

Hedging Regulations 2075 (2019)

The Government of Nepal ("GON") has issued Hedging Regulations 2075 (2019) ("Regulation") utilizing the powers conferred by Section 22 of the Foreign Exchange (Regulation) Act 2019 (1962). The Regulation was approved by the Council of Ministers, Government of Nepal on *Poush* 15, 2075 (December 20, 2018) and was published in the Nepal Gazette on *Falgun* 13, 2075 (February 25, 2019). The Regulation's purpose is to help foreign investors in infrastructure projects manage risks arising from foreign exchange fluctuations.

Types of Projects

Under Rule 3 of the Regulation, the GON may provide hedging facility to the following projects with foreign investment loans:

- a) Hydroelectricity projects with a capacity of 100 MW or more;
- b) Construction of electricity transmission lines that are more than 30 kilometers in length with a capacity of 220 KVA or more;
- c) Construction of rail, metro and mono railway lines that are more than 10 kilometers in length;
- d) Construction of fast-track roads that are more than 50 kilometers in length; and
- e) Other projects as specified by the Council of Ministers, Government of Nepal.

The Regulation defines "hedging" as locking-in a fixed foreign exchange rate, which would allow a foreign investor to repatriate its foreign loan investments at the same exchange rate that is agreed to when the foreign investor initially deposits foreign currency in Nepal Rastra Bank ("NRB"), the central bank.

Rule 4 of the Regulation provides that to obtain a hedging facility, a project company must first be approved for foreign investment under prevailing foreign investment laws. A hedging facility is available only for foreign convertible currencies as specified by NRB.

Procedure

To obtain a hedging facility, a project company must submit an application to NRB along with the following documents:

- a) Copy of license obtained from relevant government agency regarding the project's implementation;
- b) Copy of agreement on the investment project ;
- c) Copy of foreign investment approval letter;
- d) Copy of Articles of Association and Memorandum of Association of the company; and
- e) If applicable, copy of a letter from the relevant Ministry confirming that the Council of Ministers has approved hedging facility for a project under Rule 3(e) (see above).

NRB may require the project company to submit additional documents within 15 days. In the event a hedging facility cannot be provided to the project company, NRB must notify the project company of its decision within 7 days.

Conditions

NRB may approve a hedging facility to a project company under the following conditions:

- a) The project company must obtain the loan in the convertible foreign currency as determined by NRB; and
- b) The foreign currency must be deposited at the time specified by NRB.

Hedging Method

After the project company deposits foreign currency in NRB, NRB will deposit the equivalent amount in NPR under the prevailing exchange rate in the project company's bank account in a commercial bank. NRB shall then lock-in the exchange rate, thus guaranteeing the repayment of the loan at that rate.

Conclusion

The purpose of the Regulation is to encourage foreign investments in infrastructure projects in Nepal by minimizing the risk of foreign exchange fluctuations. With the implementation of this Regulation, foreign investors that are approved for the hedging facility will be protected against potential losses incurred by foreign exchange fluctuations and will enjoy greater certainty.

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