NRB Unified Directives for Class A, B and C Licensed Institutions

Directive 11

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Contents

Directive 11: Provisions Relating to Consortium Financing

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Controlled English translation

Provisions Relating to Consortium Financing

Preamble

Controlled English translation

In exercise of the authority conferred by Section 79 of the Nepal Rastra Bank Act, 2058, the following directives are issued to make loans extended by Class “A”, “B” and “C” licensed institutions under Consortium Financing systematic and effective.

Source Page: 95

1 Definition of Consortium Financing Loan

Controlled English translation

Unless the subject or context otherwise requires, “Consortium Financing Loan” in this Directive means loans, advances and facilities extended to a single customer, firm, company or project by two or more licensed institutions pursuant to an agreement based on mutual understanding.

2 Provisions Relating to Consortium Financing

Controlled English translation

A firm/company using credit extended under consortium financing shall carry out banking transactions only with the Lead Bank and participating banks. This provision shall apply equally to Loose Consortium loans. However, once a consortium financing group has been formed, nothing herein shall prevent admission of a new member with the consent of the group. “Loose Consortium” means loans, advances and facilities extended/to be extended by two or more banks and financial institutions for a project without forming a consortium group, while maintaining security on a pari passu basis.

3 Conditions Required for Participation in Consortium Financing

Controlled English translation

(1) Only institutions licensed by this Bank to conduct financial transactions and Hydroelectricity Investment and Development Company Limited (in the relevant sector) may participate in consortium financing.
However, nothing herein shall prevent the Employees Provident Fund and Citizen Investment Trust from participating in a consortium group and extending credit where an institution licensed by this Bank to conduct financial transactions or Hydroelectricity Investment and Development Company Limited (in the relevant sector) acts as the Lead Institution.
Explanation: For the purpose of this Directive, “Lead Institution” means a licensed institution selected by the consortium group as the lead institution.
(2) Where a financial institution other than the institutions mentioned in the proviso to sub-clause (1) is included as a participant in consortium financing, this Bank shall be informed.

4 Restriction on Lending by Other Institutions and Opening Customer Accounts

Controlled English translation

(1) A licensed institution that does not participate in a consortium financing arrangement shall not extend additional loans, advances or facilities for the same project on top of credit extended by the consortium group.
However, where there is a special reason, a licensed institution not participating in the consortium group may, with approval of the consortium group, extend any type of additional loan, advance or facility in addition to credit extended by the consortium group.
Explanation: For the purpose of this Directive, “Consortium Financing Group” means the group of institutions participating in consortium financing.
(2) A customer, firm, company or project that has obtained loans, advances or facilities under consortium financing shall not open an account for such loans, advances or facilities with a licensed institution other than a participating member.
However, where there is a special reason to open such account with another licensed institution, it may be opened with approval of the consortium group.

5 Time Limit for Decision on Loan Disbursement

Controlled English translation

After an application for credit has been received, the consortium financing group has been formed and the Lead Institution selected, the Lead Institution and participating members shall decide within ninety days whether or not to extend the loans, advances and facilities.

6 Selection of Participating Licensed Institutions

Controlled English translation

The borrower and the licensed institution to which the borrower has applied for loans, advances or facilities shall have the right to select other participating members of the consortium financing. However, once the consortium financing group has been formed, no new member may be admitted without the consent of the group.

7 Formation of the Consortium Financing Group

Controlled English translation

All licensed institutions selected pursuant to Clause 6 shall form a consortium financing group before extending loans, advances or facilities. The internal procedures of the group shall be as determined by the group itself.

8 Selection of the Lead Institution

Controlled English translation

The members of the consortium financing group shall select from among themselves one licensed institution as the Lead Institution, taking into account the institution willing to invest the largest share of the loan/facility, its long-standing familiarity with the customer, experience in consortium financing and capacity to provide professional advice. Where necessary, a Co-lead institution may also be appointed with its duties specified in the consortium financing agreement.

9 Disbursement and Recovery through the Lead Institution

Controlled English translation

Loans, advances and facilities under consortium financing shall be disbursed through the Lead Institution, and recovery of principal and interest shall also be made through the Lead Institution. Where principal instalments or interest are recovered partially, the recovered amount shall be distributed pro rata in proportion to investment.

10 Functions, Duties and Powers of the Lead Institution

Controlled English translation

The functions, duties and powers of the Lead Institution shall be as follows:
(a) act as the lead and representative (agent) of participating members;
(b) coordinate among participating members and carry out necessary correspondence;
(c) mandatorily convene a meeting of the consortium group at least once every six months;
(d) where any member requests a meeting for a special reason, convene the meeting within fifteen days;
(e) analyse the project, prepare a report and provide copies to all participating members;
(f) where short-term credit is requested for the project, analyse the requirement;
(g) prepare the terms of the consortium financing agreement on the basis of consent of participating members and provide one copy to each member;
(h) prepare documents required for extension of loans, advances and facilities;
(i) arrange creation/registration of security and perform all activities relating to protection of investment, including insurance;
(j) safely retain all documents relating to loans, advances, facilities and security and provide copies to all participating members;
(k) obtain necessary data and other information from the borrower from time to time and make such information available to all participating members;
(l) periodically carry out on-site inspection of the project with participation of members, prepare inspection reports and provide copies to all members;
(m) periodically evaluate performance of the financed project and inform all members;
(n) arrange for participating members to maintain loan-loss provisions uniformly;
(o) submit to this Bank all information required in relation to consortium financing, carry out necessary correspondence as Lead Institution on its own behalf and on behalf of members, and provide such information to all participating members;
(p) where legal action must be initiated against a defaulting borrower, obtain a decision of the consortium group meeting and proceed with the necessary legal action;
(q) charge the service fee prescribed by Directive No. 20 for performing its role, as decided by the consortium group in the agreement;
(r) where a member delays disbursement of the amount it committed to invest and the Lead Institution disburses that amount on the member's behalf within its own committed credit limit, recover from the delaying member the principal amount, interest for the period of delay and any compensation agreed by the consortium group;
(s) where expenses incurred in arranging consortium financing or in taking legal action against a defaulting borrower cannot be recovered from the borrower, recover such expenses from all participating members in proportion to their investment;
(t) before extending loans, advances or facilities, obtain necessary information regarding the borrower from the Credit Information Centre, and where the borrower is adversely reported or has failed to repay any credit on time, do not extend credit;
(u) make loans, advances and facilities available to the borrower on time in accordance with the consortium financing agreement; and
(v) subject to directives of this Bank, carry out other necessary activities pursuant to decisions of the consortium group meeting.

11 Majority Decision to Prevail

Controlled English translation

Where consensus cannot be reached among participating members on any matter, a decision shall be taken by majority, and votes shall be counted on the basis of the percentage of credit investment. Where votes are tied, the Lead Institution may cast a deciding vote.

12 Duties and Responsibilities of Participating Members

Controlled English translation

The duties and responsibilities of participating members shall be as follows:
(a) give the Lead Institution an authorisation letter (mandate) to act on the member's behalf in relation to consortium financing;
(b) provide all assistance required by the Lead Institution to perform its role;
(c) actively participate in consortium-financing meetings;
(d) once a formal decision to extend loans, advances or facilities has been made by the consortium group meeting, comply with all terms stated in the consortium financing agreement;
(e) respect the spirit of consortium financing and endeavour to resolve disputes so that decisions are reached by consensus as far as possible;
(f) not undertake any activity in furtherance of its own interest to the detriment of another member;
(g) after approving the credit it is to extend, inform the Lead Institution and make the amount available on time;
(h) conduct all consortium-financing activities transparently and exchange information relating to the loan and borrower;
(i) promptly implement decisions of the consortium group meeting;
(j) not invest in a project beyond the prescribed limit, take unilateral recovery action, or classify the loan differently from the consortium arrangement; and
(k) make loans, advances and facilities available to the borrower on time in accordance with the consortium financing agreement.

13 Provisions Relating to Additional Credit

Controlled English translation

Where additional credit is required in respect of a loan financed under a consortium arrangement, the following basis shall apply:
(a) only the consortium group may decide, after analysing the borrower's requirement, to provide additional loans, advances or facilities. Any additional amount so approved shall be provided by all members in proportion to their previous investments;
(b) where, after such decision, a participating member is unable to provide its share of the additional amount, the remaining members or another member with their consent may provide the remaining amount. With the consent of the borrower and the consortium group, a new member may also be admitted to provide additional investment; and
(c) where consortium institutions are unable to provide additional credit/facility required by the borrower, the borrower shall be informed thereof in writing.

14 Circumstances in which a Member May Withdraw from Consortium Financing

Controlled English translation

(1) A member may withdraw from the consortium financing group, without adversely affecting Project Completion, only where: (a) another member agrees to take the share of the member wishing to leave; or (b) with consent of existing members, the member transfers its share to a new member.
(2) A member accepting the share of a departing member shall assume all liabilities of the former member. A departing member may sell its share at a discount or premium.

15 Appointment of Auditor or Consultant

Controlled English translation

Where it is necessary to evaluate the borrower's financial position from time to time, the consortium group may appoint an independent auditor or consultant on its behalf. The cost of such auditor or consultant shall be borne by each member in proportion to its credit investment.

16 Use of a Single SOL Group Name

Controlled English translation

For consortium and pari passu loans, when using the borrower's SOL Group Name, the consortium group shall decide the name in a meeting and all participating banks and financial institutions shall use the same SOL Group Name.

17 Statements to Be Submitted in Relation to Consortium Financing

Controlled English translation

The Lead Institution shall prepare the statement prescribed in Directive Form No. 11.1 for each fiscal year as of the ends of Ashoj, Poush, Chaitra and Ashadh and mandatorily submit it, within 30 days from the month-end date, to the Banks and Financial Institutions Regulation Department and the concerned Supervision Department of this Bank.

18 Repeal and Saving

Controlled English translation

(1) The following directives previously issued by this Bank are hereby repealed: the directive issued as Directive No. 11/081 under the consortium-financing provisions of Unified Directives, 2081 and all circulars relating to the same subject issued thereafter up to Magh 2, 2082.
(2) Any acts or actions done or taken pursuant to the directives and circulars repealed under sub-clause (1) shall be deemed to have been done or taken pursuant to this Directive.

Forms 11.1: Consortium Financing Loan Statement

Controlled English translation

Quarterly

Source Page: 100

Controlled English translation

1. S.N.

2. Name of Group

3. Name and Address of Borrower

4. Loan Extended - Amount

5. Loan Extended - Date

6. Repayment Date

7. Additional Loan - Amount

8. Additional Loan - Date

9. Recovered - Principal

10. Recovered - Interest

11. Outstanding - Principal

12. Outstanding - Interest

13. Remarks

Controlled English translation

Details of the participating banks and financial institutions shall be stated in the Remarks column.

Human Review Required: True

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