approval of the Bank, with the related body of the foreign country regarding recovery of dues, resolution plan etc. of the commercial bank or financial institution remained under the process of resolution.

(4) Regarding the resolution of the commercial bank or financial institution having branch or office in the foreign country as well upon being established in Nepal, or any commercial bank or financial institution having branch or office in Nepal upon being established in foreign country, the Bank and the institution that secures deposit insurance also can coordinate and exchange help reciprocally.

(5) After forging reciprocal agreement by the Bank and the institution that secures deposit insurance regarding the resolution being performed by the related body of the foreign country and its plan, if any information or help is sought regarding any incident or problem affecting regarding the commercial bank or financial institution that has fallen into resolution, they can exchange such information or help.

(6) If any help is to be obtained from or coordination is to be done with the central bank, commercial bank or financial institution or the institution that secures deposit insurance of foreign country on the ground of reciprocity as per this Section, if such help and coordination is needed from the government level, the Bank shall recommend in front of the Government of Nepal to arrange the necessary management regarding this.

88 O. Application for liquidation may be made: (1) If the process of resolution, which was started by the Bank regarding any commercial bank or financial institution is concluded or if the Bank believes in the matter, on the ground of the recommendation furnished by Special

Administration Team regarding this or on other grounds as well, before that process is concluded, that such commercial bank or financial institution cannot be properly operated, it can furnish application to the court for the sake of liquidating such commercial bank or financial institution.

(2) When the Bank furnishes application for the sake of liquidation as per Sub-Section (1), Sub-Section (3) of Section 10 of Section 13 of Insolvency Act, 2063 shall not be applied regarding such commercial bank or financial institution.

(3) When the Bank furnishes application as per Sub-Section (1), the court can give order to appoint liquidator for the sake of liquidation of such commercial bank or financial institution.

Chapter - 10

Balance Sheet, Auditing and Report

89. **Fiscal Year:** The Fiscal year of the Bank shall be as per the Fiscal year of Government of Nepal.
90. **Account system :** (1) The Bank shall have to keep the account of its profit and loss exact so as to reveal the transaction and financial condition as per account system according to Nepal accounting standards.
- (2) Notwithstanding whatever matter has been written in Sub-Section (1), international accounting standards shall have to be taken as basis on the sectors in which Nepal accounting standard is not involved.
91. **Annual Report:** (1) The Bank shall prepare an annual report for each fiscal year, which should include the balance sheet, profit and loss [™] [□] and the particulars relating to it.

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□ Added By Second Amendment

- (2) The Bank shall submit the annual report referred to in Sub-section (1) to Government of Nepal within four months from the date of completion of each fiscal year.
- 92. Auditing:** (1) The Auditor General shall carry out auditing of the accounts of the Bank.
- (2) The Board may, if it deems appropriate, cause the internal auditing of its accounts carried out by some external Auditor. While causing such auditing of accounts, it shall cause to be carried out in accordance with the account system of international practice.
- 93. Submission of Report to Government of Nepal:** (1) The Bank shall have to submit the following reports to Government of Nepal within four months from the date of completion of each fiscal year:-
- (a) Auditing Report,
 - (b) Report on its activities of itself,
 - (c) Report on economic and financial position,
- (2) The Bank shall publish its monthly balance sheet within fifteen days from date of completion of each month.
- 94. Report on Monetary Policy:** The Bank shall publish the report on monetary policy each year for the information of general public. The said report to be published in such a manner shall contain the following matters:-
- (a) Comprehensive review and evaluation of the monetary policy introduced and followed by the Bank in the preceding year;
 - (b) Justification and analysis of the monetary policy that the Bank is going to introduce in the following year:-

Chapter - 11

Offences, Punishment and Proceedings

- 95. Acts Deemed to be Offence Under this Act:** (1) Whoever accepts deposits or gives credits or issues debenture or other financial instruments in contravention to this Act or the Rules or bye-law framed

thereunder or an order or directive issued thereunder; or whoever charges or gives interest against the policy determined by the Bank or issues fake, fraudulent, counterfeit or duplicate or copied currency or distributes or circulates such currency or is involved in such acts [™][□] or instead of obtaining license from the Bank as per existing law, if transaction is made without obtaining it, or if obstruction is posed on the process of clearing and settlement as per Chapter-9 A., it shall be deemed to have committed offences under this Act.

(2) Except otherwise provided under Sub-section (1) any person who fail to comply with the provisions made under this Act or rules made thereunder, or bye-laws, or the order or directives issued thereunder, shall commit offence under this Act.

●**96. Penalty and Punishment :** (1) The person who commits the crime as per Sub-Section (1) or (2) of Section 95, fine up to three times of the property or imprisonment up to three years, or both the punishments shall be given by confiscating the property related to that crime.

(2) If there is the condition that the property cannot be fixed while punishing as per Sub-Section (1) or (2) of Section 95, fine up to maximum of one million rupees or imprisonment up to three years, or both the punishments shall be given by looking into the extent of crime.

(3) If the crime as per Section 95 is committed by any firm, company or institution, such punishment shall be given to the chief lien on post of such firm, company or institution.

(4) The person, firm, company or institution or the lien on post of such firm, company or institution who attempts to commit the crime as per Section 95 or accomplices to commit such crime shall get half of the punishment which is given to the principal criminal.

●**97. Government of Nepal to be Plaintiff:** The cases relating to the offences referred to in Section 95 shall be filed by Government of Nepal as

[™] Deleted By Second Amendment

[□] Added By Second Amendment

● Amended by Second Amendment

plaintiff and such cases shall be deemed to have been incorporated in Schedule -1 of the Government Cases Act, 2049 (1992).

98. Bank to Provide Information: In cases where the Bank has an information from any source that any one has committed the offences referred to in Section 95, the Bank shall forward such information in writing to Government of Nepal or the concerned agency for necessary actions.

99. Fine for Violation of Bank's Regulation: (1) In case any commercial bank or financial institution licensed under this Act, violates an order or directive issued by the Bank under this Act or under the regulation or Bye-laws framed thereunder, the Bank may fine such commercial bank or financial institution an amount up to the amount related to such violation.

(2) In cases where the Bank's regulation referred to in Sub-section (1) has been violated by a Director, official or employee of the commercial bank or financial institution, such fine shall be imposed on the concerned Director, official or employee.

100. Punishment for Violation of Bank's Regulation: (1) In case any commercial bank or financial institution licensed from the Bank, violates an order or directive issued by the Bank under this Act or under the regulation or bye-laws framed thereunder, the Bank may impose one or more of the following punishment to such commercial bank or financial institution:-

- (a) Giving reprimand or written warning;
- (b) Obtain an undertaking from Board of Directors for adopting reformative measures;
- (c) Issuing written order to end up frequent violations, to abstain from such violation and to adopt reformative measures;
- (d) Suspend or terminate the services of the Bank's employee;

- (e) Prohibit commercial bank or financial institution to distribute dividend to its shareholders;
- (f) Prohibit commercial bank or financial institution to accept deposits or to grant loan and advance;
- (g) Imposing full or partial restriction on the transaction of business of the commercial bank or financial institution;
- (h) Suspend or revoke license of the commercial bank or financial institution.

(2) Where a Director or official or employee of a licensed commercial bank or financial institution violates an order or directive issued by the Bank under this Act or under the regulation or bye-law framed there under or in cases where, they have acted against the interest of the depositor or general public or where they failed to submit the documents, particulars, data required by the Bank or the inspecting or supervising official within the time prescribed, the Bank may impose the following punishments to such Director, official or employee:-

- (a) Giving reprimand or written admonition;
- (b) Suspending;
- (c) Imposing a cash fine not exceeding five hundred thousand rupees;
- (d) Giving order to the Board of Directors of concerned commercial bank or financial institution to stop payment of all benefits including remuneration and allowances;
- (e) Giving order to the Board of Directors of the concerned commercial bank or financial institution to remove Directors from his office of Director or to terminate the services of officer or employee.

101. Procedures for Pecuniary Penalty and Punishment: (1) While imposing pecuniary penalty or punishment pursuant to Sections 99 and

100, the Bank shall have to follow the following procedures:-

- (a) Prior to imposing pecuniary penalty or punishment, the Bank shall issue a written notice to the accused institutions or persons stipulating the following matters to submit its reply within fifteen days, on the proposed fine or punishment:-
 - (1) Nature of the offense,
 - (2) Amount of fine or proposed punishment that may be imposed on the basis of nature of offence, and
 - (3) Summary of the facts related to the offence.
- (b) The institution or person accused pursuant to Clause (a) should submit written replies within fifteen days accepting or denying the charges.
- (c) In case the denial of the charge by the accused institution or person is found to be satisfactory, the Bank may change, limit or dismiss such charge.
- (d) In case the accused institution or person accept the charge or does not give satisfactory replies, the Bank shall impose such fine or punishment.
- (e) The Bank may issue order to deduct the amount of fine imposed pursuant to Clause (d) from the accounts of the concerned commercial bank or financial institution maintained at the Bank.

(2) The cash fine to be recovered by the Bank pursuant to Clause (e) of Sub-Section (1) shall be deposited in the general reserve fund.

(3) Notwithstanding anything contained in Sub-section (1), there is no need to follow such procedure while imposing punishment under Clauses (a), (b), (c) or (d) of Sub-section (1) and Clauses (a) and (b) of Sub-section (2) of Section 100.

- 102. Filing Appeals:** The commercial bank or financial institution or the director or official or employee thereof not satisfying with the punishment imposed by the Bank under Sections 99 and 100 may, within thirty five days from the date of punishment, file an appeal at the [⊙]High Court.

Chapter - 12

Miscellaneous

- 103. Payment, Clearing and Settlement:** (1) The Bank shall make necessary arrangement for the clearing and settlement of cheques, payment orders, interbank payment security transactions made in the currencies prescribed by the Bank and any other payment instrument and carry out the functions of regulation, inspection and supervision thereof.

(2) While carrying out the functions referred to in Sub-section (1), the Bank may prescribe necessary procedures.

(3) For the purpose of clearing and settlement arrangement referred to in Sub-section (1), the commercial bank or financial institution shall, subject to the terms and conditions prescribed by the Bank, open account in the Bank or any other financial institution prescribed by the Bank.

▣(4) While regulating as per Sub-Section (1), apart from regulating the transaction including the payment, clearing and settlement to be made through agent or external source by the commercial bank or financial institution, the Bank can conduct inspection and supervision of such transaction as per necessary.

- 104. Collection of Data:** (1) The Bank [▣] shall, in order for achieving its objectives or carrying out its functions, collect data necessary for it from itself or from Government of Nepal or other agencies. For this purpose, the Bank may seek help from the authorized persons, institution, organization within and outside [▣] and international association and organizations.

[⊙] Amended by Second Amendment

[▣] Added By Second Amendment

[▣] Deleted by Republic Strengthening and Some Laws Amendment Act, 2010.

(2) The Bank may make necessary provisions for coordination and reformation in the system of collection, storing and distribution of data relating to its area of competence.

105. Trust Accounts: The Bank may, for special purposes, open and operate separate account in the form of trust account. The amount collected in such account shall not be used for any other purposes. The property in such account shall be used only for the purpose of fulfilling the liabilities of such accounts and the Bank shall not be allowed to use the amount or property in other accounts for fulfilling such liabilities.

106. Actions not to be Invalid: None of the actions taken by the Bank or the Board shall be invalid merely for the reason that there was irregularity in the appointment of Governor, Deputy Governor or Director or in the formation of the Board or simply on the ground that the office of the Governor, Deputy Governor or Director has remained vacant.

▫ **106 A. Not to work in commercial bank or financial institution :** (1) The person who has become a Governor must not work in any commercial bank or financial institution by remaining in any status.

(2) Deputy Governor and Executive Director of the Bank must not work in any commercial bank or financial institution by remaining in any status until three years from the date of acquittal or retirement from his/her post and the staff of officer level of the Bank must not work until two years from the date of acquittal or retirement from his/her post.

Provided that, after the deadline fixed in this Sub-Section expires, the Deputy Governor, Executive Director or Officer concerned shall have to obtain prior approval of the Bank for the sake of working in any commercial bank or financial institution by remaining in any status.

(3) Notwithstanding whatever matter has been written in Sub-Sections (1) and (2), this provision shall not be applied to the post in which the Government of Nepal makes appointment.

□106 B. **Expert Service to be provided** : If the Government of Nepal requests, the Bank shall have to provide the service of expert possessed by it.

□106 C. **Government of Nepal may give directives** : (1) The Government of Nepal may give directives to the Bank regarding currency, banking and finance.

(2) To abide by the directives given as per Sub-Section (1) shall be the duty of the Bank.

107. **No Responsibility for Acts Done on Good Faith**: (1) Governor, Deputy Governor, Director or [Ⓞ].....□staff of the Bank or Special Administration Team shall not be personally or collectively liable for any act done on good faith under this Act and under the Regulations or Bye-laws or under an order or directive issued thereunder.

Provided that for any act done knowingly or with *mala fide* intention, they shall be personally liable.

(2) In case a lawsuit of any type has been filed against the Governor, the Deputy Governor, Director or any official of the Bank with regard to any loss sustained or to be sustained because of any act done or attempted to do in good faith pursuant to this Act or under the Regulations or Bye-laws framed thereunder or an order or directive issued thereunder, the Bank shall bear expenses incurred therefor.

Provided that the Bank shall not bear the expenses incurred for the lawsuit filed against any act done knowingly or with *mala fide* intention.

Ⓞ108. **Oath of Office**: (1) Before assuming their office, the Governor and Director before the chief justice of the Supreme Court or justice prescribed by him/her and Deputy Governor before the Governor, shall take an oath of post and secrecy as determined in the schedule.

(2) Any employee or advisor appointed first time in the bank should take an oath of post and secrecy as prescribed, before resuming his post.

109. This Act to be Applicable: Notwithstanding anything contained in the prevailing laws, provisions contained in this Act shall prevail.

110. Power to Frame Rules and Bye-laws: (1) In order to implement the objectives of this Act, the Bank shall, having obtained approval of Government of Nepal, frame necessary Rules on the following matters:-

- (a) Foreign Exchange Transaction;
- (b) Refund of the burnt, torn, defaced or mutilated banknotes and coins;
- (c) Transaction of business between Government of Nepal and the Bank;
- [Ⓜ](d) Other necessary matters which bank thinks necessary to implement the objective of this Act.

(2) In order to implement the objectives of this Act, the Board may frame byelaws on the following matters:-

- (a) The venue and time of the meeting of the Board and procedures relating thereto,
- (b) Formation of sub-committees by the Board as per necessity and procedures of such sub-committees,
- (c) Appointment, promotion, transfer, dismissal, remuneration and facilities, pension, gratuity, provident fund, leave, conduct and discipline and terms and conditions of service, of the employees of the Bank,
- (d) Delegation of authority by the Board to the Governor, by the Governor to the Deputy Governor or other employees of the Bank,

[Ⓜ] Added by First Amendment.

- (e) The terms and conditions for the lease agreements to be concluded on behalf of the Bank,
- (f) The use of the seal of the Bank,
- (g) The accounts, ledger, registrars, books and other record and documents to be maintained by the Bank and the format thereof,
- (h) Internal auditing and inspection of the Bank,
- (i) Supervision of commercial banks and financial institution,
- (j) The particulars to be submitted by commercial banks and financial institutions,
- (k) Cash deposit of the Bank or responsibility of the cash,
- (l) The case to be filed on behalf of the Bank or operation of other transaction of business,
- (m) Credit control,
- (n) The Bank's system of expenditure,
 - (n1) Regarding merging the commercial bank and financial institution or to be merged with one another.
 - (n2) Regarding quick reformative action of the commercial banks and financial institutions,
 - (n3) Regarding credit information.
 - (n4) Regarding payment and account settlement.
 - (n5) Regarding carrying out clearing and settlement.

▫(n6) Regarding the license to be issued by the Bank.

▫ (o) Other necessary subjects, which are necessary to implement the objective of this Act.

(3) Except the subject matters referred to in Sub-Sections (1) and (2), the Governor shall issue the order, direction, procedures and guidelines to be issued under this Act.

(4) The Bank shall forward, for information of Government of Nepal, the Bye-law framed under Sub-section (2) and the order or directive issued under Sub-section (3).

(5) The Bank shall publish and transmit the bye-law framed under Sub-section (2) or an order or directive issued under Sub-section (3).

111. Guidelines to be Framed and Implemented: The Bank may, in order to fulfill the objectives of the Act, frame and implement necessary guidelines from time to time subject to this Act, or Regulations or bye-laws framed under this Act.

112. Repeal and Saving: (1) The following Acts have been repealed:

(a) The Nepal Rastra Bank Act, 2012 (1955);

(b) The Currencies Act, 2040 (1983);

(2) All acts and activities carried out in accordance with the Acts repealed under Sub-section (1) shall be deemed to have been carried out in accordance with this Act.

▫ Added By Second Amendment

▫ Added by First Amendment.

***Schedule**

(Related to Sub-Section (1) of Section 108)

Oath swearing form

I,, have been appointed to the post of of Nepal Rastra Bank; hence, I shall abide by the duty of the post of....., and always keep in mind the welfare of the Bank. I shall never anywhere reveal the transactions and the matters to be kept confidential. I take an oath, bearing in mind the honesty and religion truly and faithfully, that except in the condition of the rights conferred by the Board of Directors and if compelled by law, with the status of....., I shall not provide anyone with the information and notice, which comes to my knowledge, directly or indirectly, with any manner, even in any condition of remaining or not remaining in the post.

Of the lien on post who takes oath

Of the lien on post who gets oath taken

Signature :

Signature :

Name :

Name :

Post :

Post :

Date :

Date :

Stamp :

* Amended by the First Amendment.