

Bank and Financial Institution Act, 2073 (2017)

Date of Authentication

2073/01/10 BS (April 23, 2017 AD)

Act No. 1 of the year 2074

An Act Made to Provide for the Amendments to, and Consolidation of the Laws Relating to Banks and Financial Institutions

Preamble: Whereas, it is expedient to amend and consolidate forth with the prevailing laws relating to banks and financial institutions in order to enhance the confidence of the general public towards the overall banking and financial system of the country; to protect and promote the rights and interests of depositors; to provide quality and reliable banking and financial services to the general public through healthy competition among banks and financial institutions thereby making national economy strong and strengthened; and to maintain financial stability and make the necessary legal provisions concerning to incorporation operation, management, regulation, inspection and supervision of banks and financial institutions timely;

Now, therefore, be this Act enacted by the Legislature-Parliament as referred to in Clause (1) of Article 296 of the Constitution of Nepal

Chapter- 1

Preliminary

1. **Short Title, Extension and Commencement:** (1) This Act may be called as "Banks and Financial Institutions Act, 2073 (2017)."
 - (2) This Act shall extend to the whole territory of the state of Nepal and also enforce to a branch or liaison office opened outside of Nepal by a bank and financial institution incorporated in Nepal.
 - (3) This Act shall come into force at once.
2. **Definitions:** In this Act, unless the subject or the context otherwise requires, -

- (a) "Court" means a Commercial Bench of the Court designated by the Government of Nepal with the approval of the Supreme Court by a notification published in the Nepal Gazette.
- (b) "Chairperson" means and includes the Chairperson of the Board of Directors and the Executive Chairperson.
- (c) "License" means a license issued by the Rastra Bank in the name of a bank or financial institution to carry out banking and financial transactions, pursuant to this Act.
- (d) "Licensed transaction" means banking and financial transactions to be carried out by a bank or financial institution by obtaining a license under this Act.
- (e) "Licensed Institution" means a bank or financial institution which has obtained a license pursuant to this Act for carrying out banking or financial transaction.
- (f) "Significant Ownership" means a situation where any person has, solely or jointly in association with any other individual or institution, subscribed two percent or more shares of a bank or financial institution and due to share ownership one may have influence on the management of the bank or financial institution.
- (g) "Borrower" means an individual, a firm, company or institution obtained credit from bank or financial institution.
- (h) "Credit" means, and includes any amount lent by a bank or financial institution to any individual, firm, company, institution or other business enterprise subject to the repayment of there on principal, interest or other charge within the certain time limit, direct or indirect gurantee, interest or other charge of the credit, re-finance, restructuring and renewal of the credit, guarantee given and other commitment made for the repayment of such credit and also any type of credit as specified by the Rastra Bank by publishing a public notice.
- (i) "Chief Executive" means, and includes the Chief Executive Officer having responsibility of operating a bank or financial institution and also the Executive Chairperson and Managing Director acting as the Chief Executive.
- (j) "Office" means, the registered and central office of a bank or financial institution and also includes any branch office of a bank or financial institution located within

Nepal and outside Nepal and a branch office of a foreign bank or financial institution located in Nepal.

- (k) “Net worth” means any amount that remains after deducting the external liabilities from the grand total of the assets to be maintained in the balance-sheet of a bank or financial institution.
- (l) “Non-executive Director” means a Director excluding the Executive Director performing daily business of a bank or financial institution.
- (m) “Current account” means an account of funds deposited with a bank or financial institution by a costumer that may be withdrawn at any time on demand.
- (n) "Paid-up Capital" means the portion of the capital paid up on behalf of shareholders out of the issued capital of a bank or financial institution.
- (o) “Risk-weight asset” means the total assets calculated by multiplying the amounts coming under each heading of on-balance sheet and off-balance sheet operations of a bank or financial institution by the risk-weight in the format as prescribed by the Rastra Bank.
- (p) “Liquid assets” means the cash balance of a bank or financial institution, the balance remained in the current account, the balance maintained in the Rastra Bank and such assets of a bank or financial institution specified as liquid assets by the Rastra Bank from time to time.
- (q) “Prescribed” or "as prescribed" means prescribed or as prescribed in the Rules or Byelaws framed under this Act.
- (r) “Securities” means and includes a share, stock, bond, debenture, debenture stock or a mutual investment scheme certificate issued by a bank, financial institution or corporate body or a certificate, saving bond or bond issued by the Government of Nepal or by a corporate body against the guarantee of the Government of Nepal, and also other stock specified by the Securities Board as the stock to be transacted or transferrable through the stock market to sell or exchange such stock.
- (s) "Articles of Association" means the Articles of Association of a bank or financial institution framed pursuant to the prevailing laws relating to companies.
- (t) “Deposits” means and includes amounts deposited in current, savings or fixed accounts of a bank or financial institution through costumers with or without

accruing interests and also such amounts which a bank or financial institution accepts through different financial instruments as specified by the Rastra Bank from time to time.

- (u) "Deposit Guarantee" means the act of security of deposit and guarantee of such deposit pursuant to Section 108.
- (v) "Office bearer" means a Director, Chief Executive, Company Secretary and an officer level employee of a bank or financial institution who is authorized to make a decision on any matter.
- (w) "Family" means a Director's husband or wife, son, daughter-in-law, daughter, adopted son, adopted daughter, father, mother, stepmother and also the elder brother, elder sister-in-law, younger brother, younger sister-in-law, elder sister and younger sister of the Director, who are dependent on him or her:

Provided that the term does not include members of the family being separated after the partition of the family property and carrying out his/her profession or business on his/her own.

- (x) "Capital" means the authorized capital, issued capital and paid up capital of a bank or financial institution.
- (y) "Capital Fund" means and includes the total sum of primary capital and supplementary capital of a bank or financial institution as specified by the Rastra Bank and also any other fund or amount as specified by the Rastra Bank from time to time.
- (z) "Infrastructure Development Bank" means the Infrastructure Development Bank incorporated to carry out financial transactions as referred to in sub-section (5) of section 49.
- (aa) "Letter of credit" means a letter written by one bank or financial institution in the name of any other bank or financial institution authorizing the latter thereon to accept cheques, drafts, or bills of exchange of any specified person within the limit of the amount specified therein.
- (bb) "Memorandum of Association" means the Memorandum of Association of a bank or financial institution framed pursuant to the prevailing companies' law.

- (cc) “Primary Capital” means and includes the funds of a bank or financial institution listed under such headings as the paid-up capital, share premium, non-redeemable preference shares, general reserve fund and accumulated profit and loss, and also such other funds listed under other headings as may be prescribed as primary capital by the Rastra Bank from time to time.
- (dd) "Acquiring Institution" means the holding bank or financial institution acquiring an institution licensed pursuant to this Act.
- (ee) "Acquisition" means the act of acquisition by a licensed institution to another licensed institution having settled the accounts of entire assets and potential liabilities by winding up the legal capacity of such institution and also the act of accepting all contractual liabilities by the acquiring bank or financial institution created by the targeted institution before its merger.
- (ff) “Savings Account” means accounts containing details of the amounts deposited by any customer for savings in a bank or financial institution.
- (gg) “Bank” means and includes corporate body incorporated to carry out banking and financial transactions as referred to in Sub-Section (1) of Section 49 and a branch office of a foreign bank located in Nepal, a branch office opened outside of Nepal by a bank incorporated in Nepal and an Infrastructure Development Bank to performing the functions as referred to the Section 49 and a branch office of the same bank.
- (hh) “Banking and financial transaction” means the banking and financial transaction as referred in Section 49.
- (ii) “Bonus share” means and includes share issued as an additional share to shareholders, by capitalizing the saving earned from the profits or the reserve fund of a bank or financial institution, and the increase of the paid up amount of a share by capitalizing the saving or other fund.
- (jj) “Fixed Account” means a periodic account of funds deposited with a bank or financial institution for a specified term, during which normally the deposited amount cannot be withdrawn.
- (kk) "Rastra Bank Act" means the Nepal Rastra Bank Act, 2058 (2002).
- (ll) "Rastra Bank" means the Nepal Rastra Bank.

- (mm) "Targeted Institution" means a bank or financial institution to be merged in an acquiring institution pursuant to this Act with entire assets and liabilities.
- (nn) "Audit Committee" means the Audit Committee as referred to in section 60.
- (oo) "Dividend" means cash dividend, interim dividend or bonus share to be given by a bank or financial institution according to this Act and the prevailing laws.
- (pp) "Liquidator" means and includes a person appointed for carrying out the functions of liquidation of bank or financial institution according to an order of a court or a resolution adopted by a meeting of the creditors and as well as an office carrying out the function of a liquidator.
- (qq) "Leasing" means an act of acquiring only the possessory right of a movable or immovable asset for a specified period of time by retaining the ownership thereof with the bank or financial institution in consideration of which a lessee is required to pay the rent within the schedule as per the agreement.
- (rr) "Off-balance-sheet transaction" means and includes letters of credit, letters of guarantee, letters of acceptance, commitments, swaps, options and transaction in advance concerning foreign exchange having, the potential of bearing liabilities by a bank or financial institution and also transactions of the instruments as specified by the Rastra Bank, from time to time.
- (ss) "Financial institution" means and includes a corporate body incorporated to carry out banking and financial transactions as referred to in to sub-sections (2), (3) or (4) of Section 49 and a branch office of a development bank, finance company, micro finance institution or a branch office of a foreign financial institution located in Nepal and also a branch office opened abroad by a financial institution incorporated in Nepal.
- (tt) "Financial interests" means a situation where any Director, shareholder subscribing one percent or more shares or the Chief Executive or a family member of such a person or the individual, company, or corporate body having the authority to appoint a Director subscribes ten percent or more shares of a firm, company or corporate body separately or jointly, such a person or persons are deemed to have financial interests in the institution having ten percent or more shares, and also

include the interests which the Rastra Bank specifies as having financial interests depending upon the nature and circumstance of a financial transaction.

- (vv) “Branch of a foreign bank or financial institution” means a branch of any bank or financial institution having obtained a license from the Rastra Bank in accordance with this Act to carry out banking and financial transactions having opened a branch office in Nepal.
- (ww) “Electronic transaction” means and includes the business of accepting deposits, making payments and transferring funds through telephone, telex, computers or magnetic tapes or other electronic equipment of a similar nature and transactions to be carried out through terminal, automated teller machines and cash dispensing machines, as well as those to be carried out through charge cards, debit or credit cards.
- (ww) “Prospectus” means the prospectus to be published by a bank or financial institution pursuant to Section 8.
- (xx) “Branch Office” means any branch, sub-branch, unit, area, and representative or liaison office of a bank or financial institution within and outside Nepal and any office including a branch or representative office or liaison office or any other office of a foreign bank or financial institution in Nepal.
- (yy) “Share” means the divided portion of the share capital of a bank or financial institution.
- (zz) “Shareholder” means a person having ownership in a share of a bank or financial institution.
- (aaa) “Director” means and includes a member of the Board of Directors and also the Chairperson of the Board of Directors as well as an Alternate Director.
- (bbb) “Board of Directors” means the Board of Directors constituted pursuant Section 14.
- (ccc) "Promoter" means a person who, having undertaken to subscribe at least one share, signs the Articles of Association and the Memorandum of Association in the capacity of a Promoter for the incorporation of a bank or financial institution pursuant to this Act.
- (ddd) “Affiliated person” means a Director, office bearer of a bank or financial institution or his/her family member or any firm, company or institution having substantial

ownership of such a person or any person, firm, company or institution having substantial ownership in such a firm, company or institution or also a beneficial owner with substantial ownership thereof.

- (eee) "Independent Director" means the person appointed to the position of Independent Director pursuant to Sub-Section (3) of Section 14.
- (fff) "Voluntary Liquidation" means a situation in which a bank or financial institution initiates voluntary liquidation pursuant to Chapter 11.
- (ggg) "Creditor" means and includes a person or a body corporate to whom/which a bank or financial institution has to pay and also a depositor and debenture-holder for the purpose of liquidation process.
- (hhh) "Hypothecation Loan" means a loan disbursed having entered into an agreement between a bank or financial institution and a Borrower against the collateral security of the stock having retained such stock under possession of the borrower concerned.

Chapter - 2

Provisions Relating to Incorporation of a Bank or a Financial Institution

3. **Incorporation of Banks or Financial Institutions:** (1) Any person, wishing to incorporate a bank or financial institution to carry out financial transactions according to this Act shall incorporate it by getting such a bank or financial institution registered as a public limited company in accordance with the prevailing laws:

Provided that banks or financial institutions which are in operation at the commencement of this Act do not require to be incorporated pursuant to this sub-Section.

(2) An official authorized in accordance with the prevailing laws in force to register a company pursuant to Sub-Section (1) shall register the company subject to Section 4.

4. **Prior-approval to be Obtained to Incorporate Banks or Financial Institutions:** (1) A person or an institution desires to incorporate a bank or financial institution for the purpose of Section 3 shall, while making an application for getting such a bank or a financial institution registered according to the prevailing laws, make an application to the Rastra

Bank along with the prescribed fee for obtaining prior approval having enclosed therewith the following documents:-

- (a) Memorandum of Association of the proposed bank or financial institution,
- (b) Articles of Association of the proposed bank or financial institution,
- (c) Feasibility study report of the proposed bank or financial institution,
- (d) Personal details of the applicant in the form as prescribed by the Rastra Bank,
- (e) A certified copy of the agreement, if any, concluded between the applicants prior to incorporation of the bank or financial institution in relation to incorporation of the bank or financial institution,
- (f) Evidence of the statement disclosing the sources of incomes and of tax clearance by the applicants up to the fiscal year immediately preceding the making of the application pursuant to this Section,
- (g) Details as to whether or not the applicant of the proposed bank or financial institution has become a bankrupt in Nepal or abroad, whether or not he/she has borrowed any loan from any bank or financial institution, whether or not the person has been blacklisted in any transaction with a bank or financial institution, if so, whether or not a period of three years has lapsed after having such a blacklisting,
- (h) Self-declaration of the applicant stating that no action has been taken against and no punishment has been imposed on the applicant in Nepal or abroad for being involved in cheating, fraud or any criminal offence deemed to be as such as per the prevailing laws,
- (i) Details as to whether or not any action has been taken against the applicant in Nepal or abroad by any regulatory or oversight authority or whether or not a license of the company or bank or financial institution in which he/she is associated with has been suspended, revoked or subjected to compulsory liquidation or is in the course of being so,

- (j) Details as to the names, surnames, addresses and relationship of the family members of the applicant; substantial ownership and capacity of each of them and if any of them is a Director, official or employee in any institution, details as to the title of the post each of them holds:

Provided that in cases where a body, applicant is a corporate, details as to the person having substantial ownership or position in that body corporate body, the audited financial statements of the last three years as well as the tax clearance certificate of that corporate body shall also be enclosed.

- (k) Written authority given to the Rastra Bank to allow it to conduct or to cause to conduct an inquiry as to the financial and professional background of the applicant and to share such notice and information,
- (l) An undertaking that the deposits to the limits as prescribed by the Rastra Bank will be guaranteed,
- (m) Other details or documents as specified by the Rastra Bank from time to time.

(2) The Rastra Bank may, if it finds appropriate to grant approval upon the examination of the application submitted for prior approval pursuant to Sub-Section (1) and enclosed documents, grant its approval to incorporate such a bank or financial institution within one hundred twenty days after filing of the application, with or without prescribing any conditions.

(3) Notwithstanding anything contained in Sub-Section (2), no prior approval shall be given to incorporate a bank or financial institution to the following persons and the firms or companies having substantial ownership of such persons and of the members of their family if they had been:

- (a) Being investigated in regulatory actions of the Rastra Bank,
- (b) Convicted of any banking offence,
- (d) Convicted of cheating, fraud, forgery,
- (e) Convicted of any offence of money laundering and terrorist financing activities,

- (f) Convicted of any the offence of corruption,
- (g) Convicted of any serious types of offences such as trafficking-in-person, kidnapping,
- (h) Hostage, taking and rape.

5. **Prior Approval to be Obtained for Incorporation of Bank or Financial Institution in**

Foreign Investment: (1) A foreign bank or financial institution shall, for the purpose of obtaining prior approval to incorporate a bank or financial institution as a subsidiary company in accordance with this Act in joint venture with a corporate body registered in Nepal or with a Nepali citizen or to maintain the share capital as specified by the Rastra Bank, shall submit in addition to the documents set forth in Sub-Section (1) of Section 4 the following documents and details along with the fee specified by the Rastra Bank:-

- (a) The Memorandum of Association, Articles of Association of the foreign bank or financial institution and a copy of the certificate of incorporation of the bank or financial institution in the country concerned and capital structure thereof,
- (b) A copy of the license of the foreign bank or financial institution obtained from the country concerned for carrying out banking and financial transactions,
- (c) Details as to the principal place of business,
- (d) A certified copy of the audited balance-sheet and profit and loss account of the last three years of the foreign bank or financial institution,
- (e) Details as to the proposed business plan in Nepal, business strategies and types of transaction to be carried out, internal control, and risk management,
- (f) Decision made by the foreign bank or financial institution as per the prevailing laws of the country concerned to open bank or financial institution in Nepal and the authority granted by the regulatory body of the country concerned.

(2) The Rastra Bank may, if it deems appropriate to grant approval upon examination of the application submitted for prior approval pursuant to Sub-Section (1)

and enclosed documents, grant its approval to a foreign bank or financial institution for incorporation of the bank or financial institution in joint venture or within the prescribed share limit within one hundred twenty days after making of an application, with or without prescribing any conditions.

(3) A foreign bank or financial institution may, with approval from the Rastra Bank, take share ownership of a local bank or financial institution having been in operation, as a joint venture by completing the procedures as prescribed by the Rastra Bank.

(4) Notwithstanding anything contained elsewhere in this Act, investment made by any foreign bank or financial institution or other foreign institution by getting approval pursuant to the prevailing laws before the commencement of this Act shall be deemed to have been continued.

6. **Approval to be Obtained to Open Branch Office of Bank or Financial Institution:**(1)

If any internationally rated foreign bank or financial institution wishes to open a branch office to carry out banking and financial transactions or non-banking financial transactions within Nepal, prior approval of the Rastra Bank shall be obtained before opening such a branch office.

(2) For the purpose of Sub-Section (1), an application shall be made to the Rastra Bank along with the capital and fees as prescribed by the Rastra Bank.

(3) While making an application pursuant to Sub-Section (2), such a foreign bank or financial institution shall submit the following details and documents in addition to the details and documents as referred to in Sub-Section (1) of Section 5:-

- (a) Written commitment made by the Board of Directors that it will make available on demand of the Rastra Bank the amount necessary for fulfilling its entire liabilities with regard to the business activities of its branch or representative or liaison office of the foreign bank or financial institution concerned in Nepal,
- (b) Details as to the location of the proposed branch office of the foreign bank or financial institution,
- (c) Details as to the possible office bearers in the proposed branch office of the foreign bank or financial institution.

(4) The Rastra Bank may, if it deems necessary to demand further documents or details while carrying out inquiry into the documents or details submitted pursuant to Sub-Section (3), demand the required documents or details from the concerned applicants.

(5) The Rastra Bank may, if it deems appropriate to grant prior approval while carrying out inquiry into additional documents submitted pursuant to Sub-Section (3) and of the documents asked for submission pursuant to Sub-Section (4), grant approval to open a branch office in Nepal within one hundred twenty days after filing of the application, with or without prescribing any conditions.

(6) The foreign bank or financial institution, after obtaining prior approval as referred to in Sub-Section (5), shall register a branch office according to the prevailing companies laws.

(7) The branch office of a foreign bank or financial institution registered pursuant to Sub-Section (6) shall make an application to the Rastra Bank along with the following documents and details as well as the charge or fee as prescribed by the Rastra Bank for approval to carry out banking and financial transactions in Nepal:-

- (a) Registration certificate registered according to the prevailing laws to carry out banking and financial transactions in Nepal as a branch office,
- (c) Letter of approval or consent granted by the Government or Central Bank or regulating agency according to the law of the country concerned of the foreign bank or financial institution to open a branch office of such bank or financial institution in Nepal,
- (d) Details of the discrepancy, if any, in any matter to be completed by the foreign bank or financial institution concerned according to this Act after the submission of the application before the Rastra Bank for the establishment of a branch office of the foreign bank or financial institution or after obtaining approval from the Rastra Bank,
- (e) Other information and details as may be demanded by the Rastra Bank.

(8) The Rastra Bank may, if it deems appropriate upon carrying out inquiry into the application received pursuant to Sub-Section (7), grant approval to such a branch office of a foreign bank or financial institution for carrying out banking and financial transactions in Nepal, within ninety days from the date of filing the application.

(9) The Rastra Bank may, while granting approval pursuant to Sub-Section (8), prescribe the necessary terms and conditions.

(10) A bank or financial institution may open a branch office outside Nepal by obtaining approval from the Rastra Bank.

(11) The Rastra Bank may, from time to time, make policies as may be required with regard for opening branch office outside of Nepal pursuant to Sub-Section (10).

7. **Power to Refuse to Grant Prior Approval:** (1) The Rastra Bank may refuse to grant prior approval for the incorporation of any bank or financial institution and for opening a branch office of the foreign bank or financial institution in any of the following circumstances:

- (a) If the name of or banking and financial transaction to be carried out by, the proposed bank or financial institution is not found to be appropriate from the point of view of public interest, religions, ethnicities or communities etc.,
- (c) If the objectives of the proposed bank or financial institution are contrary to the laws in force,
- (d) If incorporation of the proposed bank or financial institution does not seem to be technically appropriate,
- (e) If a study of the feasibility study report, details and documents and other infrastructures submitted by the proposed bank or financial institution does not provide a ground to believe that it may carry out financial transactions in a healthy and competitive manner,
- (f) If all promoters of the proposed bank or financial institution have not signed the Memorandum of Association and Articles of Association, stating their names, addresses and number of shares subscribed by them, in the presence of a witness and the name and address of the witnesses have not been mentioned,

- (g) If per person share investment limit and share ownership ratio has not been found to have been maintained as specified by the Rastra Bank from time to time,
- (h) If it is found to be contrary to the policy relating to incorporation of banks or financial institutions and licensing policy issued by the Rastra Bank,
- (i) If any condition as prescribed by the Rastra Bank has not been found to be fulfilled.

(2) If the Rastra Bank refuses to grant prior approval to the proposed bank or financial institution for any of the reasons as referred to in Sub-Section (1), information shall be given to the applicant stating the reasons thereof.

Chapter-3

Provisions Relating to Transactions of Securities

8. **Prospectus:** (1) A bank or financial institution shall, before public offering of its securities, have to get the prospectus registered at the Rastra Bank after obtaining the necessary approval concerning securities according to the prevailing laws.

(2) Until and unless such prospectus is registered pursuant to Sub-Section (1), the said bank or financial institution or anyone on behalf of the bank or financial institution shall not be allowed to publish the prospectus of such a bank or financial institution.

(3) Notwithstanding anything contained in Sub-Section (1), until and unless the Rastra Bank receives a written notification of the approval from the Securities Board to register the prospectus, the Rastra Bank shall not register such prospectus.

9. **Allotment of Shares:** (1) The bank or financial institution shall set aside at least thirty percent share of its total issued capital for subscription by the general public.

Explanation: For the purpose of this section, “general public” means a natural person.

(2) The shares allotted to the general public pursuant to Sub-Section (1) shall be sold to the general public within the stipulated time. The shares that could not be sold in such a manner may be sold to any other firm, company or institution.

(3) The bank or financial institution may set aside 0.5% shares, except that of the limit referred to in Sub-Section (1), to its employees.

(4) The bank or financial institution may, if it wishes, convert the shares into ordinary shares having fulfilled the process specified by the Rastra Bank in such manner as not to be the share ownership of the promoter shares group less than 51 percent.

Explanation: For the purpose of this Chapter,-

(a) “Promoter shares group” means the promoter shares group as prescribed by the Rastra Bank.

(b) “Ordinary shares group” means the shares groups other than the promoter shares group.

(5) Notwithstanding anything contained in Sub-Section (1), the ratio of share ownership as set forth in Sub-Section (1) is not necessarily be there in the case of a bank or financial institution and infrastructure development bank to be incorporated under significant ownership of Government of Nepal.

(6) A bank or financial institution to be incorporated in joint venture with a foreign bank or financial institution or other foreign institution or infrastructure development bank shall allot the shares to the general public as specified by the Rastra Bank.

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

10. **Transactions of Securities:** (1) A bank or financial institution shall, while issuing its securities for subscription to the general public, carry out the acts of sale, allotment and the act of exchange in accordance with the prevailing laws relating to securities.

(2) A bank or financial institution shall submit a copy of an agreement entered into by it on the transaction of securities through any institution dealing with securities before the Rastra Bank, within seven days from the date of the conclusion of such agreement.

(3) A bank or financial institution shall, while issuing any type of debenture or financial instrument, obtain prior approval of the Rastra Bank.

(4) The Rastra Bank may, while granting approval pursuant to Sub-Section (3), specify the terms and conditions as may be required and it shall be the duty of the bank concerned or financial institution to abide by such terms and conditions.

11. **Provisions Relating to the Sale of Shares or Pledging of Securities:** (1) A promoter of a bank or financial institution shall not be entitled to sell or pledge any share registered

under his/her ownership for at least five years from the date of commencement of financial transactions.

(2) Notwithstanding anything contained in Sub-Section (1), in cases where a special circumstance arises due to emergence of any obstruction or hindrance in the operation of a bank or financial institution or a promoter shareholder is included on the blacklist owing to transactions with another bank or financial institution, shares may be sold or purchased amongst promoters by obtaining approval from the Rastra Bank.

Explanation: For the purpose of this Section, “special circumstance” means a situation where to hold a meeting of the Board of Directors has not been possible due to lack of a quorum for a consecutive period of three times or a situation where no decision been made possible because of disputes amongst its Directors.

(3) If a promoter wishes to sell or pledge the shares held in his/her name after five years from the date of commencement of financial transactions and after shares are issued to the general public by the bank or financial institution, he or she may sell or pledge such shares by obtaining approval from the Rastra Bank on the condition that such shares shall remain in the promoters' group:

Provided that, approval of the Rastra Bank shall not be required while selling or pledging shares by a promoter having subscribed the shares of less than two percent of the paid up capital.

(4) Notwithstanding anything contained in Sub-Section (1) and Sub-Section (2) of Section 9, after completion of a period of ten years of transactions by a bank or financial institution, the promoter shares may, gradually be converted into ordinary shares with the approval of the Rastra Bank by giving due consideration to the impact it may have on the capital market, banking and the overall financial sector.

(5) In cases where any company or corporate body has subscribed promoter shares, prior approval of the Rastra Bank shall be obtained before alteration of shareholders or sale or transfer the ownership of shares among the shareholders having substantial ownership of such company or corporate body:

Provided that, approval of the Rastra Bank shall not be required while selling or transferring the shares by a company or corporate body having subscribed the shares of less than two percent of the paid up capital of a bank or financial institution.

12. **Prohibition on Transaction of Securities:** (1) The Director, Chief Executive, Auditor, Company Secretary of a bank or financial institution or a person directly involved in the management and account of a bank or financial institution shall not buy or sell, mortgage or cause to be mortgaged, cause to be bought or sold, accept or give in the form of a gift, transfer or transact the securities of the concerned bank or financial institution or of its subsidiary company in his/her name or in name of any member of his/her family or a firm, company or institution under the control of such person or to any other person until he/she holds such a position or until one year from the date of retirement from such position:

Provided that nothing in this Sub-Section shall prevent from buying and selling securities among Directors to Directors or Directors to Promoters with the approval of the Rastra Bank while issuing bonus shares, rights shares or the shares allotted for employees or issuing new shares, or while implementing a directive of the Rastra Bank or while selling the entire share having in any bank or financial institution under own ownership by any Director or any corporate body having power to appoint Director or while merging or amalgamating banks or financial institutions in each other according to the provisions made in Chapter-10 or while acquiring all assets or liabilities of one bank or financial institution by another bank or financial institution or while carrying out purchase or sale of securities among promoter directors or directors to directors with the approval of the Rastra Bank in cases of emergence of any hurdle in the operation of the bank or financial institution or while carrying out purchase or sale or transfer of shares during the process of reformative or settlement process of a problematic bank.

(2) In cases where anyone commits any act in contravention of Sub-Section (1), the bank or financial institution concerned shall forfeit such securities and sell them according to the process as prescribed by the Rastra Bank.

13. **Prohibition on buy back by Bank or Financial Institution of its' Own Shares:** (1) No bank or financial institution shall buy back its own shares or lend loans against security of its own shares.

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

- (a) If the shares issued by the bank or financial institution have already been fully paid up,
- (b) If the shares issued by the bank or financial institution have already been listed in the securities market,
- (c) If the buy-back of its own shares is authorized by the Articles of Association of the concerned bank or financial institution,
- (d) If a special resolution has been passed at the General Meeting of the concerned bank or financial institution authorizing the buy-back of its own share,
- (e) If the ratio of the debt owed by the bank or financial institution is not more than double of the capital and general reserve fund after such buy-back of shares,

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

- (f) If the value of the shares to be bought back by a bank or financial institution is not more than twenty percent of the total paid up capital and general reserve fund of that bank or financial institution,
- (g) If the buy-back of the shares comply with the directives relating to the capital fund issued by the Rastra Bank to that bank or financial institution,
- (h) If it is not against the directives issued by the Rastra Bank from time to time with regard to buy back of shares.

(3) A bank or financial institution shall make an application to the Rastra Bank for the approval to buy-back its own share pursuant to Sub-Section (2) with the following details:-

- (a) The reason, necessity, duration and modus-operandi for the buy-back of the shares,
- (b) A statement of the evaluation of the potential impacts on the financial situation of the bank or financial institution as a result of the buy-back of the shares,

- (c) The type of the share, par value of the share and number of the shares purposed to buy-back,
- (d) The maximum or minimum amount required to buy-back the shares as referred to in Part (c), and the source of such amount,
- (e) Such other matters as specified by the Rastra Bank with regard to the buy-back of its own shares,
- (f) Other necessary matters to be mentioned as per the prevailing laws.

(4) The Rastra Bank may, in cases where, upon inquiry into the application received as per Sub-Section (3) and the details enclosed therewith, it deems appropriate to grant approval to such a bank or financial institution to buy back its own shares, grant such approval.

(5) Upon receipt of the approval pursuant to Sub-Section (4), the concerned bank or financial institution may buy back its shares in any of the following manners, within six months from the date of receipt of such approval or within twelve months of the adoption of a special resolution at the General Meeting, whichever is the later: -

- (a) By purchasing through the securities market,
- (b) By purchasing from the existing shareholders on a proportional basis.

(6) If a bank or financial institution buys back its own shares pursuant to Sub-Section (5), it shall file with the Rastra Bank a return containing the number of shares bought back, amount paid for the same and the other necessary details within thirty days of the date of such a buy-back.

(7) There shall be established a separate capital redemption reserve fund, to which a sum equal to the face value of the shares bought back pursuant to Sub-Section (5) shall be transferred; and the amount of such fund shall be maintained as if it is the paid-up capital.

(8) If a bank or financial institution buys back its own shares pursuant to Sub-Section (5), it shall cancel the shares so bought back within one hundred twenty days of the date of such a buy-back.

(9) Other provisions regarding buy-back of its own shares by a bank or financial institution shall be as prescribed by the Rastra Bank.

Chapter 4

Provisions Relating to Board of Directors and Chief Executive

14. **Constitution of Board of Directors:** (1) A bank or financial institution shall have a Board of Directors comprising at least five Directors and not exceeding seven Directors.

(2) Subject to this Act and the Articles of Association, the General Meeting of a bank or financial institution shall appoint the Directors:

Provided that,-

- (a) Until the First Annual General Meeting of the bank or financial institution is held, promoters shall appoint the Directors.
- (b) In case where the position of any Director falls vacant before the holding of the Annual General Meeting, the Board of Directors may appoint a Director until the next General Meeting is held.
- (c) In cases where any corporate body has subscribed shares, it may appoint Directors in proportion to the number of shares it has subscribed and while nominating in such a manner, the same person shall not be nominated to more than one bank or financial institution.
- (d) Notwithstanding anything contained in Clause (c), nothing shall prevent from appointing a person, who is a Director in any bank or financial institution as Director of an Infrastructure Development Bank.

(3) The Board of Directors shall appoint at least one independent Director from among the persons possessing qualifications and experience set forth in Section 17 and information thereof shall be furnished to the First General Meeting to be held after such an appointment:

Provided that no promoter, Director or shareholder possessing more than zero point one percent share of a bank and financial institution and his/her member of family may become an independent Director.

(4) Notwithstanding anything contained in Sub-Sections (1) and (3), no more than one member of a family may become a Director of any bank or financial institution at the same time.

(5) A Director chosen by the Directors from among themselves by a majority votes shall be the Chairperson of the Board of Directors.

(6) A company, corporate body, foreign bank or financial institution which has subscribed shares of a bank or financial institution may, while appointing a director in proportion to the shares it has subscribed, appoint an Alternate Director to work in the absence of the Director.

15. **Term of Office of the Directors:** (1) The term of office of a Director shall be for a maximum period of four years as provided for in the Articles of Association and he/she may be eligible to be reappointed or re-nominated:

Provided that an Independent Director may be appointed for only one term of office.

(2) Notwithstanding anything contained in Sub-Section (1), the Executive Chairperson or Managing Director appointed after the commencement of this Act shall remain in office only for two consecutive terms.

16. **Qualifications of Director:** (1) A person to be appointed to the office of Director shall have to possess the following qualifications:-

- (a) Having work experience of at least five years as a Director or office bearer level of a foreign or local bank or financial institution or corporate body of the related sector or at the officer level of the Government of Nepal, or
- (b) Having earned a bachelor degree and having work experience of at least three years as a Director or office bearer level of a foreign or local bank or financial institution or corporate body of the related sector or at least at the officer level of the Government of Nepal, or
- (c) Having earned a master degree in the related subject as prescribed.

(2) Notwithstanding anything contained in Sub-Section (1), the academic qualifications and experience of a Director of a financial institution of class "D" will be as prescribed by the Rastra Bank from time to time:

Provided that the qualifications of an independent director shall be as set out in Section 17.

17. **Qualifications of Independent Director:** While appointing an Independent Director by a bank or financial institution, it shall do so from among the persons having met the following qualifications and experience:-
- (a) In the case of a class “A” bank or national level class “B” development bank, having obtained at least master’s degree in a subject as prescribed by the Rastra Bank and experience as prescribed by the Rastra Bank,
 - (b) In the case of a class “B” development bank and a financial institution of class "C", other than the class “B” development bank of the national level, having obtained at least bachelor’s degree in a subject prescribed by the Rastra Bank and work experience as prescribed by the Rastra Bank,
 - (c) In the case of a micro finance institution of class "D", a person possessing the qualifications and experience prescribed by the Rastra Bank.
18. **Disqualification of Directors:** (1) The following persons shall not be eligible to become a Director of the a bank or financial institution:-
- (a) If he or she has not attained the age of 25 years,
 - (b) If he or she is of unsound mind or insane,
 - (c) If he or she has been declared bankrupt in Nepal or abroad for being unable to pay debt,
 - (d) If he or she has been blacklisted or declared a defaulter in connection with any transaction with any bank or financial institution in Nepal or in abroad, and a period of at least three years has not been lapsed after removal of his\her name from the blacklist or list of defaulter,
 - (e) An incumbent Director or an employee of any corporate body carrying out transactions of a bank or financial institution or any institution collecting any type of deposits or carrying out transactions relating to insurance,
 - (f) A borrower or an incumbent auditor or an advisor of the concerned bank or financial institution or a person, firm or company

who/which is a partner in any kind of contract with the concerned bank or financial institution or having personal interests,

- (g) Who has acquired the membership of the Stock Exchange to act as a securities broker or a merchant banker,
- (h) Incumbent Director of a licensed bank or financial institution,
- (i) A person, who has not subscribed to the minimum number of shares required to subscribe to be eligible for appointment as a Director pursuant to the Articles of Association of a bank or financial institution,
- (j) Incumbent employee of the Government of Nepal, or a corporate body having ownership of the Government of Nepal, or Rastra Bank or of a bank or financial institution,

Provided that nothing in this clause shall prevent from nominating a Director in a micro-finance institution or infrastructure development bank, of which share has been purchased by the Government of Nepal or an institution having under the ownership of the Government of Nepal or Rastra Bank or bank or financial institution.

- (k) Who, having a liability to pay taxes pursuant to the laws in force, has failed to pay the same
- (l) If he or she has not completed a period of ten years after serving out the sentence upon being convicted of an offence of theft, cheating, forgery, fraud, corruption, any offence involving moral turpitude or a banking offence from a court of Nepal or that of a foreign country,
- (m) If action had been taken against him or her by a regulatory agency as per the law for committing an act in contravention of the law and if he or she has not completed a period of five years after being taken such action,
- (o) In the case of an independent Director, If he or she is a promoter or a shareholder holding ownership of more than 0.1 % share of the concerned bank or financial institution,

- (p) If he or she has not served the full sentence or is yet to clear the dues of the fine imposed by a court of law or if he or she is in arrears to pay a government due.

(2) Notwithstanding anything contained in Clause (e) of Sub-Section (1), an official or employee of a bank or financial institution may work as a Director of a subsidiary company of the same bank or financial institution.

19. **Ineligibility to Remain in Office of Director** : (1) No person shall remain in the office of Director of a bank or financial institution in any of the following circumstances: -

- (a) If he or she does not possess the qualifications as referred to in Sections 16 or 17 or is disqualified pursuant to Section 18,
- (b) In cases where a motion to remove from the office of a Director is adopted by a majority of the General Meeting at the recommendation of the group from which he/she was appointed to the office of Director that is passed by the shareholders having representation of at least fifty one percent of the shares of the same group,

Explanation: For the purpose of this Section, “group” means a group of promoters and shareholders from the general public.

- (c) If the resignation tendered by a Director from his/her position is approved,
- (d) In case he or she commits any act that is not supposed to be committed under this Act or directives of Rastra Bank,
- (e) If the Rastra Bank directs to remove from the office stating that since he or she carried out activities against the rights and interests of the bank or financial institution or of the depositors and as such he or she is not competent to perform the functions of a Director of the bank or financial institution.

(2) In cases where a bank or financial institution deems that any of its Directors is disqualified to remain in office of Director according to this Act or the Rastra Bank Act or he or she no more holds the position of Director, written information thereof shall be given to the Rastra Bank within fifteen days.

(3) The Rastra Bank may, if it has received in written form with regard to a Director that he/she is disqualified to remain in office pursuant to Sub-Section (2), issue appropriate direction after carrying out necessary enquiry.

20. **Provision Regarding a Person Holding Constitutional Position:** No person, who holds a constitutional position shall, so long as he/she is holding such a position, may remain in the Board of Directors or become the Chief Executive of any bank or financial institution.

21. **Meetings of Board of Directors:** (1) Meetings of the Board of Directors shall have to be held at least twelve times in a year.

Provided that the interval between the two meetings shall not exceed sixty days.

(2) The chairperson shall convene a meeting of the Board of Directors at any time if at least one-third of the Directors make a request in writing to convene a meeting by mentioning the agenda to be discussed in the meeting.

(3) Chairperson shall preside over the meetings of the Board of Directors. In the absence of the Chairperson, a Director selected by majority of the Directors from among themselves shall preside over a meeting.

(4) No meeting of the Board of Directors shall be held unless it is attended by at least fifty-one percent of the total number of Directors.

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

(6) Minutes regarding the names of the Directors attending the meeting of the Board of Directors, the agenda discussed and the decisions taken thereon shall be recorded in a separate book, and such minutes shall be signed by all Directors attending the meeting:

Provided that if any Director puts forward any dissenting opinion in the decision of the Board of Directors, he/she may record his or her dissenting opinion in the minutes by putting his or her signature.

22. **Functions, Duties and Powers of Board of Directors:** (1) All functions, duties and powers to be exercised by a bank or financial institution, except those functions to be performed by the General Meeting, shall be vested in the Board of Directors subject to this Act, the prevailing laws and the Memorandum of Association and Articles of Association.

(2) It shall be the duty of the Board of Directors to operate the bank or financial institution in the interests of depositors, costumers and general shareholders by taking the

overall risks management of the bank or financial institution and to give guarantee not to intervene in the day to day of business of the bank of financial institution in matters such as collecting, deposits, lending, making investment, managing personnel, making expenses from budget by maintaining appropriate corporate governance in the bank or financial institution.

(3) Other functions, duties and powers of the Board of Directors shall be as follows:-

- (a) To frame the necessary Byelaws, Directives, procedures subject to this Act, the prevailing laws and directives of the Rastra Bank and to enforce them in order to carry out the functions of the bank or financial institution in an orderly manner,
- (b) To prepare and enforce the internal control system and risks management guidelines for avoiding the emergence of risk or risk-prone situations in the transactions of the bank or financial institution and to carry out banking and financial transactions carefully according to its policies and strategies,
- (c) To make the necessary policy for carrying out all the business of the bank or financial institution and to operate the bank or financial institution in an orderly and rational manner by carrying out regular monitoring of such business,
- (d) To prepare the organizational structure of the bank or financial institution clearly and frame policies and implement them accordingly,
- (e) To submit the General Meeting the audit report along with the annual progress report of the bank or financial institution,
- (f) To carry out other functions as may be specified by the Rastra Bank from time to time.

23. Responsibility and Accountability of Director: (1) A Director shall not commit or cause to be committed any act for personal benefit through a bank or financial institution or in the course of the business of the bank or financial institution.

(2) A Director shall be personally liable for any act carried out exceeding his/her authority as of a Director of a bank or financial institution.

(3) A Director of a bank or financial institution shall assume responsibility with regard to the risks management and internal control by following sound business strategies of the institution.

(4) A Director shall not intervene in the day to day business and activities of the management of a bank or financial institution.

(5) A Director shall have to fully comply with the directives issued by the Rastra Bank from time to time.

24. Details of Directors to be Collected: A bank or financial institution shall collect the following details of a Director: -

- (a) Name, surname, address, academic qualifications, occupation and experience of its Director,
- (b) Details as to the designation and responsibility if he/she has worked earlier as a Director, official or employee of any other entity,
- (c) Details as to name and surname of the family of the Director and the relevant person's details and financial interests of himself/herself or his/her family in a bank or financial institution or other entities, share ownership in his/her name and names of the family of the said institution,
- (d) Details as to the shares and debentures subscribed by the Director or his/her family members in the bank or financial institution or its holding or subsidiary company,
- (e) Details of the family members working as office bearer or employee in the bank or financial institution, if any,
- (f) Details as to whether the concerned bank or financial institution has, or is going to have, any type of contract with himself/herself or his/her family member,
- (g) Details as to whether there is any type of interests or concerns with regard to the appointment of the Chief Executive, Company Secretary and Auditor,

- (h) Written authority given to the Rastra Bank to allow it to conduct an inquiry or to cause to be conducted the inquiry into the financial and professional background of the Director,
- (i) Self-declaration that he/she is qualified to be a Director pursuant to this Act,
- (j) Any other details as may be specified by Rastra Bank from time to time to be furnished before the Rastra Bank and the Board of Directors.

25. **Information of Director and Record:** (1) A Director shall have to submit the details referred to in Section 24 to the bank or financial institution within seven days of his/her appointment.

(2) The bank or financial institution shall separately maintain the records of the details submitted pursuant to Sub-Section (1).

(3) In case a Director or any member of his/her family has substantial ownership of or any type of interests in the bank or financial institution directly or indirectly, such a Director shall provide the full details thereof at the first meeting of the Board of Directors.

(4) A Director shall, in cases where discussions are to be held as a meeting of the Board of Directors or of any other sub-committee on any subject concerning any interests of the Directors concerned, disclose about such interests at the very beginning of the meeting and he/she shall not take part in the discussions or restrain from voting on such subjects.

(5) In cases where there is any change in the details as referred to in Sub-Section (1) or a Director has been changed, information thereof shall be submitted to the Rastra Bank within fifteen days.

(6) The Rastra Bank, if it deems it appropriate to conduct an inquiry into the information forwarded pursuant to Sub-Section (5), shall have the powers to conduct or cause to be conducted inquiry into the same.

26. **Power to Constitute Sub-Committees:** (1) Except as expressly provided for in this Act that particular work shall be carried out by any particular entity or official, the Board of Directors may constitute one or more sub-committee(s) for any specific purpose subject to the directives of the Rastra Bank:

Provided that the Chairperson of the Board of Directors shall not be on the sub-committee.

(2) The functions, duties, powers and rules of procedure of the sub-committee constituted pursuant to Sub-Section (1) and the remuneration or allowances receivable by a member attending its meetings shall be as specified by the Board of Directors and the functions carried out by such a sub-committee and expenditures incurred by it shall be clearly specified in the annual report.

27. **Delegation of Power:** The Board of Directors may, stating the rational and reasons, delegate any of its powers to any Director, a sub-committee constituted pursuant to Section 26, the Chief Executive or any person acting as the Chief Executive of the bank or financial institution on the conditions that such powers shall be exercised under its supervision or direction.
28. **Allowances and Facilities of Director:** Meeting allowances and other facilities of a Director for attending a meeting shall be as provided for in the Articles of Association.
29. **Appointment of Chief Executive and Terms and Conditions of Service:** (1) The Board of Directors shall, subject to this Act, Memorandum of Association and Articles of Association appoint a Chief Executive for the management of a bank or financial institution.
- (2) The tenure of office of the Chief Executive shall be for a maximum period of four years and he/she may be re-appointed for one more term of office.
- (3) The provisions referred to in Sub-Section (2) shall be applicable only after the commencement of this Act.
- (4) Notwithstanding anything contained in Sub-Section (2), the Board of Directors may remove the Chief Executive from his/her office at any time; if his/her work performance has not been satisfactory:
- Provided that before removing from him or her office, a reasonable opportunity shall be provided to submit his or her clarification.
- (5) While appointing a Chief Executive, a person having possessed the following qualifications and experience shall be appointed and information thereof shall be furnished to the Rastra Bank within seven days from the date of appointment: -

- (a) If he or she holds a Master's degree in management, banking, finance, monetary, economics, commerce, accountancy, statistics, accounting, mathematics, business administration or law,
- (b) If he or she has work experience of at least ten years at an officer level or above in the banking or finance sector, government entity, corporate body, university or an international institution or organization performing similar functions after having earned a bachelor's degree in chartered accountancy or management, banking, finance, monetary, economics, commerce, bookkeeping, statistics, accounting, mathematics, business administration or law:

Provided that in the case of the Chief Executive of a Class "D" financial institution, he or she shall have to possess the academic qualifications and work experience as specified by the Rastra Bank.

- (c) If he or she fulfills the criteria as prescribed by the Rastra Bank with regard to appointment of a Chief Executive,
- (d) If he or she is not disqualified pursuant to Sub-Section (1) of Section 18: Provided that the disqualifications as referred in Clauses (i) and (n) of Sub-Section (1) of Section 18 shall not apply to the Chief Executive.

(6) The Rastra Bank may, in cases where, it is found that a Chief Executive appointed pursuant to Sub-Section (1) is not qualified according to this Act, issue an order to the concerned bank or financial institution to remove the Chief Executive and to appoint another person qualified to get appointed in the office of Chief Executive.

(7) The remuneration and terms and conditions of service and other facilities of a Chief Executive shall be as specified by the Board of Directors and the terms and conditions of service and facilities shall be fixed at the time of his/her appointment.

(8) The Chief Executive of any bank or financial institution shall not perform business as the Chief Executive, office bearer, employee or holds any other position in any other business organization:

Provided that nothing in this Sub-Clause prevents from becoming a Director of an Infrastructure Development Bank in which the bank or financial institution has made investment.

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

- (a) To exercise the powers delegated by the Board of Directors and to implement decisions of the Board of Directors subject to the Memorandum of Association and Articles of Association and oversee and control the activities and transactions of the bank or financial institution,
- (b) To prepare the annual budget and any action plan of the bank or financial institution and submit to the Board of Directors for approval,
- (c) To manage the necessary human resources subject to the Personnel Byelaws of the bank or financial institution,
- (d) To implement or cause to be implemented the decisions of the General Meeting,
- (e) To operate the institution according to this Act and directives of the Rastra Bank and to carry out effective internal control and risks management,
- (f) To submit statements, documents, decisions, etc. to be submitted by the bank or financial institution to the Rastra Bank or any other agency on time subject to this Act, directives of the Rastra Bank and Memorandum of Association and the Articles of Association.
- (g) To operate the institution taking into consist optimum protection of interests of depositors, shareholders and the institution itself,
- (h) To apply appropriate criteria for senior management subject to the policy as determined by the Board of Directors.

(2) The Chief Executive shall be accountable to the Board of Directors for his or her work.

Chapter-5

Provisions Relating to Licenses

31. **Prohibition on carrying out Banking or Financial Transactions by anyone other than Banks or Financial Institutions:** (1) No one, except the bank or financial institution having obtained a license pursuant to Section 34, shall carry out banking or financial transactions according to this Act.
- (2) The Rastra Bank shall formulate and execute a licensing policy concerning banks or financial institutions for the purpose of granting a license to banks or financial institutions.
32. **Use of the Name of Banks or Financial Institutions:** (1) No one shall use the name of a bank or financial institution for the purpose of carrying out banking and financial transactions without obtaining approval from the Rastra Bank.
- (2) No person, company or institution, other than a bank or financial institution having obtained a license to carryout banking and financial transaction pursuant to Section 49 of this Act and a foreign bank or financial institution opening a branch office in Nepal, shall use in its name the words such as "bank", "finance" or other words or symbol or adjective indicating a similar meaning without getting prior approval from the Rastra Bank.
- (3) Notwithstanding anything contained in Sub-Section (2), the provision as referred to in Sub-Section (2) shall not be applicable to the following organizations:-
- (a) Any organization established or recognized according to the existing laws, or international agreement or practice,
 - (b) A company submitting an application for carrying out banking and financial transactions within six months of incorporation.
- (4) Notwithstanding anything contained in Sub-Section (2), any bank or financial institution which has obtained approval to carry out financial transactions according to the prevailing laws at the commencement of this Act may carry out financial transactions by using the name on having at the time of approval.
- (5) Financial institutions of Class "B", "C" and "D" shall use the name as "development bank", "finance company" and "micro finance financial institution" respectively.

(6) An institution having obtained a license to use the name as a micro-finance development bank before the commencement of this Act shall use the name as referred to in Sub-section (5) after the commencement of this Act.

33. **Application to be Made to Obtain a License for Carrying on Banking and Financial**

Transactions: (1) A bank or financial institution wishing for carrying out banking or financial transactions pursuant to this Act shall make an application to the Rastra Bank for obtaining a license along with as the prescribed by the Rastra Bank.

(2) The bank or financial institution shall also enclose the following details and documents with the application to be made pursuant to Sub-Section (1): -

- (a) A copy of the Memorandum of Association and Articles of Association of the bank or financial institution along with a copy of the certificate of incorporation according to the prevailing laws,
- (b) Particulars of an office building equipped with all infrastructures required by the bank or financial institution to carry out financial transactions, or, if such a building is to be rented, a copy of the lease agreement and the particulars of the building to be rented, including particulars that there are enough grounds for making available banking and financial services and facilities,
- (c) Documents evidencing that the amount of the shares undertaken to be subscribed by promoters is paid to and deposited in the Rastra Bank,
- (d) Byelaws Relating to the Conditions of Service and Facilities of the Employees, Financial Administration Byelaws; and Bye-laws relating to Write-off of Loans of the bank or financial institution,
- (e) Principal place of business or if addresses of the branches have been identified, addresses thereof,
- (f) Consent that the terms and conditions specified by the Rastra Bank for carrying out banking and financial transactions will be abided by,
- (g) A business plan prepared by incorporating the business strategy of the bank or financial institution, the organizational structure suitable

to the nature of the transaction to be carried out, the internal control and risk management process,

- (h) Name-list of the Directors and office bearers of the bank or financial institution and the details stating that they are qualified to become Directors and office bearers according to this Act,
- (i) Commitment to meet the minimum capital adequacy ratio set by the Rastra Bank from time to time as long as the bank or financial institution carries out banking and financial transactions,
- (j) Commitment that the bank or financial institution will maintain an internal control system for proper management of all potential risks,
- (k) Other details and documents specified by the Rastra Bank from time to time.

(3) In the case of a bank or financial institution to be established in joint venture in Nepal by any foreign bank or financial institution, the following details and documents shall also to be submitted to the Rastra Bank in addition to those matters as set forth in Sub-Section (2):-

- (a) In the case of a bank or financial institutions of Class “A”, “B”, “C” and “D”, a letter of consent or approval given by the government of the concerned country or the central bank or the regulating agency established according to the laws of the concerned country of foreign bank or financial institution, for carrying out banking and financial transactions in Nepal by such a foreign bank or financial institution,
- (b) Upon submission of an application to the Rastra Bank to incorporate a foreign bank or financial institution or upon obtaining permission from the Rastra Bank, if any matter to be submitted by such a foreign bank or financial institution under this Act had not be submitted, details of that matter,
- (c) Other information and documents as demanded by the Rastra Bank.

(4) The Rastra Bank may, if while upon carrying out an inquiry into the documents and details so received pursuant to Sub-Sections (2) or (3), finds that any documents or

details are not adequate or sufficient, ask for additional documents or details from the concerned bank or financial institution.

34. **License may be granted for carrying out Banking and Financial Transactions:**(1) In cases where, the Rastra Bank finds, while carrying out inquiry into the application received pursuant to Section 33 and documents and details enclosed therewith, that all requirements to carry out banking and financial transactions according to this Act have been met, the Rastra Bank may issue a license of any class based on the classification of the bank or financial institution as referred to in Section 37 within one hundred twenty days to carry out banking and financial transactions.

(2) The Rastra Bank shall, before issuing a license pursuant to Sub-Section (1), ascertain the following matters:-

- (a) That granting of a license for carrying out banking and financial transactions will result in development of healthy competition and effective financial intermediary transactions thereby the result in protection of interests of depositors,
- (b) That it is capable of carrying out banking and financial transactions subject to this Act, Rules, Byelaws framed thereunder, Orders or Directives issued as well as Memorandum of Association and Articles of Association,
- (c) That the documents and details submitted along with application pursuant to Section 33 for a license are sufficient and adequate physical infrastructures in place,
- (d) That any official appointed or involved or to be appointed or to be included in the bank or financial institution is capable of carrying out banking and financial transactions.

(3) In cases where the Rastra Bank has specified the date of commencement of a license while issuing a license to carry out banking and financial transactions, the license shall be deemed to have been commenced from that specified date and if no such date has been specified, the license shall be deemed to have been commenced from the date of the issuance of the license.

35. **Power to Refuse to Grant a License:** (3) Notwithstanding anything contained in Section 34, the Rastra Bank may refuse to grant a license to operate banking and financial transactions to a bank or financial institution in any of the following circumstances:-
- (a) If it causes adverse effects on the stability, fair competition and credibility of the financial system of Nepal,
 - (b) If it is not reasonable and appropriate to issue a license for operation of financial transactions for the protection of the interests of depositors,
 - (c) If the infrastructure to operate banking and financial transactions are not completed,
 - (d) If other particulars or conditions set forth in this Act are not found to be fulfilled.
- (2) The Rastra Bank shall, in cases where, it is not possible to grant a license to operate banking and financial transactions pursuant to this Section, inform the concerned bank or financial institution accordingly stating the reasons thereof within ninety days of the date of filing of the application.
36. **Power of Rastra Bank to Specify Conditions :**(1) The Rastra Bank may, while granting a license for carrying out banking and financial transactions pursuant to Section 34, specify the necessary terms and conditions by giving consideration to the existing condition of the bank or financial institution, healthy operation of financial transactions and interests of depositors. It shall be the duty of the concerned bank or financial institution to abide by such terms and conditions.
- (2) The Rastra Bank may bring necessary alterations and changes in the terms and conditions as specified pursuant to Sub-Section (1) from time to time as may be required.
37. **Classification of Bank or Financial Institutions:** The Rastra Bank shall, based on the minimum paid up capital of a bank or financial institution submitting an application pursuant to Section 33 for carrying out banking and financial transactions and transaction to be operated on by such a bank or financial institution and working areas, classify banks or financial institutions in to classes “A”, “B”, “C” and “D” and issue a license to the concerned bank or financial institutions accordingly:
- Provided that an infrastructure development bank shall not be included in any class.

38. **Possibility of Being Converted into Higher Class of Bank or Financial Institution:** (1)

If a bank or financial institution of lower class wishes to be converted into a bank or financial institution of one level higher class, it shall submit an application to the Rastra Bank alongwith the details as specified by the Rastra Bank.

Provided that class "D" institutions cannot be converted into a higher class.

(2) If the Rastra Bank deems appropriate, upon carrying out inquiry into the application and details enclosed with the application as set forth in Sub-Section (1), to convert a bank or financial institution as a bank or financial institution of a higher class, it may grant prior approval subject to the following terms and conditions:-

- (a) That it has made payment of the paid up capital requirement for a bank or financial institution of a higher class as prescribed by the Rastra Bank,
- (b) That it has been continuously maintaining the capital fund adequacy according to the Rastra Bank directives for the last five years, that it is in profit continuously for the last five years, and the average non-performing loans of the last five years are within the limits as prescribed by the Rastra Bank,
- (c) That the preliminary expenses have already been written off,
- (d) That the shares to be issued publicly have been issued and already been allotted,
- (e) That the General Meeting has already passed a special resolution for conversion into an upper class bank or financial institution,
- (f) That it has met all the conditions as prescribed by the Rastra Bank.

(3) The Rastra Bank shall issue a license of an upper class bank or financial institution pursuant to this Act requiring to make amendments to the Memorandum of Association and the Articles of Association, of the bank or financial institution according to the prevailing laws having obtained prior approval pursuant to Sub-Section (2).

39. **List to be Published:** (1) The Rastra Bank shall publish a list of the banks or financial institutions carrying out banking and financial transactions every month in the national level newspaper or through any other means.

(2) The Rastra Bank may include the date of commencement of transaction, paid up capital, condition of capital fund, total loans, status of non-performing loans and other

details as to deemed necessary by the Rastra Bank on the list to be published pursuant to Sub-Section (1).

40. **Special Provisions Relating to Branches of Foreign Banks:** (1) In cases where the Rastra Bank has granted a license to an internationally classified foreign bank to carry out banking and financial transactions through a branch in Nepal, the branch so established in Nepal as per the prevailing company laws shall be deemed as equivalent to a bank or financial institution incorporated pursuant to this Act and unless otherwise provided by this Act or Rules, Byelaws, order or directives framed under this Act, all other provisions shall equally be applicable even in the case of such a branch.

(2) The Rastra Bank may issue the necessary directives with regard to the responsibilities of the officials and employees taking responsibilities of the functions, duties, powers, responsibility, liability, assets, accounts, etc. of a branch of a foreign bank.

(3) A branch of a foreign bank located in Nepal shall, while using its own assets in the course of bearing its responsibility, give first priority to its liability towards Nepal in such manner as not be prejudice to any legal provision.

(4) Notwithstanding anything contained elsewhere in this Act, a branch of a foreign bank may carry out wholesale banking transactions.

(5) The functions and activities of a branch office of a foreign bank shall be as prescribed by the Rastra Bank.

Chapter-6

Provisions Relating to Capital, Capital Fund and Liquid Assets

41. **Capital to be Maintained** : (1) The minimum paid up capital of a bank or financial institutions shall be as prescribed by the Rastra Bank from time to time.

(2) Banks or financial institutions shall fulfill the minimum paid up capital as set forth in Sub-Section (1) within the time frame as set by the Rastra Bank.

(3) The Rastra Bank may make provisions that requiring a person, firm, company or institution may only invest up to a maximum of fifteen percent of the paid up capital of any one bank or financial institution.

(4) While investing in other bank or financial institution by any person, firm, company or institution having investment in one bank or financial institution pursuant to

Sub-Section (3), investment shall be made in such manners so that it shall be less than one percent of the paid up capital of the said bank or financial institution only.

(5) Provisions concerning investment by any person, firm, company or institution in the paid up capital of any bank or financial institution to be established in foreign joint venture, a "D" class financial institution and infrastructure development bank shall be as prescribed by the Rastra Bank.

(6) The percentage of the share capital that may be invested by any person or institution in order to incorporate a bank or financial institution or invest in a bank or financial institution shall be as prescribed by the Rastra Bank from time to time.

42. **Capital Fund:** (1) A bank or financial institution shall have to maintain the capital fund in the ratio as prescribed by the Rastra Bank on the basis of its total assets or total risk-weighted assets. The Rastra Bank may, while prescribing such ratio, also prescribe the ratio of additional capital fund.

(2) In cases where a bank or financial institution fails to maintain the capital fund set forth in Sub-Section (1), the Board of Directors of such bank or financial institution shall furnish information thereof to the Rastra Bank within one month.

(3) The information set forth in Sub-Section (2) shall also be accompanied by, *inter alia*, the reasons for the failure to maintain the capital fund and the plans or programs prepared by the Board of Directors to increase the capital fund and restore it to the position as prescribed by the Nepal Rastra Bank.

(4) On receipt of the information as pursuant to Sub-Sections (2) and (3) , if the Rastra Bank deems the plan or program submitted by the Board of Directors reasonable, it may give directive to the concerned bank or financial institution to implement such plans or programs; and if any amendment or alteration is to be made in the proposed plans or programs it may give instructions to the concerned bank or financial institution to amend or alter such plan or programs stating the reasons for such amendment or alteration, and to implement the same.

43. **Provisions Concerning Possible Loss:** A bank or financial institution shall make provisions of loss as prescribed by the Rastra Bank so as to be able to cover its potential risks concerning assets including loans and liabilities incurring from the off balance sheet transactions.

44. **General Reserve Fund:** (1) A bank or financial institution shall maintain a general reserve fund. At least twenty percent of the net profits of each fiscal year shall be added until the paid up capital is doubled and at least ten percent shall be deposited in every fiscal year thereafter in such a reserve fund.

(2) The amount credited to the general reserve fund of a bank or financial institution pursuant to Sub-Section (1) may not be invested or transferred to any other headings or spent without obtaining prior approval of the Rastra Bank.

45. **Exchange Equalization Fund:** (1) A bank or financial institution carrying out foreign exchange business shall make necessary accounts adjustments in the profit and loss account of the revaluation profits earned as a result of fluctuations in the exchange rates of foreign currencies, other than the Indian currency, every year at the end of the same fiscal year. While making such accounts adjustment in the profit and loss account, if revaluation earning has been made in any fiscal year, at least twenty-five per cent of such profits shall be credited to the exchange equalization fund:

Provided that in the case of a revaluation profit-loss resulting from fluctuation in the exchange rate of the Indian currency, it shall be as prescribed by the Rastra Bank.

(2) No amount credited to the exchange equalization fund pursuant to Sub-Section (1) shall, without the approval of the Rastra Bank, be spent or transferred to other headings for any purpose other than the adjustment of loss resulting from the devaluation of foreign currencies.

46. **Liquid Assets to be Maintained:** A bank or financial institution shall maintain liquid assets as may be prescribed by the Rastra Bank from time to time.

47. **Declaration and Distribution of Dividends:** (1) A bank or financial institution shall obtain approval of the Rastra Bank before declaring and distributing dividends.

(2) No bank or financial institution shall be allowed to declare or distribute dividends to its shareholders until it recovers all of its preliminary expenses and the losses sustained by it until the previous year, capital as prescribed by the Rastra, capital fund, possible loss provisioning bank and for general reserve fund pursuant to Section 44 and until complete sale of shares to be allotted to the general public.

48. **Power to Issue Order to Decrease Capital:** Notwithstanding anything contained in the prevailing laws, the Rastra Bank may issue an order to decrease the issued and paid up capital of a bank or financial institution.

Chapter -7

Provisions Relating to Operation of Banking and Financial Transactions

49. **Powers of Banks or Financial Institutions to Carry out Banking and Financial Transactions:** (1) A Class “A” bank may carry out the following banking and financial transactions subject to this Act, the Memorandum of Association and Articles of Association and the limitations, conditions and directions issued by the Rastra Bank:-
- (a) To accept deposits or to mobilize deposits through various financial instruments and make payment thereof with or without interest,
 - (b) To accept deposits, making payments, carrying out transactions, carry out intermediary services and transfer funds to other headings through various electronic instruments or devices,
 - (c) To lend loans including hire-purchase, leasing, housing and overdrafts,
 - (d) To lend loans on collateral of project and hypothecation and lending or causing to be lend loans in consortium financing having divided the collateral on *pari passu* basis according to mutual agreement entered into between one another,
 - (e) To lend loans against the guarantee of foreign banks or financial institutions,
 - (f) To lend loans against the amount covered by the value of the movable or immovable assets which have already been mortgaged to it or lending loans on remortgage in own amount to be covered by the value of the movable or immovable assets which has already been mortgaged to other bank or financial institution,
 - (g) To issue guarantees on behalf of its customers and getting executed necessary bonds with such customers in consideration thereof, obtaining security, and acquire their movable or immovable assets as collateral or on mortgage, or the assets of third persons as collateral and to acquire, and hold the assets holding as security and to carry out other related transactions,

- (h) To make get refinancing from the Rastra Bank as may be required or to lend or borrow loans from other bank or financial institution,
- (i) To supply loans or managing loans from the amount received from the Government of Nepal or other national or foreign entity for promotion of a project,
- (j) To write-off credits subject to the prevailing credits write-off Byelaws,
- (k) To issue shares, debenture, debenture bonds and so on for the purpose of making the capital fund complete,
- (l) To issue, accept, pay, discount or purchase and sell letters of credit, bills of exchange, promissory notes, cheques, travelers cheques, drafts or other financial instruments,
- (m) To issue, accept and manage digital card or other instruments for electronic transactions and to appoint agents for carrying out acts relating thereto,
- (n) To carry out foreign exchange business subject to the prevailing laws,
- (o) To carry out government transactions subject to the limits, terms and conditions or directions of the Rastra Bank,
- (p) To purchase, sell or accept treasury bills issued by the Government Nepal or bonds issued by the Rastra Bank,
- (q) To remit or transmit amount to different places within or outside Nepal through bills of exchange, cheques or other financial instruments; receiving remittance from abroad and to make payment thereof,
- (r) To take responsibility of and make arrangement for the sale or purchase of shares, debentures or securities; collecting interest, dividends etc. accruing from shares, debentures or securities; remitting or transmitting such interests or dividends to places within or outside Nepal; and arranging safe deposit vaults for customers acting as a commission agent of its customers,
- (s) To carry out off-balance sheet transactions,
- (t) To disburse credits upto the amount as prescribed by the Rastra Bank against individual or collective guarantee for the economic upliftment of the peoples

from the deprived sector, low-income families, victims of natural calamities and inhabitants of any area of the country,

- (u) To exchange details, information or notices concerning debtors or customers who have obtained credits from it or other banks or financial institutions with the Rastra Bank or any other bank or financial institutions,
- (v) To buy and sell gold and silver bullions,
- (w) To conduct, or cause to be conducted, study, research and survey relating to the establishment, operation and evaluation of projects, and providing training, consultancy and other information,
- (x) To manage properly or sell its assets of every type coming under its ownership according to this Act and the prevailing laws,
- (y) To give guarantee with the consent of the parties involved in matters of payment to be made or values to be recovered in consideration of any act between two or more persons, subject to the prevailing laws,
- (z) To carry out such other business as may be prescribed by the Rastra Bank.

(2) Subject to this Act, the Memorandum of Association and Articles of Association and limitation and conditions imposed and directives issued by the Rastra Bank Class “B” financial institutions may, in addition to the banking and financial transactions as referred to in clauses (a), (b), (c), (f), (h), (i), (j), (k), (n), (p), (r), (s), (t), (u) and (x) of Sub-Section

(1) carry out the following banking and financial transactions:-

- (a) To lend credit in collateral of project, to make or cause to be made arrangements for jointly lending credits on the basis of consortium financing in collaboration with other banks or financial institutions in accordance with the mutual agreement entered into for the division of the collateral (*pari passu*)
- (b) To issue guarantees on behalf of its customers and to cause to be executed necessary bonds with such customers, to acquire their movable or immovable assets as collateral or on mortgage, or the assets of third persons as collateral in consideration thereof,
- (c) To issue, accept, make payment, discount or purchase and sell bills of exchange, promissory notes, cheques, travelers cheques, drafts,

- (d) To accept loans in mortgage of its movable and immovable assets,
- (e) To carry out transactions of letters of credit and remittance with the prior approval of the Rastra Bank,
- (f) To take custody of and arrange for the sale or purchase of shares, debentures or securities, to collect interest, dividends etc. accruing from shares, debentures or securities, to make arrangement of safe deposit vaults for customers acting as a commission agent of its customers,
- (g) To carry out transactions of transfer of amount within Nepal,
- (h) To carry out, or cause to be carried out study, research and survey work relating to the project establishment and operation as well as banking, account, property, loan evaluation and to provide training, consultancy and other services and to provide information thereof,
- (i) To carry out other functions as may be prescribed by the Rastra Bank.

(3) Subject to this Act, Memorandum of Association and the Articles of Association and the limitation and conditions imposed and directives issued by the Rastra Bank Class “C” financial institution may, in addition to the financial transactions referred to in clauses (a), (b), (f), (h), (j), (k), (p), (r), (t) (u) and (x) of Sub-Section (1) carry out the following financial transactions:-

- (a) To disburse credit for hire-purchase, leasing, housing loans,
- (b) To jointly disburse credits on the basis of consortium financing in collaboration with other banks or financial institutions in accordance with the mutual agreement entered into for the division of the collateral (*pari passu*),
- (c) To take loans mortgaging its movable and immovable assets,
- (d) To properly manage its assets, to sell or rent or lease them out,
- (e) To issue, accept, make payment, discount or purchase and sell bills of exchange, promissory notes, cheques, travelers cheques or other financial instruments,
- (f) To carry out the transaction of foreign currencies by obtaining approval from the Rastra Bank,

- (g) To disburse installment or hire-purchase loans to any person, firm, company or institution for motor vehicles, machinery, tools, equipment, durable household goods or similar other movable property,
- (h) To provide leasing finance to any person, firm, company or institution to hire vehicles, machines, tools or instruments, household durable goods, or similar types of movable assets or to accept or provide such goods on hire,
- (i) To issue guarantees on behalf of its customers and to cause to be executed necessary bonds with such customers, to acquire their movable or immovable assets as collateral or on mortgage, or the assets of third persons as collateral in consideration thereof,
- (j) To sell off or lease out its assets in whole in part,
- (k) To prescribe prices of goods on consent with the finance institution and seller in cases where any goods procured has to be sold to other purchaser at the current price or deferred price,
- (l) To carry out such other business as may be prescribed by the Rastra Bank.

(4) Subject to this Act, the Memorandum of Association, Articles of Association and limitation, conditions imposed and direction issued by the Rastra Bank Class “D” financial institution may, carry out the following banking and financial transactions:

- (a) To disburse micro-credit, with or without any movable or immovable property as the collateral or security, for operating any micro-enterprise prescribed by the Rastra Bank to any project, any group or a member thereof that have regularly maintained the prescribed saving,
- (b) To accept loans or grants from any bank or financial institution or national or foreign organization or institution, and use such loans or grants for the supply of micro-credit or for making the same effective:

Provided that approval of the Rastra Bank shall be obtained prior to obtaining loans or grants from any foreign organization or institution.

- (c) Prior to disbursing micro-credits, to evaluate the schemes for which micro-credits have been requested and determine whether or not they are feasible,
- (d) To provide necessary services and consultation to the groups with regard to the mobilization of micro finance,

- (e) To take necessary actions for recovery of the micro credits on time,
- (f) To accept deposits and refund such deposits subject to the limit prescribed by the Rastra Bank by getting approval of the Rastra Bank,
- (g) To issue shares, debentures, bonds, etc. for the purpose of meeting the capital fund requirements,
- (h) To exchange information or notices on borrowers or customers, who have obtained credit or any kind of facility from it and other bank or financial institutions, with the Rastra Bank or any other bank or financial institutions,
- (i) To carry out such other functions as may be prescribed by the Rastra Bank.

(5) Subject to this Act, the Memorandum of Association, Articles of Association, and limits, conditions and directives of the Rastra Bank, infrastructure development banks may carry on the following transactions:-

- (a) To disburse loans and investing in shares in projects relating to infrastructure development,
- (b) To finance in securities of the companies operating projects relating to infrastructure development,
- (c) To open letters of credits and issue guarantees for purchase, sale or supply or installation of machineries, equipment and tools required for construction and operation of projects relating to infrastructure development,
- (d) To issue financial instruments in national or foreign currencies with the approval of the Rastra Bank for collecting fund required for investment in projects concerning infrastructure development and to acquire loans to that effect,
- (e) To mobilize resources by accepting long term deposits or issuing debentures,
- (f) To carry out leasing transactions with the approval of the Rastra Bank,
- (g) To provide loans and facilities for projects by accepting guarantee of foreign banks and financial institutions,
- (h) To carry out such other business as prescribed by the Rastra Bank.

50. **Acts not Allowed to be carried out by Banks or Financial Institutions:** (1) A bank or financial institution shall not carry out or cause to be carried out any of the following acts:-
- (a) To purchase and sell goods with an objective of business and to construct buildings and to purchase immovable land and except those are necessary for its own purposes,
 - (b) To disburse credit against security of its own shares,
 - (c) To provide any type of credit facility to the Directors, persons having subscribed one percent or more than that of the paid up capital, the Chief Executive, or a member of family of such persons, or the firm, company or organization having significant ownership or financial interest in any person, firm, company or organization having the authority to nominate or appoint a Director or a managing agent,
 - (d) To provide credit or facility exceeding per customer limit prescribed by the Rastra Bank from its capital fund to a single customer, company, companies or partnership firms of the same group and relevant persons,
 - (e) To provide any type of credits to any person, firm, company or institution on the guarantee of promoters, Directors, or the Chief Executive,
 - (f) To make investment in the securities of a bank or financial institution of class "A", "B" and "C", as classified by the Rastra Bank,
 - (g) To invest any amount more than the limit as prescribed by the Rastra Bank in share capital of any other institution,
 - (h) To create any type of monopoly or other type of restrictive practices in banking and financial transactions in collusion with banks or financial institutions,
 - (i) To commit any act with a view for creating an artificial hurdles in the competitive environment in the financial sectors with a intention to get undue advantage,
 - (j) To carry out any other acts which are prescribed by the Rastra Bank as the business not be carried out by a bank or financial institution.

(2) Notwithstanding anything contained elsewhere in this Act, nothing shall prevent from carrying out own banking and financial transactions or providing housing or other facilities for its own employees according to the prevailing Personnel Byelaws of the bank or financial institution, disbursing any credit against the collateral security of the bond issued by the Government of Nepal or the Rastra Bank, making available credits against the amounts deposited in any account or fixed deposits receipts or from making available credits and credit card facilities up to the prescribed limit to promoters, Directors, Chief Executive or shareholders having subscribed more than one percent of shares against the collateral security of their own fixed deposit receipts, and the bonds issued by Government of Nepal or the Rastra Bank.

51. **Provisions concerning Subsidiary Company:** (1) A bank or financial institution may incorporate subsidiary company with the approval of the Rastra Bank.
- (2) The Rastra Bank may prescribe the necessary terms and conditions while granting approval pursuant to Sub-Section (1).
52. **Prohibition on carrying out transactions with relevant persons:** No bank or financial institution shall be allowed to provide any type of loan or facility to the relevant persons.
53. **Information of Suspicious Transaction to be furnished:** A bank or financial institution shall identify its account holders and furnish information about any suspicious activity of its customer as per the prevailing laws relating to money laundering and prevention of terrorist financing.
54. **Rastra Bank to issue Directives:** The Rastra Bank may issue the necessary directives with regard to the procedural aspects and other matters to be followed by a bank or financial institutions while carrying out activities according to this Chapter.

Chapter -8

Provisions Relating to Disbursement and Recovery of Credits

55. **Provisions Relating to Disbursement of Credits:** (1) A bank or financial institution shall disburse credits only after disclosing the purpose subject to the directives issued by the Rastra Bank and the credit policy as determined by the Board of Directors.

(2) While disbursing credits, a bank or financial institution shall obtain any movable or immovable property acceptable to it as a collateral security or an appropriate guarantee in manners as to safeguard the interests of its own and of its depositors.

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

(4) In cases where a request has been made for registration, transfer or to withhold pursuant to Sub-Section (3), the concerned office shall withhold the registration or transfer thereof accordingly.

(5) In cases where the Rastra Bank gives direction to disburse credits for such class and in such area as prioritized for the economic upliftment of the persons belonging to a low-income group and indigent class and of the inhabitants residing in any particular geographical region, banks or financial institutions shall disburse credits according to the direction.

(6) The terms and conditions, repayment schedule, and interests of the credits borrowed by a borrower shall be according to the deeds or contract executed between the bank or financial institution and the borrower.

(7) If the borrower is a guarantor, or firm, company or an institution, the directors, the shareholders having subscribed the shares in numbers more than the percent prescribed by the Rasta Bank or partners or owners in any manner thereof; members of the families of all of the above persons and if any of them is a beneficiary of any institution get all the details thereof and also get the proof of identity while taking actions according to the prevailing laws.

(8) While disbursing any credit by a bank or financial institution to anyone, the regular installment of the credit, interests thereon, damage thereon and the repayment schedule shall be clearly specified in a deed or contract and information thereof shall be given to the borrower and guarantor in case where there exists a guarantor.

(9) A borrower may make a request for details of the payable or paid amount of principal, interests, damage, and other fees and the deed or contract executed in the course

of availing the credit and banks or financial institutions shall make such details available accordingly.

56. **Monitoring as to Utilization of Credit Amount:** A bank or financial institution shall carry out regular monitoring by preparing a monitoring schedule as to whether or not the borrower has utilized the credit for the purpose for which it has been disbursed.

57. **Provisions on Recovery of Credit:** (1) Notwithstanding anything contained in a deed of a loan or in the prevailing Nepal law, a bank or financial institutions may recover its principal and interests thereon, having selling through auction the assets kept as mortgage by the borrower in the name of the bank or financial institution, if the borrower fails to abide by the terms and conditions of the credit as mentioned in the deed or contract or fails to repay the credit and interest thereon to the bank or financial institution within the loan repayment schedule stipulated in the deed or fails to pay the damage or if the bank or financial institution finds upon monitoring pursuant to Section 56, that the borrower has misused the credit by using it for the purpose other than the purpose for which it was disbursed.

(2) Notwithstanding anything contained in the prevailing laws, in cases where a borrower relinquishes the title in any manner whatsoever over the assets mortgaged or the assets mortgaged as collateral security to the bank or financial institution or if the value of the collateral security, a bank or financial institution may ask such a borrower to keep more assets as collateral security decreases within the time limit specified by it and the borrower shall keep place additional collateral security within the time-limit prescribed by the bank or financial institution.

(3) In cases where a borrower fails to keep more assets as collateral within the time limit pursuant to Sub-Section (2) or the principal and interests thereon could not be recovered from the collateral security so mortgaged, the bank or financial institution may recover its principal and interests from the other movable or immovable property of the borrower according to the prevailing laws.

(4) In cases where any balance has remained after deducting the amount spent in connection with an auction or otherwise during the recovery of the principal, interest thereon or amount of damage, such balance shall be refunded to the concerned borrower upon deduction of the principal, interest and the amount of damage payable to the bank or financial institution.

(5) Banks or financial institutions shall write to the concerned office to register or transfer of the ownership of the assets so auctioned as per this Section in the name of the person accepting the auction in accordance with the prevailing laws.

(6) In cases where a bank or financial institution writes for registration or transfer the ownership of the assets pursuant to Sub-Section (5), notwithstanding anything contained in the prevailing laws, the concerned office shall register or transfer the ownership of the assets as requested in the name of the person who accept such an action.

(7) In cases where no one accepts the movable or immovable assets in the course of carrying out auction by a bank or financial institution pursuant to this Section, a bank or financial institution may take the ownership of such assets as prescribed in its own name.

(8) A bank or financial institution that has taken the ownership of the asset in question in its own name pursuant to Sub-Section (7) shall request to the concerned office shall, In cases where such a request has been received notwithstanding anything contained in the prevailing laws, the concerned office shall register or transfer the ownership of the assets in the name of the concerned bank or financial institution.

(9) If the previous owner does not allow or obstruct the exercise of the possessory right over the property, accepted by any person or a bank or institution through auction, the concerned office of the Government of Nepal shall cause to be erased the possessory right over the property in question.

(10) No one shall not be entitled to hinder the recovery process of the credit written off by a licensed institution in accordance with the prevailing Credit Write-off Byelaws.

(11) In cases where a borrower does not repay the credit from a bank or financial institution and the interests accrued thereto and damage within the time limit stipulated in the deed of the credit or the contract, the bank or financial institution shall write to the Credit Information Center Limited to blacklist the borrower according to the prevailing laws.

(12) In cases where a credit could not be recovered even after taking actions against the borrower under this Section, the bank or financial institution may, for the purpose of recovering such credit amount, take actions for the recovery of the credit according to the prevailing laws including freezing of any other assets of the borrower located in a foreign country if it is possible.

(13) In cases where a credit could not be recovered even after taking all actions under this Section, the concerned bank or financial institution may request the Rastra Bank for making the necessary arrangements to withhold or confiscate the passport of the concerned borrower and to deprive him of any particular services to be made available by the State. Upon receipt of such request, the Rastra Bank shall forward the request to the Government of Nepal for necessary actions along with its opinion.

(14) Nothing herein is deemed to prevent taking legal actions for any offence as per the prevailing laws on the ground that a bank or financial institution had taken action against a person in connection with the recovery of its credit.

Chapter-9

Provisions on Accounts, Records, Details and Reporting

58. **Accounts to be Maintained Accurately:** (1) Banks or financial institutions shall maintain their accounts, books, records accurately and in an up to date manner.

(2) The accounts to be maintained pursuant to Sub-Section (1) shall have to be maintained according to recognized principles of the double entry book keeping system reflecting the exact status of transactions of the bank or financial institution.

(3) Without prejudice to the generality of Sub-Sections (1) and (2), a licensed branch or office of a foreign bank or financial institution obtaining license shall prepare and maintain financial statements including separate accounts, books and records of its assets, liabilities, income and expenses and profit and loss accounts.

(4) Unless otherwise approved by the Rastra Bank, the accounts and other statements to be maintained pursuant to Sub-Section (1) shall be maintained at its central office.

59. **Balance-sheet, Profit and Loss Accounts to be Prepared:** (1) Banks or financial institutions shall prepare and maintain its balance-sheet, profit and loss account and cash flow statement and other statements in such format and in such manner as prescribed by the Rastra Bank.

(2) Banks or financial institutions shall submit their balance-sheet and profit and loss account to the Rastra Bank within three months of the completion of each fiscal year and details of such balance-sheet and profit and loss account shall be made public for

information of the general public as prescribed by the Rastra Bank within that period. Banks or financial institutions shall make public the audited balance-sheet of Fiscal Year and profit and loss accounts of the transactions within and outside Nepal in such formats as prescribed within nine months of the next fiscal year.

(3) If a bank or financial institution has a subsidiary company, the balance-sheet and profit and loss accounts and status of the transactions of business of the subsidiary company and parent company shall be maintained separately as well as in an integrated manner.

(4) The format, contents, methods of certification and details of the matters to be made public in the balance-sheet and profit and loss accounts to be prepared by a bank or financial institutions pursuant to this Chapter shall be as prescribed or directed by the Rastra Bank.

(5) If the Rastra Bank doubts that a matter made public by a bank or financial institution pursuant to Sub-Section (2) is erroneous, incomplete, misleading or false, it may cause by giving a notice in writing the concerned bank or institution to do the following:-

- (a) To publicize the matters omitted or not stated, or
- (b) To re-publicize the details which are erroneous, incomplete, misleading or false by correcting them, or
- (c) To publish by making correction of the matters as required by directives of the Rastra Bank.

60. **Audit Committee:** (1) The Board of Directors of a bank or financial institution shall constitute an Audit Committee comprising three members under the convenorship of a non-executive Director.

(2) The Chairperson of a bank or financial institution, convener of the sub-committee and the Chief Executive shall not work in the audit committee referred to in Sub-Section (1).

(3) Members of the committee referred to in Sub-Section (1) shall not be entitled to be engaged in collecting deposits, disbursing credits, investing in securities, and making decisions in any daily transaction that requires for making expenses out of the approved budget.

(4) Except where a meeting has been called by the Board of Directors, meeting of the Audit Committee shall normally be held once in three months.

(5) Procedures of the meetings of the Audit Committee shall be as determined by the committee itself.

61. **Functions, Duties and Powers of the Audit Committee:** Functions, duties and powers of the Audit Committee shall be as follows:-

- (a) To ascertain whether or not the accounts, budget and internal auditing procedures, internal control mechanism of the bank and financial institution are appropriate and if they are appropriate, to carry out monitoring and supervision as to whether or not they are complied with,
- (b) To cause to carry out internal auditing of the accounts and books of records of the bank or financial institution and to ascertain as to whether or not such documents have been prepared accurately according to the prevailing laws, regulations and directives of the Rastra Bank,
- (c) To conduct or to cause to be conducted regularly auditing of the management and operation, managerial and work performance of the bank or financial institution to ensure that the laws in force in the bank or financial institution are fully complied with,
- (d) To carryout monitoring as to whether or not activities have been carried out according to this Act or Rules made thereunder, Byelaws, policies or the directives issued in the bank or financial institution and to submit the report thereof to the Board of Directors,
- (e) To recommend the names of three auditors for appointment of the external auditor,
- (f) To furnish opinion on matters as requested by the Board of Directors.

62. **Auditing:** (1) A bank or financial institution shall, within four months from the date of completion of the Fiscal Year, prepare the balance sheet, profit and loss account, cash flow statement and other financial statements in such formats and according to such methods as specified by the Rastra Bank and get the external audit carried out. Such financial statements shall be signed by at least two Directors, the Chief Executive and the auditor:

Provided that in the case of a branch office of a foreign bank or financial institution carrying out financial transactions with the approval from the Rastra Bank, it shall be as prescribed by the Rastra Bank.

(2) In cases bank or financial institution that has failed to the auditing to be carried out within the period referred to in Sub-Section (1) makes a request for an extension of time for the auditing stating reasonable cause, the Rastra Bank may extend the period upto two months.

(3) The external auditor shall submit the report of auditing performed by him or her to the concerned bank or financial institution and the Rastra Bank as well.

63. **Appointment and Remuneration of Auditor:** (1) The appointment of an auditor shall be made by the General Meetings of a bank or financial institution.

(2) The General Meeting shall not appoint the same auditor for more than three consecutive terms.

(3) While appointing an auditor pursuant to Sub-Section (1), the General Meeting shall appoint a Chartered Accountant in the case of obtaining a licensed bank or financial institution of Class "A" or "B" or "C", and a Chartered Accountant or a Registered Auditor in the case of a Class "D" bank or financial institution obtaining a license.

(4) If a bank or financial institution did not or could not appoint an auditor pursuant to Sub-Section (1), the Rastra Bank may appoint the auditor.

(5) If, for any reason, the position of an Auditor falls vacant, the Board of Directors shall appoint another Auditor for the remainder of the term.

(6) The remuneration of an auditor of a bank or financial institution shall be as determined by the Rastra Bank in cases where the auditor has been appointed by the Rastra Bank; as determined by the General Meeting in cases where the Meeting has appointed and as determined by the Board of Directors, in cases where the Board has appointed the Auditor.

64. **Ineligibility for Appointment as Auditor:** Any of the following persons or any firm, company or institution in which such a person is a promoter or partner shall not be eligible to be appointed as an auditor of a bank or financial institution: -

(a) A promoter, Director, Chief Executive of a bank or financial institution or his/her family member,

- (b) An office bearer, employee or internal auditor of a bank or financial institution,
- (c) A person working as a partner of any promoter, executive chief or employee of a bank or financial institution,
- (d) A borrower of a bank or financial institution, a person with significant ownership or the relevant person or a person having financial interests,
- (e) A person who has been declared bankrupt in Nepal or abroad,
- (f) A person, firm, company or institution having subscribed one percent or more shares of a bank or financial institution,
- (g) A person, who has been convicted of any criminal offense by a court and a period of five years has not been lapsed after he\she served such a punishment,
- (h) A person, who is disqualified to become an auditor according to the prevailing laws.

(2) If any person appointed as an auditor of a bank or financial institution is found to be ineligible pursuant to Sub-Section (1), his/her appointment shall be deemed to have been *ipso facto* void

65. **Details to be Furnished:** (1) A bank or financial institution shall, at all times, provide all such accounts, records, books, ledgers and other statements as demanded by an auditor in the course of performing audit.

(2) For the purpose of Sub-Section (1), the officer, responsible for providing accurate statement or answer as demanded, shall also furnish forthwith accurate statement or answer to the queries made by an auditor.

66. **Functions, Duties and Powers of Auditor:** (1) The functions, duties and powers of an auditor shall be as follows:-

- (a) To conduct auditing of accounts and financial statements,
- (b) To prepare an audit report by including audited accounts, balance-sheet, and profit and loss accounts and to submit them to the Board of Directors of the bank or financial institution,
- (c) If it is found that irregularities were committed in the activities of a bank or financial institution or business were not being carried out in an appropriate

manner and such matters may cause harms or loss to the bank or financial institution, to inform the same to the Board of Directors,

- (d) To inform the Rastra Bank, if any of the following situation is like to arise:-
- (1) Violation of the terms and conditions as prescribed by the Rastra Bank during issuance of the license or violation this Act or Rules, Byelaws, Directives framed under this Act,
 - (2) To cause adverse effect on the regular activities of the bank or financial institution,
 - (3) To prevent the auditor from submitting the audit report or ask to prepare a false audit report.

(2) An auditor shall have the power to inspect all documents the concerning accounts including ledger, books, account, voucher, and goods at any time and he or she may seek answers or explanations from a Director or office bearer of a bank or financial institution on matters, as he or she may deem necessary, in the course of performing his/her duties and carrying out his/her functions in an appropriate manner.

- (3) An auditor shall specify the following matters in his/her report clearly:-
- (a) Whether or not replies to the queries as per the demand were provided,
 - (b) Whether or not the balance sheet, off-balance sheet transactions, profit and loss account, cash flow statements and other financial statements, and so on have been prepared in such a format and in accordance with such procedures as prescribed by the Rastra Bank, and whether or not they actually matched with the accounts, records, books and ledgers maintained by the bank and financial institution,
 - (c) Whether or not the accounts, records, books and ledgers have been maintained accurately in accordance with the prevailing laws,
 - (d) Whether or not any office bearer of the bank or financial institution has committed any act contrary to the prevailing laws or committed any irregularity or caused any loss or damage to the bank or financial institution,

- (e) Whether or not credits have been written off as per the Credit Write-off Byelaws or directives of the Rastra Bank,
- (f) Whether or not the transactions of the bank or financial institution have been carried out in a satisfactory manner as prescribed by the Rastra Bank,
- (g) Matters to be informed to the shareholders,
- (h) Matters prescribed by the prevailing laws and other matters as prescribed by the Rastra Bank requiring to be specified in the audit report by the auditor,
- (i) Other suggestions which the auditor deems necessary to be furnished.

(4) The Rastra Bank may, upon receipt of the audit report, if it deems necessary, order the auditor of the bank or financial institution to carry out the following additional functions:-

- (a) To submit additional information as required by the Rastra Bank concerning auditing,
- (b) To further widen the scope of auditing of the bank or financial institution or its subsidiary company,
- (c) To carry out other tests as specified by the Rastra Bank or recommended to the bank or financial institution in any particular subject.

67. **Recommendation for taking actions against Auditor:** (1) The Rastra Bank shall recommend to the concerned regulating authority to remove the name of an auditor, who does not perform his/her duties as set forth in this Act, from the panel of the auditors prohibiting him/her to carry out audit of any bank or financial institution for one year to three years.

(2) In cases where recommendation has been received pursuant to sub-section (1), the concerned regulating agency shall take actions against such an auditor under the prevailing laws.

68. **Auditor to Certify:** An auditor shall mark any certify the accounts, records, books and ledgers audited by him/her by putting his /her signature thereon and also mentioning therein the date on which he/she has audited them.

Chapter-10

Provisions Relating to Merger or Acquisition of Banks or Financial Institutions

69. **Banks or Financial Institutions may be Merged or Acquired:** (1) A bank or financial institution may be merged with another bank or financial institution or a bank or financial institution may acquire another bank or financial institution by fulfilling the procedures prescribed by this Act and the Nepal Rastra Bank Act.

(2) A class "D" financial institution may be merged with or such institution may acquire another institution of the same class:

Provided that, an infrastructure development bank and a bank or financial institution may not be merged into each other and none of them may acquire the other.

(3) Notwithstanding anything contained elsewhere in this Chapter, in cases where any of the following circumstances in regard to any bank or financial institution is found from an Inspection and Supervision Report of the Rastra Bank, the Rastra Bank may order by giving the reason thereof that any of its assets, liabilities, and business of such bank or financial institution merge or be merged into another bank or financial institution:-

- (a) The capital fund is inadequate or the financial position has been deteriorating for the last three years,
- (b) An act committed causing adverse effect on depositor's interests and liabilities towards depositors or such a situation is existing,
- (c) It is necessary to enhance the competitive capacity at the national and international level for stability, development and promotion of the financial system.

(4) Notwithstanding anything contained elsewhere in this Chapter, if any of the following circumstances is regard to a bank or financial institution is found from an Inspection and Supervision Report of the Rastra Bank, the Rastra Bank may, by giving the reason thereof, order such a bank or financial institution to acquire or cause to be acquired another bank or financial institution:-

- (a) In cases where more than one bank or financial institution belonging to single group of persons, firms and companies are in operation and there is an unhealthy financial relation,

- (b) In cases where the rights and interests of the depositors, ordinary shareholders, and other costumers could not be protected due to the negative impact, if the bank or financial institution is operated in the status quo,
- (c) In cases where system-based risks are increased and the licensed institution is unable to pay its liabilities,
- (d) In cases where shares have not been issued in the ordinary group within the prescribed time, the issued shares have not been sold or subscribed, or the prescribed minimum proportional paid up capital has not been met,
- (e) In cases where the bank or financial institution is subjected to actions of rapid reforms for three times or more or good governance has become weak due to arising of frequent disputes in the Board of Directors of the bank or financial institution.

(5) While issuing an order by the Rastra Bank pursuant to Sub-Sections (3) or (4) for merger or acquisition of the bank or financial institution, it may specify the procedures thereof in such an order.

70. **Application to be submitted for Merger or Acquisition:** (1) In cases where any bank or financial institution wishes to merge or to be merged into another bank or financial institution, two or more banks or financial institution/s so wishing to merge or be merged shall decide the matter from their respective Board of Directors and submit a joint application to the Rastra Bank for getting approval in principle stating the following matters:-

- (a) Necessity of and justification for merger of the bank or financial institutions and general projection of the impact it is likely to cause in the banking and financial sector and fiscal system,
- (b) Latest auditor's report of the bank or financial institutions wishing to merge or be merged including the audited balance-sheets, profit and loss account, cash flow statement and net worth and so on,
- (c) Arrangements made for protection of the interests of the creditors of the bank or financial institutions wishing to merge or be merged,

- (d) Actual report of the movable and immovable assets of the bank or financial institutions wishing to be merged and also period of repayment of liabilities,
- (e) Details of the management of employees of bank or financial institutions wishing to merge or to be merged,
- (f) Approval process under the prevailing laws concerning company and securities for the purpose of merger;
- (g) Preliminary agreement concluded for merger by the institutions;
- (h) Other details as specified by the Rastra Bank.

(2) In cases where any bank or financial institution wishes to acquire another bank or financial institution, the concerned two or more banks or financial institutions shall decide the matter from their respective Board of Directors and then submit a joint application to the Rastra Bank for getting approval in principle stating the following matters:-

- (a) Necessity of and justification for the acquisition of the bank/s or financial institution/s and general projection of the impact it is likely to have in the banking and financial sector and fiscal system,
- (b) Latest auditor's reports of the principal institution and of the target institution(s) including the audited balance-sheets, profit and loss account, cash flow statement and net worth and so on,
- (c) Details of the management of the employees of the principal institution and targeted institution,
- (d) Approval process under the laws concerning companies and securities,
- (e) Preliminary agreement concluded for acquisition of the bank or financial institution,
- (f) Other details as specified by the Rastra Bank.

(3) The Rastra Bank shall conduct an inquiry into the application submitted pursuant to Sub-Section (1) or (2) and in the course of the inquiry, the Rastra Bank may hold discussions with the applicants as and ask for additional documents as may be required.

(4) If the Rastra Bank is satisfied upon inquiry carried out pursuant to Sub-Section (3), that the merger or acquisition would not have any negative impact on the development of banking and financial system of the nation and in fair competition and compliance with the prevailing laws, it may grant approval in principle for further continuation with the process of merger or acquisition and while giving such approval, it may specify additional conditions or issue additional directives.

71. **Provisions Concerning Valuation of Assets and Liabilities:**(1) Upon getting approval in principle of merger of bank/s or financial institution/s pursuant to Section 70, such banks or financial institutions shall appoint, with mutual consent a person, firm, company or institution that is at least capable for carrying out auditing of a banks or financial institutions for valuation of their respective assets, liabilities, and transactions and information thereof must be furnished to the Rastra Bank:

Provided that, banks or financial institutions may carry out such valuation to be conducted before submitting an application to the Rastra Bank.

(2) Upon getting approval in principle to acquire a bank or financial institution pursuant to Section 70, the targeted institution shall get its assets, liabilities and transactions audited by an auditor appointed by the General Meeting or by the Board of Directors under the authority of the General Meeting.

(3) An acquiring institution may also carry out comprehensive valuation of the assets and liabilities of the target institution.

(4) If the Rastra Bank does not find actions of Valuator appointed pursuant to sub-Section (1) or (2) reliable, it may give an order to the concerned bank or financial institution to remove him/her and appoint another valuator.

(5) The concerned bank or financial institution shall determine by the terms and conditions of services of the valuator.

(6) While valuating the assets, liabilities, net worth, and overall transaction by the valuator, it has to be carried out according to the established norms, basis and procedures.

(7) The Rastra Bank may issue the necessary directives as to the methods of valuation, basis of valuation and the scope thereof.

72. **Provisions Relating Agreement:** Unless otherwise ordered by the Rastra Bank pursuant to this Act, the banks or financial institutions having obtained approval in principle for

merger, amalgamation or acquisition shall enter into an agreement stating the following matters:-

- (a) Provisions concerning the protection of the interests of depositors, creditors and shareholders,
- (b) Provisions concerning the valuation system and matching of assets and liabilities of the banks or financial institutions,
- (c) Provisions concerning management of investment and transaction, details of the inter-agency ownership and inter-agency transactions, details of guarantee and assurance, management of non-banking transactions, proper management of assets and liabilities,
- (d) Merger, merging and acquisition processes, the time to be taken and costs to be incurred,
- (e) Operation and management structure and the name list of Directors,
- (f) Arrangement for adjustment of level of employee of the bank or financial institution obtaining approval in principal for merger of acquisition or of the principal institution and targeted institution and terms and conditions of services.
- (g) Details of the shareholders with substantial ownership and of other shareholders,
- (h) If the bank or financial institutions to be merged or acquired as a new bank or financial institution, the name, Memorandum of Association and Articles of Association, capital structure, restructuring and class thereof,
- (i) In the case of a foreign bank or financial institution, a letter of consent from the concerned regulating agency,
- (j) In the case of a foreign bank or financial institution, matters as to whether or not to acquire the business of a bank or financial institution located in Nepal, or if the entire business of such a bank or financial institution is to be sold in Nepal, matters relating thereto,
- (k) Grievance handling system of stakeholders,
- (l) The prevailing laws and process to be initiated for its compliance,
- (m) Other necessary details specified by the Rastra Bank.

73. **Provisions Relating to Approval:** (1) Banks or financial institutions getting approval in principle for initiating merger or acquisition process shall adopt special resolutions from their respective General Meetings and shall submit a joint application to the Rastra Bank having attached therewith the agreement referred to in Section 72 and other matters specified by the Rastra Bank for final approval.

(2) While carrying out an inquiry into the application submitted pursuant to Sub-Section (1), the Rastra Bank, if it deems necessary, may ask for additional information or documents from the concerned bank or financial institution.

(3) While carrying out an enquiry pursuant to Sub-Sections (1) and (2), the Rastra Bank may give due consideration to the facts that whether or not the merger of any bank or financial institution would create a healthy competition in the financial sector of the country, whether or not monopoly or restricted practice of any bank or financial institution may have; whether or not serious adverse impact would have cause on the overall banking and financial system on financial market and depositors and also having conducted fit and proper test of the promoter/s who may has/have significant ownership in the institution to be created after the merger, the Rastra Bank may grant final approval to the banks or financial institutions for merger with each other or acquisition by specifying terms and conditions or limitations.

(4) The Rastra Bank shall, if it does not find to be appropriate to grant approval pursuant to Sub-Section (3), notify the concerned bank or financial institution along with the reasons thereof within forty five days.

(5) In cases where it is difficult for the institutions that have obtained approval pursuant to Sub-Section (3) to comply with the provisions of this Act and directives of Rastra Bank by virtue of such a merger or acquisition, the Rastra Bank may grant exemptions as specified by it on the basis of necessity and rationality.

(6) Other provisions concerning merger and acquisition shall be as specified by the Rastra Bank.

74. **Transactions may be Acquired:** Any branch, office of any bank or financial institution or any property or transaction thereof, with the prior approval of the Rastra Bank may be acquired by, or transferred to, any other bank or financial institution with mutual consent.

Chapter-11

Voluntary Liquidation of Banks or Financial Institutions

75. **Voluntary Liquidation of Bank or Financial Institution:** (1) Any bank or financial institution wishing to go for voluntary liquidation shall submit an application along with an action plan of voluntary liquidation.

(2) In cases where the Rastra Bank is confident, upon carrying out an inquiry into an application submitted pursuant to Sub-Section (1), that such bank or financial institution or a branch or office of a foreign bank or financial institution is fully capable of repaying all of its credits and liabilities, it may grant approval in principle, along with some terms and conditions, for voluntary liquidation.

(3) A bank or financial institution getting approval in principle from the Rastra Bank pursuant to Sub-Section (2) shall carry out the following functions:-

- (a) To inform the Office of the Companies Registrar that it has got an approval in principle within seven days from the date of getting such an approval;
- (b) To send notice to all depositors, creditors or concerned persons by fast, efficient and reliable means, about the approval in principle it got within thirty days from the date of getting such an approval;
- (c) To publish a notice in national newspapers that it has got an approval in principle within thirty days from the date of such approval
- (d) To perform other functions as specified by the Rastra Bank.

76. **Initiation of Voluntary Liquidation:** (1) The process of initiation of voluntary liquidation of a bank or financial institution shall be deemed to have been commenced from the date of granting the final approval for voluntary liquidation by the Rastra Bank.

(2) A bank or financial institution that has got an approval in principle for voluntary liquidation pursuant to Section 75 shall fulfill the following conditions before getting final approval of voluntary liquidation from the Rastra Bank:-

- (a) That all the deposits and liabilities are refunded or fulfilled within the due date,
- (b) That operation of transactions are closed down and no new transaction to be carried out,

(c) That exercise of other powers, except those essential for voluntary liquidation, shall not be allowed.

(3) The Rastra Bank may issue the necessary directives in the course of carrying out functions pursuant to Sub-Section (2).

(4) In cases where a person entitled to get payment of the amount and other liabilities pursuant to Clause (a) of Sub-Section (2) fails to come to receive the payment within the prescribed time-limit, the said amount shall be deposited to an account as directed by the Rastra Bank.

(5) An approval of voluntary liquidation will not cause any type of adverse effect on the rights and interests of the depositors and other creditors.

(6) An bank or financial institution opting for voluntary liquidation shall, upon completion of the proceedings of this Act, submit to the Rastra Bank an auditing report of such a bank or financial institution.

(7) The Rastra Bank shall grant final approval for voluntary liquidation to a bank or financial institution that performed the function as referred in this Section. The Rastra Bank shall revoke the license for carrying out banking and financial transaction of such a bank or financial institution.

(8) The amounts to be paid by the bank or financial institution opting to go for voluntary liquidation for the deposits not claimed at the moment shall be separately set aside as directed by the Rastra Bank.

77. No Effect in Liability: There shall be no effect on the liability of any shareholder, Director, Chief Executive, office bearers, employees or other persons under to this Act or any other prevailing laws as a result of liquidation of any bank or financial institution under this Chapter.

Chapter-12

Provisions Relating to Mandatory Liquidation of Bank or Financial Institutions

78. Application may be filed before the Court for Mandatory Liquidation of Banks or Financial Institutions: (1) The Rastra Bank may file an application to the court for mandatory liquidation of any bank or financial institution under this Chapter and a notice of application of such action shall be published in a daily newspaper of national level.

(2) The Rastra Bank shall attach the following documents along with the application filed before the court for initiation of the process of liquidation of any bank or financial institution pursuant to Sub-Section (1):-

- (a) Details along with the reasons for mandatory liquidation of the bank or financial institution that the situation referred to in Section 79 is continue to persist,
- (b) Financial statement of the bank or financial institution.

(3) Notwithstanding anything contained in Sub-Section (1), any of the following persons may, with the prior approval of the Rastra Bank, file an application to the court for liquidation that there exists a situation specifying the reasons to show the situation that a bank or financial institution may be subjected to mandatory liquidation pursuant to Section 79 :-

- (a) A joint application of the depositors having representation of more than twenty-five percent of the total deposit, who do not get the payment of the payable deposits or of more than one percent of the depositors, or
- (b) A person competent to file an application for mandatory liquidation according to the prevailing laws relating to insolvency.

(4) In cases where the court orders for initiation of the process of liquidation of a bank or financial institution based on the application referred to in Sub-Section (1) or (3), the process of mandatory liquidation of the bank or financial institution shall be commenced from the date of giving of such an order.

79. Circumstances leading to Mandatory Liquidation of Bank or Financial Institutions: A bank or financial institution may be subjected to mandatory liquidation under the following circumstances:-

- (a) In cases where the matured deposit or the deposit to be repaid immediately or other financial liability could not be paid on time and is in due,
- (b) In cases where the capital fund of a bank or financial institution is negative,

- (c) In cases where the Rastra Bank recommends for liquidation of a bank or financial institution based on an inspection report of the bank or financial institution,
- (d) In cases where the shareholders with significant ownership or office-bearer of a bank or financial institution frequently commit acts causing obstruction against the rights and interests of the depositors for the development of financial system,
- (e) In cases where it is found that it is in frequent violation of the this Act and directives given by the Rastra Bank,
- (f) In other circumstances as determined by the Rastra Bank for mandatory liquidation of a bank or financial institution.

80. Transaction to be Suspended:(1) The Rastra Bank shall immediately after submission of an application to the court pursuant to Section 78 for mandatory liquidation of a bank or financial institution, suspend the entire financial transactions of such a bank or financial institution.

(2) The Rastra Bank may, while issuing an order for suspension of financial transactions pursuant to Sub-Section (1), revoke the license of such a bank or financial institution.

81. Appointment of Liquidator: (1) The court may issue an order to the Rastra Bank to make recommendation for appointment of a liquidator for initiating process of mandatory liquidation of any bank or financial institution.

(2) In cases where the court issues an order pursuant to Sub-Section (1), the Rastra Bank shall recommend the names of at least three persons for appointment to the Liquidator within fifteen days.

(3) While making recommendation to the court by the Rastra Bank pursuant to Sub-Section (2), it will make recommendations from among persons having experience in the banking and financial sector and having a license to act as insolvency practitioners according to the prevailing laws.

(4) The court may appoint one of the three persons recommended pursuant to Sub-Section (2) as liquidator.

(5) After a Liquidator has been appropriated pursuant to Sub-Section (4), the Board of Directors of such bank or financial institution shall be deemed to have been *ipso facto* dissolved and unless otherwise ordered by the Liquidator, services of the entire office-bearers and employees appointed by the bank or financial institution shall *ipso facto* be terminated.

(6) If the Liquidator appointed pursuant to Sub-Section (4) tenders his or her resignation, dies or the Rastra Bank deems that he/she is incompetent to perform the prescribed functions, the Rastra Bank shall file an application to the court according to this Section to appoint another Liquidator by removing such a liquidator.

(7) The remuneration and terms and conditions of services of a liquidator shall be as prescribed by the court on the recommendation of the Rastra Bank.

82. Functions, Duties and Powers of Liquidator:(1) A liquidator appointed for the purpose of initiating the process of mandatory liquidation of a bank or financial institution shall, after his/her appointment, carry out the following actions:-

- (a) To publish a notice in a national level Nepali and English daily newspaper for information of shareholders and other concerned persons of the bank or financial institution within fifteen days of the appointment,
- (b) To send to the Office of the Company Registrar and the institution established as per the prevailing laws for guarantee of deposits for information with an authenticated copy of the order of mandatory liquidation within fifteen days of the appointment;
- (c) To post or cause to be posted a copy of such an order in a conspicuous manner at the principal place of business of the bank or financial institution and at each of its offices,
- (d) To broadcast the notice through a national level television and radio for four weeks at least once in a week after the appointment,
- (e) To perform such other functions as specified by the Rastra Bank.

(2) After getting information as referred to in Clause (b) of Sub-Section (1), the Office of the Company Registrar shall make in the concerned registration book that an order of initiating the process of mandatory liquidation has been issued.

(3) In addition to the functions, duties and powers as referred to elsewhere in this Act, the other functions, duties and powers of a liquidator shall, subject to the directives of the Rastra Bank, be as follows:-

- (a) To take custody of the office, books and accounts, records and assets of the bank or financial institution,
- (b) To carry out most essential regular functions of operation and management of the bank or financial institution,
- (c) To carry out all the functions to be carried out on behalf of or in the name of the bank or financial institution,
- (d) To appoint employees to render assistance in its functions,
- (e) To make the necessary expenses for operation, management and liquidation of the bank or financial institution,
- (f) To make coordination with institutions established by the prevailing laws for security of deposits,
- (g) To exercise all the powers to be exercised by the shareholders, General Meeting, Board of Directors and office-bearers of the bank or financial institution,
- (h) To carry out inquiry into the business and financial status of the bank or financial institution,
- (i) To merge or transfer the entire or some of the assets and liabilities of the bank or financial institution with another bank or financial institution with the approval of the Rastra Bank,
- (j) To get credit in mortgaging of the bank or financial institution,
- (k) If it is felt that it will be beneficial for the bank or financial institution to sell any assets or terminate any contract or liability, to sell such assets or to terminate such contract or liability,
- (l) To procure services of professional and qualified persons to render assistance in its functions as may be necessary,
- (m) To hold necessary discussions and enter into compromise with any creditor or borrower of the bank or financial institution,

- (n) To collect, protect and sell the assets of the bank or financial institution and to distribute according to this Act,
- (o) To conduct an inquiry into whether or not a Director, office bearer, employee, or any other person has committed fraud, cheating, or misrepresentation against the bank or financial institution or depositors or creditors and to take the necessary legal actions against them or to file any case or initiate a legal action on behalf of the bank or financial institution or to defend on behalf of the bank or financial institution,
- (p) If anyone has been using any property of the bank or financial institution, to withdraw it or to take legal actions to take such property or cash amount from the transaction which has been declared invalid back,
- (q) To prepare a report in every three months on the actions taken in the course of liquidation in such format as specified by the Rastra Bank and to submit it to the Court and Rastra Bank,
- (r) To carry out all other functions as may be required for liquidation of the bank or financial institution,
- (s) To perform other functions as prescribed by the Rastra Bank.

(4) If any difficulty arises in the course of exercising any power or discharging any duty by a Liquidator under this chapter, he/she may file an application to the court to remove such difficulty.

(5) In cases where the reasons stated in the application submitted pursuant to Sub-Section (4) are found to be reasonable, the Court may issue an appropriate order.

83. Effects of Order Relating to Liquidation: (1) In cases where the court orders for initiating the process of mandatory liquidation of any bank or financial institution, the order shall result in the following on the following matters:-

- (a) In cases where statutory limitations have expired as to any claim or right of the bank or financial institution, the statutory limitations of such claims or rights shall *ipso facto* be extended for upto six months from the date of issuing an order by the court to initiate the process of mandatory liquidation.
- (b) Except in circumstance as provided for in Clause (c), if any property or asset of a bank or financial institution has been withheld for any reason

whatsoever, or such property has been mortgaged against any credit made available to the bank or financial institution, such property or asset shall *ipso facto* be released.

(c) The functions concerning accepting deposits and lending credits shall *ipso facto* be stopped.

(d) Case proceedings against the bank or financial institution in any court shall *ipso facto* be stopped and unless otherwise ordered by the court, court proceedings against such bank or financial institution shall not be revived:

Provided that in cases where there is any case sub-judiced at the Supreme Court as to the bank or financial institution, or it is necessary to seek clearance from the Supreme Court, the Rastra Bank shall file an application to that Court.

(e) No interests or any type of additional charge shall be levied on the liabilities of the bank or financial institution.

(f) Shares of such a bank or financial institution may not be transferred, mortgaged or stroke out its title:

Provided however that the act of transfer, mortgage or striking out may be carried out with prior approval of the Rastra Bank.

(2) If it comes to the knowledge of a Liquidator from any source that any action carried out before six months from the date of issuing an the order by the court to initiate the process of mandatory liquidation may harm or cause loss to the interests of the depositors or creditors of the bank or financial institution, the Liquidator shall submit to the court an application about it and information thereof shall also be given to the Rastra Bank.

(3) In cases where the court finds from the application submitted pursuant to Sub-Section (2) by a Liquidator that any of the following actions was carried out, the court may declare such an action null and void:-

(a) If a decision was made to offer a gift,

(b) If any act that cause may harm to the rights and interests of the creditors or depositors was committed,

- (c) If payment was made or transferred before repayment of credits or the collateral was released, transferred or stroke out the title before the expiration of the term of the credit,
- (d) If a contract was executed with a view to imposing additional liabilities on the bank or financial institution that the ones normally prevailing practice in the course of operating any business,
- (e) If any agreement or transaction, other than those regular banking or financial transactions permissible under this Act, is found to have been executed,
- (f) If a contract was made with a view to providing employment to the relevant persons.

(4) In cases where any bank or financial institution is subjected to mandatory liquidation, the following transactions shall be void:-

- (a) Preferential transactions made immediately before six months of the initiation of the process of mandatory liquidation or within the period of six months after initiation of the process,
- (b) Preferential transactions made with the relevant persons immediately before one year of the initiation of the process of mandatory liquidation or within the period of one year after initiation of the process,
- (c) Transaction as a result of which a bank or financial institution is subjected to mandatory liquidation, with a lower price immediately before one year of the initiation of the process of mandatory liquidation and other transactions made with low a lower price made within one year after initiation of the process;
- (d) Fraudulent transactions made immediately before two years of the initiation of the process of mandatory liquidation or within the period of two years after initiation of the process;

(5) The Liquidator shall have to file an application to the court to cause to make transactions referred to in Sub-Section (4) as void.

(6) If the court is satisfied that certain transaction are void, the court may issue the following order:-

- (a) To order the concerned person to pay to the Liquidator all or some of the amount the payment of which made by the bank or financial institution with regard to such transactions,
- (b) To order the concerned person to handover the assets so transacted or to pay the equivalent value to the Liquidator,
- (c) To issue an order to exempt or release, in whole or in part, the credit the bank or financial institution has availed, the security or collateral pledged by the bank or financial institution against that credit,
- (d) To issue an order to make any executed pardon, surrender or agreement concluded between the bank of financial institution and another person as void, ineffective or implementable as a result of the voidable transaction,
- (e) If additional order is required to be given for the execution of the order given under this Sub-Section, the court shall issue such an order as well.

(7) In cases where any Director, office bearer, employee or any other person is found to have committed the acts referred to in Sub-Section (3) or (4) and the bank or financial institution has been suffering any loss or damage, they shall be liable to bear the compensation personally for such harm or damage.

84. Records of Assets and Liabilities: (1) A Liquidator shall immediately prepare a record of the assets, liabilities or potential liabilities of a bank or financial institution which has gone into mandatory liquidation under this Act and a copy of which shall be submitted to the Rastra Bank and another copy shall be retained at the concerned bank or financial institution.

(2) The records to be prepared pursuant to Sub-Section (1) shall include the following details:-

- (a) Liabilities towards the depositors and creditors of a bank or financial institution,

- (b) Details of the entire assets and all types of liabilities of the bank or financial institution, and their estimated costs,
- (c) Contracts that a bank or financial institution has entered into for procuring services,
- (d) Significant transactions, the bank or financial institution has made before six months of the date of an order issued for mandatory liquidation.

(3) The record referred to in Sub-Section (1) shall be updated in every trimester and be made available for inspection by the creditors as and when they wish.

85. Power to terminate Transactions: (1) A Liquidator may terminate the following transactions of a bank or financial institution within six month of the date of order issued by the court for mandatory liquidation of the bank or financial institution:-

- (a) Any contract concluded by the bank or financial institution concerning employment,
- (b) Any contract concluded for any services in which the bank or financial institution is a party,
- (c) All functions and contracts being carried out by the bank or financial institution in its capacity as a trustee,
- (d) Any regular function or business of the bank or financial institution or branches of the bank or financial institution according to the need and circumstances,
- (e) Any liabilities said to be borne by the bank or financial institution without any limit,
- (f) Other functions or proceedings as specified by the Rastra Bank.

(2) For the transactions terminated pursuant to Sub-Section (1), no any type of additional amount and compensation may be claimed other than the due amount to be paid or liability to be borne by the bank or financial institution till the date of the termination of the transaction.

86. Notice to submit claims: A Liquidator shall, upon initiating the process of mandatory liquidation of a bank or financial institution, within the time line specified by the Rastra Bank, publish a notice containing clearly the following details asking the persons having

any claim of any type with the bank or financial institution to submit his/her details of claim within one month from the last date of publication of the notice stating his/her claims and the amount he/she may receive:-

(a) To publish a notice in any daily Nepali and English languages newspaper of national level,

(b) To place or cause to be placed such notices at the main places of businesses of the bank or financial institution and post it at every office in a conspicuous manner.

87. Power of Liquidator to Accept or Reject Claims: (1) The Liquidator shall, within ninety days from the date of submission of the claim pursuant to Section 86 carry out an inquire into the claims and accept or reject the claim in whole or in part based on the evidences collected and information thereof shall be given to the claimant and public notice thereof shall also be published.

(2) A claimant having his/her claim accepted or rejected in part pursuant to Sub-Section (1) shall, within fifteen days from the date of publication of the notice thereof, have to submit his/her claims again enclosing the additional evidences, if any.

(3) If there is a need to make any amendment to in the claims made pursuant to Sub-Section (2), the Liquidator may change in whole or in part.

(4) In cases where a claimant is not satisfied with the decision of the Liquidator made pursuant to Sub-Section (1) or (3), the claimant may file an appeal at a court within twenty-one days of after the decision comes to the knowledge of the claimant.

88. Classification of Claims: (1) The claims accepted, accepted partially or rejected pursuant to Section 87 shall by a Liquidator be recorded separately segregating them under different headings.

(2) The claims accepted in part pursuant to Sub-Section (1) shall be included in the accepted list to the extent of acceptance and the rest of the claims shall be included in the list of rejected claims.

(3) While preparing a list of claims, the name and address of the claimant, place, date and amount of payment and details as to whether or not any collateral for securing the claim shall be clearly stated.

(4) If there is a dispute as to a claim, such a claim shall be stated in the list of disputed claims until its decision is made.

(5) A Liquidator shall enlist the approved claims and the claims having no value in the list as he/she has fixed.

(6) The claims of the secured creditors shall be separately classified.

(7) The approved claims shall be listed in such manner as to be placed it on the priority list in the payment process.

89. Meeting of Creditors: (1) The creditors of a bank or financial institution having its mandatory liquidation process initiated may form a Meeting of Creditors for mutual discussions and agreement

(2) Subject to the directives given and conditions as specified by the Rastra Bank, the Liquidator of a bank or financial institution subjected to mandatory liquidation process may negotiable and build consensus as with the creditors and borrowers of such bank or financial institution, as may be necessary.

90. Liquidation Plan:(1) The Liquidator shall, within 30 days after completion of classification of the claims pursuant to Section 88, prepare a detailed plan of action of the liquidation of the said bank or financial institution and submit it to the court for approval, and information thereof shall be given to the Rastra Bank as well.

(2) The following matters shall be incorporated into the liquidation plan to be submitted pursuant to Sub-Section (1):-

- (a) Detail description of the assets and liabilities of the bank or financial institution and their nature and quantity,
- (b) The previous and projected income and expenditure of the bank or financial institution,
- (c) Detail description as to whether to continue the current financial transactions of the bank or financial institution or to revoke them,
- (d) Decision or order of the court,
- (e) Details of the proceedings taken for compensation from a Director, office bearer or employee for the offences and other unlawful acts they have committed,
- (f) Detail description as to the classification of claims and priority order of payment,

- (g) Plan of sale and liquidity of the main assets or group of assets of the bank or financial institution,
- (h) Liabilities of the bank or financial institution and table of details of the probable payment to be made to the depositors and creditors within the upcoming ninety days,
- (i) Costs and expenses of the mandatory liquidation,
- (j) Other details as specified by the Rastra Bank.

(3) The Liquidator shall update the liquidation plan referred to in Sub-Section (1) on a quarterly basis.

(4) Once the liquidation plan is approved by the court, the plan shall have to be made available to the creditors of the bank or financial institution for inspection, whose claims are stated in the plan.

(5) Notwithstanding anything contained elsewhere in this Act, no bank or financial institution, which has been subjected to mandatory liquidation, shall be recapitalized by making full or partial financing.

91. Advance Payment may be made to Depositors Immediately: (1) Notwithstanding anything contained elsewhere in this Chapter, the depositors of the bank or financial institution subjected to mandatory liquidation may be distributed up to one hundred thousand rupees per account as advance with a condition to settle the account at the time of payment of the deposit.

(2) The advanced payment made pursuant to Sub-Section (1) shall be adjusted while making payment pursuant to Section 94.

92. Power to Sell Assets: The Liquidator may, subject to the directives given by the Rastra Bank, auction off or cause to auction off the entire assets of a bank or financial institution being in the process of mandatory liquidation including the assets mortgaged as collateral security of the approved secured claim of the creditors bank or financial institution as follows:-

- (a) At the place of transaction of the securities, foreign currencies or other assets that may be sold easily in the market,

- (b) The securities given for security of the loan of the creditor, foreign currencies or other assets that may be sold easily in the market, by the creditors by themselves,
 - (c) If the Liquidator deems that no reasonable price could be received through an auction of assets, to them in any manner whatsoever,
 - (d) To make other provisions as prescribed by the Rastra Bank.
93. Notice of Settlement of Claims: The Liquidator shall, in order to settle the claims according to the liquidation plan as referred to in Section 90, publish and broadcast a public notice stating the nature, quantity and priority order for payment of the claims.
94. Order of Priority for Payment: (1) A bank or financial institution that has been subjected to mandatory liquidation shall pay its liabilities in the following order of priority:-
- (a) Expenses incurred for mandatory liquidation,
 - (b) An amount upto the amount paid for deposits insurance security made under the prevailing laws not exceeding the limitation of total approved claimed amount of the depositor or an equivalent amount, if payment has been made to a deposit insurance security organization incorporated under the prevailing laws for security of deposit,
 - (c) The deposits remaining after payment made pursuant to Clause (b),
 - (d) Salary, allowances and amounts for other liabilities payable to the employees of the bank or financial institution,
 - (e) Amount payable to the Government of Nepal, local bodies, or the Rastra Bank,
 - (f) Outstanding amounts payable to other banks or financial institutions as fees or valuation amount,
 - (g) Amounts payable to other creditors and other claims;
 - (h) Shareholders according to the prevailing laws.
- (2) Notwithstanding anything contained elsewhere in this Chapter, in case where a creditor submits an application agreeing to accept any of the assets that was not sold while auctioning pursuant to Section 91 in lieu of the amount which the bank or financial institution has to pay him/her, the Liquidator may transfer such assets to such a creditor according to the value of the asset as fixed by the Rastra Bank in its criteria.

(3) Notwithstanding anything contained elsewhere in this Chapter, in cases where any asset has been pledged as security for the secured creditors, such asset shall be used only for fulfilling the liability towards them.

95. Unclaimed Goods or Amount: In cases where a notice has been issued under this Chapter to receive the amount or goods according to the details of the claims or liabilities and if the concerned person fails to show up to receive the amount or goods within the specified time, such amount or goods shall be kept under the responsibility of the Liquidator or other entity according to the direction given by the Rastra Bank.

96. Decision of Liquidation: (1) The Liquidator of the bank or financial institution that has been subjected to mandatory liquidation or having its license revoked by the Rastra Bank shall after completion of the process of liquidation submit an application to the court along with the details of the activities carried out requesting for liquidation.

(2) In cases where the Liquidator submits an application to the court pursuant to Sub-Section (1), the court shall carry an inquiry into its as may be necessary and may decide that such bank or financial institution has been subjected to mandatory liquidation.

(3) The Liquidator shall publish the decision given by the court pursuant to Sub-Section (2) in each national level newspaper of the Nepali or English language at least once and while publishing in such a manner, the main points of the order of the court and the liquidation report shall have to be mentioned.

(4) Upon publication of the notice pursuant to Sub-Section (3), the Liquidator shall request the Office of the Company Registrar to remove the name of the bank or financial institution from the list of registration of companies and the Office of the Company Registrar shall publish the notice of removal of the name of the bank or financial institution from the Companies Registration Book in the Nepal Gazette accordingly.

(5) The process of mandatory liquidation of the bank or financial institution shall be completed after removal of the name of the bank or financial institution subjected to mandatory liquidation after publishing a notice thereof in the Nepal Gazette pursuant to Sub-Section (4) and such a bank or financial institution shall be deemed to have been duly dissolved.

(6) If there is any liability of a Director, Chief Executive, office bearer, employee or shareholder of the bank or financial institution or other person under this Act or other prevailing laws, such liability shall continue to remain as it is.

97. Mandatory Liquidation of Bank or Financial Institution Carrying on Transactions in More Than One Country: The process of mandatory liquidation of a branch of a bank or financial institution carrying out transactions in more than one country shall be as determined by the Rastra Bank by giving due consideration to international practices:

Provided that, mandatory liquidation of a subsidiary company of a bank or financial institution operating in more than one country shall be dealt with according to this Chapter.

98. No claim to be entertained: A creditor or other person who fails to submit a claim within the time line given while publishing a notice for the same pursuant to Section 86 shall not be entitled to make any claim thereafter:

Provided that if a depositor has failed to make a claim over the amount of money deposited in the account, his or her rights will not be affected merely for the reason that he or she has failed to make a claim.

Chapter-13

Provisions Regarding Actions, Offences and Punishment

99. Power to Take Regulatory Actions: (1) In cases where a bank or financial institution is found to have violated this Act, the Rastra Bank Act, or Rules, Bye-laws, Directives or Orders issued thereunder, the Rastra Bank may, depending upon the nature and gravity of the violation, take one or more of the following actions against the bank or financial institution:-
- (a) To admonish or issue a warning in writing,
 - (b) To cause the Board of Directors to enter into a bond for taking reformatory steps,
 - (c) To issue an order in writing not to violate this Act or Rastra Bank Act or Rules, Byelaws, Directives or Order framed thereunder or to take reformatory steps,

- (d) To prohibit to distribute dividends or issuing bonus shares to the shareholders of bank or financial institution or to prohibit to distribute dividends or issues bonus shares,
- (e) To specify limits on, or prohibit, accepting deposits or disbursing credits or accepting deposits or disbursing credits by the bank or financial institution,
- (f) To impose complete or partial ban on the transactions of the bank or financial institution.

(2) The Rastra Bank may suspend or revoke a license to carry out banking or financial transactions issued to a bank or financial institution in the following circumstances:-

- (a) In cases where the banking and financial transactions are not initiated within six months from the date of obtaining the license for carrying out banking and financial transactions,
- (b) In cases where banking and financial transactions have been closed without obtaining approval from the Rastra Bank,
- (c) In cases where the bank or financial institution has operated banking and financial transactions in such a manner as to be against the interests of the depositors or it does not reimburse or fails to reimburse the deposited amount or amount whose maturity date has expired,
- (d) In cases where there is violation of or non-compliance with the Rastra Bank Act, this Act, and the Rules, Byelaws, Orders, Directives framed thereunder or the terms and conditions as fixed by the Rastra Bank,
- (e) If it is found that the bank or financial institution obtained the license submitting false descriptions,
- (f) If the deposits have not been guaranteed as per the prevailing laws.

(3) If a promoter, shareholder, Director, Chief Executive, office bearer, employee or any other relevant person of a bank or financial institution violates this Act or Rastra Bank Act, or Rules, Byelaws, Directives or Orders framed thereunder, the Rastra Bank may, depending on the nature and gravity of the violation, take one or more of the following actions:-

- (a) To forfeit and freeze the subscribed shares of the concerned bank or financial institution and to give direction to the Board of Directors to sell the said shares to other persons,
- (b) To give direction the Board of Directors to freeze or suspend some or all of the facilities including meeting allowances, monthly remuneration of the Board of Directors, Director, office bearer, employee or any other relevant person of the bank or financial institution,
- (c) If the Chairperson, Director, Chief Executive or the person acting in the capacity of the Chief Executive or an employee is, upon an inspection or monitoring of the Rastra Bank, found that such a person has not worked in the interests of the depositors, shareholders, and license holding institution, he/she may be removed from the said position by furnishing a written notification to that effect:

Provided that while taking actions under this clause, a time limit of three to fifteen days shall be given to such a person allowing him or her to submit explanations for defense from the allegation. Such a person shall not be entitled to get any compensation or benefits as set forth in the Personnel Byelaws in lieu of termination of his or her service and he/she shall be deemed to be disqualified for service in any bank or financial institution obtaining a license from the Rastra Bank for a period of five years.

- (d) If the director, office bearer or other employee subjected to the actions referred to in Clause (c) does not receive the letter of taking actions or does not submit an explanation after receiving the letter, the Rastra Bank may inform about the actions taken through a public notice,
- (e) If any bank or financial institution is found to have taken or given remuneration or other facilities contrary to this Act or in an unnatural manner, to recover all of such service facilities or the amount to be required for such facilities and the interests to be accrued thereon from the person giving such facilities,

(f) To issue an order to the bank or financial institution to write to the concerned agency to take action against the Director, office bearer or employee of the bank or financial institution where he/she is professionally affiliated.

(4) If it is found that any amount to be paid by a bank or financial institution resulted from recklessness or negligence of any Director, office bearer or employee, the Rastra Bank may issue an order to recover the amount from such a director, office bearer or employee.

(5) The Director, office bearer or employee shall pay personally within thirty-five days from the date of receipt of the information of the order issued pursuant to Sub-Section (4).

(6) If the amount payable within the time limit as referred to in Sub-Section (5) is not paid, the said amount shall be recovered as government due from any account of such a Director, office bearer or employee or from the account of any of his/her family members that has been kept at any bank or financial institution or from any movable or immovable property belonging to him or her or his or her family member.

(7) If the Rastra Bank carries out regulation, inspection, supervision or any other actions of any bank or financial institution pursuant to this Section and publishes or broadcasts public notices thereof, the concerned bank or financial institution shall pay the expenses incurred in connection with publishing or broadcasting such notices.

100. Power to Impose Fines: (1) The Rastra Bank may impose the following fines against a bank or financial institution which does not give information or documents to be given according to the this Act or Rastra Bank Act, or Rules, Byelaws, Directives or Orders issued thereunder; or which does not make available within the prescribed time the documents, statement, statistics, or record as demanded in the course of carrying out, monitoring, inspection or suspension by the Rastra Bank or any official deputed by the Rastra Bank for that purpose:-

- (a) Daily one hundred thousand rupees up to two weeks from the date of expiration of the time limit,
- (b) Daily one hundred twenty-five thousand rupees up to one month from the date of expiration of the time limit,

(c) Daily one hundred fifty thousand rupees from the date of expiration of the time limit referred to in Clause (b) up to indefinite period of time.

(2) If a Promoter, Director, Shareholder, Chief Executive, office bearer, employee of a bank or financial institution or any other related person violates this Act or the Rastra Bank Act or the Rules, Byelaws framed thereunder or the Directive or Order issued thereunder, or fails to implement the directive issued by the Rastra Bank pursuant to Clause (b) of Sub-Section(3) of section 99, the Rastra Bank may, depending on the nature and gravity of the violation, impose a fine not exceeding on million rupees.

(3) If the bank or financial institution fails to pay the fines imposed pursuant to Sub-Section (1) within three days from the date of receipt of information of the decision, the said amount shall be recovered by deducting from the amount deposited in an account of the said bank or financial institution opened at the Rastra Bank.

(4) The amount of a fine received in the form of cash by the Rastra Bank pursuant to Sub-Sections (1) and (2) shall be deposited to the Government fund.

101. Procedures of Actions: Except otherwise provided for in this Act, the Rastra Bank shall follow the procedures as mentioned hereunder while taking actions pursuant to Section 99 and imposing fines pursuant to Section 100:-

(a) Before taking the proposed action or imposing fines, the accused bank or financial institution or person shall be given a written notice of seven days to defend its/his/her position, stating the nature of the act he/she/it has committed, short description of the act, the amount that may be imposed as fines and the proposed actions.

(b) The concerned bank or financial institution or person shall be required to submit his/her/its clarification in writing within seven days from the date of receipt of the written notice pursuant to Clause (a).

(c) If the written clarification submitted pursuant to Clause (b) is found to be reasonable, the Rastra Bank may amend, delimit or dismiss the charge.

(d) If the written clarification submitted pursuant to Clause (b) is not found to be satisfactory, the Rastra Bank may take action as referred to in Section 99 or impose a fine pursuant to as set forth in Section 100.

(2) The other procedures to be complied with while taking actions or imposing fines by the Rastra Bank shall be as specified by the Rastra Bank.

102. Control Over Licensee Institutions: (1) Notwithstanding anything contained elsewhere in this Act, if the Rastra Bank believes that a licensee institution has violated this Act or the Rastra Bank Act or the Rules or Byelaws, Orders or Directives framed thereunder or is satisfied, on the basis of the inspection and supervision report of the Rastra Bank, that a licensed institution has failed or is likely to fail to perform the obligations required to be performed by the licensed institution or that a bank or financial institution has not been operated smoothly or has carried out anything contrary to the interests of its shareholders or depositors, the Rastra Bank may suspend the Board of Directors of such a licensed institution for a maximum period of three years and take such a bank or financial institution under own control.

(2) After taking any licensee institution under its control pursuant to Sub-Section (1), the Rastra Bank may, either itself or through any appropriate person, firm, company or institution appointed by it, carry out the management of such bank or financial institution.

(3) The Rastra Bank shall, within one year after the management of a licensee institution by itself or through any other person, firm, company or institution pursuant to Sub-Section (2), conduct or cause to be conducted financial and management audit of such institution and publicly publish a report thereof.

(4) If the Rastra Bank is satisfied, from the report referred to in Sub-Section (3), that the concerned licensed institution has become capable of fulfilling the responsibilities required to be fulfilled by it or has reached a stage under which it has become able to operate smoothly, the Rastra Bank may take the following actions:-

- (a) To lift the suspension of the Board of Directors of the licensed institution made as referred to in Sub-Section (1) and handover the management of the institution again to that Board of Directors, or
- (b) To dissolve the Board of Directors of the licensed institution which has been suspended pursuant to Sub-Section (1), and then form a new Board of Directors from among the shareholders of the licensed institution and handover the management of that institution to a new Board of Directors, or

- (c) To convene the General Meeting of the licensed institution, and get a new Board of Directors formed by the Meeting, and handover the management of the institution to the Board of Directors, or
- (d) To take any other action as the Rastra Bank may deem appropriate.

(5) If the Rastra Bank is satisfied, from the report referred to in Sub-Section (3), that the concerned licensed institution has become incapable of fulfilling the responsibilities required to be fulfilled by it or that the institution has reached a stage in which it is not able to operate smoothly, the Rastra Bank may take any of the following two actions:-

- (a) To initiate the process of mandatory liquidation according to the provisions made in Chapter 12 of the Act, or
- (b) To initiate the process of settlement according to the Rastra Bank Act.

(6) The Rastra Bank shall, prior to taking a licensed institution under its control pursuant to Sub-Section (1), give an opportunity to the concerned bank or financial institution to defend itself, by providing it with a time-limit not exceeding fifteen days, depending on the situation.

(7) The concerned licensed institution shall bear all expenses incurred by the Rastra Bank in connected with taking actions taken by it after taking such an institution under its control pursuant to this Section.

(8) The Rastra Bank shall inform the Government of Nepal, Ministry of Finance about the action of taking of any licensed institution under its control pursuant to Sub-Section (1).

103. Offences: (1) If anyone commits any of the following acts in contravention of this Act or the Rules, Byelaws, Directives, Orders, issued were under conditions or limitations shall be deemed to have committed an offence under this Act:-

- (a) Carrying out banking and financial transactions without obtaining a license,
- (b) Obtaining a license for carrying out banking and financial transactions submitting wrong or false statements,

- (c) Carrying out banking and financial transactions against the terms and limitations of the license for carrying out banking and financial transactions,
- (d) Carrying out foreign currency exchange related business without a license,
- (e) Disbursing credits or making other investment in contravention of this Act,
- (f) Engaging in irregularities in the course of distributing credits, valuating mortgage, recovering credits or performing any act related thereto or creating an artificial price in the course of auctioning off of a mortgage, accepting an assets as a non-banking asset, selling a non-banking asset after it is accepted or while taking collateral.
- (g) Committing irregularities by any Director, office bearer, employee and other person while carrying out merger, amalgamation and acquisition, liquidation, or auditing,
- (h) Attempting to commit an offence as referred to in Clauses (a) to (g) or abetting to the commission of such offence by any manner.

(2) Except in cases where a sitting Director, office bearer, employee or any other person abetting in the commission of an offence as referred to in Sub-Section (1) proves that he/she had tried his/her best to avoid committing such an offence or that it was committed without his/her consent, the offence is deemed to have been committed by himself/herself.

(3) Except in connection with regular transaction, in cases where an office bearer or employee of a branch of a foreign bank transfers the assets of such branch to another country, grants approval therefor, delegates authority to that effect, or abets the commission of such an act, it shall be deemed to be an offence committed under this Act.

104. **Punishment:** (1) Any person who commits any of the following offenses shall be liable to the following punishment:-

- (a) In the case of commission of the offence as referred to in Clause (a) of Sub-Section (1) of Section 103, the amount involved shall be confiscated and the offender shall be punished with a fine up to three

times of the amount involved and with imprisonment for a term not exceeding five years,

- (b) In the case of commission of the offence referred to in Clause (b) of Sub-Section (1) of Section 103, the amount involved shall be confiscated and the offender shall be punished with a fine up to two times of the amount involved and with an imprisonment for a term not exceeding two years,
- (c) In the case of commission of the offence referred to in Clause (c), (d), (e), (f) or (g) of Sub-Section (1) of Section 103, the amount involved, if any, shall be confiscated and the offender shall be punished with a fine equal to the amount involved and with imprisonment for a term not exceeding one year,
- (d) In the case of commission of the offence referred to in Clause (h) of Sub-Section (1) of Section 103, the amount involved, if any, shall be confiscated and the offender shall be punished with a half of the punishment to be imposed on the principal offender.

(2) While ascertaining the amount involved for the purpose of Sub-Section (1), the amount shall be calculated taking into account the entire amount of transaction involved.

(3) While imposing fines for the offences as referred to in Clause (a) to (e) of Sub-Section (1), if the amount involved is identified, fines shall be imposed accordingly and if no such amount is identified, a fine ranging from one million to five million rupees will be imposed.

(4) In case of a person committing an offence as referred to in Sub-Section (3) of Section 103, the offender shall be punished with a fine equivalent to the involved amount and with imprisonment for a term not exceeding five years.

(5) In cases where an offence as referred to in Section 103 has been committed by any firm, company or institution, punishment according to this Section shall be imposed on the concerned Director, office bearer, employee or concerned person of the concerned firm, company, or institution and if such a concerned person could not be ascertained, punishment shall be imposed on the chief of the firm, company, or institution, as the case may be.

(6) If anyone is found to have committed any offence as referred to in Section 103 and the proceeds of the offence is found to have been kept or concealed in the name of himself/herself, any family member or relative or in the name of anyone else, such property and the property accrued therefrom shall also be confiscated.

105. Appeal: (1) A bank or financial institution or a Director, office bearer, shareholder or employee thereof which of who is not satisfied with the actions taken by the Rastra Bank pursuant to Section 99 or punishment imposed pursuant to Section 100, may file an appeal at the court within thirty-five days from the date of getting an order of such actions:

Provided that while filing an appeal against an action taken pursuant to Section 99 or punishment imposed pursuant to Section 100 on a bank or financial institution by any shareholder, it has to be filed by a representative of the shareholders representing at least twenty-five percent of the paid up capital of the bank or financial institution.

(2) If any Director, office bearer, employee or any other person wishes to file an appeal pursuant to Sub-Section (1) against an actions taken or a fine imposed on him or her on a personal basis, fifty percent of the amount of such fines or any amount as mentioned in the order as payable should be deposited.

(3) A director, office bearer or employee of any bank or financial institution who is removed or dismissed from his position shall not be eligible to become a director, office bearer or employee of any other bank or financial institution until a period of five years is expired from the date of such actions taken or until, if he or she has filed an appeal at the court, until the exoneration by the court.

106. No Difficulty in Imposing Punishment: If any person is found to have been committed in any offence as referred to in Section 103 while holding any position of a bank or financial institution, there shall be no obstruction to take actions against him/her for the reason of his/her retirement or non-holding of the position.

Chapter-14

Miscellaneous

107. Special Provisions Relating to Infrastructure Development Bank: (1) The Rastra Bank may formulate a separate special policy or issue directives accordingly concerning the establishment, operation, regulation, supervision, merger and acquisitions or liquidation of

Infrastructure Development Banks based on the nature, volume and investment made in respective Infrastructure Development Banks.

(2) Notwithstanding anything contained elsewhere in this Act, the maximum limit of shares to be subscribed by a promoter or shareholder of an Infrastructure Development Bank or limit of equity investment to be made by any foreign bank, financial institution and other corporate body in shares, debentures or other financial instruments shall be as determined by the Rastra Bank from time to time.

108. Security of Deposits to be made: A licensed bank and financial institution shall be required to make security of the amount remained in deposit account in accordance with the provisions of the prevailing law as specified by the Rastra Bank.
109. Banking Secrecy to be Maintained: (1) The relationship between a bank or financial institution and its customers and information pertaining to his or her accounts, records, books, ledgers and statements shall not be disclosed to any person other than the concerned person.

(2) Notwithstanding anything contained in Sub-Section (1), secrecy shall not be deemed to have been violated, if the details or information of any person remained in a bank or financial institution is provided in following manner: -

- (a) If the details or information provided to the Rastra Bank pursuant to this Act or Rastra Bank Act or the Rules or Byelaws framed thereunder or the orders or directives issued thereunder or if the details or information is shared between banks or financial institutions in the course of exchanging credit information,
- (b) If the details or information is provided to the court in connection with any litigation or any other legal action,
- (c) If such notice or information is provided to any Committee of Inquiry carrying out investigations or prosecution, or inquiry according to the prevailing laws or to any other competent person authorized by the prevailing laws, or such information is provided to any regulatory entity.
- (d) If any detail or information is provided to an auditor in the course of auditing,

- (e) If any detail or information is provided to a foreign country in accordance with the prevailing laws relating to mutual legal assistance,
- (f) If, in the course of investigation of any case of a specific nature, the Government of Nepal, Ministry of Finance, has made a request, accompanied by the reason therefor, for providing any details of the account of any person, firm, company or institution maintained with the bank or financial institution, and if the Rastra Bank has given direction according for the same.

(3) No one shall disclose or cause to be disclosed any information or details received under Sub - Section (2) to any unauthorized person.

(4) Except in the circumstance as referred in Sub-Section (2), the Director, Chief Executive, office bearer, employee, auditor, advisor of a bank or financial institution or any other relevant person shall not disclose or cause to be disclosed the secrecy of the accounts, records, books, ledgers and any other information of the bank or financial institution the secrecy of which is required to be maintained in such a manner as to undermine the relationship between the bank or financial institution and its customers.

110. Power to Give Directive to Freeze Accounts: (1) The Rastra Bank may, in the following circumstances, give directive to a bank or financial institution at any time to freeze any account not allowing any type of payment to be made to or transfer of fund in the name of, any person, firm, company or institution:-

- (a) In cases where a request has been made by a competent authority to the Rastra Bank in the course of investigation of any offence,
- (b) In order to maintain national interests by preventing money laundering and financing in terrorism and prevention of corruption, organized crime or controlling commission of possible offence in the transaction of bank and financial institution.

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

111. Right to Make Claims over the Deposits: (1) No claims of any person other than the actual depositors over the deposits made with a licensed bank or institution shall be entertained.

(2) In the event of the death of a depositor, a nominee appointed by him/ her, if any, and if such nominee also dies or if no nominee has been appointed by the depositor, the surviving person from amongst his/her relatives, in the following order of priority, shall have right to such deposits in the first place: -

- (a) The husband or wife living in the joint family,
- (b) The son or daughter, or adopted son or adopted daughter or widow daughter-in-law, living in the joint family,
- (c) The father, mother, grandson or granddaughter living in the joint family,
- (d) The husband or wife, son, daughter, father or mother, son, daughter-in-law or married daughter living separately,
- (e) The grandfather, grandmother, brother, nephew, niece, sister living in the joint family, the grandfather or grandmother living separately,
- (f) The step mother living in the joint family, and grandson and unmarried granddaughter of the son living separately,
- (g) The elder or younger brother living separately and nephew, niece, sister, nephew, niece
- (h) The uncle, widowed aunt, sister-in-law (elder or younger brother's wife), or grand-daughter-in-law living in the joint family,
- (i) Married sisters, grand-daughter-in-law living separately.

(3) If there is no one in the order of priority as referred to in Sub-Section (2), and as such a situation has arisen where a rightful successor according to the prevailing laws has not made any claim over the deposit, the deposit(s) shall be deposited in the Banking Development Fund of the Rastra Bank and be used for banking development.

(4) Notwithstanding anything contained in the prevailing laws, no amount deposited with a bank or financial institution shall be handed over to anyone without the approval of the person who has the title thereto under Sub-Section (1).

112. Statement of Unclaimed Deposits: (1) A bank or financial institution shall, within the first month of each fiscal year, submit to the Rastra Bank statements of any deposit accounts which have remained dormant for the last ten years, and of those which have not been claimed under this Act.

(2) A bank or financial institution shall publish a notice to collect the unclaimed deposits as referred to in Sub-Section (1) once in every five years in a national level daily newspaper. Details description thereof shall also be posted by the bank or financial institution on its website.

(3) In cases where the amount as referred to in Sub-Section (1) is not collected within a period of twenty years, such deposit shall be collected to the Banking Development Fund of the Rastra Bank and be used for banking development.

113. Recovery from or confiscation of deposits: In cases where any credit has been distributed or transaction has been carried out by pledging as collateral or security the amount deposited with a bank or financial institution, or if amounts are deposited with a bank or financial institution with misappropriated funds belonging to the Governmental of Nepal or any entity owned by the Government of Nepal, or with funds obtained by committing any act which is deemed to be an offense under the prevailing laws, or with funds collected by carrying out any activity relating to terrorism or committing banking or financial offence or organized crime, such deposits may be confiscated or such collateral or security or misappropriated or other funds may be recovered from such deposits or such deposit may be confiscated in accordance with the prevailing laws.
114. Recovery from Director: If any Director is found to have taken any cash or kind for personal benefit in the course of transaction of a bank or financial institution, the bank or financial institution shall recover such cash or kind from such a Director.
115. Prohibition on Making Claims: If any person is found to have entered into any transaction with any Director or with his/her representative knowingly or having adequate reasons to believe that the Director has entered into the transaction for his/her personal interests or inflicting loss to a bank or financial institution, such a person may not make a claim against the bank or financial institution with regard to such transaction.
116. Government of Nepal to be a Plaintiff: (1) A case relating to offenses as referred to in Section 103 shall be filed with the Government of Nepal being the plaintiff, and such a case shall be deemed to have been included in Schedule 1 of the Government Cases Act in force.
- (2) Anyone may file a complaint in writing or verbally against any Director, office bearer, employee, borrower or any other person committing an offence referred to in

Section 103 along with evidence thereof at the nearby police office. While filing such a complaint, it shall not be required to mention the name of the person filing the complaint.

(3) The Rastra Bank shall extend the necessary cooperation in all acts such as inquiry of investigation, prosecution of the offences as referred to in Section 103.

117. Provisions Relating to Transparency: (1) A bank or financial institution or a branch of a foreign bank or financial institution shall be required to publish a periodic report on its financial position and status of risks in every three months for transparency of the transactions it has carried out.

(2) The minimum matters to be included in the report as referred to in Sub-Section (1) shall be as specified by the Rastra Bank.

118. Provisions Relating to Protection of Customers' Interests: The Rastra Bank may carry out the following functions for the purpose of protection of the interests of consumers:-

- (a) To ensure that a licensed bank or financial institution has been carrying out its financial transactions as per the prevailing laws and that they have been making available financial services to the consumers in a transparent and fair manner,
- (b) To make coordination on matters of protection of the interests of customers in the financial sector,
- (c) To collect the necessary information to introduce reform in matters of the protection of interests of consumers in the banking sector and to bring about financial literacy.

119. Exemption and facilities: (1) Any mortgage deed of movable or immovable assets to be concluded for credit not exceeding one million rupees supplied by a bank or financial institution to any citizen of Nepal or any institution established in accordance with the laws in force for agriculture, cottage and small-scale industry, irrigation, hydro-power generation and for any other enterprise as specified by the Government of Nepal shall not be required to make registration of such deed.

(2) The maturity period of the credit and deposits shall be as fixed by the bank or financial institution.

(3) No revenue stamp fee shall be charged on any kind of deeds or documents related with the bank or financial institution.

120. Expenditures Management: The Rastra Bank may issue the necessary directives with regard to preliminary, incorporation, administrative, commercial and managerial expenditure as well as other expenditures of a bank or financial institution.
121. Statement of Assets to be submitted: The Directors, office bearer and the Chief Executive of a bank or financial institution shall be required to submit a statement of the entire movable and immovable assets and liabilities in his/her name and in name of his/her family members within sixty days from the date of completion of every fiscal year to the concerned Bank and information thereof shall be given also to the Rastra Bank. While submitting such a statement, the source of such income shall also be mentioned.
122. Credit, Liabilities and Titles against the Collateral of Credit may be purchased or sold: Notwithstanding anything contained in be prevailing laws of Nepal and unless otherwise provided for in the agreement concerning credit, the title over the credit given by any bank or financial institution to any person or of the liability it has accepted and of the movable or immovable assets pledged as collateral may also be purchased or sold.
123. Settlement of Disputes: (1) In case of any dispute arising between banks or financial institutions, such a dispute shall be required to be settled in mutual consent.
- (2) In cases where a dispute could not be settled through mutual consent in accordance with Sub-Section (1), the Rastra Bank shall settle the dispute through mediation or other methods of disputes resolution under the prevailing laws.
- (3) The decision made by the Rastra Bank pursuant to Sub-Section (2) shall be final.
124. Not to be liable for acts done in good faith: (1) The office bearer or employee of the Rastra Bank or of a bank or financial institution shall not be held individually or severally liable for any act carried out in good faith under this Act or the Rastra Bank Act or the Rules or Byelaws framed thereunder or the orders or directives issued thereunder.
- (2) If any kind of lawsuit is filed against the Rastra Bank, a bank or financial institution or an office bearer thereof in relation to any loss or damage caused or likely to be caused by any act carried out or supposed to be carried out in good faith in connection with the compliance with this Act or Rastra Bank Act or the Rules or Byelaws framed thereunder or the orders or directives issued thereunder, the concerned institution shall bear the expenses of such lawsuit:

Provided that if an act is committed out of enmity, negligence or malafide intention, the concerned person shall be liable and the Rastra Bank or a bank or finance institution shall not bear the expenses to be incurred on such matter.

125. Actions Taken not to be Invalid: No action taken by a Director or Board of Directors shall be void merely on the ground that any irregularity in appointment of the Director of a bank or financial institution or in formation of any committee had taken place or the position of a Director had fallen vacant.
126. Study Committee and Sub-committee may be formed: (1) The Rastra Bank may, in order to carry out overall study on the reform of banking and financial laws, credit recovery, stability of the financial sector, and timely reforms on the financial system and to submit a report, thereon, constitute an expert study committee comprising representatives and experts of the Rastra Bank, bank or financial institutions and concerned entities.
- (2) The Rastra Bank may, for the purpose of Sub-Section (1) constitute sub-committees as may be necessary.
- (3) The functions, duties, and facilities of the Study Committee as referred to in Sub-Section (1) or of the sub-committee as referred to in Sub-Section (2) shall be as specified by the Rastra Bank.
127. Taking Oath of Office: (1) Each Director, office bearer, Chief Executive or employee of a bank or financial institution shall, prior to assuming the duties of his or her office, take the oath of office and secrecy according to the format as referred to in the schedule.
- (2) The oath of office referred to in Sub-Section (1) shall be administered by the Rastra Bank to the Chairperson, by the Chairperson to other Directors and the Chief Executive and by the Chief Executive or official designated by him/her to other official and employees.
128. Amendment of Memorandum of Association and Articles of Association: Notwithstanding anything contained in prevailing laws, amendment to the Memorandum of Association and Articles of Association of a bank or financial institution shall not be effective unless approved by the Rastra Bank.
129. This Act to Prevailed: (1) Matters as referred to this Act or the Rules, Byelaws, working procedures or Orders or Directives issued under this Act, it shall be dealt with in accordance

with such provisions and in other matters, it shall be dealt with according to the Rastra Bank Act and other prevailing laws.

(2) Matters Relating to the regulation, inspection and supervision and settlement of a claim of the bank or financial institutions established under this Act shall be under the Rastra Bank Act.

130. Power to Remove Difficulties: (1) If any difficulty arises in connection with the enforcement of any provision of this Act, the Rastra Bank may, with the approval of the Government of Nepal, issue necessary orders to remove such difficulty.

(2) While issuing an order for removing difficulty pursuant to Sub-Section (1), reasons and justification thereof shall also be specified.

131. Power to issue Order or Direction: The Rastra Bank may, subject to this Act or the Rules or Byelaws framed thereunder, issue an order or directive to a bank or financial institution as may be necessary.

132. Power to frame Rules, Byelaws: (1) The Rastra Bank may, in order to implement this Act, if it deems necessary, frame and enforce necessary Rules of Byelaws.

(2) The Rules framed by the Rastra Bank pursuant to Sub-Section (1) shall commence only after approval by Government of Nepal.

133. Power to Frame Byelaws and Working Procedures: (1) The Board of Directors may, in order to carry out its institutional, administrative and business transactions in a systematic manner, with the approval of Nepal Rastra Bank, frame byelaws relating to any or all of the following matters subject to this Act and the terms and conditions, limitations and norms as prescribed by the Rastra Bank:-

- (a) On appointment, promotion, transfer, dismissal, remuneration, allowances, gratuity, pension, leave, code of conduct, discipline, and the terms and conditions of service and the formation of such a service,
- (b) On financial administration of the bank or financial institution,
- (c) On writing off of credits,
- (d) On other matters as prescribed by the Rastra Bank from time to time.

(2) In addition to the matters referred to in Sub-Section (1), a bank or financial institution may frame working procedures on the following matters as may be necessary:-

- (a) On meeting of the Board of Directors and working procedures of the General Meeting,
- (b) On delegation of authority by the Board of Directors to any Director, Chief Executive, Office bearer or employee,
- (c) On the terms and conditions of a contract to be concluded on behalf of a bank or financial institution,
- (d) On procedures relating to the use of the seal of a bank or financial institutions,
- (e) On valuation of non-banking assets to be mortgaged at the time of disbursement of credits or at the time of auction,
- (f) On other business to be carried out by a bank or financial institution as per this Act,
- (g) On declassifying documents and papers,
- (h) On other matters as specified by the Rastra Bank, from time to time.

134. Repeal and Saving: (1) The Banks and Financial Institutions Act, 2063 (2006) is hereby repealed.

(2) Acts carried out and actions taken according to the Act repealed pursuant to Sub-Section (1) shall be deemed to have been taken under this Act.

Schedule

(Relating to Sub-Section (1) of Section 127)

Format of Oath of Office

I,solemnly and sincerely affirm that as I have been appointed/nominated/elected to the office of of the bank or financial institution, I shall perform the duties of my office paying attention forever to the promotion of financial system and interests of the bank or financial institution with honesty subject to the prevailing laws, Rules and policies, regulation and directives of the Rastra Bank. I shall not disclose the transactions and matters of the bank or financial institution to be kept confidential. I also do solemnly affirm with honesty and truth that I shall not disclose any information or matter that come to my knowledge as in the capacity of at any time regardless of whether I remain in office or not, directly or indirectly, except in cases where authorized by the Board of Directors and compelled by law.

The person taking the oath of office

Name:

Designation:

Signature:

Date:

The person administering the oath of office

Name:

Designation:

Signature:

Date: