

31 July 2017

## **Nepal Rastra Bank introduces general conditions relating to approval of Share Pledge and Personal Guarantee in favor of a Foreign Lender**

### ***Background:***

Nepal Rastra Bank (“**NRB**”) has published a notice vide the power conferred under Section 9 C and Section 10 of Foreign Exchange (Regulation) Act 1962 (2019) (“**FERA**”) in relation to providing of personal guarantee and share pledge in favor of foreign lender (the “**Notice**”). The Notice is available online in Nepalese language on website: (<https://nrb.org.np/fxm/notices/noticeJune12.pdf>).

Section 9 C of the FERA restricts to make or receive any kind of payment in any kind of manner to persons residing outside of Nepal. Similarly, Section 10 of the FERA restricts to give any securities to any person residing outside of Nepal unless done in accordance to the provisions specified by NRB. In this regard, the Notice has provided certain requirements for providing share pledge and personal guarantee in favor of foreign lenders. Key requirements stated in the Notice are set out below.

1. ***Approval Requirement:*** A prior approval from NRB is required for providing share pledge or personal guarantee in favor of a foreign lender. The Notice does not explicitly specify if a prior approval from NRB is also required for providing corporate guarantee in favor of a foreign lender. However, in context of Section 9 C and Section 10 of FERA, this requirement is equally applicable to corporate guarantee.
2. ***Documents Required:*** Following are the key documents required for obtaining of approval along with application to NRB are as follows: (i) Loan Agreement; (ii) Share Pledge Agreement; and (iii) Personal Guarantee/ Corporate Guarantee.
3. ***Timeline:*** The language of the Notice suggests that the approval is required to be obtained after obtaining an approval for the Loan Agreement from the concerned authority. However, in view of the past practices, applications can be submitted for approval for foreign loan as well as share pledge/guarantee at once.
4. ***Recording:*** The Notice requires to record and to update the release of pledged shares and such other documents upon completion of transaction contemplated in the Loan Agreement.
5. ***Other General Conditions:*** The Notice lists out terms and conditions for obtaining of a foreign loan:
  - i) The approved foreign loan is required to be brought into Nepal by way of banking channel and recorded with NRB upon receipt of the loan.
  - ii) Foreign lenders are required to adhere to terms and conditions of the approved Loan Agreement and prevailing law if the lender requires obtaining, use, control or sell the pledged shares.
  - iii) In case of default in payment of loan pursuant to the Loan Agreement, the pledged shares cannot be sold in a foreign country.

- iv) Foreign lenders can request for record of the transfer of title of the pledged shares pursuant to FERA and other prevailing laws with NRB.
- v) The pledged shares and documents creating right to obtain payment from the guarantee can be enforced to the extent covering the outstanding amount or payables under the Loan Agreement.
- vi) To record with NRB the payment of interest and loan and subsequently release of all documents and shares pursuant to the Loan Agreement.

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