

**Hedging Related Regulations, 2075 (as amended in 2076)**

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First Amendment on 2076/12/03 (16 March 2020)

***Note:** The changes made through first amendment have been underlined.*

The Government of Nepal in accordance with the rights provided by section 22 of Foreign Exchange (Regulation) Act, 2019, has formulated the following rules.

**1. Short Title and Commencement:**

- (1) The name the Regulation shall be "Hedging Related Regulation, 2075".
- (2) This Regulation shall come into force immediately.

**2. Definition:** Unless the subject and the context otherwise requires, in this Regulation:

- (a) "**Act**" means Foreign Exchange (Regulation) Act, 2019.
- (b) "**Project**" means the project set out under Rule 3.
- (c) "**Bank**" means the Nepal Rastra Bank.
- (d) "**Hedging**" means the arrangement to stable the exchange rate of the foreign currency for repatriation of the investment under an agreement, at the same exchange rate of the foreign currency deposited in the Bank at the time of making foreign loan investment by the the investor for project implementation.

**3. Availability of Hedging Facilities:** Bank may provide the facility of hedging to the following projects with foreign loan investment:

- (a) Generating hydroelectricity of capacity of 100 MW or more,
- (b) Construction of more than 30 km length electric transmission line with capacity of 220 KVA or more,
- (c) Construction of Rail, Metro or Mono Rail of more than 10 km length,
- (d) Construction of Fast track of more than 50 km length,
- (e) Other projects determined through the decision of the Council of Ministers, Government of Nepal.

**4. Approval is required:** The projects intending to obtain hedging facility under Rule 3 shall obtain approval for foreign investment and bringing in foreign loan in foreign currency, in accordance with prevailing federal laws.

**5. Application to be made :**

- (1) A project intending to obtain hedging facility as per this Regulation, shall submit an application to the Bank in the format provided under Schedule- 1.
- (2) The following documents have to be submitted along with the application mentioned under Sub-rule (1):
  - (a) A copy of license received from the concerned authority for implementation of the project,
  - (b) A copy of project investment agreement,
  - (c) A copy of approval for foreign investment and bringing in foreign loan in foreign currency as per Rule 4.
  - (d) A copy of Memorandum of Association and Articles of Association of the Company.
  - (e) A copy of notice issued by concerned ministry where a project has been determined for providing hedging facility through the decision of Council of Ministers, Government of Nepal pursuant to Rule 3 (e).

**6. Examination of the application:**

- (1) The Bank shall examine if necessary details and documents have been submitted with the application received as per Rule 5.
- (2) While conducting examination pursuant to Sub rule (1), if any detail or document is not sufficient or clarification on any subject matter is necessary, the Bank shall provide written notice to the applicant providing maximum of 15 days to submit details or documents or provide additional clarification on such details or documents.
- (3) On receipt of notice pursuant to Sub-rule (2), the applicant shall provide the required details or documents or clarification on any subject matter, to the Bank within prescribed time.
- (4) If it appears that a hedging facility cannot be provided after examining the application on the basis of details or documents received pursuant to Sub-rule (3) and Sub-rule (2) of Rule 5, the Bank shall provide written notice of the decision within 7 days to the applicant.

**7. Granting Approval:** After examination of the application pursuant to Rule 6, if it appears to be reasonable to provide hedging facility as requested, the Bank shall provide approval for providing the hedging facility to the applicant, on the conditions prescribed below:

- (a) Foreign debt investment to be taken in foreign convertible currency as determined by the Bank,
- (b) Foreign currency received in accordance with part (a) to be deposited in the bank account within the time provided by the Bank.

**8. Depositing foreign currency:**

- (1) An application shall be made to the Bank by the project receiving approval pursuant to Rule 7 in order to deposit the foreign currency to be received in the form of foreign loans.
- (2) The Bank shall provide bank account to the applicant after receiving an application pursuant to Sub-rule (1).
- (3) The investor shall deposit foreign currency in the bank account provided by the Bank within the time line provided by the Bank.

- (4) After depositing the foreign currency in the bank account pursuant to Sub-rule (3), the Bank shall convert such foreign currency to Nepalese Rupees at the prevailing exchange on the day of deposit of such foreign currency and deposit such Nepalese Rupees in the account maintained in the name of the of the project at any commercial bank.

**9. Locking of foreign exchange rate:**

- (1) The foreign currency deposited in the bank account pursuant to Sub-rule 3 of Rule 8, shall be locked by the Bank, without any alteration, at the same exchange rate in which such currency was converted in Nepalese Rupees pursuant to Sub-rule 4 of the said Rule.
- (2) The bank shall provide hedging facility to investor to repatriate the foreign exchange rate which has locked pursuant to Sub-rule (1).

**10. Hedging Charge:**

- (1) Bank shall determine the hedging fee on basis of the foreign exchange rate risk. While determining the hedging fees, the Bank may charge different fees on every project.
- (2) The concerned project shall submit hedging fees as determined pursuant to Sub-rule (1), to the Bank.
- (3) The Bank shall issue hedging solution certificate in the prescribed format under Schedule 2 to the project after receiving hedging fees pursuant to Sub-rule (2).
- (4) Notwithstanding anything contained in Sub-rule (1), in case of an agreement executed prior to the commencement of the Regulation, implementation shall be as stated in such agreement. However, in case nothing has been stated in the agreement, hedging fee determined pursuant to Sub-rule (1) shall be submitted to the Bank.

**11. Period of hedging facility:** The period of hedging facility provided under this Regulation period shall be provided for a maximum of 5 (five) years, depending on the nature of project.

**12. Renewal:**

- (1) The project intending to renew the certificate received pursuant to Sub-rule (3) of Rule 10, shall submit an application for renewal to the Bank 30 days prior to expiry of the period of the certificate.
- (2) If the application received pursuant to Sub-rule (1) appears to be reasonable, the bank shall, depending on the nature of the project, renew the hedging solution certificate for maximum period of 5 years at a particular instance, after receiving fees pursuant to Rule 10.

**13. Currency for Hedging facility:** The hedging facility under this Regulation shall be provided for only those foreign currencies which have been specified by the Bank by publishing public notice.

**14. Establishing a hedging fund:**

- (1) There shall be one hedging fund at the Bank for the purpose of managing foreign currency deposited in the bank pursuant to Rule 8 and hedging cost received pursuant to Rule 10.
- (2) The limit of the amount of the fund mentioned under Sub-rule (1) shall be as determined by the Bank.

- (3) The Bank shall invest and carry out necessary management of the amount deposited in fund mentioned under Sub-rule (1).
- (4) The return received from the investment and management pursuant to Sub-rule (3) shall be deposited in same currency as received, in the hedging fund mentioned under Sub-rule (1).
- 15. Coordination and Consultation:** In relation to providing hedging facility under this Regulation, the Bank shall coordinate and consult with Ministry of Finance, concerned ministry for the project, concerned authority of Government of Nepal and the investor.
- 16. Maintenance of Foreign Exchange:** The bank shall maintain the foreign currency provided for hedging facility pursuant to Rule 9 as if the foreign currency was maintained for activities prescribed under Sub-section (2) of Section 6 of the Act. .
- 17. Accounts of hedging:** The bank shall maintain details of accounts related to hedging as per the Nepalese accounting standards.
- 18. Report to be submitted:** The bank shall prepare report regarding activities related hedging facility each year and shall be submitted it to Ministry of Finance within 3 months from the end of each fiscal year.

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