

Company Act, 2063

Preamble: This Act is made to amend and consolidate the laws related to companies, to promote investment in the fields of industry, trade, and business through economic liberalization, to bring dynamism to the economic development of the country, and to make the incorporation, operation, and administration of companies more accessible, simple, and transparent¹.

The House of Representatives has passed this Act in the first year of the declaration of the House of Representatives, 2063².

Chapter-1

Preliminary

1. Short Title and Commencement:

(1) The name of this Act shall be "Company Act, 2063"³.

(2) This Act shall be deemed to have come into force on the 20th of Asoj, 2063 B.S.⁴.

2. Definitions: Unless the subject or context otherwise requires, in this Act:

(a)

"Company" means a company incorporated in accordance with this Act⁵.

(b)

"Private Company" means a private company incorporated in accordance with this Act⁶.

(c)

"Public Company" means a company other than a private company⁷.

(d)

"Holding Company" means a company that holds a subsidiary company under its control⁸.

(e)

"Subsidiary Company" means a company that is under the control of a holding company⁹.

(f)

"Foreign Company" means a company incorporated outside the State of Nepal¹⁰.

(g)

"Listed Company" means a company whose securities are listed on the securities exchange market¹¹.

(h)

"Non-profit Distributing Company" means a company incorporated under Chapter-19 on the condition that it may not distribute or pay dividends or any other amount from the acquired profit or savings to its members for the achievement of any objective¹².

(i)

"Promoter" means a person who, by agreeing to the matters stated in the memorandum of association and articles of association to be submitted to the Office for the incorporation of a company, signs as a promoter¹³.

(j)

"Officer" means a director, chief executive, manager, company secretary, liquidator, and any employee with departmental responsibility of the company¹⁴.

(k)

"Memorandum of Association" means the memorandum of association of the company¹⁵.

(l)

"Articles of Association" means the articles of association of the company¹⁶.

(m)

"Prospectus" means the prospectus that the company has to publish in accordance with Section 23¹⁷.

(n)

"Share" means a divided portion of the share capital of a company¹⁸.

(o)

"Preference Share" means a share issued as a preference share in accordance with this Act¹⁹.

(p)

"Ordinary Share" means a share other than a preference share²⁰.

(q)

"Bonus Share" means a share issued as an additional share to shareholders by capitalizing the savings or reserve fund from the company's profit, and the term also includes the situation where the paid-up amount of the share is increased by capitalizing the savings or reserve fund²¹.

(r)

"Shareholder" means a person who has ownership of a company's share²².

(s)

"Debenture" means a bond issued by a company with or without pledging the company's assets²³.

(t)

"Debenture Trustee" means an organized institution that takes the responsibility for protecting the interests of debenture holders when a company issues debentures²⁴.

(u)

"Register Book" means the register book of shareholders or debenture holders established in accordance with Section 46²⁵.

(v)

"Electronic Record" means the secure storage in a computer system of all types of documents submitted by the company to the Office in electronic form and the documents sent by the Office to the company²⁶.

(w)

"Company Seal" means the company seal used by the company²⁷.

(x)

"Securities Board" means the Securities Board established in accordance with the prevailing law to regulate and manage securities²⁸.

(y)

"Security" means a share, bond, debenture, or loan note issued by a company, and the term also includes a deposit receipt for securities and a right and entitlement letter for securities²⁹.

(z)

"Director" means a director of a company, and the term also includes an alternate director³⁰.

(aa)

"Board of Directors" means the board of directors of a company³¹.

(bb)

"Managing Director" means a managing director of a company³².

(cc)

"Premium Share" means a share issued by a company for sale at a price higher than its face value³³.

(dd)

"Net Worth" means the remaining amount after deducting all other liabilities, excluding the paid-up capital and any reserve, fund, or retained profit to which shareholders are entitled, and also deducting accumulated losses, from the company's total assets at present³⁴.

(ee)

"Unanimous Agreement" means an agreement made by all current shareholders of a private company by unanimous consent regarding the operation of the company³⁵.

(ff)

"Office" means the Office of the Company Registrar established by the Government of Nepal to administer the company, and the term also includes a branch office of the Office of the Company Registrar³⁶.

(gg)

"Registrar" means the registrar of the Office³⁷.

(hh)

"Independent Director" means an independent director appointed in accordance with sub-section (3) of Section 86³⁸.

(ii)

"Court" means the commercial bench of a court specified by the Government of Nepal by publishing a notice in the Nepal Gazette with the consent of the Supreme Court³⁹.

(jj)

"Close Relative" means a member of the same family (Ekasagol) or a husband, wife, father, mother, father-in-law, mother-in-law, brother, sister, sister-in-law, brother-in-law, son, daughter, daughter-in-law, grandson, granddaughter, granddaughter-in-law, or son-in-law⁴⁰⁴⁰⁴⁰⁴⁰.

(kk)

"Prescribed" or "As Prescribed" means as prescribed by the Government of Nepal by publishing a notice in the Nepal Gazette⁴¹.

Chapter-2

Incorporation of a Company

3. Incorporation of a Company:

(1) Any person who wishes to undertake any enterprise with the objective of making a profit may, alone or in a group, incorporate a company for the achievement of one or more objectives as mentioned in the memorandum of association⁴².

(2) For the incorporation of a public company, there shall be at least seven promoters⁴³. However, when a public company incorporates another public company, seven promoters are not required⁴⁴.

(3) Notwithstanding anything contained elsewhere in this section, a non-profit distributing company may be incorporated for the achievement of one or more objectives, subject to the provisions made in Chapter-19⁴⁵.

4. Application to be made for Company Incorporation:

(1) A person who wishes to incorporate a company in accordance with Section 3 shall apply to the Office through electronic means for the approval of the proposed name of the company⁴⁶.

(2) Upon receiving information that the name of the company has been approved by the Office in accordance with sub-section (1), the applicant shall submit an application to the Office in the prescribed format by uploading the following documents through the electronic system:

(a) The memorandum of association of the proposed company⁴⁷,

(b) The articles of association of the proposed company⁴⁸,

(c) If it is a public company and an agreement was made between the promoters before the incorporation of the company, a copy of such agreement⁴⁹,

(d) If it is a private company and a unanimous agreement has been made, a copy of such agreement⁵⁰,

(e) If the law requires prior approval or license from any body before registering a company to operate a particular type of business or transaction, such approval or license⁵¹,

(f) If the promoter is a Nepali citizen, a certified copy of the citizenship certificate; if the promoter is a person with non-resident Nepali citizenship, a certified copy of his/her non-resident Nepali citizenship certificate; and if an organized institution is the promoter, the registration certificate of such institution, the decision of the board of directors regarding the incorporation of the company, and the main document related to the incorporation of such institution⁵²,

(g) If the promoter is a foreign person or company or body, a permit received in accordance with the law to invest or operate a business or transaction in Nepal⁵³,

(h) If the promoter is a foreign person, a document certifying the country of which he/she is a citizen⁵⁴,

(i) If the promoter is a foreign company or body, a certified copy of the certificate of incorporation of such company or body and the main document related to its incorporation⁵⁵.

(3) Notwithstanding anything contained in sub-section (2), clause (b), if a single shareholder company with only one promoter agrees to accept the prescribed format of the articles of association, it shall not be necessary to submit the proposed articles of association⁵⁶⁵⁶⁵⁶⁵⁶.

5. Company to be Registered:

(1) Upon an application for the incorporation of a company in accordance with Section 4, the Office shall, after necessary examination, register such company by taking the prescribed fee within seven days from the date of the application and shall issue a certificate of company registration to the applicant in the prescribed format⁵⁷. If the company is not registered within the specified time, the Office must provide a reason to the proposed company within three days⁵⁸.

(1a) When authenticating application and certificate documents, an electronic signature shall also be valid, and the documents may be submitted electronically⁵⁹.

(2) After the company is registered in accordance with sub-section (1), the company shall be deemed to have been incorporated⁶⁰.

(3) For the purpose of sub-section (1), the Office shall maintain a company registration book in the prescribed format⁶¹.

(4) After the incorporation of a company in accordance with this Section, the matters written in the memorandum of association and articles of association shall be binding on the company and

its shareholders, as well as between the shareholders themselves, as if they were separate agreements⁶².

(5) No person shall be allowed to use the word "company" in the name of any firm or institution to conduct any kind of business without registering a company in accordance with this Act⁶³.

6. Company Registration May be Refused:

(1) The Office may refuse to register a company in any of the following circumstances:

(a) If the name of the proposed company matches the name or trademark of an already registered company, or if it is so similar as to cause confusion⁶⁴.

(b) If the name or objective of the proposed company is contrary to the prevailing law or appears inappropriate or undesirable from the perspective of public interest, morality, decency, etiquette, etc., or appears to reflect the intention of a criminal act⁶⁵.

(c) If the name of the proposed company matches or is so similar as to cause confusion with the name of a company whose registration has been canceled in accordance with this Act or which has been declared bankrupt in accordance with the prevailing law, and a period of five years has not been completed since such cancellation or bankruptcy⁶⁶.

(d) If the necessary conditions for the incorporation of a company in accordance with this Act are not met⁶⁷.

(2) If the Office refuses to register a company due to any of the circumstances mentioned in sub-section (1), it must provide a notice with the reasons to the applicant within fifteen days from the date the application for company incorporation was filed in accordance with Section 46⁸.

(3) A person who is not satisfied with the Office's refusal to register a company in accordance with sub-section (1) or the failure to provide a notice in accordance with sub-section (2) may file a complaint with the court within fifteen days⁶⁹.

7. Company to be an Incorporated Body:

(1) A company incorporated in accordance with this Act shall be an autonomous and organized institution with perpetual succession⁷⁰.

(2) A company may acquire, hold, sell, or otherwise manage movable and immovable property in the same way as a person, subject to this Act⁷¹.

(3) A company may file a lawsuit in its own name, and a lawsuit may also be filed against the company in the same name⁷².

(4) A company may enter into contracts and exercise rights and fulfill liabilities under the contract in the same way as a person⁷³.

8. Liability to be Limited:

The liability of a shareholder in relation to the business of a company incorporated in accordance with this Act shall be limited to the maximum amount of the shares he has purchased or agreed to purchase⁷⁴.

9. Number of Shareholders:

(1) The number of shareholders of a private company shall not exceed one hundred and one⁷⁵.

(1a) Notwithstanding anything contained in sub-section (1), if a private company is incorporated by transport business committees registered and operating in accordance with the prevailing law and a group of transport businessmen associated with them to operate a transport business, and an application is submitted within three months from the date of commencement of this sub-section, such a private company may be registered even if the number of shareholders is more than that stated in sub-section (1)⁷⁶.

(2) Subject to the proviso of sub-section (2) of Section 3, the number of shareholders of a public company shall be at least seven and may be any number above that⁷⁷.

(3) Notwithstanding anything contained in sub-section (1), employees who have purchased shares under a share-selling plan for employees or employees who have purchased shares under such a plan but are not currently in the company's service shall not be counted as shareholders⁷⁸.

10. Conditions to be Followed by a Company:

A company incorporated in accordance with this Act shall, in addition to the conditions stated in this Act, its memorandum of association, or articles of association, follow the following conditions:

(a) All its transactions shall be carried out in the name of that company⁷⁹.

(b) A private company shall write "Private Limited" after its name, and a public company shall write "Limited" after its name⁸⁰. However, this provision shall not apply to a non-profit distributing company⁸¹.

(c) A private company shall not openly sell its shares and debentures⁸².

(d) A private company shall not transfer, mortgage, or otherwise release its securities to any person other than the shareholders without completing the procedure provided for in the memorandum of association, articles of association, or unanimous agreement⁸³⁸³⁸³⁸³.

(e) A company shall not open a partnership or private firm⁸⁴.

(f) Unless otherwise provided in this Act, a non-profit distributing company shall not distribute dividends to its members or make any direct or indirect payment to a member or their close relative⁸⁵.

11. Paid-up Capital of a Public Company:

(1) Unless otherwise provided for a specific company by the prevailing law or by the Government of Nepal by publishing a notice in the Nepal Gazette, the paid-up capital of a public company shall be at least one crore rupees⁸⁶.

(2) Notwithstanding anything contained in sub-section (1), a public company that does not have the paid-up capital mentioned in that sub-section at the time of the commencement of this Act shall maintain the capital as per sub-section (1) within Ashwin 22, 2065 B.S⁸⁷.

12. Public Company to do Certain Transactions:

Notwithstanding anything contained elsewhere in this Act, a company operating banking transactions, financial transactions, insurance business, securities market business, pension fund or mutual fund, a telecommunication service provider company with a paid-up capital of more than five crore rupees, or any other business or transaction as prescribed, must be incorporated as a public company⁸⁸. Currently registered private companies must be converted into public companies in accordance with this section within two years⁸⁹.

13. Private Company to be Converted into a Public Company:

(1) A private company shall be converted into a public company in accordance with this section in the following circumstances:

(a) If the general meeting of the private company passes a special resolution and decides to convert that company into a public company⁹⁰.

(b) If a private company has not fulfilled the necessary conditions to become a public company, it cannot be converted into a public company⁹¹.

(2) In the case of clause (a) of sub-section (1), the concerned private company shall submit an application in the prescribed format with the prescribed fee to the Office within thirty days from the date of the decision, attaching a copy of the decision⁹².

(3) If an application is received by the Office in accordance with sub-section (2) and the concerned private company has fulfilled the necessary conditions to operate as a public company in accordance with this Act, the Office shall record the conversion of such company into a public company in the company registration book and issue a certificate of company conversion within sixty days⁹³.

(8) If any private company is converted into a public company in accordance with this section, the provisions applicable to a public company in accordance with this Act shall automatically apply to that company from the date of such conversion⁹⁴.

(9) When a private company is converted into a public company in accordance with this section, all the assets and liabilities of the converted private company shall be transferred to the latter company⁹⁵.

14. Public Company to be Converted into a Private Company:

(1) A public company shall be converted into a private company in accordance with this section in the following circumstances:

(a) If the number of shareholders of any public company falls below seven⁹⁶.

(b) If a public company is unable to maintain its paid-up capital in accordance with Section 11 or if the paid-up capital is not maintained in accordance with Section 11 due to a reduction in capital in accordance with Section 57⁹⁷.

However, this provision shall not apply to a company in accordance with sub-section (2) of Section 11⁹⁸.

(2) If the situation in sub-section (1) arises, the concerned public company must amend its memorandum of association and articles of association and convert into a private company within six months⁹⁹.

(3) The concerned public company shall submit an application in the prescribed format with the prescribed fee to the Office for conversion into a private company, attaching a copy of the amended memorandum of association and articles of association, within thirty days of such amendment¹⁰⁰.

(4) Upon receipt of an application by the Office in accordance with sub-section (3), the Office shall record the conversion of such company into a private company in the company registration book and issue a certificate of conversion into a private company within sixty days¹⁰¹.

(5) When a public company is converted into a private company in accordance with sub-section (4), all the assets and liabilities of the public company to be converted shall be transferred to the latter company¹⁰².

15. Service of Terms, Notices, etc.:

(1) Notwithstanding anything contained in the prevailing law, if any notice, term, document, etc. related to a company's business or any matter related to the company needs to be served to a company, director, shareholder, debenture holder, or employee, it shall be deemed to have been duly served if such notice, term, or document is submitted to the registered office of the company or sent by registered post or sent through fax, email, telex, or other similar electronic device

maintained at that office¹⁰³. If such notice, term, document, etc. cannot be served, the related information may be transmitted or published in a national-level radio, television, or daily newspaper to inform the concerned company, director, or employee. Such information shall be deemed to have been received by them¹⁰⁴.

(2) Notwithstanding anything contained in the prevailing law, if any term, notice, document, etc. related to official duties needs to be served to any director, shareholder, debenture holder, or any employee from the company or from an authorized officer or court, it may be sent by registered post to the address given by such director, shareholder, or employee for telex, email, or fax, and if no such address is given, to the address provided for postal correspondence¹⁰⁵. When sent in this manner, such notice, term, or document shall be deemed to have been duly served¹⁰⁶.

(3) Notwithstanding anything contained elsewhere in this Act, when a company sends any notice or information to any shareholder, debenture holder, or director, or receives any information from them in accordance with this Act, it may use an electronic communication medium to send it to the electronic communication address provided by them, as provided for in the company's articles of association or with their consent¹⁰⁷. However, a shareholder, debenture holder, or director who does not consent to receive such notice or information through an electronic communication medium must be sent such notice or information by post or other traditional means¹⁰⁸.

16. Functions and Duties of the Registrar:

(1) The Registrar shall have the duty to implement this Act and administer the company¹⁰⁹.

(2) Without prejudice to the generality of sub-section (1), the Registrar may prepare and issue necessary directives to perform the functions of implementation of this Act and company administration efficiently and systematically, and it shall be the duty of every company and officer to comply with and cause compliance with such directives¹¹⁰.

(3) The directives issued in accordance with sub-section (2) shall be published so as to be available to the general public¹¹¹.

(4) The Registrar may delegate some of the powers granted to him under this Act to any authorized employee of the Office as per the requirement¹¹².

(5) Notwithstanding anything contained elsewhere in this section, this section shall not be deemed to limit the instructions given by any regulatory body to any company in accordance with the prevailing law or the authority that such body exercises in relation to such a company in accordance with the prevailing law¹¹³.

17. Pre-incorporation Contracts:

(1) A contract made before the incorporation of a company shall only be a proposed contract, and such a contract shall not be binding on the company¹¹⁴.

(2) If a person conducts any transaction or takes out a loan on behalf of a company before its incorporation, such a person shall bear personal liability for the contract related to such a transaction, subject to sub-section (3)115.

(3) If a company, within the time mentioned in a transaction or within a reasonable time after its incorporation, accepts a transaction or loan made before the date it obtained the right to commence business, through its actions, behavior, or conduct, or agrees to such a transaction, the transaction shall be binding on the company and the other party to the contract, and the person who conducted such a transaction on behalf of the company shall be exempted from the personal liability to be borne in accordance with sub-section (2)116.

(4) Notwithstanding anything contained elsewhere in this section, in the case of contracts made before the incorporation of a private company, it shall be as provided for in the unanimous agreement of such a company117.

Chapter-3

Memorandum of Association, Articles of Association and Prospectus

18. Memorandum of Association:

(1) The memorandum of association of a company shall contain the following matters:

(a) The name of the company118.

(b) The address of the registered office of the company119.

(c) The objectives of the company120.

(d) The works to be done to achieve the objectives of the company121.

(e) The amount of the authorized capital of the company, the amount of the share capital to be issued by the company at present, and the promoter of the company122.